

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
March 11, 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

For the Applicant:

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C O N T E N T S

Rebuttal Witnesses:	Direct	Cross	Redirect	Recross
Wes Guckert				
By Ms. Harris	32			
By Ms. Rosenfeld		144		
By Ms. Cordry		166		

E X H I B I T S

Exhibit No.		Marked/Received
479(b)	Three high-resolution disks of Exhibit 479(a)	104
480	Background and data supporting Wes Guckert's Exhibit 465	47
481	Special exception area map showing yellow highlighted access to the ring road	83
482	Combination of Exhibits 456(e) and 481	107
483	Karen Cordry's documents for cross-examination of Wes Guckert	165
483(a)	Disk containing Karen Cordry's documents for cross-examination of Wes Guckert	165
484	Pages from David Sullivan's August 2013 report	183

P R O C E E D I N G S

1 MR. GROSSMAN: This is the 28th day of the public
2 hearing in the matter of Costco Wholesale Corporation, Board
3 of Appeals No. S-2863, OZAH No. 13-12, a petition for a
4 special exception pursuant to Zoning Ordinance Section
5 59-G-2.06 to allow petitioner to construct and operate an
6 automobile filling station which would include 16 pumps.
7 The subject site is located at 11160 Veirs Mill Road in
8 Silver Spring, Maryland. That's Lot N, 631 Wheaton Plaza,
9 Parcel 10, also known as Westfield Wheaton Mall, and is
10 zoned C-2, general commercial.

11 The hearing was begun on April 26, 2013, and
12 resumed many times thereafter, the last date being February
13 25. The hearing scheduled for March 3 was canceled in
14 response to the alternate relief sought in Kensington
15 Heights Civic Association's motion to strike the Sullivan
16 rebuttal report and then weather closed the government, in
17 any event, on that date. The hearing was noticed to resume
18 today. The next session will be on April 1, 2014, here in
19 the second floor hearing room of the Council Office Building
20 at 9:30 a.m.

21 This hearing is conducted on behalf of the Board
22 of Appeals. My name is Martin Grossman. I'm the Hearing
23 Examiner, which means I will take evidence and write a
24 report and recommendation to the Board of Appeals which will
25

1 make the decision in this case.
2 All right. Will the parties identify themselves
3 for the record, please?
4 MR. BRANN: Erich Brann here for Costco.
5 MR. GROSSMAN: Okay.
6 MS. HARRIS: Good morning. Pat Harris on behalf
7 of Costco.
8 MR. GOECKE: Good morning. Mike Goecke for
9 Costco.
10 MR. GROSSMAN: Mr. Goecke.
11 MS. CORDRY: Karen Cordry from Kensington Heights.
12 MS. ROSENFELD: Michele Rosenfeld for Kensington
13 Heights.
14 MR. GROSSMAN: Ladies.
15 MS. ADELMAN: Good morning, Mr. Grossman. Abigail
16 Adelman for the Coalition.
17 MR. GROSSMAN: Mrs. Adelman.
18 MR. ADELMAN: Good morning, Mr. Grossman.
19 Dr. Mark Adelman for the Coalition.
20 MR. GROSSMAN: Dr. Adelman.
21 MR. SILVERMAN: Larry Silverman for the Coalition.
22 Good morning, sir.
23 MS. DUCKETT: Eleanor Duckett, Kensington View
24 Civic Association.
25 MR. GROSSMAN: All right.

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1 MS. DIDONE: Sylvia Didone, Kensington View.
2 MR. GROSSMAN: All right.
3 MS. SAVAGE: Donna Savage, Kensington Heights.
4 MR. GROSSMAN: Okay. And I think that exhausts
5 the audience today. So let's turn to some preliminary
6 matters. Since our last session, there have been some
7 filings: Exhibits 470 -- thank you, Sarah -- Exhibit 470
8 through, it goes beyond what I had listed because I had to
9 leave earlier yesterday, through 479. 470 is an e-mail from
10 Ms. Rosenfeld, February 27, submitting Kensington Heights'
11 corrected motion to strike the Sullivan rebuttal testimony,
12 both in a redline version, that's sub (a), and in the clean
13 version, sub (b). 471 was the e-mail from Mr. Goecke,
14 submitting Costco's response to that motion to strike, and
15 sub (a) was the response itself; 472, an e-mail from me to
16 the parties regarding the motion to strike and the response
17 and also canceling the hearing scheduled for March 3. 473
18 was a memo from Mr. Goecke, submitting a disk with data used
19 by Sullivan Environmental in preparing its rebuttal report,
20 and 473(a) was the disk. 474 was an order denying the
21 motion of Kensington Heights Civic Association to strike the
22 Sullivan rebuttal report and granting the motions request to
23 postpone the Sullivan rebuttal testimony for at least 10
24 days and to allow surrebuttal. 475 was an e-mail, dated
25 March 5, 2014, from Ms. Duckett, submitting conditions

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1 requested if approval is granted, and sub (a) are the
2 conditions requested by Kensington View Civic Association;
3 476, e-mails, dated March 6 and March 7, between the parties
4 regarding scheduling and witnesses on March 11; 477, an
5 e-mail from Ms. Cordry on March 7 with a link to Dropbox
6 documents that may be used to cross-examine Mr. Guckert; and
7 478, e-mails between the parties regarding the video
8 evidence; and 479, a memo from Ms. Harris, submitting the
9 disk with the Valley View traffic observations of
10 Mr. Guckert, and (a), sub (a) is the disk itself.
11 All right. Let's turn to other preliminary
12 matters. The witness scheduled for today is Mr. Guckert.
13 Originally there was discussion of having Mr. Sullivan but
14 that's been postponed at the request of the applicant. And
15 the witness scheduled for April 1 will be the rebuttal from
16 Mr. Sullivan, both direct and cross-examination, and any
17 surrebuttal to be called by the opposition. There also may
18 be cross-examination of Mr. Guckert regarding the Valley
19 View movie observations.
20 All right. Then party submissions of agreed-upon
21 and unagreed conditions and objections, I've allowed that to
22 be postponed due to the delays, weather and otherwise, and
23 -- but what I'd like, to have them filed by March 17 since
24 I'm going to be leaving town. I'd like a few days to review
25 them, and then we'll discuss them at the April 1,

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1 potentially, depending on the timing, we potentially will
2 discuss them at the April 1, 2014, hearing. So I would like
3 those objections and the agreed-upon and unagreed-upon
4 conditions to be filed by March 17.
5 MS. ROSENFELD: And, Mr. Grossman, would you
6 anticipate taking that up as a preliminary matter or, if
7 time allows, after the witnesses?
8 MR. GROSSMAN: If time allows, afterwards.
9 MS. ROSENFELD: Thank you.
10 MR. GROSSMAN: I'd ask the parties to discuss
11 another date since we likely will need one, although I have
12 been importuned by people who were involved in the Suburban
13 Hospital case, begging me not to allow this to break their
14 record, as it has only stood for a couple of years. So
15 passing that on, we don't want to, we don't want to break
16 their record.
17 MS. ADELMAN: Why? Why not?
18 MS. ROSENFELD: And what is that record?
19 MS. ADELMAN: Why not?
20 MR. ADELMAN: At least do we get a prize?
21 MR. GROSSMAN: Their record is 34 hearing days,
22 and they really feel strongly that they should be allowed to
23 keep it for a little bit longer, and I personally don't want
24 to break any records. I'm more than happy to have this
25 terminate when it -- in its natural course of events and the

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1 evidence is exhausted, including the parties and the Hearing
2 Examiner.
3 MR. ADELMAN: And that deadline for the conditions
4 was the 17th, sir?
5 MR. GROSSMAN: Yes.
6 MR. ADELMAN: Thank you.
7 MS. DUCKETT: Mr. Grossman, I have a question.
8 MR. GROSSMAN: Yes, Ms. Duckett.
9 MS. DUCKETT: On the conditions that we submitted,
10 will that be included in whatever they're discussing back
11 and forth?
12 MR. GROSSMAN: When you say included, yes, that'll
13 be open --
14 MS. DUCKETT: Okay.
15 MR. GROSSMAN: -- we can discuss them all at
16 whatever session it is that we discuss them. If there's
17 time left over on April 1, we'll do it, or at the next
18 session --
19 MS. DUCKETT: Okay.
20 MR. GROSSMAN: -- we'll discuss all the conditions
21 that have been proposed.
22 MS. DUCKETT: Okay.
23 MR. GROSSMAN: And there may be some that are not
24 susceptible to being conditions in a special exception, and
25 we'll talk about that as well. And my plan would be, I

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1 think, to attach submitted proposed conditions that are
2 finally agreed to by the parties as an appendix to any
3 report I write, in addition to whatever I would recommend as
4 a set of conditions, so that the Board of Appeals would have
5 available to it what the parties had requested even if I
6 don't think that they're appropriate.
7 MS. HARRIS: So for simplicity purposes, it sounds
8 as if we should submit one document that has all the
9 agreed-upon and then each party will submit any additional
10 conditions --
11 MR. GROSSMAN: Right.
12 MS. HARRIS: -- is that the way to do it?
13 MR. GROSSMAN: Yes --
14 MS. HARRIS: Okay.
15 MR. GROSSMAN: -- that was what I was envisioning.
16 MS. HARRIS: Okay.
17 MR. GROSSMAN: Does that seem like a way to go?
18 MS. HARRIS: Yes.
19 MR. GROSSMAN: It seems to me that that would
20 present to the Board of Appeals the variety of choices that
21 might be available. Okay. Now, have there been any
22 discussions of an additional date beyond April 1?
23 MS. HARRIS: There haven't except for the e-mail
24 traffic, but it looks like, unfortunately, that it's looking
25 like the end of April given schedules, as best as we can

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1 tell.
2 MR. GROSSMAN: Okay. So is there a specific date
3 at the end of April that you all have agreed to?
4 MS. ADELMAN: The Coalition is available after the
5 21st of April.
6 MR. GROSSMAN: Okay.
7 MS. CORDRY: I know I'm not available the 23rd,
8 24th, and 25th. I think, I think it was looking like those
9 days that last week in the month were really the earliest
10 ones that were --
11 MS. ROSENFELD: I think the --
12 MS. CORDRY: -- fitting into the schedule.
13 MS. ROSENFELD: I think the dates that we had put
14 forward, I had put forward in the last e-mail were the 28th
15 or 29th --
16 MR. GROSSMAN: Okay.
17 MS. ROSENFELD: -- or the 1st or 2nd. I have a
18 Planning Board hearing on the 2nd.
19 MR. ADELMAN: Of May?
20 MS. CORDRY: 2nd or --
21 MS. ROSENFELD: I'm talking about April 28th or
22 29th --
23 MR. GROSSMAN: All right.
24 MS. ADELMAN: Yes, the 2nd of May.
25 MR. ADELMAN: May 2nd.

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1 MS. ROSENFELD: -- and May 1st and 2nd and then
2 the following week.
3 MR. GROSSMAN: So 4/28 and 4/29 are available
4 dates; is that, is that what I'm hearing?
5 MS. ADELMAN: Your tooth. Just let it go?
6 MS. HARRIS: I need to check one thing, because I
7 had an oral argument that got rescheduled to the end of
8 April.
9 MR. GOECKE: And I have a hearing on the 28th.
10 MR. BRANN: I'm available.
11 MR. GROSSMAN: Thank you, Mr. Brann, a voice of
12 sanity or availability at least.
13 MS. ADELMAN: Availability.
14 MR. ADELMAN: For the record, sir, I have a dental
15 appointment on the 29th, but it would be sparing me pain if
16 rescheduled.
17 MR. GROSSMAN: Yes. I unfortunately have one on
18 the 19th of March. So there's no way that we can sneak this
19 in earlier in April?
20 MS. ROSENFELD: Everybody seems to have planned
21 vacations in April.
22 MS. CORDRY: Or you have a bunch of Planning Board
23 meetings too.
24 MS. ROSENFELD: And I have, yes, I have, I have
25 extensive hearings up in Frederick. I shared those dates on

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1 my e-mails.
2 MS. ADELMAN: Yes, and Dr. Adelman --
3 MR. GROSSMAN: Right.
4 MS. ADELMAN: -- and I will be out of the country.
5 We're leaving on April 4th.
6 MR. GROSSMAN: Right, and you had asked for two
7 days to do that. I wondered if you could cut that down to
8 one so we could do it on April 2? So, in other words, since
9 you're not leaving until the 4th, if we did it on April 2, I
10 think everybody else was free on April 2.
11 MS. ADELMAN: What's going to happen to my hair?
12 MR. GROSSMAN: It looks great.
13 MS. ADELMAN: Thank you.
14 MR. GROSSMAN: You don't need to have anything
15 done.
16 MS. HARRIS: Mr. Grossman --
17 MR. GROSSMAN: Yes.
18 MS. HARRIS: -- I learned yesterday that -- and
19 maybe this isn't an issue -- that David Sullivan is not
20 available April 2 because he's flying out the end of April 1
21 to go to depositions.
22 MR. GROSSMAN: Okay.
23 MS. HARRIS: So --
24 MS. ROSENFELD: Oh, that's an issue.
25 MR. GROSSMAN: All right. So we've eliminated

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1 April 2 anyway, and --
2 MS. ADELMAN: So I can go ahead and --
3 MR. GROSSMAN: -- so you can have your hair done,
4 but you don't really need it. You really don't.
5 MS. ADELMAN: Oh, thank you.
6 MR. GROSSMAN: Okay. So --
7 MR. GOECKE: I can try to free myself up on the
8 28th and move that hearing to another date --
9 MR. GROSSMAN: Okay.
10 MR. GOECKE: -- if that works for everyone else.
11 MR. GROSSMAN: So the 28th and 29th are
12 alternative days, and Mr. Goecke, why don't you get back to
13 me and let me know if that is cleared up so we can --
14 MR. GOECKE: Thank you.
15 MR. GROSSMAN: -- we can reserve those two days.
16 Hopefully, get back to me this week sometime if you can.
17 MR. GOECKE: Yes. Yes.
18 MR. GROSSMAN: And -- because I guess then I'd put
19 something out formal, although I've announced it at the
20 public hearing. So technically under the, under the statute
21 I don't have to send out formal notice. I've generally
22 tried to send out formal notice so that the community would
23 know about it, but legally, announcing it at the public
24 hearing is sufficient for a continuation of an adjourned
25 hearing.

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1 MS. ROSENFELD: And, Mr. Grossman --
2 MR. GROSSMAN: Yes.
3 MS. ROSENFELD: -- if it turns out that the 28th
4 does not work, should we pick another -- second day?
5 MR. GROSSMAN: Well, yes, the 28th and the 29th
6 are the two dates that seem to be open.
7 MS. ROSENFELD: Were you looking for just one
8 additional date?
9 MR. GROSSMAN: That would be three dates.
10 MS. ROSENFELD: After April 1st?
11 MR. GROSSMAN: No, but I was looking to have those
12 two dates. That would be April 1st, April 28, and April
13 29 --
14 MS. ROSENFELD: Right.
15 MR. GROSSMAN: -- would then give us three days.
16 I think that ought to be sufficient, don't you?
17 MS. ROSENFELD: Yes, but my question is, if it
18 turns out that Mr. Goecke can't reschedule --
19 MR. GROSSMAN: Oh.
20 MS. ROSENFELD: -- should we go ahead and just
21 pick a third date in case --
22 MS. CORDRY: Not a bad idea.
23 MS. ROSENFELD: -- so that it's already there, and
24 if --
25 MR. GROSSMAN: Okay. You guys --

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1 MS. ROSENFELD: As long as we're talking about it
2 and everybody's got their calendars out.
3 MR. GROSSMAN: May?
4 MR. GOECKE: Sure.
5 MS. CORDRY: May Day?
6 MS. ROSENFELD: May 1st or 2nd, that week?
7 MS. CORDRY: May Day?
8 MR. ADELMAN: I like, I like May Day.
9 MS. ADELMAN: Well, we've got April Fools' Day.
10 MS. CORDRY: Yes, we've already got April Fools'
11 Day. Perhaps May Day as well?
12 MR. GROSSMAN: May --
13 MS. HARRIS: The 1st works for us, not the 2nd.
14 MR. GROSSMAN: Okay.
15 MS. ROSENFELD: Okay.
16 MR. GROSSMAN: So April 28, 29, and potentially
17 May 1.
18 MS. CORDRY: All right. I'll check, as well,
19 because I have some cases that are heating up and that may
20 actually require me to do some work on --
21 MR. GROSSMAN: They don't let you do any work
22 other than --
23 MS. CORDRY: -- and out-of-town hearings and
24 things like that. I have a case in Buffalo --
25 MR. GROSSMAN: All right.

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1 MS. CORDRY: -- that I am being dragged off to,
2 but I will see what we can do.
3 MR. GROSSMAN: Okay. Any other preliminary
4 matters?
5 MR. ADELMAN: Yes, sir.
6 MR. GROSSMAN: Wait a minute. I see from the
7 peanut gallery Mr. Silverman.
8 MR. SILVERMAN: Right. Yes. I made a request for
9 hard copies of the documents that --
10 MR. GOECKE: You did. They should have been on
11 the disk. Did you look under the Reference section of the
12 disk?
13 MR. SILVERMAN: I have not received the disk.
14 MR. GOECKE: The Coalition received a copy of the
15 disk, no?
16 MR. ADELMAN: Yes.
17 MS. ADELMAN: Yes.
18 MR. SILVERMAN: Okay. Maybe I can get it.
19 They're on the disk. And, also, there's a reference to the
20 CRS or CRC Report 2012. Is that -- has that been put into
21 evidence before?
22 MR. GOECKE: I'm not sure.
23 MR. SILVERMAN: I'll send you a note about that.
24 MR. GOECKE: Okay.
25 MR. ADELMAN: I don't know anything about that.

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1 MR. SILVERMAN: It's in his hard copy. It's not
2 in the references, but it's -- he references it in
3 connection with Los Angeles, and I think I know what it is,
4 but I'm not sure.

5 MR. GROSSMAN: Dr. Adelman, did you have a
6 preliminary matter you wanted to raise?

7 MR. ADELMAN: Yes, sir. The fundamental question
8 is, I have a series of objections to raise and what, in your
9 opinion, is the proper time to raise them? But I wanted to
10 preface it, if I might, with a couple of definitional
11 questions.

12 MR. GROSSMAN: Okay.

13 MR. ADELMAN: And they come from my reading of
14 your ruling on KHA counsel's request to deny the -- it has
15 to do with what reversible error is and where it diverts.
16 Do I understand that reversible error is determined at the
17 appellate level and that error does not get reversed in
18 these hearings?

19 MR. GROSSMAN: I guess my answer to that would be,
20 well, number one, I can't give you legal advice here, but
21 when you say error reversed, there's nobody to reverse in
22 these hearings. I mean, that is, when I -- you mean for me
23 to actually reverse something? Is that what you're saying?
24 I don't understand what your, exactly what your question is.

25 MR. ADELMAN: I'm about to object at some point to

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1 some filings which, if I understand, you have already ruled
2 you would not accept an objection to. My grounds for
3 objection are different. Therefore, I would be asking
4 you --

5 MR. GROSSMAN: To reconsider is what you're --

6 MR. ADELMAN: Okay, reconsider, thank you.

7 MR. GROSSMAN: Yes, that would be the term that
8 would apply.

9 MR. ADELMAN: Okay.

10 MR. GROSSMAN: Sure, you can ask me to reconsider
11 anything --

12 MR. ADELMAN: Fine. And --

13 MR. GROSSMAN: -- not just repetitively, but you
14 could ask me to reconsider.

15 MR. ADELMAN: Understand. And so then the
16 question becomes simply -- I have four objections to raise
17 -- would you prefer that I raise them now, or would you
18 prefer that I raise them as they come up during the direct
19 testimony? What's your preference?

20 MR. GROSSMAN: Well, all right, you can give us a
21 little preview. Tell us now, and I'll see if we --

22 MR. ADELMAN: A preview, all right. I object to
23 this -- do you want the numbers? Let's see. I have the
24 numbers. I object to 456(b), 456(c), 456(f). Those are the
25 three filings that have to do with Brandywine, and

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1 there's --

2 MR. GROSSMAN: Well, hold on. Let me take a look
3 at the exhibit list because I didn't memorize it. So let
4 me --

5 MS. ADELMAN: (b),(c), and (f)?

6 MR. ADELMAN: Yes, 456(b), 456(c), as in Charlie,
7 56(f).

8 MR. GROSSMAN: Okay.

9 MR. ADELMAN: I also have an objection --

10 MR. GROSSMAN: All right. So this is the, it
11 starts out with a memo from Ms. Harris, submitting hard
12 copies of exhibits from Mr. Guckert's testimony.

13 MR. ADELMAN: Yes.

14 MR. GROSSMAN: Okay. And so (b) is the aerial
15 view of the Matapeake Business Drive, (c) is the Brandywine
16 Costco gas transactions, and (f) is a video of the cars
17 exiting the Brandywine Costco --

18 MR. ADELMAN: Precisely.

19 MR. GROSSMAN: -- on December -- all right. So
20 what's the nature of your objection?

21 MR. ADELMAN: The general nature is that these all
22 are, first of all, not proper rebuttal and they're about a
23 gas station which has not been part of the discussion, to my
24 knowledge. I believe there was one filing of a picture of
25 it. I can go down into the weeds and discuss each one

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1 independently, but they're all, they all seem to me not to
2 be proper materials for rebuttal.

3 MR. GROSSMAN: Okay, not proper rebuttal. Okay.
4 What's your other objection?

5 MR. ADELMAN: The other objection, which is
6 actually more strenuous, is 465. That's the Wheaton
7 capacity results and that is this document, which, as I
8 received it, is two pages of which the second is blank. So
9 it constitutes essentially one chart in which a totally
10 different methodology is used to assess traffic impact than
11 the one that's been used throughout these hearings. There's
12 no data of any kind presented, provided, no indication of
13 why a different methodology was used. I think it's
14 completely inappropriate to accept this as rebuttal
15 material.

16 MR. GROSSMAN: Okay. I guess we'll hear that from
17 the witness when he testifies. In other words, the witness
18 will testify as to, presumably as to the rebuttal, and then
19 we'll be able to rule on your objection, as to whether it's
20 improper, after we hear that testimony.

21 MR. ADELMAN: But how, if the witness is allowed
22 to testify without our having had a prior chance to examine
23 the data, how can we possibly cross-examine?

24 MR. GROSSMAN: Well, you can make that objection
25 at the time, after we hear what the justification is. I'm

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1 not inclined to prohibit the testimony until I hear what it
2 is. You might consider that a proffer of testimony or
3 testimony that is susceptible of being stricken if I deem it
4 inappropriate after I hear it.
5 So we have that luxury in cases that are not
6 before a jury, of not worrying about whether anybody is
7 tainted. We can hear what -- and this often happens in a
8 courtroom -- there will be a request for a proffer of what
9 testimony is so a determination can be made by a court as to
10 whether or not it's appropriate. Here it doesn't make sense
11 to have a proffer so much. We might as well hear what it is
12 that's being said, and then if it's improper, based on an
13 objection, then we can strike it, depending on what is said.
14 I don't know at this point.
15 I'm not inclined to -- let me reverse that. I am
16 inclined to be liberal in terms of what I allow in as
17 rebuttal, to the extent that it is arguably rebuttal, so as
18 not to unduly preclude what might be relevant evidence, and
19 I think that's the way the courts would lean on this. Yes,
20 it is possible to exclude something as improper rebuttal,
21 but in most situations I would think that it would be, as
22 long as you're not prejudicing the other side, I think it
23 would be appropriate to allow it. And in this case, in
24 terms of Mr. Guckert's testimony, he's going to be made
25 available -- I don't know if you saw the e-mail exchange --

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1 but he's going to be made available on the April 1 hearing
2 date for the cross-examination. So if there's something
3 that comes out in today's proceeding, you will have had
4 ample time to prepare for it in terms of the
5 cross-examination. So I don't think there's any prejudice
6 to the opposition if there happens to be something that's
7 arguably not rebuttal.
8 See, rebuttal is a little fuzzy concept because
9 it's essentially responsive to what's come up in the course
10 of the direct opposition testimony; on the other hand, it's
11 not supposed to include things that could have been part of
12 the case-in-chief, but sometimes there's an overlap in that
13 and it's difficult to tease it out, as I mentioned in my
14 order. So --
15 MR. ADELMAN: And I'm --
16 MR. GROSSMAN: -- let's hear what he has to say,
17 and then you can raise any objections after you --
18 MR. ADELMAN: I'm not, sir, I'm not trying to be
19 argumentative, but I read your ruling and I understand how
20 carefully you have to slice the rebuttal, but essentially,
21 it goes to the overall question of, do you want to beat the
22 record? I mean, it seems to me that more and more
23 information/location marks is being introduced, and I'm
24 saying that it does not strike me as proper rebuttal
25 information. It's new information which could have been

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1 proffered before, and we're spending more and more time on
2 it. So I --
3 MR. GROSSMAN: You may be right about that --
4 MS. ROSENFELD: And --
5 MR. GROSSMAN: -- and it may be that it's subject
6 to being stricken as not proper rebuttal, but I do want to
7 give them the opportunity to explain it and why it is proper
8 rebuttal by hearing it, and then we'll see if we need to
9 strike it. Yes.
10 MS. ROSENFELD: And I just would like to make the
11 point that we don't concede that there's no prejudice. From
12 our point of view, of course, we have been trying hard to
13 reach finality on where the evidence is going to stop.
14 There continues to be extensive and exhaustive new reports,
15 new information, new evidence, and that is causing an
16 extended amount of time in these proceedings and, from the
17 point of view of my clients, incredible amounts of time and
18 resources that are limited with respect to our ability to
19 continue to mount a defense in this case, but --
20 MR. GROSSMAN: I understand.
21 MS. ROSENFELD: So I just want to let you know
22 there's prejudicial considerations on both sides of the
23 table, and we, we submit that continuing with substantial
24 new evidence is prejudicial to us because we have to
25 continue to prepare for, rebut, refute that new evidence.

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1 MR. GROSSMAN: Right. It's not that I lack
2 concern about that. I am concerned about the additional
3 burdens that might be placed. I think that, generally
4 speaking, on balance, one should lean towards allowing the
5 testimony if there's enough time between the testimony and
6 any potential cross-examination availability, and in this
7 case, there would be a very significant amount of time.
8 We're talking about 21 days or so between now and the April
9 1 date.
10 So I don't think that -- at least as far as
11 Mr. Guckert is concerned -- so I don't think that prejudice
12 would outweigh any probative value, but I do, it's certainly
13 arguable, I'm not saying it's not, that the, that the, some
14 of the things that are being submitted could have been part
15 of the direct, applicant's case-in-chief. They might want
16 to consider that in terms of what they put on, but I'm not
17 inclined to prevent them from at least stating it, and then
18 we can deal with any objections that are raised after that's
19 heard.
20 MS. ROSENFELD: And the prejudice that I was
21 trying to get to, more directly, is not necessarily the,
22 having available the amount of time to prepare. You have
23 made accommodations in that regard. It's the need to hire
24 experts, hire attorneys, and continue to participate in a
25 case that from our point of view has been unnecessarily

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1 prolonged by the way the evidence has been presented by the
2 applicant in this case.
3 MR. GROSSMAN: I understand. Yes, sir.
4 MR. ADELMAN: Not to beat a dead horse, but
5 prejudice is not -- I realize that I may be misconstruing
6 the term prejudice in this context, but once you have heard
7 some statements, you being human, sir, are in a sense --
8 MR. GROSSMAN: That's not what my wife says.
9 MR. ADELMAN: I'm sorry. You are in a sense
10 prejudiced just by the introduction of the material. I
11 don't mean to assert that you are prejudiced, but it's human
12 nature to be influenced by who speaks first.
13 MR. GROSSMAN: I understand, but there's, at least
14 you can call it a fiction in the law, that those who are in
15 my position -- that is, either in a quasi-judicial capacity
16 or in a judicial capacity -- can exclude from their
17 consideration things that have been stated but yet are not
18 appropriate to be considered. And so after a while you get
19 pretty good at being able to not consider things that have
20 been brought over, brought up. So it's usually not
21 considered to be a factor to be considered. Mr. Silverman.
22 MR. SILVERMAN: I just want to comment in the most
23 respectful way. First of all, I looked at the cases. I
24 think that the courts will defer to your judgment because
25 clearly you've been thinking about this, and I think they'll

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1 respect that. I think you can go either way, and I don't
2 think you'll have reversible error. But the second point
3 I'd like to make, my sense is that your job is to determine
4 whether the applicant has met the burden of proof, but
5 sometimes, as we get deep in the science, I have a feeling
6 that the job being done here is to determine what the truth
7 is, which, if it's much longer, is going to be a difficult
8 one and harder for us to deal with, and I just wanted to
9 make that point and see if you had any thoughts about that.
10 MR. GROSSMAN: Well, any fact-finding proceeding
11 of this nature is a search for truth, I guess you'd say,
12 ultimately, but it is always true that the applicant has the
13 burden of proof, the burden of persuasion, and the burden of
14 going forward with the evidence in general in these
15 proceedings, and I'm mindful of that. So if the evidence
16 were in equipoise, then they would have failed to meet their
17 burden.
18 I'm going to hear back from the applicant. Do you
19 wish to comment on this little dialogue?
20 MR. GOECKE: I don't think so.
21 MS. HARRIS: No.
22 MR. GROSSMAN: Okay. Anything further,
23 Dr. Adelman? No? Okay.
24 MR. ADELMAN: I guess I've put in my dues.
25 MR. GROSSMAN: All right.

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1 MR. GOECKE: I guess one comment, just to, for the
2 record.
3 MR. GROSSMAN: Couldn't resist, could you,
4 Mr. Goecke?
5 MR. GOECKE: I couldn't resist, no. It felt, it
6 felt unnatural remaining silent, but to the extent there's a
7 prejudice -- and, you know, I think the word you used is
8 burden, and I think that's, that's right -- there is a
9 burden on the opposition in responding to the evidence in
10 this case and that's a burden that they've assumed or
11 they've voluntarily undertook. And to the extent that
12 there's any prejudice in responding to this, you know, we
13 have taken pains to try to give them enough time so that
14 they can prepare responsibly and adequately, and I think
15 that's the prejudice that we're supposed to be focusing on
16 when we're talking about whether it's actually prejudicial.
17 The fact that it's difficult for them or time-consuming for
18 them, I think, is less significant in terms of what you're
19 supposed to do, in terms of whether to admit evidence or
20 not.
21 MR. GROSSMAN: Okay.
22 MS. CORDRY: I would have to make one comment, and
23 I've been very quiet to this point, but I am mindful of the
24 statement by Anatole France that the law, in its infinite
25 majesty, forbids rich and poor alike to sleep under bridges.

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1 So, yes, it's quite true that we voluntarily chose
2 to oppose this station, which is being forced down our
3 throats, but to suggest that somehow that the only issue of
4 prejudice here is whether we have enough time to respond to
5 the new evidence, I think, is, comes with somewhat ill grace
6 from the sixth largest corporation in the world.
7 MR. GROSSMAN: All right. I guess we've all had a
8 piece. I have to remind all the parties what my wife said
9 to me in the course of a little discussion we had. After
10 she made her argument, I was about to open my mouth, and
11 then she said: I'm about to hear a specious argument, but
12 go ahead. So if I use that line on anybody, I just want you
13 to blame my wife, not me. Anyway, that's an advisory to all
14 parties. Okay. So sometimes even the Hearing Examiner
15 can't win. That's the bottom line.
16 All right. So are we now ready for --
17 MS. HARRIS: Mr. Guckert.
18 MR. GROSSMAN: -- Mr. Guckert's rebuttal?
19 MS. HARRIS: Yes. And is it acceptable if
20 Mr. Guckert sits here?
21 MR. GROSSMAN: It's certainly acceptable to me if
22 everybody else is okay with it.
23 THE REPORTER: I have mic'd the chair over there
24 as --
25 MS. HARRIS: Oh.

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1 MR. GROSSMAN: She's mic'd the chair over here.
2 So --
3 MS. SAVAGE: Can you move it?
4 MR. GOECKE: Can we move that?
5 MS. HARRIS: Can we move this over there?
6 MR. GROSSMAN: Can we move the --
7 MR. GOECKE: Or can we just put the microphone --
8 MR. GROSSMAN: Can we move the mic?
9 THE REPORTER: It's taped down. You'll have to
10 give me just a moment to --
11 MR. GOECKE: That's fine.
12 MR. GROSSMAN: Okay.
13 MS. HARRIS: Mr. Grossman --
14 MR. GROSSMAN: Yes.
15 MS. HARRIS: -- while we're doing that, I know
16 this is treading on thin ice, can we do something with the
17 temperature a little bit?
18 MR. GROSSMAN: Is it too warm in here?
19 MS. CORDRY: Yes, we're all really boiling in
20 here.
21 MS. HARRIS: Put it this way: The one thing that
22 the opponents and the applicant agree on is it's cold.
23 MS. CORDRY: We're freezing.
24 MR. GROSSMAN: All right. Would you mind --
25 there's a problem with our little monitoring system. So

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1 they probably can't hear --
2 MS. HARRIS: So go tell Ellen?
3 MR. GROSSMAN: -- in the office. So tell Ellen,
4 and she'll adjust the thermostat.
5 MS. HARRIS: Thank you. Thank you.
6 THE REPORTER: I'm sorry. I was told witnesses
7 were there. So it's taped --
8 MR. GROSSMAN: We have usually had the witnesses
9 over here for this hearing, but apparently, it's more
10 convenient for the display to have him at the table.
11 MS. CORDRY: Can we just take, like, a
12 couple-minute break before we get started then since we're
13 all --
14 MR. GROSSMAN: Okay. Yes, certainly, Ms. Cordry.
15 (Whereupon, a brief recess was taken.)
16 MR. GROSSMAN: All right. We're back on the
17 record now, ready to proceed. You may proceed, Ms. Harris.
18 MS. HARRIS: Okay. Mr. Guckert, were you present
19 when --
20 MR. GROSSMAN: Well, you have to -- you're calling
21 Mr. Guckert as your rebuttal witness.
22 MS. HARRIS: I'm sorry. Oh, we're calling
23 Mr. Guckert as our rebuttal witness.
24 (Witness previously sworn.)
25 MR. GROSSMAN: All right. And, Mr. Guckert, since

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1 you've testified here before, let me remind you that you are
2 still under oath.
3 THE WITNESS: Yes, sir.
4 MR. GROSSMAN: All right. You may proceed.
5 REBUTTAL DIRECT EXAMINATION
6 BY MS. HARRIS:
7 Q Mr. Guckert, were you present when Ms. Cordry and
8 Mr. Adelman testified about the traffic?
9 A Yes, I was.
10 Q And did you agree with their conclusions?
11 A Well, not really. You know, the problems that
12 they indicated, Mr. Grossman, that would be caused by the
13 gas station really -- those, those issues that they pointed
14 out really would not be different than, than any other
15 successful regional retail center, in my opinion.
16 MR. GROSSMAN: Well, they testified for quite some
17 time, each one probably at least a day. So that's a pretty
18 overall broad statement about the things they testified
19 about, which --
20 THE WITNESS: Indeed, indeed, it is, and -- but
21 their testimony related significantly to traffic issues that
22 they perceive would occur inside the regional mall, the ring
23 road, and the parking lots and things of that nature.
24 MS. HARRIS: And we will, through his testimony,
25 get into those specific areas. There's --

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1 MR. GROSSMAN: Okay.
2 MS. HARRIS: -- primarily five issues that we're
3 going to be focusing on.
4 MR. GROSSMAN: All right.
5 BY MS. HARRIS:
6 Q Mr. Guckert, what's the, what's the purpose of
7 driveways and drive aisles and parking lots?
8 A Well, they're to move cars -- I'll say, obviously.
9 They're obviously to move cars in and out of parking spaces
10 and in and out and through parking lots, back out onto a
11 collector or ring road and back out to the main public
12 roadway, you know, and these driveways and aisles and
13 parking lots in, in Wheaton and especially in the vicinity
14 on the south side are being used for the precise purpose
15 that they're intended.
16 You know, there's a, there's a distinction here in
17 my opinion, Mr. Grossman, and that is, one of choice. It's
18 not as if this particular gas facility is fronting on
19 Georgia Avenue or Veirs Mill Road and issues occur out on
20 the public road system. This is all on private property.
21 It's not fronting on a public street. And when you go to a
22 mall on a Saturday, as an example, or you go to the mall
23 during Christmastime, the expectation, in my opinion, is
24 that you're going to find cars, you're going to find
25 traffic, you're going to find some delays. And so it's an

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1 expectation to me that points to the fact that it's not a
2 nuisance in that, I said it before, but that, you know, a
3 crowded parking lot equates to a successful business; an
4 empty parking lot is just the opposite. It's -- I think it
5 was Yogi Berra who said, nobody goes there anymore because
6 it's too crowded, but the fact is that successful businesses
7 want to have parking lots that have a lot of cars in them.
8 If you've got a perfect traffic condition where there's
9 never any delay, you can always find a parking place, you
10 don't -- you have too much parking or you've got a problem
11 with the business.
12 So, I mean, the intention, the intention is to
13 have those parking lots filled, to have those parking lots
14 used. So -- and because of that, you expect to have
15 occasional interruptions and that's why, Mr. Grossman, we,
16 as traffic people, we look at over a peak hour or peak
17 period, two or three hours, not a moment in time, a snippet
18 in time, a second, a minute, five minutes, 15 minutes. We
19 look at it over an hour period because it balances out
20 throughout an hour, and you might have occasional delays and
21 interruptions but that's expected when you're dealing with a
22 retail facility.
23 You know, even -- this mall has been approved,
24 even with the construction of Costco, for another 183,000,
25 183,000 square feet of retail space. We've been through APF

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1 on that 183,000, and in the evening peak hour alone, not
2 even talking about Saturday, that's another, about 750
3 peak-hour trips. So there's more coming that has been
4 approved and been tested and gone through the approval
5 process at the Planning Board level for, for APF.
6 Q Ms. Cordry used the term during part of her
7 testimony about the mall having reached its, quote, breaking
8 point. What's your opinion about that?
9 A Far from it. You know, you do -- do whatever
10 tests you want to do, whether it's an APFO test using
11 critical lane volume, which is the preferred method here in
12 Montgomery County, or you can do other, other capacity
13 analyses, whether they're mathematical, like Highway
14 Capacity Manual, or other simulations using Synchro and
15 SimTraffic that Montgomery County uses. You'll see that
16 we're not at a breaking point.
17 Is the parking lot to the west of Costco heavily
18 used? You bet it is, and God bless Target and Costco
19 because what's happening is they have customers and they
20 have economic development and that's a good thing, in my
21 opinion. But it's working, it's working. The ring road
22 does not have very much traffic on it at all. The parking
23 lot is used, but they're supposed to be used.
24 MR. GROSSMAN: Well, one of the things that the
25 opposition has raised is that you've applied adequate public

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1 facilities tests to an area which you admittedly say is
2 private property, where it's not appropriately applied, and
3 some of your comments here about there being, it's been
4 approved for substantial additional traffic applies to the
5 effect on the public roadways, does it not, not to, not to
6 the mall traffic, but it applies to the public facilities,
7 not to the private roads, isn't that true?
8 THE WITNESS: The off-site public facilities, but
9 it's the test, even on site, that the county uses, and it's
10 the test that the Planning Commission staff uses, to use
11 critical lane volume. In fact, as you, as you may recall,
12 or to remind you, the -- when we, when we scoped this study
13 for the special exception, staff asked for on-site analyses,
14 and so we did that as part of the special exception APFO
15 test.
16 MR. GROSSMAN: Right, but aside from the question
17 of adequate public facilities, I have to consider
18 compatibility, and adequate public facility tests do not
19 necessarily determine compatibility from a traffic
20 standpoint in the mall. So --
21 THE WITNESS: Well, I'm not sure I agree with you
22 there. I mean, it is a test that is used. There are
23 others, but it's, it's the primary test that's used in this
24 county for this government, whether it's in the mall or
25 outside the mall, as it relates to capacity and level of

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1 service. Now --
2 MR. GROSSMAN: Yes, it is the primary test that's
3 used, but the case law says that I must consider
4 compatibility issues from traffic as produced by other
5 evidence --
6 THE WITNESS: Uh-huh.
7 MR. GROSSMAN: -- submitted by opposition
8 witnesses.
9 THE WITNESS: Well, we're going to talk a little
10 bit more about that.
11 MR. GROSSMAN: Okay.
12 BY MS. HARRIS:
13 Q So to follow up --
14 MR. ADELMAN: Objection. The witness is
15 testifying about economic matters. He's qualified as a
16 traffic expert.
17 MR. GROSSMAN: I understand. I think this is
18 within -- I'm taking his testimony as going to the traffic
19 issues. When you say about economic matters, he is saying
20 -- you mean when he says it's a good thing that there's more
21 traffic, more --
22 MR. ADELMAN: No. I'm referring to comments about
23 the vitality of the mall and the impact of traffic on the
24 vitality. Is he qualified as an economic expert?
25 MR. GROSSMAN: No, and I don't, I don't take his

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1 testimony in that light. That's not what I'm considering
2 his testimony for. I understand your objection, and I'll
3 sustain it in the sense that, yes, he's not proffered as an
4 expert on the economics of malls. I agree with that and I
5 don't take his testimony as going to -- establishing
6 anything in that regard.
7 All right. You may proceed.
8 MS. HARRIS: Okay. Thank you.
9 BY MS. HARRIS:
10 Q To follow-up on Mr. Grossman's question, did you
11 go beyond the APF analysis in your evaluation in determining
12 whether this use is compatible?
13 A Well, as a result of comments by Mr. Grossman and
14 comments by the opposition, yes, we did, in order to help
15 address those issues.
16 Q And can you explain -- and we're going to touch on
17 the specific areas -- but can you provide a little insight
18 on how you did that?
19 A Sure. We, like the opposition, we spent a lot of
20 time examining and looking at, visually examining traffic
21 conditions getting into the mall and the access and
22 circulation near the special exception area. Additionally,
23 although it was, there was discussion before today's hearing
24 about a different capacity analysis methodology, we did
25 undertake Highway Capacity Manual analyses --

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1 MR. ADELMAN: Objection. We object to the witness
2 testifying about any of that material unless that has been
3 addressed as a formal objection. He should not be
4 testifying on material that we've already indicated was not
5 provided in proper format, not sufficient information for us
6 to evaluate. So we object to his testifying about it at all
7 at this time.
8 MR. GROSSMAN: All right. I'm going to hear his
9 testimony. I'm going to overrule your objection until I
10 hear it, and then it'll be subject to being stricken if I
11 think that that's an appropriate objection, given that you
12 have the opportunity between now and April 1, today being
13 March 11, to go over any materials that he is referencing
14 and prepare cross-examination on it.
15 MR. ADELMAN: And you recognize such material has
16 not been provided?
17 MR. GROSSMAN: I don't know yet. You perhaps,
18 Ms. Harris, can tell me whether material that Dr. Adelman is
19 referencing, that has not been provided?
20 MS. HARRIS: We had provided the results of the
21 HCM on, I believe it was February 27th. We did not provide
22 the backup, but certainly, if they --
23 MR. GROSSMAN: The backup, meaning?
24 THE WITNESS: The mathematical calculations.
25 MS. ADELMAN: The data.

