

Attachment C: Critique of Costco's Land Use Report

M. R. Adelman

Mark R. Adelman, Ph.D.

Costco's Land Use Report: Rebuttal of a Tangled Web [1]

by

Mark R. Adelman [2]

Webmaster, The Stop Costco Gas Coalition [3]

A. Overview

[Those familiar with the technical aspects of the Special Exception process may wish to read our Summary (Section D) first, and then return to this section.]

This filing is intended as a rebuttal of the Land Use Report that Costco filed (as Exhibit O) in support of its Special Exception application (S-2863), requesting approval to build/operate a mega gas station in the southwest quadrant of Westfield's Wheaton Mall. This rebuttal is intended to meet the needs of the staff at Montgomery County Planning Commission, who are charged with evaluating Costco's filings (as well as any filings by opponents of the application) and recommend to the Planning Board whether the Board should approve, disapprove, or take no position on the application. This rebuttal is also intended to serve as a filing with the Planning Board, and with the Board of Appeals Hearing Examiner who will hear testimony regarding the application [4]. Furthermore, it is intended to be readable by the general public, who may/may not have had the time to work through the various filings (many are long and highly technical documents) that are used to convince all Parties that the application should/should not be approved. This filing will be posted to our website once all of our filings have been submitted.

B. Format

Planning staff has assured us that there is no single approved format for filings such as this rebuttal, so we [4a] have adopted this discussion format, in the hope that citizens will not be put off [as they might be when approaching the highly technical, jargon-laden filings that Montgomery County Code (law) is presumed to require in cases such as S-2863]. We have spent considerable time trying to decide the appropriate tone for this filing. Costco's tone in its Land Use Report is **assertive**: it asserts that certain elements of the Code have been satisfied, often by reference to other filings. These filings, taken together, constitute a web of inter-connected materials that supposedly prove that Costco's application should be approved. We have chosen to adopt a **dismissive** tone: we find the Land Use Report to be poorly written, riddled with factual errors and misleading statements, filled with sections that distract the reader from the issues at hand, and containing numerous inconsistencies (see also our Exhibit B) both within the document and when compared to other filings in their submission packet. Above all, it does not support the assertion that the relevant requirements of the Code have been met. In short, the Land Use Report (which is an overview of the entire application) does not convince us that Costco's application should be approved. We conclude that it should be dismissed (i.e. not approved).

[Because the detailed rebuttal is (must be) very long, we suggest that interested Parties first skip over section C and read our final section (D. Summary and Conclusion). There we reiterate how Costco has failed to satisfy the elements of

Code that it must meet in order to justify its request for approval to build a mega gas station at the proposed site in Westfield's Wheaton Mall. The approval can only be granted if Costco has met the requirements, both General and Specific, as they apply to the specific site. Section D lists the elements of the Code that Costco has failed to satisfy. After reading Section D (it is relatively brief), the reader can then return to Section C and work through the detailed rebuttal which puts the final section (D) in perspective.]

C. Specifics

Costco's Land Use Report has seven sections (and two attachments - each of these is a map, on which we do not comment). Some sections have subsections. In what follows, we address almost every section. Our purpose here is not primarily to indicate our reasons for dismissing the points Costco claims to have made, although we do that in many places, either directly or by reference to our other more detailed filings. Rather our intent is to give an overall sense of the vapid nature of Costco's arguments and to indicate how the County Code appears almost to encourage filings that fail to address, in a meaningful way, the issues that concern citizens. So as to give the reader a clear path through the web of pointless filings and meaningless assertions, we have placed many details in our Endnotes section (or our own web of filings). We hope that by doing this, we are providing the reader a clearer picture of the issues, while at the same time making available pertinent information that some (but probably not all) readers may wish to consider. [5a] For the remainder of this section (C) of our rebuttal, the numbers and headings (in quotation marks) are those that Costco used in its Land Use Report. We use these headings and comment on each section but, for the most part, do not quote Costco's document, except as indicated. Readers should understand that Costco's Land Use Report (hereafter referred to as "CLUR" [5]) makes frequent reference to (indeed often includes verbatim quote of) Chapter 59 of the Montgomery County Code; we will use such references only sparingly [6] and will almost never actually quote the text of the Code. However the reader must understand that Costco's filings are intended to address the requirements of the Code, in a point-by-point fashion. Hence our final section (D) does include the numbering (but not the actual content) of the points of the Code that Costco has failed to meet.

" I. INTRODUCTION

A. Project Summary and Site Description"

This subsection simply describes the location of the Mall, the proposed siting of the mega gas station, and a number of factors related to the impact of the decision, by the County Council (in mid 2012), to pass Zoning Text Amendment (ZTA) 12-07 (see Exhibit A). ZTA 12-07 stipulated a 300 foot "buffer" between any gas station of a certain size and any "sensitive land uses". It caused certain changes in the Code regulating approval/denial of Special Exception applications for gas stations. We will comment on Costco's misleading interpretation of ZTA 12-07 at the appropriate point (below). We comment here on two specific points in this subsection of CLUR [5].

First: Costco erroneously refers to three entrances to the Mall from University

Boulevard. There are in fact only two. This is not a minor point. As we explain in detail in our rebuttal of Costco's Traffic Impact Analysis (Exhibit F), Costco is asserting a level of ease of ingress/egress that does not exist and this assertion renders invalid Costco's assertion that the mega gas station will have no negative impact [7] on traffic in the area.

