

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  
May 20, 2014, commencing at 9:41 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

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C O N T E N T S

Surrebuttal Witnesses:	Direct	Cross	Redirect	Recross
Karen Livornese By Ms. Cordry By Mr. Goecke	17	37	44	
Brendan McGarry By Ms. Cordry By Mr. Goecke	46	53		
Karen Cordry By Mr. Goecke	71	275		

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P R O C E E D I N G S

1 MR. GROSSMAN: This is the 34th day of a public  
2 hearing in the Costco Wholesale Corporation, Board of  
3 Appeals No. S-2863, OZAH No. 13-12, a petition for a special  
4 exception pursuant to Zoning Ordinance Section 59-G-2.06 to  
5 allow petitioner to construct and operate an automobile  
6 filling station which would include 16 pumps. The subject  
7 site is located at 11160 Veirs Mill Road, Silver Spring,  
8 Maryland. That's Lot N, 631 Wheaton Plaza, Parcel 10, also  
9 known as Westfield Wheaton Mall, and is zoned C-2.  
10 The hearing was begun on April 26, 2013, and the  
11 next session will be Thursday, May 22 -- well, I should add,  
12 also May 29 and possibly June 6th, 2014 -- here in the  
13 second floor hearing room of the Council Office Building at  
14 9:30 a.m.  
15 This hearing is conducted on behalf of the Board  
16 of Appeals. My name is Martin Grossman. I'm the Hearing  
17 Examiner, which means I will take evidence and write a  
18 report and recommendation to the Board of Appeals which will  
19 make the decision in this case. Will the parties identify  
20 themselves, please?  
21 MR. BRANN: Good morning. Erich Brann for Costco.  
22 MR. GROSSMAN: I thought you looked familiar.  
23 MS. HARRIS: Pat Harris on behalf of Costco.  
24 MR. GROSSMAN: Good morning.

1 MR. GOECKE: Good morning. Mike Goecke for  
2 Costco.  
3 MR. GROSSMAN: Mr. Goecke.  
4 MS. CORDRY: Good morning. Karen Cordry for  
5 Kensington Heights.  
6 MR. GROSSMAN: Ms. Cordry.  
7 MS. ROSENFELD: Good morning. Michele Rosenfeld  
8 for Kensington Heights.  
9 MR. GROSSMAN: Ms. Rosenfeld.  
10 MR. SILVERMAN: Good morning, Mr. Grossman. Larry  
11 Silverman for Stop Costco Gas Coalition.  
12 MS. ADELMAN: Good morning, Mr. Grossman. Abigail  
13 Adelman for Stop Costco Gas Coalition.  
14 MR. GROSSMAN: All right. And Ms. Duckett.  
15 MS. DUCKETT: Good morning. Eleanor Duckett,  
16 Kensington View.  
17 MR. GROSSMAN: Good morning, Ms. Duckett.  
18 MR. TIAN: Good morning. Qiang Tian, Traffic  
19 Group.  
20 MR. GROSSMAN: Good morning.  
21 MS. LIVORNESE: Karen Livornese, Kensington  
22 Heights.  
23 MR. GROSSMAN: Okay.  
24 MR. MCGARRY: Brendan McGarry, resident of  
25 Kensington Heights.

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1 MR. GROSSMAN: All right. And, ma'am, how do you  
2 spell your last name?  
3 MS. LIVORNESE: L-I-V, as in Victor, -O-R-N-E-S-E.  
4 MR. GROSSMAN: All right. L-I-V-O-R-N-E-S-E?  
5 MS. LIVORNESE: Yes.  
6 MR. GROSSMAN: And you, sir?  
7 MR. MCGARRY: McGarry, M-C-G-A-R-R-Y, and it's  
8 Brendan, B-R-E-N-D A-N.  
9 MR. GROSSMAN: All right. And you both wish to be  
10 heard today?  
11 MS. CORDRY: Yes.  
12 MR. MCGARRY: Yes.  
13 MR. GROSSMAN: In surrebuttal?  
14 MS. CORDRY: Yes. These would be -- Mr. Core is  
15 not available, and Mr. McGarry did wish to testify. It  
16 would be the same testimony about idling, and I think  
17 Mr. Core probably would not be available for a couple of  
18 days. He's been away and that. So I think, probably in  
19 lieu of calling Mr. Core at all, I think we would just ask  
20 that these two witnesses testify, and perhaps if we could  
21 get them in and out before we spend too much time on the  
22 other part.  
23 MR. GROSSMAN: That would be fine as long as  
24 you're both aware that this is not direct opposition  
25 evidence; this has to be responsive to the rebuttal case put

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1 on by the applicant.  
2 MS. CORDRY: Right.  
3 MR. GROSSMAN: You have to speak up so that you  
4 can be heard.  
5 MS. LIVORNESE: Yes.  
6 MR. MCGARRY: Yes.  
7 MR. GROSSMAN: Okay. The court reporter takes it  
8 all down --  
9 MR. MCGARRY: That's fine.  
10 MR. GROSSMAN: -- and since you haven't been here  
11 before, this proceeding is conducted pretty much the way a  
12 courtroom is. It's a little less formal. We have a little  
13 bit -- the rules of evidence are similar but relaxed in  
14 terms of hearsay evidence, and it's kind of a combination of  
15 formality and informality, but if you've seen in the  
16 courtroom here or on TV, you get an idea of the general way  
17 in which it's conducted. All witnesses are sworn in.  
18 They're subject to cross-examination. Everything is taken  
19 down by a court reporter.  
20 Okay. All right. We have -- let me turn here to  
21 a few preliminary matters. Since our last hearing on May  
22 12, the parties have filed the following additional  
23 exhibits: 576 through 586. I saw one came in last night by  
24 e-mail that did not yet get an exhibit mark on it, from  
25 Mr. Goecke, and that was NO2 One-Hour 98th Percentile

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1 Monitor Values Using 411 Individual Monitoring Stations  
2 Across the United States During 2003. As I say, that one  
3 does not yet have an exhibit number on it.  
4 MS. HARRIS: Excuse me, Mr. Grossman. I think you  
5 said 2003.  
6 MR. GROSSMAN: I meant to say 2013. Okay. It's  
7 early yet, until at least 10 clock. All right. 576 is an  
8 e-mail between the parties regarding Costco's objection to  
9 Dr. Jison testifying; 577, e-mail from Ms. Cordry,  
10 responding to exhibit objections; 578, e-mails from  
11 Ms. Rosenfeld of 5/17, submitting hard copies of exhibits at  
12 the next hearing rather than electronic copies; 579, e-mail  
13 from Ms. Cordry, exhibits for testimony on May 20; 579(a),  
14 Sterling Versus Wheaton Transactions, May 2014; 579(b),  
15 Sterling Versus Wheaton Transactions, September 2012; 580,  
16 e-mails between parties regarding new witnesses and  
17 Mr. Sullivan's testimony; 581, submitted by Ms. Rosenfeld,  
18 Dr. Cole's PowerPoint slides; 582, submitted by  
19 Ms. Rosenfeld on May 19, KHCA's further response to Costco's  
20 objections to proposed exhibits; 583, submitted by  
21 Ms. Rosenfeld, PowerPoint, quote, Air Monitor Locations,  
22 closed quote; 584, submitted by Ms. Rosenfeld on May 19,  
23 additional exhibits to be used in Dr. Cole's testimony; 585,  
24 submitted by Ms. Rosenfeld, e-mail, listing additional  
25 exhibit submissions. 585 is Annual Energy Outlook 2014

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1 excerpts; (b) is EIA report on, quote, New-Vehicle Fuel  
2 Economy Continues to Increase, end quote; (c) is UMTRI  
3 report on Sales-Weighted Ratings Through 2014; (d) is a  
4 report by Doug Short entitled Vehicle Miles Driven: Another  
5 Population-Adjusted Low; 586, submitted by Ms. Rosenfeld, a  
6 compact disc regarding Exhibits 581 through 585.  
7 And the witnesses scheduled for today, Ms. Cordry  
8 and presumably Ms. Livornese and Mr. McGarry. Okay. And  
9 Dr. Cole is scheduled for May 22, and our final planned day,  
10 we hope, will be May 29 but potentially June 6. And if we  
11 have time today, we'll hear from the applicant on the  
12 individual exhibits to which Applicant has objected.  
13 I remind everybody that the applicant's brief will  
14 be due 30 days after the final hearing date. The opposition  
15 brief is due 20 days thereafter, and a reply brief due 10  
16 days after that. I think that was the agreed-upon time  
17 element. As far as oral closing arguments, which have been  
18 requested, we would set those for 10 days or so thereafter,  
19 and at the oral argument, the applicant will have a total of  
20 40 minutes and the opposition will have a total of 40  
21 minutes, which can be split up among the parties by their  
22 agreement.  
23 Any other preliminary matters? Ms. Harris.  
24 MS. HARRIS: I had two, Mr. Grossman.  
25 MR. GROSSMAN: Yes.

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1 MS. HARRIS: One was, we had just received  
2 yesterday KHCA's further response to the exhibits, but given  
3 the number of other materials that we have received over the  
4 last day or two, we have not had a chance to really evaluate  
5 this. So I think if we had a little bit more time to  
6 evaluate it, we would probably be able to expedite the  
7 overall discussion of the exhibits, if that's possible.  
8 MR. GROSSMAN: Well, let's see what happens today.  
9 We'll see what our time element is. I don't want to lose  
10 any time today --  
11 MS. HARRIS: Right. I understand.  
12 MR. GROSSMAN: -- so let's see what happens.  
13 What's your second then?  
14 MS. HARRIS: Okay. And then the second one was,  
15 we had previously determined that today was going to be an  
16 environmental-free day because Mr. Sullivan is not here.  
17 MR. GROSSMAN: Right.  
18 MS. HARRIS: To the extent that there is any  
19 testimony regarding, that implicates or is associated with  
20 Mr. Sullivan's testimony, we'd like to reserve the right to  
21 cross-examine the witness with respect to that after we've  
22 had a chance to consult with Mr. Sullivan.  
23 MR. GROSSMAN: Yes. I saw that e-mail exchange  
24 concerning that point. I just wondered whether -- as I  
25 understood the proposal for the testimony today, to the

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1 extent that it touched on Mr. Sullivan, it was only  
2 regarding traffic issues upon which he might have relied.  
3 I'm not sure whether, in view of that, a consultation is  
4 necessary, but let's see how that develops, and we'll hear  
5 an objection later, if necessary.  
6 MS. HARRIS: Thank you.  
7 MS. ROSENFELD: And I think we were clear all  
8 along that Ms. Cordry's testimony was going to involve  
9 traffic. I'm not sure why it's --  
10 MR. GROSSMAN: She has a very broad reach in her  
11 testimony. So --  
12 MS. CORDRY: I think the --  
13 MR. GROSSMAN: -- it could involve almost  
14 anything.  
15 MS. CORDRY: Right. Well, there's no problem with  
16 myself being back on another day. I think the question was,  
17 to the extent these witnesses say that there -- and  
18 partially, they're being, they obviously are being brought  
19 in to say that trucks idle longer or at different places  
20 than what Mr. Sullivan was assuming in his calculations --  
21 but to the extent they say that, I don't think, it's not  
22 particularly complex testimony, and I don't know that he  
23 needs to be here to hear them say that five or 10 minutes'  
24 worth of things, and I would really hate to think that these  
25 people would have to come back again on the notion that they

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1 have to be cross-examined on that after you've asked the  
2 scientist, what do you think about the fact that they say  
3 he's, they're idling someplace. So --  
4 MR. GROSSMAN: I know, but I can't prejudge the  
5 potential --  
6 MS. CORDRY: I understand. I understand.  
7 MR. GROSSMAN: -- objection. I understand the  
8 points. All right. Any other preliminary matters?  
9 Mr. Silverman.  
10 MR. SILVERMAN: Just one. During the  
11 cross-examination of Mr. Sullivan, I referenced the  
12 extraordinary efforts of the Port of Long Beach to control  
13 air pollution from mobile sources, and I was actually  
14 genuinely surprised that he didn't know about that. But you  
15 asked if there was any predicate or any documents about that  
16 since it's a well-known fact, and I have a short one; there  
17 are long ones, but I got a three-pager from the Internet.  
18 MR. GROSSMAN: Well, let's take that after we --  
19 MR. SILVERMAN: Okay.  
20 MR. GROSSMAN: -- deal with the testimony --  
21 MR. SILVERMAN: Right.  
22 MR. GROSSMAN: -- that's being offered by the  
23 citizens. All right. Anything else? Ms. Rosenfeld.  
24 MS. ROSENFELD: Two preliminary things. Number  
25 one, Exhibit No. 584 actually contains several subparts, and

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1 perhaps after the witnesses testify, we can go through. I'd  
2 like to hand them out and just make sure they're  
3 exhibitized --  
4 MR. GROSSMAN: Okay.  
5 MS. ROSENFELD: -- but I don't -- I'm happy to  
6 have the witnesses testify before we do that.  
7 The other thing, with respect to when we discuss  
8 conditions, we'd like to suggest that we talk about  
9 conditions after closing argument because that obviously  
10 will be a short day and all of the parties will have  
11 completed all of their final arguments, their final  
12 analysis; and, at that point, it seems like it would be both  
13 an opportune time, as well as, at that point everybody will  
14 have decided whether or not there's any modifications to the  
15 conditions or if there's some that currently we object to  
16 that maybe we'll decide would be appropriate, just --  
17 MR. GROSSMAN: Applicant, what do you think about  
18 that?  
19 MS. ROSENFELD: -- in terms of coordination.  
20 MS. HARRIS: I think it sounds reasonable. I  
21 don't have an issue with that.  
22 MS. ROSENFELD: Okay.  
23 MS. CORDRY: Good.  
24 MR. GROSSMAN: It's fine with me --  
25 MS. CORDRY: Right.

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1 MR. GROSSMAN: -- assuming that we all stay  
2 within our time parameters --  
3 MS. CORDRY: Right.  
4 MR. GROSSMAN: -- and it really is a short day.  
5 MS. CORDRY: Right.  
6 MR. GROSSMAN: I'll have to remember to bring a  
7 stopwatch because we don't have little red lights here like  
8 the Council has. So --  
9 MS. CORDRY: Hope still springs eternal that we  
10 can finish, say, at the end of the 29th --  
11 MR. GROSSMAN: Yes.  
12 MS. CORDRY: -- and if we talk about conditions,  
13 I'm sure we would go over into another day. So that's why  
14 we're suggesting, might as well put it on a day that we know  
15 we'll be coming back for.  
16 MR. GROSSMAN: Yes. I realized that when I  
17 visited my granddaughter this weekend, that she's now twice  
18 as old as when we started this process.  
19 MS. CORDRY: Well, Ms. Kamen measures this hearing  
20 by the age of her daughter as well. So --  
21 MR. GROSSMAN: All right. Then are we ready to --  
22 MR. GOECKE: One final thing, Mr. Grossman.  
23 MR. GROSSMAN: Yes.  
24 MR. GOECKE: In addition to the NO2 chart that I  
25 e-mailed yesterday, I sent another e-mail with an article

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1 from Thomas Hesterberg and William Bunn, as well as  
2 Mr. Bunn's biography and CV. I didn't hear you mention that  
3 as one of the items that had been submitted since our last  
4 hearing.  
5 MR. GROSSMAN: I didn't --  
6 MR. GOECKE: Okay.  
7 MR. GROSSMAN: -- and if it's not on a list, I  
8 didn't get it.  
9 MR. GOECKE: Okay. I just wanted to make sure  
10 that --  
11 MS. ROSENFELD: That raises another preliminary  
12 matter, but it might take some time. Perhaps we should --  
13 MS. CORDRY: Yes. We'll --  
14 MS. ROSENFELD: -- if we can reserve --  
15 MR. GROSSMAN: Sure.  
16 MS. ROSENFELD: -- discussion of that topic after,  
17 until after the witnesses testify.  
18 MR. GROSSMAN: Certainly, and to the extent that  
19 something is missing, during a break you can check with  
20 Sarah and see if there's --  
21 MR. GOECKE: Sure.  
22 MR. GROSSMAN: -- something slipped. Okay. All  
23 right. Then are we ready to proceed?  
24 MS. CORDRY: Right.  
25 MR. GROSSMAN: All right. Then, Ms. Livornese,

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1 would you come forward, please, and take the witness stand?  
2 MS. LIVORNESE: This?  
3 MR. GROSSMAN: Right here.  
4 MS. LIVORNESE: This one?  
5 MR. GROSSMAN: Yes.  
6 MS. LIVORNESE: Okay.  
7 MR. GROSSMAN: And I'll move this one back a  
8 little bit so that it doesn't block you. Okay. All right.  
9 Once again, for the record, would you state your full name  
10 and address, please?  
11 MS. LIVORNESE: Karen Elizabeth Livornese. My  
12 address is 2811 Peregoy Drive, Kensington, Maryland 20895.  
13 MR. GROSSMAN: Okay. Would you raise your right  
14 hand, please?  
15 (Witness sworn.)  
16 MR. GROSSMAN: All right. And you may proceed  
17 then.  
18 MS. CORDRY: All right. We are actually calling  
19 her for --  
20 MR. GROSSMAN: Okay.  
21 MS. CORDRY: -- a witness. So I'll ask some  
22 questions and help walk her through.  
23 MR. GROSSMAN: We being Kensington Heights Civic  
24 Association.  
25 MS. CORDRY: Yes, we being Kensington Heights,

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1 yes.  
2 MR. GROSSMAN: Okay.  
3 SURREBUTTAL DIRECT EXAMINATION  
4 BY MS. CORDRY:  
5 Q Ms. Livornese, will you show us on the map there,  
6 which -- do you know which exhibit number this is? This is  
7 the map we have been using throughout the proceedings, 159.  
8 It shows the --  
9 MR. GROSSMAN: Do you need my trusty laser  
10 pointer?  
11 MS. CORDRY: Yes, that would be fine.  
12 BY MS. CORDRY:  
13 Q Just push the button.  
14 A Okay.  
15 Q Can you point on the map to where your house is on  
16 that?  
17 A Right here.  
18 MR. GROSSMAN: So that's just below the ring road,  
19 in the southwest corner of the mall.  
20 THE WITNESS: Yes.  
21 MR. GROSSMAN: All right.  
22 BY MS. CORDRY:  
23 Q In terms of Peregoy, where are you on that road  
24 compared to the mall?  
25 A I am at the dead end of the road, and I am right

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1 on the edge of the buffer zone, right next to the ring road.  
2 Q Okay. So you're the last house on the left, as  
3 they say --  
4 A Correct.  
5 Q -- in the movies?  
6 A Yes.  
7 Q Okay.  
8 MR. GROSSMAN: I don't know what that means, last  
9 house on the left. What does that mean?  
10 MS. CORDRY: Well, as you go down the road, hers  
11 is the last house on --  
12 MR. GROSSMAN: The last house furthest away on  
13 that street from the ring road, you mean?  
14 MS. CORDRY: No, no, no. As you --  
15 THE WITNESS: No, closest.  
16 MR. GROSSMAN: Closest.  
17 MS. CORDRY: Closest. As you drive --  
18 MR. GROSSMAN: So it's the first house, not the  
19 last house.  
20 MS. CORDRY: Well, as you drive down from the main  
21 road, it's the last house on the left.  
22 MR. GROSSMAN: All right. That's why I just  
23 wanted to clarify.  
24 MS. CORDRY: If you're coming from the ring road,  
25 it's the first house on the right, yes.

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1 MR. GROSSMAN: Okay.  
2 MS. CORDRY: Okay.  
3 BY MS. CORDRY:  
4 Q How long have you lived there?  
5 A I moved in January of 2013.  
6 Q At the time when you moved in, what was the status  
7 of the Costco warehouse?  
8 A It was not open.  
9 Q But it was built?  
10 A But it was built.  
11 Q Okay. So you could see that. Were you aware that  
12 there was a proposal at that time to build a gas station?  
13 A No.  
14 Q That couldn't have influenced your decision about  
15 buying a house if you --  
16 A Correct.  
17 Q -- didn't know about it. Okay.  
18 MR. GROSSMAN: I'm sorry, but how is that  
19 surrebuttal?  
20 MS. CORDRY: Okay. I'm sorry.  
21 BY MS. CORDRY:  
22 Q When you moved in, what was the traffic like on  
23 the ring road at that point?  
24 MS. HARRIS: That's not --  
25 THE WITNESS: Very light --

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1 MR. GOECKE: I'd object to that as well. How is  
2 that surrebuttal?  
3 MR. GROSSMAN: I mean, I presume that the  
4 surrebuttal portion of this testimony, the idea is that it's  
5 going to respond to testimony during rebuttal about traffic,  
6 is that correct?  
7 MS. CORDRY: Yes.  
8 MR. GROSSMAN: So I'll let that as a foundation  
9 question.  
10 MS. CORDRY: Okay.  
11 THE WITNESS: Very --  
12 MR. GROSSMAN: Overruled.  
13 THE WITNESS: Very light, and if I heard  
14 something, it was -- two to three times an hour I'd hear a  
15 car just purr around the ring road, but that was it.  
16 BY MS. CORDRY:  
17 Q And was that during the week, on weekends? Is  
18 that --  
19 A Both.  
20 Q Okay. Did you used to use, drive into the mall  
21 when you first moved in?  
22 A Yes.  
23 Q And what would be an occasion of that?  
24 A I would come home from work, and I would bypass my  
25 road at the turn at Drumm, go in, park in front of Panera,

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1 get a salad, drive back home to my dog.  
2 Q And actually, just for the record, what work do  
3 you do?  
4 A I'm a nurse with the Public Health Service, and I  
5 work at Walter Reed Bethesda.  
6 Q Okay. And what's your specialty there that you  
7 worked on?  
8 A I am a psychiatric nurse, and I work with service  
9 members in a specialty clinic who have comorbid PTSD and  
10 traumatic brain injury.  
11 Q All right. So prior to the mall opening, go to  
12 Panera every day, come home. Was there a time when your  
13 relationship with the mall changed?  
14 A Yes. When --  
15 MR. GROSSMAN: You'll excuse the odd phraseology.  
16 THE WITNESS: Yes.  
17 MS. CORDRY: Asking a non-leading question there,  
18 yes.  
19 THE WITNESS: When the Costco first opened -- you  
20 know, I didn't just, you know, land on earth -- I knew it  
21 was going to be crazy. I knew a lot of people would be  
22 excited; so I knew it was going to be crowded. So I didn't  
23 go, but it has sustained the amount of people. It hasn't  
24 gone down since it opened. It's very, very crowded.  
25 BY MS. CORDRY:

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1 Q And what is the traffic like on the ring road at  
2 this point now?  
3 A Oh, it's constant. There's constant, and I could  
4 hear a lot because there's a -- right where my house is,  
5 there is a speed bump. So you can hear the cars.  
6 MS. ADELMAN: Excuse me. Mr. Grossman, do you  
7 have your laser pointer?  
8 THE WITNESS: Oh.  
9 MS. CORDRY: She does.  
10 MR. GROSSMAN: She does. She's --  
11 MS. ADELMAN: Oh, she does.  
12 MR. GROSSMAN: -- equipped with it already.  
13 THE WITNESS: It is that little white line right  
14 there --  
15 MS. ADELMAN: Oh, I see. Okay.  
16 THE WITNESS: -- and my house is right there.  
17 MS. ADELMAN: Thank you.  
18 BY MS. CORDRY:  
19 Q And do you continue to try to drive to the Panera  
20 after work?  
21 A No.  
22 Q Why not?  
23 A It's too frustrating. There's too much traffic.  
24 There's too many people. There's too many shopping carts.  
25 It's too frustrating; so I don't go.

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1 Q Do you try to go to the mall at all anymore?  
2 A On a limited basis, on off-peak times, if I can.  
3 Q Do you try to go there on Saturday?  
4 A No.  
5 Q Why not?  
6 A Because it's too crowded, the parking is -- cars  
7 actually park around the ring road, and I could see them  
8 from my house, and there's shopping carts everywhere,  
9 there's people everywhere, it's hard to find parking, and  
10 it's, it's packed.  
11 Q Okay. Do you try to walk to the mall?  
12 A I've tried to walk to the mall on two or three  
13 occasions. Two times I was almost hit by a car, crossing  
14 the ring road.  
15 Q When you try to walk, where do you try to enter  
16 the mall?  
17 A At the top of the circle at Faulkner, which I  
18 think is, let's see, right here, that ring road, and there's  
19 a little pedestrian cross that goes over to the Target.  
20 MS. CORDRY: And I would proffer for the record  
21 that she's pointing to, by Intersection 16. That's the --  
22 MR. GROSSMAN: Okay.  
23 MS. CORDRY: -- where we had been talking about  
24 Intersection 16 before there.  
25 BY MS. CORDRY:

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1 Q Okay. And there's a crosswalk there, and what's  
2 your experience been when you've tried to --  
3 A It's been -- cars do not see you. It's, it's,  
4 it's dangerous, and I was almost hit twice. One time the  
5 car was probably within five inches of me before it  
6 screeched to a stop.  
7 Q Okay. And --  
8 MR. GROSSMAN: You do understand that this  
9 proceeding has nothing to do directly with the Costco  
10 warehouse operations and traffic since then; this proceeding  
11 deals with the proposed addition of the gas station?  
12 THE WITNESS: Uh-huh.  
13 MR. GROSSMAN: Okay.  
14 BY MS. CORDRY:  
15 Q If additional traffic comes to the mall from the  
16 gas station, do you expect your experience to be any better  
17 than it currently is?  
18 A No, I do not.  
19 Q Would you expect it to be worse?  
20 A I do, yes.  
21 Q Okay.  
22 MR. GROSSMAN: I don't know. It wasn't objected  
23 to, but --  
24 MS. CORDRY: No.  
25 MR. GROSSMAN: -- I'm not sure where, how

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1 expectations in that sense can be --  
2 MS. CORDRY: Well, if --  
3 MR. GROSSMAN: -- considered as evidence, but you  
4 know, it wasn't objected to.  
5 MS. CORDRY: Okay. I think it's pretty much of a  
6 given that --  
7 MR. GROSSMAN: You think it's self-evident.  
8 MS. CORDRY: -- that if it's bad now and you add  
9 more traffic, it's not going to get any better. So we're  
10 just trying to illustrate the existing status, which is part  
11 of what we've been talking about, that it's already very  
12 difficult there and adding anything more to it is not going  
13 to make it better.  
14 MR. GROSSMAN: Well, as I understand it from the  
15 e-mail submissions, you intend to introduce evidence that  
16 traffic is going to go down overall in the country --  
17 MS. CORDRY: I --  
18 MR. GROSSMAN: -- driving is going to go down?  
19 MR. SILVERMAN: Well, I hope we have a chance to  
20 discuss that.  
21 MS. CORDRY: Yes, I think overall, but I really  
22 wonder why we keep getting put in this catch-22 every time  
23 we put evidence in.  
24 MR. GROSSMAN: Because it's something I have to  
25 consider.

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1 MS. CORDRY: Yes, it may well be --  
2 MR. GROSSMAN: It is a catch-22 --  
3 MS. CORDRY: Yes.  
4 MR. GROSSMAN: -- for you perhaps, but I'm just  
5 saying that that is evidence that you propose to introduce.  
6 MS. CORDRY: I certainly propose to introduce it,  
7 yes. Overall, as time goes on, traffic will go down. We  
8 certainly propose to introduce that proper land use planning  
9 would try to reduce traffic in the mall to alleviate some of  
10 these conditions that we have right now, yes. We certainly  
11 have had discussions and raised issues with Costco and  
12 Westfield numerous times that there might be better ways to  
13 run their operation to reduce traffic, but --  
14 MR. GROSSMAN: That's --  
15 MS. CORDRY: -- that's a different question.  
16 Okay.  
17 MR. GROSSMAN: Mr. Silverman is chafing at the  
18 bit. So --  
19 MR. SILVERMAN: I am.  
20 MR. GROSSMAN: -- let me hear his, if he has an  
21 objection.  
22 MR. SILVERMAN: I've been thinking a lot about  
23 this. I think what is likely to happen is that a lot of  
24 small gas stations will go out of business, and not just  
25 here, but all around the country.

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1 MR. GROSSMAN: Well, now you're broadening out  
2 this discussion beyond --  
3 MR. SILVERMAN: Well, and the larger ones, as a  
4 result of the decline in demand, its potential that larger  
5 ones will get more business, not less.  
6 MR. GROSSMAN: Do you have evidence of that?  
7 MR. SILVERMAN: No more than the evidence that if  
8 the demand goes down, that the demand at -- the traffic at  
9 Costco will go down.  
10 MR. GROSSMAN: You realize, I can't consider your  
11 suspicions as a non-witness to be --  
12 MR. SILVERMAN: I'm just --  
13 MR. GROSSMAN: -- probative of anything.  
14 MR. SILVERMAN: I'm just saying that your thesis  
15 that a decline in national gasoline usage means a decline in  
16 the usage of large discount stations.  
17 MR. GROSSMAN: I didn't have that thesis.  
18 MS. CORDRY: Right.  
19 MR. SILVERMAN: Okay.  
20 MS. CORDRY: Okay. All right.  
21 MR. GROSSMAN: My observation was merely that  
22 there was evidence that I just saw in the e-mails that were  
23 exchanged in the last few days that there's going to be a  
24 decline in traffic. So --  
25 MS. CORDRY: And we certainly hope that's true,

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1 but I don't think that's going to happen in the next six  
2 months. So --  
3 MR. GROSSMAN: All right.  
4 MR. GOECKE: And, Mr. Grossman, my objection to  
5 this questioning is I think we're beyond the foundation now.  
6 We still haven't gotten to any questions about the rebuttal  
7 testimony itself --  
8 MS. CORDRY: Well --  
9 MR. GOECKE: -- in terms of what she's responding  
10 to.  
11 MS. CORDRY: Well, I think --  
12 MR. GROSSMAN: It's on the edge.  
13 MS. CORDRY: Well, the rebuttal testimony was a  
14 total recap of all the testimony about how the mall  
15 operated. So I'm now moving on to --  
16 MR. GOECKE: That's --  
17 MR. GROSSMAN: I don't think that's true either.  
18 MR. GOECKE: That's not true.  
19 MS. CORDRY: I --  
20 MR. GROSSMAN: It wasn't a total recap, but in any  
21 event, let's --  
22 MS. CORDRY: It was pretty close. Okay.  
23 MR. GROSSMAN: -- let's go forward.  
24 BY MS. CORDRY:  
25 Q All right. So moving on now to, in addition to

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1 the traffic issues that you have seen with respect to the  
2 mall since the warehouse opened, have there been other  
3 issues that have been of concern to you with respect to the  
4 way now the mall is operating in?  
5 A Yes. There --  
6 MR. GOECKE: Again, objection.  
7 MR. GROSSMAN: Yes. Sustained. Let's --  
8 MS. CORDRY: Well, again, I'm trying to --  
9 MR. GROSSMAN: -- get a more direct question --  
10 MS. CORDRY: Okay.  
11 MR. GROSSMAN: -- to the witness that's --  
12 MS. CORDRY: I'm trying not to be leading, okay?  
13 I can ask her, are there problems with trucks idling? I can  
14 ask that question, which is what we're really trying to get  
15 to at this point.  
16 MR. GROSSMAN: All right. Why don't you ask that  
17 question?  
18 MS. CORDRY: Fine.  
19 BY MS. CORDRY:  
20 Q Have you seen trucks idling in and about the mall  
21 area near the Costco, in the area -- between your house and  
22 the Costco warehouse?  
23 A Yes.  
24 Q Okay. Can you describe what you have seen and  
25 when you have seen it?

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1 A I have seen trucks idling on the ring road -- I  
2 actually have a picture of one on my cell phone from my yard  
3 -- and I have heard trucks just, I don't know where they  
4 are, but I hear them pretty much every other morning. I  
5 wake up at about 5:00 and let my dog out, and I hear trucks  
6 idling, and that's been constant since I moved -- since the  
7 Costco opened.  
8 Q And how long do you hear them idling?  
9 A I just hear them when I go outside. I don't stand  
10 there and wait until they're gone, but I do hear them pretty  
11 much every other morning.  
12 MR. GROSSMAN: This is at 5:00 a.m.?  
13 THE WITNESS: Yes.  
14 MR. GROSSMAN: And for what duration do you hear  
15 them idling?  
16 THE WITNESS: I would say, five minutes. I let my  
17 dog out, she does her thing in the yard, and then five  
18 minutes later I let her back in and I still hear the idling.  
19 MR. GROSSMAN: Do you have any other observations  
20 of the idling, other than that five-minute window?  
21 THE WITNESS: Sporadically in the afternoon. I'm  
22 out of my house by, before 6 o'clock, and I come home at  
23 4:30. So I might hear some in the afternoon. And I do go  
24 to bed early. So usually, mostly I hear them and I notice  
25 hearing them in the morning.

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1 MR. GROSSMAN: All right.  
2 BY MS. CORDRY:  
3 Q Can you hear them when you're inside your house?  
4 A When the windows are open, yes.  
5 Q Do you leave your windows open?  
6 A I try to, but I have to close them sometimes. One  
7 night I had a big presentation, and one of the trucks woke  
8 me up at 4 o'clock in the morning, and I tried to call  
9 Westfield. No one answered the phone. So I sent them an  
10 e-mail about the idling trucks, and they did not respond  
11 back.  
12 Q And that particular morning, for instance, how  
13 long did the truck idle, to your knowledge?  
14 A Over a half hour.  
15 Q Okay. And, again, this was one that was right on  
16 the ring road by your house?  
17 A It must have been right by the ring road because  
18 it woke me up out of a dead sleep.  
19 MR. GROSSMAN: And that was about 4:00 a.m.?  
20 THE WITNESS: It was 4:00 a.m.  
21 BY MS. CORDRY:  
22 Q Have you observed trucks idling at other places in  
23 the, in or around the parking lots?  
24 A What I've noticed, I've only noticed from my house  
25 are the ones at the ring road. I hear other ones, and I

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1 have seen that there's a new parking grid for a semi. I  
2 think it's right -- right around here there's new white  
3 lines for a semi --  
4 Q Are you --  
5 A -- to park, and I've seen a semi park --  
6 MR. GROSSMAN: Just for the record, you're  
7 pointing to the area just to the east of Intersection 16, is  
8 that correct, or --  
9 MS. CORDRY: No.  
10 BY MS. CORDRY:  
11 Q Are you pointing, I think --  
12 A Where --  
13 Q -- are you pointing just above the unpaved area  
14 there where there's a cross aisle there?  
15 A It's a paved area. It's right here.  
16 Q There's a cross aisle there going east and west?  
17 MS. ROSENFELD: Just north of the old special  
18 exception location?  
19 BY MS. CORDRY:  
20 Q Well, just north of the unpaved area, is that  
21 where you're pointing to?  
22 A All right.  
23 Q Okay. Okay. This area here is --  
24 A All right. So this is -- oh, I'm sorry. This is  
25 where my house --

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1 Q This is the grassy area. Okay. And this is the  
2 grassy area here.  
3 A So, yeah, that's the grassy area. So it's just  
4 beyond the main parking in front of Costco. So it's right  
5 about here --  
6 Q Right.  
7 A -- there's a --  
8 Q There is now an east-west drive aisle across --  
9 A Oh, there is? Okay.  
10 Q Is that where you're referring to?  
11 A Possibly. I don't go there that often, but I did  
12 see -- it was just right around here. This was the Costco.  
13 It was right here.  
14 MR. GROSSMAN: All right.  
15 MS. CORDRY: Okay.  
16 MR. GROSSMAN: So the witness is essentially  
17 indicating just to the north of --  
18 MS. CORDRY: Okay.  
19 MR. GROSSMAN: -- what's now a grassy area. Is  
20 that correct --  
21 MS. CORDRY: Right.  
22 MR. GROSSMAN: -- where the drive aisle --  
23 MS. CORDRY: Yes.  
24 BY MS. CORDRY:  
25 Q And have you seen trucks park there?

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1 A Yes.  
2 Q Okay. And idling?  
3 A I do not know if they were idling because I was  
4 driving. So I do not know.  
5 Q Okay. So have you noticed trucks idling in the  
6 evening when you're home?  
7 A Yes.  
8 Q Okay. And how often?  
9 A Two to three times a week.  
10 Q Okay. And, again, where would you -- where are  
11 you observing them idling?  
12 A I just hear them, because I'm usually on my back  
13 porch and that's where I hear it. Because of the hill, I  
14 just hear it; so I don't see them.  
15 Q Okay. And how long do you hear them on those  
16 occasions?  
17 A As long as I'm outside, so anywhere from, if I'm  
18 outside for a minute, if I'm outside for five, 10, 15  
19 minutes. It just, it just depends on how long I'm outside.  
20 I'm in and out, in and out, in and out.  
21 Q Okay. And I'm sorry. And how often did you say  
22 that would occur on, say, a weekly basis?  
23 A On the afternoons and the early evenings, two to  
24 three times a week.  
25 Q A week, are you talking about?

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1 A Uh-huh.  
2 Q Okay. Okay.  
3 MR. GROSSMAN: Let me ask you this: There's been  
4 some testimony in this case that trucks sometimes, rather  
5 than idling, run some kind of internal generator, I guess to  
6 keep an air-conditioning functioning. Do you have any way  
7 of knowing whether the noise you're hearing is a truck  
8 idling versus that generator?  
9 THE WITNESS: I don't, I don't know the, I don't  
10 know the difference, but from where I am, I'm thinking if it  
11 was a generator, I would hear a different hum than -- I  
12 think if the truck was idling, it would be a lot more noisy  
13 than the hum, and I've heard different hums. I hear, I hear  
14 a lot of stuff.  
15 MR. GROSSMAN: You hear a lot of noise.  
16 THE WITNESS: I hear a lot of noise. I hear a lot  
17 of noise, but I wouldn't be able to tell.  
18 MR. GROSSMAN: All right.  
19 MS. CORDRY: Yes, I think there was one truck that  
20 we had the generator --  
21 MR. GROSSMAN: I know. I just don't know if --  
22 MS. CORDRY: Yes. Right.  
23 MR. GROSSMAN: -- I was, I had never heard of that  
24 device on trucks. I learned it --  
25 MS. CORDRY: Right.

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1 MR. GROSSMAN: -- for the first time in this --  
2 MS. CORDRY: Right.  
3 MR. GROSSMAN: -- hearing. So I just wondered --  
4 I don't know how widespread it is or --  
5 MS. CORDRY: Right. I don't know. In all the  
6 trucks, the time since then, that was the only time I've  
7 ever seen anybody that seemed to have a generator as opposed  
8 to an idling --  
9 MS. HARRIS: I'm sorry. She's --  
10 MR. GOECKE: She's not testifying right now.  
11 MS. HARRIS: -- testifying a fair amount.  
12 MR. GROSSMAN: Well, I understand. I'm --  
13 MS. CORDRY: All right.  
14 MR. GROSSMAN: -- treating it as her commentary.  
15 MR. SILVERMAN: Required in Long Beach, for the  
16 record.  
17 MS. CORDRY: Okay.  
18 MR. GROSSMAN: More unsolicited information.  
19 MR. SILVERMAN: Right.  
20 BY MS. CORDRY:  
21 Q All right. Has there been any other occasion when  
22 you've tried to -- no, never mind. Let's see. Okay. Is  
23 there any, let me just give it to you, is there anything  
24 else you -- any other observations you want to make?  
25 Otherwise, I have no further questions.

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1 A The only other observation, which I may have  
2 already stated, was that when I moved in there, the Costco  
3 was not open. When the Costco opened, the traffic and the  
4 trucks, the idling, it is definitely, definitely noticeable,  
5 and it's definitely changed the atmosphere; it has changed  
6 the neighborhood and the pleasantness of my home and the  
7 neighborhood.  
8 Q And that's the current background that you live  
9 in?  
10 A Yes.  
11 Q Okay.  
12 MS. CORDRY: All right. I have no further  
13 questions.  
14 MR. GROSSMAN: All right. Applicant, any  
15 questions?  
16 MR. GOECKE: A few, please.  
17 SURREBUTTAL CROSS-EXAMINATION  
18 BY MR. GOECKE:  
19 Q Ms. Livornese, what did you do to prepare for your  
20 testimony today?  
21 A I e-mailed a couple of times to Ms. Cordry, and  
22 then she just spoke to me a few minutes before the hearing.  
23 Q Yes. And what did you e-mail her?  
24 A What did I e-mail?  
25 Q You said you e-mailed Ms. Cordry. What -- did you

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1 initiate those e-mails?  
2 MS. CORDRY: Is it appropriate for him to be  
3 cross-examining the witness about what she's discussed with  
4 us when we've --  
5 MR. GROSSMAN: It is. It goes --  
6 MS. CORDRY: -- when we have called her as a  
7 witness?  
8 MR. GROSSMAN: You called her as a witness.  
9 It's --  
10 MS. CORDRY: Yes.  
11 MR. GROSSMAN: -- certainly appropriate for her to  
12 -- for him to inquire about prior discussions. That always  
13 would happen with any witness in a trial.  
14 MS. CORDRY: With counsel? Okay. All right.  
15 MR. GROSSMAN: It's not unusual at all.  
16 MS. CORDRY: All right.  
17 THE WITNESS: It started when that truck woke me  
18 up at 4 o'clock in the morning, when Westfield did not  
19 answer my call.  
20 MR. GROSSMAN: I'm going to stop -- hold on one  
21 second. Are you claiming privilege? Is that what you're  
22 saying, or is that -- it's just not an unusual question  
23 regarding witness preparation.  
24 MS. CORDRY: Okay. All right.  
25 MR. GROSSMAN: But I'm not -- if you're claiming

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1 privilege, then that may be another question. I don't know  
2 what you're saying in your objection.  
3 MS. CORDRY: Well --  
4 MR. GROSSMAN: Do you represent --  
5 MR. GOECKE: I don't think Ms. Cordry is the  
6 attorney of record.  
7 MR. GROSSMAN: Right. That's why, but I do --  
8 MS. CORDRY: That's all right. It's true, I am  
9 not the attorney of record here; so I will not claim  
10 privilege for this. All right.  
11 MR. GROSSMAN: All right. Go ahead.  
12 BY MR. GOECKE:  
13 Q Okay. So I'm sorry. So --  
14 A Okay. So I sent -- Westfield did not contact me.  
15 So I sent them an e-mail, and I cc'd Ms. Cordry on the  
16 e-mail I sent to Westfield about the idling trucks waking me  
17 up.  
18 Q And when was this?  
19 A This was the morning of May 5th.  
20 Q So just about two weeks ago?  
21 A Uh-huh.  
22 Q Okay. And why did you copy Ms. Cordry on that  
23 e-mail?  
24 A Because I know that she is involved with the,  
25 this, the hearings here --

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1 Q Sure.  
2 A -- with the emissions and the gas station.  
3 Q And how do you know that?  
4 A From going to the Kensington Heights Civic  
5 Association meetings.  
6 Q Okay. Did you review any transcripts before  
7 testifying today?  
8 A No.  
9 Q Okay. Are you aware that these hearings that have  
10 been going on for a while are transcribed and that the  
11 transcripts are available to the public?  
12 A I guess I do know that, but I didn't take any  
13 initiative to look at them.  
14 Q Did Ms. Cordry ever tell you that they were  
15 available to you?  
16 A I don't think directly --  
17 Q Okay.  
18 A -- but there's a newsletter that I think states  
19 that the transcripts are available in our civic association.  
20 Q Okay. But she never provided you with a copy --  
21 A No.  
22 Q -- of any transcript? And she never asked you to  
23 review anything in preparation for your testimony?  
24 A No, she did not.  
25 Q Okay. And I assume then that you also did not

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1 review any of the reports that have been prepared by any of  
2 Costco's consultants or experts in this matter?  
3 A I did not review them, but I've heard about the  
4 emission reports and that they're going back and being  
5 re-analyzed a few times, and I've picked that information up  
6 from our civic association meetings and civic association  
7 letters.  
8 Q Okay. But you haven't reviewed any of them  
9 yourself?  
10 A Correct.  
11 Q Okay. Going back to that morning on May 5th,  
12 2014, when a truck woke you up at 4:00 a.m., did you say you  
13 had a presentation to give at work that day?  
14 A Correct.  
15 Q So is it fair to say that you might have been  
16 sleeping a bit restlessly that night anyway?  
17 A No. I mean, I know my stuff. I just wanted to  
18 not look haggard.  
19 MR. GROSSMAN: I don't really think that that area  
20 is going to be part of what would be part of my report.  
21 So --  
22 BY MR. GOECKE:  
23 Q Aside from that one time when you e-mailed and  
24 tried to contact Westfield about the noise from the mall,  
25 have you ever complained to Westfield about the noise at the



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1 MR. GROSSMAN: Ah. Well, you can leave it  
2 there --  
3 THE WITNESS: Okay.  
4 MR. GROSSMAN: -- in case the next witness needs  
5 it.  
6 THE WITNESS: All right.  
7 MR. GROSSMAN: Okay.  
8 MS. HARRIS: Smart question.  
9 MR. GROSSMAN: And do you wish to call  
10 Mr. McGarry?  
11 MS. CORDRY: Yes, please, Mr. McGarry.  
12 MR. MCGARRY: Remain standing?  
13 MR. GROSSMAN: Have a seat, please. All right.  
14 Would you state your full name and address, please?  
15 MR. MCGARRY: Brendan McGarry, 2815 Peregoy Drive,  
16 Kensington, Maryland 20895.  
17 MR. GROSSMAN: All right. Would you raise your  
18 right hand, please?  
19 (Witness sworn.)  
20 MR. GROSSMAN: All right. You may proceed.  
21 MS. CORDRY: Okay.  
22 SURREBUTTAL DIRECT EXAMINATION  
23 BY MS. CORDRY:  
24 Q Mr. McGarry, with the pointer or if you want to  
25 just describe verbally, where are you in relationship to the

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1 ring road?  
2 A I'm two houses down from Karen.  
3 Q Okay.  
4 A I'm on Peregoy. I'm toward the end of the no  
5 outlet on Peregoy.  
6 Q On the same side of the street or the other?  
7 A Same side of the street.  
8 Q Okay. All right. And how long have you lived  
9 there?  
10 A My wife and I closed on the house March 15 of last  
11 year.  
12 Q Okay. And, again, at that point, was the Costco  
13 warehouse operating?  
14 A It was not, as far as I could tell. You could see  
15 that it was constructed, but I believe it didn't open until  
16 the following month.  
17 Q Okay. And at that point, what was your experience  
18 with traffic in the road near your house?  
19 A Traffic's -- I mean, we love the neighborhood --  
20 traffic's pretty minimal right there. We have a membership  
21 to the LA Fitness. We subsequently did get a membership to  
22 the Costco. We do shop at the grocery store there. So we  
23 did go there in our first month on occasion. Traffic wasn't  
24 -- it did pick up on the weekend. It was noticeably heavier  
25 after Costco opened, in subsequent weeks and months.