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1 MR. GROSSMAN: Okay.
2 MS. HARRIS: But --
3 MR. ADELMAN: The data.
4 MS. ROSENFELD: Just for clarification, are you
5 talking about the information in Exhibit 465, the Costco
6 Wheaton Capacity Analysis --
7 MS. HARRIS: Yes.
8 MS. ROSENFELD: -- Results?
9 MS. HARRIS: Yes.
10 MS. ROSENFELD: The Highway Capacity Analysis
11 Results?
12 THE WITNESS: Yes.
13 MS. ROSENFELD: Okay. Mr. Grossman --
14 MR. GROSSMAN: Yes.
15 MS. ROSENFELD: -- to the extent that Mr. Guckert
16 plans to testify about this document today, Exhibit 465, we
17 would object to any testimony regarding this exhibit unless
18 and until we do have the backup data that supports this
19 one-page table that's been provided.
20 MS. HARRIS: And I would note, I mean, as
21 Mr. Guckert said, it's mathematical calculations. They --
22 for the last 15 days, there was never a request for any
23 backup information. Certainly we would have provided it had
24 it been requested. I, in fact, have copies here that I can
25 distribute. It wasn't withholding of information. It was

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1 that we were providing the results of his analysis.
2 MR. GROSSMAN: All right.
3 MS. ROSENFELD: And --
4 MR. GROSSMAN: Yes. Go ahead.
5 MS. ROSENFELD: -- from my point of view, I think
6 until Mr. Guckert clarified that this was a new methodology,
7 I did not appreciate the fact that there were different
8 calculations and different formulas that would have been
9 involved. Certainly the opposition has been very engaged in
10 reviewing numerical data, formulas, and calculations
11 throughout this case. So we would ask that we have an
12 opportunity to review the backup data before Mr. Guckert
13 testifies.
14 MR. GROSSMAN: Well, you will certainly -- and as
15 I understand it, Ms. Harris says she has copies --
16 MS. HARRIS: Yes.
17 MR. GROSSMAN: -- for you now and will give it to
18 you. It seems to me that the appropriate remedy here is to
19 allow you to cross-examine after examining this data, and
20 you'll have until April 1 to conduct that, that review. So
21 I don't see any good reason to prevent him from testifying
22 about it now --
23 MR. ADELMAN: Mr. Grossman --
24 MR. GROSSMAN: -- and it's subject to your later
25 objection after you review the data and to your

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1 cross-examination based on it.
2 MR. ADELMAN: Mr. Grossman, let me, let me try to
3 explain. This is not simply a question of the data. This
4 is a question of the worksheets, how the data is used, and
5 that information -- as you know, we spent a lot of time
6 looking over the CLV worksheets --
7 MR. GROSSMAN: Right.
8 MR. ADELMAN: -- and that led to our assertion --
9 I won't get into that. We need to see that information, and
10 it has not been provided, and I --
11 MR. GROSSMAN: Well, it has been provided now, but
12 the point -- the point I'm making is that it gives you
13 somewhat of an advantage in that you will now have heard his
14 testimony as well as seeing the data before you have to
15 cross-examine. So it's kind of, the reverse is true.
16 You're not being prejudiced by this by not having to
17 cross-examine him on it until April 1. You're going to have
18 from March 11 to April 1 to prepare a cross-examination
19 based on it and to formulate any objections you might have
20 at that point.
21 MS. ROSENFELD: Mr. Grossman, I just would like to
22 make this observation: The fact that this data is copied
23 and being handed out this morning, in my view, reflects the
24 fact that Costco had anticipated discussing this data this
25 morning, and it begs the question, why wasn't it provided

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1 earlier?
2 In my view, this is yet another example of being
3 sandbagged at the last minute with pages and pages of
4 detailed data that Mr. Guckert is going to be discussing
5 this morning, and candidly, sitting here, it would have been
6 much more productive to understand it and appreciate what
7 he's talking about in the context of this while he's
8 discussing it. I understand we'll have time to review it,
9 but procedurally, it flies in the face of everything that we
10 have talked about with respect to providing documentation in
11 a timely manner.
12 MR. GROSSMAN: Do you want to respond to that,
13 Ms. Harris?
14 MS. HARRIS: Certainly Mr. Guckert is going to
15 testify about the Highway Capacity analysis because he
16 conducted it and we provided that. I'm just baffled by the
17 fact that given that we have provided this 15 days prior, if
18 it would have been helpful to the opponents to see the
19 mathematical calculations, why wasn't it requested?
20 MS. CORDRY: I think we did say we were going to,
21 that we -- I think the discussion was there would be
22 objections to these exhibits at the hearing, and we are
23 objecting to them at the hearing. I don't know that we know
24 what you haven't given us. I mean, to go back to, I thought
25 it was Donald Rumsfeld, but then I think somebody -- I think

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1 it was Rumsfeld about the unknown unknowns. I mean, we
2 don't know what data you have and what you don't have. I
3 mean, you're the one that's producing these, these
4 documents.
5 MS. ROSENFELD: Well, Mr. Grossman, I'll just make
6 a global request: From now on, any time there is
7 information or data that is supported by underlying
8 analysis, formulas, calculations, research, surveys,
9 studies, anything, we would like to have that concurrent
10 with whatever it is that you expect to testify about and 10
11 days in advance of when that testimony is expected to occur.
12 MR. GROSSMAN: I think that's a fair request, and
13 I would say that if it weren't for the fact that Mr. Guckert
14 will be available for cross-examination on April 1, I would
15 grant the objection and preclude him from testifying about
16 it given the late arrival of the data --
17 MS. HARRIS: Okay.
18 MR. GROSSMAN: -- but given that that amount of
19 time exists between this hearing, March 11, and April 1,
20 which is three weeks, I just don't see it as being --
21 MR. ADELMAN: Mr. Grossman --
22 MS. HARRIS: And the only thing --
23 MR. GROSSMAN: -- significantly prejudicial.
24 MS. HARRIS: -- I would just request that that
25 request that Ms. Rosenfeld made be applied both ways.

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1 MS. ROSENFELD: Certainly.
2 MR. GROSSMAN: All right. So --
3 MR. ADELMAN: Mr. Grossman --
4 MR. GROSSMAN: If you're going to reargue it --
5 MR. ADELMAN: -- is there, is there a place in the
6 law that says we must request every piece of information in
7 advance of making an objection? I haven't seen it.
8 MR. GROSSMAN: Well, that's a pretty broad
9 question. Once again, these administrative proceedings,
10 this particular type of administrative proceeding does not
11 have a discovery process as part of the statutory setup.
12 For better or for worse, when the zoning code was
13 established, they apparently decided or didn't address any
14 question of discovery.
15 So in lots of kinds of litigation, and even
16 administrative litigation, there is a discovery process that
17 goes on before and so these kinds of things are teased out.
18 Because of the nature of this case, I've tried to, in order
19 to maximize fairness and disclosure, I've tried to have a
20 disclosure rule here that goes beyond what we usually have
21 in zoning proceedings under the statute. So the answer to
22 your question is, it's very broad and there are many things
23 that apply, okay?
24 MR. ADELMAN: Fine. I appreciate that, sir. The
25 last point, the suggestion that we knew we were going to

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1 request this data and somehow didn't request it to play such
2 a little trick is objectionable in itself, and the Coalition
3 objects to the suggestion by the applicant that somehow
4 we're playing games.
5 MS. HARRIS: For the record, I wasn't suggesting
6 that.
7 MR. GROSSMAN: Right, she didn't say that. So
8 let's not infer that which was not suggested. She said it
9 wasn't requested, and so they would've provided it had it
10 been. But I think that fairly, Ms. Rosenfeld said that it
11 is part of her broad request that when they're submitting
12 conclusory graphs, that the underlying data be supplied, and
13 I think that's fair.
14 MS. ROSENFELD: And, Mr. Grossman, on that point,
15 much earlier in these proceedings, when Mr. Guckert
16 testified, we had requested copies of the video at the
17 various points where traffic counts were taken. That
18 documentation has not been provided. Now, in light of the
19 fact that there have been extensive videos submitted that
20 reflect traffic entering at certain points, I would renew
21 our request that that other videographic data be made
22 available to us.
23 MR. GROSSMAN: To tell you the truth, I don't
24 recall the video issue being -- before we get into the video
25 question, let me mark this new submission as an exhibit, and

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1 I'm going to give it a new exhibit number, which will be
2 480, and this is background data supporting Mr. Guckert's
3 Exhibit 465. Is that, is that a fair description of what
4 480 is?
5 MS. CORDRY: Do you want to make it a separate
6 number or --
7 THE WITNESS: Say it, say it again, Mr. Grossman.
8 MS. ROSENFELD: Want to make it 465(a)?
9 MR. GROSSMAN: I don't want to go back because
10 it's an earlier date. So I don't want to --
11 THE WITNESS: Mr. Grossman, it's, it is the
12 mathematical calculations tied to Exhibit 465.
13 MR. GROSSMAN: Okay. I said background data.
14 Does that --
15 THE WITNESS: That's fine.
16 MR. GROSSMAN: Data and calculations?
17 THE WITNESS: Yes, sir.
18 MR. GROSSMAN: So Exhibit 480 is background data
19 and calculations supporting Mr. Guckert's Exhibit 465.
20 Okay. Now, as to videographic, are there any
21 other videos that were taken, Mr. Guckert, in addition to
22 those that have been submitted here, that served as the
23 basis for your earlier traffic conclusions?
24 (Exhibit No. 480 was marked
25 for identification.)

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1 THE WITNESS: In April 2013 we used proprietary
2 video cameras to conduct various intersection turning
3 movement counts and pedestrian data. Quite frankly, I do
4 not know if that can be, information can be read from a
5 regular run-of-the-mill recorder, okay, because it's special
6 equipment, and we actually end up sending the data to Canada
7 to be processed. So I do not know if that type of
8 information is available or could be downloaded. It would
9 be, I'm guessing, maybe 8 or 900 hours' worth of data. So I
10 will, I will check and see whether it's readable by, by
11 normal pedestrian equipment, okay?
12 MR. GROSSMAN: All right.
13 MS. CORDRY: If you go back to --
14 MR. GROSSMAN: Actually, I don't recall a request
15 for -- I'm not saying you didn't make it, but --
16 THE WITNESS: And I do not either.
17 MS. CORDRY: It was, but I --
18 MS. ROSENFELD: It was. It was. We're looking
19 for it in the transcript.
20 MS. CORDRY: The request was actually made at the
21 time when there was the discussion about the queuing at
22 Elkridge, the Columbia station, and again, it was said there
23 were video of the queues and so forth, and we asked at that
24 point, specifically, if they were available, and I think he
25 made the same point about it being proprietary and he'd

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1 check into it. And so, yes, it was definitely made then
2 because I have just gone back again in the last week and
3 read all the transcripts. So --
4 MR. GROSSMAN: All right.
5 MS. CORDRY: -- I can tell you it's in there. I
6 left my notes at home on which page it was, but it's there.
7 Shall I --
8 MR. GROSSMAN: All right. Did you have occasion
9 to check it the last time?
10 THE WITNESS: Quite frankly, I don't remember
11 that. So I will -- we will certainly, certainly check now.
12 Please --
13 MR. GROSSMAN: All right. If it's available,
14 let's provide it.
15 THE WITNESS: -- please, Mr. Grossman or Michele,
16 can we have, do you want -- what videos do you want? You
17 want Columbia. What else?
18 MS. CORDRY: Well, we --
19 MS. ROSENFELD: In particular, the Wheaton --
20 MS. CORDRY: Anything about Wheaton.
21 MS. ROSENFELD: -- the Wheaton Station that you --
22 THE WITNESS: On which days or dates and time?
23 MS. CORDRY: Well, why don't you tell us what you
24 have, and then we can tell you what we want, because I can't
25 very well tell you the days because I have no idea what you

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1 videotaped. And actually, perhaps it's a sign of fate, I
2 opened this up at random to the page, which was page 148 and
3 149.
4 MR. GROSSMAN: Page 148 and 149 of which date?
5 MS. CORDRY: This would be the May 1st date, and
6 actually, this one in particular, we were also asking about
7 University Boulevard as well, which was actually
8 Mr. Adelman's --
9 MR. GROSSMAN: May 1, 2013?
10 MS. CORDRY: Right.
11 MR. GROSSMAN: All right.
12 MS. CORDRY: And at this point he was asking about
13 the --
14 MR. GROSSMAN: He being?
15 MS. CORDRY: Mr. Adelman.
16 MS. ADELMAN: Dr. Adelman.
17 MS. CORDRY: Dr. Adelman was asking about the
18 video counts at Wheaton, and the question was: Am I correct
19 that you recorded the traffic and then you used some sort of
20 computer screen that's actually, you count essentially
21 the --
22 And the answer: There's a proprietary computer
23 program where we sent the videos away, and so forth. And
24 then we also asked about, later on, with respect to
25 Elkridge, which I will find, but yes, we --

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1 MR. GROSSMAN: But was there a request that the
2 video --
3 MS. CORDRY: Yes, at a later point, there was a
4 request, which I will find as well. In any case --
5 MR. GROSSMAN: Yes.
6 MS. CORDRY: -- we would be interested --
7 MS. ROSENFELD: We'll find it during --
8 MR. GROSSMAN: By the way, I'm not sure what all
9 the, what the video of the traffic count is really going to
10 reveal to me, but in any event, if you've got it and they
11 want --
12 THE WITNESS: Well, it'll take me a couple of
13 weeks to compile everything that we have, and as soon as I
14 can, I can get that and get somebody on that, because it's,
15 we've got to get stuff from Canada, I think, in order to
16 compile everything, it'll be a case of, case, big case of
17 video disks, and we'll, we'll have to do that, I guess.
18 MS. CORDRY: We're not necessarily saying we want
19 to watch 30 or 40 or 50 hours of video. We are just trying
20 to figure out --
21 MR. GROSSMAN: Yes, I'm just wondering what, you
22 know, whether --
23 THE WITNESS: No, no, no, 8 or --
24 MR. GROSSMAN: -- the question -- wait a second,
25 Mr. Guckert.

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1 THE WITNESS: I'm sorry.
2 MR. GROSSMAN: There is a question in my mind as
3 to, if it's just showing a count and it doesn't have, you
4 know, to confirm a count or something of that sort, you
5 know, I'm not sure that it's really going to have any
6 impact. I mean, I don't have a problem with it being
7 supplied. I just, I just don't know that it ultimately --
8 I'm certainly not going to sit there for 400 hours, watching
9 the video of a traffic count --
10 MS. ROSENFELD: And Mr. --
11 MR. GROSSMAN: -- and I've got evidence under oath
12 that it, that this reflects the count. Yes.
13 MS. ROSENFELD: And to the extent that Mr. Guckert
14 was relying solely on counts, I think it was less important,
15 but in light of this new Highway Capacity analysis that he's
16 conducted, I think there may well be information in there
17 that's germane to a supplemental analysis. In any event,
18 they've agreed to produce it if it's readable.
19 MR. GROSSMAN: All right.
20 MS. HARRIS: The one thing, 900 hours' worth? I
21 mean --
22 THE WITNESS: At least.
23 MS. HARRIS: -- there's a lot, a lot of data on
24 there. We'll provide when we can if it's -- I, too,
25 question the value of it --

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1 MR. GROSSMAN: Yes. I mean --
2 MS. HARRIS: -- and I also think it places an
3 undue burden on Costco both in time and money in providing
4 it.
5 MR. GROSSMAN: I mean, one of the questions I've
6 had, I have is, I guess, with regard to that particular
7 burden, whether or not it's actually going to be reviewed by
8 the opposition. I don't have a problem with your -- with
9 asking him to supply it, but I don't want to ask him to
10 supply something you're not going to actually sit down there
11 and look at 900 hours yourself to verify a traffic count.
12 So that's -- I'd ask you to think about what it is
13 actually that you are going to be looking at, and if there's
14 particular intersections that are of value to you to look
15 at, then let's find that out now or let's say by tomorrow,
16 if you can, and let them know so that what they request is
17 actually video that you're really going to look at --
18 MS. ROSENFELD: And I think, I think if --
19 MR. GROSSMAN: -- because it's silly to have them
20 produce all that hundreds of hours of video that you're not
21 going to look at.
22 MS. CORDRY: To start with, I think the first
23 statement we made is just, we wanted to know what they had,
24 which is not the same thing as saying give us 900 hours.
25 It's --

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1 MR. GROSSMAN: Okay.

2 MS. CORDRY: -- a page or two listing. I mean, I,

3 we can consult a little more, but I would assume that, for

4 instance, Veirs Mill and Newport Mill is not an intersection

5 that we're particularly interested in looking at. I mean,

6 we probably are --

7 MS. ADELMAN: Right.

8 MS. CORDRY: -- at the very least, you know,

9 looking at the immediate vicinity of the mall as opposed to

10 the farther-away intersections, but we can certainly do

11 that. But I think the request we had at this point was,

12 first off, tell us what you have.

13 MS. ROSENFELD: And I think knowing the dates as

14 well. We might not want all of the dates. So perhaps at

15 the break we can confer among ourselves and maybe with

16 Mr. Guckert and see if we can pare it down.

17 MR. GROSSMAN: Okay. Yes, let's do that, and then

18 you can formally, you know, well, formally, by e-mail, in

19 some written form that we can put in the record, specify

20 what it is that you really need to see and so that they can

21 produce less or at least not produce things that you are not

22 going to look at, because I don't want them spinning their

23 wheels. I don't want you spinning your wheels.

24 MS. CORDRY: That's for sure.

25 MR. GROSSMAN: All right.

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1 BY MS. HARRIS:

2 Q Mr. Guckert, thank you. Now, I think we were in

3 the middle of a question, and the question was -- and maybe

4 you've completed it -- which was, beyond standard APF

5 analysis, what else have you done to evaluate the

6 compatibility of this station with the surrounding area?

7 A Well, there are a number of things that we've

8 done, one of which is to, at the request or at the -- at

9 what I recall was a discussion by the opposition,

10 potentially, and by the, Mr. Grossman, potentially, is that,

11 is CLV the way to analyze internal operations? And so with

12 that as a backdrop, we conducted a Highway Capacity Manual,

13 HCM, analysis of 193 at Valley View and the first

14 intersection at the ring road east of Valley View.

15 Q Okay. Okay. And now I do want to --

16 MR. GROSSMAN: And that's Intersection --

17 MS. ADELMAN: 16.

18 MR. GROSSMAN: -- 16? Is that --

19 MS. HARRIS: 16, yes.

20 THE WITNESS: Yes.

21 MR. GROSSMAN: -- my recollection? Okay.

22 THE WITNESS: And that's what's shown on Exhibit

23 465, Mr. Grossman.

24 BY MS. HARRIS:

25 Q Okay. Now I want to move into more detail with

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1 regard to that Intersection 16, which was the basis of a lot

2 of discussion during the opponents' case. Do you have

3 concerns regarding the Valley View and University Boulevard

4 intersection and the impact of the station on that

5 intersection?

6 A I do have not concerns, no.

7 Q And what's your basis for that conclusion?

8 A Well, the basis is that we've, we've observed

9 traffic, we've videotaped traffic, we have new tapes and

10 information that has already been submitted to the

11 opposition. The current situation is that during most

12 times, Mr. Grossman, that intersection operates quite

13 nicely, free flow during busy periods.

14 MR. GROSSMAN: Which one? Which intersection are

15 you talking about now? 16 or the Valley View and the --

16 THE WITNESS: Valley View/193.

17 MR. GROSSMAN: Okay.

18 THE WITNESS: And so that, you know, from a

19 capacity point of view and an operational point of view, the

20 intersection operates quite nicely.

21 BY MS. HARRIS:

22 Q And can you describe the tapes that were recently

23 taken? When were the tapes that we've admitted, that are in

24 evidence as Exhibit --

25 A Friday, March -- oh, I'm sorry.

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1 Q Yes, 460 -- I'm sorry.

2 MS. CORDRY: While she's looking at that, could I

3 suggest that those are not, have not been admitted or

4 they're not in evidence? Those are ones that may have been

5 given a number.

6 MR. GROSSMAN: You're talking about the disk

7 that --

8 MS. ROSENFELD: Nothing's been admitted yet.

9 MS. HARRIS: Yes.

10 MR. GROSSMAN: -- you just dropped off at my

11 office? That is --

12 MS. HARRIS: Yes, 479(a).

13 MR. GROSSMAN: -- 479(a).

14 MS. HARRIS: Yes.

15 MS. CORDRY: Right. I think --

16 MR. GROSSMAN: It was dropped off --

17 MS. HARRIS: Okay.

18 MR. GROSSMAN: -- yesterday, I believe --

19 MS. HARRIS: Yes.

20 MR. GROSSMAN: -- is that correct? Because it was

21 after I left yesterday.

22 MS. HARRIS: Correct. Okay.

23 BY MS. HARRIS:

24 Q So can you explain what 479(a) shows?

25 MS. CORDRY: And, again, I think --

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1 MR. ADELMAN: Wait.
2 MS. ROSENFELD: Objection.
3 MS. CORDRY: I think we would object. We have
4 not, I think it would be -- oh, I'm sorry. If you want to
5 ask what it is before we ask whether this could be admitted.
6 I think he can describe the exhibit. I would take back an
7 objection to a description --
8 MR. GROSSMAN: Well, yes. The question of whether
9 or not it's going to be admitted is a broader question,
10 which we're going to deal with on our last hearing date.
11 MS. CORDRY: Well --
12 MR. GROSSMAN: Some of these things are going to
13 be identified. The question of whether there are objections
14 to exhibits will be taken up later. A lot of these things
15 are identified for the record, but nothing is --
16 MS. CORDRY: Right.
17 MR. GROSSMAN: -- formally admitted into the
18 record until we have that discussion of everybody's
19 objections.
20 MS. ROSENFELD: Right.
21 MS. CORDRY: But I think in terms of this question
22 about whether this is appropriate additional evidence and so
23 forth, we would, I expect, be wanting to look at this in the
24 same light as the rest of it; that is, you noted yesterday
25 that this is rather late in the day to be providing this

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1 information, but if the question is simply describe what's
2 on that exhibit --
3 MR. GROSSMAN: All right.
4 MS. HARRIS: Well, that's the first question,
5 but --
6 MS. CORDRY: Right.
7 MS. HARRIS: -- obviously, there's going to be
8 additional questions.
9 MR. GROSSMAN: I take it you'll have an objection
10 to its admission and I'll note that. I'm going to overrule
11 it temporarily, at least, to let him describe it, and you'll
12 have the opportunity on April 1, as the e-mail exchange
13 indicated, to cross-examine on it.
14 MS. CORDRY: Right. I did want to be clear,
15 because I think there was a suggestion that this exhibit had
16 been admitted, and it clearly has not.
17 MR. GROSSMAN: Right. Okay. Will you describe
18 Exhibit 465(a), please?
19 THE WITNESS: Yes, sir.
20 MR. GROSSMAN: Or not 465(a), I'm sorry.
21 MR. GOECKE: 479(a).
22 MS. HARRIS: 479(a).
23 MR. GROSSMAN: 479(a). See, you got me confused.
24 THE WITNESS: We undertook video of the
25 intersection of 193 and Valley View on Friday, March 7th,

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1 and Saturday, March 8th, throughout the day. The --
2 BY MS. HARRIS:
3 Q When you say, excuse me, when you say throughout
4 the day, what hours on Friday and what hours on Saturday?
5 A The, on Saturday the data was collected from 10:00
6 a.m. to 4:00 p.m., and on Friday the information was
7 collected from 2:00 p.m. to 6:00 p.m.
8 Q Thank you. And how was it collected?
9 A We put a standard video camera at the
10 intersection, and it was set up in the southwest quadrant,
11 pointing towards the intersection, specifically to examine
12 how cars enter making a left turn in, a right turn into the
13 mall, and cars that are along the access road entering the
14 mall, going up the hill to Intersection 16.
15 Q Thank you. And were you here during the
16 presentation of Ms. Cordry's testimony regarding traffic?
17 A Yes.
18 Q And did you observe the tapes that she provided?
19 A Yes.
20 Q And do your tapes differ from the tapes that she
21 provided?
22 A Yes.
23 Q And can you explain the differences in your
24 observations versus the ones that were, Ms. Cordry provided?
25 A On these 10 hours of tapes taken on March 7th and

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1 8th, while there is traffic going into the mall and there's
2 queuing on the mall access road, there is not the blockage
3 of the intersection that is occurring.
4 Q And what do you think is attributable to that
5 difference?
6 A It's just day of the week and time of the year
7 when I believe Ms. Cordry's data was collected.
8 Q Okay.
9 MS. HARRIS: And what I would like to do now is
10 show -- and we will spare you and not plan to show 10 hours'
11 worth of tape -- but if we could take a few minutes, and we
12 have the benefit of being able to fast-forward through.
13 BY MS. HARRIS:
14 Q Mr. Guckert, in reviewing the tape on, why don't
15 we start with -- can we start with Saturday?
16 A Well, I was --
17 MS. CORDRY: Can I, as a voir dire question
18 perhaps, it's my understanding from looking at the listing
19 we had that these were actually 15-minute segments. Are you
20 saying they're actually full hours of each one? I thought
21 they were 15 -- each one of these, I thought, were 15-minute
22 segments.
23 THE WITNESS: No. You're confusing with something
24 else. These are full hours.
25 MS. CORDRY: Well, okay, I'll look at it again,

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1 but --
2 MR. GROSSMAN: The something else she's confusing
3 it with are -- you're talking about the other videos you
4 made regarding traffic counts? Those are the 15-minute
5 ones? Or what are you talking about?
6 THE WITNESS: No --
7 MR. GROSSMAN: No?
8 THE WITNESS: -- the ones doing the traffic counts
9 in April, they were, they were 10-hour tapes.
10 MR. GROSSMAN: Okay.
11 MS. CORDRY: Okay. Well, I'm not confusing them
12 with the 10-hour tapes. I was looking at your Dropbox
13 links.
14 THE WITNESS: No, I wasn't, I wasn't talking to
15 you about being confusing. I was --
16 MS. CORDRY: Okay.
17 THE WITNESS: -- I was responding to the question.
18 MS. CORDRY: Okay. Well --
19 MS. ROSENFELD: Maybe I can ask the question a
20 different way. Are these, for example, on the Friday, is it
21 four consecutive hours --
22 THE WITNESS: Yes.
23 MS. ROSENFELD: -- four full consecutive hours?
24 THE WITNESS: Yes.
25 MS. ROSENFELD: And on that Saturday it's six full

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1 consecutive hours?
2 THE WITNESS: Correct.
3 MS. ROSENFELD: Okay.
4 THE WITNESS: And they're broken down into, I have
5 -- in fact, what I've also brought for Mr. Grossman and for
6 you, Ms. Rosenfeld, additional sets that have a higher
7 quality video for you as well, in addition to what you've
8 already received. The same thing you've already received
9 from Costco, we have better quality for you.
10 MS. ROSENFELD: Thank you.
11 THE WITNESS: Okay?
12 MR. ADELMAN: Mr. Grossman, can you please
13 clarify? If I understand, these videos have not yet been
14 admitted in evidence. Is that what you said?
15 MR. GROSSMAN: Yes. They've been marked and
16 identified as exhibits, and ordinarily, if they were going
17 to be presented to the fact finder, ordinarily they'd be
18 admitted into evidence. Here we have the fact finder and
19 the legal determiner as the same person. I can determine
20 later that, to ignore whatever I have seen, and these, if I
21 later determine that these should not, or were improvidently
22 viewed --
23 MR. ADELMAN: So --
24 MR. GROSSMAN: -- and so it's, you know, that can
25 be excluded from my consideration later.

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1 MR. ADELMAN: Is the premise that any prejudice
2 you might have from viewing the videotapes we can reverse in
3 our cross-examination? Is that, is that the premise?
4 MR. GROSSMAN: No. The premise is that if in fact
5 it shouldn't be admitted and I shouldn't have admitted it, I
6 shouldn't admit it, then I will not consider what I have
7 seen if I, after I've seen it. I will not consider it as
8 part of my evaluation of the case.
9 MR. ADELMAN: Okay.
10 MS. HARRIS: Would it be helpful to turn off the
11 light?
12 MR. GROSSMAN: You certainly can if you think so.
13 BY MS. HARRIS:
14 Q Okay. Mr. Guckert, what day is this? This is the
15 8th, is that correct?
16 A The 8th at 2:00 p.m.
17 Q Okay.
18 A And so what I want to do, I think it's, it's
19 evident where the location is, and -- but it's at the
20 intersection of 193 and Valley View, and what you're looking
21 at right now is at the, in the southwest quadrant, looking
22 northeast. Now, by, by holding the fast-forward button,
23 we're able to move through at a much faster, faster pace.
24 MR. GROSSMAN: That would be the southwest
25 quadrant, wouldn't it?

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1 THE WITNESS: Southwest quadrant, looking
2 northeast.
3 MR. GROSSMAN: Right. Okay.
4 MS. ROSENFELD: So for the record, is the
5 southwest quadrant on the lower left-hand side of the
6 screen?
7 MR. GROSSMAN: It would be on the lower right-hand
8 side, right?
9 MS. ADELMAN: Lower right.
10 MS. ROSENFELD: Perhaps you can orient. On the
11 lower left-hand side of this screen --
12 THE WITNESS: This is --
13 MS. ROSENFELD: -- is that 193?
14 THE WITNESS: This is the quadrant.
15 MS. ADELMAN: Yes.
16 THE WITNESS: This is 193, this is Valley View to
17 the left, and this is the entrance to the mall.
18 MS. ROSENFELD: The entrance to the mall is on the
19 right-hand? Okay.
20 THE WITNESS: Giant Food. Okay?
21 MR. ADELMAN: So the --
22 MR. GROSSMAN: Right. Giant Food is in the upper
23 right-hand corner, and the movie is being taken from the
24 southwest --
25 MS. HARRIS: Would it be helpful to show you --

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1 MS. ROSENFELD: And so traffic is traveling from
2 west to east?
3 THE WITNESS: This is, this is, this is eastbound,
4 okay? That's southbound.
5 MR. GROSSMAN: Wait a minute.
6 THE WITNESS: This is Valley View. This is 193.
7 This is the mall entrance. This is Giant Food.
8 MS. ROSENFELD: Mr. Grossman --
9 MR. GROSSMAN: Wait a minute.
10 MS. ROSENFELD: -- for purposes of the transcript,
11 could you identify --
12 MR. GROSSMAN: Yes. Is that the southwest corner
13 or the southeast corner that you're taking the movie from?
14 MR. ADELMAN: He's on the southeast corner.
15 MS. ADELMAN: No. It's west.
16 MS. HARRIS: If I could, I think it would be
17 helpful to show on the larger --
18 MS. ADELMAN: It's west.
19 MS. HARRIS: -- plan.
20 MR. GROSSMAN: Yes.
21 BY MS. HARRIS:
22 Q And this is Exhibit --
23 A Wait a minute. Wait a minute, please. Just give
24 me one second.
25 Q Exhibit 230.

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1 A Exhibit 230, and in Exhibit 230 -- I'm looking for
2 the north arrow.
3 Q It's over there on the left.
4 MR. GOECKE: Upper left.
5 THE WITNESS: Yeah. So north, southwest quadrant,
6 which is where I've stated four or five times this morning,
7 southwest quadrant and looking, looking northeast.
8 MR. ADELMAN: That's the southwest quadrant of the
9 mall, but it's not --
10 MR. GROSSMAN: It's the southwest quadrant to the
11 mall but not of the intersection. That's the confusion,
12 Mr. Guckert. It's the south, it's the --
13 MS. HARRIS: It is the --
14 THE WITNESS: It's the, it's the southwest
15 quadrant of the intersection. North, south, west, that's --
16 well, we can name it whatever you'd like, okay? I give up.
17 I'm on -- to me it's the southwest quadrant.
18 MS. CORDRY: Could I suggest that perhaps the way
19 -- he's standing in what we have been referring to as Outlot
20 B, I think, at other times there. So it looks like that's
21 where the camera is set up, is in Outlot B, pointing east
22 towards, up University, or northeast, up University
23 Boulevard.
24 MR. GROSSMAN: All right. I see. I see what
25 you're -- I guess that my orientation issue was, if you were

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1 looking -- if north is that way, west is on the other side,
2 but I understand what you're saying. Looking at the
3 intersection of that, that particular intersection, it would
4 be southwest, because the other side of the entranceway
5 would be the eastern side of it if you're looking at it that
6 way. So I guess it would be the southwest side of that,
7 that intersection. Okay. I understand what you're saying
8 now.
9 THE WITNESS: So what I want to do is go through
10 and speed this up so that it, we're not looking at 10 hours'
11 worth of video. And this, again, is on Saturday and cars
12 coming in, cars going out.
13 BY MS. HARRIS:
14 Q Can you --
15 A I -- go ahead.
16 Q No. Go ahead.
17 A There you see a momentary situation where cars are
18 waiting to enter the mall, but when you go through these
19 tapes -- and, Mr. Grossman, no, I have not reviewed every
20 second at current speed of these tapes. They have been spot
21 checked by me, and the conditions are such that it
22 corresponds with my testimony a few moments ago regarding
23 the intersection.
24 MR. GROSSMAN: Okay.
25 BY MS. HARRIS:

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1 Q And why did you pick for purposes of this
2 demonstration 2 o'clock on that Saturday?
3 A 2 o'clock is a fairly busy time of day for the
4 mall.
5 Q Okay. And now can we briefly go to the Friday
6 afternoon tape, please?
7 A I will pull that out.
8 Q Actually, before we leave that, let me just ask
9 you a question. In terms -- there was a lot of discussion
10 about the westbound turn lane, turning left into the mall.
11 What did you observe from the tapes of that turning?
12 A Well, you'll see that once you go through and
13 review them, that the westbound left turn from 193 into the
14 mall is not heavily used. Clearly, it's more heavily used
15 on heavy shopping days, like Thanksgiving and Christmas and
16 those periods of time, but for the most part, that's a
17 left-turn lane that can accommodate about 55 cars in it.
18 And when you start to look at the video, you'll see that
19 it's really not being used, that when we designed that
20 left-turn lane, Mr. Grossman, it was designed for peak use
21 for the mall.
22 Q And when you say when we designed it, when was,
23 when was that intersection designed or redesigned?
24 A A number of years ago. I don't recall the exact
25 time, but it was when, it was when the new department stores

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1 were built.
2 Q And it was an --
3 MR. ADELMAN: Objection to the use of the term not
4 being used. Those lanes are being used. Objection to that
5 terminology.
6 MR. GROSSMAN: Well, this is factual. You can
7 cross-examine on what he says.
8 MR. ADELMAN: Sorry.
9 MR. GROSSMAN: Okay. So it's overruled. Go
10 ahead.
11 BY MS. HARRIS:
12 Q And Westfield was required to redesign that
13 intersection?
14 A We recommended the redesign and Westfield built
15 it.
16 Q And was that done in anticipation of additional
17 development on the mall site?
18 A Yes.
19 Q Okay. Now, if we could, just go briefly to the
20 March 7th --
21 A Okay. We'll have to --
22 Q -- (c) day.
23 A -- have to go to a new disk.
24 MR. GROSSMAN: While that's loading, how do you
25 account for the very significant difference in the video

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1 which was shown by Ms. Cordry of this intersection and the
2 video you're showing in terms of the levels of traffic?
3 THE WITNESS: As I recall -- and I could be wrong,
4 because I know that if I'm wrong, I will be corrected -- I
5 think Ms. Cordry's was during Christmas season, in that
6 Christmas season point of view.
7 MR. GROSSMAN: No. I think she, not in her --
8 MS. CORDRY: Yes. Shall I correct that?
9 MR. GROSSMAN: Go ahead.
10 MS. CORDRY: The only information I supplied about
11 the Christmas season was four pages of a written discussion.
12 All of my videos were taken long before Christmas.
13 MR. GROSSMAN: Right. That's --
14 MS. CORDRY: And long before Thanksgiving as well.
15 MR. GROSSMAN: All right. So do you have any,
16 given that correction as to when her videos were taken, any
17 explanation for why hers show significantly more traffic
18 queuing in making that left turn into the --
19 THE WITNESS: I'll have to go look at the dates
20 again --
21 MR. GROSSMAN: All right.
22 THE WITNESS: -- to see if there was, where there
23 was a coincidental situation. I can tell you that March
24 time frame represents almost average retail conditions,
25 nearly average retail conditions.