The second point is more subtle, but perhaps more important: Costco insists on using the term "Filling Station" in reference to the proposed gas station. (The Code uses the same term, and we suspect, for the same reason.) We insist on using the term "mega gas station" because it is more accurate [8]. Furthermore, constant use of the term filling station serves to "sanitize" the issue, whereas use of the term mega gas station serves to remind the reader that what is being proposed is a 16 nozzle gas station that will dispense about 12 million gallons of gasoline per year near a neighborhood that already is served by about 25 gas stations (the number varies depending on how one defines the vicinity), most of which dispense less than one-eighth as much gasoline. We elaborate on this issue below (and in our other filings). The matter of misleading use of wording becomes even more important in the discussion of "neighborhood" that occurs at numerous points in CLUR (see following sections).

"B. Zoning and Master Planning History"

A brief section stating what master and sector plans are relevant to the application. Embedded here is the correct statement that the bulk of the Mall is zoned CR (and thus less restricted as to development that may generate lots of traffic); this is introduced to "set up" the argument that master and sector plan sections related to smart growth are not relevant (see below).

"C. History of the Transformation of Wheaton Shopping Mall"

This is, for the most part, a factually accurate statement of the history of the Mall. There are, however, a number of problematic uses of english that are designed to confuse the issue(s):

Costco employs the terms "automotive use" and "full service automobile repair center" (in reference to the Montgomery Ward center that no longer exists) to convey the subtle implication that gas station services existed previously in the southwest quadrant of the Mall. They did not: never.

Costco refers to "a planned redevelopment of the traffic pattern on the Mall Parcel", and "shifting one of the University Boulevard entrances" to convey the notion that traffic flow off University Blvd. has been improved (or at least not made worse) by the growth of the Mall since Westfield took ownership and that part of this has resulted from reconfiguring multiple entrances into the Mall. This is not the case. Traffic congestion at the Valley View Avenue entrance is worse than before, and this is so despite the fact that the Midvale Road entrance (one of the two that actually existed) was closed (moved to the point where East Ave. intersects University) and two stacking lanes, each two blocks long were created. Pedestrians trying to navigate the Valley View intersection complex can attest to the problematic situation.

Costco implies [9] that the entrance to the Mall and the proposed mega gas station "is along the western edge of the Mall Parcel and abuts the Kensington Heights residential community to the west". This is phrasing to prepare the reader for the preposterous claim (below) that the neighborhood of the mega gas station does not include any part of Kensington Heights. [However, it also reflects the reality that this is the major point of access to the gas station - a point that is discussed more fully in our rebuttal of Costco's Traffic Impact Analysis (see Exhibits F and G).]

"D. Land Use: Proposed Filling Station within Wheaton Shopping Mall

1. Location"

This subsection notes "The Ring Road serves as the primary means of circulation for the Mall." This is correct. In fact circulation on the ring road is critical to proper flow of traffic into and out of the Mall at the intersection with Valley View (an issue that we discuss in much more detail in our own traffic analysis filings, Exhibits F and G).

"2. Circulation"

Factually accurate, but written to assert that traffic into and out from the mega gas station will flow smoothly, with no negative impact on pedestrian traffic: we assert that this cannot be determined until both the mega gas station and the Costco store are open and functioning. Any opportunity to accumulate actual data on the impact of the store on traffic was "lost" when Costco announced it would not open the store in October, 2012 - as had been widely publicized. Recent announcements by Costco guarantee that the store will not open until April, thus precluding any hope that the needed "baseline data" can be collected.

"3. Layout"

Factually accurate, including the statement that it will sell no diesel gas [a fact that Costco's "health professional" seems slow to understand and the statement that Costco gas is only sold to members (who pay a membership fee) - a fact that seems to be forgotten at places in Costco's Traffic Impact Analysis (TIA).

"4. Signage"

Apparently factually accurate, with the caveat that the report here refers to fuel deliveries being made from one to five times a day, whereas the TIA provides numbers implying six to nine truckloads per day. A minor discrepancy perhaps, given that planning commission staff inform us the number of deliveries will be 1-5 per day, as a condition of approval (if the application is approved), but the implications [10] should be considered.

"5. Landscaping and Screening"

This is a very interesting example of the degree of convoluted presentation that can arise when a web of documents is being constructed to support a questionable application such as S-2863. The section, in essence, argues that Costco will use multiple landscaping features, including improving the existing landscaped buffer, to screen the adjacent Kensington Heights neighborhood from any of the possible negative impacts of the proposed mega gas station. However, the argument presented is inherently questionable for two major reasons:

First, Costco applied for and received exemptions from any requirement to preserve the Forest buffer along the edge of the Mall [11, and see Exhibits N and O]. With the exception of a few plantings on the inside of the boundary of the Mall property, all of the landscaping discussed is outside the "screen wall" that Costco proposes to erect (indeed must erect to satisfy conditions under which Westfield was given some four million dollars of taxpayer money to facilitate bringing Costco into Montgomery County). Thus any such landscaping is to be done in the Forest Buffer. In essence, having received exemptions from laws intended to protect forest buffer zones, Costco is proposing to carry out its own forest improvement, without any regulatory control - and presumably without the interference of experts like those associated with the Audubon Society, who might be able to guide Costco as to what species to plant, how large they should be, where exactly they should be planted, etc.

Secondly, the forest buffer improvements that are part of Costco's landscaping work are a part of Costco's planned "screen wall". This is to be a barrier of "concrete panels" including acoustical screening components and a "green screen along the entire side of the wall facing the residences". Presumably the residences are those in Kensington Heights immediately adjacent to the portion of the wall where the proposed mega gas station is to be sited. We emphasize "presumably" because details regarding this "wall" change with every filing modification that Costco makes. We are not certain, even as we finalize this document for submission to planning staff, about the height of the wall, nor its extent along the periphery of the ring road, nor its composition. The plans have changed multiple times, for "reasons" we cannot assess. So we stipulate here that Costco proposes to erect a wall at the periphery of the ring road and that this wall is of some composition, with some height (possibly variable) and some linear extent, with some landscaping component. Planning staff may feel that they understand the details of this wall, but we do not, and staff efforts to assure us of the details have not proven satisfactory.

