

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ROXANA LANDFILL, INC.,)	
)	
PETITIONER,)	
)	
vs.	)	NO. PCB 15-65
	)	(Third Party Pollution
	)	Control Facility Siting
	)	Appeal)
VILLAGE BOARD OF THE)	
VILLAGE OF CASEYVILLE,)	
ILLINOIS; VILLAGE OF)	
CASEYVILLE, ILLINOIS; AND)	
CASEYVILLE TRANSFER)	
STATION, LLC,)	
)	
RESPONDENTS.)	
_____)	
)	
VILLAGE OF FAIRMONT CITY,)	
ILLINOIS,)	
PETITIONER,)	
)	
	)	NO. PCB 15-69
vs.	)	(Third Party Pollution
	)	Control Facility Siting
	)	Appeal) (CONSOLIDATED)
VILLAGE OF CASEYVILLE,)	
ILLINOIS; BOARD OF TRUSTEES))	
AND CASEYVILLE TRANSFER)	
STATION, LLC.)	
)	
RESPONDENTS.)	

DEPOSITION OF ROBERT WATT
TAKEN ON BEHALF OF THE PETITIONER
OCTOBER 22, 2014

Elizabeth A. Goodwin, RPR, IL-CSR, MO-CCR
CSR No. 084.004310, CCR No. 831

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1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2 ROXANA LANDFILL, INC.,)

3 PETITIONER,)

4 vs.)

NO. PCB 15-65
(Third Party Pollution
Control Facility Siting
Appeal)

6 VILLAGE BOARD OF THE)

7 VILLAGE OF CASEYVILLE,)

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9 CASEYVILLE, ILLINOIS; AND)

10 CASEYVILLE TRANSFER)

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12 RESPONDENTS.)

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14 VILLAGE OF FAIRMONT CITY,)

15 ILLINOIS,)

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17 vs.)

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(Third Party Pollution
Control Facility Siting
Appeal) (CONSOLIDATED)

18 VILLAGE OF CASEYVILLE,)

19 ILLINOIS; BOARD OF TRUSTEES))

20 AND CASEYVILLE TRANSFER)

21 STATION, LLC.)

22 RESPONDENTS.)

23 DEPOSITION OF ROBERT WATT, produced, sworn,

24 and examined on behalf of Petitioner, OCTOBER 22,

25 2014, between the hours of 5:45 in the evening and

26 7:00 in the evening of that day, at Village of

27 Caseyville, 909 South Main Street, Caseyville, IL

28 62232, before Elizabeth A. Goodwin, RPR, MO-CCR,

29 IL-CSR.

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A P P E A R A N C E S

Petitioner Roxana Landfill represented by
Ms. Jennifer Pohlenz of Clark Hill, PLC, 150 N.
Michigan Ave. Suite 2700, Chicago, IL 60601.

Respondent Caseyville Transfer Station
represented by Ms. Penni S. Livingston of Livingston
Law Firm, 5701 Perrin Road, Fairview Heights, IL
62208.

Petitioner Village of Fairmont City
represented by Mr. Donald J. Moran of Pedersen &
Haupt, 161 N. Clark Street Suite 3100, Chicago, IL
60601.

Respondent Village Board of the Village of
Caseyville, Illinois and Village of Caseyville,
Illinois represented by Mr. J. Brian Manion of
Weilmuenster Law Group, P.C., 3201 West Main Street,
Belleville, IL 62226.

Also Present: John Siemens, Esq.

1 IT IS HEREBY STIPULATED AND AGREED by and
 2 between counsel for the Petitioners and counsel for
 3 the Respondents, that this deposition may be taken in
 4 shorthand by Elizabeth A. Goodwin, a Registered
 5 Professional Reporter, Certified Shorthand Reporter
 6 and Certified Court Reporter, and afterwards
 7 transcribed into typewriting, and the signature of the
 8 witness is waived by agreement of counsel and the
 9 witness.

10 0-0-0

11 ROBERT WATT,
 12 of lawful age, being produced, sworn and examined on
 13 the part of the Petitioner, and after responding "Yes,
 14 I do" to the oath administered by the court reporter,
 15 deposes and says:

16 * * * * *

17 [EXAMINATION]

18 BY MS. POHLENZ:

19 Q Mr. Watt, can you please state your full
 20 name and spell it for the court reporter?

21 A **It's Robert Watt, R-O-B-E-R-T, W-A-T-T. No**
 22 **"S".**

23 Q And my name is Jennifer Sackett Pohlenz.
 24 Thank you for coming tonight. This is your discovery

1 deposition in the matter concerning the Caseyville
2 Transfer Station siting approval.

3 Have you been deposed before?

4 **A No. I've got a good record of not being, so**
5 **now it's over.**

6 Q Okay, excellent. Well, I am honored to be
7 the first.

8 MS. LIVINGSTON: Blame her.

9 Q (By Ms. Pohlenz) So, let me go over some very
10 easy ground rules of deposition. I'm sure your
11 attorney has as well. Sometimes I speak a little
12 quietly, so if I speak in a way that you can't hear
13 me, please let me know.

14 **A All right.**

15 Q And if I ask a question that you don't
16 understand, please let me know.

17 **A Okay.**

18 Q Is it fair if I ask a question and you
19 answer it, for me to assume that you could hear it and
20 you could understand it?

21 **A Yes.**

22 Q Another ground rule is that I have to wait
23 until you're done answering and you need to wait for
24 me to ask a question because our lovely court reporter

1 is typing everything we say and we don't want her to
2 have to take down two conversations overlapping.

3 **A Okay. All right.**

4 Q So what position do you hold with the
5 Village of Caseyville?

6 **A I'm the Village Clerk.**

7 Q As Village Clerk can you describe for me
8 your duties and responsibilities?

9 **A I take care of all the records,**
10 **recordkeeping, meeting minutes; I sign checks with the**
11 **Mayor for whatever bills and stuff we have; make sure**
12 **the meetings are on time; general administrative type**
13 **stuff.**

14 Q Okay. As Village Clerk are you the only
15 person who can accept for filing or file a document
16 with the Village of Caseyville?

17 **A Yes.**

18 Q As the Village Clerk are you the only person
19 who can accept for filing or file a document, such as
20 the Caseyville Transfer Station, LLC application for
21 site location approval with the Village of Caseyville?

22 **A As far as the application, yes.**

23 Q Correct.

24 On behalf of the Village of Caseyville, as

1 the Village Clerk, did you file the four binder
2 application for site location approval of Caseyville
3 Transfer Station, LLC on February 10th, 2014?

4 **A Is that the first day?**

5 Q That is -- February 10th, 2014 is -- I don't
6 understand what you mean by "first day"?

7 **A I mean, the first time we actually saw the**
8 **application, is that what you're asking?**

9 Q I'm asking on February --

10 **A When did I receive it?**

11 Q Let me ask it this way then.

12 **A All right.**

13 Q What's the first date that you received the
14 siting application?

15 **A I can't -- I can't recall the actual date.**
16 **I know that the -- I don't think it was the February**
17 **10th. That's because we didn't know it was already**
18 **delivered.**

19 Q Okay. On February 10th, 2014, did you file
20 a siting application for Caseyville Transfer Station,
21 LLC?

22 **A I don't think so. I don't know. I can't**
23 **answer that.**

24 Q Okay. It's my understanding that on

1 February 18th -- let's see -- February 19th, 2014 is a
2 Wednesday and there would have been a Village board
3 meeting; is that accurate?

4 **A I'd have to look at the calendar. I can't**
5 **say if that's accurate or not.**

6 Q Okay. Let me see if I can get a calendar
7 for you and we can take a look at it.

8 MR. MORAN: February 19th, you said?

9 MS. POHLENZ: Correct.

10 MR. MORAN: I believe that's a Wednesday.

11 MS. POHLENZ: Yes.

12 Q (By Ms. Pohlenz) And Wednesdays are the
13 Village board meetings; correct?

14 **A It depends on what -- if it's the third**
15 **Wednesday or if it's the first Wednesday.**

16 Q Sure. Let's see. Here is just a general
17 year calendar and I -- we can make a copy of this on
18 the copier. But here's -- what did I say February.
19 So here's February 2014 and this is general -- it has
20 all the months of the year on it.

21 **A That would have been the third Wednesday,**
22 **that would have been a regular board meeting, yes.**

23 Q Okay. And do you recall making a statement
24 to someone -- or do you recall whether it was first on

1 February 18th, 2014 that you received a box of four
2 binders in the mail consisting of the Caseyville
3 Transfer Station, LLC siting application?

4 **A I don't recollect that, no.**

5 Q Okay. Do you recall with reference to that
6 Village board meeting when it first became -- came to
7 your attention that you -- there was a Caseyville
8 Transfer Station, LLC application that existed?

9 **A Okay.**

10 Q Where was it in reference to that board
11 meeting?

12 **A I don't recollect when the first person**
13 **actually came in to look at it and I don't -- can't**
14 **recollect the exact day that Mike Mitchell had it in**
15 **his office. I don't know if it was before or after or**
16 **during that.**

17 Q Okay.

18 **A It could have been before because I know**
19 **that an applicant did come in, we didn't have it the**
20 **first time, second time he came in, we had it. We**
21 **knew it was in the box and we brought it in here for**
22 **them to look at it. I can't tell you the exact date.**

23 Q Okay. So tracking back to what you just
24 said. When you said an applicant came in, was that

1 Caseyville Transfer Station, LLC or was that just
2 someone from the public?

3 **A Somebody from the public that came in.**

4 Q Okay. And do you recall that person's name?

5 **A Nope, sure don't.**

6 Q Okay. So, at some point someone came in and
7 asked for a siting application.

8 **A Yep.**

9 Q And you didn't know what they were talking
10 about; is that correct?

11 **A I knew what they were talking about but we
12 didn't have it at the time.**

13 Q Okay.

14 **A I didn't know it was actually delivered yet.**

15 Q Okay. And do you recall whether this was
16 after the February 10th, 2014 date?

17 **A I can't -- I can't say yes or no.**

18 Q Okay. So you don't know when this was?

19 **A Right, exactly.**

20 Q Did anyone from Caseyville Transfer Station,
21 LLC give you a call or communicate with you in any way
22 to let you know, hey, I'm going to be coming in on a
23 specific date and I'm going to be filing this document
24 with you?

1 **A If they did, it had to be with Mike Mitchell**
2 **because it wasn't with me.**

3 Q No, I'm asking with respect to you.

4 **A No, not me. It would have been somebody**
5 **else because I didn't.**

6 Q Okay. Do you know of anyone else that
7 Caseyville Transfer Station, LLC gave a heads up to,
8 hey, we're going to be filing this?

9 **A I can't answer that.**

10 Q Is that because you don't know?

11 **A I don't know.**

12 Q Okay.

13 MS. LIVINGSTON: She's not saying it did
14 happen. Listen carefully to her questions. She has
15 her own agenda.

16 THE WITNESS: Okay.

17 MS. LIVINGSTON: Just tell the truth.

18 THE WITNESS: All right.

19 Q (By Ms. Pohlenz) If someone comes to Village
20 Hall to file a document, is it the Village Clerk of
21 Caseyville's ordinary course of business that either
22 Keri Cary or Leslie McReynolds at the administrative
23 office will receive, stamp that document with a
24 received stamp and then leave that document for you

1 either outside your office or in your box outside your
2 office for you to then file?

3 **A Yes.**

4 Q Likewise, is it the ordinary course of
5 business that when documents are requested by someone
6 from the Village of Caseyville while that request may
7 come to Leslie McReynolds or Keri Cary that -- in the
8 front office, that prior to those documents being
9 produced that the Village Clerk would have to okay
10 them to be produced?

11 **A Initially, yes. After a while, no.**

12 Q Okay. And when you say that, are you
13 speaking in reference to a specific document, such as
14 the Caseyville Transfer Station, LLC application?

15 **A It was in general. If it -- we had already**
16 **started, after a while it was just routine. I just**
17 **let it go.**

18 Q I understand. So if it's some type of new
19 category of document that someone's requesting, then
20 it needs to go through you, to have you say okay and
21 you can release it?

22 **A If it's outside of what you're talking about**
23 **now, yes.**

24 Q Just in general.

1 **A** **If we are talking about for this, after a**
2 **while they had the free rein to do it because I have**
3 **my work during the day, so...**

4 **Q** **Okay. So, for example, I'm not talking**
5 **about the Caseyville Transfer Station application yet.**
6 **I'm talking about in general. So, in general people**
7 **come in and ask for ordinances and it's a frequent**
8 **enough thing that happens that no one at the front**
9 **office has to come to you to ask for approval to**
10 **release an ordinance because they know they can give**
11 **it to someone. That would be an -- an accurate**
12 **statement?**

13 **A** **It depends on what it is. If you're asking**
14 **through a FOIA request it would have to come through**
15 **the Village Clerk. They don't have the authority to**
16 **do that. Now, if you're talking about general**
17 **documents that they can make copies of, yeah, they can**
18 **do that; but, there are certain different things.**

19 **Q** **Okay. I thank you for that explanation.**

20 **A** **All right.**

21 **Q** **So, with respect to the Caseyville Transfer**
22 **Station application and the public record -- do you**
23 **know what I'm referencing when I say the "public**
24 **record"?**

1 **A** You're talking about the box that we had
2 with all the four binders and all the information that
3 you had.

4 **Q** Correct. And do you -- what about all the
5 other documents that people filed?

6 **A** They would be able -- they would be put back
7 into that box and if anybody needed to see it, they
8 would go make the copies and provide it to those
9 individuals.

10 **Q** So the public record -- when we're just
11 talking here today at your deposition, do you
12 understand when I say "public record" I'm talking
13 about the entire grouping of documents?

14 **A** Yes, I understand that. They were all in
15 that box including the binders, anything that was sent
16 in was put in the box.

17 **Q** Okay. So you're referencing a box. And
18 that box, was what size box?

19 **A** The box -- we made sure that it was all in
20 the conference room in a box about that big, like the
21 one sitting down there.

22 **Q** So that's a long legal storage box. So it's
23 more than --

24 **A** It's a big --

1 Q It's larger than a banker's box?

2 A It's a bit deeper. We made sure that
3 everything that dealt with that was in that box. So
4 that any time someone wanted to see it, they could
5 come in here and see it. There would be no -- nothing
6 hidden.

7 Q Okay. So with respect to your procedure, if
8 someone came in and submitted a FOIA request to see
9 the public record in the Caseyville Transfer Station,
10 LLC siting application, would you then require them to
11 wait to get your approval?

12 A If it came to -- if it came down to that,
13 no. Because it was part of the Caseyville Transfer
14 Station. So that would be the documents that they had
15 in the box and they had authority to get the copies
16 for those individuals then. And then I would sign the
17 letter after the fact, making sure that it was all
18 legal.

19 Q Okay.

20 A Any letter that went out or something like
21 that. A FOIA request didn't matter because it dealt
22 with that. We were told anybody that wanted to see
23 it, it didn't have to be a FOIA request. They could
24 come in and see it, so that's what we did. So, when

1 she would send me an e-mail and say, hey, I got this
2 FOIA request on that. I'd say, no, you don't need it.
3 They can come in and make whatever copies they need.
4 That's how that worked.

5 Q And what about for someone who would ask,
6 for example, Leslie McReynolds for documents, would it
7 be her ordinary course in the Caseyville Transfer
8 Station site location approval process to then ask you
9 prior to then telling the person whether or not she
10 could produce the documents?

11 A Initially it started that way, but after a
12 while it got to she sent me an e-mail, hey, Rob,
13 so-and-so came in, they made copies and then they left
14 and I was fine with that because that's basically what
15 we were told that they can come in and make copies and
16 go about their business. We weren't allowed to stop
17 them.

18 Q Okay. About when were you told that? You
19 said after a while that this new process started.

20 A It's not really a new process, there was no
21 process made. It was a decision on my part to say,
22 hey, I can't wait until the next day for these people
23 to get their stuff because I come in late at night --

24 Q Okay.

1 A -- to get it done. So why not just give
2 them the authority to do it. So then when the person
3 came in, got the stuff done, they didn't have to wait
4 two or three days. So that's the process was my
5 decision to tell them that, hey, for the Caseyville
6 Transfer Station you guys just need do this and that's
7 it.

8 Q Okay. To the extent that someone came to
9 the window and was told that they couldn't receive
10 documents until you approved it, that would be
11 contrary to that process?

12 A It would be initially. Now, you got to
13 watch the words here. Initially, it was that way and
14 then I started thinking that, well, maybe that's not
15 good for those people. So that's when I altered the
16 process so that they could make the copies. So
17 initially I didn't know that, you know, that it was
18 just -- it was a new thing. I've never done this
19 before. So I was working through the process that I
20 knew. So then once these people started coming in, in
21 droves, it didn't make sense for me to say, hey, wait
22 until I get there. So, then I decided they will make
23 those copies as they are needed and that's how the
24 process went from there.

1 Q Let's put this into context of the siting
2 hearing which occurred on May 29th, 2014. Is that a
3 date that you are familiar with?

4 A **Yes.**

5 Q Okay. So, prior to that siting hearing,
6 were you requiring requests to go through you --

7 A **No.**

8 Q -- to obtain documents?

9 A **No.**

10 Q Okay. So at some point --

11 A **It would probably -- I would give you -- it**
12 **probably was a week. Because as soon as this thing**
13 **hit the ground, everybody and their mom was coming in**
14 **here to get a copy. So after a week -- I would say a**
15 **week, I don't know if it was definitely a week. But**
16 **after that it was getting so ridiculous that there was**
17 **no time for me to come in here every day to do that.**
18 **So I gave them the authority to do it. So they had**
19 **ample time for -- everybody had their chances to do**
20 **it.**

21 Q And when you say that, would that have been
22 the entire public record you're referencing or only
23 that siting application?

24 A **It would be anything that they wanted to**

1 see. We were told that if they wanted to see the
2 siting application, if they wanted to see anything
3 that was in those binders, anything that they wanted
4 to see they were allowed to see. There was nothing
5 held back. I had Susan Piassa in here. They got
6 their copiers in here to do whatever they wanted to do
7 and we didn't hold them back. They could see anything
8 that they wanted to.

9 Q And do you understand her copier came in --
10 when her copier came in here to copy the application?

11 A Rephrase that.

12 Q Do you know a date when --

13 A I have no idea when she did it.

14 Q That's all I'm asking.

15 A Okay.

16 Q Okay. So, I'm going to mark this as
17 Exhibit 16.

18 (Exhibit 16 was marked for
19 identification by the court reporter.)

20 MS. LIVINGSTON: What is Exhibit 16?

21 MS. POHLENZ: It is an e-mail that was
22 contained in our document production and it's between
23 Leslie McReynolds and Mr. Rob Watt. There's some
24 other e-mails in the chain printed out but it's

1 between them.

2 MS. LIVINGSTON: Do you recall the date?

3 MS. POHLENZ: I'll ask about it as soon as I
4 get it back.

5 MS. LIVINGSTON: Okay.

6 Q (By Ms. Pohlenz) Can I have that to ask you
7 the question?

8 **A Sure.**

9 Q Thank you. I'm going to hand you what's
10 been marked as Exhibit 16. And I want you to take a
11 look here at about, I don't know, two inches down from
12 the top of the page, there starts an e-mail and it
13 appears to be from you to Leslie McReynolds.

14 **A Uh-huh.**

15 Q And it ends, oh, about -- above where it
16 says original message.

17 **A Uh-huh.**

18 Q Can you take a look at that and tell me if
19 that is a true and accurate copy of your e-mail to
20 Leslie that is dated June 13th, 2014 at 8:45 a.m.?