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1 MR. GROSSMAN: Okay.
2 THE WITNESS: And so that -- so we're doing this
3 for nearly average retail conditions, number one; number
4 two, having to wait until snow is basically gone in order to
5 make, give a video that was, that was representative.
6 MR. GROSSMAN: Okay.
7 THE WITNESS: So let's move up here. As an
8 example, here it is 4:30 in the afternoon on Friday.
9 MR. GROSSMAN: Friday, March 7th?
10 THE WITNESS: Correct.
11 MR. GROSSMAN: 2014?
12 THE WITNESS: Correct. And what you're going to
13 see, Mr. Grossman -- and I know that you indicated you would
14 not be reviewing all 10 hours of this -- but what you --
15 MR. GROSSMAN: No. What I actually said was I
16 wasn't going to review 400 hours or 900 hours of videos of
17 the --
18 THE WITNESS: Ah, okay.
19 MR. GROSSMAN: -- of the traffic counts.
20 THE WITNESS: Okay. So --
21 MS. ROSENFELD: We better schedule some extra
22 days.
23 THE WITNESS: Yeah, and actually, it turns out to
24 be about 1300 hours of that Saturday.
25 MS. ADELMAN: Going up. It's going up.

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1 THE WITNESS: So what this, what you would see by
2 reviewing this is that while there may be occasionally a
3 situation during the week -- this happens to be on a Friday
4 -- you're not going to see much of anything as it relates to
5 congestion or delay. You'll see some of that a little bit
6 on Saturday, as I showed to you, but this is Friday around
7 4:30 in the afternoon.
8 BY MS. HARRIS:
9 Q Ms. Cordry's tape showed approximately a two- to
10 three-minute approach going up the access drive toward the
11 ring road. In your experience --
12 MR. GROSSMAN: You mean two to three minutes after
13 the turn was made or --
14 MS. HARRIS: Yes --
15 MR. GROSSMAN: Okay.
16 MS. HARRIS: -- I believe that's --
17 MR. GROSSMAN: On the access road.
18 MS. HARRIS: -- I mean, it ranged from one to
19 two-and-a-half minutes, I believe. She can correct me if
20 I'm wrong.
21 BY MS. HARRIS:
22 Q What is your view about that length of time,
23 approaching a shopping center in the middle of the day on
24 Saturday? Is that something, are those -- and while your
25 tapes don't necessarily show that, are those, is that a

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1 typical, is that an expected condition?
2 A At a successful center, yes.
3 Q While it was slow traffic, was it free-flowing?
4 A Well, it was not a situation where you had a full
5 breakdown of the system along 193. There was a momentary
6 blockage of the eastbound traffic that generally cleared.
7 Q Okay. And now, just to be clear, this is the --
8 the tapes that you have shown show the traffic situation as
9 it currently exists with the Costco warehouse in place,
10 correct?
11 A Correct.
12 Q And can you describe what happens to this
13 intersection upon the additional traffic that will be
14 attributable to the gas station?
15 A Well, as shown on -- if we go back to Exhibit 465,
16 the results of the HCM analysis, while we could add critical
17 lane volume and do a critical lane analysis at the
18 intersection -- and we have and it shows almost no increase
19 -- we went one step further to do more of an operational
20 analysis, which is the HCM, and we show that there's about a
21 two-second delay per car with the additional cars generated
22 by the gas station.
23 MS. CORDRY: Could you identify which -- I'm
24 sorry. If you --
25 MR. GROSSMAN: I'm sorry. How much delay did you

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1 say it would be?
2 THE WITNESS: Two seconds --
3 MR. GROSSMAN: Two seconds.
4 THE WITNESS: -- per car.
5 MS. CORDRY: Okay. I'm sorry. And you're saying
6 that at the 193 intersection?
7 THE WITNESS: Yes.
8 MR. GROSSMAN: And you're talking about eastbound
9 traffic on 193, westbound traffic? What are you -- which
10 one are you talking about has a two-second delay in it?
11 THE WITNESS: Overall intersection delay. That's
12 the way it's measured.
13 MR. GROSSMAN: Okay.
14 BY MS. HARRIS:
15 Q And how many cars --
16 A Can we just turn this off now?
17 Q Yes, I think we can, and it may be helpful to flip
18 that --
19 MR. GROSSMAN: And what about at the intersection
20 16?
21 THE WITNESS: As shown on Exhibit 465, it shows an
22 additional plus or minus four-second per-car delay at that
23 location.
24 MR. GROSSMAN: Plus or minus?
25 THE WITNESS: This is not an exact, precise.

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1 About four seconds. That's why I say plus or minus.
2 MR. GROSSMAN: Okay. You don't mean it could be
3 less traffic; you just mean it's four, five seconds', more
4 or less --
5 THE WITNESS: That's correct.
6 MR. GROSSMAN: -- delay added, not that it could
7 be minus four or five seconds --
8 THE WITNESS: Correct.
9 MR. GROSSMAN: -- when you said plus or minus?
10 Okay.
11 MR. ADELMAN: Just clarification, is that the part
12 of the chart that shows a level of service of E at that
13 intersection?
14 THE WITNESS: That's correct, and the same thing
15 on the evening peak hour. That's correct.
16 MR. GROSSMAN: Okay.
17 BY MS. HARRIS:
18 Q And so the two-second delay, what does that mean
19 in terms of additional cars at that intersection,
20 approximately, at various directions -- approaches?
21 A Say that again.
22 Q You've noted that the, once the gas station is
23 operational --
24 A Yes.
25 Q -- it'll result in a two-second delay for cars

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1 accessing the Valley View Drive.
2 A Correct.
3 Q And what does that mean in terms of additional
4 cars at that intersection?
5 A It's about one additional car per minute, about
6 two cars per signal cycle.
7 Q And, in your view, is this increase perceptible?
8 A No. In my opinion, you're not going to notice an
9 increase of one or two cars per change of the signal during
10 peak hours.
11 Q How many cars can be accommodated on the westbound
12 approach double-turn lane?
13 A That's where I had testified early about 55 cars,
14 and currently the demand is much, is much less than that.
15 About 50 percent of that double left-turn lane is utilized.
16 Q And so in any given light cycle, how many more
17 cars will be added?
18 A One to two.
19 Q And then under normal non-holiday conditions, does
20 that light cycle -- does that double-turn lane clear in one
21 light cycle?
22 A Yes.
23 Q And will it continue to do that once the gas
24 station is added?
25 A Yes.

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1 Q In your review, is there any indication that this
2 intersection after the addition of the gas station will be
3 an unsafe or hazardous intersection?
4 A In my opinion, there's, there's nothing that tells
5 me that it'll be unsafe or hazardous at all.
6 MS. ROSENFELD: And which intersection are you
7 asking about?
8 THE WITNESS: 193 and Valley View.
9 MS. ROSENFELD: Thank you.
10 BY MS. HARRIS:
11 Q And Valley View, I'm sorry, and Valley View and
12 the ring road?
13 A Same thing, it'll operate with more traffic but
14 it's not going to be unsafe or -- at all.
15 Q Okay. Now what I'd like to do is turn to the
16 issue of the gas -- of the cars exiting the gas station
17 after they've been serviced. The opponents spent a fair
18 amount of time discussing the cars exiting the gas station.
19 Do you foresee a problem with this?
20 A No, I do not.
21 Q And why is that?
22 A Well, there's, there's six different ways that you
23 can exit a gas station, two of which take you out of the
24 parking lot directly to the ring road in a pretty
25 expeditious manner.

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1 MS. HARRIS: And so, Mr. Grossman, Mr. Guckert is
2 referencing Exhibit No. -- sorry.
3 MR. ADELMAN: 456(e).
4 MS. HARRIS: I'm sorry, 450?
5 THE WITNESS: 6, did you say?
6 MR. ADELMAN: 456(e).
7 THE WITNESS: 466(e)?
8 MS. HARRIS: 456(e), oh.
9 MR. ADELMAN: No, 456(e).
10 THE WITNESS: Sorry, that's what I thought you
11 said.
12 MS. HARRIS: Okay. 456(e), which is --
13 MR. GOECKE: Do you have extra copies for them?
14 MS. HARRIS: Yes, we have extra copies. Sorry,
15 hold on. We're going to be -- we're distributing packets
16 that we had previously submitted. Mr. Grossman, would you
17 like a packet? They're already in the record, but would
18 that make it easier --
19 MR. GROSSMAN: Sure, a packet's always fun.
20 MS. CORDRY: Do you have one more?
21 MS. HARRIS: We do.
22 MR. GROSSMAN: Thank you. Now, this is -- I'm
23 going to put my little MLG here -- this is the Guckert
24 rebuttal packet.
25 MS. HARRIS: Yes.

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1 MR. GROSSMAN: Is that fair to say?
2 MS. HARRIS: Yes. Did you give them another copy?
3 MR. GOECKE: I don't have any more. I gave them
4 what I had.
5 MS. HARRIS: Oh, here's one more.
6 MS. ADELMAN: Thank you.
7 MS. HARRIS: Yes.
8 BY MS. HARRIS:
9 Q Okay. So let's back up. Why do you not foresee
10 that to be a problem?
11 A Well, if you look at 456(e) --
12 Q Yes.
13 A -- and, Mr. Grossman, for your -- it's this one
14 here, Mr. Grossman.
15 MR. GROSSMAN: Yes. I'm looking at it. I have
16 the --
17 THE WITNESS: Okay. All right. I'm sorry.
18 MR. GROSSMAN: -- I have the exhibit itself.
19 THE WITNESS: For -- this particular exhibit shows
20 that there are basically six ways for vehicles to leave the
21 gas station facility and --
22 MR. ADELMAN: Clarification, there are actually
23 two pages to 456(e). Are they different in some way, or is
24 it just a difference in size?
25 THE WITNESS: Just size.

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1 MR. ADELMAN: Fine.
2 THE WITNESS: One's a blowup.
3 MR. ADELMAN: Fine. Thank you.
4 THE WITNESS: Welcome. And so this particular
5 exhibit shows how you can get out of the gas station onto
6 the, through the parking lot, or quite frankly, No. 1 and
7 No. 6 is a situation whereby you can, you can go directly
8 outside of the, of the parking lot and get directly back to
9 the ring road.
10 BY MS. HARRIS:
11 Q And while we're setting that up, is the design
12 unique to other Costco gas stations?
13 A No. This, this, this design is -- every, every
14 station is different.
15 MR. ADELMAN: I'm sorry. Could I have, could I
16 have a clarification?
17 THE WITNESS: Certainly.
18 MR. ADELMAN: If I understood, you said you can,
19 you can use Lanes 1 and 6 to get out of the gas station
20 without in any way going in the parking lot?
21 MR. GROSSMAN: Dr. Adelman, wait for
22 cross-examination --
23 MR. ADELMAN: Ah.
24 MR. GROSSMAN: -- for that kind of question, okay?
25 MR. ADELMAN: Fine.

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1 THE WITNESS: The -- let me repeat what I said,
2 and I'll show you with another exhibit that's a little bit
3 larger. This also shows the special exception area, and
4 what I've highlighted in yellow is a pathway for any of the
5 exits from, from the gas station that can proceed, make a
6 left down to the ring road or make a right and come down to
7 the ring road.
8 MS. ROSENFELD: Excuse me. Mr. Grossman, is that
9 an exhibit?
10 MR. GROSSMAN: Is that an exhibit that you have
11 marked?
12 MS. HARRIS: No, it's not an exhibit.
13 MR. GROSSMAN: Well, let's have it marked --
14 MS. HARRIS: Okay.
15 MR. GROSSMAN: -- if he's going to refer to it.
16 MS. ROSENFELD: And do you have copies?
17 MS. HARRIS: We don't have copies of that.
18 THE WITNESS: This is, this is, this is the same
19 exhibit that you have in your hand --
20 MS. HARRIS: With a yellow --
21 THE WITNESS: -- without, without the green, and
22 it's just showing --
23 MS. ROSENFELD: Without the green and adding
24 yellow?
25 THE WITNESS: That's correct.

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1 MS. ROSENFELD: I get it.
2 THE WITNESS: Okay.
3 MR. GROSSMAN: Okay. All right. But let's have
4 it marked if you're going to refer to it, so we know what
5 we're referring to in the record. And would you write on
6 there 481, and that's a --
7 THE WITNESS: Special exception area map showing
8 access, highlighted access to the ring road.
9 MR. GROSSMAN: Yellow highlighted access to ring
10 road. All right.
11 (Exhibit No. 481 was marked
12 for identification.)
13 THE WITNESS: And what I had testified to, as it
14 relates to 456(e), was that you can make that access without
15 going through the parking lot and passing a minimal number
16 of parking spaces on the west and on the east.
17 MR. GROSSMAN: So you're suggesting that once they
18 exit from either, the exits shown on 456(e), the six exits,
19 they can proceed along the highlighted area and to the,
20 essentially, to the east and west of the subject site and
21 exit onto the ring road?
22 THE WITNESS: That's correct, and I guess, in my
23 opinion, if I have no further business inside the parking
24 lot, I'm going to get out onto the ring road versus travel
25 through the parking lot. So the purpose of this,

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1 Mr. Grossman, is to highlight the most expeditious ways out
2 of the gas, back to the ring road if you're exiting the
3 mall.
4 MR. GROSSMAN: The people who are exiting on the
5 green arrows on Exhibit 456(e) -- the green arrows labeled
6 2, 3, 4, and 5 -- if they wanted to get back to the ring
7 road, presumably they'd be turning a hard left or right,
8 west or east, and then going south along the same route as
9 the ones labeled 1 and 6?
10 THE WITNESS: Yes, that's correct. I was just
11 showing the options to exit.
12 MR. GROSSMAN: Do they have any other options, the
13 people in 2, 3, 4, and 5 on Exhibit 456(e)?
14 THE WITNESS: Sure. They can make a U-turn and go
15 down where 1 is, as an -- everybody can come out of one of
16 those four areas and go left or right.
17 MR. GROSSMAN: Okay. But would you show them on
18 456(e), going north, for Nos. 2, 3, 4, and 5, where do they
19 go from there, is my question.
20 THE WITNESS: Well, if -- they may be going and
21 picking someone up that has product at Target or picking
22 someone up that has product at Costco, or they may be going
23 straight up to the front of the mall, making a left, and
24 going back out to the ring road. If we look at -- I've now
25 put up for Exhibit 230 -- such that if they were exiting and

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1 going straight up, they would go straight up and come out,
2 make a left turn across the front of the Target store and go
3 out to the ring road.
4 MR. GROSSMAN: Okay. So their other choice, the
5 other choice for those in 2, 3, 4, and 5, the ones labeled
6 2, 3, 4, and 5 on Exhibit 456(e), is to go due north --
7 THE WITNESS: Or --
8 MR. GROSSMAN: -- until they get to the Target
9 store --
10 THE WITNESS: Or --
11 MR. GROSSMAN: -- essentially, and make a left.
12 THE WITNESS: Or they could come to the next cross
13 aisle, which is about 10 spaces to the north --
14 MR. GROSSMAN: Okay.
15 THE WITNESS: -- okay, and make a left and go out
16 to the ring road.
17 MR. GROSSMAN: Okay.
18 THE WITNESS: So there are multiple ways for them
19 to get out: up, all the way up to the north and make a
20 left; partially up to the north and make a left; and, of
21 course, to make a left or right and go back out to the ring
22 road to the south.
23 MR. GROSSMAN: Okay.
24 MS. SAVAGE: Mr. Grossman --
25 MR. GROSSMAN: Yes.

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1 MS. SAVAGE: -- excuse me. Do you have your magic
2 laser pointer with you?
3 MR. GROSSMAN: I do.
4 MS. SAVAGE: Because it would be easier for us
5 back here if he sat down and used the laser pointer --
6 MR. GROSSMAN: Okay.
7 MS. SAVAGE: -- to see those kind of things.
8 MR. GROSSMAN: Mr. Guckert, I have a laser pointer
9 here if you want to use it.
10 THE WITNESS: Let me see.
11 MS. HARRIS: He likes to use his.
12 THE WITNESS: Use yours?
13 MR. GROSSMAN: You may. And this, the trigger is
14 on top there.
15 THE WITNESS: Yeah.
16 MS. SAVAGE: Thanks.
17 THE WITNESS: Do you want me to restate that then?
18 MS. SAVAGE: That's all right. That's all
19 right --
20 THE WITNESS: Okay.
21 MS. SAVAGE: -- but from now on --
22 THE WITNESS: Okay.
23 MS. SAVAGE: -- if you could use that, that would
24 be helpful.
25 THE WITNESS: Very good.

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1 BY MS. HARRIS:
2 Q And, Mr. Guckert, you indicated that there were
3 six ways in which a customer could exit the station. Are
4 you familiar with any Costco stations that have just one
5 exit?
6 A There are -- there are, certainly, Costco stores.
7 I'd have to go through and see if we, what we have, but
8 clearly there are stores that have one or two ways in order
9 to get out. That's, that's for sure.
10 Q If someone were in what's labeled here Aisle 4 or
11 5, if they decided they wanted to make a left-hand turn and
12 go out where you've indicated Car No. 1 is going out, is
13 that such an unusual movement that occurs in a Costco gas
14 station?
15 A It's not unusual. It is not unusual.
16 Q There was concern expressed regarding the early
17 morning loading and, if the drive aisle near the loading
18 dock is occupied with trucks, how the cars will exit the far
19 -- or can you tell us, how will the cars exit if the loading
20 is occurring?
21 A Well, if loading is occurring -- I'm referring now
22 to Exhibit 481 -- if loading is occurring for the store, the
23 cars can exit back out to the left, back out to the ring
24 road.
25 Q And are there other --

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1 MR. GROSSMAN: In other words, on the western
2 portion of the yellow highlighter.
3 THE WITNESS: The western portion, or they could
4 proceed up, as we've just talked about, up to the cross
5 aisle or to the next cross aisle, all the way up the north
6 end.
7 BY MS. HARRIS:
8 Q And is that movement unlike what occurs at other
9 Costco gas stations?
10 A No, it is not.
11 Q And now I want to get into the amount of cars that
12 are actually exiting the station at any one time, and we'll
13 focus on peak hour since that seemed to be a concern of the
14 customers. Can you explain the exiting? Once someone has
15 completed their gas transaction and they're exiting and
16 assuming that there's a steady flow of customers, can you
17 explain that dynamic?
18 A The dynamic, Mr. Grossman, is such that you've
19 got, with the volume of cars that would be exiting -- I'm
20 pointing again now to Exhibit 481 -- with the volume of cars
21 that would be serviced on an hourly basis during peak time
22 and with the amount of time it takes the cars to fuel,
23 you're, you've got about a car every 20 seconds, every 20
24 seconds, would be leaving to go to either north or to be
25 making a left or right to get back to the ring road.

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1 MR. GROSSMAN: You mean every 20 seconds per lane
2 or overall?
3 THE WITNESS: Overall --
4 MR. GROSSMAN: Okay.
5 THE WITNESS: -- because when you take, when you
6 take somewhere between 180 and 200 cars, you're in the range
7 of two-and-a-half to three-and-a-half cars a minute. So
8 it's about a car every 20 seconds, overall, that would be
9 leaving --
10 MR. GROSSMAN: Okay.
11 THE WITNESS: -- on the average.
12 BY MS. HARRIS:
13 Q And so how many cars a minute is that?
14 A That's three cars a minute.
15 Q And how many choices do they have to get out,
16 those three cars, in a given minute?
17 A They've got at least, at least six, and depending
18 on whether or not you count the two different cross aisles,
19 there could be 12.
20 Q Okay. I want to move to an example of this and
21 that's the Brandywine tape that we have, but before we go to
22 the tape, it may be helpful for you to describe Exhibit No.
23 456(c), which is the Brandywine Costco transactions, and --
24 A Do you want me to use this one?
25 Q That's fine.

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1 A Okay.

2 Q And what was the purpose of studying -- well,

3 let's start with, why did you choose Brandywine to observe?

4 A 456(c)?

5 Q Actually, let me back up for one moment. Let's

6 go, I think it may be helpful to start with the aerial,

7 which is 456 --

8 MS. ADELMAN: (B).

9 BY MS. HARRIS:

10 Q -- (b).

11 MR. ADELMAN: And just to reiterate at this point,

12 Mr. Grossman, to remind you that we are objecting to the,

13 all of the material pertaining to Brandywine.

14 MR. GROSSMAN: Okay.

15 BY MS. HARRIS:

16 Q Why did you select Brandywine to evaluate?

17 A Brandywine is, is a, is a station that, where you

18 can clearly see that, that you're exiting into the parking

19 lot.

20 Q And in the case of Brandywine, how many options

21 are there, exiting options are there?

22 A In this Brandywine case, there are probably three

23 ways for vehicles to exit --

24 Q Okay.

25 A -- two going, two going, two going east and then

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1 making a right and going back out.

2 Q And on what day did you tape Brandywine?

3 A I've got to look at that. Give me a second.

4 MS. ROSENFELD: Ms. Harris, can you clarify? Are

5 you talking about the summary of gas transactions that are

6 this chart, or are you looking at an aerial photograph?

7 MS. HARRIS: We started with the aerial photograph

8 just to orient people.

9 MS. ROSENFELD: Which is 456(b), right?

10 THE WITNESS: Correct.

11 MS. HARRIS: Correct, and now Mr. Guckert is

12 explaining -- I asked him on what day did he videotape, and

13 then he's going to explain how 456(c) relates to the tape.

14 THE WITNESS: And we videotaped on December 21st,

15 2013, and that's the same date as 456(c), with the summary

16 of gas transactions for that particular day, on a Saturday

17 afternoon right before Christmas.

18 BY MS. HARRIS:

19 Q And were the number of transactions comparable to

20 what you would expect at the Wheaton station?

21 A Yeah. It's -- as you can see on the second line

22 of 456(c), you're averaging about three, three cars a minute

23 leaving that facility.

24 Q And just for the record, can you just pick an hour

25 and, just by purposes of an example, to show --

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1 A Sure.

2 Q -- to explain what that chart is showing?

3 A Sure. If you -- Mr. Grossman, these, these pages

4 are not numbered, but there are, there's time, time stamps

5 in the right column. So pick, for an example, the third

6 page of that exhibit, which is 456(c), and if you look on

7 the right column and pick 12:29 p.m., and you can see in

8 that particular case, at that particular minute, there were

9 five cars exiting, or being fueled and therefore exiting

10 over, in a one-minute period. The next --

11 MR. GROSSMAN: Where do you see the number five?

12 THE WITNESS: No, you have to count: 12:29,

13 12:29, 12:29. So that's, it's five --

14 MR. GROSSMAN: I see.

15 THE WITNESS: -- five transactions, okay?

16 MR. GROSSMAN: Okay.

17 BY MS. HARRIS:

18 Q And then at 12:30 what happened?

19 A And at 12:30 there were three. At 12:31 there was

20 one. 12:32 there were four. So at 12:34 there were two.

21 So at -- on the average, you end up averaging about three

22 cars a minute.

23 MR. GROSSMAN: All right. And what testimony from

24 the opposition is this rebutting?

25 MS. HARRIS: The testimony from Ms. Cordry that

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1 the cars exiting the station into the parking lot was going

2 to cause undue congestion and hazard given the cars to the,

3 particularly to the north that would be parking or the

4 pedestrians that would be walking through the parking lot.

5 MR. GROSSMAN: All right. Now, Dr. Adelman, do

6 you want to state what your objection is to 456(c)?

7 MR. ADELMAN: Yes, Mr. Grossman. First of all,

8 let's take them as a package because they're telling a

9 story. First, the graphic, the aerial view --

10 MR. GROSSMAN: Yes.

11 MR. ADELMAN: -- has been cropped; so it does not

12 show the full parking lot. Actually, Costco filed a more

13 appropriate version of that same aerial view, and I'm sorry,

14 I don't have the number. Hang on a second. It's in your

15 files as Exhibit 356(c). 356(c) shows the parking lot in

16 the immediate vicinity of the gas station as distant, quite

17 distant from the parking lot where the cars that convey

18 shoppers --

19 MR. GROSSMAN: Why should I exclude a close-up,

20 especially if there's a broader view available too?

21 MR. ADELMAN: You're being presented a story about

22 how much traffic from the parking -- from the gas station is

23 going into the shared parking area.

24 MR. GROSSMAN: Well, I know but that's what

25 cross-examination is for, is to put it into context. If you

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1 think that this picture, taken in isolation, is, creates the
2 wrong context, you can cross-examine and put it in the
3 correct context. That's not a reason for objecting, or
4 that's not a reason for sustaining that objection on 456(b).
5 That's what that is, the aerial photos.
6 All right. What's your objection to 456(c)? So
7 I'd overrule that objection. What's your objection to
8 456(c)?
9 MR. ADELMAN: I think it's clear, it's best if I
10 make the point as my cross-examination, Mr. Grossman.
11 MR. SILVERMAN: I think his objection is about
12 relevance, because what does this have to do with what we're
13 talking about?
14 MR. GROSSMAN: Well, there was direct evidence in
15 the opposition, challenging assumptions about the, how easy
16 it would be to exit stations and so on. So I think it is
17 fair rebuttal and relevant. So if that in fact is the
18 objection that he's making -- is that the objection you're
19 making, Dr. Adelman?
20 MR. ADELMAN: Mr. Grossman, it's now clear to me
21 that the detail of my objection cannot be conveyed in this
22 format. So I think it's more appropriate that I simply
23 convey it in cross-examination. I apologize.
24 MR. GROSSMAN: All right. All right. No problem.
25 All right. Go ahead, Ms. Harris.

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1 BY MS. HARRIS:
2 Q So we were discussing the transaction chart. So
3 the transaction chart was intended -- can you just please
4 reiterate what the purpose of the transaction chart was?
5 A Sure. The transaction chart shows the amount of
6 cars that are purchasing gas on a minute-by-minute basis,
7 and in that particular case, you've got a situation where
8 you've got about three cars a minute, a car on the average
9 every 20 seconds. That's what that --
10 MR. GROSSMAN: Okay.
11 BY MS. HARRIS:
12 Q Okay.
13 A -- portrays.
14 Q And now what I would like to do is show Exhibit
15 356(f), which is the video, and if you can describe what's
16 happening at the exiting, this station.
17 MS. CORDRY: You said 356. You meant 456,
18 correct?
19 MS. HARRIS: Sorry, 456(f).
20 THE WITNESS: And what this shows is that we --
21 BY MS. HARRIS:
22 Q Well, wait. Let me back up for a moment.
23 A Yeah.
24 Q On what day --
25 A Well, I'm going to -- that's what I'm going to

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1 say.
2 Q Okay.
3 A This was on the same day as we just finished
4 discussing the transactions, on 12/21/13, 1 o'clock in the
5 afternoon, and the purpose is to show the random departures
6 from the station. I apologize, it was a very windy day.
7 MR. GROSSMAN: And this is Brandywine, correct?
8 THE WITNESS: This is Brandywine.
9 MR. GROSSMAN: Okay.
10 BY MS. HARRIS:
11 Q And for purposes of this discussion, can you put
12 it on normal speed just for a moment?
13 A Certainly. And pretty much, Mr. Grossman, if we
14 were to sit here, bored to tears, we'd be able to count and
15 see the cars and how randomly they leave the gas and how
16 unimpeded they are driving through the parking lot.
17 Q Can you distinguish this, the Brandywine parking
18 lot immediately north of the station, as shown on this film,
19 from what the expectation is in the Wheaton parking lot
20 north of the station in terms of the level of use of the
21 parking lot and how that may -- what factors that may
22 create?
23 A If in the -- in the Wheaton parking lot, you've
24 got, as I indicated before, I think I understand the
25 question, that we've got in the Wheaton parking lot six

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1 different ways, minimum, to get out of that, to get out of
2 that particular facility. With a similar number of cars,
3 this, this parking lot really has three ways. If you go
4 back and look at the aerial, you'll see there are two drive
5 aisles going out to the main road or you can make a right
6 turn and come down to a third drive aisle.
7 Q If this parking lot were full, as we expect
8 Wheaton to be, does that change your conclusion about the
9 non-events that --
10 A No. I mean, you're still going to have the same
11 number of cars. They would just be passing -- some of the
12 cars would be passing the parking area that has cars parked
13 in it.
14 Q And you don't foresee that to be a problem?
15 A It's -- they're driving down a drive aisle, which
16 is what drive aisles are for in a parking lot.
17 Q Okay.
18 MR. GROSSMAN: You don't think that the, that if a
19 parking lot is essentially completely full, that the amount
20 of activity there would have more of an interference factor
21 with the drive aisles?
22 THE WITNESS: You wouldn't, anyone, anyone in the
23 -- well, they wouldn't know whether they're looking for a
24 parking space or whether they're a random departure from the
25 gas station, and a car, three -- a car every 20 seconds or

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1 three cars a minute, there's just, like, we could sit here
2 for 20 seconds or we could sit and watch as these cars go
3 through, watch this videotape. It's additional cars going
4 through a parking lot, and whether or not it's this special
5 exception use or another use that's permitted, it's cars
6 that are going through the parking lot, Mr. Grossman.
7 MR. GROSSMAN: But my question is, if that parking
8 lot were entirely full --
9 THE WITNESS: Yes.
10 MR. GROSSMAN: -- and cars were pulling into
11 spaces and pulling out of spaces --
12 THE WITNESS: Yes.
13 MR. GROSSMAN: -- you don't think that that
14 affects the flow --
15 THE WITNESS: Oh, it affects the flow. They'd be
16 waiting for the cars to pull in and pull out of the space --
17 the way you do in any other parking lot; the way you will at
18 the Wheaton parking lot.
19 MR. GROSSMAN: All right.
20 BY MS. HARRIS:
21 Q If you assume for a moment that there were not six
22 ways to exit the Wheaton station but there was only one, and
23 so you'd have three cars a minute exiting through Aisle,
24 what would be your arrow, say, Aisle, the, one of the drive
25 aisles immediate and going north of the station -- so assume

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1 for the moment that there was only Drive Aisle 4 open and
2 you had three cars a minute. What would be your view,
3 what's your opinion about whether that -- what kind of, what
4 kind of impact that may have?
5 A It's still the -- you know, if all the cars were
6 going down one drive aisle, it would be an additional car on
7 the drive aisle, whether or not it was from this gas station
8 or whether it was for someone trying to go from the ring
9 road to the northern end of the site or trying to get into,
10 look for a parking space at the Costco store, look for a
11 parking space at Target. It's just, it's another car. It's
12 other cars, but it's not a plethora of cars in a single
13 moment. It's not as if you're out on 193 where there's,
14 cars are going by every one to two seconds.
15 MR. GROSSMAN: How close is the Brandywine gas
16 station to the Costco warehouse, though?
17 THE WITNESS: We'll have to find an exhibit and
18 pull that up, okay?
19 MR. ADELMAN: I have an exhibit, if you wish,
20 Mr. Grossman.
21 THE WITNESS: I don't have it.
22 MS. CORDRY: Why don't we wait for that for
23 cross-examination, Mr. Grossman? We'll be happy to show you
24 that.
25 MS. SAVAGE: Guess what the answer is?

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1 MR. GROSSMAN: I think they're waiting in the
2 weeds for you, Mr. Guckert.
3 MS. HARRIS: I think I'll ask Mr. -- I'll ask
4 Mr. Guckert that question.
5 MR. GROSSMAN: All right.
6 MS. HARRIS: Hold on one moment. I have an
7 exhibit, or I have an aerial. I don't know that it's
8 been --
9 THE WITNESS: Is it to scale? No. I'll measure
10 it from the parking spaces.
11 MR. GROSSMAN: I guess, while she's looking, I
12 guess the import of the question and probably the answer is,
13 isn't there activity generated by the warehouse, pedestrian
14 activity, that could impact on the traffic exiting the gas
15 station?
16 THE WITNESS: I think it's a matter of opinion,
17 and my opinion is --
18 MR. GROSSMAN: That's not a --
19 THE WITNESS: -- my opinion is that the proximity
20 of the station to the store really is not that important.
21 The important thing is whether or not the discussion,
22 Mr. Grossman, that you and I had about cars that are passing
23 through the parking lot, whether they're gas station cars or
24 somebody else seeking a parking space, it's a car going
25 through a parking lot. And I'm not trying to make light of

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1 it or to diminish it, but it's not a situation where we've
2 got a dangerous situation, where cars are going very, very
3 fast and people are jumping out in front of them, okay? I
4 mean, it's a parking lot that you and I and everyone else
5 drives almost every single day -- a parking lot, is what I'm
6 saying, not that parking lot, but parking lots in general.
7 It's what we do when we go to a shopping area.
8 BY MS. HARRIS:
9 Q We're looking for that aerial. So we can come
10 back to that question, but I just want to drill down a
11 little bit --
12 A All right. Well, let me --
13 Q Okay.
14 A -- let me finish then because I have, I have an
15 aerial of the Brandywine, and the -- did you ask me the
16 distance?
17 MR. GROSSMAN: Distance between the Costco
18 warehouse entrance --
19 THE WITNESS: Okay. So -- certainly.
20 MR. GROSSMAN: -- and the gas station exit.
21 THE WITNESS: I'm estimating 200 feet --
22 MR. GROSSMAN: Okay.
23 BY MS. HARRIS:
24 Q So --
25 A -- and it's based upon the width of the drive

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1 aisles in the parking lot.
2 MR. GROSSMAN: All right.
3 BY MS. HARRIS:
4 Q So, in your opinion, if all -- if there were only
5 one way to exit this station and all cars were going down
6 one drive aisle, what is your opinion about that situation
7 versus having six options to exit the station?
8 A That, as I said, to answer that earlier question,
9 what I said was, with six, with six exits you've got, you've
10 got six times as many options than if you had just a single
11 driveway exiting through the parking lot.
12 Q And, in your opinion, is a car that's exiting a
13 gas station operating or functioning any differently than a
14 car that may have been coming solely for the purposes of
15 shopping that's driving through the parking lot?
16 A No, and that was the, my comment to Mr. Grossman,
17 that it's a car and, once it leaves the gas station, it's
18 driving through the parking lot as if it were a customer
19 looking for a parking place or, or has left a parking place
20 on their way out of the parking lot.
21 Q And then to go to Mr. Grossman's question, earlier
22 question, how do you see these cars relating to the
23 pedestrians that are walking through the parking lot?
24 A It's the same, same answer as, as just a moment
25 ago. These cars for the gas station, once they leave the

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1 gas, are passing through the parking lot as if they were
2 looking for a space or had just left a parking space.
3 Q Okay. Thank you. What I'd like to do --
4 A Are you finished with this?
5 Q Yes, unless -- yes. Okay. What I'd like to do
6 now is turn to the issue of the gas station queuing.
7 A And are we finished with all the videos?
8 Q We are finished with the videos.
9 MR. GROSSMAN: Okay.
10 MS. CORDRY: Is there a point to take break? Are
11 we close to the end?
12 MR. GROSSMAN: Sure, if you want to break.
13 MS. HARRIS: We're not --
14 MR. GROSSMAN: How much additional --
15 MS. HARRIS: About, I'd say we're halfway through.
16 MR. GROSSMAN: Okay. So shall we take a break now
17 for about five minutes, come back at just a couple of
18 minutes before 12:00?
19 MS. HARRIS: Sure.
20 (Whereupon, a brief recess was taken.)
21 MR. GROSSMAN: All right. Are we ready to
22 proceed?
23 MS. HARRIS: Yes. Before we do so, though, I did
24 want to hand out the disks, and Mr. Guckert had indicated --
25 MR. GROSSMAN: Okay.

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1 MS. HARRIS: -- that they're higher resolution and
2 they may be helpful.
3 MR. GROSSMAN: Thank you, sir. All right. So
4 these are, these are the same as the disk that was delivered
5 to me in 479(a)?
6 MS. HARRIS: Yes.
7 MR. GROSSMAN: Just a higher resolution?
8 MS. HARRIS: Correct.
9 MR. GROSSMAN: All right. So we'll call this,
10 we'll call it 479(b), three high-resolution disks of 479(a).
11 Okay.
12 (Exhibit No. 479(b) was marked
13 for identification.)
14 MS. HARRIS: Actually, you may want to put that
15 disk back up on the board, that one, just as it is. Okay.
16 Okay. Thank you.
17 MS. CORDRY: Oh, while you're looking for that, I
18 might just say, Mr. Grossman, I found the pages where the
19 other videotape request was.
20 MR. GROSSMAN: Okay.
21 MS. CORDRY: It was on page, start at page 242.
22 MR. GROSSMAN: This is also on that May --
23 MS. CORDRY: Right. Right.
24 MR. GROSSMAN: -- May, May -- wait a second.
25 MS. CORDRY: May 1st.