Why is this "screen wall" of any significance? Three reasons:

a. The repeated changes of the specifications as to this wall impose on citizens attempting to present objections to S-2863 the unacceptable challenge of a constantly changing "target". We do not believe this is some sort of accident. It is an intentional strategy.

b. The screen wall is presented as the ultimate buffer between the proposed mega gas station and any possible negative impacts on the adjacent residential community. A barrier to noise, high levels of lighting, air pollution, health effects, etc. If high enough, wide enough, green enough, and sturdy enough, it protects all of the

adjacent properties - and people - from any/all adverse effects.

c. The screen wall becomes a barrier between the Kensington Heights community that Costco can use in support of its assertion (see below) that Kensington Heights is not part of the neighborhood whose concerns are the major concerns that Costco must address.

We will return to the ramifications of the uncertainty about this screen wall after we discuss how Costco proposes to define the relevant neighborhood.

"II. Surrounding Development and Defined Neighborhoods"

In a way, this is the simplest section of the Land Use Report to dismiss, because it is so patently absurd. Costco states that the neighborhood that is to be considered as potentially impacted by construction/operation of the mega gas station is bounded as follows:

"Northern Boundary: University Boulevard
Eastern Boundary: Veirs Mill Road
Southern and Western Boundary: Boundary of the Mall Parcel"

That is what is stated in the Land Use Plan (p.7).

Very neat and clean. This two page section could be quoted here in its entirety and dissected point by point, but we have chosen not to do so because we would prefer that readers see it for themselves and consider what this means about Costco as a corporate entity [12]. We have chosen instead to comment on the implications of this supposed argument by Costco's Land Use Planning experts:

a. It is absurd on the face of it. The adjacent homes of Kensington Heights, the Kenmont Swim Club, the Stephen Knowles School for special needs children are not part of the neighborhood that is impacted by the proposed gas station?!

b. Planning staff do not agree with this definition and have so informed Costco. According to planning staff, the definition of neighborhood that they will use in evaluating S-2863 extends well beyond the Mall Parcel (essentially to McComas Avenue (southeast extent) and Drumm Avenue (southwest extent). We agree with these boundaries.

c. One can view the CLUR definition of neighborhood as a ploy, a legalistic "trick". A nice try. We do not view it that way. We view it as an expression of Costco's contempt for the people who live adjacent to the property it occupies and who will be impacted by its operations. [12]

If all other points in our filings are rejected, this single point should be sufficient basis for denial of Costco's application. [7a]

We return now to the Landscaping and Screening Wall referred to above. The importance of this construct is now quite clear. It is a wall designed to separate Kensington Heights from the mega gas station. [See the following sections.] It is

inconsistently defined because it is to be defined and constructed in whatever manner is needed to wall off the existing neighboring community and "insulate" it from the negative impacts of the mega gas station. Too much noise or light? Make the wall higher. Too much exhaust? Make it higher, thicker, and/or wrap it in plastic so no fumes can escape downhill to the residential community. Costco asserts there is "no interaction occurring between the two areas" (the Mall property and Kensington Heights), It includes a footnote acknowledging pedestrian paths connecting the two domains, but does not include a third pathway, the ramp by which children from Stephen Knowles School are brought to the Mall for frequent visits. No problem: the wall can be modified with airlock passageways that allow pedestrian passage but prevent transfer of exhaust fumes, etc. All is possible with this magical screening wall.

The wall is not designed to protect the community from negative impacts of the proposed gas station. It is designed to protect Costco from the criticisms of citizens residing in the neighboring community.

"III. 2012 Wheaton CBD and Vicinity Sector Plan"

This three page section is largely irrelevant here because it focusses on the letter of the sector plan, rather than the intent. And because all sector plans are viewed as guidelines to what are desired outcomes of development, they are easily ignored by both government and corporate entities whose visions are not aligned with the visions of the sector plan(s). Our separate filing (Exhibit D) on the sector plan and smart-growth addresses these issues in more detail.

"IV. Zoning Ordinance Conformance"

Pages 10 through 24 of CLUR include a series of assertions that S-2863 is in conformance with the various relevant sections of the Zoning Code. The format is predictable and predictably uninformative. Each section/subsection of the relevant code (from Chapter 59, including all the subsections of G-1 and all the subsections of G-2.06) are duplicated and "addressed". In essentially every case (there are at least 23 quoted sections, and more are enumerated but not quoted), it is asserted that the requirements of the code are either met or are not relevant. We have chosen to address only a subset of these items, both to avoid commenting on points that are true but irrelevant and in order to focus on a few examples where Costco's assertions are most egregiously wrong. We do not, in what follows, refer to each and every element of the code by number: that would be inherently distracting and many of our comments in fact address more than one section (indeed must do so). However, our Summary and Conclusions section (D) does list each element of the Code (by number) that we assert Costco has failed to meet.

