

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
April 29, 2014, commencing at 9:51 a.m., at the Office of
Zoning and Administrative Hearings, 100 Maryland Avenue, 2nd
Floor Council Hearing Room, Rockville, Maryland 20850
before:

Martin L. Grossman
Hearing Examiner

A P P E A R A N C E S

For the Applicant:

Patricia Harris, Esq.

Mike Goecke, Esq.

Lerch, Early & Brewer, Chartered

3 Bethesda Metro Center, Suite 460

Bethesda, Maryland 20814

For Kensington Heights Civic Association:

Michele Rosenfeld, Esq.

The Law Office of Michele Rosenfeld, LLC

11913 Ambleside Drive

Potomac, Maryland 20854

C O N T E N T S

Rebuttal				
Witnesses:	Direct	Cross	Redirect	Recross
Wes Guckert				
By Ms. Cordry		28		278
By Mr. Adelman		213		
By Ms. Harris			266	

E X H I B I T S

Exhibit No.		Marked/Received
522(b)	Shaded version of 522(a)	229
550	Montgomery County Executive Pedestrian Safety Initiative	38
551	USDOT Manual on Uniform Traffic Control Devices	40
552	Maryland Transportation Code Annotated Section 21-101	46
553	Karen Cordry's chart comparing CLV to HCM	153
554	Wes Guckert's Trip Generation for Background Development prepared March 19, 2014	171
555	Karen Cordry's chart of background generation for September 2012 and April 2013	174

P R O C E E D I N G S

1 MR. GROSSMAN: This is the 30th day of a public
2 hearing in the matter of Costco Wholesale Corporation, Board
3 of Appeals No. S-2863, OZAH No. 13-12, petition for a
4 special exception pursuant to Zoning Ordinance Section
5 59-G-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 Westfield Wheaton Mall, and is zoned C-2,
10 general commercial.
11

12 The hearing was begun on April 26, 2013, and the
13 next session will be on May 1, 2014, here in the second
14 floor hearing room of the Council Office Building at 9:30.
15 This hearing is conducted on behalf of the Board of Appeals.
16 My name is Martin Grossman. I'm the Hearing Examiner, and I
17 will take evidence and write a report and recommendation to
18 the Board of Appeals which will make the decision in this
19 case. Will the parties identify themselves, please?

20 MR. BRANN: Good morning. Erich Brann with
21 Costco.

22 MR. GROSSMAN: Mr. Brann.

23 MS. HARRIS: Good morning. Pat Harris on behalf
24 of Costco.

25 MR. GROSSMAN: Ms. Harris.

1 MR. GOECKE: Good morning. Mike Goecke for
2 Costco.
3 MR. GROSSMAN: Mr. Goecke.
4 MS. CORDRY: Karen Cordry for Kensington Heights.
5 MR. GROSSMAN: Ms. Cordry.
6 MS. ROSENFELD: Michele Rosenfeld, Kensington
7 Heights.
8 MR. GROSSMAN: Ms. Rosenfeld.
9 MR. SILVERMAN: Good morning. Larry Silverman
10 with the Coalition to Stop Costco Gas.
11 MR. GROSSMAN: Mr. Silverman.
12 MS. ADELMAN: Good morning, Mr. Grossman. Abigail
13 Adelman, Stop Costco Gas Coalition.
14 MR. GROSSMAN: Ms. Adelman.
15 MR. ADELMAN: Good morning, Mr. Grossman.
16 Dr. Mark Adelman for the Coalition.
17 MR. GROSSMAN: Dr. Adelman. And?
18 MS. AREVALO: Ann Arevalo.
19 MS. SAVAGE: Donna Savage, Kensington Heights.
20 MR. GROSSMAN: All right.
21 MS. DIDONE: Sylvia Didone, Kensington View.
22 MS. DUCKETT: Eleanor Duckett, Kensington View.
23 MS. SHEARD: Virginia Sheard, Kensington View.
24 MR. GROSSMAN: Ms. Sheard, hi. All right.
25 MR. SULLIVAN: David Sullivan for Costco.

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1 MR. GUCKERT: Wes Guckert, Traffic Group.
2 MR. TIAN: Qiang Tian, The Traffic Group.
3 MR. GROSSMAN: Okay. Thank you. All right,
4 actually was everybody. Let's start out with some
5 preliminary matters. Since our April 1, 2014, hearing,
6 we've received additional exhibits, and that is Exhibits 515
7 through Exhibit 549, and I'm not going to read every one of
8 them this time, just some of the more significant ones.
9 On 5 -- Exhibit 519 is an order granting Part 1 of
10 the joint motion of KHCA, KVCA, and SCGC to postpone
11 Mr. Sullivan's testimony and denying Part 2 for
12 reconsideration of the Hearing Examiner's decision not to
13 strike Mr. Sullivan's rebuttal report of February 21, 2014.
14 Exhibit 520 was a notice of four additional hearing dates,
15 and you all know those dates. Let's see. 524 was a
16 response from the Board of Appeals to Dr. Adelman's second
17 request for a motion for summary disposition. 525 was an
18 e-mail from Renee Kamen of April 10, 2014, regarding
19 comments on the requested HCM analysis and proffered
20 improvement to Intersection 16.
21 Exhibit 529 was an e-mail from Mr. Goecke,
22 submitting objections to the opposition's exhibits, and a
23 response from me, and 529(a) was the list of Costco's
24 objections to the opposition's exhibits; 531, comments from
25 Dr. Cole -- actually, really questions, the way I read it --

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1 on Mr. Sullivan's report submitted by Ms. Rosenfeld; 532,
2 e-mail from Ms. Rosenfeld, submitting a new motion to strike
3 portions of Mr. Sullivan's rebuttal report, and 532(a) were
4 the KHCA objections to omissions of the portions of
5 Mr. Sullivan's rebuttal report.
6 533 was an e-mail from me of April 16, responding
7 to the motion to strike. 536 is Costco's motion for
8 reconsideration of the Hearing Examiner's decision of April
9 1 regarding the evidence on April -- regarding the evidence
10 for Intersection 16, and then I -- 536(a) was an e-mail from
11 me, giving the opponents until April 25 to respond. 538 was
12 an e-mail from Ms. Rosenfeld on April 21, submitting KHCA's
13 response to Costco's exhibit objections, and 538(a) of that
14 is the exhibit -- is the response itself.
15 543 is an e-mail from Ms. Duckett, received on
16 April 25, submitting Kensington View's response to the
17 proposed Intersection 16 changes, and Costco's motion for
18 reconsideration; Exhibit 545, KHCA's response to Applicant's
19 motion for reconsideration of my ruling on the scope of
20 admissibility of Intersection 16 design changes and KHCA's
21 request for oral argument if I were inclined to grant that
22 motion to reconsider; 547, an e-mail from the Stop Costco
23 Gas Coalition of April 28, supporting KHCA's response to
24 Applicant's motion for reconsideration.
25 548 was the order denying Applicant's motion to

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1 reconsider my ruling regarding the proposals to modify
2 Intersection 16. 549 is the Board of Appeals' resolution to
3 affirm the Hearing Examiner's denial of Dr. Adelman's motion
4 to dismiss dated April 25, 2014.
5 Okay. I presume you all got the e-mail I sent out
6 yesterday, denying the motion to reconsider?
7 MS. ROSENFELD: Yes.
8 MR. GROSSMAN: I thought it was, speed was more
9 important than formality there in terms of issuance of that.
10 All right. The witness scheduled for today is
11 Mr. Guckert's direct and cross and Applicant's rebuttal and
12 any -- well, I guess we're into cross, really, of
13 Mr. Guckert, rather, and any surrebuttal related to the
14 traffic issues. If we have time, we can also discuss the
15 objections that have been filed by the applicant to
16 exhibits.
17 After I denied the opposition's joint motion to
18 preclude Mr. Sullivan's testimony, KHCA filed an objection
19 to the testimony based on an argument that it's inadmissible
20 as employing a methodology not acceptable in the scientific
21 community. As I said in my April 16, 2014, response to the
22 e-mailed objection, I will not preclude Petitioner from
23 having Mr. Sullivan testify as to his use of the, quote,
24 ozone limiting method, unquote, during his rebuttal
25 testimony since it is responsive to Dr. Cole's testimony;

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1 however, as I stated, I will consider the admissibility
2 issue again after Mr. Sullivan has the opportunity to
3 present his scientific justification for applying the ozone
4 limiting method during his rebuttal testimony.
5 As I think I said in the e-mail, in this kind of
6 proceeding, we do have the luxury -- we're not in front of a
7 jury -- of considering the evidence and then, if we decide
8 that it should be stricken or that its weight should be
9 allowed in a certain way, we can do that as necessary. If I
10 decide to preclude this substantive portion relating to the
11 OLM method based on the cases that were cited -- Frye-Reed
12 and Chesson -- or based on Daubert, it will then be in the
13 record as proffered but not admitted testimony, available
14 for review by subsequent forums. If I admit it, the
15 opposition's expressed concerns relating to the scientific
16 acceptability of the methodology will go to the weight that
17 I give it. Okay.
18 MS. CORDRY: Mr. Grossman --
19 MR. GROSSMAN: Yes.
20 MS. CORDRY: -- if I understood you to say, you
21 were expecting us to put surrebuttal testimony on at this
22 point rather than have our surrebuttal at the end of their
23 rebuttal testimony --
24 MR. GROSSMAN: Well --
25 MS. CORDRY: -- because --

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1 MR. GROSSMAN: -- I thought that that would be,
2 was one of the possibilities here given the discrete nature
3 of the rebuttal; that is, we have a traffic rebuttal and we
4 have a Mr. Sullivan rebuttal and that's all on the rebuttal.
5 So if you, if we have time --
6 MS. CORDRY: I guess, I think I would certainly
7 prefer that we -- if we do the objections say, rather than
8 using that, because, I mean, if I was going to prepare a
9 rebuttal, I would, or surrebuttal, I would prepare it, I
10 would perhaps bring in different exhibits, I would have
11 other witnesses perhaps, not just, say, myself come back and
12 testify on things I testified to. So I think we had assumed
13 that you would do all the rebuttal together --
14 MS. ROSENFELD: Yes.
15 MS. CORDRY: -- and then you do all the
16 surrebuttal together rather than --
17 MR. GROSSMAN: All right.
18 MS. ROSENFELD: It had been my expectation that
19 Costco would present its rebuttal witnesses and then we
20 would bring our surrebuttal witnesses.
21 MS. CORDRY: I think it may be a meaningless
22 question because I think we will -- with luck, I think we
23 will get done today, but I don't think we will have a large
24 amount of time left over. So --
25 MR. GROSSMAN: All right. All right.

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1 MR. ADELMAN: Mr. Grossman, just, I was actually
2 going to raise the same issue. I would agree with
3 Ms. Cordry and with Ms. Rosenfeld. I think the surrebuttal
4 from my point of view would more logically come after
5 Applicant has completed its rebuttal, but I just wanted to
6 know when you think is best to do it.
7 MR. GROSSMAN: After a year of this hearing, you
8 want logic?
9 MR. ADELMAN: I am sorry.
10 MR. GROSSMAN: Well, it wasn't a formal
11 arrangement, and usually, surrebuttal comes after rebuttal
12 is completed. I'm not forcing you to put on surrebuttal
13 testimony today. I was just suggesting that as one
14 possibility, and let's see -- if what you say, Ms. Cordry,
15 is correct, we may not have a huge amount of time. We can
16 go through the objection issues --
17 MS CORDRY: Right.
18 MR. GROSSMAN: -- which is the next item I was
19 going to discuss.
20 The parties' agreed-upon exhibit lists and
21 separate objections to exhibits were due by April 15 so we
22 could discuss them today. I did receive objections from the
23 applicant on April 15 -- that's Exhibit 529(a) -- and I
24 received the response from the opposition on April 21,
25 Exhibit 538(a). I did not receive opposition objections to

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1 exhibits; so I assume that you don't have objections.
2 MS. CORDRY: Well, I think other than the ones,
3 the specific ones we have done, as, for instance, to
4 portions of Mr. Sullivan's reports --
5 MS. ROSENFELD: Correct.
6 MS. CORDRY: -- and so forth, I think we -- we
7 stated, I think, in our response that we view the rest of
8 them as things that while in a court you might object to
9 hearsay on this or that or the other thing, that it --
10 within the confines of these proceedings, we were prepared
11 to just, you know, let the other exhibits come in, as you
12 said, for whatever weight they bear.
13 MR. GROSSMAN: Okay. I will allow the applicant
14 to make an argument as to specific exhibits, and we can
15 discuss them, each one that you raised in your list,
16 Mr. Goecke, but I do want to give you my general approach to
17 the admissibility of exhibits in this proceeding, and it's a
18 little closer to what KHCA said in its response than to your
19 general position.
20 I see little reason to strike learned treatises in
21 this type of proceeding when the applicant has had every
22 opportunity to rebut anything said in them. It seems to me
23 that's the kind of hearsay that the statute, the
24 Administrative Procedures Act, and our own rules were
25 contemplating when it said that hearsay could be admissible

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1 in this type of proceeding if it's otherwise reliable and
2 probative. And this -- and certainly the fairness aspect of
3 this has been satisfied by giving every opportunity, by
4 having these produced in advance and by giving the
5 opportunity to respond. They won't be given the weight of
6 live expert testimony because the declarants are not here to
7 be cross-examined, but they would be admitted.
8 The same is true of signed letters to OZAH by
9 folks who have not testified. Traditionally here we have
10 accepted signed letters from members of the community, even
11 though the person is not here to be cross-examined. They
12 definitely do not get the weight of a witness who has
13 testified under oath and who has been cross-examined. That
14 has been the practice for many years, to receive community
15 submissions in that fashion. We do require, as I say, that
16 they be signed so that we can have a sense of some
17 reliability.
18 Newspaper articles I consider a different story.
19 I think that they have an inherent unreliability built into
20 them, and I am not inclined, as a general rule, to just
21 admit newspaper articles that are objected to, but I'm happy
22 to go through them one at a time to see if particular ones
23 have some indicia of reliability that would, you know, we
24 would allow them in in a particular case and vice versa. So
25 we can do that as time permits.

1 I have gone through your list and looked at the
2 exhibit descriptions in our exhibit list, and I have some
3 preliminary ideas based on my recollection of those
4 particular exhibits. I haven't yet gone through the
5 physical exhibit, each physical exhibit. So that's
6 something I think we can do in this hearing to the extent
7 that you care to, and you might take a look over and, given
8 my comments, see which ones you really continue to have an
9 objection to and then --

10 MR. GOECKE: I think that's a good suggestion.
11 Thank you.

12 MR. GROSSMAN: Okay.

13 MS. CORDRY: Would you care to, or we can perhaps
14 try to figure out what you consider reliable in a newspaper
15 article. If it's a columnist writing about something he's
16 observed, is that more reliable than somebody --

17 MR. GROSSMAN: I didn't want to state a rule about
18 that. I just, I think I would look at it, each one, and see
19 what my sense of it is. I'm just very hinky about newspaper
20 articles, some reporter giving an impression of something
21 somebody said, you know. I'd consider that of questionable
22 value, especially in a case like this, which has gone on so
23 long, which we have so much live testimony.

24 I think, as something I've said to the opposition
25 before, I mean, you have to give some consideration to what

1 really will bear on what I'm going to decide, what I'm
2 really going to look at here. Am I going to go to a
3 newspaper article to think about it in terms of evidence in
4 this case when I have so much evidence on these significant
5 issues? It's just, you know, there is a limit to what is
6 meaningful or truly can have a material impact on what I
7 would recommend.

8 MS. CORDRY: Right. I think perhaps when we look
9 at some of them, you will see that they are of no
10 controversy or they are things like gasoline mileage reports
11 that are, you know, but we can, we can certainly go through
12 those as we go through.

13 MR. GROSSMAN: Right. I understand.

14 MR. SILVERMAN: Yes. Mr. Grossman, I think some
15 of these exhibits are evidence beyond what they say
16 directly. So, for --

17 MR. GROSSMAN: That's probably the problem with
18 them, Mr. Silverman.

19 MR. SILVERMAN: Yes. Well, for example,
20 Mr. Guckert indicated he was not aware until this case of
21 the safety statistics compiled by the Montgomery County
22 Police. Without deciding whether those statistics are
23 correct or incorrect, it seems to me it bears on his
24 credibility as a safety witness the fact that he doesn't,
25 chose not to look at those things. So I think that that's,

1 that all the evidence about pedestrian safety, I mean, he is
2 saying, I don't look at those --

3 MR. GROSSMAN: Well, I don't think you have to get
4 into that argument now. That's --

5 MR. SILVERMAN: Yes.

6 MS. CORDRY: Yes.

7 MR. GROSSMAN: -- that's a question of what weight
8 I give Mr. Guckert's testimony. That evidence came out in
9 terms of the cross-examination. It's not, it really doesn't
10 depend on what's in the newspaper article per se. You know,
11 I can reach my own impressions about his testimony.

12 MR. SILVERMAN: And the other issue, you know,
13 Ms. Harris began this case by saying that the opposition was
14 governed by emotion and not by science or facts, and that's
15 a, that's a serious statement. And I think, I think, for
16 example, Ms. Adelman, in citing all the documents that she
17 read and relied on, essentially rebuts that basic statement
18 that this is a case of emotion versus fact, and I think she
19 has --

20 MR. GROSSMAN: That's not an issue that we're
21 discussing now. Right now I'm just making some general
22 comments about the objections that have been made, that have
23 been formally made, and we'll get into specific ones. It's
24 not -- what you consider that I should consider is a matter
25 of argument, and you can make that argument later, but in

1 terms of the specific exhibits, when we go through those
2 which Mr. Goecke still wishes to object to, you know, we can
3 do that later. I have made notes on each one based on my
4 recollection of those exhibits, but as I said, I haven't
5 physically gone through them again yet. So --

6 MR. GOECKE: And given your guidance,
7 Mr. Grossman, I think it makes sense for us to go back, take
8 a look at our list, maybe cull it down and focus on the ones
9 that we feel more strongly about --

10 MR. GROSSMAN: Okay.

11 MR. GOECKE: -- and then perhaps we can bring
12 copies of those for everybody to discuss.

13 MR. GROSSMAN: Sure. Well, we have the copies
14 here. We have the boxes of the --

15 MR. GOECKE: Sure. Sure, but in a more orderly
16 fashion.

17 MR. GROSSMAN: -- of the files here. It's just a
18 logistical thing --

19 MR. GOECKE: Right.

20 MR. GROSSMAN: -- to go through them. Okay.
21 Let's see. All right. And Applicant has filed a motion to
22 have me reconsider the April 1, 2014, ruling. I did rule on
23 that, as I said, in the e-mail I sent out yesterday, which I
24 think was Exhibit 548. I'm not going to go through and read
25 it into the record again unless anybody thinks -- and a copy

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1 of it should be in the file now. I think I tried to be
2 rather clear about where I am on that, and we'll just go on
3 from there. As I said, I denied that motion. Okay.
4 MR. SILVERMAN: May I raise a question about the
5 intersection 16?
6 MR. GROSSMAN: Yes.
7 MR. SILVERMAN: That intersection is not part of
8 the subject property --
9 MR. GROSSMAN: Right.
10 MR. SILVERMAN: -- and it's not under the control
11 of the applicant.
12 MR. GROSSMAN: Right.
13 MR. SILVERMAN: Is Westfield subject to the
14 rulings of the Board, I mean, if the Board says Westfield
15 has to do this, that, and the other thing?
16 MR. GROSSMAN: No. No. You might not have been
17 here, but I think that point -- we raised that point, but
18 Westfield actually filed something, saying they agreed to it
19 or they physically --
20 MS. HARRIS: They would agree to Costco making the
21 improvement.
22 MR. SILVERMAN: Yes, but what is --
23 MR. GROSSMAN: Right, but in terms of the, and --
24 in terms of the Board requiring it, if the owner did not
25 agree, the Board, in my opinion, could not require it and, I

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1 suspect, based on my past connection with the Board on this
2 kind of issue, would not require it, you know. I would
3 certainly question their jurisdiction to do it, and one of
4 the things I said in my order denying the motion to
5 reconsider was: Moreover, it is a change proposed for an
6 area outside of the special exception site and is therefore
7 outside of the direct control of the litigants and the Board
8 of Appeals. It also appears that resolving the concerns of
9 the parties regarding the advisability of the proposed
10 changes and their acceptability to the community would
11 involve evaluations beyond the scope of this special
12 exception hearing. So that's the language in my order
13 denying your motion.
14 Also, the second question I had raised is whether
15 we should, we should have, or allow a condition that dealt
16 with this, and after seeing the concerns raised, I think it
17 would probably be unwise. So I would, I suggested in my
18 order some alternative language for the Board of Appeals,
19 essentially saying that they're not expressing an opinion
20 about what happens to Intersection 16. If Westfield and the
21 community and the technical staff decided that it was
22 advisable to reconfigure that intersection, then that would
23 be up to them to determine it. It wouldn't be precluded by
24 anything that the Board of Appeals would be saying. That
25 would be my, probably be my recommendation given the input

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1 that I've now had from various sides on the concerns about
2 changing the intersection. It may still be advisable. I'm
3 not saying it isn't. I just think it's something that -- it
4 appears to be beyond what we can really do for a property
5 outside of the subject site in this type of proceeding.
6 MS. CORDRY: And just to clarify, based on that, I
7 have taken out, I'm not intending to question about,
8 Mr. Guckert about the nature of those changes or the
9 advisability or anything like that, which is one of the
10 reasons why I say we might actually get done today --
11 MR. GROSSMAN: Bless you.
12 MS. CORDRY: -- with Mr. Guckert. So I just want
13 to be clear that obviously, if we were considering that
14 further, I would have some questions on it, but --
15 MR. GROSSMAN: Yes.
16 MS. CORDRY: -- based on your piece, I am not
17 trying to go to that question.
18 MR. GROSSMAN: Then it was serendipity that I sent
19 it out yesterday, right?
20 MS. CORDRY: Yes. I was --
21 MR. GROSSMAN: All right.
22 MS. CORDRY: -- hoping you would get it out
23 yesterday so I would know whether to include those questions
24 or not.
25 MR. GROSSMAN: All right. Do we have any other

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1 preliminary or procedural matters?
2 MR. ADELMAN: Yes.
3 MR. GROSSMAN: Dr. Adelman.
4 MR. ADELMAN: One is very personal and I apologize
5 in advance. My leg is giving me a lot of trouble. So I'll
6 be in and out, because I have to keep moving; so I will try
7 and not be disruptive.
8 MR. GROSSMAN: I'm sure you won't be.
9 MR. ADELMAN: And the second --
10 MR. GROSSMAN: I'm sorry about your leg. It's
11 something I can understand personally. That's --
12 MR. ADELMAN: Thank you. And the second, I will
13 note, with all deference to Ms. Cordry, I think it's very
14 unlikely we will finish with Mr. Guckert today. She appears
15 to have forgotten that I have a few questions. So --
16 MR. GROSSMAN: I'm sure you'll keep it short,
17 though.
18 MS. CORDRY: But you see, I have scratched out
19 parts on my notes here, so you see.
20 MR. GROSSMAN: Very good. Ms. Rosenfeld.
21 MS. ROSENFELD: Cindy Holland, the real estate
22 broker who had earlier indicated she wanted to testify as an
23 individual but was unavailable because of work conflicts, is
24 available to testify on May 8th, and she asked me to convey
25 that, that she would like to come in and testify. Again,

1 she's been in contact with me. She's not a Kensington
2 Heights witness. She's not a Coalition or a Kensington View
3 witness. She is coming in to testify as an individual.

4 MR. GROSSMAN: Well, I think it's problematic in
5 that it's after the cases, case-in-chief has been completed
6 on both sides. So, you know, unless it was part of a
7 surrebuttal, assuming, based on my recollection of what she
8 said in the statement that she filed -- and that, by the
9 way, was one of the items objected to by Mr. Goecke, was the
10 statement and her list of qualifications, as well, that she
11 filed -- and so her testimony is clearly opposition
12 testimony, and it really can't come, in fairness, at this
13 stage in the proceeding.

14 What I was going to say in terms of his objection
15 is, I was, assuming that her statement was signed -- and I
16 don't recall it, whether it was signed -- assuming her
17 statement was signed, I would receive it as non-expert
18 testimony in the same way I would receive any other signed
19 statement submitted by, by a member of the community and
20 given weight of that sort. It would not be received as
21 expert testimony.

22 MS. ROSENFELD: Her statement was not signed. It
23 was provided at the request of Costco to offer the scope of
24 testimony that she anticipated to provide --

25 MR. GROSSMAN: Right.

1 MS. ROSENFELD: -- and that was at the time when
2 she expected she would be able to appear. Obviously, if she
3 were a Kensington Heights witness, then we would have been
4 able to compel her to be here --

5 MR. GROSSMAN: Right.

6 MS. ROSENFELD: -- more persuasively than we could
7 when she was appearing as an individual. She had
8 settlements scheduled and just could not appear the days
9 that she had hoped to appear.

10 MR. GROSSMAN: Right.

11 MS. ROSENFELD: So I would hope that given the
12 fact that the case has been so protractive, we still are in
13 the course of rebuttal testimony on both sides, that she
14 would be allowed to appear to testify as an individual.

15 MR. GROSSMAN: Actually, I think that cuts the
16 other way, because it's gone on for a year before we --
17 almost a year before we even began the rebuttal. So she
18 could have appeared lots of times. I made special -- I
19 arranged a special day for members of the community to
20 appear if they wanted and took members on many other days as
21 well. So there was ample opportunity.

22 MS. ROSENFELD: She hadn't even reached out to us
23 at that point in time.

24 MR. GROSSMAN: I'm not blaming anybody. I'm --

25 MS. CORDRY: Right.

1 MS. ROSENFELD: So I --

2 MR. GROSSMAN: -- just saying that in terms of the
3 orderliness of the proceeding --

4 MS. CORDRY: It is my understanding that her
5 actual involvement and reasons, among other -- reasons for
6 testifying, in terms of her activities and trying to be a
7 real estate broker in that area, didn't even occur until
8 well after the July 31st date when other witnesses came and
9 testified. I don't think that's really the point. It is

10 somewhat problematic to downgrade the weight of her
11 testimony without allowing her to come in and produce, you
12 know, the basis for which her testimony would then be given
13 the equivalent weight of other witnesses that would testify.

14 MR. GROSSMAN: I don't know. Why would it be
15 problematic? I'm just treating her, I would treat her
16 written, any -- her written signed statement the same way I
17 would treat any other written signed statement, but --

18 MS. CORDRY: Well, what I'm saying is she's
19 prepared to come in and obviate the objection that's being
20 raised to it.

21 MS. ROSENFELD: I'll couch it differently. It
22 would be prejudicial because she's able to testify. She can
23 come in and present her testimony and substantiate what she
24 would be able to provide in writing.

25 MR. GROSSMAN: Well, it seems to me, without even

1 hearing from the applicant, the prejudice is on the other
2 foot because they're in their rebuttal case now. So, in any
3 event --

4 MS. CORDRY: We would note, a 55-page new
5 scientific application was made as part of the rebuttal
6 report. It hardly seems that it's an equivalent level --

7 MR. GROSSMAN: Let's not --

8 MS. CORDRY: -- of prejudice in terms of what's
9 being introduced.

10 MR. GROSSMAN: No. Let's not retrace that step.
11 We've --

12 MS. CORDRY: I understand, but --

13 MR. GROSSMAN: -- argued that out a fare-thee-well
14 now. So --

15 MS. CORDRY: I understand, but I think that --

16 MS. ROSENFELD: And they certainly would have the
17 opportunity to bring a rebuttal witness if they felt it was
18 appropriate.

19 MR. GROSSMAN: I'll hear from the applicant on
20 this, say --

21 MR. GOECKE: We would object to Ms. Holland
22 testifying for the reasons you've cited.

23 MR. GROSSMAN: At some point, when you've had a
24 hearing that's gone on for a year now, you have to have
25 some, some aspect of orderliness, and I think that

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1 completing the cases-in-chief, over that point is a fair
2 point to say, no, there are going to be no more direct
3 witnesses, you know, there are just going to be rebuttal
4 witnesses at this point. So she had every opportunity to
5 come in. We had lots of days available for her to come in.
6 So I cannot --
7 MS. CORDRY: May she at least submit it in a
8 formal signed fashion and -- so that --
9 MR. GROSSMAN: She can submit the signed version.
10 In other words, if she, since you said that the earlier one
11 -- and I think I recall it not being signed -- the early
12 statement that she submitted was not signed, if she submits
13 a signed version of that statement, I'll accept it as a, as
14 authenticating something she already had filed on a timely
15 basis and I'll treat it as I would a signed statement from a
16 member of the community, which, as it says --
17 MS. ROSENFELD: But her statement only went to the
18 scope of what she expected to testify. It doesn't include
19 any of her rationale or her firsthand personal knowledge of
20 her experience.
21 MR. GROSSMAN: To the extent it's limited, it was
22 by her own choice. She had a year. She had from the time
23 this case was filed, more than a year, to file whatever she
24 wanted to file. So that's not --
25 MS. CORDRY: Again, as I said, her experience did

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1 not occur a year ago. It occurred within the last few
2 months, as I understand what her --
3 MR. GROSSMAN: It hasn't been within the last few
4 months because her filing was more than the last few months
5 ago. So I --
6 MS. CORDRY: Well, in any case, it was certainly
7 long after July, as I understand, was when her involvement
8 with these issues actually arose. So, you know --
9 MR. GROSSMAN: Yes, that's July of 2013. We're
10 now at the end of April --
11 MS. CORDRY: I understand.
12 MR. GROSSMAN: -- of 2014. You know, there was
13 ample opportunity for her or any other member of the
14 community to come in, and lots did. Okay. Any other
15 preliminary matters?
16 (No audible response.)
17 MR. GROSSMAN: No. Then I think we're ready for
18 our next witness. Mr. Guckert, would you be so kind as to
19 take the seat of honor there, please?
20 MR. GUCKERT: Uh-huh.
21 MR. GROSSMAN: And would you mind moving the chair
22 that's in front of you back a little bit so I can see?
23 MR. GUCKERT: Yes, sir.
24 MR. GROSSMAN: Thank you. All right. So I think
25 we left off, we were in the middle of cross-examination.

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1 MS. CORDRY: Yes.
2 (Witness previously sworn.)
3 MR. GROSSMAN: All right. And, Mr. Guckert, you
4 are still under oath.
5 THE WITNESS: Yes, sir.
6 MS. CORDRY: Okay.
7 MR. GROSSMAN: All right. You may resume,
8 Ms. Cordry.
9 REBUTTAL CROSS-EXAMINATION (Resumed)
10 BY MS. CORDRY:
11 Q Mr. Guckert, do you have with you your, copies of
12 your original traffic analysis and your supplemental traffic
13 analysis?
14 A I believe I do.
15 Q Okay.
16 A For the LATR, correct?
17 Q Yes. Since we will be asking a number of
18 questions on those, I just want to make sure you have them
19 handy.
20 MR. GOECKE: And which exhibits are these?
21 BY MS. CORDRY:
22 Q And those would be, I believe, Exhibit 11 in the
23 original submission, and then 128 was the supplemental
24 traffic analysis.
25 A I'm not sure what the supplemental is. Could you

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1 show me?
2 Q That was the April analysis you did, the April
3 27th.
4 A The, the map?
5 Q Well, the map and then we had a number of actual
6 traffic readings that went with that map.
7 A Well, I've got the map, okay, and if you, if you
8 could help me explain -- let's go back so I can mark this.
9 The LATR was No. 11?
10 Q Yes.
11 A Okay.
12 MR. GROSSMAN: Now, Ms. Cordry, you spoiled me
13 prior to this by always giving me a copy of pages that you
14 intended to refer to.
15 MS. CORDRY: I will. I just --
16 MR. GROSSMAN: Okay.
17 MS. CORDRY: -- wanted to make sure whether he
18 had --
19 MR. GROSSMAN: I just wanted to know if I
20 should --
21 MS. CORDRY: -- the entire document with him so
22 that he would be able to --
23 MR. GROSSMAN: Okay.
24 MS. CORDRY: -- find them just in case I missed
25 any page that I had --

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1 MR. GROSSMAN: I wanted to know if I --
2 THE WITNESS: Yes.
3 MR. GROSSMAN: -- if I needed to get a copy of the
4 report out.
5 THE WITNESS: I'm not sure if -- are you talking
6 about the critical lane volume analyses?
7 BY MS. CORDRY:
8 Q Well, I'm talking about this document, which was
9 sent to us on May 10th, 2013, which starts out with --
10 A Okay, the critical lane volume analysis.
11 Q The critical lane volume --
12 A Okay.
13 Q -- and it has several intersections, not all of
14 the same intersections as were done in Exhibit 11.
15 A All right. And what -- do you have an exhibit
16 number for that?
17 Q That's 128(b). The detailed critical lane volumes
18 and minute, or 15-minute intervals and so forth, that's
19 128(a), and then the map, so to speak, is 128(b).
20 A Let me see if I have -- the map is up there.
21 So --
22 Q Right.
23 A -- that's fine.
24 MS. HARRIS: Wes, I have an extra copy if you need
25 it.

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1 THE WITNESS: No. I have, I have 128(a). I have
2 that out.
3 BY MS. CORDRY:
4 Q Right.
5 A Okay.
6 Q All right. When we were here last time, do you
7 recall I asked you if there was some number that traffic
8 engineers use for how fast people walk?
9 A Yes.
10 Q And I believe you said four feet per second.
11 A Around four feet per second. I think my --
12 Q Okay.
13 A -- I think my testimony was we normally use
14 somewhere around four feet per second.
15 Q And, in fact, I asked you if you didn't yourself
16 use three-and-a-half feet per second in some of your
17 calculations, and you said, no, four feet per second is what
18 traffic engineers used?
19 A I don't recall that.
20 Q Okay. I can show you if you'd like to see it.
21 A You could.
22 Q Okay.
23 A You could show me, but I'm just saying I don't
24 recall that, but three-and-a-half, four feet per second.
25 Q Well, you were pretty emphatic that it was four

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1 feet per second, I think.
2 A Okay.
3 MR. GROSSMAN: What difference does it make,
4 really?
5 BY MS. CORDRY:
6 Q Well, because I would now ask you to turn to
7 Exhibit 14(a) in your documents, in your supplemental
8 traffic analysis, I'm sorry, no, your original traffic
9 analysis, Exhibit 11.
10 A So in 11. Do you want me to --
11 Q And within that is Exhibit 14(a).
12 A Do you want me to go --
13 MR. GROSSMAN: All right. So it's not my Exhibit
14 14(a). It's his labeled --
15 MS. CORDRY: His exhibit was in Exhibit 11.
16 MR. GROSSMAN: Okay.
17 THE WITNESS: Okay.
18 BY MS. CORDRY:
19 Q Would you read Footnote 2?
20 A Three-and-a-half feet per second walking speed
21 was, no, utilized to calculate desired time.
22 Q Okay. So when you said on April 1st that four
23 feet per second was what the traffic engineers used and I
24 asked you if you didn't use three-and-a-half feet per
25 second, you --

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1 MR. GROSSMAN: Well, Ms. Cordry, I'm going to stop
2 you. I just want to know, what difference will that make in
3 any, for anything?
4 MS. CORDRY: Well, for one thing it means it's
5 longer time. For another thing it means that when I ask him
6 a question about what he has in his own exhibits, he denies
7 them, he doesn't recall what he's put in his exhibits, he's
8 incorrect. I'm also going to ask him if that is -- if
9 three-and-a-half feet per second has not been the legal
10 standard for quite a few years.
11 MR. GROSSMAN: How would that be material to
12 anything that I have to make a recommendation on? How will
13 three-and-a-half --
14 MS. CORDRY: Because -- okay.
15 MR. GROSSMAN: -- versus four feet per second on
16 pedestrian speed make a difference to anything?
17 MS. CORDRY: Okay. There are two things: one,
18 whatever the speed is, it is a matter of how fast people get
19 across there, how much time they spend in the way; it's
20 relevant to that. Secondly, you are being asked to place a
21 great deal of weight on his opinion and his expertise. What
22 I'm going to show you as we go through, and I've already
23 shown you, is that on many occasions what he says are the
24 facts are not the facts, that his expertise is not
25 necessarily there, that his recollection of his own exhibits

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1 is wrong, and I think it goes to the weight of his
2 testimony.
3 MR. GROSSMAN: I understand, but look, it seems to
4 me that that kind of examination takes a lot of time over a
5 very, very minor detail that is -- is it really the, is the
6 walking speed a factor in terms of anything that I have to
7 consider, or is it just to attack his credibility?
8 MS. CORDRY: Well, it is both, Your Honor, and I
9 think --
10 MR. GROSSMAN: I understand your point about what
11 he testified previously. Now tell me how it impacts
12 anything that I have to make a recommendation, other than
13 the credibility issue.
14 MS. CORDRY: Well, as we have talked about, one of
15 the questions is how much time pedestrians are going to
16 spend, how much interaction they will have with a car, how
17 fast they'll go through it. He said they'll be there for a
18 millisecond, and I was -- that was part of the reason why I
19 was talking about how fast they move, and he vehemently, I
20 don't know vehemently, but he strongly denied when I asked
21 him was it less than what he was saying. He, you know, he
22 doesn't remember what's in his own exhibits. He contradicts
23 what I'm asking --
24 MR. GROSSMAN: That's the credibility issue. I'm
25 asking --

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1 MS. CORDRY: Okay. And the point --
2 MR. GROSSMAN: -- you whether or not they take
3 three-and-a-half, they go three-and-a-half feet per second
4 or four feet per second makes a difference in anything I'd
5 have to recommend.
6 MS. CORDRY: It means that they will be walking in
7 front of the cars, coming out of the station longer than
8 they would otherwise. I can only -- there's a case I've
9 read in there that says a wall isn't built from a single
10 brick. Your Honor, I have to build my wall of evidence here
11 brick by brick. If every brick I bring becomes -- that's
12 not the entire wall, but I have to --
13 MR. GROSSMAN: I understand. You've made your
14 credibility point. Now move to something else.
15 MS. CORDRY: Okay.
16 MR. GROSSMAN: Okay. Go ahead.
17 MS. CORDRY: That's all I was doing, Your Honor.
18 I was asking him that. Can I ask him one more question?
19 MR. GROSSMAN: Go ahead.
20 BY MS. CORDRY:
21 Q Are you aware of how long it has been the policy
22 in Montgomery County to use three-and-a-half feet per
23 second?
24 A It's not a policy.
25 Q Are you sure of that, Mr. Guckert?