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1 MR. GROSSMAN: Yes, I'm just looking for that. I
2 have May 1st, 2013 --
3 MS. CORDRY: Right.
4 MR. GROSSMAN: -- and what was the page?
5 MS. CORDRY: Start at page 242 and there's a
6 couple pages there of discussion. I would note that my
7 memory mistook me. It was discussing Sterling as opposed to
8 Elkridge, but there was a request made about video at that
9 point, yes.
10 MR. GROSSMAN: All right.
11 MR. GOECKE: It was a request for the Sterling?
12 MS. CORDRY: Yes, that was the video we were
13 asking about at that point.
14 MR. GOECKE: Sterling?
15 MS. CORDRY: Yes.
16 MR. GROSSMAN: I mean, I'll have to tell you that
17 videos of other stations have somewhat to a lesser or a
18 greater degree attenuated influence on any conclusions I
19 could reach here for both sides, but in any event, it has
20 been presented by both sides now. So I certainly will
21 consider it, but the weight that it may have as to this
22 particular station clearly is reduced by the differences
23 between the stations. So, all right, you may go ahead.
24 MS. HARRIS: Okay. Thank you.
25 BY MS. HARRIS:

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1 Q Mr. Guckert, have you visited a number of Costco
2 gas stations?
3 A Yes.
4 Q And where are those gas stations located?
5 A You're talking about physically where the station
6 is located as it relates to the store, or --
7 Q Yes, as opposed to geographically, what state or
8 city.
9 A Okay. Yeah. They're all located in the parking
10 lots of where the Costco store is located.
11 Q Okay. Thank you. And are some of them closer to
12 the mall than the Brandywine -- to the mall structure itself
13 than the Brandywine station?
14 A To the physical structure, some are closer, some
15 are further away. It just depends. Mr. Grossman, every
16 station is different. Every, every Costco is different.
17 Q But the commonality is they're located in a
18 parking lot?
19 A They're all located within a parking lot.
20 Q Thank you. Okay. I'd like to move on to the
21 queuing issue. What is the reason that the entrance to the
22 special exception is designed as a single entrance?
23 A Well, it's designed as a single entrance because,
24 first, it's located --
25 Q Use your pointer so that --

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1 A Yeah, I've got my pointer, but I need a --
2 Q Oh.
3 A -- I need -- this is a larger copy of a previously
4 marked exhibit.
5 Q Actually, I don't know that we had -- that's a
6 combination of two exhibits.
7 A Okay.
8 Q So that's --
9 A So what do you want to do?
10 MR. GROSSMAN: That's the merging of --
11 MS. HARRIS: Is it helpful --
12 MR. GROSSMAN: -- 456(e) and 481, is it?
13 MS. HARRIS: Right. So should we, can we label
14 that 482, please?
15 MR. GROSSMAN: Okay. 482 is combination of
16 Exhibits 456(e) and 481.
17 (Exhibit No. 482 was marked
18 for identification.)
19 THE WITNESS: So the question, the question
20 related to why there's a, why there's a single entrance.
21 Well, first off, it's a, it's a one-way entrance into the
22 gas facility off of the existing ring road and, when you,
23 when you look at other driveways located along the ring
24 road, as an example, in the -- and I'm now referring to
25 Exhibit 230 -- in the southeast corner of the mall site,

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1 there's one entrance into the office building, one --
2 MS. SAVAGE: Could you back up a little so we can
3 see?
4 THE WITNESS: I'm so sorry.
5 MS. SAVAGE: Yeah.
6 THE WITNESS: One entrance into the, into the
7 office building/theater area. You go further around; you
8 have one entrance into the area where the garage is located.
9 So the purpose of providing the single entrance is to help
10 control traffic and so that it's not coming in in multiple
11 locations, and you can see that that's fairly common off of
12 a ring road. It's not just the Wild West and all driveways
13 can go all different ways.
14 So referring back to 482, that's why there's a
15 single entrance, because if we had multiple entrances,
16 they'd, then you would have, you'd tend to start to have a
17 little bit of chaos trying to get into the, to the facility
18 itself.
19 BY MS. HARRIS:
20 Q And can you explain the dynamic of when a car
21 enters the -- how will it function, in terms of that single
22 entrance, when a car enters the special exception area?
23 A Referring to 482, when a car enters the special
24 exception area, it will then, the driver will then make a
25 decision as to which lane he wants to use in order to

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1 purchase his gas. Since they're all similar, common sense
2 would say that unless you have all the time in the world,
3 you would normally pick the shorter, shorter queue lane if
4 there's a queue. If there's cars that are all waiting in
5 Lane 1, maybe I would go to Lane 2 if there's no cars
6 waiting there. So it's a matter of perspective of the
7 driver which lane they take. Common sense would say they
8 would go for the shorter of the lanes.
9 MR. GROSSMAN: Quantum mechanics would say that
10 most of them would be in the center two aisles.
11 THE WITNESS: Until, until, and --
12 MS. ADELMAN: You can't get in any more.
13 THE WITNESS: -- until you get to the point --
14 MR. GROSSMAN: That was a humorous aside --
15 THE WITNESS: Okay, good. Good.
16 MR. GROSSMAN: -- just having to do with the
17 distribution of particles.
18 THE WITNESS: Okay, good.
19 MR. ADELMAN: I thought you were going into quite
20 a chaos theory there.
21 MS. CORDRY: Chaos theory.
22 MR. GROSSMAN: No, no, no fractals today. Okay.
23 BY MS. HARRIS:
24 Q Exhibit No. 56(f), which was previously submitted,
25 and that showed a number of, 45 cars could -- it showed that

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1 45 cars could be accommodated in the queuing area, but the
2 opponents testified that this exhibit did not take into
3 account the, I'll use the word sloppy because I believe
4 that's the word they used, sloppy queuing driving behavior.
5 A Yes.
6 Q Taking that factor into account, how many cars, in
7 allowing for that, how many cars could be accommodated in
8 the queuing area? And I want to refer to Exhibit 456(d).
9 A So 450 -- is, is this top one 456(d)?
10 Q Yes. Yes.
11 A So on 456(d), even if the cars are not cheek to
12 jowl, you can easily fit 40 cars into the queuing area
13 without any issues and that, quite frankly, 96 percent of
14 the time the queue is going to be 40 cars or less based upon
15 the analysis that, that we undertook.
16 Q Okay. So this is, now you're referring -- this is
17 a blowup of 456(a).
18 MS. ADELMAN: Oh, here we go with the (a).
19 MR. GROSSMAN: So I'm sorry. I was searching for
20 my copy of 456(d), which I then found. What was your
21 testimony about assuming -- taking into account the sloppy
22 queuing, how many would fit into the area?
23 THE WITNESS: Easily fitting 40 cars.
24 BY MS. HARRIS:
25 Q And the previous exhibit had shown 45 cars, is

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1 that correct?
2 A There was an exhibit that showed 45 cars, that's
3 correct.
4 Q Okay.
5 A So --
6 MR. GROSSMAN: Do you think that that's a valid
7 observation that's been made by the opposition, that -- the
8 sloppy queuing observation?
9 THE WITNESS: There, there could be some validity
10 to that; however, most drivers in my observation are going
11 to tend to want to scooch up, but even if they did not
12 scooch up, you can see in 456(d) that there's, that there's
13 room left over even at 40, 40 cars, without infringing on
14 the ring road.
15 MR. GROSSMAN: And the 40 cars you're talking
16 about in the queuing area, that would fit in the queuing
17 area, are you counting the area below, south of the cars
18 that are depicted in 456(d), or are you saying that the 40
19 cars would fit in just where you actually see cars depicted
20 in 456(d)?
21 MS. HARRIS: And, Mr. Grossman, there were two
22 exhibits, and I believe you're looking at the one with 32 --
23 MR. GROSSMAN: Okay.
24 MS. HARRIS: -- cars versus 40.
25 MR. GROSSMAN: You are correct.

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1 MS. ROSENFELD: And what's the exhibit number for
2 the one with 32?
3 MS. HARRIS: Well, it's hard to tell from the
4 exhibit list. I'm guessing that --
5 MR. GROSSMAN: Okay. So 456(d) is a two-page
6 exhibit.
7 MS. HARRIS: Yes.
8 THE WITNESS: Yes.
9 MR. GROSSMAN: And, yes, one shows 32 cars and the
10 other one shows 40, and I see that the 40-car one, I guess,
11 is the, is the sloppy queuing one. Is that the idea?
12 THE WITNESS: Well, it shows that -- 40 cars show
13 that they're not cheek to jowl down at the bottom and that
14 there's room for more cars in the special exception queuing
15 area. And what I want to show you, Mr. Grossman --
16 MR. GROSSMAN: Yes.
17 BY MS. HARRIS:
18 Q Wait. Before you get to the graph, I want to ask
19 you a question. To follow up on Mr. Grossman's question
20 about the cheek to jowl and the sloppy behavior, what impact
21 would the second assistant that, that may be out on the site
22 when the gas station is at its peak?
23 A Well, there's a point in time, a couple points in
24 time when there could be a momentary situation where you
25 may, you may get to 40. I'm going to show you that in a

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1 moment. But the second assistant is -- his purpose is to,
2 is to scooch the people along, to get them to pull up so
3 that there's far less sloppiness as it relates to the
4 queuing area and much more regimented situation. So the
5 purpose of the assistant is to act as a director of getting
6 the cars in line.
7 Q And, okay, now using Exhibit 456(a), can you
8 relate that to your queuing graph?
9 A So 456(a), is this, for sake of discussion, is
10 that a two-page exhibit also, the way you labeled it?
11 Q It's actually not me labeling it, but I'm assuming
12 that it is. So --
13 MR. GROSSMAN: I think so. Hold on a second.
14 I'll pull it out.
15 THE WITNESS: Because this is Saturday -- there's
16 a weekday and this is Saturday.
17 MR. GROSSMAN: Yes, 456(a) is two pages, yes.
18 THE WITNESS: Okay. So page 2 I want to look at
19 on 456(a) first. Mr. Grossman, that is the projected cars
20 queued each minute in the eight lanes at, at the Wheaton
21 facility on a Saturday. And, and what you've got, this,
22 this number right here --
23 MR. GROSSMAN: Right here being the left-hand
24 column.
25 THE WITNESS: Left-hand between 34 and 43, is

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1 about location where there, where there would be 40, 40
2 cars. And you draw a line across here, and you can see that
3 these are in one-minute intervals; the spikes are in
4 one-minute intervals. There may be a dozen one-minute
5 intervals where you get to 40 cars throughout the nine hours
6 that are depicted on this particular exhibit.
7 So when we talk about sloppiness and the fact that
8 we've got a second attendant to help scooch the cars up, on
9 a Saturday during peak time, you're going to have maybe a
10 dozen one-minute intervals on a Saturday where you, where
11 you get the 40 cars. So -- and so for that one-minute
12 interval, the next minute it's gone; then that one-minute
13 interval where you might have 40 cars, then it drops down.
14 So you never, you never get beyond 48, which is shown on
15 this exhibit, and as you know, we've shown that if cars were
16 squeezed up, you can get 48 to 50 cars in the special
17 exception area.
18 BY MS. HARRIS:
19 Q Just to remind us, and I know you testified about
20 this before, but how was that graph derived?
21 A This graph was derived by examining the Sterling
22 situation and what actually occurred at Sterling on a
23 Saturday in January 2013, and then it was factored for the
24 amount of gas Sterling generates versus the, versus the 12
25 million gallons that we've been talking about for this

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1 facility.
2 MR. GROSSMAN: What's the average queuing amount
3 that you would say from that graph? I don't remember if
4 it's --
5 THE WITNESS: Well, the average, I've got that.
6 The average on, on this graph is, is going to be probably in
7 the 15- to 17-car range on an average situation.
8 BY MS. HARRIS:
9 Q And just to be clear, that's, that's --
10 A On this graph.
11 Q -- 15 to 17 cars is spread over eight lanes?
12 A Correct, and that does not include --
13 Mr. Grossman, this is just from 10:00 a.m. to 7:00 p.m. It
14 doesn't include the entire 15 hours.
15 MR. GROSSMAN: Right.
16 THE WITNESS: In the 15 hours it's about one car,
17 but under this, this 10:00 to 7:00 it's, it's averaging
18 probably around a 15- to 17-car range.
19 MS. CORDRY: Could you draw on there, or could you
20 just indicate on there where the 15-car level would be, if
21 you wouldn't mind, just --
22 MR. GOECKE: Is it time for cross-examination?
23 MS. CORDRY: Well, just --
24 MR. GROSSMAN: Yes, that's fair.
25 MS. CORDRY: Okay. I'm sorry. Then I'll ask that

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1 later.
2 BY MS. HARRIS:
3 Q And then --
4 MR. GROSSMAN: Actually, I think that graph,
5 that's the, this is the Saturday --
6 MR. SILVERMAN: January.
7 MR. GROSSMAN: I'm sorry. What day of the week is
8 this graph of? This is --
9 THE WITNESS: 456(a) is a Saturday, and -- page 2
10 of 456(a) is a Saturday.
11 MR. GROSSMAN: Yes, but just looking at it, it
12 looks like that's page 1 on my -- you just have the pages
13 different. Weekday, yes --
14 THE WITNESS: Saturday is, Saturday is page 1?
15 MR. GROSSMAN: It looks to me, yes, Saturday is --
16 THE WITNESS: Okay.
17 MR. GROSSMAN: -- page 1 in my formal exhibits.
18 THE WITNESS: Okay.
19 MR. GROSSMAN: And you're saying that the average
20 is 15 to 17?
21 THE WITNESS: You asked me to look at the graph --
22 MR. GROSSMAN: Yes.
23 THE WITNESS: -- and I think you're probably
24 averaging 15, 15 to -- we can calculate that and get it back
25 to you in April.

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1 MR. GROSSMAN: Yes. It looks higher than that to
2 me, but that's from looking, just looking at the graph.
3 THE WITNESS: Okay.
4 MR. GROSSMAN: Okay.
5 THE WITNESS: Tell me what you want me to do. If
6 you want me to calculate it from 10:00 to 7:00, we can do
7 that mathematically.
8 MR. GROSSMAN: I'll leave that up to your counsel
9 as to whether or not --
10 THE WITNESS: Okay.
11 MS. HARRIS: We will provide that information for
12 you.
13 MR. GROSSMAN: Okay.
14 BY MS. HARRIS:
15 Q In any event, can you note what, 76 percent of the
16 time what the average queue is?
17 A Yeah. For 76 percent of the time, the queue is
18 four vehicles or less per lane.
19 MR. GROSSMAN: On a Saturday or overall?
20 THE WITNESS: On a Saturday.
21 MS. CORDRY: I'm sorry. Did you say per lane or
22 total?
23 THE WITNESS: Four vehicles or less in the queue
24 per lane.
25 MS. CORDRY: Okay.

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1 MR. GROSSMAN: Okay.
2 BY MS. HARRIS:
3 Q Do you have a blowup of the weekday?
4 A Yes.
5 Q Can you just quickly speak to that, please?
6 A Go ahead. What this -- 456(a), page 2 now,
7 revised, shows the queuing projected each minute weekday at
8 Wheaton, and as you -- as shown on this exhibit, the maximum
9 ever reached is projected to be 34 and that's, that's shown
10 on a blue line on this exhibit. As you can see, during the
11 weekday, the other, the other six, five days of the week,
12 the queuing is far less throughout the day. I'm going to
13 say you're probably averaging eight to 10 cars during this
14 nine-hour period. Again, overall, during the 15 hours, it's
15 about one and that was shown in a previous exhibit that --
16 in all of the analyses that were done in Sterling and
17 submitted to the planning staff. But we can also give you
18 an average on the, over the nine hours.
19 MS. CORDRY: And, again, just to make sure I'm
20 hearing you right, are you saying one car, you're saying
21 over the total period it was one car as your -- if you take
22 the whole period, you're saying the average is one car in
23 queue? I just want --
24 MS. ADELMAN: Per lane?
25 MS. CORDRY: -- I just want to make sure I heard

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1 what you were saying there.
2 THE WITNESS: It's up to my counsel for answering
3 those right now.
4 MS. CORDRY: Well, I'm just asking you what you
5 just said. I just didn't really hear it.
6 THE WITNESS: Ah. What I said was, the average
7 queuing is, is one, one to two cars, the average queuing --
8 MS. ADELMAN: Per lane?
9 THE WITNESS: -- over a 15-hour period. No, total
10 queue.
11 MS. ADELMAN: Oh.
12 MS. ROSENFELD: Total?
13 MR. GROSSMAN: That's what he said.
14 MS. CORDRY: Okay.
15 THE WITNESS: Uh-huh.
16 BY MS. HARRIS:
17 Q Okay. Now I want to move on to the, let's talk a
18 little bit about the entrance to the station and the ring
19 road, and it may be helpful to refer to -- do you need a
20 moment --
21 A Yeah.
22 Q -- to clarify that?
23 MS. HARRIS: Can we have a moment just so he can
24 clarify his answer?
25 MR. GROSSMAN: Sure. While he's looking, does the

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1 opposition plan to conduct some cross-examination today of
2 Mr. Guckert? I will take those --
3 MS. CORDRY: I think, yes, I think we can, we can
4 certainly --
5 MS. ROSENFELD: We can start.
6 MR. GROSSMAN: -- head nods, yes. Okay.
7 THE WITNESS: Just give me one second here because
8 I do want to clarify --
9 MR. GROSSMAN: Take your time, Mr. Guckert.
10 THE WITNESS: -- that, that answer, make sure.
11 I'm sorry. That was, that's, that's per lane, not, not
12 total queue; it's per lane.
13 MR. GROSSMAN: Okay.
14 MS. ROSENFELD: Thank you.
15 BY MS. HARRIS:
16 Q Thank you.
17 MS. ROSENFELD: You got that, Karen?
18 MS. CORDRY: I got that, and -- all right. Well,
19 we'll ask in cross-examination where that came from.
20 BY MS. HARRIS:
21 Q And, Mr. Guckert, I want to now move to the issue
22 of entering, the cars entering the station from the ring
23 road. How many lanes are westbound on the ring road
24 currently?
25 A In the, in the westbound direction, there are,

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1 there are two lanes on the ring road.
2 Q And does that include the parking?
3 MR. GROSSMAN: That chart is upside down. So I
4 just --
5 THE WITNESS: Yeah, I know. I'm going back to 482
6 because of that. There's, there's two lanes westbound on
7 the ring road.
8 BY MS. HARRIS:
9 Q And how many eastbound?
10 A There are -- if cars are parked, there's one lane.
11 If there's, cars are not parked, there's two lanes.
12 Q And that's the current situation, correct?
13 A Correct.
14 Q And is that going to change when the gas station
15 comes and the pedestrian path gets put in?
16 A There'll still be two lanes in the eastbound
17 direction.
18 Q Including the parking lane?
19 A Plus -- including the parking lane, yes.
20 Q Thank you. Okay.
21 MS. CORDRY: I'm sorry. Okay. Never mind.
22 BY MS. HARRIS:
23 Q And I want, if you could, I want you to explain
24 what is happening, how often do cars -- based on the peak
25 hour of traffic anticipated at the gas station, how

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1 frequently are cars turning into the gas station?
2 A Well, you actually have the same, the same
3 situation. You've got about a car every, every 20 seconds
4 under peak conditions making either a right or a left into
5 the gas station.
6 Q And can you explain how that will -- assume a car
7 is coming eastbound on the ring road -- how that turning
8 will occur with cars at the same time going westbound?
9 A Well, there's a three-way stop -- Mr. Grossman,
10 I'm pointing to the right side of Exhibit 482 -- there's a
11 three-way stop along the ring road at the north-south drive
12 aisle adjacent on the west side of Costco, and cars that --
13 MR. GROSSMAN: On the west side of Costco
14 warehouse.
15 THE WITNESS: Correct -- and cars that are
16 westbound on the ring road will stop at that three-way stop.
17 If there's a car waiting to make a left into the gas
18 station, that will create a natural gap that will allow that
19 car to make a left turn in. In the case that the car has
20 pulled away from the stop sign, the car making a left into
21 the gas station will have to wait until, if there's a car
22 coming in the westbound direction, will have to wait. The
23 volume of traffic on the ring road is light enough that, in
24 my opinion, there'll be very little delay for cars waiting
25 to make a left turn into the gas station -- one, because of

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1 the volume of traffic on the ring road; two, because of the
2 gap that is created by the stop sign.
3 BY MS. HARRIS:
4 Q So do you anticipate a queue lining up to turn
5 into the gas station from eastbound traffic?
6 A I do not anticipate a queue. Could there ever be
7 a queue? Yeah, there could be one or two cars.
8 Q And is that any different than the cars going into
9 any other of the entrances to various other spots on the
10 parking lot?
11 A It's not unlike if you were turning left into this
12 north-south drive aisle on the west side of the special
13 exception area.
14 Q Okay. One other question not related to the cars
15 entering the gas station, but have you driven around the
16 ring road?
17 A Yes.
18 Q And have you clocked your average speed around the
19 ring road?
20 A Yes.
21 Q And what was that?
22 A It's in the -- because of the speed humps that
23 exist at various locations, you're averaging 15 to 20 miles
24 an hour.
25 Q Okay. Thank you.

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1 MR. GROSSMAN: What's the speed limit on the ring
2 road?
3 THE WITNESS: Speed limit is 30, but the speed
4 humps are keeping that, keeping that speed down.
5 MR. ADELMAN: Could we get the data on that
6 clocking on paper --
7 BY MS. HARRIS:
8 Q Are you sure that the --
9 MR. ADELMAN: -- or is that just an opinion?
10 MR. GROSSMAN: Can you get the data on it? You
11 can just -- that's not an objection. I don't think you can
12 ask right now. You can raise it during a break. That's not
13 an objection to the testimony. Go ahead.
14 THE WITNESS: I think I said 30 miles an hour. I
15 think the speed limit is posted for less than that. I think
16 it's 25 miles an hour, is the posted speed limit.
17 MS. HARRIS: Okay. If we could, I want to
18 double-check that to make sure the record is clear, and
19 we'll --
20 MR. GROSSMAN: Okay.
21 MS. HARRIS: -- after the break or something,
22 we'll just correct the record.
23 MR. GROSSMAN: If it's --
24 THE WITNESS: I think I said 30 miles an hour. I
25 think it's 25, is the posted speed on the ring road, but

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1 I've got to check that.
2 MR. GROSSMAN: Okay. If it's 10 miles an hour,
3 you can expect a ticket in the mail probably through
4 testimony under oath.
5 BY MS. HARRIS:
6 Q Right, because you're under oath.
7 A Yeah.
8 Q Okay. Moving to safety and pedestrians, as a
9 traffic engineer, do you have experience evaluating or
10 reviewing parking lots?
11 A Yes. We do it all the time.
12 Q And can you elaborate on what you've done in that
13 capacity and what types of issues you've looked at?
14 A Well, when we're, when we're asked to examine a
15 parking lot, we're asked to look for things as to whether or
16 not a parking lot is safe, whether or not it's going to
17 operate efficiently, whether or not, oh, it's being designed
18 to avoid accidents as much as possible.
19 Q And in a parking lot where the average drive aisle
20 is 24 feet as opposed to 20 feet, what's your opinion about
21 that in terms of safety?
22 A Well, clearly, if it's, if you've got 24 feet, it
23 makes, quite frankly, the backing out and pulling into a
24 parking space much more efficient from a time point of view.
25 Q Meaning that cars can do that more speedily?

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1 A They can more easily get in --
2 Q More easily.
3 A -- and do it, more often do it in a single
4 movement versus -- sometimes the narrower the drive aisle,
5 sometimes you have to do a three-point turn or a two-point
6 turn in order to get in.
7 Q And are there any sight distances concerns that
8 you've evaluated at this parking lot?
9 A No, and the sight distance issue relates to
10 ensuring that you've got, the landscaping is low enough and
11 trees are not blocking or light poles are not blocking,
12 things of that nature, and none of that occurs in this case.
13 Q And any turning radii issues?
14 A No, and as you can see on the exhibit 482, turning
15 in and out on the right side, excuse me, turning in and out
16 on both the right and left side of the special exception
17 area, we're creating wider than normal drive aisles to make
18 it easier along the special exception area to get in and
19 out.
20 MR. GROSSMAN: Ms. Harris, just so I understand,
21 your question about turning radii, are you referring to car
22 turning radiuses to get into the gas station and out of it,
23 or are you talking about the loading dock turning radius
24 issues that we --
25 MS. HARRIS: No, I was not talking about the

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1 loading dock. I was --
2 MR. GROSSMAN: Okay.
3 MS. HARRIS: No.
4 BY MS. HARRIS:
5 Q In reviewing the existing conditions of the
6 Wheaton Mall parking lot, is there anything that gives you
7 concern from a safety or nuisance standard?
8 A No, there's not.
9 Q Okay. And, in your opinion, will the addition of
10 the gas station make the parking lot less safe than it
11 currently is?
12 A In my opinion, it will not. The, you know, while
13 we're -- while we're adding cars to those drive aisles and
14 to the parking lot, it's, it's additional cars that are,
15 that you would find if it were just parking spaces instead
16 of the, the gas station.
17 Q Have you ever been involved in a case that
18 involved adding a pad site to a parking lot?
19 A Yes.
20 Q And is this case similar or dissimilar to that?
21 A Oh, it's similar inasmuch as there are fast-food
22 restaurants that'll generate, that'll generate 150 cars an
23 hour. 7-Elevens or Wawas can generate more than that, 200
24 cars, 250 cars an hour.
25 Q I want to refer to a quote by Mr. Adelman that was

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1 made on November 14th on page 202 of the transcript where he
2 said, quote: How come there are not more accidents? And
3 the answer is quite simple: people are very careful;
4 they're moving very slowly.
5 And what is your opinion about that statement?
6 A And who made, who made that --
7 Q Mr. Adelman, and I'll repeat it.
8 MS. ADELMAN: Dr. Adelman.
9 MR. GROSSMAN: Dr. Adelman.
10 BY MS. HARRIS:
11 Q Excuse me, Dr. Adelman. How come there are not
12 more accidents? And the answer is quite simple: people are
13 very careful; they're moving very slowly.
14 A And that's a correct statement.
15 Q Okay.
16 MR. GROSSMAN: By the way, I'm going to ask the
17 opposition to address the point that was just made by
18 Mr. Guckert. There's been some testimony from the
19 opposition, argument made about additional cars on the
20 parking lot being an issue, and Mr. Guckert just testified
21 that essentially that's not going to further endanger
22 pedestrians because there would be additional cars if that
23 whole area of the parking lot were occupied by cars parking
24 instead.
25 So I want you to address that issue as well, as to

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1 whether or not there is an additional danger to pedestrians
2 from cars using the gas station as distinguished from cars
3 using the parking lot if they're relatively the same number.
4 I don't know if they are. I haven't done a calculation, but
5 I would like to hear a response in that form.
6 All right. Go ahead, Ms. Harris.
7 MS. HARRIS: Thank you.
8 BY MS. HARRIS:
9 Q Now turning to parking --
10 MS. ROSENFELD: Certainly.
11 BY MS. HARRIS:
12 Q Are you good?
13 A No. Just wait a second.
14 MS. HARRIS: Excuse us one moment.
15 THE WITNESS: Go ahead.
16 BY MS. HARRIS:
17 Q Okay. In your opinion, is there a sufficient
18 number of spaces on site to accommodate the gas station and
19 the other retail uses?
20 A Yes, and quite frankly, that determination was
21 made by DPS in conjunction with the parking waiver, where
22 the waiver was given at four spaces per thousand. And so
23 we've got, in my opinion, more than sufficient parking on
24 the facility, and for the gas station, there's still about
25 400 spaces available in the third level of the parking

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1 garage.

2 MR. GROSSMAN: When you say available, you mean

3 that they have 400 spaces, not that --

4 THE WITNESS: Not used.

5 MR. GROSSMAN: That are not being used?

6 THE WITNESS: Correct.

7 MR. GROSSMAN: As of when? When was that

8 measurement made?

9 THE WITNESS: We've been doing, we've been doing

10 measurements between Thanksgiving and Christmas. We were --

11 I was out there myself on February 22nd, and there's still

12 400 spaces. The whole top deck of that, of that garage is

13 still virtually unused.

14 MR. GROSSMAN: Okay.

15 BY MS. HARRIS:

16 Q And as far as you know, are those observations

17 consistent with what the opponents have observed?

18 A Yes. I think they concur that that top level deck

19 is just not, has not yet been used because there's not yet a

20 demand.

21 Q So, in your opinion, while that remains empty,

22 where are most of the people parking?

23 A Well, I think you've got -- you've got about 800

24 spaces in that southwest quadrant of the mall to the west of

25 the Costco store and south of Target. There's, there's 400

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1 spaces that are being used on the second level of the deck

2 and that's -- so you've got, probably half of the people are

3 parking in the second level of the deck; the other half are

4 parking in the surface parking lot.

5 Q And how does the approximately 400 spaces compare

6 to the number of people, if you know, that are in the Costco

7 store at any one time, that have driven to the store?

8 A I, I really do not have the number of customers in

9 the store. We've, we've done some, some crude observations.

10 There could be 300 people in the store at any one time, is,

11 is, is what it appears based on my own observations.

12 Q Okay. So if there's 400 parking spaces on the top

13 level, what would it take for people to park there or why

14 aren't people parking there?

15 A There's not a demand for them to park there.

16 Q Meaning?

17 MS. CORDRY: I would object to speculation. I

18 don't really think he knows why people park or don't park

19 where they do.

20 MR. GROSSMAN: Well, I guess the question relating

21 to that objection is, is that part of your traffic, or

22 transportation management expertise -- that is, the reasons

23 for use of or disuse of garages -- or is this, is it

24 speculation?

25 THE WITNESS: It's a commonsense thing. If there

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1 was a demand, they'd be parking there. It's available.

2 There's, there's four to six elevators to allow people to

3 bring goods up. There's, I don't -- as a, as a

4 transportation planner, there's not yet a demand. There may

5 one day be a demand and, well, when, if parking -- some

6 spaces will be displaced, other spaces will be added if this

7 is approved, and if the store gets busier or Target gets

8 busier and there's a demand, they'll, they'll park there. I

9 just don't see it as a traffic thing. It's a -- I see it as

10 a commonsense thing.

11 MR. GROSSMAN: Okay. So I'm going to overrule the

12 objection in terms of it being a commonsense observation by

13 the witness, not a, not part of his expertise, is what he's

14 saying.

15 MS. HARRIS: Okay.

16 MS. CORDRY: Okay. Then we'll --

17 MR. GROSSMAN: So I'll sustain it as far as it

18 being part of his expertise. Okay.

19 MS. CORDRY: Too much for an expert.

20 BY MS. HARRIS:

21 Q In your opinion, is there any reason -- has the

22 existing situation, in terms of the parking lot, compelled

23 people to find parking elsewhere?

24 A Talking about the surface lot?

25 Q Yes.

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1 A They're using the deck, the second-level deck.

2 Q But not the third level?

3 A No, they're not yet using the third level.

4 Q Okay.

5 MR. GROSSMAN: The third level is open air?

6 THE WITNESS: Yes.

7 MR. GROSSMAN: Maybe they're leaving it for Jeff

8 Bezos to drop those drones with the goods in there. All

9 right.

10 BY MS. HARRIS:

11 Q Okay. Let's move to the early morning traffic

12 discussion. Do you expect early morning customers to create

13 any hazards or nuisances with the warehouse delivery trucks?

14 A I don't expect the early morning customers will do

15 that, no.

16 Q And why?

17 A Well, the -- earlier in the day you've got a car

18 every 30, 30 seconds, 40 seconds that will be buying gas;

19 the early morning queuing is nearly non-existent; and, while

20 the backup and delivery will occur in proximity to the

21 special exception, I just don't see it interfering with the

22 operation of the gas station.

23 Q If you assume, during the early morning deliveries

24 and after the gas station is open, that all of what's

25 labeled Aisle 6 is occupied by loading trucks, how will the

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1 other cars exit?
2 A They'll use one of the other, other ways that are
3 shown on Exhibit 482. They'll go out 1, 2, 3, 4, or 5.
4 Q And the opponents' Exhibit No. 378 and during
5 their testimony on November 19th showed that the traffic, or
6 stated that the traffic in the morning will increase by 100
7 to 250 percent as a result of the gas station, the traffic
8 at this end of the mall. Do you foresee that being a
9 problem?
10 A Well, I think it's important --
11 MR. GROSSMAN: Are you asking, do you foresee that
12 being a problem or do you foresee that being the case?
13 MS. HARRIS: Whether -- no, is it a problem --
14 MR. GROSSMAN: Are you asking him whether he
15 agrees with that observation?
16 MS. HARRIS: -- if in fact, yes.
17 MR. GROSSMAN: Is it a fact or --
18 THE WITNESS: I don't know if it's a fact or not.
19 If it's a fact, I think, I think -- and I'd have to go back
20 and review those pages -- but I think their discussion was
21 there's very little traffic on the ring road today in the
22 morning and, when you add -- and, if there were 10 cars on
23 the ring road today and we add 25 cars on the ring road,
24 that's a 250 percent increase.
25 So, yeah, the percentage is not the point. The

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1 additional cars on the ring road combined with what's there
2 is the point, and in my opinion, going, increasing the
3 number of cars on the ring road in the morning by the gas
4 station is not an issue -- plenty of capacity on the ring
5 road all day long, weekdays and Saturdays.
6 BY MS. HARRIS:
7 Q The graphs that were provided in Exhibit 456
8 showed the early morning queues starting at 10 o'clock in
9 the morning?
10 A No, no. No, no. This, this just shows the
11 queues. The previous exhibits that we produced for Sterling
12 show that the early morning queues from, from 6:00 or 6:30
13 to 10:00 are much, much less. However, if you look at, if
14 you look at the graphs, you'll see that the queuing is very,
15 very low even at 10 o'clock in the morning.
16 Q So my question was going to be, between 6:00 and
17 10:00, what --
18 A It's much less.
19 Q And much less meaning? Do you have a number?
20 A I don't have a number on the queuing off the top.
21 I can get that for you, but --
22 Q Okay. We'll provide that.
23 A -- not off the top of my head.
24 Q Okay. Okay. Now I would like to move on to the
25 gas delivery issue.

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1 MS. HARRIS: And, Mr. Grossman, we're probably, we
2 have about 10 or 15 minutes more, just so you know.
3 MR. GROSSMAN: Okay.
4 BY MS. HARRIS:
5 Q Do you recall how many gas deliveries are expected
6 daily?
7 A I think it's somewhere between two and four a day,
8 depending on use and gas usage and demand.
9 Q And do you expect those deliveries to create any
10 type of nuisance or hazard?
11 A Well, the -- we've testified to that before, as to
12 how the aisle on the west side of the special exception area
13 is widened to allow those deliveries to occur. So I do not
14 see that as a problem. The, you know, what, what we end up
15 with is a circumstance where we have a 24-foot drive aisle
16 and we -- you know, Montgomery County standard is 20 feet.
17 Q I think if you go under, maybe refer to this
18 exhibit. Excuse me.
19 MR. GROSSMAN: I want to make sure it's the latest
20 of your plan revisions because you changed the location of
21 the fueling truck in a later --
22 MS. HARRIS: True. I think that --
23 MR. GROSSMAN: And I think that was before
24 Mr. Guckert, I mean, after Mr. Guckert testified.
25 MR. BRANN: Yeah, that's the right one.

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1 MS. HARRIS: Okay. Here it is.
2 MR. BRANN: That's the redline plan.
3 MS. HARRIS: Now, unfortunately, this is dated
4 7/31, doesn't have an exhibit number on it.
5 MR. GROSSMAN: All right. What's the -- I may be
6 able to dig that out.
7 MS. HARRIS: Okay.
8 MR. GROSSMAN: July 31. Okay. Is that an overall
9 illustrative plan or the received special --
10 MS. HARRIS: It says: Proposed Special Exception
11 Plan, Sheet 3, 3 of 3.
12 MR. GROSSMAN: Okay. Yes, that's, I think that's
13 -- received at hearing July 31, '13, revised special
14 exception plan. That's Version 7. And proposed special
15 exception plan is (c). So it's 229(c).
16 THE WITNESS: So on 229(c), this plan shows,
17 Mr. Grossman, that there's a 30-foot area between the curb
18 line --
19 MR. SILVERMAN: Can you step back?
20 THE WITNESS: Excuse me?
21 MR. GROSSMAN: Can you step back, he said. You're
22 blocking him. Yes. If you sit in your seat, you could do
23 it, if you can. Can you see it from there?
24 MS. SAVAGE: He can't see from there.
25 MR. GROSSMAN: Okay.

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1 THE WITNESS: So there's a 30-foot area between
2 the curb line and the parking area where the fuel trucks
3 would park. Assuming 10 feet of fuel truck, you're still
4 left with a 20-foot-wide drive aisle, which actually meets
5 Montgomery County standards for a parking drive aisle.
6 BY MS. HARRIS:
7 Q And assume hypothetically that Costco would agree
8 to designate the first six spaces immediately to the west of
9 the loading bay as employee spaces. What effect, if any,
10 would this have on your response?
11 A Referring now back to 229(c), so that if the
12 parking spaces to the west of the special exception area, if
13 the first six were designated as employees, they would end
14 up being adjacent to the fuel truck so that there would be
15 much less activity pulling in and out of those first six
16 spaces, Mr. Grossman, because they'd be employees that would
17 be there for a longer period of time and therefore --
18 MR. GROSSMAN: I don't recall the testimony before
19 about them being designated for employees.
20 MS. HARRIS: No, they were not. We were -- my
21 question was hypothetically, if they were, and we're
22 considering that as a condition.
23 MR. GROSSMAN: I see. Okay.
24 THE WITNESS: And if that were the case, then much
25 less activity adjacent to the fuel truck and no customers in

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1 that area adjacent to the fuel truck.
2 BY MS. HARRIS:
3 Q Thank you. And then, finally, I wanted to move on
4 to the last question of concern, area of concern which had
5 to do with impact on nearby roadways. We focused up until
6 now on the mall itself and immediate environment, but I
7 wanted to focus on the impact of the station to the nearby
8 roadways. And what impact will the proposed station have on
9 the roadways within the CBD?
10 A Oh, almost none.
11 Q And your conclusion for that?
12 A Well, my conclusion is that you've got, when you
13 take the net new cars that are generated versus the cars
14 that are pass-by and -- you end up with about 50 new cars in
15 the peak hour, in the peak one hour, on all of the roads in
16 the CBD, all of the major roads in the CBD, from 193 to
17 Veirs Mill to Georgia Avenue, coming from all the different
18 directions. Fifty cars in an hour on roadways that are
19 carrying 100,000 cars a day, the impact is going to be not
20 even noticeable at all, imperceptible.
21 Q Okay. Thank you.
22 MS. HARRIS: No other questions for Mr. Guckert.
23 MR. GROSSMAN: When you say in the CBD, are you
24 including the roadways immediately to the south of the mall,
25 which are the Mount McComas area?

