



24 10:00 a.m.

L.A. REPORTING, 312-419-9292

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1 A P P E A R A N C E S:

2 HEARING TAKEN BEFORE:

3 ILLINOIS POLLUTION CONTROL BOARD,  
4 100 South Third Street  
5 Geneva, Illinois 60134  
6 BY: BRADLEY P. HALLORAN, HEARING OFFICER

6

7 MEMBERS OF THE ILLINOIS ENVIRONMENTAL PROTECTION  
8 AGENCY AS WELL AS OTHER INTERESTED ENTITIES AND  
9 AUDIENCE MEMBERS WERE PRESENT AT THE HEARING,  
10 BUT NOT LISTED ON THIS APPEARANCE PAGE.

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HEARING OFFICER HALLORAN: Good  
morning. My name is Bradley Halloran. I'm a

3 hearing officer from the Illinois Pollution  
4 Control Board and I'm assigned to this matter,  
5 Gilbert Citgo, L.L.C. versus the Illinois  
6 Environmental Protection Agency, Wheeling Trust  
7 & Savings Bank, a/k/a Cole-Taylor Bank,  
8 Successor Trustee, as Trustee under Trust  
9 No. 73-314, and John Caporaso as beneficiary of  
10 Trust No. 73-314, PCB No. 01-50.

11 Today is Wednesday, November 22nd.  
12 It's approximately 10:00 a.m. I note, aside  
13 from the representative parties of the Board,  
14 there do not appear to be any members of the  
15 public present today, is that correct?

16 This hearing is being held pursuant to  
17 Section 106.604 of the Board's procedural rules  
18 regarding water well setback exceptions. The  
19 hearing will be governed in accordance with the  
20 Illinois Environmental Protection Act and the  
21 Board's procedural rules.

22 The hearing will be conducted in  
23 accordance with Section 102, Subpart J of the  
24 Board's procedural rules regarding regulatory

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1 hearings.

2 I note that this hearing is intended  
3 to develop a record for review for the petition  
4 for water well setback exception by the entire  
5 Pollution Control Board.

6 I will not be deciding this case.  
7 It's the Pollution Control Board that will be  
8 the ultimate decision maker. They will review  
9 the transcript of this proceeding and the  
10 remainder of the record and render a decision in  
11 this matter. My job is to try and insure an  
12 orderly hearing and present a clear record to  
13 develop records so the Board can have all  
14 necessary information before rendering a  
15 decision.

16 I will rule on admission matters and  
17 all non-dispositive motions.

18 After the hearing, the parties will  
19 have an opportunity to submit post-hearing  
20 briefs. These, too, will be considered by the  
21 Board.

22 Before we begin with the continued  
23 introduction of the parties, I would like to  
24 introduce the staff members who are here on

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1 behalf of the Board.

2 We have Alisa Liu, who is a member of  
3 the technical unit of the Pollution Control  
4 Board. And we Mr. John Knittle, the chief  
5 hearing officer from the Pollution Control  
6 Board.

7 Mr. Dwyer, would you like to introduce

8 yourself and your witnesses, please?

9 MR. DWYER: Sure.

10 My name is Timothy Dwyer. And I'm  
11 here on behalf of the Petitioner, Gilberts Citgo  
12 L.L.C.

13 We'll be calling on Diana Larson and  
14 Mike Maude. Those are our preliminary  
15 witnesses. We've identified two more in the  
16 event that the Board or anyone else has any  
17 questions, we'll certainly supply them.

18 HEARING OFFICER HALLORAN: Mr. Ewart?

19 MR. EWART: Yes. My name is Stephen  
20 Ewart. I'm an attorney for the Illinois  
21 Environmental Protection Agency and I have one  
22 opinion witness, Lynn Dunaway, also with the  
23 Illinois Environmental Protection Agency.

24 HEARING OFFICER HALLORAN: And you're  
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1 responding in this matter?

2 MR. EWART: Yes.

3 HEARING OFFICER HALLORAN: Are there  
4 any representatives from either John Caporaso or  
5 the Wheeling Trust & Savings Bank, a/k/a/  
6 Cole-Taylor Bank present?

7 At this point, I'd like to do a little  
8 housekeeping, and note for the record the  
9 history of this petition, for clarification of  
10 the Board, for the Board.



13 represented that she is the attorney -- excuse  
14 me, who is an attorney licensed in Illinois,  
15 stated that she is representing her husband and  
16 that she nor he, her husband, wished to partake  
17 in the telephone status conference, nor would  
18 they appear here today.

19 Finally, pursuant to Section 106.603,  
20 there has been no responses other than a  
21 response filed by the agency present before the  
22 Board today.

23 With that said, Dr. Dwyer, would you  
24 like to make an opening statement?

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1 MR. DWYER: Just briefly, Mr. Hearing  
2 Officer.

3 In the context of the background that  
4 you supplied, the Petitioner is willing to rest  
5 on its second amended petition. All the parties  
6 have been served and noticed, and as you said,  
7 the objector, who has pretty much initiated this  
8 process, has failed to make any subsequent  
9 objection or show up or otherwise participate in  
10 the process.

11 It's my understanding this morning  
12 that the technical staff for the Pollution  
13 Control Board has some questions. So, I'm just  
14 going to put on a couple of witnesses and go  
15 through the background so that those questions

16 might be answered.

17 HEARING OFFICER HALLORAN: Terrific.

18 You may call your first witness.

19 MR. DWYER: I call Ms. Diana Larson.

20 (Witness sworn.)

21 DIANA S. LARSON,

22 called as a witness herein, having been first

23 duly sworn, was examined and testified as

24 follows:

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1 DIRECT EXAMINATION

2 BY MR. DWYER:

3 Q. Ms. Larson, could you state your  
4 occupation for the record?

5 A. I'm an attorney licensed to practice  
6 in Illinois.

7 Q. Okay. And now what is your  
8 participation in this process?

9 A. I initially represented the Petitioner  
10 in the development process of the property.

11 Q. That is getting it zoned, getting all  
12 of the permits approved, et cetera?

13 A. Yes, documents of records, making sure  
14 the -- well, first of all, in the purchase of  
15 the property and any subsequent development work  
16 that was not being handled by the general  
17 contractor.

18 Q. At some point in time, did a problem  
19 arise with respect to, you know, the property --  
20 drilling a well on the property?

21 A. Yes, it did.

22 Q. You want to go through that?

23 A. Sure.

24 I was contacted in early March by one  
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1 of my clients indicating that it had been  
2 discovered that there was a well on the  
3 adjoining property, which we had -- either had  
4 or were in the process of purchasing.

5 At that time, I did a verbal title  
6 search with Chicago Title Insurance Company here  
7 in Geneva and was told that the property was in  
8 a land trust but as is typical in a case like  
9 that the title company also gave me the contact  
10 person listed on the real estate tax bill, and  
11 that was John Caporaso. I was also given a  
12 card, and I am not sure where it came from, I  
13 believe it might have been supplied by the  
14 Village of Gilberts, indicating that the  
15 property adjoining Petitioner's property was  
16 owned by Abatron, Inc. The card indicates that  
17 John Caporaso was the president of that company.  
18 So, on Friday, March 10th, 2000, I contacted --  
19 I attempted to contact John Caporaso by phone  
20 and was connected to Marsha Caporaso.

21 Q. How did that connection come to pass?

22 A. I assumed that the receptionist said,  
23 you know, John's calls are being taken by Mrs.  
24 Caporaso.

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1 Q. Okay.