21 **A Yep.**

22 Q Okay. And can you tell me what is being
23 referenced here in the top line as the Certificate of
24 Publication?

1 **A This is their Certificate of Publication**
2 **where the public hearing was filed by Mr. Siemsen, we**
3 **did not receive a copy.**

4 Q Okay. Is that referencing something that
5 Mr. Siemsen has but didn't give to you yet?

6 **A I don't know if that's the case or not. We**
7 **just didn't have receipt of whether he gave it to**
8 **someone else or the Mayor had it, I don't know. I**
9 **know I never saw it.**

10 Q So what was being requested here it was your
11 response to Leslie that that wasn't in the public
12 record, that you did not have it?

13 **A The public hearing notice?**

14 Q That -- this, the Certificate of Publication
15 for the public hearing notice.

16 **A No, we didn't have it. But we did -- we did**
17 **have the public hearing date and stuff but I never saw**
18 **that.**

19 Q Right. No, I'm not asking about the date.
20 I'm just asking about that sentence.

21 **A Yeah. I never saw it. I'm not going to --**

22 Q I'm not asking you to lie. And if you
23 don't -- like I said, if you don't understand my
24 question I'll rephrase it. If I use a term that we're

1 not clicking on, I'll explain what I mean.

2 **A Okay.**

3 Q Okay. Now, you have made reference to
4 that -- to a -- documents and I'm not sure how you
5 described them, so I'm just going to say documents,
6 came into Mike Mitchell's office. At some point you
7 were told or you otherwise discovered the documents
8 related to the Caseyville Transfer Station were in
9 Mike Mitchell's office. Can -- did you -- did someone
10 tell you documents were in Mike Mitchell's office or
11 how did you find that out?

12 **A We only assumed it was in Mike Mitchell's**
13 **office because he was taking care of it. I had a**
14 **discussion with Mike and since he's not there but, oh,**
15 **I don't know twice a week, I didn't have a chance to**
16 **get with him to see if he actually received anything.**
17 **And when we found out -- when he came in, I asked him**
18 **the question, he said he had it, and that's when we**
19 **started providing whatever.**

20 Q Okay. So, in the sequencing of things,
21 someone walks into City Hall and asks for something
22 called the siting application.

23 **A Uh-huh.**

24 Q You tell them that you don't have such a

1 thing; is that accurate?

2 **A I don't think I would phrase it that way.**

3 Q No, no, I'm not asking phraseology. Please,
4 use your own words. What would you have told them?

5 MS. LIVINGSTON: At what point in time, the
6 first week?

7 Q (By Ms. Pohlenz) I don't know.

8 MR. MANION: Do you understand the question?

9 **A No. I'm trying to figure out what documents**
10 **she's talking about now. Are you talking about the**
11 **documents that were in the box or are you talking**
12 **about the first time Mr. Siemsen gave us something**
13 **that me and the Mayor signed?**

14 Q (By Ms. Pohlenz) Okay. Well, let's go first
15 to the documents in the box. What documents -- when
16 you finally got a box of documents, what documents,
17 that Mike Mitchell had, what was in that box?

18 **A We had all the binders and anything that**
19 **dealt with all the way up until before the hearing.**

20 Q Were there four binders in a box?

21 **A Yes. Yes, there were.**

22 Q Okay. So at some point after you get
23 documents -- you find out Mike Mitchell has documents,
24 has four binders in a box; is that accurate?

1 **A Uh-huh. Yep.**

2 **Q How do you find that out, did someone tell**
3 **you that?**

4 **A We thought that Mike Mitchell had them**
5 **because he would be the only one because it was a**
6 **zoning issue and it would have went to Mike Mitchell.**
7 **Whoever got the box would have gave it to Mike**
8 **Mitchell. We couldn't ask him that day because he**
9 **wasn't in that day and when he finally came in we**
10 **contacted him and he said, yes, we have that box with**
11 **those. And then we brought them in here and then we**
12 **started letting people look at it.**

13 **Q Okay. So how did it come to your awareness,**
14 **though, that there was a box of documents that people**
15 **wanted to see?**

16 **A I only got that from Leslie -- I think I got**
17 **it from Leslie. That she said that there would have**
18 **been a box and then I said, okay, well, if there is a**
19 **box, we need to get with Mike Mitchell, if he's the**
20 **one that got it; and there it went.**

21 **Q Okay. How did -- what is your --**

22 **A I can't answer for Leslie.**

23 **Q I'm not asking you to answer for Leslie.**
24 **I'm asking you, you said at some point someone came in**

1 and asked for the siting application.

2 A Right. They asked for the --

3 Q They asked for it from you or from Leslie?

4 A They asked it from Leslie initially because
5 I was at work.

6 Q Okay.

7 A And then the second time I was here they
8 asked for it and that's when we started, okay, I
9 said -- that was a day off that I had. I think it was
10 the next day he came back and we said let me see if I
11 can find out where it's at. And that's when we found
12 out that Mike Mitchell had it and we brought it in
13 here and he was happy and did whatever he needed to
14 do.

15 Q Okay. What was your day off?

16 A It was a Friday. I can't tell you the exact
17 Friday.

18 Q Okay. So it was a Friday. Was it Friday in
19 February?

20 A I don't know.

21 Q Okay.

22 A It would have had to be Friday in February,
23 I guess. I don't know. I can't say for sure.

24 Q Okay.

1 **A** **It would had to have been -- it would had to**
2 **have been February. I think it would have been.**

3 Q Okay. So where are we with this now? Was
4 it a Friday in February yes or no, to the best of your
5 recollection?

6 **A** **My recollection, it would have been a Friday**
7 **in February.**

8 Q Okay. And Friday in February would have
9 been your day off or your day on because I forgot with
10 the in-between discussion?

11 **A** **It would have been a Friday that I had a day**
12 **off.**

13 Q Okay, sorry. Okay. And there would have
14 been a Friday in February where you had been in the
15 office. And on that Friday in February when you were
16 in the office someone from outside the Village of
17 Caseyville --

18 **A** **Yep.**

19 Q -- came back to the Village of Caseyville to
20 ask for the second time where is -- is there a siting
21 application?

22 **A** **He was told there was. We just didn't -- we**
23 **just didn't have it on us at the time because Mike**
24 **Mitchell had it in his office. We didn't know it was**

1 **in his office until he told us.**

2 Q Okay. And do you remember who this person
3 was?

4 **A No.**

5 Q And so, on Friday that you had off, did you
6 speak then with Mike Mitchell?

7 **A No.**

8 Q Okay. So, do you come in Saturday or
9 Sunday?

10 **A No.**

11 Q Would the following Monday have been a day
12 that you would have spoken with Mike Mitchell?

13 **A No. Leslie called Mike Mitchell on Friday.**
14 **Somebody contacted Mike Mitchell on Friday and he said**
15 **it was in his office. And we got it for the gentleman**
16 **so he could take care of whatever he needed to take**
17 **care of.**

18 Q Okay. So, a gentleman comes in -- I'm just
19 trying to summarize this, on a day earlier than Friday
20 that you have off in February?

21 **A Yes.**

22 Q The gentleman asks for a siting application
23 for Caseyville Transfer Station, you don't have it; is
24 that accurate so far?

1 **A** **I would say, yes, because I wouldn't say we**
2 **didn't have it. I didn't know we had it.**

3 **Q** The Clerk's office?

4 **A** **I didn't have it.**

5 **Q** The Village Clerk did not have it?

6 **A** **No, the Clerk's office did not have it, no.**

7 **Q** Okay, that's my question. And I'm sorry I
8 didn't phrase it that way. So on -- prior to the
9 Friday that you had off in February when a person -- a
10 gentleman from outside -- outside -- not employed with
11 the Village of Caseyville, came into the Village of
12 Caseyville and asked you or asked someone from your
13 office for a Caseyville Transfer Station siting
14 application, the Village Clerk did not have that
15 document to give to that person; correct?

16 **A** **Right.**

17 **Q** Okay. On the Friday that you had off in
18 February, that same gentleman came into the Village
19 and asked you, the Village Clerk, for that document?

20 **A** **Uh-huh.**

21 **Q** You did not have it at that time but had
22 Leslie call Mike Mitchell who then tracked down the
23 document and brought it to -- was it this conference
24 room?

1 **A Yes.**

2 Q For that gentleman --

3 **A Uh-huh.**

4 Q -- to view; is that an accurate statement?

5 MR. MANION: I'm going to object to the
6 form. I don't think he said that he didn't have it.
7 I think he said he didn't know where it was. That it
8 was in Mike Mitchell's office.

9 Q (By Ms. Pohlenz) Okay. Let me ask that
10 again. So on the Friday that you had off, when that
11 gentleman came back to the Village to ask for the
12 document, did you, the Village Clerk, have that
13 document in you the Village Clerk's possession?

14 **A No.**

15 Q Okay. Do you have -- is Fridays off a
16 regular thing for you in your schedule or is it an
17 occasional thing?

18 **A It's occasional.**

19 Q So if you were to look back in a calendar or
20 at work somewhere, would you be able to identify which
21 Friday off that this was?

22 **A Probably not.**

23 Q Okay. And why not?

24 **A Because I would have had two or three**

1 **Fridays off that month and then it goes from there.**

2 Q Okay. Do you, Rob Watt, as Village Clerk
3 have personal knowledge about how that box of four
4 binders came to be located in Mike Mitchell's office?

5 **A No.**

6 Q So the first time that you, Rob Watt, as
7 Village Clerk would have been able to file the
8 Caseyville siting application, Caseyville Transfer
9 Station, LLC application for site location approval
10 would have been on a Friday within February of this
11 year when you had off?

12 MR. MANION: Objection to the form of the
13 question. I think there's already testimony that the
14 ladies at the Clerk would stamp received on documents
15 and receive them.

16 MS. POHLENZ: But there's also testified
17 about this Friday in receiving this document. So let
18 me ask the question again.

19 MR. MANION: Well, because I think filing
20 has different meanings.

21 MS. POHLENZ: I'll ask it again.

22 MR. MANION: Okay.

23 Q (By Ms. Pohlenz) So, you're the only person
24 in the Village, the Village Clerk with the authority

1 to file a document; is that accurate?

2 **A Yes.**

3 Q And your first opportunity to file the
4 Caseyville Transfer Station, LLC site location
5 application would have been on that Friday that you
6 had off of work that you were in Village Hall and you
7 were able to get that document into your possession as
8 Village Clerk; is that accurate?

9 **A You mean that's the first time I saw it?**

10 Q Is that your first opportunity to have had
11 that document in your possession to be able to file
12 it?

13 **A For anybody to look at it, yes. If it came
14 in some other time before that it may have been
15 stamped, I don't know. I didn't take a look when I
16 saw it, so I don't know.**

17 Q Okay. So, if the Caseyville -- if a
18 document is stamped received by the Village --

19 **A Uh-huh.**

20 Q -- then as Village Clerk you consider that a
21 filed document?

22 **A Yes. That's how it is with FOIAs and
23 everything like that. Once it's stamped, that's the
24 date I have, until -- like anything, I have a certain**

1 **time frame to get that done. So once it's stamped at**
2 **the front it's pretty much...**

3 Q Okay. So, you go by the received date
4 that's stamped at the front?

5 **A Pretty much, yes.**

6 Q Okay. So, if on the Friday you had off, you
7 received these four binders and within that four
8 binders there was a received stamp on it, say, of the
9 Thursday just prior, then it would be -- you would
10 consider that filed on the Thursday just prior or
11 would you consider it filed when it came into your
12 possession?

13 **A It would have been filed whenever it was**
14 **stamped, that's how I see it.**

15 Q Okay. And so for a document that does not
16 have any stamp, do you as Village Clerk, can you tell
17 us in your official capacity when that document is
18 filed?

19 **A No document should be coming in here without**
20 **being stamped.**

21 Q Okay. If there is a document that does not
22 have a file stamp can you, as Village Clerk, tell me
23 in your official capacity whether that document is
24 filed or if that -- let me strike that.

1 If a document -- If I show you a document
2 and it has no file stamp, in your official capacity as
3 Village Clerk is it your opinion that a document, that
4 document with no file stamp, is a filed document with
5 the Village of Caseyville?

6 **A Once it gets into my possession it would be,**
7 **I would probably --**

8 Q You would have it stamped?

9 **A Stamped.**

10 Q Correct.

11 **A If I didn't see it on there.**

12 Q Okay. So just then to be clear with this.
13 So if a document comes into your possession with no
14 file stamp, then once it's in your possession it's
15 filed?

16 **A Right. Because I would ask Leslie and them.**

17 Q You would ask someone to do it, okay.

18 **A I would ask them why it wasn't stamped**
19 **initially, because it could have come in three or four**
20 **days before that, before I got it. So then it would**
21 **be a matter of going back saying, hey, why wasn't this**
22 **stamped, when did you receive it.**

23 Q Okay.

24 **A So it just doesn't come in here and I just**

1 sit there and go, oh, okay, I got it just know. I
2 will go back and say, hey, when did you guys receive
3 this and then we would go from there.

4 Q Okay. And do you know who, Leslie or Keri
5 received this document?

6 A I can't tell you that.

7 Q Okay. And you don't know how the document
8 came to be in the Village?

9 A I don't know how it got into Mike's office.
10 It should have been delivered to me. So I don't know
11 how somebody put it in his office.

12 Q Okay. So, as you sit here today, as Village
13 Clerk, can you tell me with specificity on what date
14 the siting application for Caseyville Transfer
15 Station, LLC was filed with the Village of Caseyville?

16 A I can't say that off, no. Because I don't
17 know when it actually -- when somebody actually took
18 possession of it. I can't say that. I mean, it could
19 have been the day that -- the first day that the
20 application should have been filed, I don't know.

21 Q Okay. Can the Public Works Director take
22 possession of documents, legal documents, and have
23 that be an official filing of the Village Clerk?

24 A It would have had to come in through means,

1 to the Admin section first. It doesn't go straight to
2 whoever. It would had to have come through the Admin
3 section. No one takes -- no one takes anything until
4 it goes through the Admin section.

5 Q Okay. And the process used through the
6 Admin section is that it would have received a
7 received stamp?

8 A Right.

9 Q And then you would have received it with the
10 received stamp?

11 A If it wouldn't have been put into Mike
12 Mitchell's office, right.

13 Q I'm just talking about the normal --

14 A In general. In general, yes, it would be in
15 my box and I would look at it and then we would go
16 from there.

17 Q Okay. And you would consider it received
18 the day of the received stamped?

19 A Right.

20 Q Okay. So if something came in, in general,
21 that had no received stamp and you received it, then
22 you would consider it received the date that you
23 actually got it in your possession and then had Leslie
24 stamp it?

1 MS. LIVINGSTON: I'm going to object.

2 MR. MANION: Objection. He already
3 testified that he'd try and figure out when it was
4 received and that would be the filing date.

5 THE WITNESS: Right.

6 MS. LIVINGSTON: Not only that, there's a
7 legal effect to the filing date that this witness may
8 not comprehend. I'm sure he doesn't understand that
9 you are challenging the City's decision and that the
10 applicant, in fact, had to do a notice in the
11 newspaper to say what date he would file it and that
12 it is important that he file it on that date. So the
13 authority to file or whatever when it was received
14 he's saying he doesn't know. So, I don't think that
15 you can ask --

16 MS. POHLENZ: I'm going to object to your
17 narrative here because you're not testifying right now
18 and I'm asking this witness questions. So we're just
19 delaying him.

20 MR. MANION: All right. Well, I'm going to
21 object to any questions asking -- using the phrase
22 "filing" because that's asking for a legal conclusion.

23 MS. LIVINGSTON: That's my objection.

24 MR. MANION: If you want to ask him when it

1 was received and whether his understanding is what the
2 effect of the receiving of it is.

3 MS. POHLENZ: I don't think the words --

4 MS. LIVINGSTON: Which he's already
5 testified. Asked and answered.

6 MS. POHLENZ: You know, I'm going to -- he's
7 already testified as to, you know, filing, he
8 understands what the word filing is, he's the Village
9 Clerk.

10 MS. LIVINGSTON: Right. Then it's already
11 asked and answered.

12 MR. MANION: Then it's already been asked
13 and answered then. Let's move on.

14 Q (By Ms. Pohlenz) I believe you stated that
15 all documents that came in concerning -- into the
16 Village Clerk's office concerning the Caseyville
17 Transfer Station went into a box in the conference
18 room. Is that an accurate restatement of what you've
19 said today?

20 A Are you talking about the transfer station
21 stuff or are you talking about general documents?

22 Q I'm just saying everything after the
23 application that came in from people, including the
24 applicant and other people. You put them all in one

1 place in this conference room?

2 **A If it came in, yes, it went in there. If we**
3 **received it, it went in there.**

4 Q Okay. So, for example, do you recall
5 receiving an appearance from me saying that I was
6 going to participate in this proceeding?

7 **A I've seen a lot of appearances but I**
8 **don't -- I can't say definitively which ones I**
9 **actually saw --**

10 Q Okay.

11 **A -- so -- because the Mayor got a copy of it.**
12 **So, I can't say if he did or not. I don't know.**

13 Q Okay. So, what was the process for -- what
14 did you do after you received a document that came in
15 to be part of the public record for the Caseyville
16 Transfer Station, LLC?

17 **A It would have been -- if it had something to**
18 **do with that, we would have put it in the box and left**
19 **it in there.**

20 Q Okay. And you just mentioned that you made
21 a copy for the Mayor. Was it something --

22 **A No. The Mayor would receive a copy.**
23 **Everything that was done was in duplicate. He would**
24 **receive a copy of it. It had different people's names**

1 on it, he would have got a copy of it. Just sort of
2 like the notices we just got for all of this. He
3 received a copy. There was copies in there. He would
4 have had a copy sent to him in person.

5 Q Was that your people who work with you, like
6 Leslie who would make that copy?

7 A What copy are you talking about?

8 Q The copy you're referencing.

9 A The copy I'm referencing?

10 Q Yes.

11 A For the Mayor?

12 Q Yes, correct.

13 A The Mayor would receive his own in the mail,
14 it would go directly to him.

15 Q Okay. So when a document was addressed to
16 both the Mayor and the Village Clerk, that's what
17 you're referencing --

18 A Yes.

19 Q -- when you said the Mayor would get a copy?

20 A Yes.

21 Q I don't know what you're talking about. I'm
22 just trying find out if you're making the copy or your
23 office was making the copy.

24 A No, I think I said that it was -- that we

1 **both would received it in the mail.**

2 Q Okay. But that's when it's addressed to
3 both of you?

4 **A Right.**

5 Q Okay.

6 MS. POHLENZ: Don, you want to ask
7 questions?

8 MR. MORAN: Yes, I have some questions.

9 [EXAMINATION]

10 BY MR. MORAN:

11 Q Good evening, Mr. Watt. My name is Don
12 Moran. I represent the Village of Fairmont City.

13 Is it the regular and ordinary course of
14 business for the Clerk's office to stamp each document
15 that is filed with the Clerk?

16 **A Yes. If it's received at the window, it
17 will be stamped.**

18 Q When you say "at the window", which window
19 are you talking about?

20 **A The administrative window out here.**

21 Q That's the window immediately to the right
22 as you walk in the front door?

23 **A Yes.**

24 Q So, if a document was not presented at that

1 window, it's dropped on the floor, it's given to
2 somebody else, it somehow gets lost here in the
3 Village and it does not receive a file stamp, do you
4 consider that document filed with the Village?