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1 THE WITNESS: Well, I'm including those, but I was
2 speaking specifically to cars that would use the major
3 arterials to reach the gas station.
4 MR. GROSSMAN: There's been some testimony about
5 cars deflected into southern roadways. That's why I asked
6 that question.
7 THE WITNESS: Yes, and while I understand that, I
8 just do not buy into that, that cars would be deflected into
9 the local roadways.
10 MS. HARRIS: And if I could ask him another
11 question.
12 BY MS. HARRIS:
13 Q Why not?
14 A Why not?
15 Q Why do you not buy into that, that cars are going
16 to be deflected into the neighborhood?
17 A I just think it's going to be a longer, more
18 difficult trip to go from the west side of that community to
19 the east side, then come back out, make several left turns
20 to get into the gas station. Additionally, if the, if the
21 question that you're asking relates to the fact that
22 there'll be so much traffic because of the gas station that
23 non-gas station cars will be deflected to the community, I
24 just find that to be not realistic; that, that this facility
25 will generate so much traffic that cars cannot get up and

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1 down Georgia Avenue and therefore they'll divert to Mount
2 McComas, I just do not see that as a real situation.
3 Q Because the incremental increase from the gas
4 station is not significant?
5 A And we've --
6 MR. GROSSMAN: Well, that's a leading question --
7 MR. SILVERMAN: Leading question.
8 MS. HARRIS: Yes, it was. I agree.
9 MR. GROSSMAN: -- to which, even in the absence of
10 an objection --
11 MS. HARRIS: Okay.
12 MR. GROSSMAN: -- I will not allow.
13 MS. HARRIS: Okay. No other questions.
14 MR. GROSSMAN: Okay. I guess we should let
15 Mr. Silverman go to lunch before we begin cross-examination.
16 MS. ADELMAN: Yes.
17 MS. SAVAGE: The rest of us have to stay here --
18 MR. SILVERMAN: Right.
19 MS. SAVAGE: -- Larry gets to go.
20 MR. GROSSMAN: So we'll break until 1:45.
21 (Whereupon, at 12:57 p.m., a luncheon recess was
22 taken.)
23 MR. GROSSMAN: Let's go on the record, if we're
24 not already. All right.
25 MS. HARRIS: Thank you. A couple of questions

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1 were raised previously. One was the posted speed of the
2 ring road, and we're -- do we need Mr. Guckert to say what
3 that is, or can I just --
4 MR. GROSSMAN: Sure. Mr. Guckert.
5 BY MS. HARRIS:
6 Q Mr. Guckert, what's the --
7 A Yeah, I made a mistake. The posted speed is 15
8 miles an hour and, I observed through my observations, my
9 own speed. And 15 to 20 miles an hour is the, is the
10 average along that south side of that ring road.
11 The other item, Mr. Grossman, was coming up with
12 the average, average queues. I really need to work on the
13 spreadsheet to do that. I'll have that in a tabular format
14 when I come back next time.
15 MR. GROSSMAN: Okay. All right. So
16 cross-examination. Did you want -- Mr. Guckert, would
17 you --
18 MS. ROSENFELD: Yes, please.
19 MR. GROSSMAN: -- take the seat of honor on the
20 stand, please?
21 THE WITNESS: Certainly.
22 MR. GROSSMAN: And if you would be so kind as to
23 pull this chair back a little bit so I have a clear view of
24 you. Thank you.
25 MS. HARRIS: Wes, do you need this?

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1 MR. BRANN: Is this yours or --
2 MR. GROSSMAN: Yes.
3 THE WITNESS: That's his.
4 MR. GROSSMAN: It's mine, but you can bring it up
5 to him. Did Blue Lagoon decide to go on without us, a
6 different project?
7 MS. ROSENFELD: I think Blue Lagoon has --
8 MS. ADELMAN: Maxed out.
9 MS. ROSENFELD: -- maxed out on time. I don't --
10 I do think we'll see them again, but --
11 MR. SILVERMAN: No, no. They were in Annapolis on
12 the 27th, and I think they're eager to see our closing
13 statements.
14 MR. GROSSMAN: Does anybody know when the state
15 will act on their thing? Is that --
16 MR. SILVERMAN: Well, there was a hearing in the
17 Senate, and they maybe went out, but as to any predictions,
18 we don't know.
19 MR. GROSSMAN: I just wanted the timing. Okay.
20 Cross-examination. Who wants to go first?
21 MS. CORDRY: I'm going first, but I'm still trying
22 to get this up. Should we let Ms. Rosenfeld, she just had a
23 couple -- we had a couple of just sort of voir dire
24 questions, I guess, sort of thing, about this background
25 exhibit that we wanted to ask before we took it back and

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1 digested it. Maybe she can do that while I'm --
2 MS. ROSENFELD: Ms. Cordry will be doing the --
3 MR. GROSSMAN: Okay.
4 MS. ROSENFELD: -- cross-examination, but the two
5 -- there are two exhibits that were handed out that I had
6 just some background questions.
7 MR. GROSSMAN: Sure.
8 REBUTTAL CROSS-EXAMINATION
9 BY MS. ROSENFELD:
10 Q Exhibit 465, which is the Highway Capacity
11 Analysis Results, can you tell me what day and what times
12 this information has been filed?
13 A That was the April 27th, Saturday, April 27th,
14 when we did all, when we did all of the counts at the, at
15 the mall that day.
16 Q And did you do a similar one for the Friday? You
17 did counts --
18 A No, we did not count Friday.
19 Q Okay. Okay. And the level of service that you
20 have identified in the tables below, are those the level of
21 service that are established by the Montgomery County
22 traffic standards? What --
23 A The answer is yes, but when you say traffic
24 standards, Michele, you'd be a little more specific. Those
25 are Highway Capacity Manual levels of service.

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1 Q Okay. So where you have, for example, Maryland
2 193 and West Access, it says, Background, 18.8 slash B.
3 That's based on the --
4 A Highway Capacity Manual, because Highway Capacity
5 Manual, as others in this room know, is based upon delay per
6 vehicle.
7 Q And who publishes the Highway Capacity Manual?
8 A The National Academy of Sciences.
9 Q And is that a publicly available document --
10 A Yes.
11 Q -- or is that proprietary?
12 A Yes.
13 Q And is it available on, do you know, on the
14 Internet?
15 A Do not know. I'm sure for a price it is.
16 Q Is it updated on a periodic basis?
17 A Yes.
18 Q And what year would you have been looking at?
19 A I'd have to look. I'd have --
20 Q Okay.
21 A -- to look. It's probably the -- I'd have to
22 look.
23 Q Okay. If you could let me know.
24 A The latest.
25 Q The HCS 2010 Signalized Intersection Results

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1 Summary --
2 A Same thing --
3 Q Same thing?
4 A -- all the same stuff.
5 Q It all correlates? All of this comes from the
6 Highway Capacity Manual?
7 A Yes.
8 Q Okay. And December 18th, 2013, when it says under
9 Intersection Information, Duration, h -- I'm looking at the
10 first page of Exhibit 480 -- what does that mean?
11 A Probably hourly.
12 Q Okay. And then a couple of lines below that it
13 says: Jurisdiction, Montgomery; Time Period, Background,
14 A.M.; and then it says PHF. What do those --
15 A Peak-hour factor.
16 Q Okay. And under Demand Information, where it says
17 Demand (v), veh slash h, does that mean number of vehicles
18 per hour?
19 A Vehicles per hour, yes.
20 Q Okay. And Signal Information: Cycle, s, what
21 does, what does s stand for?
22 A Cycles per second? Is that what it is? Your
23 traffic -- do you have a traffic engineer you're going to be
24 using?
25 MR. SILVERMAN: No.

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1 THE WITNESS: Because I can't give a --
2 BY MS. ROSENFELD:
3 Q No, we don't have a traffic engineer.
4 A -- I'm not going to be able to give a full --
5 cycles, it's going to be cycles per second.
6 Q Okay.
7 MS. CORDRY: And is that traffic cycles per
8 second, like the signal cycle, or --
9 THE WITNESS: Cycles, yes. Cycles are in a
10 second.
11 MS. CORDRY: Okay.
12 BY MS. ROSENFELD:
13 Q And then Offset comma s, what would an offset be?
14 A Yeah, that's the offset. That's the signal
15 phasing.
16 Q And Force Mode, Fixed, what is that?
17 A Fixed time.
18 Q Okay. And then there's a column that says Timer
19 Results, and going to the tables to the right of that, EBL,
20 EBT, what do those stand for?
21 A EB?
22 Q E, like Edward; B, like boy; L --
23 A That's eastbound left, eastbound through. It's
24 the directional approach and the volumes that are associated
25 with that from the traffic counts.

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1 Q Okay. And so same would be WBL, westbound left,
2 westbound --
3 A Sure. You got it.
4 Q Okay, great.
5 MS. CORDRY: So --
6 THE WITNESS: Who needs a consultant, right? You
7 got it.
8 MS. CORDRY: So is it okay if we both jump in,
9 because we're both trying to read this? So for this one the
10 eastbound is University Boulevard --
11 THE WITNESS: Yes.
12 MS. CORDRY: -- going east, is that correct?
13 THE WITNESS: That's because the camera is in the
14 southwest quadrant.
15 MS. CORDRY: Right. And the westbound will,
16 again, be the westbound University Boulevard?
17 THE WITNESS: Correct.
18 MS. CORDRY: And northbound will be the exit from
19 the mall?
20 THE WITNESS: Correct.
21 MS. CORDRY: And southbound will be Valley View
22 coming in? Okay.
23 BY MS. ROSENFELD:
24 Q And when it says Maximum Allowable Headway, what
25 does that mean?

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1 A That's the distance between the cars.
2 Q And is that a maximum that's required, or is that
3 just the maximum that you, that was found, that was
4 tabulated?
5 A It's, that's probably a default value.
6 Q And Phase Call Probability, what does that mean?
7 A Excuse me?
8 Q Phase Call Probability, what does that mean?
9 A I'd have to look at that.
10 Q Okay. And Max Out Probability?
11 A That's probably -- oh, that's the maximum time
12 for, for each phase. That's what that is, the amount of
13 time for each signal phase. It's input. That'll be a
14 default value unless you, unless you actually knew what the
15 signal timing was. We, we didn't go out and time, time the
16 signals.
17 Q And under the Movement Group Results where it says
18 Assigned Movement, is that the number that was calculated?
19 A What's the, what's the result?
20 Q It says Assigned Movement Eastbound, and then
21 below that it says LTR, which I assume is left, through, and
22 right --
23 A Uh-huh.
24 Q -- and it says Assigned Movement.
25 A That's a, that's a default value in the

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1 calculations.

2 MR. GROSSMAN: Just so the record is clear, all of

3 this discussion is about Exhibit 480 and the meaning of

4 the --

5 MS. CORDRY: Yes.

6 THE WITNESS: Yes.

7 MS. CORDRY: Yes.

8 MR. GROSSMAN: -- notations on Exhibit 480.

9 BY MS. ROSENFELD:

10 Q So that's a number that your modeling software

11 would have generated; it's not a --

12 A It would have been a default value, yes.

13 Q Okay. And Adjusted Flow Rate, vehicles per hour,

14 is that a default value or a --

15 A No. You're going to see that as the -- that's

16 vehicles per hour.

17 Q That's the real number?

18 A Yes.

19 Q A real number?

20 A Yes.

21 Q Okay. And Adjusted Saturation Flow Rate --

22 A Depending on how many vehicles per hour per lane

23 can be accommodated based upon the number of lanes and the

24 -- and sometimes if you've got narrower lanes, it'll give

25 you saturation flow a little bit differently.

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1 Q And Adjusted Saturation Flow Rate is what?

2 A That's what we were just talking about.

3 Q The Adjusted Flow Rate --

4 A That's --

5 Q -- is that how many cars can be accommodated?

6 A No. That's the, that's the numbers that I think

7 that were, that were adjusted from above, where it says

8 Approach Movement above, and then you would, the program

9 makes an adjustment.

10 Q And Queue Service Time?

11 A We have to, we'll have to look that up. I'll

12 bring the book in so that you can, you can go through that,

13 because --

14 Q Okay. All right.

15 A -- because most of these things become standard

16 defaults unless you've got a very special situation that

17 you're studying.

18 Q And I'm assuming all of these are probably defined

19 terms under the Highway Capacity Manual?

20 A Yes. Yes.

21 Q Okay. Let me ask you this question. Are these

22 numbers in Exhibit 465, are they based on modeling

23 assumptions or are they based on actual counts that were

24 taken at these intersections?

25 A Based upon actual counts on that April 27th date.

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1 Q But information such as the adjusted saturated

2 flow rate, saturation flow rate, that's based on an analysis

3 of the overall capacity of the highway, based on the number

4 of lanes, for example?

5 A Yeah, and the model will take, will take the, some

6 of the information from above and use default values.

7 MR. GROSSMAN: Let me interrupt a second. You

8 indicated that the figures from Exhibit 465 were from actual

9 counts. I take it you're not including that in terms of the

10 gas station projection? In other words, you had to count,

11 but then you made a projection also, right? For 465 --

12 THE WITNESS: Yeah. I need to look at 465,

13 please.

14 MR. GROSSMAN: That's that the summary.

15 THE WITNESS: Let me come over there. Is that --

16 thank you. Yeah, background, we got, we got background,

17 which is background traffic, and then the total with gas and

18 that's how I came to the --

19 MR. GROSSMAN: Right.

20 THE WITNESS: -- to the two and four seconds.

21 MR. GROSSMAN: But the background is based on

22 actual counts, I think --

23 THE WITNESS: Correct.

24 MR. GROSSMAN: -- in response to her question, but

25 when you're talking about the total, including the gas

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1 station, the gas station is obviously not based on counts

2 because it doesn't exist yet.

3 THE WITNESS: Correct.

4 MS. ADELMAN: Right.

5 MR. GROSSMAN: Okay. So that's based on some

6 projection you made, and the question is, how did you make

7 that projection?

8 THE WITNESS: Of the, of the gas?

9 MR. GROSSMAN: Of the additional amounts from the

10 gas station, to be added by the gas station. That's the

11 question. How did you arrive at a figure for the additional

12 amount of --

13 THE WITNESS: From our impact study, the amount of

14 traffic we assigned to the intersection.

15 MR. GROSSMAN: Okay. But is that reflected in

16 Exhibit 480 then as part of the Highway Capacity Manual

17 evaluation that then bounces back to Exhibit 465?

18 THE WITNESS: Yes, sir.

19 MR. GROSSMAN: Okay.

20 THE WITNESS: Yeah, 480 are the calculations to

21 arrive at the table.

22 MR. GROSSMAN: Okay. But the table including not

23 just the inputs which you had from observations of traffic

24 but also inputs which you projected for the gas station

25 addition?

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1 THE WITNESS: That's correct.
2 MR. GROSSMAN: Okay.
3 BY MS. ROSENFELD:
4 Q And on Exhibit 465 there are six different times:
5 Morning Peak, Evening Peak, Saturday Peak, and then two
6 separate intersections and --
7 A Okay. I'm --
8 MS. HARRIS: Sorry.
9 THE WITNESS: Oops, I'm sorry. Okay.
10 BY MS. ROSENFELD:
11 Q -- Background and Total with Gas.
12 A Yes.
13 Q When I look at Exhibit 480, I have one, two,
14 three, four, five sheets. Do these sheets correlate with
15 any of these segments or pieces of information on Exhibit
16 465?
17 A Go to the Project -- yes.
18 Q Okay. And --
19 A Go to Project Description on 480, the top sheet,
20 maybe six lines down.
21 Q Got it.
22 A See, it says, Background A.M.?
23 Q Okay.
24 A Go to the next page: Background P.M.
25 Q Okay.

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1 A Go to the next page.
2 Q Yes.
3 A Total A.M.
4 Q Yes.
5 A Then Total P.M.
6 Q Okay.
7 A Okay. So that's -- and if you go up two lines,
8 you'll see 193 and Valley View on that sheet. No. Right
9 there.
10 Q Yes.
11 A See 193 and Valley View?
12 Q I do.
13 A So then, then we go and we have Existing Saturday.
14 Then you go to the next sheets, and you've got the Loop Road
15 and the West Mall Access, and we have Background A.M.,
16 Background P.M., Total A.M., Total P.M. So we have sheets
17 for all those conditions. Now, I can't tell you whether
18 your sheet is missing -- whether your group on 480 is
19 missing a sheet. So I don't know whether the copy machine
20 has all the sheets in there or not.
21 Q If my first sheet says Maryland 193 and Valley
22 View Avenue, it says Project Description, Background A.M. --
23 so on mine this is page 1 -- this would correlate with 193
24 and West Background where it says 18.8 slash B?
25 A Yes.

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1 Q Okay. I'm just going to -- and then when I go to
2 the next one, when I go to the next one --
3 A And if you, if you will, Michele, look at the,
4 look up four lines from the bottom --
5 Q Yes.
6 A -- of the first sheet. Do you see --
7 Q Got it.
8 A -- the 18.8?
9 Q Yes, I do.
10 A All right. So that corresponds to the 18.8 on the
11 spreadsheet.
12 Q Okay, great. So then the next one that says 31
13 corresponds with --
14 A There you go.
15 Q Next -- all right. And then I have one that says
16 19.9.
17 MR. GROSSMAN: By the way, the fourth row up is
18 labeled Intersection Delay. So that's the 18.8.
19 BY MS. ROSENFELD:
20 Q My third page says 19.9 on the bottom. Is that
21 Total with Gas then?
22 A Yes.
23 Q Okay.
24 MS. ADELMAN: But that's a projected total, isn't
25 it?

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1 MS. CORDRY: No.
2 BY MS. ROSENFELD:
3 Q And the next is 33.3. So that's, that's my page
4 4. That corresponds with Evening Peak with Gas, right?
5 A Yes.
6 Q All right. And the next one is 37.1, which would
7 be Saturday Peak Background, and then my next page is
8 All-Way Stop Control Analysis.
9 A Yeah, there's a, there's a page missing from the
10 copy machine. That's all I can say.
11 Q Okay. Well, we have time to get that before the
12 1st. And then with respect to the ring road and West Access
13 16, do you have --
14 A Would you make a note of that --
15 MS. HARRIS: I did.
16 THE WITNESS: -- that we can --
17 MS. HARRIS: Yes.
18 MR. GROSSMAN: So are we only missing one page,
19 because we have, let's see, we have one, two, three, four;
20 so we have 12. We should have 12 pages presumably, in fact,
21 right?
22 MS. ROSENFELD: That was my next question.
23 BY MS. ROSENFELD:
24 Q Do we have the same information for the
25 intersection 16?

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1 A Yeah. That's the, that's the All-Way Stop because
2 it's unsignalized.
3 Q Okay.
4 A Michele, if you look at the top --
5 Q Yes.
6 A -- of the next, the pages that look different --
7 Q Yes.
8 A -- they should all be there, but there may have
9 been a copy machine error, and we'll have to look at that.
10 MR. GROSSMAN: But where is the equivalent, when
11 looking at the first one that says All-Way Stop Control
12 Analysis, where's the equivalent to the fourth line up,
13 which is Intersection Delay?
14 THE WITNESS: It's a different, different type of
15 analysis, because the opposition asked for this type of
16 analysis and it's different for signalized versus
17 unsignalized.
18 MR. GROSSMAN: I understand, but I just want to
19 find, I want to --
20 THE WITNESS: Oh, I'm sorry. Go down --
21 MR. GROSSMAN: -- I want to look for background,
22 for example --
23 THE WITNESS: Sure. Go down to the bottom.
24 MR. GROSSMAN: Okay.
25 THE WITNESS: Go down to the bottom --

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1 MR. GROSSMAN: Oh, I see. It says --
2 THE WITNESS: -- and you see a B and then 10:06?
3 MR. GROSSMAN: I see it. Okay. All right. So I
4 understand. So that's one, two --
5 MS. CORDRY: And, again, for my purposes, to make
6 sure here, because this whole --
7 MR. GROSSMAN: Okay.
8 MS. CORDRY: -- intersections are kind of slanted,
9 they're not straight up and down, north and south, where we
10 have eastbound and westbound and so forth, can we identify
11 on the map here --
12 THE WITNESS: If you --
13 MS. CORDRY: -- which we're going to consider
14 eastbound and so forth?
15 THE WITNESS: Just one moment. If you go, if you
16 look at the sheet, it tells you. It says, it says
17 north-south is the loop road and east-west is the west mall
18 access. Look at the sheet in your hand.
19 MS. CORDRY: Okay. All right. So at
20 Intersection --
21 THE WITNESS: No. Look at the sheet in your hand.
22 MS. CORDRY: Okay. I understand that. I'm just
23 trying to look here on the sheet as well. North-south is
24 the ring road, you said, I believe?
25 THE WITNESS: North-south is the loop road, that's

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1 right.
2 MS. CORDRY: Okay. So this will be north, coming
3 up towards -- coming away from Costco and up towards the
4 exit?
5 THE WITNESS: Yeah.
6 MS. CORDRY: And south will be going south, down
7 towards there? Okay.
8 THE WITNESS: Yes.
9 MS. CORDRY: And east-west will be coming in from
10 the ring road and then --
11 THE WITNESS: Wow. Yeah, it says, East-West, West
12 Mall Access, okay?
13 MS. CORDRY: I understand that, Mr. Guckert.
14 MR. GROSSMAN: I know, but it's all right. You
15 know, sometimes it takes a little time to get oriented.
16 MS. CORDRY: And we just want to make sure that
17 we're not using the wrong roads.
18 THE WITNESS: Okay, apologize.
19 MR. GROSSMAN: So as I understand it, we're
20 missing two pages from Exhibit 480 -- one that will pertain
21 to the signalized intersection and one that will pertain to
22 the unsignalized intersection -- if I see that correctly,
23 because I have five pages on each and we should have six
24 pages on each, right?
25 MS. CORDRY: I'm going to ask him the question

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1 again because this is actually, because it's not just
2 straight north and south, I'm still not entirely sure that
3 I'm --
4 THE WITNESS: Sure.
5 MR. GROSSMAN: All right.
6 MS. CORDRY: -- clear about which road goes which
7 way. So --
8 THE WITNESS: Let me show you.
9 MS. CORDRY: Okay.
10 THE WITNESS: So north-south is the ring road.
11 MS. CORDRY: Right.
12 THE WITNESS: Okay? And east-west --
13 MS. CORDRY: Right. What's this part, for
14 instance?
15 THE WITNESS: Well, we're not -- the study area is
16 right in here.
17 MS. CORDRY: I understand that, but you got --
18 THE WITNESS: Okay.
19 MS. CORDRY: -- you got six lanes, and I'm trying
20 to make sure -- with these six different places here, which
21 goes to where?
22 THE WITNESS: Sure. There's two lanes northbound.
23 MS. CORDRY: Okay.
24 THE WITNESS: There's two lanes southbound.
25 MS. CORDRY: Okay.

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1 THE WITNESS: And there's two lanes eastbound.
2 MS. CORDRY: Okay. So we don't, we don't have
3 anything that's considered westbound. So this --
4 THE WITNESS: Correct.
5 MS. CORDRY: All right.
6 THE WITNESS: Correct, and that's -- and they have
7 zeros for the westbound.
8 MS. CORDRY: Okay. All right. Thank you.
9 THE WITNESS: You're welcome.
10 MR. BRANN: Five years of architectural school to
11 become an easel.
12 THE WITNESS: We will, I'll have the other pages
13 printed out --
14 MR. GROSSMAN: Okay.
15 THE WITNESS: -- and then, and then distribute
16 it --
17 MS. HARRIS: Yes. My apologies if it got --
18 THE WITNESS: -- to the attorney.
19 MR. GROSSMAN: Things happen.
20 MS. HARRIS: Yes.
21 THE WITNESS: I'm not sure it's her fault.
22 MS. HARRIS: Okay. Well, we'll see.
23 MR. GROSSMAN: Okay.
24 BY MS. ROSENFELD:
25 Q And, Mr. Guckert, also on the All-Way Stop Control

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1 Analysis, is this analysis also done pursuant to the Highway
2 Capacity Manual?
3 A Yes. Yes, it is.
4 Q Thank you.
5 MS. ROSENFELD: Thank you very much, Mr. Grossman.
6 That --
7 MR. GROSSMAN: Sure.
8 MS. ROSENFELD: -- that was helpful to me.
9 MR. GROSSMAN: All right.
10 MS. CORDRY: All right.
11 MR. GROSSMAN: Ms. Cordry.
12 MS. CORDRY: All right.
13 MR. GROSSMAN: You had some things you had handed
14 up here. Do you --
15 MS. CORDRY: Right.
16 MR. GROSSMAN: -- want them marked, or have they
17 already been --
18 MS. CORDRY: Okay.
19 MR. GROSSMAN: -- marked with your earlier
20 submissions?
21 MS. CORDRY: No, not in that particular format.
22 One thing I just gave you was copies of transcript pages,
23 just because I will be referring to the transcript from time
24 to time, and --
25 MR. GROSSMAN: Right.

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1 MS. CORDRY: -- I just printed them out so
2 everybody would have them handy, and I also gave Mr. Guckert
3 a copy of those.
4 MR. GROSSMAN: Okay.
5 MS. HARRIS: Do you have an extra copy for us?
6 MS. CORDRY: No.
7 MS. HARRIS: Okay.
8 MS. CORDRY: You have the transcripts there.
9 MS. HARRIS: Too bad, I guess.
10 THE WITNESS: Are these --
11 MR. GROSSMAN: You can share mine.
12 THE WITNESS: These pages here?
13 MS. CORDRY: Yes.
14 THE WITNESS: Okay.
15 MR. GROSSMAN: Okay. And the disk is of what?
16 MS. CORDRY: And the disk is a copy of what is up
17 on the screen. So we have a printout, plus, plus the --
18 MR. GROSSMAN: And then you handed me a little
19 booklet --
20 MS. CORDRY: Right.
21 MR. GROSSMAN: -- which is entitled Guckert
22 Cross-Examination Documents.
23 MS. CORDRY: Right.
24 MR. GROSSMAN: Do you want that marked as a
25 separate exhibit? Is that what you're --

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1 MS. CORDRY: Yes.
2 MR. GROSSMAN: Okay. All right. So --
3 MS. CORDRY: But I would put those together, (a)
4 and (b), so --
5 MR. GROSSMAN: Okay.
6 MS. CORDRY: And I believe everything on here
7 was --
8 MR. GROSSMAN: So --
9 MS. CORDRY: -- I attempted to give this to the
10 opposition. They've had problems picking up some of the
11 things from the Dropbox. I'm only going to, I think,
12 probably show one of the videos today, and obviously, if
13 we're coming back on the 1st, we will come back to that if
14 they want to look at any more, but it's approximately two
15 minutes. So --
16 MR. GROSSMAN: All right. So Exhibit 483 is
17 Cordry documents for cross-examination of Mr. Guckert on
18 rebuttal. And then 483(a) will be the disk containing
19 above, correct?
20 MS. CORDRY: Correct.
21 (Exhibit Nos. 483 and
22 483(a) were marked for
23 identification.)
24 MS. HARRIS: Mr. Grossman, and I would just pick
25 up on what Ms. Cordry said, that for whatever reason we were

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1 not able to access the videos. So neither Mr. Guckert nor
2 we have seen those yet.
3 MR. GROSSMAN: Okay.
4 MS. CORDRY: And I will note that they were also
5 taken this last weekend. So we could not take them 10 days
6 in advance.
7 MR. GROSSMAN: All right.
8 MS. CORDRY: All right.
9 MR. GROSSMAN: You can go ahead with them, as far
10 as I'm concerned, as long as it doesn't create an issue. If
11 it creates an issue, I'm sure that Ms. Harris or Mr. Goecke
12 will speak up.
13 MS. CORDRY: Okay. All right.
14 BY THE CORDRY:
15 Q So the first thing I wanted to do with this is,
16 have you looked at aerial shots of the Brandywine station?
17 A Yes.
18 Q And would that appear to represent the area around
19 the Brandywine station?
20 A It could.
21 MR. GROSSMAN: Are you saying what's up on the
22 screen?
23 MS. CORDRY: Yes.
24 MR. GROSSMAN: Which is the --
25 MS. CORDRY: Which is Slide No. 2.

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1 MR. GROSSMAN: All right.
2 MS. HARRIS: Can't see it straight. Can we move
3 it? Can we angle things so he can see it?
4 MS. CORDRY: Yes, sure.
5 MR. GROSSMAN: Brandywine Three-Kilometer Radius.
6 MS. CORDRY: Don't break your screen there. In a
7 rather lopsided way, all right.
8 BY MS. CORDRY:
9 Q And the next slide I would show you is the Wheaton
10 Three-Kilometer Radius. Does that also look like a fair
11 representation of what's within three kilometers of Wheaton?
12 A Probably.
13 Q If you compare those two, would you say it's fair
14 to say that Brandywine is a good deal more rural and less
15 urban developed --
16 A Yes.
17 Q -- than Wheaton? Okay. And --
18 MR. GOECKE: Mr. Grossman, I would object, being
19 outside the scope of his testimony on rebuttal.
20 MR. GROSSMAN: I know, but it's -- I'm going to
21 overrule it because it's fair, observational thing.
22 MS. CORDRY: Yes, and we are comparing these
23 stations; so I'd like to compare these stations.
24 BY MS. CORDRY:
25 Q And this is a Google Earth shot with a mapping of

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1 the distance to the homes. Does that look about right to
2 you, 1637 feet to the nearest homes, from your observations
3 over there?
4 A I'll assume that it's correct, sure.
5 Q Okay. Do you recall how close it is to the
6 nearest homes at Wheaton?
7 A It's several hundred feet, not 1600.
8 Q Isn't it more like 125?
9 A I didn't, I haven't measured it --
10 Q Okay.
11 A -- that's really a planning issue --
12 Q Okay.
13 A -- planning issue versus traffic, but go ahead.
14 MR. GROSSMAN: The first one, Slide 4, is the
15 Brandywine --
16 MS. CORDRY: Right.
17 MR. GROSSMAN: -- Distance to Homes --
18 MS. CORDRY: Right.
19 MR. GROSSMAN: -- and you're asserting in there
20 that it's 1,637 feet.
21 MS. CORDRY: Well, I should actually say, I guess,
22 Google Earth is asserting that, but yes, I am taking Google
23 Earth's word for it, so yes.
24 MR. GROSSMAN: Okay.
25 BY MS. CORDRY:

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1 Q Now we're just, this slide is just a little closer
2 that we can see there is a very large main road there that
3 the mall is directly adjacent to, is that correct?
4 MR. GROSSMAN: When you say this slide, let's
5 identify it for the record.
6 MS. CORDRY: This is Slide 5.
7 MR. GROSSMAN: Okay. Slide 6, I think.
8 MS. ROSENFELD: 5. 5.
9 MS. CORDRY: 5, on the bottom.
10 THE WITNESS: It says 5 down at the bottom.
11 MR. GROSSMAN: Oh, mine says 6.
12 MS. ROSENFELD: No, back up.
13 MR. GROSSMAN: Oh, maybe I'm looking at Store Area
14 Close Up. Hold on a second.
15 MS. CORDRY: Yes.
16 MS. ROSENFELD: Back up.
17 MS. CORDRY: Back up one.
18 MR. GROSSMAN: I jumped ahead, right?
19 MS. CORDRY: Yes.
20 MR. GROSSMAN: All right, 5.
21 THE WITNESS: Are you referring to the east-west
22 road?
23 BY MS. CORDRY:
24 Q No. I'm referring to the north-south road first.
25 Let's start with the north-south road there.

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1 A Okay. What is the question?
2 Q Do you know what road that is?
3 A Yes. It's --
4 Q And can you tell us?
5 A It is Maryland 3.
6 Q Okay. And then, yes, there is a road that comes
7 off there, and what is that road going east and west?
8 A That's a road. I do not know the name. I think
9 it's maybe Matawoman something.
10 Q Or Matapeake? Could that be --
11 A Could be.
12 Q -- Matapeake? Okay. And now we'll go to Slide 6,
13 which is, again, a closer up shot of the entire Costco area
14 there.
15 MR. GROSSMAN: Brandywine Costco area.
16 MS. CORDRY: Costco area at Brandywine, yes.
17 THE WITNESS: Yes.
18 BY MS. CORDRY:
19 Q And if we go back to Slide 5 a moment, it would
20 appear to me that there are two large entryways from that
21 east-west road into the mall area there at Costco --
22 A There are two --
23 Q -- the parking lot area there.
24 A -- two roads into, off of the public road, into
25 the Costco.

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1 Q Okay. And this is a stand-alone Costco, correct?
2 It's not attached to any other mall?
3 A Correct.
4 Q Okay. So if someone is coming to the store, would
5 it be fair to say that they would normally go in that second
6 entrance there, the one that's farther to the right on the,
7 on Slide 6?
8 A No, I don't think that's a fair question. I think
9 they'll use both entrances, depending on whether they're
10 going for gas or where they've, where they're used to
11 parking --
12 Q Okay.
13 A -- I think they'll use both.
14 Q And if they come in for gas, as they turn off that
15 first entrance on the left there, they can come in and go
16 immediately to the gas station, is that correct?
17 MR. GROSSMAN: When you say first, first entrance
18 on the left doesn't mean much in terms of the record.
19 What --
20 MS. CORDRY: I'm looking on the slide there, and
21 there are two entrances shown. One is on the left-hand side
22 of the slide, and one is on the right-hand side, further
23 west entrance.
24 MR. GROSSMAN: By the two entrances, you're
25 talking about the one off the circle as one of them or

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1 you're not?
2 MS. CORDRY: No, no. No. I'm talking -- there
3 was one on the very last side of the map, of the slide
4 there.
5 MR. GROSSMAN: Okay, yes.
6 MS. CORDRY: And then there's one about in the
7 center there.
8 MR. GROSSMAN: Presuming that north is up on it?
9 MS. CORDRY: Yes.
10 MR. GROSSMAN: All right. So it's on the western
11 side of it.
12 MS. ROSENFELD: Mr. Grossman, do you have your
13 handy pointer?
14 MR. GROSSMAN: I don't, but Mr. Guckert does.
15 MS. DIDONE: He's got it.
16 MR. GROSSMAN: You can hold on to it.
17 THE WITNESS: I was pointing for you.
18 MR. GROSSMAN: Okay.
19 MS. ROSENFELD: Okay, good.
20 MS. CORDRY: Okay. All right.
21 MR. GROSSMAN: So the one on the western side
22 there?
23 MS. CORDRY: Yes.
24 MR. GROSSMAN: All right. So you were considering
25 that one of the entrances?

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1 MS. CORDRY: Well, yes, I would consider that an
2 entrance.
3 MR. GROSSMAN: Okay. And the one in the middle,
4 on the north, off that northern road there, that's the
5 second one you're talking about?
6 MS. CORDRY: Right.
7 MR. GROSSMAN: And why don't you --
8 BY MS. CORDRY:
9 Q And I guess I would say there's actually three
10 entrances. Is that correct then? One off the circle as
11 well?
12 MR. GROSSMAN: Yes. I mean, you don't consider
13 the one all the way on the right to be an entrance, or --
14 MS. CORDRY: Well, I'm getting there. Just a
15 moment.
16 MR. GROSSMAN: Okay. All right.
17 BY MS. CORDRY:
18 Q So there's also, yes, a third entrance, as well,
19 there off the circle?
20 A Correct.
21 Q Okay. So anyone coming at that first entrance can
22 pull in and immediately proceed into the gas station?
23 A That's correct.
24 Q Okay. And anyone going to the store can continue
25 going on that road and not be in the area by the gas

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1 station, correct?

2 A They could or -- they have, they have two

3 different ways that they could get to the store, that's

4 correct.

5 Q Actually, they've got several different ways,

6 don't they? They have the first break there right by the

7 gas station. Then they have another break. Then they have

8 -- I mean, there's, I count one, two, three, four, four

9 entrances there along the west side, is that correct?

10 A There are a number of entrances, that's correct.

11 Q And then they could go down the right-hand side as

12 well. So all of those would allow them to bypass being

13 anywhere near the gas station, correct?

14 A That's correct, with the exception of the one,

15 that's correct.

16 Q Okay. So, and then as they leave the gas station,

17 they are immediately able to proceed out and through that

18 exit there right back onto the main road, is that correct?

19 A If they're going directly out, that's correct.

20 Q Okay. So all of that is outside of where the flow

21 would have to go if people want to go to the rest of the

22 store, is that correct?

23 A That's correct. There's, there's --

24 Q Okay. Oops, not done yet. Not done yet. Okay.

25 I'm sorry.

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1 A Yeah. There's, as you saw on the video and as

2 shown on this Slide 6, there's parking in this area where

3 the gas station -- where the gas customers would pass

4 through to exit if they're going out, that's correct.

5 Q And would it be fair to say that on December 21st

6 would be -- well, let me just ask this: December 21st would

7 be one of the busiest shopping days of the year, correct?

8 A That's correct.

9 Q And on that hour of video you showed, that area

10 over there was never solidly parked, was it?

11 A That's correct.

12 Q In fact, it had very few cars parked there?

13 A That's correct.

14 Q On even the, one of the busiest days of the year?

15 A That's correct.

16 Q So for the rest of the year, it would probably

17 almost never have anyone there?

18 A I think that's probably a fair statement.

19 Q And that would include pedestrians as well?

20 A You know, I don't know. I guess you've got

21 pedestrian activity along this north-south road.

22 Q Why would pedestrians, you think, be walking along

23 that north-south road?

24 A Well, let's blow it up. Let's go to Slide 5 or 4.

25 Q Well, that is the most blown up slide we have.

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1 A I'm sorry. Then squeeze it up. There you go. So

2 you might have pedestrians that are walking from one store

3 to the other. You might have employees, you know. So

4 there's, there's certainly pedestrian activity along here,

5 as you can see by the sidewalks.

6 Q Did you actually observe pedestrians walking back

7 and forth between those two sets of --

8 A Yeah. It shows up on the video, as you'll see.

9 Q No, no, I'm not talking there. I'm talking

10 between those two sets of stores there.

11 A It shows on the video pedestrians walking in this

12 area, yes.

13 Q I'm talking between the Costco store and that

14 other, whatever that other white building is --

15 A Okay.

16 Q -- across that main road there. You saw --

17 A Okay.

18 Q -- pedestrians taking that --

19 A Okay. It's -- on the video it shows pedestrians

20 walking across there, okay?

21 Q How many?

22 A We have to go back and count.

23 Q Well, yes, that would be nice. Certainly not very

24 many, would you say? Less than 10?

25 A I don't know.

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1 Q Okay. We'll look at your video between now and

2 next time --

3 A Okay.

4 Q -- and we can ask that question. All right. So

5 any car exiting there then in your video is not going

6 through a number of parked cars, correct?

7 A It's going through the parking lot the way you do

8 with other Costco stores.

9 Q That wasn't my question. My question was, there

10 are not -- if, on the busiest day of the year, there was

11 almost no one parked there, would it be fair to say that for

12 the entire year most of the time no one is going to be

13 competing in terms of parked cars there?