2 A. In my subsequent conversations with  
3 her, at no time did she indicate that she was  
4 the -- she was not the party in interest. She  
5 always led me to believe that she had authority  
6 either as attorney or spouse or as other -- some  
7 other representative of the company to act on  
8 the behalf of Abatron, Inc.

9 Q. So you thought that you were dealing  
10 with the actual representative of the property  
11 in interest?

12 A. I did. And in Illinois, under the  
13 Illinois Land Trust law, it's not unusual to  
14 have direct contact with the party to whom the  
15 tax bills are being mailed to as opposed to the  
16 land trustee, which is a bank, which has no true  
17 interest in the property other than holding the  
18 title of record.

19 Q. Right.

20 A. And they -- had I contacted them they  
21 would have referred me directly onto the  
22 Caporasos.

23 Q. I believe that is correct.

24 How many conversations did you have

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1 with Marsha Caporaso?

2 A. I had -- it would have been numerous  
3 conversations or at least numerous attempts to  
4 talk with her.

5 In our initial conversation, she  
6 indicated that she needed more information about  
7 Illinois law with respect to the statutes, at  
8 which time I collected everything that I could  
9 possibly find and sent it along to her, and in  
10 addition appended a brief summary for her so  
11 that it would expedite the process.

12 I did not review my billing records,  
13 but I assume that I probably talked to her 8 to  
14 10 times on the phone.

15 Q. Did you send her any correspondence?

16 A. I sent her -- yes, probably an equal  
17 number of letters, faxes, to the extent that we  
18 thought we had an agreement worked out in which  
19 she would waive the requirements that we would  
20 not be going through this process.

21 Q. Okay. What was that agreement?

22 A. It was an agreement that she would  
23 waive the 200 foot requirement provided we  
24 insure that if there was ever a problem that we

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1 would supply water to her premises during the  
2 pendency of that problem and also that we would  
3 hook up at our expense her property to public  
4 water once it was made available. It's  
5 currently not available.

6 Q. Okay. Have you called anyone with  
7 regard to the Village of Gilberts as to when  
8 water will be available?

9 A. Yes, I spoke with the village  
10 attorney, Mr. John Brakeway of Arnstein & Lehr,  
11 who indicated that in his opinion water would be  
12 available by fall of 2000, but he then referred  
13 me to Anthony Malone of Robert Anderson &  
14 Associates, which is the consulting engineer for  
15 the Village of Gilberts. He provided a letter,  
16 which I could submit into the record if you  
17 would like, dated November 16th, 2000,  
18 indicating that water is scheduled along the  
19 West End Drive for late winter or spring of  
20 2001.

21 MR. DWYER: Mr. Hearing Officer, I'd  
22 like to submit that as Petitioner's Exhibit No.  
23 A.

24 (Petitioner's No. A was submitted.)

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1 BY MR. DWYER:

2 Q. What does that letter indicate, Ms.  
3 Larson?

4 A. It indicates that the village is in  
5 the process of designing water and wastewater  
6 utilities for the Village of Gilberts,  
7 construction of the trunk line utilities within  
8 the east industrial park along West End Drive is  
9 scheduled for late winter or spring of 2000.  
10 The sizing of the lines would be appropriate for  
11 the current proposed use of the property. It  
12 also indicates that although -- that there are  
13 no plans at this time to extend the mains within  
14 the industrial park but any individual party  
15 could do so and then recapture the cost from the  
16 subsequent owners that hook up to that line.

17 Q. So, in other words, municipal water is  
18 going to be available to not only the subject  
19 property, the petition, but -- I should say Mr.  
20 Caporaso's property subject to a recapture  
21 agreement within a year?

22 A. That's my understanding according to  
23 the letter that Mr. Malone provided.

24 Q. And you were willing to undertake the  
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1 recapture agreement to avoid this whole process  
2 to appease Mr. Caporaso?

3 A. Yes, we were. We had made that offer  
4 numerous times in writing and verbally by phone.

5 Q. And that was never consummated  
6 obviously?

7 A. Correct. And I should indicate the  
8 reason that was never consummated was after the  
9 final document had been prepared as to the  
10 agreement between the parties, Ms. Caporaso  
11 requested on behalf of her corporation that my  
12 clients guaranty that there would never be a  
13 problem in perpetuity with respect to the  
14 location of the well and the underground storage  
15 tanks and as my client's attorney I advised them  
16 that I would under no circumstances allow them  
17 to sign such a document.

18 MR. DWYER: Thank you very much.  
19 That's all I have.

20 HEARING OFFICER HALLORAN: Thank you.  
21 Mr. Ewart, any questions?

22 MR. EWART: No, not at this time.

23 HEARING OFFICER HALLORAN: Ms. Liu.

24 MS. LIU: Good morning, Ms. Larson.

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1 CROSS-EXAMINATION

2 BY MS. LIU:

3 Q. How responsive were the Caporasos to  
4 your phone calls and your efforts?

5 A. To be honest, I would call them  
6 difficult and uncooperative.

7 Q. Do you have anything at all from the  
8 village that discusses their plans for  
9 connecting up the municipal water supply to that  
10 area or just the information from consulting  
11 engineer that was --

12 A. The Village of Gilberts does not have  
13 a staff engineer, they hire out and so the best  
14 opinion one could obtain would be coming from  
15 their consulting engineer, which was the  
16 document which was just submitted.

17 Q. Do you have any idea how much it might  
18 cost someone to hook up to the service once it  
19 comes out that way?

20 A. I don't know that.

21 Q. Okay. Do you know how much it might  
22 cost on a monthly basis for the water and sewer  
23 to be used once that service is hooked up?

24 A. I don't know the answer to that

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1 either. Perhaps there are other witnesses that  
2 might have a better idea of what the actual cost  
3 involved would be.

4 MR. DWYER: Who?

5 THE WITNESS: Mike.

6 MR. DWYER: Mike?

7 BY MS. LIU:

8 Q. Would you be the best person to  
9 describe the negotiations that went on when

10           Gilberts Citgo was looking at the property and  
11           deciding whether to buy it or not?

12           A.       Yes.

13           Q.       Do you know if the lending agency  
14           required them to perform an environmental site  
15           assessment before they would issue the loan?

16           A.       I do not believe one was required.  
17           That particular lender allows a questionnaire  
18           form regarding environmental, which was probably  
19           used in this instance.

20           Q.       Was there a site -- or a walk-through  
21           at all involved in that questionnaire?

22           A.       Oh, there was -- in the purchase  
23           process, there was substantial due diligence,  
24           which is how we arrived upon the issue of the

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1           well being within 200 feet of the proposed  
2           location of the tanks.

3           Q.       But you didn't discover the well until  
4           after the property was actually purchased?

5           A.       I'm not sure of the timing. Let me  
6           get another file.

7                        HEARING OFFICER HALLORAN: Off the  
8           record, please.

9                                (Off the record.)

10                       HEARING OFFICER HALLORAN: Back on the  
11           record.

12 THE WITNESS: I do not recall and I do  
13 not have the purchase file with me. I believe  
14 that the closing was in early April and that we  
15 had decided to proceed even though we knew of  
16 this issue because we, number 1, believed that  
17 there was -- that the adjoining property was  
18 owned by the party from whom we were purchasing  
19 the lot that we were purchasing, in which case  
20 it would have been an easy process to obtain a  
21 waiver.

22 If we did have knowledge of the  
23 different owner at the time that we closed, we  
24 believe that we could act reasonably and provide

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1 them with sufficient assurances that they would  
2 give us the waiver.