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1 A It's not a policy. You're -- quite frankly,
2 Mr. Grossman, what we're talking about is -- and I said it a
3 long time ago -- traffic engineering is not an exact
4 science, okay? It's an art and a science, and traffic
5 engineers work in ranges all the time, all the time. And
6 whether or not it's three-and-a-half versus four feet per
7 second, four feet per second is what we have used on a, on a
8 fairly regular basis in my industry for the last 40 years.
9 Do some people, do some jurisdictions now use
10 three-and-a-half? Absolutely. Did we -- did my analyst use
11 three-and-a-half when they computed the time? Absolutely
12 they used it. It's in the document and that's, and that's
13 what we used, and it's -- and it may have been used for the
14 last seven years, but for the last, for the 50 years prior
15 to that, it was four feet per second. Whether -- a
16 half-a-second difference is inconsequential and not really
17 meaningful.
18 MR. GROSSMAN: I understand.
19 MS. CORDRY: Okay. I'd like to mark this one as a
20 new exhibit.
21 BY MS. CORDRY:
22 Q You said you weren't sure whether it was
23 Montgomery County policy, or you were denying that it's
24 Montgomery County policy? Which is it, Mr. Guckert?
25 A There is not a --

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1 MR. GROSSMAN: What is --
2 THE WITNESS: What is this?
3 MS. CORDRY: This is a, two pages from the
4 Montgomery County Pedestrian Safety Initiative dated
5 December 2007.
6 MR. GROSSMAN: Is this --
7 MS. CORDRY: The first page is the cover page;
8 second page, Strategy 5, in terms of upgrading pedestrian
9 signals.
10 MR. GROSSMAN: Is this a portion of a previous
11 exhibit, or is this a new exhibit?
12 MS. CORDRY: No, this is a new exhibit but one I
13 circulated before the hearing.
14 MR. GROSSMAN: I'm sorry. It was wiped out by
15 somebody coughing.
16 MS. CORDRY: I'm sorry. It is a new exhibit but
17 one --
18 MS. ADELMAN: Oh, I'm sorry.
19 MS. CORDRY: -- I circulated before the hearing.
20 MR. GROSSMAN: Okay. So this is, it hasn't been
21 -- it's not a numbered exhibit?
22 MS. CORDRY: No. This is one that I would ask for
23 a number on.
24 MR. GROSSMAN: Okay. So this will be Exhibit 550,
25 is excerpt from 12/07, Montgomery County Executive

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1 Pedestrian Safety Initiative. Okay. Now, what was it that
2 you were pointing to in here?
3 (Exhibit No. 550 was marked
4 for identification.)
5 BY MS. CORDRY:
6 Q On the second page there, the second paragraph, it
7 states: The county is changing their timing on the signals
8 from four feet per second to three-and-a-half feet per
9 second to better accommodate pedestrians and those with
10 slower walking speeds. Do you see that, Mr. Guckert?
11 A Yes.
12 Q So you would agree then, in fact, the county has
13 had the policy since 2007 of using 3.5 feet per second?
14 A No. You call it a policy. They use a different
15 word. This is what Montgomery County is saying, that's,
16 that's correct.
17 Q And that the components of theirs is they're going
18 to complete a comprehensive review of pedestrian timings and
19 enhance them to meet those standards?
20 A That's what it says.
21 Q Okay. Are you aware that the Federal Highway
22 Administration made three-and-a-half feet the standard in
23 2009?
24 MR. GOECKE: Objection. Relevance.
25 MS. CORDRY: It's a nationally binding standard.

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1 He says traffic engineers use it, and I'm asking him is he
2 aware that in fact since 2009 traffic engineers have been
3 required to use three-and-a-half feet per second.
4 MR. GROSSMAN: All right. I'll overrule the
5 objection.
6 THE WITNESS: Not required --
7 BY MS. CORDRY:
8 Q Not required?
9 A -- that's the answer. Correct. Again,
10 Mr. Grossman --
11 MR. GROSSMAN: No. Let's -- hold on a second.
12 You've answer the question, not required. Let me see what
13 she has.
14 THE WITNESS: All right. Go ahead.
15 MS. CORDRY: Again, all of these I'm handing out
16 were circulated before.
17 MR. GROSSMAN: All right. So this is Exhibit 551?
18 MS. CORDRY: Yes.
19 MR. GROSSMAN: And this is an excerpt, I take it,
20 not the whole thing?
21 MS. CORDRY: Yes. The whole thing is --
22 MR. GROSSMAN: All right.
23 MS. CORDRY: -- hundreds upon hundreds of pages
24 long. So we have --
25 MR. GROSSMAN: All right. So an excerpt from --

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1 MS. CORDRY: There are two pieces here that are
2 attached. You can either call it all one exhibit or you can
3 make it (a) and (b).
4 MR. GROSSMAN: -- USDOT Manual on Uniform Traffic
5 Control Devices, and what specifically in here are you
6 referring to?
7 (Exhibit No. 551 was marked
8 for identification.)
9 MS. CORDRY: Okay. The first two pages are a,
10 from the Federal Highway Administration or, yes, the home
11 page, and on the second page there, I've highlighted where
12 they state that states must adopt the 2009 National MUTCD,
13 which I will define in just a moment, as their legal state
14 standard for traffic control devices within two years from
15 the effective date.
16 MR. GROSSMAN: Right.
17 MS. CORDRY: And then behind it is a couple pages
18 from the actual Manual on Uniform Traffic Control Devices.
19 MR. GROSSMAN: This goes to the question, as did
20 your prior exhibit here, 550, as to how you time a traffic
21 control device, correct?
22 MS. CORDRY: This is talking about time for
23 pedestrians to walk across streets and what kind of timing
24 -- what number of feet should be used.
25 MR. GROSSMAN: Right, but the requirement is a

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1 requirement for how you time a traffic control device --
2 MS. CORDRY: Well, it is --
3 MR. GROSSMAN: -- is that correct?
4 MS. CORDRY: -- it is the timing that you are
5 supposed to use for pedestrian walking speeds.
6 MR. GROSSMAN: No, but it is, it is the time to --
7 the requirement pertains to traffic control devices.
8 MS. CORDRY: Okay.
9 MR. GROSSMAN: Isn't all of this specifying that?
10 MS. CORDRY: Yes, and all, and this --
11 MR. GROSSMAN: I mean, 550 is traffic signals,
12 regards traffic signals, and so does the manual, the federal
13 manual.
14 MS. CORDRY: Right, and all of these used four
15 feet per second before, and they all now are changed to 3.5
16 feet per second as of those time periods.
17 MR. GROSSMAN: I know, but I think your question
18 to Mr. Guckert is, is it a requirement that he follow in
19 using his analysis, this changed standard --
20 MS. CORDRY: Well --
21 MR. GROSSMAN: -- and he said, no, it's not a
22 requirement.
23 MS. CORDRY: Well, what I am saying is that these
24 are the requirements for timing signals --
25 MR. GROSSMAN: Right.

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1 MS. CORDRY: -- for both federal and state and
2 Montgomery County policy and that these are what people are
3 supposed to use when they're trying to determine pedestrian
4 walking speeds.
5 MR. GROSSMAN: Well, no. I think that last part
6 was not the same as the first part. If you were asking him
7 and he -- if he were up here testifying about how he timed a
8 traffic control device and he didn't use this standard, I
9 think you'd have more of a point, but if you're talking
10 about how he analyzes what he considers to be walking speeds
11 in a traffic, in a, in a parking lot, I think you have less
12 of a point. I'm not saying you don't have a point. You
13 just have less of a point --
14 MS. CORDRY: Okay.
15 MR. GROSSMAN: -- but let's just go on if you've
16 made your point.
17 MS. CORDRY: All right. But my point is, I think
18 -- okay.
19 MR. GROSSMAN: You made your point.
20 BY MS. CORDRY:
21 Q And last question. And has that --
22 MR. GROSSMAN: You had a last question five, 10
23 questions ago.
24 MS. CORDRY: Okay.
25 MR. GROSSMAN: There's just a limiting amount of

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1 time you can spend on --
2 MS. CORDRY: Okay. All right.
3 MR. GROSSMAN: -- such a picayune issue --
4 MS. CORDRY: Well --
5 MR. GROSSMAN: -- and it is picayune.
6 MS. CORDRY: Okay. I'm also trying to determine
7 whether in fact he's aware of what current legal standards
8 are, whether that's what he applied --
9 MR. GROSSMAN: All right. So move on to the next
10 thing. You've --
11 MS. CORDRY: All right.
12 MR. GROSSMAN: -- made your point about the
13 three-and-a-half versus four seconds. Now move on to the
14 next thing.
15 MS. CORDRY: Okay.
16 BY MS. CORDRY:
17 Q When we were discussing cars leaving the gas
18 station versus cars are in the parking lot last time, you
19 also referred several times to Article 66 and a half of the
20 Maryland Code as giving the answer on these right-of-way
21 issues.
22 A If there was a specific question that dealt with,
23 as I recall -- as I recall, if there was a specific question
24 that dealt with Article 66 and a half, that's what I was
25 referring to.

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1 Q Well, actually, my question to you was -- and I'm
2 looking at page 243 of the transcript --
3 MR. GROSSMAN: Just identify for the record,
4 transcript of which date?
5 MS. CORDRY: Of April 1st, 2014.
6 MR. GROSSMAN: Okay.
7 BY MS. CORDRY:
8 Q I'll show you here. I ask you: When cars are
9 coming out of the gas station, there's no clearly defined
10 determination -- and I was talking about the gas station
11 here in the mall --
12 MR. GROSSMAN: Right.
13 BY MS. CORDRY:
14 Q -- as to who has the right-of-way, is that --
15 And you said: Incorrect.
16 I ask you: Is there any legally defined
17 right-of-way between cars leaving the gas station versus
18 cars in the parking lot?
19 Yes.
20 And then I said: And what legal determination is
21 that?
22 And you volunteered: Article 66 and a half.
23 A And that's correct. That's what I believe where
24 Article 66 and a half indicates that cars are not supposed
25 to hit pedestrians and that pedestrians would have the

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1 general right-of-way.
2 Q Okay. And you referred to Article 66 and a half
3 again on page 244?
4 A Once again, yes, that's correct.
5 Q Okay. And let's see. Actually, twice on page
6 244, down here as well.
7 A Okay.
8 Q Okay. And on page 246 again, you volunteered it
9 was Article 66 and a half where all this is contained in the
10 Maryland Code?
11 A That was, that was my belief, yes.
12 Q Okay.
13 MR. GROSSMAN: Thank you. Is this another one to
14 be labeled as an exhibit?
15 MS. CORDRY: Yes, please.
16 MR. GROSSMAN: Okay.
17 MS. CORDRY: These are some excerpts from the
18 Maryland Traffic Code, Transportation Code.
19 BY MS. CORDRY:
20 Q Can you turn to the very last page in that
21 document there once we have it marked, which will be Exhibit
22 552.
23 MS. CORDRY: Is that correct?
24 MR. GROSSMAN: Yes, that's correct. And this is
25 Maryland Transportation Code Annotated Section 21-101, and I

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1 should say it's 2014.
2 (Exhibit No. 552 was marked
3 for identification.)
4 BY MS. CORDRY:
5 Q And can you turn to the very last page there?
6 A Yes.
7 Q And that's labeled Maryland Annotated Code Article
8 66.5?
9 A Yes.
10 Q Can you read down on the last two lines on that
11 page?
12 MR. GROSSMAN: I'm sorry. Which page are you on
13 now?
14 MS. CORDRY: The very last page.
15 MR. GROSSMAN: Okay.
16 THE WITNESS: I don't know what this refers to.
17 It says, Article 66 and a half repealed, repealed by Acts
18 1977, Ch. 14-1, effective July 1, 1977.
19 BY MS. CORDRY:
20 Q Well, Article 66.5 has not been in effect for 37
21 years now, is that correct, Mr. Guckert?
22 A I don't know that -- I don't know --
23 Q Well, this --
24 A -- because this is --
25 Q If I proffer to you that I printed this off from

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1 the Maryland Code, does this not say that Maryland Code 66
2 and a half has not been in effect for 37 years?
3 A I'm not sure.
4 MR. GROSSMAN: Let me ask you, does it say that?
5 MS. CORDRY: It says, Article 66.5 repealed.
6 MR. GROSSMAN: Repealed by Acts 1977 --
7 MS. CORDRY: Right.
8 MR. GROSSMAN: -- Chapter 14. Is that what you're
9 saying?
10 MS. CORDRY: Yes.
11 MR. GROSSMAN: So you're saying that --
12 MS. CORDRY: There is no Article 66 and a half
13 anymore.
14 MR. GROSSMAN: And there hasn't been one since
15 July 1, 1977.
16 MS. CORDRY: That's what the code says.
17 MR. GROSSMAN: Okay.
18 BY MS. CORDRY:
19 Q So whatever the traffic laws in Maryland are,
20 they're not Article 66 and a half, correct?
21 A I don't know that that's the case. I just don't
22 know. I'm not -- I don't know what, what this says. I have
23 a -- we use a document, when needed, that refers to
24 Article 66 and a half. I mean, that's, that's what we do.
25 Q And when was that document put out? Do you know?

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1 A I don't.
2 Q Thirty-seven years ago?
3 A I don't know that. I'm sorry.
4 Q Do you know what document that is?
5 A I don't have it with me. I'm sorry.
6 Q Have you reviewed the Maryland Code any time in
7 the last 37 years directly?
8 A Yeah, and maybe it's, maybe the article number has
9 changed.
10 Q Okay. But you're still remembering from 37 years
11 ago what it was?
12 A I'm remembering the document that we have. It's a
13 thick book, legal-type document that we review, and they may
14 have changed the article number, but we still refer to it as
15 66 and a half. I apologize.
16 Q Okay.
17 MR. GROSSMAN: Ms. Cordry, do you know if they
18 changed the substance of what the witness was referring to
19 in Article 66 and a half?
20 MS. CORDRY: Well, it's hard to say because they
21 don't have 66 and a half on the books anymore; so I can't
22 find what was there 37 years ago. I can tell you, and I'm
23 going to ask you in a moment, which is why I put the current
24 pages in, to look at the pages of what the actual law is now
25 and what the actual sections are, but I did want to be clear

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1 that we are not talking about a chapter that was repealed 37
2 years ago.
3 MR. GROSSMAN: Right. I understand the point
4 you're making. I don't know if it made a substantive
5 difference in what he testified to. I just don't know from
6 what you said yet.
7 MS. CORDRY: Well, I'm going to ask him that next,
8 but --
9 MR. GROSSMAN: Okay.
10 MS. CORDRY: -- I do think, again, goes to weight,
11 credibility.
12 MR. GROSSMAN: I understand.
13 MS. CORDRY: Okay.
14 BY MS. CORDRY:
15 Q Have you reviewed Chapter 21, the transportation
16 chapter of the Maryland Code?
17 A You've just given it to me.
18 Q Have you ever looked at that before?
19 A I could have.
20 Q Do you have any idea when you might have looked at
21 it, when was the last time?
22 A A year, two years, three years ago, as needed.
23 Q Okay. But you didn't remember that it was not
24 actually Chapter 66 and a half anymore?
25 A I think I said that, didn't I?

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1 Q Yes. Okay. I think at one point, you know, you
2 said that cars have to yield to pedestrians. Is that a, all
3 the time? They always have to yield to pedestrians?
4 A Gee, if you, if you go to 21-404, that's where it
5 talks about duty to stop.
6 MS. ADELMAN: Where is that?
7 MS. ROSENFELD: 21-404.
8 BY MS. CORDRY:
9 Q Well, my question to you was, is there -- do cars
10 always have to yield to pedestrians?
11 A What I -- my answer is, I'm sorry, is that we were
12 -- the context was, where we were going is that the drivers
13 have a duty to stop when they're about to enter or cross a
14 highway from a private road, and I, or a driveway, and
15 that's what I was referring to.
16 Q Okay. So, in general, there are certain times
17 when cars have to stop for pedestrians and other times when
18 they may not have to stop for pedestrians, correct?
19 A I don't know the specifics of the law. I'm not a
20 lawyer. So maybe you could ask the lawyer next to you, but
21 I'm not a lawyer. As a traffic guy, you don't want to hit
22 pedestrians and that's what we're referring to during my
23 testimony.
24 Q Okay. But I was trying to also get at the
25 legalities of who has the right-of-way.

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1 A I can't answer legalities.
2 Q Okay. So when you were testifying about who has
3 the right-of-way and which is more proper, you don't
4 actually have the legal standards in mind on that?
5 A Correct. I'm a traffic guy, and it was the
6 practicality of not driving and running over the pedestrians
7 as you leave the gas station.
8 Q Okay. And the practicality, of course, as we've
9 discussed, is that when you have a gas station on a main
10 road and people are walking on the sidewalk, it's very clear
11 that those pedestrians have the right-of-way over any car
12 coming out of the station and going down the road?
13 A I don't think it's any clearer there than it, than
14 it is when you're leaving the Costco gas. There are 360
15 stations that they have around the country.
16 Q Well, my question to you was -- if you'll answer
17 it again -- is that it's very clear that when someone is
18 coming out of a gas station on a main road and crossing a
19 sidewalk, that the pedestrian on the sidewalk has the
20 right-of-way, correct?
21 A Yeah, I don't think it's -- I think you don't want
22 to hit pedestrians when you're leaving a driveway, is what
23 I'm, is what I'm answering for you.
24 Q I understand that, but could you answer my
25 question?

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1 A I think I -- I think I'm doing my best to answer
2 your question. I don't know if you're asking me a legal
3 question or a practical question. So from a practical point
4 of view, when you're pulling out and you see a pedestrian,
5 you don't want to hit them and you stop from a practical
6 point of view.
7 Q Well, I'm sure that everyone's intention is not to
8 hit somebody at any time on or off the road.
9 MR. GROSSMAN: Ms. Cordry, let me ask you, are you
10 suggesting that it isn't always a requirement that a vehicle
11 yield to a pedestrian?
12 MS. CORDRY: Well, in the sense of is a vehicle
13 allowed to hit a pedestrian deliberately, of course not, but
14 are there times where pedestrians do not have the
15 right-of-way over drivers, absolutely.
16 MR. GROSSMAN: Well, yes, have the right-of-way.
17 MS. CORDRY: Yes, which means that -- for
18 instance, let me point you to 21-502(b), Duty of Pedestrian.
19 MR. GROSSMAN: 21-502(b)? Okay.
20 MS. CORDRY: Yes. A pedestrian may not suddenly
21 leave a curb or other place of safety and walk or run into
22 the path of a vehicle which is so close that it's impossible
23 for the driver to yield.
24 MR. GROSSMAN: Right. That's sensible.
25 MS. CORDRY: Well, exactly. That -- and that also

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1 can apply, for instance, for a pedestrian walking out from
2 between parked cars. They -- the driver in the drive aisle
3 does not have to yield to that pedestrian. The pedestrian
4 has to watch out for the driver, which is something that is
5 different from when you are crossing on a sidewalk in front
6 of a gas station on a main road.
7 MR. GROSSMAN: Right. Well, what's your overall
8 point here? So we, I think we all know that pedestrians are
9 not supposed to step out against the red light and all of
10 that, and that cars aren't supposed to run over pedestrians,
11 but what's the, what's the --
12 MS. CORDRY: My point is, what I did want to do
13 was introduce the actual legal standards here and make clear
14 that within the parking lot, that once they're in that drive
15 aisle, driving down the parking lot, that driver has every
16 bit as much right-of-way as the pedestrian and, quite
17 possibly, more. Obviously the driver is not supposed to
18 deliberately hit the pedestrian, but there is no defined
19 right-of-way between them in the way that there is with the
20 gas station on the main road.
21 MR. GROSSMAN: Okay. So you're making a
22 distinction between gas stations on main roads, where they
23 have a requirement of yielding to -- where cars have a
24 requirement of yielding to a pedestrian on a sidewalk, and
25 when you're in a parking lot --

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1 MS. CORDRY: Right.
2 MR. GROSSMAN: -- it's a little more chancy
3 because it's not clear that --
4 MS. CORDRY: Yes. It's one of our main points all
5 along, is that the parking lot environment is --
6 MR. GROSSMAN: Right.
7 MS. CORDRY: -- far more diffuse --
8 MR. GROSSMAN: I understand. Okay.
9 MS. CORDRY: -- disorganized, chaotic; pick your,
10 pick your adjective there. Okay.
11 BY MS. CORDRY:
12 Q Now, I think you also said in your testimony on
13 April 1 that there was only about one pedestrian every five
14 to eight minutes at Intersection 16.
15 A Yes, that was -- that were crossing. I think, I
16 think it was crossing. I made an estimate. I know I'm
17 going to be held to a millisecond, but I made an estimate of
18 the amount of pedestrians crossing any particular leg.
19 Q Okay. Now, this is a question from your counsel;
20 so this was not something we were being unfair to you about:
21 Ms. Harris: Do you recall, based on your prior
22 counts done on April 27, what the level of pedestrian
23 traffic is here? And we were talking about Intersection 16
24 at that point.
25 Quite low. Mr. Grossman, there's about a

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1 pedestrian every five to eight minutes. Every five to eight
2 minutes. So it's not Silver Spring, as an example, where
3 you've got hundreds of pedestrians in an hour. It's one
4 every five to eight minutes.
5 Do you recall that?
6 A Yes. I made an -- I made an estimate based upon
7 my recollection, Mr. Grossman, of the information at the
8 time.
9 MR. GROSSMAN: Okay.
10 BY MS. CORDRY:
11 Q Well, I assume your counsel, you know, worked with
12 you to make sure you were giving proper testimony before --
13 A I wouldn't, I wouldn't assume that.
14 Q Well, when you said you --
15 A Not that there's anything wrong with my counsel,
16 but I wouldn't assume, I wouldn't assume that each and every
17 question is, is rehearsed. So I made an, made an estimate
18 based upon my recollection of what, of what that particular
19 exhibit showed.
20 Q Okay. Well, you said five to eight three times in
21 about a minute and a half. You didn't sound very unclear at
22 that time, right?
23 A I don't know right. I mean, I made an estimate.
24 MR. GROSSMAN: Well, yes, let's not badger him
25 about that. You --

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1 MS. CORDRY: All right.
2 THE WITNESS: I made an estimate.
3 MR. GROSSMAN: -- you asked the question. He
4 answered it.
5 BY MS. CORDRY:
6 Q Okay. Well, that's one of the problems here, is
7 you make estimates a lot and we don't know the rest of it
8 until you come back.
9 MR. GROSSMAN: No, no, you can't comment on his
10 testimony.
11 MS. CORDRY: Okay. All right.
12 BY MS. CORDRY:
13 Q Well, can you look at Exhibit 128(b) here? And
14 right up here at the top --
15 A Uh-huh.
16 Q -- is Intersection 16.
17 A Uh-huh.
18 Q Can you look at the peak hour numbers there?
19 A Seven, eight, 13.
20 Q Okay. And that's 28, correct?
21 A That's seven crossing one way, eight crossing
22 another way.
23 Q And --
24 A And 13 --
25 Q And 13. So 28. That's 28 --

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1 A -- walking along the other way.
2 Q -- correct?
3 A Yes.
4 Q Okay. So that's 28 in an hour. That's not one
5 every five to eight minutes; that's one every two minutes,
6 correct?
7 A Yeah. I was referring to the fact that crossing
8 on a particular leg --
9 Q That is not what the question was.
10 MR. GROSSMAN: Let him finish answering.
11 MS. CORDRY: Okay. Well, I think he just
12 testified that now he's trying to break it up into every
13 single --
14 MR. GROSSMAN: Well, let him answer and then we'll
15 find out what he's saying.
16 THE WITNESS: That you've got -- you've got seven
17 pedestrians crossing in an hour, okay, and you have eight
18 pedestrians crossing in a, in a southbound direction in an
19 hour and 13 in the other direction. So I made an estimate,
20 mea culpa, that it was five to, five -- every five to eight
21 minutes.
22 BY MS. CORDRY:
23 Q Well, from the testimony I read to you, you didn't
24 say anything about it being in any given direction. You
25 were just being asked about the intersection as a whole,

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1 correct?

2 A I don't know.

3 Q Okay. Well, I read the testimony. You can go

4 back and look at it again. And on that same chart, for the

5 entire eight hours, it's true there was, 175 pedestrians

6 crossed in eight hours?

7 A That's, that's, could be, if you've added them up.

8 Q Yes. So that's one less than every three minutes,

9 not every five to eight minutes?

10 A If you're looking at the whole, intersection as a

11 whole, yes, that's correct.

12 Q Which was the question you were asked at that

13 time.

14 A You were just -- I thought you were asking me a

15 question.

16 Q I didn't ask you the question. Your counsel asked

17 you the question.

18 MR. GROSSMAN: Well, don't argue with him --

19 MS. CORDRY: Okay.

20 MR. GROSSMAN: -- just ask your question.

21 BY MS. CORDRY:

22 Q Well, my --

23 A She's not asking me a question now. What is your

24 question?

25 Q My question was, when you were asked before about

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1 that, did you not say five to eight minutes?

2 A I don't -- I don't recall the context of that

3 question. My point is that if you look at the number of

4 pedestrians crossing the legs of the intersection, that's

5 what I was referring to.

6 MS. CORDRY: You can review the transcript

7 yourself, Your Honor, as to whether that was the question he

8 was asked.

9 BY MS. CORDRY:

10 Q If you look at your, the supplemental traffic

11 analysis, Exhibit 128(a), I pulled a few pages out of here,

12 not, you know, all of them, but the ones that --

13 MR. GROSSMAN: Okay. So this is not a new

14 exhibit? This is just for my --

15 MS. CORDRY: No. This is -- that's for your --

16 MR. GROSSMAN: -- to spoil me further.

17 MS. CORDRY: I'm spoiling you again, yes.

18 MR. GROSSMAN: Okay.

19 MS. CORDRY: Actually --

20 MR. GROSSMAN: And this is part of Exhibit 128(a)?

21 MS. CORDRY: Actually, let me spoil you with a

22 different one because I reprinted again with a few more

23 pages. Let me substitute this one for the one I just gave

24 you.

25 MR. GROSSMAN: So do you want to take this back?

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1 MS. CORDRY: Yes, just exchange.

2 MR. GROSSMAN: And this is part of Exhibit 128(a),

3 you say?

4 MS. CORDRY: Yes. This would be -- and the pages

5 here are the pages within that exhibit.

6 MR. GROSSMAN: Yes.

7 MS. CORDRY: Page numbers at the bottom.

8 MR. GROSSMAN: Okay.

9 BY MS. CORDRY:

10 Q 128(a) and (b) was the analysis you did based on

11 April 27th, 2013, observations, correct, Mr. Guckert, that

12 your group did?

13 A Yes.

14 Q Okay. Can you look at page -- let's see. Well,

15 first place, the first page lists your various intersections

16 that you observed, and there were 11 of them, correct?

17 A Yes.

18 Q Okay. And one, which is Maryland 193 and Valley

19 View, that's the one that was Intersection 4 on your

20 original analysis?

21 A It could be.

22 Q Okay. And down there then, the Loop Road and the

23 West Mall Access, that's the one we've been referring to as

24 Intersection 16 on your original analysis?

25 A I don't know, could be.

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1 Q Let me see if I can find you the chart on those.

2 MR. GROSSMAN: Are you looking now on page 1, the

3 cover page of this?

4 MS. CORDRY: Yes, the cover page, yes.

5 MR. GROSSMAN: Okay. And so which corresponds to

6 which in terms of --

7 BY MS. CORDRY:

8 Q Okay. If you look in your original traffic

9 analysis, Mr. Guckert, at Exhibit 11(a) --

10 A Okay.

11 Q -- that has your list of prior intersections. So

12 let's just make sure we've got the cross-correlation here.

13 MR. GROSSMAN: They jive. So which ones do you

14 want me to know --

15 MS. CORDRY: Okay.

16 MR. GROSSMAN: -- that jive?

17 MS. CORDRY: So one on the short list on the

18 supplemental traffic analysis --

19 MR. GROSSMAN: Yes.

20 MS. CORDRY: -- is four on the original list.

21 MR. GROSSMAN: So one is four?

22 MS. CORDRY: Okay.

23 MR. GROSSMAN: Okay.

24 THE WITNESS: Yes, from the LATR.

25 MR. GROSSMAN: Okay.

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1 MS. CORDRY: Right. Two is 16.
2 MR. GROSSMAN: Okay.
3 THE WITNESS: Agree.
4 MS. CORDRY: Okay. Then let's see. Ten on the
5 short list is 12 on the original list, which is the Veirs
6 Mill and the entrance by the WMATA.
7 MR. GROSSMAN: Ten is?
8 MS. CORDRY: Yes, the short list 10 --
9 MR. GROSSMAN: Yes.
10 MS. CORDRY: -- is 12 on the original list.
11 MR. GROSSMAN: Okay.
12 MS. CORDRY: And the short list 9, Loop Road and
13 Mall Access, 9, is 20, Loop Road and South Mall Entrance.
14 MR. GROSSMAN: Is 20?
15 MS. CORDRY: Yes.
16 MR. GROSSMAN: Okay.
17 MS. CORDRY: I'll come back to that in a while but
18 just to make sure we're all talking about the same
19 intersections there. Okay.
20 BY MS. CORDRY:
21 Q We'll come back to some of these other numbers in
22 a minute, but if you look at page 5 there -- actually, let
23 me do a different one because it'll be more easily to see
24 this on a different one. Look at page 41, the last page of
25 that.

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1 MR. GROSSMAN: Page 41 at the end?
2 MS. CORDRY: Yes, very last page, has 41 at the
3 bottom there.
4 MR. GROSSMAN: Okay.
5 MS. CORDRY: Don't have 41 pages in this exhibit.
6 Thank you.
7 MR. GROSSMAN: Right. Right.
8 MS. CORDRY: Okay.
9 BY MS. CORDRY:
10 Q All right. And this is pedestrian observations
11 that day in April, correct? So you did the same -- not only
12 did you count cars, but you also counted pedestrians and
13 actually bicycles as well?
14 A Yes.
15 Q Okay. And over there it shows a total of 487 for
16 that intersection? The bottom right-hand corner.
17 A Yes, the number 487.
18 Q Okay. How do you get 487 when the first column
19 shows that there were 1242 pedestrians in just one leg of
20 that intersection?
21 A I don't know.
22 Q If you add up the other columns besides the first
23 one, I'll proffer to you that that comes out to 487.
24 MR. GROSSMAN: So you're saying the 249, 90, and
25 144 adds up to 487?

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1 MS. CORDRY: Right. Plus there's a one and a
2 three bicycle, but yes, you add those up and they come out
3 to 487.
4 THE WITNESS: Okay.
5 BY MS. CORDRY:
6 Q So is this another case where your spreadsheet,
7 you -- somebody forgot to add in all the columns in the
8 spreadsheet?
9 A Could be.
10 Q Okay. And is that the case with all of them?
11 Let's go back to one that's a lot shorter. We can go back
12 to No. 5 then. Same thing -- if you add across just the
13 first column there, or I'm sorry, the very first row, two,
14 two, one, one, and you get a total of four. So, again,
15 you're leaving out that first column.
16 MR. GROSSMAN: Hold on one second, got to make a
17 note of this.
18 MS. CORDRY: Okay.
19 THE WITNESS: I don't --
20 MR. GROSSMAN: This is an interesting omission.
21 This is page 41 of Exhibit --
22 MS. CORDRY: Right. This is 128.
23 MR. GROSSMAN: -- 128(a).
24 MS. CORDRY: Yes.
25 MR. GROSSMAN: Total of 487, left out 1,242 --

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1 MS. CORDRY: Forty-two.
2 MR. GROSSMAN: -- from the north.
3 MS. CORDRY: Right.
4 MR. GROSSMAN: Okay.
5 BY MS. CORDRY:
6 Q Who prepared these --
7 MR. GROSSMAN: Hold on one second.
8 MS. CORDRY: Okay. I'm sorry.
9 MR. GROSSMAN: So, Mr. Guckert, looking at this
10 page 41 of Exhibit 128(a), is Ms. Cordry's apparent
11 observation correct that the total at the end of 487 left
12 out the most significant column of pedestrians from the
13 north?
14 THE WITNESS: Yeah, that's correct,
15 inconsequential, but that's correct.
16 MR. GROSSMAN: And why is that inconsequential?
17 THE WITNESS: Because we were, simply reported
18 what the, what the, we would -- when we prepared the exhibit
19 128(b), we were showing the volumes; in fact -- let me see
20 what intersection this is -- was Intersection 10 on 128(b)
21 and wasn't even, it wasn't even noted because it wasn't on
22 site, okay? This is the --
23 MR. GROSSMAN: Okay.
24 THE WITNESS: -- intersection. It wasn't, it
25 wasn't on site, and we were trying to give an estimation.

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1 As you know, volumes change from day to day. So we were
2 trying to give a relative understanding of what the volumes
3 were, but that intersection wasn't even noted.
4 BY MS. CORDRY:
5 Q Well, I'm sorry. What --
6 MR. GROSSMAN: So did this --
7 BY MS. CORDRY:
8 Q What do you mean by not noted? I'm sorry.
9 MR. GROSSMAN: Well, let me --
10 MS. CORDRY: Okay. I'm sorry.
11 MR. GROSSMAN: -- finish, and I'm going to let you
12 go --
13 MS. CORDRY: Sure.
14 MR. GROSSMAN: -- because I think it could be a
15 significant point, but he's saying it's not. So let me --
16 it's clearly a significant mathematical difference between
17 what the total would be, but he's saying that -- if I
18 understand you correctly, Mr. Guckert, you're saying that
19 didn't matter; yes, the error was made, but it didn't matter
20 because that number didn't count towards anything because
21 it's an off-site error?
22 THE WITNESS: We collected the data, and what's,
23 what was important to us was the, was the hourly
24 information. While we reported eight-hour totals and, for
25 the pedestrians, and one-hour total for the pedestrians,

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1 there was never a location on 128(b) where, where for
2 Intersection 10 we -- it was an analysis of pedestrians.
3 MR. GROSSMAN: You're saying there was never --
4 this number, this 497 number, the total that was erroneous,
5 was never included in any calculation --
6 THE WITNESS: Correct.
7 MR. GROSSMAN: -- regarding pedestrians?
8 THE WITNESS: Correct.
9 MR. GROSSMAN: Because it's an off-site
10 intersection?
11 THE WITNESS: Well, because it wasn't -- it was a
12 location where we collected data, but it, but it wasn't one
13 that we were concerned with as it relates to the special
14 exception area.
15 MR. GROSSMAN: I understand that. I --
16 THE WITNESS: Yeah.
17 MR. GROSSMAN: -- understand your point there. I
18 just wanted to know, was that number, 497, used in anything
19 else?
20 THE WITNESS: No, sir.
21 MR. GROSSMAN: Okay. All right.
22 BY MS. CORDRY:
23 Q Okay. And you're not, you're not suggesting that
24 the only time you made this error was on that intersection,
25 right? That error is in every one of these spreadsheets,

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1 correct?
2 A I haven't looked at them.
3 Q Well, why don't you look right now at page 5.
4 A If you, if you -- I'll stipulate. If you're
5 saying you found the error, then the spreadsheet got carried
6 through from Mr. R.B.
7 MR. GROSSMAN: So page 5?
8 MS. CORDRY: Yes. It's the same thing as you look
9 across each one of the rows as well. It's much easier to
10 see there because you can just quickly add up in your head
11 that, for instance, 10:00 to 10:15 --
12 THE WITNESS: Okay.
13 MS. CORDRY: -- two, two, one, one, but the total
14 number comes out to four, because we --
15 MR. GROSSMAN: What are you looking at now?
16 MS. CORDRY: On page 5, the first row there, 10:00
17 to 10:15 --
18 MR. GROSSMAN: Okay.
19 MS. CORDRY: -- says there's two pedestrians on
20 the north, then two more pedestrians south, one more east,
21 one more west, and the total over there is four --
22 MR. GROSSMAN: Okay.
23 MS. CORDRY: -- which should be six, and of
24 course, that carries all the way down, and the same thing,
25 the total there is 112 but that doesn't, that's not the

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1 addition when you do that across --
2 MR. GROSSMAN: So, presumably, this was done in a
3 spreadsheet, and then somebody didn't put the right formula
4 at the end?
5 THE WITNESS: Correct. They didn't grab the other
6 column.
7 MR. GROSSMAN: Okay.
8 BY MS. CORDRY:
9 Q Did you review this document?
10 A No. I wouldn't have reviewed -- I wouldn't have
11 reviewed the count, that's correct.
12 Q So, again, you don't ever do just kind of a quick
13 and dirty look at the bottom to see if the numbers seem to
14 add up and make sense?
15 A No, and as I said, I testified early, Mr. R.B. was
16 terminated.
17 Q And was he terminated because all of his work
18 was --
19 A With prejudice.
20 Q -- as accurate as this?
21 A Terminated with prejudice.
22 Q Okay. But did you ever think about going back and
23 checking over his work and correcting your exhibits?
24 A I didn't do that, no.
25 Q Okay. So --

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1 MR. GROSSMAN: Well, let me ask you this then,
2 Ms. Cordry: Okay. So this is -- on this point that you're
3 making of the erroneous spreadsheets, did you go back then
4 and see if these numbers were then reflected in the
5 analysis? The only one we talked about was on page 41
6 here --
7 MS. CORDRY: Well --
8 MR. GROSSMAN: -- which Mr. Guckert said was not,
9 did not, was Intersection 10 and those counts didn't factor
10 in. What about the other errors on the spreadsheets?
11 MS. CORDRY: Well, first off, I'm not sure why --
12 that's one of the main intersections coming into the mall;
13 it is just as important coming in as Intersection 4 on the
14 other side. So I'm not quite sure we get this idea of why
15 it doesn't factor in. I'm not sure exactly all what Park
16 and Planning looked at. What I am saying is -- and it does;
17 this carries over to every single intersection he has there
18 on this -- again, this is a question, you know, if I don't
19 go back and check every single number in every single
20 document that's filed here, I no longer can find any
21 confidence in any of these, and there's ones I can check,
22 there's one I can't. So --
23 MR. GROSSMAN: I understand your point here. I'm
24 just trying to get to the next --
25 MS. CORDRY: Okay.

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1 MR. GROSSMAN: -- logical point, and that is, did
2 it -- do we know if it affected the numbers in terms of the
3 pedestrian counts on site, because the --
4 MS. CORDRY: I don't know.
5 MR. GROSSMAN: -- the one we just talked about --
6 MS. CORDRY: Right.
7 MR. GROSSMAN: -- page 41, was off site. Did it
8 also occur on site?
9 MS. CORDRY: Well, I'm not quite sure what you
10 mean by on site.
11 MR. GROSSMAN: On the, well, on site meaning --
12 well, I guess that's true. That's a fair distinction. It
13 isn't even -- No. 10 wasn't on the mall itself, as I look at
14 the --
15 MS. CORDRY: Well, it's a mall entrance there.
16 MR. GROSSMAN: It's --
17 MS. CORDRY: It's a mall --
18 MR. GROSSMAN: Actually, No. 10 was --
19 MS. CORDRY: Number 10 is the entrance from Veirs
20 Mill into the mall.
21 MR. GROSSMAN: It's actually on the other side of
22 the street. It's not, if I'm looking at that correctly --
23 MS. CORDRY: Well, this is the whole intersection
24 here we're talking about --
25 MR. GROSSMAN: Okay.