14 A It's possible.

15 Q Well, not just possible. It's a fact, isn't it?

16 A No --

17 Q Well, you just said --

18 A -- because I don't know that. Now, you're asking

19 me a question. I know you don't like my answer, but the

20 fact is I do not know what's happening the rest of the year.

21 I would expect that, and I've testified once before a few

22 minutes ago, that it's likely that if this isn't used --

23 it's probably not, but it's not an absolute, as you know.

24 Q Okay. And that's partially, that's because until

25 you decided to add this now, we've never talked about

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1 Brandywine before in terms of comparability to this Wheaton
2 station, correct?
3 A Could be.
4 Q Well, you haven't talked about it before, correct?
5 A I haven't talked about it.
6 Q Okay. You mentioned that there were three cars a
7 minute leaving that station. How many -- correct, that that
8 was on the average, three cars a minute would --
9 A Yes.
10 Q -- go through? How many gas lines are there? How
11 many different lanes are there at this station?
12 A Six.
13 Q How many are there at Wheaton?
14 A There'll be eight.
15 Q And you expect the same number of cars to be
16 leaving Wheaton with eight lanes as are leaving Brandywine
17 with six?
18 A That's correct.
19 Q You think the volume is going to be that much
20 lower at Wheaton?
21 A I think the volume, I think the volume at Wheaton
22 is, is going to be in the range of three cars a minute.
23 Q Well, let me ask you, how much, how much gas is
24 sold a year at Brandywine?
25 A I do not have that information.

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1 Q I believe either Mr. Goecke or Ms. Harris last
2 week, the last time we were here told me it was about 6.6
3 million gallons a year. Does that sound correct to you?
4 A I do not have that information. That wasn't, that
5 wasn't an issue for me.
6 Q Okay. So you assume that we have eight lanes but
7 we're only going to have roughly the same number of cars
8 coming out as when they have six lanes there?
9 A If you -- the purpose of this issue that I
10 provided to Mr. Grossman has to do with how the exiting
11 occurs and the amount of exiting that occurs through the
12 parking lot. The traffic projections that we've given to
13 you are based upon traffic projections adjusted for
14 Sterling.
15 Q How many cars exit a minute at Sterling?
16 A Sterling is about three-and-a-half cars a minute.
17 Q And you've based that on how many cars total an
18 hour?
19 A Let's get that information. Sterling exit on a
20 Friday is 3.3 per minute and on a Saturday is 2.7 per
21 minute.
22 Q Two point seven cars for the entire station per
23 minute?
24 A Yes.
25 Q So that over a course of an hour, there would be

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1 only about 150 cars exiting from Sterling?
2 A No. It's, it is, they've got -- it ranges from 64
3 early in the morning to 60 late in the day. In the peak one
4 hour, it's 194; so that the average is about 2.7.
5 Q I have, looking at Mr. Sullivan's report in August
6 where he had totally hour gasoline transactions from Costco
7 Sterling for September 2012, page 19 in his report, did you
8 give him those numbers?
9 A I'd have to see what numbers you're talking about.
10 MR. GROSSMAN: And when you use the question did
11 you give him those numbers, you mean did he derive those
12 numbers from Mr. Guckert's report? Is that what you're
13 asking, or --
14 MS. CORDRY: Well, I'm just asking him did
15 Mr. Sterling, I mean, did Mr. Sullivan get these numbers
16 from Mr. Guckert.
17 MR. GROSSMAN: That question includes whether
18 Mr. Sullivan just got them from looking at a report of
19 Mr. Guckert's.
20 MS. CORDRY: Well, okay --
21 MR. GROSSMAN: I mean --
22 MS. CORDRY: -- whatever --
23 BY MS. CORDRY:
24 Q Are these numbers on --
25 MR. GROSSMAN: I'm trying to know --

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1 MS. CORDRY: Okay.
2 MR. GROSSMAN: -- I'm trying to understand the
3 breadth of your question. That's all.
4 MS. CORDRY: Yes, I understand. Okay.
5 THE WITNESS: I do not know. This is not, I
6 didn't -- I don't have September 2012 from Sterling. I
7 suspect he did not get these from me.
8 BY MS. CORDRY:
9 Q Okay. Do you think he got them from Costco then?
10 A I --
11 MR. GOECKE: Objection.
12 MR. GROSSMAN: Are you asking him to speculate on
13 that?
14 BY MS. CORDRY:
15 Q All right. If we take this data, and let's take
16 it that this was given to us in Mr. Sullivan's report,
17 proffered by Costco, and taken into the hearing as
18 representing the totally hourly transactions at Sterling --
19 MR. GROSSMAN: This being what? Let's identify it
20 better. From Mr. --
21 MS. CORDRY: It's page 19 --
22 MR. GROSSMAN: Page 19.
23 MS. CORDRY: -- out of his August report.
24 MR. GROSSMAN: All right, page 19. This is the
25 August --

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1 MS. CORDRY: 2013 report.
2 MR. GROSSMAN: 2013 or 2012?
3 MS. ROSENFELD: 2013.
4 MS. CORDRY: 2013. This was the new one.
5 MR. GROSSMAN: All right.
6 MS. ROSENFELD: The last one we were supposed to
7 get.
8 MS. CORDRY: I should say, the next to last one.
9 MR. SILVERMAN: Penultimate.
10 MS. ROSENFELD: The last one we were supposed to
11 get.
12 MS. CORDRY: The maybe next to last one.
13 MR. SILVERMAN: We hope. We hope.
14 MS. ROSENFELD: Mr. Grossman, can we mark this as
15 an exhibit? I think there's going to be a fair number of
16 questions about this document.
17 MR. GROSSMAN: Which document are you talking
18 about?
19 MS. ROSENFELD: The pages in this.
20 MS. CORDRY: This is the --
21 MR. GROSSMAN: If it helps you, yes, if it helps.
22 MS. ROSENFELD: I think it'll help for purposes of
23 future reference.
24 MR. GROSSMAN: All right. Okay. Do you have a
25 copy of it to mark?

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1 MS. CORDRY: I'm sorry. Yes.
2 I MS. ROSENFELD: I'll give him mine.
3 MS. CORDRY: Okay. I hadn't really reckoned this
4 would be a point of dispute. So I --
5 MS. HARRIS: So which report did it come from?
6 MS. CORDRY: -- had not made copies of this one.
7 MR. GOECKE: The August 2013.
8 MS. ROSENFELD: August of 2013.
9 MR. GROSSMAN: Okay. So this will be --
10 MS. CORDRY: Looks like on there from Exhibit
11 255(a), it appears to be.
12 MR. GROSSMAN: All right. Let me -- all right.
13 Mr. Silverman, where did you hide my exhibit list? There it
14 is. This will be Exhibit 484, and it'll also be pages from
15 Sullivan August 2013 report, Exhibit 255(a), Exhibit 484.
16 Okay.
17 (Exhibit No. 484 was marked
18 for identification.)
19 MS. CORDRY: We could go back and look at the
20 September calendar if we wanted, but I will proffer to you
21 that there were 20 weekdays in September and five Saturdays
22 and five Sundays. If people are willing to stipulate to
23 that, we can use those numbers to calculate these into daily
24 totals.
25 MR. GOECKE: I'm still objecting because I'm not

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1 sure we've established that these numbers came from
2 Mr. Guckert originally.
3 MS. CORDRY: I'm not asking if they came from --
4 I'm asking him, assuming these are Costco numbers, which
5 they were proffered to us and presented into evidence as
6 being numbers that Costco was presenting --
7 MR. GROSSMAN: Yes.
8 MS. CORDRY: -- through its witnesses, that I can
9 ask him about what the actual numbers are at Sterling. He's
10 been testifying about numbers at Sterling. I'm asking him,
11 I'm --
12 MR. GROSSMAN: Well, what --
13 MS. CORDRY: -- suggesting that I think his
14 testimony is wrong about --
15 MR. GROSSMAN: Okay. Hold on a second.
16 MS. CORDRY: -- the volume at Sterling.
17 MR. GROSSMAN: What are you asking him? That's
18 the --
19 MS. CORDRY: Well, I'm going to get there in a
20 moment which was that I'm asking him, when we take these,
21 translate these into daily numbers, these are hourly figures
22 -- and in fact, I put the chart in myself before, another
23 exhibit; I'll find what I'd done there at one point in my
24 own testimony -- but my point here is that I want him to
25 look at what the volume is at Sterling and that that is the

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1 volume that is going to be comparable to Wheaton, not
2 Brandywine.
3 MR. GROSSMAN: Okay. But what are you asking him?
4 I'm not sure --
5 MS. CORDRY: Okay. Okay.
6 MR. GROSSMAN: -- I'm still not sure what you're
7 asking him.
8 MS. CORDRY: Okay. Right now I'm just trying to
9 get this document here and saying --
10 MS. ROSENFELD: Just ask your question.
11 MS. CORDRY: Okay. I am.
12 MS. ROSENFELD: You're good. You're good.
13 MS. CORDRY: Yes.
14 MS. ROSENFELD: Ask your question.
15 MS. CORDRY: I'm going to.
16 BY MS. CORDRY:
17 Q My question is this: First off, if we look at
18 this, it represents hourly transactions for the month
19 labeled, correct?
20 MR. GOECKE: Well, again, that's my objection
21 because Mr. Sullivan, as he's testified several times, had a
22 very conservative analysis. So whether these numbers are
23 numbers that he took from a report that were accurate, that
24 were inflated to, you know, overstate what's being used --
25 MS. CORDRY: These are gasoline transactions sold

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1 by Costco. These are not estimates. These are not
2 projections. These were sales. These are actual sales.
3 MR. GOECKE: From Sterling?
4 MS. CORDRY: From Sterling.
5 MR. GOECKE: Okay.
6 MS. CORDRY: Which Mr. Guckert has testified that
7 he thinks he knows what the sales volume is at --
8 MR. GROSSMAN: I know, but let her finish her
9 question --
10 MS. CORDRY: -- Sterling.
11 MR. GOECKE: Okay.
12 MR. GROSSMAN: -- before you make your objection,
13 and then we'll know what the question is at least.
14 MR. GOECKE: I thought she was finished. I'm
15 sorry.
16 MS. CORDRY: I was trying to get there, which was,
17 if we take these figures --
18 MR. GROSSMAN: Right.
19 MS. CORDRY: -- each one represents --
20 MR. GROSSMAN: Well, just take these figures.
21 Don't tell us what they represent. Just ask the question.
22 MS. CORDRY: Okay.
23 BY MS. CORDRY:
24 Q Let's take, for instance, the, on weekdays --
25 well, let me take weekends because that's the highest time.

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1 Let's take the highest value there, which is 1275 at Hour 16
2 for Sunday. Hour 16 would be 4 o'clock in the afternoon?
3 A I don't see where -- what are you talking about?
4 Q Okay. Do you see on the side there --
5 A This is, this is --
6 Q -- 5, 6, 7, 9, 10?
7 A -- this is daily, right? These are daily numbers.
8 Q These are total for all Saturdays and for all
9 Sundays and for all weekdays.
10 A Which day, which day are we looking at? Which
11 date?
12 Q Okay.
13 MR. GROSSMAN: It looks like the 16, the one
14 that's labeled 16.
15 THE WITNESS: Date No. 6 --
16 BY MS. CORDRY:
17 Q No. No, no, no.
18 A -- so you're saying for September 16th?
19 Q No. No. Those are hours.
20 A No. No, they're not.
21 Q Yes, they are, Mr. Guckert.
22 A Oh, okay. Well, then I can't answer this --
23 Q Well, let me --
24 A -- because this isn't mine.
25 Q Okay. Let me tell you --

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1 MR. GROSSMAN: Well --
2 MS. CORDRY: Okay.
3 MR. GROSSMAN: -- let's start out with a question.
4 BY MS. CORDRY:
5 Q All right. The question is --
6 MR. GROSSMAN: Let's know what the question is.
7 BY MS. CORDRY:
8 Q I am going to proffer to you that the testimony
9 that came in before --
10 MR. GROSSMAN: No, don't start with a proffer.
11 Ask -- tell me what the question will be.
12 MS. CORDRY: The --
13 MR. GROSSMAN: We'll start out, we'll --
14 MS. CORDRY: Okay.
15 MR. GROSSMAN: -- deal with a proffer afterwards,
16 if necessary, but first --
17 MS. CORDRY: Okay.
18 MR. GROSSMAN: -- tell me what your question is.
19 BY MS. CORDRY:
20 Q My question is, assuming that the 16 represents 4
21 o'clock, all sales made at 4 o'clock on each day in
22 September, which the prior evidence has shown that this is
23 what that was, if there are five Sundays in September, then
24 we divide -- and I put this whole chart in before, and I did
25 this in my testimony -- so if we divide -- so what I'm

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1 trying to do is come back to you -- if we divide the 1275
2 for Sunday by five, you get the hourly total --
3 MR. GROSSMAN: You're testifying now. I mean,
4 you're not --
5 MS. CORDRY: Well, yes, and I did testify before.
6 MR. GROSSMAN: I know, but it's a problem in terms
7 of asking a question. I understand --
8 MS. CORDRY: I understand.
9 MR. GROSSMAN: -- it's difficult, and I'm not
10 trying to badger you. I'm just --
11 MS. CORDRY: Right.
12 MR. GROSSMAN: -- trying to get a question that
13 can be actually answered, and I know this is a difficult
14 thing to do.
15 MS. CORDRY: All right. If everybody will stop
16 helping.
17 MR. GROSSMAN: All right.
18 MR. GOECKE: I'm not trying to help.
19 MS. CORDRY: Right.
20 BY MS. CORDRY:
21 Q If you take the 1275 that's labeled there for
22 Sundays and the hour 16, you divide that by five, what
23 number do you get?
24 MR. SILVERMAN: That's the question.
25 MR. GROSSMAN: If you have a calculator, you

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1 can --
2 THE WITNESS: Are we talking about the gas sales
3 up at the top, because --
4 BY MS. CORDRY:
5 Q Yes.
6 A -- I don't understand this chart --
7 Q Okay. That's what I was trying to explain.
8 A -- okay? And up here it says 5:00. Gas starts
9 selling at 5 o'clock in the morning?
10 Q Yes, well, at least between 5:00 and 6:00 in the
11 morning and then between 6:00 and 7:00, between 7:00 and
12 8:00, down the rest of the columns, okay? Understand that?
13 A I'll do the math for you, but I don't understand
14 this chart. So go ahead.
15 Q Okay.
16 MR. GROSSMAN: All right. So you want him to
17 divide 1275 by what?
18 MS. CORDRY: By five --
19 MR. GROSSMAN: By five. Okay.
20 MS. CORDRY: -- for the five Sundays in the month.
21 THE WITNESS: Okay.
22 BY MS. CORDRY:
23 Q And what's the, what's it --
24 A Two five five.
25 Q Okay. So if that represents how many sales there

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1 were on average at 4 o'clock on, between 4:00 and 5 o'clock
2 on Sunday, 255 is not 180, is it, or 175?
3 MR. GROSSMAN: Well, we know that that's
4 totally -- I mean, we know that that's the case.
5 MS. CORDRY: I understand that.
6 MR. GROSSMAN: Two fifty-five is not equaled to
7 anything other than 255.
8 BY MS. CORDRY:
9 Q All right. Let me ask it, let me ask it just a
10 different way. What documents do you have that show that
11 sales at Sterling average 190, whatever figure you just had
12 given us, 180 to 195 an hour?
13 A It's not -- what document I have is what was
14 submitted to the Planning Commission. It's in, it's in the
15 record, and it's the exiting every minute on a Friday and a
16 Saturday in January 11 and January 12th, 2013. That's,
17 that's this document that, that was submitted to the staff
18 and is in, should be in the record.
19 Q And do you know what document that is?
20 A You mean what document number?
21 Q Yes.
22 A No, I do not.
23 Q Would that be those --
24 MS. ROSENFELD: Document title?
25 MR. SILVERMAN: What's the title?

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1 BY MS. CORDRY:
2 Q -- would that be Exhibit -- let me find it, the --
3 MR. GROSSMAN: Well, he's talking about a document
4 submitted to the technical staff, not the technical staff's
5 report, I take it.
6 MS. CORDRY: No, I understand that.
7 MR. GROSSMAN: Okay.
8 BY MS. CORDRY:
9 Q Would that be in Exhibit 56, the vehicle queue
10 summary for Sterling, 1/11 and 1/12?
11 A 1/11 and 1/12, yes.
12 Q Okay. All right. We'll come back to those in a
13 little bit. Okay. That's where you are getting numbers
14 that say only 190 -- 180, 190 cars exited from Sterling?
15 A On the peak, in the peak one hour --
16 Q In the peak hours, okay.
17 A -- and the average results in being the exiting
18 peak -- the exiting average is 2.7 per minute on a Saturday.
19 Q And that's over the entire day, correct?
20 A Correct.
21 Q Okay. So obviously it would be higher at the peak
22 hours?
23 A In the peak it's five to seven per minute.
24 Q Okay. I thought that was the question I had asked
25 you before but perhaps not, but -- because this day at

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1 Brandywine, 2 o'clock in the afternoon at Brandywine on
2 December 21st, is probably about as peak as you're going to
3 get, correct, for that station?
4 A I don't know -- I do not know when the gas station
5 peaks versus the Christmas season. In fact, I, quite
6 frankly, do not know Costco's peaky characteristics. I do
7 know general retail characteristics. If this were that it,
8 that it could be that high, yes, that could be the peak,
9 peak day, peak month.
10 Q Why did you happen to pick December 21st?
11 A That happened to be the time when we could get
12 staff out there to do the count based upon the last set of
13 hearings that were going on in that millennium.
14 Q Okay. Okay. So we'll come back to your numbers
15 again about whether three versus four cars or whether 180 is
16 also reasonable for Wheaton, but we'll come back to that in
17 a moment, but --
18 A Okay.
19 Q -- just to compare, this is the layout for the
20 Wheaton station, correct?
21 A Yes.
22 Q The proposed Wheaton station. And it's fair to
23 say you don't come directly off a main road and go directly
24 back out to a main road for that station?
25 A That's the good thing from a compatibility point

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1 of view, I think.
2 Q I'm not asking you to opine on things. I asked
3 you a question. You do not come off and go right back onto
4 a main road, do you, to get to this station?
5 A Yes, fortunately, you do not come out like you
6 would on another gas station.
7 Q Mr. Guckert, could you please just answer the
8 question?
9 MS. ROSENFELD: Yes or no?
10 BY MS. CORDRY:
11 Q Was that a yes or no?
12 A I will -- I'm sorry. I'm just not going to -- I'm
13 going to answer the question that I think is important.
14 MS. CORDRY: Mr. Grossman, can the witness be --
15 MR. GROSSMAN: Yes, I think he can, you can
16 answer --
17 MS. CORDRY: -- asked to answer the question and
18 not to give his opinions?
19 MR. GROSSMAN: Okay. Yes, but we don't have to
20 have any bitterness here. Let's just --
21 MS. CORDRY: Okay. I'm not. I'm not.
22 MR. GROSSMAN: -- ask the question, and you just
23 answer the question, and we'll be fine. Go ahead.
24 MS. CORDRY: Right.
25 BY MS. CORDRY:

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1 Q So the question is, yes, you do not come off and
2 go directly back out onto a main road?
3 A Fortunately, you do not come out and come back
4 into a main road.
5 Q Thank you. Thank you. In fact, it's about 2,000
6 feet or so that you're driving through the mall from each
7 direction?
8 A Could be.
9 Q Okay. I had some things I looked up here from
10 some facts. The needs study indicated that the area, the
11 study area around the gas station was about 15 square miles.
12 Does that sound about right to you?
13 A I don't know.
14 Q Do you know what the population is in that area?
15 A It's not part of the work that we did or testified
16 to.
17 MS. HARRIS: If I could object. The whole purpose
18 of the Brandywine tape was to show the cars exiting the
19 station into drive aisles and the speed in which that
20 occurred. A comparison of the demographics between
21 Brandywine and Wheaton seems to be not within the scope of
22 Mr. Guckert's testimony.
23 MR. GROSSMAN: Let's put it this way: It's fair
24 for her to try to show, since you were making a comparison,
25 to show that they are not comparable in some ways. I think

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1 that's fair. Now, whether this goes too far -- and it
2 certainly suggests facts that are probably not yet in
3 evidence --
4 MR. GOECKE: That's right.
5 MR. GROSSMAN: -- so I think it may be that part
6 of this, the problem is that it might be part of a
7 surrebuttal, where you would introduce evidence of this --
8 MR. GOECKE: Yes.
9 MR. GROSSMAN: -- being not comparable, but it's
10 hard to cross-examine on facts that aren't in evidence --
11 MS. CORDRY: Okay. Well --
12 MR. GROSSMAN: -- without, you know, making a lot
13 of proffers along the way. It just makes it very difficult.
14 MS. CORDRY: Okay. Well, the needs -- okay.
15 MR. GROSSMAN: I understand your fundamental point
16 here, but that's --
17 MS. CORDRY: Yes, I understand. The needs study
18 is obviously in evidence.
19 MR. GROSSMAN: Yes.
20 MS. CORDRY: So everything on the left-hand side
21 is in evidence.
22 MR. GROSSMAN: Yes. I'm not talking about the
23 left-hand --
24 MS. CORDRY: Right.
25 MR. GROSSMAN: -- it's the right-hand side with

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1 which --
2 MS. CORDRY: The left-hand side. I was prepared
3 to proffer that but perhaps --
4 MR. GROSSMAN: What page is that in your little --
5 MS. CORDRY: That would be 8.
6 MR. GROSSMAN: Okay. That's 8 in Exhibit 483.
7 MS. CORDRY: And perhaps surrebuttal will be fine.
8 I'll proffer the facts about Waldorf there that are on the
9 right-hand side.
10 MR. GROSSMAN: All right.
11 MS. CORDRY: Perhaps Costco can, at some point,
12 tell us what the sales are at Brandywine officially, and
13 then the bottom two lines are just a calculation.
14 MR. GROSSMAN: All right. So you're going to
15 proffer that you'll introduce this as evidence --
16 MS. CORDRY: Well, I --
17 MR. GROSSMAN: -- that is, you're going to testify
18 on surrebuttal that this is, these are factual --
19 MS. CORDRY: Well --
20 MR. GROSSMAN: -- is that what you're saying, or
21 are you asking him whether they're factual?
22 MS. CORDRY: Well, I can certainly do that on
23 surrebuttal, yes. I can certainly tell you that, of course,
24 everything on the left-hand side is already in evidence --
25 MR. GROSSMAN: I understand. I understand.

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1 MS. CORDRY: -- and then on the right-hand side,
2 yes, it's one page. I can put it in now. I'm not sure if
3 I've given it to them before, but I can certainly put that
4 in.
5 MR. GROSSMAN: Let's assume she's asking it as a
6 hypothetical. I'm going to overrule the objection and let
7 her go, give her some leeway on this cross-examination to
8 show that -- what I believe she's trying to show is that
9 it's a fallacious comparison of Wheaton versus Brandywine,
10 but assuming that -- you may assume for purposes of her
11 questions that the facts on the right-hand side of page 8
12 are accurate -- what is your question to him about it?
13 BY MS. CORDRY:
14 Q My question is, if you have a sales volume per
15 pump considerably higher at Wheaton than at Brandywine, that
16 would indicate that you're going to have more cars going
17 through Wheaton than at Brandywine, would it not?
18 A It has -- you have to look at the issue of how
19 long it takes to pump gas as well. So, overall, on an
20 annual basis, you're correct.
21 Q Okay. And the evidence in the case, I think
22 several witnesses have testified at different times -- and
23 it's in the needs study among other places -- that it takes
24 about four minutes on average to pump.
25 A That's correct.

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1 Q So that translates out to about 15 cars per hour
2 per pump?
3 A That's correct.
4 Q Okay. So if you have 12 pumps, 12 times 15 would
5 be 180. Theoretically, that's roughly the maximum?
6 A That's correct.
7 Q And that's about what you were showing that the
8 Brandywine station was selling?
9 A That's not what I was showing, no, I'm sorry.
10 Q Well, okay, I'm sorry.
11 A I didn't, I didn't show gasoline sales.
12 Q Well, actually, I believe you did on your -- well,
13 okay. You showed -- this document is part of, this would be
14 456(c). This is not labeled Transactions?
15 A That is not my document. I did not prepare that
16 document.
17 MS. ADELMAN: Oh.
18 BY MS. CORDRY:
19 Q You were testifying about this document, were you
20 not?
21 A I understand, but you're -- I think, you can read
22 back, I think you asked a different question.
23 Q Okay. Well, my question is -- okay, first off,
24 who prepared this document?
25 A Not me.

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1 Q Do you know who prepared it?
2 A I do not.
3 Q Who gave it to you?
4 A It was part of the evidence. It wasn't, it wasn't
5 my exhibit, as you recall.
6 Q I'm not asking you that. I'm asking you, who gave
7 you this document?
8 A One of the three people on the wire there. I do
9 not remember exactly which person gave me that exhibit.
10 Q Did they explain what it was when they gave it to
11 you?
12 A We have a team, had a team meeting, and it was
13 explained to me what it was and that part I testified to,
14 that's correct.
15 Q Okay. And what did they tell you this was?
16 A It was sales for that particular day.
17 Q Okay. Per hour, correct?
18 A If -- yes, I think that -- wait a minute, have it
19 here. Yes, it is sales per hour, that's correct.
20 Q Okay. For four particular hours, correct?
21 A That's correct.
22 Q Okay. So come back to my question --
23 A Okay.
24 Q -- which I think was what I asked you before.
25 This is showing just about exactly that maximum number of

Page 201

1 sales, correct?
2 A It shows, it shows number of cars exiting.
3 There's a difference between sales and cars, okay? So it
4 shows the number of cars at about three per -- at about
5 three cars exiting per minute.
6 Q Okay. And three cars exiting per minute times 60
7 minutes is about 180, correct?
8 A That's correct --
9 Q And you're showing here --
10 A -- that's on the first line.
11 Q -- whoever prepared this is showing 177 --
12 A That's right.
13 Q -- 176, 175, 174, right?
14 A Number of transactions, that's correct.
15 Q Okay. So that pretty much means that there's that
16 many cars exiting, correct?
17 A And that's not -- and I didn't disagree with that.
18 Q Okay, fine. So this represents, again, roughly
19 the same number of sales as the maximum number of
20 transactions you could do with six pumps, I'm sorry, with 12
21 pumps, correct?
22 A This, this does, that's correct.
23 Q And you're saying that the station at Sterling,
24 which is the busiest station on the east coast from
25 testimony we have had, sells no more than approximately 180

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1 with 16 pumps?
2 A That was not my testimony that it's the busiest
3 station on the East Coast.
4 Q I'm not asking if it was your testimony. I said,
5 we have had testimony that it is the busiest station on the
6 East Coast.
7 A Well, I can't, I cannot testify to that. What I'm
8 saying is I have information that I collected personally
9 that shows that on a Saturday the, the sale, the -- not
10 sales, the number of cars were, were in the, in the three-
11 to four- -- average of three cars per minute leaving,
12 leaving Sterling.
13 Q Okay. So that goes back again to this Sterling
14 queuing exhibit that you did?
15 A That's correct, which has cars exiting as well as
16 queuing.
17 Q And, again, you're saying that's three cars
18 exiting at the peak hour at Sterling, correct?
19 A No. I said exiting average.
20 Q Okay. So this, again, are at peak hours, correct,
21 the exhibit that we have here with Brandywine?
22 A I don't know if they're peak hours or not because
23 there's only four hours, but there -- but it's four hours in
24 the middle of the day, okay? It's four hours in the middle
25 of the day, about, of December 21st, and it shows about

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1 three cars, average, over those four hours.
2 Q Okay. All right.
3 MR. GROSSMAN: Don't you think we've spent enough
4 time on this particular issue?
5 MS. CORDRY: On that particular one. I want to
6 make a few more points about --
7 MR. GROSSMAN: All right.
8 MS. CORDRY: -- the Brandywine station, just again
9 to point out the question of whether this is a reasonable
10 station to compare to what the effect will be at Wheaton.
11 Let me see if we've made most of these points here. Okay.
12 I think we've made most of those points in our discussion
13 here, and let me go down here.
14 BY MS. CORDRY:
15 Q I'm going to show you, this is the one video I'd
16 like to show you today based on your statement that you
17 didn't necessarily see there to be a whole lot of difference
18 between leaving through a parking lot with a lot of parking
19 spaces or the Wheaton station; that you were essentially
20 suggesting that the exiting from, as I understand your
21 testimony, the exiting from the Brandywine station would be
22 comparable to the way it would be if you were driving out of
23 the Wheaton station. So we saw an hour's worth of your
24 video. I'm just going to show you at this point one
25 drive-through.

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1 MR. GROSSMAN: Now, this is page 13 of your --
2 MS. CORDRY: Yes.
3 MR. GROSSMAN: -- Exhibit 483 --
4 MS. CORDRY: And this is at Wheaton today.
5 MR. GROSSMAN: -- which is entitled It's a Parking
6 Lot?
7 MS. CORDRY: Right.
8 MR. GROSSMAN: All right.
9 BY MS. CORDRY:
10 Q This is taken on Wheaton on Sunday, walking up the
11 main drive aisle next to the loading zone. As you can see,
12 people quite busy there, all -- not on a December weekend,
13 but in March. And as you turn down the east-west drive
14 aisle, which is where those cars will be --
15 MR. GROSSMAN: You know, you're really testifying
16 now. So --
17 MR. GOECKE: Testifying.
18 MS. CORDRY: Yes.
19 MR. GROSSMAN: -- well, let's let the movie speak
20 for itself.
21 MS. CORDRY: All right.
22 THE WITNESS: And so I know, is there a question
23 that I can be prepared --
24 BY MS. CORDRY:
25 Q Well, wait. Can you just watch this for a moment?

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1 A Well, that's what I want to know --
2 Q Okay.
3 A -- if I should, there's a question so I should be
4 observing something.
5 Q Right. Well, you can observe this.
6 MR. GROSSMAN: She'll get to her question, I
7 guess.
8 THE WITNESS: Okay.
9 BY MS. CORDRY:
10 Q Shall we restart it for you?
11 MR. GROSSMAN: No, just --
12 MS. CORDRY: Okay.
13 MR. GROSSMAN: -- let's go through it.
14 MS. ROSENFELD: Well, Mr. Guckert wasn't looking
15 at it.
16 BY MS. CORDRY:
17 Q Okay. So my question is simply, do you consider
18 those two driving experiences comparable for the people
19 leaving the Brandywine station, going through that parking
20 lot area, and the people who would be leaving the Wheaton
21 station, going into that parking lot area?
22 A Certainly not at the time of the two video
23 comparisons, you're correct.
24 Q Okay.
25 MR. GROSSMAN: And I'll say that I presume, once

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1 again, that you're planning to introduce that video as part
2 of the evidence in your surrebuttal, because it's not in the
3 case yet.
4 MS. CORDRY: I will certainly come back in and put
5 that in as surrebuttal, or we can put it as the evidence,
6 the exhibit now, but yes, I will be happy to put that video
7 in --
8 MR. GROSSMAN: All right.
9 MS. CORDRY: -- that's why I provided it.
10 BY MS. CORDRY:
11 Q So you say those two are not comparable scenarios?
12 A Not at the time, that's correct.
13 Q Okay.
14 MS. CORDRY: So, all right, and as I say, I'll
15 come back -- and the date is on there -- but we'll come back
16 to that then.
17 BY MS. CORDRY:
18 Q All right. Let me just go back here one second,
19 back to your place. You said there was three ways to exit.
20 I would actually count at least five. If we sort of start
21 up there at the top, the north side of the gas station, it
22 looks to me like there's one, two, three, four ways to go
23 out to the north, or I'm sorry, out to the west, I guess,
24 no, east -- trying to get myself oriented there. Starting
25 at the north side of the, as you come out of the gas

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1 station, it looks to me like there's one, two, three, four
2 different exits out there. If you have the pointer, I'll
3 point them out.
4 MR. GROSSMAN: All right. So you're talking
5 about, once again, you're on page 6 of your exhibit?
6 MS. CORDRY: Yes.
7 MR. GROSSMAN: Exhibit 483?
8 MS. CORDRY: Yes.
9 BY MS. CORDRY:
10 Q So I would count one there, one there, one there,
11 one there, is that fair to say, four --
12 MR. GROSSMAN: So you're looking at drive aisle
13 entrances onto a main drive aisle; is that what you're
14 saying?
15 MS. CORDRY: Yes.
16 MR. GROSSMAN: Okay. So --
17 BY MS. CORDRY:
18 Q So coming --
19 MR. GROSSMAN: -- east-west drive aisles entering
20 into --
21 MS. CORDRY: Yes.
22 BY MS. CORDRY:
23 Q Coming out to the east here, at one, two, three,
24 four different places the person could exit out to that
25 aisle?

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1 A If that's, you couldn't go out -- you can work
2 your way out, that's correct.
3 Q Okay. In the same way that you can work your way
4 out from the Wheaton station?
5 A You can work your way out more ways in the Wheaton
6 station, but yeah, that's correct.
7 Q Well, we've got four so far, and then we have at
8 least one more here, a fifth way to come back out here,
9 correct?
10 A You could, you could make that U-turn and come
11 back out, that's correct.
12 Q Okay. So they have quite a few ways for the cars
13 to get out of Brandywine in addition to that, and none of
14 them take you into the direct area near the entrance to the
15 store?
16 A They do not take you near the store.
17 Q Okay.
18 MS. CORDRY: All right. I think that's probably
19 about as much as I want to say about Brandywine at the
20 moment. We'll, like I say, when we come back in
21 surrebuttal, we can put in the rest of information, proffer,
22 but -- okay. All right. Let me just make sure -- okay.
23 All right.
24 BY MS. CORDRY:
25 Q So we'll quit this for the moment. We may come

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1 back to some of these. I did have some slides in there
2 about the garage, but I understand your testimony to be that
3 now the garage, the second floor of the garage, the part
4 that's allocated to Costco -- we had testimony about that
5 before -- that that is now pretty much solidly use, is that
6 correct?
7 A The second level of the garage is used
8 significantly.
9 Q Yes. In fact, pretty full most of the time,
10 wouldn't you say?
11 A On the weekends when I've been there, it's pretty
12 full, that's correct.
13 Q Right. So that before we were told that the
14 problem was that people were just trying to park in the west
15 lot and, if they could just be educated to go over to the
16 garage --
17 MR. GOECKE: Objection.
18 BY MS. CORDRY:
19 Q -- that would solve the problem, but that's not,
20 that's not true anymore. The --
21 MR. GROSSMAN: Well, what's your objection?
22 MR. GOECKE: Did someone testify to this, or was
23 she told at a meeting? What's the foundation of this
24 evidence she's proffering?
25 MS. CORDRY: I think there's testimony to that

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1 effect.

2 MR. GROSSMAN: I think there's testimony to that

3 general effect that the garage wasn't being well used and

4 people were using the parking lot, and we talked about maybe

5 putting some signs up or some sort of incentive to get them

6 to use the garage rather than the parking lot. So I think

7 that's a fair premise for her question.

8 BY MS. CORDRY:

9 Q So it's fair --

10 MR. GROSSMAN: Overruled.

11 MS. CORDRY: I'm sorry.

12 MR. GOECKE: Thank you.

13 BY MS. CORDRY:

14 Q It's fair to say that people have now learned to

15 use the garage, correct?

16 A Yes.

17 Q So now we have to try to educate them to use the

18 third floor of the garage?

19 A When the time comes.

20 Q One moment. We talked a lot today about how many

21 more cars there might be and how many coming in the various

22 entrances and so forth. I'm trying to get a little bit of

23 clarity on this. When you testified earlier on May 6th, you

24 were asked about projections for additional cars coming into

25 the Valley View entrance to use the gas station and you

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1 added up the new trips and the pass-by trips and you said

2 about 90 an hour. Does that sound right to you? If you

3 want to look it up, it's page 118 on the transcript there.

4 MR. GROSSMAN: The transcripts that you've given

5 him?

6 MS. CORDRY: Yes.

7 MR. GROSSMAN: Okay.

8 THE WITNESS: And I'm going to look at my report.

9 BY MS. CORDRY:

10 Q And if those are your reports, you might as well

11 take them up there because we'll probably be talking about

12 those a good bit as well.

13 MR. GROSSMAN: Which day of the transcript are we

14 talking about?

15 MS. CORDRY: May 6th.

16 MR. GROSSMAN: What page?

17 MS. CORDRY: 118. Actually, starting just back on

18 page 117.

19 BY MS. CORDRY:

20 Q Yes, I'm just asking you, do you recall your

21 testimony on May 6th?

22 A No. It's written here, though.

23 Q Can you look at that and have that refresh your

24 recollection that you were talking about 90 peak-hour trips

25 coming in that entrance?

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1 A From the new --

2 MR. GROSSMAN: It starts at the bottom of page

3 117.

4 MS. CORDRY: Yes.

5 MR. GROSSMAN: It says, there are a series of --

6 there are a series of exhibits, and you've got about 28

7 peak-hour trips, new trips, and another 60, so say 90, 90

8 peak-hour trips would be coming in at the Valley View

9 entrance on the ring road.

10 THE WITNESS: On the ring, on the ring road, yeah.

11 BY MS. CORDRY:

12 Q Okay. So my question to you is, you were then

13 asked, okay: So that translates to a car every how many

14 seconds or minutes? And you said that 90 cars in an hour

15 would translate into one every four or five minutes. See

16 that further down the page?

17 A Uh-huh.

18 Q Well, that's not right, is it? I mean, 90 cars in

19 an hour is not one every four or five minutes, correct?

20 A No, that's correct.

21 Q Okay. So that's really a mistake in your

22 testimony there?

23 A Either a mistake in the testimony or a mistake in

24 the typing, that's correct. Assuming the typing is correct,

25 then -- but that is a, that is a mistake in the math, that's

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1 correct.

2 Q Okay.

3 MR. SILVERMAN: There's a lot of those.

4 BY MS. CORDRY:

5 Q And do you have your supplemental transit,

6 transportation analysis up there, the one you did in --

7 A What does it look like?

8 Q The one you did in April, Exhibit 128.

9 A I don't have the exhibits marked, I don't think.

10 Let's take a look. What does it, what does it look like?

11 This?

12 Q Yes. It starts -- that's the first page of it,

13 yes.

14 A Okay. Okay.

15 Q If you could turn to page 4 of that.

16 A Okay.

17 Q Actually, before we get there, let me just, let me

18 just start there. You, when you did that supplemental

19 transit analysis, you looked at 11 intersections, correct?