5 **A Now, you're saying it's lost and stuff like**
6 **that, how would I -- how would I have considered that**
7 **part of the Village record if it's lost.**

8 Q Well, that's my question.

9 MR. MANION: Objection, calls for
10 speculation.

11 Q (By Mr. Moran) Is it the Village practice, in
12 the ordinary and regular course of business, to
13 consider any such documents that have not been
14 presented at that window to the right and file stamped
15 as being filed with the Village?

16 MR. MANION: I'm going to object, asked and
17 answered. I think he already said he considered it
18 filed when it was received and if it didn't have a
19 stamp he'd try to figure out when it was received and
20 then it would be stamped for that date.

21 Q (By Mr. Moran) No, I'm asking for the regular
22 and ordinary course of business practice of the
23 Village in determining whether a document that comes
24 here to the Village, whether it's considered filed if

1 it is -- it has not received a date stamp.

2 A I wouldn't see that it would be that way
3 because everything -- all the mail comes through here,
4 everything comes through that administrative office.
5 It would be turned into our boxes with a stamp. If
6 not opened, stamped on the envelope and stamped on the
7 document inside. So nothing would be coming in here
8 without a stamp. And if it did, I would go back and
9 say, hey, when did you guys receive this and then they
10 would stamp it for what date they actually saw it or
11 it would be that day.

12 Q Is there any written policy or practice that
13 identifies when a document is considered to be filed
14 with the Village?

15 A I've never seen one. But this was general
16 practice for the whole Village before I got here. So
17 it's not just, Rob Watt, Village Clerk, that made this
18 up. This is how it's been for maybe 26 years.

19 Q What is that, an oral policy or unwritten
20 policy?

21 A I can't say either way. I mean, how am I
22 supposed to know that? I mean, I wasn't here when
23 they made the policy. Even if it is there, I don't
24 know. I mean, you're asking me to go back when George

1 **Chance was Mayor when he first got here and say,**
2 **hey --**

3 MR. MANION: Let him ask a question.

4 Q (By Mr. Moran) What I'm asking, Mr. Watt --
5 and obviously I'm not doing a very good job of it.
6 I'm asking you whether there is a written policy. And
7 if there isn't, simply say there is no written policy?

8 A **I can't say whether there is or not.**

9 Q So you're unaware of whether there is or
10 not?

11 A **I don't know.**

12 Q Okay. So the policy that you've told us
13 about today, what is the source of that policy? Is it
14 something you heard from someone? Is it something
15 that's in writing some place? How did you come to
16 learn that that is the policy?

17 A **That's how they've always done it.**

18 Q That's my question.

19 A **I don't know what more you want me to say**
20 **here. Do you want me to say there isn't one? I don't**
21 **get your question. I think I answered it. I don't --**
22 **when I got here, that's how the general practice was.**
23 **I don't get -- I didn't ask if there was a policy. It**
24 **was general practice.**

1 Q How did you learn about that general
2 practice?

3 A I guess when the first time something was in
4 my box and it had a stamp on it.

5 Q Okay.

6 A And then there you go. I didn't ask a
7 question then because that's how it was all the time.
8 So I didn't know I had to ask them a question that,
9 hey, why are we stamping this. I kind of figured it
10 out because it's date stamped that, hey, we received
11 it on this date because it says received and the date.
12 So I figured, hey, it's the date we received it and
13 then I would go file it.

14 Q Okay. That explains how you view a document
15 that receives a date stamp; correct?

16 A Right.

17 Q My question related to those documents that
18 for whatever reason do not receive a date stamp, is
19 there any policy in place that informs you or anyone
20 else at the Village as to whether that document is
21 considered filed if it lacks the date stamp?

22 A If it lacks a date stamp we would have to go
23 back and find out what the date is. There's no way
24 that we could have it not date stamped. If it came in

1 **without it then it would had to have a date stamp.**

2 Q Okay. With respect to the siting
3 application that we're talking about here, you've
4 already indicated that that siting application did not
5 receive a date stamp, the date that it came in;
6 correct?

7 MS. LIVINGSTON: We're talking about the
8 four binders now?

9 Q (By Mr. Moran) Yes, the siting application,
10 the four binders.

11 A **I can't say if it did or didn't. I said I**
12 **didn't look at it to see if it did. I didn't say if**
13 **it didn't or it did.**

14 Q Okay. My question is: Do we have that
15 siting application today?

16 A **Yeah.**

17 Q Okay. Does it bear a date stamp?

18 A **I would have to look at it and see. I**
19 **haven't looked at it.**

20 Q Well, could you take my word for it, it does
21 not have a date stamp. To this date it does not have
22 a date stamp.

23 A **I can take your word, that's fine.**

24 Q For this siting application, with no date

1 stamp, what you've told us is the policy is that if
2 you notice a document that is coming to the Village
3 and does not have a date stamp you or someone within
4 the Clerk's office will then take steps to try to
5 determine when that document came in so it could be
6 properly date stamped; correct?

7 **A Right.**

8 Q Was that done for the siting application?

9 **A If it's not on there I guess it didn't.**

10 Q So, as of today, there is no way for anyone
11 at the Village to determine when that siting
12 application was filed with the Village; would that be
13 correct?

14 **A I guess so.**

15 MR. MANION: Well -- all right.

16 Q (By Mr. Moran) Now, you mentioned about
17 somebody who would come in and ask to look at the
18 siting application.

19 **A Uh-huh.**

20 Q That person was a male?

21 **A Yes.**

22 Q And, in fact, that person came in to the
23 office on February 12th of 2014; isn't that correct?

24 **A I can't say whether or not.**

1 Q Well, the Friday of that week was February
2 14th, which is Valentine's day; correct?

3 A Okay.

4 Q Was that the day you took off, Valentine's
5 day?

6 A I -- I don't know.

7 Q Well, if you would assume for a moment --
8 well, let me ask this.

9 Do you have any information to indicate that
10 the male who came in to ask for the application, to
11 look at the application did not come in on February
12 12th of 2014?

13 A I -- I can't tell you the exact date he came
14 in, but I know he came in and got what he needed.

15 Q Well, he came in on February 12th and he
16 asked to see the application and he talked to you on
17 that date, didn't he?

18 A I don't know if I talked to him on February
19 12th or not.

20 Q Well, he, in fact, came in and talked to you
21 and you brought him into this room, do you recall
22 that?

23 A No.

24 Q And when you brought him into this room

1 there was no application in this room and you
2 indicated to him that the application was not
3 available for review as yet. Do you remember telling
4 him that?

5 **A I don't remember that, no.**

6 Q So, this individual left --

7 MS. LIVINGSTON: Okay, now --

8 Q (By Mr. Moran) -- the Village at that time;
9 is that correct?

10 MS. LIVINGSTON: -- I'm going to object on
11 foundation grounds because he's telling you that he
12 doesn't remember and now you're testifying how it
13 occurred when he's already told you he doesn't
14 remember. So you might want to get how much he
15 remembers because if he doesn't remember that, how's
16 he going to remember what he doesn't know.

17 MR. MORAN: Well, he'll tell me he doesn't
18 remember this.

19 MS. LIVINGSTON: Well, he just did. He's
20 told you that.

21 MR. MORAN: I'm moving from that point and
22 I'm asking him what happens next. If he recalls this
23 is what occurred.

24 MS. LIVINGSTON: Okay.

1 Q (By Mr. Moran) Well, in fact, Mr. Watt, would
2 it have been the Village practice for someone who came
3 in and asked to see a document and was told it was not
4 yet available for someone at the Village to then
5 follow up with that individual who had left a phone
6 number and contact him when the document was available
7 for review?

8 **A If it was left behind I would assume we**
9 **would do that, yes.**

10 Q Well, in fact, this individual received a
11 phone call at approximately 8:00 p.m. that Friday, the
12 Friday after the Wednesday, February 14th, indicating
13 that the application was available for review. Left a
14 voicemail, was that you who left that voicemail?

15 **A It could have been.**

16 Q And your message was that going forward --
17 presumably some time next week the person could come
18 back in and view the application; correct?

19 **A It should have been made available.**

20 Q And, in fact, that person did come in that
21 following week to look at the application?

22 **A I assume he did. I can't say if he did or**
23 **didn't.**

24 Q You don't recall having him come back and

1 then ask to see it and that it was made available for
2 him in this room that next week?

3 **A I don't remember me being here for that. It**
4 **may have been Leslie or somebody else that did it.**

5 Q Let me show you what has been marked as
6 Exhibit 14.

7 (Prev. marked Exhibit 14.)

8 Q (By Mr. Moran) I'll ask you to look at that
9 front page. Do you recognize the document at all,
10 have you ever seen it before?

11 **A Yeah, these are the documents that we**
12 **received on this -- yeah, I think I saw this. Because**
13 **these were the same thing that we got from -- yeah, I**
14 **saw those.**

15 Q Directing your attention to the date stamp
16 that appears on the first page of Exhibit 14.

17 **A Okay.**

18 Q Did you apply that date stamp?

19 **A No.**

20 Q Was this date stamp a date stamp that was
21 applied by someone from the Village of Caseyville? In
22 other words, do you recognize it as the Village of
23 Caseyville date stamp?

24 **A Yeah, it's one of ours.**

1 Q Okay. And as a Caseyville date stamp, would
2 this indicate that this document, this Exhibit 14, was
3 received by the Village of Caseyville on July 9th,
4 2014?

5 A That's -- yeah, that would have been
6 received, yeah.

7 Q Okay. And do you know if this document was
8 then put in the file or the area where all the
9 documents relating to the siting application would
10 have been put?

11 A It was put in an envelope with the other
12 stuff.

13 Q When you say in an envelope?

14 A Yeah, they were separate. We separated the
15 other correspondence that didn't go with the binders
16 we put in another envelope, so it was separated, so we
17 knew what was what, what came in and after.

18 Q And would Exhibit 14 have been distributed
19 to the other trustees or would it have just simply
20 been put in the envelope with the other material?

21 A It would have been made available for them
22 in here.

23 Q It would have been?

24 A Yes.

1 Q It would not have been sent to them in their
2 mailboxes?

3 **A We -- we were putting stuff in there and**
4 **they were advised that it would be in there.**

5 Q Okay. So the answer is it was not sent to
6 them in the mailbox?

7 **A It was not put in their mailbox.**

8 Q And that's Exhibit 14. Let me ask you the
9 same questions about Exhibit 15.

10 (Prev. marked Exhibit 15.)

11 Q (By Mr. Moran) Take a look and see if you've
12 seen that before.

13 **A Yep.**

14 Q Again, directing your attention to the first
15 page of Exhibit 15 it bears a date stamp, is that the
16 Village of Caseyville date stamp?

17 **A Yes.**

18 Q Was that applied by you?

19 **A Nope.**

20 Q Somebody?

21 **A Somebody in the office within the Admin,**
22 **yes.**

23 Q And does it accurately reflect that Exhibit
24 15 was received by the Village of Caseyville on

1 August 6th of 2014?

2 **A That's -- if it's on there, that's probably**
3 **when it happened.**

4 Q Was this document, as well, placed in the
5 envelope with the other siting materials?

6 **A Yes, it was put in there.**

7 Q And this document was not delivered or sent
8 to the individual trustees in their mailboxes?

9 **A No. Because, again, it was made available**
10 **to them there.**

11 Q Okay. And how was it communicated to the
12 trustees that the documents would be available to them
13 here in the envelope if they wanted to review them?

14 **A It was -- it was probably in passing when**
15 **they were sitting back before meetings and said, hey,**
16 **if there's any documents that we had here in this**
17 **office, in this conference room.**

18 Q So it would have been in a Village meeting
19 when you made the comments to them, the Mayor, or some
20 other person?

21 **A It wouldn't have been in a Village meeting,**
22 **no. It would have been prior to a meeting or just in**
23 **passing, hey, Mr. Mayor, we just got this, it's in**
24 **there.**

1 Q And so, it would have been the Mayor who
2 told them that the documents were available here, it
3 would have been you, it would have been Leslie
4 McReynolds?

5 A It would have been -- it could have been a
6 combination. The Mayor could have told them. Leslie
7 could have told them. I could have told them in
8 passing, hey, we got some new stuff it's in the box.

9 Q Available for your review?

10 A Right.

11 Q But there was nothing in writing sent to
12 them about the availability of these documents --

13 A No.

14 Q -- here for their review?

15 A No.

16 Q Thank you very much. Nothing further.

17 [EXAMINATION]

18 BY MS. LIVINGSTON:

19 Q If City Council members testified that they
20 thought they saw these documents in their box, would
21 you know if anyone else could have put it in their
22 box?

23 A Leslie could have put it in there.

24 Q Okay. So, you wouldn't know if they

1 actually received it in their box or not?

2 **A I don't, no.**

3 Q You only know you didn't put it in there?

4 **A Right, I didn't put it in there. If they**
5 **received it Leslie, could have made a copy. Keri**
6 **could have made a copy.**

7 Q Right. Mike Mitchell was my client for
8 eight years.

9 **A Okay.**

10 Q Can you tell me what his role is here?

11 **A He is the Zoning Administrator.**

12 Q All right. Is that a part-time job?

13 **A Yes, it is.**

14 Q And does he have regular hours?

15 **A I know he works here two days a week, but I**
16 **don't know the exact hours.**

17 Q All right. If someone were to apply for a
18 building permit or a change of zoning, they want to go
19 from residential to commercial or something like that,
20 once that would be received from the Clerk's office
21 during day time hours, would the Deputy Clerk or Keri
22 think that they should put that in Mike Mitchell's
23 box?

24 **A Yeah. It would probably go to him or if it**

1 **was needing signatures and stuff it would come to me**
2 **and the Mayor to sign or whatever.**

3 Q Okay. So, if there was any kind of a zoning
4 issue that was raised, was it understood in the office
5 that zoning issues were to be referred to Mike
6 Mitchell?

7 **A Yes.**

8 Q Okay. So, let me ask you this. Did you and
9 I just meet today right now?

10 **A Yes.**

11 Q Okay. So, we haven't had any conversations
12 before we came in here today?

13 **A No, ma'am.**

14 Q All right. So since we haven't and this is
15 all on the record, I want to talk to you about a
16 couple of things. Did you understand anything about
17 the fact that there is a statute out there that
18 relates to local siting approval?

19 **A This was the first time that I had to go**
20 **through this. So it was based on the attorney.**
21 **Whatever the attorney gave me advice on, I wouldn't...**

22 Q It's fair to say that while you've been
23 Clerk you've never received any application for local
24 siting --

1 **A No.**

2 Q -- other than this application?

3 **A Other than that one, yes.**

4 Q Okay. And how long have you been Village
5 Clerk?

6 **A It will be two years next May.**

7 Q All right. And as Village Clerk you are not
8 the person who is here during daytime hours?

9 **A Right.**

10 Q You have a Deputy Clerk and an
11 Administrative Assistant for that?

12 **A Yes.**

13 Q All right. So if someone filed a notice in
14 the newspaper that said I'm going to file something on
15 a certain day at Village Hall and they delivered it
16 that day and it was received, do you have some opinion
17 that they didn't do what they were supposed to do
18 because you didn't file it?

19 **A Can you say that again? I'm trying to --
20 I'm trying to catch up.**

21 Q That's all right. We had some conversation
22 about you have authority to file and other people
23 don't have authority to file.

24 **A Right.**

1 Q And so I'm just trying to figure out what it
2 means to have authority to file. For example, if you
3 receive bills, you're the person who puts them in the
4 right file. Yes?

5 **A The bills and billing and stuff is handled**
6 **by Leslie. I don't take care of bills and stuff like**
7 **that. I only take care of stuff with -- as it**
8 **pertains to Water Department stuff that, you know,**
9 **there are public notices for lawsuits against people**
10 **that are, I guess, forfeit on their properties and**
11 **stuff like that.**

12 Q Okay.

13 **A As far as billings and stuff like that,**
14 **invoices and stuff like that, that goes to Leslie.**

15 Q All right. So I want to make sure I
16 understand this issue of authority to file and what it
17 means to file. Okay. And I don't know if you know or
18 if I know what that means.

19 **A Right.**

20 Q But there seems to be an issue being made
21 about it. I just want you to understand why the
22 issue's being made.

23 **A Okay.**

24 Q They are challenging that this siting

1 application was not here on February 10th, the date
2 the newspaper notice said it had to be here.

3 **A Okay.**

4 Q And you testified, well, if I didn't file it
5 then it wasn't filed. So I want to make sure do I
6 understand what does that mean?

7 **A Oh, well, okay.**

8 Q So, I'm asking you what your understanding
9 is about somebody sending something in. If I had a
10 deadline on a zoning application and I got it here but
11 you didn't get here until nighttime hours, how does
12 that work?

13 MS. POHLENZ: Objection, narrative, compound
14 question. It's, frankly, a confusing question and
15 it's inconsistent with testimony already provided.

16 MS. LIVINGSTON: Right because the witness
17 didn't understand.

18 MR. MANION: You can answer the question if
19 you understand it.

20 MS. POHLENZ: One more objection is using --
21 it's also -- well, it's not relevant. Go ahead.

22 Q (By Ms. Livingston) Well, it is relevant. My
23 question is: If someone delivered a document to this
24 office on the day that it was due and you didn't see

1 it that day, do you consider that that person missed
2 their deadline?

3 **A No.**

4 Q Okay. And if it happened to be that a
5 document, say, four binders didn't happen to get a
6 stamp on it, is it your opinion then that that was not
7 received by the Village?

8 **A Well, if it's in the Village -- if it's in**
9 **the Village offices I would figure Mike Mitchell had**
10 **it, so it was delivered to the Village, so it would be**
11 **technically filed.**

12 MR. MORAN: I move to strike --

13 MS. POHLENZ: I move to strike.

14 MR. MORAN: -- both of those answers. The
15 last two answers that he's given as being legal
16 conclusions.

17 MS. POHLENZ: And I'll join in the motion.

18 MS. LIVINGSTON: Because that's what you
19 guys were asking him about. And the guy doesn't even
20 know what you're trying to do to trick him into. So
21 I'm just trying to clarify it.

22 MS. POHLENZ: No one is trying to trick
23 anyone except -- well...

24 MS. LIVINGSTON: Okay.

1 Q (By Ms. Livingston) So -- okay. Do you even
2 recall how I started that?

3 (The requested portion of the record
4 was read by the court reporter.)

5 Q (By Ms. Livingston) So, as you sit here
6 today, you do not personally know what day the siting
7 application for Caseyville Transfer Station was
8 actually received; is that true?

9 A Yes, ma'am.

10 Q Okay. But just because you don't know what
11 day it was received, that doesn't mean it wasn't
12 received; right?

13 A Yes, ma'am.

14 Q And, in fact, you found it in Mike
15 Mitchell's office?

16 A Yes.

17 Q And if Mr. Moran's testimony is correct, you
18 were looking for it the very first week that it was
19 here; is that true?

20 A Well, whenever the person came in, that's
21 when we were --

22 Q All right.

23 A If that was the first week, I can't say if
24 it was the first week or not.

1 Q All right. So if it was filed on February
2 10th and this individual came in on February 12th as
3 represented by Mr. Moran and then Friday was
4 Valentine's day and you let him in here then, in fact,
5 that individual would have seen the record within five
6 days of it being received; right?

7 MR. MORAN: Objection, that's not what I
8 said.

9 MS. LIVINGSTON: It isn't what you said?

10 MR. MORAN: I didn't say he came in here on
11 the 14th and looked at it. I said he received a
12 voicemail message --

13 MS. LIVINGSTON: On the 14th.

14 MR. MORAN: -- from an individual at the
15 Village at approximately 8:00 p.m. on February 14th, a
16 very unusual time, to say that the application was now
17 available for review.