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1 Q Okay. And, okay, and what, what work do you do?  
2 A I'm a news reporter --  
3 Q Okay.  
4 A -- actually. I currently work for a website  
5 called military.com. I've previously worked for newspapers.  
6 My previous employer was Bloomberg News in D.C.  
7 Q Okay. So what kind of time schedule are you on?  
8 Are you on a regular 9:00 to 5:00 schedule, or do you work  
9 unusual hours or what?  
10 A I actually do have a more unusual schedule now. I  
11 work from home as part of my current job. So I am in my  
12 home office most of the day, and so I am, I am there quite  
13 frequently. I do, I do cover testimony on the Hill, and I  
14 cover press conferences at DoD on occasion, but I'd say,  
15 anywhere from three to four days out of the week I'm home.  
16 Q Okay. And are you home at night as well?  
17 A I am home at night, yep.  
18 Q Okay. And since the warehouse has opened, I think  
19 you indicated that traffic had become heavier. Have you had  
20 experience with observing idling in and around your, the  
21 ring road?  
22 A I have, yes. It's similar to Karen's, my  
23 observations. I'm not as close as she is, but I am very --  
24 I'm in the vicinity. Again, I'm two houses down, and I have  
25 noticed it on several occasions at night. I'm maybe not as

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1 blessed as being as deep of a sleeper. So I have noticed  
2 it, the idling. It is a low tone. It does kind of carry  
3 through the windows, for sure if they're open, even if you  
4 keep them closed. I would say it's at least -- I would say  
5 it's at least three times a week, and again, it's either, I  
6 have noticed them idling, sitting on the perimeter, but  
7 there probably are occasion when they're somewhere parked in  
8 the, in the lot --  
9 Q Okay.  
10 A -- and it's enough, it's enough to keep me awake  
11 or curse on occasion to my wife and close the windows and  
12 turn on some fans to create some ambient noise, or the AC,  
13 just to kind of try to drown out the pitch.  
14 Q Okay. And when you hear them at night, what is  
15 the duration that you hear them for?  
16 A It is hard to say. I will be honest, I have not  
17 sought to, done some sort of statistical analysis on this.  
18 I'm very much a resident, and these are anecdotal reports.  
19 I would be happy to undertake a more detailed study, but  
20 anecdotally, it is a few times a week, and it is, it is -- I  
21 would actually say it's longer. I have noticed them late at  
22 night on occasion. Again, I'll shut the window. Late at  
23 night meaning, meaning post, close to midnight or shortly  
24 thereafter, and then I'll also notice in the morning when I  
25 get up very early. So my hunch, again, anecdotal --

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1 MR. GROSSMAN: Well, let's not give a hunch.  
2 THE WITNESS: Okay.  
3 BY MS. CORDRY:  
4 Q All right.  
5 A They're there, I believe they're there  
6 overnight --  
7 Q Okay.  
8 A -- on occasion, yes.  
9 Q For the time that you're awake and hearing them,  
10 you are hearing them in the evening and then you're hearing  
11 them again in the morning?  
12 A That's correct.  
13 Q And when you hear it in the evening time, I guess  
14 this is before you go to sleep?  
15 A That's correct.  
16 Q Or when you're trying to sleep?  
17 A Yeah, reading, sure.  
18 Q How long would you estimate you're hearing them at  
19 that point?  
20 A Again, it can be, I would say, closer to the  
21 duration of a hour or longer, and again, I will make efforts  
22 to try and drown out the noise. So I'm not measuring them  
23 from start to finish, but it is, it is sustained. It's  
24 extended. It's not --  
25 Q Okay.

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1 A -- it's not a short idle. It seems like it's an  
2 extended park.  
3 Q And when you hear it in the morning, this would be  
4 the morning after you're hearing it the night before?  
5 A Yeah, it'd be usually in the morning, yeah, right.  
6 Q Okay. And at that point, how long might you hear  
7 it for?  
8 A Until, I would say, until sometimes the workday  
9 picks up again. I'm out, briefly, walking a dog; I'll hear  
10 it, but I do not notice it -- I do not notice any idling  
11 during the day. It does seem to be an after-hours or  
12 before-the-business-day activity.  
13 Q And, again, before the business day, are you  
14 hearing it for five minutes, a half hour, or an hour, or do  
15 you -- how much time?  
16 A Again, it's shorter in the -- I would say it's  
17 shorter actually in the morning. I'm leaving my resident to  
18 walk the dog. I'm sometimes leaving to go to work. So it's  
19 -- I'm actually not there to observe for more of the  
20 morning.  
21 Q Okay. And then when you hear it at night and then  
22 again in the morning, does it appear to be in the same  
23 location that you're hearing it?  
24 A Yes.  
25 Q Okay.

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1 A Yes. I would say, again, it's in the vicinity of  
2 where Karen marked earlier. I've seen them on, on the  
3 perimeter road, adjacent to the neighborhood on occasion --  
4 again, I would say a handful of times -- and I have heard it  
5 and not noticed the truck on the perimeter road. So that --  
6 I'm assuming they're somewhere else in the lot.  
7 Q Okay. And so if I understand, you're saying that  
8 this is something you're observing approximately three to  
9 four times a week; is that what I'm hearing?  
10 A I think that's safe to say.  
11 Q Okay.  
12 A Anecdotally, I think that's safe to say.  
13 Q Okay. And did you observe that before the Costco  
14 warehouse opened?  
15 A It was our first month; so I may not have been as  
16 observant, but I would say no. I would say that it was  
17 definitely more noticeable after the opening.  
18 Q Okay. And do you walk through the mall?  
19 A Sure, on occasion, yeah.  
20 Q Do you observe any issues in terms of traffic and  
21 pedestrian safety in terms of walking through the mall?  
22 A On occasion, yeah. The weekends are dicey. You  
23 have to really just be careful going through the crosswalks.  
24 It's like elsewhere in the community: people for some  
25 reason don't seem to understand the laws of a crosswalk and

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1 they don't stop; people are zooming right around the  
2 perimeter road. And so it, on the weekends, the volume of  
3 traffic does, it is high and enough to make you want to try  
4 and get your errands done midweek.  
5 Q Okay.  
6 MS. CORDRY: Okay. I don't have anything further.  
7 MR. GROSSMAN: All right. Ms. Duckett, any  
8 cross-examination?  
9 MS. DUCKETT: No. No. No, sir.  
10 MR. GROSSMAN: All right. How about from the  
11 Coalition?  
12 MS. ADELMAN: No.  
13 MR. SILVERMAN: No.  
14 MR. GROSSMAN: I should have asked you before for  
15 the previous witness, but in any event --  
16 MR. GOECKE: Just a few, thank you.  
17 SURREBUTTAL CROSS-EXAMINATION  
18 BY MR. GOECKE:  
19 Q Mr. McGarry, so when you hear the trucks idling,  
20 can you tell if it's one truck or two trucks or three trucks  
21 or how many trucks are generating the noise?  
22 A I can't. I can't distinguish. It's a low, it's a  
23 low pitch. It's a, it's a semi. You can tell it's a, it's  
24 a, it's a commercial vehicle.  
25 Q Yes. And as Mr. Grossman mentioned before,

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1 there's been some testimony that sometimes it's hard to  
2 distinguish between when a truck is idling and when it's  
3 merely running a generator to operate its refrigeration or  
4 air-conditioning system. Are you able -- are you familiar  
5 with that, the difference in those two noises?  
6 A I worked for summers in college at a piping yard  
7 to make some money for school. We had, we had semis coming  
8 in quite a bit, not -- and idling as we loaded them with  
9 forklifts. They sound very much like that. I can't tell  
10 the difference between an idle and maybe just a  
11 refrigeration unit in operation, but from my previous  
12 experience, just being around these types of trucks, they  
13 sound like the same idle. It's like what you'd hear if you  
14 were at a red light and you roll down your window and a, you  
15 know, an 18-wheeler pulled up.  
16 Q Yes. And, again, the noises, the idling sound  
17 that you're hearing is primarily in the morning than the  
18 evening?  
19 A I, it's more of a nuisance or noticeable, if you  
20 will, in the evening for me --  
21 Q Yes.  
22 A -- and it's sustained. In the morning it's  
23 actually not -- I have heard it in the morning. It's less  
24 of an issue because I'm either, because I'm up and being  
25 active and not necessarily having, being forced to listen to

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1 it.  
2 Q Yes. And when you say it's sustained, what's the  
3 longest duration you've ever heard trucks idling for in the  
4 evening?  
5 A Again, it's anecdotal. So I want to be, I want to  
6 qualify this --  
7 Q Sure.  
8 A -- but when I say sustained, I mean, I'm laying in  
9 bed around 10:00 to 11:00 at night and sometimes I'll read  
10 for a couple of hours before I fall asleep. My wife doesn't  
11 have that problem at all. So anywhere from --  
12 MR. GROSSMAN: That's in the record now.  
13 THE WITNESS: So anywhere from one to two hours  
14 is, I think, a safe generalization when I say sustained.  
15 BY MR. GOECKE:  
16 Q Okay. And, again, at that point in time, you  
17 can't tell whether the noise is coming from one truck or two  
18 trucks or three trucks? You don't know how many trucks is  
19 generating the noise?  
20 A That's correct. I can look out my window, and  
21 from my vantage point -- you can see how the perimeter road  
22 bends right there.  
23 Q Yes.  
24 A We're literally sort of at that bend; so you can  
25 sort of see. I've seen --

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1 MR. GROSSMAN: The bend being referred to is the  
2 southwest corner of the ring road mall, around the mall.  
3 THE WITNESS: I have seen a vehicle there in the  
4 evening, just the lights. You can see the -- I haven't seen  
5 a, I haven't seen a line or some sort of, some sort of, you  
6 know, significant parking operation, but you certainly can  
7 see one, maybe two. I've seen one, I'll say that. I've  
8 seen a truck there frequently.  
9 BY MR. GOECKE:  
10 Q Okay. And is it also fair to say that you're not  
11 aware of whether these trucks are operating with clean  
12 diesel technology or not?  
13 A I am not. I was the, low on the totem pole at  
14 that piping yard. I was picking up, like, ductile iron pipe  
15 with a forklift. I, I have no expertise in advanced diesel  
16 technology.  
17 Q You're not alone.  
18 A And it's -- I would agree with Karen, I have not  
19 noticed the identity of the trucks. I just noticed that  
20 this was an issue after the opening.  
21 Q Sure.  
22 A I didn't, I didn't sleuth to investigate the  
23 owner.  
24 Q Okay. Thanks, Mr. McGarry.  
25 MR. GOECKE: I have no further questions.

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1 MR. GROSSMAN: Any redirect?  
2 MS. CORDRY: No. I think that's fine.  
3 MR. GROSSMAN: All right. I thank you,  
4 Mr. McGarry.  
5 THE WITNESS: Thank you.  
6 MR. GROSSMAN: Thank you very much for coming down  
7 and sharing your information with us.  
8 MR. GOECKE: And given the testimony,  
9 Mr. Grossman, we see no need to consult with Mr. Sullivan to  
10 cross-examine them further.  
11 MR. GROSSMAN: All right. Thank you. All right.  
12 So you're free, but you're certainly welcome to stay here  
13 and watch the festivities for the rest of the day.  
14 MS. LIVORNESE: Thank you.  
15 MR. MCGARRY: Thank you very much.  
16 MS. HARRIS: Mr. Grossman, can we take a --  
17 MR. GROSSMAN: People rarely take me up on that.  
18 I don't understand it.  
19 MR. MCGARRY: I do, I do have some stories to  
20 file. So I got --  
21 MR. GROSSMAN: This is the biggest show in town.  
22 MR. MCGARRY: News doesn't wait.  
23 MR. GROSSMAN: All right. Thank you, sir.  
24 MS. HARRIS: May we take a five-minute break?  
25 MR. GROSSMAN: Sure.

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1 MS. HARRIS: Thank you.  
2 MS. ADELMAN: They can't get out fast enough.  
3 (Whereupon, a brief recess was taken.)  
4 MR. GROSSMAN: All right. Back on the record.  
5 Are you ready, Ms. Harris?  
6 MS. HARRIS: Yes.  
7 MR. GROSSMAN: Okay. All right. I guess we're  
8 ready for Ms. Cordry then.  
9 MS. ROSENFELD: Did you want to do any of the  
10 preliminaries or have Ms. Cordry --  
11 MR. GROSSMAN: As you wish.  
12 MS. ROSENFELD: As I mentioned, on the 17th I sent  
13 in some exhibits, and I believe they're shown as Exhibit  
14 578, and it just says, e-mails, submitting hard copies of  
15 exhibits at next hearing rather than electric copies. I do  
16 have hard copies, and --  
17 MR. GROSSMAN: Okay.  
18 MS. ROSENFELD: -- perhaps we can just go ahead  
19 and exhibitize them in advance of the next hearing.  
20 MR. GROSSMAN: All right. Did we -- I just want  
21 to make sure that they're not already included, because you  
22 also had, in 585 you had something.  
23 MS. ROSENFELD: I did go through, and those are  
24 different exhibits. So --  
25 MR. GROSSMAN: Okay.

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1 MS. ROSENFELD: -- we're not duplicating here.  
2 MS. ADELMAN: Did you get a copy from Ellen? If  
3 you didn't, I'll go ask Ellen now.  
4 MS. ROSENFELD: We didn't. And maybe we can just  
5 do these 578(a), (b), (c).  
6 MR. GOECKE: Thank you.  
7 MS. ROSENFELD: I have to make sure I give one to  
8 Mr. Grossman. The first are excerpts from the modeling  
9 protocol.  
10 MR. GROSSMAN: Hold on one second. So we're  
11 looking at -- I'm sorry. Which was the exhibit that --  
12 MS. ROSENFELD: 578.  
13 MR. GROSSMAN: 578. Okay. Let's see.  
14 MS. ROSENFELD: And I'm not sure. Maybe you can  
15 check and see if those are the same documents or --  
16 MR. GROSSMAN: 578 is just, it looks like just an  
17 e-mail and a listing. It doesn't have other things  
18 attached. I think that's --  
19 MS. ROSENFELD: Okay. And so the first one, is  
20 the first listing the protocol, the modeling protocol?  
21 MR. GROSSMAN: First listing, 578, is one Exhibit  
22 453(a), Energy Information.  
23 MS. ROSENFELD: No.  
24 MR. GROSSMAN: Do you want to look at the file?  
25 MS. ROSENFELD: Yes.

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1 MR. GROSSMAN: I'll put a little yellow marker on  
2 it for the one that's labeled 578. You can see, you can  
3 look at the file and see what's --  
4 MS. ROSENFELD: Why don't I do that over a break  
5 then --  
6 MR. GROSSMAN: Fair enough.  
7 MS. ROSENFELD: -- rather than take our time here.  
8 MR. GROSSMAN: Okay. Fair enough.  
9 MS. ROSENFELD: And then the other preliminary  
10 was, you had -- Mr. Goecke had mentioned that they had  
11 submitted information for a Mr. William Bunn that they had  
12 proposed as a potential reply witness --  
13 MR. GROSSMAN: I saw that information.  
14 MS. ROSENFELD: -- in the event that Dr. Jison  
15 testifies.  
16 MR. GROSSMAN: Yes.  
17 MS. ROSENFELD: We do have a suggestion as far as  
18 Dr. Jison is concerned. There are several articles that we  
19 would like to submit into the record that she would testify  
20 about. We're happy just to submit the articles and have the  
21 opportunity to reference them and not call her, and that  
22 would, of course, save time in these proceedings, and we  
23 have those copies with us here today. We can hand them out  
24 and hear what Costco has to say about that approach.  
25 MR. GROSSMAN: The gentleman, what was his name?

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1 MR. GOECKE: William Bunn.  
2 MR. GROSSMAN: Mr. Bunn? I didn't get the  
3 impression from you that you were suggesting that you were  
4 going to call him. It was just the article, as I  
5 understood. Did I misunderstand that, because I don't know  
6 -- I perhaps didn't see an e-mail exchange between the two  
7 of you.  
8 MS. CORDRY: No.  
9 MR. GOECKE: Yes, it was in the e-mail. So our  
10 plan is to have him here if Dr. Jison were to testify, and  
11 depending on what she testifies, we may call him as a reply  
12 witness, just to briefly address her health testimony.  
13 MS. ROSENFELD: And for the record, we would  
14 object to that, his last-minute calling --  
15 MS. CORDRY: We'd strongly object to any reply  
16 witnesses. We've had rebuttal and surrebuttal. That was  
17 our understanding. That was the end of it. We weren't  
18 going to have another round of this.  
19 MR. GOECKE: No. The rules contemplate for a  
20 reply. So we have that. We have -- it's in the rules that  
21 we have the right for reply witnesses, if necessary.  
22 MS. CORDRY: After rebuttal and surrebuttal?  
23 MR. GOECKE: Yes.  
24 MS. HARRIS: Yes.  
25 MR. GROSSMAN: Strangely enough, there is

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1 something in our rule about that. We've never, as far as I  
2 know, ever gotten to that, that point --  
3 MR. GOECKE: Why stop now?  
4 MS. HARRIS: You've never had 35 hearings.  
5 MR. GROSSMAN: -- because it puts me in mind of an  
6 exchange I once saw back in a previous life as a litigator.  
7 There was a series of responses and, you know, motion,  
8 opposition, reply, response, and so on and so forth, and  
9 finally, somebody filed something called Last-Word Pleading  
10 in response.  
11 There isn't anything, as I recall, in the APA  
12 about replies, but it is, as I recall, there is actually  
13 something in our rules, in the OZAH rules, not, I believe,  
14 in the Board of Appeals rules. So, you know, it's a  
15 question as to whether or not it should be allowed. I guess  
16 I would make that decision based on whether or not something  
17 warranting --  
18 MS. CORDRY: Yes.  
19 MR. GOECKE: We think his testimony will be very  
20 helpful to you if he were allowed to testify, and we'd be  
21 willing to confine it to a certain amount of time. We think  
22 we can get him up and down quickly.  
23 MR. GROSSMAN: Well, I saw his article. I saw the  
24 article that you submitted, and I presumed that that was  
25 going to be submitted. But you're saying that you're

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1 really, your intention is not necessarily to call  
2 Dr. Jison --  
3 MS. CORDRY: At this point --  
4 MR. GROSSMAN: -- but, rather, just to submit some  
5 additional articles?  
6 MS. CORDRY: Right. At this point, what we  
7 actually would be submitting are some of the materials that  
8 were presented at -- as was indicated earlier, the EPA is in  
9 the process of continuing its revision of its NO2 rule,  
10 which you're aware of. There was a hearing before this  
11 CASAC committee, the Clean Air Scientific Advisory  
12 Committee, in March. There were materials submitted --  
13 MR. GROSSMAN: In March of?  
14 MS. CORDRY: 2014, which was after everything else  
15 that we have done in this process. There were some  
16 materials submitted by that. Two pieces that -- and we have  
17 sent these around before this, sometime ago -- two pieces  
18 that we had here were some excerpts from the staff  
19 preparation that went into that report, and then the other  
20 three pieces were comments by the American Lung Association  
21 for that meeting at which they testified and then two of the  
22 articles that were referenced in there. So that's what we  
23 were talking about suggesting.  
24 I think, you know, some of this is -- you know, I  
25 think this is all things that are in an official

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1 governmental public hearing record that you could take  
2 judicial notice of and that's -- we're prepared to do that.  
3 And I think the articles and the material here is  
4 sufficiently self-explanatory that rather than prolong this  
5 and bring Dr. Jison back again and try to drag her away from  
6 her work, that we would be prepared to just submit these and  
7 say, you know, they're there as official documents in the  
8 official governmental record and --  
9 MR. GROSSMAN: I can't take judicial notice, but I  
10 can take official notice.  
11 MS. CORDRY: Official notice, yes, perhaps.  
12 MR. GROSSMAN: Do you have a response to that? Do  
13 you think that a combination of their additional articles  
14 and Mr. Bunn or Dr. Bunn's response -- or it's not directly  
15 responsive, but it does deal with the same area, that is,  
16 NO2, as I read it, NO2 effects for short exposure.  
17 MS. CORDRY: I would have a concern with that  
18 because that article goes back to 2009, which was before the  
19 last --  
20 MR. GROSSMAN: I saw that.  
21 MS. CORDRY: -- the last report that's already  
22 come in here, as opposed, these are new materials, and I  
23 think there's a real concern with -- we had his health  
24 witness. Their health witness testified at length, did not  
25 bring that issue up, did not bring, put that kind of

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1 evidence in, and to come back and reply, to put in articles  
2 that are six, five or six years old, I mean --  
3 MR. GROSSMAN: Well, I take into account its age,  
4 but I recognized its date when I saw the article. So, I  
5 mean, that is a factor in weighing it.  
6 MS. CORDRY: And we'd also --  
7 MR. GROSSMAN: And what do you think about that as  
8 an exchange, to allow in their additional --  
9 MR. GOECKE: Right. I think --  
10 MR. GROSSMAN: -- articles and your Bunn article?  
11 MR. GOECKE: I think we would need to review these  
12 articles. We haven't seen these.  
13 MS. CORDRY: Yes. Yes, you have. We sent these  
14 out a long time ago.  
15 MR. GOECKE: Oh, I'm not sure which ones she's  
16 referring to then.  
17 MS. CORDRY: All right.  
18 MR. GROSSMAN: All right. So maybe during a  
19 break --  
20 MS. CORDRY: All right.  
21 MR. GROSSMAN: -- you can take a look to make sure  
22 you in fact have seen these and go on from there. I mean,  
23 the question -- my concern is not with their authenticity,  
24 which I'll take you're vouching for, or with, in general,  
25 their admissibility as learned articles; it's more a

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1 question of timing --  
2 MS. CORDRY: Right. Right.  
3 MR. GROSSMAN: -- you know, and fairness. So  
4 that's all, and I --  
5 MS. CORDRY: Right.  
6 MR. GROSSMAN: -- think that that may, to some  
7 extent, be ameliorated or at least balanced by allowing in  
8 the Bunn article. So that's the consideration that you guys  
9 can wrestle with during the break.  
10 MS. CORDRY: Okay. I mean, I would note, we're  
11 still in surrebuttal. They would then be bringing in  
12 another round of case law, which we suggest that we would --  
13 MR. GROSSMAN: Not case law.  
14 MS. CORDRY: Well, I mean, materials and so forth.  
15 So I think it's not precisely the same.  
16 MR. GROSSMAN: I didn't say it was precisely the  
17 same.  
18 MS. CORDRY: I understand that.  
19 MR. GROSSMAN: I said that there's a certain  
20 fairness balancing going on. That's all. So --  
21 MS. CORDRY: Well --  
22 MR. GROSSMAN: -- you guys can discuss it --  
23 MS. CORDRY: I understand. I understand. Well --  
24 MR. GROSSMAN: -- offline and then arm wrestle  
25 about it, whatever you want to do, and then come to whatever

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1 your positions are, and then you can state on the record if  
2 you're agreeable to it; if not, I'll make the call, which is  
3 what I'm supposed to do.  
4 MS. CORDRY: And I would note that some of the  
5 materials in here will also be relevant to their objection  
6 point in that one of the things they objected to was some of  
7 the excerpts from the 2013 Integrated Science Assessment  
8 that we talked about when Dr. Breyse was testifying -- and  
9 I believe it was already stated at that point that they were  
10 admissible -- but in any case, some of the materials that at  
11 that point were on pages that had on them do not cite or  
12 quote --  
13 MR. GROSSMAN: Right.  
14 MS. CORDRY: -- some of that same material is now  
15 part of these official staff documents that don't any longer  
16 say do not cite or quote on them. See, these are now public  
17 record sort of documents, it appears to me. So I think that  
18 may help clear up some of the objection as well, but I think  
19 I've given copies of all five of the pieces to them at this  
20 point.  
21 MS. HARRIS: If I understood Ms. Cordry, she said  
22 that this, these materials were all in the record, and some  
23 of this --  
24 MS. CORDRY: No, no.  
25 MS. HARRIS: -- looks new to me.

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1 MS. CORDRY: No. I'm saying it's all in the  
2 record before the EPA science advisory committee --  
3 MS. HARRIS: I thought you --  
4 MR. GROSSMAN: No, I thought you were saying that  
5 they had seen the articles previously.  
6 MS. CORDRY: We have e-mailed them to the --  
7 MS. HARRIS: Not --  
8 MS. CORDRY: I believe so.  
9 MR. GROSSMAN: All right. Well --  
10 MS. CORDRY: I certainly believe so, but --  
11 MR. GROSSMAN: All right. Well, you all can --  
12 MS. CORDRY: -- in any case --  
13 MR. GROSSMAN: -- give that out during a break or  
14 even --  
15 MS. CORDRY: In any case, this is not something we  
16 would deal with today, in any case. It would be, you know,  
17 it would be something they would certainly have a chance to  
18 look at before they have to --  
19 MR. GOECKE: We would like to resolve it, because  
20 Dr. Bunn has to make travel plans to be here or not. So --  
21 MR. GROSSMAN: Okay.  
22 MS. CORDRY: Well, he would certainly not --  
23 MR. GROSSMAN: So why don't you guys resolve it  
24 over lunch, if you can.  
25 MS. CORDRY: Okay.

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1 MR. GROSSMAN: Okay?  
2 MS. CORDRY: He certainly wouldn't, I assume,  
3 would certainly not be here before --  
4 MS. ADELMAN: I'm going to ask a very unschooled  
5 question, and I thought they had an OSHA physician:  
6 Dr. Chase. So why is there a new OSHA person coming in?  
7 MR. GROSSMAN: Well, there isn't if Dr. Jison is  
8 not going to testify. There is a provision in, strangely  
9 enough, in OZAH's rules for something after the surrebuttal  
10 and that's what they're relying on.  
11 MS. ADELMAN: Oh, I see.  
12 MR. GROSSMAN: You know, whether or not it is  
13 appropriate in this particular circumstance is something  
14 I'll decide if I have to, but --  
15 MS. ROSENFELD: But I think she's asking a  
16 different question.  
17 MS. ADELMAN: I guess what I'm trying to say is  
18 that Dr. Jison is not a new witness and this seems to be a  
19 new witness and --  
20 MR. GROSSMAN: Well, Dr. Jison would be a new  
21 witness to the extent that she's appearing in a surrebuttal  
22 capacity.  
23 MS. ADELMAN: Oh, I see. Okay. All right.  
24 MR. GROSSMAN: See, I mean, all of this -- once  
25 again, to me, I'm balancing a fairness issue. It's

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1 potentially late in the day arriving, documents that have  
2 developed, to some extent, since they put on their case --  
3 MS. CORDRY: Right.  
4 MR. GROSSMAN: -- versus a document they didn't  
5 produce before --  
6 MS. CORDRY: Exactly.  
7 MR. GROSSMAN: -- but dates back to 2009 --  
8 MS. CORDRY: Exactly.  
9 MR. GROSSMAN: -- which therefore should have been  
10 available --  
11 MS. CORDRY: Exactly.  
12 MR. GROSSMAN: -- I agree with you that it affects  
13 the weight that it'd be given, but in terms of the  
14 availability to your side, to the opposition, it was  
15 available in the literature before. So it all factors into  
16 that fairness balancing, and once again, it's obviously  
17 better if this can be worked out by the parties, agreeable  
18 on it.  
19 My inclination, as you know, is to allow in as  
20 much information as is reliable and credible as possible and  
21 then weight it accordingly, although, to some extent, some  
22 of the information may be so duplicative of things that have  
23 already been in here as not to have much significance, and  
24 you can consider that. There's already a wealth of  
25 information in this record on all of these points.

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1 All right. So will you all consult during the  
2 lunch hour, and we can go forward now?  
3 MR. GOECKE: Yes.  
4 MR. GROSSMAN: Ms. Cordry, I think you're on, on  
5 the point. All right. State your name for the record,  
6 please?  
7 MS. CORDRY: Karen Cordry.  
8 (Witness previously sworn.)  
9 SURREBUTTAL DIRECT EXAMINATION  
10 MR. GROSSMAN: And, Ms. Cordry, you are still  
11 under oath.  
12 THE WITNESS: I don't think I've ever stopped  
13 being under oath in the last several months. Thank you.  
14 MR. GROSSMAN: All right. Are you proceeding in a  
15 narrative form, or are you going to be questioned by --  
16 THE WITNESS: Yeah, I think we will do the  
17 narrative form again, and to be clear, I have -- I can't say  
18 I've read every single word again in the transcripts of what  
19 has gone before, but I have sat through 99 percent of it, I  
20 have read a great deal of it, I am aware of what we  
21 questioned Mr. Guckert and Mr. Sullivan about in rebuttal,  
22 and I am going to do my best to not simply re-cover that  
23 area but only to deal with points where, as we were going  
24 through, there was testimony that was, clearly was not  
25 necessarily getting across with those witnesses and the

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1 point was made that that's something you should do in  
2 surrebuttal and so forth. So I'm going to try not to  
3 duplicate, to the extent possible, what we have done before.  
4 MR. GROSSMAN: I think what I said on that point  
5 was that --  
6 THE WITNESS: Right.  
7 MR. GROSSMAN: -- sometimes you can get something  
8 out of a cross-examination, sometimes the real point is what  
9 you are trying to introduce --  
10 THE WITNESS: Exactly.  
11 MR. GROSSMAN: -- in terms of information, and  
12 that's a surrebuttal --  
13 THE WITNESS: So I will try to not duplicate, and  
14 to the extent that there was unclarity before in that  
15 respect, I will try to clarify. And I'll just go through  
16 several topics here as we go along.  
17 MR. GROSSMAN: Okay.  
18 THE WITNESS: The first one I'll start with -- to  
19 some extent, this will follow through with some of the other  
20 witnesses in the order -- was the Brandywine station.  
21 Costco put in testimony about this station in its rebuttal  
22 evidence, purportedly, apparently, to show that the traffic  
23 from this station would be somewhat similar to that station  
24 and it would not result in significant congestion at the  
25 mall.

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1 MS. HARRIS: That's a mischaracterization of what  
2 the Brandywine testimony was.  
3 MR. GROSSMAN: All right. But I think it's her  
4 understanding --  
5 MS. HARRIS: Okay.  
6 THE WITNESS: Yes. You can --  
7 MR. GROSSMAN: -- of it, but -- so you can  
8 cross-examine her on --  
9 MS. HARRIS: Okay.  
10 MR. GROSSMAN: -- on the accuracy of her  
11 understanding of it.  
12 THE WITNESS: Whoops. Okay. And this was an  
13 exhibit that I asked him, Mr. Guckert, some questions from,  
14 but I don't know -- and we have an exhibit number for it,  
15 which I believe is 483(a) -- not positive whether it was  
16 officially put into the record before or not. It's one  
17 labeled Guckert Cross-Examination Documents.  
18 MR. GROSSMAN: But I saw the, didn't you put -- in  
19 the stuff you just filed, I saw what looked like that, I  
20 think.  
21 THE WITNESS: I think that may have been the  
22 Wheaton monitor locations, which is different.  
23 MR. GROSSMAN: Oh, okay. Maybe you're --  
24 THE WITNESS: Some of the same pictures perhaps  
25 of --

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1 MR. GROSSMAN: Yes.  
2 THE WITNESS: -- aerial shots of things, but --  
3 MR. GROSSMAN: Okay. Okay.  
4 THE WITNESS: -- this is focusing -- and we --  
5 MR. GROSSMAN: Right.  
6 THE WITNESS: -- and I did ask Mr. Guckert some  
7 questions from this document before, but now it's officially  
8 in. I am now going to be --  
9 MR. GROSSMAN: Right.  
10 THE WITNESS: -- officially vouching for it as I  
11 go through there. Slides 2 through 7 are ones comparing  
12 Brandywine with Wheaton and the general area. This is a  
13 three-kilometer radius around the Brandywine station. This  
14 is three kilometers around Wheaton -- clearly, far more  
15 urban and dense. Here is a listing of the distance between,  
16 done with a Google map, distance measured between the gas  
17 station at Brandywine and the nearest homes, which is  
18 approximately 1637 feet, give or take a foot. And these are  
19 some coming in closer to the Brandywine store area again,  
20 and again, we have seen these before. So --  
21 MR. GROSSMAN: So you're saying the closest home  
22 to the Brandywine gas station --  
23 THE WITNESS: Yes.  
24 MR. GROSSMAN: -- Costco gas station --  
25 THE WITNESS: Yeah.

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1 MR. GROSSMAN: -- is how many feet?  
2 THE WITNESS: About 1637.  
3 MS. HARRIS: Mr. Grossman --  
4 MR. GROSSMAN: Yes.  
5 MS. HARRIS: -- if I could state an objection?  
6 MR. GROSSMAN: Yes.  
7 MS. HARRIS: Mr. Guckert testified to the  
8 Brandywine station in terms of the cars exiting the station.  
9 There was no discussion whatsoever about the proximity of  
10 the nearest home to the station. I don't see how this in  
11 any way falls even closely, remotely close to rebutting what  
12 he said.  
13 MR. GROSSMAN: Do you have a response, counsel, to  
14 that?  
15 THE WITNESS: I think we talked about whether --  
16 MR. GROSSMAN: Well, I guess --  
17 THE WITNESS: I'm sorry.  
18 MR. GROSSMAN: -- that's really an objection. So  
19 I guess the response should come from counsel.  
20 MS. ROSENFELD: I'd like to consult with my  
21 client.  
22 MR. GROSSMAN: Since you've served in so many  
23 capacities, Ms. Cordry, and you're a lawyer, I'm going to  
24 let you answer.  
25 THE WITNESS: I think we were talking about where

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1 pedestrians were coming from, what the general vicinity of  
2 the area was, and so forth. So I am trying to simply  
3 contrast these two stations in terms of how comparable they  
4 are, whether it makes sense to look at this station for  
5 purposes of dealing with --  
6 MR. GROSSMAN: Yes. I'm going to overrule the  
7 objection, just because I think that it's fairly within the  
8 ambit of a surrebuttal when, on the rebuttal, the station is  
9 brought in for comparative purposes of some kind. And so  
10 the question could arise in the opposition as to whether  
11 I'm, how broadly I'm considering the comparison. So I'm  
12 going to allow it in for, in terms of the measurement of  
13 that distance.  
14 THE WITNESS: Okay. This, again, is just a little  
15 closer, showing the station, showing the roadways around it.  
16 And this is a further close-up of the station and, again,  
17 compared with the Wheaton proposed station location, that we  
18 have seen this kind of graphic a number of times with homes,  
19 of course, being much closer, the school being half the  
20 distance that the closest homes are to Brandywine, the  
21 location of the swimming pool, and so forth. So this is  
22 just orienting ourselves, essentially, to the differences  
23 between these two proposed -- the existing station and the  
24 proposed Wheaton station.  
25 I started to ask Mr. Guckert some questions based

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1 on these slides, and there was questions about where this  
2 information was coming from and so forth, and in order to  
3 validate those at the time, we said we'd come back to that  
4 on the surrebuttal. So I would like to introduce what would  
5 be a new, or I'm not sure if this one has been given an  
6 exhibit number in all of the --  
7 MS. ROSENFELD: Waldorf CDP?  
8 THE WITNESS: Yeah, the Waldorf CDP.  
9 MR. GROSSMAN: And has it been given an exhibit --  
10 MS. ROSENFELD: I don't believe it has a number.  
11 MR. GROSSMAN: Oh.  
12 THE WITNESS: Okay. Then that would --  
13 MR. GROSSMAN: All right. So this will be Exhibit  
14 587 --  
15 THE WITNESS: Okay.  
16 MR. GROSSMAN: -- and that is Waldorf CDP,  
17 Maryland?  
18 THE WITNESS: Right.  
19 MR. GROSSMAN: All right.  
20 (Exhibit No. 587 was marked  
21 for identification.)  
22 THE WITNESS: Okay. This I pulled down personally  
23 from the U.S. Census website at the -- on the second page,  
24 you can see it says: Source, U.S. Census Bureau. So this  
25 is a set of facts you can pull out about the general Waldorf

1 area, which is where Brandywine is located, and that was  
2 where I pulled the numbers on the left-hand side there with  
3 the area of 15 square miles, I'm sorry, on the right-hand  
4 side, the area of 36 square miles, the population of 68,000,  
5 which is shown at the top of the listing under Waldorf. I  
6 just did a division there to come up with the density of  
7 1,870 persons per square mile.

8 MR. GROSSMAN: And is that, the slide you have on  
9 the --

10 THE WITNESS: Yes.

11 MR. GROSSMAN: -- on the screen there --

12 THE WITNESS: Yeah.

13 MR. GROSSMAN: -- is that already in evidence?

14 THE WITNESS: This is part of the Guckert

15 Cross-Examination Documents. It's --

16 MR. GROSSMAN: Okay.

17 THE WITNESS: -- Slide 8 there. The numbers on  
18 the left --

19 MR. GROSSMAN: When you say it's part of, is it --  
20 does that have an exhibit number?

21 THE WITNESS: This is 483(a).

22 MR. GROSSMAN: Okay.

23 THE WITNESS: Okay. So this would be Slide 8 of  
24 Exhibit 483(a). The numbers on the left regard Wheaton.  
25 The 15 square miles is the area in the needs study. The

1 population of 105,000, again, comes from the needs study. I  
2 can pull up the OZAH number on that if I need to, but that  
3 was the, Mr. Flynn's -- it's been so long --

4 MR. GROSSMAN: Right.

5 THE WITNESS: -- Mr. Flynn's original needs study;  
6 did the division there for the density per square mile, the  
7 projected sales, which we've been talking about for over a  
8 year now, the number of pumps, again, a division. That  
9 would work out to 750,000 gallons per year per pump.

10 The 6.6 million was told to me by Costco when this  
11 was first-introduced information about Brandywine. Pumps,  
12 obviously it shows 12, and again, you do the division; you  
13 come up with 550,000. So it's going to be a smaller number  
14 of proposed sales per pump, so a less busy station.

15 These are some features there about the  
16 observations you can make about the station. We did talk to  
17 this in some detail with Mr. Guckert. If we look here, we  
18 obviously see from this one that the gas station is out away  
19 from where the cars are parked. The parking for the store  
20 is -- the gas station is on the far side of the parking for  
21 the store. We talked in some detail about that.

22 We looked at his videos, and we saw that the area  
23 over here where cars are exiting that there were, when we  
24 looked at his videos, that there were very few cars parked  
25 there, even on, as we would call it -- this was on December

1 21st, which he agreed was probably, if not the busiest, one  
2 of the very busiest days of the year, and yet even at that  
3 time of year there was almost no one parked there, no  
4 driving back and forth, no pedestrians, no streams of  
5 pedestrians walking back and forth. And that is some of the  
6 points that I am making on Slide 9 there about the  
7 differences between the Wheaton station and the Brandywine  
8 station. Let's see. I think that's probably all I need to  
9 talk about for that one right at the moment.

10 Now, another point of what Mr. Guckert was talking  
11 about with respect to Brandywine was it should be considered  
12 similar to Wheaton because both, assertedly, would have  
13 about three cars per minute exiting from the station. And  
14 the basis for that at Brandywine was the actual sales volume  
15 for four hours that they took on December 21st, which was on  
16 their Exhibit 456(c). That -- and I'm not introducing that  
17 again -- but that did show about roughly 180 transactions  
18 per hour. Divide that by 60; you get three a minute, of  
19 course. And, again, recall, of course, that is the sales  
20 volume on the absolute, one of the absolute peak days of the  
21 year. So one would assume that other days of the year it's  
22 probably considerably less than that volume for that  
23 station.

24 In terms of looking at how many cars come out of a  
25 station, it's a pretty simple metric to figure out. Their

1 testimony all along has been that it takes roughly four  
2 minutes per car to go through the station. That's 15 cars  
3 an hour. Fifteen cars times 12 pumps gives you 180  
4 transactions an hour. Divide that by 60; you get three.  
5 That makes sense. For a 12-pump station, 180 is, give or  
6 take, about the maximum of what you do. You do the same  
7 math with a 16-car station, and you get 240 cars, four cars  
8 a minute. It's just -- there's no reason that the logic  
9 would be any different between a 12-pump and a 16-pump  
10 station in terms of how many cars come out a minute.

11 Just going back to the difference between those  
12 two stations, again, as I say, if you recall, we talked  
13 about -- at the Brandywine station, if you recall, the clips  
14 he was showing, it was quite, let me get to, it was quite  
15 calm, very peaceful coming out of there. That was, I think,  
16 in fact, part of why they were showing you those: see how  
17 easy it is for people to get out of this station. And when  
18 Mr. Guckert was here, I showed him this clip here, which was  
19 the way this parking lot looks in Wheaton where people would  
20 be pulling out of.

21 This is the main north-south drive aisle next to  
22 the loading docks. This is not empty. This has cars. This  
23 has people. And this is in March. This is not, of course,  
24 in December. And then as we turn here at this point down  
25 the main drive aisle, the east-west drive aisle, which is

1 another place -- and we'll come back in a moment to talk to  
2 you some more about how people come out of the station --  
3 but this is the other main area where people would be coming  
4 out. Again, as we can see, this is not deserted, it's not  
5 quiet, it has people walking up and down the aisles, it has  
6 cars stopped in the middle, it has this nice, somewhat  
7 oblivious lady walking down there with her cart, down the  
8 middle of the aisle. This also indicates why it is that you  
9 can't really drive very fast here, because, in large part,  
10 you're often walking and driving behind pedestrians. So  
11 that's about as fast as you're going to move through the  
12 parking lot.

13 I won't pull up Mr. Guckert's video again of that  
14 station. You have it there, but when I asked him does this  
15 look like what you were showing us over in Brandywine --  
16 and, of course, you have people pushing carts back through  
17 there --

18 MR. GROSSMAN: Just for clarity of the record, the  
19 this you're referring to is the Wheaton --

20 THE WITNESS: The Wheaton --

21 MR. GROSSMAN: -- Costco parking lot.

22 THE WITNESS: -- parking lot on a Saturday in  
23 March at 2:06 p.m. -- he agreed, no, these two things do not  
24 look like each other. So Brandywine is a nice, calm,  
25 uncrowded station. It may be a great place for people in

1 Brandywine to go buy gas. It doesn't bear a lot of  
2 relationship to what we're going to see in Wheaton. And,  
3 again, of course, this is before the gas station is built  
4 there. So we're now out on the main road. Okay.

5 MR. GROSSMAN: I take it, this was your vehicle  
6 you were driving?

7 THE WITNESS: This is my vehicle, yes.

8 MR. GROSSMAN: I trust you were giving full time  
9 and attention to your driving? At least you didn't run  
10 anybody over --

11 THE WITNESS: I did not run anybody over. I --

12 MR. GROSSMAN: -- to dramatize it.

13 THE WITNESS: -- as you see, we were driving so  
14 slowly. Because of all the cars in the road and the people  
15 crossing and the people waiting to come out, it was possible  
16 to do this at the same time. I tried not to do this very  
17 often, but there's only so much you can do. Okay. So,  
18 again, Mr. Guckert admitted that this was, these two areas  
19 were not comparable.

20 To go back again to Brandywine just briefly, you  
21 can see here, you come off the main road. Generally, people  
22 would likely come off the main road at the separate entrance  
23 here and come in at this point --

24 MR. GROSSMAN: Well, when you say here, it  
25 doesn't --

1 THE WITNESS: I'm sorry. Okay. At the, let's  
2 see, it would be the top --

3 MR. GROSSMAN: The north? Is that north?

4 THE WITNESS: For the moment, I'm not positive if  
5 that's north or not, but we'll --

6 MR. GROSSMAN: Usually on Google Maps, usually  
7 north is up.

8 THE WITNESS: Yeah. We'll specify for purpose of  
9 this that north is up. So this would be the northwest  
10 corner. You would come in this, this road here, you would  
11 make a turn off on this first road here in the northwest  
12 corner, and you'd be able to come in the station, you'd come  
13 out, and you'd be able to go right back out onto this main  
14 road here. People -- which is in the middle, north middle  
15 side, okay -- people coming to the store are far more likely  
16 to come down here to this middle road and come straight in,  
17 or they will come past the station and come in about midway  
18 down the west side of the area here and come in. In neither  
19 case do they have to walk past the gas station and interact  
20 with the gas station.

21 MR. GROSSMAN: Yes, I don't know if they're more  
22 likely or not. They have options, clearly.

23 THE WITNESS: Right. And clearly, there are many  
24 ways that people can get to the store and go and park  
25 without having to interact with the gas station traffic, and

1 the traffic, all of this parking lot traffic here is closer  
2 to the store than the gas station; there's not going to have  
3 to be walking back and forth through the gas station traffic  
4 in order to get to the store and to go back and forth to  
5 their vehicles.

6 MR. GROSSMAN: And just for clarity of the record,  
7 you're talking about the Brandywine store parking lot.

8 THE WITNESS: I am talking about the Brandywine  
9 store parking lot.

10 MR. GROSSMAN: Right.

11 THE WITNESS: Okay. Now -- now, at Wheaton  
12 Mr. Guckert talked about there being six ways you can exit;  
13 then he has -- this is his chart, 482, it looks like.

14 MR. GROSSMAN: Exhibit 482?

15 THE WITNESS: 482, and he's showing his six ways.  
16 Okay. Now, it really actually boils down to basically three  
17 ways you can go out. The ones labeled two, three, four, and  
18 five, they all take you up within about 150 feet into the  
19 main east-west drive aisle, and once you're there, it's not  
20 a whole lot of difference whether I come in 20 feet further  
21 down the road than the next person. We're all in that very  
22 crowded area that we just saw.