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1 MS. CORDRY: -- and then Intersection -- but this,
2 this error is in each one of the, at least from every one --
3 MR. GROSSMAN: Right.
4 MS. CORDRY: -- I have spot-checked so far, it's
5 in each one of the places around here in the same way that
6 it shows up over on Intersection 4.
7 MR. GROSSMAN: When you say all of the
8 intersections there, which? Of Exhibit? Just name the
9 exhibit you're talking about.
10 MS. CORDRY: This is Exhibit 128(a) --
11 MR. GROSSMAN: (A)?
12 MS. CORDRY: -- I believe it is.
13 MR. GROSSMAN: Okay. Yes.
14 MS. CORDRY: Yes.
15 MR. GROSSMAN: All right.
16 BY MS. CORDRY:
17 Q And, I mean, one of my questions is, for instance,
18 you were estimating five to eight -- one every five to eight
19 minutes. Is that perhaps affected by looking at the total
20 down here at some point on these pedestrian observations and
21 having an artificially low number there? So maybe is that
22 why you misremembered how many pedestrians would be crossing
23 at these intersections?
24 A Was that a question to me?
25 Q Yes, that's a question.

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1 A No.
2 Q Or did you review any of these --
3 A I said no.
4 Q -- documents before you gave that testimony?
5 A Excuse me?
6 Q Well, my first question was --
7 MR. GROSSMAN: One question at a time.
8 BY MS. CORDRY:
9 Q Okay. So the first question was, is these
10 artificially incorrect numbers down here, did you review any
11 of those? Was that part of the reason why you misremembered
12 how many pedestrians would be crossing?
13 A The answer was no.
14 Q Okay. So did you review any of these documents
15 before you gave your testimony, the last couple days of
16 testimony?
17 A Did I review these documents --
18 Q Yes.
19 A -- before I gave my testimony when?
20 Q Yes. April 1st or March 11th when you came back
21 here.
22 A Did I review which documents?
23 Q Well, these documents, this document, for
24 instance, the supplemental --
25 A The ones we're talking about? No, I did not

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1 review those.

2 Q Okay. So what were you remembering when you were

3 coming up with that five- to eight-minute figure?

4 A I'll say it again, that, Mr. Grossman, what I was

5 talking about was the crossing, what I was remembering was

6 the number of vehicles on the approaches, seven and eight in

7 an hour.

8 MR. GROSSMAN: All right. Was the error reflected

9 also in vehicle counts or just in pedestrian counts,

10 Ms. Cordry, since you've obviously looked --

11 MS. CORDRY: I think only in pedestrian counts.

12 MR. GROSSMAN: Okay.

13 MS. CORDRY: I believe, as I went through, that I

14 was adding these up, although I'm not sure that I added all

15 of these, but --

16 THE WITNESS: But we're not dealing with

17 eight-hour totals in an analysis, Mr. Grossman -- real

18 important to understand. The discussion we've been having

19 is about eight-hour totals. We're not dealing with

20 eight-hour analyses, whether it's cars or pedestrians.

21 We're dealing with one-hour intervals.

22 BY MS. CORDRY:

23 Q Well, Mr. Guckert, the same error will show up in

24 one-hour intervals here, as well, with your chart, will they

25 not --

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1 A If --

2 Q -- because if your chart -- every one of your

3 15-minute intervals also makes that same error. That's what

4 I was pointing out on Exhibit 5. If you go across at each

5 15-minute interval, you have the same error there. I mean,

6 correct, right, the same error shows up in the one-hour

7 counts as well?

8 A We'll have to see. You can be correct.

9 Q Well, I guess you can start with page 5. The

10 numbers are pretty small there. So it's --

11 MR. GROSSMAN: Well, let him, give him a chance to

12 look. And while he's looking --

13 BY MS. CORDRY:

14 Q -- so it's easy to look at --

15 MR. GROSSMAN: -- you know, Ms. Harris, I

16 characterized the three-and-a-half versus four-second

17 walking pace as picayune. This is not a picayune matter,

18 okay, this kind of an error.

19 MS. HARRIS: Yes.

20 THE WITNESS: On the -- it appears to me that the

21 numbers that were used are correct, where 11:15 to 12:15

22 we've got eight from the north, 13 from the south, and seven

23 from the west, Mr. Grossman, which is what shows up on

24 128(b).

25 MR. GROSSMAN: 128(a)?

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1 THE WITNESS: Excuse me. That's what shows up on

2 the drawing when you take and you look at the hour totals.

3 BY MS. CORDRY:

4 Q But if you look at your chart here --

5 MR. GROSSMAN: Well, let me understand what he's

6 saying.

7 MS. CORDRY: Okay.

8 MR. GROSSMAN: So what are you saying about that?

9 I didn't quite understand.

10 THE WITNESS: Sure. So if you take, if you take

11 and grab the hour --

12 MR. GROSSMAN: Right.

13 THE WITNESS: -- that I said was the peak hour --

14 MR. GROSSMAN: Right.

15 THE WITNESS: -- 11:15 to 12:15, the numbers that

16 are on this exhibit --

17 MR. GROSSMAN: Right.

18 THE WITNESS: -- are reflected on, as an example,

19 on page 9 of this exhibit that we've been discussing.

20 MR. GROSSMAN: So if I understand, the point

21 you're making here is that the totals are not what are

22 reflected in 128(a) but, rather, the each individual number

23 in the column?

24 THE WITNESS: In the hour, that's correct.

25 MR. GROSSMAN: In the particular hour.

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1 THE WITNESS: That's correct.

2 MR. GROSSMAN: Okay.

3 THE WITNESS: I'm looking at this intersection

4 here that we're, we've been referring to as 16.

5 MR. GROSSMAN: Can you hand me 128(a)?

6 THE WITNESS: Sure.

7 MR. GROSSMAN: Thank you.

8 BY MS. CORDRY:

9 Q So what you're saying is, if I go to that document

10 and add up individual numbers from that document, I'll get

11 the right answer; but, if I look at your spreadsheet here,

12 which gives me supposed totals, I'll get the wrong answer,

13 correct?

14 A No. If you, if you were, if you were looking at

15 the far right bottom column, I could concur that there's a

16 formulation error on that bottom right column.

17 Q Well, it's the whole right column, not just that

18 last number. It's every single number down that right

19 column. Is that not correct?

20 A As I, as I stated, Mr. Grossman, if you take and

21 you look at --

22 MR. GROSSMAN: Well, she said, her question is --

23 her question is, it's not just the bottom right corner; it's

24 the entire totaled column. Is that correct?

25 THE WITNESS: Yes, because --

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1 MR. GROSSMAN: Okay.
2 THE WITNESS: -- because then it adds up, that's
3 right.
4 MR. GROSSMAN: And your responsive point is that
5 may be true but for Exhibit 128(a) you're not including the
6 totals in the pedestrian count --
7 THE WITNESS: I didn't use, I didn't use the total
8 columns.
9 MR. GROSSMAN: Okay.
10 THE WITNESS: I used the approach columns.
11 MR. GROSSMAN: Okay.
12 BY MS. CORDRY:
13 Q Okay. But the rest of us didn't know that we
14 should only look at 128(b) and not look at 128(a), correct?
15 A I don't know what --
16 MR. GROSSMAN: You mean --
17 THE WITNESS: -- the rest of you were thinking.
18 MR. GROSSMAN: 128(a) being?
19 MS. CORDRY: The spreadsheet listings here that --
20 MR. GROSSMAN: But I thought this was 128(a). I
21 thought that the chart was --
22 MS. CORDRY: I can't remember which one. Well, in
23 any case --
24 MR. GROSSMAN: Well, you tell me, which is the
25 chart?

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1 MS. CORDRY: Okay. Let me look at -- I keep
2 getting confused as to which one is which. Who's got the
3 exhibit list?
4 THE WITNESS: 128(a) is the data sheets.
5 MR. GROSSMAN: Oh, okay.
6 BY MS. CORDRY:
7 Q Okay. Yes. So I should only look at 128(b),
8 which is the picture, and I shouldn't look at the data
9 sheets, because I can't really trust the data sheets?
10 MR. GROSSMAN: Okay. So when I corrected you
11 before, yes, you were referring to 128(b) and I said it's
12 128(a), but you were right. It is 128(b) and the data sheet
13 is 128(a) --
14 MS. CORDRY: All right. Let me make sure I got
15 that --
16 MR. GROSSMAN: -- so our record is a little
17 confused here, but all right.
18 MS. CORDRY: Okay.
19 MR. GROSSMAN: All right.
20 THE WITNESS: So, to summarize, the information on
21 the hourly volumes on Intersection 16 -- the seven, eight,
22 13 -- correspond to the data that is on 128(a).
23 BY MS. CORDRY:
24 Q The individual columns in 128 but not the total
25 column on 128(a)?

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1 A Correct.
2 Q Okay. All right. And so just to, again, to
3 summarize, coming back, the total hourly at that
4 intersection for the peak hour is 28, correct?
5 A Seven on the one approach, eight on the other
6 approach, 13 on the other approach.
7 Q Which is 28, correct, Mr. Guckert?
8 A That's correct for the --
9 Q And that's one pedestrian roughly every two
10 minutes, correct?
11 A That's, that's correct, when you look at the total
12 intersection, that's correct.
13 Q Okay, which was the question you were asked.
14 Okay. All right.
15 A I do not know --
16 MS. HARRIS: Mr. Grossman, I just want to object
17 to the extent that Ms. Cordry is asserting that that was the
18 question that was asked. Mr. Guckert is indicating that
19 that wasn't the question that was asked.
20 MS. CORDRY: Well, I'll read the question that was
21 asked. I'll read it again.
22 MR. GROSSMAN: She went to the transcript. She
23 went to the transcript to read the question.
24 MS. HARRIS: But the question did not say what is
25 the total count for all legs of the intersection.

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1 MS. CORDRY: The question said: Based on your
2 prior counts, what is the level of pedestrian traffic here,
3 meaning at that intersection?
4 Quite low. Mr. Grossman, there's about a
5 pedestrian every five to eight minutes. Every five to eight
6 minutes. So it's not Silver Spring, as an example, where
7 you've got hundreds of pedestrians in an hour. It's one
8 every five to eight minutes.
9 MR. GROSSMAN: I think a fair reading of that is
10 that it is the pedestrian traffic in all directions, don't
11 you?
12 THE WITNESS: But that's not normally the way we
13 look at it, Mr. Grossman.
14 MR. GROSSMAN: Okay.
15 THE WITNESS: Okay? We look at -- we normally
16 look at approaches and that was the context in which I was
17 responding to the question, in all fairness.
18 MR. GROSSMAN: Well, I'm not sure I understand
19 that.
20 THE WITNESS: Okay.
21 MR. GROSSMAN: When you say approaches, you're
22 saying, when she asks you how many pedestrians every minute
23 and you say one every five to eight minutes, you're saying
24 you only meant one pedestrian from any given direction every
25 five to eight minutes?

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1 THE WITNESS: Crossing, crossing a leg of the
2 intersection.
3 MR. GROSSMAN: Okay.
4 THE WITNESS: Because it's not as if it's
5 signalized, Mr. Grossman, and you're stopping the whole
6 intersection, everybody's doing what we used to call a barn
7 stance.
8 MR. GROSSMAN: Yes, I remember.
9 THE WITNESS: Okay? So when -- you know, it's a
10 different, it's a different context that the question was
11 asked, in all fairness.
12 MR. GROSSMAN: All right.
13 BY MS. CORDRY:
14 Q Okay. I can't ask your counsel questions for --
15 MR. GOECKE: Mr. Grossman, I just read what she
16 purportedly quoted from the transcript, and she read it
17 incorrectly. She inserted some of her own opinions in the
18 quotation.
19 MS. CORDRY: I'm sorry. What did I read
20 incorrectly?
21 MR. GOECKE: It's on page 102 --
22 MR. GROSSMAN: All right.
23 MS. CORDRY: I was trying to read --
24 MR. GOECKE: -- lines 16 through 18. What
25 Ms. Harris actually asked was: And do you recall --

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1 MR. GROSSMAN: Ms. Harris? Okay, Ms. Harris
2 asked.
3 MR. GOECKE: Ms. Harris is --
4 MR. GROSSMAN: Yes. Okay.
5 MR. GOECKE: -- questioning Mr. Guckert on April
6 1st. This is page 102 of that transcript, lines 16 to 18:
7 And do you recall, based on your prior counts done on April
8 27th, what the level of pedestrian traffic is here, question
9 mark? Not here at this intersection, as she said.
10 MS. CORDRY: No, the here -- well, I was pointing
11 out that we were talking about here was, we were talking
12 about that intersection.
13 MR. GOECKE: Exactly --
14 MS. CORDRY: That was --
15 MR. GOECKE: -- she's putting her own
16 interpretation --
17 MS. CORDRY: Well --
18 MR. GOECKE: -- into the question and not reading
19 it verbatim and then representing to the Hearing Examiner --
20 MS. CORDRY: I wasn't trying to say -- I thought I
21 made it clear that we were referring at that point to this
22 intersection here, that that was my discussion of what we
23 were talking about here.
24 MR. GROSSMAN: Okay.
25 MS. CORDRY: But there certainly isn't anything

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1 about different approaches on that.
2 MR. GROSSMAN: At least I think I understand what
3 everybody is getting at here at this point. So you're
4 trying to point out that he said it was one pedestrian every
5 five to eight minutes, and you took that as erroneous
6 because the total from all legs actually would be one
7 pedestrian every two minutes. He's saying that's not the
8 way he was looking at it; he was thinking of one pedestrian
9 -- a pedestrian from a given leg in that period of time. I
10 understand at least what everybody is saying here. So --
11 MS. CORDRY: Right, and that's where then I went
12 to go look at the pedestrian counts and --
13 MR. GROSSMAN: Right. Okay.
14 MS. CORDRY: -- that's how we got this other
15 question about the exhibits. Okay.
16 MR. GROSSMAN: Okay.
17 MS. CORDRY: All right. I'm going to move on.
18 MR. GROSSMAN: Mazal tov.
19 MS. CORDRY: Mazal tov, indeed.
20 MS. ADELMAN: Mazal tov.
21 MS. CORDRY: Mr. Grossman, I did not -- I may have
22 made one or two copies of this, but I did not make a lot of
23 extra copies of these Highway Capacity Manuals, which we
24 handed out last time. I think I have --
25 MR. GROSSMAN: Okay.

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1 MS. CORDRY: -- one extra copy for you and for the
2 witness, but everyone else, hopefully, will still have their
3 own copies of these.
4 MR. GROSSMAN: I might have from last time if
5 that's what you're talking about. Yes, I do.
6 MS. CORDRY: So it would be 465 and 480 --
7 MR. GROSSMAN: Yes, I have it. 465?
8 MS. CORDRY: -- and then 504 and 514.
9 BY MS. CORDRY:
10 Q Do you have all --
11 MR. GROSSMAN: Well, I have them clipped together
12 here. So 465 I have in front of me, and which one?
13 MS. CORDRY: It's also 504 and 514.
14 BY MS. CORDRY:
15 Q Do you have all three of these, Mr. Guckert?
16 A I'd have to look for them.
17 MR. GROSSMAN: I have 500.
18 THE WITNESS: I'll take your copies. That'll be
19 fine.
20 MR. GROSSMAN: 504, did you say?
21 MS. CORDRY: Right.
22 MR. GROSSMAN: 503. I don't think I have the one
23 labeled 504. Why, I don't know, because I took everything
24 else.
25 MS. CORDRY: We'll be able to give you a copy of

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1 that one.
2 MR. GROSSMAN: Okay.
3 MS. CORDRY: Everybody else will have to share or
4 not, or hopefully they have it themselves or whatever, but
5 anyway, starting at the moment with 465 --
6 MR. GROSSMAN: Okay.
7 MS. CORDRY: -- was the cover sheet, and then
8 later 480 was the backup --
9 MR. GROSSMAN: All right.
10 MS. CORDRY: -- documentation for that.
11 MR. GROSSMAN: So let's start with 465. I have
12 that one.
13 MS. CORDRY: Okay. So that's just the one-page
14 sheet and then the, I think, 10 pages of additional --
15 MR. GROSSMAN: Yes, I have some stuff attached.
16 MS. CORDRY: Right. Okay. That, I think, was
17 actually brought in as Exhibit 480 because it came in at a
18 separate time.
19 MR. GROSSMAN: Okay.
20 MS. CORDRY: The rest of them have everything
21 combined at one place. I'm just going to call it 465 --
22 MR. GROSSMAN: Okay.
23 MS. CORDRY: -- but I'll probably refer you to
24 some of those other pages at the same time.
25 BY MS. CORDRY:

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1 Q This was labeled as being done December 18th,
2 2013. Why did you do that on that date?
3 A What was labeled?
4 Q The highway capacity analysis.
5 A What page are we talking about?
6 Q I'm talking about the second page here.
7 A Oh, you're talking about the second page of 465?
8 Q Right. Technically, actually, it's the first page
9 of Exhibit 480, but again, I'm just going to call them --
10 A Oh, I see. Okay. Go ahead.
11 MR. GROSSMAN: Gee, I'm not sure I have 480 there.
12 MS. CORDRY: Well, as I say, you may not have
13 labeled it separately. I believe it was actually, when it
14 came in, was labeled as --
15 MR. GROSSMAN: It's not --
16 MS. CORDRY: No? Okay.
17 MR. GROSSMAN: -- that's not the second page I
18 have clipped together here, but let me see if it's in this
19 package.
20 MS. CORDRY: It should be a stack of pages that
21 look like this, five of these kind of pages that have the
22 HCS 2010 Signalized Intersection Results Summary and then
23 five pages of All-Way Stop Control Analysis.
24 MR. GROSSMAN: This is 500. Hold that up again
25 for me to look. No.

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1 MS. CORDRY: All right. Well, let me give you
2 this one. You all will just have to listen in.
3 MR. GROSSMAN: All right.
4 MR. GOECKE: And I'm sorry. Is this 480?
5 MS. CORDRY: The backup pages are 480, and the
6 front page is 465.
7 MR. GOECKE: Thank you.
8 MR. GROSSMAN: Thank you.
9 BY MS. CORDRY:
10 Q Okay. So if you look on the second page of that
11 combined exhibit there, analysis date is listed as December
12 18th, 2013. Do you see that?
13 A I do.
14 Q Okay. Why was this exhibit generated at that
15 point?
16 A I'm not sure I understand the question, why it was
17 generated at this point. What do you mean?
18 Q Why was it generated at this point in time? Why
19 did you, why did somebody produce -- why did you produce
20 this exhibit or your group produce this exhibit, anyway?
21 A I think there was a discussion in this case about
22 using an analysis method that the county doesn't use to
23 analyze the intersection in a different format as part of
24 this case.
25 Q And why did you decide to do it at this point in

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1 time, in December, as opposed to any other point in time?
2 A As opposed to November or January?
3 Q Or April of last year.
4 A I don't recall.
5 Q Had you done this type of analysis at any point
6 before that date in connection with this special exception
7 application?
8 A Could be, but I don't recall doing it. I think
9 we, we were -- we decided to use what the county prescribed
10 in their guidelines, which was the critical lane volume
11 method, which we were instructed to do by staff, and
12 somewhere along the way in this case the opposition
13 suggested that maybe the county's procedure was not the
14 right procedure to use for a special exception.
15 Q Well, I'll leave aside the question whether that's
16 what we actually stated, but you were doing it for the
17 APF --
18 A No, that was my opinion.
19 Q Okay. That's your opinion. That's fine. You
20 were doing your analysis for the APF analysis, is that
21 correct, the adequate public facilities analysis for this?
22 A I was doing it, the LATR, as prescribed by the
23 county for this special exception. We had a scoping
24 agreement with county staff and that's what they asked us to
25 do.

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1 Q I understand. I understand there's an adequate
2 public facilities test that has to get met. Is that
3 correct? Is that what this was being done for?
4 A No. This was being done for the special exception
5 on the --
6 Q Okay.
7 A -- at the request of the staff.
8 Q Well, am I incorrect? Is the adequate public
9 facilities not applicable to this? Is that something else
10 entirely?
11 MR. GROSSMAN: Well --
12 MS. CORDRY: I mean, I'll stop asking that
13 question if I'm wrong, but --
14 MR. GROSSMAN: Well, I think I said at the very
15 beginning that the evidence here was that there's --
16 adequate public facilities had been met and there was some
17 space within adequate public facilities to have development,
18 and under the zoning ordinance, you don't, the Board of
19 Appeals does not make an evaluation of adequate public
20 facilities per se --
21 MS. CORDRY: Okay.
22 MR. GROSSMAN: -- if there is an intact, already
23 determination that applies of adequate public facilities
24 having been made --
25 MS. CORDRY: Okay. So I may be --

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1 MR. GROSSMAN: -- if that's the, if that's the --
2 MS. CORDRY: -- misconstruing -- okay. So I'll
3 move on from that question then.
4 BY MS. CORDRY:
5 Q In any case, had you done any kind of analysis
6 like this Highway Capacity Manual analysis, what I'm
7 referring to these as, in connection with the prior
8 application for a special exception for the gas station?
9 A I don't think we've done this type of analysis for
10 any special exception or almost ever in the county.
11 Q Okay. And in terms of the kind of analysis that's
12 being done here in Exhibit 465 and 480, this is one that
13 actually tries to get at actual congestion and delay
14 results, is that correct?
15 A It's just another analysis method over three or
16 four that are used around the world.
17 Q Okay. But as compared to the CLV method of
18 analysis, it is one that looks more closely at actual
19 congestion and delay, is it not?
20 A No. It's, it's a different, it's a different
21 method that comes up with levels of service, just like all
22 of them do, no different level of service. It's just an
23 analysis method that looks at signal timing.
24 Q Okay. Then let me ask you a different question.
25 This one gives you seconds of delay, whereas the CLV only

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1 gives you raw traffic volume, is that correct?
2 A No, that's not correct.
3 Q The CLV does not give you seconds of delay, does
4 it?
5 A That's two different questions you asked me.
6 So --
7 Q Okay. Well, let me ask you that one then. It
8 only gives you raw traffic volume, correct?
9 A Incorrect.
10 Q Traffic volume as you put the CLV calculations on
11 it to come up with a number of numbers of cars, correct?
12 A It gives you, comes up with critical lane volumes.
13 Q Which are just numbers of cars, correct?
14 A Incorrect.
15 Q Okay. Tell me what that is as opposed to what I
16 just said.
17 A Tell you what what is?
18 Q Well, the critical lane volume is only measuring a
19 number of cars, correct?
20 A You're mischaracterizing what critical lane volume
21 is.
22 MR. GROSSMAN: All right. So what is critical
23 lane volume?
24 THE WITNESS: So critical lane volume is a
25 methodology that looks at intersections, assuming they have

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1 optimum signal timing, and makes a projection of the
2 qualitative results of the analysis based upon the number of
3 lanes, the number of free-flow traffic movements, the number
4 of left-turn lanes. It makes, uses arithmetic calculations,
5 looking at progression of lanes, and then it comes up with a
6 critical lane volume that the county and others equate to
7 level of service.
8 BY MS. CORDRY:
9 Q Okay. And that is a volume that is couched in
10 terms of the number of cars in that lane, correct?
11 A No, and I know what you're trying to get me to
12 say, but I'm going to answer the question appropriately
13 because it is, it is not strictly number of cars. It is a,
14 it is a critical lane volume arithmetic technique that is
15 used to -- based upon optimum signal timing and equates to a
16 level of service.
17 Q I understand all of those things, but my question
18 was simply, the figure you get out of it is a number of
19 cars, is it not?
20 A No.
21 Q Okay. Never mind. I'm not going to keep asking
22 the question because it's clear I'm not going to get an
23 answer.
24 MR. GROSSMAN: Well, he's answered.
25 MS. CORDRY: Well, he's answered, but he --

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1 MR. GROSSMAN: He's answered.
2 MS. CORDRY: It's --
3 MR. GROSSMAN: You may not like the answer, but
4 that's his answer.
5 MS. CORDRY: Well, he can keep explaining how he
6 does it a dozen times, but the number that comes out of
7 it --
8 MR. GROSSMAN: He's telling you he does not agree
9 that critical lane volume is number of cars. That's what he
10 said.
11 MS. CORDRY: Well --
12 MR. GROSSMAN: Right or wrong, that's what he
13 said.
14 MS. CORDRY: Okay. Well, let me just ask it one
15 other different way.
16 BY MS. CORDRY:
17 Q That number that's there in the critical lane
18 volume -- for instance, in the same chart we showed you that
19 had the 11 things -- this number over here where, Maryland
20 193 and Valley View Access, it says 689, that is a number of
21 cars, is it not?
22 A It's a critical lane volume.
23 Q Calculated based on how many cars are in that
24 lane?
25 A Based upon the number of cars, the number of

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1 turning movements, the opposing, the opposing left turns,
2 the number of lanes, and factors dealing with lane-use
3 factors. It is not a number of cars.
4 Q Okay. That's fine. This other kind of method you
5 did with the highway capacity analysis, it comes down to a
6 calculation of seconds of delay, does it not?
7 A It, it -- the level of service is equated based
8 upon seconds delay per vehicle entering the intersection.
9 Q Okay. So, as I said, it comes down to a figure
10 that is calculated in terms of seconds of delay, correct?
11 A It equates -- it is not just as you stated only,
12 and I'm simply not going to agree if the question is being
13 misstated. I'm sorry. It's just --
14 Q I'm just asking you, where these numbers are down
15 here, where they say things like approach delay, seconds per
16 vehicle and has a 14.9, I'm just trying to get an
17 understanding, that's a seconds number as opposed to a
18 number of cars, correct? That's a number of seconds?
19 A It is seconds, that's correct --
20 Q Okay.
21 A -- I can answer that question.
22 Q Thank you. Okay. When you did Exhibit 128(b), as
23 we now, I think, understand, you didn't do this kind of
24 analysis at all when you presented this chart; this is
25 strictly based on critical lane volume?

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1 MR. GROSSMAN: You have to, when you say this
2 chart --
3 MS. CORDRY: 128(b).
4 MR. GROSSMAN: Okay.
5 THE WITNESS: That's correct.
6 BY MS. CORDRY:
7 Q Okay. And every single intersection there is
8 labeled as a level of service A, correct?
9 A That's correct.
10 Q Okay. And that's all because every one of those
11 critical lane volumes there was less than 1,000?
12 A That's correct.
13 Q Okay. And you were asked several times in your
14 original testimony about what those numbers meant in terms
15 of delay. Do you recall that?
16 A No.
17 Q Okay. You don't recall being asked that at all?
18 A No.
19 Q Okay. We'd first point you to page 88 here,
20 towards the bottom. Do you recall first --
21 MR. GOECKE: Ms. Cordry, which transcript are you
22 referring to?
23 MS. CORDRY: This is May 1st, I'm sorry, May 1st,
24 2013.
25 MR. GROSSMAN: All right.

Page 97

1 MS. CORDRY: Not to be confused with May 1st,
2 2014, which we have not yet reached.
3 MR. GOECKE: At page 88?
4 MS. CORDRY: Yes.
5 MR. GOECKE: And what line?
6 MS. CORDRY: Line -- the question starts at 15,
7 and the answer starts at 21.
8 MR. GOECKE: Thank you.
9 MR. GROSSMAN: You said the page was?
10 MR. GOECKE: 88.
11 MS. CORDRY: Page 88.
12 MR. GROSSMAN: 88? Okay.
13 BY MS. CORDRY:
14 Q And the question was: Would the proposed use
15 create a nuisance on the public roads? That was -- and I'm
16 getting to the delay in just a moment. And the answer, do
17 you see there? Do you recall stating --
18 A No. Hold on a minute. Let me get back, because
19 you were doing something else with this. So you're on 88.
20 Which, which line?
21 Q The question starts at 15. It's the last sentence
22 in that question.
23 A Question 15.
24 Q Line 15.
25 A Line 15: Let's focus. I don't know what the crux

Page 98

1 of Mr. Grossman's question is.

2 Q Well, the question you were being asked there is:

3 Would the proposed use create a nuisance on the public

4 roads? Do you see that? Do you see that question?

5 A One moment, please. I see that question.

6 Q Okay. And your initial answer to that question

7 was -- do you see that? We know that it does not create a

8 capacity problem on the public roads because we've been

9 through that at LATR; so it doesn't create a capacity

10 problem. I do not see from a traffic point of view, if it's

11 not a capacity problem, how it would be a nuisance. Is that

12 your, still your opinion?

13 A That was my, that was my answer to that question,

14 that's correct.

15 Q Okay. And is that still your opinion?

16 A My opinion is it would not be a nuisance.

17 Q Okay. And that's why you went ahead and showed

18 level of service A on all of these intersections?

19 A No. I did level, showed level of service A on the

20 intersections because that's what the analysis showed.

21 Q Okay.

22 MR. GROSSMAN: And when you, Ms. Cordry, you

23 referred back to, that was -- you were leaning back to

24 Exhibit 128(b)?

25 MS. CORDRY: I'm sorry, yes, Exhibit 128(b), yes.

Page 99

1 I'm going to be talking about 128(b) for a while now, I

2 think.

3 BY MS. CORDRY:

4 Q Okay. And do you recall being asked specifically

5 by the Hearing Examiner later that same day --

6 A A year ago.

7 Q A year ago. Let me get the right question here.

8 Okay. You were asked: You said operating at level, at

9 service level A -- this is line 6 on page 101 -- I don't

10 know if that's been explained here in the record. What does

11 that mean?

12 Do you see that? You were being asked about what

13 level of service A means.

14 A What, which page number?

15 Q 101.

16 A No. Let me, let me take a look at -- let me, let

17 me read through --

18 Q Sure.

19 A -- 101 then.

20 Q Okay.

21 A Mr. Grossman says: What does service level A

22 mean?

23 Q Right.

24 A But what that means is that there is minimal to no

25 delay.

Page 100

1 Q Okay. Now, can you read that, what you just read

2 now, can you read that out loud as part of your answer?

3 A Sure. I'm on page 101, line 9. It starts with

4 the witness, and it says, quote, I think the opposition had

5 a whole glossary of terms, comma, but what that means is

6 that there is minimal to no delay at the internal

7 signalized, unsignalized intersections.

8 Q So the internal intersections are unsignalized, is

9 that correct, Mr. Guckert?

10 A Most of them --

11 Q Yes. So --

12 A -- not all of them.

13 Q So what you were talking about there was the

14 internal -- well, if you're talking about internal

15 intersections, you're talking about these ones like the

16 crossroads at Intersection 16, correct?

17 A Correct.

18 Q Okay. And, again, so your answer to him in terms

19 of what service level A means is that -- you said that means

20 minimal to no delay?

21 A That's what it says. I just read that.

22 Q Okay. All right. And if you turn to page 105 --

23 MR. GROSSMAN: Ms. Cordry --

24 MS. CORDRY: Yes.

25 MR. GROSSMAN: -- how many more bricks are there

Page 101

1 in this wall, because we --

2 MS. CORDRY: About three or four, which we'll get

3 through quickly.

4 MR. GROSSMAN: All right. I'm just --

5 MS. CORDRY: And that would perhaps be a good

6 place to stop.

7 MR. GROSSMAN: I need to give people --

8 MS. CORDRY: Yes.

9 MR. GROSSMAN: -- a mid-morning break at some

10 point soon.

11 BY MS. CORDRY:

12 Q Do you see on page 105 where you stated you didn't

13 see how there could be a traffic nuisance caused by the gas

14 station since we're -- especially when, in fact, we're

15 dealing with satisfactory conditions?

16 A Give me a second here to read this. Yeah, this

17 was the context, on page 105, line 5, Mr. Grossman, has to

18 do with cut-through traffic, and then I said, therefore, I

19 didn't think there would be a traffic nuisance caused by the

20 gas station, dealing with cut-through traffic.

21 Q Because you're dealing with satisfactory

22 conditions, in your view, correct?

23 A Yeah, but in the context -- this particular

24 discussion was dealing with cut-through traffic on the other

25 adjoining county roadways, I would expect.

Page 102

1 Q Okay. And that's based, at least whole or in
2 part, on your view that a level of service A under this
3 critical lane volume is automatically satisfactory?
4 A Well, in terms of level of service, certainly
5 that's, that's one way to deal with it, level of service and
6 traffic nuisance. It's not just level of service, is the
7 only thing that you would look at for traffic nuisance.
8 Q Okay. And on page 106 do you see where you are
9 discussing whether it could be an effect at Drumm and
10 University?
11 MR. GOECKE: Which line is that on?
12 MS. CORDRY: I'm sorry. Well, I believe it's
13 Bounty View here. I think that's probably, actually, Valley
14 View.
15 BY MS. CORDRY:
16 Q Actually, my question should be, do you see where
17 it's talking about, let's say, Bounty View, which I assume
18 is Valley View, and University, and you were asked, is there
19 an impact on downstream situations and would there be any
20 nuisance from additional traffic from the gas station?
21 MR. GOECKE: Well, Mr. Grossman, I object.
22 MS. CORDRY: I'm sorry.
23 MR. GOECKE: She's, again, she's mischaracterizing
24 the testimony. If she wants to reread the transcript, why
25 don't we just reread the transcript.

Page 103

1 MS. CORDRY: Well, my --
2 MR. GROSSMAN: I'm not sure -- where are we going
3 with all of these --
4 MS. CORDRY: Okay.
5 MR. GROSSMAN: -- transcript excerpts?
6 MS. CORDRY: Okay. Two more and then we will move
7 on.
8 MR. GROSSMAN: Well, just tell me, what --
9 MS. CORDRY: Okay. All right. What I'm going to
10 come back to, and there's two more here where he has again
11 stated, both on May 23rd and on June 4th, that level of
12 service A means relatively little, if any delay, or little
13 or no delay.
14 MR. GROSSMAN: Right.
15 BY MS. CORDRY:
16 Q So will you stipulate that you have said several
17 times --
18 MR. GROSSMAN: It hasn't been stipulated. It's in
19 the transcript.
20 BY MS. CORDRY:
21 Q Well, that your belief is that -- well, okay. You
22 testified several times that the level of service A meant
23 there would be little or no delay, correct, Mr. Guckert?
24 MR. GROSSMAN: It's in the transcript.
25 MS. CORDRY: Okay. All right.

Page 104

1 MR. GOECKE: And it's not on these pages she's
2 referring to now.
3 MR. GROSSMAN: Okay.
4 MS. CORDRY: Well, that's because I'm getting
5 there, because they're on May 23rd at page 267 and June 4th
6 on pages 43 to 44 if you care to look them up. So I will
7 stipulate that.
8 BY MS. CORDRY:
9 Q Now, looking at Exhibit 465 or Exhibit 504, take
10 your pick with those two, they do not show minimal or no
11 delay, do they, what you're doing under this Highway
12 Capacity Manual?
13 A What are you talking about? What exhibits are you
14 talking about?
15 Q 465 and --
16 A I don't have them. I'm sorry. Do I have -- oh, I
17 do have them. Excuse me. Pardon, pardon, pardon, pardon,
18 pardon, pardon. Go ahead.
19 Q All right.
20 A Question is?
21 Q Question is --
22 A Do they show minimal or no delay? It's a
23 different analysis method.
24 Q Well, I understand that, but that's my question.
25 They do not show minimal or no delay, do they?

Page 105

1 A I understand. The context of the, of the
2 discussion was with using the county's methodology of --
3 Q No. The --
4 A -- critical lane volume. We used the county's
5 methodology, which shows level of service A.
6 Q The context is, you were asked several times what
7 does level of service A mean in terms of delay, and your
8 testimony several times last year was it meant minimal or no
9 delay --
10 A In, in --
11 Q -- was it not?
12 A In reference to the critical lane volume analysis
13 that we conducted at that time.
14 Q I'm not asking you about the critical lane volume.
15 You were asked --
16 A I understand.
17 Q -- specifically whether --
18 A I understand. I understand what you're asking,
19 but it's important for me to put it in context, okay?
20 Q I understand you want to put it in context, but
21 I'd like you to answer my question, which is, last year you
22 told us that those critical lane volumes meant minimal or no
23 delay.
24 A And they do.
25 Q Your Highway Capacity Manual chart shows as much

Page 106

1 as 50, almost 50 seconds on one and over 50 seconds on the
2 other one. Do you consider 50 seconds minimal to no delay?
3 A As it relates to the context of what impact this
4 station has, yes, because it's a five-second, almost
5 imperceptible, almost imperceptible difference.
6 Q That wasn't the question you were asked then.
7 It's not the question you were asked now. Is 50 seconds
8 minimal to no delay?
9 A In the context of the Highway Capacity Manual
10 procedure, 50 seconds is, is a delay that's not minimal. I
11 agree with you, okay?
12 Q Okay. And it's certainly not no delay either?
13 A It is not no delay. There is delay.
14 Q So when you put this chart up and you showed level
15 of service A at every single intersection there, is this not
16 somewhat misleading to the audiences that don't understand
17 the distinction between critical lane volume and other
18 methods of measuring delay by indicating that there is level
19 of service A at every intersection and that means minimal to
20 no delay?
21 A With all due respect, my obligation is to, when
22 this was prepared, was to the staff, okay? They're the ones
23 that are reviewing the analysis, and you know, quite
24 frankly, you know, I wasn't going -- it's not my obligation
25 to give a traffic engineering course to, to even my client

Page 107

1 in this particular case. What's important is that we follow
2 the rules and guidelines, which is what we've done, and this
3 was for the staff. I don't even know if the staff has ever
4 seen Saturday conditions because they're not required.
5 Q Well, but, Mr. Guckert, you couldn't very well
6 have made this for the staff, could you, when this was done
7 two months after the staff completed its review?
8 MR. GROSSMAN: By the this, we're talking about
9 Exhibit --
10 MS. CORDRY: Exhibit 128(b). We're --
11 MR. GROSSMAN: -- 128(b).
12 MS. CORDRY: -- still on 128(b).
13 THE WITNESS: Excuse me?
14 BY MS. CORDRY:
15 Q You couldn't have made this for the staff's
16 benefit when this was done two months after the staff
17 completed its review, but it --
18 A It wasn't made as part of their initial review,
19 that's correct.
20 Q This was made for testimony in this hearing, was
21 it not?
22 A Correct.
23 Q It was made to try to give information, useful
24 information to the Hearing Examiner?
25 A Made for useful information, that's correct.