3 BY MS. LIU:

4 Q. So you went into the purchase thinking  
5 that the waiver was a likelihood possibility --

6 A. Not going to be a problem.

7 Q. When Gilberts Citgo was looking for a  
8 piece of property to start their gas station,  
9 what criteria did they look for in finding the  
10 right site?

11 A. Typically a person looking at  
12 developing a gas station would look at traffic  
13 studies, easy access, location. There is at  
14 this time no gas station in the Village of

15           Gilberts. They're very anxious for this  
16           development to go through. We had the full  
17           support of the village, which is not always the  
18           case. Those are the types of things that we  
19           would look for.

20           Q.        Are there any other available or  
21           suitable sites in that area that might serve the  
22           same purpose?

23           A.        No, this would be the -- probably the  
24           best location in the village and there is

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1           certainly strong support. I believe the Village  
2           of Gilberts previously forwarded a letter  
3           indicating their strong support for the  
4           development at this site.

5                     MR. DWYER: I believe that is Exhibit  
6           4 to the petition.

7                     MS. LIU: The letter?

8                     MR. DWYER: Yes.

9           BY MS. LIU:

10           Q.        And so what makes it the best site?

11           A.        The access locations are extremely  
12           important when you have semis turning in and out  
13           of a facility regarding turn angles. Visibility  
14           is important. This is a heavily traveled street  
15           and it would be a very convenient location, you  
16           know. It's not the type of development that you

17 would set one lot back. It has to be a frontage  
18 parcel with easy access.

19 Q. If for some reason the Board were not  
20 to accept the setback exception, could you  
21 demonstrate in your post-hearing brief a  
22 negative economic impact if, for instance,  
23 Citgo, Gilberts, were to sell that property  
24 to -- on their investment?

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1 A. Could you restate your question?

2 MR. DWYER: Actually, I think we can  
3 call another witness who would be able, much  
4 better able to answer that.

5 MS. LIU: Who would that be?

6 MR. DWYER: That would be either Mr.  
7 Maude or Mr. Hill or Mr. Newby, take your pick.

8 BY MS. LIU:

9 Q. Are you the best one to ask about the  
10 well construction reports that were provided in  
11 the petition?

12 A. No.

13 Q. No.

14 Mr. Newby would be?

15 A. I have no idea.

16 MR. DWYER: Hold on for a second.

17 (Off the record.)

18 HEARING OFFICER HALLORAN: Back on the  
19 record. We've been off the record for

20 approximately five minutes, and Ms. Larson, the  
21 witness, doesn't appear to be able to answer  
22 some questions, but Ms. Liu, for the record,  
23 will be asking the questions, if not only for  
24 the mere purpose of clarification, it will give

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1 guidance to the Petitioner to hopefully address  
2 in his post-hearing brief.

3 Ms. Liu, would you like to ask your  
4 questions?

5 BY MS. LIU:

6 Q. I'll continue, and you don't have to  
7 answer if you don't know. I guess I would  
8 appreciate it if somehow your team would address  
9 on the water well construction reports which one  
10 of the ones in the petition that were provided  
11 correspond to this site in question. And if  
12 none of those well reports correspond with that  
13 site, would your team be willing to demonstrate  
14 that the well is not a shallow well and that it  
15 was constructed properly through the  
16 certification by a professional geologist, if  
17 the property owners were to grant you right of  
18 entry to do that.

19 MR. DWYER: What do you mean if the  
20 property owners --

21 MS. LIU: In order for a professional

22 geologist to inspect the well for depth and for  
23 proper construction --

24 MR. DWYER: You're speaking about Ms.  
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1 Caporaso's well?

2 MS. LIU: Yes.

3 MR. DWYER: Well, she won't --

4 THE WITNESS: She won't appear. She  
5 certainly won't let us on her property.

6 MR. DWYER: You don't understand.  
7 We're here because of Ms. Caporaso. Okay. And  
8 to get her consent to do this is impossible. We  
9 can't even get her on the phone to participate  
10 in the pre-hearing conference. That's just  
11 impossible.

12 So, given the fact that that is  
13 impossible, what do you want us to do?

14 MS. LIU: I guess in order to show  
15 the Board that that is impossible, then I would  
16 think that you should at least show a  
17 notification that the request was made. If they  
18 don't respond or if they deny it, then it will  
19 be shown as something that was not reasonable.

20 THE WITNESS: Why is it our  
21 responsibility to insure that she --

22 HEARING OFFICER HALLORAN: Off the  
23 record.

24 MR. DWYER: Why? On the record.

1 HEARING OFFICER HALLORAN: Fine.

2 We're back on the record at the request of Mr.  
3 Dwyer.

4 THE WITNESS: I do not understand why  
5 it is our responsibility to make sure that she  
6 properly constructed her well, when, to the best  
7 of my knowledge, they are not drinking this  
8 water. There is very little use at that  
9 property and we've agreed that if there is a  
10 problem, we will supply water to them and if  
11 need be, hook it up.

12 MR. DWYER: During the pre-hearing  
13 conference, Ms. Liu, Ms. Caporaso indicated that  
14 they were not drinking the water on that site,  
15 that it was not used for drinking water, that it  
16 was used for washing hands and machinery. Is  
17 that correct?

18 AUDIENCE: Empty warehouse.

19 HEARING OFFICER HALLORAN: Mr. Dwyer  
20 is asking the questions, please.

21 MR. DWYER: Not withstanding that  
22 fact, you want some paper from the Petitioner --  
23 I guess my only fear is that, you know, we'll  
24 write them a letter immediately asking them to

1 inspect their well and in view of the testimony  
2 of Ms. Larson, from March until the present  
3 time, they will not respond, so, how long do you  
4 want us to wait before their lack of response  
5 becomes unreasonable?

6 MS. LIU: That's not up to me.

7 MR. DWYER: Well, I guess you're  
8 raising the issue, and, therefore, it is kind of  
9 up to you.

10 MS. LIU: Well, actually the issue is  
11 part of the requirements of obtaining a setback  
12 exception is to show that if you don't receive a  
13 waiver that the well is not shallow and that it  
14 was constructed properly.

15 MR. DWYER: Right.

16 MS. LIU: I was just looking for  
17 verification.

18 MR. DWYER: I understand.

19 MS. LIU: If you couldn't provide that  
20 to at least explain or somehow --

21 MR. DWYER: Okay. Sure. No problem.

22 HEARING OFFICER HALLORAN: Point of  
23 clarification, Mr. Dwyer stated the only reason  
24 we're here is because Ms. Caporaso is the owner

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1 of the well and was uncooperative, and, in fact,  
2 the way I read Subpart F 106.604 the Board holds  
3 at least one public hearing prior to granting

4 exception.

5 MR. DWYER: My point being, Mr.  
6 Hearing Officer, that we would never had to go  
7 through this entire process had they agreed to  
8 the offer made to which is an exhibit in the  
9 petition and testified by Mrs. Larson that we  
10 would give them free water service, at our  
11 expense, pursuant to the recapture agreement.

12 Ms. Liu asked a number of questions  
13 about cost. Basically, we have said all along  
14 to these people that we will pick up the entire  
15 cost in exchange for a waiver and we'll give you  
16 municipal water service and that was kind of  
17 agreed to by them but never consummated in  
18 writing, therefore, we are here, and that was  
19 the point of my remark.

20 HEARING OFFICER HALLORAN: So noted.

21 Ms. Liu, would you like to ask anymore  
22 questions for the record for point of  
23 clarification for post-hearing briefs?