23 Your second way out is to come out and make an  
24 immediate right turn and go back down the north-south drive  
25 aisle, which is by the loading dock, which is also a very



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1 what I have to decide?  
2 THE WITNESS: Okay. Well, it bears on it if, if  
3 even Costco's and Westfield's representatives agreed, and  
4 Mr. Guckert has testified, that this was not, this is not  
5 the optimal location. This is a far better location from  
6 their perspectives and --  
7 MR. GROSSMAN: I know, but you already said  
8 that --  
9 THE WITNESS: Right. Okay. All right.  
10 MR. GROSSMAN: -- and I'm saying you're going  
11 beyond that.  
12 THE WITNESS: And -- okay. Okay. So point being  
13 that once, once that was ruled out by the ZTA, we thought  
14 that was the end of it. So we were pretty surprised when we  
15 get this new design structure here, but -- and then we were  
16 surprised when a traffic expert would come in and say that  
17 this location is really not problematic at all; in fact,  
18 it's even better than any place else you could put it, at  
19 least on a main roadway. And I think one of the problems --  
20 MR. GROSSMAN: I don't know that that was the  
21 testimony.  
22 THE WITNESS: Okay. Well, at least, certainly,  
23 Mr. Guckert spent a lot of time talking about this was much  
24 better than if it was on a main roadway. That, he certainly  
25 talked about.

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1 MR. GROSSMAN: Oh, that, he did.  
2 THE WITNESS: And I think, in fact, what I was  
3 going to say is I think one of the -- one of the problems we  
4 had with his testimony is it's this sort of dichotomy:  
5 either you put it here or you have it on a main roadway, and  
6 those are the only two options. And, of course, one of our  
7 points right now is that those are not normally the only two  
8 options. Normally you put it in some place that might be  
9 slightly off a main road. We're not saying that that's a  
10 bad thing but that if you can't have it on a main roadway  
11 because there's no place in the Wheaton Mall to put it on a  
12 main roadway, that doesn't mean you can automatically go and  
13 say, well, okay, we'll just put it anywhere, including a  
14 location that is extremely problematic in this regard, and  
15 say that that works.  
16 MR. GROSSMAN: Well, I understand. I mean --  
17 THE WITNESS: Okay.  
18 MR. GROSSMAN: -- I understand your point that  
19 this is --  
20 THE WITNESS: Okay. All right.  
21 MR. GROSSMAN: -- your point is this is a false  
22 dichotomy --  
23 THE WITNESS: Right.  
24 MR. GROSSMAN: -- because there are other choices.  
25 THE WITNESS: Right.

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1 MR. GROSSMAN: On the other hand, I think he's  
2 also -- when that testimony came up, which was at the --  
3 THE WITNESS: Right.  
4 MR. GROSSMAN: -- very beginning of, that was back  
5 in April of --  
6 MR. GOECKE: Yes.  
7 THE WITNESS: Well --  
8 MR. GROSSMAN: -- 2013, I think what he was saying  
9 is that the exiting here was not any less safe than you  
10 would see in a gas station on a main road --  
11 THE WITNESS: And --  
12 MR. GROSSMAN: -- and I think that was the basis  
13 for his comparison. I don't think he was saying, were the  
14 only two choices. So --  
15 THE WITNESS: Well --  
16 MR. GROSSMAN: -- I don't know that that's the --  
17 THE WITNESS: Okay.  
18 MR. GROSSMAN: -- you may be setting up, you know,  
19 a straw man in that sense.  
20 THE WITNESS: Perhaps not. Perhaps, perhaps not.  
21 In any case, certainly our perspective would be that if your  
22 two choices are -- well, if you don't have a choice of  
23 building on a main roadway, if you don't have a choice of  
24 building it directly off a main roadway, that doesn't mean  
25 that you automatically just find some place to stick it in

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1 and that will then necessarily be correct and that somehow  
2 conditions will solve the problem. Our view is that -- and  
3 you know this very well -- that you can't condition this  
4 situation into acceptability, that there are no conditions  
5 that will not cause other problems, that every condition you  
6 put in will cause its own problems, and that this is not --  
7 MR. GROSSMAN: I don't know if that's necessarily  
8 true also, but obviously, I'm going to try to assess the  
9 proposed location --  
10 THE WITNESS: Right.  
11 MR. GROSSMAN: -- based on its individual merits.  
12 THE WITNESS: Right. And, again, I do think it is  
13 appropriate, though, when a traffic expert now comes in and  
14 opines that this is fine, you can do this here, but if that  
15 traffic -- if the original location was elsewhere and the  
16 traffic expert also agrees that the original location was  
17 better, that really throws some credibility on how strongly  
18 they now argue, oh, well this location is fine, or is this  
19 just rationalizing what you have to defend? And I think  
20 that's -- with everything else we've put in here, I think  
21 there is some real reason to look at that, that their own  
22 original assessments should bear strong weight in terms of  
23 whether this is an appropriate location. So --  
24 MR. GOECKE: Objection. This is argument, not  
25 testimony.

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1 MR. GROSSMAN: It is, but --  
2 THE WITNESS: Okay. In any case, I'm done. I'm  
3 moving on from that point.  
4 MR. GROSSMAN: -- I mean, once again, we are a  
5 little bit more loosey-goosey in the zoning proceedings  
6 because it's a combination of a factual presentation and a  
7 citizen's take on the situation. So we are a little bit  
8 more relaxing --  
9 THE WITNESS: Okay.  
10 MR. GROSSMAN: -- but I recognize that for what it  
11 is.  
12 MR. GOECKE: Thank you.  
13 THE WITNESS: In any case, I'm done with that  
14 part. So if we move on then to the question of, again,  
15 traffic counts and exit volumes from the station. Again, I  
16 tried to discuss some of these points with Mr. Guckert using  
17 some charts I prepared, and I'm not sure it came across all  
18 that clearly, and especially since I couldn't testify  
19 precisely about everything there. So let me do that now at  
20 this point.  
21 The first piece I'd like to give you, these are,  
22 is a two-page document labeled Exit Count.  
23 MR. GROSSMAN: All right. And this does not yet  
24 have an exhibit number?  
25 MS. ROSENFELD: This actually is --

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1 MR. GOECKE: Thank you.  
2 MR. GROSSMAN: Or was this one of the --  
3 MS. ROSENFELD: -- 56(d) that's in the record.  
4 It's excerpted, correct?  
5 MR. GROSSMAN: Oh, this is part of --  
6 THE WITNESS: This, this -- okay. Let me, I will  
7 explain to you where this came from and --  
8 MS. ROSENFELD: Is this the January 11, 2013?  
9 THE WITNESS: Right, and these came out of prior  
10 exhibits there, and I'll explain that. We can either give  
11 it a new number or not, as you choose, at that point. So  
12 let me, let me just --  
13 MR. GROSSMAN: I'm sorry. Do you want me to give  
14 this --  
15 THE WITNESS: Let me tell you where they came from  
16 and then --  
17 MR. GROSSMAN: Okay.  
18 THE WITNESS: They were originally Exhibits 56(b)  
19 and (c), which were spreadsheets dealing with January 11th  
20 and January 12th detailed counts of traffic, sales counts  
21 at, not sales counts, vehicle exiting counts and queuing  
22 numbers at Sterling. Those are ones we've talked about in  
23 some detail. That was the one where we had the spreadsheet  
24 that had the error on it in terms of it didn't count up all  
25 the hours there; it only counted the first four and

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1 everything. Okay.  
2 MR. GROSSMAN: Right.  
3 THE WITNESS: There were three tabs on that  
4 exhibit. The one that we looked at was Tab 1. This is  
5 actually coming from Tab 3 on that exhibit. They actually  
6 reintroduced those exhibits as Exhibits 509(a) and (b) with  
7 the corrected versions on that first tab, and again, this  
8 is, this is, you know, still the third tab in that. So we  
9 can either call this, say that this comes out of 509(a) and  
10 (b), but it may be simpler to just give it a new exhibit  
11 number.  
12 MR. GROSSMAN: All right. Let's give it a new  
13 exhibit number --  
14 THE WITNESS: My point --  
15 MR. GROSSMAN: -- I'll vote for that. How about  
16 you guys?  
17 MR. SILVERMAN: Yes.  
18 MR. GOECKE: Why not?  
19 MR. GROSSMAN: All right.  
20 THE WITNESS: My point only being that, you know,  
21 these are not my numbers; this is just straight out of  
22 Mr. Guckert's exhibit.  
23 MR. GROSSMAN: Okay. So Exhibit 588 --  
24 THE WITNESS: Okay.  
25 MR. GROSSMAN: -- is excerpt from Guckert report

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1 of -- I don't remember. Was the report date January 11,  
2 2013, or was the report --  
3 THE WITNESS: Report would have been done later.  
4 These were observations on January 11th and 12th.  
5 MR. GROSSMAN: What was the report --  
6 MS. ADELMAN: January 22nd, I think.  
7 THE WITNESS: Not positive. If --  
8 MR. GROSSMAN: We can identify it by exhibit  
9 number. So that report --  
10 THE WITNESS: It was originally Exhibit 56(b) and  
11 (c).  
12 MR. GROSSMAN: All right. Report, Exhibit 56 --  
13 MS. ADELMAN: January 22nd of 2013.  
14 MR. GROSSMAN: All right. January 22nd, 2013?  
15 MS. ADELMAN: Yes.  
16 MR. GROSSMAN: All right. And this refers to --  
17 I'm sorry. You identified a tab that, or with a page.  
18 THE WITNESS: Okay. This was -- I believe this  
19 was the third tab, I believe, on those, those original  
20 exhibits, which were spreadsheets.  
21 MR. GROSSMAN: Okay. We'll say third tab.  
22 (Exhibit No. 588 was marked  
23 for identification.)  
24 MS. ROSENFELD: Mr. Grossman, if I could --  
25 MR. GROSSMAN: Yes, ma'am.

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1 MS. ROSENFELD: -- approach the witness just for a  
2 moment?  
3 MR. GROSSMAN: Sure.  
4 MR. GOECKE: I always get reprimanded when I do  
5 this.  
6 MR. GROSSMAN: I know, but they're trying --  
7 THE WITNESS: We're only trying to do, we're only  
8 trying to figure out --  
9 MR. GROSSMAN: -- I understand that she's just  
10 trying to identify what exhibit she's talking about.  
11 MS. ROSENFELD: I just want to make sure we've got  
12 the right exhibit number.  
13 THE WITNESS: It may have already come in as  
14 56(d).  
15 MR. GROSSMAN: And it's also more fun to yell at  
16 you, Mr. Goecke.  
17 MR. GOECKE: Apparently. My wife thinks so.  
18 THE WITNESS: This may also already be 56(d) in  
19 which case --  
20 MR. GROSSMAN: Okay.  
21 THE WITNESS: -- but since we've got it now and  
22 we're dealing with it, that's probably easier.  
23 MR. GROSSMAN: You know, Ms. Cordry --  
24 THE WITNESS: Yes.  
25 MR. GROSSMAN: -- if you want to keep my

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1 attention --  
2 THE WITNESS: Yes.  
3 MR. GROSSMAN: -- when you have the movie screen  
4 up, you should be showing pictures of my grandchildren --  
5 THE WITNESS: I understand. I understand.  
6 MR. GROSSMAN: -- rather than Brandywine station.  
7 THE WITNESS: Yeah. I seem to be missing one of  
8 my pages here. Let me give you this version. Let me see  
9 if --  
10 MR. GROSSMAN: Be careful of the wires there.  
11 THE WITNESS: The other sheet then I would give  
12 you, that I've handed you is one that I believe we have now  
13 marked in the record as 579(a). It's labeled Transactions,  
14 Sterling Versus Wheaton, May 2014 Calculations.  
15 MR. GROSSMAN: So this is my cheat sheet rather  
16 than an exhibit itself? This is in the record already?  
17 THE WITNESS: Well, this is one we sent over.  
18 MR. GROSSMAN: Okay.  
19 THE WITNESS: So it's one that's been marked as  
20 579(a). It's not been --  
21 MR. GROSSMAN: Okay. Right.  
22 THE WITNESS: -- discussed before at this point.  
23 MR. GROSSMAN: Right.  
24 THE WITNESS: It is an expansion of an exhibit  
25 that we previously submitted as Exhibit 500(c). I've added

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1 columns for Sales Per Minute to what was in there before as  
2 500(c).  
3 MR. GOECKE: Are we talking about 579(a) is  
4 similar to --  
5 THE WITNESS: Yeah, exactly.  
6 MR. GOECKE: -- 500(c), or it's --  
7 THE WITNESS: Right.  
8 MR. GOECKE: -- identical to 500(c)?  
9 THE WITNESS: It's an expansion of 500(c). 500 --  
10 MR. GROSSMAN: She added Sales Per Minute column.  
11 THE WITNESS: Right.  
12 MR. GOECKE: Thank you.  
13 THE WITNESS: 500(c) before -- and I changed,  
14 instead of using 24-hour-clock numbering, I used 12, you  
15 know, I put in 5:00 a.m. and 6:00 a.m. and so forth as  
16 opposed to, like, 20 and 21, which people were getting  
17 confused about. So I put, I changed the hour number into  
18 the kind of numbers we understand. So this exhibit was  
19 derived from the data that Mr. Sullivan -- and I'm not going  
20 to introduce this again, but I could, I'll just show you  
21 this -- this came in from his, this was Exhibit 484, which  
22 was out of Mr. Sullivan's August, I'm sorry, yeah, his  
23 August 2013 report where he did, took sales transactions  
24 from Costco Sterling for September 2012 and listed those  
25 hour by hour, broken out by weekdays, Saturday and Sunday.

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1 So just in terms of translating that into this  
2 chart, if you look at the top number on -- and actually, I  
3 do have one other copy of this for you all -- if you look at  
4 the top number there, 5, which is 5:00 a.m., weekdays, 499,  
5 that's the same number in the top left-hand column of my  
6 chart.  
7 MR. GROSSMAN: Yes.  
8 THE WITNESS: Okay. If you go over one, two,  
9 three, the column labeled Sterling Saturday, then it has 53,  
10 which is the same number he has on his chart.  
11 MR. GROSSMAN: Yes.  
12 THE WITNESS: Okay. And go over a couple more  
13 columns under Sunday; you see the 27 that he has on his  
14 chart.  
15 MR. GROSSMAN: Right.  
16 THE WITNESS: So those three columns are just  
17 taken straight from his, from his set of records there --  
18 MR. GROSSMAN: Okay.  
19 THE WITNESS: -- and he's explaining there that  
20 these were the entire sales for the month of September. So  
21 I broke out -- there were 20 weekdays in September. So the  
22 sales per day per hour, I divided the 499 by 20 to get the  
23 sales per day --  
24 MR. GROSSMAN: Okay.  
25 THE WITNESS: -- for a weekday. Okay.

1 MR. GROSSMAN: It would help me to focus, what  
 2 were you trying to show here?  
 3 THE WITNESS: Okay. What I'm trying to get here  
 4 is, going back to this -- these are just going to this  
 5 question of how many sales, what's the volume of sales  
 6 coming out --  
 7 MR. GROSSMAN: Right.  
 8 THE WITNESS: -- per hour and now going back to  
 9 this per-minute number as well.  
 10 MR. GROSSMAN: Yes. But are you suggesting that  
 11 Mr. Sullivan relied on erroneous assumptions, or are you  
 12 saying --  
 13 THE WITNESS: No, no, no. No. No. I'm accepting  
 14 his assumptions that these --  
 15 MR. GROSSMAN: Okay.  
 16 THE WITNESS: -- these are sales for September,  
 17 and Exhibit 580 has sales for January, and we will just be  
 18 looking at these numbers, and these will give us some  
 19 numbers on sales per, per minute in both of those situations  
 20 there over --  
 21 MR. GROSSMAN: Okay. To what end?  
 22 THE WITNESS: To what end? Of showing that in  
 23 fact it is likely -- I want to just discuss how many cars  
 24 will be coming out in a more ordinarily fashion than --  
 25 MR. GROSSMAN: But you're suggesting, I think, by

1 your figures on the right-hand column that it's closer,  
 2 during at least the shaded period, to four per minute rather  
 3 than three per minute --  
 4 THE WITNESS: Well --  
 5 MR. GROSSMAN: -- which is what you're saying  
 6 Mr. Guckert testified?  
 7 THE WITNESS: Okay. Well, the numbers -- what I'm  
 8 doing first off is just setting up what the numbers are.  
 9 The front page is the Sterling numbers. These are actual  
 10 Sterling numbers.  
 11 MR. GROSSMAN: Right.  
 12 THE WITNESS: And for Sterling, for the entire  
 13 month of September, you can see that during the weekdays,  
 14 that the numbers -- and I've sort of broken out and shaded  
 15 here, especially on the weekend when it's the highest peak  
 16 numbers -- but even on the weekday, which is the column just  
 17 to the left of the shaded numbers, during the time when the  
 18 warehouse is open, the numbers generally are 3.6 and above  
 19 during that time period. On the weekends they are actually  
 20 pretty much at four or above four, that actually that seems  
 21 to be when people are really trying to hustle through --  
 22 MR. GROSSMAN: Right.  
 23 THE WITNESS: -- on the weekends. So it's even a  
 24 little bit more per minute than that. If you take the week  
 25 -- and the page after that, I just took the same pieces, and

1 I did exactly the same kind of calculations with the idea of  
 2 scaling down Wheaton by this .86 factor.  
 3 MR. GROSSMAN: Right, but is your, is your point  
 4 for introducing all of this to show that Mr. Guckert  
 5 understated the numbers per minute proposed, from the  
 6 proposed Wheaton station? Is that what you're --  
 7 THE WITNESS: To some extent. What Mr. Guckert  
 8 was doing was using a number for the entire time period the  
 9 warehouse is open, and -- I mean, the time, the entire time  
 10 period the gas station is open -- and one of the points that  
 11 I'm making is that it's not really particularly relevant or  
 12 important to use an average for the entire time period  
 13 because, when there's nobody there, there's nobody there.  
 14 At 6:00 a.m. there really isn't anybody much coming  
 15 through --  
 16 MR. GROSSMAN: Philosophical point.  
 17 THE WITNESS: Yes. He quoted Yogi Berra about  
 18 nobody goes there, it's too crowded. I'd actually --  
 19 MR. GROSSMAN: Right.  
 20 THE WITNESS: -- planned on using that quote  
 21 myself, and I think the corollary may be that, it's  
 22 something like, well, everybody goes there because, because  
 23 nobody's there. The point being --  
 24 MR. GROSSMAN: I understand.  
 25 THE WITNESS: -- if you're talking about the time

1 periods when there's very low station volume, it really  
 2 doesn't make a lot of difference, and if you average those  
 3 in with the high station volumes, you get a different sense  
 4 of what, perspective of what the effects are likely to be.  
 5 MR. GROSSMAN: Right, but Ms. Cordry, my  
 6 question --  
 7 THE WITNESS: Okay. Right.  
 8 MR. GROSSMAN: -- is there any reason for all of  
 9 these figures other than to show that it's closer to four  
 10 exiting per minute than three? Or is that just it?  
 11 THE WITNESS: Pretty much, yes, and I want to --  
 12 MR. GROSSMAN: Okay.  
 13 THE WITNESS: -- have these in here, on the record  
 14 to show that even if you scale down by .86, you get numbers  
 15 that are very close to four during all the relevant time  
 16 periods. And the other point to make is that I think it's  
 17 not a really particularly logical assumption to say that you  
 18 just scale these down and that's how it works, that somehow  
 19 if you have 16 pumps but a somewhat lesser total volume,  
 20 that people will go through the 16 pumps slower if you have  
 21 12 million total gallons than if they have 13.6. I mean, if  
 22 you have 20 people in line, 25 people in line, 30 people in  
 23 line, people are going to try to go through the pumps as  
 24 fast as they can go through.  
 25 MS. HARRIS: Mr. Grossman, if I could, on March

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1 11th Mr. Guckert did testify that the range would be between  
2 two-and-a-half and three-and-a-half. He said that was an  
3 average. We would most willing be, willing to stipulate  
4 that 3.79 is higher than three-and-a-half. I think that's  
5 the point, and if we could move on.  
6 MR. GROSSMAN: Well, I don't think you have to  
7 stipulate that. I think that's --  
8 MS. HARRIS: Okay.  
9 MR. GROSSMAN: -- mathematical, but in any event,  
10 the reference to scaling down is the reference to estimating  
11 the Wheaton --  
12 THE WITNESS: Right.  
13 MR. GROSSMAN: -- volume --  
14 THE WITNESS: Right.  
15 MR. GROSSMAN: -- as being .86 of the Sterling  
16 volume.  
17 THE WITNESS: Right. And my only other point of  
18 that is that --  
19 MR. GROSSMAN: I just wanted the record to --  
20 THE WITNESS: Right. Right.  
21 MR. GROSSMAN: -- understand what you're saying.  
22 THE WITNESS: That the projected volume at Wheaton  
23 of 12 million gallons is .86 or 86 percent of the actual  
24 volume at Sterling of approximately 13.9 million --  
25 MR. GROSSMAN: Right. I understand.

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1 THE WITNESS: -- so that scaling has been used.  
2 And one of my other points just to make here is that, and  
3 one of the things why I said there was the metric, that  
4 basically you process, 16 pumps, process roughly 240 cars an  
5 hour or more, that if you have all of those cars lined up  
6 and waiting, whether it's -- and this was another part, that  
7 we've seen this particular chart quite a few times.  
8 MR. GROSSMAN: Well, the record doesn't know what  
9 you're holding up.  
10 THE WITNESS: This is the chart that is showing  
11 the minute-by minute -- it's a graph showing the  
12 minute-by-minute numbers of cars queued up in a graphical  
13 form. It was part of Exhibit 460, which, again, comes out  
14 of Mr. Sullivan's report.  
15 MR. GROSSMAN: Right. Is there a page reference  
16 on that?  
17 THE WITNESS: That would have been page 21 in his  
18 August report.  
19 MR. GROSSMAN: Okay. August 2013.  
20 THE WITNESS: Correct.  
21 MR. GROSSMAN: 2000 --  
22 THE WITNESS: '13 report, yes.  
23 MR. GROSSMAN: '13 report, right.  
24 THE WITNESS: And for once I will do my  
25 eyeballing. The number that pretty much looks like, you

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1 know, the average number, that almost all the time there is  
2 that many cars lined up, it's 30 for Sterling, it's 26 for  
3 Wheaton. When you have 26 cars lined up and you have 16  
4 pumps, cars are going to be going through as fast as they  
5 can. They're not going to be going through slower because,  
6 oh, well, maybe there's one less person behind me in line.  
7 So I think the reality is that the difference  
8 between this volume here, it's not going to just scale up  
9 and scale down. You may have, it may mean that it takes  
10 less time, you know -- in other words, the reason why you're  
11 having cars backing up is because more volume is coming than  
12 can go through at roughly 240 cars an hour. You start in  
13 the morning; you don't have a lot of cars. By the time you  
14 start getting the warehouse, it starts to build up, and  
15 basically, the volume coming in is higher than the volume  
16 getting out for the entire rest of that time period. Now,  
17 what it may mean, if you have 86 percent rather than 100  
18 percent of that volume, it may take a little longer to build  
19 up, it may take, it may clear out a little faster, but --  
20 MR. GROSSMAN: But I don't need to engage in any  
21 of that --  
22 THE WITNESS: Okay.  
23 MR. GROSSMAN: -- speculation as to why. I mean,  
24 I have figures that I can deal with. I don't have to go  
25 through a lot of the logic that you're doing now, and I'm

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1 not --  
2 THE WITNESS: Well, but you don't have --  
3 MR. GROSSMAN: -- probably not going to.  
4 THE WITNESS: -- you don't have figures as to how  
5 fast cars will go through Wheaton because we haven't had  
6 them. What you have is somebody saying, well, if the volume  
7 is less, then that automatically means there will be less  
8 cars go through an hour at the peak time, and I'm saying  
9 that is not a logical assumption, that if you have 25 cars  
10 lined up versus 30 cars, they're going to go through just as  
11 fast because people want to go through just as fast. All it  
12 will effect is perhaps when the peak stops and when it  
13 builds up.  
14 So my only point being that it's not really  
15 logical to assume that the peak hours at Wheaton are going  
16 to have a slower set of volume of cars coming out than the  
17 peak hours at Sterling. Cars are going to go through 16  
18 pumps anywhere they are as fast as they can go through, and  
19 that means you're going to have as many cars coming out per  
20 hour at Wheaton as you are at Sterling, maybe not for as  
21 many hours, maybe not every minute, but --  
22 MR. GROSSMAN: Okay.  
23 THE WITNESS: -- when it's a peak hour, it's going  
24 to be --  
25 MR. GOECKE: And for the record, understanding

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1 that this proceeding tolerates a certain amount of opinion  
2 and argument and testimony, I just want to note for the  
3 record that I object to this testimony as being not  
4 factually based and speculative and opinion and  
5 argumentative.  
6 MR. GROSSMAN: It's a combination of logic and  
7 argument, and I'm going to let her put it into --  
8 THE WITNESS: Right. And I --  
9 MR. GROSSMAN: -- the record. I'm not sure  
10 that --  
11 THE WITNESS: Right.  
12 MR. GROSSMAN: -- I think, I just want you to  
13 understand that a lot of what you say maybe is making a  
14 record but it's not necessarily what I will engage in in  
15 terms of --  
16 THE WITNESS: Well --  
17 MR. GROSSMAN: -- of figuring this out, okay?  
18 THE WITNESS: -- my only point is that we've had a  
19 lot of testimony from Mr. Guckert that this is how many cars  
20 will come out and all it's coming from is simply taking  
21 numbers and scaling them down without actually applying any  
22 logic as to whether that's the way people actually drive,  
23 actually operate, actually go through queues. And I'm  
24 saying --  
25 MR. GROSSMAN: Right.

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1 THE WITNESS: -- as anybody who's sat in any line,  
2 this is not a matter that you have to apply mathematical  
3 scale-downs to. This is a matter of, people will go through  
4 that line as fast as they can.  
5 MR. GROSSMAN: Right. And where you had physical  
6 evidence which, I think, is probative of the way people line  
7 up, where you had aerial photos showing it, that's something  
8 to be considered.  
9 THE WITNESS: Right.  
10 MR. GROSSMAN: Where we're talking about some  
11 logical assumptions, that may be beyond what I can --  
12 THE WITNESS: Well --  
13 MR. GROSSMAN: -- factor in in my evaluation, but  
14 you've already put it in. So --  
15 THE WITNESS: Okay. All right.  
16 MR. GROSSMAN: -- you don't have to argue with me  
17 about it.  
18 THE WITNESS: All right. Next one, just to go  
19 through, we also spent some time with Mr. Guckert trying to  
20 figure out how much time he assumed there would be cars  
21 lined up in queues and how many, the percentile numbers and  
22 so forth. Again, just to get the record clear on this, I  
23 had prepared Exhibit 503(a). I think it's (a), (a) or (b).  
24 I have some labeled (a) and some labeled (b), just, which  
25 would be the -- no, I'm sorry. I'm sorry. These are two

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1 different things. One is 503(a), which was the exit totals,  
2 and actually, just to point out, 503(a) is just, I don't  
3 really need to go -- this just goes back to what we've been  
4 talking about before. It again takes the numbers from the  
5 exit counts here and puts them in an easier-to-read, bigger  
6 fashion that you can read those numbers and adds the  
7 per-minute evaluation. So this just goes back to the point  
8 we've been making before.  
9 MR. GROSSMAN: Okay.  
10 THE WITNESS: Okay.  
11 MS. HARRIS: And 503(a) is for Sterling, is that  
12 correct?  
13 THE WITNESS: Yes. That was --  
14 MS. HARRIS: Okay.  
15 THE WITNESS: -- no. Well, it's -- yes, it's just  
16 for Sterling, for Saturday and Friday, yes. Okay. So it's  
17 just, as I say, it's just taking the exit count numbers and  
18 putting them in a fashion that you don't actually have to go  
19 blind trying to read.  
20 MR. GROSSMAN: Okay.  
21 THE WITNESS: 503(b), yes, was the queuing  
22 percentiles, and this was where I had tried to find out from  
23 Mr. Guckert how he got to his assumptions as to 75 percent  
24 of the time there would be so many cars in line or 50  
25 percent of the time or less you would only have two cars

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1 total queued up and so forth, and I had assumed he had done  
2 some kind of sorting. He in fact said, well, he basically  
3 just kind of eyeballed these things and estimated them. So  
4 I had tried to get him to look at these charts. He said, I,  
5 they're not my charts, I don't know. Fine, they're my  
6 charts. I'm introducing them now.  
7 MR. GROSSMAN: Okay. Well, this is labeled  
8 already 503(b).  
9 THE WITNESS: Yes. This was --  
10 MR. GROSSMAN: So it's already in the record.  
11 THE WITNESS: Yes. I showed it to him as 503(b),  
12 right.  
13 MR. GROSSMAN: Okay.  
14 THE WITNESS: Okay. So here again I took numbers  
15 from his 56 or 509, either one, because it was really his  
16 calculations that were wrong as opposed to simply the queue  
17 numbers. So I took those and I just took the columns. I  
18 took the minute, minute-by-minute column, I took the total  
19 number column, and I took the longest lane column from those  
20 charts. Then I scaled down, and that was, that's listed as  
21 Sterling total queue, and for Saturday, longest lane; then  
22 the Wheaton, which is the one, two, three, fourth column  
23 over there, scaled it down by the 86 percent for both the  
24 longest -- total queue and the longest lane. Again, this is  
25 probably somewhat arbitrary. This may not be the way it

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1 would actually line up there, but this is kind of the way  
2 they were doing it; so, fine, I'm using the same thing. And  
3 then I did the same thing for the Sterling Friday numbers,  
4 which -- for the other half of that page there.  
5 So I just took those two columns, those columns, I  
6 pulled them out into another spreadsheet, and then I used a  
7 function that Excel has, which sorts all your data for you  
8 so you don't have to eyeball data --  
9 MR. GROSSMAN: Right.  
10 THE WITNESS: -- you can get an accurate analysis  
11 of these things, and sorted it by what was, by the total  
12 queue length. So Mr. Guckert had said he thought the total,  
13 the longest number was 54. In fact, it's 56 because he  
14 missed the 56 number, and there's actually two 54s, not one.  
15 It's not a big deal, but just, when you do it this way, you  
16 can actually get what the numbers are. And I went through  
17 that, sorted it all to the end.  
18 If you get down to page 12, I just did a  
19 calculation there as to where the percentile numbers would  
20 be for the 25th, for the 75th, the 50th, the 40th, 30, so  
21 forth, figured out what was, how many numbers in 750 would  
22 be 25 percent, 50 percent, and so forth, and marked those  
23 points on this chart. If you get, if you look at page 3,  
24 you will see towards the very bottom of page 3 --  
25 MR. GROSSMAN: Page 3? I'm on page 12.

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1 THE WITNESS: Actually had, actually -- I actually  
2 wrote the numbers on there, and I think --  
3 MR. GROSSMAN: Yes, I saw that. I appreciate  
4 that. All right. So you have the 75 percent; is that what  
5 you're saying?  
6 THE WITNESS: Right. Right. So 75 -- his  
7 testimony was that 75 percent of the time there would be 32  
8 cars or less or, you know, four cars in the lane or less.  
9 In fact, at the 75th percentile, you have 40 at Sterling;  
10 you have 34 at, you still have 34 at Wheaton. You have to  
11 go down to page --  
12 MR. GROSSMAN: By the way, if you're ever a  
13 witness in another case --  
14 THE WITNESS: Yes.  
15 MR. GROSSMAN: -- you could carry that heading  
16 across to each page; it would be helpful.  
17 THE WITNESS: I will do that. I do not purport to  
18 be an expert on Excel, but at least I --  
19 MR. GROSSMAN: I like --  
20 THE WITNESS: -- at least I can find some of those  
21 functions anyway. So if you get down, at the very top of  
22 page 5, you will see where it, we finally come up -- the  
23 first time we come up with 32 cars in line, i.e., no more  
24 than four cars in queue, and that's not 75 percent; it's  
25 65.70 percent. One of the points --

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1 MR. GROSSMAN: And so what --  
2 THE WITNESS: Okay.  
3 MR. GROSSMAN: -- what conclusion do I reach --  
4 THE WITNESS: One of the conclusions you reach is  
5 that --  
6 MR. GROSSMAN: -- from that that's significant?  
7 THE WITNESS: Okay. One of the conclusions you  
8 reach is that Mr. Guckert is willing to testify about things  
9 very generically, making up estimates, not actually having  
10 accurate numbers, and never telling you those things. So I  
11 think in terms of the weight to his testimony, you have to  
12 look at the fact that he's, he does things rather sloppily.  
13 In terms of whether or not --  
14 MR. GROSSMAN: Yes, but I want to know is --  
15 THE WITNESS: Okay.  
16 MR. GROSSMAN: -- why this, the distinction you've  
17 made makes a difference.  
18 THE WITNESS: Okay. I'm going to get to one of  
19 the points about that. One of the points he was saying is  
20 that -- and this goes back to some of the things we talked  
21 about the way queues operate -- he's saying, well, four cars  
22 in line, 32 cars, and so forth. If you look at the numbers  
23 there, starting below that number where it goes to 32, you  
24 can see that the first 32 happens to have that the longest  
25 car in queue is four.

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1 MR. GROSSMAN: Which page are you on now?  
2 THE WITNESS: Just at the top of page 5.  
3 MR. GROSSMAN: Okay. And the second --  
4 THE WITNESS: Okay.  
5 MR. GROSSMAN: -- the second number?  
6 THE WITNESS: Right.  
7 MR. GROSSMAN: Okay.  
8 THE WITNESS: But if you go below that, then you  
9 see five and five, then you see six, and then you go down  
10 and you see sevens.  
11 MR. GROSSMAN: Right.  
12 THE WITNESS: You see sevens quite a ways down.  
13 In other words, cars are not necessarily lining up nice and  
14 neat and even here, just as we said. If you, if you take  
15 these kind of scaled-down numbers, you will see that even  
16 when it's at 32, you may very well have cars, six cars,  
17 seven cars in line, and to reference that in terms of his  
18 queuing, his nice, neat little queuing diagram, which was  
19 Exhibit 511, when you start getting six cars lined up, you  
20 are blocking the entrance to -- here's 511. You can see  
21 that six cars is going to be starting to get to blocking  
22 into that entranceway and seven cars certainly would be  
23 blocking that entranceway.  
24 So that even at 32 cars, if you just, you know,  
25 take and apply Sterling, you know, absolutely line by line

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1 by line, you would see that you're not going to necessarily  
2 get all those cars in there, even if you only had 32. And  
3 certainly, when you get above that number, you get those  
4 longer lines quite a bit. So that's, that's one of the  
5 points about that that --  
6 MR. GROSSMAN: Okay.  
7 THE WITNESS: And the same thing, there was also  
8 testimony that half the time or more there'd only be two  
9 cars total in queue. You know, some of the reasons for that  
10 was the, the inaccurate spreadsheet calculations.  
11 MR. GROSSMAN: You say you get over six cars,  
12 you're starting to block the entry. You're not counting the  
13 cars that are at the pumps; you're just counting the ones  
14 that --  
15 THE WITNESS: Right. Right.  
16 MR. GROSSMAN: -- are in the queues behind them?  
17 THE WITNESS: And his queues only count the ones  
18 behind them, not the ones at the pump. Again, he had  
19 testified that half the time there would only be two or  
20 less. Now, of course, again, if you go down the chart, you  
21 see at page 6, the 50 percentile number is actually 28 for  
22 Wheaton, not two. You have to get down --  
23 MR. GROSSMAN: What page am I on now?  
24 THE WITNESS: Well, if you went to page 6, you see  
25 the -- and this is on Saturday -- you see the 50 percentile

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1 number there towards the bottom, about a quarter of the way  
2 up.  
3 MR. GROSSMAN: I'm not seeing.  
4 THE WITNESS: It's, it's the number here where it  
5 labels 50 percent.  
6 MR. GROSSMAN: Oh, I see it, yes.  
7 THE WITNESS: Okay. That corresponds with 28 cars  
8 in line, not two, and if you keep going down, you get down  
9 to --  
10 MR. GROSSMAN: That's 28 cars presumed at Wheaton.  
11 THE WITNESS: Yes. If you get to page 9, you see  
12 that somewhere between 25 and 30 percent, closer to 25  
13 percent is where it finally goes down to two cars at  
14 Wheaton; so not 50 percent, 25 percent of the time, and that  
15 kind of time is very likely accounted for by the time before  
16 the warehouse opens and after the warehouse closes, which,  
17 again, is not going to be your busy time of the day, that  
18 during most of the busy time of the day, you will have the  
19 kind of long lines we've been talking about, and that --  
20 again, it's both important to just see the actual numbers  
21 there and to also then, in terms of how much weight you give  
22 to the analysis in terms of his testimony and so forth, I  
23 think it's, I think it is important if numbers are being  
24 given and you really have to go back and do every bit of the  
25 math yourself before you can determine whether you can

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1 actually count on any number that is being stated in the  
2 testimony.  
3 MR. GROSSMAN: I understand your point.  
4 THE WITNESS: Okay. All right. And that's all  
5 I'll say about that. If we look at Exhibit 511 again, which  
6 was the queuing diagram I gave you --  
7 MR. GROSSMAN: Yes.  
8 THE WITNESS: -- again, if we -- sort of the  
9 eyeball-analyses kind of thing. We were talking about those  
10 cars there, and I was asking him, okay, how far apart are  
11 those cars, the ones, the four of them at the entranceway  
12 that are trying to squeeze through that entranceway and come  
13 in, that last four cars down there. Now, Mr. Sullivan used  
14 numbers in his analysis of five feet as an average width for  
15 a car. My car is a Prius and that's five feet, and I think  
16 that's -- so I think that's probably a little low for the  
17 average, especially with all the vans and the SUVs and the  
18 trucks that are coming into Costco for their extra-wide  
19 spaces and their extra-large carts. Even if you use five  
20 feet per car, that's 20 feet for the cars. Mr. Guckert  
21 testified that there was going to be three feet in between  
22 each one of those cars. So that would put you another 29  
23 feet. That entranceway is only 24 feet. You can't possibly  
24 get 29 feet of cars and space out of that entranceway.  
25 So, again, he's just, his numbers that he's using

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1 are just not accurate. To get cars that close together --  
2 that's probably, at best, a foot; some of those ones,  
3 probably a couple of inches -- I think it's going to be very  
4 difficult to get people to park something like that. I  
5 think you would have to have not two attendants but an army  
6 of attendants to get people to try to park that close in  
7 there and get their cars that kind of --  
8 MR. GROSSMAN: You don't mean park. You mean  
9 situate themselves --  
10 THE WITNESS: I mean, I mean, I mean, I mean,  
11 situate, so to pull in there and get their --  
12 MR. GROSSMAN: Right.  
13 THE WITNESS: I mean, that's not, that's not a  
14 kind of driving situation I want to put my car in without  
15 somebody telling me come here, come here, an inch at a time,  
16 an inch at a time. I mean, it's crazy. This is not --  
17 MR. GROSSMAN: At least not while you're taking a  
18 movie and pictures at the same time.  
19 THE WITNESS: Certainly not, certainly not, and  
20 certainly not while I'm concentrating on trying to avoid  
21 people --  
22 MR. GROSSMAN: Right.  
23 THE WITNESS: -- coming up to pumps that can, you  
24 know, get knocked over and fires start and things like that.  
25 So point being that, again, this is just, this is not a

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1 realistic diagram as to how people can get in there, at  
2 least not on a minute-by-minute, hour-by-hour practical sort  
3 of basis. People are not going to be able to have 46 cars  
4 in there, probably not anything like 46 cars, and as we  
5 said, even with 32 cars, the diagrams would show that you  
6 may very often have six and seven cars, and that will start  
7 to spill out of this area and block traffic long before you  
8 get to perhaps 46.  
9 And I think the point is, this has, these aren't  
10 -- people aren't computers. They can't drive the way  
11 computers set you up, and you know, we've talked about truck  
12 turning radius before. We talked about them in terms of  
13 some of the areas where people are coming through the  
14 intersection and so forth, and that -- trucks can't do those  
15 radiuses either. And I would just say, I was up at the mall  
16 this last weekend, and they've got a bunch more rocks in a  
17 bunch more places on the various landscaping islands  
18 because, apparently, the trucks are continuing to run over  
19 the islands because they can't make the turns with the area  
20 that they've got there, and we've already talked a great  
21 deal about what kind of problems it will be if the trucks  
22 try to make it without having the entranceways there. So  
23 that's enough on the queuing diagram and so forth.  
24 MR. GROSSMAN: Okay. And I do understand your  
25 point.

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1 THE WITNESS: Okay. And I'm done with that point.  
2 One last point before we move away from the number of  
3 vehicles at the station, and we've talked to this before.  
4 We talked about how they expect to sell less at Wheaton and  
5 Sterling and so forth, and the one thing I've tried to  
6 figure out all along is what are the objective demographics  
7 and size and so forth that would suggest that Wheaton will  
8 actually have less than Sterling, because that really goes  
9 into all of the calculations that come here, is this  
10 assumption that Wheaton will actually sell only 86 percent  
11 at Sterling. So I did, I pulled up some more census data.  
12 This would be a new exhibit, I believe, or did we -- again,  
13 is this one I think that we put, had an exhibit number for?  
14 MS. ROSENFELD: Is this Wheaton?  
15 THE WITNESS: Yeah, the Wheaton versus Sterling  
16 numbers here.  
17 MS. ROSENFELD: Yes, and we don't have an exhibit  
18 number on this.  
19 MR. GOECKE: And, Mr. Grossman, I would object to  
20 this testimony, if I understand her correctly. She's not a  
21 modeler for what consumption of gasoline is going to be at  
22 Wheaton or any place else --  
23 THE WITNESS: I'm not -- I'm just giving you some  
24 objective numbers.  
25 MR. GOECKE: -- and --

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1 MR. GROSSMAN: Well, hold on. Let him finish his  
2 objection.  
3 THE WITNESS: Okay. Okay.  
4 MR. GOECKE: Yes. And it's also beyond the scope  
5 of what was addressed during our rebuttal case. We talked  
6 about the projected need for the gas station, what they  
7 anticipated sales were going to be, 10 million gallons of  
8 gas, how we used 12 million gallons of gas as a conservative  
9 estimate for purposes of this special exception process, and  
10 that's all been addressed during the case-in-chiefs on both  
11 sides, and I think that's inappropriate for her to delve  
12 into that now.  
13 THE WITNESS: Well, I think we also discussed,  
14 again, the 12-million number, that it was going to be less,  
15 that we were going to have all these things scaled down, and  
16 I think it's just reasonable to put in some, some objective  
17 evidence about the relationship between these two stations  
18 and whether that's a realistic assumption. You can take  
19 this for whatever weight it has. It's going to take me  
20 about two minutes to go through it and get --  
21 MR. GROSSMAN: All right. And based on the  
22 two-minute estimate, I'm going to overrule the objection and  
23 listen to it.  
24 THE WITNESS: Okay.  
25 MR. GOECKE: I'll set my timer.

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1 THE WITNESS: Only once we figure out what the --  
2 do we give this an exhibit number?  
3 MS. ROSENFELD: This needs a new exhibit number.  
4 THE WITNESS: Okay. All right. So this would be  
5 a new exhibit then.  
6 MR. GROSSMAN: All right.  
7 MS. ADELMAN: That doesn't go into the two  
8 minutes, right?  
9 MR. GOECKE: She can -- tell me when to go, Karen.  
10 MR. GROSSMAN: Hold on a second.  
11 THE WITNESS: I can talk very fast, Michael.  
12 MR. GOECKE: And long.  
13 MR. GROSSMAN: Hold on. Don't count her time yet.  
14 All right. So I wonder if we should just include this as  
15 part of 587, where you have the Waldorf CDP and --  
16 THE WITNESS: Well, that, that's, because that's  
17 talking about Brandywine and this would be --  
18 MR. GROSSMAN: All right. So --  
19 THE WITNESS: Okay.  
20 MR. GROSSMAN: -- we'll make it a different one.  
21 So this will be Exhibit 589 and that's Wheaton, Maryland,  
22 CDP versus Sterling, Virginia, CDP.  
23 (Exhibit No. 589 was marked  
24 for identification.)  
25 THE WITNESS: Okay. All right. So what I was

1 trying to do was to get a sense, objectively, whether there  
 2 were reasons to think that the Wheaton would be less than  
 3 the Sterling sales, because, again, that underlies virtually  
 4 everything in this case. I pulled up the relative census  
 5 data from them, somewhat smaller than what I did with  
 6 Brandywine. Again, population-wise, Wheaton has 48,000,  
 7 Sterling has less than 28,000, and the housing units are  
 8 roughly comparable, as well, in terms of that Wheaton is  
 9 substantially bigger than Sterling.

10 I couldn't find an actual listing of the size of  
 11 the stores, but I tried to do some measuring with the Google  
 12 Earth shots. It looks to me like the Sterling store has  
 13 about 141,000 square feet. The Wheaton store is listed at  
 14 152,000 square feet. The calculations on traffic for stores  
 15 is based on per square foot, which would suggest that you  
 16 would have more trips coming to the warehouse because it's  
 17 clear that gasoline station sales are very highly correlated  
 18 with people coming to the warehouse. That would suggest  
 19 you'd have more sales at the store with the larger  
 20 warehouse.

21 I looked at parking spaces. That is something you  
 22 can count. Went a little blind but I basically counted  
 23 roughly, give or take a few, 600 around the Sterling store.  
 24 The testimony has been that Costco has about 750 spaces  
 25 combined here at Wheaton, and -- just the parking lot and

1 the garage, second floor, and it has access to the third  
 2 floor. Those seem to be full all the time. Again, that  
 3 would suggest that you're getting more traffic coming to the  
 4 Wheaton store than Sterling, would again suggest that, you  
 5 know, they have a volume that -- they have some testimony  
 6 that some percentage of the people go to the warehouse, shop  
 7 at the station as well. Again, that would seem to suggest  
 8 that you would have more sales at this station than --

9 MS. HARRIS: Excuse me. May I ask for a  
 10 clarification? Did Ms. Cordry say that the top floor of the  
 11 parking garage is full?