18 MS. LIVINGSTON: All right. Okay.

19 **A Well, if it would have been eight o'clock at**
20 **night, I work til six, seven o'clock and I come here**
21 **after hours to do whatever work I have to do. If it's**
22 **peculiar to them, it's not peculiar to me.**

23 Q (By Ms. Livingston) All right. If what
24 Mr. Moran has just stated is the truth, then would it

1 be fair to say that you made the record available to
2 this individual as soon as you knew about it and you
3 indicated to him within the same week it was filed
4 that it would be available to him?

5 **A Yeah.**

6 MS. POHLENZ: Objection. He testified he
7 didn't know what date it was filed.

8 **A Right.**

9 MS. LIVINGSTON: I was asking if Mr. Moran
10 was correct in his statements if that would be a true
11 statement.

12 MS. POHLENZ: Mr. Moran didn't testify or
13 state what date it was filed. So, again, same
14 objection.

15 MR. MANION: You can answer it if you know.
16 If you understand the question.

17 MS. POHLENZ: Talk about a trick question.

18 MS. LIVINGSTON: Well, the application was
19 filed on February 10th, so it's not a trick question.

20 MS. POHLENZ: So far no one has testified to
21 that but let's have him --

22 MS. LIVINGSTON: I'm sorry. Mr. Siemsen
23 testified to that and he has hotel receipts that can
24 prove he drove down here from Chicago. So you can't

1 say no one testified to that. The person who applied,
2 testified that he applied on the date that he was
3 supposed to apply.

4 Q (By Ms. Livingston) So I'm just saying if
5 Mr. Siemsen's testimony is true and he filed it on the
6 10th and Mr. Moran's testimony is true and someone
7 asked for it on the 12th and got a voicemail on the
8 14th, then if those other people's testimonies are
9 true, then would that indicate to you that you were
10 being responsive to the individual looking for the
11 record within the same week it was filed?

12 MS. POHLENZ: Objection, calls for
13 speculation.

14 MR. MANION: You can answer it if you
15 understand it.

16 A It -- if the call was -- if we're going with
17 his call, it would have been probably the following
18 week if it was made available.

19 Q (By Ms. Livingston) Okay. You think that
20 Mr. Moran is incorrect?

21 A If he --

22 Q You think it was the next week?

23 A Right. Because if it was eight o'clock on
24 the 12th and he said it's a Friday, so...

1 MR. MORAN: The 14th.

2 MS. LIVINGSTON: Valentine's day.

3 A The 14th, right. If it was on a Friday and
4 he got the call, then it wouldn't have been available
5 that day for him. It would have had to have been the
6 following week.

7 Q (By Ms. Livingston) Right. Okay, I got it.
8 But I was just indicating that you were -- if you made
9 that phone call, you were being cooperative?

10 A Yes.

11 Q Okay. You mentioned that Susan Piassa,
12 P-I-A-S-S-A, had conversations with you?

13 MS. POHLENZ: I don't think he mentioned
14 that at all.

15 MS. LIVINGSTON: I wrote it down, so he
16 mentioned it. Would you like the court reporter to
17 word search it?

18 A The comment that I made was she asked for --
19 she came down and made copies of the -- of whatever
20 the application was, she was one of the persons that
21 came.

22 Q (By Ms. Livingston) Right.

23 A That's what I said.

24 Q I mean, you did mention she came in.

1 **A Yes. With a copier person to make copies of**
2 **whatever we had.**

3 Q All right. Did you have conversations with
4 her when she came in?

5 **A No, I wasn't here when she came in.**

6 Q You were just saying you were aware of it?

7 **A Leslie --**

8 MS. POHLENZ: He just said that she came in
9 to make copies, he never talked about a discussion
10 which is why I objected to your question. So you
11 wrote it down wrong.

12 **A Leslie would have taken care of that because**
13 **during the day I'm not here.**

14 Q (By Ms. Livingston) All right. Have you ever
15 had any conversations with Susan Piassa?

16 **A We've had conversations via e-mail, her**
17 **wanting FOIA requests for certain things. We've**
18 **talked how she wanted copies during meetings of**
19 **certain things. That's about it. Nothing other than**
20 **that.**

21 Q All right. Her FOIA requests and her
22 conversations with you asking for copies of things at
23 meetings, were they all related to the Caseyville
24 Transfer Station?

1 **A I think most of it was. I can't recollect**
2 **what the FOIA was for.**

3 **Q Okay. Were you aware that Susan Piassa and**
4 **her company were seeking to be exclusive trash haulers**
5 **for the Village of Caseyville?**

6 **A I did not know that.**

7 MS. POHLENZ: Objection.

8 **A I did not know that.**

9 MS. POHLENZ: It calls for speculation.

10 MS. LIVINGSTON: Well, no, I'm asking him if
11 he was aware and he said he wasn't, so he didn't
12 speculate.

13 **A Yeah, that's not -- no. I thought she was**
14 **interested in what everybody else was needing copies,**
15 **that's all I knew.**

16 **Q (By Ms. Livingston) Okay. Have you ever seen**
17 **as Village Clerk a proposal for an ordinance for local**
18 **siting approval?**

19 **A If that's the thing that we approved when**
20 **the initial -- I think it was the initial -- I want to**
21 **say it was the initial thing that we did for Mr.**
22 **Siemens, I think.**

23 **Q You're thinking of the host agreement.**

24 **A Right.**

1 Q All right.

2 A I think that's the only thing that I...

3 Q Okay. How many citizens live in Caseyville?

4 A I'm going wag 5,400 maybe. I have to go
5 with a wag, I don't...

6 Q I'd have said less, so I didn't realize.
7 That's good. All right. And how many board members
8 do you have on the Village board?

9 A Six.

10 Q Do you attend all of the Village meetings?

11 A I attend when I can or if I'm out of town.

12 Q Did you attend the May 29th public hearing
13 on the local siting approval?

14 A No. My wife's grandmother was in the
15 hospital.

16 Q Okay. At any time did anyone ever indicate
17 to you that you were not to receive documents after a
18 certain date on this local siting application?

19 A I think the attorney may have mentioned it.

20 Q All right. Do you recall what he said?

21 A Not offhand. I think he said there was a
22 certain time that there had to be a cut off. I don't
23 remember the exact verbiage.

24 Q All right. Do you know which attorney?

1 **A It would had to have been John Gilbert.**

2 Q All right. Did he send you anything in
3 writing that said, hey, here's your deadline, don't
4 accept anything after this date?

5 **A I don't think so.**

6 Q Okay. Now, if things were received
7 concerning the local siting application, does that
8 necessarily mean that you read the documents,
9 recognized the documents, paid attention to what the
10 documents were?

11 **A I may have briefly scanned some of them. I**
12 **know I read the replies back from Mr. Siemsen because**
13 **there was one that looked the same. It was the**
14 **application and then there was one that looked the**
15 **same. He was answering the questions to those, so I**
16 **needed to differentiate so I didn't throw one away.**

17 Q Okay, fair enough. What are the duties of
18 Leslie McReynolds?

19 **A Well, she's got tons of them. Deputy Clerk**
20 **is the one. She's the accounts receivable. She's --**
21 **she takes care of all our locust [ph] stuff,**
22 **financials, pretty much she's got a lot. I can't name**
23 **it all. I mean, there's a lot. I just -- off the top**
24 **of my head, that's the most important ones that she**

1 **does.**

2 Q It's fair to say that you rely heavily upon
3 her and her skills?

4 A **Yes. Because I wouldn't have any time to do**
5 **most of the stuff. People wouldn't have been able to**
6 **get what they needed if she wasn't here. I mean, her**
7 **taking care of it for me.**

8 Q Okay. And you mentioned that you have a day
9 job. Where is your day job?

10 A **It's at Scott Air Force Base.**

11 Q All right. What do you do for Scott Air
12 Force Base?

13 A **I'm the Chief of the Global Reach Planning**
14 **Center.**

15 Q What does the Global Reach Planning Center
16 do?

17 A **It's a conference center.**

18 Q For military?

19 A **Yes.**

20 Q So you coordinate meetings at the Global
21 Reach Conference Center?

22 A **Meetings, conferences, stuff like that,**
23 **yeah.**

24 Q Skype?

1 **A BTCs, DCOs, stuff like that.**

2 Q All right. The area you're in, does
3 everything shut down when somebody comes in?

4 **A Yeah.**

5 Q Yeah, I was in that room once. Okay. All
6 right. Is it fair to say that if a particular
7 document received by this office didn't have a file
8 stamp date on it and it still doesn't have a file
9 stamp date on it, that you would still consider that
10 if it was received by this office, that it was
11 received by this office?

12 **A Yes.**

13 MR. MORAN: Objection.

14 MS. POHLENZ: I join in the objection.

15 MR. MORAN: Asking for --

16 MR. MANION: He's already answered the
17 question.

18 Q (By Ms. Livingston) That's all right. I just
19 wanted to make sure. Although it might be good if I
20 could finish my question before the objection came.

21 MR. MANION: Were you able to get the
22 question down?

23 MR. MORAN: I think you did finish the
24 question.

1 MS. LIVINGSTON: No, I had two more words.

2 MR. MORAN: Well, you can throw them in.

3 MS. LIVINGSTON: No, she got it.

4 Q (By Ms. Livingston) Within the realm of your
5 personal knowledge, do you have any reason to believe
6 that the application for local siting filed by Mr.
7 Siemens was not filed on February 10th?

8 MS. POHLENZ: Objection. It is inconsistent
9 with -- he's already asked and answered the question.
10 It's -- you're asking it in a manner that
11 mischaracterizes what he's already said.

12 MS. LIVINGSTON: All right. I'm going to
13 give you my question again, just so the question and
14 the answer are next to each other and she has a
15 standing objection.

16 Q (By Ms. Livingston) My question was: Do you
17 have any basis of knowledge, personal to you, within
18 the realm of your knowledge, do you have any basis for
19 disputing that the application for local siting was
20 filed by Mr. Siemens on February 10th, 2014?

21 **A All right. Say that again because I'm**
22 **trying to...**

23 Q Do you have any reason to believe that the
24 application was not here on February 10th?

1 **A No, I don't. I -- no, I can't.**

2 Q Okay. I think we've covered it.

3 [EXAMINATION]

4 BY MS. POHLENZ:

5 Q At the same point, do you have any reason to
6 believe that the application was here on February 10th
7 personally?

8 **A That it was here?**

9 Q Yeah.

10 **A Yeah, it would had to have been if Mike**
11 **Mitchell had it, yeah.**

12 Q On a specific date?

13 **A On a specific date.**

14 Q I'm not saying that it was here in general.
15 I'm saying do you have personal knowledge that it was
16 here on February 10th?

17 **A I, myself, no.**

18 Q Okay. That's it.

19 MR. MORAN: I have a couple questions.

20 MR. MANION: Okay. I might have got skipped
21 along the way.

22 [EXAMINATION]

23 BY MR. MANION:

24 Q Did you ever speak with anyone within the

1 Village to try to determine when the box with the
2 binders was received in Village Hall?

3 **A I tried to talk -- I think I talked to Mike**
4 **Mitchell about it, but I can't recollect what the**
5 **conversation.**

6 Q Okay. Anyone else within the Village Hall?

7 **A The only other person I would have talked to**
8 **about it was Leslie.**

9 Q Okay. But it would be possible that if
10 Leslie was at lunch?

11 **A Keri could have taken care of it for her.**

12 Q And if Leslie was at lunch and Keri was sick
13 or using vacation --

14 **A There would have been somebody from the**
15 **Water Department would have took it.**

16 Q Okay. Does it happen from time to time that
17 if Keri's out for sick or vacation or Leslie's out for
18 sick or vacation and when one of them's out to lunch
19 across the hall --

20 **A Yes.**

21 Q -- they have to receive documents?

22 **A Yes, they have to receive documents.**

23 Q Okay. And if they do that, do you consider
24 those documents filed when received by the people

1 across the hall?

2 **A Yeah, because they would -- because the**
3 **office manager works over there.**

4 Q Okay. And the people across the hall
5 wouldn't have access to the received stamp?

6 **A No, they wouldn't have stamped it; no.**

7 Q Okay. So, a stamp isn't determinative of
8 whether a document is received or when it's considered
9 received; correct?

10 **A Yes.**

11 Q Okay. And basically you're -- within
12 Village Hall a very small amount of the time during
13 business hours; isn't that correct?

14 **A Oh, yeah, that's definitely correct.**

15 Q Okay. And you rely on the Village
16 employees--

17 **A Yes.**

18 Q -- to receive documents for you as Village
19 Clerk?

20 **A Yes.**

21 Q Okay. I don't have any other questions.

22 MR. MORAN: I do.

23 {C}* * *

24 {C}* * *

1 [EXAMINATION]

2 BY MR. MORAN:

3 Q Mr. Watt, do you have any information or
4 personal knowledge that Leslie McReynolds delivered
5 any materials out of that envelope or from that box
6 that had siting materials to any of the mailboxes of
7 the trustees?

8 A I wouldn't say I would have seen her, no.

9 Q So you have no personal knowledge that that
10 actually happened; correct?

11 A If she did, she did it on her own. She
12 was --

13 Q I'm sorry, that's not my question. My
14 question is: You don't have any personal knowledge.
15 I don't want you to speculate. You did when you
16 answered Ms. Livingston's question. So that's what
17 I'm trying to get at now. I don't want any
18 speculation.

19 Do you have any personal knowledge that
20 Leslie McReynolds actually sent any materials from
21 that envelope or from that siting material area to any
22 of the mailboxes of trustees?

23 A No, I don't.

24 Q Okay. Can you give us any reasons why

1 neither you nor anyone at the Village tried to
2 determine the date on which the siting application was
3 actually received so that the proper date stamp could
4 be put on the application?

5 **A No, I don't.**

6 Q Thank you. That's it.

7 MS. LIVINGSTON: Okay. Thanks.

8 MS. POHLENZ: Would you like to tell him
9 about waiving or reserving?

10 MR. MANION: You have the opportunity to
11 read the transcript. So she's going to type up
12 everything that was asked and answered and you can
13 review it and you can basically just make sure that
14 everything was properly transcribed or you can waive
15 the right to do that. I usually suggest in these
16 circumstances like this that you just waive it unless
17 you particularly want to.

18 THE WITNESS: That's fine, I'll waive.

19 MR. MANION: Okay.

20 MS. POHLENZ: And while we have you here, I
21 just wanted to ask. yes.

22 COURT REPORTER: Stay on the record?

23 MS. POHLENZ: Yeah, still on the record. So
24 this process is a little bit different. So, we take a

1 deposition and then I'm going to have an opportunity,
2 as well as the other parties to read it. And I'm
3 going to suggest to the other parties if after I read
4 it I think, well, that's about -- you know, we'll save
5 some time here and we don't need to call you back for
6 hearing and I'll ask them if that's acceptable to them
7 that we do so. If either any one of us read it and we
8 think, well, we need to call you back for a hearing, I
9 understand that you're going to be traveling.

10 THE WITNESS: Yeah. I'll be gone the 28th.

11 MS. POHLENZ: Would you be available then on
12 the 27th to come back if we needed you to?

13 THE WITNESS: No.

14 MS. POHLENZ: Okay.

15 THE WITNESS: We are getting ready to do the
16 final pieces of the kits and stuff that we're taking
17 on the 27th.

18 MS. POHLENZ: What date would you be
19 available if we needed to ask you to come back?
20 Because my understanding from Mr. Manion was the 27th
21 at 9:00 a.m.

22 THE WITNESS: I thought it was the --

23 MR. MANION: We talked about that and I
24 asked you to stipulate to that and then you said you

1 wouldn't stipulate, so I don't -- we didn't have
2 anything further conversation.

3 MS. POHLENZ: You asked me to give up my
4 right to the deposition is what you asked --

5 MR. MANION: Right.

6 MS. POHLENZ: -- and I said I wouldn't.

7 MR. MANION: Right. And that was several
8 days ago, so I don't know. We haven't had any further
9 conversations about it.

10 MS. POHLENZ: Okay. So, I'm asking you
11 because I was told that 9:00 a.m. on the 27th you
12 would be available. Instead of attending the hearing
13 to accommodate that and, you know, have the subpoena
14 then be for the 27th. I'm not saying we're all going
15 to ask you to come back on that date because like I
16 said the likelihood is we're going to read this and
17 I'm going to ask everyone if they agree and that will
18 be sufficient.

19 MR. MANION: I don't know why this needs to
20 be on the record.

21 MS. POHLENZ: So I'm just asking when
22 you're -- when you could be available?

23 MR. MANION: Is the deposition done?

24 MS. POHLENZ: I'm just asking that this

1 continue to be on the record.

2 MR. MANION: Well, okay, I think the
3 deposition's already done. So I'm objecting to
4 anything else on the record.

5 MS. LIVINGSTON: For example, I don't know
6 why this is an issue either but it wasn't noticed as
7 an evidentiary deposition even though everyone knows
8 that you're unavailable on the date of the hearing.

9 MS. POHLENZ: We didn't know that when we
10 sent out the subpoenas for the hearing. So, I just
11 want to know when you would be available, Mr. Watt.
12 If you can let us know that will help us, if we needed
13 to schedule something. That's it.

14 THE WITNESS: I can't tell you right now. I
15 have to get back and look at my schedule and if I
16 can't make it on the 27th then I just can't.

17 MS. POHLENZ: Okay. Then what about the
18 26th or the 25th?

19 THE WITNESS: I'd have to look at my
20 schedule.

21 MS. LIVINGSTON: I'm sorry, you're asking
22 him if he could make it on Sunday or Saturday this
23 week?

24 MS. POHLENZ: It's not me who is expediting

1 this. I'm doing everything to compensate --

2 MS. LIVINGSTON: I'm sorry. We're just
3 following the rules and it was my understanding --

4 MS. POHLENZ: You have the right to waive
5 the rules.

6 MS. LIVINGSTON: Right. And we have the
7 right not to.

8 MR. MANION: We're done. Let's get out
9 here.

10 MS. POHLENZ: Thank you, Mr. Watt.

11 COURT REPORTER: Are we off the record?

12 MS. POHLENZ: We are off the record. Etran,
13 scanned exhibits and transcripts Friday morning by
14 10:00.

15 MS. LIVINGSTON: I would like the Exhibits
16 attached to the transcript. Scanned is fine. And I
17 need the transcripts Friday, also.

18 (Whereupon signature was waived, and
19 the deponent was excused.)

20 (The original exhibit retained by
21 counsel, a copy of exhibit attached to
22 the record.)

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REPORTER CERTIFICATE

I, Elizabeth A. Goodwin, RPR, MO-CCR,
IL-CSR, do hereby certify that there came before me at
Village of Caseyville, 909 South Main Street,
Caseyville, IL 62232,

ROBERT WATT,

who was by me first duly sworn; that the witness was
carefully examined, that said examination was reported
by myself, translated and proofread using
computer-aided transcription, and the above transcript
of proceedings is a true and accurate transcript of my
notes as taken at the time of the examination of this
witness.

I further certify that I am neither attorney
nor counsel for nor related nor employed by any of the
parties to the action in which this examination is
taken; further, that I am not a relative or employee
of any attorney or counsel employed by the parties
hereto or financially interested in this action.

Dated this 23rd day of October, 2014.