24 MS. LIU: I would like to hold off on  
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1 any additional questions for that purpose for  
2 Mr. Maude.

3 HEARING OFFICER HALLORAN: Very well.

4 Mr. Dwyer, any redirect of Ms. Larson?

5 MS. LIU: But I would like to continue

6 asking Ms. Larson some questions, if I might.

7 HEARING OFFICER HALLORAN: Proceed.

8 MS. LIU: I'm sorry.

9 BY MS. LIU:

10 Q. I guess the question I might have is  
11 obvious, do you have any idea why the Caporasos  
12 have been so difficult when it seems like you've  
13 offered them everything that was reasonable?

14 A. I -- in my opinion, I've been  
15 practicing law for 20 years. I don't litigate.  
16 I negotiate on a daily basis. And I would say  
17 she is one of the two most difficult people I've  
18 ever dealt with in my life. I don't know why.

19 Let me give you an example. I talked  
20 to the attorney -- to a local attorney who had  
21 purchased her property and after the closing it  
22 took them a year before she moved out of her  
23 house. That's the kind of person we are dealing  
24 with.

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1 Q. Any idea if she had anything to gain  
2 by not --

3 A. I made one final attempt to reach her  
4 after the most recent phone hearing and I  
5 indicated to her that I could not understand why  
6 she was taking the position she was taking, that  
7 it seemed that if she would grant the waiver it  
8 was a win/win situation, we could move on with

9           our development. This is costing us a lot of  
10           money just to be sitting and not moving forward  
11           with the development. In addition, we were  
12           supplying many expenses to her, you know. I  
13           said to her, I just do not understand why you  
14           are taking the position you are and I want to  
15           give you a final opportunity to work out  
16           something and she said our conversation is  
17           ended.

18                           MS. LIU: All right. Thank you so  
19           much for all of your help.

20                           DIRECT EXAMINATION FURTHER

21           BY MR. DWYER:

22           Q.       Ms. Larson, based upon your dealings  
23           with Ms. Caporaso, what do you think the chances  
24           are of her giving you access to her property to

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1           examine her well with regard to shallowness and  
2           construction?

3           A.       I think she would take every  
4           opportunity to lengthen the process, to make it  
5           more difficult for us. If there were a way for  
6           her to turn that into a two or three month  
7           process, I'm sure she would do so and I cannot  
8           explain her behavior.

9           Q.       So you were going to give her water --

10          A.       I think it is totally unreasonable to

11 ask us to even contact her any further. We'll  
12 certainly cooperate.

13 Q. Just to recap, you were going to give  
14 the adjacent property owner water service --

15 A. Correct.

16 Q. -- at your cost?

17 A. At our expense when the water was  
18 available.

19 Q. And the water is going to be available  
20 within the next year?

21 A. Correct.

22 MR. DWYER: That's all I have.

23 HEARING OFFICER HALLORAN: Any  
24 questions, Mr. Ewart?

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1 MR. EWART: None.

2 HEARING OFFICER HALLORAN: Ms. Liu?

3 MS. LIU: No, thank you.

4 HEARING OFFICER HALLORAN: You may  
5 step down. Thank you.

6 MR. DWYER: Mike, you want to step up.

7 (Witness sworn.)

8 MICHAEL MAUDE, JR.,  
9 called as a witness herein, having been first  
10 duly sworn, was examined and testified as  
11 follows:

12 DIRECT EXAMINATION

13 BY MR. DWYER:

14 Q. State your name and spell it for the  
15 record.

16 A. Michael Maude, M-A-U-D-E, Junior.

17 Q. Mr. Maude, what is your participation  
18 in this project?

19 A. My role is the design builder. I  
20 obtain the contract to assist the Gilberts Citgo  
21 L.L.C. group in obtaining all permits through  
22 design engineering permitting, and I've also  
23 performed negotiation feature functions, which  
24 is the construction management of the project.

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1 MR. DWYER: All right. That's all I  
2 have. I may have my rebuttal after.

3 HEARING OFFICER HALLORAN: Mr. Ewart,  
4 any questions?

5 MR. EWART: No.

6 HEARING OFFICER HALLORAN: Ms. Liu?

7 CROSS-EXAMINATION

8 BY MS. LIU:

9 Q. Good morning.

10 A. Good morning.

11 Q. Could you tell me how far the well is  
12 from the property line in feet?

13 A. The Caporaso's well?

14 Q. Yes.

15 A. I do not have that exact information.

16 It's on the site plan.

17 (Off the record.)

18 HEARING OFFICER HALLORAN: Back on the  
19 record. Mr. Maude is on the witness stand. Ms.  
20 Liu.

21 BY MS. LIU:

22 Q. Could you tell me how far away the  
23 well is from the property line?

24 A. It appears from the records that it is  
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1 about 17 feet.

2 MR. DWYER: Mr. Hearing Officer, I'm  
3 going to mark the site utility plan, site  
4 grading plan as Petitioner's Exhibit B. Where  
5 do you want this?

6 (Petitioner's No. B was submitted.)

7 By MS. LIU:

8 Q. Actually, I was hoping perhaps that,  
9 Mr. Maude, you could describe to us the  
10 difficulty and constraints you have to deal with  
11 on the engineering site plan in locating the  
12 tanks and the truck traffic and as they would  
13 come to fill up the tanks on your engineering  
14 site plan?

15 A. Okay. There is only a few places that  
16 the tanks could be located on the site. If I  
17 could refer to this document, might be best  
18 served to have another document, which has a

19 site circulation with the tanker driving on the  
20 site.

21 MR. DWYER: This one?

22 Let the record reflect that Mr. Maude  
23 is looking at Petitioner's Exhibit No. A in the  
24 actual petition in terms of answering the

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1 question.

2 THE WITNESS: The tanks have been  
3 placed in what might be the southwest -- middle  
4 southwest of the lot. And as you can see from  
5 the tanker, to deposit fuel into the tanks is  
6 loaded from the passenger side and the  
7 circulation to get on and off the site, the  
8 travel path, is indicated by this drawing, the  
9 circulation tanker plan. And so the placement  
10 of those tanks can best be placed in that travel  
11 path. The tanker would not be able to circulate  
12 in any other location on this site.

13 BY MS. LIU:

14 Q. Are the tanks these oblong, oval  
15 shapes?

16 A. Yes, they are.

17 Q. And there appears to be basically two  
18 tanks?

19 A. There are two tanks.

20 Q. Where would the associated piping for

21 those tanks run underneath the site?

22 A. The product piping that fuels the  
23 dispensers is located on the product piping plan  
24 that is provided to the state fire marshals

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1 office. That information was provided and a  
2 permit was issued by the office of the state  
3 fire marshal in March of 2000. There may or may  
4 not be a product piping plan associated with  
5 this but one can be provided in the post-hearing  
6 packet, if necessary.

7 Q. Could you do that for us, please?

8 A. Yes.

9 Q. Thank you.

10 Ms. Larson mentioned that you might be  
11 a better one to answer my questions about cost  
12 issues in bringing municipal water supply,  
13 perhaps what a monthly service fee might be for  
14 water and sewer. Do you know what that might  
15 be?

16 A. As far as bringing monthly water  
17 supply to provide water for the usage of -- to  
18 make coffee and to flush the toilets and things  
19 of that nature, I would not be able to provide  
20 you with that estimate.

21 Q. In your post-hearing brief, is there  
22 someone that could contact a municipal water  
23 supply and ask them what the going rate is?

24 MR. DWYER: You know, I guess we could  
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1 try to. I would like to establish the relevance  
2 though, first. I mean, we've offered to pay for  
3 the objector's water service in total.