20 That's what's shown on page 1 of your analysis?

21 A Yes.

22 Q Okay. On page 2 --

23 MS. HARRIS: Mr. Grossman, it seems to me that, to

24 some extent, this reminds me of what should have been

25 crossed at the time that Mr. Guckert testified about that

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1 supplemental analysis, not rehashing what he presented back
2 in May.
3 MR. GROSSMAN: What's the connection between what
4 you're asking now and what he testified to on rebuttal?
5 MS. CORDRY: Well, I think he's testified about
6 how many trips there would be, how there wouldn't be traffic
7 problems, how it's going to be no issues there, that the
8 traffic is fine, that the amount of cars coming in and going
9 out. I mean, I think he's -- I think he rehashed his
10 testimony pretty thoroughly himself. So I'm, I have a
11 number of questions about this, but at this point, all I'm
12 doing is just identifying what was part of that analysis
13 before we even get to the questions I had there, but --
14 MR. GROSSMAN: Well, why don't you just get to the
15 questions, and we won't identify --
16 MS. CORDRY: Well, I was.
17 MR. GROSSMAN: All right.
18 MS. CORDRY: I was. There was an objection
19 raised.
20 MR. GROSSMAN: I'm going to overrule the objection
21 and give you the leeway.
22 MS. CORDRY: Okay. And I just, just so we, when
23 we're looking at the pages, we all have them in hand here.
24 BY MS. CORDRY:
25 Q The second page, it just shows, it's a map that

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1 just shows where your various intersections are and that's
2 -- the numbers on the map correspond with the numbers on
3 that, on the front page, correct?
4 A Yes.
5 Q Okay. Now, if you look at -- so Intersection 1 is
6 the 193 and Valley View entrance, correct?
7 A Uh-huh.
8 Q Okay. And that would have been, in your original
9 traffic analysis, that would have been Intersection 4, if
10 you recall. Does that sound correct?
11 MS. HARRIS: Since we don't have a copy, can I
12 just look over Mr. Guckert's shoulder?
13 MS. CORDRY: Oh, here. Here. That, I do have.
14 THE WITNESS: Correct.
15 MS. CORDRY: And actually, here.
16 MR. GOECKE: Thanks.
17 MS. CORDRY: Again, all of this is already in
18 evidence, but I want to go ahead and -- I printed out some
19 pages just so it would be easier for everybody to look at
20 them.
21 MR. GROSSMAN: Thanks.
22 BY MS. CORDRY:
23 Q So if you look at page 4 then of that supplemental
24 transit analysis, the transportation analysis, or how we --
25 traffic analysis, I guess it was, supplemental traffic

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1 analysis, this lists the cars every 15 minutes, correct, for
2 the period of time from 10:00 until 6:00 on Saturday, April
3 27th?
4 A Not, not what I have, no.
5 Q Page 4?
6 MR. GROSSMAN: Are you talking about this?
7 MS. CORDRY: Yes.
8 MR. GROSSMAN: I think he's looking at something
9 different. This was a smaller document. She just handed me
10 a copy.
11 MS. CORDRY: Well --
12 MR. GROSSMAN: It's got a --
13 THE WITNESS: Okay. What, what does it say up
14 top?
15 BY MS. CORDRY:
16 Q It says, Vehicle Turning Movement Count,
17 Intersection of Maryland 193 and Valley View Road.
18 A Okay.
19 Q It's got a handwritten 4 at the bottom of it on
20 the document I have.
21 A I don't have that, but go ahead. Let me, let me
22 get to that intersection. I do not have that document.
23 MR. GROSSMAN: Do you have a copy for the witness?
24 MS. CORDRY: Yes. I guess I can give him one too.
25 MS. ROSENFELD: I'll take it up.

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1 MS. CORDRY: Okay.
2 BY MS. CORDRY:
3 Q I don't know if there was a separate appendix or
4 what, but --
5 A Thank you.
6 MS. ROSENFELD: Yes.
7 THE WITNESS: Okay. Go ahead.
8 BY MS. CORDRY:
9 Q -- in any case, for ease here, we can at least
10 refer to those numbers, those handwritten numbers at the
11 bottom of the page.
12 A Sure.
13 Q Okay. So, again, this is showing you 15-minute
14 totals from 10:00 to 6:00, is that correct, at the top?
15 A Correct.
16 Q Okay. And then about midway through there it has
17 a line labeled 10-Hour Totals?
18 A Correct.
19 Q It's not actually 10-hour totals, correct? 10:00
20 to 6:00 is not 10 hours, is it?
21 A Eight-hour totals.
22 Q Okay. So that's mislabeled as well?
23 A That's mislabeled.
24 Q Okay. So if I was trying to do something and I
25 divided by 10, I would be coming out with a number that was

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1 too low, right, for the transactions per hour, or I'm sorry,
2 the traffic per hour, the cars per hour?
3 A Correct.
4 Q Okay. So I'd actually have to divide only by
5 eight, right?
6 A Correct.
7 Q Okay. Who prepared this exhibit?
8 A Looks like a gentleman named R. B., Rick Braun
9 probably.
10 Q And did he actually physically make up this
11 exhibit and put the labels on it and so forth?
12 A Yeah, he put the labels on it. He's no longer
13 with us.
14 Q And did you check this document before it went in?
15 MR. GROSSMAN: Meaning he's dead or he left your
16 employ?
17 THE WITNESS: He's left the employ --
18 MR. GROSSMAN: Okay.
19 THE WITNESS: -- for making, for making, for
20 making a typo from where it should have been eight and it
21 said 10. He's been removed.
22 BY MS. CORDRY:
23 Q Well, that really wasn't my question, but did you
24 check this document before it was filed?
25 A No.

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1 Q Okay.
2 A I looked at the peak-hour volumes, which is what I
3 -- which was used by my staff to do the capacity
4 calculations.
5 Q I was trying to bring up two documents on my
6 screen here, and I'm -- oh, here it comes, okay. Sorry,
7 just went dormant on me for a moment there.
8 MS. ROSENFELD: Taking a nap.
9 MR. SILVERMAN: Taking a nap.
10 BY MS. CORDRY:
11 Q I'm going to put your two documents, your queuing
12 summaries up on the screen because I want to look at the
13 calculations on them. So I want to have them actually up in
14 the Excel form. One moment. Sorry about that. Actually,
15 let me put this down to the size where it'll all show on the
16 screen at the same time, and then I will change it back a
17 little bigger because it is, I think, beyond all of our eyes
18 to be able to read it unless some of you have better vision
19 than I. But this, this is the document you're talking
20 about, correct, the minute-by-minute --
21 A Yes.
22 Q -- queuing totals there? Okay. And let me blow
23 that up just a little bit bigger so that we can see it and
24 that would be Exhibit 56(b). And on this we start at 6:30
25 a.m., and we go 6:31, 6:32, so minute by minute all the way

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1 through the day, correct?
2 A Yes.
3 Q Okay. And I'm not sure if you can quite read that
4 number there, but I believe that's a 12.
5 MR. GROSSMAN: Where is this all going?
6 MS. CORDRY: This is going to indicate a number of
7 issues including -- there was a great deal of testimony
8 today about how much, how many cars would be in queue, what
9 the average time was, how long, and the queuing at Wheaton
10 is derived from the queuing at Sterling. So I am getting
11 into these discussions about the queuing at Sterling, and we
12 had a great deal of testimony about how much there was on
13 average, how many cars would be lined up, and so forth.
14 So --
15 MR. GROSSMAN: All right.
16 MS. CORDRY: Okay. So, first, I'm just going
17 through the documents to make sure we all understand this.
18 MR. GROSSMAN: All I'm saying is the level of
19 detail may exceed the informational purposes you intend.
20 MS. CORDRY: I don't think so. So let me, let me
21 just make sure that we all understand --
22 MR. GROSSMAN: Or it may even diminish the
23 informational points you intend. That's --
24 MS. CORDRY: Okay. Well --
25 MR. GROSSMAN: -- I think that's the point.

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1 MS. CORDRY: Okay. I have to kind of set this up.
2 BY MS. CORDRY:
3 Q So, anyway, so we have eight lanes at Sterling,
4 correct, and you have eight columns here with each lane
5 being shown separately, correct?
6 A Correct.
7 Q Okay. And then you have a total, the total queue,
8 and that's adding up all across those columns, correct?
9 Mr. Guckert?
10 A I'm looking. Yeah, it's correct.
11 Q Okay. And then the longest lane is just whichever
12 one of those eight had the longest number of people in the
13 queue?
14 A That's correct.
15 Q Okay. And like I say, if we go back, we started
16 at 6:30 in the morning. It was, you know, not surprisingly,
17 I would expect we would all agree that, you know, nobody
18 wants to get up at 6:30 in the morning too much. So looking
19 at this, there is definitely, as I think you have said, not
20 a whole lot of people queuing up for that first hour, is
21 that correct?
22 A That's correct.
23 Q Generally, you're showing zero total queues.
24 Okay. I think we're all in agreement with that.
25 MR. GROSSMAN: Yes. So what?

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1 MS. CORDRY: Okay.
2 THE WITNESS: And that's a difference --
3 MR. GROSSMAN: I mean, really, Ms. Cordry, it's
4 just, it's an exhausting amount of detail to show the
5 obvious. We know that --
6 MS. CORDRY: Well --
7 MR. GROSSMAN: -- little or no queue then. What
8 difference does it make?
9 MS. CORDRY: Okay. Okay, because I'm just, I am
10 going to, I am --
11 BY MS. CORDRY:
12 Q And what I want to show then is, let me go back to
13 the, we do have, the queue -- for one thing, I want to look
14 at when did this queue begin to build, and let me go back to
15 where we have the entire document on the screen. Each page
16 is an hour, correct, if you have your chart there?
17 A What day are you on?
18 Q This would be the Friday.
19 A Looking at the first couple pages, it appears to
20 be each page is an hour --
21 Q Okay. All right.
22 A -- starting at 6:30 in the morning.
23 Q So if we go all the way to the end here -- and
24 that's 15 pages, because you went from 6:30 a.m. until 9:30
25 p.m., correct?

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1 A Yes.
2 Q Okay. At the bottom, we have Average Total Queue
3 and that is -- what does that number represent there?
4 A It represents the average total number of cars
5 queued in the entire area of the station.
6 Q Over the entire time period you have there? Over
7 that whole 15-hour time period?
8 A Average per minute.
9 Q Okay. So that is the average -- it's supposed to
10 be the average of all of those numbers that you have
11 displayed in that last --
12 A Should be.
13 Q -- next to last column there?
14 A Should be, yes.
15 Q Okay. So, and that would be, you're showing a 1.5
16 there as the average total queue?
17 A Over 15 hours, the average per minute.
18 Q Okay. Can you look up at the top there where it
19 has the box labeled fx?
20 A Yes.
21 Q Does that show the formula that is used to create
22 that number down there at the bottom?
23 A It should.
24 Q Can you read us what that formula is?
25 MS. CORDRY: Believe me, this is important.

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1 MR. GROSSMAN: Okay. I can't see it. So he'll
2 have to read it.
3 MS. CORDRY: Okay.
4 THE WITNESS: Equals sum paren. J13 colon J252
5 divided by 240.
6 BY MS. CORDRY:
7 Q Okay. Two hundred forty, I'm assuming that's the
8 number of minutes it's being divided by?
9 A Yes.
10 Q So that's only 240 minutes out of 15 hours? And
11 J13 -- well, let me, that's correct, right, 240 minutes?
12 A Yeah, 240 occurrences.
13 Q Okay. And J13 to J252, that's just numbered from
14 the top of the chart, correct?
15 A Should be.
16 Q Okay. So therefore we're talking about the four
17 hours from 6:30 a.m. to 10:30 a.m.? Sixty minutes per hour,
18 four hours is 240 observations.
19 A 6:30 to 9:30, right.
20 Q Okay. But J13 or J -- let me go back down there
21 and look at that formula again. If we are only averaging
22 the values between line 13 and line 252, those are only the
23 values from 6:30 a.m. to 10:30 a.m., correct, Mr. Guckert?
24 A Should be.
25 Q So when you said that was the average of all of

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1 the readings over the 15 hours, that wasn't true, was it,
2 Mr. Guckert? That's not the average of all 15 hours' worth
3 of readings, is it?
4 A Well, this only gives you the, you know, the one.
5 You've got to look at the --
6 Q No. I'm asking you about this one. This one does
7 not show down there --
8 A This particular sheet is not 15 hours, that's
9 correct.
10 Q No. The whole, the whole sheet is 15 hours, is it
11 not? We went through page 13, 12, 10, 9, 8, 7, 6, 5, 4, 3,
12 2, 1.
13 MR. GROSSMAN: So your point is that the bottom
14 line does not reflect accurately the total of the 15 pages?
15 MS. CORDRY: Yes. My point is --
16 MR. GROSSMAN: Okay.
17 THE WITNESS: Ah, I have to check that.
18 MS. CORDRY: -- that the bottom line only averages
19 the four hours before anybody starts coming to the station.
20 MR. GROSSMAN: Okay.
21 BY MS. CORDRY:
22 Q So that that is not in fact an accurate reflection
23 of what the total average queue is, is it, Mr. Guckert?
24 A I have to look. I have to check that.
25 MR. GROSSMAN: Which station was this one?

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1 MS. CORDRY: This was Sterling.
2 THE WITNESS: This is Sterling.
3 MR. GROSSMAN: All right.
4 MS. CORDRY: And this is the one from which we are
5 taking our values.
6 MR. GROSSMAN: Which exhibit was that taken from?
7 MS. CORDRY: That was 56(b).
8 BY MS. CORDRY:
9 Q And again, if you want me, I'll blow up that so
10 you can see those numbers on the side more easily. We're
11 starting with No. 13. As we go down to 252, we come to
12 10:30. If you were going to include all of the hours, you
13 would have had to sum up through No. 912, would you not
14 have?
15 MR. GROSSMAN: Assuming there's an error there,
16 I'm not sure how you got from the particular error to the
17 conclusion, because I'm not sure -- I thought you said that
18 it was divided by 240 or whatever --
19 MS. CORDRY: Well, what I'm --
20 MR. GROSSMAN: -- when it should have been divided
21 by a larger number. I'm not --
22 MS. CORDRY: No. No. I'm saying, okay, he
23 correctly determined the average queue per minute for the
24 first four hours of the day, but this chart -- and he just
25 testified again -- was represented as presenting the average

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1 total queue over the entire day, and I think he has
2 testified to that again today.
3 MR. GROSSMAN: Okay. So you're saying that the
4 number gives you the average over the first four hours?
5 MS. CORDRY: Correct, and of course, as we've
6 heard and as we've seen, the first four hours are not when
7 there is a lot of queuing at this station.
8 MR. GROSSMAN: Okay. Okay.
9 THE WITNESS: I don't have an answer. I'm going
10 to go back --
11 BY MS. CORDRY:
12 Q Who prepared this chart?
13 A I have to go back and look and see where the,
14 where the error --
15 Q Well --
16 A -- if there's an error, where the error occurred
17 or whether it's --
18 Q Well, you're not disputing that there's an error,
19 are you, Mr. Guckert?
20 A It appears to be an error, and I need to check to
21 see if there's an error and where it is or whether it's
22 mislabeled, okay?
23 Q Well, we're not talking about mislabeled. We're
24 talking about --
25 MR. GROSSMAN: Well, he's answered that question.

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1 MS. CORDRY: Okay. Well, I'm -- okay.
2 MR. GROSSMAN: He needs to look back and check to
3 make sure.
4 MS. CORDRY: Well, okay.
5 MR. GROSSMAN: It appears to be an error, but
6 he'll have to look back and check --
7 MS. CORDRY: Okay.
8 MR. GROSSMAN: -- and fortunately, he's coming
9 back on April 1st and we'll find out.
10 MS. CORDRY: Well, okay.
11 BY MS. CORDRY:
12 Q Who prepared this chart?
13 A It's up top. It's says the same guy again.
14 Q Did you review this chart?
15 A I looked at the answers. I did not look at all of
16 the calculations and the input.
17 Q Did you look at the numbers across the bottom here
18 where there was the same kind of a calculation done for each
19 line?
20 A I didn't look at the calculations.
21 Q Okay. So you put this in and you're opining about
22 it, but you didn't actually look at the calculations
23 themselves or check their validity?
24 A All right. Let me say it again --
25 MR. GROSSMAN: He's answered the question now. He

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1 answer the question. He didn't look at the calculations.
2 BY MS. CORDRY:
3 Q Can you tell us how you would correctly calculate
4 the total average queue number?
5 A I need, I need to look at it. Yeah. You take the
6 total number of minutes and look at the total, the total
7 queue, the total queue -- the total volume of the total
8 queues divided by the total opportunities.
9 Q Okay. And can you show us with that, tell us how
10 we would change that formula there to do that?
11 A I don't know if the rest of the formula is
12 correct. I really want to check that, okay, and I'll get
13 back to you.
14 Q Okay. You can't do that right now just by looking
15 at it?
16 A That's correct.
17 Q You can't extrapolate from four hours up to 15 --
18 MR. GROSSMAN: He's answered that question.
19 MR. GOECKE: Objection.
20 MR. GROSSMAN: Don't keep on asking the same
21 question over and over.
22 MS. CORDRY: Well --
23 MR. GROSSMAN: He answered the question, and he
24 can't do it. You've made your point.
25 MS. CORDRY: All right. Well, let me just

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1 briefly --
2 BY MS. CORDRY:
3 Q All right. And would the same be true with
4 respect to 56(c), which is the Saturday hours -- all of the
5 time that was calculated should be showing up there in that
6 average total queue?
7 A I'll check it, if you -- and we will get back to
8 you.
9 Q And did that, again, have the same, only
10 calculating the first four hours?
11 A I'll check it and I'll get back to you, okay?
12 Q Okay.
13 A And if there's a mistake, it's a mistake, and I'll
14 let you know that and give you what the correct answer is.
15 Q Okay. And the hours at Sterling, I think we've
16 heard the gas stations, they close at 7 o'clock on Saturday,
17 is that correct?
18 A I have to look that one up.
19 MS. CORDRY: Well, could Mr. Brann perhaps tell
20 us, stipulate Sterling closes at 7:00 like the rest of the
21 Costco gas stations?
22 MR. BRANN: As far as I know, that's correct, yes.
23 MS. CORDRY: Okay.
24 BY MS. CORDRY:
25 Q So you would not expect to actually have any

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1 queues after 7 o'clock, correct, on a Saturday --
2 A If it's closed --
3 Q -- if the station is closed? Okay.
4 A -- that's correct.
5 MR. BRANN: Absent any operational parameters
6 given by an approving body, the manager, at his discretion,
7 will keep the station open longer if he has business, but
8 typically on Saturdays they're closed by 7:00.
9 MR. GROSSMAN: Okay.
10 MR. SILVERMAN: Will that be true here in Wheaton?
11 MS. ADELMAN: Wow.
12 MR. BRANN: I hope we get to that point,
13 Mr. Silverman.
14 MS. SAVAGE: Good answer.
15 MS. CORDRY: So you're saying it could be a
16 variable time that it closes in Sterling?
17 MR. GROSSMAN: Well --
18 MS. CORDRY: Okay.
19 MR. GROSSMAN: -- he's not on the stand now. So
20 let's not, let's not --
21 MS. CORDRY: Okay. Well, perhaps we could find
22 out because I want to be sure how many, when he goes back to
23 do his calculation, how many actual minutes he puts in his
24 calculation, because obviously during the week it's 15
25 hours.

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1 MR. GROSSMAN: He's not going to be able to know.
2 Apparently, there's some flexibility, but I guess we can
3 work off the 7 o'clock one if that's what is the usual
4 practice. I don't know.
5 MR. BRANN: That would be the typical closing
6 time, would be 7:00 p.m.
7 MR. GROSSMAN: Right, so for comparative purposes.
8 MS. CORDRY: And so we will assume a 7 o'clock
9 closing in the calculations then?
10 MR. BRANN: Yes.
11 MS. CORDRY: Okay. All right. Okay.
12 BY MS. CORDRY:
13 Q So when you've been saying that you expected there
14 to be no more than two cars on average queuing up over the
15 time at the station, were you working -- you were using
16 those calculations to inform that testimony, is that
17 correct, Mr. Guckert?
18 A I was using the calculations that, that we had, a
19 lot of the information that we had that we've been talking
20 about, plus other counts and surveys that we have submitted
21 to you and submitted to staff.
22 Q Can you tell me what other counts and surveys
23 you're referring to?
24 A There were counts and surveys that we did in
25 Sterling in 2012, and there were counts and surveys that we

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1 did in Columbia back in earlier years as well.
2 Q Okay. But when you were just testifying now about
3 you expected there to be less than -- roughly two cars or
4 less, you were discussing that from those Sterling numbers,
5 correct?
6 A We were discussing it from the Sterling.
7 Q So that would then likely be changed once you go
8 back and look at your formula again?
9 A Could be, yes.
10 Q Okay. And on May 1st, if you look at your
11 transcript there at page 28 and 29, you testified that 50
12 percent of the time the station is open, there are two cars
13 or less in line. And, again, was that conclusion based on
14 this chart, on this calculation?
15 A It was, it was based upon a number of the things
16 that we just talked about a few minutes ago, I mean, a few
17 moments ago.
18 Q Well, can you tell me precisely what that number,
19 what that calculation, that statement was based upon?
20 A It was based upon Sterling, Beltsville, and
21 Columbia, were the stations that we've been, we've been
22 looking at.
23 Q Have you ever given us any minute-by-minute
24 queuing numbers at Beltsville?
25 A I do not know.

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1 Q Okay. And at Elkridge, are you saying that
2 there's numbers there that indicate the average at Elkridge
3 is two cars or less over time?
4 MR. GROSSMAN: Over what time?
5 MS. CORDRY: Any time. I guess I'm trying to
6 understand because I don't know that we've seen that kind of
7 calculation for Elkridge.
8 MR. GROSSMAN: Two cars or less over any time
9 doesn't -- that question doesn't make sense.
10 MS. CORDRY: Well, I'm asking because he's saying
11 he's given us a lot of things. I'm trying to hone in on
12 exactly what it is I should be crossing my examination on.
13 MR. GROSSMAN: I don't understand that question.
14 MS. CORDRY: Okay. Well, I'm just trying to get
15 very clear in my mind exactly what exhibits, what studies
16 he's pointing to as suggesting that there would be two cars
17 or less on average.
18 MR. GROSSMAN: On average per what? Per minute
19 you mean?
20 MR. SILVERMAN: Per day.
21 MR. GROSSMAN: Per day? What are you talking
22 about?
23 MS. CORDRY: Well --
24 MR. GROSSMAN: You have to have a per. When you
25 say a per, you got to have a figure.

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1 MS. CORDRY: Okay. He said that -- on May 1st
2 he --
3 MR. GROSSMAN: Yes.
4 MS. CORDRY: -- testified that 50 percent of the
5 time the station is open, there will be two cars or less in
6 line --
7 MR. GROSSMAN: Okay.
8 MS. CORDRY: -- that you'd be able to show that,
9 that that would be something you could prove, and I want to
10 find out what exactly it was that he's basing that statement
11 on.
12 THE WITNESS: I was basing the statement upon all
13 of the data that we've collected and submitted in this case
14 as a, as an average condition, and clearly, the Sterling
15 data was an important piece of that information.
16 BY MS. CORDRY:
17 Q Okay. And if you go back and look at that
18 testimony there at page 28, on May 1st --
19 MR. GROSSMAN: The one we had just been looking at
20 before?
21 MS. CORDRY: Yes.
22 MR. GROSSMAN: All right.
23 BY MS. CORDRY:
24 Q This says you're doing just one-minute intervals
25 and that's because of an empirical set of data that, quite

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1 frankly, Costco never had before. Correct? See that
2 testimony there?
3 A Just give me a second. What page are you on?
4 Q 29.
5 MR. GROSSMAN: Which transcript page are we on?
6 MS. CORDRY: May 1st.
7 MR. GROSSMAN: May 1st, page 29?
8 MS. CORDRY: Starting a discussion on page 28, but
9 the particular sentence I read is on page 29.
10 MR. GOECKE: May I stand next to the witness,
11 Mr. Grossman, since we don't have a copy of this?
12 MR. GROSSMAN: Sure.
13 THE WITNESS: Okay. What is the question?
14 BY MS. CORDRY:
15 Q Okay. Well, first, you just see what I just read
16 to you?
17 A At the bottom of page 28?
18 Q And going into page 29, yes.
19 A Yes.
20 Q And that discussion on page 28 and 29 is talking
21 specifically about the study you did at Sterling, correct?
22 A Yes.
23 Q Okay. And that's where you're coming up with this
24 figure that we were able to show that 50 percent of the time
25 the gas station is open, there's only two cars, correct?

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1 A Correct.
2 Q And Mr. Grossman asked you, you mean a total of
3 two cars in all lanes, and you said, yes, total in the box,
4 correct?
5 A Correct.
6 Q Okay.
7 MS. HARRIS: Mr. Grossman, since Mr. Guckert
8 testified back in May, he has submitted updated information,
9 including these graphs. And so I'm wondering, why are we
10 dwelling on what was discussed in May versus the most
11 up-to-date information that we have --
12 MS. CORDRY: Well --
13 MS. HARRIS: -- and in fact -- so the questions
14 that Ms. Cordry is getting to right now was the exact
15 question that was asked of him this morning to which he said
16 he needed to go back and run the numbers and come up with
17 what that average queue is. So we all acknowledge that
18 there was an error done in the Sterling calculation for
19 calculating the average, and so that's good to put him on
20 notice so when he goes back and does his homework and comes
21 up with the average queue for Wheaton, he won't carry that
22 mistake forward, but I don't see any point in dwelling on
23 what occurred back in May, especially with updated
24 information.
25 MS. CORDRY: Okay. Number one, I do not believe

1 this is updated information. I think that chart, as I
2 recall, is the one they wanted to put in back in April and
3 we said we hadn't been given it in time and they took it
4 back and now it comes in again. This is the evidence from
5 January 2013 that is -- this is simply a graphical format of
6 the chart that we've been discussing here, in the study
7 we've been discussing.

8 MR. BRANN: No, it's not.

9 MS. CORDRY: Secondly, we were just talking about
10 what the average was. This discussion is about, I guess it
11 would be the mode, perhaps, or the mean, the number of
12 minutes when cars are less than that as opposed to the
13 average, because an average is obviously going to be pulled
14 up by the fact that a zero could be balanced by a 50. But
15 he's trying to make a different point here which he says,
16 regardless of whatever the total -- the average number of
17 cars is, he's saying I have been able to show you that 50
18 percent of the minutes are two or less. So even if the
19 average is higher, the minute-by-minute is going to be less,
20 and I'm asking him about that, which is a different
21 question.

22 MR. GROSSMAN: I agree it's a different question,
23 but on the other hand, would it not make more sense to let
24 them go back, let him go back and look at the erroneous
25 calculation and see if there's a correction that needs to be

1 made rather than continuing to cross-examine on this point?
2 I think that's because --

3 MS. CORDRY: Well, it's a -- okay.

4 MR. GROSSMAN: -- he is going to be back here for
5 further cross-examination.

6 MS. CORDRY: Okay. It's a different point, which
7 I can identify now and he can go back and check out that one
8 as well, which is, I am asking him what basis he has to say
9 -- and this is going to be my question -- what basis he has,
10 once I identify the testimony, that more than 50 percent of
11 the time at Sterling or at Wheaton, whichever way he wants
12 to do it, actually he can do both, that there were two cars
13 or less going to be lined up. And I'm going to ask him what
14 evidence he has to show that and has he actually done a
15 count --

16 MR. GROSSMAN: Okay. All right. So --

17 MS. CORDRY: -- minute by minute that would show
18 that.

19 MR. GROSSMAN: So you can answer that question.
20 I'll overrule the objection to answer that question.

21 THE WITNESS: And we have the data. I've got to
22 go look at it to obviously make some changes and corrections
23 to the printout.

24 MR. GROSSMAN: Okay.

25 BY MS. CORDRY:

1 Q And I would ask you to check that and do an actual
2 minute-by-minute count and show me, you know, an
3 hour-by-hour basis how many are two or less and how many are
4 more than that, because I will proffer that the answer is
5 not going to be what was testified to, but I'll let him go
6 back and do it again, and we'll see what he comes up with.

7 MR. GROSSMAN: Do you want to give me a hint at
8 what the answer is going to be?

9 MS. CORDRY: Yes.

10 MS. ROSENFELD: More than two.

11 MS. CORDRY: Yes, that on a weekday it's 57
12 percent is more than two, and on the weekend it's 71 percent
13 is more than two.

14 MR. GROSSMAN: And more than two, you mean what?

15 MS. CORDRY: Anywhere from three to 50 plus.

16 MR. GROSSMAN: Okay. All right.

17 BY MS. CORDRY:

18 Q Okay. And one thing when you are doing your
19 counts -- I could bring that chart back up again -- when you
20 were looking at that, I noticed there's a number of places
21 where on occasion it will go from something like 23 cars
22 lined up at 12:29 -- I think this was on the Saturday -- and
23 then it would say zero and then the next minute would be
24 back to 21. These counts you have here, this was done from
25 a computerized video, as I understand, and then you talked

1 about sending it off and having it taken care of in Canada
2 to give you these counts --

3 A Yes.

4 Q -- is that all correct? So would it be reasonable
5 to assume that you didn't go from 23 to zero to 21 in a --

6 A Yes.

7 Q So those zeros we can eliminate? We can assume
8 that those were simply a, some kind of computer glitch?

9 A Sure.

10 Q Okay. When you're looking at it, perhaps you
11 could also be able to explain -- maybe you know the answer
12 now, but if not, when we come back -- on the weekday the
13 hours were from, up to -- from 4:30 to 5:30 almost every
14 minute, every minute was above two, and the hour from 6:30
15 to 7:30 every minute was at two or above, but from 5:30 to
16 6:30 -- and you can actually see that, I guess, on that
17 weekday chart that we had there, if anybody has that one
18 with that pretty little graphical --

19 MS. ROSENFELD: Do you want this one?

20 MR. GROSSMAN: Ms. Cordry, how much longer do you
21 think your cross-examination for today will last?

22 MS. CORDRY: It'll be all day. I've got a lot.

23 MR. GROSSMAN: Okay. Well, let's take a break
24 then for five minutes --

25 MS. CORDRY: Okay, sure. Okay.

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1 MR. GROSSMAN: -- and we'll figure on you
2 terminating today at about 10 to 5:00.
3 MS. CORDRY: Okay.
4 MR. GROSSMAN: Okay.
5 MS. CORDRY: Okay.
6 (Whereupon, a brief recess was taken.)
7 MR. GROSSMAN: All right. Ms. Cordry, are you
8 ready to resume?
9 MS. CORDRY: I can, indeed.
10 MS. ROSENFELD: Mr. Grossman, I'd like to make a
11 suggestion. Karen has, Ms. Cordry has a few more questions
12 relating to --
13 MS. CORDRY: On one point.
14 MS. ROSENFELD: -- to one point, but it seemed
15 like it might be more productive, rather than continue to
16 question on documents that are going to be revised, that
17 perhaps after she's finished making a few more, presenting a
18 few more questions, that we wait until the corrected or
19 clarified documents are provided to us.
20 MR. GROSSMAN: That seems eminently reasonable.
21 What do you think, folks?
22 MS. HARRIS: It does. My only question is, are
23 there any other questions that you're prepared to cross
24 Mr. Guckert on that don't relate to any updated documents?
25 MR. GROSSMAN: Ms. Cordry?

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1 MS. CORDRY: Questions to cross on that don't
2 relate to updated documents? Well --
3 MS. ROSENFELD: Well --
4 MS. CORDRY: -- I'm not sure I would put it in
5 that way, but I can certainly, let's put it this way --
6 MR. GROSSMAN: You mean any others that you might
7 need, she might need to alert you to now that need to be
8 looked at or --
9 MS. HARRIS: No. Are there going to be other
10 cross-examination questions of Mr. Guckert that aren't
11 dependent upon any of the exhibits that are going to be
12 updated, because if so --
13 MS. CORDRY: Oh, okay.
14 MS. HARRIS: -- it would seem to me, because I'm
15 starting to be concerned about time again in terms of next
16 hearings, that we use the next hour to ask those questions
17 as well.
18 MS. CORDRY: Well, anything, well, the next 45
19 minutes, anything that I do, I could start on something, but
20 I'd be right in the middle of the next --
21 MS. ROSENFELD: Yes.
22 MS. CORDRY: -- chunk of things and it wouldn't
23 get all that far. I don't know that -- I mean, I probably
24 got 10 minutes, five to 10 more minutes to finish off this
25 particular piece, and I'm not sure that what I'd start with

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1 in 20 minutes or a half hour would push us that much further
2 along.
3 MR. GROSSMAN: Well, let's try. Let's --
4 MS. CORDRY: Okay.
5 MR. GROSSMAN: Go ahead.
6 MS. CORDRY: All right.
7 MS. ROSENFELD: Okay. Go ahead.
8 MS. CORDRY: All right. I think I --
9 MR. GROSSMAN: But, I mean, except for the things
10 that you think are going to be relying on the corrected
11 documents --
12 MS. CORDRY: Right. Right.
13 MR. GROSSMAN: -- going to other things is what
14 we're talking about.
15 MS. CORDRY: All right. And let's say I will -- I
16 don't know that I had other arithmetic errors. I'll
17 double-check my questions, and if I do have any other ones
18 that I'm thinking he should correct his charts on, I will
19 let you know before the next hearing. How about that?
20 BY MS. CORDRY:
21 Q Okay. I think where we left off, I had asked you
22 some questions about the computer readings and so forth and
23 whether a particular isolated zero was probably a mistake.
24 The other question I was going to ask you about -- I don't
25 think I'm actually going to be back up on the screen just

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1 yet --
2 MR. BRANN: Oh, okay.
3 BY MS. CORDRY:
4 Q -- I was asking you on the weekday, if you've got
5 this chart here that, whatever number that was, the graph of
6 the minute-by-minute queues that we've been talking about
7 today --
8 MR. GROSSMAN: Yes. That's --
9 MS. CORDRY: If anybody remembers what number that
10 was.
11 THE WITNESS: Which, Mr. Grossman, that has
12 nothing to do with the, with the formula change. They,
13 those, that graph comes directly from the minute-by-minute,
14 okay?
15 MR. GROSSMAN: Okay.
16 THE WITNESS: So that's not going to change with,
17 with the formula revisions or corrections.
18 MR. GROSSMAN: Okay.
19 BY MS. CORDRY:
20 Q So do you have that chart there?
21 A I'm working on it.
22 Q Okay.
23 MR. GROSSMAN: That's Exhibit --
24 THE WITNESS: Give me a second.
25 MS. ADELMAN: 456(a).

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1 THE WITNESS: Yes, with both a Saturday and a
2 weekday.
3 BY MS. CORDRY:
4 Q So, I guess, actually for, just going back one
5 point to my one where we talked about the computer glitches,
6 will you go ahead and fill in a number there or put an
7 extrapolated number so we don't -- you know, I see like, for
8 instance, on this chart that there's some little blank
9 spaces and so forth. Can we add an extrapolated number in
10 there so we get a more accurate --
11 A I can do that.
12 Q Okay.
13 A I can do that, and I'm wondering if I could --
14 maybe I'll just highlight it in yellow if it's extrapolated
15 so that you know. Is that, would that be acceptable?
16 Q Sure. Sure.
17 A I think that makes sense.
18 MR. ADELMAN: Would it --
19 THE WITNESS: Mr. Grossman, where there's a blank
20 line here, there's two, three instances --
21 MR. GROSSMAN: Referring to Exhibit 456(a), yes.
22 THE WITNESS: Yes. I will extrapolate what would
23 make sense reasonably, to basically fill in the blanks, make
24 an estimate.
25 MR. GROSSMAN: I don't know if that's necessary.

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1 Does anybody feel that's necessary, to fill in the blank on
2 that?
3 MR. BRANN: No.
4 MS. CORDRY: Well, if we're going to actually do
5 an average calculation, either that or subtract out those
6 minutes, one or the other.
7 MR. GROSSMAN: Yes. I mean, I just, I don't know
8 that's going to -- there's just slender slivers here; I
9 don't feel like that's necessary for him to calculate that,
10 do you?
11 MS. CORDRY: Well --
12 MR. GROSSMAN: Dr. Adelman?
13 MR. ADELMAN: I would suggest that rather than use
14 or extrapolate, that Mr. Guckert do an interpolation, pick a
15 number to fill in that empty spot that's sort of half in
16 between the bars on either side.
17 MR. BRANN: What difference does it make?
18 MS. CORDRY: Well --
19 MR. GROSSMAN: That's the question. What
20 difference does it make whether we fill in those bars or
21 not?
22 MS. CORDRY: Well, it does --
23 MR. ADELMAN: Because, if you extrapolate --
24 MR. GROSSMAN: No, no.
25 MR. ADELMAN: -- you're using some sort of

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1 formula.
2 MS. CORDRY: Okay.
3 MR. GROSSMAN: The question is whether or not it
4 makes a difference of any, if it makes a tiny, tiny
5 difference that no --
6 MS. CORDRY: Well, let me do the simpler thing
7 which is, to whatever zeros he takes out of his calculation,
8 he reduces his denominator by the same number. So --
9 MR. BRANN: Fair enough.
10 MR. GROSSMAN: All right.
11 MS. CORDRY: All right.
12 MR. GROSSMAN: We all agree with that.
13 BY MS. CORDRY:
14 Q All right. So coming over then, my question on
15 the weekday queuing chart, it's certainly less than the
16 Saturday queuing but it has significant queuing most of the
17 time, and what I'm noticing is that the hour between 5:30
18 and 6:30, which would presumably be the height of the peak
19 rush hour, seems to have very low queue numbers. Is there
20 anything that you could tell us would account for why nobody
21 is coming in the station from all that passerby traffic,
22 presumably?
23 MR. GROSSMAN: This is 5:30/6:30 p.m.?
24 MS. CORDRY: On the weekday, yes.
25 THE WITNESS: And --

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1 MR. GROSSMAN: On weekdays, okay.
2 MS. ADELMAN: Oh, weekday.
3 THE WITNESS: Yeah.
4 MS. CORDRY: On the weekday, yes. So if you look
5 at it, you can see that the numbers are quite high and then
6 they drop way off and then they come back up again after
7 that.
8 MR. GROSSMAN: Okay.
9 THE WITNESS: I do not know that answer.
10 MR. GROSSMAN: Maybe they were eating dinner.
11 MS. CORDRY: What? I'm sorry?
12 MR. GROSSMAN: Maybe they were eating dinner.
13 MS. CORDRY: Could be, but one would think that
14 between 5:30 and 6:30 there's a lot of cars driving by most
15 places around this community. I'm just --
16 MR. GROSSMAN: Okay. I understand.
17 BY MS. CORDRY:
18 Q If, when you review your data or anything, you
19 come up with anything that provides some sort of explanation
20 for that, I'd be interested, because it seems like an
21 abnormally low --
22 MR. GROSSMAN: Low key.
23 BY MS. CORDRY:
24 Q -- numbers in there.
25 A Okay.