Page 108

1 Q Okay. And you think it is completely transparent
2 and not misleading to only use level of service A and to
3 define level of service A as minimal or no delay when these
4 are the actual kind of results that occur at those
5 intersections?
6 A We're using a different methodology. We could
7 have -- we can use even a third or fourth methodology and
8 potentially come up with different results --
9 Q But --
10 A -- with different results -- no buts -- I mean,
11 with different results that still equate to a level, to a
12 different type of methodology.
13 Q But the question is, the Hearing Examiner asked
14 you very clearly to try to understand the question of delay,
15 which is the real relevant question to nuisance. You told
16 him minimal to no delay repeatedly.
17 A I did, absolutely.
18 Q And that is not what your new exhibits show,
19 correct?
20 A The new exhibit shows different analysis as a
21 result of the opposition asking us to use the Highway
22 Capacity Manual procedure.
23 Q Do you have any particular idea of when exactly it
24 was we asked you to use the Highway Capacity Manual?
25 MR. GROSSMAN: All right. I think -- I understand

Page 109

1 your point --
2 MS. CORDRY: Okay.
3 MR. GROSSMAN: -- you don't have to belabor it
4 anymore.
5 MS. CORDRY: Okay. Well, I'm just, we did not ask
6 that --
7 MR. GROSSMAN: I understand that. I --
8 MS. CORDRY: I think it's great he did because it
9 gives us evidence we didn't have before, but --
10 MR. GROSSMAN: It really doesn't matter --
11 MS. CORDRY: Okay.
12 MR. GROSSMAN: -- you know, who asked for it. I'm
13 familiar with 128(b) --
14 MS. CORDRY: Right.
15 MR. GROSSMAN: -- and what that shows, and I'm
16 familiar with Exhibit 465 and what that shows.
17 BY MS. CORDRY:
18 Q Okay. And just to be clear, there is no time
19 period of any of the 12 different analyses here on Exhibit
20 465 and the other ones, there's none of these here that show
21 a level of service A being measured in terms of this Highway
22 Capacity Manual delay analysis, correct?
23 A Correct.
24 Q Okay. They range from B all the way up to E?
25 A Correct.

Page 110

1 Q Okay.

2 MR. GOECKE: Can we take a break now?

3 MR. GROSSMAN: Is this is a good time to take a --

4 MS. CORDRY: I was just going to say, this is a

5 great time to take a break.

6 MR. GROSSMAN: All right. All right. We'll take

7 a five-minute break here.

8 (Whereupon, a brief recess was taken.)

9 MR. GROSSMAN: All right. We're back on the

10 record. Ms. Rosenfeld told me that she had to leave and

11 that Ms. Cordry would handle the rest of the morning for

12 KHCA.

13 MS. CORDRY: Right. Okay.

14 MR. GROSSMAN: I notice that you let Mr. Guckert

15 get some refreshments.

16 MS. CORDRY: I did. I did. I want him to be

17 suckered and ready to resume.

18 MR. GROSSMAN: All right.

19 BY MS. CORDRY:

20 Q All right. Just as a lead-in to the next set of

21 questions and so forth, I'm looking at the May 23rd, 2013,

22 transcript on page 269, starting at line 6.

23 A 269, line 6, by Mrs. Harris.

24 Q Do you just want to read the question and your

25 answer?

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1 A Let me, let me read it to myself first. All

2 right. The question was by Mrs. Harris: Taking the issue

3 of nuisance further onto the public roads based on your

4 observations, will the gas station cause queuing -- will the

5 gas station cause queuing along the University Boulevard at

6 the Valley View entrance?

7 My answer was: Absolutely not.

8 Q Now, you would agree, would you not, though, that

9 there is already cars queuing up on that Valley View

10 entrance on the weekend?

11 A Oh, cars queue. I mean, they queue and they

12 dissipate, yes.

13 Q Right. So there's already queuing there. So the

14 gas station will, if anything, obviously have to make that

15 worse?

16 A No. I think, I think the context of what we were

17 talking about a year ago was will -- and I think that's a

18 good question -- will the, will the gas station itself

19 basically exacerbate queuing and make things poor, and my

20 answer was no, the number of cars generated by the gas

21 station are not going to make things worse. You know, all

22 intersections have, have queuing and delay, and they have

23 queuing because when the signal turns red, the cars stop and

24 they queue up and then they dissipate, but in the context of

25 what we do as traffic engineers and what we review, you're

Page 112

1 looking at extended queues and people not getting through

2 intersections that's a problem.

3 Q Okay. Well, the question you were asked was, will

4 the gas station cause any queuing onto University Boulevard,

5 and your answer was absolutely not, correct?

6 A Yeah. I'm not sure that those words that were

7 typed, whether there are other words there that were missed,

8 but the -- but, again, the context was what I stated,

9 that --

10 Q Okay.

11 A -- would the queuing be a problem, and in my

12 opinion, the queuing would not be a problem from the gas

13 station.

14 Q Well, leaving aside your opinion, right now we

15 were trying to look at what you said as a fact and what

16 you --

17 A Well --

18 Q -- were claiming as a fact as to whether there was

19 going to be queuing or not.

20 MR. GROSSMAN: The transcript says what it says.

21 MS. CORDRY: Okay. All right. What I'm trying to

22 get is the facts, not what his opinion is, as to whether or

23 not that would be a nuisance or not.

24 BY MS. CORDRY:

25 Q So you would agree, and we'll --

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1 MR. GROSSMAN: Well, he --

2 MS. CORDRY: Let me ask a question, if I could.

3 BY MS. CORDRY:

4 Q You would agree there's already --

5 MR. GROSSMAN: But, I mean, you said trying to get

6 at the facts. I mean, you asked him -- you showed him the

7 transcript. He said what he said in the transcript --

8 MS. CORDRY: Okay. And now what I'm trying to get

9 at --

10 MR. GROSSMAN: -- although he's not entirely sure

11 he said that, but --

12 MS. CORDRY: Okay.

13 MR. GROSSMAN: -- that's what the transcript says.

14 MS. CORDRY: Okay. And what I'm now trying to get

15 at is, what are the facts on the ground or on the road, so

16 to speak --

17 MR. GROSSMAN: Okay.

18 MS. CORDRY: -- about what is actually happening

19 on University Boulevard.

20 BY MS. CORDRY:

21 Q And you would agree, would you not, that there are

22 already cars that have to queue up even on the right-turn

23 lane there on University Boulevard? Correct?

24 A Yeah, but you're taking, you're taking the word

25 queuing and apparently thinking that there should never, you

Page 114

1 should never see a car at the intersection, but that's not
2 what we -- in the traffic parlance, that's really not what
3 we, what we talk about and what we're looking at.
4 Q I'm not asking you what you're looking at. I'm
5 asking you a fact-based question.
6 A Okay. I'm sorry.
7 Q Are there cars lined up, queuing on University
8 Boulevard --
9 A It really --
10 Q -- even before the gas station? Mr. Guckert,
11 could you let me finish my question?
12 A It really has to be --
13 MR. GROSSMAN: Hold on one second, both of you.
14 THE WITNESS: Okay.
15 MR. GROSSMAN: Okay. First of all, the
16 intersection you're talking about --
17 MS. CORDRY: I'm talking about the intersection --
18 MR. GROSSMAN: -- Valley View and University?
19 MS. CORDRY: Valley View and University Boulevard.
20 MR. GROSSMAN: And the direction you're talking
21 about?
22 MS. CORDRY: I'm talking about, are there cars
23 already, as of now, prior to the gas station, having to
24 queue up, line up, back up, take your pick of the adjective
25 you want to --

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1 MR. GROSSMAN: But you said making a right-hand
2 turn.
3 MS. CORDRY: Making the right-hand turn into
4 Valley View.
5 MR. GROSSMAN: What direction are they going in?
6 MS. CORDRY: They're going eastbound.
7 MR. GROSSMAN: Okay. All right. I just want to
8 make sure --
9 MS. CORDRY: Northeast.
10 MR. GROSSMAN: -- that the record reflects what
11 intersection --
12 MS. CORDRY: Right. Right.
13 MR. GROSSMAN: -- and what direction you're
14 talking about.
15 MS. CORDRY: Right. And I'm, I'm --
16 MR. GROSSMAN: Okay. So are there -- and I think
17 he already answered that question when you asked it earlier.
18 He said, yes, cars queue up at that intersection.
19 MS. CORDRY: Okay. And the next question was,
20 when you add the gas station, whether you think it's a lot
21 or not, it would certainly add to the level of queuing at
22 that intersection.
23 MR. GROSSMAN: So that's the question. Would the
24 gas station add any cars to the queue at that intersection,
25 turning right, the eastbound direction?

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1 THE WITNESS: It will, it will be additional cars.
2 If they're stopped, they will create additional queues.
3 MR. GROSSMAN: Okay. Thank you.
4 BY MS. CORDRY:
5 Q Okay. All right. And you did say at one point
6 that you thought a delay of up to several minutes, trying to
7 go in an entrance road like this, is common at malls?
8 A I don't know if I said that or not.
9 Q I think you said that in your March 11th
10 testimony. Would you -- well, let me ask you a different
11 way. Do you think that's true that cars, that it takes cars
12 several minutes to go in this intersection here, from Valley
13 View up to Intersection 16? That kind of delay from cars
14 trying to enter a mall, do you consider that common?
15 A I see that on a regular -- regular occasion, yes.
16 Q Okay. You haven't produced any evidence of that
17 in this case, though, have you?
18 A No. You were asking my opinion, I think.
19 Q I understand that. I'm just asking you a second
20 question. You have not put any evidence in, in any case --
21 A That's correct.
22 Q -- about that? Okay.
23 A You're correct.
24 Q And I think you had originally indicated you
25 thought maybe the videos we had presented that showed the

Page 117

1 queuing and the lineups and the backing, that those might
2 have been taken at the holidays. Did you recall thinking
3 that might have been --
4 A No, I don't recall.
5 Q Okay. Shall I show you your testimony when you
6 said you thought that?
7 A You can if you'd like.
8 Q Let me ask you a different question. Have you
9 checked back now and found that those videos were not taken
10 at Christmastime; they were taken during the remainder of
11 the year?
12 A No, I did not.
13 Q Okay. Let me just show you, in any case. This is
14 on your March 11th testimony, page 71.
15 A What year?
16 Q This year --
17 A Okay.
18 Q -- March 11th, 2014. Mr. Grossman asked you -- it
19 starts at the very bottom of page 70 at line 24. Can you
20 read his question and your answer?
21 A Let's take a look here.
22 MR. GROSSMAN: While he's looking, we ought to
23 consider the fact that this is a Tuesday. So the Council
24 will also have a session. There'll be people vying with you
25 for the lunch. I did alert the cafeteria that there would

Page 118

1 be a crowd today. So I don't know that you're going to get
 2 any food if we go too late.
 3 MS. CORDRY: Okay.
 4 MR. GROSSMAN: You should consider that in terms
 5 of -- how much longer do you think your cross-examination
 6 will take?
 7 MR. SILVERMAN: They have fish today,
 8 Mr. Grossman.
 9 MR. GROSSMAN: No liver for you, Mr. Silverman?
 10 MR. SILVERMAN: No liver, never again.
 11 MR. GROSSMAN: We can put in a special order.
 12 MS. ADELMAN: That's mean. And Peruvian chicken,
 13 right?
 14 MR. SILVERMAN: Well, Peruvian chicken I think
 15 I'll skip.
 16 MS. CORDRY: I mean, it will take a long time for
 17 a good breaking point. I would think, hopefully, in a half
 18 hour to 45 minutes or so, we could --
 19 MR. GROSSMAN: Okay. I just want to warn you --
 20 MS. CORDRY: Perhaps, probably closer to 45
 21 minutes.
 22 MR. GROSSMAN: -- you'll have to answer to
 23 Mr. Silverman --
 24 MR. SILVERMAN: You will. You will.
 25 MS. CORDRY: Right. I understand.

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1 MR. GROSSMAN: -- if he doesn't get any food.
 2 BY MS. CORDRY:
 3 Q All right. Do you see that question?
 4 A Yeah. I said -- I do.
 5 Q Well, can you read Mr. Grossman's question and
 6 then your answer?
 7 A Mr. Grossman -- it's on page 70, line 24. It says
 8 -- Mr. Grossman says: While that's loading, how do you
 9 account for the very significant difference in the video
 10 which was shown by Ms. Cordry of this intersection and the
 11 video you're showing in terms of the levels of traffic?
 12 Line 3, the witness replies: As I recall -- and I
 13 could be wrong, comma, because I know that if I'm wrong,
 14 I'll be corrected, dash dash -- I think Ms. Cordry's was
 15 during Christmas season, comma, in that Christmas season
 16 point of view, period.
 17 Q Okay. And you were corrected at that time on the
 18 record. Do you recall that we told you that it was in fact
 19 not at Christmastime?
 20 A Line 7, Mr. Grossman: No. I think she, comma,
 21 not in her, dash dash --
 22 Line 8, Ms. Cordry: Yes. Shall I correct that,
 23 question mark?
 24 Line 9, Mr. Grossman: Go ahead.
 25 Ms. Cordry: The only information I supplied about

Page 120

1 the Christmas season was four pages of a written discussion,
 2 period. All of my videos were taken long before Christmas,
 3 period.
 4 Q Okay. So did you ever go back and verify that and
 5 agree for yourself that, in fact, all of the videos that
 6 were put in the record before were not taken at
 7 Christmastime?
 8 A Absolutely not. I did not do that.
 9 Q Okay. But you're not disputing my testimony,
 10 correct?
 11 A I have no idea when your videos were taken then.
 12 If you said that they weren't taken at Christmas, I did not
 13 go back and determine the date at which they were taken.
 14 Q All right. You would agree that the holidays, of
 15 course, are a much heavier traffic time period? So if there
 16 are delays taken at non-holiday times, they will undoubtedly
 17 be higher during the holidays?
 18 A I would expect.
 19 Q So this I'm showing you, this is from your video
 20 that you took in March of this year.
 21 A Okay.
 22 Q You gave us quite a few. There was about 10
 23 hours' worth, I guess.
 24 MS. CORDRY: I'm not going to ask us to sit
 25 through 10 hours. I'm just going to ask a couple minutes'

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1 indulgence here, Your Honor.
 2 BY MS. CORDRY:
 3 Q And this is the first one in, that you sent us in
 4 the Dropbox, which was Saturday at 1:00 p.m. So that's what
 5 I looked at. I want to ask you first, how did you decide
 6 where to place your camera?
 7 A I wanted to see the, whether or not there was
 8 blockage of the intersection from left turns turning into
 9 the mall.
 10 Q Okay. Were you at all interested in seeing how
 11 long the backup was going up to Intersection 16?
 12 A Not for this issue, no.
 13 Q Or how long the blockage was on University
 14 Boulevard --
 15 A No.
 16 Q -- going west?
 17 A No. I'll state again, okay, I was interested in
 18 seeing whether there was ongoing sustained blockage from the
 19 westbound left turn entering the mall blocking eastbound
 20 through traffic for a sustained period of time.
 21 Q Okay.
 22 A That was the purpose of this.
 23 Q Okay. That's not, of course, the only places
 24 where people might be impacted by this intersection, of
 25 course?

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1 MR. GROSSMAN: I take it that was a question?
2 MS. CORDRY: It was a question.
3 BY MS. CORDRY:
4 Q You only focused on one turning issue in here, is
5 that correct?
6 MR. GROSSMAN: Well, let --
7 THE WITNESS: It was my video --
8 BY MS. CORDRY:
9 Q I understand.
10 A -- my decision. I wanted to focus on that one
11 particular issue, okay?
12 Q Okay. There are spots you could have filmed from
13 that would have let you see not only the backup from
14 Intersection 16, the left turns and the right turns at the
15 same time, are there not?
16 A I'm sure there are.
17 Q Okay. But what you can see on this one, if cars
18 are backed all the way down to University Boulevard, you can
19 see that, correct, because you can see the very tail end of
20 those cars there waiting?
21 A That's correct.
22 Q Okay. And as an alternative, these are the other
23 tapes that you gave us based on your observations back in
24 September of 2012? Do you recognize this?
25 A No, I didn't take it, but I'm sure that --

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1 Q Well, not you personally, but your group.
2 A Okay.
3 Q Okay.
4 A I'll assume that that's correct.
5 MS. HARRIS: What date, did you say?
6 MS. CORDRY: These were the ones, the --
7 MS. HARRIS: September?
8 MS. CORDRY: -- September 2012.
9 THE WITNESS: From the LATR.
10 MS. CORDRY: I'm sorry. No. I'm sorry. These
11 were the April 2013. I'm sorry.
12 MS. HARRIS: Okay. Thank you.
13 THE WITNESS: Oh.
14 MS. CORDRY: Right. I'm sorry. I was thinking of
15 something else, but the April 2013 tapes coming into the
16 intersection there. Right? Because it actually, I think,
17 says 4/13 at the top there. Yes. So these were taken in
18 April of 2013.
19 BY MS. CORDRY:
20 Q And from this angle, you can see the cars on
21 University Boulevard coming from the east, but you can't see
22 how much they're backing up on University Boulevard from the
23 west, correct?
24 A Uh-huh, correct.
25 Q And, again, you can't see if they're backing up

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1 down from Intersection 16?
2 A Correct.
3 Q Okay. And, again, is there a reason why you
4 picked that particular angle to take your video from?
5 A To do the turning movement counts.
6 Q Okay. Could you have taken it from a different
7 point and still have seen all those?
8 A Probably not.
9 Q And why would that have been?
10 A The analyst that does that work made a selection
11 as to what would be the best vantage point for the computer
12 to, to count the cars.
13 Q All right. So let's go back to this one, which
14 was the March 18th, 2014, I'm sorry, March 8th, 2014, video,
15 and let's run it -- you ran a little bit of this, but you
16 ran it at fast speed. So let's, let's run it at normal
17 speed a little bit here, just for a few seconds. Before we
18 start that, do you know how long that stretch of road is
19 from the entrance here at University and Valley View up to
20 Intersection 16?
21 A No.
22 Q If I told you approximately 600 feet, would that
23 sound correct to you?
24 A I don't know.
25 Q You have no idea?

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1 A I haven't measured it.
2 Q Would you accept a proffer of that from your
3 observations?
4 A It's not my decision.
5 Q Well, I'm asking you -- let me go back. How
6 many --
7 MR. GROSSMAN: He answered. He doesn't, he
8 doesn't know. Don't --
9 MS. CORDRY: Well -- okay.
10 MR. GROSSMAN: See, you can't always squeeze
11 something out of somebody who doesn't know the answer. He
12 said he doesn't know.
13 MS. CORDRY: Okay. Okay.
14 BY MS. CORDRY:
15 Q How many times have you been over there to the
16 mall and observed that particular set of roadway?
17 A I'll say several.
18 Q Okay. But, at this point, you can give no
19 estimation of how long it is?
20 A I don't know.
21 Q Okay. If I proffer to you that it's approximately
22 600 feet and you were using your car, average car length of
23 15 feet and three feet apart or a little more space for 20
24 foot per car, you could put 30 cars in that, in a 600-foot
25 space, correct?

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1 A I'm not sure I'm the person to accept the proffer.
2 I'm just a witness here.
3 Q Well, you're an expert witness. I'm asking you.
4 You gave us all these other figures before, and I'm asking
5 you as an expert --
6 MR. GROSSMAN: Yes, she can pose to you what we --
7 THE WITNESS: Oh, she can?
8 MR. GROSSMAN: -- call a hypothetical if it's
9 based on --
10 THE WITNESS: Okay.
11 MR. GROSSMAN: -- evidence that's in the record.
12 THE WITNESS: Okay. So go ahead.
13 BY MS. CORDRY:
14 Q So if we assume that's 600 feet long with the kind
15 of spacing you were saying with cars, you could get as many
16 as 30 cars in each lane going up there?
17 A Well, you've got, you've got five cars per 100
18 feet --
19 Q Yes.
20 A -- right?
21 Q Right. Times 600 feet.
22 A And you've got two lanes going up there, right?
23 Q Right.
24 A Okay.
25 Q So 30 cars in each lane.

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1 A So 30 cars in each lane, 60 cars, okay.
2 Q Okay. And if they're moving at a very slow pace,
3 would you agree it could easily take a car a couple of
4 minutes to get up there if they're having to stop?
5 A It depends.
6 Q Okay.
7 A It really does depend on a lot of factors because
8 it's not about, Mr. Grossman, it's not about the number of
9 cars that are queued. It has to do with the cars that are
10 on the ring road, making left turns or not making left
11 turns.
12 Q Okay. So, in any case, where we start this out --
13 and this is the 1 o'clock tape -- you saw cars all the way
14 down, right to the, to the end of the entranceway there on
15 the incoming road, correct?
16 A Yes.
17 Q Okay.
18 MR. GROSSMAN: When you say the incoming road --
19 MS. CORDRY: The incoming, coming in from
20 University Boulevard, going up to --
21 UNIDENTIFIED SPEAKER: 16.
22 MR. GROSSMAN: Okay.
23 MS. CORDRY: -- Intersection 16.
24 BY MS. CORDRY:
25 Q And right now there is no one waiting on the

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1 right-turn lane, correct, at this point in the tape?
2 A That's right.
3 Q Okay. If you'll just give me indulgence for a few
4 seconds until when it runs to the right place. And we do
5 see at this point, the cars are now starting to line up to
6 make the left-hand turn in, correct, and this is at about 25
7 seconds into the tape or so? Would you agree?
8 A Oh, that's what it shows.
9 Q Okay. And here, at approximately 37 seconds in,
10 we see a car now starting to come from the, right, correct?
11 A Yeah. Now, this, this car, we're talking about
12 crossing -- this is a free-flow right turn -- crossing the
13 pedestrian crossing, right?
14 Q Yes.
15 A Okay.
16 MR. GROSSMAN: Do you want my laser pointer?
17 THE WITNESS: I actually have one. I think you
18 should hold on to yours.
19 MS. ADELMAN: Ever trying to advertise.
20 THE WITNESS: I don't want it to --
21 MR. GROSSMAN: We're trying to make it a valuable
22 asset to Montgomery County.
23 THE WITNESS: So the, yeah, cars are on the
24 free-flow, free-flow right-turn lane, little, little island
25 for pedestrians, flat, and then they cross over, and this

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1 car goes up the pathway. Okay.
2 BY MS. CORDRY:
3 Q Okay. So, at that point, the cars have moved out
4 of the picture; so it's clearly not backed all the way. We
5 start to see cars coming in from the right, and at -- hold
6 on. Hold on.
7 MR. GOECKE: Maybe it's a sign it's lunchtime.
8 MS. CORDRY: Maybe so. Hold on one second. Let
9 me stop this and see if I can get -- I was trying not to
10 make everybody trip over this, but I'm --
11 MR. GROSSMAN: I appreciate that. What exactly
12 are we going to prove here by --
13 MS. CORDRY: Well --
14 MR. GROSSMAN: -- watching this again?
15 MS. CORDRY: Well, we haven't even watched --
16 MR. GROSSMAN: I watched it in fast speed, as I
17 recall, sometime back.
18 MS. CORDRY: Well, watching in fast speed doesn't
19 let you see very much. I have about three or four minutes
20 of this I'd like to ask him about and that's, that's all.
21 MR. GROSSMAN: All right.
22 MS. CORDRY: All right. Let me try this.
23 MR. GROSSMAN: We should also make you stand on
24 one foot while you're doing that.
25 MS. CORDRY: Right. Right.

1 MR. GROSSMAN: Feel free to sit down, Ms. Cordry,
2 if you need to, while you're doing that.

3 MS. CORDRY: Well, I'm trying to -- ah, there we
4 go. All right. All right. Let me stop this a second.
5 Okay.

6 BY MS. CORDRY:

7 Q Now, at this point -- and we're approximately one
8 minute and 15 seconds in -- at this point, as we can see,
9 the cars, as they come in from the left-hand side, keep the
10 cars coming in from the right from coming into that lane, is
11 that correct?

12 A There's a song that this reminds me of. It's
13 called a Moment in Time, and that's correct, at this moment
14 in time, there is -- the cars are there and then they clear.

15 Q Well, at this point, as we can see, the aisle is
16 now, again, it appears, full up to the top because we have
17 cars sitting all the way down here to the intersection with
18 University Boulevard, correct?

19 A Snapshot in time, correct.

20 Q Okay. We have now cars coming off to the left
21 here, queuing up on University Boulevard?

22 A Yeah, with plenty of space between them because,
23 because they're still moving.

24 Q That's right, but we don't know how many cars
25 there are because your angle doesn't show back that far.

1 A No, we do not, but there's space between the cars
2 that are there.

3 Q Well, I'm sure there's space between the cars,
4 yes.

5 A Well, I think that's pretty important.

6 Q Well, and as we see, those cars are moving quite
7 slowly, because there's quite a few of them lined up and
8 because it's backed all the way up now to the intersection,
9 correct?

10 A In one of the lanes and then it keeps on moving.

11 Q It is moving, yes, because --

12 A That's correct.

13 Q -- this is an all-way stop, but you have --

14 A It's --

15 Q -- quite a few cars lined up there, waiting to get
16 in, correct?

17 A It's not, it's not gridlock. It's what occurs.

18 These people are volunteering to come here.

19 Q Well, I would certainly hope the mall would want
20 people to come to the mall, that this has not yet gotten to
21 the point where it's totally impossible to shop at the mall.
22 And I understand your definition of --

23 MR. GROSSMAN: Well, no speech-making here,
24 just --

25 MS. CORDRY: Well --

1 MR. GROSSMAN: Look --

2 MS. CORDRY: Well, I ask the witness a question,
3 and I get a speech back. So --

4 MR. GROSSMAN: Well, that does happen, but you're
5 not allowed to make speeches. That's --

6 MS. CORDRY: Well, sometimes, sometimes witnesses
7 are asked to only answer the question that was asked, but --

8 THE WITNESS: I'm not a Perry Mason guy. I've got
9 to help, I've got to help, you know -- yes or no doesn't,
10 doesn't help Mr. Grossman understand the context of what
11 we're talking about.

12 BY MS. CORDRY:

13 Q Well, I understand --

14 MR. GROSSMAN: Although some questions, some
15 questions warrant a yes-or-no answer, but in any event, now
16 we've seen the film.

17 MS. CORDRY: All right. Please, I said a couple
18 of minutes. It's only been --

19 MR. GROSSMAN: Well --

20 MS. CORDRY: -- like, a minute and a half.

21 MR. GROSSMAN: My wife describes my younger son as
22 a serial underestimator --

23 MS. CORDRY: Well, I --

24 MR. GROSSMAN: -- and I think that, I think that
25 might fairly apply to you.

1 MS. CORDRY: Well, the point is, I -- okay. All
2 right.

3 BY MS. CORDRY:

4 Q What I want to show you is that as the cars come
5 in, they block up, they block down to the intersection and
6 that they stay that way continuously for long periods of
7 time.

8 A I do vehemently disagree with that statement.

9 Q What I'm saying is that they, they -- okay. What
10 I'm trying to do is show what -- well, I'm actually trying
11 to show as opposed to describing it, which is that, again,
12 as you see at this point, the cars coming in from the left
13 stop the cars from the right --

14 A Well, why are we stopping the tape, I mean,
15 because that --

16 Q Because I want to let somebody actually look at
17 something, Mr. Guckert. If you don't mind letting me do the
18 cross-examination as opposed to you discussing what you'd
19 like to discuss.

20 A I apologize. I'm sorry.

21 MR. GROSSMAN: All right.

22 BY MS. CORDRY:

23 Q Thank you.

24 A I'm sorry.

25 Q All right. So, again, at this point, the cars

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1 that would be otherwise coming in from the right have to
2 stop and wait and back up, waiting for that line --
3 MR. GOECKE: Mr. Grossman, does she have some
4 questions or testifying? Everyone can see what it shows
5 and --
6 MR. GROSSMAN: All right. Well, I guess, in one
7 sense, everybody can see it, but by the same token, she can
8 describe for the record because the record doesn't see it.
9 So --
10 MS. CORDRY: And at this point, for instance --
11 MR. GROSSMAN: -- if anybody has a problem with
12 what she's describing, they can object and say that that's
13 an inaccurate description.
14 MR. GOECKE: I'll start objecting then. Thank
15 you.
16 MR. GROSSMAN: So for the record, so she's
17 describing it for the record.
18 MS. CORDRY: Well, and again, just, just as an
19 illustration -- and I'm not trying to have this show
20 anything other than what it shows -- but that, again, this
21 is an illustration of the time where the cars, as they come
22 in from the left, have filled the intersection all the way
23 up to 16, that they're spilling out into University
24 Boulevard -- and they are, and I will grant you, it doesn't
25 go on for hours or anything -- but they are momentarily

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1 blocking the cars from being able to proceed there until
2 they clear out of the way. And then we have the whole line
3 of right-turn cars also trying to come in.
4 BY MS. CORDRY:
5 Q Is that a fair description, Mr. Guckert?
6 A I think, I think you're, you're mischaracterizing
7 it. I think that the description is, the cars come in;
8 because of the three-way stop sign, they stop, but it clears
9 out. That was the purpose of providing this video, to show
10 that -- I'm not denying that cars queue up on that entryway.
11 I'm not denying that; otherwise, I wouldn't have provided
12 you with the video.
13 Q Well, I thought you just said -- and I, perhaps
14 your distinction was that the gas station isn't going to
15 make cars queue up on University and Valley View -- but I
16 thought you just said absolutely not, there would be, there
17 wasn't going to be queuing up on University. In fact, last
18 year you said that.
19 A And I can go back and recapture my testimony, but
20 the context of what we were talking about --
21 MR. GROSSMAN: I'm going to stop you for a second.
22 Actually, what he said, the absolutely no was whether or not
23 the gas station would cause additional queuing.
24 MS. CORDRY: And that's, that's my question.
25 MR. GROSSMAN: That's what he said absolutely not

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1 to --
2 THE WITNESS: Yes.
3 MS. CORDRY: Okay. And that was what --
4 MR. GROSSMAN: -- but he didn't say it was
5 absolutely not, that there would -- not that there is not
6 queuing here. So I think you mischaracterized that.
7 MS. CORDRY: Okay. And my next question to him
8 after that was, well, if you're already having queuing on
9 University Boulevard, the gas station is obviously going to
10 make it worse.
11 BY MS. CORDRY:
12 Q Correct?
13 A It will add, it will momentarily add a car or two
14 -- and I, I really hesitate to say this because I know that
15 the next hearing in June we'll talk about it -- but it could
16 add a car or two per signal cycle. So there could be a car
17 at one place or another that would add to the queue.
18 Q And you haven't done any more updated critical
19 lane volume counts for these roadways this year, correct?
20 You haven't done anything since last April?
21 A Nothing's been submitted. I don't think we've
22 done anything.
23 Q Okay. Do you recall a discussion of a study by
24 the Federal Highway Administration about the causes of
25 traffic delay? It was submitted as Exhibit 404(b), and

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1 parts were excerpted into Dr. Cole's discussion in his
2 PowerPoint.
3 A No.
4 Q Okay.
5 MS. CORDRY: Again, since this was already
6 introduced in the record, I'm not putting in, putting in new
7 exhibits. They're just excerpts from the ones that are
8 already in the record.
9 MR. GROSSMAN: Okay.
10 THE WITNESS: No, I've never seen this before.
11 MR. GOECKE: This is 404(b)?
12 MR. GROSSMAN: Which one is 404(b)?
13 MS. CORDRY: Let's see. 404(b) is labeled, I
14 think, up in the top.
15 MR. GROSSMAN: Mine doesn't have a label.
16 MS. CORDRY: Okay. One, I thought, had it on it.
17 Anyway, 404(b) is the excerpt from the Federal Highway
18 Administration study.
19 MR. GROSSMAN: Okay.
20 MS. CORDRY: And 406(a) are these couple of copies
21 of slides that are part of Dr. Cole's presentation.
22 MR. GROSSMAN: All right.
23 BY MS. CORDRY:
24 Q Would you agree with the Federal Highway
25 Administration that at higher base, quote, at higher base

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1 congestion levels, bottleneck-related congestion grows at an
2 increasingly faster rate, unquote?
3 A I don't know what you're talking about. Where --
4 what are you, what are you talking about?
5 Q Okay. I'm just asking you that as a sentence to
6 begin with, but I will show you. It says that -- let's see,
7 find the exact place of this. Okay. I'm sorry. On the
8 second page of 404(b), at the bottom there, where the
9 highlighted, the little dot indentation is, the last
10 paragraph there --
11 MR. GROSSMAN: I don't think he has the same
12 second page as I do.
13 BY MS. CORDRY:
14 Q Are you looking --
15 MR. GROSSMAN: It doesn't look the same.
16 BY MS. CORDRY:
17 Q Are you looking at this document?
18 A Second page.
19 Q I'm sorry. Let me see. All right. Somehow we
20 got two different copies of this, but anyway, there is the,
21 there's an indented dot there that --
22 MR. GROSSMAN: He doesn't have the indented dot.
23 MS. CORDRY: Yes, he does, right here.
24 MR. GROSSMAN: Oh.
25 MS. CORDRY: For some reason I got two sets of

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1 these copied at different times. Same dot --
2 MR. GROSSMAN: Yes.
3 MS. CORDRY: -- just printed in a different size.
4 BY MS. CORDRY:
5 Q You see there where it says: At higher base
6 congestion levels, bottleneck --
7 A I see what it says.
8 Q Okay. Would you disagree with that?
9 A I have no idea. I want to make it perfectly
10 clear, I have not read, retained, and memorized every single
11 traffic document ever published. This is taken out of
12 context, and I'm not sure what this, what this refers to or
13 what it's all about. So I'm sorry, I have not seen this
14 before.
15 MR. GROSSMAN: Okay. You've answered. You have
16 no idea.
17 BY MS. CORDRY:
18 Q Okay. As a general principle, as an expert in
19 traffic engineering, would you disagree with the statement
20 that at higher base congestion levels, bottleneck-related
21 congestion grows at an increasingly faster rate?
22 A What does that refer to? It has to be in context
23 of something else. What does that refer to? I haven't seen
24 this document.
25 Q I'm not asking you whether you've seen the

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1 document or not. I'm asking you, as a general statement --
2 MR. GROSSMAN: He says he doesn't --
3 MS. CORDRY: Okay.
4 MR. GROSSMAN: -- he can't answer the question
5 because he doesn't know the context.
6 BY MS. CORDRY:
7 Q Well, as an expert, you can't answer that
8 question, as to whether or not -- okay. Let me ask it in a
9 different way. I won't ask you by quoting this.
10 A I'm sure we'll ask it in a couple different ways.
11 Go ahead.
12 Q If you have a bottleneck in a road, a car that --
13 A What does a bottleneck mean?
14 Q I'll tell you in just a second if you just let me
15 answer the -- get the question out before you start
16 interrupting. A car parked half on and half off the road,
17 an obstruction, any kind of thing that causes a bottleneck,
18 you lose a lane, you have a stop sign, anything, a
19 bottleneck. Is that a term that you all don't use in your
20 practice at all?
21 A No.
22 Q You've never used the term bottleneck in terms
23 of --
24 A We use, we use other terms. Go ahead.
25 Q Okay. But you -- okay. Now you get the concept?

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1 A I understand what your concept is.
2 Q Okay. The more traffic you have on a road, the
3 more impact any particular bottleneck is going to have. Is
4 that a fair statement?
5 A That's a fair statement.
6 Q Okay. And would you agree that once you get a
7 bottleneck in a road, as the traffic congestion goes up, the
8 delay from a particular congestion can increase very fast
9 compared to how many more cars you add on?
10 A It, it just depends.
11 Q Okay. Their statement there is that research has
12 found that delay increases exponentially, i.e., it goes,
13 quote, ballistic, unquote, with traffic level on a fixed
14 capacity base.
15 MR. GROSSMAN: Where are you reading now? Oh, I
16 see.
17 BY MS. CORDRY:
18 Q Okay. Would you --
19 MR. GROSSMAN: Researchers have long noted, is
20 that what you're saying?
21 MR. SILVERMAN: Yes.
22 MS. CORDRY: Yes.
23 MR. GROSSMAN: Okay.
24 BY MS. CORDRY:
25 Q Would you agree or disagree with that statement?

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1 A I'd have to take some time to look at that --
2 Q Okay.
3 A -- it's very possible.
4 Q Okay. I'm sorry. You said it's very possible?
5 A It's possible --
6 Q Okay.
7 A -- sure.
8 Q So if you're at a point where you already have
9 traffic delays and queuing up and cars getting in line and
10 waiting, it may take very little additional traffic to
11 significantly increase the amount of delay?
12 A It's possible --
13 Q Okay.
14 A -- but I haven't studied it, and you really need
15 to have a little more specifics dealing with arrival factors
16 and departure factors.
17 Q Well, I understand, but at the moment, I'm just
18 trying to talk about the generality.
19 A No, no, no. I know you understand, but I was just
20 trying to respond to your particular question. I'm trying
21 to respond to your questions. It's hard.
22 Q Okay. Well -- the report also states that, quote,
23 once a queue forms and an additional vehicle joins at the
24 back of the queue, you get a double whammy: not only is
25 that vehicle delayed, but the queue is now longer and any

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1 new vehicles that join in will also be delayed by the now
2 longer queue, unquote. Would you agree with that statement
3 as well?
4 A It's somebody else's quote. It's possible,
5 depending on the, on the departure rate of the cars that are
6 in the front of the queue.
7 Q Okay.
8 MR. GROSSMAN: So where are we going with this?
9 MS. CORDRY: Okay. Where we're going is, when I
10 get into his charts, they are going to show that even though
11 there are very small additions of cars, they make outsized
12 increases in the traffic flow, and that's what I'm also
13 trying to get at here as well.
14 MR. GROSSMAN: So, all right, so you're suggesting
15 that if the gas station only produced a small number of
16 additional cars, because a queue already exists, such as you
17 showed --
18 MS. CORDRY: Yes.
19 MR. GROSSMAN: -- at the movie, that there'll be
20 an exponential increase in --
21 MS. CORDRY: Yes.
22 MR. GROSSMAN: -- congestion?
23 MS. CORDRY: Correct.
24 MR. GROSSMAN: Okay.
25 MS. CORDRY: Okay.

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1 BY MS. CORDRY:
2 Q And are you aware that it's common now to have
3 traffic backing up not only out onto University Boulevard
4 but also backing south, down the ring road from the
5 intersection, from that intersection 16?
6 A Cars waiting to make a left turn?
7 Q Yes.
8 A Cars wait to make a left turn.
9 Q Yes.
10 A Cars wait to make a left turn. That's a
11 statement.
12 Q Okay. And you're aware that they may back up past
13 the Target lot entrance?
14 A I have not looked at that.
15 Q Okay. So you can't say one way or the other?
16 A I know that cars queue to make a left turn because
17 it's a three-way stop, but I have not measured what that
18 distance is.
19 Q Okay. Okay. So you don't have any kind of --
20 MR. GROSSMAN: Well, he's answered. Let's not --
21 MS. CORDRY: Okay. I'm just -- okay.
22 MR. GROSSMAN: -- don't have to go over the same
23 question over and over.
24 MS. CORDRY: Just trying to make sure so that if
25 we put in the testimony --

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1 MR. GROSSMAN: Well, you don't have to make sure.
2 He's answered.
3 MS. CORDRY: Well, I just want to make sure there
4 isn't any context for this answer either so that when we
5 come back and question it, there won't be any context that
6 we need to explain. Okay.
7 MR. GROSSMAN: Well, that may be, but --
8 BY MS. CORDRY:
9 Q If cars are backing up from the intersection 16,
10 past the entrance of the Target lot, all the way down to the
11 entrance, the main east-west drive aisle there, that will
12 obviously cause trouble for cars trying to exit from the
13 Target lot onto the ring road?
14 A Depends on how long they're there.
15 Q Well, assume you have a whole length of cars going
16 all the way from Intersection 16, past that lot and going
17 down towards the, that east-west drive aisle.
18 A Yeah, it --
19 MR. GOECKE: On which road?
20 MS. CORDRY: On the ring road.
21 THE WITNESS: -- it depends on how long they're
22 there, and I mean, they're all there voluntarily. So it
23 depends on how long they're there.
24 BY MS. CORDRY:
25 Q Okay.