ELIZABETH A. GOODWIN, RPR, MO-CCR, IL-CSR

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ROXANA LANDFILL, INC.,)
)
 PETITIONER,)
)
 vs.) NO. PCB 15-65
) (Third Party Pollution
) Control Facility Siting
) Appeal)
)
 VILLAGE BOARD OF THE)
 VILLAGE OF CASEYVILLE,)
 ILLINOIS; VILLAGE OF)
 CASEYVILLE, ILLINOIS; AND)
 CASEYVILLE TRANSFER)
 STATION, LLC,)
)
 RESPONDENTS.)
 _____)
)
 VILLAGE OF FAIRMONT CITY,)
 ILLINOIS,)
 PETITIONER,)
)
 vs.) NO. PCB 15-69
) (Third Party Pollution
) Control Facility Siting
) Appeal) (CONSOLIDATED)
)
 VILLAGE OF CASEYVILLE,)
 ILLINOIS; BOARD OF TRUSTEES))
 AND CASEYVILLE TRANSFER)
 STATION, LLC.)
)
 RESPONDENTS.)

DEPOSITION OF LESLIE MCREYNOLDS
TAKEN ON BEHALF OF THE PETITIONER
OCTOBER 22, 2014

Elizabeth A. Goodwin, RPR, IL-CSR, MO-CCR
CSR No. 084.004310, CCR No. 831

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 (Copies of Exhibits attached to transcript.)

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
2 ROXANA LANDFILL, INC.,)
3 PETITIONER,)
4 vs.) NO. PCB 15-65
5) (Third Party Pollution
6) Control Facility Siting
7 VILLAGE BOARD OF THE)
8 VILLAGE OF CASEYVILLE,)
9 ILLINOIS; VILLAGE OF)
10 CASEYVILLE, ILLINOIS; AND)
11 CASEYVILLE TRANSFER)
12 STATION, LLC,)
13)
14 RESPONDENTS.)
15 _____)
16 VILLAGE OF FAIRMONT CITY,)
17 ILLINOIS,)
18 PETITIONER,)
19) NO. PCB 15-69
20 vs.) (Third Party Pollution
21) Control Facility Siting
22 VILLAGE OF CASEYVILLE,)
23 ILLINOIS; BOARD OF TRUSTEES))
24 AND CASEYVILLE TRANSFER)
25 STATION, LLC.)
26)
27 RESPONDENTS.)

18 DEPOSITION OF LESLIE MCREYNOLDS, produced,
19 sworn, and examined on behalf of Petitioner, OCTOBER
20 22, 2014, between the hours of 11:00 in the forenoon
21 and 12:30 in the afternoon of that day, at Village of
22 Caseyville, 909 South Main Street, Caseyville, IL
23 62232, before Elizabeth A. Goodwin, RPR, MO-CCR,
24 IL-CSR.

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A P P E A R A N C E S

Petitioner Roxana Landfill represented by
Ms. Jennifer Pohlenz of Clark Hill, PLC, 150 N.
Michigan Ave. Suite 2700, Chicago, IL 60601.

Respondent Caseyville Transfer Station
represented by Ms. Penni S. Livingston of Livingston
Law Firm, 5701 Perrin Road, Fairview Heights, IL
62208.

Petitioner Village of Fairmont City
represented by Mr. Donald J. Moran of Pedersen &
Haupt, 161 N. Clark Street Suite 3100, Chicago, IL
60601.

Respondent Village Board of the Village of
Caseyville, Illinois and Village of Caseyville,
Illinois represented by Mr. J. Brian Manion of
Weilmuenster Law Group, P.C., 3201 West Main Street,
Belleville, IL 62226.

Also Present: John Siemens, Esq.

1 IT IS HEREBY STIPULATED AND AGREED by and
2 between counsel for the COMPLAINANT/PETITIONER and
3 counsel for the RESPONDENT, that this deposition may
4 be taken in shorthand by Elizabeth A. Goodwin, a
5 Registered Professional Reporter, Certified Shorthand
6 Reporter and Certified Court Reporter, and afterwards
7 transcribed into typewriting, and the signature of the
8 witness is waived by agreement of counsel and the
9 witness.

10 0-0-0

11 LESLIE MCREYNOLDS,

12 of lawful age, being produced, sworn and examined on
13 the part of the Petitioner, and after responding "Yes,
14 I do" to the oath administered by the court reporter,
15 deposes and says:

16 * * * * *

17 [EXAMINATION]

18 BY MS. POHLENZ:

19 Q Leslie, have you ever been deposed before?

20 A No.

21 Q I imagine that you got some preparation
22 today from Mr. Manion, but I'm just going to go
23 through some ground rules real quick. Okay?

24 A Okay.

1 Q The court reporter is here to transcribe
2 what we say. So, it helps her out a lot in the
3 transcription if I wait for you to finish answering a
4 question and if you wait for me to finish asking a
5 question and we try not to interrupt each other so
6 that she can write without having to write what two
7 people are saying. Which I don't even know if she can
8 do.

9 **A Okay.**

10 Q Does that make sense?

11 **A Yes.**

12 Q Okay. In addition, if I say -- ask you a
13 question that doesn't make sense to you or you didn't
14 hear it, I ask that you just ask me to ask that
15 question again or tell me you don't understand it and
16 I'm happy to rephrase it or repeat it for you.

17 **A Okay.**

18 Q If you need a break at any time, let us know
19 and we are happy to do that.

20 **A Okay.**

21 Q Leslie, for -- you know what as -- for whom
22 do you work?

23 **A The Village of Caseyville.**

24 Q And what do you do?

1 **A Accounting.**

2 Q Accounting.

3 MR. MORAN: Could you ask her her name for
4 the record?

5 MS. POHLENZ: Oh, I'm sorry. That's a good
6 idea. I'm so focused on these documents because of
7 the mess I made for myself this morning.

8 Q (By Ms. Pohlenz) Could you please state your
9 name and spell it for the record?

10 **A Leslie, McReynolds, L-E-S-L-I-E,**
11 **M-C-R-E-Y-N-O-L-D-S.**

12 Q And, Leslie, what do you do for the Village?

13 **A I do the accounting and I'm the Deputy**
14 **Clerk.**

15 Q What are your responsibilities as the Deputy
16 Clerk?

17 **A To assist the Clerk as-needed.**

18 Q Okay. And do you have the authority,
19 without being specifically given to you by the Clerk,
20 to file documents on behalf of the Village?

21 **A File with who?**

22 Q With the Village.

23 **A Sometimes. I mean, I can pull ordinances,**
24 **resolutions, things like that, but as far as anything**

1 **legal, I go through him first.**

2 Q Okay. So, in other words, if someone came
3 in -- if I came in to file something with you, let's
4 say, my written comment that Roxana filed in the
5 course of the siting hearing. Would that be something
6 that you would file, that you would call him or had a
7 discussion with him in advance, anything that came
8 into the public record you were allowed to file?

9 A **I would just stamp it received and put it in**
10 **his box.**

11 Q Then what would happen after that?

12 A **I don't know.**

13 Q Okay. So, after you stamp it received and
14 but it in his box -- and that's his mailbox that's
15 located where?

16 A **Right outside of his office door.**

17 Q Okay. So, it's in the Village Hall outside
18 his office door. What -- How big is this box?

19 A **Probably 12-by-12.**

20 Q Okay. So, is it a box that's on the wall or
21 is it a box that's on like a desk or something?

22 A **Correct, it's on the wall.**

23 Q It's on the wall. Okay. So, when he comes
24 in then what he does with those documents you're not

1 aware of?

2 **A Correct.**

3 Q Okay. Would you put any documents on the
4 Caseyville Transfer Station, LLC location or site
5 location approval, would you put any documents into
6 the public record without him telling you to do so?

7 **A No. I filled in at the public hearing.**

8 Q That's right. And we'll get to that in a
9 little bit.

10 **A Yeah.**

11 Q In terms of that process maybe being a
12 little bit different from --

13 **A Correct.**

14 Q -- what your normal process was?

15 **A Yes.**

16 Q Okay. So, can we wait for that for a little
17 bit later?

18 **A Yes.**

19 Q Okay. Now, do you know who John Siemsen is?

20 **A Yes.**

21 Q So, you recognize him sitting here at the
22 table with us?

23 **A Yes.**

24 Q Okay. And at some point John Siemsen came

1 into Village Hall up to the glass window where the
2 administrative offices are located. Is that also
3 where you sit?

4 **A Yes.**

5 Q Okay. Do you recall him coming into the
6 office with a box of four binders of documents?

7 **A No.**

8 Q Okay. So, did you ever take a box with four
9 binders of documents from Mr. Siemsen and bring them
10 into the Village?

11 **A I don't know.**

12 Q You don't know, okay.

13 Do you recall Mr. Siemsen ever contacting
14 you -- and it can be by e-mail or by phone or however,
15 in person -- to let you know, hey, Leslie, I want to
16 let you know that I'm going to be filing a siting
17 application -- he didn't have to use those exact
18 words, but the gist of it -- on February 10th, I
19 wanted to give you a heads up I'll be coming by. Did
20 you ever receive a call or any type of communication
21 from him?

22 **A I don't know.**

23 Q Okay. Do you know of anyone in the Village
24 Hall who accepted on behalf of the Village a box with

1 four binders of documents from Mr. Siemsen?

2 **A I don't know.**

3 Q Does anything that comes into the Village --
4 well, let me back up. Strike that.

5 With respect to that front office, who are
6 the people who -- besides you at that front office,
7 who someone comes into the Village to deliver a
8 document would be receiving it?

9 **A Keri Cary.**

10 Q Okay. And, I'm sorry, the name is Cary? Is
11 this Keri Davis Cary?

12 **A Correct.**

13 Q Can you spell her name for us?

14 **A K-E-R-I, C-A-R-Y.**

15 Q Keri Cary. So, other than you and Keri
16 Cary, and I guess the exception of Rob Watt is there
17 too, is there anyone else who would be bringing
18 documents from -- who are not employed by the
19 Village -- is there anyone else who would be accepting
20 documents from someone who is not employed by the
21 Village and bringing them into the Village?

22 **A No.**

23 Q When something is received by either you or
24 Keri Cary, is there a received stamp that goes on that

1 document?

2 **A Yes.**

3 Q And does -- To your knowledge, to your
4 understanding, does Keri Cary follow the same
5 procedure that you do, put the received stamp on it
6 and put it in Rob Watt's box?

7 **A I don't know.**

8 Q You don't know.

9 **A I'm the only one with a received stamp.**

10 Q Okay. So what is Keri Cary's position with
11 the Village, if you know?

12 **A Administration.**

13 Q Does she sit at a different part of the --
14 there seems to be like two areas when you first walk
15 in with glass windows. Does she sit at one and you
16 sit at the other?

17 **A Yes.**

18 Q Okay. Is there a difference between the two
19 in terms of their labeling?

20 **A The window I sit in front of does not have
21 an opening, a way to speak to the public.**

22 Q And Keri Cary's does?

23 **A Yes.**

24 Q Is there different signage that you know of?

1 **A There's no signage on the window that I sit**
2 **in front of.**

3 Q Okay. And what does Keri Cary's window say,
4 do you know?

5 **A Administration.**

6 Q If someone comes to Keri Cary's window with
7 documents to be filed or received by the Village, does
8 she take them or does she tell you to come over to her
9 window?

10 **A She takes them.**

11 Q Okay. And then what does she do with them,
12 when you've seen her take documents?

13 **A She puts them in the boxes for whomever they**
14 **were addressed to.**

15 Q Okay. And what about documents that are
16 being filed with the Village, would she take them or
17 if you're sitting there would she ask you to come
18 over?

19 **A She would take them.**

20 Q Okay. And what would -- when you see her
21 take documents when you're also sitting there, what
22 does she do, does she ask you ever for your file
23 stamp?

24 **A No.**

1 Q If we see --

2 A **Occasionally.**

3 Q Okay. I'm going to hand you a big stack of
4 e-mails that I've produced previously but -- do you
5 want to see all of them?

6 MS. LIVINGSTON: No, that's all right.

7 MS. POHLENZ: Okay.

8 MS. LIVINGSTON: I'm going to take your word
9 on that one.

10 MS. POHLENZ: And we're going to mark it --
11 Brian, is it okay if I mark it?

12 MR. MANION: Yeah, sure.

13 MS. POHLENZ: Mark it Deposition Exhibit No.
14 13.

15 (Exhibit 13 was marked for
16 identification by the court reporter.)

17 Q (By Ms. Pohlenz) I want you to go through
18 this -- and don't worry we're not going to sit here
19 and hover over you looking at it, take your time and
20 go through it. I want you to make sure that these are
21 e-mails that are between you and me. It could also be
22 between you and me and other people but at least you
23 and me are on these e-mails, or you and someone else
24 are on these e-mails, such that you can look at this

1 and say, yes, this is a true and accurate copy of an
2 e-mail I sent or that I received as Leslie McReynolds.
3 Okay?

4 **A Okay.**

5 MR. MANION: If you have any questions when
6 you're going through them, just let me know and we can
7 go talk about it if we need to.

8 **A Do you want me to read all of them or do you**
9 **want me to just verify that these are from me or to**
10 **me?**

11 Q (By Ms. Pohlenz) Right. Well, I want you to
12 verify that the content is true and accurate. So you
13 are going to have to read them.

14 **A Okay.**

15 Q You may read them and realize yes, this
16 is -- yes, I realize this is an e-mail I wrote and you
17 can skim through it in doing that, that's really up to
18 you. But I need you to look through every page of
19 that to make sure that these are documents that either
20 you received or that you sent.

21 **A Okay.**

22 MS. LIVINGSTON: Okay. Just so we're all on
23 the same page. If you have specific questions about
24 specific e-mails that you want to ask her about, it

1 might be more efficient if you point those e-mails out
2 and ask her is that one true, is that one true, as
3 opposed to having her read an inch stack of things
4 that say, hey, how are you doing.

5 MS. POHLENZ: But they don't say, hey, how
6 you doing.

7 MS. LIVINGSTON: So every single one of them
8 is important to you?

9 MS. POHLENZ: I have culled out, yes, about
10 half of what was produced.

11 MS. LIVINGSTON: Okay. All right. Then she
12 needs to read them all.

13 I think there is also an issue about the
14 fact that you're not listed as a witness. So, if you
15 are asking us to stipulate to admissibility of e-mails
16 between you and Ms. McReynolds, I think we might have
17 an issue with that. I just thought I would raise it
18 now while you are laying this foundation because you
19 may find us not stipulating to that. Just thought I
20 would mention it.

21 MS. POHLENZ: You know, you can make
22 whatever objections you're going to make. I'll
23 proceed with Ms. McReynolds.

24 We'll go off the record and let her look

1 through them.

2 (Recess.)

3 MR. MANION: Why don't we stay on the record
4 because counsel has agreed to three hours.

5 MS. POHLENZ: Okay.

6 Q (By Ms. Pohlenz) Okay. Leslie, I'm handing
7 you page 1 of Exhibit No. 13. This is -- shows an
8 e-mail. It states it's from you to me on Tuesday,
9 June 10th, 2014 at 11:30 a.m. Can you take a look at
10 that e-mail and tell me is that a true and accurate
11 copy of the e-mail that you sent to me on Tuesday,
12 June 10th at 11:30 a.m.?

13 A Yes.

14 Q Okay. And below it is an e-mail from me to
15 you, Rob Watt. And then this "RW" e-mail is also Rob
16 Watt's; correct?

17 A Yes.

18 Q And it is dated June 10th, 2014 and it is at
19 11:26 a.m. Can you take a look at that and tell me
20 whether that's a true and accurate copy of an e-mail
21 you received?

22 A Yes.

23 Q Okay. I'm showing you page 2 and 3 of that
24 exhibit. And this contains an e-mail from me to you,

1 as well as Rob Watt, dated May 29th, 2014 at 9:05 a.m.
2 Can you take a look at that e-mail and tell me whether
3 that's a true and accurate copy of an e-mail that you
4 received from me?

5 **A Yes.**

6 Q Okay. So that is pages 2 and 3 of that
7 exhibit.

8 MS. LIVINGSTON: I was just going to ask
9 you, too, are you changing your mind as to what's in
10 the Exhibit?

11 MS. POHLENZ: I'm pulling out some
12 duplicates.

13 MS. LIVINGSTON: Oh, all right. Because
14 maybe it makes more sense that if we are going to run
15 copies of this to run them now so we're looking at
16 them while she's looking at them and we know what
17 she's actually looking at.

18 MS. POHLENZ: If you want that, you can
19 exclude it from the three hours.

20 MS. LIVINGSTON: Well, I don't think you're
21 going to go the full three hours.

22 MS. POHLENZ: I know. But since he's
23 tracking it, it needs to be excluded.

24 MS. LIVINGSTON: I don't disagree.

1 MS. POHLENZ: Okay. So are we --

2 MS. LIVINGSTON: I'm just saying if that
3 would be easier.

4 MS. POHLENZ: Okay. Do you want to stop the
5 deposition and do that?

6 MR. MANION: All right. If that's what
7 everyone wants.

8 MS. LIVINGSTON: Okay. I think it would
9 probably make better sense for you and I to be reading
10 while she is reading them so we will know what she's
11 reading. Okay.

12 MR. MANION: All right. Okay. How many do
13 we need four?

14 MS. POHLENZ: No. Okay. We are off the
15 record.

16 (Off the record.)

17 Q (By Ms. Pohlenz) So, I am handing you page 4
18 and 5 and 6 of what we've marked as Exhibit No. 13.
19 Can you take a look at e-mails dated June 10th, 2014,
20 11:32 a.m. from me to you and Rob Watt is copied.
21 June 10th, 2014 at 11:30 a.m. from you to me, and Rob
22 Watt is copied on those three pages. Tell me if those
23 are true and correct copies of what I sent to you and
24 what you sent to me.

1 **A Yes.**

2 Q Okay. And I'm going to hand you now what's
3 been marked as page 7 and 8 of Deposition Exhibit 13.
4 This is an e-mail from me to you on June 13th at
5 6:56 a.m. Can you tell me whether this e-mail from me
6 to you is a true and accurate copy of an e-mail you
7 received from me?

8 **A Yes.**

9 Q Okay. And below it here that isn't anyone.
10 It looks like what happened was I was trying to repeat
11 something that I put up in here, but regardless where
12 it says on or June 11th, 2014, 11:22 a.m. Leslie
13 McReynolds' wrote, is below it, please also provide,
14 that's not you writing, that's --

15 **A Correct.**

16 Q Okay. I just wanted to make that clear
17 that's not part of -- that falls below my signature
18 line on the e-mail on page 7 that we just discussed
19 date -- from Friday, July 13th at 6:56 a.m.

20 **A Yes.**

21 Q Okay. And I'm giving you what is page 9,
22 10, 11 and 12 of Exhibit No. 13. I'll ask you to take
23 a look at page 9 and this is an e-mail from me to you
24 and it is Friday, June 13th, 2014 at 12:13 p.m. If

1 can you tell me if that is a true and accurate copy of
2 an e-mail that you received from me.

3 **A Yes. Oh, do you want me to go through them**
4 **all?**

5 Q No, that's okay. I'm going to turn the page
6 because I'm going to skip through, hopefully, some of
7 them. Starting on the bottom of page 9 and going
8 to -- starting on the top of page 10, there is an
9 e-mail from Rob to you. Below that -- then the e-mail
10 from Rob to you is dated June 13th, at 8:45 a.m., and
11 then below that is an e-mail from you to Rob and
12 that's dated June 13th at 8:22 a.m. So it preceded
13 the one from Rob to you. Are those true and accurate
14 copies of e-mails that were exchanged between you and
15 Rob Watt?

