

March 26, 2013

Office of Zoning and Administrative Hearings  
Stella B. Werner Council Office Building 100 Maryland Avenue, Room 200 Rockville,  
Maryland 20850

Attn: Mr. Martin Grossman, Hearing Examiner

Re: S-2863, Costco Gas Station

Dear Mr. Grossman;

On behalf of the Stop Costco Gas Coalition, I submit this Pre-Hearing Statement in Opposition to Special Exception Application S-2863.

At the Hearings before you on April 26, May 1, 6, 14, 17, 20, 23, and June 4, we intend to show that S-2863 should be denied because the Applicant has failed to meet its burden of proof as to several elements of the Montgomery County Zoning Code:

1. It has not satisfied General Conditions 59-G-1.21 (a) (2) because it has not satisfied various parts of the Specific Conditions 59-G-2.06 for an automobile filling station including, but not limited to: (1) the station will constitute a nuisance because of noise, fumes, odors and physical activity in the proposed location; and (2) the proposed use will constitute a traffic nuisance.
2. It has not satisfied General Conditions 59-G-1.21 (a) (3) because it has failed to demonstrate the proposed use (the mega gas station) is consistent with the intent of the Sector Plan, especially as it relates to Transportation Oriented Development and protection of the Wheaton Green Forest Buffer.
3. It has not satisfied General Conditions 59-G-1.21 (a) (4) because it has failed to demonstrate the proposed use is in harmony with the specific character of the neighborhood, in that by its size and mode of operation it will have disruptive impacts by virtue of the additional traffic and traffic congestion it will impose on the neighborhood.
4. It has not satisfied General Conditions 59-G-1.21 (a) (6) because it has failed to prove the absence of adverse effects (inherent and/or non-inherent) with respect to noise, fumes, odors, and dust. The proposed mega gas station will have adverse effects on air quality, which includes fumes, odors and dust, specifically including but not limited to known airborne carcinogenic pollutants, soot and/or fine particulates with known health risks.
5. It has not satisfied General Conditions 59-G-1.21 (a) (8) because it has failed to prove the absence of adverse effects (inherent and/or non-inherent) on the health, safety, and general welfare of residents, visitors, or workers. The air pollutants that will be generated by the proposed use will have adverse effects on residents, visitors

to the neighborhood (including both the Mall and Kensington Heights), and workers. It will create a safety hazard for pedestrians walking through major portions of the southwest quadrant of the Mall, because traffic flow patterns and pedestrian paths are either too close or are in fact co-incident.

6. It has not satisfied General Conditions 59-G-1.21 (a) (9) because it has failed to prove that adequate public facilities (specifically police and fire protection) can be guaranteed. By failing to submit an Emergency and Disaster Management Plan it has failed to provide first responders with any data upon which to base their assessment of the scope of additional levels of protection they may be required to provide.

7. It has not satisfied General Conditions 59-G-1.23 (d) because it has failed to provide a Forest Conservation plan and the process by which it obtained an exemption from this requirement is invalid. Its filed plans for landscaping constitute a de facto plan for Forest Conservation/Management and the exemptions granted inherently preclude any certainty that the plantings will be guided by appropriate County agencies.

8. It has not satisfied General Conditions 59-G-1.23 (e) because it has failed to prove the planned use will not impact groundwater quality in the neighborhood or the impacted watersheds.

9. It has not satisfied General Conditions 59-G-1.24 (1) because it has failed to prove that a need exists for the proposed use to serve the population in the general neighborhood.

10. It has not satisfied the Conditions specific to automobile filling stations enumerated in 59-G-2.06. In particular it has failed to satisfy:

a. Subsection (a) (1) as to fumes and odors,

b. Subsection (a) (2) as to traffic hazard or traffic nuisance,

c. Subsection (b) (2) because the proposed screen fence cannot protect the community from the airborne pollutants released by the proposed mega gas station.

Attachment 1 to this statement is a list of Exhibits (A-U) that we are hereby filing along with this statement. For each Exhibit, the indicated person who prepared the document will present its contents during the hearings; specifically these include Mr. Larry J. Silverman, Esq., Dr. Mark R. Adelman, Ms. Abigail B. Adelman, Ms. Patricia Mulready, and Ms. Diane Cameron. We estimate the time required for these presentations will be approximately ten hours; this time estimate does not include the time (six hours) for testimony by our Air Quality Expert, or for cross examination.

We intend to call one expert witness: Dr. Henry S. Cole, who prepared Exhibit H; his credentials are included in that Exhibit.

Dr. Cole will testify for approximately six hours and will testify generally on air quality issues including, but not limited to, the type and concentrations of airborne pollutants

generated by the proposed automobile filling station, the dispersion patterns of those pollutants in the context of the design of the special exception, and will offer his expert opinion on the scope, accuracy and methodology provided in the Applicant's reports on air quality, pollutant modeling and generally accepted pollution standards.

The written testimony (Exhibit E) of our Traffic Expert, Mr. Mark Franz will be incorporated into the presentation of Exhibits F and G as to the traffic and vehicular impacts of the proposed special exception on traffic congestion in the neighborhood - including the Mall - and impacts on pedestrian safety.

The Stop Costco Gas Coalition has not retained a Counsel of Record; we will be appearing before you "pro se". We wish to designate Larry J. Silverman, Esq. to be the Coalition's spokesperson during these proceedings, and that he be allowed to sit at the counsel table, with the legal counsels of the Applicant and of the Kensington Heights Civic Association (KHCA), on our behalf. Mr. Silverman will pose questions of witnesses, with the assistance of the member of our group who, by virtue of having prepared the relevant Exhibit(s) is best prepared to pose the specific questions. Mr. Silverman will also introduce those who will testify on our behalf. In those instances when Mr. Silverman is unable to be present, we designate Dr. Mark R. Adelman to sit at the counsel table.

We are providing your office two copies of this Pre-Hearing Statement, one hard copy of each Exhibit, and a CD containing digital versions of all Exhibits. We are providing Counsels for the Applicant and for KHCA, by first class mail, a copy of this Pre-Hearing Statement and a CD with digital versions of all Exhibits.

We are posting all Exhibits to our website and will notify each Party of Record, that all Exhibits are available at your office and will provide them with the direct URL (<http://www.stopcostcogas.org/s2863filings/S2863Filings.html>) of the section of our website to which all the Exhibits have been posted.

Thank you.

Abigail B. Adelman  
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Attachment 1 - List of Exhibits

Exhibit	Short Title	Preparer
CoverLtr	Cover Letter	SCGC Chair
A	Relevance of ZTA 12-07	L. Silverman
	Intentionally Blank	
C	Critique of Costco's Land Use Report	M. Adelman
	Intentionally Blank	
E	Expert Critique of Costco's TIA	M. Franz
F	Critique of Costco's TIA	M. Adelman
G	Analysis of Congestion within Mall	M. Adelman
H	Expert Air Quality Impact Assessment	H. Cole
	Intentionally Blank	
	Intentionally Blank	
K	Health Matters	A. Adelman
	Intentionally Blank	
M	Lack of Adequate Disaster and Emergency Plans	P. Mulready
N	Landscaping and Forest Conservation Plans	M. Adelman
O	ANS Critique of Forest Conservation Plan	D. Cameron
P	Water Resources	L. Silverman
Q	Critique of Engineering Report	M. Adelman
	Intentionally Blank	
S	Concise Summary	M. Adelman
T	Framework: Outside the Box	M. Adelman
U	Planning Staff Report	Planning Staff