4 MS. LIU: Yes.

5 MR. DWYER: So are you getting to what  
6 our hardship is?

7 MS. LIU: You also withdraw that offer  
8 when it became clear that they were not willing  
9 to issue the waiver, is that correct?

10 MR. DWYER: The offer has never been  
11 withdrawn. No, that is absolutely not correct.  
12 The offer -- if she was here today and agreed to  
13 it, we would do it right now and walk. No, that  
14 is not correct.

15 MS. LIU: If the exception goes  
16 through the Board, will that offer still stand?

17 MR. DWYER: If the Board okays the  
18 exception? No.

19 MS. LIU: Reason for my questioning  
20 was in the exception procedure they ask you to  
21 identify the impacts and those impacts are not  
22 just simply environmental but they could be  
23 economic as well. If you no longer offer to  
24 provide water and sewer service, then there is

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1 an economic impact there to those property  
2 owners and I was just merely trying to establish  
3 what that would be.

4 MR. DWYER: Okay. I don't -- I don't  
5 really -- I don't really get the relevance, but  
6 we'll certainly provide you with anything we  
7 can.

8 HEARING OFFICER HALLORAN: And I think  
9 it behooves us all to get all of the information  
10 in front of the Board for a full and informed  
11 decision, and as Mr. Dwyer, you know, the  
12 petition has -- Petitioner does have the burden,  
13 and in order for the Board to grant or deny the  
14 exception, they do need all of the information.  
15 So it would be appreciated if you could get all  
16 of the information to all of the questions that  
17 Ms. Liu has asked in the post-hearing briefs.

18 MR. DWYER: No, we'll certainly try,  
19 it's just that, you know, what sewer and water  
20 may or may not cost is, you know, inherently  
21 speculative and it's based upon where you are,  
22 subject to the recapture agreement.

23 I mean, if they're a mile and a half  
24 away, it is going to cost more than if you're

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1 two blocks away and I'm not really sure how you  
2 go about quantifying that. Actually, I am sure,

3           you get an engineer, but I'm not going to hire  
4           an engineer to quantify costs which aren't  
5           relevant to the issue and that is my only  
6           problem. So we'll do our best to get you  
7           anything you need in that regard, short of  
8           hiring an engineer.

9           BY MS. LIU:

10           Q.       Mr. Maude, I have one more question  
11           that I asked Ms. Larson and she thought that you  
12           might be the better one to answer it. If for  
13           some reason the Board did not grant the setback  
14           exception, could Gilberts Citgo demonstrate a  
15           negative return on their investment if they had  
16           to sell that property because they weren't able  
17           to develop it?

18           A.       I would not be able to answer that  
19           question.

20           Q.       Okay. Do you know who might be better  
21           able to address that in perhaps a post-hearing  
22           brief?

23           A.       I believe one of the owners might be  
24           able to better address their investment. I'm

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1           not aware of their investments that they've made  
2           in the property or if it would be a negative  
3           investment as a result of the hardship.

4           MR. DWYER: We will get your question

5 answered today after a short break, after Mr.  
6 Maude is done testifying.

7 MS. LIU: Wonderful.

8 MR. DWYER: Okay.

9 MS. LIU: Thank you, Mr. Maude, very  
10 much.

11 THE WITNESS: Thank you.

12 HEARING OFFICER HALLORAN: Mr. Dwyer,  
13 any redirect?

14 MR. DWYER: No.

15 HEARING OFFICER HALLORAN: Mr. Ewart?

16 MR. EWART: No.

17 HEARING OFFICER HALLORAN: You may  
18 step down. Thank you, sir.

19 MR. DWYER: Two minutes.

20 HEARING OFFICER HALLORAN: Sure, off  
21 the record, please.

22 (Off the record.)

23 HEARING OFFICER HALLORAN: Back on the  
24 record, it's approximately 11:00 o'clock. Mr.

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1 Dwyer, you can call your next witness please.

2 MR. DWYER: Mr. Edward Newby.

3 (Witness sworn.)

4 EDWARD NEWBY,  
5 called as a witness herein, having been first  
6 duly sworn, was examined and testified as  
7 follows:

8

DIRECT EXAMINATION

9 BY MR. DWYER:

10 Q. Please state your name and spell your  
11 last name for the record.

12 A. Edward Newby, N-E-W-B-Y.

13 Q. And Mr. Newby, are you the owner of  
14 this piece of property, subject of the matter  
15 today?

16 A. We're the owner through an L.L.C.  
17 company.

18 Q. Okay. So you're a part owner?

19 A. That's correct. I'm a member.

20 Q. Okay. How long have you owned the  
21 property?

22 A. We concluded the purchase sometime in  
23 the spring and I don't have the exact date on  
24 it, but spring of this year.

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1 Q. Okay. And what is your intention to  
2 use the property for, sir?

3 A. Well, we bought it to put in a gas  
4 station and convenience store.

5 Q. Are you going to own the gas station  
6 and convenience store?

7 A. Yes.

8 Q. Okay. And since your purchase of  
9 April, even prior to that and subsequent to that

10 time, have you put money into the property?

11 A. Well, we've put, of course, obviously,  
12 the initial purchase price of the property and  
13 then -- and I don't have hard numbers for you,  
14 but subsequent fees for the village, for the  
15 hearings that we went through and for legal  
16 fees, et cetera, et cetera. And, obviously,  
17 they're still accumulating. That we've probably  
18 tossed somewhere between 50 and \$75,000  
19 additional monies over and above the purchase  
20 price in this process.

21 Q. Does that include engineers,  
22 architects, the whole package?

23 A. Oh, no. No. That is -- if you put in  
24 what we would -- at this point in time, what we

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1 have done with the engineering company, et  
2 cetera, et cetera, as a matter of fact, I think  
3 I was just presented with a bill that we have  
4 approximately \$50,000 additional funds over and  
5 above that. If it went belly up, they're gone.

6 Q. \$50,000 in funds over and above what,  
7 sir?

8 A. Over and above the 50 to 75 estimate  
9 that I just gave you.

10 Q. So in total is it your testimony that  
11 you have 100 to 125,000 into this property for  
12 purposes of constructing the gasoline station?

13           A.       That is correct.

14           Q.       Okay.  In the event that you had to  
15           sell it today, because the Board did not grant  
16           you a water well exception, what kind of damages  
17           could you sustain?

18           A.       That is really hard to say because I  
19           don't know what the exact sale price would be,  
20           but I can only tell you that we could not  
21           recover our money if we had to sell our  
22           property, we just couldn't do it.  We can't --  
23           in other words, we can't get that much over what  
24           we paid, anywhere near that much.  If we -- I

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1           would say that we could definitely cover our  
2           land purchase price.  The rest of it would be  
3           gone.

4           Q.       Well, now, if you didn't get the water  
5           well exception, wouldn't that also devalue the  
6           property?

7           A.       Well, it would.  It would in the fact  
8           that you have to know the piece of property to  
9           appreciate what we're trying to do here.  It is  
10          in an industrial area.  There are no residential  
11          areas around it.  It is straight industrial  
12          area.  And we do know that that site has been  
13          investigated by at least one other person that  
14          is in the gas business and, in fact, has told us

15 that they would like to have put a gas station  
16 there. So it's a site that is excellent for the  
17 gas station and if we can't get the waiver, the  
18 land has been sitting there vacant for several  
19 years.