16 **A Yes.**

17 Q And it got to me because then you forwarded
18 it to me with a response to my question, is that
19 accurate?

20 **A I assume.**

21 Q Okay.

22 **A I mean, I -- at that point there were so**
23 **many e-mails going back and forth, I think if you had**
24 **sent me something then I would forward to him or he**

1 **would forward to me so I know there's a lot of blanks**
2 **in-between there.**

3 Q Okay. So, that's just the general process.
4 In these e-mails there's quite a few where I send you
5 a request and say I'm looking for these documents.
6 The ones that we just read -- specifically I was
7 looking for some documents that you showed me through
8 the window on May 28th, so the day before the hearing,
9 I came in and asked to see the record.

10 **A Okay.**

11 Q Do you recall showing me a stack of
12 documents with a black binder clip through the window
13 and saying to me that you had to check with Rob before
14 you could turn them over to me?

15 **A Yes.**

16 Q And so I was asking for those documents --
17 because I recognize that on the top sheet of what you
18 showed me with the black binder clip, there were some
19 e-mails.

20 **A Okay.**

21 Q So, that was part of what was in my request
22 and I think we go back and forth a few times trying --
23 for me trying to explain that to you. Do you recall
24 that content?

1 **A Yes.**

2 Q And then in addition to that, another thing
3 I was asking for was a Certificate of Publication that
4 I understood Mr. Siemsen presented at the May 29th
5 hearing and that was included in my request to you; do
6 you recall that?

7 **A The request or the publication?**

8 Q The Certificate of Publication, me asking
9 for it in an e-mail?

10 **A Yes, you asking for it.**

11 Q And then you in response asked Rob, here's
12 some things that Jennifer Sackett Pohlenz is asking
13 for, can I turn -- can I give them to her, what's the
14 response. Is that kind of the procedure that was
15 followed?

16 **A Always, yes.**

17 Q Always. So, not just with those e-mails but
18 any time I would ask you for things, you would ask Rob
19 and then he would respond to you and you would get
20 back to me?

21 **A Yes. Yes. So, if you would send me like a
22 second request e-mail then I would forward it to Rob
23 and ask him if he had addressed it or not and then go
24 from there.**

1 Q Okay. So, when we see that in this packet,
2 even when we don't see it in this packet, you would
3 have done that as just your procedure --

4 A Yes.

5 Q -- you would have checked with him?

6 A Yes.

7 Q Okay. All right. Now, moving to page 13.
8 This is an e-mail in the middle of the page from you
9 to me dated June 17th at 8:58 a.m. And then on the
10 top of the page is an e-mail from me to you dated
11 June 17th at 11:25 a.m. Can you take a look at those
12 and tell me whether those are true and accurate copies
13 of e-mails that were exchanged between you and me?

14 A Yes.

15 Q And also switched -- switching back here --
16 or here, actually. So, at the e-mail that is from you
17 to me dated the 17th of June at 8:56 a.m., is that
18 your response to my e-mail at the bottom of the page
19 that goes on to page 14 that's dated June 13th at
20 12:13 p.m.?

21 A So, is this my response to your e-mail?

22 Q Below it.

23 A Below it.

24 Q Correct. So, is your June 17th e-mail on

1 page 13 your response to my June 13th e-mail below it
2 on page 13 to 14?

3 **A Yes.**

4 Q And is that a true and accurate copy of that
5 exchange?

6 **A Yes.**

7 MS. POHLENZ: I'm going to take out some
8 duplicates. The next three pages I pulled because
9 they're duplicates.

10 MS. LIVINGSTON: After you listed 15, 16,
11 and 17?

12 MS. POHLENZ: No. We ended on 14.

13 MR. MANION: So the one that starts, "here
14 we go" and the two following.

15 MS. LIVINGSTON: Okay. So "here we go", do
16 you agree that that's at the top of the page?

17 MS. POHLENZ: Yeah, the 15 is the top --

18 MS. LIVINGSTON: So "here we go", take out
19 three pages?

20 MS. POHLENZ: Take out three pages because
21 they're just duplicates.

22 Q (By Ms. Pohlenz) All right. Looking at the
23 e-mail dated -- it's page 15 in Exhibit No. 13, the
24 top of the page, is an e-mail from me to you dated

1 June 25th, 2014 at 2:52 a.m. Can you take a look at
2 that e-mail and tell me whether that is a true and
3 accurate copy of an e-mail you received from me?

4 MR. MANION: Just for clarification, it's
5 p.m. not a.m.

6 Q (By Ms. Pohlenz) I'm sorry, p.m.

7 A Yes.

8 Q Okay. I am going to the next page that
9 starts with the No. 3 and then two pages after that we
10 can pull as duplicate copies. And so page 16 of
11 Exhibit 13 will become an e-mail from me to Leslie
12 dated Wednesday, June 25th, 2014 at 3:07 p.m. Can you
13 take a look at that e-mail and tell me whether that is
14 a true and accurate copy of an e-mail you received
15 from me?

16 A Yes.

17 Q Okay. If you can take a look at the next
18 grouping I'm handing you, it's Pages 17 through 31.
19 And they are e-mails that are from you to me or me to
20 you that may include Rob as a copy on them. And there
21 could be some in there between you and Rob separately
22 that were then forwarded to me. If you could take a
23 look through the whole group and let me know whether
24 you agree that all of the e-mails within that group

1 pages 17 to -- can you check the last page for me?

2 **A All right.**

3 Q Oh, did I skip a page?

4 **A Yeah, I think it would be through 32.**

5 Q Oh, let me see, 32, yeah. Thank you. So
6 through 32 are true and accurate copies of what was
7 exchanged between us?

8 **A Okay. Yes.**

9 Q Okay.

10 MS. LIVINGSTON: And you ended on page 31?

11 MS. POHLENZ: Correct.

12 MS. LIVINGSTON: And page 31 appears to be a
13 memo dated June 23rd?

14 **A It's --**

15 MS. POHLENZ: No, 32, I'm sorry, we ended on
16 page 32.

17 MS. LIVINGSTON: And that is the last page
18 of the memo?

19 MS. POHLENZ: It is a letter dated June
20 23rd, 31 and 32, that was an attachment to the e-mail.

21 MS. LIVINGSTON: Got it.

22 MS. POHLENZ: And just to go over that.

23 Q (By Ms. Pohlenz) Do you recall, Leslie, what
24 you sent to me -- or whether what you sent to me in

1 this e-mail dated June 26th, 2014 at 11:02 a.m. the
2 attachment, whether that's page 31 and 32?

3 **A Yes.**

4 Q Okay. So, May 29, 2014 was the night of the
5 public hearing for the Caseyville Transfer Station,
6 LLC site location approval. Do you recall that?

7 **A The public hearing?**

8 Q The public hearing?

9 **A Yes.**

10 Q And was -- you actually were substituting
11 for Rob Watt as -- at that public hearing in place of
12 the Clerk that night?

13 **A Yes.**

14 Q And was this something that you had known
15 well in advance that you were going to be substituting
16 for him that night or was this something that was last
17 minute that you found out and had to?

18 **A It was last minute.**

19 Q And during the course of -- did anyone tell
20 you why -- strike that.

21 Did anyone tell you why Rob Watt wasn't
22 going to be there on the 29th for the public hearing?

23 **A Yes.**

24 Q And what was that reason?

1 **A I don't know.**

2 Q Okay.

3 **A I remember getting an e-mail that day from**
4 **him saying that he wasn't going to be able to make it.**

5 Q Okay.

6 **A And I'm sure he stated why, but I do not**
7 **recall why. I don't know if he had to work, I don't**
8 **know.**

9 Q Okay. But you received that e-mail pretty
10 close to the time the public hearing was happening or
11 was it --

12 **A It was probably mid afternoon, I believe, or**
13 **early morning.**

14 Q Mid afternoon to late morning did you say?

15 **A Late morning to mid afternoon.**

16 Q Okay, got it. So, do you know what I mean
17 when I reference the public record for the Caseyville
18 Transfer Station, LLC?

19 **A The binders.**

20 Q The Caseyville siting application is what
21 you relate to as public record?

22 **A Which was included in Volume 1 of the**
23 **binders; correct?**

24 Q The binders --

1 MR. MANION: You have to let her ask the
2 questions. So, if you don't understand what she's
3 saying, you can say I don't understand and can you
4 restate the question.

5 Q (By Ms. Pohlenz) I'm going to re-ask it,
6 Leslie.

7 **A Okay.**

8 Q What do you understand or what do you call
9 the four binders that were the Caseyville site
10 location application, Caseyville Transfer Station, LLC
11 site location application?

12 **A The public record.**

13 Q You call that the public record?

14 **A Yes.**

15 Q And what about everything that everyone else
16 filed with the Clerk regarding that proceeding, what
17 do you refer to that as?

18 **A The public record.**

19 Q The public record. So everything that was
20 filed you call -- you're referring to as the public
21 record?

22 **A Yes.**

23 Q Okay. Just so I'm on the same page and I
24 don't use a term that has a different meaning to you,

1 that's why I was clarifying that.

2 So, during the course of the public hearing,
3 Caseyville Transfer Station, LLC submitted a number of
4 documents into the public record. Do you recall that?

5 **A No.**

6 Q Okay. The Village of Fairmont City
7 submitted an expert report into the public record. Do
8 you recall that?

9 **A No.**

10 Q Okay.

11 **A I never added anything else myself to the
12 public record until the night of the hearing.**

13 Q Okay.

14 **A So everything that was filed that night, I
15 then added to the binder, to the public record.**

16 Q Okay.

17 **A So, if anything had previously been
18 submitted, I didn't add it then. I didn't add it
19 myself.**

20 Q Okay. So everything that had been submitted
21 at the public hearing, you then took those documents
22 that night away from the public hearing rather than
23 the court reporter taking them?

24 **A Well, there was a sign-in sheet that I took**

1 and then everything that was submitted was also given
2 to the board in a small binder. So, then I added that
3 small binder to the public record as well.

4 Q And who gave the small binder to the board?

5 A I don't know.

6 Q Do you know who generated the small binder,
7 where it came from?

8 A No.

9 Q Do you know what was in the small binder?

10 A There were -- there were maps and there were
11 letters. And then at the public hearing, the
12 Transportation Specialist had a little handout thing
13 and so I included that.

14 Q And was the -- the person you're calling the
15 "Transportation Specialist", was that someone who
16 spoke -- was he someone I had --

17 A Yes.

18 Q I questioned under oath at the hearing?

19 A Yes.

20 Q Okay. And his handout was a series of
21 pictures and his resume?

22 A I -- correct.

23 Q So we have maps, letters, the handout from
24 the Transportation Specialist, and -- who was my --

1 the expert that we presented. And then you said there
2 was a sign-in sheet?

3 **A A sign-in sheet. And I think there were**
4 **letters signed from various Fairmont residents or**
5 **officials, I don't know what it's technically called**
6 **but they had signed something. I don't know if it was**
7 **like an objection or -- I don't know what it was.**

8 Q Okay. So there is a document that you
9 believe to be signed by Fairmont residents?

10 **A Or if they were -- yes.**

11 Q Okay. And was there anything else that you
12 can recall?

13 **A Not specifically.**

14 Q Are there additional documents that you
15 believe were in that grouping of what you took back
16 from the public hearing that you just don't recall?

17 **A Yes.**

18 Q How large was the stack that you took with
19 you that night to -- you said you hole punched it?

20 **A No. It was -- oh, there was the binder and**
21 **then there were these letters and then the sign-in**
22 **sheet and --**

23 Q The other things you discussed. So what did
24 you do with them after the hearing?

1 **A I gave -- I put them in Rob's box.**

2 Q Okay. You put them in Rob's box.

3 And about how thick was the total stack that
4 you put into Rob's box, excluding the binder?

5 **A About a half of an inch.**

6 Q Okay. And after they were in Rob's box,
7 were you asked to do anything else with those
8 documents?

9 **A No.**

10 Q Okay. After they were in Rob's box, did you
11 then see them again in the public record?

12 **A Yes.**

13 Q At what point did you see them again in the
14 public record?

15 **A I believe that you asked to review them or
16 someone did and then I got with Rob and asked him to
17 give me everything from the hearing to add to the
18 public record.**

19 Q Okay. So would that have been in response
20 to the series of e-mails, and some of them are
21 included in the documents that we just looked at in
22 Exhibit 13, where I had asked you for documents that
23 were presented at the public hearing?

24 **A Yes.**

1 Q And your response to me with respect to
2 those documents that was everything that you had?

3 **A Yes.**

4 Q Okay. So in that request, for example, I
5 asked for the Certificate of Publication and that was
6 the hearing publication that Mr. Siemsen had
7 referenced as presenting to the -- in the public
8 hearing on the 29th of May. But I did not get that
9 from you. Would the reason I did not get that from
10 you would be -- do you recall giving that to me?

11 **A No.**

12 Q Okay. Do you recall having that document or
13 that group of documents?

14 **A No. We did post something but I don't know
15 if it was myself or Rob and we had put it on the
16 website.**

17 Q Okay. So there was something that you put
18 on the website concerning what?

19 **A The hearing --**

20 Q Oh, the public hearing.

21 **A -- the date and the time, yes.**

22 Q So the four binders that were the Caseyville
23 Transfer Station, LLC site location application, those
24 original four binders, where were they, to your

1 knowledge, maintained by the Clerk's office or the
2 Clerk?

3 **A They were in here, in the conference room.**

4 Q They were in the conference room. And what
5 about the other documents that people had, you know,
6 submitted to be part of the public record and filed to
7 be part of the public record?

8 **A I don't know.**

9 Q Okay. Do you know -- Did you make a copy of
10 those four binders that were the original, you know,
11 the Caseyville site location application for all the
12 board members?

13 **A No.**

14 Q Do you know of anyone making a copy for
15 that?

16 **A For the board members?**

17 Q For the board members?

18 **A I'm sorry. No.**

19 Q That's okay. In fact, when my colleagues
20 came in to ask you for a copy of the siting
21 application we were asked to bring in an outside copy
22 service to make that copy; is that accurate?

23 **A Yes.**

24 Q And that was just because it was large --

1 there was a large amount of documents there with the
2 four binders?

3 **A Yes.**

4 Q Mr. Siemsen testified yesterday that on
5 either May 28th or 29th prior to the public hearing,
6 he also came to the window where you were sitting and
7 believes he spoke with you to ask to see the public
8 record. Do you recall that exchange?

9 **A Yes.**

10 Q Okay. In response that you opened the door
11 and you let him into the conference room to view the
12 public record; is that accurate?

13 **A Yes.**

14 Q And Mr. Siemsen also testified -- and I'm
15 going to hand you what we've marked in other --
16 earlier as Exhibit No. 12.

17 Can you take a look at Exhibit No. 12.
18 Mr. Siemsen also testified that when he came in to
19 look at the public record that this is one of the
20 things he was -- that was available to him to review.
21 Do you agree with that statement?

22 **A Yes.**

23 Q And was this -- to your recollection, was
24 this the top page of the stack of binder clipped

1 documents that I viewed, that you showed me through
2 the Clerk's window on the 28th?

3 **A I don't know.**

4 Q Okay. To your recollection, did you ever
5 produce this series of e-mail documents, Exhibit
6 No. 12, to me?

7 **A I don't know.**

8 Q Okay. Do you recall then in the e-mails you
9 reviewed -- that we just looked at in Exhibit No. 13,
10 I asked several times for e-mails that I saw through
11 the window?

12 **A Yes.**

13 Q Okay. And do you -- but it's a fair
14 statement to say that you don't recall whether you
15 sent that to me?

16 **A No.**

17 Q It's not a fair statement?

18 **A Yes, it is a fair statement.**

19 Q Okay. Do you have any documentation that
20 shows that this is transmitted to me or was made
21 available for me to come to view?

22 **A I don't know.**

23 Q And if I told you that I never received
24 these documents until discovery when they were turned

1 over in this appeal, would you have any reason to
2 dispute that?

3 MR. MANION: Objection, calls for her to
4 speculate.

5 Q (By Ms. Pohlenz) You can answer it.

6 THE WITNESS: Am I supposed to answer that?

7 MR. MANION: You can answer it if you know.

8 **A Can you repeat the question?**

9 Q (By Ms. Pohlenz) Do you have any reason to
10 dispute a statement that either myself or my
11 colleagues never received this document, Exhibit No.
12 12, in response to several requests that we made from
13 the Clerk's office until it was produced by the
14 Village in response to discovery in this appeal?

15 **A I don't know.**

16 Q Okay. So you have no reason?

17 MS. LIVINGSTON: She said she didn't know.

18 MR. MANION: Objection, asked and answered.
19 She doesn't know.

20 MS. LIVINGSTON: You are already asking her
21 to speculate as to what other people may or may not
22 have done.

23 MS. POHLENZ: I didn't ask her that, I asked
24 her for her knowledge.

1 Q (By Ms. Pohlenz) Do you know with certainty
2 as you sit here today whether when you left the
3 hearing on May 29th you had all of the documents that
4 were -- that people submitted to the public record
5 that night?

6 **A Can you repeat the question?**

7 Q Absolutely. Do you know with certainty as
8 you sit here today whether you had all of the
9 documents from the May 29th, 2014 siting hearing that
10 people had submitted to the public record?

11 **A No, I do not know that with certainty.**

12 MS. POHLENZ: Don.

13

14 MR. MORAN: Yes. Good morning or good
15 afternoon.

16 [EXAMINATION]

17 BY MR. MORAN:

18 Q Ms. McReynolds, my name is Don Moran. I
19 represent the Village of Fairmont City. You said you
20 were the only person who had the date stamp that would
21 be applied to any documents that were submitted or
22 filed to the Village of Caseyville.

23 **A Yes.**

24 Q And are you the only person who would apply

1 that date stamp on any materials or documents that
2 came into the Village of Caseyville?

3 **A No, no. It's in my top drawer. So if I'm**
4 **not here and Keri may find it necessary -- we would**
5 **normally date stamp like legal things or summons or**
6 **important things like that. So, she would have access**
7 **to the date stamp.**

8 Q Would she be the only other person who would
9 have access to the date stamp?

10 **A Yes.**

11 Q And would she be the only other person who
12 would apply a date stamp on any documents that were
13 submitted or filed with the Village of Caseyville?

14 **A Yes.**

15 Q Was it the regular and ordinary business
16 practice of the Village of Caseyville to date stamp
17 any documents that were filed with it?

18 **A As in multiple documents?**

19 Q No. Was it just simply the regular practice
20 of the Village of Caseyville to ensure that any
21 documents that were received by it, to be filed by
22 persons for whatever purpose, that those documents be
23 date stamped?

24 **A Yes.**

1 Q And it was your understanding, it's been
2 your experience in your position with the Village of
3 Caseyville, that it has been the regular practice of
4 Caseyville to date stamp any such documents?

5 **A Yes.**

6 MR. MORAN: What number are we up to?
7 Exhibit 14.

8 (Exhibit 14 was marked for
9 identification by the court reporter.)

10 MS. LIVINGSTON: Before you continue with
11 your questions, Don -- I don't mind if this is on the
12 record. Jennifer, are you considering the rest of the
13 unnumbered pages to still be part of that exhibit?

14 MS. POHLENZ: No. We can consider Exhibit
15 No. 13 as being pages 1 through 32.

16 MS. LIVINGSTON: All right. So the rest of
17 these are not going to be part of that exhibit any
18 more?

19 MS. POHLENZ: Correct.

20 MS. LIVINGSTON: Okay. I just wanted to be
21 sure before I marked my stuff.

22 MR. MORAN: That's the Exhibit I'm going to
23 show her, the one that you have.

24 MR. MANION: Okay. Is it all these

1 attachments that are referenced on the cover?