12 THE WITNESS: No. I said it was available.

13 MS. ADELMAN: Available, yes.

14 MS. HARRIS: But I think it said, and full. Okay.  
 15 That's not what you meant?

16 THE WITNESS: No, no. I meant to say --

17 MS. HARRIS: Okay.

18 THE WITNESS: -- that the parking lot and the  
 19 second floor are largely full these days, the third floor is  
 20 also available --

21 MS. HARRIS: Thank you. Thanks for the  
 22 clarification.

23 THE WITNESS: -- no, not, not meaning to say that  
 24 it's full yet, no. No.

25 MS. HARRIS: Okay.

1 THE WITNESS: So by several objective factors,  
 2 that would seem to me to suggest that Wheaton might very  
 3 well sell more than Sterling. So it says to me that either  
 4 the numbers are understated, as we've been seeing oftentimes  
 5 with some of these traffic volume numbers, seem to be  
 6 understated, or that people aren't buying here because they  
 7 aren't willing to wait in the long lines when there are 28  
 8 other gas stations available at which they can buy, which  
 9 seems to us to say that either you don't have this need here  
 10 that they're trying to demonstrate or that the numbers are  
 11 going to be understated.

12 And I would just, one last factual point, that  
 13 what had been the Freestate station up at Georgia and  
 14 Layhill, which closed down about a year or so ago, is now  
 15 back open again. So we are back up to 28 stations or 25,  
 16 depending on what you do with those three stations over in  
 17 the Four Corners area. So we are back up to 28 again  
 18 serving this area. And I don't know if that was two  
 19 minutes, but pretty close. That's all I have to say on that  
 20 point.

21 MR. GROSSMAN: You didn't make a buzzer go off.  
 22 So --

23 MR. GOECKE: I didn't, I didn't press start.

24 THE WITNESS: Okay. But --

25 MR. GOECKE: I trust her.

1 MS. ADELMAN: Was a threat.

2 THE WITNESS: I did not spend a lot of time on  
 3 that issue. Okay. All right. So let's go back to the  
 4 driving and the pedestrian issues now back at Wheaton. So  
 5 we're not talking about Brandywine or any place anymore.  
 6 We're back, back to Wheaton.

7 MR. GROSSMAN: All right.

8 THE WITNESS: All right. So, as we talked about  
 9 with Mr. Guckert, the official county number for feet per  
 10 second of people crossing is three-and-a-half feet per  
 11 second these days. It's roughly 140 feet across this area  
 12 here. So we're roughly talking 40 seconds for someone, any  
 13 given person to cross this particular area here.

14 MR. GROSSMAN: Just identify for the record --

15 THE WITNESS: And I'm sorry, across the top of the  
 16 gas station area there.

17 MR. GROSSMAN: Across the northern front of the  
 18 gas station.

19 THE WITNESS: Yes, where there's an assumption  
 20 that we're now going to have a pedestrian walkway, and we  
 21 would hope that people would use the pedestrian walkway,  
 22 which is good in terms of visibility. It also, though,  
 23 tends to compress then even more; so you're going to have  
 24 even more volume in that limited area there.

25 We also talked about the fact that there are, back

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1 in April, that the numbers that were observed were  
2 approximately 1600 people, pedestrians coming out of the  
3 store at the peak hour, and that only counted people coming  
4 out of the mall entrance. We're looking at this, looking at  
5 the mall entrance now, the one by the Costco itself.  
6 MR. GROSSMAN: The western side.  
7 THE WITNESS: The western entrance there. There  
8 was no count taken of people coming out of the Target  
9 entrance, which is on the north side here, which brings in  
10 another, you know, large group of people into the parking  
11 lot. Most of those people presumably will not be coming  
12 down here to this area, but --  
13 MR. GROSSMAN: To the southern end --  
14 THE WITNESS: To the southern area here.  
15 MR. GROSSMAN: -- of the parking lot.  
16 THE WITNESS: But there's no parking -- there is  
17 no pedestrian path across, on either side of this  
18 north-south drive aisle at the moment there, and in  
19 addition, since the time that that was taken, we've also had  
20 a Jo-Ann's store open here, which is a further volume of  
21 people coming in terms of entering and leaving.  
22 MR. GROSSMAN: Do I have to count Jo-Ann stores?  
23 THE WITNESS: No, but it's --  
24 MR. GROSSMAN: I seriously --  
25 THE WITNESS: Yeah, right.

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1 MR. GROSSMAN: -- don't know what their volume is  
2 or anything --  
3 THE WITNESS: I don't know, but --  
4 MR. GROSSMAN: -- I don't know when they opened, I  
5 don't, when --  
6 THE WITNESS: They opened several months ago.  
7 MR. GROSSMAN: And the other side hasn't had --  
8 THE WITNESS: Right. Right.  
9 MR. GROSSMAN: -- an opportunity to address it.  
10 So let's, let's not address, not include that.  
11 THE WITNESS: Okay. The point being is that there  
12 is additional retail there now since the time that that  
13 particular volume was taken.  
14 MR. GROSSMAN: I don't know that. So, I mean, I  
15 don't want to count in things that are developing after they  
16 had an opportunity to put in their case. I mean, I have to  
17 be fair about that. So let's not --  
18 THE WITNESS: Okay. Okay. That's fine.  
19 MR. GROSSMAN: -- talk about additional retail  
20 that's, that opened in the last month.  
21 THE WITNESS: Well, it's been several months now.  
22 It's really not the last month. It was --  
23 MR. GROSSMAN: You said the last month or two.  
24 So --  
25 MR. SILVERMAN: It's been years --

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1 THE WITNESS: No.  
2 MR. SILVERMAN: -- in planning, Mr. Grossman.  
3 It's not a surprise.  
4 THE WITNESS: No. No, I don't think I said a  
5 month or two. It's been several months, at least, that it's  
6 been open. But in any case, it's not -- anyway, we'll move  
7 on. It is there.  
8 MR. GROSSMAN: Okay.  
9 THE WITNESS: And, of course, the other point is  
10 that when the station dislocates, the spaces that are here,  
11 all of those spaces have to move over to what is now the  
12 grassy area, and also, we lose some spaces here.  
13 MR. GROSSMAN: You already put that evidence in  
14 and started it.  
15 THE WITNESS: Right. Okay. And that is, that is  
16 Exhibit 500(d) that talks about how many spaces there were  
17 there. Just to summarize that, there was a total of lost  
18 spaces. It would be a displacement of 103 spaces, would be  
19 moved. So 103 spaces that are now close to the warehouse  
20 would be moved further over, and there would be a net loss  
21 of 15 spaces. So you will have 15 more people trying to  
22 drive around and not finding spaces and 103 spaces where  
23 people will be farther away and having to walk across the  
24 front of the gas station at this point.  
25 MR. GROSSMAN: Right.

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1 THE WITNESS: Okay. And to the extent that one of  
2 Costco's proposed conditions is to have its employees park  
3 in several of the spaces directly across from the west side  
4 of the station in order to avoid conflicts with, with the --  
5 MR. GROSSMAN: The fueling trucks.  
6 THE WITNESS: -- fueling trucks, that's great for  
7 that purpose, but it means there's even more customer spaces  
8 lost. So that conflicts in that sense with --  
9 MR. GROSSMAN: I don't know if there are more  
10 lost. I mean, it may be that Costco employees were parking  
11 in that lot, in any event, previously. So I don't know that  
12 that means --  
13 THE WITNESS: Well, they certainly weren't being  
14 directed to park there, and one of their other conditions is  
15 that, other than those people parking there, we're going to  
16 try to get them moved out. But in any case, if that is new,  
17 which seems quite likely, that would be another several  
18 spaces that would be lost for --  
19 MR. GROSSMAN: Once again, it's another one of  
20 those iffy assumptions I don't need to make.  
21 THE WITNESS: I don't know what you need to make  
22 or not.  
23 MR. GROSSMAN: Well, why would I assume that?  
24 It's not in evidence --  
25 THE WITNESS: Well, I --

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1 MR. GROSSMAN: -- that they wouldn't have parked  
2 there previously, somewhere in the lot. I mean --  
3 THE WITNESS: Well --  
4 MR. GROSSMAN: -- I can't make that assumption  
5 that you are.  
6 THE WITNESS: Okay. I would assume that most  
7 stores try to have their employees park --  
8 MR. GROSSMAN: Yes, but once again, I would  
9 assume. I mean, why would I want to, in a case with a  
10 year's worth of evidence, why would I want to speculate on  
11 an assumption?  
12 THE WITNESS: Okay. Okay. All right. To get a  
13 little more detail in looking at how these cars will be  
14 coming out and what will be happening, to the extent that  
15 these cars try to go directly to the north and get in this  
16 drive aisle, we saw how busy, just a minute ago, that aisle  
17 was, how cars were there, how you could not immediately,  
18 necessarily, pull right out into there but could be held up  
19 trying to get out of these north-south parking aisles into  
20 that east-west drive aisle. If that happens, if I'm sitting  
21 here, trying to get out of either two, three, four, or five  
22 into the east-west drive aisle and cannot move forward, then  
23 I may start having cars backing up behind me down this aisle  
24 and impeding cars being able to get out of the station.  
25 If I am thinking, if I'm one of these people here

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1 that, okay, I'm going to get out of the station and turn  
2 either left or right -- one of Mr. Guckert's points was it's  
3 very regimented within the station, everything just goes in  
4 a very nice straight line, and his little charts here show  
5 everybody going up in very nice straight lines -- but if I'm  
6 getting backed up from the east-west drive aisle and can't  
7 get out and I decide, oh, well, I'll try this separate aisle  
8 here, right above the station, all of a sudden these nice,  
9 very straight lines are going to start having people coming,  
10 well, I think I'll cut across here and I'll cut across, you  
11 know, I'll come to the left or I'll come to the right and  
12 try to go back out to these other drive aisles here.  
13 MR. GROSSMAN: Well, doesn't that concern make an  
14 assumption that you actually have cars that are going to  
15 take more than four minutes waiting to exit from one of  
16 those north-south columns onto the east-west drive aisle?  
17 THE WITNESS: No, not four minutes, because,  
18 remember, we have cars coming out every 15 seconds. We have  
19 16 pumps.  
20 MR. GROSSMAN: Right.  
21 THE WITNESS: So one every, one every -- four cars  
22 a minute is one every 15 seconds.  
23 MR. GROSSMAN: All right.  
24 THE WITNESS: And I will show you in a minute --  
25 MR. GROSSMAN: No, but they have four different

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1 aisles to come out of.  
2 THE WITNESS: Well, I understand that, but we've  
3 got --  
4 MR. GROSSMAN: So --  
5 THE WITNESS: -- we've got cars coming out of  
6 every one of those aisles there. What I'm saying is it can,  
7 you can have cars backing up down here that may interfere.  
8 If I, once -- if cars try to use this, this cross aisle here  
9 to avoid it, all of a sudden you're going to have cars  
10 crossing back and forth and you're not going to have these  
11 nice, neat, straight little lines here that he's --  
12 MR. GROSSMAN: I don't know that any of your  
13 evidence makes me believe that cars will actually back up  
14 along any of those -- what's the number of that exhibit  
15 again?  
16 THE WITNESS: 482, I believe it is.  
17 MR. GROSSMAN: 482, that they will back up on  
18 those green arrows, given the rate at which they're  
19 exiting --  
20 THE WITNESS: Well, let --  
21 MR. GROSSMAN: -- to make a turn.  
22 THE WITNESS: -- I will come to that in just a  
23 moment, but let me, let me just -- at this point, I'm just  
24 talking what happens if they do start backing up. If a car  
25 tries to come out here --

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1 MR. GROSSMAN: Here being?  
2 THE WITNESS: To the right, to the right and going  
3 down the --  
4 MR. GROSSMAN: The easternmost --  
5 THE WITNESS: Yeah, and going down the north-south  
6 drive aisle here by the loading dock.  
7 MR. GROSSMAN: Right.  
8 THE WITNESS: If that car can't get out because of  
9 the traffic going up, it's going to block these two lanes  
10 here, trying to come out.  
11 MR. GROSSMAN: Right.  
12 THE WITNESS: Same for a car trying to turn here,  
13 you can easily have that kind of blockage there. As soon as  
14 you start getting people slowed up, trying to get out of the  
15 gas station itself, that's going to propagate back into the  
16 queuing area and back out onto the main road.  
17 These cars, as they come down these two  
18 north-south drive aisles, many of them are going to be  
19 trying to make left turns. You're also going to have cars  
20 trying to make the left turn into the station here. Those,  
21 all of those left turns are going to be interfering with  
22 each other very easily. So I think, you know -- and if  
23 those cars can't get in there because it's propagating back  
24 this way, I mean, you can, you can have a vicious circle  
25 starting up here, I think, very easily.

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1 And let me show you what I mean about the problems  
2 getting out of the parking lot. This is Slide 16 on Exhibit  
3 483. Whoops. This is coming up by the Target, and we're  
4 starting here, and I'm pulling up now, and let's see.  
5 Here's my --  
6 MR. GROSSMAN: I'm sorry. Which way are you  
7 headed out? Where --  
8 THE WITNESS: At this point -- at this point, I'm  
9 actually up by the Target lot coming up, and this is not  
10 even down in this section. This is up by the Target, and  
11 I'm waiting and I'm waiting -- oh, there we go; there's my,  
12 there's my little timer -- and I'm waiting and I'm waiting  
13 and I'm waiting. It took me a full 40 seconds or more to  
14 get out of that parking aisle -- and I will pull it up on  
15 the big chart and show you -- to get out of the parking  
16 aisle and get into the drive aisle.  
17 And now I'm waiting again to get out of the drive  
18 aisle by the Target to get onto the ring road, again,  
19 waiting and waiting, and you can see the cars out on the  
20 ring road backed up from Intersection 16, that we have to  
21 get in that line and wait. And I show you, this is now past  
22 the Target aisle, several cars going down, past the Target  
23 aisle, and cars parked out on the ring road itself. And  
24 now, let's see, about a two-minute total, this video. So it  
25 took me about a minute and 30 seconds or more to get out of

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1 the parking lot and onto the ring road.  
2 So, yes, do I think you can easily sit there for  
3 30 seconds or more, waiting to get into that east-west drive  
4 aisle or those north-south drive aisles? Yes, I, this, I --  
5 you know, I'm not going to belabor the record with dozens of  
6 these videos, but yes, it is quite easy to spend that amount  
7 of time waiting there. And if you have cars, you know,  
8 trying -- and this is with the traffic we have now, not when  
9 we're putting all of this new traffic in, right into that  
10 area there.  
11 If you're sitting there 30 seconds or more trying  
12 to get out in that east-west drive aisle, you are going to  
13 be backing up cars behind you, and those cars are going to  
14 be backing up there. Other cars are not going to be able to  
15 get out. The cars trying to get out are going to say, oh,  
16 well, now I'll start trying to crisscross across in this  
17 area right here above the station, and that's, if I can't  
18 get out to the east or west, now I'm going to be blocking  
19 the traffic going --  
20 MR. GROSSMAN: Well, Ms. Cordry, let me, what  
21 you're suggesting is, I guess -- how many car lengths is it  
22 between where you exit the pump on the, let's take the  
23 middle two green arrows --  
24 THE WITNESS: Okay.  
25 MR. GROSSMAN: -- are they labeled? I don't have

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1 my glasses on.  
2 MR. GOECKE: Three and four.  
3 MR. GROSSMAN: Yes, three and four. How many car  
4 lengths are there from the top of the green arrow -- that is  
5 where, I guess, they would be making their turn; actually,  
6 where the number is --  
7 THE WITNESS: Okay. I think --  
8 MR. GROSSMAN: -- and the pump that they are  
9 coming from?  
10 THE WITNESS: Okay. I think it's eight, it's  
11 roughly eight spaces above there afterwards --  
12 MR. GROSSMAN: And you are --  
13 THE WITNESS: -- and each of those spaces is 10  
14 feet wide.  
15 MR. GROSSMAN: All right. And you are suggesting  
16 that you think that given the rate at which they are exiting  
17 the pumps, that those north-south aisles are going to have  
18 backups of at least eight cars each --  
19 THE WITNESS: Well, no, no. No.  
20 MR. GROSSMAN: -- or eight cars approximately?  
21 THE WITNESS: No, because 80 feet is roughly four  
22 cars.  
23 MR. GROSSMAN: Well, that's what I was asking you.  
24 How many car lengths --  
25 THE WITNESS: Okay. I said there was eight,

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1 eight, eight parking spaces, each of which is 10 feet wide,  
2 is 80 spaces, roughly 20 feet per car, if you say that, if  
3 you, if you want to get that close. So that could be four  
4 cars, but keep in mind, you've got two cars -- you got two  
5 different lanes being shown as coming up here, two different  
6 lanes coming up here, so 15 seconds from each one of those,  
7 but seven-and-a-half -- if you combine the two, then it  
8 would be one every seven-and-a-half seconds trying to get  
9 out there.  
10 MR. GROSSMAN: I'm just looking at -- looking at  
11 the diagram itself and, you know, the, the size of the pump  
12 area, et cetera, I think you're underestimating the amount  
13 of distance there for cars to be able to queue at the  
14 east-west drive aisle. It looks to me like there's more  
15 room for cars queuing than four car lengths --  
16 THE WITNESS: Well, I --  
17 MR. GROSSMAN: -- between the, between the, by the  
18 pump --  
19 THE WITNESS: Well --  
20 MR. GROSSMAN: -- counting from the pump --  
21 THE WITNESS: Well, I'm counting from these  
22 islands here that --  
23 MR. GROSSMAN: What's the scale on this?  
24 THE WITNESS: Well, this -- okay. I'm not  
25 positive what the scale is. I'm talking this area here.

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1 I'm not talking in this part here because if --  
2 MR. GROSSMAN: Well, I am because --  
3 THE WITNESS: Well, I understand, but if cars are,  
4 if cars are now also sitting here, then you're going to have  
5 trouble -- you know, you're presumably going to try to keep  
6 this open here so that people can go back and forth, because  
7 that was the assumption, that this was going to be, you  
8 know, a way that people can cross back and forth. And, in  
9 fact, I had thought, again, as I had said, I had been  
10 assuming that they were going to try to keep this area free  
11 from people coming into the parking lot itself, but the  
12 statement was no, no, this can also be an entranceway for  
13 people just trying to come in and enter into the parking  
14 lot. So you also have --  
15 MR. GROSSMAN: You said they are going to keep it  
16 free. You mean a Costco attendant --  
17 THE WITNESS: Yes.  
18 MR. GROSSMAN: -- was going to be standing out  
19 there --  
20 THE WITNESS: Well --  
21 MR. GROSSMAN: -- at the northern end?  
22 THE WITNESS: No, no. No, no. I'm talking on  
23 the, the east and west points here for this cross aisle  
24 here.  
25 MR. GROSSMAN: Who's the they? Who's the --

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1 THE WITNESS: Okay. Okay.  
2 MR. GROSSMAN: -- antecedent for the they that you  
3 said is going to keep it free?  
4 THE WITNESS: No, no. I had thought -- and we,  
5 this was testimony from -- I had thought that Costco would  
6 probably have signs here, saying, do not enter, try to leave  
7 this area here open so it would only be used for the gas  
8 station, but it was said at an earlier day in the hearing,  
9 no, no, no, this was intended to be just open space, people  
10 coming into the parking lot can come in here and use this as  
11 well. So this is --  
12 MR. GROSSMAN: All right. Just for the record,  
13 the area here you're referring to is the area immediately to  
14 the north --  
15 THE WITNESS: Yes.  
16 MR. GROSSMAN: -- of the pumps.  
17 THE WITNESS: Yes.  
18 MR. GROSSMAN: Okay.  
19 THE WITNESS: Right. Now --  
20 MR. GROSSMAN: So what I'm asking you is, are you  
21 suggesting in your evidence that from the time a car leaves  
22 the pump until that car gets to the east-west drive aisle,  
23 just to the north of those numbers --  
24 THE WITNESS: Right. Yeah.  
25 MR. GROSSMAN: -- two, three, four, five, that --

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1 are you suggesting that that's only four car lengths?  
2 THE WITNESS: Well, no, no. What I am saying is,  
3 this is the area I was counting.  
4 MR. GROSSMAN: It's more like eight car lengths,  
5 right?  
6 THE WITNESS: No. This, this is four car lengths.  
7 This is 80 feet, which is, we'll talk --  
8 MR. GROSSMAN: To the islands?  
9 THE WITNESS: Yes.  
10 MR. GROSSMAN: To those --  
11 THE WITNESS: And then there, I think this is, I'm  
12 not positive exactly how much. I would guess this is  
13 probably 32 feet, perhaps 40 feet, perhaps 24. I'm not sure  
14 exactly how wide this is expected to be here, but maybe  
15 another car or two in here, but the area in the parking  
16 spaces is roughly 80 feet. Again --  
17 MR. GROSSMAN: All right. So let's say it's six  
18 car lengths down to the pumps --  
19 THE WITNESS: Possibly. Possibly.  
20 MR. GROSSMAN: -- and so you're suggesting that  
21 exiting onto the east-west roadway there is, or drive aisle,  
22 is going to be so difficult that there will be six cars  
23 approximately backed up, or more, because that's, it would  
24 have to take more than that to back up into the pump area,  
25 on those north-south green arrows?

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1 THE WITNESS: Well, again, I'm not assuming, you  
2 know, 20 car -- 20 feet is, again, if you have the  
3 attendants out there, also trying to scooch those people up,  
4 but I don't think you got that many attendants left.  
5 MR. GROSSMAN: No.  
6 THE WITNESS: People give some more space. I  
7 think the area from here back to here is probably four to  
8 five cars reasonably there. You've got two different pumps  
9 coming out into each one of these areas. You have this area  
10 here. All of this was within a very short period of cars.  
11 You have people -- and remember, we've got people walking  
12 back and forth across here that will be, that cars will have  
13 to be waiting for. You will have difficulties of cars  
14 getting out into this space because of the number of cars  
15 there and all of these additional cars going into what's  
16 already there.  
17 Now, I don't -- can I guarantee you that cars will  
18 back up all this way? Can I guarantee you that this car  
19 will not be able to get here, it will be blocking these  
20 pumps, trying to come out? You know, I can't guarantee you  
21 all of this, but I can tell you, this is an area which,  
22 again, as Mr. Guckert conceded, this is not like the areas  
23 that they have at their other stations where cars can easily  
24 go out, easily find room to get into uncrowded, uncongested  
25 areas. This is putting these cars into the --

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1 MR. GOECKE: Objection. She's mischaracterizing  
2 his testimony.  
3 THE WITNESS: Well --  
4 MR. GROSSMAN: Once again, it's her, as a witness,  
5 her understanding of the testimony, and I take it that way.  
6 THE WITNESS: Well, it certainly is not anything  
7 like the Brandywine station, for instance, that we were  
8 shown as, oh, here's the way cars can exit.  
9 MR. GROSSMAN: I understand, but we're past the  
10 comparison thing --  
11 THE WITNESS: Okay. Okay.  
12 MR. GROSSMAN: -- that you were doing. We're now  
13 just looking at the station, and I was just questioning your  
14 assumption that there's actually going to be a backup, that  
15 cars are going to be exiting those pumps fast enough to  
16 create a backup on the green arrows on Exhibit -- I'm sorry.  
17 What's the number again?  
18 THE WITNESS: 482.  
19 MR. GROSSMAN: 482. That's --  
20 THE WITNESS: Can I guarantee it? No, but I can  
21 tell you that we can already see that there are, there can  
22 be long backups now, and this -- the area over here by the  
23 Target is not the busiest area in the mall. This area down  
24 here on the east-west drive aisle is busier than that area  
25 up by Target from all my observations.

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1 We're already a very busy area. We're now going  
2 to be putting pedestrians walking across there, more  
3 pedestrians because of the dislocation of the parking  
4 spaces. You are going to have all of these lines of cars  
5 coming out, trying to go into that very narrow space there.  
6 Each one, as it comes in, may hold up all the cars behind --  
7 you know, if this guy is trying to get in, then all of those  
8 cars behind there have to wait until he gets in, you know,  
9 continues to block these, you know --  
10 MR. GROSSMAN: What's the rate of cars exiting --  
11 by your calculations, what's the rate of cars exiting the  
12 pumps anticipated at Wheaton?  
13 THE WITNESS: What you can anticipate, I think,  
14 would be that there'd be -- essentially, no different at the  
15 peak hours than you would have at Sterling. You have 16  
16 pumps. You have cars backed up. People would be coming out  
17 as fast as they can, somewhere in excess of four cars per  
18 minute, so roughly one every 15 seconds.  
19 MS. HARRIS: It --  
20 MR. GROSSMAN: I'm sorry. Did you say something?  
21 MS. HARRIS: Sorry.  
22 MR. GROSSMAN: Okay.  
23 MS. HARRIS: Well, that doesn't correspond to her  
24 exhibit, so far as I can tell.  
25 THE WITNESS: What I did with my exhibits was

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1 simply to take your approach, which was simply to scale down  
2 numbers. What I said was that my -- I don't believe that  
3 that's an actual accurate way to assume that cars will  
4 actually go through there. I testified that my view is that  
5 if you have people lined up, if you have 16 pumps, people  
6 will be trying to use the pumps as fast as they can; that  
7 the, that the truly accurate way, you'd have, you'd have to  
8 actually see how this works out, and if the numbers are less  
9 than that, my guess is that it will be more affected by how  
10 long you will have these high numbers.  
11 MR. GROSSMAN: Let's say it's four cars per  
12 minute. That's counting all the pumps, right?  
13 THE WITNESS: Right.  
14 MR. GROSSMAN: So you have four cars, and assuming  
15 they spread out over those four green arrows, then you'll  
16 have one car every minute landing in an aisle there,  
17 north-south aisle, leading up to those numbers on that  
18 exhibit. And even if you take your assumption of 40 seconds  
19 or even a minute to get out, they're not going to back up  
20 down to the pumps, are they, I mean, by your own math?  
21 They're not --  
22 THE WITNESS: I don't --  
23 MR. GROSSMAN: -- they're just not going to back  
24 up down to the --  
25 THE WITNESS: That's if things are nice and neat

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1 and even. Things usually aren't nice and neat and --  
2 MR. GROSSMAN: Even if they're not, I mean, giving  
3 it a, giving it a, lots of margin for error, if it's one car  
4 in each arrow per minute and it takes a minute -- you had 40  
5 seconds -- but if it takes a minute for them to get onto the  
6 aisle, they're not going to back up. I mean --  
7 THE WITNESS: Well --  
8 MR. GROSSMAN: -- I'm just using your, I'm just --  
9 THE WITNESS: -- since we already have cars  
10 backing up at this point without this traffic --  
11 MR. GROSSMAN: All right.  
12 THE WITNESS: -- it's hard to believe that it's  
13 not going to back up even more and even longer. I mean, we  
14 have 30- to 40-second backups without this kind of traffic.  
15 I think it's entirely possible you'll have more than that  
16 with this kind of traffic. It certainly is a, it certainly  
17 is going to make that area extraordinarily more congested,  
18 extraordinarily more difficult for people to walk through  
19 and to get --  
20 MR. GROSSMAN: Well, you had, you showed a 30- to  
21 40-second backup on your anecdotal, showing, exiting a  
22 different port --  
23 THE WITNESS: Right, which is a less --  
24 MR. GROSSMAN: -- in Target, which is --  
25 THE WITNESS: -- which is a less-crowded area of

1 the mall at this point.  
 2 MR. GROSSMAN: Don't exactly know that from the  
 3 evidence, but the point is that you're asking me to  
 4 speculate about something that I don't think your numbers --  
 5 I understand many of your other numbers and the rationale  
 6 for, but I don't think I can reach the conclusion that  
 7 you've reached in this particular one based on what I've  
 8 just said. So anyway, we don't have to go over it again.  
 9 THE WITNESS: It's possible that they can all get  
 10 out and there's no problem. It's also entirely --  
 11 MR. GROSSMAN: Not just possible. It is -- the  
 12 numbers you have given me seem to indicate that. That's  
 13 what I'm saying. Don't I have to assess it that way?  
 14 THE WITNESS: No. I think you have to assess it,  
 15 if you already have 30- or 40-second backups without this  
 16 kind of traffic and you add this traffic in, all of this  
 17 concentrated traffic in that very small area, that it is  
 18 extraordinarily likely that you will have longer backups  
 19 than not, and --  
 20 MR. GROSSMAN: All right. All right. I've heard,  
 21 I've heard your point.  
 22 THE WITNESS: Okay. All right. And, again, all  
 23 of those additional traffic being added on to what we just  
 24 saw before, as to what that kind of area looks like during  
 25 the weekend, this is exactly why the County Executive has

1 twice had campaigns directed at the special hazards of  
 2 parking lots and pedestrian --  
 3 MR. GROSSMAN: Well, you don't know. You really  
 4 can't testify as to why the County Executive did what he  
 5 did. His -- whatever he issued that you've already put in  
 6 evidence speaks for itself.  
 7 THE WITNESS: Okay. Well, yes, pedestrians in  
 8 parking lots are an area that the County Executive has had  
 9 two separate campaigns about, and the most recent one, last  
 10 fall, yes. And it's certainly fair to say that Montgomery  
 11 County is actually at the forefront of trying to study these  
 12 parking lot incidents, why they happen, what the design  
 13 factors are that go into it, how you can try to make them  
 14 safer. I've been attending the parking, pedestrian safety  
 15 meetings, and --  
 16 MR. GOECKE: Objection. She's already testified  
 17 about this. It's in the record.  
 18 MR. GROSSMAN: That's true.  
 19 THE WITNESS: Okay.  
 20 MR. GROSSMAN: I'm going to take a five-minute  
 21 break here.  
 22 (Whereupon, a brief recess was taken.)  
 23 MR. GROSSMAN: Back on the record. What's your  
 24 estimate of how much additional testimony you have,  
 25 time-wise?

1 THE WITNESS: I'm about half through. Well, I  
 2 didn't start until like 11 o'clock almost. So it's --  
 3 MR. GROSSMAN: I understand.  
 4 THE WITNESS: So probably, maybe another two hours  
 5 or so, hopefully.  
 6 MR. GROSSMAN: Well, that's not hopefully.  
 7 Hopefully is --  
 8 THE WITNESS: Well --  
 9 MR. GROSSMAN: -- a half hour. How's that?  
 10 THE WITNESS: No, no, clearly not, not with as  
 11 many things we covered. Okay.  
 12 MR. GROSSMAN: So let me get a sense of the crowd  
 13 as to when you want to break for lunch.  
 14 MS. ADELMAN: Well, we've already discussed  
 15 this --  
 16 MR. SILVERMAN: There's an awful lot of snacking  
 17 going on, Mr. Grossman.  
 18 MR. GROSSMAN: I see.  
 19 MS. ADELMAN: -- and we just, Karen feels like she  
 20 has about 15 or 20 minutes and then that would be a good  
 21 breaking point.  
 22 MR. GROSSMAN: I see.  
 23 THE WITNESS: And actually, maybe not even, maybe  
 24 not even that long. It's sort of a point, when I finish  
 25 this up and move on to another topic, it's probably no more

1 than five to 10 minutes, maybe 15 at the outside, but I,  
 2 probably less than that. So we could --  
 3 MS. ADELMAN: So both the opposition and the  
 4 applicant are in agreement.  
 5 MR. SILVERMAN: Agreement.  
 6 MR. GROSSMAN: Well --  
 7 MS. HARRIS: Let the record reflect.  
 8 MR. GROSSMAN: -- I'm so shocked that I don't  
 9 think I can respond.  
 10 THE WITNESS: All right.  
 11 MS. HARRIS: And we're even going to share our  
 12 granola bars.  
 13 MR. GOECKE: Would you like a granola bar while we  
 14 wait?  
 15 THE WITNESS: I probably, I probably should have  
 16 stopped us from taking that break, but I was ready for a  
 17 quick break. So let me, let me --  
 18 MR. GROSSMAN: I was more ready than you were.  
 19 THE WITNESS: Okay.  
 20 MR. GROSSMAN: Go ahead.  
 21 THE WITNESS: All right. So I'm going to move  
 22 away from this in just a moment, though. The last thing I  
 23 would just say is that in terms of discussion we had here,  
 24 the one thing I did not mention was the fact, of course,  
 25 these, these are not like open aisles. These are aisles

1 where people will be coming up, using them for parking.  
2 These are probably among the more desirable parking spaces  
3 because they're among the closest spaces to the entrance to  
4 the Costco.

5 So in addition to these, these cars from the gas  
6 station coming out here, you have all of the normal traffic  
7 of people trying to come in and park, trying to get into a  
8 parking space, trying to get out, backing in, backing out,  
9 loading and unloading their cars. So it's not that these  
10 cars have nice, clean, open areas to go up in. They will be  
11 competing with all this other traffic here, which already  
12 can slow you down going through that.

13 So I think that's part of the reason why I say you  
14 can easily get, you know, backing up here. And again, of  
15 course, as I pointed out, to the extent that they try to go  
16 out to either the east or the west and they can't  
17 immediately get out onto that drive aisle, that immediately  
18 starts to backup traffic in the station because it will be  
19 just directly in front of where people would be trying to  
20 leave the station from this area here. So that can start  
21 having, you know, slows up of cars being able to get in and  
22 out.

23 So, again, can I tell you exactly how this is  
24 going to function and exactly how backed up it will get and  
25 so forth? No, but is this a design capacity that in this

1 part of a parking lot is, is really likely to cause problems  
2 and to have severe potential for backup and cars waiting,  
3 interference with the other pedestrians -- and, again, you  
4 can have cars driving back and forth across this aisle,  
5 pedestrians walking back and forth across this aisle,  
6 directly above the station -- all of this makes this a very  
7 problematic location for this station and a very problematic  
8 design.

9 And, again, in terms of putting all these  
10 additional cars into this very crowded area, the parking  
11 lot, going back to the way that the county is trying to look  
12 at pedestrian safety issues and the way you try to design  
13 structures, Mr. Guckert's testimony basically seemed to come  
14 down to, in many cases, well, it's regimented while they're  
15 in the station, but of course, as soon as we come out of the  
16 station, it's obviously not regimented. People can, even  
17 with his six little lines here, people can go to any of  
18 these different ways, and all the traffic from the station  
19 can get very intertwined. All the people coming in and out  
20 of the mall is going to be interacting with that, all the  
21 pedestrians walking across, the cars backing out, the  
22 strollers, the cars trying -- the carts trying to load and  
23 unload. All of that is why a parking lot is a very  
24 unstructured, very problematic environment, and just saying  
25 it's a parking lot, after all, isn't really much of an

1 answer to that.

2 He also talked about the fact that, well, they're  
3 going to be making 90-degree turns and that that somehow is  
4 better than, if you're out on a main road, that you might be  
5 making a slightly angled turn as you come onto the main  
6 road. Well, I'm not going to fight with him about whether  
7 or not that's more or less visible, but it's certainly, as  
8 we, as we spent a great deal of time talking with him about,  
9 the environment, as you come from a gas station onto a main  
10 road, for instance, is a much more structured environment.  
11 It's clear where the main road is. It's clear where the  
12 sidewalk is. You don't have people popping out from between  
13 parked cars. You don't have people parking, pushing grocery  
14 carts back and forth. It's a pretty limited set of  
15 interactions you have to consider looking at.

16 MR. GROSSMAN: You said you weren't going to  
17 challenge what he said about the difference in --

18 THE WITNESS: No, I just said whether or not --

19 MR. GROSSMAN: -- safety, and then you just did.

20 THE WITNESS: No, no. No, no. No. I said  
21 whether or not looking 90 degrees versus a 60-degree  
22 angle --

23 MR. GROSSMAN: I see.

24 THE WITNESS: -- is somehow that much better.  
25 I --

1 MR. GROSSMAN: Fair enough.

2 THE WITNESS: -- I have my doubts about that, but  
3 I, that particular point, but the rest of what I'm saying  
4 is, there is much more distractions in the parking lot, even  
5 if you're trying to make a 90-degree angle. And I would  
6 point out that, again --

7 MR. GROSSMAN: All right. I think, by the way,  
8 that's generally accepted in the traffic lexicon about --

9 THE WITNESS: Right.

10 MR. GROSSMAN: -- about -- that's why there's  
11 actually a requirement that, of perpendicular exits from gas  
12 stations --

13 THE WITNESS: Okay.

14 MR. GROSSMAN: -- so --

15 THE WITNESS: That's fine.

16 MR. GROSSMAN: -- in the, in the code.

17 THE WITNESS: But to assume the fact that you have  
18 a perpendicular exit solves all your problems in the  
19 distracted environment of a parking lot is not necessarily a  
20 valid assumption, and I would point out that last summer the  
21 pedestrian that was killed in the Cabin John Shopping Center  
22 was killed from somebody -- and this I know because I --

23 MR. GROSSMAN: I know, but really, I'm not going  
24 to reach any conclusions from an isolated incident. You  
25 know that.

1 THE WITNESS: Well, there aren't that many --  
 2 MR. GROSSMAN: I understand your point --  
 3 THE WITNESS: Okay. Okay.  
 4 MR. GROSSMAN: -- but I mean, it's one you've made  
 5 a number of times already. So --  
 6 THE WITNESS: Okay. Okay. The point only being  
 7 that 90 degrees is not some kind of panacea for the problem  
 8 that --  
 9 MR. GROSSMAN: Nothing, nothing is a panacea.  
 10 THE WITNESS: Okay. And I'd just refer you to  
 11 Exhibit 513, which was the --  
 12 MR. GROSSMAN: But it's not a pandemic either.  
 13 THE WITNESS: Well --  
 14 MR. GROSSMAN: So --  
 15 THE WITNESS: -- I mean, it's not a pandemic in  
 16 the sense that, you know -- yeah.  
 17 MR. GROSSMAN: All right. I just, I just, I  
 18 couldn't resist a little --  
 19 THE WITNESS: Yes. I mean, there's a limited  
 20 number of accidents that you have in any given area. You  
 21 know, it's not like we have 20 people a day being hit in  
 22 parking lots. I would not say that, but you know, I think  
 23 the county's view is that one person is too many and that we  
 24 should be doing what we can to eliminate that.  
 25 MR. GROSSMAN: Well, you know --

1 THE WITNESS: Yeah. Okay. I would just refer you  
 2 to Exhibit 513, which was the county briefing about -- that  
 3 had a lot of information in there about the dangers of  
 4 parking lots, where the problems were, noting that 83  
 5 percent of parking lot pedestrian collisions do occur in  
 6 private retail lots where the county has essentially no  
 7 enforcement authority. So it has to look to cooperation  
 8 with the mall owners and so forth to try to deal with that.  
 9 At this point, there's no indication that Costco  
 10 or Westfield has been participating with any of the county  
 11 efforts. Mr. Guckert indicated he was not even aware that  
 12 the County Executive Office was, even had these kind of  
 13 initiatives or what kind of studies have been going on about  
 14 why there are accidents in parking lot, what you can do as a  
 15 structural matter to try to deal with those. His approach  
 16 seemed to be, well, I have to look at this particular  
 17 accident to find out what the precise conditions were for  
 18 this particular moment, and that's, that's certainly a way  
 19 -- any accident has some particular constellation of  
 20 factors, but there's also a sort of systems engineering  
 21 approach to these things to try to make it less likely that  
 22 you have those factors come together. And I think that's  
 23 what we've been trying to do all along in a lot of areas of  
 24 traffic engineering and car design and so forth: we try to  
 25 design around the way people are and not the way people

1 should be.  
 2 MR. GROSSMAN: Well, in fairness, I don't know  
 3 that he was asked to design the station as distinguished  
 4 from analyzing traffic.  
 5 THE WITNESS: Well, I understand, but he was also  
 6 suggesting that there weren't problems here, and I'm  
 7 suggesting that --  
 8 MR. GROSSMAN: I heard your point on that --  
 9 THE WITNESS: Yeah. Okay.  
 10 MR. GROSSMAN: -- and I heard it during the --  
 11 THE WITNESS: Right.  
 12 MR. GROSSMAN: -- cross-examination of  
 13 Mr. Guckert.  
 14 THE WITNESS: Right. Okay. So our point being  
 15 that you, when you look at this, you look at the way people  
 16 are and not just, well, everybody -- if you just drive real  
 17 slow and everybody's real careful and everybody watches out  
 18 for each other, then everything's fine. Well, if that were  
 19 the fact, you wouldn't have to have seat belts and you  
 20 wouldn't have, you know, lots of things because we'd all be  
 21 careful, but we design cars, we design intersections, and so  
 22 forth around the fact that people aren't always careful and  
 23 that people don't always see each other and that kids do run  
 24 out in traffic and you do pull out of parking. So you  
 25 should design around the problems that do exist and not take

1 assumptions that everybody will just be careful.  
 2 And I think in terms of what I was going to say  
 3 about the specific, this area the station was on, that's  
 4 probably what, I was going to stop there. So --  
 5 MR. GROSSMAN: But let's go on because we have --  
 6 THE WITNESS: All right.  
 7 MR. GROSSMAN: -- everybody said 1 o'clock. So  
 8 let's just --  
 9 THE WITNESS: All right. All right. Okay. One  
 10 thing Mr. Guckert said was that the kind of -- I'm going to  
 11 move on to sort of the traffic-flow issues now, more like  
 12 over on --  
 13 MR. GROSSMAN: Okay.  
 14 THE WITNESS: -- the entrances on the west side  
 15 and so forth -- again, he was saying that, well, this kind  
 16 of backing up that we've been talking about at Intersection  
 17 16 on the, down from the ring road, on the ring road, back  
 18 onto University Boulevard, that's common in other malls.  
 19 I'd have to say, I don't think that takes expert testimony.  
 20 I think we can all observe whether or not we see cars  
 21 backing up in malls all the time.  
 22 I would comfortably say, I don't find that, in my  
 23 experience, that what we've been seeing at this mall is  
 24 common. Around here, around the outlet malls on the Eastern  
 25 Shore, or anywhere I've gone, I have not seen this kind of

1 problem, certainly not on a Saturday in March; now,  
 2 December, height of the Christmas season, yes, that's a  
 3 different story, but day in and day out, these kind of  
 4 traffic issues, no, have not seen those.  
 5 And just to make sure I wasn't kind of being  
 6 optimistic, I drove by Montgomery Mall over the weekend and  
 7 I drove over by Tysons Corner. Montgomery Mall is the other  
 8 regional mall in Montgomery County. Tysons Corner is  
 9 certainly a far larger, far denser area than Wheaton. In  
 10 neither case did I see anything remotely like the kind of  
 11 backups on the Valley View entrance that I see virtually any  
 12 weekend when I go there on Saturday. The cars came in.  
 13 There might be a car or two waiting but not 20 cars, not 30  
 14 cars, not several minutes to get off the main road, just  
 15 into the ring road and so forth.  
 16 One of the other observations I noted there was  
 17 that a number of these malls, when they incorporate garages  
 18 into their design, they actually, the garages surround the  
 19 mall as a whole and you have quite a few entrances to them  
 20 at several different levels so you don't have the, the  
 21 bottleneck that the garage here at Wheaton has, where  
 22 there's only one way to get up to the upper floors. This  
 23 sort of goes more towards, partially to traffic and the  
 24 backing up but also to Mr. Sullivan's calculations in terms  
 25 of how long he thinks it will take a car to get in and to

1 get parked in the garage and to come back out again.  
 2 I think if you look at his calculations, I think  
 3 it was his November report, he sort of showed that it's  
 4 going to come -- the car is going to drive down this way and  
 5 then it's going to go up the aisle and then it's going to go  
 6 down, like, one aisle and then it's going to find a parking  
 7 space. And maybe when this first started, that might have  
 8 been realistic, but nowadays you go in that garage and you  
 9 drive up and down several aisles, and by the time you get to  
 10 the end, you're at the far end of the garage and there's no  
 11 other way to get up to the third floor except to turn around  
 12 and come all the way back through the garage and go back up  
 13 to the third floor. The point being that his assumptions  
 14 about, that he's being very conservative about how much time  
 15 it will take to get into the garage and get parked and get  
 16 back out again are not necessarily conservative at all.  
 17 They are -- nowadays they're probably very realistic in  
 18 terms of being able, trying to find a space in that crowded  
 19 garage.  
 20 In terms of -- one thing we talked with  
 21 Mr. Guckert a little bit about was, like, what other kinds  
 22 of uses might be at the mall if the garage wasn't there, I  
 23 mean, if the parking, gas station wasn't there, and he did  
 24 agree that almost any other use -- really, actually, any  
 25 other use would be less auto-intensive than the current

1 station there.  
 2 What we are seeing, certainly, is that that is,  
 3 that there is other uses being built at other malls. When I  
 4 went to Montgomery Mall, I was reminded that in fact they  
 5 are building additional square footage above one of their  
 6 existing garages and that you have that additional density  
 7 being built into there. As you know, the current zoning,  
 8 the zoning update, the main law has been written. The maps  
 9 are going to be approved within a very short period of time.  
 10 The --  
 11 MR. GROSSMAN: Well, they're going to be  
 12 discussed --  
 13 THE WITNESS: Some map is going --  
 14 MR. GROSSMAN: -- in July.  
 15 THE WITNESS: Some map is going to be approved  
 16 within a very short period of time. They, they have every  
 17 assumption of approving some map somehow. The zoning for  
 18 this mall has not changed in months. There's no opposition  
 19 for the mall, no opposition anywhere else that I know of.  
 20 MR. GROSSMAN: By this mall -- you've talked about  
 21 two malls.  
 22 THE WITNESS: Wheaton. Wheaton. I'm sorry, the  
 23 Wheaton Mall, certainly would allow under the current  
 24 proposed zoning, mixed-use housing throughout the mall  
 25 parcel, not just along the Veirs Mill area. So all of that

1 is going to go into the question of what can be on this  
 2 mall, what's a logical development of the mall, where are  
 3 people going to be when they're exposed to the emissions if  
 4 a station is built --  
 5 MR. GROSSMAN: This falls into that same category  
 6 that I said before. I'm not going to engage in speculation  
 7 about what may happen in terms of other development like  
 8 that that's not part of the evidence in the case. You want  
 9 me to engage in speculation in a case I don't need to do it.  
 10 I've got a year --  
 11 THE WITNESS: Okay.  
 12 MR. GROSSMAN: -- over a year's worth of actual  
 13 evidence.  
 14 THE WITNESS: Okay. There are only two points I  
 15 would make: number one, the special exception is supposed  
 16 to look at logical development, which is obviously --  
 17 MR. GROSSMAN: Yes.  
 18 THE WITNESS: -- the kinds, potentially, you can  
 19 have; number two, to the extent that Mr. Sullivan is  
 20 discounting emissions levels, that he's adjusting for the  
 21 fact that people won't spend time in a particular place or  
 22 time near a queue or something, that is not necessarily what  
 23 is going to be the situation in the future. So you can't  
 24 really -- you know, if you just want to rule out all of  
 25 those aspects of his thing about how long people will be,

1 where they will be, how much time people will be near the  
2 gas station and say that that's irrelevant, because we don't  
3 know in the future what kind of development will be where  
4 the gas station --

5 MR. GROSSMAN: No. I'm going to take what I  
6 consider the preponderance of the evidence on points, on  
7 estimates made by those qualified to make estimates.  
8 That's --

9 THE WITNESS: Okay. No --

10 MR. GROSSMAN: -- that's what I would --

11 THE WITNESS: -- but my point is, he's assuming  
12 that you will never have a situation other than the fact  
13 that a gas station is here and no other development around  
14 there, and he's saying you can take what the calculations  
15 are, the hourly calculations, which is what the EPA says to  
16 do, is do these hourly calculations, and I'm going to  
17 determine risk assessment by assuming no one will ever be  
18 more than 20 minutes in a queue and I can then discount how  
19 much time they'll be exposed to.