20 Q. Aside from the gas station, does it  
21 have any other use?

22 A. Well, it could support obviously an  
23 industrial building, but for an industrial site  
24 you could never justify the cost of the land

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1 that we paid for with the idea that we would be  
2 able to put in a gas station and convenience  
3 store. An industrial building just will not  
4 generate enough income.

5 Q. Sir, could it support an industrial  
6 building without a water well setback exception?

7 A. I believe -- I believe that they would  
8 be able to put a well in on an industrial site,  
9 is that --

10 Q. Exactly.

11 A. Exact -- I don't think it would be any  
12 restriction of the well there.

13 Q. Right. So the answer is yes?

14 A. Yes.

15 Q. Okay. Now, what is the difference in  
16 value in your estimation between an industrial  
17 site, an industrial building on that site and

18 the gasoline station in terms of valuing the  
19 property?

20 A. Well, I'm not in the development of  
21 industrial buildings, but I think traditionally  
22 buildings would probably be -- a square foot  
23 site basis would probably be 50 percent at  
24 least, no more than 50 percent of a commercial

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1 site development, and probably even less, but  
2 I -- I'm not -- I'm not an expert in industrial  
3 development, but --

4 Q. What is the highest and best use for  
5 this property, sir?

6 A. Well, the highest and best use is  
7 without question what we're trying to do with  
8 it, and it has prompted us to pay what we  
9 considered at the time a premium price for the  
10 property, but we felt that the business  
11 opportunities were there and the village has  
12 been very, very supportive of this project.  
13 They need it, they want it and this problem that  
14 we've run into here has literally set us back  
15 months and months and months.

16 Q. Mr. Newby, are you familiar with this  
17 letter?

18 A. Yes, I have a copy of this letter.

19 Q. What is the date of that letter?

20 A. March 15th.  
21 Q. March 15?  
22 A. 2000.  
23 Q. And who is the letter from?  
24 A. Well, it is from Diana Larson to Ms.  
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1 Caporaso.  
2 Q. Can you read the last paragraph on  
3 page 1 for the record, please, on page 1?  
4 A. Page 1.  
5 Okay. The environmental expert has  
6 also suggested that we might consider relocating  
7 your well 100 feet to the east on your property  
8 at our expenses. I hesitate to suggest this as  
9 it reminds me of the time my neighbor had asked  
10 me to move my air conditioning unit to the other  
11 side of my house because it was keeping him  
12 awake at night. Nevertheless, it is a possible  
13 solution, which we would consider.  
14 MR. DWYER: I submit this letter as  
15 Petitioner's No. C.  
16 (Petitioner's No. C was submitted.)  
17 I have no further questions.  
18 HEARING OFFICER HALLORAN: Mr. Ewart,  
19 any cross?  
20 MR. EWART: Yes. Just a few.  
21 CROSS-EXAMINATION  
22 BY MR. EWART:

23 Q. Mr. Newby, in the petition on page 4,  
24 it states that the purchase price was

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1 approximately \$135,000, is that accurate?

2 A. No. No. That -- and I thought that  
3 had been changed. It was 287,000.

4 Q. 287,000.

5 Okay. Does that include fees and  
6 legal fees?

7 A. No, that was the purchase price.

8 Q. That was just the purchase price?

9 A. That is the purchase price.

10 Q. It doesn't include the fees?

11 A. It doesn't include legal fees. It  
12 doesn't include anything.

13 Q. It doesn't. Okay.

14 So approximately what did it cost you  
15 to purchase that property?

16 A. Up to this date?

17 Q. Yes.

18 A. Up to this date, we could add another  
19 \$100,000 without question to it. That's where  
20 we're at today.

21 Q. So you're saying 387,000  
22 approximately?

23 A. Yes, and I believe it will probably be  
24 higher than that when everything is totaled up,

1 but that is approximate. I mean, I'm  
2 comfortable with that number. And if you give  
3 me a little time, I can give you almost an  
4 accurate number, but --

5 Q. Well, I think that in your  
6 post-hearing brief you might want to crunch  
7 those numbers to provide that for the Board.

8 A. Sure.

9 Q. The other issue is if this -- have you  
10 ever looked into this property to see -- or your  
11 expectancy, what is your expectancy with regard  
12 to the percentage that you would -- in revenues  
13 you would receive from gasoline versus  
14 revenues -- versus the use of this property just  
15 as a convenience store?

16 A. Oh, I don't even want to take a wag at  
17 that because I would never even consider  
18 building a convenient store without the  
19 petroleum end of the business. It just is not  
20 feasible. I mean, we never -- I would never do  
21 that, so I can't answer your question.

22 MR. EWART: Thank you.

23 MR. DWYER: No further.

24 HEARING OFFICER HALLORAN: Ms. Liu.

2 BY MS. LIU:

3 Q. Good morning, Mr. Newby.

4 A. Good morning.

5 Q. Did you make those investments above  
6 and beyond the purchase price of the property,  
7 the engineering and the permits and the legal  
8 fees, under the reasonable belief that the well  
9 owners would grant the waiver for you?

10 A. Yes, we did. And I will only -- I  
11 will only tell you that Patterson Construction,  
12 the general contractor on this, has stated that  
13 they have -- they have built literally hundreds  
14 of gas stations and some of them needed waivers,  
15 several of them, I don't remember the exact  
16 terminology that was used, but this is the first  
17 time that they've ever had an adjoining lot  
18 owner that refused to give a waiver.

19 MS. LIU: Thank you.

20 Mr. Hearing officer, I do have one  
21 more question that I would like Mr. Dwyer to  
22 answer in his post-hearing brief. Is now the  
23 appropriate time to ask?

24 HEARING OFFICER HALLORAN: You can  
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1 state it for the record, the question.

2 MS. LIU: The water well exception  
3 requirements under 415 ILCS 5/14.2F, there is

4 mention of whether or not the county or  
5 municipality might have ordinances that are more  
6 stringent than the prohibitions of the section I  
7 mentioned. Is there some way that you can  
8 affirm --

9 MR. DWYER: Absolutely. And the  
10 answer is no, not in Gilberts county has an  
11 ordinance more stringent than that provision,  
12 but did you need letters from the county or how  
13 would you want that verified?

14 MS. LIU: Your answer today was fine.  
15 That's all I have.

16 HEARING OFFICER HALLORAN: Mr. Dwyer,  
17 any redirect or -- any recross?

18 MR. EWART: No.

19 HEARING OFFICER HALLORAN: Thank you,  
20 sir.

21 You may step down.

22 Any other witnesses, Mr. Dwyer?

23 MR. DWYER: No, not at this time. I  
24 might have a rebuttal witness, depending on what

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1 the agency says, but I don't think so.

2 HEARING OFFICER HALLORAN: The  
3 Petitioner rests in his case in chief.

4 Mr. Ewart?

5 MR. EWART: Yes. I would like to call  
6 Lynn Dunaway as a witness as part of our case as

7 Respondent.

8 (Witness sworn.)

