"Federation Corner" column
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Kensington victory
By Karen Cordry and Donna R. Savage

Costco's proposal to build a 16-pump, 12-million-gallon mega gas station at Westfield Wheaton started a 5-year, David-and-Goliath struggle with the Kensington Heights Civic Association (KHCA), the Stop Costco Gas Coalition, the Kenmont Swim & Tennis Club, and other civic, environmental, and individual supporters.

In the end, we fought the proposal head on – and won! Detailed in this article is what every neighborhood must be prepared to do, unfortunately, to protect and preserve the quality of life in our County.

History

It's been a long, strange trip for the Opposition – we kept winning, but Costco just kept coming back for more until they finally ran out of places to go. Here, in a nutshell, is what happened.

1. Costco convinced the County Executive to propose a Zoning Text Amendment (ZTA) in 2010 to exempt them from the Special Exception (SE) process by threatening not to build the warehouse without the gas station. In the face of vehement opposition, Costco backed down and agreed to build the warehouse regardless. WIN #1.

2. Costco filed its first SE application in 2011; in response, the Opposition urged the County Council to pass a ZTA setting a minimum buffer for large gas stations (defined as at least 3.6 million gallons a year). After watering down the original proposal for a 1000-foot buffer from schools and outdoor recreational areas to 300 feet, the Council unanimously passed ZTA 12-04 in the summer of 2012. By then, we had connected with two wonderful experts, Dr. Hank Cole and Dr. Patrick Breysse, who provided us with letters and testimony dealing with the emissions and health effects, respectively, from gasoline stations. WIN #2.

3. Costco refiled its application in the fall of 2012. The ZTA's 300-foot setback was small enough that it could move the gas station to be 347 feet from Kenmont, but only 118 feet from the nearest homes, which were not covered by the ZTA. The new station location was now even closer (less than 1,000 feet) to the severely disabled children attending the Stephen Knolls School. The Opposition met with the County Planning staff and raised numerous issues, ranging from lack of need to traffic concerns to land use to the adverse health effects the station would create for nearby residents, the 400 Kenmont families, and the students. The staff report recommended DENIAL based on the health effects. WIN #3.

4. After a hearing on February 28, 2013, the Planning Board majority voted to recommend DENIAL because the proposed station would be incompatible with Wheaton's Sector Plan, and its focus on Wheaton's future as a smart growth, transit-oriented hub. WIN #4.

5. The Special Exception hearing then began and became the longest in County history – 37 days from April 2013 to September 2014. The Hearing Examiner's report, issued December 12, recommended DENIAL, based on his finding that Costco had not met its burden of proving that the station would meet all of the SE requirements. His findings were based primarily on Costco's failure to prove that the station could operate without adverse health effects and be compatible with the neighborhood. He made clear he was only deciding "this particular proposal, at this particular location, at the level of usage planned (12,000,000 gallons...) with the proposed design, and the proximity of residences, a community swimming pool, and the Stephen Knolls School which serves many medically fragile children." (Report, p. 166) WIN #5.

6. The final step was the Board of Appeals hearing. After carefully reviewing all of the recommendations, the Board voted unanimously on March 11, 2015, to DENY the application. WIN #6.

Although Costco can appeal the Board's decision, the standard of review for such decisions is highly deferential and we are confident this decision will stand up. We are even more hopeful that Costco will decide that six strikes are enough!

How did we win? Opposition groups are way out of their financial league when contesting zoning exceptions; although the applicant bears the burden of proof, that doesn't mean much if citizens can't afford to fight back. Costco, the third largest retailer in the world, outspent us by at least 10- or 20-to-1 for its experts and lawyers.

We relied on a vast quantity of volunteer time and fundraising and we thank everyone who contributed, with special thanks to Kenmont. We made the brilliant decision to hire Michele Rosenfeld as our lawyer, who worked hundreds of hours, at a fraction of her normal salary, to give us needed legal expertise; our experts too only charged us a small fraction of their usual fees. We were lucky enough to have many "learned lay persons" in the community who were able to counter Costco's paid experts. For example, we learned during the hearing that an "expert" doesn't necessarily know whether to multiply or divide!

Many of our arguments were backed by years of community activism and local knowledge. That background was crucial to this case and far exceeded what Costco's hired "experts" supplied.

The publicity we generated helped us gather support for every aspect of our efforts. We forged alliances with others who understood that this struggle was important for everyone, not just

the immediate neighborhood. We cemented relationships with County staff
and County Councilmembers that led to their recommendations of denial and favorable ZTA
results.

And most importantly, we "hung in there" during this seemingly never-ending struggle. We
knew we had a winning case; it just took a long time for everyone to acknowledge the obvious.

One last date! On May 12 at 7:30 pm there will be a public hearing on a third ZTA that would
increase the buffer zone from the current 300 feet to 500 feet, and include residences and
sensitive environmental areas in its coverage. Seven of nine Councilmembers are co-
sponsoring this ZTA. When enacted, this proposal will ensure that a mega gas station like
Costco proposed cannot be built in Montgomery County "in any one's back yard."