20 What I'm saying is that is, that simply assumes  
21 that in the future that's the way the development will be at  
22 the mall, and it's not really a realistic assumption to say  
23 that -- he can't assume that that's the way the mall will  
24 stay any more than I can guarantee that the mall will  
25 change. I think there's a lot more likelihood that the mall

1 will change and have more dense development there than that  
2 it would stay undeveloped, the way he's proposing. But in  
3 either case, the appropriate answer may be to take neither  
4 one of those and to not adjust for time spent near the  
5 station and not assume that there'll be new development.  
6 Neither one is a development you can assume, if that makes  
7 sense.

8 MR. GROSSMAN: And so what do you assume?

9 THE WITNESS: I, my assumption is that this mall  
10 will be like every other mall and will start bringing in  
11 other kinds of more dense development and --

12 MR. GROSSMAN: No, but you said not -- if you  
13 reject both of those, essentially, what do you do?

14 THE WITNESS: Well, if you reject both of those,  
15 what I would say is that you then only look at what the  
16 calculations are for what comes out of a course of an hour  
17 and you don't do this ratcheting down the number by virtue  
18 of saying, oh, well, you're only going to be 20 minutes here  
19 and no one would ever be more than 20 minutes near the  
20 station and that the other, rest of the time I'm going to  
21 count then some kind of background level and so forth. I'm  
22 saying that's their calculation.

23 MR. GROSSMAN: Well, you're talking about, you're  
24 talking about the hourly exposure being split up into --

25 THE WITNESS: Right. Right.

1 MR. GROSSMAN: -- 20-minute portions because  
2 that's the length of time in the queue.

3 THE WITNESS: Right.

4 MR. GROSSMAN: And you're saying that your  
5 questioning of what the future development will be bears on  
6 that issue?

7 THE WITNESS: Right, that there's no more reason  
8 to assume that you will always stay the situation where -- I  
9 mean, it would be --

10 MR. GROSSMAN: I don't see that, I don't see  
11 that --

12 THE WITNESS: Okay. Okay.

13 MR. GROSSMAN: -- those two things are really  
14 connected.

15 THE WITNESS: Okay. It is perfectly -- and that  
16 the number would then go down to background, like some  
17 number way far away from what the actual level is up on the  
18 mall.

19 MR. GROSSMAN: Right.

20 THE WITNESS: It would be perfectly plausible, as  
21 a matter of development, that you would build retail above  
22 the Costco store, which would then be within a very short  
23 distance of the mall -- of the gas station 24 hours a day,  
24 and that to assume that you would then say, okay, I would,  
25 you know, 20 minutes in the queue and the rest of it would

1 be some, you know, rural background as opposed to 20 minutes  
2 in the queue and 24 hours --

3 MR. GROSSMAN: Well, maybe I can save you some  
4 time.

5 THE WITNESS: Yeah.

6 MR. GROSSMAN: I'm not going to assume development  
7 that's not either there or in the pipeline right now.

8 THE WITNESS: Okay.

9 MR. GROSSMAN: I'm just not going to make that  
10 assumption because I think that's what -- almost all of  
11 these zoning cases go by that kind of a standard. They look  
12 at, for example, in traffic they look at the present  
13 traffic, they look at what's, they call background being,  
14 that's what their -- their definition, for the traffic  
15 people, of background are things in the pipeline, and then  
16 they, they look at what's proposed, and those three factors  
17 are added together. That, I think, is a very legitimate  
18 approach.

19 THE WITNESS: Absolutely for traffic, I agree,  
20 that that's what you try --

21 MR. GROSSMAN: And I think it's the same thing in  
22 terms of what assumptions I'd make about, about development  
23 here unless I have something that, some evidence that  
24 convinces me to the contrary, and what you've given me is  
25 speculation.

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1 THE WITNESS: My only point is that there's land  
2 use differences, because I think the land use is not looking  
3 at just simply what's precisely at this moment; it's also  
4 looking to the future, and I think that looks to what sector  
5 plans assume and so forth --  
6 MR. GROSSMAN: Right.  
7 THE WITNESS: -- and zoning assumes. The other  
8 portion is simply my point that his assumption that this  
9 scenario with gas station on the mall and no housing  
10 anywhere except well off the mall, let's say, beyond the  
11 barrier, that that situation, for instance, is what you  
12 would always have and that you can then discount, you know  
13 -- if you remember going back, his --  
14 MR. GROSSMAN: I don't want to go over the same  
15 thing over and over again.  
16 THE WITNESS: Okay. All right. Okay.  
17 MR. GROSSMAN: The point I'm making is that I  
18 think you want me to speculate as to a potential future that  
19 is beyond what I'm willing to do.  
20 THE WITNESS: Okay. And my only point is that his  
21 numbers should not be used because it assumes something that  
22 is also speculative; i.e., that you will never have a  
23 different scenario there. That's --  
24 MR. GROSSMAN: I think usually we use numbers as  
25 to what exists and what is in the approved pipeline to give

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1 us an idea, you know, of where we stand, and I think beyond  
2 that it's to speculation.  
3 THE WITNESS: Okay. All right. Okay. We'll,  
4 that may come back with --  
5 MR. GROSSMAN: We can agree to disagree.  
6 THE WITNESS: Yeah. That may come back with  
7 Dr. Cole in terms of somewhat --  
8 MR. GROSSMAN: Dr. Cole can't testify about --  
9 THE WITNESS: No, no, but he can testify, he can  
10 testify more about the emission question, but we're done  
11 with that in terms of what I have to say --  
12 MR. GROSSMAN: All right.  
13 THE WITNESS: -- about this point. So let's see.  
14 It probably would be a good point because at this point I'm  
15 going to go into the whole traffic volume and the Highway  
16 Capacity Manuals and everything and that's going to get  
17 nasty and arithmetic and so forth. So this is --  
18 MR. GROSSMAN: All right.  
19 THE WITNESS: -- probably a good time to break.  
20 MR. GROSSMAN: All right. So we'll break now for  
21 lunch until 1:45. Does that sound reasonable?  
22 Mr. Silverman, are we on board?  
23 MR. SILVERMAN: Yes, I'm glad.  
24 MR. GROSSMAN: All right.  
25 MR. SILVERMAN: I'm glad. Good decision,

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1 Mr. Grossman.  
2 MR. GROSSMAN: Thank you.  
3 (Whereupon, at 12:58 p.m., a luncheon recess was  
4 taken.)  
5 MR. GROSSMAN: All right. We're back on the  
6 record. Ms. Cordry, you may resume.  
7 THE WITNESS: We'll make sure my phone is off. I  
8 should have done it before. All right.  
9 MR. GROSSMAN: By the way, did you, did you all  
10 reach an agreement over lunch on these --  
11 MS. HARRIS: Not --  
12 MS. ROSENFELD: We had discussions.  
13 MS. HARRIS: They had discussions, and what we  
14 asked to do is, we wanted to forward these to our health  
15 expert and have, and get them to weigh in on a couple  
16 aspects of it, and then we'll get back. And hopefully by  
17 the next hearing, in the morning we'll have the resolution.  
18 MR. GROSSMAN: Okay.  
19 MS. ROSENFELD: What we had proposed was just  
20 submitting the documents and not calling either health  
21 expert --  
22 MR. GROSSMAN: Okay.  
23 MS. ROSENFELD: -- and we're waiting for a  
24 response.  
25 MS. HARRIS: Right, and I think we have a little

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1 bit of concern about that, but we want to talk to our -- you  
2 know, putting technical health documents into the record  
3 when a health expert hasn't testified to them gives us a  
4 little bit of concern. So --  
5 MR. GROSSMAN: Okay. All right. Then we'll --  
6 either you'll inform me Wednesday by e-mail or I'll find out  
7 and be excited on Thursday morning.  
8 MS. ROSENFELD: We would hope.  
9 MR. GROSSMAN: All right. Ms. Cordry, you're on.  
10 THE WITNESS: All right. So I'm going to talk  
11 about traffic volumes and the Highway Capacity Manual  
12 analyses and so forth. When we had Mr. Guckert up here, we  
13 obviously spent a lot of time talking about how the Highway  
14 Capacity Manual, the HCM analyses matched up with the prior  
15 critical lane volume analyses --  
16 MR. GROSSMAN: Right.  
17 THE WITNESS: -- and I think we conceded that they  
18 don't necessarily tell you the same thing, that the critical  
19 lane volume tells you cars but it doesn't necessarily tell  
20 you delay, and that the Highway Capacity Manual is meant to  
21 try to get you to delay issues and, also, that the showing  
22 on these charts in that Exhibit 128, which was the April  
23 2013 readings that showed level of service A all the way  
24 through, in the testimony that meant little or no delay,  
25 probably was not really an accurate statement when we come

1 back and look at the Highway Capacity Manual analyses. So  
2 we're going to go -- I'll go through that in a bit more  
3 detail in a moment.

4 One point, Mr. Guckert testified earlier in the  
5 proceedings that there were only about 3,000 car a day on  
6 the back segment of the ring road, which was the area our  
7 witnesses this morning were talking about. He contrasted  
8 that with saying that you add only about --

9 MR. GROSSMAN: When you say the -- you mean the  
10 southern --

11 THE WITNESS: Yeah, the southern --

12 MR. GROSSMAN: -- ring road?

13 THE WITNESS: Yeah, back away from the main roads,  
14 yeah; so the southern, the southwest corner there of the  
15 ring road.

16 MR. GROSSMAN: Right.

17 THE WITNESS: He contrasted that with saying,  
18 well, you're only going to add about 70 trips an hour for  
19 the station. Well, that, of course, is not a particularly  
20 valid comparison because trips per hour versus trips over an  
21 entire day, obviously you're going to have many more trips  
22 over an entire day. But that statement also assumed that  
23 the only new traffic coming back on the back ring road was  
24 the new trips to the station, i.e., new to outside the mall  
25 area, but I just want to make clear that, as we've talked

1 about here, that pretty much anybody coming in is going to  
2 have to get out, get in their car, come back, and make  
3 another trip back to the back of the ring road to come back  
4 in the station.

5 So that, in terms of additional traffic on that  
6 back section of the ring road, you're pretty much going to  
7 really have to account for the entire volume of the station  
8 itself in terms of new trips on that area that wouldn't be  
9 there otherwise or else they would be a new trip somewhere  
10 else in the mall. If you come first to the station, you'll  
11 be making a separate trip to go somewhere else in the mall.  
12 And if you look at it in that basis, if you take a 12-gallon  
13 fill-up per car by 12 million gallons, a million fill-ups,  
14 you divided that by 360 days in the year, that comes out to  
15 2777 cars a day making trips through that back area that  
16 would not have to have been there before absent the gas  
17 station. So you really are, basically, talking about  
18 doubling the volume back there over the course of the day.

19 MR. GROSSMAN: I'm not sure I followed that, but  
20 hold on one second.

21 THE WITNESS: Okay.

22 MR. GROSSMAN: Hold on. Now, are you saying you  
23 should double the 70-per-hour estimate given by Mr. Guckert  
24 because he -- is that what you're saying to be doubled,  
25 because he is not including the fact that cars, to access

1 the gas station, may have to access the ring road again?

2 THE WITNESS: Well, it's actually really tripling  
3 because, basically, he divided his number up about thirds.  
4 About a third were trips already coming to the mall, a third  
5 were trips passing by the mall, and a third were trips newly  
6 coming into the mall. So that -- his traffic numbers were  
7 coming about a third, a third, and a third, give or take,  
8 slightly, and that was in terms of the traffic analysis for  
9 the traffic outside the mall, which is the kind of traffic  
10 analysis you do for adequate public facilities --

11 MR. GROSSMAN: Right.

12 THE WITNESS: -- but in terms of what happens  
13 within the mall, if there was not the gas station there, the  
14 cars would come in, they would park somewhere, and they'd go  
15 back out onto the road. Once they go to the gas station,  
16 they get back in their car, they drive back around the  
17 outside of the ring road, come down to the south part of the  
18 station, and go through the station.

19 So everybody coming to the station is essentially  
20 a new trip back there on that road, whether it's before you  
21 go to the gas station or whether it's after you go to the  
22 gas station, but it's an additional trip and beyond what you  
23 would make otherwise.

24 MR. GROSSMAN: Yes, I understood the general  
25 point. I'm just --

1 THE WITNESS: Okay.

2 MR. GROSSMAN: -- trying to understand the math --

3 THE WITNESS: Okay.

4 MR. GROSSMAN: -- there. You're saying that his  
5 70-per-hour number --

6 THE WITNESS: Uh-huh.

7 MR. GROSSMAN: -- on the southern ring road  
8 actually is just one-third of the total number of cars that  
9 are going to be on the ring road, is that correct?

10 THE WITNESS: Right, that he was counting in terms  
11 of making a comparison between what was the 3,000 before the  
12 -- and as I read his testimony, it was before the warehouse  
13 opened that perhaps 3,000 cars a day through there -- that  
14 he's saying we're going to have 70 new trips just for the  
15 gas station per hour at the peak hour, so that's all I'm  
16 going to count in terms of making my comparison.

17 So the point, first point I made was, obviously  
18 saying 70 versus 3,000 is not a particularly fair comparison  
19 because one's an hour and one's a day. So whatever it was,  
20 even if it was just new trips, it would obviously be much  
21 higher than just 70 versus 3,000.

22 MR. GROSSMAN: Yes, but I mean, he --

23 THE WITNESS: Right, and then --

24 MR. GROSSMAN: -- confined it to an hour, right.

25 THE WITNESS: Well, no. He used 3,000 a day and

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1 70 an hour. So I'm just saying, you know --  
2 MR. GROSSMAN: All right.  
3 THE WITNESS: But then my point was that he's only  
4 looking at new trips in the sense of if you look outside the  
5 mall, but when you --  
6 MR. GROSSMAN: I understood. I just didn't  
7 know --  
8 THE WITNESS: Okay. Okay.  
9 MR. GROSSMAN: -- how you got to --  
10 THE WITNESS: Oh.  
11 MR. GROSSMAN: -- I'm trying to figure out why you  
12 are saying it's only one-third, that 70 is only one-third.  
13 I understand the new trips versus trips that are already  
14 there and you'd have to go back out again. Why isn't that  
15 just doubled? That's what I'm --  
16 THE WITNESS: Okay, because he's counting the  
17 trips with -- he's just counting the new trips. Of the  
18 total trips coming to the gas station, of everybody who  
19 comes to the gas station --  
20 MR. GROSSMAN: Right.  
21 THE WITNESS: -- and let's say, outside the mall,  
22 everybody coming to the mall --  
23 MR. GROSSMAN: Right.  
24 THE WITNESS: -- of that number, which was what he  
25 was doing with his adequate public facilities kind of

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1 analysis, he, it breaks up roughly -- one-third, he was  
2 saying, were, they were assuming, were brand-new trips only  
3 for the gas station --  
4 MR. GROSSMAN: Right.  
5 THE WITNESS: -- one-third were trips going by the  
6 mall but not going into the mall, and one-third were trips  
7 that were already coming into the mall but, but not  
8 necessarily going back on that back part of the ring road  
9 and going back to the station.  
10 So in, certainly in the first place, in terms of  
11 new trips, anybody who was otherwise going by the mall and  
12 now coming into the mall, that's obviously a new trip within  
13 the mall --  
14 MR. GROSSMAN: Right.  
15 THE WITNESS: -- in addition to the gas station  
16 only, new trips within the mall. So that would double, but  
17 my point is, even if you were already coming into the mall,  
18 because of the location of the station and because you need  
19 to park and then come back and go to the station or you go  
20 to the station you park and then you make another trip  
21 outside, there's an additional, additional set of traffic  
22 that goes there. Even for someone's who's already coming to  
23 the mall, you're going to have more trips going back and  
24 coming away from that back part of the mall and the ring  
25 road.

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1 MR. GROSSMAN: All right. I think I understand  
2 what you're saying. I have to --  
3 THE WITNESS: Okay.  
4 MR. GROSSMAN: -- think about whether or not  
5 that's really going to do what you're suggesting, but I'll  
6 think about that.  
7 THE WITNESS: And the 2777 was just doing 12  
8 million gallons -- 12 gallons per purchase as an average,  
9 360 days a year, because the station is closed a few days a  
10 year. You do that set of divisions out, and it comes out to  
11 2777. Could be a little more, could be a little less, but  
12 on average, that's going to be how many cars have to be  
13 driving around, back on the ring road in order to access the  
14 station.  
15 Okay. I thought about but I think I will spare  
16 you, on -- well, you can watch it again if you want -- on  
17 the video, on the PowerPoint there, I added another video of  
18 another time coming up to the intersection 16. What's  
19 interesting that time, I think, is that I actually was able  
20 to drive in and get about halfway up the ring, that  
21 entranceway --  
22 MR. GROSSMAN: Right.  
23 THE WITNESS: -- before I was stopped, and yet,  
24 even with coming halfway up, it took a full two minutes to  
25 get up, go through that stop sign and move on.

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1 So it is clear that that is an intersection that  
2 can have very long delays, and that's a point we've made  
3 before. And it's not just coming into the mall. It's, as  
4 I've said and as we, as I showed you on some of the other  
5 videos earlier this morning, it can also back up going south  
6 from that road, backing you into the parking lot; it can  
7 back up going into the parking lots themselves; lesser but  
8 some degree, some backing around by the Giant, not as much  
9 there at the moment, but those -- but the other parts, all  
10 of the parts where you're going, what Mr. Sullivan was  
11 concentrating on, all the parts where you're going down  
12 towards the warehouse and coming back from the warehouse,  
13 you get substantial backing up often during the busy hours  
14 on the weekend now, and none of that backing and congestion  
15 and delay and idling is addressed in Mr. Sullivan's numbers  
16 at this point.  
17 He testified that basically he dealt with all of  
18 that; because his numbers were so conservative and he had  
19 such a high overall volume of cars, that that was enough to  
20 take care of any of those kind of problems. But all of his  
21 estimates do assume free-flowing traffic, which, in the  
22 first place, I think we've been hearing quite a bit that the  
23 amount of emissions are quite different for free-flowing  
24 traffic than for cars that are idling.  
25 MR. GROSSMAN: Easy for you to say.

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1 THE WITNESS: Or not so easy, as the case may be,  
2 yes. But, again, our one other point would be that if he  
3 thought he was putting in an appropriate degree of  
4 conservatism when he didn't realize there was delay, why  
5 should that amount of conservatism still not be used when it  
6 turns out there is a bunch of delay? Why shouldn't his --  
7 why shouldn't he use accurate figures, including delay in  
8 timing, and then put the conservatism that he's been telling  
9 us about up until this point?  
10 MR. GROSSMAN: Well, I'm looking for accuracy --  
11 THE WITNESS: Well --  
12 MR. GROSSMAN: -- more than conservatism, but --  
13 THE WITNESS: Well, the point is -- but that's  
14 really the point. He, it's -- and I would refer you back to  
15 his original report where he said one of the reasons why we  
16 use this conservative background number, which he now  
17 doesn't want to use anymore, is because it is not possible  
18 to adequately, accurately estimate every single source, do  
19 all these things, do it down to this fine kind of detail --  
20 MR. GROSSMAN: When you say he doesn't want to use  
21 it, first of all, which, which pollutant are you talking  
22 about?  
23 THE WITNESS: Any of them, but NO2.  
24 MR. GROSSMAN: Some of the background has changed,  
25 according to --

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1 THE WITNESS: But NO2, NO2, in particular --  
2 MR. GROSSMAN: All right. But I mean --  
3 THE WITNESS: -- which, where he -- before we were  
4 using a single 98th percentile background. Before we used  
5 the highest single year. Then we went to the average  
6 three-year. Now we're down to saying --  
7 MR. GROSSMAN: I understand.  
8 THE WITNESS: -- it's at this matched background.  
9 MR. GROSSMAN: I understand.  
10 THE WITNESS: So in discussing -- but his  
11 discussion, in general, about backgrounds, that the reason  
12 why you use a conservative background is because you have to  
13 maintain a tractable analysis, it's not feasible to model  
14 everything, and that's the problem. Absent sitting out here  
15 with a monitor, which he doesn't want to do, you can't  
16 possibly try to precisely determine every single car at  
17 every single moment at every single delay. That is why you  
18 build in conservatism, because you need to be sure that you  
19 are not missing points and you're not doing things, and  
20 that's what he said all along until he didn't. So that's --  
21 MR. GROSSMAN: Well, I don't think that's exactly  
22 fair. I mean, his bottom-line statement, I mean, I  
23 recognize the points you're making about his changing or  
24 relaxing some of the conservatism, but his bottom-line  
25 statement through his rebuttal testimony is that he still

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1 believes that his estimates are conservative --  
2 THE WITNESS: Well --  
3 MR. GROSSMAN: -- that's what his bottom line is.  
4 So I don't think it's fair to say that he said I was  
5 conservative until I wasn't --  
6 THE WITNESS: Well, I understand --  
7 MR. GROSSMAN: -- that's really not what he said.  
8 THE WITNESS: -- I understand what he said. I'm  
9 just saying that --  
10 MR. GROSSMAN: Okay.  
11 THE WITNESS: -- you know, it's -- I think we went  
12 back to our point about the size of coffee cups in  
13 Starbucks. You know, you have grande, then you have super  
14 grande, you have big and -- I mean, we, it's always been  
15 conservative, but it --  
16 MR. GROSSMAN: Right.  
17 THE WITNESS: -- gets less conservative every time  
18 we do it. My only point was, if you were going to say that  
19 you were using that high-traffic volume because you needed  
20 that degree of conservatism, before you realized there were  
21 delay problems, that, that shouldn't account for, the delay  
22 shouldn't -- you know, you shouldn't even be able to use  
23 that to solve the delay problems. You should still have  
24 that as part of your conservatism.  
25 MR. GROSSMAN: I understand.

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1 THE WITNESS: Okay. And, of course, the point  
2 that was made in the slides from the Federal Highway  
3 Administration, that delay builds on itself very quickly;  
4 that if you have a lot of capacity in a system, it can  
5 absorb additional bottlenecks and delays but, if you have a  
6 system that is very close to capacity, the delay will build  
7 up very quickly, and that, I think, is what we're going to  
8 see when we go through Mr. Guckert's HCM analyses.  
9 So let me give you again -- these are two that  
10 came in before -- 553(a) and 554(a).  
11 MR. GROSSMAN: Okay.  
12 THE WITNESS: And I -- if you have them, fine; if  
13 not, I think we have an extra copy for you all. It should  
14 look like -- do you have those, Michele?  
15 MS. ROSENFELD: I have one copy of each.  
16 THE WITNESS: Okay. That's fine, but I can share,  
17 too, if -- I thought I had more than that, but --  
18 MS. ROSENFELD: I had multiples of the others but  
19 not that one.  
20 THE WITNESS: Okay. We have talked about 553  
21 before, to some degree. So let me just -- what I do want to  
22 just make sure is that we have everything understood on this  
23 particular chart and what it's, what it's showing and how  
24 the calculations are done.  
25 MR. GROSSMAN: Mr. Brann, would you check the

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1 temperature and make sure that we're down, at least no  
2 higher than 72?  
3 MR. BRANN: Well, the system is off.  
4 MR. GROSSMAN: Oh, well --  
5 MS. HARRIS: Actually, Karen, do you have an extra  
6 copy? I'm sorry.  
7 THE WITNESS: I thought I had brought a couple of  
8 copies of that.  
9 MR. GROSSMAN: Thank you.  
10 MR. BRANN: It was turned off.  
11 MR. GROSSMAN: That'll prevent cooling --  
12 MR. BRANN: That'll do it every time.  
13 MR. GROSSMAN: -- that'll prevent effective  
14 cooling.  
15 MR. BRANN: Yes, it will.  
16 MR. GROSSMAN: I'm not an engineer, but I know  
17 that much.  
18 MR. BRANN: I've had that discussion with my wife  
19 several times --  
20 MR. GROSSMAN: Yes.  
21 MR. BRANN: -- if you turn it off, it doesn't work  
22 at all.  
23 THE WITNESS: All right.  
24 MS. HARRIS: I may have it, actually.  
25 THE WITNESS: All right. All right. If you find

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1 it, you can give it back to Michele; if not, you can keep  
2 the copy. Should I go ahead or --  
3 MS. HARRIS: Well, what --  
4 MS. ROSENFELD: I did give a, I --  
5 MS. HARRIS: -- can you identify? Which one was  
6 -- does it have a date on it?  
7 MR. GOECKE: We have one copy.  
8 MS. ROSENFELD: No, you have a copy.  
9 MS. HARRIS: Oh, okay. Thank you. Never mind.  
10 MS. ROSENFELD: You'll have to share, but you do  
11 have a copy.  
12 MS. HARRIS: Okay.  
13 THE WITNESS: All right. So in this one what I  
14 tried to do was to pull together in one place several  
15 different exhibits that have been submitted by the, by the  
16 petitioner and the numbers from them so we can do these kind  
17 of comparisons somewhat more readily. The first set of  
18 numbers there are labeled Weekday-September 2012, and these  
19 are the numbers taken from Exhibit -- and, again, these are  
20 the, Exhibit 3, 7, 10, which came out of Mr. Guckert's  
21 original traffic analysis --  
22 MR. GROSSMAN: Yes.  
23 THE WITNESS: -- and the OZAH No. was 11, his  
24 traffic analysis.  
25 So these are from them, and what I, what I pulled

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1 out was his morning peak-hour number for the Valley View and  
2 University Boulevard intersection, which is labeled as  
3 Intersection 4 and the slash 1 -- when we, when we did the,  
4 when he did the April analysis, it was labeled as  
5 Intersection 1 -- the Valley View and the ring road  
6 intersection, which is 16, and there's two -- page 3 of this  
7 exhibit has the WMATA entrance, which was Intersection 12  
8 and then later Intersection 10, and the WMATA and the ring  
9 road entrance, which was Intersection 20 and later  
10 Intersection 9.  
11 So I pulled out the total traffic number, which is  
12 the column which is right under Valley View Entrance. It  
13 says 1741. That was the total number of cars at that  
14 intersection for the hour that is labeled right above there,  
15 8:15 to 9:15. Next to that, there's CLV, which was 370, was  
16 from his calculations again, and again, the level of service  
17 A, did the same thing across the columns. Also --  
18 MR. GROSSMAN: I understand what you did.  
19 THE WITNESS: Okay. All right. Evening peak  
20 hour, morning peak, evening peak. Exhibit 7 has the  
21 original traffic observations with his assumptions about new  
22 background, which was the pipeline development, and then  
23 Exhibit 10 is the, has the existing, plus the projected  
24 background, plus the projected gas station. So that would  
25 show you 2800, for instance, for the Valley View entrance in

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1 the evening peak hour. I didn't bother carrying the morning  
2 peak again through since it's clear the evening is going to  
3 be the highest time here.  
4 Right below that, we had then his weekend  
5 observations, April 2013, which is his supplemental traffic  
6 analysis, which is Exhibit 128 -- again, just the same sorts  
7 of numbers all the way across there. So that -- I'm sorry.  
8 MR. GROSSMAN: Refresh my recollection.  
9 THE WITNESS: Okay.  
10 MR. GROSSMAN: The exhibit 7 references --  
11 THE WITNESS: Okay.  
12 MR. GROSSMAN: -- whose numbering system is that?  
13 THE WITNESS: That is his numbers within Exhibit  
14 11. In other words, within --  
15 MR. GROSSMAN: Okay.  
16 THE WITNESS: -- Exhibit 11 he had a whole series  
17 of exhibits, and let's see if I have --  
18 MR. GROSSMAN: Yes, I got you.  
19 THE WITNESS: Right.  
20 MR. GROSSMAN: I just wanted to make sure. And  
21 the exhibit 128 --  
22 THE WITNESS: That was the supplemental traffic  
23 analysis.  
24 MR. GROSSMAN: Right, but that was the OZAH  
25 number.

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1 THE WITNESS: Right, that's the OZAH number.  
2 MR. GROSSMAN: Right.  
3 THE WITNESS: And so just, just to show you,  
4 these, these are the way the exhibits look --  
5 MR. GROSSMAN: Right. Right. And, once again,  
6 Exhibit 10 that you have listed there, those are his numbers  
7 again?  
8 THE WITNESS: Right, 3, 7, and 10 are all his  
9 numbers within Exhibit 11, and the weekend is Exhibit, it's  
10 OZAH Exhibit 128.  
11 MR. GROSSMAN: So the next time you have to try  
12 this case, you should actually label them OZAH Exhibit or --  
13 THE WITNESS: Okay. All right. So then we go to  
14 his HCM analyses here, and these are -- and I hope you have  
15 handy; if not, we should try to pull out, I meant to ask you  
16 to -- do you have these three HCM analyses, which would be  
17 465, 504, and 514?  
18 MR. GROSSMAN: Actually, I'm sure I have them in  
19 my office. I didn't bring everything --  
20 THE WITNESS: Okay.  
21 MR. GROSSMAN: -- in with me this time.  
22 THE WITNESS: I think I wrote most of all the  
23 numbers down; so I'm going to give you these.  
24 MR. GROSSMAN: Okay.  
25 THE WITNESS: I might need to pull them back

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1 momentarily to look at them, if possible.  
2 MR. GROSSMAN: I mean, I can get them out of the  
3 file here, out of one of these files. I'm just saying --  
4 THE WITNESS: Actually --  
5 MR. GROSSMAN: -- the copies you made for me the  
6 last time --  
7 THE WITNESS: Okay.  
8 MR. GROSSMAN: -- I didn't bring in with me today.  
9 THE WITNESS: If they are available, it might  
10 help.  
11 MR. GROSSMAN: Okay.  
12 THE WITNESS: Can we take just a moment?  
13 MR. GROSSMAN: Sure.  
14 THE WITNESS: I'm sorry. I should have, I should  
15 have told you at lunchtime I had --  
16 MR. GROSSMAN: So 465 and 514 and 504?  
17 THE WITNESS: Right.  
18 MR. GROSSMAN: 465, 504, and 514. All right.  
19 We'll take a two-minute recess and I shall return. I'll  
20 give this back to you.  
21 (Whereupon, a brief recess was taken.)  
22 MR. GROSSMAN: We're back on the record. I have  
23 those exhibits.  
24 THE WITNESS: Okay. All right. So what we can  
25 see between these two --

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1 MR. GROSSMAN: Which one am I looking at now?  
2 THE WITNESS: We're still looking at 553(a).  
3 MR. GROSSMAN: Okay.  
4 THE WITNESS: What we can see to some extent here  
5 is a comparison, in some respects, of projected versus  
6 actual, not completely comparable because one's a weekday  
7 and one's a weekend, but it can give us somewhat of a sense  
8 as to whether the weekend is going to be higher or lower  
9 than the weekday. If you look at Intersection -- the Valley  
10 View entrance, for instance, the weekend peak hour of 2701  
11 is only 99 cars less than what it's projected to have, the  
12 full background and the gas station immediately above there.  
13 You see on Exhibit 10?  
14 MR. GROSSMAN: Yes.  
15 THE WITNESS: So even though we don't have the  
16 full background yet, if we remember, we discussed that about  
17 half the background hadn't yet been built when the April  
18 readings were taken and, of course, we don't have any gas  
19 station count coming in there. Yet out on University  
20 Boulevard we're almost already exactly at that number, and  
21 when all of that additional is added, it will likely be  
22 considerably higher. And if we look at Intersection 16, we  
23 see that the number on the weekend, 1899, is substantially  
24 higher than what was projected to be the total during the  
25 week of 1467, directly above there.

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1 MR. GROSSMAN: Okay.  
2 THE WITNESS: Okay. You can look at the same  
3 things over on the WMATA side. There the numbers are  
4 somewhat lower for the Veirs Mill Road, and again, that's  
5 because most all of the background is on that side; so it  
6 has more of the effect that the background hasn't been built  
7 yet. But I assume this is pure coincidence, but the actual  
8 number for the ring road entrance, 1142 on the weekend, is  
9 exactly the same as what they projected would be the full  
10 background plus that. So once all of that is added in, I  
11 think we can again assume that the weekend number will be  
12 much higher, and that was why Mr. Guckert was in fact  
13 willing to concede that, yes, in and around the mall itself,  
14 the weekend is going to be higher than the weekday.  
15 MR. GROSSMAN: Yes.  
16 THE WITNESS: Okay. And let's see. I have a  
17 different exhibit I'll come back to in a moment. Okay. All  
18 right. So, again, the HCM analyses are trying to get at the  
19 actual delay coming from these numbers here. So what I,  
20 what I did look at here -- and the rest of what's on this  
21 exhibit are the three different, are pulling out the  
22 relevant numbers from these three different analyses,  
23 Exhibit --  
24 MR. GOECKE: I'm sorry. Are we still on 553(a)?  
25 THE WITNESS: Yes. Yeah.

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1 MR. GOECKE: Okay.  
2 THE WITNESS: So we have HCM Method Version 1,  
3 Version, V1, V2, V3, so Version 1, 2, and 3. So those would  
4 correspond to the exhibit 465.  
5 MR. GROSSMAN: Okay.  
6 THE WITNESS: 514 is Version 2, and 504 is Version  
7 3.  
8 MR. GROSSMAN: 504(a) corrected, according to my  
9 records, Exhibit 514, because 514 had a mistake in  
10 calculation in it. That's what my records say.  
11 THE WITNESS: No, I think that might be 554.  
12 MR. GROSSMAN: You think?  
13 THE WITNESS: 514 is, should be one of the HCM  
14 analyses.  
15 MR. GROSSMAN: It says here, I mean, my copy --  
16 THE WITNESS: Oh, yes. Yes. I'm sorry. 514,  
17 yes, was the one where they had a mistake in calculations,  
18 yes.  
19 MR. GROSSMAN: Right.  
20 THE WITNESS: And 504, yes, is corrected. I'm  
21 sorry, that's exactly correct, but for my purposes here,  
22 what I want to show is relationships of numbers, not, I'm  
23 not trying to say that Version 2 should have been used  
24 versus Version 3. What I want to do is show you what  
25 happens as the cars go up and how that relates to the delay,

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1 and you can see it on these three different versions.  
2 So if you look at Version 1, which is the exhibit  
3 465, if you take, for, for instance, the morning peak there,  
4 which is listed as Exhibit 7, and the number is 1940 --  
5 okay. We're on HCM Method --  
6 MR. GROSSMAN: Oh, you're back to the --  
7 THE WITNESS: Yeah, I'm sorry, back to 553, yes.  
8 MR. GROSSMAN: All right.  
9 THE WITNESS: I'm sorry, yes, and that's why I  
10 pulled all of these out, so we don't have to try to go  
11 through all of these very detailed ones.  
12 MR. GROSSMAN: Right.  
13 THE WITNESS: Okay. The number that, the total  
14 number that is the morning background, which is 1940 -- and  
15 since I'm now testifying, I can tell you that if you take --  
16 and I will pop back to Exhibit 465 -- if you take where it  
17 has the demand across here on each one of these, these  
18 sheets here in Exhibit 465 --  
19 MR. GROSSMAN: Okay.  
20 THE WITNESS: -- it will show you eastbound,  
21 westbound, northbound, southbound, left, LT&R, so left --  
22 MR. GROSSMAN: Right.  
23 THE WITNESS: -- through, and right and so forth.  
24 If you add all those numbers up across there, they come out  
25 to 1940, because this is the, this is the chart that's being

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1 done to diagram what happened in the morning peak with the  
2 background numbers there.  
3 MR. GROSSMAN: Okay.  
4 THE WITNESS: Okay. So that's the same as Exhibit  
5 7. So you take the 1940. When you then -- his other  
6 analysis that he did in Exhibit 465, he then went to total  
7 a.m., and if you add those numbers up on the page in 465,  
8 you get 1997, which is what's listed as Exhibit 10, morning  
9 peak with gas.  
10 MR. GROSSMAN: Right.  
11 THE WITNESS: Okay. That's why I say, got to kind  
12 of explain this but, once you explain it, it works pretty  
13 well. So the difference simply, the difference between the  
14 1940 and the 1997, that's 57 trips. That's what he, that's  
15 what they're assuming will be added with the gas station.  
16 MR. GROSSMAN: Okay.  
17 THE WITNESS: Okay. And do the simple math.  
18 That's about a three percent increase in trips, 57 over  
19 1940.  
20 MR. GROSSMAN: Okay.  
21 THE WITNESS: Okay. If you look at his, his HCM  
22 chart here -- and I have the delay numbers here listed:  
23 18.8 seconds with 1940 cars; with 1997 it goes up to 19.9.  
24 That's about a six percent increase. So you have a three  
25 percent increase in cars. You have a six percent increase

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1 in delay. So it's not a proportional increase. It's a  
2 doubling of the delay, just by the doubling of -- by the  
3 number of cars that go up, not huge at this point, but we'll  
4 see. It becomes more significant as we go along.  
5 Now, in terms of his point about when you have a  
6 lot of capacity, you don't necessarily get a lot more delay  
7 from more cars, you can look at the morning for Intersection  
8 16. It goes from 636 to --  
9 MR. GROSSMAN: Let me stop you for a second.  
10 THE WITNESS: Okay.  
11 MR. GROSSMAN: I mean, you've already, you've made  
12 the point orally in summary form that the relationship  
13 between the additional traffic and the additional delay is  
14 not linear.  
15 THE WITNESS: Right.  
16 MR. GROSSMAN: I don't know exactly what it is.  
17 THE WITNESS: Well, that's what --  
18 MR. GROSSMAN: Right.  
19 THE WITNESS: -- that's why I'm walking you  
20 through here.  
21 MR. GROSSMAN: Right. I'm just saying, but why do  
22 we have to -- we don't have to sit here and work through the  
23 numbers. Why don't you just tell me what your conclusion is  
24 as to what the increase is?  
25 THE WITNESS: Well, because the increase does

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1 vary, and it varies for each one of these in a way -- it's  
2 going to depend on how busy the intersections, that -- I can  
3 do this pretty quickly. Let me just show you. It does vary  
4 from these.  
5 MR. GROSSMAN: I don't want to frustrate you,  
6 Ms. --  
7 THE WITNESS: Okay.  
8 MR. GROSSMAN: You're too close.  
9 THE WITNESS: Because there isn't a one to one.  
10 It's not a one to two. It's not a one to three. The busier  
11 it gets, the bigger the delay gets, and that's what, let  
12 me --  
13 MR. GROSSMAN: Right, but that's, that's the  
14 general proposition.  
15 THE WITNESS: Okay. What I want to show you is  
16 how much bigger it gets. So --  
17 MR. GROSSMAN: What's the biggest --  
18 THE WITNESS: Well, that -- okay.  
19 MR. GROSSMAN: -- increase?  
20 THE WITNESS: Okay. If you want to say, for  
21 instance, take Exhibit 514, which, again, these numbers were  
22 too high, obviously, I'm not, I'm not suggesting that,  
23 but --  
24 MR. GROSSMAN: But why don't we use the corrected  
25 version of it, which is 504(a).

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1 THE WITNESS: Okay, because you wanted to know how  
2 big a delay you could get from that. What I'm --  
3 MR. GROSSMAN: No, I know, but --  
4 THE WITNESS: Okay.  
5 MR. GROSSMAN: -- I'd rather use the correct  
6 numbers, which is in 504(a).  
7 THE WITNESS: Okay.  
8 MR. GROSSMAN: Even though it's a lower number in  
9 terms of our exhibit list, it is the corrected version of  
10 514, according to my records.  
11 THE WITNESS: Okay, but each one of these is a way  
12 of showing an analysis of how much delay from a given amount  
13 of numbers, and --  
14 MR. GROSSMAN: But I'd rather, at any point, use  
15 the correct numbers.  
16 THE WITNESS: Okay. Well, it's not at all clear  
17 that that one is any more correct because it doesn't have  
18 the background, it doesn't have it all added in. Can I just  
19 do this? It won't take very long at all.  
20 MR. GROSSMAN: All right.  
21 THE WITNESS: All right. Intersection 16, in the  
22 morning it goes up by 15 percent, but there's only about a  
23 five percent increase in delay because it's not crowded.  
24 MR. GROSSMAN: Okay.  
25 THE WITNESS: Now, in the evening you go up by 71

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1 trips. So you're back on Exhibit 1. You go up by 71 trips  
2 from the gas station, which is a two percent increase, but  
3 now the delay increases by seven-and-a-half percent. See,  
4 that's what I'm saying. You see a -- it's the same kind of,  
5 in fact, a somewhat smaller increase, a 2.6 percent increase  
6 versus a three percent increase, but rather than doubling,  
7 now it's tripling. Intersection 16 on this particular  
8 method, it goes from a 13.6 increase, but the delay goes up  
9 by 20 percent.  
10 Now, the weekend I couldn't do this kind of  
11 calculation because we didn't have that before-and-after  
12 sheet, because they said it wasn't copied, but then  
13 Mr. Guckert said he never actually did it. He just  
14 guesstimated what those numbers were. So I don't have any  
15 volume; so I can't do that one with that version.  
16 If we go to the second version then -- and I do  
17 this only because to show you that with some numbers it can  
18 get very high, astronomically high very fast -- if you look  
19 at Intersection 16, looking in the evening there, it goes --  
20 and this is, again, with somewhat more background than it  
21 should have had added in -- at that point, they were  
22 assuming you would go from 1899 cars to 2307, and that was  
23 about a 21-and-a-half percent increase in volume, so you  
24 know, some, but not --  
25 MR. GROSSMAN: Eighteen ninety-nine to what?

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1 THE WITNESS: Twenty-three oh seven, and this is  
2 all showing up on the Version 2 one.  
3 MR. GROSSMAN: All right. Now, what percent  
4 increase is that?  
5 THE WITNESS: Twenty-one-and-a-half percent. If  
6 you look at the delay increase, it goes up by 140 percent.  
7 That's one of my points, that these numbers can get much  
8 bigger much faster and, you know, they really do this  
9 exponential sort of delay. And then when they add in an  
10 additional 48 additional trips for the gas station above the  
11 2307, when you go down under Saturday With Gas, Background  
12 Trips, they went to 2355, which is only 48 more trips. It  
13 adds -- which is a 2.1 percent increase. That adds another  
14 11 seconds or about another 10 percent. So a two percent  
15 increase in trips under this calculation would bring up the  
16 delay by another 10 percent.  
17 Now, okay, now we'll go to Version 3. See, that  
18 didn't take very long, but it really is a point to see how  
19 huge these differences can get very quickly. Now we go back  
20 to this. This shows at this point that the assumption is  
21 that rather than having 3439 trips on University Boulevard,  
22 now they say, no, 3017 is the correct number. It had been  
23 -- anyway, that jumped, and for the, for the gas station,  
24 they had said 1899 before, and they still say exactly 1899.  
25 So even though University Boulevard is going up by

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1 several hundred trips, they didn't add a single one more on  
2 for background at, you know, from the background to the  
3 final version at the, at the station. And when I asked  
4 Mr. Guckert about that, if you recall, we talked about it  
5 for a while, and he said, well, we know there's more people  
6 coming out and they're leaving those apartments and they're  
7 doing all that stuff but we don't know where they're going,  
8 so I can't tell you -- I didn't, I didn't assume anybody  
9 more going in the mall. But, yes, are people going to go in  
10 the mall? Sure, there's going to be more trips in the mall.  
11 So we don't -- this 1899 number, I think  
12 Mr. Guckert conceded it was probably not going to be the  
13 final number going in the mall, but he didn't have a  
14 different number. So, so we're just keeping that number  
15 again, and this time around, with -- but now it's being, now  
16 he's actually calculating the difference. Before he  
17 guesstimated the difference with the gas station trips. So  
18 this time he goes from 1899 trips at Intersection 16 on  
19 Version 3 to 1947 -- again, only 48 new trips being added.  
20 MR. GROSSMAN: All right. What are those numbers  
21 again?  
22 THE WITNESS: Eighteen ninety-nine to 1947.  
23 That's, again, about a two-and-a-half percent increase in  
24 the number of trips coming in through that intersection.  
25 MR. GROSSMAN: Yes.