As to the General Conditions [Chapter 59-G-1.21 through 1.21(9)(C)(c)], and Costco's considerations of all of them, we choose to comment on only the following (page numbers are those in the CLUR):

p. 10: "traffic normally associated with a gas station". Since mega gas stations presently constitute less than 4% of all gas stations, there is nothing "normal" about the one Costco proposes to construct/operate.

p.11: "surrounding properties, (i.e. the Mall Parcel)". This continues usage of the absurd re-definition of the relevant neighborhood. We will not call out the repeated uses of this twisted logic any more in our document.

p.11: Costco refers to "state of the art technologies" without defining such, claims the station will operate "extremely efficiently" without explaining what this means (see our Exhibit Q), calls the station a "high volume station" (a term not used elsewhere) and states it is expected to sell "approximately 10 million gallons of gasoline annually". [Costco has given different numbers in different documents; we - and planning commission staff - have concluded that the one correct number to be used in evaluation of S-2863 is 12 million gallons per year.]

p.12: This page begins: "As discussed in greater detail, there will be no adverse impacts resulting from the scale of the Filling Station". There is no reference to where the discussion of scale can be found: we urge the reader to attempt to find this detailed discussion.

p. 12: Section 3 on "Scope" includes many assertions of things that the Costco station will not do (e.g. be open late at night) as an argument why the station is highly desirable. While some citizens may agree, others may value such services and be concerned that Costco will drive other gas stations out of business and thus leave the community with fewer options (for example to get gas after 7 PM on a Saturday or Sunday). Does Costco intend to drive other gas stations out of business? Is there any other plausible understanding of their business model?

p.12: Section 4 on Lighting is an interesting example of attempting to mislead by word usage. CLUR says - in parentheses - "See Photometrics - Exhibit "L". Exhibit L is a one page schematic with no associated text or explanation. Did the information simply get lost? Is this Costco's definition of Photometrics?

p.12: Section 6 on Traffic contains elements that will be addressed in our own traffic impact analysis (exhibits F and G), but the construction is interesting because it is an especially striking example of how the wording is used to mislead. "The applicant estimates that 30% of customers to the Filling Station will also be visiting the Costco Warehouse, thus reducing the number of new trips to the Property." What about the other 70%? What about the congestion that results when customers who parked to shop at the store return to their cars [12a] and drive out of the parking lot and onto the ring road in order to access the gas station (it can only be entered from the ring road)? Further careful reading of this section reveals that Costco (this is the case in other places in their various filings) obscures the fact that customers of the gas station (and the store) must be members (they must pay to be members) and that most patrons of the Mall will not be able to avail themselves of either the store or the gas station.

[This section also continues the technique of claiming - incorrectly - that there are five entrances to the Mall parcel.]

p.13: Section 7 on Environment includes the following: "... the Filling Station will comply with all National and State air quality standards and guidelines". As

explained in our separate filing on Health Matters (Exhibit K), this is no longer the case. In a long-expected outcome, EPA has recently issued a ruling about "soot" (i.e. fine particulates such as are found in automobile exhaust) that will make it impossible for Costco's environmental impact filing to demonstrate compliance. We could elaborate on this point in an endnote but we chose to place this here so it is immediately available to any reader: There have been many comments made about how long the Costco battle has dragged on (since late 2009!). There have been accusations that this is unfair to Costco, bad for the business image of Montgomery County, simply a stalling tactic employed by citizens who oppose the gas station, and so forth. The reality is that Costco is racing to gain approval of this mega gas station at a time when understanding of the air quality and health impact issues is growing exponentially. We predict that within two years the "National and State air quality standards and guidelines" will have changed to such an extent that applications such as S-2863 will be summarily rejected.

pp. 13-14: Most of this is an extended discussion of how S-2863 is not in conflict with the sector plan or ZTA 12-07. This discussion is much too complex to summarize here. [13, see also Exhibits A and D] There is however, one critical mis-statement in this section that we choose to call out. On page 14, in the paragraph beginning "Furthermore", CLUR states "...the County Council affirmatively rejected a proposed 1,000 foot setback...". This is a deliberate mis-statement. It is an attempt to revise history. [13] Costco's assertion is inaccurate and must be disregarded.

p.14: The entire section at the bottom is invalid. Costco uses the term "auto-centric, automobile dominated Regional Mall" within a wording structure that is designed to convince the reader that the sector plan encourages the use of cars and placement of gas stations in the southwest quadrant of the Mall. The Mall is indeed auto-centric and ours is indeed an automobile dominated society. Most recognize this as problematic and the Transit Oriented Developments (TOD - Costco of course prefers to use the acronym) aspects of the sector plan (Exhibit D) reflect an overall attempt to reduce wherever possible the negative impacts of excessive reliance on automobile travel. Neither the sector plan as a whole, nor its TOD components can be construed as supporting, much less encouraging, the establishment anywhere in the County - but especially not in the Westfield Wheaton Mall - of a mega gas station such as Costco proposes.

p.15: Costco states "...the station will cater to the needs of shoppers traveling to and from the shopping Mall by automobile, as well as the 977 vehicles parking daily in the WMATA parking garage.....". Yet another assertion ignoring the "Members Only" nature of Costco gas stations. We believe there is no need to call out the additional uses in CLUR of this deceptive phrasing.

p.16: In discussion of the section of Code that requires structures be "in harmony" with the general character of the neighborhood, Costco again asserts it meets the requirement (because it has defined the neighborhood as discussed above) and it further asserts that the station will be "...imperceptible to the residential area to the south and west..." (by virtual of its magical wall) and that the wall itself "will not be readily apparent". The magical wall is now invisible!

p. 17: Two sections of the Code (59-G-1.21 (5) and (6)) having to do with "peaceful

enjoyment, property values", etc. (5) and "objectionable noise, vibrations, fumes, odors, dust, illumination, glare," etc. (6) are called out and it is asserted that the mega gas station will not have any effects relevant to these issues. CLUR refers to these issues having been "thoroughly analyzed in the Environmental Analysis". Given that the Environmental Analysis is in two parts (totaling almost 600 pages), we will reserve for others the pleasure of reading this Analysis and dissecting it. We simply assert that the Environmental Analysis does not prove any of the points claimed.