2 MR. MORAN: Yes, it's a group exhibit in
3 effect.

4 MR. MANION: Okay.

5 Q (By Mr. Moran) Ms. McReynolds, I'll show you
6 what's been marked as Exhibit 14. I'll ask you if
7 you've ever seen this document before?

8 A Yes.

9 Q Can you identify it for us?

10 A It appears -- a memo regarding the
11 Caseyville Transfer Station siting approval.

12 Q Was this document filed with the Village of
13 Caseyville?

14 A Yes.

15 Q There appears to be a date stamp on the
16 first page of that exhibit, do you see that?

17 A Yes.

18 Q Did you apply that date stamp?

19 A I don't know.

20 Q You don't recall having applied this date
21 stamp to this document on or about the date of
22 July 9th, 2014?

23 A I remember this document coming in along
24 with a large box via FedEx. I just don't remember if

1 I opened the envelope and stamped it received or if
2 Rob opened it and brought it to me to be received.
3 So, repeat your question.

4 Q You said you remember a large box coming
5 with this submission?

6 A Yes.

7 Q Could you describe the box for us? Was it
8 like a banker's box similar to the one on the table
9 behind Penni?

10 A No. It was bigger. It had copies of the
11 binders in it as well.

12 Q And it was received the same day that
13 Exhibit 14 was received?

14 A I believe so.

15 Q Okay. Did you review any of the contents of
16 that box?

17 A No. I put the box in front of Rob's door.

18 Q Aside from the box and Exhibit 14, were
19 there any other filings that were submitted or that
20 arrived at the Village of Caseyville that day,
21 July 9th?

22 A I don't know if it was that day or the next
23 day but a FedEx letter, pack letter type envelope
24 came.

1 Q From whom did the box come?

2 A **It came from Mr. Siemsen.**

3 Q And did Exhibit 14 come from Mr. Siemsen as
4 well?

5 A **Yes.**

6 Q If you did not apply the date stamp on
7 Exhibit 14, would it have been Keri who applied the
8 date stamp?

9 A **Yes.**

10 Q And do you have any information or reason to
11 believe that this Exhibit 14 was not received by the
12 Village of Caseyville on July 9th, 2014?

13 A **No.**

14 Q Let me show you what I have marked as
15 Exhibit 15.

16 (Exhibit 15 was marked for
17 identification by the court reporter.)

18 Q (By Mr. Moran) Can you identify Exhibit 15
19 for us?

20 A **Objection to false information presented by
21 opponent regarding a thousand-foot setback.**

22 Q Have you ever seen Exhibit 15 before?

23 A **I don't know.**

24 Q Did you apply the date stamp that appears on

1 the first page of Exhibit 15?

2 **A I don't know.**

3 Q If you did not apply the date stamp, would
4 Keri have been the one who applied the date stamp?

5 **A Yes.**

6 Q Do you recall whether there were any other
7 materials or documents that arrived with Exhibit 15 to
8 the Village?

9 **A I don't know.**

10 Q Do you have any information to conclude or
11 believe that Exhibit 15 was filed with the Village on
12 a date other than August 6th, 2014?

13 **A No.**

14 Q Was it ever the practice of the Village of
15 Caseyville to apply a date stamp on a document that
16 was received after business hours on a given day? In
17 other words, if a document came in, perhaps, after
18 4:30 on a given day and there was someone who had
19 received the document, could they -- or was it allowed
20 that the date stamp be applied after the close of
21 business on that given day?

22 **A Yes.**

23 Q You're aware that the meeting of the Village
24 of Caseyville trustees to decide this siting

1 application occurred on August 6th of 2014; correct --

2 **A Yes.**

3 Q -- the same date that appears on Exhibit 15?

4 **A Yes.**

5 Q Thank you.

6 **A You're welcome.**

7 **[EXAMINATION]**

8 BY MS. LIVINGSTON:

9 Q Was the siting application received by the
10 Village?

11 **A Yes.**

12 Q And do you have any basis for disputing that
13 the application was filed on February 10th of this
14 year?

15 **A Can you repeat that, please?**

16 Q Do you have any basis to dispute that the
17 application was filed on February 10th of this year?

18 **A No.**

19 Q Okay. And what kinds of things get filed at
20 Village Hall that you would put date stamps on?

21 **A Everything.**

22 Q Okay. So like building permits, zoning
23 changes, things like that?

24 **A Mail, anything that we receive should be**

1 **date stamped.**

2 Q All right. I noticed here that it does seem
3 to have a location that says "by whom"?

4 **A Yes.**

5 Q Do you normally initial when it's by you or
6 do you just date stamp it?

7 **A Half and half.**

8 Q Okay. So it could be that your initials
9 might not appear on something that you actually did
10 date stamp?

11 **A Correct.**

12 Q Okay. I noticed in the e-mails that
13 Jennifer went over with you, that one of the e-mails
14 from her indicates that her colleagues had been there
15 the previous Wednesday to go over the record. Do you
16 remember that?

17 **A Yes.**

18 Q Can you tell us approximately how many
19 people were here, how long they were here, what that
20 looked like?

21 **A There were two individuals here multiple
22 times.**

23 Q And do you remember who the individuals
24 were?

1 **A I talked to her all the time.**

2 Q Susan?

3 **A Susan Piassa, yes.**

4 Q When you say you talk to her all the time,
5 do you talk to her about anything not related to
6 Caseyville Transfer Station?

7 **A Yes.**

8 Q And what kinds of things do you talk to her
9 about?

10 **A I think they wanted to come in and be**
11 **Caseyville's only trash hauler. So we had talked**
12 **about that.**

13 Q All right. Do you recall if the discussions
14 about -- well, let's start here.

15 Do you know who Susan Piassa is with? Let
16 me ask it this way: Do you know if she is with Allied
17 Waste?

18 MS. POHLENZ: Objection. Who -- she's
19 leading the witness. So either you know or you don't
20 know.

21 MS. LIVINGSTON: It's not my witness.

22 MR. MANION: It's a discovery witness.

23 MS. LIVINGSTON: I can lead anybody.

24 MR. MANION: In discovery depositions

1 leading questions are permissible. So, you can answer
2 the question.

3 MS. LIVINGSTON: You can answer the
4 question.

5 **A She works for a waste company but I do not**
6 **know which one.**

7 Q (By Ms. Livingston) All right. And to the
8 best of your knowledge, when did you meet Susan
9 Piassa?

10 **A It was a few months before the public**
11 **hearing.**

12 Q It would have been in 2014?

13 **A I don't know.**

14 Q Well, the public hearing was on May 29th;
15 right?

16 **A 2014, yes.**

17 Q Right. So is it possible you met her a few
18 months before the public hearing?

19 **A No.**

20 Q Okay. So that would be this year?

21 **A Yes.**

22 Q Okay. And was she with anyone when you
23 first met her?

24 **A No.**

1 Q Okay. Did she come in person?

2 A Yes.

3 Q And what kind of conversation did she have
4 with you?

5 A It was at a board meeting.

6 Q Okay.

7 A So it wasn't specifically with me.

8 Q Do you know if it was at a board meeting
9 after the application had been filed in this matter?

10 A Before.

11 Q It was before that?

12 A Yes.

13 Q All right. And did she speak at the board
14 meeting?

15 A Yes.

16 Q And what did she say?

17 A Something about wanting to be the only trash
18 hauler for the Village.

19 Q All right. Did she give any indication on
20 cost?

21 A I don't recall.

22 Q All right. Did she ask that any action be
23 taken?

24 A I don't recall.

1 Q All right. When's the next time you saw
2 her?

3 A She was at every board meeting for probably
4 three or four months.

5 Q Including the board meetings where the
6 Caseyville Transfer Station was discussed?

7 A Yes.

8 Q All right. Was she also present at the
9 May 29th public hearing?

10 A Yes.

11 Q Did she speak at that hearing?

12 A No.

13 Q All right. So, what other conversations
14 have you had with her that you recall, what she might
15 have said to you, what you might have said to her?

16 A It was just general conversation.

17 Q Hey, how are you doing?

18 A Yeah.

19 Q Okay. So, for example, she wouldn't have
20 indicated to you any matters that she wished the
21 Village to make a decision on or given you her
22 opinions about anything?

23 A No.

24 Q Okay. And so, you said you talked to her a

1 lot of times. Were some of these times that she
2 actually came into your office?

3 **A Yes.**

4 Q Okay. And how many times would you say
5 Susan Piassa came into the Clerk's office after the
6 filing of the application for Caseyville Transfer
7 Station?

8 **A Probably three or four.**

9 Q All right. And of those three or four was
10 she ever with someone else?

11 **A Yes.**

12 Q All right. Most of the time was she?

13 **A Yes.**

14 Q Do you know who that person was?

15 **A No.**

16 Q Do you know if that person was a lawyer?

17 **A I don't know.**

18 Q Does the name Ken Blyers?

19 **A Yes.**

20 Q Okay. That's familiar to you?

21 **A Yes.**

22 Q Could that have been the person?

23 **A Maybe.**

24 Q All right. Do you know what he looks like?

1 **A Yes.**

2 Q Okay. Was he ever present with her?

3 **A Yes.**

4 Q Did he ever tell you he was a lawyer?

5 **A No.**

6 Q All right. And so, do you remember the
7 specific order of these times that you encountered
8 them or do they all go together?

9 **A Together.**

10 Q All right. So what kinds of things do you
11 think occurred? Like, for example, did they come in
12 and look at documents?

13 **A Yes, they came in and inspected the record.**
14 **They had brought in a printing company and copied the**
15 **records.**

16 Q Do you know the timing of any of that?

17 **A No.**

18 Q Well, for example, would you remember if
19 they printed the record before the public hearing?

20 **A I don't know.**

21 Q All right. But it's fair to say that Susan
22 Piassa and Mr. Blyers had inspected the public record
23 on several occasions?

24 **A Yes.**

1 Q Could it have been more than four occasions?

2 A Well, she -- she and he came in to make sure
3 that we had the hearing posted on the board and they
4 had requested that we put it on the website.

5 Q And did you?

6 A Yes. And then I think they inspected the
7 record probably three or four times. I think I
8 printed her some e-mails when she came in one time as
9 well.

10 Q Was Ms. Pohlenz ever with them when they
11 came?

12 A I don't think so.

13 Q All right. Did she also come separately to
14 inspect the record?

15 A No. She came just the window, when she came
16 to the window. She and I communicated mostly through
17 e-mail.

18 Q All right. Did you feel like from her
19 e-mails that you were trying to cooperate and give her
20 whatever you had?

21 A Yes.

22 Q In any way did you -- did anyone ever tell
23 you not to give anybody anything?

24 A No.

1 Q All right. And so, in no way were you
2 trying to not give people information that they
3 wanted?

4 A **No. I think there were delays because if**
5 **she would send me something then I would send it to**
6 **Rob and then Rob would get it to me. But, no, we were**
7 **very cooperative.**

8 Q All right. And is it fair to say that you
9 were very cooperative before the public hearing?

10 A **Yes.**

11 Q You wanted people to have access to
12 information before the public hearing?

13 A **Yes.**

14 Q And from the e-mails it appears you were
15 cooperative after the public hearing as well; is that
16 accurate?

17 A **Thank you, yes.**

18 Q Okay. And you were at the public hearing;
19 right?

20 A **Yes.**

21 Q About how long did it last?

22 A **Probably three hours.**

23 Q Did you ever hear anyone from the Village at
24 that public hearing announce any deadline for public

1 comments?

2 **A I don't know.**

3 Q If they did, it would be in the transcript?

4 **A Correct.**

5 Q Okay. Do you ever remember anything about a
6 deadline for public comments?

7 **A No.**

8 Q So, for example, no one ever indicated to
9 you, hey, don't accept public comments after a certain
10 date?

11 **A No.**

12 Q Did anyone else come in to look at the
13 public record that you recall from the public?

14 **A Yes.**

15 Q Do you recall who those persons were?

16 **A No.**

17 Q All right. But the public definitely had
18 access to the record and they did access the record?

19 **A Yes.**

20 Q Now, there seems to be some issue about not
21 having a copy of a Certificate of Publication. That
22 seems to be what these e-mails were about. Did you
23 get a copy of the Certificate of Publication which,
24 you know, I guess you could go to the newspaper and

1 get it, too. But did you ever get a copy of that?

2 **A No.**

3 Q All right. And so that's why you didn't
4 provide it to her?

5 **A Yes.**

6 Q You just couldn't find a copy of it?

7 **A I didn't know what she meant.**

8 Q Oh, you didn't know what she meant?

9 **A No.**

10 Q Okay. So, it's possible that there's a
11 Certificate of Publication some place in this record
12 and you just didn't know what it was or couldn't find
13 it?

14 **A Yes.**

15 Q Okay. But you weren't trying to not be
16 cooperative with her?

17 **A No.**

18 Q Err go the friendliness of your e-mails?

19 **A Yes.**

20 MR. MANION: I think I just want to clear up
21 one or two things.

22 [EXAMINATION]

23 BY MR. MANION:

24 Q You and Keri both take sick days or vacation

1 days from time to time; correct?

2 **A Yes.**

3 Q And if one of you wasn't present in the
4 office up front due to a day off, would that office be
5 un-staffed for a period of, for example, the one
6 person there that day had to go to lunch or something?

7 **A Yes.**

8 Q Okay. And in that situation would it be
9 possible that someone would come in to file something
10 and would go across the hall to -- would that be the
11 Water Department?

12 **A Yes.**

13 Q Okay. And has that happened in the past?

14 **A Yes.**

15 Q Okay. So, it would be possible that they
16 could receive a document if you were out to lunch and
17 Keri was on vacation, for example?

18 **A Yes. And they would put it in Rob's box.**

19 Q Okay. So, that wouldn't come through via
20 Keri or you in that case?

21 **A Correct, yes.**

22 Q Okay. You were also asked whether you were
23 certain that you received every document at the public
24 hearing. To the best of your knowledge, did you

1 receive every document at the public hearing?

2 **A Yes.**

3 Q Okay. So, you're not aware of something
4 that you didn't take from that hearing and put in
5 Rob's box; correct?

6 **A No. No. I grabbed everything that I -- I
7 seen.**

8 Q Okay. I don't have any other questions.

9 [EXAMINATION]

10 BY MS. POHLENZ:

11 Q You had mentioned that -- do you attend
12 every board meeting?

13 **A No.**

14 Q Okay. You mentioned that Susan Piassa had
15 attended every board meeting for a period of three or
16 four months. Were those board meetings that you had
17 also attended?

18 **A Yes.**

19 Q Okay. And you had referenced that -- strike
20 that.

21 Do you have any reason to believe if Rob
22 Watt responds to a request that he doesn't have it
23 that that's not an accurate response?

24 **A Ask that question again.**

1 Q Sure. If Rob Watt responded to one of the
2 requests I made in the e-mails, for example, that
3 Mr. Siemsen had a record, do you have any reason to
4 doubt what he says?

5 **A No.**

6 Q And with respect to my request of the
7 Certificate of Publication in the e-mails, you had
8 testified right now that you don't know what I meant
9 by that?

10 **A Correct.**

11 Q Did you ever tell me I don't know what
12 you're looking for?

13 **A No.**

14 Q Was it -- was that because when you got my
15 request you didn't actually go through and try to find
16 things you were giving it to Rob to then respond to
17 me?

18 **A Yes.**

19 Q So it really didn't matter what I asked for
20 because ultimately Rob was the one who was going to
21 review it and then tell you what you would provide to
22 me?

23 **A Yes.**

24 Q That's all I have.

1 MR. MORAN: I have a few questions as a
2 follow-up to what we've heard.

3 [EXAMINATION]

4 BY MR. MORAN:

5 Q What information do you have that indicates
6 that the siting application was filed with the Village
7 on February 10th, 2014?

8 A I don't.

9 Q So you don't know when the siting
10 application was filed with the Village of Caseyville?

11 A I do not.

12 Q Who within the Village of Caseyville has the
13 authority to determine whether a person who comes to
14 the Village asking to look at the siting application
15 can review it?

16 A Initially, it was the Village Clerk but then
17 when -- I think the more requests we had to look at
18 the record, whether it was from Jennifer or John, I
19 think once we had established that the record was
20 actually public, then I didn't ask permission first
21 then I would let anyone look at it that wanted to. I
22 think it was just initially that I would e-mail Rob
23 and say, hey, you know, this person wants to look at
24 it, is it okay. So, at first it was like that.

1 Q So, initially what you would do is if
2 someone came here to review the siting application you
3 would first ask Rob Watt whether it was okay to let
4 that person see the application?

5 **A Yes.**

6 Q And that continued for about a few weeks, a
7 couple months?

8 **A A few weeks. A few weeks. Because I think**
9 **at first I was unsure if it needed to be Freedom of**
10 **Information or if it was public record and then once**
11 **that was established.**

12 Q When that application was filed, where was
13 it kept?

14 **A It was kept in here.**

15 Q Was it kept on this table?

16 **A Yes.**

17 Q And I think we established that it was -- it
18 appeared to be four volumes or four binders of
19 material?

20 **A Correct.**

21 Q So, in the first few weeks after that
22 application was filed and it was being kept in this
23 room, if any person came to the front desk and asked
24 to review the application and if you were the person

1 who received that request, you would go to Rob Watt
2 and say is it okay for me to let this person look at
3 the application; correct?

4 **A I didn't ask permission after -- I don't**
5 **remember who came in originally and asked to look at**
6 **it and then I think Susan and that gentleman came in**
7 **and then they copied it and then after that I did not**
8 **ask permission.**

9 Q Okay. You said that was after about four
10 weeks after the application was filed?

11 **A I don't know.**

12 Q Well, it was after a number of weeks after
13 the application was filed; correct?

14 MS. LIVINGSTON: Well, she said a few at
15 least four times now. I don't think a few is four.

16 Q (By Mr. Moran) I guess, I'm asking what is
17 "few"? What did you mean when you said "few"? Did
18 you mean two weeks? Three weeks? Did you mean four
19 weeks?

20 MR. MANION: If you can remember. I don't
21 want you to guess.

22 **A I don't remember. I don't remember.**

23 Q (By Mr. Moran) So, your answer is it was a
24 few weeks after it was filed that you stopped asking

1 Rob Watt for permission to let someone look at the
2 application?

3 **A Yes.**

4 Q Okay. Do you recall whether an individual,
5 male, came to Caseyville a couple of days after the
6 application was filed and asked to look at the
7 application.

8 **A Yes.**

9 Q Did that male ask you or was it Keri he
10 approached or do you recall?

11 **A I do not know his initial point of contact.**

12 Q Okay.

13 **A But I was here -- if we're talking about the**
14 **same thing, I was here that day and Rob was also**
15 **actually present that day.**

16 Q Can you describe anything about this male
17 who came and asked for the application?

18 **A No. I just know that he was by himself and**
19 **he was the only person that had ever come by himself**
20 **to look at the record.**

21 Q And he asked to look at the application?

22 **A Yes.**

23 Q You then went to Rob Watt and asked Rob if
24 he could look at it?

1 **A Yes.**

2 Q And did Rob then respond to you and indicate
3 whether the person could or couldn't look at the
4 application?

5 **A Yes.**

6 Q What did Rob say?

7 **A I think he said that he could look at it and
8 the guy came in here and looked at it right away.**

9 Q Now, when you say "you think", you're just
10 speculating?

11 **A I remember thinking at that time I didn't
12 even know what the guy was asking for. And then that
13 was the response where I -- that was the situation
14 where I didn't know if the guy needed a Freedom of
15 Information or if it was -- that was the situation I
16 was talking about, so...**

17 Q Did you tell this person that the
18 application could not be reviewed because it was not
19 time to be able to review it?