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1 THE WITNESS: And that calculates out to a 13  
2 percent overall increase in delay, and that's taking the  
3 intersection from an E to an F. And now, he claimed it was  
4 just barely an F and, if he took out some of the trucks,  
5 he'd get it back down to an E again, but when you see how  
6 much difference 48 cars make, if you add in virtually  
7 anything for background, you know, with all -- if you have  
8 300 cars more going, more than 300 cars going through on  
9 University Boulevard, if only 50 percent, not 50 percent, if  
10 only 50 of those cars come in through Intersection 16,  
11 you're pretty likely going to have, at least, again, that  
12 much increase and we will be up in that F-plus number that  
13 we were talking about the last time around.  
14 So that's what I'm saying, we don't, still none of  
15 these is exactly the right number and none of these -- what  
16 I wanted to do was to walk through these and see that these  
17 do in fact very strongly support our point that even a  
18 little bit extra traffic, when it's as close to capacity as  
19 it is on these days, can have a major effect. And if we  
20 stay with Exhibit 504, if you go down to the two charts for  
21 Saturday which are for Intersection 16, one is labeled  
22 Background Saturday and one is label Total Saturday, and  
23 they say, All-Way Stop Control Analysis at the top. See  
24 these two sheets here?  
25 MR. GROSSMAN: All right. Which --

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1 THE WITNESS: Okay.  
2 MR. GROSSMAN: -- exhibit am I looking at?  
3 THE WITNESS: 504.  
4 MR. GROSSMAN: All right. 504(a), you mean?  
5 THE WITNESS: Yeah. I'm sorry, 504(a), exactly.  
6 MR. GROSSMAN: Okay.  
7 THE WITNESS: If you drill down just even a little  
8 deeper -- I was a science major in college. I can't help  
9 this.  
10 MR. GROSSMAN: I was a science major, too, at one  
11 point, but I was too stupid to become a physicist; so I  
12 became a lawyer.  
13 THE WITNESS: But this is only, this is only  
14 addition/subtraction and multiplication/division. So I took  
15 calculus but I didn't like it, but addition and subtraction  
16 I'm real good at. So if you look here, there's really only  
17 two lanes that they add these trips to. The eastbound  
18 right-turn lane had 500 before and it went to 524, if you  
19 compare the two sheets --  
20 MR. GROSSMAN: Okay.  
21 THE WITNESS: -- and the northbound left-turn  
22 lane. So this is, logically enough, the right-turn lane is  
23 the one coming in the mall and making the right turn to go  
24 down by Costco; the northbound left-turn lane is the one  
25 coming from Costco and going to the left to go back out of

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1 the mall.  
2 MR. GROSSMAN: Okay.  
3 THE WITNESS: So changes each one of those by 24  
4 trips, and if you come down at the bottom there, the east,  
5 where it has Capacity and Level of Service, for that Lane 2,  
6 which is the eastbound lane there, it's 4392 before you do  
7 this, and adding those 24 trips brings you to 5379. So more  
8 than 10 seconds per car from 24 trips, less than one every  
9 two minutes, adds a 10-second delay to every car going  
10 through there.  
11 MR. GROSSMAN: Okay.  
12 THE WITNESS: And let's see. And you can see the  
13 same thing with, on the northbound Lane 1. It goes from 44  
14 seconds to 55 seconds -- again, one car every two minutes  
15 and you're adding more than 10 seconds per car delay.  
16 So I think our point, which I think you get, is  
17 that there's been a suggestion that, oh, well, if we add the  
18 gas station, it won't make a difference because there aren't  
19 that many cars. Well, I think the answer is, it doesn't  
20 take very many cars at all to make a difference here, and  
21 that's without -- as I say, I think the assumptions about  
22 how many cars are going through there are likely still  
23 understated at this point because we are not adding in these  
24 kind of background numbers, which are surely going to be  
25 actually coming into the mall.

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1 Okay. Now, one of the things I tried to do was to  
2 look at the same thing somewhat with University Boulevard,  
3 and it got very interesting because the volume went up but  
4 somehow the delay numbers went down. I was going to ask  
5 Mr. Guckert about that, but he didn't really understand  
6 about the HCM method or the analysis or at least wasn't  
7 really familiar; so we didn't spend the time with him on the  
8 stand on that.  
9 MR. GROSSMAN: I'll take that, once again, as an  
10 expression of your opinion --  
11 THE WITNESS: Well, I think he, I think he did --  
12 MR. GROSSMAN: -- as to whether he understood it  
13 or not.  
14 THE WITNESS: Well, I think he did say that he was  
15 really not very familiar with those, that he wasn't the one  
16 who did this, he couldn't really go into detail on those.  
17 MR. GROSSMAN: He didn't do the actual --  
18 THE WITNESS: Well --  
19 MR. GROSSMAN: -- spreadsheet data.  
20 THE WITNESS: -- I think when we asked him, he  
21 really was not in a position -- okay. You can go back and  
22 read it, but the reason why we didn't spend more time with  
23 him was because he didn't appear to be able to really answer  
24 detailed questions on it.  
25 MR. GROSSMAN: Okay.

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1 THE WITNESS: And I certainly do not claim to be,  
2 at the end of all of this, any kind of an expert. There  
3 were some things, though, that you can observe on here. If  
4 you, again, looking at Exhibit 504 --  
5 MR. GROSSMAN: 504(a)?  
6 THE WITNESS: Sure, 504(a), I'm sorry. Under  
7 Timer Results, about middle of the page --  
8 MR. GROSSMAN: Yes.  
9 THE WITNESS: -- you can see Phase Duration, and  
10 that's the amount of time spent on each signal phase of the  
11 traffic lights.  
12 MR. GROSSMAN: Right.  
13 THE WITNESS: One thing that happens between the  
14 three sets of exhibits here is that those, that number,  
15 particularly for the westbound lane turning into the mall  
16 from University Boulevard, changes on every one of them.  
17 Now, if this is supposedly characterizing, for the Saturday  
18 anyway, the other numbers, everything pretty much stays the  
19 same, but for Saturday --  
20 MR. GROSSMAN: Well, you're saying the phase  
21 duration changes?  
22 THE WITNESS: Yes.  
23 MR. GROSSMAN: Okay. For each of what?  
24 THE WITNESS: Okay. If you look at 465 and 504  
25 and --

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1 MR. GROSSMAN: Oh --  
2 THE WITNESS: -- 504(a) --  
3 MR. GROSSMAN: -- it changes between these  
4 exhibits?  
5 THE WITNESS: Right, but in each case, we're --  
6 each of these is supposedly analyzing the same set of  
7 numbers --  
8 MR. GROSSMAN: Okay.  
9 THE WITNESS: -- on the same day and the same  
10 time.  
11 MR. GROSSMAN: So how do you explain that change,  
12 phase duration?  
13 THE WITNESS: Well, what I think I explain it as,  
14 I talked somewhat to the Park and, Mr. Axler in the Park and  
15 Planning staff -- and I asked Mr. Guckert about this, and he  
16 seemed to suggest that he agreed -- is that this is not  
17 necessarily a precise, especially these phase durations and  
18 so forth, a precise calculation of exactly what is  
19 happening. This is more a way of using the software to try  
20 to optimize an intersection and a delay.  
21 So that these numbers are not necessarily what was  
22 actually being observed on Saturday in April in 2013 for the  
23 traffic lights. These are, if you had 25-second delay, how  
24 would that work out with the rest of the intersection; if  
25 you had a 29-second delay, how would that work out.

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1 MR. GROSSMAN: Well, the phase duration is the  
2 same for that intersection in Exhibits 514 and 504(a). I  
3 don't know about 465. Let's see.  
4 THE WITNESS: Not for Saturday --  
5 MR. GROSSMAN: All right. Let's see.  
6 THE WITNESS: -- I don't believe, I don't believe.  
7 So --  
8 MR. GROSSMAN: Well, I'm looking at the first  
9 page.  
10 THE WITNESS: Okay. What I'm saying is you have  
11 to look at the Saturday numbers. The weekday numbers don't  
12 change.  
13 MR. GROSSMAN: Okay.  
14 THE WITNESS: Saturday numbers. For instance, if  
15 you look at Total Saturday on Exhibit 514 and Total Saturday  
16 on Exhibit 504(a), the phase duration in 514 is 29.7  
17 seconds.  
18 MR. GROSSMAN: And I'm having trouble finding out  
19 where it tells me if it's a Saturday or not.  
20 THE WITNESS: Okay. The time is right up here  
21 under Project Description.  
22 MR. GROSSMAN: Yes. It says, Background A.M.  
23 THE WITNESS: Well, keep going. You got to go  
24 down to the right page.  
25 MR. GROSSMAN: That's what I'm --

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1 THE WITNESS: Okay.  
2 MR. GROSSMAN: Does it say Saturday on it in that  
3 block?  
4 THE WITNESS: One should say Background Saturday,  
5 and one should say Total Saturday.  
6 MR. GROSSMAN: Okay. I see Background Saturday.  
7 THE WITNESS: Okay. If you just look, for  
8 instance, at Total Saturday.  
9 MR. GROSSMAN: Total Saturday?  
10 THE WITNESS: Yeah.  
11 MR. GROSSMAN: Total P.M. Total A.M. Total  
12 Saturday.  
13 THE WITNESS: Okay. So --  
14 MR. GROSSMAN: All right. That still has 5.5 on,  
15 in this exhibit.  
16 THE WITNESS: Well, what I'm talking about is the  
17 westbound turn lane, which is one of the -- that's one of  
18 the critical places in terms of this intersection here.  
19 MR. GROSSMAN: All right. Westbound turn lane.  
20 THE WITNESS: Actually, the 5.5 is a seven, but if  
21 you look at the next column over, it's 46.7 on one and 55,  
22 I'm sorry, 57.7.  
23 MR. GROSSMAN: In the eastbound turn lane --  
24 THE WITNESS: Right.  
25 MR. GROSSMAN: -- 57.7.

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1 THE WITNESS: That's eastbound through, I think.  
2 And then if you come over to the westbound left-turn lane,  
3 it shows 29.7 on Exhibit 514, and it shows 25.7 on Exhibit  
4 504 --  
5 MR. GROSSMAN: All right. Well --  
6 THE WITNESS: -- and so forth. So the point is,  
7 this is clearly not measuring -- these are ones that, as I  
8 understood it, was an attempt to optimize, and this appears  
9 to be consistent with that because, if you were measuring  
10 what was actually happening on a given Saturday, the phase  
11 duration is what it is. I mean, the signal is what it is.  
12 It doesn't change every time you run the numbers. It was  
13 either 20 seconds or 25 seconds or 30 seconds.  
14 MR. GROSSMAN: Well, I don't know. I mean, phase  
15 duration --  
16 THE WITNESS: Oh, no.  
17 MR. GROSSMAN: -- may be changed if the signal --  
18 THE WITNESS: Well, no, but I mean, but if this  
19 analyzing Saturday, a given Saturday --  
20 MR. GROSSMAN: Right.  
21 THE WITNESS: -- it was what it was on that day.  
22 It didn't change.  
23 MR. GROSSMAN: On any given Saturday.  
24 THE WITNESS: If I add, if I take that -- and  
25 these are analyzing the numbers from a given Saturday, which

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1 is the background --  
2 MR. GROSSMAN: Okay.  
3 THE WITNESS: -- and then adding in additional  
4 traffic volumes, but --  
5 MR. GROSSMAN: I don't know. What am I --  
6 THE WITNESS: Okay. Okay. My point is that --  
7 MR. GOECKE: I'd also like to object to the  
8 foundation. She doesn't know what the signal patterns are  
9 at that -- at least there's been no evidence that she knows  
10 what the signal patterns are.  
11 THE WITNESS: Well, if you wait for just a moment,  
12 I will tell you that you can easily tell what the signal  
13 patterns are because we had a lot of video of that  
14 intersection and you can sit there and watch the video and  
15 you can count the numbers. And, in fact, none of these  
16 numbers that they -- these use numbers ranging between 25  
17 and 29 point something. In fact, in April the number was  
18 actually, approximately 20 seconds. If you look at the  
19 video on --  
20 MR. GROSSMAN: But what does this --  
21 THE WITNESS: Okay.  
22 MR. GROSSMAN: -- what does this --  
23 THE WITNESS: Okay.  
24 MR. GROSSMAN: -- yield me in terms of my analysis  
25 of the case?

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1 THE WITNESS: Okay. What my, what, what this  
2 yields you is that you shouldn't -- that you need to take,  
3 especially with the University Boulevard numbers and the  
4 assumption that those numbers are as -- that the delay  
5 factors are no more than what they are, this, this software  
6 is giving you an optimized number. This -- it may not be  
7 that good. It can easily be worse than that, and it's  
8 certainly -- none of these numbers probably recognize the  
9 exact accurate what's going on. These are attempts to move  
10 traffic through as well as possible.  
11 But what we can see from these -- these are  
12 presumably the petitioner's best efforts to get the  
13 intersection to work -- what we can see is that even with  
14 that we have not minimal delay, we have substantial delay,  
15 and that we have considerable delay at, coming into the  
16 mall, as we stated; that it's undoubtedly understated; that  
17 the numbers, that the kind of records we showed you of  
18 actual observations, on taking two minutes, three minutes,  
19 four minutes, are quite accurate and that those should be  
20 there, but at least, at least with this we know that these  
21 are -- it's certainly not going to be any better than these  
22 numbers. It's undoubtedly likely going to be worse than  
23 these actual numbers here.  
24 MR. GROSSMAN: Well, all right, let's -- I guess  
25 my, once again, my question is --

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1 THE WITNESS: Okay.  
2 MR. GROSSMAN: -- why do I have to enter into the  
3 analysis of the phase duration --  
4 THE WITNESS: Okay.  
5 MR. GROSSMAN: -- in the sense that you are doing  
6 it when I already know from looking at the corrected exhibit  
7 on 514, that is, 504(a), that I see the total of the gas  
8 station is projected at an F level of service --  
9 THE WITNESS: Okay. That's at Intersection 16.  
10 What I was getting at was --  
11 MR. GROSSMAN: -- at Intersection 16?  
12 THE WITNESS: -- was looking at also out on  
13 University Boulevard, where they are showing a considerably  
14 lower number and that that number -- what I was trying to  
15 understand was how, when they had their volume going up on  
16 University Boulevard, the number of delay that they show  
17 could go down on University Boulevard, and the only  
18 explanation I can come is that things like the phase  
19 duration are being adjusted, these kind of things. So that  
20 instead of showing what had originally been 37.1 sections  
21 and 39 with the gas station and a D level of delay, they  
22 managed to add on more than 300 trips and somehow come out  
23 with 29.4 and 30.1 seconds and only a C level of delay. I  
24 was trying to understand how you can add a whole lot of  
25 trips and have less delay than you do --

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1 MR. GROSSMAN: I understand.  
2 THE WITNESS: And the answer is, I think they were  
3 just -- okay. My point is -- okay. My point with trying to  
4 go through these was to (a) to understand that, how that  
5 could possibly happen, and what I see is that the, there was  
6 a lot of just changes being made to these inputs that don't  
7 necessarily actually reflect the reality of how that  
8 intersection is as opposed to what might be the best way to  
9 make that intersection work.  
10 MR. GROSSMAN: Yes, I don't know that that's the  
11 case. I understand your reasoning --  
12 THE WITNESS: Okay.  
13 MR. GROSSMAN: -- but once again, I think this is  
14 another area in which you're asking me to apply your  
15 reasoning as to why circumstances are as distinguished from  
16 the more concrete evidence that I have in front of me.  
17 THE WITNESS: Okay. Well, what I can certainly  
18 say to you is that, yes, they are changing inputs; that if  
19 you're simply measuring the same intersection with adding  
20 more traffic to it, the input wouldn't change on that day  
21 unless you're simply trying to set up an optimized pattern.  
22 I can also --  
23 MR. GROSSMAN: Well, it's the unless part. Once  
24 again, I think -- the problem with your analysis is that it  
25 doesn't necessarily analyze the possible universe of, the

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1 universe of possibilities. So I don't know whether to rely  
2 on it, and I can't really rely on it, and I think that even  
3 from your standpoint, what you should be wanting me to rely  
4 on is the evidence in the case rather than your analysis of  
5 the number inputs and what you think led to those number  
6 inputs, reasoning backwards.  
7 THE WITNESS: Well --  
8 MR. GROSSMAN: So --  
9 THE WITNESS: Okay.  
10 MR. GROSSMAN: Because that's essentially what  
11 you're doing. You're a wonderfully detailed analytical  
12 person, but there is -- in terms of what I should be doing,  
13 I should be addressing the evidence I have as distinguished  
14 from your speculative analysis.  
15 THE WITNESS: Well, it's not a, it's not a  
16 speculative --  
17 MR. GROSSMAN: Well, it is. It is a, it is a --  
18 THE WITNESS: Well, you could --  
19 MR. GROSSMAN: -- you're reverse engineering the  
20 numbers to figure out how they got there. That's what  
21 you're doing, right?  
22 THE WITNESS: I am looking at the fact that inputs  
23 are changing, and you can see the effect of the inputs  
24 changing. You can see that as the phase duration changes on  
25 these exhibits, the capacity goes up. When the capacity

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1 goes up, the delay goes down. It's --  
2 MR. GROSSMAN: Okay. Well, I know you --  
3 THE WITNESS: -- I mean, this isn't rocket  
4 science, particularly.  
5 MR. GROSSMAN: Well --  
6 THE WITNESS: But --  
7 MR. GROSSMAN: -- whatever kind of science it is,  
8 it's still a level of analysis beyond what I should actually  
9 be considering here when I have more direct evidence on  
10 these, on these points.  
11 THE WITNESS: All right. Well, then let's just  
12 say that these exhibits, at best, show you, as I think they  
13 indicated, an attempt to optimize these numbers and that if  
14 you look at the actual video, if you look at what was on the  
15 hard drive that they gave you that showed you April, you can  
16 see that in fact the inbound lanes at that point were only  
17 getting about 20 seconds; the inbound western lane was only  
18 getting about 20 seconds of input.  
19 MR. GROSSMAN: I don't know if those are even  
20 being played at normal speed. How am I going to --  
21 THE WITNESS: Yeah, we -- yeah, they're played at  
22 normal speed.  
23 MR. GROSSMAN: Well, I don't know. I don't know  
24 whether --  
25 THE WITNESS: I showed you, I showed you some of

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1 them. I can plug it in right now and play it for you.  
2 MR. GROSSMAN: No. No. The point I'm making, I  
3 don't know whether, whether what I'm seeing in terms of  
4 counting seconds at intersections, I don't know whether  
5 that's in some way speeded up or slowed down on that --  
6 THE WITNESS: Well --  
7 MR. GROSSMAN: -- I can't tell. I mean, I --  
8 THE WITNESS: Mr. Guckert, I mean, I'm sorry,  
9 Mr. Grossman, the --  
10 MS. ROSENFELD: Mr. Grossman, could we have a  
11 five-minute break?  
12 MR. GROSSMAN: All right. All right.  
13 THE WITNESS: Okay.  
14 MR. GROSSMAN: Let's take a five-minute break.  
15 THE WITNESS: Okay.  
16 MS. ROSENFELD: Thank you.  
17 (Whereupon, a brief recess was taken.)  
18 THE WITNESS: To finish this off, the only thing I  
19 would say is you can look at the hard drives, you can see  
20 the second-by-second time. If you look at the time in  
21 April, it was approximately 20 seconds for that left-turn  
22 lane, and when you did the March 2014 numbers, they've now  
23 moved that up to 30 seconds. So they've clearly had to  
24 adjust the University Boulevard timings in order to deal  
25 with the congestion, the delay factors, whatever. It has

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1 distinctly changed between April of last year and the  
2 current, and you can see that very clearly on the two sets  
3 of videotapes that you were given if you run them at normal  
4 speed, which you can run at normal speed. I have spent more  
5 time than I care to think about looking at them running at  
6 normal speed.  
7 MR. GROSSMAN: Doesn't that also depend on speed  
8 at which it's recorded? Isn't that -- can't it be recorded,  
9 depending on your equipment, at different speeds --  
10 THE WITNESS: Well, I don't know.  
11 MR. GROSSMAN: -- and therefore change the, what  
12 happens in terms of the playback?  
13 THE WITNESS: Well, I don't know, but if you look  
14 at them --  
15 MR. GROSSMAN: It's --  
16 THE WITNESS: -- if you hold your own stopwatch,  
17 it has, it has the seconds written on the bottom of the  
18 screen at every moment. Just like when I'm recording  
19 here --  
20 MR. GROSSMAN: Okay.  
21 THE WITNESS: -- you can take your own watch, you  
22 can look at it, you can see how fast cars drive, you can see  
23 it at normal speed, you can count the seconds, and we did  
24 that somewhat on some of the previous ones where I was  
25 saying, as you can see, it took a minute and a half for the

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1 cars to do this or it cleared out at this point. So --  
2 MR. GROSSMAN: Okay. All right.  
3 THE WITNESS: -- that was my only point on that,  
4 was that you can see that there has, there's now a distinct  
5 change in the timing there.  
6 MR. GROSSMAN: Okay.  
7 THE WITNESS: Okay. Moving on, and again, this is  
8 an exhibit we've talked about before, which is 453(c), and  
9 again, I just want to make sure that in each one of these,  
10 that we have it in there that it's clear what's going on and  
11 that you understand what the columns are and so forth. This  
12 one, again, was the attempt to compare the projections to  
13 the actual numbers that Dr. Adelman and Mrs. Adelman  
14 observed --  
15 MR. GROSSMAN: Right.  
16 THE WITNESS: -- and to make some observations  
17 about the weekend peak versus the weekday peak in terms of  
18 numbers and then, also, the way I described it with  
19 Mr. Guckert, how peaky the peak is: was, compared to on the  
20 weekday, was the highest peak hour so much higher than the  
21 average of the peak hours compared to on the weekend; how  
22 much higher is the highest peak hour compared to the overall  
23 peak. And Mr. Guckert did agree that -- and this is what  
24 we're really showing here, there -- we took, where it says  
25 Exhibit 3 Existing, the first line there is the highest

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1 hourly peak count. The three hours underneath there are --  
2 and that was, that was a count taken from 4:00 to 7:00, and  
3 the highest hour for that was, you could see, was 4:45 to  
4 5:45 at one of the intersections or 4:30 to 5:30 at another  
5 one and so forth. And then I just took the 4:00 to 5:00,  
6 the 5:00 to 6:00, the 6:00 to 7:00 hours, and you can see  
7 that they're all near that number but they're all below that  
8 number. And I took the average for those three hours and  
9 then just compared how much higher was the highest number to  
10 the average of the entire period, and it gives you a number  
11 ranging from 101 percent for Intersection 16 at that point  
12 up to 110 percent for Intersection 20.  
13 I made some notations here about what background  
14 existed and wasn't open back in 2013. This was just to note  
15 the point that we've been making that most of the  
16 background, more than half of the background had not yet  
17 opened when these counts were taken in April of 2013.  
18 Essentially, the Costco was open, but everything else had  
19 not yet been built out, the Safeway, the Solaire Apartments,  
20 and so forth.  
21 The second page then picked up, again, what we  
22 talked about with Exhibit 10, which was the projected peak.  
23 Right underneath that -- some of these are some of the  
24 numbers we've just gone through again -- I think I call it  
25 supplemental traffic analysis, which was supposed to be

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1 supplemental traffic analysis there, which was the April  
2 numbers, and it has the actual counts, 4/27/13 -- again, the  
3 same counts we've just been talking about, the 1899, and  
4 we've talked about a lot at Intersection 16 and so forth --  
5 and then, again, the hours between 10:00 and 6:00 that were  
6 observed on that day, each one of the hourly counts. And  
7 this time I took an average of the full eight hours, an  
8 average of the six hours, the higher, the higher six hours  
9 from 11:00 to 5:00, and then the average of the highest four  
10 hours.

11 MR. GROSSMAN: I always assumed that supplemental  
12 was a contraction of supplemental and plentiful.

13 THE WITNESS: Well, that may have been as well.  
14 We spent a lot of, plentiful amount of time analyzing these  
15 numbers. So what you can see here is just, if you look at  
16 these numbers, taking for an average of a full eight hours  
17 as opposed to, in the weekday it was only three hours we  
18 took, if you take the full eight hours from 10:00 to 6:00,  
19 the numbers are very similar to the kind of numbers we had  
20 for only three hours; it doesn't go above 110 percent. And  
21 then if you take a smaller number of hours, it gets, it gets  
22 considerably lower again, just the point being the weekend  
23 is higher and it stays higher; it doesn't have just one  
24 single peak. It gets higher and stays higher for an  
25 extended period of time, and I think Mr. Guckert really

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1 agreed with that. So that, that part was one.  
2 And then if you turn to the third page where we  
3 just got into -- this is where we listed the actual counts  
4 and so forth, and then I had some analysis here. And as we  
5 see, the actual count that the Adelmans did, there were two  
6 times, they had two days they took it before the warehouse  
7 was opened, and they came out with an average of 1080, and  
8 the exhibit 3, which was the, the number before you added in  
9 background was being projected, was taken as 1037, was the  
10 number. So that's pretty close, but then when they took  
11 their counts after the warehouse opened, which would be  
12 somewhat comparable to Mr. Guckert's Exhibit 7, which was  
13 with the full background, with all of the background that  
14 was there, he was projecting only 1291, and they were  
15 observing 1494, and we talked about --

16 MR. GROSSMAN: Right.

17 THE WITNESS: -- how that's about 15 percent  
18 higher.

19 Now, we're going to, we're going to get into  
20 another exhibit that -- and the question is, is 15 percent  
21 mean very much? And Mr. Guckert -- Mr. Sullivan said, well,  
22 no, 15 percent is not that much bigger of a number, not that  
23 big of a deal.

24 MS. HARRIS: Mr. Grossman, if I could, this just  
25 seems very repetitive. I'm having a déjà vu from about

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1 eight months ago.

2 THE WITNESS: Well --

3 MR. GROSSMAN: There is a repetitive aspect here.

4 THE WITNESS: Well, I'm getting on to the part  
5 that is not repetitive at the moment, which is, Mr. Sullivan  
6 then testified that he used a different way of calculating  
7 the numbers on the ring road and so forth. So I went back  
8 to look at that, to see what we could do, and I looked at  
9 his numbers and I looked at Exhibit 10, and I could find out  
10 how he got to his numbers, the four lanes he was using,  
11 which were only the ones that corresponded with coming down  
12 to the warehouse and going out through the warehouse, and  
13 the same thing on the other side of the mall.

14 So I could come up with his numbers, and what I  
15 then wanted to do was to use these actual numbers that Mr.,  
16 Dr. Adelman and Mrs. Adelman observed -- and they broke  
17 their numbers out lane by lane -- and I wanted to take those  
18 and do his same kind of analysis there to see what, how that  
19 would then compare. In other words, he was using  
20 Mr. Guckert's projections, but he was only using a portion  
21 of the projection, and I understand why he was doing that.  
22 So what I wanted to do was to take the same portions of the  
23 Adelmans' observations and compare them. So we have the  
24 same actual to projected comparison, only now the way he was  
25 doing his.

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1 MR. GROSSMAN: But what I don't understand is, how  
2 does this become responsive to the rebuttal, because as I  
3 recall Mr. Sullivan's testimony on rebuttal, he said, well,  
4 I took the highest peak hour during the week and counted  
5 that as every hour, including the weekends, and therefore  
6 was conservative, much more so than if I had taken the  
7 weekend hours. He --

8 THE WITNESS: But --

9 MR. GROSSMAN: -- didn't go through this.

10 THE WITNESS: Okay. But if we agree, as  
11 Mr. Guckert says, that the weekend hours --

12 MR. GROSSMAN: Do you agree with my recollection  
13 of --

14 THE WITNESS: Well, I know what he was saying.  
15 What I'm saying is, number one, Mr. Guckert was agreeing  
16 that in fact the weekend hours were higher and they stayed  
17 higher for a considerable period of time. So that's one  
18 part. Secondly, I was trying to determine whether, whether  
19 his numbers that he was using, even if we assume that we're  
20 going to start with the weekday hours --

21 MR. GROSSMAN: Right.

22 THE WITNESS: -- whether those numbers were  
23 accurate or whether they were understated, because when I  
24 looked at -- when looking at, for instance, Mr.,  
25 Dr. Adelman's and the Adelmans' numbers, they look

1 understated. Now, he's saying, I came up with some  
2 different numbers and I was doing it a different way. So I  
3 want to look at his numbers, the numbers he was looking at,  
4 and compare them to see what happens.

5 MR. GROSSMAN: So you're saying that when  
6 Mr. Sullivan said he's using the peak-hour figures and  
7 counting that as every hour --

8 THE WITNESS: Right.

9 MR. GROSSMAN: -- that he was using something  
10 other than the peak-hour figures?

11 THE WITNESS: Well, okay, first -- okay. What he  
12 testified was that he originally used a number for  
13 Mr. Guckert that was taken from Figure 10, from OZAH Exhibit  
14 11, and that he used that for three separate areas around  
15 the mall, Intersection 20, an unnamed intersection by the  
16 gas station --

17 MR. GROSSMAN: Right.

18 THE WITNESS: -- and Intersection 16, and he came  
19 up with three different numbers there and he averaged those.  
20 When I first looked at that, it didn't seem to make any  
21 sense because those were not the numbers I was seeing from  
22 Exhibit 10. What he then said on, in his testimony was, I  
23 wasn't using all six of the lanes at each of those  
24 intersections, I was using four of them, the lanes that, in  
25 my view, correspond to what deals with the south ring road

1 traffic.

2 MR. GROSSMAN: Right.

3 THE WITNESS: Okay. I can understand that. Let  
4 me go back and look at those numbers and see how they  
5 compare, because he's saying, well, 15 percent really isn't  
6 a very big, big change, so that's, that's within my range of  
7 conservatism. So I wanted to see whether the 15 percent  
8 increase that we were seeing from the actual versus  
9 projected, how that would affect if you looked at the way he  
10 was calculating the numbers, the four lanes that he was  
11 looking at.

12 MR. GROSSMAN: All right. All right.

13 THE WITNESS: Okay. So that's this chart.

14 MR. GROSSMAN: So this is a new exhibit?

15 THE WITNESS: This is a new one.

16 MR. GROSSMAN: All right. So we're up to 590.

17 MR. SILVERMAN: Do I hear six?

18 THE WITNESS: Now, he --

19 MR. GROSSMAN: And Exhibit 590, do you want to  
20 describe what this is then?

21 THE WITNESS: Okay. All right. Yes. This is one  
22 where I have taken these same sorts of numbers and I've  
23 broken them out lane by lane. Instead of using now the  
24 total volume at a particular intersection, I'm doing this  
25 just for Intersection 16 for this purpose. So rather than

1 taking the entire numbers that we had at Intersection 16 for  
2 these different cases, for instance --

3 MR. GROSSMAN: So you've taken lane-by-lane  
4 volume --

5 THE WITNESS: Right.

6 MR. GROSSMAN: -- at Intersection 16?

7 THE WITNESS: Yes.

8 MR. GROSSMAN: At Intersection 16. So Cordry  
9 chart showing lane-by-lane volume at Intersection 16.

10 Anything else?

11 THE WITNESS: Right. So let me -- so if you look  
12 at 453, for instance, the exhibit 3 morning, I'm sorry,  
13 evening peak-hour total was 1037. So what I have done is  
14 I've simply taken that 1037 and I have broken it out lane by  
15 lane, which, again, comes from Mr. Guckert's numbers.

16 MR. GROSSMAN: But what I'm trying --

17 THE WITNESS: Okay.

18 MR. GROSSMAN: -- to say, I just want to identify  
19 what the exhibit is.

20 THE WITNESS: Okay. Oh, okay. I'm sorry.

21 MR. GROSSMAN: So Cordry chart showing  
22 lane-by-lane volume at Intersection 16 --

23 THE WITNESS: Yeah.

24 MR. GROSSMAN: -- is that sufficient?

25 THE WITNESS: Yeah, that's fine.

1 MR. GROSSMAN: Okay. All right.

2 (Exhibit No. 590 was marked  
3 for identification.)

4 THE WITNESS: I'm sorry. Yes.

5 MR. GOECKE: I'm sorry. Ms. Cordry, have you  
6 produced this document to us before?

7 THE WITNESS: I believe so.

8 MS. HARRIS: Do you know when?

9 THE WITNESS: Not this minute, sitting here. If  
10 we take another break, I can tell you, but I believe so. I  
11 think I produced it -- this is one I said that I was trying  
12 to -- it was towards the end of last week. It has not been  
13 10 days, but it is, I have produced it before -- either  
14 Thursday or Friday, I believe, just took a while to get time  
15 to sit down and finish this.

16 So to walk through, you can see Exhibit 3 is  
17 there. The next-to, next-to-right-hand column has 1037 --

18 MR. GROSSMAN: First of all, do you have a copy  
19 for them --

20 THE WITNESS: Yes.

21 MR. GROSSMAN: -- right now?

22 MS. ROSENFELD: Yes. They --

23 THE WITNESS: Yes.

24 MS. ROSENFELD: -- I just gave them a copy.

25 MR. GROSSMAN: They have a copy?

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1 MR. GOECKE: We have a copy, yes. Thank you.  
2 MR. GROSSMAN: All right.  
3 THE WITNESS: So it shows the 1037. That is the  
4 exhibit 3 number. Below that it shows --  
5 MR. GROSSMAN: I don't, where --  
6 THE WITNESS: The next, the second-to-right-hand  
7 column there, which is Total Cars.  
8 MR. GROSSMAN: Okay. I see it. I see it, Total  
9 Cars, 1037.  
10 THE WITNESS: Okay. Then it shows the 1291, which  
11 is the exhibit 7 number, which is --  
12 MR. GROSSMAN: Right.  
13 THE WITNESS: -- all full background. I just did  
14 a percent how much higher that is. Then the exhibit 10  
15 number, 1467.  
16 MR. GROSSMAN: Okay.  
17 THE WITNESS: Okay. Then I picked up, again, the  
18 same two numbers that we took from the Adelmans' chart  
19 before, which was on 453(c), the 1130 and the 1031 number,  
20 which are two observations they did before the warehouse.  
21 Then I took their -- I took some percentages there, which  
22 I'll come back to in a moment -- then I took their actual  
23 numbers after the warehouse.  
24 MR. GROSSMAN: I just don't see, I don't see the  
25 labeling that says that.

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1 THE WITNESS: Okay.  
2 MR. GROSSMAN: Well, where does it say Adelson --  
3 THE WITNESS: Well, it says, Actual Before  
4 Warehouse.  
5 MS. ADELMAN: Adelman.  
6 MR. GROSSMAN: Yes, I know. I got it.  
7 THE WITNESS: Okay.  
8 MR. GROSSMAN: As I mentioned years ago, I have  
9 some friends, Dr. and Mrs. --  
10 MS. ADELMAN: Adelson?  
11 MR. GROSSMAN: -- Adelson, yes. So I --  
12 THE WITNESS: Okay. This --  
13 MR. GROSSMAN: -- I have to forgive myself for  
14 lapsing.  
15 THE WITNESS: I'm sorry.  
16 MR. GROSSMAN: Go ahead.  
17 THE WITNESS: This is a corollary to Chart 453,  
18 and I'm picking up the same actual counts that are on 453.  
19 These are -- where it says Actual and there are two numbers  
20 there, these are the same counts, the same actual counts  
21 that are being shown on Exhibit 453.  
22 MR. GROSSMAN: So Actual are the, are the Adelman  
23 counts?  
24 THE WITNESS: Right.  
25 MR. GROSSMAN: So that's what you referred to as

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1 Actual?  
2 THE WITNESS: Correct.  
3 MR. GROSSMAN: All right. Do you mind if I --  
4 THE WITNESS: Sure.  
5 MR. GROSSMAN: -- mark that? Under Actual --  
6 THE WITNESS: Sure.  
7 MR. GROSSMAN: -- I'll put Adelman.  
8 THE WITNESS: And 453 gives the actual dates those  
9 were taken.  
10 MR. GROSSMAN: Okay.  
11 THE WITNESS: Okay. And the same thing then after  
12 the warehouse, these are the eight counts they took after  
13 the warehouse, between April 15th and May 14th, 2013 --  
14 MR. GROSSMAN: Okay.  
15 THE WITNESS: -- and, again, the average of all  
16 those, which comes out to the 1494 number that we talked  
17 about. Then STA observations, that's the supplemental  
18 traffic observations; that's Mr. Guckert's numbers, and the  
19 1899 is a number we've talked about quite a bit.  
20 MR. GROSSMAN: Okay.  
21 THE WITNESS: Now, the final, the rightmost chart  
22 number there where it's called Limited Intersection 16,  
23 these are picking up the lanes that Mr. Sullivan was  
24 referring to, and we -- and I have highlighted those lanes  
25 in the, you know, just put the highlight on them, which

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1 would be so, that would be the northbound through lane and  
2 the northbound left-turn lane. So those are the ones coming  
3 from the south, from the Costco area up towards Intersection  
4 16. It would be -- and the lane A, B, C and so forth, those  
5 are the lanes that the Adelmans were using. The west entry  
6 going to the right is the one coming in from Valley View and  
7 making a right turn, and the southbound through lane is the  
8 one coming from by the Giant store and coming, again, down  
9 towards the Costco.  
10 So those are the four, four numbers he went  
11 through, which four he had counted up and used, and those  
12 are the four he used, and that comes out to the 824 number.  
13 That's the number he used, and he testified -- that's the  
14 number he testified to --  
15 MR. GROSSMAN: Yes.  
16 THE WITNESS: -- last week or whenever the time  
17 before that was. Now, and so, and I did the same kind of  
18 comparisons for each one of these, these time periods, using  
19 those four lanes and not all of them. So rather than 1037,  
20 there would only have been 437 cars actual observed; rather  
21 than 1291, there was 648, and so forth.  
22 So doing it this way, what you see is that the  
23 average down there of observations after the warehouse  
24 opened but without the gas station and without the full  
25 background was 889, which is already higher than the number

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1 he was assuming using the exhibit 10 numbers, which was full  
2 background and with the gas station. And if you --  
3 MR. GROSSMAN: Well, now I didn't follow that.  
4 THE WITNESS: Okay. All right.  
5 MR. GROSSMAN: I see the 889.25, right? So --  
6 THE WITNESS: Okay. That, that's the, the average  
7 of --  
8 MR. GROSSMAN: Who's the antecedent to the word he  
9 you used?  
10 THE WITNESS: Okay. Mr. Sullivan.  
11 MR. GROSSMAN: Okay.  
12 THE WITNESS: Okay.  
13 MR. GROSSMAN: So you're saying the 889 is what?  
14 THE WITNESS: Okay. 889 is the number that the  
15 Adelmans observed, taking the four lanes out of their  
16 observations. So of the 1494 total average cars that they  
17 saw at that intersection, 889.25 would be in the four lanes  
18 that he's talking about, that Mr. Sullivan is talking about.  
19 MR. GROSSMAN: Okay. All right. And you're  
20 saying that that is higher than what?  
21 THE WITNESS: That's already higher than the 824  
22 number that he was deriving from the exhibit 10, and Exhibit  
23 10 is the assumption that you would have all of the  
24 background up and running and coming into the mall and doing  
25 whatever it's going to do, and it would also have gas

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1 station traffic. So, at this point, you're already,  
2 whatever that is, 25, 85, 65 cars higher, so about eight or  
3 nine percent higher without being fully comparable. In  
4 other words, that 889 number's got, got room to grow.  
5 MR. GROSSMAN: I don't know what that means.  
6 THE WITNESS: Okay. These two numbers are the  
7 most -- both of these numbers were taken on weekdays. The  
8 824 was a weekday set of observations.  
9 MR. GOECKE: I'm sorry. Which two numbers?  
10 THE WITNESS: The 824, that was a set of weekday  
11 observations that Mr. Guckert made. The 889 is the number  
12 that the Adelmans observed on weekdays. So --  
13 MR. GOECKE: That's the actual count or what they  
14 projected?  
15 THE WITNESS: These are their actual observations  
16 after the warehouse opened but without the gas station and  
17 without, with more than half of the background traffic not  
18 being counted yet, not being built yet; so it can't be  
19 contributing anything yet. So already, with only partial  
20 background and without the gas station, the number at  
21 Intersection 16 on a weekday is already higher than what  
22 Mr. Sullivan was using, okay? Do you see that? That's just  
23 the difference between the 824 and the 889.  
24 MR. GROSSMAN: All right.  
25 THE WITNESS: Now, if you look at the weekend

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1 number -- and here's where I'm saying, okay, let's, let's  
2 look at whether the weekend is comparable to the way he was  
3 preparing it -- if you take those four, four lanes in the  
4 weekend, I thought it should be 1899; he said, no, no, no,  
5 that's the wrong number. But even if you take out the two  
6 lanes he's not counting, you're still at 1236 as opposed to  
7 824, and 1236 is 150 percent higher than 824. So the  
8 weekend number in April without the full background, without  
9 the gas station was already 150 percent higher than he was  
10 using as a projection with the full background and with the  
11 gas station.  
12 MR. GROSSMAN: Well, have you done any analysis to  
13 compare what he says is -- counting that figure, his figure  
14 of peak hour as, you know, round the clock, essentially,  
15 compared with your number for either the Adelman  
16 observations --  
17 THE WITNESS: Well, okay.  
18 MR. GROSSMAN: -- or not?  
19 THE WITNESS: Well, my point is, is this --  
20 MR. GROSSMAN: I know your point.  
21 THE WITNESS: Oh, okay.  
22 MR. GROSSMAN: I just want to get to my point, so  
23 my question.  
24 THE WITNESS: Well, okay, I'm not quite sure of  
25 your question. If the question is, and this is where I was

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1 saying, if the weekend number is higher and if it stays  
2 higher longer -- he was talking several times about the  
3 175th highest hour -- so if this number is considerably  
4 higher, if it's considerably higher for, and generally will  
5 stay around that level, for several hours a day on the  
6 weekend days, two hours a days, even just two hours a day on  
7 a weekend, two days a weekend --  
8 MR. GROSSMAN: Well, I don't think his -- his  
9 75th-hour thing was not, was not in terms of the traffic.  
10 MS. HARRIS: Right.  
11 MR. GOECKE: No.  
12 THE WITNESS: Yes, I think it -- it's partially in  
13 terms of the traffic, yes.  
14 MR. GOECKE: You're right.  
15 MR. GROSSMAN: I think the -- no. He said he  
16 counted the peak hour, not the 75th --  
17 THE WITNESS: Hundred and seventy-fifth.  
18 MR. GROSSMAN: Hundred and seventy -- he counted  
19 the peak hour in terms of traffic and then counted that and  
20 as the peak weekday hour --  
21 THE WITNESS: Okay.  
22 MR. GROSSMAN: -- he counted that as every hour  
23 during the entire period. And so he is saying, if I recall  
24 his testimony, he is saying that that is, gives you a much  
25 higher result than even if you look to the Saturday hours --

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1 THE WITNESS: Okay. And what we are looking at --  
2 MR. GROSSMAN: -- because they're not all peak.  
3 THE WITNESS: Okay. Okay. Well, they're not all  
4 peak, but --  
5 MR. GROSSMAN: No.  
6 THE WITNESS: -- their peaks are much higher than  
7 the weekday peaks.  
8 MR. GROSSMAN: Their peaks are higher, but --  
9 THE WITNESS: Okay.  
10 MR. GROSSMAN: -- but he said this, this more than  
11 compensates --  
12 THE WITNESS: Okay.  
13 MR. GROSSMAN: -- for that. So I was asking you  
14 if you --  
15 THE WITNESS: Well -- okay. And that's what I was  
16 trying to answer you, yeah.  
17 MR. GROSSMAN: -- if you had analyzed that.  
18 THE WITNESS: I am partially looking at it, and I  
19 think if you look, go back and look at it -- and I did go  
20 back and look at it -- the, there is a relationship to the  
21 175th hour and that does have something there, and Dr. Cole  
22 is going to look at that some more. What our point that we  
23 were talking about and that Dr. Cole will talk about some  
24 more and what I'm just trying to get -- at this point, I'm  
25 trying to get the numbers here in terms of where the peaks

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1 are and so forth -- that there's two different, there's  
2 different sorts of calculations. There's calculations over  
3 the entire yearly period or 24-hour or weekly period or  
4 something. There's also the question about the highest  
5 hours, and NO2, in particular, as we recall, we were talking  
6 about a peak hourly number.  
7 So -- and I think Dr. Cole plans on discussing  
8 this -- that to say that, okay, I used a number that is  
9 lower the peak but I used it for a whole long time, that's  
10 really not going to answer the question as to what is in  
11 fact the peak exposure we may have when we're looking at  
12 one-hour numbers. So -- and that's, that's the point he  
13 wants to get to. What I'm just trying to do is --  
14 MR. GROSSMAN: All right. So that -- I understand  
15 that --  
16 THE WITNESS: Okay.  
17 MR. GROSSMAN: -- and he can get to that. So I  
18 understand what you're saying, that there is some peak hour  
19 of concentration things, but I don't think --  
20 THE WITNESS: Well --  
21 MR. GROSSMAN: -- that the 175th hour he's  
22 referring to has anything to do directly with the --  
23 THE WITNESS: I think it does when --  
24 MR. GROSSMAN: -- with the --  
25 THE WITNESS: -- when you go back to --

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1 MR. GROSSMAN: -- with the traffic --  
2 THE WITNESS: It does. It all relates together,  
3 but --  
4 MR. GROSSMAN: Well, it relates because traffic,  
5 in part -- because his figures are ultimately based, to some  
6 extent, on traffic, but it doesn't relate the way you're  
7 saying it does --  
8 THE WITNESS: Well, I --  
9 MR. GROSSMAN: -- that's not my understanding.  
10 THE WITNESS: I have gone back and read it again,  
11 and I think it does relate, to a degree. But in any case,  
12 my point is to try to look at -- one of the questions is,  
13 where is the actual peak time at the mall, and there was a  
14 great deal of discussion. He said many times that he  
15 thought the weekend, the weekday peak was the peak. Now,  
16 what I am trying to do is say that in terms of where is the  
17 actual highest number and for how much of the time, it is  
18 not the weekday, and it is not the weekday by a considerable  
19 factor.  
20 Now, have I, can I possibly try to analyze on an  
21 hour-by hour, minute-by-minute? No. Nobody, including  
22 Mr. Guckert or Mr. Sullivan, has that much data that they  
23 can give you all day long every day, add up all the numbers,  
24 but what I am trying to get at here is to indicate that  
25 there is, using even his own way of analyzing these numbers,

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1 there is evidence that the weekend peak is much higher than  
2 the weekday peak, certainly at this particular spot, and  
3 that --  
4 MR. GROSSMAN: If even assuming that's true, I  
5 don't know that that compensates for what he suggests, that  
6 is, that the, that using the peak weekday hour for every  
7 hour more than makes up for that --  
8 THE WITNESS: Well, again, it depends on --  
9 MR. GROSSMAN: -- and if you haven't done the  
10 calculation --  
11 THE WITNESS: Okay. Every time I try to do a  
12 calculation --  
13 MR. GROSSMAN: I understand. I give you a hard  
14 time --  
15 THE WITNESS: But no. No, no one has done that --  
16 MR. GROSSMAN: -- when you have too many  
17 calculations, but --  
18 THE WITNESS: -- calculation, and I don't think he  
19 has done it, and I don't think he, I don't think he can do  
20 it either, but again, the point is that there is --  
21 MR. GROSSMAN: But is there any expert evidence  
22 that, that disputes his assertion?  
23 THE WITNESS: Yes. Dr. Cole is going to discuss  
24 the fact, his view that in terms of looking at peak-hour  
25 exposures for the NO2 kind of exposures, which are one-hour

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1 exposures, it is important to know where the actual peak is  
2 and that saying that you have a lower peak that you apply  
3 across a broad number of hours but is not the high peak --  
4 MR. GROSSMAN: I understand that point. You're  
5 going to, you're going to, you told me that Dr. Cole --  
6 THE WITNESS: Okay.  
7 MR. GROSSMAN: -- is going to testify on that  
8 point, and I think that that's a legitimate area for him to  
9 testify. I just, I just wondered about my broader question  
10 overall.  
11 THE WITNESS: I've done as much as I can.  
12 MR. GROSSMAN: Well, you've done more than anybody  
13 could reasonably expect out of any person. I'm not -- I'm  
14 just asking it in terms of, of what the evidence is, that's  
15 all.  
16 THE WITNESS: I mean, we don't, we don't have  
17 24-hour-a-day traffic figures. We don't have them on the  
18 weekend. We don't have them during the week. I couldn't  
19 possibly add up and tell you whether, if you had all of the  
20 weekday hours and added them together versus all of the  
21 weekend hours and so forth --  
22 MR. GROSSMAN: I'm not, I'm not --  
23 THE WITNESS: So I -- okay.  
24 MR. GROSSMAN: -- I'm not casting dispersions.  
25 You've done --

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1 THE WITNESS: I know. I know.  
2 MR. GROSSMAN: -- a phenomenal amount of work on  
3 this. I'm just trying to find out if the evidence exists.  
4 You're telling me it doesn't.  
5 THE WITNESS: No, it doesn't. It doesn't exist.  
6 Nobody has --  
7 MR. GROSSMAN: Okay.  
8 THE WITNESS: -- taken that much. So we got  
9 assumptions. Okay.  
10 MR. GROSSMAN: So that answers my question. The  
11 answer is no.  
12 THE WITNESS: One other quick point to make is  
13 that he did state at some point that Mr. Guckert gave him  
14 some other number where the average on the ring road was  
15 783. That was never explained where that number came from  
16 or how that was derived or what that was, but he did say  
17 that, assuming that's correct, that's about a 23 percent  
18 increase on that ring road traffic.  
19 He largely discounted that number, when he was  
20 testifying, by saying, well, if you look at the ring road  
21 values in my Stage III approach, that only makes about a  
22 two-microgram difference. I'll leave it to Dr. Cole to  
23 discuss why we think Stage III is not appropriate. We don't  
24 particularly agree with Stage II either, but if you look at  
25 that stage, the ring road values, the numbers that are --

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1 the existing numbers for the ring road are much higher. It  
2 was only about six or seven for Stage III, but for Stage II  
3 the numbers are, existing numbers that he's using is 42.74  
4 and 46.95. If you put a 23 percent increase on them, you're  
5 adding an additional 10 to 11 micrograms.  
6 MR. GROSSMAN: Well, you're saying Dr. Cole is  
7 going to address this, right?  
8 THE WITNESS: Well, he's, no, he's going to  
9 address why we don't think Stage II or Stage III is right.  
10 I'm just saying, even if you take his Stage II numbers, for  
11 instance --  
12 MR. GROSSMAN: Yes.  
13 THE WITNESS: -- if you take those and you  
14 increase them on the ring road by 23 percent, you're  
15 bringing up the value by 10 to 11 micrograms and you're  
16 coming up with final values in the range of 160 to 167.  
17 MR. GROSSMAN: But is that a correct thing to do?  
18 Even if your traffic is 23 percent higher, is that --  
19 THE WITNESS: Well, he --  
20 MR. GROSSMAN: Well, let me finish my question.  
21 THE WITNESS: Okay, sorry.  
22 MR. GROSSMAN: Even if your traffic is, assuming  
23 all that you've said and your traffic is 23 percent higher  
24 on the ring road, those figures are only partially derived  
25 from traffic, that is, the levels that he's talking about.