There is however one puzzling point buried in this section: CLUR asserts that light levels at the Mall perimeter "will be 0 foot candle". That is absolutely black. A very interesting technical achievement. Rather like a black hole. Another property of the magical wall? [14]

p.19: Covered here are two very important sections of the Code [59-G-1.21 (8) and (9)]. We chose to quote these in their entirety, from the actual code:

(8) Will not adversely affect the health, safety, security, morals, or general welfare of residents, visitors, or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

and

(9) Will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities.

As to (8), we may be incorrect but we can find only ONE place where health is mentioned in the relevant code - here in subsection 8. Just once. We will spare the reader any comments on the other elements of (8) and focus simply on health. The main concern of almost every citizen who is opposing S-2863 is that the air pollution (due to exhaust fumes) from the mega gas station will cause unacceptable health risks (Exhibit K). Yet the Code relating to requirements as to matters of health risks only mentions health **once!** Costco's filings refer to a "Health Analysis"; but this turns out to be in fact an extremely brief "Health Letter" that is grossly inadequate. [Please read endnote 15.] We have searched Costco's filings in vain for a true analysis of health related risks, but there is none. We have repeatedly asked planning commission staff if they can find such documentation for us and been told that they cannot. Our own Health Matters filing (Exhibit K) attempts to address these issues in more detail; while it may not be definitive, it is certainly more complete than Costco's filings. When the County Council argued over, and eventually passed ZTA 12-07, it was sitting in its capacity as our governmental department of health. Is this really the best we can all do? Costco's filings do not satisfy the need, as expressed in the Code, that the applicant prove there is no adverse impact of its proposed gas station on health in the neighborhood. Of that there can be no doubt. But do we really place so low a value on risks to public health that the bar for an acceptable level of discussion is set **this low?**

To restate: The Montgomery County Code that applies to the requested S-2863 approval for Costco's mega gas station mentions "health" just one time. Costco's

massive filings in support of S-2863 include less than four pages of material even vaguely related to health risks. Do we as a society actually care about health risks?

As to subsection (9) of the Code (quoted above) we call attention to the requirement for adequate public facilities and that this includes first responders, fire and police. As best we can determine, both fire and police officials have provided brief statements to planning commission staff that they see no problems with the proposed gas station. [16] We would be interested in their comments on Costco's Disaster Management Plan; but they have not - indeed can not - comment on the plan because Costco did not file any Disaster Management Plan, and planning staff have confirmed this for us. [17, Exhibit M]. It is not clear whether or not the Code requires that all applicants file a DMP; what seems clear is that Code **should** require this. Thus another question that arises is whether we as a society are satisfied with a governing structure that permits crucial decisions to be made only after major "mistakes" are made.

Also as to subsection (9), regarding water; Costco refers to their Engineering Report (Exhibit R). This very brief document (with several attachments) has a section (VI. Sediment Control, Storm Drain, and Stormwater Management) that addresses surface water issues but appears to have no information related to underground water quality impact issues (our Exhibit Q). If Costco is allowed to build the proposed mega gas station, its underground holding tanks will become, *de facto*, a regional underground gasoline storage system. What assurances do we have as to the impacts on the water below the surface of the gas station? None. [18, our Exhibit P]

As to the Special Conditions that apply to Automobile filling stations [Chapter 59-G-2.06, subsections (a)(1) through (a)(3) and (b)(1) through (b)(10), Costco's assertions regarding these elements of the Code are found on pages 20-24 of the CLUR. Many of these requirements overlap those of the general section (59-G-1) and Costco's responses/comments are of a similar nature. Essentially all of the points that Costco makes and to which we have objections have already been discussed above, so we will not comment further. But we do call out each of the relevant sections in our summary, so the reader can see the list of Code elements with which Costco fails to comply.

"V. Conformance with the Requirements of the Zone"

This brief section is largely innocuous, except for the fact that Costco uses it to again assert that there will be no "public nuisance by reason of emission of dust, fumes, gas, smoke, odor, noise, vibration or other disturbance." We, of course, dismiss this assertion as inaccurate and unsubstantiated. [20]

"VI. The Proposed Location's Relationship to Residential Uses is Comparable to Other Montgomery County Filling Stations"

This section is actually quite humorous. Costco notes four locations where gas stations are in close proximity to homes and suggests (but rather softly) that many of these stations (and others like them) are comparable with the proposed mega gas station as to the number of pumps and/or the number of cars that will be served.

The notion that any of these stations is comparable to the proposed mega gas station is preposterous, but Costco could easily have convinced us by providing one simple number for each station: the volume of gas sold by the station in a year. Would that number be anything close to 12 million gallons per year?

This section also reminds us that the "green screen" (that magic wall again) "provides complete assurance that the Filling Station will be completely concealed from the adjacent residences." Indeed? If/when this application is approved and the station is operational, we will be happy to provide those who approved its construction with pictures (and sound recordings) taken from the decks and bedrooms of residents in Kensington Heights who will at that point in time have begun living in the Costco era.

"VII. Conclusions"

No surprises. One paragraph. Concluding with the assertion that the application should be approved.

Finally, although Costco does not call this out in their Land Use Report, there are two sections of the code that are relevant to understanding why S-2863 must be denied.

Costco's Land Use Report does not address Code Section 59-G-1.23 (d) regarding submission of a Forest Conservation plan because Westfield and Costco previously obtained an exemption from the need to submit such a plan. Our filing on this matter (Exhibit N, supported by members of the Audubon Naturalist Society - Exhibit O) argues that the process by which that exemption was granted was flawed and thus the exemption is invalid. We also argue that Costco's 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 supervisory staff.