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1 A But if it's blocked, it's blocked. I mean, that's
2 common sense. If it's blocked, it's blocked, right?
3 Q Okay. And if you can't get out onto the ring
4 road, that can then also block traffic trying to move
5 through the parking aisles, out to those drive aisles, going
6 out to --
7 A Which is, which is what happens on parking lots at
8 major malls all over the country and all over the county.
9 Q But we don't have any evidence about any place
10 else in the county. We're just dealing with right here,
11 correct, Mr. Guckert?
12 MR. GROSSMAN: Actually, we do have some evidence
13 about other places in the county that's been put in, but
14 just --
15 MS. CORDRY: Well, what we --
16 MR. GROSSMAN: -- your premise is not exactly
17 correct.
18 MS. CORDRY: Yes. What we did show is we didn't
19 see any delays in those particular places. So --
20 MR. GROSSMAN: But let's --
21 MS. CORDRY: Okay.
22 MR. GROSSMAN: -- move it along.
23 BY MS. CORDRY:
24 Q Have you given Mr. Sullivan any information that
25 indicates that there's in fact these kind of congestion and

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1 delays at these various intersections and throughout the
2 mall?
3 A I haven't had those -- I haven't given
4 Mr. Sullivan anything in particular. He has my, the traffic
5 study work.
6 Q Okay. And so he had Exhibit 128 --
7 A Have no idea.
8 Q -- (a) and (b) that -- you don't know if he has
9 these?
10 A I do not know.
11 Q Okay. So you have no real idea what information
12 he's using?
13 A Correct --
14 Q Okay.
15 A -- I mean, other than he's using my information.
16 Q Okay. And this was the information, 128(a) and
17 (b), and your testimony that this would show little or no
18 delay anywhere in the mall?
19 A Based upon the analysis procedure we were
20 requested to undertake by the county, that's correct.
21 Q Okay. And are you aware that his kind of
22 calculations are very dependent on questions of how fast
23 cars can move, how long they're stopped, how long they're
24 backed up, how long they're idling? Are you aware of that?
25 A No.

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1 Q Okay.
2 MS. CORDRY: Do you want to break now?
3 MR. GROSSMAN: I'm leaving it to Mr. Silverman.
4 MR. SILVERMAN: Yes.
5 MS. CORDRY: Okay. All right.
6 MS. ADELMAN: He's been ready for a while.
7 MS. CORDRY: Yes. I have a breaking point in my
8 questions here. So --
9 MR. GROSSMAN: All right.
10 MS. CORDRY: All right.
11 MR. GROSSMAN: How much longer do you figure your
12 examination will take?
13 MS. CORDRY: I have a lot of pages, but I have
14 marked out a lot of things on here. So I'd say probably at
15 least another two hours or so.
16 MR. GROSSMAN: All right. Let's try to slim it
17 down --
18 MS. CORDRY: I will try.
19 MR. GROSSMAN: -- as my wife says to me.
20 MS. CORDRY: All right.
21 MR. GROSSMAN: All right. So we'll break for
22 lunch now until 1:30.
23 MS. CORDRY: I'm sorry, until what time?
24 MR. GROSSMAN: Until 1:30.
25 MS. CORDRY: 1:30? Okay, great.

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1 (Whereupon, at 12:43 p.m., a luncheon recess was
2 taken.)
3 BY MS. CORDRY:
4 Q All right. So, Mr. Guckert, I think we're going
5 to spend a little time looking very specifically at these
6 three Highway Capacity Manual charts that you had there.
7 A Okay.
8 Q And, again, these are done for two intersections
9 -- University Boulevard and Valley View -- and then the
10 intersection 16, correct?
11 A Yes.
12 Q Okay. Last time do you recall having several
13 interchanges with Mr. Grossman about whether an F in the
14 Highway Capacity Manual delay analysis was the same thing as
15 an F in the critical lane volume analysis?
16 A I remember a discussion where we were talking
17 about level of service, HCM, CLV.
18 Q Okay. And do you recall whether you were being
19 asked about whether an F in the HCM analysis was the same
20 thing as an F in the CLV analysis?
21 A I think that's, that's correct, because level of
22 service is level of service. In the Highway Capacity
23 Manual, I believe the discussion I had was, you know, they
24 -- level of service is a, is a qualitative description of,
25 of traffic conditions regardless of the type of analysis.

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1 Q Okay. And would you agree that in fact, though,
2 it's quite possible to have a CLV value that would show up
3 this level of service A and have a delay, the HCM kind of
4 delays that are much higher than that?
5 A Well, we've shown that already.
6 Q Okay. So, in fact, so an A is not an A, and an F
7 is not an F, correct --
8 MR. GROSSMAN: Well, I'm going to stop you there
9 because I don't --
10 BY MS. CORDRY:
11 Q -- in terms of equivalent delay factors?
12 MR. GROSSMAN: An A is not an A, and an F is not
13 an F --
14 MS. CORDRY: Well, an A in --
15 MR. GROSSMAN: -- I don't know what that question
16 means exactly. I think I --
17 MS. CORDRY: Okay. The A in --
18 MR. GROSSMAN: -- know what you're getting at, but
19 I don't --
20 MS. CORDRY: Okay.
21 BY MS. CORDRY:
22 Q The A in the CLV does not necessarily equate, in
23 terms of actual delay, to an A in the HCM manual?
24 A Because CLV doesn't do delay. So --
25 Q Okay. Exactly.

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1 A -- but a level of service A in CLV is a level of
2 service A in HCM, but they're different processes, as we
3 talked about this morning --
4 Q Okay.
5 A -- a lot.
6 Q But as we talked about this morning, intersections
7 that are there labeled as level of service A under the CLV
8 are not level of service A under your HCM manual --
9 A Well, they are. The difference is that CLV
10 assumes that the intersection is signalized and has optimum
11 timing, optimum signal timing. That's the, that's the
12 premise of critical lane volume and that's why it's a part
13 of the county guidelines.
14 Q CLV, in any case, though, you start with actual
15 movement through an intersection, correct, when you're
16 timing actual movements?
17 A No. You -- no.
18 Q You don't start with actual observations at an
19 intersection when you're --
20 A When you say actual, you mean traffic volumes?
21 Q Yes.
22 A Yes.
23 Q Okay. And then you --
24 A And you do the same thing with HCM.
25 Q Okay. But let's just stay where I am with the

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1 CLV, and you do a set of arithmetic manipulations, and you
2 come out with a critical lane volume from that, correct?
3 A You come out with a critical lane volume.
4 Q So it is perfectly possible that you could have a
5 low CLV and still have, as we've discussed here, a high HCM
6 value?
7 A That's correct. We've --
8 Q Okay.
9 A -- talked about that --
10 Q Yes.
11 A -- a number of occasions.
12 Q Okay.
13 MS. CORDRY: I'd like to put in a compilation
14 chart. I believe I sent this around before, and we'll walk
15 through where these numbers come from. And I'm going to
16 put, give you several excerpts from the traffic analysis so
17 you can see where these numbers are coming from that I've
18 put on this compilation chart. And here's -- did I give
19 you --
20 MS. HARRIS: Well, which one does this entail?
21 MS. CORDRY: Okay. It's entitled Capacity
22 Analysis, CLV Versus HCM, and I gave you one just now.
23 THE WITNESS: Is that in one of my exhibits?
24 BY MS. CORDRY:
25 Q No, it's not your exhibits. It's one I'm doing.

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1 MS. CORDRY: Let me -- this would be a new exhibit
2 number.
3 MR. GROSSMAN: Okay. See if I can find my exhibit
4 list. All right. No, that's not it.
5 MS. HARRIS: Karen, I don't think we have that.
6 MS. CORDRY: Okay. I thought I just put some over
7 there for you.
8 MR. GOECKE: This is what you gave me.
9 MS. CORDRY: Okay. I didn't give you this one?
10 MR. GROSSMAN: Okay. This will be Exhibit 553.
11 (Exhibit No. 553 was marked
12 for identification.)
13 MS. CORDRY: Okay. Why don't you take one of
14 those. That's fine.
15 MR. GOECKE: This one?
16 MS. CORDRY: Yes.
17 MR. GOECKE: Thank you.
18 MS. CORDRY: What number again? I'm sorry. 553?
19 MR. GROSSMAN: Yes.
20 MR. GOECKE: And, Karen, this is something you
21 prepared?
22 MS. CORDRY: Yes.
23 MR. GOECKE: Okay.
24 MS. CORDRY: I'm going to walk through where the
25 numbers came from and let him look at them.

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1 MR. GROSSMAN: And this is --
2 BY MS. CORDRY:
3 Q Just wait, Mr. Guckert. We'll walk you through
4 where that, what that is.
5 MR. GROSSMAN: -- Cordry chart --
6 THE WITNESS: Okay. You can try that.
7 BY MS. CORDRY:
8 Q Okay. Thank you.
9 MR. GROSSMAN: -- comparing CLV to HCM?
10 MS. CORDRY: Yes.
11 THE WITNESS: Just, just so I know, as an
12 administrative matter, so you've taken my data and
13 rearranged it? Is that what you've done?
14 BY MS. CORDRY:
15 Q I have taken parts of your data, and if you will
16 just wait, Mr. Guckert, I will tell you where it's coming
17 from and --
18 A I was asking you --
19 Q Yes.
20 A -- before we get started, so I understand what
21 we've got. That's --
22 Q Okay.
23 A -- what I'm asking you, okay?
24 Q And what I was telling you is I will take you
25 through each line of that and show you where --

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1 A Each and every line, I understand, but before --
2 Q -- show you where it comes from and let you check
3 it yourself.
4 A Okay. Go ahead.
5 Q Okay. Thank you. And these are the --
6 A This is your exhibit; so you can explain it.
7 Q Thank you.
8 MR. GROSSMAN: All right. So, and what are the
9 things you handed me, Ms. Cordry?
10 MS. CORDRY: These are excerpts from -- the ones
11 that are labeled Vehicle Turning Movement Count Summaries,
12 these are excerpts from Exhibit 11. These are the traffic
13 counts that were taken --
14 MR. GROSSMAN: Okay.
15 MS. CORDRY: -- September 8th. The ones that are
16 labeled Exhibit 3, 7, and 10, again, are from that same
17 Exhibit 11.
18 MR. GROSSMAN: 3, 7, and 10, what are you talking
19 about?
20 MS. CORDRY: These charts here. Do you have a set
21 of those?
22 MR. GROSSMAN: Oh, mine don't have any labels on
23 it then.
24 MS. CORDRY: Down at the bottom.
25 MR. GROSSMAN: Oh, I see, 3, 7, 10, okay.

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1 MS. CORDRY: Again, these are --
2 MR. GROSSMAN: These are from?
3 MS. CORDRY: The umbrella exhibit 11 --
4 MR. GROSSMAN: Okay.
5 MS. CORDRY: -- his original traffic report, and
6 the other two pieces are just copies of the other two
7 Highway Capacity Manual analyses, Exhibits 504 and 514.
8 BY MS. CORDRY:
9 Q Okay. And the point of this chart was simply to
10 put all on one page your CLV numbers and your various HCM
11 numbers so they can be looked at more easily.
12 MR. GROSSMAN: This chart being Exhibit 553.
13 MS. CORDRY: 53, correct.
14 BY MS. CORDRY:
15 Q So if we could start with where it says, Weekday,
16 September 2012. Do you see that?
17 A Go ahead.
18 Q Well, do you see it?
19 A Go ahead.
20 Q Okay. And underneath there it says, Exhibit 3.
21 If you look at your Exhibit 3 from your original traffic
22 analysis, these are the existing peak hour traffic volumes
23 in September 2012, correct?
24 A I don't know. I haven't --
25 Q This chart --

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1 A -- this is the first time I've seen this. So --
2 Q Mr. Guckert, look at me, please.
3 A This is the first time I've seen this. So --
4 Q Mr. Guckert, look at me, please. I'm asking you a
5 question about this chart, okay?
6 A I thought you said this chart.
7 Q If you look at me, I'm asking you about this chart
8 with the Exhibit 3 here, okay?
9 A Go ahead.
10 Q This is taken from your original traffic analysis,
11 correct?
12 A Yes.
13 Q Okay. And if you also look at this set of traffic
14 observations, these are the existing numbers, correct, of
15 observations that you took, not you personally, but your
16 group took on September 5th, 2012?
17 A Yes.
18 MR. GOECKE: And you're talking about page 57 of
19 Exhibit 11?
20 MS. CORDRY: Yes, exactly, yes.
21 THE WITNESS: 57, 97, 81, 83.
22 BY MS. CORDRY:
23 Q Right. So these are our four intersection --
24 again, let's make sure we have the same intersections.
25 Valley View and the Mall Access, that's the original

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1 intersection 4. That's how I have the top of that page
2 labeled.
3 A I'll correct you if you're wrong. Go ahead.
4 Q Okay. The next one down is the Loop Road and the
5 West Mall Access, Valley View Avenue; so that's Intersection
6 16.
7 A I'll correct you if you're wrong --
8 Q Okay. All right.
9 A -- so I'm just trying to save time.
10 Q All right. Okay. I'm sorry. The next one down
11 is, again, 586 or Veirs Mill and the Metrobus Access --
12 A Yep.
13 Q -- Intersection 12, and the last one is the
14 Wheaton Mall, Loop Road, and South Access, which is
15 Intersection 20.
16 A Okay.
17 Q Okay, good. So we're all on the same page here.
18 Now, these are the existing numbers that you -- your actual
19 observations that are on this page 57, correct?
20 A Correct.
21 Q Those are the same ones that are shown on your
22 Exhibit 3, correct?
23 A Should be.
24 Q Okay. If we go across, you show in the middle of
25 the page here, on your page 57, Peak Hour under Morning --

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1 A Yes.
2 Q -- 8:15 to 9:15?
3 A Yes.
4 Q Now, looking at the chart I put together, do you
5 see there under Valley View Entrance, Intersection 4 slash
6 1? One is the intersection on the second version of these
7 intersections we went through that, that cross-check.
8 Intersection 4 was Intersection 1 on the second set of
9 observations.
10 A Yes.
11 Q Okay. You see the 8:15 to 9:15?
12 A Yes.
13 Q And if you look over here, I -- on your page 57,
14 it shows 1741 is the total?
15 A Yes.
16 Q And is that the same number I have there on the
17 chart?
18 A Yes.
19 Q Okay. And if you look down on page, the next
20 page, which is Intersection 16 --
21 A Just so I know, are we going to do each and every
22 line?
23 Q No. I just want, I just want to do a little spot
24 check here so you don't feel bad that this is my exhibit,
25 okay?

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1 MR. GROSSMAN: Well, hold on one second. First of
2 all, was this exhibit --
3 MS. CORDRY: Sent? Yes.
4 MR. GROSSMAN: Pardon me?
5 MS. CORDRY: Sent to them before? Yes.
6 MR. GROSSMAN: Okay. All right. Yes, I was going
7 to say, we don't need to go through each one of these if you
8 were going to --
9 MS. CORDRY: I don't want to.
10 MR. GROSSMAN: -- if you were going to -- are you
11 going to proffer to me that they all represent --
12 MS. CORDRY: Yes, I do. I just --
13 MR. GROSSMAN: -- the figures that are taken from
14 Mr. Guckert's --
15 MS. CORDRY: Right. I just want to let him have a
16 chance to just spot check a few and make sure he felt
17 comfortable with that.
18 MR. GROSSMAN: Okay. All right. You can --
19 BY MS. CORDRY:
20 Q You can check as many as you like.
21 MR. GROSSMAN: -- spot check one more, if you'd
22 like.
23 MS. CORDRY: All right.
24 BY MS. CORDRY:
25 Q So on the next page there, which would be page 97

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1 of these observation sheets, which is Intersection 16, 8:30
2 to 9:30 is your peak hour in the morning; 593 is your total
3 count. Is that correct?
4 A Yes.
5 Q Okay.
6 MR. GROSSMAN: I'm not seeing that. Where are we
7 seeing that?
8 MS. CORDRY: In the second column, second set of
9 columns here, over here.
10 MR. GROSSMAN: No, I mean on -- I thought on his
11 page.
12 MS. CORDRY: Oh, I'm sorry. It's on page 97, the
13 second page.
14 MR. GROSSMAN: Yes, I'm looking at 97. Where on
15 97?
16 MS. CORDRY: In the middle of it, in the middle
17 there, there's a, there's a set-off line running across
18 there, saying, Peak Hour.
19 MR. GROSSMAN: Oh, I see, Total North Plus South
20 Plus --
21 MS. CORDRY: East Plus West.
22 MR. GROSSMAN: Okay.
23 MS. CORDRY: Right.
24 MR. GROSSMAN: 593.
25 MS. CORDRY: Right.

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1 MR. GROSSMAN: Okay.
2 MS. CORDRY: Okay.
3 MR. GROSSMAN: And what does that correspond to on
4 your Exhibit 553?
5 MS. CORDRY: That is under here where it says,
6 Valley View Road -- Valley View-Ring Road and then
7 Intersection 16 slash 2. So those are the two designations
8 for the two different time periods. And then -- do you see
9 that?
10 MR. GROSSMAN: Okay. Yes, I see it.
11 MS. CORDRY: Okay. All right.
12 BY MS. CORDRY:
13 Q And then we had already looked at this set of,
14 this exhibit here, which is excerpts from your, again, from
15 your traffic analysis, Exhibit 11(a), and you have your
16 critical lane volumes here.
17 A Yep.
18 Q Okay. And if you could look at the morning peak
19 hour for Intersection 4. Do you have it? Do you have this
20 chart? Can you look at the morning peak hour?
21 A For Saturday?
22 Q No. I'm looking for the weekday, because we're
23 still on the weekday here. You should have both sets of
24 those charts.
25 A Nope.

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1 Q If you don't, let me bring you one, if I may.
2 MR. GOECKE: Can I have one too, please? Thanks.
3 BY MS. CORDRY:
4 Q I may have just shown you this one. I may not
5 have brought this one up yet; so here you go. I hope that's
6 the next morning and that's the evening.
7 MS. CORDRY: Did I give you a morning, Mr. Goecke?
8 You have the morning? Okay. Let me give you -- this one
9 has the morning and the evening, both.
10 BY MS. CORDRY:
11 Q All right. Does the one I gave you have both the
12 morning and evening?
13 A No.
14 Q Well, look at the second page. Yes. Okay.
15 A Both evening.
16 Q Oh, okay. Then let me swap. Here's the morning,
17 and then we have --
18 MS. CORDRY: Everybody's got both a morning and an
19 evening, right? Okay.
20 THE WITNESS: I do.
21 BY MS. CORDRY:
22 Q All right. So if we look at that 11(a) for the
23 original set of analyses, the morning, Exhibit 4, 370 is
24 your critical lane volume. Do you see that now on the chart
25 next to the 1741? And by the chart, I mean the capacity

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1 analysis chart.
2 A Yes.
3 Q Okay, great. All right. So that's the first set.
4 The next set I did exactly the same thing, taking your
5 numbers from Exhibit 7 and Exhibit -- your Exhibit 7 in your
6 original traffic analysis. That was adding on background
7 peak volumes.
8 A Okay.
9 Q Okay. You don't have the same kind of chart here.
10 So I had to add them up, and you're welcome to add them up
11 if you want, but I, I think I added them right, and these
12 are the numbers here. Would you like to add one of them as
13 a check?
14 A No. I mean, it's --
15 Q Okay.
16 A -- your chart. If it's correct --
17 Q Okay. Well, I just, because --
18 A It's your chart. It's your exhibit.
19 Q Well, I'm trying to use your numbers, and I have
20 to --
21 A I know what you're trying to do.
22 Q -- work with your numbers, and so --
23 MR. GROSSMAN: I know, but it's problematic to do
24 that --
25 THE WITNESS: Why don't we --

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1 MR. GROSSMAN: -- with the witness on the stand
2 here. I mean, really, that's not --
3 MS. CORDRY: Well, I don't -- okay. I don't know
4 any other way to do it other than to work through the
5 numbers, but --
6 MR. GROSSMAN: But what are we, what are we going
7 to show with all of these?
8 MS. CORDRY: Okay. We're going to --
9 MR. GROSSMAN: Let's get to that part.
10 MS. CORDRY: Okay. What we're going to show with
11 this is the, again, the effects of adding on the gas station
12 traffic to these charts.
13 MR. GROSSMAN: Okay.
14 MS. CORDRY: Okay. And, again, to actually have
15 all the numbers together there. So just to, just to, again,
16 describe, we put the numbers from Exhibit 3, Exhibit 7, and
17 Exhibit 10, same thing for each one, added up the total
18 number of cars --
19 MR. GROSSMAN: Just to make sure it's clear, the
20 Exhibit 3, 7, and 10 you're referring to are not OZAH
21 exhibits --
22 MS. CORDRY: Correct.
23 MR. GROSSMAN: -- 3, 7, 10. They are part of --
24 MS. CORDRY: His original traffic --
25 MR. GROSSMAN: Pardon me?

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1 MS. CORDRY: Part of the original traffic
2 analysis, OZAH 11.
3 MR. GROSSMAN: Part of Exhibit 11.
4 MS. CORDRY: Correct. And then where it says,
5 Weekend, April 2013, those are the same kind of numbers from
6 the analysis that was done in Exhibit 128(a), which was the
7 supplemental traffic analysis.
8 MR. GROSSMAN: Right.
9 MS. CORDRY: And then we just have the figures
10 from the three HCM analyses there carried through in the
11 same way. And, as you can see, the numbers are carrying
12 over because we were -- again, the HCM was picking up
13 originally the morning peak hour with the background and the
14 evening peak hour with the background and Saturday and then
15 went to the morning peak with gas. So these numbers should
16 be matching up, which they do.
17 The third page there is for the WMATA entrance,
18 which was always done under the CLV analysis, but for
19 completeness, I put it in.
20 MR. GROSSMAN: All right.
21 BY MS. CORDRY:
22 Q Okay. All right. When you did these observations
23 in April of all of the background totals that you were using
24 in your, to go from Exhibit 3, which is the existing, to
25 Exhibit 7, which was your projected totals with background,

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1 they had not all yet been built, is that correct?
2 MR. GROSSMAN: I'm sorry. I didn't catch that.
3 MS. CORDRY: Okay. The background --
4 MR. GROSSMAN: What had not been built?
5 MS. CORDRY: The background.
6 BY MS. CORDRY:
7 Q Okay. Let me ask it this way: When you added
8 background, that is for developments that had been approved
9 and were either under construction --
10 MR. GROSSMAN: Oh, okay.
11 BY MS. CORDRY:
12 Q -- or were approved to be constructed, is that
13 correct, Mr. Guckert?
14 MR. GROSSMAN: Things that were in the pipeline --
15 MS. CORDRY: Yes.
16 MR. GROSSMAN: -- background.
17 BY MS. CORDRY:
18 Q Building construction in the pipeline, is that
19 correct?
20 A Yes.
21 Q Okay. And not all of those had yet been built at
22 the time you took your measurement in April of 2013,
23 correct?
24 A On Saturday. On Saturday.
25 Q Well, whether it was Saturday or Wednesday, they

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1 had not yet been built, is that correct?
2 A No. It -- I want to make sure that we're talking
3 about Saturday in April, correct?
4 Q Okay. Well, my point about the background,
5 whether those had been built or not --
6 A Just answer, right.
7 Q -- is irrelevant as to whether it was Wednesday or
8 Saturday. I mean, they weren't built between Wednesday and
9 Saturday, correct? Let me just give you this excerpt from,
10 again, from your original traffic report, and that's, well,
11 it's Exhibit 5 in your original --
12 A Correct.
13 Q -- OZAH Exhibit 11. Okay. And my question to you
14 is, of all of these background developments, many of them
15 had not yet been built when you took your measurements in
16 April of 2013, correct?
17 A Do not know.
18 Q Do you know if the Wheaton Safeway was built in
19 April of 2013?
20 A I --
21 MR. GOECKE: The Safeway?
22 THE WITNESS: The Safeway, I don't know. I'd have
23 to check.
24 BY MS. CORDRY:
25 Q Okay. All right. Well, we may have to put that

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1 in ourselves. Do you know if the Solara Apartments down
2 there, just to the south of the mall, were built yet or not?
3 A I do not know. I know that the Costco store was
4 built.
5 Q Okay. But you're unaware as to whether any of the
6 rest of this development had yet been built or not?
7 A Personally, I am not aware.
8 Q Okay.
9 A Some of my staff may be aware, but I'm not aware.
10 Q So, in any case -- and I guess I can put it in in
11 surrebuttal -- in any case, for the moment, as the expert,
12 if I proffer to you that essentially the only part of the
13 background that had been built was the Costco warehouse
14 development --
15 A Yeah. I think --
16 Q -- at that point --
17 A -- I think the only, the only development we added
18 in for the Saturday analysis was that, was, was supposed to
19 be the gas because the Costco had been built. We didn't, we
20 didn't go and try to reanalyze Saturday conditions for some
21 of these housing things because the key item was at
22 Intersection 16, where the gas station was, I mean, where
23 the Costco store was --
24 MR. GROSSMAN: I don't think she asked that. I
25 don't think she asked that.

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1 BY MS. CORDRY:
2 Q Okay. Yes. My first question was simply, yes,
3 let's try to understand what was built in April when you
4 were taking the existing measurements and what wasn't built,
5 and I thought you would be aware, but if you're not, I will
6 proffer to you that I think the Costco and the Dick's was
7 the only thing out of these that was built at that time --
8 A Okay.
9 Q -- that the rest of those were pending.
10 A All righty.
11 MS. CORDRY: And, again, for ease of people trying
12 to look at this, I will -- I did another exhibit. Let me
13 actually put two of these, two exhibits in. This would be a
14 new exhibit that I compiled, and this is the list of Trip
15 Generation for Background Development that you gave us in
16 connection with what you were assuming on Saturday, April
17 2012. That was prepared recently and provided to us, the
18 page labeled Trip Generation for Background Developments.
19 So if we could first just mark each one of those as an
20 exhibit.
21 MR. GROSSMAN: Well, first of all, when you --
22 MS. CORDRY: Okay.
23 MR. GROSSMAN: -- this is not part of the original
24 exhibit 11?
25 MS. CORDRY: No, because this -- Exhibit 11 was

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1 doing trip generation during the week --
2 MR. GROSSMAN: All right. So --
3 MS. CORDRY: -- for background. This is a --
4 MR. GROSSMAN: -- this is a new exhibit?
5 MS. CORDRY: Yes. This is trip generation for
6 Saturday, same developments, but a Saturday trip generation
7 as opposed to a weekday trip generation.
8 MR. GROSSMAN: All right. So this is Exhibit --
9 MR. GOECKE: Karen, could I have a copy? Thanks.
10 THE WITNESS: Okay. So this was prepared by my
11 staff back in March as what one of the staff members assumed
12 was background development --
13 MR. GROSSMAN: All right.
14 THE WITNESS: -- and the background Saturday
15 traffic.
16 MR. GROSSMAN: All right. So Exhibit 554 is
17 Guckert Trip Generation for Background Development as of --
18 what's the date on this? I don't see a date.
19 THE WITNESS: Down at the bottom, it says --
20 MR. GROSSMAN: Oh, 3/19/14.
21 THE WITNESS: -- this was prepared 3/19.
22 MR. GROSSMAN: Okay. 3/19/14. So you're saying
23 this was prepared last month?
24 (Exhibit No. 554 was marked
25 for identification.)

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1 THE WITNESS: Yes.
2 MR. GROSSMAN: Okay. And then the other one, the
3 other exhibit -- now if I can find that.
4 MS. CORDRY: And I'm sorry. I see I did make one
5 typo here when I was transposing numbers. Let me, on
6 Wheaton Safeway there where it says Retail Pass-By over
7 under the Weekend --
8 MR. GROSSMAN: Yes.
9 MS. CORDRY: -- the Out should have been 300 and
10 not 312. Sorry, I typed that one wrong.
11 MR. GROSSMAN: Mine doesn't have either of those.
12 The pass-by for Wheaton Safeway?
13 MS. CORDRY: Right. I'm talking about on this
14 chart here.
15 MR. GROSSMAN: Yes.
16 MS. CORDRY: Yes.
17 MR. GROSSMAN: Mine -- oh, I see. On the weekend
18 of --
19 MS. CORDRY: Right.
20 MR. GROSSMAN: One says --
21 MS. CORDRY: Well, actually --
22 MR. GROSSMAN: Are these out of line?
23 MS. CORDRY: -- it says Retail across the top.
24 When they did it on the first day, they did total trips and
25 they subtracted out pass-by and only put new trips in. When

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1 they did it for the weekend, they did, it looks to me like
2 just a net value because it just, where they said there was
3 zero pass-by trips or whatever, but in any case --
4 MR. GROSSMAN: Well, I really, don't really know
5 what you're talking about --
6 MS. CORDRY: Okay. All right.
7 MR. GROSSMAN: -- but I just want to know what
8 your correction is.
9 MS. CORDRY: Okay. My correction here is on the
10 top line for the Wheaton Safeway --
11 MR. GROSSMAN: Yes.
12 MS. CORDRY: -- on the weekend. It says, 312, and
13 then it said 312 again and 624. It should be 312, 300 --
14 I'm sorry, I typed that wrong -- and 612.
15 MR. GROSSMAN: All right. So it should say 312,
16 300 --
17 MS. CORDRY: Right.
18 MR. GROSSMAN: -- and then 612 instead of 624?
19 MS. CORDRY: Right, because I want to make sure
20 that it matches up with his chart here.
21 MR. GROSSMAN: Okay. And this is Exhibit 555 --
22 MS. CORDRY: Yes.
23 MR. GROSSMAN: -- and this is your chart, right?
24 MS. CORDRY: Right.
25 MR. GROSSMAN: Cordry chart, and what did you say

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1 this is comparing? This is just --
2 MS. CORDRY: So this is just, this is just putting
3 these two different sets of trip generation, two different
4 sets of backgrounds on the same page.
5 MR. GROSSMAN: All right. Cordry chart of
6 background trip generation.
7 (Exhibit No. 555 was marked
8 for identification.)
9 MS. CORDRY: Okay.
10 MR. GROSSMAN: And this is for what date?
11 MS. CORDRY: The original one was done at the
12 time, September 2012.
13 MR. GROSSMAN: So is this only for September 2012
14 figures, or does this include --
15 MS. CORDRY: Well, by the time they had done this
16 in April, which is now, you're looking -- the Saturday was
17 an April figure. The trips --
18 MR. GROSSMAN: April of what year?
19 MS. CORDRY: April 2013 --
20 MR. GROSSMAN: All right.
21 MS. CORDRY: -- when they did the supplemental
22 traffic analysis last year, and when they did these
23 highway --
24 MR. GROSSMAN: I just want to know, to describe
25 your chart --

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1 MS. CORDRY: Okay.
2 MR. GROSSMAN: -- on the exhibit list --
3 MS. CORDRY: Right.
4 MR. GROSSMAN: -- it's Cordry chart of background
5 trip generation for what time?
6 MS. CORDRY: Okay. For two different analyses
7 they did, September 2012 and April 2013.
8 MR. GROSSMAN: For September 2012 and April 2013?
9 MS. CORDRY: Yes.
10 MR. GROSSMAN: Okay.
11 MS. CORDRY: And just the other correction to make
12 is, since we took 12 off up at the top, you'd take 12 down
13 at the bottom where it says, Non-Costco. So you would just
14 subtract 12 off of that as well. So it would be 11, and
15 I'll be happy to --
16 MR. GROSSMAN: It would be 11 --
17 MS. CORDRY: 22. I'll be happy to submit
18 afterwards a corrected one that has the correct numbers
19 there.
20 BY MS. CORDRY:
21 Q Okay. So in both, both of these ones you were,
22 you looked at both Costco and non-Costco trips, correct?
23 MR. GOECKE: I'm sorry. Both of which ones?
24 MS. CORDRY: Both of the background generation,
25 trip generation charts.

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1 THE WITNESS: The one for weekday and the one for
2 Saturday?
3 BY MS. CORDRY:
4 Q Yes.
5 A We've got, Costco is in both of those.
6 Q Yes. And then you had a number of other
7 non-Costco developments?
8 A Correct.
9 Q Okay. And if we assume for the moment that the
10 non-Costco ones were not built, then those trips would not
11 be part of what you were observing in Saturday, correct?
12 A Correct.
13 Q Okay.
14 MS. CORDRY: Now, one thing to note here is, when
15 we add these up, it looks like there's considerably more
16 total trips, total background trips assumed on the
17 weekend --
18 MR. GROSSMAN: What are you adding up? Which
19 chart?
20 MS. CORDRY: Both charts. If you add up all of
21 the trips on the weekday chart --
22 MR. GROSSMAN: Which exhibit number? What exhibit
23 number are you --
24 MS. CORDRY: This would be the exhibit 555.
25 MR. GROSSMAN: Okay. So what am I noticing now?

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1 MS. CORDRY: If you go down to Grand Total --
2 MR. GROSSMAN: Yes.
3 MS. CORDRY: -- the total of trips assumed for the
4 weekday is 1543.
5 MR. GROSSMAN: Yes.
6 MS. CORDRY: Okay.
7 BY MS. CORDRY:
8 Q And the total trips assumed for the weekend --
9 and, again, that last final number has 12 also come off of
10 it, so 2179 -- it's assuming 2179 total new background
11 trips, correct?
12 A Okay.
13 Q Okay. So the weekend is about, roughly 50 percent
14 higher than the weekday in terms of additional traffic?
15 A All right.
16 Q Okay, great. If we look at the CLV chart, this
17 capacity analysis chart that we had here --
18 A Yours?
19 Q Yours or you can look at your own the same way.
20 It's easier when they're all in one place. If you look at
21 your -- your Exhibit 7 said the morning peak was 1940 trips
22 for the University Boulevard and Valley View entrance.
23 A For what time period?
24 Q This would be the weekday.
25 A In the morning or the evening?

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1 Q In the morning.
2 A Which intersection number?
3 Q Intersection 4 or 1, take your pick.
4 A Okay, 370.
5 Q Okay. And when you add the gas station in -- I
6 want to make sure I got this right -- and then if you look
7 down at your HCM method, that shows, again, the same morning
8 peak, 1940, right, under the HCM method?
9 MR. GROSSMAN: Which exhibit are you looking at
10 now?
11 MS. CORDRY: We're still on 553 here.
12 MR. GROSSMAN: 553, okay.
13 THE WITNESS: Which, which line number?
14 BY MS. CORDRY:
15 Q Okay.
16 A You don't have the line. I'm sorry. What --
17 Q Right under HCM Version 1.
18 A Version 1 has been, has been thrown out, okay?
19 Q Well, except that all these numbers are exactly
20 the same for all three of them. So you can look at any one
21 of the three; it wouldn't make much difference. Take your
22 pick.
23 A Okay. So go to Version 3.
24 Q Okay, fine. We'll go to Version 3. I don't mind.
25 A And what is your question?

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1 Q Okay. First off, I'm just pointing out to you
2 that your morning peak background was 1940, okay?
3 A For the CLV, okay.
4 Q Well, that's the total number of cars, yes.
5 A Oh. So it's not even CLV, okay.
6 Q No. I'm asking you the total number of cars,
7 okay?
8 A Yeah.
9 Q Please stay with me.
10 A No. I'm going to try to stay with you.
11 Q Okay.
12 A You got to use the right words, okay?
13 Q Well, I'm using the words. That's the --
14 A No, no.
15 Q -- total number of cars.
16 A Come on.
17 MR. GROSSMAN: Let's not argue with each other.
18 THE WITNESS: You've got to use the proper
19 words --
20 MR. GROSSMAN: Hold on.
21 THE WITNESS: -- otherwise, we're going to be here
22 a long --
23 MR. GROSSMAN: Mr. Guckert. Mr. Guckert, just --
24 THE WITNESS: I'm sorry.
25 MR. GROSSMAN: Ask your question.

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1 MS. CORDRY: All right.
2 MR. GROSSMAN: Apologize. Go ahead.
3 BY MS. CORDRY:
4 Q And then if you go --
5 A What is the question?
6 Q The question was, do you simply see the line there
7 that says 1940, which was the morning peak background?
8 A I see that line.
9 Q Okay. And if you take your chart, 504, I'm sorry,
10 which was the Version 3, and you go to Total A.M. and you
11 add it up, the total number is only 1997, or 57 total trips
12 higher, which is -- where it labels there, Morning Peak With
13 Gas.
14 A I don't have it, but go ahead.
15 Q Yes. Well, it's on this chart here, Morning Peak
16 With Gas.
17 A I haven't got -- I see what you're saying --
18 MR. GOECKE: We don't have the other one.
19 THE WITNESS: -- but I don't have it. So go
20 ahead.
21 BY MS. CORDRY:
22 Q Well, I'm not sure what you mean by saying you
23 don't have it. You have the -- you have your chart. This
24 would be 504.
25 MR. GOECKE: I don't think we have that one.

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1 MS. CORDRY: Well, I --
2 MR. GROSSMAN: I think you're losing all of us.
3 MS. CORDRY: All right. All right. Let me --
4 MR. GROSSMAN: This is not --
5 MS. CORDRY: Okay. I'm just --
6 MR. GROSSMAN: I know --
7 MS. CORDRY: -- going to ask the questions right
8 this minute, okay?
9 MR. GROSSMAN: Maybe part of your problem is
10 you're trying to do by cross-examination what probably
11 should be surrebuttal, if that's what you intend. I mean,
12 you're going through a lengthy thing, trying to have us --
13 have the witness identify this and that. It's just so much
14 more efficient to do it through your testimony if that's
15 what you're trying to do.
16 MS. CORDRY: Well --
17 MR. GROSSMAN: I don't quite understand what your
18 question is. All you're -- the whole series of questions
19 is, do you see this, do you see that.
20 MS. CORDRY: Okay, because I'm just --
21 MR. GROSSMAN: How about asking a question of the
22 witness?
23 MS. CORDRY: Okay. All right.
24 MR. GROSSMAN: A substantive question.
25 MS. CORDRY: All right, a substantive question.