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1 THE WITNESS: Well, I'm doing exactly what he did  
2 with Stage III. He said, I can increase -- he said, here's  
3 the ring road; it would increase that number by 23 percent.  
4 I'm saying -- and he said, but that's no big deal because in  
5 Stage III the ring road traffic is fairly small. I'm saying  
6 we're going to do everything we can to show that Stage III  
7 is not appropriate, probably not even Stage II, but if you  
8 stick with Stage II, that has much higher ring road numbers.  
9 If you do the same, bring it up by 23 percent, which he did  
10 for Stage III, then you bring your numbers --  
11 MR. GROSSMAN: Yes. I don't know that it follows.  
12 I just don't. I'm not, I'm not --  
13 THE WITNESS: Well, I --  
14 MR. GROSSMAN: Well --  
15 THE WITNESS: He didn't say anything like, it only  
16 applies --  
17 MR. GROSSMAN: Can I finish?  
18 THE WITNESS: I'm sorry.  
19 MR. GROSSMAN: I don't recall that particular  
20 piece of testimony, but I'm not sure that that applies in  
21 the way you are applying it, whether the, you can just  
22 increase the Stage II numbers by 23 percent and say that  
23 there's a one-to-one correspondence there or that -- I don't  
24 know.  
25 THE WITNESS: Okay.

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1 MR. GROSSMAN: I mean, you can argue it, but I  
2 just don't know. I'd have to look back and see whether that  
3 makes sense.  
4 THE WITNESS: Okay. I think if you look back,  
5 he's saying, we've broken out each one of these pieces here,  
6 and if you remember, he had all his different little levels  
7 there --  
8 MR. GROSSMAN: I do.  
9 THE WITNESS: -- and he had, he has ring roads in  
10 Stage III; he has ring roads in Stage II. He talked about  
11 Stage III, and he increased it there. He didn't talk about  
12 Stage II, probably because the numbers were so much higher  
13 there. If you do exactly the same thing in Stage II that he  
14 did in Stage III, you'd bring your numbers up by 10 or 11  
15 micrograms, you'd bring your total up to 160 to 167, and the  
16 testimony we had before is that that puts us right in the  
17 range of where --  
18 MR. GOECKE: Objection. She has no foundation to  
19 talk about modeling.  
20 THE WITNESS: I'm not talking --  
21 MR. GROSSMAN: Well, hold on.  
22 MS. ROSENFELD. No. No.  
23 THE WITNESS: -- I'm talking about arithmetic.  
24 MR. GROSSMAN: Hold on. Hold on. Once again, I  
25 mean, this is argument, in effect, when you're talking

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1 about, about whether or not that's in the range of whatever  
2 you were about to say, right?  
3 THE WITNESS: Well, what I was going to say is  
4 that the EPA has talked in its rule that the goal of having  
5 no more than 190 on the main roadways is to ensure that away  
6 from the main roadways levels stay below --  
7 MR. GOECKE: She's getting into something else  
8 now.  
9 THE WITNESS: -- 85 to 95 parts per billion,  
10 which --  
11 MR. GROSSMAN: Right. I remember that whole  
12 discussion --  
13 THE WITNESS: -- corresponds -- right. Okay.  
14 MR. GROSSMAN: -- that we had, and I remember  
15 questioning you about whether or not you could really apply  
16 the EPA standards that way, whether you could say, as you  
17 were suggesting, that when they have a standard of 190, that  
18 means that's the standard next to the roadway and,  
19 therefore, if you're above 160, you're violating the  
20 standard if you're away from the roadway. That was your  
21 essential point. I remember it quite well, and --  
22 THE WITNESS: And Dr. Breyssse's point as well.  
23 MR. GROSSMAN: Well, my, my question, my question  
24 doesn't really go to that. My question that I raised with  
25 you is whether or not you could make that kind of linear

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1 transformation you were doing. I don't know whether it's  
2 correct or not. I just can't remember enough about his  
3 chart off the top of my head to assess that, but go ahead.  
4 THE WITNESS: Okay. Well, that was my only point.  
5 I wasn't --  
6 MR. GROSSMAN: Okay.  
7 THE WITNESS: -- arguing. I was just doing math.  
8 I was doing the same math he was doing. I was just applying  
9 it to his other stage.  
10 MR. GROSSMAN: Okay. No, but I meant, I think the  
11 point that was argument was whether or not that makes it  
12 below the EPA standards. That's --  
13 THE WITNESS: Well, my point was only to, was only  
14 to remind you of what the EPA standard, the rule says and  
15 what the goal is, and it's in the rule and it's in the  
16 documentation that we are submitting again.  
17 MR. GROSSMAN: Well, we'll look at all of that,  
18 believe me.  
19 THE WITNESS: In any case, you can -- if you do  
20 look between Exhibit 453, which had a 15 percent overall  
21 increase at --  
22 MR. GROSSMAN: Yes.  
23 THE WITNESS: -- Intersection 16, and Exhibit 590,  
24 it's actually that the 15 percent overall translates into a  
25 37 percent on the weekday increase for the Costco-related

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1 traffic. So, in fact, the Costco traffic is substantially  
2 higher. That overall increase is basically part of the  
3 roadway having no increase or maybe even being a little  
4 below projections and the rest of the Costco traffic being  
5 much higher than what was projected.  
6 Okay. So, again, basically the point being the  
7 actual numbers are already higher than what he has. They do  
8 not -- this actual number did not include everything that  
9 could go into his own number. Whether or not we get to his  
10 783, like I say, I don't know exactly how he got that  
11 number, but --  
12 MR. GROSSMAN: What you're referring to as actual  
13 is the Adelman numbers?  
14 THE WITNESS: Right, and that those --  
15 MR. GROSSMAN: Okay.  
16 THE WITNESS: -- those are showing numbers  
17 considerably higher than what he was originally assuming --  
18 MR. GROSSMAN: Okay.  
19 THE WITNESS: -- 50 percent higher on the weekend,  
20 and he was, he's been assuming a 23 percent increase. So  
21 there's considerable room to look at his numbers and say  
22 they are not nearly as conservative as he thinks they are  
23 and that we have not gone back any time, since we're  
24 starting to get the background in, since we're actually  
25 getting the warehouse operating and so forth, we've had no

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1 further updates on those, and if there has not been the same  
2 conservatism that he thinks he has, that undercuts a lot of  
3 the calculations that are there. And, again, then he's also  
4 not been quoting the idling, and so forth, that we've had  
5 evidence about.  
6 And with looking at idling, the last point I just  
7 wanted to make here -- and I'm almost done here --  
8 MR. GROSSMAN: I'm sorry? What was the last thing  
9 you said?  
10 THE WITNESS: I'm almost done.  
11 MR. GROSSMAN: Okay.  
12 THE WITNESS: He was assuming a certain amount of  
13 idling of trucks and so forth. The one thing we've heard  
14 here is that there is, he was not -- he did state that he  
15 was not assuming any idling anywhere away, except for right  
16 at the loading docks, and to the extent that we have had  
17 testimony that trucks in fact are idling -- in fact, it  
18 really doesn't make much difference whether they're Costco  
19 trucks or not. To the extent he's -- he's looking at  
20 overall background and what's happening at the mall and  
21 everything. To the extent that trucks are idling away from  
22 the loading docks, near people's homes, that will affect how  
23 much the modeling is going on, where the emissions are  
24 coming from, how much people are going to be exposed to  
25 them. To the extent that they are idling in addition to

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1 sitting at the dock, that there may be idling for hours or  
2 more away from the dock, that all affects that.  
3 And the final wrap-up point, we're concerned with  
4 these idling vehicles, not just because of the emission of  
5 the gases that are regulated by these air quality standards;  
6 it's also the fact that we talked about that they create the  
7 greenhouse gases in addition to the pollutants. The  
8 emissions from the trucks coming to the warehouse, sitting  
9 there -- the amount they drive in may be unavoidable; the  
10 amount that they, when they're just going up to the docks,  
11 and if they spent five or 10 minutes there, that may be  
12 unavoidable, but --  
13 MR. GROSSMAN: I don't quite understand.  
14 THE WITNESS: Okay.  
15 MR. GROSSMAN: What's the greenhouse gas --  
16 THE WITNESS: Okay.  
17 MR. GROSSMAN: -- point?  
18 THE WITNESS: Cars sitting in line, idling, create  
19 greenhouse gases. We've had testimony earlier in the  
20 proceeding about that. All of the cars sitting in queue at  
21 this station, idling, are creating greenhouse gases that do  
22 not now exist in this county and do not need to --  
23 MR. GROSSMAN: No, but I mean, as far as the  
24 trucks are concerned, how --  
25 THE WITNESS: No, I --

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1 MR. GROSSMAN: -- how does the --  
2 THE WITNESS: No.  
3 MR. GROSSMAN: -- how do the trucks that are  
4 existing now, idling and potentially --  
5 THE WITNESS: No.  
6 MR. GROSSMAN: -- creating greenhouse gases --  
7 THE WITNESS: No, but my -- okay. My --  
8 MR. GROSSMAN: -- how does that --  
9 THE WITNESS: Okay.  
10 MR. GROSSMAN: -- affect anything I have to --  
11 THE WITNESS: Actually, I was moving on from that,  
12 which is that it may be unavoidable that those trucks have  
13 to come to the warehouse and they may have to spend a few  
14 minutes idling and moving back and forth. To the extent  
15 that they're idling elsewhere, they're creating greenhouse  
16 gases, but in addition, the cars idling in queue at the  
17 station are creating these greenhouse gases. They're doing  
18 it unnecessarily. They are doing it in violation of every  
19 policy that this county has, that the state has, that the  
20 United States has.  
21 And I do want to just put in some information that  
22 we have sent around before about where these policies are,  
23 and the reason why this really ties in here is that  
24 Mr. Sullivan has repeatedly in his testimony told you over  
25 and over again that, hey, the station isn't going to be a

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1 problem because background levels are going down of these  
2 pollutants. It's probably true, to a large extent, maybe  
3 not as much as he says, maybe more, whatever. They're going  
4 down, but to the extent that they are going down -- and he  
5 conceded this -- it's because we have substantial  
6 governmental regulations that have come into effect over the  
7 last several years that have done, all kinds of policies  
8 being put into place to deliberately bring those down,  
9 through increasing gas fuelage, through controlling tailpipe  
10 emissions, and so forth.  
11 MR. GROSSMAN: Nobody's disputing that.  
12 THE WITNESS: Okay. And all of those things, and  
13 much more that we're trying to do, is trying to bring down  
14 greenhouse gases, because they create adverse effects. What  
15 we are -- and he's taking advantage of that by virtue of  
16 saying -- and the net result of all of those things also  
17 brings down these other air pollutants as well -- and he's  
18 taking advantage of that and saying, oh, see, the station is  
19 going to be okay because these levels are going down, and  
20 yet the corollary of that or what he's not, they're not  
21 ready to take responsibility for is that at the same time,  
22 they are unnecessarily creating greenhouse gases at this  
23 station from all of those idling cars that are sitting  
24 there. We don't have those cars idling in the county now.  
25 We don't have those greenhouse gas emissions now. When the

1 station gets built, if it ever got built, we would be  
 2 creating exactly what we are trying to get rid of and  
 3 exactly what, when we get rid of, he's going to benefit  
 4 from.  
 5 I would just like, at this point, to just put in a  
 6 couple of things that are happening in terms of, you had  
 7 mentioned something about whether this was some kind of  
 8 legislative concern or not. Earlier this year -- and I  
 9 think I mentioned some of these sometime ago when you said,  
 10 well, you don't know if they are going to pass or not yet.  
 11 So things have been passing. So --  
 12 MR. GROSSMAN: Right, but --  
 13 THE WITNESS: Okay. But I --  
 14 MR. GROSSMAN: -- the point, I think, that you're  
 15 referring to that I was making is that control of greenhouse  
 16 gases, in general, is a matter for legislative resolution,  
 17 not for me to be evaluating in terms of an individual  
 18 special exception.  
 19 THE WITNESS: But if in fact you are supposed to  
 20 evaluate non-inherent adverse effects --  
 21 MR. GROSSMAN: Right.  
 22 THE WITNESS: -- if this station is creating a  
 23 non-inherent effect, because these gases do not exist now,  
 24 they do not have to exist -- these cars are being gassed up  
 25 all over this county right this minute and not creating

1 those greenhouse gases because they are not idling for five,  
 2 10, 15, 20 minutes at a time. This station is essentially  
 3 unique. Nobody else has stations that create this level of  
 4 idling, certainly not in this county, and so these gases  
 5 don't exist now. If the station is approved, you're going  
 6 to be approving knowing that these gases are going to be  
 7 created that don't now exist and that absolutely create  
 8 adverse effects.  
 9 I can give you the EPA finding of adverse effects.  
 10 The county has just passed a whole series of bills dealing  
 11 with this and where Council member Berliner, and this is his  
 12 press release and so forth, specifically talking about the  
 13 reason why we're putting these bills in is because the  
 14 county needs to do something with the, quote, looming  
 15 disaster that climate change represents, and we may not be  
 16 able to single-handedly solve that looming disaster, but  
 17 that doesn't mean our county should not do what it can.  
 18 If you approve something that creates part of this  
 19 problem and, at the same time, you let them take credit for  
 20 everything that everybody else is doing to reduce the  
 21 problem --  
 22 MR. GROSSMAN: The taking-credit part is totally  
 23 irrelevant to the issue that you're talking about now. I  
 24 just think that you're confusing --  
 25 THE WITNESS: Well --

1 MR. GROSSMAN: -- you're conflating two things  
 2 that shouldn't be conflated.  
 3 THE WITNESS: All right. Then let me just leave  
 4 it -- let me leave them separately. I think, I think it's  
 5 not conflating because I think it is a fact that if all of  
 6 these efforts to reduce greenhouse gases were not going on,  
 7 those levels of background emissions would not be coming  
 8 down.  
 9 MR. GROSSMAN: Well, let me put it more bluntly.  
 10 I'm not going to conflate the two if I analyze it.  
 11 THE WITNESS: Okay. Then we don't --  
 12 MR. GROSSMAN: The only question I would have is  
 13 whether or not it is within my purview to look at the broad  
 14 question of greenhouse gases in a gas station when the  
 15 County Council has authorized a special exception which  
 16 allows large gas stations.  
 17 THE WITNESS: It allows large gas stations, but it  
 18 also has, tells you to look at non-inherent adverse effects.  
 19 There are other stations in this county that have as many  
 20 pumps as this station does but that do not have the volume  
 21 of cars sitting here, idling. It is the idling cars that is  
 22 the problem, and it is not inherent in a gas station, and it  
 23 is an adverse effect.  
 24 MR. GROSSMAN: I understand your point. I'll  
 25 think about it.

1 THE WITNESS: All right.  
 2 MR. GROSSMAN: My inclination is to say, as it was  
 3 initially when raised, that this is really a legislative  
 4 concern that I shouldn't be addressing as part of a special  
 5 exception application, but I understand your point. I'll  
 6 think about it.  
 7 THE WITNESS: Okay. And let me, let me just put  
 8 these in, and the last point I'd just say is that the  
 9 legislature doesn't need to ban every gas station in the  
 10 county because every gas station doesn't create this  
 11 problem. It has left the question of non-inherent adverse  
 12 effects to you because -- and this is a unique situation --  
 13 MR. GROSSMAN: No, but if they made a -- they can  
 14 make a legislative determination that they are not going to  
 15 allow gas stations that have idling cars --  
 16 THE WITNESS: Well --  
 17 MR. GROSSMAN: -- sitting in line or over some  
 18 number; they could make that legislative determination.  
 19 THE WITNESS: They could, but that is an awfully  
 20 fine-tuned legislative determination to have to make, as  
 21 opposed to, you are given the discretion to look at a  
 22 particular station and a particular concern.  
 23 MR. GROSSMAN: I understand. I understand.  
 24 THE WITNESS: All right. So let me just put these  
 25 in. If we could give -- actually, I think these had exhibit

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1 numbers. 546(a) is the press release from Council member  
2 Berliner.  
3 MR. GROSSMAN: Hold on a second. Let me -- so  
4 this, the one you just handed me --  
5 THE WITNESS: Right.  
6 MR. GROSSMAN: -- is 546(a)?  
7 THE WITNESS: Right. The first two pages are  
8 546(a).  
9 MR. GROSSMAN: And that's already in?  
10 THE WITNESS: Yeah. That was sent over and that  
11 was given that number as --  
12 MR. GROSSMAN: Right. And what's the last page?  
13 THE WITNESS: That's the, that's the actual  
14 statement that the bills have passed now. So --  
15 MR. GROSSMAN: And does that have a number?  
16 THE WITNESS: That would be 546(b).  
17 MR. GROSSMAN: Okay.  
18 MR. BRANN: I'm sorry. What was 546(b)?  
19 THE WITNESS: The page saying that these first set  
20 of nine bills had passed.  
21 MR. GROSSMAN: So this is just a Marty copy; it's  
22 -- we already have it in the file?  
23 THE WITNESS: Well, it was sent to you --  
24 MR. GROSSMAN: Well, if it's been --  
25 THE WITNESS: -- the whole thing was e-mailed to

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1 you, and it was given a number at that point. So --  
2 MR. GROSSMAN: Yes. If it's been exhibitized,  
3 then it should be in here.  
4 THE WITNESS: Yeah. I don't know that we've put  
5 it in the record. We haven't handed it out before this  
6 point.  
7 MR. GROSSMAN: Right.  
8 THE WITNESS: And then 546(c) was excerpts from  
9 the Intergovernmental Panel on Climate Change, which is  
10 referred to by Council member Berliner in the --  
11 MR. GROSSMAN: And that's 546(c), right?  
12 THE WITNESS: Yes.  
13 MR. GROSSMAN: Let me make sure that --  
14 MS. ROSENFELD: Karen, can you show me what you're  
15 looking at?  
16 THE WITNESS: I'm sorry.  
17 MS. ROSENFELD: This is --  
18 MR. GROSSMAN: Let me make sure that this is in  
19 the file.  
20 MS. ROSENFELD: Okay. This is 546(c)?  
21 THE WITNESS: Yes.  
22 MR. GOECKE: And I'm sorry. What -- this is  
23 546(a)?  
24 THE WITNESS: Let me see that. 546(a) should  
25 start out, Montgomery County Council Press Releases &

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1 Statements, has Release ID: 14-16; Release Date: 4/22.  
2 There is another one that I'm going to be handing out as  
3 well. Do you have that one?  
4 MS. ADELMAN: Karen, are you going to be using  
5 that -- I'm worried about the bulb in the projector.  
6 THE WITNESS: I think that can turn off, yeah. I  
7 don't think I need -- I don't need that anymore.  
8 MS. ROSENFELD: Karen --  
9 MS. ADELMAN: Oh, thank you.  
10 MR. GOECKE: Thank you.  
11 MR. GROSSMAN: All right.  
12 THE WITNESS: All right. And that is, these  
13 excerpts -- this is from the same report that Council member  
14 Berliner was referring to. So that was in an initial  
15 package of nine bills for the county, dealing with climate  
16 change as a whole.  
17 MR. GROSSMAN: Speaking of climate change,  
18 Mr. Brann, would you check that thermostat again, please?  
19 MR. BRANN: Be happy to.  
20 MR. GROSSMAN: You haven't let Ms. Harris near it,  
21 have you?  
22 MR. BRANN: No, I have not.  
23 MR. GOECKE: I think she might have a remote  
24 control.  
25 MS. HARRIS: I gave it to Abigail.

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1 THE WITNESS: And the other status of where things  
2 are at here is, the bill that probably had the most  
3 clear-cut relevance here was actually Bill 6-14, which was  
4 not -- which was introduced all at the same time, and I'm  
5 going to, in a moment, put in the initial introduction  
6 package.  
7 MR. GOECKE: And I'm sorry. This is 546(a) still,  
8 or are we on to something else now?  
9 THE WITNESS: No, we're moving on to something  
10 else. 546(a) was the press release about the nine bills and  
11 the concerns and climate change and the looming disaster and  
12 the county has to do what it can; 546(b) was the press  
13 release, saying those bills had passed; and 546(c) is some  
14 excerpts from that Intergovernmental Panel report that  
15 Council member Berliner was talking about.  
16 Then a different one -- and I don't think this has  
17 been given to you before because it really has only just  
18 come out -- but let me pass on to you the other piece of  
19 this, which is, as I say, it's -- 6-14 was the bill of most  
20 direct relevance. It talked about, among other things,  
21 reestablishing, or establishing and funding an Office of  
22 Sustainability, which was, among other things, would be  
23 tasked with the notion of implementing the county's climate  
24 protection plan. That is in the record already.  
25 MR. GROSSMAN: I don't know. You're saying

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1 there's a bill that has passed which you're going to hand  
2 me?  
3 THE WITNESS: Okay. Let me, I'm going to tell you  
4 the status of it at this point.  
5 MS. HARRIS: Mr. Grossman, excuse me. This does  
6 not seem remotely close to any kind of rebuttal.  
7 MR. GROSSMAN: Right, but let's hear what she's  
8 saying and --  
9 THE WITNESS: Okay.  
10 MR. GROSSMAN: -- first, what it is.  
11 THE WITNESS: Okay. So when I'm doing this, and  
12 this, what -- you can take official notice of the status of  
13 these issues, as well, if, and I'm -- it just seems like  
14 it's time to put this in here, and I'm done with my  
15 testimony at that point.  
16 MR. GROSSMAN: But what is it? Just identify what  
17 you're talking about.  
18 MR. GOECKE: Why are they relevant?  
19 THE WITNESS: Okay. All right. 6-14 is the bill  
20 that dealt with Office of Sustainability. We talked -- it  
21 was earlier put in the county's climate protection program.  
22 That included, among other things, specifically references  
23 to reducing idling and so forth; so that -- and reducing the  
24 greenhouse gases, very specifically, 80 percent by 2050, and  
25 all these kind of things, and committing the county to doing

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1 those kind of things.  
2 6-14 was not passed with this original set of  
3 bills because it had budget implications. As of probably  
4 this moment, if the county has -- if the Council has  
5 finished its business for today, the funding for that bill  
6 has been included in the current county budget and that's,  
7 this we can have -- this, this is the other press release  
8 you were just looking at.  
9 MS. ADELMAN: Is this the bill that went back?  
10 THE WITNESS: Okay. Yeah, and what I have here,  
11 what I have is a whole package. One is the bill. I mean,  
12 sorry, one is the press release that talks about funding,  
13 the second is Council member Berliner's original package  
14 description when he put the bills in, and the third is the  
15 bill itself.  
16 MS. ROSENFELD: And this is exhibit number what?  
17 MR. GROSSMAN: Now, has the bill itself --  
18 THE WITNESS: Okay.  
19 MR. GROSSMAN: -- that you're talking about, has  
20 that passed?  
21 THE WITNESS: And I'll tell you that in just a  
22 moment.  
23 MS. ADELMAN: Does that bill --  
24 MR. GROSSMAN: Why don't you just answer my  
25 question?

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1 THE WITNESS: Okay. Okay.  
2 MR. GROSSMAN: Has the bill passed?  
3 THE WITNESS: The bill has been funded. I asked  
4 Council member Berliner's staff member yesterday what the  
5 status of the bill was, and I have --  
6 MR. GOECKE: Objection. Hearsay.  
7 THE WITNESS: -- I have the e-mail back from him  
8 to me --  
9 MR. GOECKE: Still hearsay.  
10 MR. GROSSMAN: It is still hearsay, but --  
11 THE WITNESS: But --  
12 MR. GROSSMAN: -- first of all --  
13 THE WITNESS: Okay.  
14 MR. GROSSMAN: -- has the bill passed?  
15 THE WITNESS: Okay.  
16 MR. GROSSMAN: Forget about funding for a second.  
17 Has the bill passed?  
18 THE WITNESS: The bill has not passed. What he  
19 has said is, because of -- it went in as a part of a --  
20 MR. GROSSMAN: Well, let's deal with the objection  
21 first.  
22 THE WITNESS: Okay. All right.  
23 MR. GROSSMAN: All right. I'm going to hear what  
24 she says he said because I think that it sounds like she's  
25 got an e-mail from him. That would be a reliable source.

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1 So I would not preclude that, that aspect of hearsay here.  
2 So what does the e-mail say?  
3 THE WITNESS: All right. What the e-mail says is  
4 it all went in, well, it doesn't -- okay. I had some  
5 correspondence back and forth with him. All of these went  
6 in originally as a, as a package. Because this one had  
7 budget implications, it was pulled out and dealt with  
8 separately. It has now been funded and should be approved  
9 as of today. I asked him if the bill itself has passed. He  
10 said they didn't get time to pass the bill before this but,  
11 with the funding, the bill will pass. They expect that to  
12 -- it already has six co-sponsors -- they expect it to pass  
13 within the next two weeks and expect it to be signed.  
14 I am not asking you to assume this exists until  
15 that happens, but by the time we finish this process, I'm --  
16 the timetable he gave me was that he has every, every  
17 expectation that the bill, with its six co-sponsors, will  
18 pass and -- we put a lot of testimony in about what was  
19 happening in bills in the state legislature that had not  
20 yet --  
21 MS. HARRIS: Not us.  
22 THE WITNESS: -- that had barely been introduced.  
23 I think at the status, when you have a bill, that you've  
24 already got funding for the bill, it doesn't seem like it's  
25 going to be a big leap that it's going to pass. And I'm, as

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1 I say, I will come back and I will give you the evidence  
2 when the bill actually passes, but what I wanted to do was  
3 indicate that it exists, that it's been introduced, that it  
4 has six co-sponsors, that it's been funded, and that --  
5 MR. GROSSMAN: All right.  
6 THE WITNESS: -- the expectation is it will pass  
7 shortly --  
8 MR. GROSSMAN: Let --  
9 THE WITNESS: -- and that deals specifically with  
10 these greenhouse gases, reducing greenhouse gases, the  
11 county's commitment to doing those things, all of that.  
12 MR. GROSSMAN: All right. Let's mark this as an  
13 exhibit --  
14 THE WITNESS: Okay.  
15 MR. GROSSMAN: -- because you've now referenced  
16 it, and then we can debate its admissibility at the  
17 appropriate time if it's objected to. All right. Exhibit  
18 591 is Council Bill 6-14, and I'll say, not yet passed, and  
19 related materials.  
20 (Exhibit No. 591 was marked  
21 for identification.)  
22 THE WITNESS: Right.  
23 MR. GROSSMAN: All right.  
24 MS. ROSENFELD: And, Karen, what was the exhibit  
25 number that you just handed out?

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1 THE WITNESS: That was the, 546(a), the one we  
2 couldn't find initially.  
3 MR. GOECKE: Do you want your original back,  
4 Karen?  
5 THE WITNESS: You can just give it to Michele.  
6 MR. GROSSMAN: Now, just so we don't waste a lot  
7 of time here, what is the specific language in this bill --  
8 THE WITNESS: Okay.  
9 MR. GROSSMAN: -- that you say relates directly to  
10 what I have to --  
11 THE WITNESS: Okay.  
12 MR. GROSSMAN: -- make findings on?  
13 THE WITNESS: Okay. If you turn to page 11 --  
14 MR. GROSSMAN: Okay. Circle 11?  
15 THE WITNESS: Yeah, the circle 11 at the bottom  
16 there.  
17 MR. GROSSMAN: Right.  
18 MS. HARRIS: I'm sorry.  
19 MR. GOECKE: On which exhibit?  
20 MR. GROSSMAN: This is on Exhibit 591. That's the  
21 proposed bill.  
22 MS. ROSENFELD: I'm sorry. I'm -- can you show me  
23 the front page of 591?  
24 THE WITNESS: Okay. 591 is the one that's labeled  
25 14-148, Press Release: 5-15-2014.

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1 MS. ROSENFELD: That's 591?  
2 THE WITNESS: Right.  
3 MR. GOECKE: All right. We don't have that one.  
4 That was the one -- I think you gave it to me before, but  
5 then she took it back.  
6 THE WITNESS: Oh, yeah. Okay. So give that one  
7 back to them now. That --  
8 MS. ROSENFELD: This one is 591, right?  
9 MR. GOECKE: Yes.  
10 MS. ADELMAN: Well, what about in this package --  
11 is this 591?  
12 THE WITNESS: That's all 591. It's all being  
13 done --  
14 MS. ROSENFELD: And so what is this?  
15 THE WITNESS: Okay. That is something I'm going  
16 to do in a minute.  
17 MR. GOECKE: And I'm sorry. Was the e-mail marked  
18 as an exhibit?  
19 MS. ADELMAN: No.  
20 THE WITNESS: Not yet. That would be the next  
21 exhibit.  
22 MR. GOECKE: Okay.  
23 THE WITNESS: Okay. So Circle Page 11 at the  
24 bottom there talks about the Office of Sustainability must  
25 update the greenhouse gas inventory and then the Office must

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1 update the county climate protection plan by January 15th,  
2 2015. This update must outline a plan to reduce countywide  
3 greenhouse gas emissions to 80 percent below the amount of  
4 greenhouse gas submissions in the base year identified in  
5 the inventory by 21, January 1, 2050, including a plan to  
6 achieve a 10 percent reduction every five years through  
7 2050, and even that probably wouldn't get us there, but at  
8 the very least, that's it.  
9 The county's climate protection plan and  
10 recommendations, earlier recommendations, they're already in  
11 the record. I can find you the number, but we put those in  
12 at an earlier point. So the point is the county -- and  
13 getting to an 80 percent reduction in the current baseline  
14 is going to require even more reduction than that because,  
15 if you don't do anything, with the population increase and  
16 everything else, you would expect emissions to go up over  
17 time, not necessarily down. So an 80 percent reduction from  
18 our current level is a very ambitious goal. It's one,  
19 though, that, as they've talked about, is necessary to deal  
20 with the looming disaster of climate change and so forth.  
21 And in that climate protection plan and in the  
22 previous recommendations about the previous sustainability  
23 working group, it talked about idling as being one of the  
24 things that they needed to work on, and certainly, in any  
25 case, idling is clearly a source of greenhouse gas. Cars

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1 create carbon dioxide. They create it every time they idle.  
2 If you have idling cars, you have greenhouse gases, and if  
3 you have idling cars where you don't need to have idling  
4 cars, you have greenhouse gases that are going in the face  
5 of what the county is trying to do.  
6 MR. GROSSMAN: I understand your point. I mean,  
7 I --  
8 THE WITNESS: Okay. And if you want --  
9 MR. GROSSMAN: -- I mean, I'll think about it --  
10 THE WITNESS: Okay.  
11 MR. GROSSMAN: -- but I have great concerns that  
12 not using the special exception process to make a global  
13 decision that would ultimately bar all gas stations of  
14 this --  
15 THE WITNESS: Well, if every --  
16 MR. GROSSMAN: -- of this type, when I think  
17 that's more of a legislative type of decision, but I  
18 understand your point. You don't have to go over it again.  
19 THE WITNESS: Right, and our point being that this  
20 is a unique gas station situation. And I guess, just the  
21 last one, if you want to have this --  
22 MR. GROSSMAN: When you say unique gas station  
23 situation, I think unique in terms of siting, et cetera, but  
24 your, your argument here is that it's also unique because it  
25 has idling cars and that -- you are essentially arguing that

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1 I recommend that the Board of Appeal adopts a ruling that  
2 would bar all gas stations that have idling cars of some  
3 amount because that would increase greenhouse gases?  
4 THE WITNESS: What I would say is --  
5 MR. GROSSMAN: Isn't that what you're actually  
6 asking for?  
7 THE WITNESS: -- a non-inherent adverse effect.  
8 Every gas station will have a car that comes in and has to  
9 idle for a moment while it's waiting for a pump to clear --  
10 MR. GROSSMAN: Right. So what is the number of  
11 idling cars that is to be established by this ruling that  
12 you suggest in order to not increase greenhouse gases?  
13 THE WITNESS: Everything increases greenhouse  
14 gases to a degree.  
15 MR. GROSSMAN: Right. So where --  
16 THE WITNESS: As a non-inherent way of dealing  
17 with it -- I am looking at a gas station that is, by an  
18 order of magnitude, outside the realm of every other gas  
19 station in this county.  
20 MR. GROSSMAN: Where do I draw the line?  
21 MR. SILVERMAN: You don't have to draw the line.  
22 THE WITNESS: Ten cars all the time for eight  
23 hours a day. If you want that to be on, then fine.  
24 MR. GROSSMAN: Well, no. I mean --  
25 THE WITNESS: There's no one else in this county,

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1 I think, that will --  
2 MR. GROSSMAN: But why do I take your suggestion  
3 as to where to draw that line?  
4 THE WITNESS: But you have to do that with  
5 everything where you're looking at a non-inherent effect.  
6 There is -- I do not believe this is the first time where  
7 there has been an effect that, if it's really big, it's a  
8 problem and, if it's not really big, it's not a problem --  
9 MR. GROSSMAN: No. No.  
10 THE WITNESS: -- and that somebody's had to draw a  
11 line there, and it's --  
12 MR. GROSSMAN: No. This is more of a -- you're  
13 asking for more of a global kind of decision here when this  
14 process is designed to deal with individual site-specific  
15 situations.  
16 THE WITNESS: Well, that is precisely our point.  
17 This is a --  
18 MR. GROSSMAN: No, that's not precisely your  
19 point. Your --  
20 THE WITNESS: This is a gas station that's  
21 unlike --  
22 MR. GROSSMAN: No, but hold on a second, that's  
23 not precisely your point. Your point with regard to  
24 greenhouse gases is no matter where you put it in the  
25 county, if you have over some unspecified number of cars

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1 idling, you are violating county policy and therefore it is  
2 non-inherent and should be barred, but there isn't any  
3 evidence in the record that tells me where to draw that  
4 line.  
5 THE WITNESS: Well, I don't think you are, at this  
6 point, with this station, anywhere near any line that you  
7 would have to draw. If you were to talk about the  
8 difference between whether there's two cars idling or three  
9 cars idling, whether it was there for five minutes a day or  
10 10 minutes a day, it's one thing, but something where you  
11 have in the record the statement that, for instance, all day  
12 on Saturday, eight to 10 hours a day you will have 25 to 30  
13 cars idling and there is nothing like that anywhere else in  
14 this county and that those cars are already being served in  
15 this county, and that's our other point --  
16 MR. GROSSMAN: No, but you're, once again, you  
17 can't, these are different kinds of analyses, the need  
18 analysis and -- because they've separated them out in the  
19 code, it would be not a good analytical way to approach it,  
20 to try to munch them together and say, well, the need is  
21 being served elsewhere.  
22 The important point is you've made an argument --  
23 and I hear your argument -- that there's a county policy  
24 against creating greenhouse gases. The problem is whether  
25 or not it should apply to this sort of proceeding as opposed

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1 to some other kind of decision-making process, especially  
2 given what our evidence is on this, and not to mention the  
3 fact that we don't actually have the law being passed and,  
4 if it is, it's coming late in the day in this case. But  
5 aside from that, I mean, I think that that's the, that's the  
6 problem dealing with it, but all right. So you've made your  
7 point.  
8 THE WITNESS: Okay.  
9 MR. GROSSMAN: Now let's see what this exhibit is.  
10 This is the e-mail --  
11 THE WITNESS: All right. This is, this is just  
12 the e-mail from me to Josh Faust, and unfortunately, his  
13 name gets cut off there at the top, but that -- you can sort  
14 of see the bottom of the Montgomery County gov. This was  
15 from Josh Faust in the Council member Berliner's office.  
16 MR. GROSSMAN: All right. So let's see. Exhibit  
17 592 is e-mail of May 19, 2014, from Josh Faust -- how do you  
18 spell his last name?  
19 THE WITNESS: F-A-U-S-T.  
20 MR. GROSSMAN: Regarding the status of Bill 6-14.  
21 (Exhibit No. 592 was marked  
22 for identification.)  
23 THE WITNESS: Right. And just to clarify, what  
24 the previous release said was that they had taken a straw  
25 vote last week by nine to nothing to approve all these

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1 various measures, and towards the end, under Energy and  
2 Environment, is listed the \$207,000 for implementation of  
3 Bill 6-14 that creates this Office of Sustainability, and  
4 today is the final vote on the bills --  
5 MR. GROSSMAN: Okay. All right. Well, you've --  
6 THE WITNESS: -- on the budget, I should say.  
7 MR. GROSSMAN: -- you have made your point.  
8 THE WITNESS: Okay. And I'm done.  
9 MR. GROSSMAN: All right. I won't ask Ms. Duckett  
10 if she wants to cross-examine because she's not here. Any  
11 cross-examination from the Coalition?  
12 MR. SILVERMAN: No.  
13 MS. ADELMAN: No.  
14 MR. GROSSMAN: All right. Applicant,  
15 cross-examination?  
16 MR. GOECKE: Thank you. Yes, Mr. Grossman.  
17 SURREBUTTAL CROSS-EXAMINATION  
18 BY MR. GOECKE:  
19 Q Ms. Cordry, let's start by talking about your,  
20 your testimony regarding the delays that are likely to occur  
21 based on an increased level of traffic. When you, when you  
22 calculated how much delay cars would experience because of  
23 an increase in traffic, did you use an HCM methodology to  
24 calculate that?  
25 A Well, if you're talking about -- when I was saying

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1 that there was a two-and-a-half percent increase in cars and  
2 a seven-and-a-half percent increase in delay?  
3 Q For example, yes, that.  
4 A I was taking those from Mr. Guckert's HCM  
5 analyses.  
6 Q When you say taking that, what do you mean?  
7 A Well, I mean, I was taking the numbers here and I  
8 was comparing a number from a background number to a total  
9 number and I was taking the difference in cars there and I,  
10 if there's 47 cars' difference, and I divided that by the  
11 original number and that gave me so much percentage and then  
12 I took the difference between, say --  
13 Q Well, hang on. So you did your own calculations  
14 based on his numbers, if I'm hearing you correctly?  
15 A Well, did I take 19.9 and subtract 18.8 from that  
16 and get 1.1 and divide that by --  
17 Q All right. Stop it. So --  
18 A Yes.  
19 Q -- which document are we talking about now?  
20 A Well, for instance, 465.  
21 Q Bear with me. Okay.  
22 A And --  
23 Q And so let's go back to the example that you  
24 brought up a moment ago.  
25 A Okay.

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1 Q So there was an increase in traffic of how much?  
2 A Well, let me get -- all right. So, for instance,  
3 in 461, I mean, so 465 --  
4 Q Yes.  
5 A -- the original number for background at the  
6 Valley View entrance with University Boulevard, there was a  
7 total of 1940 cars --  
8 Q Okay. Wait. So this original number, now, where  
9 are you getting that from?  
10 A That number you get if you add up all the numbers  
11 across there that are labeled as Demand --  
12 Q Across where?  
13 A Across these pages here.  
14 Q Okay. So we're not on 465 anymore.  
15 A Okay. I think, I think this one was brought in  
16 two different --  
17 Q No, I'm just having trouble following your math,  
18 and so --  
19 A Okay. Okay. I understand. I understand. I  
20 thought I walked through this, but I'll do it again. It's  
21 no problem.  
22 Q Just kind of jumps around.  
23 A Okay. Okay. In fact, in this particular one,  
24 Exhibit 465 was just the front page and the rest of this --  
25 MR. GROSSMAN: 480.

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1 THE WITNESS: -- was given as 480. So this would  
2 actually be -- the first page of 480 would show Background  
3 A.M., for instance.  
4 BY MR. GOECKE:  
5 Q Background A.M., okay.  
6 A Okay.  
7 Q And show me where that is.  
8 A It's on the right-hand -- top left-hand side,  
9 about the one, two, three, four, five, six, seventh or so  
10 line down there. It says, Project Description.  
11 Q Okay.  
12 A It says, Background A.M.  
13 Q Thank you.  
14 A Okay. And then underneath that a couple of lines,  
15 it says, Demand/Vehicles Per Hour.  
16 Q Okay.  
17 A If you add those numbers across -- he doesn't do  
18 it, so you have to add them up -- but if you add them up,  
19 they come out to the 1940. It was the background Exhibit 7  
20 number.  
21 Q So you've added up all the numbers in the, in the  
22 different columns from EB, which I'm assuming is  
23 eastbound --  
24 A Right.  
25 Q -- westbound, northbound, and southbound?

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1 A Right. So the one, the one plus the 485, plus the  
2 161, and so forth, all the way across.  
3 Q Okay. And that ended up with what number?  
4 A 1940.  
5 Q Okay.  
6 A Which is what's on Exhibit 553(a), labeled there  
7 as Morning Peak Background.  
8 Q Okay.  
9 A And then if you go to Total A.M. and you add those  
10 numbers up, you get --  
11 Q Okay. And when you say go to Total A.M., where is  
12 that at?  
13 A A couple pages back.  
14 Q A couple pages back in Exhibit 480?  
15 A Uh-huh.  
16 Q Okay. So page 3 of Exhibit 480.  
17 A Okay.  
18 Q Okay.  
19 A And if you add those numbers across, you get 1997.  
20 So that's -- and then I took the difference between those  
21 two --  
22 Q Thirty-seven, or 57 cars?  
23 A Fifty-seven, right.  
24 Q Okay.  
25 A And I divided 57 by 1940.