Furthermore, there is one critical issue raised by the Code, that of Neighborhood Need. Section 59-G-1.24 states:

"In addition to the findings and requirements of Article 59-G, the following special exceptions may only be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that a need exists for the proposed use to serve the population in the general neighborhood, considering the present availability of identical or similar uses to that neighborhood"

This requirement applies to 6 distinct types of facilities, one of which is "Automobile filling stations". Costco must meet this requirement, but the issue is not addressed in the CLUR. We have submitted a separate filing on the matter of Neighborhood Need (Exhibit L), but the issue is sufficiently complex - and important - that we would be remiss if we did not comment on it briefly here. Costco must demonstrate that there is a Neighborhood Need for the gas station it proposes to build/operate. To the average person, a very simple answer to this is that, with so many gas stations in the vicinity (approximately 25 more or less, depending on the way one defines vicinity),

there is no need for the gas station. But the issue of need is a very thorny one. Our endnote [19] attempts to explain why this is so, why Costco is required to submit a "Neighborhood Needs Analysis", which it has done (Exhibit Q 53 pages long!) and why we have filed our own rebuttal of the needs analysis (our Exhibit L).

D. Summary and Conclusions

In Section C above we have attempted to guide the reader through the web of cross-linked filings and flawed arguments by which Costco claims to have satisfied the elements of Code that it must meet in order to justify its request for approval to build a mega gas station at the proposed site in Westfield's Wheaton Mall. The approval can only be granted if Costco has met the requirements, both General and Specific, as they apply to the specific site. We assert that Costco has not proven its case. Our assertion is based not only on the detailed rebuttal of Costco's Land Use Report (Section C above), but also on the various documents we have filed in addition to this rebuttal (in essence weaving a web of our own). At this point we will simply list the elements of the Code that Costco has failed to satisfy and how it has failed; each item includes the numbering of the relevant section of the 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.
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 as it relates to Forest Conservation Planning.
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.
3. 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 soot and/or fine particulates, and possibly including other components to be specified at a later date).
4. 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.
5. 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 a 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.

6. 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.

7. 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.

8. 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.

9. 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 wall cannot protect the community from the airborne pollutants released by the proposed mega gas station.

Costco will of course disagree with all of the above. That is largely a reflection of the fact that Costco does not respect the reality that Kensington Heights is the neighborhood into which it has moved, whereas residents of Kensington Heights understand that Costco has indeed moved into **their** neighborhood.

We conclude that Costco has not met the burden of proof required by the various sections of the Code and that, therefore, its application (S-2863) should be denied.

ENDNOTES

1. "Oh what a tangled web we weave, When first we practise to deceive!" Sir Walter Scott

2. Dr. Adelman has an AB in Biology and a PhD in Biophysics. His CV is available at (<http://www.educationalassistance.org/MRA/MRAPersonal/CV.html>). He has over 40 years experience in reading and evaluating complex documents and deciding whether the data presented support the conclusions reached.

3. The Stop Costco Gas Coalition was formed in October 2012 by a group of citizen-activists who were concerned that only a small segment of the public was following the Costco mega gas station issue. The SCGC website (www.stopcostcogas.org) has a large amount of information about the application, background material relevant to understanding the Special Exception process, references providing information on citizen concerns, and a listing of the members who have joined the Coalition.

4. The Special Exception process is complex and time consuming. The SCGC website (see endnote 3) has a detailed explanation of the process, as well as the information needed by concerned citizens who may wish to become involved in the process.

4a. Throughout this document the terms "we" and "our" are used to convey the notion that the filing is the product of a group of people: the Stop Costco Gas Coalition Coordinating Committee. In fact, while the ideas that form the core of the document (and many of the detailed comments) are the result of a group effort, the final report is essentially the product of one person - the author. The time constraints under which we (as well as other citizens) were compelled to work made it impossible for the group to carry out any meaningful final critiquing/modification of this document (or most of the others we have submitted). Thus any errors in content, format, and/or tone are solely the responsibility of the author.

5. Although we would prefer to use no acronyms, constant reference to "Costco's Land Use Report" may begin to annoy readers, so we have chosen the acronym "CLUR".

5a. Despite our desire to construct a readable rebuttal, the complexity of Costco's web has forced us to create a rather long document of our own. We believe it is clear and readable, but it is very long and we thank everyone who reads it to the end.

6. Chapter 59 of the Montgomery County Code has essentially all of the "rules" that are followed as S-2863 is "processed". Chapter 59 is very long. Two sections are especially relevant to consideration of S-2863: Sections 59-G.1 (General Conditions) and 59-G.2.06 Specific Conditions for gas stations). Both of these are available on our website; both have multiple subsections to which we will refer (by number) only if we believe this filing is made clearer or more accurate by including those numbers.

7. The jargon becomes a bit tedious in many parts of this discussion, because of how the code is written. For example, the code recognizes that there are negative impacts of any gas station, no matter where it is placed or how it operates: these are called "inherent adverse effects". The code further recognizes that there are, in principle, certain additional negative impacts that may occur if a specific gas station is approved for a specific site: such impacts are referred to as "non-inherent adverse effects".

7a. We find no mention, in the code listing potential "non-inherent adverse effects" [7] of "contempt for citizens". If this were listed, one could decide the issue (and reject the S-2863) without any further discussion.