9 LYNN E. DUNAWAY,  
10 called as a witness herein, having been first  
11 duly sworn, was examined and testified as  
12 follows:

13 DIRECT EXAMINATION

14 BY MR. EWART:

15 Q. Would you state your name for the  
16 record and spell your last name.

17 A. My name is Lynn Dunaway,  
18 D-U-N-A-W-A-Y.

19 Q. Would you state your address for the  
20 record?

21 A. I live at 1505 West Elm Street in  
22 Taylorville, Illinois.

23 Q. Where are you employed?

24 A. Illinois Environmental Protection  
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1 Agency.

2 Q. And what branch of the Illinois  
3 Environmental Protection Agency do you work  
4 with?

5 A. I work in the Groundwater Section in  
6 the Division of Public Water Supplies, Bureau of  
7 Water.

8 Q. What is your title?

9           A.       I'm an Environmental Protection  
10 Specialist 3.

11           Q.       Would you briefly describe your  
12 educational background?

13           A.       I've got a bachelor of science degree  
14 in geology.

15           Q.       Where and when?

16           A.       1982, Bradley University.

17           Q.       Are you a licensed professional  
18 geologist in Illinois?

19           A.       Yes.

20           Q.       How long have you worked with Illinois  
21 Environmental Protection Agency?

22           A.       Since February of 1988.

23           Q.       In what capacity with the Illinois  
24 Environmental Protection Agency?

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1           A.       I've always worked in the groundwater  
2 section.

3           Q.       Would you briefly describe your  
4 current duties within the groundwater section at  
5 Illinois Environmental Protection Agency?

6           A.       I explain and work with the public  
7 regulated parties, other government agencies  
8 explaining aspects of the environmental  
9 protection act, the regulations that were  
10 adopted under the environmental protection acts  
11 such as, you know, the setback zones, the

12 regulations that would apply within those  
13 setback zones, other ground work quality  
14 standards, reviewing geologic reports that are  
15 prepared for sites and other special projects  
16 that the agency may do that require geologic  
17 expertise, and other -- write reports, general  
18 reports that are required for us by either the  
19 U.S. Environmental Protection Agency or within  
20 the agency.

21 Q. How often do you deal with setback  
22 waivers and exceptions?

23 A. Fairly often. We probably have --  
24 well, we have an actual waiver needed roughly on

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1 average once a month, they don't always come one  
2 every month, but there has probably been eight  
3 to ten a year since the act went, the portion of  
4 the act that established the setback zones  
5 require waivers went into effect. And I've  
6 probably dealt with about 74 of those myself.

7 MR. EWART: Mr. Hearing Officer, I  
8 offer this witness as an opinion witness, an  
9 expert in the area of geology and hydrogeology  
10 with regard to these proceedings forthcoming.

11 HEARING OFFICER HALLORAN: Any  
12 objection?

13 MR. DWYER: None.

14 HEARING OFFICER HALLORAN: Okay.

15 BY MR. EWART:

16 Q. Would you describe the circumstances  
17 with regard to Gilberts Citgo and the setback  
18 waiver and how you got involved?

19 A. I believe it was in the early part of  
20 April, I talked, I spoke with representatives  
21 from Patrick Construction -- Patterson  
22 Construction, excuse me. They were representing  
23 Gilberts Citgo and we were discussing  
24 requirements of the waiver. And I explained to

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1 them the requirements, the type of information  
2 they needed to submit to the agency and the  
3 process that I would go through, the review  
4 would have to do, and that the actual waiver  
5 would be required from the well owner in order  
6 to proceed with construction that the agency  
7 grant concurrence, which essentially means that  
8 the well owner has adequate information to make  
9 an informed decision.

10 Q. Now, did you speak with the Petitioner  
11 on this, representatives of the Petitioners?

12 A. Yes, I did.

13 Q. Did you speak with anyone else with  
14 regard to this issue?

15 A. I also spoke with Marsha Caporaso, the  
16 well owner, on at least one occasion, possibly

17 two, and she asked for additional information  
18 regarding the waiver, and I believe I faxed her  
19 pertinent sections from the Environmental  
20 Protection Agency act for her review and I think  
21 I had a follow-up call with her to see if she  
22 had any questions regarding the -- to insure  
23 that the fax had arrived and to see if she had  
24 any follow-up questions.

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1 Q. And approximately when was that  
2 follow-up call?

3 A. It was the first part to mid-April,  
4 first part of April to mid part of April.

5 Q. Had you had any other contact with the  
6 Respondent regarding these issues?

7 A. No, not since that point.

8 Q. Please continue with your description  
9 of the process, what, if anything, with regard  
10 to the waiver requests?

11 A. In May we received a waiver request  
12 for Gilberts Citgo, which I did review and I  
13 found that based on my opinion of the  
14 requirements of the act that they had supplied  
15 adequate information and I recommended to our  
16 division manager that, you know, he sign the  
17 letter that I prepared stating that we did  
18 concur with their waiver, and our division

19 manager, Roger Selburg did sign that letter and  
20 we did send that to the Petitioner. Also I  
21 notified the well owner that the concurrence had  
22 been granted, Kane County public health.

23 Q. Have you had any further contact with  
24 representatives of Gilberts Citgo?

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1 A. Yes. They did -- they contacted me  
2 several times. We have had telephone  
3 conversations regarding the next step since they  
4 did not seem to be able to get a waiver from the  
5 well owner. And I said that they would need to  
6 file an exception with the Board. And at a  
7 later point when -- in the year, I believe it  
8 may have been the first part of September, they  
9 asked for an example exception. I said the  
10 agency didn't have an example but I did provide  
11 them with a copy of another exception that had  
12 been presented to the Board with the subject  
13 names blocked out so that there was no  
14 identification of where the other exception took  
15 place or who the parties involved were.

16 Q. Did you have occasion to review the  
17 petition and the various amended petitions  
18 including --

19 A. Yes, I did.

20 Q. -- the most recent one, the second  
21 amended petition dated October 20th, 2000?

22 A. Yes.

23 Q. What opinion, if any, did you form  
24 regarding the adequacy of the various petitions

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1 especially with regard to the one dated  
2 August -- or October 20th, 2000?

3 A. I felt like they had provided adequate  
4 evidence that the petition -- that adequate  
5 evidence was in the petition for it to be heard  
6 by the Board.

7 Q. What do you feel about the  
8 alternative, the maximum feasible alternative  
9 setback zone?

10 A. I think they made an adequate  
11 demonstration that given the requirements for  
12 truck traffic and safety considerations, that  
13 they used the maximum alternative setback from  
14 the tanks to the well.

15 Q. You did look at the geologic well logs  
16 that were attached to the petition?

17 A. Yes, I did.

18 Q. What, if anything, did you conclude  
19 from those, the detailed well logs?

20 A. Well, there are a number of well logs  
21 provided and some of them were -- because of the  
22 requests, the way they requested from the state  
23 water survey, some of them were not in the area,

24 I did identify some that were at least within  
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1 the general area where the site is located.  
2 There are three streets, Cinder Drive, Solo  
3 Drive, East Drive, and that is bordered by Route  
4 72, based on the maps provided by the  
5 Petitioner.

6 Q. Are these your copies?

7 A. I have the ones that are from the  
8 general area with me up here.

9 Q. Oh, you do?

10 A. Yes.

11 Q. Is it true that in the record, as you  
12 received it, that there was not a well log for  
13 the subject well?

14 A. No, I didn't find one that was  
15 identified as the subject well.

16 Q. But what wells are you discussing now  
17 in your review?

18 A. Okay. The wells I'm discussing now  
19 are wells that are located in the general  
20 vicinity of the proposed site for the Gilberts  
21 Citgo.