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1 BY MS. CORDRY:
2 Q There are 57 more trips added, according to your
3 chart, 504, with the gas station compared, for the morning
4 peak hour, compared to the original peak hour. And 57 trips
5 divided by the 1940 that's there is about a three percent
6 increase?
7 A I don't know.
8 Q Okay. And it causes a six percent increase in the
9 delay. Can you see that by looking at the comparison of
10 numbers?
11 A No, you can't do it like that.
12 Q Well, I'm not asking you whether you can do it or
13 not. I am saying you added in 57 more trips --
14 A No, I haven't, I haven't done that analysis.
15 Q Okay, of course not. Have you done any analysis
16 -- you've said that the number of trips makes a very small
17 difference, and what I would like to ask you is -- let me
18 just ask you this way: Have you done any analysis to
19 indicate the percentage of trips you've added versus the
20 percentage of delay that's been created by those?
21 A No, not consequential.
22 Q I'm not asking you whether it's consequential.
23 I'm asking you, have you compared --
24 MR. GROSSMAN: Well, he said no --
25 MS. CORDRY: No. He --

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1 THE WITNESS: No.
2 MR. GROSSMAN: -- and then he said not
3 consequential.
4 MS. CORDRY: Well, he said it's not consequential.
5 BY MS. CORDRY:
6 Q Does that mean you haven't done it or you have
7 looked at it and you have decided it's not consequential?
8 A I have not done the analysis you are asking.
9 Q Okay. So you have no idea if a small number of
10 trips results in a greater proportional increase in delay?
11 A Correct. I do not -- I did not do that
12 analysis --
13 Q Okay.
14 A -- so therefore I cannot answer that question,
15 okay?
16 Q Okay. If a small number of trips added does
17 result in a proportionally greater amount of delay than,
18 simply, three percent more trips results in three percent
19 more delay, if that's not the case, if three percent more
20 trips results in six percent more delay or nine percent or
21 10 percent, is that indicative, again, of the fact that you
22 are already at a very highly congested area and that adding
23 a small number of additional trips causes this sort of
24 ballistic effect that we talked about this morning?
25 A No.

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1 Q No?
2 A No.
3 Q Okay, fine. But, in any case, you haven't done
4 any of those calculations, right? Okay.
5 MR. GOECKE: Objection. Asked and answered.
6 MR. GROSSMAN: Sustained.
7 MS. CORDRY: I mean, the only thing I want to be
8 clear is, when I come in and testify to all of this as a
9 non-expert, I just want to be clear that I can't give the
10 explanations he's going to want to give, but that's okay.
11 MR. GROSSMAN: I don't know what that comment
12 means exactly. I understand your concern since you're not
13 an expert, and that is a problem if you don't have an
14 expert. I agree with you that's a --
15 MS. CORDRY: Which is why I'm trying to ask the
16 questions of the expert.
17 MR. GROSSMAN: Well, I know, but you can't always
18 get -- you can't always get Expert A to do what you want, to
19 say what you want Expert A to say. So --
20 MS. CORDRY: Well, he doesn't have -- well --
21 MR. GROSSMAN: -- so if he's answered your
22 question, he's answered your question. That is --
23 MS. CORDRY: I understand. I understand.
24 MR. GROSSMAN: -- it is an issue, I understand
25 your problem, but --

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1 MS. CORDRY: Well, sometimes he can --
2 MR. GROSSMAN: -- nothing I can do about that --
3 MS. CORDRY: Right. I understand that, but --
4 MR. GROSSMAN: -- you present your case.
5 MS. CORDRY: -- he can certainly comment on what
6 I've done and whether it shows what I say it's showing or
7 not, but -- all right. So I'll move on. I won't --
8 MR. GROSSMAN: I mean, and he did -- he answered
9 your question.
10 MS. CORDRY: Okay. Okay.
11 BY MS. CORDRY:
12 Q When you did this analysis initially, you showed
13 -- which was 465 -- you showed that your values at
14 Intersection 16 were, for Saturday with the gas at both the
15 Valley View and the intersection 16, were estimated, or at
16 least it says EST, which I assume meant estimated.
17 A Yes.
18 Q Why were those estimated?
19 A Because I didn't do the analysis at that time.
20 Q Well, how did you come up with an estimate?
21 A Based upon what I thought the incremental increase
22 would be, and that's why it said estimated.
23 Q Well, if you don't have an idea of how much more
24 traffic you'll get from a certain additional amount of cars,
25 then how can you estimate that number? Isn't that what I

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1 was just asking you about?
2 A No.
3 Q No? You just came up with this from your head?
4 A I estimated it based upon what I thought the
5 increase would be, and that's why it said estimated --
6 Q Okay.
7 A -- about a four- or five-second increase in delay.
8 Q And you were able to do that without doing the
9 calculations?
10 A Yes. I estimated. That's why it's called
11 estimated, okay?
12 Q I understand. Okay. And is that --
13 A I didn't do the calculations.
14 Q And is that why, then, we didn't get a copy of
15 those background sheets? It didn't have anything to do with
16 not copying them or something like that; you just estimated
17 that number?
18 A Let's see. I --
19 MR. GROSSMAN: I'm not sure which background
20 sheets you're talking about that you didn't get.
21 MS. CORDRY: Okay. When this was originally
22 presented to us a couple of hearing days back, those --
23 there wasn't any sheet for those two numbers there.
24 MR. GROSSMAN: First of all, the this --
25 MS. CORDRY: Okay.

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1 MR. GROSSMAN: -- what's the antecedent of the
2 word this --
3 MS. CORDRY: Okay.
4 MR. GROSSMAN: -- and what's the two numbers
5 you're talking about?
6 MS. CORDRY: When we got Exhibit 460, well,
7 actually 480 --
8 MR. GROSSMAN: Okay.
9 MS. CORDRY: -- we got 465, which just was the
10 cover sheet --
11 MR. GROSSMAN: Right.
12 MS. CORDRY: -- with the label about estimate.
13 Then we got, we asked for the backup sheets, and we were
14 only given 10 and not 12.
15 MR. GROSSMAN: Okay.
16 MS. CORDRY: My recollection is, at the time, it
17 was stated that somehow they got lost on the copier or they
18 just didn't get copied or something.
19 BY MS. CORDRY:
20 Q Now, is what you're saying now is that there never
21 was such an analysis; it was just an estimate by you?
22 A I never said it wasn't an estimate. It's always
23 said estimate there, okay?
24 Q Well, I understand, but didn't -- wasn't it said
25 back at the time, two hearing days back, that the sheets

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1 were just left on the copier and that's why we didn't have
2 them?
3 MR. GROSSMAN: When you say it was said, who said?
4 MS. CORDRY: I'd have to look back in the hearing,
5 but either Ms. Harris or Mr. Guckert said it was a copying
6 problem.
7 MR. GROSSMAN: Okay.
8 MS. CORDRY: It was never said until this moment
9 that there was never done --
10 MR. GROSSMAN: Okay.
11 MS. CORDRY: -- which is interesting, to say the
12 least. I'm very interested to find out now that this is
13 another one of those cases where we're just eyeballing
14 things. Okay. All right, very interesting.
15 BY MS. CORDRY:
16 Q Okay. Then there was a second set of calculations
17 done; it was given to us about two weeks later, and that's
18 Exhibit 514. Do you --
19 A No, I don't have that.
20 Q I gave it to you.
21 A Okay. Here it is.
22 Q Okay. Who actually took care of doing this
23 particular analysis?
24 A Mr. Lee.
25 Q I'm sorry. Mister who?

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1 A Lee.
2 Q Okay. And did you review it?
3 A Not, not before I submitted it, no.
4 Q And I understand the problem is that there was
5 background counted twice. Is that Mr. Lee's mistake?
6 A Correct --
7 Q Okay. And you didn't --
8 A -- and that --
9 Q -- you didn't review this at all before you
10 submitted it?
11 A Should I just answer? Correct.
12 Q Okay. Did you even see it at all? Did, I mean,
13 you look at this front page at all before it went in?
14 A I don't recall. I think it was submitted, and
15 it's based upon having -- Mr. Lee was not aware, when he did
16 this analysis, that the Costco store had been built for the
17 Saturday condition. He, he added in the Costco store as he
18 did for the morning and evening peak hour. So there was a,
19 there was a, an error in that part.
20 Q Okay. Let's set aside for the moment whether
21 those numbers were correct or not, but in terms of the
22 increase there, it went up at Intersection 16 by about 400
23 trips over the original number of about 1900, so a little
24 over 20 percent increase.
25 MR. GROSSMAN: From what?

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1 MS. CORDRY: From Exhibit 465.
2 MR. GROSSMAN: Okay.
3 BY MS. CORDRY:
4 Q That 20 percent increase resulted in a roughly 140
5 percent increase when you went from 44.85 to 108 seconds.
6 Does that indicate to you that there's not necessarily a
7 proportional increase between the number of trips going up
8 versus the amount of delay that goes up?
9 A I don't, I don't know that answer.
10 Q Okay. When did you find out that this one was
11 wrong?
12 MR. GROSSMAN: This being?
13 MS. CORDRY: 514.
14 MR. GROSSMAN: Okay.
15 THE WITNESS: Probably shortly after it was
16 submitted.
17 BY MS. CORDRY:
18 Q And how did you find out?
19 A It was examined. It was determined that it was
20 wrong.
21 Q Well, who examined it?
22 A One of my staff members.
23 Q And why were they examining it?
24 A I don't recall, probably because we were trying to
25 make, figure out why that number was so high.

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1 Q Okay. And that was a review. Then it was done
2 after it was submitted. Okay.
3 A Correct.
4 Q So that was then when you did the, you all did the
5 third version of this, which is now Exhibit 504?
6 A Correct.
7 Q Okay. So obviously now the numbers are somewhat
8 smaller than they were for Exhibit 514 in terms of the total
9 number of cars coming in?
10 A Yeah. I think that we were rushing to make our
11 10-day deadline, and it wasn't -- there was a mistake made,
12 mea culpa, my fault.
13 Q Okay. Well, actually, that wasn't my question.
14 My question was, the numbers on this one now are smaller --
15 A Uh-huh. I understand, yeah.
16 Q -- obviously than --
17 A That's correct.
18 Q Okay.
19 A Uh-huh.
20 Q When I add them up, I see it's about 300 and some
21 higher for additional trips for University Boulevard and the
22 Valley View entrance but there doesn't seem to be any
23 difference whatsoever at Intersection 16; it seems to be
24 exactly the same number of trips coming in there. Does that
25 seem logical?

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1 A I don't know what you're adding up.
2 Q Okay. I'm adding up the total number of trips --
3 A Where? Are we on an exhibit?
4 Q Well, yes. From the exhibit, if you add up,
5 starting with, like, your 465 number, if you add up the
6 total number of trips that was existing Saturday --
7 A Yeah, I did not do this analysis. So I have to
8 have my associate respond to that because I'm -- I don't
9 want to misstate for you. So go ahead.
10 Q Okay. Well, my real question is -- I'm just going
11 to say to you, and you can add the numbers up yourself if
12 you want -- that while there's about 300 more trips added on
13 University Boulevard at the intersection, the number --
14 MR. GROSSMAN: In which exhibit is 300 trips
15 added?
16 MS. CORDRY: Okay. Going between Exhibit 465 and
17 Exhibit 504.
18 MR. GROSSMAN: Okay. So going from 465 to the
19 corrected exhibit?
20 MS. CORDRY: Right.
21 MR. GROSSMAN: Okay.
22 BY MS. CORDRY:
23 Q And if you go in, if you go in 504, it now has two
24 numbers now for Saturday. One is labeled as a Background
25 Saturday, which is 504 at this point.

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1 A Are we talking for No. 16?
2 Q No. I'm looking at the University Boulevard and
3 Valley View entrance.
4 A And what is your question?
5 Q Okay. First question is, you have -- now you have
6 two charts. You have a background chart, which is supposed
7 to include all of the background but not doubling up on the
8 background, correct?
9 A Which time of day?
10 Q Saturday.
11 A So Background Saturday.
12 Q Okay. And then you have a Total Saturday,
13 correct?
14 A And there's a Total Saturday, correct.
15 Q Okay. So between those two, when I compare those
16 two and you add in all the correct background but not too
17 much background, you go up by about 300 cars between the
18 background versus the total on Saturday.
19 A Okay, if you say so.
20 Q Wait. I'm sorry. I'm confusing myself. Let me
21 start over again. I said it right the first time. When you
22 go between Exhibit 465, which did not have all of the
23 background, which was your existing -- 465 was your Existing
24 Saturday -- and then you go to your Background Saturday in
25 504, you go up by about 300 trips. Let me ask the question

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1 a different way because I'm just trying to give you --
2 MR. GROSSMAN: I hope you're keeping track of what
3 you're saying because --
4 MS. CORDRY: Yes. Okay. My --
5 MR. GROSSMAN: -- I'm not following you.
6 MS. CORDRY: Okay.
7 BY MS. CORDRY:
8 Q All right. The question is this: When you added
9 in your background, your total background trips for your
10 Exhibit 504, you added about 300 on the University Boulevard
11 and Valley View entrance, but the number did not change at
12 all at Intersection 16. Does that seem odd to you that when
13 you added all of the extra background that you're supposed
14 to be adding in --
15 A Well, all the background is on, is residential; so
16 it's going to be on, along 193.
17 Q Well, none of those trips would come into the
18 mall?
19 A We did not assume that there would be increase
20 from the bank moving into the mall or from, from Safeway
21 people would be going into the mall, no, we did not do that.
22 Q Okay. And is that just, that's an assumption?
23 A Just an assumption that we made.
24 Q Okay. So if that assumption is wrong, if there's
25 any additional trips, that, again, would increase your total

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1 delay factors?
2 A If that assumption is wrong, there would be more
3 cars coming in.
4 Q Okay. And in terms of how you did these
5 calculations, if we can just look at -- we can look at 504,
6 is fine for the moment. I just want to ask you about a
7 couple specific lines there. There's a line labeled Timer
8 Results, and it says, Phase Duration.
9 A Yeah, I did not do this; so -- but you can ask a
10 question, and if I can answer it, I will.
11 Q Okay. Is that number expected to be the actual
12 timing of lights at that intersection?
13 A I do not know that answer. We'd have to have the
14 analyst answer that.
15 Q Okay. So you don't really know what these various
16 lines are here?
17 A I'm not involved in that.
18 Q Okay. All right, makes it a little difficult
19 there. Do you know if this kind of analysis is meant to
20 actually start with the existing -- it's a little different
21 question -- with the existing actual duration of these
22 lights and measure it based on the existing actual duration,
23 or is this a way of optimizing what the time should be
24 assigned to the different lights?
25 A I'm not sure about that.

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1 MR. GROSSMAN: And when you say this type of
2 analysis, you're referring to the --
3 MS. CORDRY: The HCM analysis.
4 MR. GROSSMAN: -- HCS 2010 --
5 MS. CORDRY: Yes.
6 MR. GROSSMAN: -- Signalized Intersection --
7 MS. CORDRY: Right.
8 MR. GROSSMAN: -- Results Summary?
9 MS. CORDRY: Right.
10 THE WITNESS: There are, there are a number of
11 default values that the computer puts in --
12 BY MS. CORDRY:
13 Q Okay. Well, the --
14 A -- the computer program puts in.
15 Q Well, the duration of a light signal, I presume,
16 would not be a default value, would it?
17 A I wouldn't presume that.
18 Q Okay. And one of the questions I have is, if you
19 go between these three different forms of this HCM analysis,
20 the phase durations change for what would otherwise be the
21 same analysis. So my question is, if you're just changing
22 the number of cars you have, should you be changing that
23 phase duration or shouldn't that -- isn't that what the
24 intersection is? Isn't the intersection -- it is what it
25 is, isn't it?

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1 A The answer is, I don't know that answer because of
2 -- I don't work with this program.
3 Q Okay. It's been suggested to me that this kind of
4 analysis is a way, not of necessarily using what's actually
5 happening at the intersection, but a way of trying to
6 optimize and get the best value you can at an intersection.
7 Do you know that?
8 A I would, I would expect it would try to optimize.
9 Q Okay. So what we have here might very well not be
10 an analysis of actual delay at the intersection but an
11 optimized analysis of what the best you could do at this
12 intersection?
13 A I'm going to let somebody else answer that.
14 Q Okay.
15 MR. GROSSMAN: What exactly does that answer mean?
16 Does it mean you don't know?
17 THE WITNESS: Well, it means that, yeah, it means
18 I don't, I don't know --
19 MR. GROSSMAN: Okay.
20 THE WITNESS: -- because I do not work with this
21 particular program.
22 BY MS. CORDRY:
23 Q Okay. So this an optimized attempt; then we might
24 very well have higher values in reality?
25 A I don't know that.

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1 MR. GROSSMAN: He said he --
2 THE WITNESS: I can't answer that.
3 MR. GROSSMAN: If he can't answer it, he can't
4 answer it.
5 MS. CORDRY: Okay. Well, I don't think they're
6 going to put anybody else on here to answer that question
7 either. So, I mean --
8 MR. GROSSMAN: Pardon me?
9 MS. CORDRY: As far as I know, they weren't
10 planning on calling anybody else to explain. I mean --
11 MR. GROSSMAN: Well, I know, but he --
12 MS. CORDRY: -- I'm asking him about their
13 exhibits, Your Honor.
14 MR. GROSSMAN: You have a witness on the stand.
15 He can either say yes, no, or I don't know or an
16 explanation. That's all he can do.
17 MS. CORDRY: Okay.
18 MR. GROSSMAN: He's not another witness. He's --
19 MS. CORDRY: Okay.
20 MR. GROSSMAN: -- the witness you have on the
21 stand.
22 MS. CORDRY: Okay. If I was asking about my
23 exhibits, I would understand, but I am trying to ask him
24 about their exhibits that they have put him on to put in,
25 but --

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1 BY MS. CORDRY:
2 Q Okay. So would that pretty much be your answer
3 about any of the really specific details here, why there
4 would be a zero shown at one place --
5 A Correct.
6 Q -- or why a number would change? You're not
7 really able to explain any of that?
8 A Correct.
9 MS. CORDRY: Okay. Well, that will certainly
10 shorten things up a lot if I can't ask him questions about
11 this exhibit. Okay.
12 MR. GROSSMAN: You asked the questions. He
13 answered the questions about the exhibit. He doesn't know.
14 He can't answer.
15 MR. SILVERMAN: I gather that goes to the weight
16 of his testimony.
17 MR. GROSSMAN: We're not arguing, Mr. Silverman.
18 MR. SILVERMAN: Oh, certainly. Thank you.
19 MS. CORDRY: Okay. Okay. I understand. Okay. I
20 will move on. I had expected this was the witness I would
21 ask questions of, but -- okay. Just say, it moves it along
22 much faster if I'm not asking those questions. Okay. Let's
23 see.
24 MR. GROSSMAN: All right.
25 BY MS. CORDRY:

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1 Q And do you know what the actual timings were of
2 the lights, the very signal phases back in April?
3 A No.
4 Q Or what they are now in March of 2014?
5 A No.
6 Q Okay. Okay. All right. Well, then we'll move on
7 from those exhibits. The other thing I would like to do --
8 MS. HARRIS: Mr. Guckert --
9 BY MS. CORDRY:
10 Q -- the last area I'd like to cover here is to try
11 to --
12 MR. GROSSMAN: Hold on one second. I think --
13 MR. GOECKE: One second.
14 MR. GROSSMAN: -- we have an interruption.
15 Ms. Harris.
16 MS. HARRIS: One of the reasons that we had
17 Mr. Guckert's colleague, Mr. Qiang Tian, Qiang --
18 THE WITNESS: Tian.
19 MS. HARRIS: -- Tian, here is because he was the
20 person that prepared the HCM analysis and is an expert in
21 that component of the traffic study. If it's appropriate,
22 either after Mr. Guckert's finished or at some point, we can
23 put him up there to answer the relevant questions.
24 MS. CORDRY: I would object.
25 MR. SILVERMAN: This is a surprise. We object --

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1 MR. BRANN: Oh, she's going to object.
2 MR. GROSSMAN: Pardon me?
3 MS. CORDRY: I mean --
4 MR. GROSSMAN: All right. Well, I'll give you a
5 simple answer to that: Right now he's on the stand --
6 MS. HARRIS: Yes. Okay.
7 MR. GROSSMAN: -- we'll deal with the next
8 question when it comes up --
9 MS. HARRIS: Okay.
10 MR. GROSSMAN: -- if it does come up.
11 MS. CORDRY: Okay.
12 MR. GROSSMAN: I think you announced initially you
13 were going to have --
14 MR. GOECKE: Yes.
15 MR. GROSSMAN: -- two rebuttal witnesses --
16 MR. SILVERMAN: Right.
17 MR. GROSSMAN: -- Mr. Guckert and Mr. Sullivan.
18 So --
19 MS. HARRIS: No, but I think at one of the prior
20 hearings, I thought that we said we would have, that we
21 would have a person here for the HCM in case questions came
22 up --
23 MS. CORDRY: I --
24 MS. HARRIS: -- and I don't know if we said
25 that --

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1 MS. CORDRY: -- don't recall that.
2 MS. HARRIS: -- as a sidebar to you, to the
3 opponents, or whether we said it on the record.
4 MR. GROSSMAN: I don't recall it on --
5 MS. CORDRY: Okay.
6 MR. GROSSMAN: -- but you can, you can show me
7 if --
8 MR. ADELMAN: Mr. Grossman, I don't recall that
9 having been said. I think if it was said, it should be on
10 the record.
11 MR. GROSSMAN: I know. We just said that.
12 MS. CORDRY: I mean, I think there may have been
13 something like, that the HCM manual is here if we wanted to
14 look at it, all four volumes of it, but anyway.
15 BY MS. CORDRY:
16 Q The last thing I'd try to get at here is the
17 question of how the weekday total volumes compare with
18 weekend total volumes, and I think, although we didn't have
19 a full set of comparisons, we do have a number of
20 intersections at which it was measured at both weekday and
21 weekend and also predicted weekday versus actual weekday.
22 So I wanted to just ask you a few questions about that.
23 First off, were you here when Mr., I'm sorry,
24 Dr. Adelman was testifying about his observations at
25 Intersection 16?

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1 A No.
2 Q Okay. Are you aware that he, he and Mrs. Adelman
3 sat there at Intersection 16 on a number of occasions and
4 took their own traffic counts on weekdays?
5 A No.
6 Q Okay.
7 MS. CORDRY: That information has been put in the
8 record. Do you recall that, Your Honor?
9 MR. GROSSMAN: I do recall that.
10 MS. CORDRY: Okay.
11 MR. GROSSMAN: As I recall, it didn't markedly
12 differ from Mr. Guckert's figures. There might have been --
13 MS. CORDRY: Well --
14 MR. GROSSMAN: -- up to a 10 or 15 percent
15 difference, but it wasn't --
16 MS. CORDRY: Well, 15 percent is not a minuscule
17 difference.
18 MR. GROSSMAN: Well, I don't remember the exact
19 things, but as I recall, there wasn't a huge difference in
20 the two.
21 MS. CORDRY: Well, okay.
22 MR. GROSSMAN: I do recall --
23 MS. CORDRY: There was a 15 percent difference,
24 yes.
25 MR. GROSSMAN: Okay.

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1 MS. CORDRY: You can characterize that as large or
2 small, but yes --
3 MR. GROSSMAN: Right.
4 MS. CORDRY: -- there was a 15 percent
5 difference --
6 MR. GROSSMAN: Right.
7 MS. CORDRY: -- in the, what you projected for
8 that intersection versus what they observed.
9 BY MS. CORDRY:
10 Q Would that surprise you?
11 A No.
12 Q And why not?
13 A Because traffic will vary day to day, week to week
14 10 to 15 percent. You'll find at --
15 Q Okay.
16 A -- you'll find one thing one day and something
17 different the next day.
18 Q And if that was an average taken on one, two,
19 three, four, five, six, seven, eight days over a month's
20 period of time, would that then tend to erase some of those
21 day-to-day differences?
22 A I'd have to study the data and look at it and
23 compare it to mine.
24 Q Okay. But you haven't looked at any of that to
25 this point?

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1 A His data? No.
2 Q Yes. Okay. And, again, you're assuming that all
3 of the additional background that's being built is not going
4 to have any effect whatsoever on people coming inside the
5 mall -- on that side, in any case, on that west side?
6 A I think it's inconsequential. The mall is going
7 to continue to grow, and it's going to add traffic and that
8 changes from day to day, and Saturday is a whole lot more
9 busier than, than any other day of the week, and it varies
10 on Saturday from month to month to week to week. So it
11 doesn't surprise me.
12 Q And Sunday is also very heavy at a retail mall
13 compared to a weekday?
14 A On this particular mall?
15 Q Yes.
16 A It's less than Saturday.
17 Q But it's also heavier than a weekday?
18 A Could be.
19 Q Okay. The other thing I wanted to ask you about,
20 and let me just try to ask the question this way. We will
21 try to do it without having to put all the numbers in. Let
22 me just ask you some of my conclusions. When I looked at
23 your hour by hour, you know, quarter minute, quarter by --
24 15-minute by 15-minute and hour by hour for the weekday
25 where you did three hours in the morning and three hours in

1 the afternoon, it appeared to me that the highest peak hour
 2 was fairly higher than the average of all three hours, that
 3 there was kind of a spike there for that peak; there really
 4 was a peak among the three hours in the evening. Would that
 5 be fair?
 6 A I haven't, I haven't looked at that, but it's
 7 possible.
 8 Q Okay. And, of course, the evening hours are more,
 9 at least in these ones right around the mall, than the
 10 morning hours?
 11 A The --
 12 Q The evening peak hour is more than the morning
 13 peak hours?
 14 A It probably is. I would --
 15 Q Right.
 16 A -- expect that.
 17 Q Because, of course, the mall isn't open at --
 18 A Right.
 19 Q -- 7:00 or 8 o'clock in the morning. Okay. And
 20 on the weekend, when I look, again, at those numbers that
 21 you have for the period, the eight-hour period from, I think
 22 it's 10:00 a.m. to 6:00 p.m., the peak hour there, if I do
 23 the calculations, looks to me to be less peaky or less
 24 spikey but there's a broader continued high period over the
 25 weekend hours than there is for the --

1 A Sure --
 2 Q -- weekday peak. Okay.
 3 A -- as expected.
 4 Q Okay. So if it's higher on the weekend, it may be
 5 higher for several hours each day on the weekend than during
 6 the weekday peak?
 7 A I think I understand that question.
 8 Q Right.
 9 A May I repeat it?
 10 Q Okay, sure.
 11 A I think what you said was there would be more
 12 hours on Saturday with a higher volume --
 13 Q Yes.
 14 A -- than you might experience on a Thursday --
 15 Q Right.
 16 A -- commuting hour.
 17 Q Right.
 18 A Is that --
 19 Q Yes, I think, I think that's close, yes.
 20 A Yes, and I agree.
 21 Q Okay. All right. So if we were trying to get in
 22 the course of an entire year, you know, starting with the
 23 very highest hour, which is presumably 8 o'clock, 9 o'clock,
 24 10 o'clock on Christmas Eve when everybody's racing to the
 25 store to get their last present, and go down to, you know, a

1 snow day in the middle of February, if you're trying to get
 2 the highest hours, the weekend hours are going to be your
 3 highest hours, correct?
 4 A Of all the days of the year, the weekend is going
 5 to be higher than the weekday, yes.
 6 Q Okay. And are you aware that Mr. Sullivan, in
 7 terms of doing his calculations for the emissions and so
 8 forth, only used your weekday readings?
 9 A No.
 10 Q Okay. And if he is actually trying to get the
 11 highest hours, he might not, if he's using your weekday
 12 hours, he might not have the highest hours then from what
 13 we've just been saying?
 14 A If, if -- assuming a Saturday is higher than, than
 15 a weekday.
 16 Q Which, I think, we've just been talking about now.
 17 A Yeah, that's correct --
 18 Q Okay.
 19 A -- that's what we've been talking about.
 20 Q Right. And you weren't asked to try to figure out
 21 when the highest hours were overall in the course of the
 22 mall, is that correct?
 23 A Correct.
 24 Q I mean, as part of what you do with staff, you
 25 have a set protocol to follow?

1 A Correct.
 2 Q Okay. And it says do a weekday?
 3 A Correct.
 4 Q In fact, don't do a Monday or a Friday, is that
 5 right?
 6 A Correct.
 7 Q And don't do the day before a holiday or after a
 8 holiday?
 9 A Correct.
 10 Q And go at certain specific intersections. So it's
 11 a very set protocol?
 12 A Correct.
 13 Q And that's what you did?
 14 A Correct.
 15 Q Okay. So whether or not that's exactly the
 16 numbers that Mr. Sullivan needs to use for his charts,
 17 that's a different question. You weren't doing your
 18 calculations for his research, correct?
 19 A Correct.
 20 Q Okay. And you all haven't just sat down any time
 21 and tried to, you know, go over your numbers or talk about
 22 delays or congestion? You and Mr. Sullivan have not worked
 23 together on his numbers and your numbers at all, is that
 24 correct?
 25 A Other than the fact that I wanted -- he made sure,

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1 I made sure that he had my latest numbers but nothing beyond
2 that.
3 Q Okay. And by your latest numbers, those are the
4 ones for the September 20, the --
5 A For the 2012 LATR, and I gave him the April
6 information, April 2013 information.
7 Q Okay.
8 MS. CORDRY: I'm done.
9 MR. GROSSMAN: Thank you. All right. Perhaps we
10 should take a --
11 THE WITNESS: Yes.
12 MR. GROSSMAN: -- a break before we go to
13 Dr. Adelman for his cross-examination, which he promised me
14 would only take five or 10 minutes.
15 (Whereupon, a brief recess was taken.)
16 MR. GROSSMAN: And we are back on the record.
17 MS. HARRIS: Mr. Grossman --
18 MR. GROSSMAN: Yes.
19 MS. HARRIS: -- can I just make one comment about
20 offering Mr. Tian for, to testify? It was merely as a
21 courtesy to answer the mechanics --
22 MR. GROSSMAN: Right.
23 MS. HARRIS: -- of the HCM. We weren't suggesting
24 that we were putting him on as a direct witness.
25 MR. GROSSMAN: Okay. Then that simplifies it

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1 because they objected to his a being witness. So --
2 MS. HARRIS: Right, exactly. Okay. Thank you.
3 MR. GROSSMAN: -- it's a moot point. Nothing
4 against you, sir, just the vagaries of the situation. All
5 right. Dr. Adelman, are you ready to proceed?
6 MR. ADELMAN: No.
7 MR. GROSSMAN: Well, you have to proceed anyway.
8 MR. ADELMAN: Oh, I know.
9 MR. GROSSMAN: What does your tee shirt say?
10 MS. ADELMAN: Oh.
11 MR. GROSSMAN: I was tired yesterday and I'm tired
12 again today.
13 MR. SILVERMAN: Retired.
14 MS. CORDRY: I'm retired.
15 MS. ADELMAN: I am retired.
16 MR. GROSSMAN: Oh, I didn't see the --
17 MS. CORDRY: On top. It says, I'm retired.
18 MR. GROSSMAN: Well, part of it is hidden. The
19 other side is hidden.
20 MR. ADELMAN: That's because I'm so heavy.
21 MR. GROSSMAN: Listen, I got you there. Okay.
22 Thank you.
23 MR. ADELMAN: I try to choose my -- is this thing
24 working?
25 MS. ADELMAN: I think I object to that going in

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1 the record.
2 MR. ADELMAN: When I pulled out the chaise --
3 MR. GROSSMAN: I don't know if that machine is
4 actually doing anything now in magnifying your voice. Is
5 it? Oh, there you go. There you go.
6 UNIDENTIFIED SPEAKER: There you go.
7 MR. ADELMAN: Is it working now? No, it's not.
8 MR. GROSSMAN: No. It seems to only work when you
9 have it down, not when you put it up to your mouth.
10 MR. ADELMAN: Thank you, Mr. Grossman. That's
11 useful.
12 MR. GROSSMAN: I don't know why that is, but I'm
13 not sure you need it. Do you want to -- you can grab a
14 chair right there and just sit --
15 MS. HARRIS: Do you want to sit here?
16 MR. ADELMAN: No. Actually, I just wanted leg
17 room for a second.
18 MR. GROSSMAN: All right. I was going to say, you
19 can just be closer to the witness and then you wouldn't need
20 it.
21 MR. ADELMAN: Yes.
22 THE WITNESS: Sit next to me.
23 MR. ADELMAN: All right.
24 MR. BRANN: Dr. Adelman, are you going to use this
25 screen? If not, I'll just move it out of the way a little

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1 bit so the exhibit is easier to see.
2 MR. ADELMAN: I did want to ask Mr. Guckert to
3 look at a couple of video segments --
4 MR. BRANN: Okay, fine.
5 MR. ADELMAN: -- but we probably won't get to it
6 today.
7 MR. GROSSMAN: Yes, we will.
8 UNIDENTIFIED SPEAKER: Optimism.
9 MR. ADELMAN: Is that an order or --
10 MR. GROSSMAN: Yes.
11 MR. ADELMAN: -- or a conviction? Okay.
12 BY MR. ADELMAN:
13 Q Mr. Guckert, do you know who I am?
14 A You're Dr. Adelman.
15 Q Fine. Maybe I misconstrued, but there in the last
16 couple of minutes, Ms. Cordry asked you if you'd been
17 present when I testified, and I could have sworn I saw you
18 sitting in the audience when I testified. So have I
19 misconstrued your answer?
20 A I don't recall your testimony. I could have been
21 there. I mean, it's been a long -- it's been 30 hearings.
22 I mean, it's possible I heard you, but I didn't recall when
23 that question was asked.
24 Q Okay, fine. All right. I'm guilty of a lot of
25 misconstrusions, which, by the way, is allowed. Okay.

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1 Let's see. Mr. Guckert, do you recall where you were on the
2 morning of March 11th, 2014?
3 A No, sir.
4 Q You're sure?
5 MR. GROSSMAN: What's the point in that? Let's
6 not be coy here. Let's get to the point.
7 MR. ADELMAN: It's actually an attempt to change
8 the mood. I apologize.
9 MR. GROSSMAN: Well, let's not change the mood.
10 Let's just get moving along.
11 MR. ADELMAN: Okay, fine.
12 BY MR. ADELMAN:
13 Q But you're aware I'm not a lawyer?
14 MR. GROSSMAN: No. Come on. Please, ask
15 questions that pertain --
16 MR. ADELMAN: Fine.
17 MR. GROSSMAN: -- to the case.
18 BY MR. ADELMAN:
19 Q Mr. Guckert, you testified in rebuttal on my
20 assertions on behalf of the Costco Coalition, the Stop
21 Costco Gas Coalition, did you not?
22 A Excuse me?
23 Q Did you testify in rebuttal of assertions that I
24 made when I testified? Is that correct?
25 A Did I testify in rebuttal?

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1 MR. GROSSMAN: He's here as a rebuttal witness.
2 THE WITNESS: Yeah, rebuttal witness now.
3 BY MR. ADELMAN:
4 Q Fine. Could you tell me specifically one point
5 that I made that you have rebutted?
6 A I'm sorry. I --
7 MR. GROSSMAN: He's asking you, is there a
8 specific point that he made in his testimony that you are
9 rebutting.
10 THE WITNESS: Yeah, and I don't remember his
11 testimony; so the answer is no.
12 BY MR. ADELMAN:
13 Q Do you recall that I objected to the filing that
14 Ms. Harris made on your behalf of a number of documents to
15 support the rebuttal testimony?
16 A Do not.
17 Q You do not. Could you please take a look at
18 Exhibit 522?
19 MR. GROSSMAN: Do you have that, a copy of that
20 with you, or is this --
21 MR. ADELMAN: I have my own copy. I don't have
22 multiple copies.
23 MR. GROSSMAN: 522, okay. See if we have that
24 here.
25 THE WITNESS: I think, I think Ms. Harris has it.

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1 Is it a one-page document?
2 BY MR. ADELMAN:
3 Q That's the attachment to the document.
4 MR. GROSSMAN: I see it. I have here, that's the
5 attachment I have. It's an e-mail to me from Dr. Adelman.
6 It's from me to Dr. Adelman, and it says: Please don't
7 forget, Dr. Adelman, that cross-examination and rebuttal is
8 generally limited to the scope of the direct examination and
9 rebuttal. It is not an opening to cross-examine the witness
10 again on direct testimony he gave in Applicant's
11 case-in-chief.
12 MR. ADELMAN: So I apologize. I thought 522 was
13 my original e-mail to where I respond that --
14 MR. GROSSMAN: Well, apparently, it includes -- my
15 response to you is at the top of the page, and your e-mail
16 was to Ms. Harris. So do you --
17 MR. ADELMAN: With a request.
18 MR. GROSSMAN: So do you -- all right. He's, I
19 think the witness has been given a copy of it now. Is that
20 correct?
21 THE WITNESS: Yes, sir. It is -- Dr. Adelman, I
22 have here, from you to Patricia Harris and Mr. Grossman, a
23 two-and-a-fraction-page e-mail where you talk about advance
24 information.
25 BY MR. ADELMAN:

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1 Q Have you seen that e-mail previously?
2 A I don't recall seeing this, no.
3 Q Had you seen that e-mail previously, would it have
4 been helpful to you in responding to my questions?
5 A Well, I haven't seen it; so I'm not, I'm not sure
6 about that.
7 Q Okay.
8 A But I haven't -- you know, there's 5 or 600
9 exhibits, and I guarantee you I haven't seen most of them.
10 Q Do you realize this was an e-mail I sent to --
11 excuse me. If I proffer to you that this is an e-mail I
12 sent to all parties to enable a more efficient questioning
13 process, can you accept that as a reasonable assertion?
14 MR. GROSSMAN: Well, you don't have to proffer.
15 It's in the record.
16 MR. ADELMAN: Fine.
17 MR. GROSSMAN: Your e-mail is in the record as
18 Exhibit 522. It says whatever it says.
19 BY MR. ADELMAN:
20 Q As you can see, Mr. Guckert, I'm sitting here with
21 a stack of materials, with a bunch of questions to ask you.
22 It was not my intention, it is not my -- do you know that
23 it's not my intention to make things difficult for you, that
24 it is in fact my intention to make this go efficiently, and
25 that that e-mail was intended to make you aware of what I

1 wanted to ask questions of?
 2 A I know that you want this to go efficiently.
 3 Q Thank you. Are you aware that Ms. Harris has not
 4 provided the data that we requested multiple times upon
 5 which I intend to question you?
 6 A What data?
 7 Q The data on, let's see, Exhibit -- excuse me.
 8 A Or just what kind of data?
 9 Q Ah, data that was presented by you when you
 10 testified in rebuttal, specifically data about transactions
 11 at Brandywine and data that led to the summary sheet with
 12 respect to the HMC, the HCM analysis. We requested that raw
 13 data multiple times. We have not yet received it. Are you
 14 aware of that?
 15 A Well, you have received the HCM stuff. It is --
 16 you have the sheets. In fact, Ms. Cordry had them and we
 17 talked about them this afternoon --
 18 Q Also --
 19 A -- and you've had those for quite some time.
 20 There is no other data.
 21 Q There is no other data?
 22 A No, sir.
 23 Q No worksheets?
 24 A Those are the worksheets that's input into the, to
 25 the software program.

1 Q So all of the data which led to the HCM analysis
 2 is the same data that was collected for the supplementary
 3 analysis that you did, that your firm did last April, is
 4 that correct?
 5 A You have every single piece of data that we have,
 6 that we produced to do our analysis. As it relates to the
 7 Brandywine Costco, I'm not party to sales information for
 8 Brandywine Costco and I don't know whether that was
 9 submitted or not.
 10 Q You testified on it, did you not?
 11 A No, no. I testified on, on traffic issues, not on
 12 sales issues, as I recall.
 13 Q Can you please look at Exhibit 456(c)? Exhibit
 14 456(c), would you please look at that?
 15 A I'll give you this back.
 16 MS. HARRIS: Okay.
 17 UNIDENTIFIED SPEAKER: Thank you.
 18 THE WITNESS: Finished with that. This is the
 19 data you were just asking about, the Brandywine Costco
 20 information, correct, that I said I didn't know if it had
 21 been submitted, you said you didn't receive it?
 22 BY MR. ADELMAN:
 23 Q No. The data I have not received is the
 24 spreadsheet from which these pages were prepared.
 25 A I can't help you with that.