8. Gas stations, of course, come in many sizes and shapes, with/without a variety of components distinct from the simple reality that they have a number of gasoline dispensing nozzles. Up until perhaps twenty years ago, the vast majority of all gas stations in the USA were "small" stations with 2-6 nozzles. They pumped on the order of 200,000 gallons of gas per year. But the size and sales volume of stations has been increasing steadily; at the current time the "average station" nationwide pumps somewhere in the range of slightly more than 1 million gallons per year, while the average in Montgomery County is closer to 1.5 million gallons per year. There has been a growing trend in recent years, to have significantly larger gas stations. "Large" gas stations have larger numbers of nozzles and pump more gas per year. Most discussions consider "large" gas stations to be ones that dispense up to about 3.6 million gallons per year (definitions vary). The gas station that Costco has opened in other locations - and proposes to open in Westfield Wheaton Mall is an **entirely different kind of gas station**. It will pump (Costco's numbers) 12 million gallons of gas per year, via 16 nozzles. The numbers of cars coming to this gas station are many times greater than is the case with even a "large" gas station. Because of Costco's "business model", which generates extremely high numbers of cars coming to fill up at each of the limited number of stations it opens (see our Exhibit S), cars must frequently wait in lines (queuing) and while they are waiting, their engines are running. So the amount of air pollution coming from such gas stations is much more than from a "small" station or even a "large" station. Stations such as the ones that Costco operates are now referred to as either "mega gas stations" or "hyper gas stations". (We prefer the term mega gas station.) Experts in this field recognize that there is a trend towards such mega gas stations and that the numbers will increase steadily into the future, subject only to decisions made by counties or states to stop their construction, or by regulatory agencies (such as EPA) to define conditions on permissible sites and modes of operation.

9. The actual wording just preceding the quoted passage is in fact so poorly constructed that one cannot really be sure what is being said unless one is familiar with the relationship of the Mall Ring Road to the entrance at Valley View.

10. Citizens should understand that planning staff cannot be involved in considerations of enforceability of conditions. If the County has an enforcement mechanism "on the books", planning staff must assume that mechanism works. We urge citizens to consider this carefully. For example: What happens if a citizen living some 200 feet from the station is awakened, say at 5 AM, by a delivery truck. How can that citizen be assured that the truck (it may be violating noise ordinances - how well are they enforced?) will not be the first of, say, six or more deliveries? And so on.

11. Our filing on the forest buffer issue relies on the expertise of the Audubon Naturalist Society and its various filings (in 2012) asking the County to revisit the process by which it exempted Westfield/Costco from various forest conservation regulations. Interestingly, the title of one of the ANS publications on this matter begins "A Web of Waivers and Exemptions..."

12. The full version of CLUR (Exhibit O) is available at the Board of Appeals offices. A digital version was supplied to us by Costco's lawyer and is posted to our website.

We urge all interested Parties to read Section II. Many citizens regard Costco as an exemplar of a "good corporation" with a record of concern for the communities and customers it serves. This application, including the deceitful attempt to define away the existence/relevance of an entire neighborhood is a clear demonstration that the executive leadership of Costco is willing to take whatever steps they deem necessary to impose Costco's "corporate model" on whatever community dares to oppose them.

12a. When such customers return to their cars they will be walking across a crowded parking lot - with fewer spaces available because Westfield/Costco have received County permission to have fewer parking spaces - that serves Target and several other businesses. And cars exiting the proposed gas station will be moving near/through this parking lot.

13. We have two filings related to this: a filing on the sector plan and smart growth issues (Exhibit D) and a second filing (Exhibit A) that addresses the impact of ZTA 12-07. The actual history of ZTA 12-07 is a very interesting example of how our society attempts to deal with complex issues at the interface of health and science. It is in fact very analogous to the events that unfolded as, many years ago now, we struggled with the issue of the health risks of smoking. As the scientific evidence grew that smoking was bad - for the smoker and for those nearby - there was an initial phase of mass denial (the science was regarded as not yet certain, and so on), followed by regulatory steps that were at first timid and then became more forceful and more accepted. Over a period of perhaps 50 years our society completely changed its assessment of the health risks of smoking. Now the battle over the health risks of automobile exhaust are being played out. At the local level, when S-2794 (the previous version of Costco's Special Exception) was being "processed" citizen activists approached members of the County Council and convinced first one, and then a few more, that the Council, acting as a public health body, should enact a zoning text amendment (it became ZTA 12-07) that required a buffer zone between gas stations and certain facilities: the initial version envisioned protecting homes, schools, and outdoor recreational facilities via a buffer zone of 1000 feet. A period of intense lobbying (by both sides) followed, during which allegiances shifted back and forth. During this phase there was much discussion of what the science "was", what the regulations "were", what constituted prudent standards, etc. Finally a "deal" or compromise was struck and ZTA 12-07 was passed and County Code was changed. The resulting code was far from an affirmative declaration; it was a political compromise that satisfied no one, but was at least a first step. Unfortunately, the compromise that was reached was such that Costco was easily able to reposition the proposed siting in such a way that, as one disgusted citizen activist has said, "we managed to move the gas station away from a swimming club with healthy kids but closer to a public school with kids having all kinds of severe medical problems". The regulations will of course change - hopefully more rapidly than was the case with cigarette smoking - and the public servants who achieved the compromise will move on; how many more health problems will be created before the defective laws are changed remains of course to be determined.

14. The experts who prepared Costco's Photometrics should be asked how it is that the light from existing light poles along the ring road yield light levels of 6 foot candles, whereas Costco must keep the light levels in the gas station vicinity to 0.1

foot candles. This seems unfair to Costco.