22 Q. What, if anything, do these well logs  
23 detail with regard to the geologic conditions?

24 A. Generally speaking I did not have a

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1 well log for the subject well. In general, most  
2 of the wells in the area used the bedrock  
3 aquifer, which is located some -- approximately  
4 200 feet below ground surface. And the wells  
5 that did penetrate that deep indicated that  
6 there were relatively thick sequences of clay  
7 between the surface and the bedrock aquifer.  
8 The significance of clay is that it has a low  
9 permeability, which inhibits the movement of  
10 fluids, which would be either water or were  
11 there a gasoline spill it would also inhibit the  
12 movement of gasoline, because of the thick clay  
13 layers, it seemed to be fairly widespread  
14 through the area. I didn't think that the  
15 proposed site posed a significant hazard to the  
16 bedrock aquifer. There are a few wells in that  
17 vicinity that appear to use shell, sand and  
18 gravel, that they're interspersed throughout the  
19 clays. Based on the well logs I have, those  
20 sands and gravels don't seem to be very  
21 continuous. So the shallow groundwater that  
22 might be used for potable use within those sand  
23 and gravel layers would not be wide spread. I  
24 did, however, in some of the nearby logs there

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1 were some shell, sand and gravels that I think  
2 in my opinion if the shell, sand and gravel

3 occurred on the subject property or on the  
4 proposed Citgo site, and if the subject well  
5 utilized the same sand and gravel, there could  
6 be a significant risk to the well were there a  
7 release from the site, however, in their  
8 petition the Petitioner has stated that they are  
9 willing to monitor the subject well at least on  
10 an annual basis and since they are willing to  
11 monitor the subject well, I believe that removes  
12 the significant hazard from consumption of that  
13 water.

14 So in summary, I would not say that  
15 the Gilberts Citgo poses a significant hazard to  
16 the subject well or groundwater in general.

17 MR. EWART: Thank you. I don't have  
18 any further questions at this point.

19 CROSS-EXAMINATION

20 BY MR. DWYER:

21 Q. You've done about 75 of these?

22 A. Yes.

23 Q. Have you ever seen a situation where  
24 the petitioning party offers the objector to

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1 move their well?

2 A. I think so.

3 Q. Okay. Have you ever seen a situation  
4 where the petitioning party offers to bring  
5 municipal water to the adjacent property?

6 A. Yes.

7 Q. Okay. Do you think those are  
8 reasonable accommodations in this circumstance?

9 A. Yes.

10 Q. Okay. Can you think of anything above  
11 that that the Petitioner could do to accommodate  
12 the objector?

13 A. It would depend on the specific  
14 circumstances at the site. I -- I think  
15 providing alternative source of water to replace  
16 the well is very reasonable. Any other  
17 accommodations that might be reasonable would  
18 have to be, you know, based on site specific  
19 conditions.

20 MR. DWYER: Thank you very much.

21 HEARING OFFICER HALLORAN: Mr. Ewart,  
22 any redirect?

23 MR. EWART: None.

24 HEARING OFFICER HALLORAN: Ms. Liu?

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1 CROSS-EXAMINATION

2 BY MS. LIU:

3 Q. Good afternoon, Mr. Dunaway.

4 Can you think of any reason why the  
5 state water survey would not have a well  
6 construction report on file for this subject  
7 well?

8           A.       It's possible one was never turned  
9           into the state water survey.

10          Q.       Is there a requirement to do that  
11          generally?

12          A.       I believe there is, but it's not  
13          always done.

14                    MS. LIU: Thank you very much.

15                    HEARING OFFICER HALLORAN: Any other  
16          questions of this witness, Mr. Dunaway? Mr.  
17          Dwyer? Mr. Ewart?

18                    MR. EWART: No.

19                    MR. DWYER: No.

20                    HEARING OFFICER HALLORAN: You may  
21          step down. Thank you.

22                    You don't have any other witnesses?

23                    MR. EWART: None.

24                    HEARING OFFICER HALLORAN: Do you have  
                    L.A. REPORTING, 312-419-9292

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1          any rebuttal?

2                    MR. DWYER: No.

3                    HEARING OFFICER HALLORAN: For the  
4          record, I want to note that there are no members  
5          of the public here.

6                    Also, for the record, I want to note  
7          that representatives -- there are no  
8          representatives of Wheeling Trust & Savings  
9          Bank, the other Respondent, nor John Caporaso,  
10         they're not in the room.

11                   With that said, Mr. Dwyer, would you  
12                   like to make a closing?

13                   MR. DWYER: No. Especially if we're  
14                   going to do a post-hearing brief, if that is  
15                   what you're looking for.

16                   HEARING OFFICER HALLORAN: Mr. Ewart,  
17                   any closing?

18                   MR. EWART: No closing.

19                   (Off the record.)

20                   HEARING OFFICER HALLORAN: We've been  
21                   off the record discussing post-hearing briefs.  
22                   The record appears to be -- the transcript will  
23                   be ready on December 6. Mr. Dwyer and Mr. Ewart  
24                   stated that their post-hearing briefs will be

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1                   filed by December 6th and I'm going to allow a  
2                   seven day window for public comment, so, the  
3                   briefs, post-hearing briefs are due December 6th  
4                   from the Petitioner and the Respondent, and  
5                   public comments will be due on December 13th.

6                   Also, for the record, Mr. Dwyer, have  
7                   you moved these exhibits into evidence?

8                   MR. DWYER: I thought I did.

9                   HEARING OFFICER HALLORAN: Petitioner  
10                   Exhibit A, Exhibit B, Petitioner's Exhibit C?

11                   MR. DWYER: If I didn't, I'd like to  
12                   now.

13 HEARING OFFICER HALLORAN: Any  
14 objection, Mr. Ewart?

15 MR. EWART: None.

16 HEARING OFFICER HALLORAN: For the  
17 record, Petitioner's Exhibit A is a letter dated  
18 November 16th, year 2000, to Ms. Larson from  
19 Anthony Malone, the hired project engineer from  
20 the Village of Gilberts.

21 Exhibit B is a blow up of the site  
22 grading plan and the site utility plan  
23 comprising of four documents.

24 Petitioner's Exhibit C is a March  
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1 15th, 2000, letter to Ms. Caporaso from Ms.  
2 Larson.

3 (Petitioner's No. A, B & C  
4 were received into evidence.)

5 HEARING OFFICER HALLORAN: With that  
6 said, we'll break for lunch. We'll be back here  
7 approximately 1:00 o'clock, in case there are  
8 any members of the public that show up.

9 Thank you.

10 MR. DWYER: If there aren't any  
11 members of the public that show up, do we still  
12 have public comment period for a week after the  
13 date?

14 HEARING OFFICER HALLORAN: We do.

15 MR. DWYER: Better safe than sorry.

16 (Lunch recess.)

17 HEARING OFFICER HALLORAN: Back on the  
18 record.

19 Good afternoon. We're back on the  
20 record in case of Pollution Control Board 01-50.  
21 There being no members of the public present,  
22 this concludes the hearing in this matter, and I  
23 might add that it is approximately 1:00 o'clock  
24 in the afternoon, November 22, year 2000.

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1 I want to thank you all for appearing  
2 here today, and have a nice trip home. Thank  
3 you.

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1 STATE OF ILLINOIS )  
 )SS:  
2 COUNTY OF DU PAGE )

3 I, ROSEMARIE LAMANTIA, being first duly  
4 sworn, on oath says that she is a court reporter  
5 doing business in the City of Chicago; that she  
6 reported in shorthand the proceedings given at  
7 the taking of said hearing, and that the  
8 foregoing is a true and correct transcript of  
9 her shorthand notes so taken as aforesaid, and  
10 contains all the proceedings given at said  
11 hearing.

12  
13

-----

14 ROSEMARIE LA MANTIA, CSR  
15 License No. 84 - 2661

16 Subscribed and sworn to before me  
17 this            day of            , 2000.

18 -----  
Notary Public

19  
20

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22

23

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