1 MR. ADELMAN: Perhaps Ms. Harris can explain,
 2 excuse me, clarify why a repeated request for that
 3 spreadsheet was not answered.
 4 MR. GROSSMAN: No. Right now all you can do is
 5 ask the witness questions.
 6 BY MR. ADELMAN:
 7 Q Does it appear to you that the numbers on these
 8 sheets came from a spreadsheet?
 9 A It quickly looks as if the, the data -- and I'm
 10 calling the top sheet of 456(c) a spreadsheet -- it appears
 11 that this is a printout from, from Costco, is what it
 12 appears to me.
 13 Q But you did not prepare that material?
 14 A No, sir. I think -- this looks to me as if it's
 15 something from, a printout from Costco. I don't know
 16 whether it's proprietary or not, but that's what it looks
 17 like to me.
 18 Q But you did testify using information from that
 19 data set, did you not?
 20 A No. I recall testifying to the top sheet. I did
 21 not prepare the top sheet.
 22 Q You did not prepare the top sheet. You did not
 23 prepare the proprietary data. Is that what you're saying?
 24 MR. GROSSMAN: He's already answered that. He's
 25 already answered that. He said he did not prepare it.

1 BY MR. ADELMAN:
 2 Q Assuming Ms. Harris prepared that material for
 3 you, did she consult with you about its contents?
 4 A The answer is no.
 5 Q All right. I call your attention -- we're done
 6 with that.
 7 A Okay.
 8 Q I call your attention to Exhibit 456(b); (b), as
 9 in boy.
 10 A Is this the one, Dr. Adelman? Do you know?
 11 Q Yes.
 12 A I'm coming to you. Don't you worry.
 13 Q Yes.
 14 A That's the one? Okay.
 15 Q That's the one.
 16 A Okay.
 17 MR. GROSSMAN: Mr. Brann, would you check and see
 18 if File 7 is there so I can actually --
 19 THE WITNESS: Yes, sir. If you don't mind, I'll
 20 stand so I can --
 21 MR. GROSSMAN: Absolutely --
 22 THE WITNESS: Okay, make it --
 23 MR. GROSSMAN: -- make it convenient for him.
 24 BY MR. ADELMAN:
 25 Q It's okay. Thank you. I'd rather you have a

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1 comfortable seat. I'm fine.
2 A Okay.
3 MR. BRANN: File Folder 7.
4 MR. GROSSMAN: Thank you, sir.
5 THE WITNESS: Yes, sir.
6 BY MR. ADELMAN:
7 Q Do you recall whether you selected that exhibit?
8 A Whether I selected the exhibit?
9 Q Yes.
10 A I do not recall whether I selected the exhibit or
11 whether it was selected by a member of our team. This, this
12 exhibit, this aerial photograph?
13 Q Yes.
14 A I don't recall.
15 Q Do you recall what it was intended to show?
16 A The gas station in a parking lot, in Costco's
17 parking lot in Brandywine.
18 Q Fine. Does it show the Costco store?
19 A No, sir.
20 Q Could you keep that handy and please compare it to
21 Exhibit 356? By the way, Mr. Guckert, I apologize. It was
22 my intention that you would have all of this handy. That's
23 why I sent that e-mail.
24 MR. BRANN: No, he wants you to keep that handy.
25 THE WITNESS: I'm going to hold on to this.

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1 MS. HARRIS: Is this correct?
2 MS. ADELMAN: 356, correct?
3 MR. ADELMAN: 356.
4 MS. HARRIS: Well, there's (a) through (e).
5 MS. ADELMAN: Yes, (e).
6 MR. ADELMAN: Oh.
7 MS. ADELMAN: Oh, it got, it got cut off.
8 MR. ADELMAN: It got cut off. Just a second.
9 MS. HARRIS: Yes.
10 MR. ADELMAN: I believe it's a (c).
11 MS. CORDRY: Yes, 356(c), Brandywine.
12 MR. ADELMAN: I believe it's a (c). It's where
13 all the --
14 THE WITNESS: It's an aerial.
15 MS. ADELMAN: Yes, it is (c).
16 THE WITNESS: He's looking at an -- he's looking
17 at an aerial photograph.
18 MS. HARRIS: It's 356?
19 MS. CORDRY: Yes, 356.
20 MS. ADELMAN: 356(c), as in candy.
21 MS. HARRIS: Oh, we don't have that one.
22 THE WITNESS: We don't have it?
23 MS. HARRIS: No.
24 THE WITNESS: Okay.
25 BY MR. ADELMAN:

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1 Q You don't have it?
2 A No, sir. They don't have it.
3 MR. GROSSMAN: All right. Can you pull File
4 Folder 6?
5 MR. BRANN: I got lucky last time. That one was
6 on top.
7 MR. GROSSMAN: Yes.
8 MR. ADELMAN: Mr. Grossman, I apologize to you
9 again. My intent by sending that e-mail was to eliminate
10 this.
11 MR. GROSSMAN: I understand. I appreciate that.
12 There's just a lot of documents in this case and everybody's
13 very busy. So --
14 MR. ADELMAN: I know. My point was to avoid
15 having to go all this time without the documents.
16 MR. GROSSMAN: I understand. All right. So 356?
17 MS. ADELMAN: Yes.
18 MR. ADELMAN: (C), as in Charlie. 356(c), as in
19 Charlie.
20 THE WITNESS: And it's an aerial photograph,
21 Doctor?
22 BY MR. ADELMAN:
23 Q Yes, sir.
24 A Well, that'll make it, should make it a little --
25 MS. ADELMAN: Of Brandywine.

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1 BY MR. ADELMAN:
2 Q Of Brandywine.
3 MR. GROSSMAN: And hopefully it'll be in this one,
4 but it might be the one before it. Let's see. I got 360,
5 358. We're getting closer. No. It's the file before this
6 one, one more down.
7 MR. BRANN: So File No. 5?
8 MR. GROSSMAN: Yes. All right. 353, 355 --
9 THE WITNESS: It's the --
10 MR. GROSSMAN: -- 35 --
11 MR. BRANN: The overall aerial --
12 THE WITNESS: It's a set of exhibits that had
13 different stores, I think --
14 MS. CORDRY: Yes.
15 THE WITNESS: -- on it.
16 MR. GROSSMAN: All right. 357, 356. (C), you
17 said?
18 MR. ADELMAN: (C.)
19 MR. GROSSMAN: (A), (b), (c). Okay. There you go.
20 THE WITNESS: Yes, sir, I see that.
21 BY MR. ADELMAN:
22 Q Do you agree that 356(c), which was previously
23 filed by Applicant, shows the gas station, the various parts
24 of the parking lot, and the Costco store?
25 A I do agree that, yes, sir.

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1 Q Would you agree that each one is attempting to
2 represent the -- would you agree that 356(c) would be a
3 better choice of figure to show the relationship of the gas
4 station and parking lot to the store than 45 --
5 MR. GROSSMAN: Well, the other one doesn't show
6 the store, so yes.
7 THE WITNESS: Correct, yes.
8 MR. ADELMAN: Precisely.
9 MR. GROSSMAN: Let's not belabor the obvious here.
10 MR. ADELMAN: Okay. Sometimes math will belabor
11 the obvious.
12 BY MR. ADELMAN:
13 Q Not to belabor the obvious, but can you now look
14 at the figure which I prepared, the one and only one exhibit
15 that I filed, which I believe has been labeled 522(b).
16 MR. GROSSMAN: 522?
17 THE WITNESS: It's the one that shows the
18 distances.
19 BY MR. ADELMAN:
20 Q It's the one that shows the distances, exactly.
21 MR. GROSSMAN: 522?
22 MS. ADELMAN: (B), as in boy.
23 MR. ADELMAN: (B), as in boy.
24 MR. GROSSMAN: Okay.
25 THE WITNESS: I gave it back.

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1 MR. GROSSMAN: I've got it.
2 THE WITNESS: I gave it back to you. I'm sorry.
3 MR. ADELMAN: Oh, I see it's been labeled 522(a),
4 as in apple.
5 MR. GROSSMAN: 522(a)?
6 MR. ADELMAN: That's according to the latest --
7 MR. GROSSMAN: Oh, you mean the picture?
8 MR. ADELMAN: Yes, exactly.
9 MR. GROSSMAN: Okay. Yes. I have that.
10 THE WITNESS: Okay.
11 BY MR. ADELMAN:
12 Q And, again, for the record, Mr. Guckert, I sent
13 this in my e-mail so you would have it.
14 A I understand. I have it, I have it in front of
15 me.
16 Q Good.
17 A The top, for clarification, to save a little time,
18 the top drawing is -- the top aerial shows Brandywine
19 Costco. The bottom aerial shows the Wheaton with the
20 proposed special exception area --
21 Q Precisely.
22 A -- and it's got, there are distances marked in
23 yellow, indicating, indicating what I think are the
24 distances along those lines. Am I correct?
25 Q Correct, precisely.

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1 A So that Costco has different distances along the
2 -- Brandywine has different distances along the parking lot
3 versus different distances on the Wheaton parking lot.
4 Q Precisely.
5 A Yes, sir.
6 Q Now --
7 THE REPORTER: Excuse me. Could we get
8 Mr. Guckert back near his microphone, please?
9 MR. GROSSMAN: Okay.
10 THE REPORTER: Thanks.
11 THE WITNESS: On my way.
12 MR. GROSSMAN: He's a traveling man.
13 BY MR. ADELMAN:
14 Q Now, finally, Mr. Guckert, before you sit down,
15 could you do me a favor --
16 A Is this better? Can you hear me now?
17 THE REPORTER: That's fine.
18 THE WITNESS: Okay.
19 BY MR. ADELMAN:
20 Q I want you to hold that, keep that figure, and
21 when I sent the e-mail, I said that I would send you a
22 modification of the figure, which I'm now handing you.
23 A Okay.
24 MR. ADELMAN: I guess you can call that 522(b).
25 I'm not sure.

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1 MR. GOECKE: Thank you.
2 MR. ADELMAN: There are a couple of copies.
3 MR. GROSSMAN: And --
4 MR. GOECKE: Thank you.
5 MR. GROSSMAN: -- Dr. Adelman, what is this that
6 you're handing me --
7 MR. ADELMAN: This is --
8 MR. GROSSMAN: -- a modification of the --
9 MR. ADELMAN: This is a modification of 522(a) --
10 MR. GROSSMAN: Okay.
11 MR. ADELMAN: -- to indicate by cross-hatching
12 areas in the two parking lots where cars were parked for
13 purposes of getting Mr. Guckert's assessment of the relative
14 parking areas available. So the combination of the two
15 figures -- one which makes the numbers clearer; the other
16 which more or less shades in the parking lot areas -- are
17 intended to be used together.
18 MR. GROSSMAN: Okay. So we'll call it 522(b), and
19 I'll say --
20 MR. ADELMAN: Okay.
21 MR. GROSSMAN: -- shaded version of 522(a) added
22 4/29/14. Does that accurately describe it?
23 (Exhibit No. 522(b) was marked
24 for identification.)
25 MR. ADELMAN: That does.

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1 MR. GROSSMAN: Okay.
2 BY MR. ADELMAN:
3 Q Mr. Guckert, as an expert observer of traffic
4 patterns and of parking lots now, would you agree that the
5 parking area available at the two sites is approximately
6 comparable? I have numbers if you wish.
7 A If you're -- I haven't counted the spaces. If you
8 tell me that a, b, and c at Brandywine are equivalent to a
9 and b at Wheaton, is that what you're --
10 Q Roughly.
11 A Okay. I'll --
12 Q Yes.
13 A -- I'll agree.
14 MR. ADELMAN: Okay. For the record, I've -- I
15 proffer that I've measured the areas and that at Brandywine
16 it's 227,000 square feet and that at Wheaton it's 220,000 --
17 MR. GROSSMAN: Well --
18 MR. ADELMAN: -- square feet, that parking area.
19 MR. GROSSMAN: -- in fairness, you can't exactly
20 proffer stuff that is not in the record yet if it's not
21 going to be put in the record by independent testimony.
22 Now, if what you're telling me is that you're going to be a
23 surrebuttal witness, maybe, or somehow this is getting into
24 the record, but you're just a questioner of the witness now.
25 MR. ADELMAN: Fine.

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1 MR. GROSSMAN: The proffers that were made before
2 were, by Ms. Cordry, were things that were presumably in the
3 record already or that she intends to introduce in the
4 record as a surrebuttal witness. Am I correct, Ms. Cordry?
5 MS. CORDRY: Yes. Yes.
6 MR. ADELMAN: Okay. Then --
7 MR. GROSSMAN: Okay. So, I mean, you can't -- so
8 that's the difference.
9 MR. ADELMAN: Understand. I intend to --
10 MR. GROSSMAN: Okay.
11 MR. ADELMAN: -- introduce them into the record
12 while I do my surrebuttal.
13 MR. GROSSMAN: All right.
14 BY MR. ADELMAN:
15 Q Then, Mr. Guckert, not to belabor the point, do
16 you agree that the parking areas available on the two sites
17 are approximately comparable?
18 A Well, the parking areas that you have noted -- one
19 for the entire Brandywine Costco and two for just the west
20 side of Wheaton -- are approximately the same.
21 Q Fine. Would you agree that looking at the upper
22 portion of the figure, either version, with or without the
23 cross-hatching, that that Brandywine site is different from
24 Wheaton's site in a number of respects?
25 MR. GROSSMAN: Well, that's, again, belaboring the

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1 obvious. They're different places in the geography of the
2 world; so they're clearly different. So what --
3 BY MR. ADELMAN:
4 Q Mr. Guckert, have you -- have you not testified
5 repeatedly that we're talking about a parking lot, that the
6 argument is about a parking lot?
7 A In the context that traffic goes up and down drive
8 aisles, people, pedestrians walk up and down drive aisles
9 and they load and unload their cart, that was the context in
10 which I said that.
11 Q And the implication, correct me if I'm wrong, was,
12 was it not, that parking lots are all pretty much the same,
13 they function the same, or have I misconstrued?
14 A Well, I think -- what I was talking about is that
15 there are cars backing in and out, there are people walking
16 up and down drive aisles, some of them have carts, some of
17 them do not have carts, some of them have big carts, some of
18 them have little carts, some are carrying bags. That's what
19 I was talking about parking lots, okay?
20 Q Okay. Would you agree that the parking lot had --
21 strike that.
22 That information on Brandywine was offered as part
23 of your rebuttal testimony, was it not, to establish another
24 comparison site to the Wheaton site?
25 A I don't think that was the reason. I think the

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1 reason was to, to see and to show cars that were, were
2 similar in volume but how they were exiting the gas station
3 and the infrequency and timing of exiting the gas station.
4 That was the video that we produced.
5 Q And I'll come to the video in a moment.
6 A Okay.
7 Q So you're not asserting, are you, that the
8 Brandywine site is comparable to the Wheaton site?
9 A No, I don't think we've ever done that. You know,
10 as it, I'm not going to repeat myself, but as it relates to
11 -- it had a purpose. We were not saying they were
12 simpatico.
13 Q Okay. Now could we go back to that Exhibit
14 456(c), the one with the summary sheet and the tabulation of
15 transactions?
16 A For Brandywine?
17 Q Correct.
18 MR. GROSSMAN: So, Dr. Adelman, where are we going
19 with this line?
20 MR. ADELMAN: I thought I was going to establish
21 that Mr. Guckert has not in fact rebutted any points in my
22 testimony.
23 MR. GROSSMAN: Well, I know, but we've past that
24 point now. So where are you going?
25 MR. ADELMAN: Actually, we have not --

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1 MR. GROSSMAN: Oh.
2 MR. ADELMAN: -- in my judgment.
3 MR. GROSSMAN: All right. So where are we headed?
4 That's what I'm trying to get an idea of, where I'm -- so I
5 can focus in on and understand better what you're getting
6 at. Do you want me to just shut up and listen? Is that --
7 MR. ADELMAN: Yes, I do. I hope I wouldn't say
8 it, but only I --
9 MR. SILVERMAN: Yes.
10 MR. ADELMAN: We're going to several points,
11 Mr. Grossman. I hope --
12 MR. GROSSMAN: All right.
13 MR. ADELMAN: -- in the broadest sense, we're
14 going to quote the truth, but --
15 MR. GROSSMAN: Oh, it always makes me worry when
16 somebody's going to quote the truth. That sounds too much
17 like a politician. All right. Go ahead. I'm sorry I
18 interrupted you. Go ahead, sir.
19 MR. ADELMAN: Mr. Grossman, if you ask me the
20 bottom line, then you're going to tell me, I think, that I'm
21 making a conclusory new statement, which has to come down
22 the road, and so --
23 MR. GROSSMAN: Well, I mean, part of --
24 MR. ADELMAN: -- I feel trapped either way.
25 MR. GROSSMAN: -- part of what I'm allowed to do

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1 is to try to find out what the issues are that we're
2 addressing and try to focus the attention to the issues that
3 are really before me. That's what I'm getting at.
4 MR. ADELMAN: Fine. What I'm attempting to do is
5 establish a big picture of principle, that Mr. Guckert, in
6 his rebuttal testimony, didn't in fact rebut anything I
7 said, and I don't know -- I don't know any other way to do
8 it except to address each and every exhibit and show that it
9 doesn't rebut anything in my testimony. I've asked
10 Mr. Guckert if he can give me an example of something he
11 rebutted, and I'm not sure of the response, but I believe it
12 was that, no, he didn't wish to do that. I could be wrong.
13 So I don't know any other way to do this except to ask these
14 questions.
15 MR. GROSSMAN: Well, here's the thing: I mean,
16 you're cross-examining him on his rebuttal testimony.
17 MR. ADELMAN: Correct.
18 MR. GROSSMAN: Therefore, you have to address --
19 your cross-examination has to be generally within the scope
20 of his direct.
21 MR. ADELMAN: Correct.
22 MR. GROSSMAN: So what is it in his direct that
23 you are addressing? It seems to me that you're going back
24 to your own testimony and trying to work backwards into
25 something and looking for something that he might have said

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1 in reference to. I'm saying you're approaching it
2 backwards. You're really, your scope of your
3 cross-examination has to be within, within the scope of his
4 direct on --
5 MR. ADELMAN: And his direct was a rebuttal of my
6 direct, is that correct?
7 MR. GROSSMAN: Well, you're saying it's not --
8 MR. ADELMAN: That's right.
9 MR. GROSSMAN: -- and so what's the point in your
10 cross-examination? I don't --
11 MR. ADELMAN: The point, Mr. Grossman, is actually
12 very simple. When I objected to admission of a number of
13 these exhibits, you told me -- I probably can find the exact
14 location -- that I would establish that in
15 cross-examination, which I'm attempting to do.
16 MR. SILVERMAN: It's a case of --
17 MR. GROSSMAN: Well, I'm not -- well,
18 Mr. Silverman has something to say.
19 MR. ADELMAN: It's a case of the dog that didn't
20 bark. Sometimes what he didn't say is as important as what
21 he did say.
22 MR. GROSSMAN: I know and that's a matter, isn't
23 it, for argument, not for cross-examination. When you, when
24 somebody hasn't said something on direct, has not addressed
25 something on direct, then --

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1 MS. CORDRY: You say thank you.
2 MR. GROSSMAN: -- if that's the case, then what
3 are you cross-examining on? He can cross-exam on
4 credibility, which is something that, that Ms. Cordry does,
5 and he can cross-examine on, you know, on elements that have
6 been covered in his direct, but he can't just pick things
7 out of the air that he talked about and that were not
8 covered on the direct of Mr. Guckert --
9 MR. ADELMAN: Oh, I --
10 MR. GROSSMAN: -- wouldn't you agree with that,
11 Mr. Silverman?
12 MR. SILVERMAN: Well, I'll tell you, it would be
13 very helpful to me -- I mean, what I understood Mr. Guckert
14 to say is that he doesn't really remember Dr. Adelman's
15 testimony, but I do think -- that doesn't mean that he was
16 not addressing it in some way or another. I'm just trying
17 to --
18 MR. GROSSMAN: Well, I don't --
19 MR. SILVERMAN: Yes.
20 MR. GROSSMAN: -- but then ask questions about the
21 things he --
22 MR. SILVERMAN: Yes.
23 MR. GROSSMAN: -- don't go through every element
24 of Dr. Adelman's own testimony to get to it. Address
25 specific things that were said on the direct by this witness

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1 that are subject to cross-examination --
2 MR. SILVERMAN: Right.
3 MR. GROSSMAN: -- because that's the scope,
4 generally speaking, in the business, wouldn't you agree?
5 The scope of cross-exam is limited by the scope of direct.
6 MR. SILVERMAN: I do agree.
7 MR. GROSSMAN: Okay. So that's the point.
8 MR. SILVERMAN: Yes.
9 BY MR. ADELMAN:
10 Q Then let's go to credibility. You're testifying
11 as an expert witness about traffic impact, is that correct,
12 Mr. Guckert?
13 A Yes.
14 Q An expert is reasonably familiar with the
15 materials that are being discussed, is that correct?
16 A Materials that I discussed, the materials that I
17 produced, yes.
18 Q Materials you produced or materials you testified
19 about?
20 A I don't know that there's a difference there.
21 Q Well, there actually is, because I've been asking
22 you, have I not --
23 MR. GROSSMAN: Well, hold on. You can't respond
24 to him. You can ask him a question.
25 BY MR. ADELMAN:

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1 Q I've been asking you, have I not, whether you felt
2 that presenting an aerial photo of Brandywine was in some
3 way rebuttal of me?
4 A I'm not sure I presented an aerial photo.
5 Q It was shown at the hearing when you were
6 testifying, and you --
7 A I don't know that that's the case. It could be,
8 but I sure don't remember submitting an aerial photo.
9 Q An aerial photo is in the record, is it not, in
10 connection with your testimony?
11 A That, I do not know.
12 Q You don't know what was part of your testimony?
13 A I do not know whether this came in through me.
14 I'm sorry. I --
15 MR. GROSSMAN: This being Exhibit?
16 THE WITNESS: This being Exhibit 456(b). I don't
17 know if it came in. If it did, okay, but I'm not sure what
18 the question is, sir.
19 BY MR. ADELMAN:
20 Q Could you look at the summary table on 456(c)?
21 A Yes, sir.
22 Q What, in your opinion, does that summary say?
23 A There's about three cars a minute leaving the gas
24 between noon and 4:00 p.m., over that four-hour period.
25 Q Three cars per minute?

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1 MR. GROSSMAN: At? At?
2 THE WITNESS: Brandywine.
3 MR. GROSSMAN: Brandywine.
4 BY MR. ADELMAN:
5 Q At Brandywine. Fine. What's the comparable
6 number for Wheaton?
7 A Three cars a minute.
8 MR. GROSSMAN: Projected?
9 THE WITNESS: Yes, sir, based, based upon, based
10 upon Sterling -- factored Sterling data.
11 BY MR. ADELMAN:
12 Q Fine. Would you agree that when cars are queued,
13 that a car leaving the gas station every three minutes means
14 that cars spend about three minutes fueling? They're
15 stacked one behind the other, is that correct?
16 A Cars -- Costco cars average about four minutes
17 fueling.
18 Q Not three minutes, four minutes?
19 A Four minutes fueling.
20 MR. GROSSMAN: So I guess the fact that they're
21 leaving -- there's a car leaving every three minutes means
22 there's more than one line --
23 THE WITNESS: Correct.
24 MR. GROSSMAN: -- is that the idea?
25 THE WITNESS: Correct.

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1 BY MR. ADELMAN:
2 Q But these numbers are per line, are they not?
3 MS. CORDRY: Actually, just to clarify one thing,
4 not one every three minutes, three every minute.
5 MR. GOECKE: Yes.
6 MR. GROSSMAN: Oh, three every minute, okay, yes.
7 MS. CORDRY: That would be a very slow Costco
8 store.
9 MR. GROSSMAN: Right, although I want you to note,
10 I spent two hours at the gas station, not Costco, on Friday
11 night as my car wouldn't start after I, but that's a -- you
12 don't have to factor that into the numbers.
13 THE WITNESS: There was a question, Dr. Adelman,
14 that I did not answer but I need you to repeat, please.
15 BY MR. ADELMAN:
16 Q Does the number of cars leaving the gas station
17 give any information on how long it takes a car to fuel at
18 the gas station?
19 A No, sir.
20 Q Thank you. Perhaps we can do this without --
21 would you be willing to show a small portion of the video
22 that you testified about, showing cars leaving the
23 Brandywine station?
24 MR. GROSSMAN: You can show it. I mean --
25 THE WITNESS: You can show it.

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1 MR. GROSSMAN: -- if it's in the record, you can
2 show it.
3 MR. ADELMAN: Okay. I won't show it. I'll ask
4 the question.
5 BY MR. ADELMAN:
6 Q The numbers that you have in the summary chart for
7 cars leaving are approximately 175 for each of the one-hour
8 periods, is that correct?
9 A I did not -- and we're now, for clarification,
10 talking about 456(c), I can see from here, correct?
11 Q What?
12 A I did not prepare this.
13 Q But you can read the numbers on the chart?
14 A Yeah, absolutely. Go ahead. 177, 12:00 to 1:00.
15 Q Okay, fine. So the average of all those numbers
16 is approximately 176, is that correct?
17 A Approximately all the numbers on, from 12:00 to
18 1:00, 1:00 to 2:00?
19 Q Exactly.
20 A I'll say, yes, sir.
21 Q Fine.
22 MR. GROSSMAN: If you know. I mean, do you --
23 THE WITNESS: It looks approximately 176. I'm not
24 worried about fractions. Go ahead.
25 BY MR. ADELMAN:

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1 Q Fine. How many transactions are expected -- how
2 many cars leaving the Wheaton site are expected at
3 comparable hours to those shown for the Brandywine site?
4 A Comparable hours?
5 Q Yes.
6 A The, I'll tell you, the peak one-hour, from 11:00
7 to 12:00, we've got it estimating at 220 to 225 --
8 Q Fine.
9 A -- with a -- and I'm wondering if I have that
10 spelled out.
11 MR. GROSSMAN: And, Dr. Adelman, what will it show
12 me when you -- when he comes up with a number, if he can
13 come up with a number?
14 MR. ADELMAN: That there's a significant
15 difference in the number of cars exiting the two gas
16 stations.
17 MR. GROSSMAN: Brandywine versus Wheaton?
18 MR. ADELMAN: Precisely.
19 MR. GROSSMAN: Okay.
20 THE WITNESS: I do have a chart here. It is -- I
21 don't think it's been submitted. It's my own document.
22 MS. HARRIS: It's been submitted.
23 THE WITNESS: Which one? No, that's not hourly.
24 He's -- I think Dr. Adelman is asking me for the same hours
25 of the day at Brandywine, Exhibit 456, 12 o'clock, 1

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1 o'clock, 2 o'clock, 3 o'clock, okay? Am I correct,
2 Dr. Adelman?
3 BY MR. ADELMAN:
4 Q Correct.
5 A Okay. So what we have -- what I have in my table
6 for Wheaton would be 200 versus 177, 207 versus 176, 213
7 versus 175, then 207 versus 174.
8 Q Okay.
9 MR. GROSSMAN: So it's 10 or 15 percent higher at
10 Wheaton?
11 THE WITNESS: Not percent, 10 or 15 cars. Well,
12 it depends on the hour. You know, if you're at 200 versus
13 177, that's 23 cars, 10 percent in fraction.
14 MR. GROSSMAN: Okay.
15 THE WITNESS: The numbers average out to still,
16 because of the numbers you're dealing with, about three
17 cars, three exits a minute.
18 MR. GROSSMAN: Okay.
19 BY MR. ADELMAN:
20 Q Three exits a minute at the Brandywine site and
21 four a minute at the Wheaton site?
22 A No, sir. No.
23 MR. GROSSMAN: I think he said three at both,
24 didn't he?
25 THE WITNESS: It's three -- you know, 200, 207,

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1 you do the math; it's three and a fraction. We're talking
2 about seconds here. We're talking about seconds here.
3 BY MR. ADELMAN:
4 Q Understood. Understood.
5 A Okay. During the peak for Saturday for Wheaton,
6 the peak one-hour could be a car every 16 seconds versus
7 every 20 seconds, a four-second difference.
8 MR. SILVERMAN: Twenty-five percent.
9 THE WITNESS: You can -- we can do the math in a
10 percentage. Do the math, the seconds: one thousand one,
11 one thousand two, one thousand three, one thousand four.
12 BY MR. ADELMAN:
13 Q By showing the pattern of cars exiting from the
14 gas station at Brandywine, were you not attempting to show
15 that those cars move out of the gas station freely, that
16 they don't interrupt passage of pedestrians and so forth?
17 Was that the purpose of that testimony?
18 A I think the purpose of the testimony was twofold:
19 one, to show what it looked like for a car to leave a
20 station every 20 seconds and, two, that they were going out
21 through the parking lot.
22 Q They were going out into a parking lot?
23 A Yes.
24 Q The parking lot from the aerial photos we just
25 looked at is at the periphery of the entire parking lot?

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1 A That's correct.
2 Q Whereas, would you agree, the cars exiting the
3 Wheaton site, if it is constructed, will be exiting into the
4 major part of the parking lot that serves the mall?
5 A I agree with one exception. I mean, it enters
6 into the, the, what you have on 522(b) as Area A --
7 Q Yes.
8 A -- on 522(b), which is a parking lot that serves
9 Costco and Target. I --
10 Q And other stores?
11 A Other stores because you can enter other stores.
12 Q In fact, the parking lot at Wheaton serves, with
13 or without the Costco gas station, serves a number of
14 stores?
15 A Yes, sir.
16 Q Fine. Whereas the parking lot at Brandywine
17 serves one store?
18 A Correct.
19 Q And the gas station at Brandywine is at the
20 periphery, is it not?
21 A As I stated, the gas station for Brandywine is
22 located at the, what is the north end of the parking area.
23 Q Approximately 200 feet from the Costco store, I
24 believe you estimated, is that correct?
25 A Yeah, and I'm looking at your exhibit --

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1 Q Yes.
2 A -- and it's 200-and-some feet.
3 Q Fine. Is it not accurate to say that the number
4 of pedestrians leaving the Costco store or going to the
5 Costco store at Brandywine who will encounter cars leaving
6 the gas station at Brandywine is relatively small in
7 comparison to the similar situation at Wheaton? Sorry that
8 was so convoluted. I can rephrase if you like.
9 A I think what I heard you say was that there are
10 more cars parked for people leaving Wheaton.
11 Q No.
12 A No.
13 Q I'm sorry. I -- that was poorly worded. Let me
14 rephrase. Pedestrians walking through the parking lot in
15 the Wheaton situation are more likely to encounter a car
16 exiting the proposed gas station, are they not, than at the
17 Brandywine site?
18 A I'm not sure that's the case and that's because,
19 you know, the -- if I'm a driver leaving gas, I want to get
20 out, back out to the ring road to leave sooner than later.
21 My goal would not be to drive through Parking Lot A to exit.
22 I'm going to make a, make a 180 and get back out to the ring
23 road as expeditiously as possible.
24 So, I mean, it's possible because, because of the
25 way Brandywine is set up versus Wheaton, but the idea would

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1 be that, as a driver leaving gas in Wheaton, get myself back
2 out to the ring road. That's the important thing, and I
3 think that's what they're going to do. They're going to go
4 east to the Wendy's entrance or WMATA entrance, or they're
5 going to go west out to Valley View.
6 Q But when they leave the gas station at Wheaton,
7 they are entering a part of the parking lot proper, are they
8 not?
9 A Well, that's, that's --
10 Q I put a small arrow there.
11 A Yeah, you did. There's a, there's a, an east-west
12 drive aisle that allows cars -- and I'm now referring --
13 Q It's Exhibit 230, I believe, upper left.
14 A 230. Referring to Exhibit 230 -- where cars can
15 leave the gas station, go into their own east-west drive
16 aisle, and then come back down a drive aisle on both sides
17 of the special exception area to get onto the ring road. I
18 think they're going to -- if I'm, got gas and I'm leaving,
19 received gas, bought gas and leaving, I'm going to get back
20 out to the ring road unless I have a reason to go back into
21 the parking lot.
22 Q Is it not correct to say that getting back to the
23 ring road involves going into a portion of the parking
24 lot --
25 A You can say that if --

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1 Q -- where pedestrians are walking?
2 A You can say that if you want. There's, there's a
3 few -- there's a few parking spaces along the west side of
4 the, of the store, and there's a few parking spaces along
5 the, excuse me, yeah, along the west side of the store and a
6 few parking spaces along the west side of the special
7 exception area. So there, there are some spaces there, yes.
8 Q And, Mr. Guckert, I'm not trying to be
9 argumentative. It's not a question of what I want to say.
10 I'm attempting to get you to state what you see as the
11 reality.
12 A The reality is there are a few cars -- a few
13 spaces would be passed as you're getting back out to the
14 ring road.
15 Q A few spaces?
16 A Yes.
17 Q Would you care to estimate how many spaces?
18 A If, if the spaces on the west side of special
19 exception area are not used by Costco employees, although I
20 think that there's discussion about having some of them
21 dedicated to Costco employees, I'm going to estimate,
22 because you asked me to estimate, 15 or 20 spaces on the
23 west side of special exception area and five or six on the,
24 well, the west side of the Costco store.
25 Q And you're aware of how many spaces are preferred

1 spaces for Costco customers in that lot, are you not?
 2 A Correct, I'm not.
 3 Q You are not. If I told you that the number was
 4 somewhat less than 400, would that seem like a reasonable
 5 number?
 6 A Less than 400? How were they preferred? By the
 7 size? You say the preferred spaces; is that what you said?
 8 Q Yes.
 9 MR. GROSSMAN: What do you mean by that, is what
 10 he's asking.
 11 BY MR. ADELMAN:
 12 Q What the Applicant has specified, that it doesn't,
 13 it doesn't designate specific spaces that are only usable by
 14 Costco but it says that Costco has a certain number of
 15 preferred spaces.
 16 A Yeah, I don't know how that, how that is enforced
 17 on preferness. I think, I think Costco has -- when they
 18 built the lot or restriped the lot, they, they had some
 19 wider spaces --
 20 Q Yes.
 21 A -- to make it more easier for customers to get
 22 packages in and out the side of the car, but I don't know
 23 that number, but I -- if you tell me it's, it's whatever
 24 number, I'll believe you because you probably looked at it a
 25 whole lot closer than I.

1 MR. GROSSMAN: So, Dr. Adelman, where are we
 2 headed here?
 3 MR. ADELMAN: Where we're headed is to building a
 4 case, excuse me, rebutting an argument that involves a
 5 number of incremental differences, and the question is, how
 6 many small differences that in and of themselves seem
 7 unimportant add up to a significant impact? That's where
 8 we're headed.
 9 MS. CORDRY: Can we take a short break, in any
 10 case?
 11 MR. GROSSMAN: Yes, in just a moment. I don't
 12 want to say that so many small things can't add up to
 13 something. It's just that, don't you think it's unlikely in
 14 the context of a case with this much evidence that these
 15 little points that I guess you're referring to are not going
 16 to be significant --
 17 MR. ADELMAN: Actually --
 18 MR. GROSSMAN: -- in order to warrant the hearing
 19 time of 10, 15 people here?
 20 MR. ADELMAN: Let me address the second part
 21 first, Mr. Grossman. This hearing time would have been
 22 greatly lessened had Applicant's counsel provided
 23 Mr. Guckert with the information I wanted him to have. So
 24 the lost time is not because I'm dragging things out. I
 25 attempted to expedite things.

1 Now, to address the first point, I understand your
 2 argument, your statement, your assertion that at some point
 3 you have more than enough data and adding small increments
 4 is not going to help you, but by the same token, there are
 5 certain small increments that are helpful.
 6 MR. GROSSMAN: Well, perhaps. It's just that it
 7 seems to be approached so elliptically, that it would be so
 8 much easier, if you want to make this, these points, so you
 9 testify about these points. Trying to somehow arrive at
 10 them through cross-examination that doesn't really directly
 11 address things that this witness testified about is the
 12 problematic thing. That's, that's the problem, I think.
 13 MR. ADELMAN: I understand and --
 14 MR. GROSSMAN: So I'd ask you to try to -- we're
 15 going to break here -- but I'd ask you to try to hone the
 16 rest of your cross-examination into things that this witness
 17 testified about on the direct of his rebuttal evidence,
 18 okay? That's really what you're required to do on a
 19 cross-examination.
 20 MR. ADELMAN: And that's what I've been doing,
 21 Mr. Grossman.
 22 MR. GROSSMAN: Okay. All right. We'll take a
 23 break, five minutes.
 24 (Whereupon, a brief recess was taken.)
 25 MR. GROSSMAN: All right. Back on the record.

1 BY MR. ADELMAN:
 2 Q Mr. Guckert, with reference to Exhibit 456(e) and
 3 456(f) or 456(e), the two versions, these are the diagrams
 4 with the multiple routes by which cars can exit the Wheaton
 5 site.
 6 A Yes, sir.
 7 Q You've shown six possible routes of exit, is that
 8 correct?
 9 A Yes, sir.
 10 Q But, in your expert opinion, most people will
 11 choose to use Routes 1 and 6, is that correct?
 12 A I think, I think -- and I'm looking for the
 13 exhibits -- but the ones that looped back around closest to
 14 the ring road, those are the ones, I think, they'll be
 15 using.
 16 Q In your opinion, is it unlikely cars will use the
 17 other four points of exit?
 18 A It depends on where they're going, you know, if
 19 they're going back into the parking lot or they're picking
 20 somebody up in front of the store or they're going to Target
 21 or something. I would expect that most folks will shop, buy
 22 gas, and leave in that order versus buy gas, shop. I
 23 think --
 24 Q Okay.
 25 A -- they'll shop, buy gas, leave versus the other

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1 way.

2 Q I want to make sure I understood --

3 A Sure.

4 Q -- shop, buy gas, leave?

5 A Leave. That's what I, that's what I think --

6 Q Following that logic -- I know your comments about

7 logic, Mr. Grossman -- following that logic, if a driver

8 with one or two passengers shops at the Costco store, for

9 example, and then leaves the Costco store and goes to the

10 gas station for gas, they will have to drive, will they not,

11 through the parking lot to exit the parking lot and loop

12 back into the gas station? Is that not correct?

13 A That's correct.

14 Q So then is it not correct to say that cars

15 patronizing the gas station, if they had come from the

16 Costco store previously, are in fact traversing the parking

17 lot by more than simply the two drive aisles?

18 A Sure. In other words, they're leaving the parking

19 lot, they're going to the ring road, they're coming back in

20 and buying gas and leaving. That --

21 Q Fine.

22 A -- that would be what I think. Now, I have no

23 evidence myself from Costco that that's the way it's done.