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1 Q Okay.  
2 A And that gave me whatever number I said in my  
3 testimony. Let me go back and pull those, get back to that  
4 page. So that's about a three percent increase in trips.  
5 Q Okay. And then how did you calculate what delay  
6 that would cause for the traffic?  
7 A Well, on his first page, which is 465, he said the  
8 background of 18.8; he said the total with gas was 19.9. I  
9 subtracted 18.8 from 19.9. I got 1.1. I divided 1.1 by  
10 18.8 and got whatever I said, six percent.  
11 Q Okay. So you assumed a direct correlation then  
12 between the increase in traffic and the delay?  
13 A I'm just stating two numbers. He increased -- the  
14 only thing he changed here in terms of traffic numbers was  
15 the 57 trips, gas station trips. I'm saying, when you add  
16 the 57 gas station trips in, that increased the total number  
17 of trips by three percent and it increased his delay  
18 calculation here by six percent.  
19 Q Yes, but do you -- okay. So, but we agree that  
20 the numbers on Exhibit 465 were prepared by Mr. Guckert and  
21 his company by applying an HCM analysis, right?  
22 A That's what he's testified to, yes.  
23 Q Okay. But you did not apply an HCM analysis to  
24 get to your numbers?  
25 A I'm working with his numbers. I did not do an

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1 independent HCM analysis.  
2 Q Right. And have you ever done an HCM analysis  
3 before?  
4 A No.  
5 Q Okay. Have you ever done a CLV analysis before  
6 this case?  
7 A Before this case, no. Have I played with the CLV  
8 calculation since then? Yeah.  
9 Q Yes. So you have no training or experience in  
10 estimating how traffic would affect delays for cars involved  
11 in the traffic?  
12 A Training, no.  
13 Q Or experience?  
14 A Well, I know that when I sit in traffic, I see  
15 that if there isn't delay -- there isn't heavy capacity on  
16 the road, you can put more cars in and you can get by; if  
17 the road is running at capacity and you have even just  
18 somebody sitting on the side of the road, that you all slow  
19 down and you get terrible traffic jams and you go past and  
20 you say, what was that about? So --  
21 Q Right. But aside from your own personal  
22 experiences, in terms of the math that you applied in this  
23 case, as Mr. Grossman put it, the reverse engineering that  
24 you attempted to do --  
25 A Well --

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1 Q -- you had no experience or training that  
2 qualifies you to do that here?  
3 A Well, this is not reverse engineering. This is  
4 taking two sets of numbers, subtracting one from the other,  
5 and doing two sets of subtractions and two sets of  
6 comparisons. I have had training and experience in how to  
7 subtract 1940 from 1997 and take the percentage of that, and  
8 the same thing with 18.8 from 19.9. I don't think that  
9 takes any reverse engineering.  
10 MR. GROSSMAN: Yes, but in fairness, when I used  
11 that term, I wasn't applying it to this particular set of  
12 calculations. I was applying it --  
13 MR. GOECKE: No, no, I, I mean --  
14 MR. GROSSMAN: -- to another set of calculations  
15 where she arrived, she came back to try to figure out how  
16 certain numbers were arrived at, whereas here she's doing a  
17 mathematical calculation. Whether or not the mathematical  
18 calculation is justified under HCM analysis, that's another  
19 thing that you're getting to, but --  
20 MR. GOECKE: That's fair.  
21 MR. GROSSMAN: -- I don't want to unfairly apply  
22 that, that reverse engineering comment to this particular  
23 set of calculations.  
24 MR. GOECKE: Understood. Okay.  
25 BY MR. GOECKE:

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1 Q And I believe you mentioned before that the delay  
2 that would be caused by an increase in traffic depends on  
3 many factors, is that fair?  
4 A Well, yes, and that goes back to what we've talked  
5 about with that Federal Highway Administration analysis,  
6 that yes --  
7 Q It depends on --  
8 A -- the busier you are, the more a delaying factor  
9 will increase the delay.  
10 Q Well, that's perhaps one part of it, but the  
11 traffic signal timing may affect it as well?  
12 A If you're at a signalized intersection, sure. If  
13 you have a longer traffic signal, it will give one part of  
14 the intersection more time to go. It may cause more delays  
15 for another part of the intersection. So that's, that's a  
16 complex set of interactions there.  
17 Q And do you have any familiarity with the traffic  
18 signal timing changes at the signalized intersections around  
19 the mall?  
20 A Not all of them. I spent a fair amount of time  
21 looking at the timing on the intersection there at Valley  
22 View and University Boulevard.  
23 Q Okay. And what did your observations show you?  
24 A Well, what my observations showed me was that  
25 originally, that back in April it was, the one I was paying

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1 particular attention to at that point was about 20 seconds  
2 on the westbound lane coming on; that, when I looked at it  
3 later on, it had been increased to 30 seconds.  
4 Q When you say later on, later on that same day?  
5 A No, no, no, weeks, months later. I'm not sure  
6 exactly when the change went, but by the time I spent,  
7 started spending more time in the summertime analyzing it,  
8 at that point it was up in the range of more, 30 seconds or  
9 so.  
10 MR. GROSSMAN: Did you compare at the same time of  
11 day for each of those?  
12 THE WITNESS: I have looked at it many times.  
13 MR. GROSSMAN: No, I mean, those two comparisons,  
14 from 20 seconds to 30 seconds or whatever, were those two  
15 comparison times that same time of day --  
16 THE WITNESS: Okay. Well --  
17 MR. GROSSMAN: -- and a weekday versus a weekend?  
18 THE WITNESS: Yeah. I mean, I looked, and I also  
19 looked at it on Mr. Guckert's videos, and you know, they had  
20 given us videos of both a Friday and Saturday, and it  
21 appeared -- at the time, they appeared to be roughly the  
22 same. I mean, I think there's perhaps a slight amount of  
23 variation, perhaps 18 seconds, 19 seconds, 20 seconds, but  
24 it was in that range, any one of the ones that I looked at  
25 in April. And then when I looked at it, started looking at

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1 the summer, last summer and then until now, now it appears  
2 to be in the range of about 30 seconds on that left turn.  
3 MR. GROSSMAN: Yes, but I just want to make sure  
4 we're not comparing --  
5 THE WITNESS: At, at many various times.  
6 MR. GROSSMAN: -- oranges and apples. Was -- your  
7 first comparison was at 10:00 a.m. and the next one was at  
8 5:00 p.m. or --  
9 THE WITNESS: No.  
10 MR. GROSSMAN: -- you know, even a couple of  
11 seconds' difference might make a difference if it was rush  
12 hour or not rush how. So that's what I'm trying to --  
13 THE WITNESS: I mean, I looked at it at many  
14 different times, and I believe it's --  
15 MR. GROSSMAN: But I know, but I'm just trying to  
16 get down, pin down --  
17 THE WITNESS: Okay.  
18 MR. GROSSMAN: -- on these two numbers that you've  
19 given, where the timing, you said, increased from about 20  
20 seconds to about 30 seconds. Were those two observations  
21 made at the same time of day, and was it also a weekday  
22 versus a weekend?  
23 THE WITNESS: What I'm saying is, I have observed  
24 -- his tapes had several different hours on both Saturday  
25 and, Friday and Saturday --

1 MR. GROSSMAN: Right.

2 THE WITNESS: -- and I looked at the times. They  
3 all appeared to be roughly consistent at that point in time,  
4 and then since then I have looked -- I've been there  
5 mornings, evenings, weekends, weekdays. I mean, I go  
6 through there, around the mall, and it now appears to  
7 consistently be 30 seconds, and it appeared to be  
8 consistently 20 seconds, and perhaps that's the point you're  
9 trying to get at.

10 MR. GROSSMAN: All right. Well, it's not exactly  
11 the point. It may be angles towards it, but my precise  
12 point is that I know the traffic signal timing can change,  
13 depending on -- from 9:30 to 9:35 as it moves from the rush  
14 hour to the non-rush hour. So my question is, were these  
15 observations made at exactly the same time on the same day  
16 of the week? That's my point.

17 THE WITNESS: Okay.

18 MR. GROSSMAN: Just so we know what that means.

19 THE WITNESS: Right. I think I have looked, I  
20 think I have looked at, although I can certainly go back and  
21 look again, at a 1:00 p.m. on Saturday both before and, you  
22 know, April and now, and a 5:00 p.m. on Friday. I can go  
23 back and look again. I can't --

24 MR. GROSSMAN: No, I'm not --

25 THE WITNESS: -- I can't say that I have looked at

1 exactly the same minute, but I think I have, but I would  
2 have to look again, but --

3 MR. GROSSMAN: Yes, right. I'm not asking you to  
4 go back and look at them. I'm also not saying that, that  
5 it's necessarily going to make a difference if they change  
6 the timing into anything I have to evaluate, but I -- but  
7 just in response to that question, I don't know that I can  
8 reach any conclusions from it if they changed it, but I  
9 certainly can't reach any conclusions if I don't know that  
10 they're comparable times. That's all.

11 THE WITNESS: Well, okay.

12 BY MR. GOECKE:

13 Q And you testified that they were, they appeared to  
14 be roughly the same. So are you just sort of ballparking  
15 the duration of the signals, or did you actually time it?

16 A Well, I actually sat there and looked at the  
17 videotapes and looked at it. It said it was, you know,  
18 12:30.02, and I watched until it changed over and it'd be  
19 12:30.32, and then I'd watch, and then two minutes later it  
20 would do it again. I mean, I watched that several times on  
21 several of the videotapes, and that's to say, it might be 29  
22 seconds one time, 30 seconds one time, you know, but in a  
23 very consistent range over, you know, an extended period of  
24 time with the tapes, and then I looked again at some of the  
25 other tapes and saw again.

1 I mean, it was very, it was very noticeable to me  
2 because I was, had kind of watched enough of my own tapes  
3 and watched, you know, his March 2014 tapes. I looked at  
4 those some more too, and I'd gotten used to about how many  
5 cars would come through the intersection. And when I  
6 started watching the ones from, I guess it was September,  
7 actually it was probably September, yeah, of 2012, I was  
8 really sort of taken aback by how much shorter the -- or  
9 maybe it was April; by now I've gotten so confused as to  
10 what was on what tape -- but when I, when I was seeing the  
11 shorter time periods, I guess it was April of 2013, I was  
12 noticing that they were distinctly shorter. I was expecting  
13 to see, well, you have about one, two, three, four, five,  
14 six, so many cars, and all of a sudden it was stopping. I  
15 was going, I'm not used to that, because I'd gotten used to  
16 about how long it would take.

17 MR. GROSSMAN: Okay.

18 BY MR. GOECKE:

19 Q So you did observe then that the duration of the  
20 signal changed, even from signal to signal?

21 A No. I'm -- well, within a range of perhaps one  
22 second or two seconds but not 10 seconds.

23 Q Yes. And so you would agree that they also change  
24 from day to day?

25 A No, I didn't say that.

1 Q You're not aware of that?

2 A I have not -- you know, we only have a limited  
3 number of days we have there, and I mostly was watching on  
4 weekends, and they seem to be consistent. I don't -- have  
5 no particular awareness that it changes from day to day.

6 Q Okay. So you don't know whether the signals on  
7 the weekend are the same as the signals during the week?

8 A It may be different, but again, I would certainly  
9 assume that in terms of just looking at these charts -- and  
10 the main point I was trying to look at these charts for was  
11 why the traffic volume was going up between the numbers and  
12 the delay was supposedly going down. So I was primarily  
13 looking just at the Saturday to Saturday because that was  
14 where that effect was showing up. It didn't seem logical to  
15 me. I was trying to figure out why. If you say I shouldn't  
16 reverse engineer, I won't reverse engineer.

17 Q Could we go back to your PowerPoint presentation  
18 for a minute?

19 A Okay. I don't know. Did you open -- did you open  
20 it?

21 MR. BRANN: It's coming.

22 THE WITNESS: Yes.

23 MR. BRANN: Yeah. Here it comes.

24 THE WITNESS: Yep, there it goes. Okay.

25 BY MR. GOECKE:

1 Q And once it lights up, would you please go to the  
2 slide that's called It's a Parking Lot? It might be Slide  
3 13, I think. And so the quotations up at the top here, It's  
4 a Parking Lot, is that your quote, is that Mr. Guckert's  
5 quote?

6 A That's my recollection that that was kind of the  
7 gist of Mr. Guckert's quotes.

8 Q Right. And so you're --

9 A I believe he said that several times.

10 Q So you're sort of mocking that as an insufficient  
11 explanation for how traffic disperses in this parking lot?

12 A Well, or it's a parking lot and this is the way  
13 parking lots are: busy, distracted, confused, disorganized,  
14 crowded, this one perhaps more than others.

15 Q Okay. And yet you felt comfortable driving  
16 through the parking lot while videotaping your drive?

17 A No. I felt distinctly uncomfortable doing it, and  
18 other than this situation, I would never do it again, and I  
19 hope nobody reports me to the cops for doing distracted  
20 driving.

21 MR. GROSSMAN: I think Mr. Silverman is going to  
22 make a citizen's arrest.

23 MR. SILVERMAN: A citizen's arrest, right.

24 BY MR. GOECKE:

25 Q Okay. And I'm looking at my phone here to see.

1 So March 9th, 2014, do you remember what day of the week  
2 that was?

3 A That would have been either a Saturday or Sunday.  
4 I forget which day it was. It was a weekend day, in any  
5 case.

6 Q Okay. It was a Sunday.

7 A Okay.

8 MS. ADELMAN: Sunday, yes.

9 BY MR. GOECKE:

10 Q So this is 2:06 on Sunday, March 14. So this is a  
11 period when, I think you've argued, is one of the peak hours  
12 of the week for traffic at the warehouse?

13 A It's -- yeah. Sundays -- Saturday is probably a  
14 little higher, but Sundays are also very, very busy as well.

15 Q Yes. And so is this your speedometer right here,  
16 the zero that we see?

17 A Yeah. That was when I was sitting there, not  
18 moving at that point, because the car ahead of me couldn't  
19 move.

20 Q Okay. And would you press play, please?

21 A Oops, I'm sorry.

22 Q And so I notice, even right now, when it's really  
23 slow, you're still going six miles per hour, five with  
24 people right in front of you, six, seven, eight, nine miles  
25 per hour. Am I reading that correctly?

1 A Yeah. At this point, it cleared out a little bit  
2 for this little stretch right here, yeah.

3 Q And now you're up to 11 --

4 A Ten.

5 Q -- 10. So even at 2 o'clock on a Sunday  
6 afternoon, when it's at one of its most crowded times,  
7 you're still able to get about 10 miles per hour on the most  
8 crowded stretch?

9 A In spots, and then we come back down to, pretty  
10 much to a halt again while, again, this nice lady is walking  
11 up the roadway and the cars are there.

12 Q Yes. And is it your testimony that this  
13 experience that you videotaped here is atypical for driving  
14 in a regional mall?

15 A I would say so, certainly was atypical at this  
16 mall before the warehouse opened, and just to tell you, I  
17 drove around, even just over at Montgomery Mall, and I don't  
18 -- it was not this crowded. It did not have this amount of  
19 cross traffic and so forth. It was just -- it was not this  
20 difficult.

21 Q What was your average speed for this journey? Do  
22 you know?

23 A Probably, all told, four to five miles an hour, I  
24 would guess.

25 Q Yes. So if Mr. Sullivan modeled traffic at the

1 mall site at five miles per hour, isn't that consistent?  
2 Isn't that a very conservative estimate for all traffic at  
3 the mall for all times?

4 A Well, actually, he didn't say he modeled all of it  
5 for the mall at all times. He said he modeled all the ring  
6 road at, I think, 15 miles an hour, he said. And my  
7 recollection is -- now, he said in the most recent thing he  
8 was using five miles an hour. I distinctly remember him  
9 testifying earlier it was seven-and-a-half. So I don't know  
10 what he actually was using, but --

11 Q But you would agree that five miles per hour is an  
12 accurate representation of your experience, going through  
13 the mall at one of its most crowded times?

14 A For that particular part of it.

15 Q And, in fact, you've used this video to show how  
16 bad it can get at the mall?

17 A No. It can get worse than this. I'm just showing  
18 that this -- this was a random day that I had time to go up  
19 there and do it, because we were in the middle of the  
20 hearings and I just decided to update from what we'd done  
21 last summer. I mean, certainly, certainly the holidays were  
22 far worse than this. And just one point on that,  
23 Mr. Sullivan said he was being very conservative, using that  
24 number. If that's an accurate number, then that's not  
25 particularly a conservative number.

1 Q Well, you would agree that your experience at 2  
2 o'clock on a Sunday afternoon is slower than most times when  
3 you're going to be shopping at the mall?

4 A No. I'd say that was not at all particularly  
5 atypical if I'm going there during the weekend hours.

6 Q Right, but the weekend days only constitute two of  
7 the seven days in a week.

8 A I know, but most of us have to go shopping on the  
9 weekend because most of us work during the week.

10 Q So at 2 o'clock on a Monday, it's going to be less  
11 crowded, right?

12 A Well, I will go back to my reverse engineering of  
13 Yogi Berra: It doesn't really do you a lot of good to not  
14 be busy when nobody has the ability to get there.

15 Q But if we're talking about emissions and  
16 concentrations of emissions and Mr. Sullivan is applying the  
17 mall when it's most crowded, at its peak, then it's going to  
18 overstate the amount of emissions, because Monday, Tuesday,  
19 Wednesday, Thursday, and maybe even Friday the traffic level  
20 is going to be much lower at the mall at 2 o'clock in the  
21 afternoon.

22 A But only if you're talking about long-term  
23 emissions. If you're talking about peak-hour emissions,  
24 then no. And peak-hour emissions are what we're concerned  
25 about with NO2.

1 MR. GROSSMAN: You mean with NO2, one-hour.

2 THE WITNESS: That's what I mean, peak hour,  
3 one-hour. That's what I'm talking about.

4 BY MR. GOECKE:

5 Q I think so. Can you go back to the slide that  
6 showed you exiting near the Target, which is, let me out of  
7 here? Is that --

8 A Yeah.

9 Q -- is that your quote, or is that Mr. Guckert now?

10 A That's, no, that's my quote. That's my quote.

11 Q We all feel that way sometimes.

12 A Yes. I'm trying to inject a little levity into  
13 these proceedings.

14 Q And so where you are here in this get me out, let  
15 me out of here on Slide 16 is actually not where the cars  
16 will be immediately exiting from the Costco gas station but  
17 further north, as I point to Exhibit -- which is labeled as  
18 Truck Turn Exhibit 1. So your Slide 16 on the PowerPoint,  
19 you're actually exiting -- and I'm pointing to the northern  
20 part here -- near the Target?

21 A Yes, I exit up by the Target, that particular one.

22 Q Okay. So the backlog of cars that you're  
23 concerned about just north of where the gas station would go  
24 is actually further south, much further south from where you  
25 were exiting in this video?

1 A Right. I wasn't suggesting that those were the  
2 two same spots. I was just indicating that it's, even now,  
3 in a Saturday -- that, actually, I guess it was a Saturday,  
4 it looks like, in March -- up there where you don't have  
5 cross traffic, you only have the one lane of traffic, so you  
6 don't have cars trying to cross back and forth there, there  
7 can be lengthy backups there, just trying to get out of the  
8 parking lot.

9 Q You don't have cars going back and forth where?

10 A In other words, this drive aisle by the Target  
11 only has cars entering it from one side. It doesn't have  
12 cars entering it from both sides. As we saw, when we were  
13 looking at the --

14 Q And by one side, you mean from the south?

15 A It only comes up from the south, yes.

16 Q Okay.

17 A As we were looking at the east-west drive aisle  
18 here, it had cars coming from both sides, and that made it  
19 even more difficult to get in and slow and so forth. This  
20 only has cars coming into it from one direction, and yet it  
21 still took me --

22 MR. GROSSMAN: Isn't there an entry into that from  
23 the -- on the western side of that Target, there's an entry  
24 that goes in that same --

25 THE WITNESS: Yes. My point was that from the

1 north-south direction, it was only -- you only enter it from  
2 the south. The Target is there. You don't have any cars  
3 coming into it from the north. So it's only getting traffic  
4 coming in from one direction.

5 MR. GROSSMAN: Well, isn't there like an L-shape  
6 or maybe even a U-shape underneath that, right in front of  
7 that Target --

8 THE WITNESS: I'm not --

9 MR. GROSSMAN: -- which may -- it's covered up,  
10 but isn't that, cars can enter it from the west, and then  
11 it's under cover of, I guess, a garage, but --

12 THE WITNESS: I don't --

13 MS. ADELMAN: At the Target?

14 THE WITNESS: No, I don't, I don't think so. I'm  
15 not sure what you're referring to, but --

16 BY MR. GOECKE:

17 Q There's a western entrance here where the cars can  
18 enter, and as well as, the cars can come from the east as  
19 well.

20 A Well, they cannot because there is a -- doesn't  
21 that go all the way through? I think that --

22 MS. ADELMAN: No, does not.

23 THE WITNESS: No, it doesn't. Okay. That's  
24 right. It, yeah, it can come from the east. My point is --

25 BY MR. GOECKE:

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1 Q And it can come from the west.  
2 A They can come back and forth there. My point --  
3 Q So they can come from three directions, not one  
4 direction.  
5 MS. ADELMAN: No.  
6 THE WITNESS: Okay. My point, when I was saying  
7 one direction, was crossing the east-west drive aisle. This  
8 one, you're only crossing it from one side, from the south.  
9 This aisle, you're crossing it from both ways and -- you  
10 know, in other words, you got cars coming from four  
11 directions here, three directions here, here being the  
12 Target drive aisle. So --  
13 BY MR. GOECKE:  
14 Q And going back to Exhibit 482 that you testified  
15 about before, so you said there's -- you testified that when  
16 folks are exiting the gas queue, there's only three ways for  
17 them to leave, but there's actually six, isn't that right?  
18 A Well, what I said is that there are six lanes but,  
19 essentially, you go into three places: you go a north-south  
20 drive aisle on the east side, you go a north-south drive  
21 aisle on the west side, and all four of those other ones  
22 come up very close together in the east-west drive aisle.  
23 So you're, all four of those, two through five, you all end  
24 up getting dumped into the same aisle very close together.  
25 Q Well, but if, if Aisle 4 were crowded, somebody

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1 could go to Aisle 3 or 2 or Aisle 5 or 6 or 1. They have  
2 five other options when they're leaving, if one of the  
3 aisles happens to be congested.  
4 A My statement was about what happens once you get  
5 into the main drive aisles. That's what I was talking about  
6 there when I was talking about three main places to go.  
7 Q But so what? I mean, don't you agree that they  
8 have six options when they're exiting the queue?  
9 A And my point was that as soon as you exit and as  
10 soon as you go that 80 feet, you're getting dropped -- four  
11 of you are getting dropped into the same place and you're  
12 all interfering with each other once you get there. That  
13 was what I was saying.  
14 Q And you're just guessing about that 80 feet, or  
15 you actually measured that?  
16 A Well, I believe it's, the -- I think it's either  
17 eight or nine parking spaces here. One, two, three, four,  
18 five, six, seven, eight, and then this space here, so nine  
19 spaces, so 90 feet then. They're 10-foot spaces.  
20 Q Yes. And even then, when folks get to that aisle,  
21 they could continue straight; they could go north through  
22 the aisle, right?  
23 A They can.  
24 Q They could go east?  
25 A They --

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1 Q I'm sorry. They could go west or they could go  
2 east --  
3 A Right.  
4 Q -- they could go either direction?  
5 A Right.  
6 Q So they still, even at that point, they still have  
7 many options, depending on where the traffic might be, for  
8 them to get out of the, out of the mall parking lot?  
9 A Yes, and they're all -- everyone else is using  
10 those same options as well, yes.  
11 Q And you've talked about how chaotic it is at the  
12 mall parking lot, but wouldn't you agree that inside the  
13 Costco special exception area, it's actually very regimented  
14 and orderly?  
15 A Between the point where you come in through that  
16 one narrow intersection point there, that little bottleneck  
17 there, that next 140 feet or so, whatever that is, up to the  
18 pumps, relatively regimented. I will say that, again, that  
19 in the queuing area, as we've talked about quite a bit,  
20 people may line up nicely, they may not line up nicely.  
21 It's more regimented than being outside because you got the  
22 little barriers on either side.  
23 Q No, I think that's right. It's probably the most  
24 regimented area of the parking on the mall.  
25 A Of the entire parking lot area, yes. Within that,

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1 it's more regimented than anywhere else, but it's certainly  
2 not necessarily completely lined up. Once you get at the  
3 pumps, yes, you got eight nice pump lines and you'll  
4 presumably line up nicely at the, at the pumps.  
5 MR. GOECKE: Could we take a short break,  
6 Mr. Grossman?  
7 MR. GROSSMAN: Sure.  
8 (Whereupon, a brief recess was taken.)  
9 MR. GROSSMAN: Let's go back on the record here,  
10 and before you resume your cross-examination, I just wanted  
11 to mention something regarding this, the question of whether  
12 I should consider greenhouse gases. I'm going to point  
13 59-G-1.2.1, which is the standard for evaluation of the  
14 special exception, and it says: A special exception must  
15 not be granted without a finding -- without the findings  
16 required by this article. In making these findings, the  
17 Board of Appeals, Hearing Examiner, or District Council, as  
18 the case may be, must consider the inherent and non-inherent  
19 adverse effects of the use on nearby properties and the  
20 general neighborhood at the proposed location, irrespective  
21 of adverse effects the use might have if established  
22 elsewhere in the zone. That addresses nearby properties and  
23 the general neighborhood.  
24 59-G-1.21(a)(5) also talks about: Will not be  
25 detrimental to the use, peaceful enjoyment, economic value

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1 or development of surrounding properties or the general  
2 neighborhood at the subject site, irrespective of adverse  
3 effects the use might have if established elsewhere in the  
4 zone. And (6) is a similar thing about it with regard to  
5 noise, vibrations, fumes, et cetera, odors, dust,  
6 illumination, glare, or physical activity at the subject  
7 site, irrespective of any adverse effects the use might have  
8 if established elsewhere in the zone.  
9 I think the clear import of those sections is to  
10 have us address the nearby properties and the general  
11 neighborhood when evaluating a special exception, not  
12 something more global such as the overall impact of  
13 greenhouse gases. So --  
14 THE WITNESS: Climate change affects us all.  
15 MR. GROSSMAN: Well, it does --  
16 THE WITNESS: Bad weather --  
17 MR. GROSSMAN: -- in a broader way, in a broader  
18 way, but that's clearly not what the statute tells me to  
19 look at. So, anyway --  
20 THE WITNESS: Well, I --  
21 MR. GROSSMAN: -- just thought you ought to know  
22 that since --  
23 THE WITNESS: I would say that the findings of the  
24 EPA is that greenhouse gases affect all of us. It affects  
25 our weather. It affects our breathing. It affects every

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1 one of us.  
2 MR. GROSSMAN: That's not -- yes, of course, and  
3 because it's so global in its impact, according to the EPA  
4 or other agencies, it's less of what I am supposed to be  
5 addressing and more of a legislative issue. So, in any  
6 event, I just thought you ought to know that.  
7 THE WITNESS: Okay. I --  
8 MR. GROSSMAN: Okay.  
9 THE WITNESS: -- I would say that it's everybody's  
10 business.  
11 MR. GROSSMAN: Of course it is in a legislative  
12 way, but that just makes the point.  
13 THE WITNESS: No, it --  
14 MS. ADELMAN: Okay. All right.  
15 MS. ROSENFELD: Karen --  
16 MR. GROSSMAN: When it's everybody's business --  
17 THE WITNESS: Then it's nobody's business.  
18 MS. ADELMAN: Okay.  
19 MR. GROSSMAN: When it's everybody business, it's  
20 a legislative matter.  
21 MR. SILVERMAN: Mr. Grossman, can I just say, I've  
22 talked to many legislators on these subjects, and they all  
23 say, oh, it's up to Mr. Grossman.  
24 MR. GROSSMAN: And they all say what?  
25 THE WITNESS: Right.

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1 MR. SILVERMAN: It's up to, it's up to the Hearing  
2 Examiner --  
3 MR. GROSSMAN: Right.  
4 MR. SILVERMAN: -- he'll tell us what the truth  
5 is.  
6 THE WITNESS: Right. I mean, at this point --  
7 MR. GROSSMAN: Yes, but not with regard to  
8 greenhouse gases. That's a different thing.  
9 THE WITNESS: I don't understand how greenhouse  
10 gases are different than any other kind of gas that affects  
11 people in the neighborhood, and I don't understand why, if  
12 it's a problem, a global problem, it is not also a local  
13 problem --  
14 MR. GROSSMAN: There's no evidence in this case,  
15 other than the evidence regarding specific pollutants that  
16 have been testified to by the expert witnesses, that allow  
17 me to evaluate, in general, the impact of greenhouse gases  
18 on --  
19 THE WITNESS: Well --  
20 MR. GROSSMAN: -- on the environment, in general.  
21 That's not what this case is about.  
22 THE WITNESS: Well, we have put in other evidence  
23 there. So it's in the case that you can evaluate if you  
24 wish to.  
25 MR. GROSSMAN: No, not on, not in terms of an

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1 immediate neighborhood as opposed to the specific chemicals  
2 that have been discussed, specific pollutants, which is what  
3 I believe my duty is in this case. But the Council can pass  
4 whatever it wants, and the state and the federal government  
5 can pass whatever they want, but it seems to me that from  
6 what I just read you, my directions are very specific to the  
7 immediate, to the subject site, the properties nearby, and  
8 the general neighborhood. That's what it says in the code.  
9 That's what my standard is.  
10 THE WITNESS: Okay. And we will write to that  
11 standard. Thank you. Okay.  
12 MR. GROSSMAN: All right.  
13 MR. GOECKE: Thank you. Just one or two quick  
14 questions.  
15 BY MR. GOECKE:  
16 Q So, Ms. Cordry, I just wanted to revisit Exhibit  
17 482 again. And so now that we agree that there's actually  
18 six ways to exit the gas queue, using your numbers, which I  
19 think were 3.7 cars exiting the gas queue in a peak hour,  
20 which you then rounded up to four, and so that you would get  
21 one car leaving every 15 seconds --  
22 A Okay. That's -- okay. Go ahead. What's your  
23 question?  
24 Q So if there's one car every 15 seconds, if we then  
25 assume an equal distribution -- and I realize that that may

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1 or may not happen -- but if there was an equal distribution  
2 in terms of where the cars were exiting, we would, it would  
3 be one car through each of the six exits every 90 seconds.  
4 Do you agree with that?  
5 A That's one way to look at it.  
6 Q Right. So 15 seconds, 30 seconds, 45 seconds, 60  
7 seconds, 75 seconds, 90 seconds?  
8 A I understand what the calculation was you did,  
9 yes.  
10 Q Okay. And so you agree then that with an even  
11 distribution, it would be one car every one-and-a-half  
12 minutes per lane?  
13 A That's one way to look at it.  
14 Q Thank you.  
15 MR. GOECKE: No further questions.  
16 MR. GROSSMAN: Okay. Any redirect? No? Okay. I  
17 thank you very much.  
18 THE WITNESS: All right.  
19 MR. GROSSMAN: You're off the hook.  
20 THE WITNESS: All right.  
21 MR. GROSSMAN: All right. All right. So anybody  
22 have a plan for the next 10 minutes, or do you want to go,  
23 start going over objections, or did you want me to wait  
24 until you had an opportunity to look further at  
25 Ms. Rosenfeld's --

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1 MR. GOECKE: Ideally, we'd like to wait, just to  
2 give her analysis a bit more of --  
3 MR. GROSSMAN: Attention?  
4 MR. GOECKE: -- consideration, attention, and --  
5 MR. GROSSMAN: Okay. All right.  
6 MR. GOECKE: -- and we'll try to use that  
7 effectively so that, when we do talk about it, it'll be a  
8 much more expeditious conversation.  
9 MR. GROSSMAN: All right. And you all wanted me  
10 to wait on discussing conditions until after -- well, until  
11 you have oral argument?  
12 MS. ROSENFELD: Right, until after -- it just  
13 seems to me we'll have, we, even assuming we --  
14 MR. GROSSMAN: Don't forget to remind me, because  
15 I don't want to close the record --  
16 MS. CORDRY: Oh, no. No.  
17 MR. GROSSMAN: -- before we discuss them, all  
18 right, because I'll consider the oral argument part of the  
19 record here.  
20 MR. GOECKE: Yes, and we had one question about  
21 that. So the record will close after -- the briefs will be  
22 part of the record, oral argument will be part of the  
23 record, our discussion about the conditions will be part of  
24 the record, and I'm assuming that's when the record will  
25 close?

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1 MR. GROSSMAN: That's when the record will close.  
2 MR. GOECKE: Thank you.  
3 MR. GROSSMAN: Does that make sense to everybody?  
4 MS. ROSENFELD: It makes sense to me.  
5 MS. HARRIS: But is it also appropriate that at  
6 the end of the last day of hearings, but for those items  
7 just mentioned, there'll be no more admissions of evidence?  
8 MR. GROSSMAN: Oh, yes, that will be the closeout  
9 on evidence per se. It won't --  
10 MS. HARRIS: Right.  
11 MR. GROSSMAN: -- close out oral arguments, and it  
12 won't close out the briefs, and it won't close out the  
13 discussion on conditions.  
14 MS. HARRIS: Okay. Thank you.  
15 MR. GOECKE: Okay.  
16 MR. GROSSMAN: But we'll base that on whatever the  
17 evidence is that's in the record already.  
18 MR. GOECKE: Okay.  
19 MS. CORDRY: Will the Hearing Examiner be allowed  
20 to take official notice of county actions that occur after  
21 that point?  
22 MR. GROSSMAN: No. No, I'm serious. I mean, once  
23 we close the evidentiary record -- in fact, there is a  
24 specific division, and in terms of taking official notice, I  
25 have to give parties an opportunity to respond when I take

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1 official notice. So, I mean, there's got to be some point  
2 at which the parties have, no longer have an obligation to  
3 respond. Obviously, if the county were to act on a zoning  
4 matter while this is pending, the nature of the case law  
5 regarding legislative zoning actions is that it's effective,  
6 even on cases that are pending.  
7 So it could conceivably be something that I would  
8 have to, I don't want to say eat those words, but in a  
9 sense, I would have to go back and look at what specifically  
10 the legislative action is because it can and usually does  
11 pertain to a pending zoning case. There are questions --  
12 once an action is taken pursuant to a zoning decision and  
13 has, and something is vested, then there are other  
14 considerations, but while the case is still pending, it does  
15 affect what you do under the case law.  
16 All right. Anything else?  
17 MS. HARRIS: Could we --  
18 MR. GROSSMAN: Yes, ma'am.  
19 MS. HARRIS: Yes. Could we get a sense of how  
20 long Dr. Cole will testify, so -- for planning purposes?  
21 MS. ROSENFELD: I suspect he'll be the better part  
22 of Thursday. I would think that we would finish with him.  
23 MS. HARRIS: Finish?  
24 MS. CORDRY: Direct.  
25 MS. ROSENFELD: Direct.

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1 MS. HARRIS: Direct.  
2 MS. CORDRY: You're welcome to finish with cross  
3 on Thursday as well.  
4 MR. GROSSMAN: As opposed to finish him off, yes.  
5 Okay. So -- well, hopefully, he'll be even shorter than  
6 that. You know, I'm always a hopeful, optimistic guy.  
7 MS. ROSENFELD: Yes.  
8 MS. CORDRY: See, we did three witnesses today.  
9 MR. GROSSMAN: That's right. All right. Anything  
10 else that we should be handling? Mr. Silverman.  
11 MR. SILVERMAN: I don't know if you're disputing  
12 this, but the Port of Long Beach, I mean, it was brought up  
13 by the other side; so --  
14 MR. GROSSMAN: Oh, yes, yes. So, yes, you did  
15 bring that up; so let's hear it.  
16 MR. SILVERMAN: Yes.  
17 MR. GROSSMAN: We have a couple of minutes. Let's  
18 talk about the Port of Long Beach.  
19 MR. SILVERMAN: The only point I would -- I asked  
20 the question to Mr. Sullivan, don't you know that they're  
21 taking similar steps in Long Beach to reduce air pollution,  
22 and he didn't know that, and I was surprised. And you had  
23 said, well, you have to have a factual predicate, and so I  
24 have. And there are many, many reports. I found the  
25 shortest possible one that raises the issue.

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1 MR. GROSSMAN: All right. I mean, it's -- I'll  
2 let you mark it if you want to, but is it really going to  
3 affect anything I, I do here, what they're doing in the Port  
4 of Long Beach?  
5 MR. SILVERMAN: Well, I, I don't really think it  
6 should because it's such a different situation, but they  
7 make, they -- their argument is, which they make repeatedly,  
8 is, oh, well, if we're below 100 at the Port of Long Beach,  
9 we can't possibly be in violation here, which I think is not  
10 a true argument but that's the one they make. So --  
11 MR. GROSSMAN: Oh, well, actually, they have a  
12 chart that takes every NO2 monitor, as I said, didn't make  
13 it -- perhaps we should mark this as an exhibit now while we  
14 have it.  
15 MR. GOECKE: Yes.  
16 MR. GROSSMAN: This is Exhibit 593.  
17 MS. ADELMAN: Do you have multiple copies, Mike?  
18 MR. GOECKE: I do.  
19 MS. ROSENFELD: Which is which one?  
20 MR. GROSSMAN: It is --  
21 MR. GOECKE: NO2 chart.  
22 MR. GROSSMAN: -- NO2 One-Hour 98th Percentile  
23 Monitor Values Using the 411 Individual Monitoring Stations  
24 Across the United States During 2013.  
25 MS. ADELMAN: Thanks, Mike.

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1 MR. GOECKE: You're welcome.  
2 MR. GROSSMAN: 593.  
3 MR. SILVERMAN: Yes, I think Dr. Cole will discuss  
4 this too, but I mean, the point is about this, these numbers  
5 is that this particular chart is based on a monitoring  
6 system which is, which EPA says is not an accurate  
7 monitoring system, and they're replacing it with a whole new  
8 system --  
9 MR. GROSSMAN: Do you have an extra one?  
10 MR. GOECKE: No, we don't have an extra one, but  
11 this is Dr. Bunn's article that we e-mailed, as well as the  
12 hard copy of that.  
13 MR. GROSSMAN: Oh, yes, that might have actually  
14 already been marked, although I can't remember.  
15 MR. GOECKE: Oh, it has been? Okay.  
16 MS. ROSENFELD: I don't think so.  
17 MR. GROSSMAN: I don't remember. Hold on one  
18 second. I'm sorry, Mr. Silverman, interrupt you. Hold on  
19 one second. Maybe you're right. Maybe that wasn't marked  
20 yet. Okay.  
21 MS. ROSENFELD: I don't believe it is,  
22 Mr. Grossman.  
23 MR. GROSSMAN: Yes. Okay. Exhibit, so 593 -- let  
24 me finish writing this down, and I'll get back to you in a  
25 second, okay; I'm sorry, Mr. Silverman -- 98th Percentile

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1 Monitor Values Using the 411 Individual Monitoring Stations  
2 Across U.S. in 2013. And then --  
3 (Exhibit No. 593 was marked  
4 for identification.)  
5 MR. GOECKE: Would you like another copy of this,  
6 or are you all set?  
7 MR. GROSSMAN: Yes, that would be great --  
8 MR. GOECKE: Okay.  
9 MR. GROSSMAN: -- since I just marked that one.  
10 MR. GOECKE: Sure.  
11 MS. ADELMAN: Did you send out his résumé also,  
12 Mike, or was it --  
13 MR. GOECKE: I have it. I can do that. I was  
14 going to wait until we resolve -- why don't I just pass this  
15 out.  
16 MS. ROSENFELD: Well, maybe we should just --  
17 MS. ADELMAN: Yes, maybe we can wait then.  
18 MS. ROSENFELD: Oh, okay. No.  
19 MR. GROSSMAN: All right. So 594 is 2009 article  
20 -- see, you guys have made me write too much. I just ran  
21 out of ink on my pen. I got to take my spare here, my  
22 trusted government-issued pen. Okay, 2009 article by  
23 Hesterberg, Bunn, et cetera --  
24 MS. ADELMAN: Thank you.  
25 MR. GROSSMAN: -- reviewing human data on

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1 short-term NO2 exposures, and then it says, evidence for NO2  
2 no-effect levels. All right.  
3 (Exhibit No. 594 was marked  
4 for identification.)  
5 MS. ROSENFELD: Don't put your pen away.  
6 MR. GOECKE: And I've also handed out Dr. Bunn's  
7 CV and professional biography, and these were also e-mailed  
8 to you.  
9 MR. GROSSMAN: Yes, I saw that.  
10 MR. GOECKE: Okay.  
11 MR. GROSSMAN: All right. So we'll keep that  
12 as --  
13 MS. ROSENFELD: Should we mark those now, or  
14 should we wait and decide, see if he's going to be called as  
15 a witness first?  
16 MR. GOECKE: We can mark them, get it out of the  
17 way, and then --  
18 MR. GROSSMAN: Why don't we wait until we see if  
19 he's going to be called as a witness --  
20 MR. GOECKE: Okay.  
21 MS. ADELMAN: Okay.  
22 MR. GROSSMAN: -- because there are other authors  
23 on that article too.  
24 MR. GOECKE: Okay.  
25 MR. GROSSMAN: Okay. Now, Mr. Silverman --

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1 MR. SILVERMAN: Yes.  
2 MR. GROSSMAN: -- getting back to you, so --  
3 MR. SILVERMAN: Yes, I just, just, this, these --  
4 the whole country is in attainment/unclassifiable, and I  
5 think we introduced evidence of that last time. What it  
6 suggests is that the existing monitoring system, which is  
7 not, not finding violations anywhere in the United States,  
8 is now in question and the EPA is revising it. It's going  
9 to take a couple of years. We do have lots of evidence that  
10 nitrogen dioxide is actually causing health problems  
11 throughout this country and around the world.  
12 MR. GROSSMAN: Well, and that's not the question  
13 right now.  
14 MR. SILVERMAN: No.  
15 MR. GROSSMAN: The question is, is this Long Beach  
16 article something that you feel needs to be in the record,  
17 because the witness is no longer on the stand?  
18 MR. SILVERMAN: Right. Well, if you take my word  
19 for it that Long Beach is --  
20 MR. GROSSMAN: Well, it's not a question of taking  
21 your word for it. It's the --  
22 MR. SILVERMAN: Right.  
23 MR. GROSSMAN: -- if you think that it's an  
24 evidentiary matter --  
25 MR. SILVERMAN: Yes.

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1 MR. GROSSMAN: -- I mean, you can dispute that,  
2 then you can have it marked as an exhibit.  
3 MR. SILVERMAN: I'd like to mark it as an exhibit.  
4 MR. GROSSMAN: Okay.  
5 MR. SILVERMAN: Yes. Like I said, I was caught by  
6 surprise by when --  
7 MR. GROSSMAN: That'll be Exhibit 595 --  
8 MR. SILVERMAN: -- Mr. Sullivan didn't know about  
9 it.  
10 MR. GROSSMAN: -- and this is, article about air  
11 quality at the Port of Long Beach --  
12 MR. SILVERMAN: Right.  
13 MR. GROSSMAN: -- and that's Exhibit 595. All  
14 right.  
15 (Exhibit No. 595 was marked  
16 for identification.)  
17 MS. CORDRY: And as long as we're marking --  
18 MR. GROSSMAN: Well --  
19 MS. CORDRY: -- these are the ones that we had  
20 talked -- did I give you copies of these ones?  
21 MR. GROSSMAN: I don't know. I can't see that  
22 far.  
23 MS. CORDRY: Oh, I'm sorry.  
24 MR. GROSSMAN: But --  
25 MS. CORDRY: These are the ones that we were

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1 talking about with Dr. Jison, but then we were saying that  
2 perhaps we can just put these in and not have Dr. Jison.  
3 So --  
4 MR. GROSSMAN: Right. Why don't we -- have these  
5 been --  
6 MS. HARRIS: But I think, similar to the CV, maybe  
7 we should wait on that discussion as well.  
8 MS. CORDRY: Well, you put his articles in.  
9 MS. ROSENFELD: Well, since we put Dr. Bunn's  
10 article in --  
11 MR. GROSSMAN: Yes, he put the articles in, but --  
12 MS. HARRIS: Oh, okay. I'm sorry.  
13 MR. GROSSMAN: -- but have these been e-mailed to  
14 me as well?  
15 MS. CORDRY: Yes. They were sent on April 25th.  
16 MR. GROSSMAN: But they weren't included in the --  
17 why don't we do this, because I'm on a little deadline here  
18 if I want to get to my cardiac rehab. So why don't you give  
19 them to Sarah --  
20 MS. CORDRY: Okay.  
21 MR. GROSSMAN: -- as hard copies, and then she can  
22 mark them at the end of these.  
23 MS. CORDRY: All right. That's fine.  
24 MR. GROSSMAN: All right.  
25 MS. CORDRY: There are going to be five of them.

1 MR. GROSSMAN: And the other side has copies  
2 already?  
3 MS. CORDRY: Yes.  
4 MR. GROSSMAN: Okay.  
5 MS. CORDRY: Do you want them as an exhibit  
6 number, (a) through (e), or do you want them separate?  
7 MR. GROSSMAN: Well, I'll leave that to you,  
8 depending on what they -- it looks to me like they might be  
9 separately marked, especially if they have subparts to them.  
10 All right. Anything further?  
11 (No audible response.)  
12 MR. GROSSMAN: Then we are adjourned until  
13 Thursday.  
14 MR. GOECKE: Thank you.  
15 MS. ADELMAN: So we're off the record?  
16 MR. GROSSMAN: We're off the record now.  
17 (Whereupon, the hearing was adjourned.)  
18  
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20  
21  
22  
23  
24  
25

C E R T I F I C A T E

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

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

By:

Wendy Campos, Transcriber

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