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1 Q And actually -- hold on one second here -- I'm
2 actually looking at that chart. Let's see. I said 5:30 to
3 6:30, correct?
4 MR. GROSSMAN: Yes, page 2.
5 BY MS. CORDRY:
6 Q In looking at it, you might want to check whether
7 or not the last two columns for some reason were transposed,
8 because -- and I'm just saying you can go back and do this
9 -- but I'm looking at, for instance, 5:31. The next to last
10 column, which is the total queue, shows two, but the last
11 column, which, as I recall, was the longest queue line,
12 shows five. So --
13 A I'll take a look.
14 Q -- you can't very well have five --
15 MR. GROSSMAN: Okay. He'll take a look.
16 BY MS. CORDRY:
17 Q -- as the longest and two as the total. So that,
18 that may explain that. That hour might have had its numbers
19 transposed. So perhaps that will also go into your
20 corrected chart. Yes, I'm seeing that all the way through.
21 So that, that strikes me that that is probably the
22 explanation of what happened between 5:30 and 6:30.
23 MR. GROSSMAN: Okay.
24 BY MS. CORDRY:
25 Q All right. So you can correct that part of your

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1 chart as well. Okay. All right. In terms of these
2 calculations that you did originally on 56(b) and (c), were
3 those figures given to Mr. Sullivan for his calculations?
4 A I don't know what 56(b) and (c) --
5 Q Those are the two we've just been looking at,
6 those --
7 A Oh, I do not know. It's possible.
8 Q Do you know --
9 MR. GROSSMAN: Do you mean 456 --
10 MS. CORDRY: No, no, the --
11 MR. GROSSMAN: -- or 56?
12 MS. CORDRY: 56(b) and --
13 MR. GROSSMAN: Because we were just looking at
14 456.
15 MS. CORDRY: Right. Okay. Well, that makes it
16 easier to work with them. 56(b) and (c) are the actual --
17 MR. GROSSMAN: The numbers?
18 MS. CORDRY: -- numbers in the Excel spreadsheet,
19 and 456 are the graphs --
20 MR. GROSSMAN: Okay.
21 MS. CORDRY: -- so the numbers.
22 THE WITNESS: I do not know.
23 BY MS. CORDRY:
24 Q Do you know what numbers were given to
25 Mr. Sullivan to use for traffic?

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1 A I do not know. I mean, it's -- I'd have to do a
2 lot of research to figure out what was given to him and when
3 over the last several years. I just don't, I don't know.
4 I --
5 Q I mean --
6 A -- know I gave him information --
7 Q Okay.
8 A -- from time to time. There's no question about
9 that --
10 Q I mean --
11 A -- and I had discussions with him, no question
12 about that.
13 Q His traffic figures would all come from you,
14 correct?
15 A They should, but I know that he was doing some
16 things a little bit differently, a little bit more
17 worst-case than some of the data we have.
18 MR. SILVERMAN: Can I ask --
19 BY MS. CORDRY:
20 Q Because --
21 MR. GROSSMAN: No. I think one at a time.
22 MR. SILVERMAN: No. All right. We'll --
23 BY MS. CORDRY:
24 Q I'm asking you because originally -- well,
25 actually, let me go back, one other question. Along the

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1 same line of reading the computer programs and errors and so
2 forth, the first set of numbers that, queue numbers that we
3 ever got from Columbia, from the Elkrigde station were,
4 again, extremely low, in the range of, you know, one to two
5 cars total in the queue. Do you remember that, that there
6 was a study from Elkrigde that used very little queue
7 numbers as well?
8 A That was, there was data that we included in the
9 original LATR --
10 Q Okay.
11 A -- for Columbia.
12 Q And then you went back and did another one, and
13 the numbers were dramatically higher than that, in the range
14 of, instead of one to two cars total, more in the range of
15 20, 25, 30, 35 cars?
16 A I don't remember, but I believe you.
17 Q Okay. Do you know why there was that difference
18 between those two?
19 A I do not.
20 Q Do you remember if they were both taken on a
21 weekend?
22 A I'd have to go back and check that. I'm sorry. I
23 just, I just don't remember that.
24 Q Okay. Do you recall if there was any breakdown in
25 your equipment or anything like that?

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1 A I do not recall.

2 Q Okay. And Mr. Sullivan originally used one set of

3 queue numbers, and in the course of -- for this special

4 exception -- and in the course of working through with Park

5 and Planning, he went back and substantially increased his

6 queue numbers based on the results you came up with at

7 Sterling. Do you know what change he made, why he had to --

8 what numbers he was working from originally?

9 A I do not. I'm sorry.

10 Q When you redo these numbers, do you expect to give

11 them to Mr. Sullivan so he can look at them in terms of

12 whether they make any difference in his reports?

13 A I haven't, haven't gotten there yet. I need to

14 discuss that with the team. I would think that, depending

15 on what information he has, there may not need to be much of

16 a change, but I just don't know that yet.

17 Q Okay. In any case, taking these raw numbers --

18 and we'll have to do some more work with them -- from 56(b)

19 and (c), those were the ones, and I think we've clarified,

20 that was where you prepared these 456 charts from, correct?

21 A That's correct.

22 Q Okay.

23 A But they don't, they won't change based --

24 Q Right. I understand that.

25 A Okay.

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1 Q Were you part of the discussion when Costco came

2 up with the assumption that Wheaton would sell 12 million

3 gallons?

4 A I was.

5 Q Okay. Can you tell us what factors led them to

6 assume that the station would sell less than the Sterling

7 station?

8 A I don't know that I can, that I can answer that

9 part of the question, only because I, the only, if you let

10 me answer the -- I'm not sure if you want me to answer the

11 question, but --

12 Q Well, okay, let me hear your answer, and then I'll

13 tell you whether that was the answer I wanted to hear or

14 whether to answer the question I was asking. Go ahead.

15 A The discussion about Sterling versus Wheaton was

16 that they believed, Costco believed from their market

17 analysis -- that I was not privy to -- that they would

18 probably sell 10 million gallons, and there was a discussion

19 internally that, well, let's try our best to do worst-case,

20 so let's work on this as 12 million gallons --

21 Q Okay.

22 A -- so they thought it would do less than Sterling

23 because of their market analysis.

24 Q Okay. But you've never seen that market analysis?

25 A Correct.

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1 Q And did they ever identify any factors to you from

2 that market analysis that suggested why they thought 10

3 million, let's say, versus 14?

4 A I wasn't, I wasn't part of that discussion.

5 MR. GROSSMAN: I haven't heard an objection but

6 that seems to me to be well beyond the scope of the rebuttal

7 testimony.

8 MS. CORDRY: Well, we have had a great deal of

9 testimony today, again, as always, that we are scaling down

10 Wheaton from Sterling by some particular factor, and I'm

11 trying to find out why it's reasonable to assume that that

12 is a reasonable scale-down factor to, again, go to this

13 question of traffic --

14 MR. GROSSMAN: That scale-down, kind of scale-down

15 information was part of the original case. So I think it's

16 well beyond, but you've already explored it; so I'm just

17 saying, let's not belabor that. It seems to be well outside

18 the scope of the rebuttal.

19 MS. CORDRY: Well, it's hard to say exactly how

20 broad this rebuttal is, but in any case, let's see.

21 BY MS. CORDRY:

22 Q I don't need to put the PowerPoint back up, but

23 the, on the PowerPoint, Slide 11, you have --

24 A No.

25 Q It's -- you don't?

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1 MR. GROSSMAN: This document.

2 MS. CORDRY: Okay.

3 THE WITNESS: Okay.

4 MS. HARRIS: Do you need it?

5 THE WITNESS: I do if it would --

6 BY MS. CORDRY:

7 Q Don't we have one up there for you? Perhaps not.

8 A Thank you.

9 MS. HARRIS: You're welcome.

10 BY MS. CORDRY:

11 Q Is that a queuing diagram you prepared?

12 A My staff did, yes.

13 Q Okay. And that's showing where you think you're

14 going to get 45 cars in the queue?

15 A That shows -- that's correct.

16 Q How much space is there between bumpers of those

17 cars in that kind of drawing?

18 A I'd have to measure it. I have to get a scale

19 drawing. It's a couple feet. It should be a couple feet.

20 It should be 15-foot cars with three feet between,

21 two-and-a-half to three feet between the bumpers.

22 Q And you think those are showing three-foot

23 distances in between there?

24 A I didn't -- it's a graphical depiction. Some cars

25 are 15; some cars are 12 feet long.

1 Q No. And I ask you, does this drawing, the spaces
 2 that are shown there, are you indicating that if that's a
 3 15-foot car, that that's three feet in between those cars?
 4 A No. I'd have -- I'll have to, since you're asking
 5 me precisely, I'll have to get a scale drawing and scale it,
 6 okay?
 7 Q And to get 45 cars there, you got four cars
 8 coming, looks like maybe five feet off the edge of that, the
 9 entranceway there; the back bumpers are about five feet past
 10 the entranceway.
 11 A Okay.
 12 Q How far apart would you say those, the blue car
 13 and the green car are there?
 14 A Oh, gee.
 15 Q Inches?
 16 A Could be an inch, could be a foot, you know.
 17 It's, again, it's, it's giving average distances and average
 18 lengths of cars.
 19 Q Well, I'm just looking at this because this is how
 20 you're getting 45 cars in there. Do you think you're
 21 actually going to be able to get somebody to scooch up that
 22 six inches away from somebody else's bumper?
 23 A Sure, somebody could do that. They may scooch
 24 over a little bit more where there's plenty of room to the
 25 right or to the left.

1 Q And how are you going to get the other five cars
 2 in there? You said you thought you'd get 50 cars in there.
 3 Where are the other five cars going to go?
 4 A A couple over to the right, and you can fit two or
 5 three cars in between the back of the blue car and the ring
 6 road.
 7 Q And you don't think that those cars, as they go in
 8 there, are going to block people from getting into those
 9 other spaces?
 10 A Sometimes they'll be blocked; sometimes they
 11 won't.
 12 Q So if you have somebody sitting in there in the
 13 middle of that space -- let me back up. I think your
 14 original testimony was people would only come in that
 15 entranceway one car at a time, correct?
 16 A That's correct.
 17 Q So once you have somebody sitting there, that
 18 person's going to block everybody going in until --
 19 A Sometimes, yes --
 20 Q -- those cars clear up?
 21 A -- sometimes, no. No, that's not, that's not
 22 correct, you know, depending on what's going on, depending
 23 on what the attendant does. You know, the attendant can
 24 move the cars around if you ever got to 45 or 50 cars.
 25 Q But you did agree that the testimony that the

1 cars, absent somebody trying to line them up and regiment
 2 them, are probably not going to line up all nicely and
 3 neatly like you have there?
 4 A And that's why, that's why there's an attendant
 5 involved.
 6 Q Do you think one attendant is going to be enough
 7 to scooch all those people up?
 8 A Yeah, I do, yes.
 9 Q Do you have an extra attendant at Columbia?
 10 A I do not know.
 11 Q Wouldn't they want to scooch the cars up at
 12 Columbia so they'd not block traffic?
 13 A I do not know.
 14 Q Did you talk to Ms. Harris in the previous special
 15 exception about how, that you could scooch people up there,
 16 one at Columbia?
 17 MR. GROSSMAN: What do you mean by the previous
 18 special exception?
 19 MS. CORDRY: In the first special exception
 20 request.
 21 MR. GROSSMAN: You mean the one that was withdrawn
 22 because --
 23 MS. CORDRY: Yes. Yes.
 24 MR. GROSSMAN: -- of the ZTA?
 25 MS. CORDRY: Right, and the queuing study that was

1 done then.
 2 MR. GROSSMAN: I think this is far afield, but
 3 I'll let you ask him --
 4 MS. CORDRY: Well --
 5 MR. GROSSMAN: -- that one question. What --
 6 THE WITNESS: I don't know that answer.
 7 MR. GROSSMAN: All right. He doesn't know. So --
 8 BY MS. CORDRY:
 9 Q Well, I'm reading from a memo you sent to
 10 Ms. Harris with respect to that one: Since we have two
 11 Costco staff persons on site, they can help direct autos to
 12 empty lanes and have them scooch up and reduce the space
 13 between bumpers to make the queuing as, quote, compact,
 14 unquote, as possible.
 15 MR. GROSSMAN: Which station was he referring to?
 16 MS. CORDRY: This appears, since they had talked
 17 about having on-site, it would appear to me they're talking
 18 about something in the present tense when they're talking
 19 about --
 20 MR. GROSSMAN: I don't know, but that's -- I think
 21 he may be referring to what is the plan for the intended gas
 22 station.
 23 BY MS. CORDRY:
 24 Q Even so, let me ask you --
 25 MR. GROSSMAN: Do you know?

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1 BY MS. CORDRY:
2 Q Is there a reason why you would not have
3 attendants trying to keep people from blocking traffic at
4 Columbia?
5 MR. GROSSMAN: Do you know if that memo -- hold on
6 a second.
7 THE WITNESS: Should I answer your question first?
8 MR. GROSSMAN: Yes, answer my question first. Do
9 you know if that memo referred to Columbia or it referred to
10 the intended gas station in Wheaton?
11 THE WITNESS: I would expect that it was -- it
12 sounds like it referred to the intended gas station at
13 Wheaton.
14 MR. GROSSMAN: All right.
15 BY MS. CORDRY:
16 Q Okay. Well, let me ask you, though, as a
17 hypothetical question or as a, not a hypothetical really
18 because Columbia is there, is there any reason why Costco
19 would not want to have people scooching up the cars in
20 Columbia to try to keep them out of the traffic and keep
21 them from blocking entrance and egress?
22 A I have no idea what their intention is in Columbia
23 other than they're expanding the facility.
24 Q Okay. That had nothing to do with my question,
25 did it?

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1 MR. GROSSMAN: No, he had no, he has no idea what
2 their intention is in Columbia.
3 MS. CORDRY: Well, my --
4 MR. GROSSMAN: I don't understand why --
5 MS. CORDRY: Okay.
6 MR. GROSSMAN: -- but just let's try to get back
7 to --
8 MS. CORDRY: Okay.
9 MR. GROSSMAN: -- what's relevant here.
10 MS. CORDRY: Well, what I'm trying to do is, there
11 was a discussion that an obvious potential problem, that the
12 cars will be nowhere near as compact here and they'll be
13 spilling out --
14 MR. GROSSMAN: Right.
15 MS. CORDRY: -- is going to be solved by an
16 attendant. My question is, we have the same problem in
17 Columbia. Are they doing that there? If they're not doing
18 that there, is there a reason to assume they're going to do
19 it here?
20 MR. GROSSMAN: And he says he doesn't know about
21 Columbia.
22 MS. CORDRY: Okay. Well, I had to ask him the
23 question, and he answered.
24 MR. GROSSMAN: He answered that, but I'm just
25 saying, let's --

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1 MS. CORDRY: All right. And then he went on to
2 say they're expanding, and I said, that had nothing to do
3 with my question, did it? So that was --
4 MR. GROSSMAN: I don't know that -- all right. Go
5 ahead.
6 MS. CORDRY: Okay.
7 MR. SILVERMAN: Interesting, I didn't know they
8 were expanding.
9 MS. ADELMAN: I didn't know they were expanding.
10 MS. CORDRY: Yes, and I guess that is the
11 question.
12 BY MS. CORDRY:
13 Q When you say they're expanding, the station?
14 A Yes.
15 Q To how many?
16 A I think --
17 MR. GROSSMAN: What difference does it make?
18 MS. CORDRY: He brought it up. I just was asking.
19 MR. GROSSMAN: It makes no difference whatever to
20 this case.
21 MR. SILVERMAN: Well, it makes no difference if
22 there's a condition that there be no expansion.
23 MR. GROSSMAN: What's happening in Columbia makes
24 no difference whatever to this case. We have no authority
25 over Columbia whatever.

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1 BY MS. CORDRY:
2 Q Well, I think we've, you've also testified that
3 your discussion about queues and numbers and how many will
4 be here at Wheaton is based on all of the studies, not just
5 Sterling but also Elkridge, correct?
6 A That's correct, looking at all of the studies that
7 we've done.
8 Q Okay. And you had originally started with
9 Elkridge and scaled up to Wheaton?
10 A Originally, that's correct, as part of the LATR.
11 Q Okay. And you did a queuing study there, and from
12 that you made assumptions about how many cars would be
13 outside the box at Wheaton?
14 A Possibly.
15 Q And when you did that study at Columbia -- and I
16 am referring you back again to this memo, and it's been
17 placed in the -- it already is Exhibit 371(a).
18 MR. GROSSMAN: All right.
19 BY MS. CORDRY:
20 Q I'll just show this to -- well, okay. And there
21 you talked about there were only 15 out of 360 observations
22 where the cars exceeded the 34 spaces. Do you see that on
23 the front page there?
24 A Number 2 --
25 Q Yes.

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1 A -- that's correct.
2 Q Okay.
3 MR. GROSSMAN: I'm not, you're saying -- oh, I'm
4 looking at 471. You're saying 371.
5 MS. CORDRY: 371.
6 MR. GROSSMAN: Okay.
7 MS. CORDRY: I'm sorry. I didn't make a whole
8 series of copies of that.
9 MR. GROSSMAN: All right.
10 BY MS. CORDRY:
11 Q And you said you were present when we were talking
12 about the way the cars queued at Columbia and that the fact
13 that cars might very well spill out more quickly than when
14 there were 34 cars lined up. Do you agree with that?
15 A I think your question was, was I present when that
16 discussion occurred --
17 Q Right, yes.
18 A -- the answer is, yes, I was present.
19 Q Okay. And would you agree that that was likely to
20 occur?
21 A Would I agree -- say it again.
22 Q Would you agree that it was likely that cars would
23 be coming outside of that box at Columbia when there was
24 less than 34 cars lined up?
25 A I don't remember that as a, as a statement that I

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1 made.
2 Q I didn't ask you if it was a statement you made.
3 I'm --
4 A Well, I'm sorry.
5 Q -- asking you as a matter of fact, would you
6 agree, based on the testimony and based on what you just
7 said today that you agree that cars don't always line up
8 nicely and neatly, that it's likely that cars would be
9 spilling out below the 34 number that you're using here?
10 A No. Number 3 says 96 percent of the time autos
11 remained inside the queuing area.
12 Q And is that based on actually somebody physically
13 observing them staying within the queuing area?
14 A Yes.
15 MS. HARRIS: Mr. Grossman, I'd like to object. I
16 don't understand how cars spilling out from Columbia's area,
17 if in fact they are, is in any way relevant to what's
18 happening in Wheaton, what may happen in Wheaton.
19 MR. GROSSMAN: Yes, I can't say it's irrelevant
20 because I think that there was a fair demonstration that
21 there might be sloppy queuing from Ms. Cordry earlier on,
22 photographic demonstration and so on, and I think that
23 Mr. Guckert admitted there may be sloppy queuing. So I
24 can't say it's unrelated. How much further you need to go
25 on establishing that which you've already established and

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1 the witness has already admitted, that, I can't imagine.
2 MS. CORDRY: Well --
3 MR. GROSSMAN: I mean, how much --
4 MS. CORDRY: Yes.
5 MR. GROSSMAN: -- how much more can you really
6 establish when you already, the witness has already
7 admitted, yes, that the sloppy queuing problem might in fact
8 expand the queue beyond that which was originally estimated?
9 How much more can you get out of this witness on this
10 point --
11 MS. CORDRY: Well, it would be nice if --
12 MR. GROSSMAN: -- by talking about a different gas
13 station?
14 MS. CORDRY: Well, it would be, you can look --
15 well, in the first place, we're comparing a lot of gas
16 stations to Wheaton. So I don't think it's --
17 MR. GROSSMAN: Right.
18 MS. CORDRY: -- unreasonable for me to compare
19 them. This is one --
20 MR. GROSSMAN: No, but I mean, you've already
21 gotten, you've already made your point --
22 MS. CORDRY: Well --
23 MR. GROSSMAN: -- you just don't know when to
24 stop.
25 MS. CORDRY: No. This witness said it might. It

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1 would be useful if he would agree that it does happen, agree
2 the degree to which it happens, agree that -- there's a lot
3 more things he could agree to before we --
4 MR. GROSSMAN: It doesn't really help. I mean, I
5 think the point is, I think you made a legitimate point
6 about it when you testified and you showed the evidence of
7 it, and the witness also agreed that it's a legitimate
8 issue --
9 MS. CORDRY: All right.
10 MR. GROSSMAN: -- that's, you know, you're gilding
11 the lily a little bit too much here.
12 MS. CORDRY: I think the witness did try to
13 rehabilitate his testimony here, but we'll move on from that
14 for the moment. Let's see. Let me, if I could, just, well,
15 let me make a couple very specific points here, and then
16 I'll move on from that.
17 MR. GROSSMAN: Specific questions you mean.
18 MS. CORDRY: Yes, specific questions, yes.
19 BY MS. CORDRY:
20 Q If you can look at 1:19 p.m. on this --
21 MR. GROSSMAN: On what?
22 BY MS. CORDRY:
23 Q -- on your chart here.
24 MR. GROSSMAN: I don't know what you're referring
25 to.

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1 MS. CORDRY: It's 371(a) --
2 MR. GROSSMAN: Okay.
3 MS. CORDRY: -- and there's the queue summary on
4 there.
5 MR. GROSSMAN: All right.
6 THE WITNESS: For Columbia?
7 BY MS. CORDRY:
8 Q Yes.
9 A 1:19 p.m.?
10 Q Yes.
11 A Okay.
12 MR. GOECKE: Page 3.
13 BY MS. CORDRY:
14 Q Okay. And actually, before we get to that
15 question, if you just look on the -- the second page of that
16 has a map of the Columbia -- it doesn't have the little cars
17 lined up, but it has numbers written on it as to how many
18 cars would be in line in each of those lanes to come to your
19 34 total.
20 A Okay.
21 Q So it's showing eight cars each in the first two
22 lanes from the right-hand side.
23 A Yes.
24 Q Okay. And 1:19 p.m. it shows that longest lane as
25 being 10 cars long.

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1 A All right.
2 Q So that pretty much means they kind of got to be
3 spilling out, don't they, if eight cars fills up the box?
4 A Those 10 cars would extend beyond, that's correct.
5 Q Okay. And what's the total queue there it shows?
6 Thirty-three, isn't it?
7 A Yes.
8 Q So, clearly, cars do spill out and you don't have
9 to get to 34?
10 A When you say spill out, what do you mean spill
11 out?
12 Q Spill out beyond the box.
13 A And the box is defined what?
14 Q Well, it's defined by your picture here and by
15 your little label here that says 34 total cars.
16 A Okay. So, yeah, they'll go beyond the throat --
17 they'll go beyond the throat of the, of that area.
18 Q Yes. And they'll be out in the traffic area
19 there?
20 A Well, I don't -- you mean on Marie Curie Drive,
21 no, but out beyond the little box.
22 Q Well, there is a drive lane there that other cars
23 are trying to use, is there not?
24 A I don't know if they're trying to use it or not.
25 Q It's a set of traffic lanes that goes back to

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1 other stores in the mall, is it not, Mr. Guckert?
2 A That's, that's a different question.
3 Q You think nobody wants to use that lane to go back
4 to those stores?
5 MR. GROSSMAN: Ms. Cordry, let me, you don't seem
6 to follow what I'm saying. Do you think there's any chance
7 that in my report I'm going to refer to 1:19 p.m. in some
8 different gas station, or am I going to look at the overall
9 issue of the fact that cars do not necessarily scooch up all
10 the way? I mean, really, you're just beyond what -- my
11 report is not going to be 10,000 pages long. If you wrote
12 it --
13 MS. CORDRY: I understand that.
14 MR. GROSSMAN: -- it would be 10,000 pages long,
15 okay?
16 MS. CORDRY: Okay.
17 MR. GROSSMAN: It's got to have some utility to
18 the reader, and the same thing with your examination: it's
19 got to have some utility here. That's my point. I think
20 you're a remarkably detail-oriented person, but really, the
21 question is, what is of utility here for what we have to
22 evaluate? That's really what the question is.
23 BY MS. CORDRY:
24 Q Okay. You testified on May 1st at page 189 of
25 your testimony that even if the Wheaton station sold as much

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1 as Sterling, there still wouldn't be any traffic issue on
2 the ring road --
3 A Wait, wait, wait, wait. Wait a minute. I'm
4 sorry. We changed. We went someplace else.
5 Q Well, yes. I was told to move on; so I'm moving
6 on.
7 A Oh, I get it.
8 MR. GROSSMAN: All right.
9 THE WITNESS: Oh, I get it. You just need to wait
10 until I get that document that you gave me, okay?
11 BY MS. CORDRY:
12 Q Okay.
13 A May 1st?
14 Q Yes.
15 A What page?
16 Q 189.
17 MR. GROSSMAN: And what was the question? I'm
18 sorry. I missed the question here.
19 MS. CORDRY: The question was --
20 THE WITNESS: Me, too, missed the question.
21 BY MS. CORDRY:
22 Q You testified that even if the station sold as
23 much as Sterling, that there still wouldn't be any traffic
24 issue on the ring road 99.9 percent of the time --
25 A Uh-huh.

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1 Q -- recall that?
2 A I do.
3 Q Okay. So that means that if we assume that, then
4 we can go back to the queuing figures from Sterling that
5 were the unadjusted queuing figures from Sterling, correct?
6 A No, I wouldn't do that.
7 Q No, you wouldn't do that, right? Why not?
8 A Because I'd go to the queuing table that was
9 previously introduced. That's where I would go.
10 Q Well, what queuing table is that?
11 A It's the one that shows the minute-by-minute
12 queuing.
13 Q Right. That's what I'm talking about, but I'm
14 talking about the one -- when it was originally done --
15 A That one.
16 Q -- it was done for Sterling.
17 A That's correct.
18 Q Okay. And then it was just simply adjusted down
19 by 14 percent to be the Wheaton one, correct?
20 A Correct. So that's what I would go to.
21 Q And that's because Wheaton was going to sell 14
22 percent less than Sterling, correct?
23 A That's correct.
24 Q So if it sells as much as Sterling, you should
25 still have the same number of cars in line as at Sterling,

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1 correct?
2 A Okay.
3 Q Okay. So you have -- do you have the unadjusted
4 chart there, by any chance? If not, I've got some copies of
5 it here.
6 A I have one.
7 Q Okay.
8 A No, I do not. Well, this is, this is adjusted,
9 right?
10 Q Well, the numbers on the side there where it
11 strikes out the original number and has the handwritten
12 numbers --
13 MS. HARRIS: Do you have an extra, Karen?
14 THE WITNESS: Yes.
15 MS. CORDRY: Yes. That's actually the only one I
16 got left. I'm sorry.
17 BY MS. CORDRY:
18 Q All right. So --
19 A Yes.
20 Q So if you look at the numbers before the
21 handwriting is on there, those are the Sterling numbers,
22 correct?
23 A Yes.
24 Q Okay. So the one that has the 34 written in
25 handwriting, next to that is 40 originally?

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1 A Correct.
2 Q Okay. So if 40 is an actual, more reasonable
3 number for the queuing area, as we've been discussing today,
4 that's going to have overflow a lot more than point
5 one-tenth of one percent of the time, isn't it?
6 A If 40 is the right number, I think 40 is overly
7 conservative.
8 Q Okay. But if 40 is the number, it's entirely
9 possible you're going to have that?
10 A If 40 is the number and if Wheaton does as much as
11 Sterling, then you would have that number.
12 Q Okay. And the next number up there on the chart
13 is 50, correct?
14 A That's correct.
15 Q So 45 is somewhere in, halfway in between there,
16 right?
17 A Okay.
18 Q So if you drew a line across at 45, which you
19 think is a more reasonable number, that's still a whole lot
20 more than one-tenth of one percent, isn't it?
21 A If, if you're -- you are assuming that 45 cannot
22 fit in?
23 Q No. I'm saying if you take 45 and say that's your
24 number and you run a number across your chart here at 45,
25 halfway between the 40 and the 50 number --

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1 A Yeah.
2 Q -- you're still going to have a whole lot more
3 than one-tenth of one percent of the time more than 45,
4 aren't you?
5 A But that wasn't -- I'm sorry. I guess I
6 misunderstood your initial question. I thought the question
7 was about whether or not cars would spill out on the ring
8 road, and what I'm saying is you can, you can get 45 to 50
9 cars in the box.
10 Q Even with all of the sloppiness and everything,
11 you're going to say that the only cars you're going to look
12 at are the ones that get above 50?
13 A Nothing sloppy about this. You're going to have
14 an attendant who's going to be there for those minute number
15 of times when cars are exceeding or getting even close to 40
16 cars --
17 Q Well --
18 A -- that's why the attendant is going to be there.
19 Q Well, that's my point. More than 40 is a heck of
20 a lot more than one-tenth of a percent, isn't it?
21 A More than 40 is more than -- that's correct,
22 but --
23 Q So is 45 more than one-tenth of a percent?
24 A I don't know. Now we're getting a little close.
25 Q You really can't look at that and see that there's

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1 more than one-tenth of one percent of those measurements
2 above 45?
3 MR. GOECKE: Objection. Asked and answered.
4 MR. GROSSMAN: Yes, I'll sustain that, but let me
5 just see if I follow. First of all, this page that you
6 handed me --
7 MS. CORDRY: Right.
8 MR. GROSSMAN: -- is page 21 from what?
9 MS. CORDRY: This is from Mr. Sullivan's August
10 report.
11 MR. GROSSMAN: Okay. So this, this is from the
12 August 2013 report?
13 MS. CORDRY: Yes.
14 MR. GROSSMAN: Secondly, the line you referred to
15 as depicting 45, is that the one --
16 MS. CORDRY: Well, there is no -- there's a 40
17 number and there's a 50 number there. The lines on the side
18 are just 10, 20, 30, 40, 50, 60.
19 MR. GROSSMAN: Okay. Yes, I see a -- the 40
20 number is the one crossed out next to 34 --
21 MS. CORDRY: Yes.
22 MR. GROSSMAN: -- and 34 is handwritten. So
23 that's the 40 you're referring to?
24 MS. CORDRY: Right.
25 MR. GROSSMAN: So then you're going to go, you're

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1 going to go up to the 45, assuming this is linear, which it
2 looks like it is, so you go up to 45, and you're asking the
3 witness whether or not the lines, the vertical lines jutting
4 out above the pretend 45 are more than --
5 MS. CORDRY: One-tenth of one percent.
6 MR. GROSSMAN: -- one-tenth of one percent?
7 MS. CORDRY: Right.
8 MR. GROSSMAN: Okay. And he's answered, it's a
9 little bit closer on that scale. I understand. All right.
10 And I take your point.
11 BY MS. CORDRY:
12 Q If you want to do that calculation when you come
13 back, that's fine as well. Sterling, the layout at Sterling
14 is completely open; there's no barriers around it the way
15 there are here, no concrete barriers around it the way there
16 are here, proposed for Wheaton, is that correct?
17 A It's a different layout.
18 Q Well, my question was, there are no concrete
19 barriers around it in the way that there are at Wheaton;
20 it's open to people driving in, correct?
21 A Well, let's look at it.
22 Q Go ahead.
23 A Just to make sure, okay?
24 MR. GROSSMAN: And, Ms. Cordry, you should start
25 to begin to wind up here --

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1 MS. CORDRY: Okay.
2 MR. GROSSMAN: -- as we're going to be quitting in
3 about five minutes.
4 THE WITNESS: I don't have that drawing handy, I'm
5 sorry, but it's completely different than, than what we've
6 been talking about.
7 BY MS. CORDRY:
8 Q Are you aware that they actually changed the
9 layout in Sterling in the course, over the course of the
10 last couple years while we've been doing this whole little
11 project here?
12 A I'm unaware of that. Whether they did or didn't,
13 I'm unaware.
14 Q So you don't know that it used to have concrete
15 barriers around there --
16 A No.
17 Q -- and islands?
18 MR. GOECKE: Objection. Asked and answered.
19 MR. GROSSMAN: Let her finish the question before
20 you object.
21 MR. GOECKE: Sorry.
22 MS. CORDRY: Well, that was my question.
23 BY MS. CORDRY:
24 Q You don't know that the way that it used to be set
25 up had those kind of concrete barriers similar to the

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1 station here?
2 MR. GROSSMAN: Overruled for the objection. Go
3 ahead.
4 THE WITNESS: I have no knowledge of that station,
5 again, one way or the other, as to whether they changed it
6 or didn't.
7 BY MS. CORDRY:
8 Q When was the first time you started doing any
9 studies over there? Do you recall?
10 A Sometime in 2012, I believe.
11 Q Okay. So you don't recall that in 2012 it did
12 have the islands there when you were doing your work?
13 A I have no recollection. I did not personally go
14 there. My staff went there. So I do not know whether it
15 had barriers or didn't have barriers.
16 Q Oh, okay. So you have not observed Sterling; your
17 staff observed Sterling?
18 A That's correct.
19 Q And if it is wide open now, it allows cars to
20 continue to come in and take up the entire space without
21 this kind of bottlenecking that we have with the barriers,
22 is that correct?
23 A If it's wide open, they wouldn't bottleneck.
24 MS. CORDRY: And that's probably as good a place
25 as any to start, stop. I've got some other --

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1 MR. GROSSMAN: Okay.
2 MS. CORDRY: -- directions I'm going at that
3 point.
4 MR. SILVERMAN: Mr. Grossman --
5 MR. GROSSMAN: Mr. Silverman, yes.
6 MR. SILVERMAN: -- Ms. Cordry's cross has filled
7 me with pure trembling. If this witness comes up with new
8 data, does that mean that Mr. Sullivan gets a chance to
9 write a new report or have we had the end of reports?
10 MR. GROSSMAN: Do you want to respond to that,
11 Ms. Harris?
12 MS. HARRIS: I need -- I'm sorry.
13 MR. GOECKE: I guess the question is, if the data
14 upon which Mr. Sullivan relied or used in his environmental
15 reports need to be updated, is he going to adjust his
16 calculations, and I think that's a fair question. I think
17 that we'd have to --
18 MR. GROSSMAN: I would hope not. I mean, I think
19 that the time for adjustment has passed. So, I mean, I
20 think he can be, he can testify on, in his rebuttal, and you
21 know, I guess he can reference the fact that some
22 calculation might be affected, but I think that the
23 opposition has a fair point, that there's got to be a time
24 when we stop getting corrected reports.
25 MR. GOECKE: Okay.

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1 MR. GROSSMAN: So --
2 MR. GOECKE: I don't anticipate that it would
3 affect his overall numbers, but I'm not an expert. So I
4 can't speak to that, but we can have him address that in
5 testimony instead of a report if you think that's the most
6 efficient way to go.
7 MR. GROSSMAN: Well, I mean, when you say address
8 it in testimony, he can't be adding additional, you know,
9 data to it. He can admit that he underestimated some
10 impact, I guess. I suspect that the opposition wouldn't
11 object to that.
12 MR. SILVERMAN: No.
13 MS. CORDRY: No. No, we wouldn't.
14 MR. GROSSMAN: But that's different from, you
15 know, a lot of additional data, it seems to me.
16 MS. ROSENFELD: And, Mr. Grossman, with respect to
17 the, any corrections or updated information that Mr. Guckert
18 might provide, when can we expect to get that information?
19 MR. GROSSMAN: All right. So it's now March 11,
20 and the next hearing -- can we say by the end of, by one
21 week from today? That would be March 18th.
22 MS. HARRIS: Does that work for you? Can you go
23 through all of the information in a week?
24 MR. GROSSMAN: Because --
25 MS. HARRIS: Yes.

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1 MR. GROSSMAN: Okay. So March 18 for any new
2 Guckert submissions.
3 MS. ROSENFELD: Thank you.
4 MR. GROSSMAN: And please make sure to e-mail a
5 copy to the other side so they get -- as well as me -- so
6 everybody gets that information in time to look at it.
7 MS. ADELMAN: But we still are agreed that
8 Mr. Sullivan will be on the stand first, right?
9 MR. GROSSMAN: Right, because he's going out of
10 town.
11 MS. CORDRY: Actually, can we ask him how long
12 will he be out of town because I need, I will consult with
13 Mr. Adelman, but I would not be surprised if we take up most
14 of the day with Mr. Guckert to finish this off and with any
15 redirect and so forth. So it may be that he doesn't, you
16 know, that, you know, we would finish this and then he could
17 come back, you know, start another day, because --
18 MS. ADELMAN: Who's he?
19 MS. CORDRY: Mr. Sullivan. In other words --
20 MR. GROSSMAN: No. We want --
21 MR. BRANN: No.
22 MS. CORDRY: In other words, if --
23 MR. GROSSMAN: The idea was Mr. Sullivan would
24 be --
25 MS. ADELMAN: He's going first.

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1 MS. CORDRY: Well, I understand.
2 MR. GROSSMAN: -- would go first.
3 MR. BRANN: Mr. Sullivan is going first.
4 MS. CORDRY: No, I understand that, but --
5 MS. ADELMAN: So your point is what?
6 MS. CORDRY: Well, my point was, if we spend a
7 whole day with Mr. Guckert and we are well down the road
8 when we come back, Mr. Sullivan may very well be back at the
9 end of April, you know. He's not available on April 2nd,
10 though.
11 MR. SILVERMAN: Yes, I don't think I understand,
12 Karen.
13 MS. ROSENFELD: I think she's suggesting that
14 Mr. Guckert might be on the stand for a full day.
15 MR. GROSSMAN: Mr. Guckert may, but I don't
16 know --
17 MS. CORDRY: Right.
18 MR. GROSSMAN: -- that Mr. Sullivan would be.
19 So --
20 MS. CORDRY: Mr. Sullivan put in a 55-page report.
21 The likelihood that we'll get through that in less than a
22 day, I think, is relatively low.
23 MR. GROSSMAN: Well, in any event, we're going to
24 start out with Mr. Sullivan because you got to, you got to
25 start somewhere, right?

1 MR. SILVERMAN: Right. Right.
2 MR. GROSSMAN: We've agreed to that because
3 Dr. Cole is going to be available then --
4 MS. ADELMAN: Yes.
5 MR. GROSSMAN: -- and Mr. Sullivan is going out of
6 town. So that seems to be the sensible way to go.
7 MR. SILVERMAN: Okay.
8 MR. GROSSMAN: All right. Thank you, all.
9 MR. GOECKE: Thank you.
10 MR. SILVERMAN: Thank you, sir.
11 MS. ROSENFELD: Thank you.
12 MS. HARRIS: Thank you. Enjoy your vacation.
13 MR. GROSSMAN: Thank you. My wife hasn't told me
14 exactly -- I know I'm going up to visit my grandchildren on
15 March 21st, but exactly where I'm going after that --
16 MS. HARRIS: Oh, that's exciting.
17 MR. GROSSMAN: -- I haven't been told yet.
18 (Whereupon, at 4:49 p.m., the hearing was
19 adjourned.)
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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