24 I don't even know whether, whether they know. They may know

25 what the typical pattern is, but I do not know.

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1 Q But some, some percentage of cars that are making

2 the joint visit to Costco store, warehouse store, and Costco

3 gas station are going to be traveling through other parts of

4 the parking lot other than simply the two --

5 A Yes.

6 Q -- in your words, preferred routes?

7 A Yes, sir.

8 Q Fine. And that will add some increment to the

9 congestion, is that correct?

10 A It will add more cars to the drive aisle,

11 depending on where they're coming from.

12 Q Fine. And adding more cars to any kind of passage

13 point for cars constitutes an increment in congestion, is

14 that not correct?

15 A Well, I'm not sure I'd characterize it that way.

16 You know, if one car is there and two cars creates

17 congestion, then, then that definition, but I'm not sure

18 it's going to create congestion, in my opinion.

19 Q Let me rephrase. Cars moving through a parking

20 lot constitute traffic --

21 A Yes.

22 Q -- do they not?

23 A Correct.

24 Q Now, more cars moving through any space -- a road,

25 parking lot, whatever -- is more traffic?

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1 A That's correct.

2 Q Congestion is a way of describing how much

3 impedance of traffic flow there is, is it not?

4 A Yeah, but I think it's -- cars in a parking lot

5 doesn't mean, doesn't equal congestion, and a few more cars

6 in a parking lot doesn't equal more congestion. It equals

7 more traffic, I concur with you on that, but I'm not sure

8 traffic equals congestion. That's not the way I would

9 phrase it as in my life.

10 MR. GROSSMAN: You look puzzled, but I guess what

11 he's saying, if you had a highway and you had five cars on

12 it and there was no impedance of flow and then you added

13 another five cars and there was still no impedance of flow,

14 would you call that congestion?

15 MR. ADELMAN: I think the term congestion is a

16 relative term, obviously, and I'm not talking about -- I was

17 not asking about one car more in a situation where there's

18 only one other car. I'm asking a question about a parking

19 lot which is nearly full at peak hours.

20 MR. GROSSMAN: I was just reacting to the puzzled

21 look on your face when he said just because you add more

22 cars doesn't mean you have more congestion.

23 MR. ADELMAN: The puzzled look reflected my

24 failure to understand Mr. Guckert's parsing of the term

25 congestion.

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1 MR. GROSSMAN: Well, is that really parsing? I'm

2 just saying that if you -- if he doesn't think there's

3 congestion in the first place, then adding more cars does

4 not necessarily mean congestion, does it? And I was just

5 giving you a hyperbolic example of where it would not be

6 congestion.

7 MR. ADELMAN: I understand, and in the most

8 general sense, if a road is empty and you add one car,

9 there's no congestion.

10 MR. GROSSMAN: Or five cars and you add five more,

11 there's no congestion --

12 MR. ADELMAN: Not much congestion.

13 MR. GROSSMAN: -- even though you've doubled the

14 number.

15 MR. ADELMAN: Right --

16 MR. GROSSMAN: So I'm just --

17 MR. ADELMAN: -- but if you have a parking lot

18 which is crowded and you add one or two cars or five or 10,

19 doesn't that constitute increasing congestion?

20 THE WITNESS: And the answer is that our

21 definition, traffic parlance, is that congestion is when,

22 when -- arise when demand approaches or exceeds capacity.

23 So that, that is our definition of congestion -- our

24 definition, traffic engineers, transportation planners.

25 MR. GROSSMAN: And do you think that the proposed

1 Wheaton gas station would create congestion within the
 2 parking lot?
 3 THE WITNESS: No, sir, not at, not at one car
 4 every, every 15 or 20 seconds exiting with -- many of which
 5 will be, will be going back out to the ring road. I just
 6 don't see that as an issue that where, congestion or a
 7 nuisance type of thing.
 8 MR. ADELMAN: All due respect, Mr. Grossman, I
 9 wasn't asking whether the one or two cars would create
 10 congestion. I was asking whether they would increase
 11 congestion.
 12 MR. GROSSMAN: Right. I think -- all right. So
 13 is there congestion, in your opinion, in that parking lot
 14 now? And would it be, if it -- well I'll ask that, the
 15 first question. Is there congestion in that parking lot, in
 16 the Wheaton Costco parking lot that we're talking about
 17 right now?
 18 THE WITNESS: Not according to the traffic
 19 definition.
 20 MR. GROSSMAN: And would the addition of the cars
 21 that are projected for the, to be, to leave the Costco gas
 22 station, would that create congestion, in your opinion?
 23 THE WITNESS: In my opinion, it would not.
 24 MR. GROSSMAN: Okay. I realize that this is an
 25 issue, and I realize there's been evidence suggesting, from

1 the opposition, suggesting there would be, and I'm not
 2 making up my mind one way or the other. I'm just saying
 3 that requesting that he speculate and add a speculation to a
 4 speculation to arrive at a supposition is not going to
 5 change my mind on that. I've heard the evidence on this.
 6 So that's --
 7 MR. ADELMAN: Understood. Understood.
 8 MR. GROSSMAN: -- that's what I'm trying to get
 9 across to you.
 10 MR. ADELMAN: Understood. And I'm not trying to
 11 restate the original case-in-chief. I'm attempting to get
 12 at what was or was not made as a point in the rebuttal
 13 testimony.
 14 MR. GROSSMAN: All right.
 15 BY MR. ADELMAN:
 16 Q Your firm made a number of video records of, well,
 17 various sites, but at least one you showed of an existing
 18 situation in the Wheaton parking lot, the parking lot to the
 19 west of the Costco store, did you not? You presented it
 20 when you testified.
 21 A Inside the parking lot?
 22 Q Yes.
 23 A I don't think so. I think what we did was we
 24 counted cars using video technology on the ring road on that
 25 west side but not inside the parking lot, no, sir.

1 Q Am I not correct that you showed a video of cars
 2 in the parking lot moving or attempting to move from the
 3 parking lot to the drive aisle close to the Target store?
 4 A I don't think that was me, sir.
 5 MR. GROSSMAN: That might have been Ms. Cordry.
 6 THE WITNESS: Yeah.
 7 MS. CORDRY: It might have been mine. I showed
 8 one on his first or second, first day, I believe, showing
 9 cars pulling into that east-west drive aisle, if that's the
 10 question you're asking.
 11 BY MR. ADELMAN:
 12 Q You showed no such video?
 13 MR. GROSSMAN: He says he can't, he doesn't recall
 14 being there.
 15 THE WITNESS: My videos were all related to
 16 turning movement counts on the ring road entrances to the
 17 parking lot and the other intersections within the mall.
 18 BY MR. ADELMAN:
 19 Q And the ring road entrance that, one of the ring
 20 road entrances to the parking lot was the so-called drive
 21 aisle that goes past the Target store, was it not?
 22 A Yes, sir. We counted, as I recall, let me look, I
 23 think we counted that Target entrance to the -- yeah, we
 24 counted, we counted that, where the Target, I'll call it the
 25 Target entrance -- it's really the east-west drive aisle

1 that runs along the south side of Target out to the ring
 2 road -- we did count that, yes.
 3 Q You had video of it from which --
 4 A We had video of it in order to do the counts, and
 5 we provided that to you.
 6 Q Right. Did you observe those videos yourself?
 7 A No, sir.
 8 Q Have you observed the parking lot yourself at all?
 9 A That parking lot on the west side of Costco? Yes,
 10 sir.
 11 Q Is it fair to say that cars attempting to park at
 12 the parking lot or leave from the parking lot experience
 13 some delay when the parking lot is full --
 14 A Of course.
 15 Q -- versus when it's empty?
 16 A Well, of course --
 17 Q Fine.
 18 A -- because that's the purpose of the parking lot,
 19 to --
 20 Q That's the purpose of parking lots.
 21 A -- to harbor the cars.
 22 Q Fine. In your expert opinion -- and this may seem
 23 a small increment, but I don't think it is, testifying -- in
 24 your expert opinion, on average, when the parking lot is
 25 full, how long does it take a car to leave a parking spot or

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1 to enter a parking spot, and --
2 A I've not looked. I've not looked at that.
3 Q If the average car is parked in the lot for, let's
4 say, a half hour, would it be safe to assume that the car
5 upon entering the lot spends a minute looking for a slot?
6 A I don't understand what's --
7 MR. GROSSMAN: Are you asking him to speculate on
8 that? When you say would it --
9 MR. ADELMAN: Not asking him to speculate. I'm
10 asking for his expert opinion based on his experience.
11 BY MR. ADELMAN:
12 Q The question is, how much time do cars spend
13 moving slowly, which is a variation on the highway, when
14 they come into the parking lot and later when they leave the
15 parking lot?
16 A I don't know.
17 Q No idea?
18 MR. GOECKE: Objection. Asked and answered.
19 MR. GROSSMAN: Sustained.
20 MR. ADELMAN: Fine. Thank you.
21 BY MR. ADELMAN:
22 Q Okay. Finally -- almost done -- you made a number
23 of comments during your testimony, did you not, that had to
24 do with your opinion as to the economic success of the
25 Wheaton situation?

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1 A I did.
2 Q And you recall when I objected to your testifying
3 because you're not an expert in economic matters?
4 A I do.
5 Q Speaking as a non-expert but a person who's built
6 his own business, has some experience with business in
7 general, is it safe to say that simply because one or two
8 stores in the mall are experiencing success, that doesn't
9 mean that all stores are experiencing success?
10 MR. GROSSMAN: You're asking him as a laywitness
11 now, I take it?
12 MR. ADELMAN: Yes, precisely, because he is, he's
13 not, he's not an expert in economics --
14 MR. GROSSMAN: Right.
15 MR. ADELMAN: -- but you said that I could pursue
16 that thread.
17 MR. GROSSMAN: All right.
18 MR. ADELMAN: I'm pursuing it.
19 MR. GROSSMAN: Yes.
20 THE WITNESS: Sure, not all stores are going to be
21 equally successful.
22 BY MR. ADELMAN:
23 Q Fine. And, in general, you can't -- is it correct
24 to say that some stores, will they in fact not regard the
25 success of other stores as in their benefit?

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1 A I find that hard to understand.
2 Q Fine.
3 MR. ADELMAN: I have two last questions which I'm
4 not sure it's appropriate to ask Mr. Guckert. It may
5 require bringing those who made the comments up to testify,
6 but I'll ask him first.
7 MR. GROSSMAN: Well, I guess I'll listen to what
8 your question is. I don't --
9 MR. ADELMAN: Okay.
10 MR. GROSSMAN: -- know about bringing anybody
11 else, but go ahead.
12 BY MR. ADELMAN:
13 Q During your testimony, Mr. Brann made some
14 comments about the hours of operation of the, I believe it
15 was the Sterling store, but the general thread was that, as
16 I recall it -- and I can find the exact location -- that
17 Costco stores did not necessarily stay open exactly for the
18 hours that were specified, that they could, at the
19 discretion of the operator, stay open longer. Do you recall
20 those comments by Mr. Brann?
21 A I don't -- I recall the general comments but not
22 specific enough to answer your question.
23 Q Fine.
24 MR. ADELMAN: Rather than pursue this with
25 Mr. Guckert, Mr. Grossman, I'd like to ask if Mr. Brann can

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1 be called to the stand, either today or next time, to
2 explain those comments?
3 MR. GROSSMAN: I think you might want to consult
4 with your fellow travelers here before you, before you
5 suggest that, and you can't pursue it any further with him
6 because he says he doesn't remember.
7 MR. ADELMAN: Fine. Okay. Then we're done. I'll
8 make the rest of my comments as part of my surrebuttal.
9 MR. GROSSMAN: All right. Okay. Is there any
10 redirect?
11 MS. HARRIS: Yes, sorry.
12 MR. GROSSMAN: Oh, I was hoping you would say no.
13 I almost --
14 MS. HARRIS: Squeeze your little toy.
15 MR. GROSSMAN: Yes. I toyed with the idea of
16 saying, you don't have any redirect, do you? All right.
17 How long do you think your redirect will be?
18 MS. HARRIS: Probably an hour.
19 MR. GROSSMAN: Oh, really? All right.
20 MS. HARRIS: Well, I could consult with Mr. Goecke
21 for five minutes.
22 MR. GOECKE: Can we take three minutes and try to
23 winnow it down?
24 MR. GROSSMAN: Yes. Yes.
25 MR. GOECKE: Thank you.

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1 (Whereupon, a brief recess was taken.)
2 MR. GROSSMAN: All right. Redirect.
3 MS. HARRIS: Okay. So that reprieve helped us
4 shave off --
5 MR. GROSSMAN: Two hours.
6 MS. HARRIS: And I was only at an hour. So now
7 we're, I --
8 MR. GOECKE: So we get an hour back.
9 MS. CORDRY: Good.
10 MS. HARRIS: -- bought back an hour.
11 MR. GROSSMAN: Owe you an hour.
12 MS. HARRIS: No.
13 REBUTTAL REDIRECT EXAMINATION
14 BY MS. HARRIS:
15 Q Okay. Mr. Guckert, the first issue I want to
16 discuss is the closing of the curb cuts --
17 A Yep.
18 Q -- that was brought up when Ms. Cordry
19 cross-examined you, and I want to clarify what's in the
20 record. South of the east-west drive aisle, how many,
21 currently how many drive aisles are there, I'm sorry, curb
22 cuts leading to the ring road?
23 A South of?
24 Q The east-west drive aisle.
25 A And I'm referring to, I think you said it was 230.

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1 MR. GROSSMAN: Yes.
2 THE WITNESS: Number 230. Are you referring to
3 this as the --
4 BY MS. HARRIS:
5 Q Yes.
6 A -- east-west drive aisle? Well, currently there
7 is -- well, this isn't current. So --
8 MR. GROSSMAN: You can take the little green --
9 MS. CORDRY: Well, that --
10 MR. GROSSMAN: -- was there a reason for the
11 little green tab you put on there, Dr. Adelman? Sir --
12 MS. ADELMAN: Yes.
13 MR. GROSSMAN: -- was there a reason for the --
14 MR. ADELMAN: What?
15 MR. GROSSMAN: What's the reason for the green
16 tab?
17 MR. ADELMAN: Doesn't matter.
18 MR. GROSSMAN: Okay.
19 MS. CORDRY: Probably the aerial, the one that
20 we've been using before.
21 THE WITNESS: How about this one?
22 MR. BRANN: No, that's not going to show you
23 current.
24 MS. CORDRY: Right. That's what I'm saying, the
25 aerial photo, which is current.

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1 MS. HARRIS: Sorry.
2 MS. CORDRY: Is that still up there? It might
3 still be.
4 THE WITNESS: Yeah. The -- I'm referring now to
5 128, Exhibit 128(b), and the east-west drive aisle has
6 access to the ring road, and then there are two other
7 north-south drive aisles onto the ring road.
8 BY MS. HARRIS:
9 Q So there's how many total from the east-west drive
10 aisle --
11 A Right.
12 Q -- including that walking around to the --
13 A The existing east-west?
14 Q Yes.
15 A Well, there's two -- I've got to ask a question
16 here. Are you -- when you say east-west drive aisle, I'm
17 pointing to one that goes from the Costco store all the way
18 out.
19 Q Correct.
20 A Okay. So --
21 Q Count that as one, yes.
22 A So count that as one?
23 Q Right.
24 A All right. And then there's one to the south --
25 Q Yes.

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1 A -- is two, and there are, it appears to be two,
2 two more in the vicinity of the special exception area.
3 Q For a total of?
4 A So a total of four.
5 Q Okay. And upon approval of the station and
6 construction, how many will there be?
7 A Bunch of monkeys. Upon approval -- that doesn't
8 show it. That doesn't show it. I'm going to refer --
9 MR. BRANN: Wes, the one that's up there.
10 THE WITNESS: Upon approval of the station, the
11 east-west drive aisle will be one. Then there will be two
12 more. So there'll be three. So we go from four to three,
13 plus the entrance to the gas station.
14 BY MS. HARRIS:
15 Q And, in your opinion, is that reduction of four to
16 three, does that cause any type of congestion for people
17 exiting the parking lot?
18 A No, in my opinion, it does not. Having, having
19 three ways to get onto the ring road plus a fourth up at
20 Target for that, those number of parking spaces is fine.
21 Q And is there any rule from an industry in terms of
22 exits from a parking lot?
23 A We would, we would typically look at 400 cars to
24 600 cars -- 400 cars to 600 cars as being, in a parking lot,
25 as being acceptable.

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1 MR. GROSSMAN: For how many exits?
2 THE WITNESS: I'm sorry, for each exit.
3 MR. GROSSMAN: For each exit?
4 THE WITNESS: Yeah, 400 to 600, yes. When
5 garages, when garages are designed, you will typically look
6 at a gate for 400 cars. So if you've got two gates, you can
7 normally accommodate an 800-car garage.
8 MR. GROSSMAN: Okay.
9 BY MS. HARRIS:
10 Q Okay. Thank you. And moving on to the issue of
11 pedestrians in parking lots, in response to one of
12 Ms. Cordry's questions on April 1, you confirmed that
13 Exhibit 128 indicated 1600 pedestrians coming out of
14 Entrance 13 to the mall. Do you recall that?
15 A Yes.
16 Q And can you describe where the majority of those
17 1600 pedestrians are coming from?
18 A Referring again now to Exhibit 230, those, those
19 pedestrians come out of the, at the north end of the Costco
20 store. There's a common area that serves both the Costco
21 store on the south and mall patrons on the north. So they
22 come out in the, I'll say, 75 percent of the way north on
23 that particular parking field.
24 MS. CORDRY: I'm sorry. I'm not following that.
25 THE WITNESS: Sure. The pedestrians come out in

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1 the northern three-fourths area of the parking lot.
2 BY MS. HARRIS:
3 Q So is it correct to say that the majority of the
4 pedestrians won't in any way interfere with people exiting
5 from the gas station?
6 A Correct, with the gas station being at the
7 southern probably third of the parking lot, and the
8 pedestrians that were discussed come out at the northern
9 three-fourths section of the parking lot.
10 Q And, in your opinion, at what point are there ever
11 too many cars and too many -- too many vehicles in a parking
12 lot and too many pedestrians? Is there a saturation point?
13 A I'm unaware that there's an analysis of that, I
14 mean, too many cars. The parking lot is there to serve the
15 number of cars that are, that are, that are striped. If you
16 get to the point where cars are parked long term in the
17 drive aisles, then clearly you've reached a saturation
18 point, but that's not going -- that's just not going to
19 happen. So, as long as you have parking spaces, that's what
20 they're there for.
21 Q And I'm going to the question of background.
22 A Of what?
23 Q Background trips for a moment, the --
24 A Yes.
25 Q -- testimony earlier this afternoon. When you --

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1 briefly explain, please, what background trips are.
2 A Background traffic or background trips are the
3 traffic, relates to the traffic projections of approved but
4 not yet built subdivisions or developments.
5 Q And why, in your professional opinion, did you not
6 include them in any calculation about the increased
7 potential traffic on the mall once the gas station is built?
8 A When we undertake an analysis like this,
9 especially a retail analysis, traffic is coming in and out
10 of the mall all day, all week long, and it really is driven
11 by the uses within the mall. And just assuming that
12 Mr. Jones' 40-unit townhouse development is built within
13 proximity of the mall doesn't mean that Mrs. Smith is going
14 to be an immediate shopper in the mall. They do other
15 things. They go other places.
16 So it's just not a, I would say, a standard
17 practice to, to make that kind of a -- you make assumption
18 of the new uses within the mall but not assuming -- it's
19 just impractical to assume that Mrs. Jones, living at 4201
20 Leesburg Village, they've moved into the neighborhood and
21 they're going to shop at Macy's on Saturday at 1 o'clock.
22 It's just too detailed, unknown factor.
23 Q In your professional opinion, will Intersection
24 16, once the gas station is operating, will it, will
25 Intersection 16 operate in any way as a -- will it be a

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1 nuisance or a hazard?
2 A Well, I'm not sure how you could -- from a traffic
3 point of view, there's really not a definition of, of
4 nuisance. You know, we had a definition of congestion and
5 that's when something approaches, you know, capacity and the
6 intersection or roadway is at complete capacity and a
7 standstill.
8 In this case, the analysis that we've done
9 indicates that with the gas station, with the additional
10 cars, there could be an additional delay of four to five
11 seconds. In my opinion, that doesn't create a nuisance
12 because I think it's going to be barely perceptible from day
13 to day, from hour to hour, that, that type of increase, and
14 of course, that four to five seconds really is -- is really
15 worst-case/worst-case because of the way we did our analysis
16 originally. We, we used far fewer, far fewer intercept of
17 existing patrons than history shows. It was -- history
18 shows 55 to 60 percent. We end up using a 30 to 35 percent
19 number.
20 Q And was that analysis based on a model? How did
21 you determine --
22 A Based on the Highway Capacity Manual. You're
23 talking about the four to five seconds?
24 Q Yes.
25 A Yes.

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1 Q And were there any conclusions there that --
2 A Well --
3 Q -- were your conclusions or your inputs based on
4 modeling, or was it based on statistical information you
5 know to be true once the station is operational?
6 A Well, we -- what we did when we ran our
7 intersection capacity analysis, we used the default values.
8 We talked about that. My analyst used the default values,
9 which, in that case, assumed about 40 heavy trucks, heavy
10 vehicles going through that intersection. The videos show
11 that, that it's more like seven to eight heavy trucks going
12 through that intersection. So, again, we used
13 worst-case/worst-case when we did that capacity analysis in
14 saying that it's going to be a four- to five-second
15 additional delay per vehicle.
16 Q And if you had not used that assumption of the 40
17 trucks, the default, do you have any sense of what the
18 conclusion would be in terms of the delay?
19 A I think we fall -- we fall back under at about a
20 49-second delay versus the 50.6 that we had shown in our
21 analysis.
22 Q In your professional opinion, can you -- and
23 recognizing that there's not a definition for nuisance --
24 but just to sort of recap all of your testimony, in your
25 professional opinion, what would constitute a nuisance?

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1 MR. SILVERMAN: Objection. Didn't he just testify
2 that nuisance is not a term used in his professional
3 expertise?
4 MR. GROSSMAN: He did. Do you have a response to
5 that objection?
6 MS. HARRIS: I'm sorry.
7 MR. GROSSMAN: Mr. Silverman objected to his
8 testifying about it because the witness has testified that
9 nuisance is not a term that is used in his traffic
10 expertise.
11 BY MS. HARRIS:
12 Q Mr. Guckert --
13 MR. GROSSMAN: Well, no, he raised an objection.
14 Do you have a response to the objection?
15 MS. HARRIS: I was going to reformulate the
16 question.
17 MR. GROSSMAN: All right. She withdrew the
18 question.
19 MR. GOECKE: Well, I think the question was his
20 personal opinion as opposed to the industry-standard
21 definition.
22 MR. SILVERMAN: The question was, was his
23 professional opinion.
24 MR. GOECKE: Right.
25 MS. HARRIS: Right, and I actually don't know that

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1 that's so inconsistent, even though there's not a -- there's
2 not a standard. You can't look in the IT and see a
3 definition for nuisance. Based on his 30 or 40 years of
4 experience, he may have a sense of what would, nonetheless,
5 constitute a nuisance.
6 MS. CORDRY: Well, I have a sense of what
7 constitutes a nuisance for me as well, and I've been driving
8 around for 40 years too, but if --
9 MR. GROSSMAN: I'm sure you're going to tell us
10 when you do your surrebuttal.
11 MS. CORDRY: No, no. I --
12 MR. GOECKE: I actually asked her that, and she
13 wouldn't answer.
14 MS. CORDRY: Well, but you know, but I'm not sure
15 that -- I mean, if he's here as an expert to give expert
16 testimony, I'm not sure it should be a personal
17 idiosyncratic view of what is a nuisance.
18 MR. GROSSMAN: Of course, he was asked a
19 non-expert question by Dr. Adelman. I let him answer that.
20 So we'll let him answer this question. I'll overrule the
21 objection.
22 THE WITNESS: I think, I think, from my, from my
23 perspective, that in order for something traffic-wise to be
24 a nuisance, that in my opinion the occurrence probably needs
25 to be sustained and not just for minutes. To me, a traffic

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1 nuisance doesn't occur for a couple of minutes or even an
2 hour or even a peak hour. I think for, for something to be
3 a nuisance, I think it needs to be a sustained impact over a
4 much longer period of time, might be for several hours
5 during the commuting rush hour, and clearly, a nuisance, in
6 my opinion, on private property, where you want to bring
7 people, I don't see that as being a nuisance in a mall,
8 where you expect people to be there and to shop. So my
9 opinion, it really needs to be sustained out on the public
10 street system versus on the private street system.
11 BY MS. HARRIS:
12 Q Thank you. And, in your professional opinion, is
13 the proposed gas station compatible with the mall site and
14 the surrounding area?
15 A Well, in my opinion, it's compatible, and it's
16 compatible for a few reasons, not the least of which is that
17 Costco has 360 Costco stores and Costco gas stations in
18 parking lots. Sam's Club, where they built gasoline
19 stations, they're in a parking lot. Safeway, Giant Food,
20 BJ's, where they have gas stations, they're all in parking
21 lots. That's where they put auxiliary, ancillary gas
22 station facilities. As a use, they put it in the parking
23 lot near the store.
24 So from a compatibility point of view, having,
25 having that type of facility in a parking lot is compatible

1 with, with all the other uses that are in a regional mall or
2 within a parking lot. There are cars. They go into the gas
3 station. They go out through the gas station, out the
4 parking lot, out to the ring road. I think it's very
5 compatible when you look at what is occurring on the gas
6 station, on the parking lot.

7 Q Thank you.

8 MS. HARRIS: I have no other questions.

9 MR. GROSSMAN: Any recross, Dr. Adelman?

10 MR. ADELMAN: (No audible answer.)

11 MS. CORDRY: Just a couple, very short.

12 MR. GROSSMAN: Sure. Ms. Cordry.

13 MS. CORDRY: Okay.

14 REBUTTAL RECROSS EXAMINATION

15 BY MS. CORDRY:

16 Q All right. For Exhibit 128(b), you were saying,
17 of the 1600 people that come out, not all of them are going
18 to cross the east-west drive aisle, correct? Is that
19 basically what you're saying?

20 A No. What I said was, for the people that are
21 currently coming out of, on the day that we counted, they're
22 not all working their way down to in front of the, of the
23 gas station.

24 Q Okay. I think that's what I just said. So
25 they're, not all, but plenty of them are going to be coming

1 down there and crossing that east-west drive aisle in front
2 of the station, are they not?

3 A When you say the east-west drive aisle, are you
4 speaking of the one --

5 Q The one right there where you have your pointer
6 on, yes.

7 A -- that's located --

8 MR. GROSSMAN: North of the gas station.

9 THE WITNESS: -- about 100 feet north of the gas
10 station?

11 BY MS. CORDRY:

12 Q Yes.

13 A Some will. Some will to get to that southwest
14 area.

15 Q Okay. And as far as the Costco spaces, those are
16 primarily the small number of spaces there to the east of
17 that north-and-south sidewalk, sort of elevated piece that
18 we talked about that's in the middle of the parking lot up
19 on the north side? Let me point it out to you.

20 MR. GROSSMAN: Do you want to use my laser
21 pointer?

22 MS. CORDRY: Sure, I would be happy to use your
23 laser pointer.

24 MR. GROSSMAN: Thank you.

25 MS. CORDRY: I would be happy to make use of it.

1 BY MS. CORDRY:

2 Q This up-and-down piece here, which is an elevated
3 sidewalk, if you're aware.

4 A Go ahead.

5 Q To the west of that, that's primarily Target
6 parking, is that not correct?

7 A I'm not sure there's -- in my opinion, I see
8 customers from all the uses parking in the parking lot, and
9 I have not personally looked to see who's what where as it
10 relates to use.

11 Q Well, that's the closest parking to the Target
12 entrance, correct?

13 A On the west side of the, of the --

14 Q Of that north-south sidewalk area there.

15 A I think, I think the parking in the, in the
16 northern third or more is, is convenient Target parking, but
17 they're going to park where they can find a parking space.

18 Q I understand that, but my question to you is -- if
19 you know, just answer the question -- this area here to the
20 west of that north-south parking area is the closest parking
21 to the Target entrance, is it not?

22 A No. No. That's why we have trouble
23 communicating, because you've got, you've got this parking
24 here on both sides that are, that are close to the Target
25 store.

1 Q Okay. But that area is also even closer to the
2 Costco. So that is one of the -- the primary place, when
3 people are going to try to go to Costco, is to park there
4 first, correct?

5 MR. GROSSMAN: There being?

6 MS. CORDRY: To the east of that barrier.

7 THE WITNESS: To the west of the Costco store --

8 BY MS. CORDRY:

9 Q Yes.

10 A -- they're going to park in that area.

11 Q Yes. And then this area is the other primary
12 place where --

13 MR. GROSSMAN: That's the southeast corner.

14 MS. CORDRY: The southeast corner, yes.

15 THE WITNESS: No, southwest.

16 MR. GROSSMAN: Southwest, I'm sorry.

17 MS. CORDRY: I'm sorry, southwest corner, yes.

18 THE WITNESS: You misspoke.

19 MR. GROSSMAN: I screwed up that time.

20 MS. CORDRY: Yes.

21 BY MS. CORDRY:

22 Q Okay. So anyone wanting to use this southwest
23 corner is going to be walking past the east-west drive aisle
24 and into this area here and past any traffic that's coming
25 out of the gas station and into that east-west drive aisle?

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1 MR. GROSSMAN: Once again, this area here, you
2 have to identify for the record what you're talking about.
3 MS. CORDRY: Okay.
4 BY MS. CORDRY:
5 Q The area we are talking about is the gas station
6 area. Anyone coming --
7 MR. GROSSMAN: Okay.
8 BY MS. CORDRY:
9 Q -- from the store going to that southwest corner
10 of the lot is going to be passing in cross, in front of the
11 gas station, correct?
12 A No. No, I don't think so. Passing in --
13 Q Well, are they going to walk all the way around
14 behind it and come around?
15 A I answered the question. Go ahead.
16 Q Okay. There's some way to get from this corner
17 here over to the southwest corner without walking across, in
18 front of the gas station?
19 A Without diagonally? Yes. Yeah. I mean, without
20 going diagonally? They're --
21 Q Well, I didn't --
22 A -- not going to go diagonally. That's the way
23 your pointer is going.
24 Q Okay. I will walk down the aisle, and then I will
25 walk across, and then I'll walk down here. I'm not saying

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1 diagonally in the sense that they will walk kitty-corner
2 through everything, but I'm saying, they will come from this
3 part of the store and they will have to cross across this
4 drive aisle and come into this southwest area.
5 MR. GROSSMAN: Once again, this part of the store,
6 meaning leaving the, exiting the --
7 MS. CORDRY: Leaving the exiting on the west side.
8 BY MS. CORDRY:
9 Q As they come down, anyone --
10 MR. GROSSMAN: Come south.
11 BY MS. CORDRY:
12 Q -- coming to park in the southwest area there will
13 have to be coming across in front of the parking --
14 A They can come across --
15 Q -- the gas station area?
16 A They can come across this area and down.
17 Q Exactly.
18 A Okay.
19 Q And that is that main east-west drive aisle that
20 we have had some pictures of from time to time?
21 A This is the drive aisle that I've just been
22 referring to --
23 Q Okay.
24 A -- the east-west drive aisle on 230 that is
25 located about 50 percent between the ring road and the front

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1 of the retail stores on the north side.
2 Q All right. Now, you said in terms of background
3 you couldn't precisely determine whether somebody leaves
4 their house, they're going to go shop at the mall. But you
5 certainly would not deny that people, if you build several
6 100 apartments, really, almost 1,000 perhaps apartments and
7 townhouses and condos and so forth in the immediate vicinity
8 of the mall, that it's likely that some of those people are
9 going to go shop at the mall? That's, that's a pretty
10 reasonable supposition?
11 A That's correct --
12 Q Okay.
13 A -- some will at some point, sure.
14 Q Okay. But you just have not put those into your
15 calculations?
16 A That's what I said.
17 Q Okay. So we can assume that there will in fact be
18 more traffic from that; it's just not part of what you've
19 calculated at this point?
20 A It's not what we calculated on Saturday, that's
21 correct --
22 Q Okay.
23 A -- and, in fact, just to make the record clear,
24 that's not a process or procedure that Planning Commission
25 used, Mr. Grossman.

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1 MR. GROSSMAN: All right.
2 BY MS. CORDRY:
3 Q Well, whether they use it or not, because they're
4 not actually -- they're looking at the traffic facilities
5 out on the main roads, are they not?
6 A That's, that's correct. They do not look at
7 private roadways or interior to malls for the most part.
8 Q Okay. But if we're determining whether there's
9 congestion and delay and nuisance inside the mall, that's
10 exactly what we do have to look at, correct?
11 MR. GROSSMAN: What's exactly that you do have to
12 look at?
13 MS. CORDRY: Looking at what kind of traffic does
14 come into the mall.
15 MR. GROSSMAN: Okay.
16 BY MS. CORDRY:
17 Q And I think you said something about 49.6 seconds
18 versus 50 seconds or something. Can you tell me what
19 numbers you're referring to there?
20 A You don't have those numbers.
21 Q Oh, okay. Well, then what numbers are those?
22 A They're analysis that we did using a practical
23 number of heavy vehicles versus the default.
24 Q Okay. Well, right now you have, according to your
25 Exhibit 504 -- and actually, let me just ask you, are you

1 getting all of this information from talking to your
 2 employee, or do you, did you know this before you went out
 3 in the hallway, what you've just been talking about now
 4 about the Highway Capacity Manual and the numbers of
 5 vehicles and so forth?
 6 A Before.
 7 Q Okay. So that is one thing you did know about
 8 your highway capacity analysis?
 9 A No. You're asking two different questions. Let's
 10 do one at a time, please.
 11 Q Okay. So I'm saying, before you didn't seem to
 12 know a lot of things about the highway capacity, but you did
 13 know all along that you used some number of heavy vehicles,
 14 you're saying? You did know that already?
 15 A It's there. We used two percent.
 16 Q Okay. And what is -- okay. 504 you show with the
 17 background being 44.85 and the total with the gas being
 18 50.63. That was your last set of calculations?
 19 A Correct.
 20 Q And what are you saying that the 49.6 versus the
 21 50 is?
 22 A The two percent -- two percent heavy vehicles is
 23 about 40 heavy vehicles. Reality is, the videos that you
 24 have, that you got, that you viewed shows about seven heavy
 25 trucks versus 40. So we, my associate reran the numbers

1 using -- actually, he ended up using 15 versus the seven
 2 vehicles, and we end up with heavy trucks being somewhere
 3 between seven and 15, and it drops the 50.63 down to about
 4 49.
 5 Q Okay. So that all those heavy trucks make a
 6 one-second difference, you're saying? All the change in the
 7 trucks make it a one-second difference?
 8 A One-and-a-half seconds.
 9 Q Okay.
 10 A Yeah.
 11 Q All right. And just the last thing, you said it's
 12 not incompatible to put a gas station in a parking lot
 13 because gas stations are in other parking lots, you've seen
 14 them with other stores -- Costco, Giant, Safeway. You said
 15 that, correct? That's what --
 16 A Yes.
 17 Q -- you just finished saying? There are many
 18 places you can put a gas station in a parking lot, and
 19 they're not all created equal, correct, Mr. Guckert?
 20 A Not necessarily. You'd have to show them to me.
 21 I'm not going to do a -- can't do a hypothetical. Show me
 22 where you're talking about.
 23 Q Well, my question was simply that, that --
 24 A Show me where.
 25 Q -- yes, not all gas stations in parking lots are

1 created equal in terms of the amount of congestion and delay
 2 and interference with pedestrians they may cause, is that
 3 correct?
 4 A In my opinion, the question I was --
 5 Q No, I didn't ask you about this --
 6 MR. GROSSMAN: Hold on one second.
 7 BY MS. CORDRY:
 8 Q I'm not asking you about this station or anything
 9 else. I'm just asking you, right, a very general question.
 10 Not all gas stations in parking lots are created equal in
 11 terms of their effect on pedestrian safety, traffic, and
 12 congestion, are they?
 13 A It would need to be examined.
 14 Q Exactly. So that simply saying that other people
 15 have gas stations in parking lots does not prove that
 16 there's compatibility, correct?
 17 A Incorrect. What I'm saying is you need to examine
 18 each individual case.
 19 Q Exactly. And you were making a broad
 20 generalization here that because other people have parking
 21 lots and have gas stations in parking lots, that proves that
 22 this parking lot and gas station are compatible?
 23 A That was one of the -- that was one of the
 24 reasons. The other reason is the orderly flow of traffic,
 25 the fact --

1 Q I'm not asking you to go through your whole
 2 testimony again --
 3 A I see.
 4 Q -- because we really are trying to get out of
 5 here.
 6 A I see. Well, then --
 7 MR. GROSSMAN: Well, you can't exactly cut him
 8 off. I understand the point you're making. Of course --
 9 MS. CORDRY: Right. And --
 10 MR. GROSSMAN: -- it depends on the particular
 11 location --
 12 MS. ADELMAN: That's right.
 13 MR. GROSSMAN: -- and the particular facility. I
 14 understand.
 15 BY MS. CORDRY:
 16 Q And if a gas station is located, for instance, on
 17 the periphery of the parking lot, immediately accessible
 18 from coming on and off of the main roads, that's a very
 19 different situation from having a gas station hundreds and
 20 hundreds of feet away from access to the main roads?
 21 A Okay. I'll answer again. You really need to look
 22 at each site individually.
 23 Q Exactly. So thank you.
 24 MR. GROSSMAN: All right. Well, we did actually
 25 wrap it up. Dr. Adelman, are you okay?

1 MR. ADELMAN: Yes.
 2 MR. GROSSMAN: I didn't say anything that made you
 3 mad at me, because you seem a little -- okay. All right.
 4 So we're back here on May 1 with Mr. Sullivan for his
 5 rebuttal. Thank you, Mr. Guckert.
 6 THE WITNESS: Thank you, sir.
 7 MR. GROSSMAN: I know you'll be sorry to leave us.
 8 MS. HARRIS: Don't answer that.
 9 THE WITNESS: It's hard to describe.
 10 MR. GROSSMAN: But, in any event, thank you for
 11 your testimony, and we'll see you on -- we'll see the same
 12 characters, except for Mr. Guckert, on Thursday.
 13 (Whereupon, at 5:07 p.m., the hearing was
 14 adjourned.)
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1 C E R T I F I C A T E
 2 DEPOSITION SERVICES, INC., hereby certifies that
 3 the attached pages represent an accurate transcript of the
 4 electronic sound recording of the proceedings before the
 5 Office of Zoning and Administrative Hearings for Montgomery
 6 County in the matter of:
 7 Petition of Costco Wholesale Corporation
 8 Special Exception No. S-2863
 9 OZAH No. 13-12
 10
 11 By:
 12
 13
 14 Wendy Campos, Transcriber
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