15. Costco's "health analysis" is apparently a "health letter" which is not quite four pages long. [The letter is not even labelled as such and Costco did not include it in the list - their Exhibit B - of the documents they filed.] Of this, nearly two pages are a list of references (many are irrelevant to the issues at hand) and two are a statement by a "practicing physician and health consultant" who appears justifiably proud of his credentials and spends about one page explaining that the levels of pollutants in diesel exhaust do not constitute a significant cancer risk. This is not very reassuring, given that the only diesel emissions at the station will be from delivery trucks that will be required to turn off their engines while pumping gas into the storage tanks. Costco will not be selling diesel fuel - a point that the health consultant eventually comes to in his report. The mega gas station will sell gasoline - 12 million gallons per year. And while citizens are of course concerned about the cancer risks inherent in breathing air laden with the many volatile organic components in automobile exhaust, they are also very concerned about the risks to their respiratory and cardiovascular systems. The health consultant dismisses concerns about such problems as asthma as being "essentially negligible risks." We note that these risks (and others) are increasingly being linked, by scientific studies that forced EPA to issue new regulations so recently that Costco could not have addressed them. In addition, we should note that the health consultant is very impressed by the thorough environmental study carried out by Costco and we are certain he perused every page (almost 600) of that study. Do we find the health letter completely inadequate? Of course - and so, obviously did Costco because they chose, in essence, to hide its existence. But, given the low level of importance that the Code attaches to matters of public health, can we really expect that Costco would provide a more serious assessment?

16. We do not suggest any criticism of the police and firefighters who serve our communities. Nor do we suggest any criticism of the officials who supervise them or evaluate the various risks to our communities. But we have no information about how much of the details of Costco's S-2863 filings was provided to the officials who commented that they see no problem inherent in the construction/installation of Costco's mega gas station.

17. Some may regard the lack of a Disaster Management Plan as a rather minor issue. We are perhaps being picky. But we are all informed, with appalling frequency, of fires and shootings in movie theaters across our country; many are in Malls, as is the case with Westfield's Wheaton Mall, where the movie complex is quite near the proposed mega gas station site. And of the efforts that first responders must make in such situations. Even if our traffic impact analysis is totally inaccurate, even if the opening of the Costco store and the proposed Costco mega gas station proves to have zero impact on traffic in the Mall, shouldn't our County expect that a Disaster Management Plan (DMP) be filed in conjunction with S-2863? And shouldn't concerned citizens expect that our first responders have been able to look at the DMP before concluding that the gas station will create no additional burdens on their resources?

18. To be precise, the environmental impact that concerns us here is ground water contamination. Gas leaks, drips, and run-off are a concern with any gas station and

they are most serious for mega stations which process much higher volumes. While Costco has promised to build the station to stringent standards, the Westfield Wheaton Plaza site presents unique problems. Because of its size the holding tanks at the station would be in essence a regional underground gasoline storage facility.

Gas stations typically have a monitoring well in place to provide information about whether an underground leak of petroleum products is occurring. We have been told by Costco, however, that this station will not have a monitoring well (they provided this information at an "open house" for citizens in 2012). Why not? Because, Costco said, drilling a hole in the hill on which Wheaton Plaza sits could be a conduit for contamination – a short cut connecting oil and water. The geology of the Plaza area includes a number of ground water formations (both shallow and deep), right under or close to where Costco's giant underground gas tanks would be placed. The area has been described as a honeycomb of small streams, surrounding the mall property and draining into the Rock Creek and Silver Creek basins. The ground water under the hill and in the surrounding areas could significantly increase the severity of any petroleum product leak. Put most simply, the proposed site involves tricky and sensitive terrain - so tricky that Costco cannot even utilize its normal monitoring methods. Clearly, this is not the site for placing any gas station, much less one that is equivalent to 5-10 normal stations crammed into one tiny area.

19. The issue of "Need" is a thorny one, essentially because we all define need in different ways. Put very simplistically, while you may say you "need" the availability of "cheaper gas" (such as Costco often provides), your neighbor might say you do not "need" cheaper gas, rather you "want" cheaper gas. The Planning Commission (and thus the staff) have had sufficient problems in dealing with this part of the Code that they have had to devise some sort of way of "quantifying" need. And this is not an easy matter. The method that has been arrived at is called a "market analysis" and it is sufficiently complex that we will not even attempt to explain it here. In fact the author does not understand the "market analysis" approach for evaluating need (nor do many others!). Fortunately, one of our group does understand the approach, has discussed Costco's Neighborhood Needs Analysis in detail with Planning staff, and has prepared our rebuttal of Costco's filing (Exhibit L).

20. We must confess a caveat here. Costco has filed an enormous amount of paperwork in support of S-2863. Although we are not experts in any of the areas discussed in the various filings, we have worked assiduously to read, understand and analyze the mountains of "data". Planning staff has been very helpful in attempting to explain the data (and the voluminous nature of it); they have also helped us understand the numerous factors that guide their professional assessment of the various filings. They have even been willing to have discussions as to why certain findings may not conform to what we believe are reasonable standards. There have been numerous instances where they have explained that they are professionals and view certain things differently than we would like them to view those things. But even with their help, it has been impossible for us to do the kind of truly thorough study of Costco's filings that we feel are required to prepare the best possible rebuttals. Some of this reflects the realities of working up a steep learning curve. Some of the problems we dealt with are related to the "minor" changes in the "official filings" that occurred - often because planning staff had requested clarifications from Costco - and thus we were compelled to read the revisions. Some, but not all, of the problems we faced might have been alleviated had we not

been forced to operate in such a compressed time window. In any case, that is the way the system operates. If our various filings contain errors, we cannot honestly claim to apologize for them; we have done the best we could, under the conditions that applied.