20 **A I don't know.**

21 Q You didn't tell that to the person. If that
22 had been told to the person, it would have been Rob
23 Watt?

24 **A Yes. Yes. When that person came into City**

1 **Hall that day I directed them to Rob Watt.**

2 Q Okay. And did you have any other discussion
3 with this individual at that time?

4 **A No.**

5 Q Okay. Do you recall any other persons
6 coming to the Village and asking you for the
7 opportunity to review the siting application or the
8 four volumes that were in this room?

9 **A Anyone -- ask me that again, please.**

10 Q Do you recall whether any other person came
11 to the Village and asked you for the opportunity to
12 review the siting application which was maintained in
13 this room?

14 **A Yes.**

15 Q How long after the male that we talked about
16 before did that next person come to ask you to review,
17 approximately, a couple weeks a couple months, a
18 couple days?

19 **A I believe a couple days. I believe it was
20 Susan was the next person to look at the record.**

21 Q Did Susan come by herself that next time or
22 was she with someone?

23 **A She was with that gentleman.**

24 Q They asked you for the opportunity to review

1 the application; correct?

2 **A Yes.**

3 Q Was this the point at which you could make a
4 determination to simply let them review it or did you
5 have to check with Mr. Watt?

6 **A I checked with Rob first because they
7 actually wanted to get a copy of the binders but we
8 didn't have that capability here and then that's when
9 he said that anyone who wanted copies was welcome to
10 come in and bring a copy service with them to copy the
11 record.**

12 Q Okay. Do you recall any other persons
13 coming to ask to look at the siting application other
14 than the male that we've identified and with Susan and
15 the gentleman that copied with her?

16 **A There was someone else.**

17 Q When did that someone else come and ask to
18 see the application?

19 **A It was after Susan had made a copy of
20 everything.**

21 Q Was this a male or female?

22 **A I don't know. I don't know if -- it was a
23 male, but I'm not sure if he was with the printing
24 company or if he was the interested individual, so...**

1 Q Did you talk to this individual when he
2 came?

3 A Yes.

4 Q Do you recall if that individual then was
5 brought to this room and given the opportunity to
6 review the application?

7 A Yes.

8 Q How long was that after Susan and the
9 gentleman came to look at the application --

10 A I'm not sure.

11 Q -- to review it?

12 Going back to the first male that we talked
13 about who came in and asked to see the application and
14 that you referred him to Rob Watt, did he ever come
15 back?

16 A No.

17 Q He didn't come back --

18 A No.

19 Q -- nine days later to look at the
20 application?

21 A Not that I know of.

22 Q If he did come back, he would have talked to
23 either Keri or Rob Watt?

24 A Unless maybe he came the first time and I'm

1 **thinking of the second time when Rob was here.**

2 **Because if we're referring to the same person when Rob**
3 **was here and I was here that person was allowed in**
4 **here to look at what we had.**

5 Q Did you make any telephone call to this
6 individual to indicate to him that he would be able to
7 come in and look at the application?

8 **A I don't know.**

9 Q Did Rob Watt make such a call and leave such
10 a message?

11 **A I don't know.**

12 Q Okay. Thank you.

13 **A You're welcome.**

14 **[EXAMINATION]**

15 BY MS. LIVINGSTON:

16 Q To the best of your knowledge, was anyone
17 ever denied access to the record?

18 **A No.**

19 Q When you called Rob at the beginning in the
20 first couple of weeks to get permission, did he always
21 give permission?

22 **A Yes.**

23 Q Do you recall when Susan came to look at the
24 record was it quite a ways before the public hearing?

1 **A Yes. When she came I didn't even know what**
2 **the waste transfer station was to be honest.**

3 Q All right. Would there be any documentation
4 for us to be able to know what day she came in and
5 made copies?

6 **A Possibly.**

7 Q If there was, what do you think it would be?

8 **A E-mail.**

9 Q In the discovery that the City produced, did
10 you put that information together, the e-mails and
11 things?

12 **A I printed them out, yes.**

13 Q Do you think that e-mails with Susan would
14 have been in that pile as well?

15 **A No, they were not.**

16 MS. LIVINGSTON: Is that something we could
17 get?

18 MR. MANION: I assume so. We can search for
19 those.

20 THE WITNESS: Yes.

21 MS. LIVINGSTON: Okay.

22 Q (By Ms. Livingston) And might there have been
23 other people who sent you e-mails as well to ask you
24 to look at the record?

1 **A No.**

2 Q No, okay. But -- you would still have
3 e-mails from Susan when she's asking you to see the
4 record?

5 **A I'm not certain that she asked me.**

6 Q But if she did you would --

7 **A But her and I had e-mail communication that**
8 **wasn't related to the transfer station when she had**
9 **come in and addressed the board. Now I did e-mail**
10 **here and asked her the name of the printing company.**
11 **I didn't include that in the e-mails regarding the**
12 **transfer station. But I can look.**

13 Q Okay. Did you ever have any discussions or
14 did you ever have any knowledge that Susan seemed to
15 also want the Village to pass local siting ordinance?

16 **A No.**

17 Q And you never saw a draft local siting
18 ordinance?

19 **A Not that I know of.**

20 Q Okay. Just wondered.

21 MR. MANION: I don't have any other
22 questions.

23 MS. POHLENZ: I just wanted to know if
24 you're going to produce supplemental information that

1 was requested, you are going to produce it to all of
2 the parties?

3 MR. MANION: Yes. If there's anything,
4 we'll produce it to everyone.

5 Any other questions?

6 MR. MORAN: I have no questions.

7 MR. MANION: You have the opportunity to
8 review the transcript if you want to make sure that
9 the court reporter took down everything accurately.
10 If you read a question you couldn't go back and change
11 your answer substantively, it's just if something was
12 transcribed improperly or you can waive that right. I
13 usually just tell people to waive it.

14 MS. LIVINGSTON: Unless you'd like to read
15 the transcript in the next day.

16 THE WITNESS: No thank you.

17 MR. MANION: She'll waive, thanks.

18 (Whereupon signature was waived, and
19 the deponent was excused.)

20 (The original exhibits were retained by
21 counsel. A copy of the exhibits were
22 attached to the transcript.)

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REPORTER CERTIFICATE

I, Elizabeth A. Goodwin, RPR, MO-CCR,
IL-CSR, do hereby certify that there came before me at
Village of Caseyville, 909 South Main Street,
Caseyville, IL 62232,

LESLIE MCREYNOLDS,

who was by me first duly sworn; that the witness was
carefully examined, that said examination was reported
by myself, translated and proofread using
computer-aided transcription, and the above transcript
of proceedings is a true and accurate transcript of my
notes as taken at the time of the examination of this
witness.

I further certify that I am neither attorney
nor counsel for nor related nor employed by any of the
parties to the action in which this examination is
taken; further, that I am not a relative or employee
of any attorney or counsel employed by the parties
hereto or financially interested in this action.

Dated this 23rd day of OCTOBER, 2014.

ELIZABETH A. GOODWIN, RPR, MO-CCR, IL-CSR

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ROXANA LANDFILL, INC.,)
)
 PETITIONER,)
)
 vs.) NO. PCB 15-65
) (Third Party Pollution
) Control Facility Siting
) Appeal)
)
 VILLAGE BOARD OF THE)
 VILLAGE OF CASEYVILLE,)
 ILLINOIS; VILLAGE OF)
 CASEYVILLE, ILLINOIS; AND)
 CASEYVILLE TRANSFER)
 STATION, LLC,)
)
 RESPONDENTS.)
 _____)
)
 VILLAGE OF FAIRMONT CITY,)
 ILLINOIS,)
 PETITIONER,)
)
 vs.) NO. PCB 15-69
) (Third Party Pollution
) Control Facility Siting
) Appeal) (CONSOLIDATED)
)
 VILLAGE OF CASEYVILLE,)
 ILLINOIS; BOARD OF TRUSTEES))
 AND CASEYVILLE TRANSFER)
 STATION, LLC.)
)
 RESPONDENTS.)

DEPOSITION OF KERRY DAVIS
TAKEN ON BEHALF OF THE PETITIONER
OCTOBER 22, 2014

Elizabeth A. Goodwin, RPR, IL-CSR, MO-CCR
CSR No. 084.004310, CCR No. 831

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Transfer Station, LLC

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2 ROXANA LANDFILL, INC.,)

3 PETITIONER,)

4 vs.)

NO. PCB 15-65
(Third Party Pollution
Control Facility Siting
Appeal)

6 VILLAGE BOARD OF THE)

 VILLAGE OF CASEYVILLE,)

7 ILLINOIS; VILLAGE OF)

 CASEYVILLE, ILLINOIS; AND)

8 CASEYVILLE TRANSFER)

 STATION, LLC,)

9)

 RESPONDENTS.)

10 _____)

11 VILLAGE OF FAIRMONT CITY,)

 ILLINOIS,)

12 PETITIONER,)

13)

 vs.)

NO. PCB 15-69
(Third Party Pollution
Control Facility Siting
Appeal) (CONSOLIDATED)

15 VILLAGE OF CASEYVILLE,)

 ILLINOIS; BOARD OF TRUSTEES))

16 AND CASEYVILLE TRANSFER)

 STATION, LLC.)

17)

 RESPONDENTS.)

18

19

20 DEPOSITION OF KERRY DAVIS, produced, sworn,
and examined on behalf of Petitioner, OCTOBER 22,
2014, between the hours of 4:30 in the afternoon and
21 5:30 in the evening of that day, at Village of
Caseyville, 909 South Main Street, Caseyville, IL
22 62232, before Elizabeth A. Goodwin, RPR, MO-CCR,
IL-CSR.

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A P P E A R A N C E S

Petitioner Roxana Landfill represented by
Ms. Jennifer Pohlenz of Clark Hill, PLC, 150 N.
Michigan Ave. Suite 2700, Chicago, IL 60601.

Respondent Caseyville Transfer Station
represented by Ms. Penni S. Livingston of Livingston
Law Firm, 5701 Perrin Road, Fairview Heights, IL
62208.

Petitioner Village of Fairmont City
represented by Mr. Donald J. Moran of Pedersen &
Haupt, 161 N. Clark Street Suite 3100, Chicago, IL
60601.

Respondent Village Board of the Village of
Caseyville, Illinois and Village of Caseyville,
Illinois represented by Mr. J. Brian Manion of
Weilmuenster Law Group, P.C., 3201 West Main Street,
Belleville, IL 62226.

Also Present: John Siemens, Esq.

1 IT IS HEREBY STIPULATED AND AGREED by and
2 between counsel for the PETITIONER and counsel for the
3 RESPONDENTS, that this deposition may be taken in
4 shorthand by Elizabeth A. Goodwin, a Registered
5 Professional Reporter, Certified Shorthand Reporter
6 and Certified Court Reporter, and afterwards
7 transcribed into typewriting, and the signature of the
8 witness is waived by agreement of counsel and the
9 witness.

10 0-0-0

11 KERRY DAVIS,

12 of lawful age, being produced, sworn and examined on
13 the part of the Petitioner, and after responding "Yes,
14 I do" to the oath administered by the court reporter,
15 deposes and says:

16 * * * * *

17 [EXAMINATION]

18 BY MS. POHLENZ:

19 Q Can you please state your name and spell it
20 for the court reporter?

21 A **First name is Kerry, K-E-R-R-Y, Davis,**
22 **D-A-V-I-S.**

23 Q Thank you, Mr. Davis, for showing up today.

24 A **I'm sorry, you are going to have to speak up**

1 **because I have a heard time hearing.**

2 Q Certainly. Thank you, sir, for appearing
3 today for your deposition. My name is Jennifer
4 Sackett Pohlenz. I'm going to be asking you some
5 questions today.

6 **A Okay, Jennifer.**

7 Q I'm sure Mr. Manion spoke with you about
8 depositions in general, but I want to just go over
9 some ground rules. If I say something that you can't
10 hear me, I want you to stop me and say I can't hear
11 you.

12 **A Okay.**

13 Q So what I would like is that when I ask you
14 a question and you answer it, that by answering it we
15 both know that you understood it and you could hear
16 it; is that fair?

17 **A Okay. If you can speak like you are, I can
18 hear you.**

19 Q Okay.

20 **A Other than that, the ringing in my ears is
21 louder than your voice.**

22 Q Okay. If I speak too loud let me know too,
23 because I don't mean to annoy you.

24 **A No, that's fine.**

1 Q All right. The other ground rule is that we
2 have someone here with us today who is very nicely
3 typing what we say, so we can make a record of it.
4 So, we need to speak at separate times and try to
5 avoid overlapping one another. So, when I finish a
6 question you answer, I'll try not to interrupt you and
7 if you could try not to interrupt me, that'll just
8 help in terms of getting everything written down the
9 right way. Does that make sense?

10 A **Got it.**

11 Q Okay. Have you ever been deposed before?

12 A **Yes.**

13 Q And in -- how many times?

14 A **I don't recall totally, I really don't.**

15 Q Okay. What kind of cases?

16 A **Personal injury cases.**

17 Q Okay. Were they involving you as a witness
18 or you as one of the plaintiff or a defendant?

19 A **Both.**

20 Q Okay. For how long -- You are a Village
21 board member with the Village of Caseyville; is that
22 correct?

23 A **Yes.**

24 Q And for how long have you been a Village

1 board member?

2 **A Thirty-one years consecutively and a total**
3 **of -- I'm sorry, 31 years total.**

4 Q Okay.

5 **A And I served the last 23 years**
6 **consecutively.**

7 Q Congratulations.

8 **A I thought they might ask that, that's why I**
9 **wrote that down.**

10 Q Well, it's very impressive.

11 What did Caseyville Transfer Station, LLC
12 propose to the board and the board approve?

13 **A To operate a transfer station in the Village**
14 **of Caseyville.**

15 Q Do you know what is a transfer station?

16 **A It was explained to us.**

17 Q Okay. And can you tell me what your
18 understanding is of a transfer station?

19 **A Trash haulers will haul trash to the**
20 **transfer station. It will be dumped at that site**
21 **inside an enclosed building, it will be later loaded**
22 **onto another truck and taken to a landfill somewhere**
23 **outside of St. Clair County, I believe.**

24 Q And do you have an understanding as to where

1 that was, that it was going to be taken?

2 **A I don't recall where it was going to be**
3 **taken.**

4 Q When was the first time you heard about the
5 Caseyville Transfer Station, LLC, transfer station
6 proposal?

7 **A I don't recall the exact date when that**
8 **happened.**

9 Q Was it this year in 2014? Was it last year
10 in 2013?

11 **A It would have been this year.**

12 Q Okay. Do you recall whether it was winter
13 out still? We had a pretty brutal winter, it's hard
14 to forget that. Or, you know, was it starting to get
15 new leaves on the ground and looking nice and sunny
16 again?

17 **A I'm sorry, I don't recall. There was so**
18 **much going on in the Village in the last year, that**
19 **it's difficult to sort it all out.**

20 Q Okay. Do you recall with relationship -- I
21 know one of the big things going on in the Village
22 concerned the police chief; is that correct?

23 **A That was one of several issues, yes.**

24 Q Does -- I'm just trying to find a time

1 frame. Does it help you in terms of a time frame when
2 you first found out about the transfer station
3 proposal, was it before, during or after the police
4 chief ruckus, let's call it?

5 **A I'm not trying to be difficult, ma'am, but I**
6 **really can't pinpoint it. I don't really recall. It**
7 **wasn't really that important to me at that time.**

8 **Q Okay. Okay.**

9 **A There were more important issues going on.**

10 **Q Do you remember how you first learned about**
11 **it? And "it" being the transfer station proposal.**

12 **A I believe the first time I heard about it**
13 **was when the proposal was submitted at a Village board**
14 **meeting.**

15 **Q And was that a Village board meeting at**
16 **which Mr. Siemsen spoke or was that a Village board**
17 **meeting where people just discussed the application?**

18 **A I'm not sure. I believe he just spoke to**
19 **us. There was no application at that time.**

20 **Q Okay.**

21 **A The initial contact -- I don't even know**
22 **that was him sitting down there, I thought he was an**
23 **attorney. I believe the first time is when they just**
24 **came to the board with the initial proposal.**

1 Q Okay. So, who was it -- your understanding
2 when you came in today to introduce yourself, I
3 thought you knew that man's name is John?

4 A **No, I said I recognized him.**

5 Q Oh, I see.

6 A **I recognize him but I thought he was an
7 attorney. I thought you guys -- I thought you were
8 both attorneys. I'm sorry I didn't.**

9 Q Okay. So, you know the name John Siemsen or
10 not?

11 A **I do now.**

12 Q Okay.

13 A **I recall now that that's the man who --
14 yeah.**

15 Q Okay. So, at some point you did know that,
16 I'm not just telling you for the first time the name
17 John Siemsen today?

18 A **No, no.**

19 Q Okay. Are you aware of an agreement with an
20 entity called -- on paper it's called Washington Park
21 Transfer Station, LLC and the Village of Caseyville
22 for fees related to garbage coming into the transfer
23 station?

24 A **Am I familiar with it or have I seen it or**

1 **what are you asking me?**

2 Q And I'll show you. I'm showing you what's
3 been previously marked as Exhibit 8.

4 (Prev. marked Exhibit 8.)

5 Q (By Ms. Pohlenz) Do you recognize this
6 agreement? It's with an entity called Washington Park
7 Transfer Station, LLC.

8 **A I recall the heading and the whole community**
9 **agreement. I recall seeing that, yes.**

10 Q Okay. And when do you recall first seeing
11 this agreement? You can feel free to look through it
12 if that helps you.

13 **A I -- I don't recall when I first saw it.**
14 **And I apologize for not doing my homework and going**
15 **through all my minutes of the meetings up to this**
16 **point. You know, I didn't know what you were going to**
17 **ask me today. So, I don't know when I first saw that.**

18 Q Okay. Did you have any involvement in the
19 negotiation of this agreement?

20 **A No.**

21 Q And "this agreement" referencing Exhibit 8.

22 **A No.**

23 Q Okay. Are you aware of anyone in the
24 Village who negotiated the agreement that's Exhibit 8

1 in front of you?

2 **A No.**

3 Q Would you be surprised if I told you that no
4 one on behalf of the Village negotiated this
5 agreement, that they just accepted what was given to
6 them?

7 MR. MANION: Objection to the form of the
8 question. I don't know if it matters whether he's
9 surprised or not.

10 Q (By Ms. Pohlenz) You can answer the question.

11 **A I'm sorry?**

12 Q You can answer the question.

13 **A I don't want to sound flippant on this or**
14 **anything like that, but in the last 12 months nothing**
15 **surprises me.**

16 Q Okay. Is it a common practice, in your
17 experience as a Village board member, that an
18 agreement for fees would be not negotiated by the
19 Village yet agreed to?

20 **A In my experience that would be uncommon.**

21 Q Uncommon?

22 **A Uncommon.**

23 Q Okay. At some point did you learn that an
24 application for site location approval had been filed

1 by Caseyville Transfer Station, LLC?

2 **A I don't recall if it came during a board**
3 **meeting, if I -- that's how I would have been made**
4 **aware of it, but I don't really.**

5 Q Okay.

6 **A If I can just take a minute here and explain**
7 **something to you.**

8 Q Go ahead.

9 MR. MANION: You have to wait for her --

10 THE WITNESS: I'm sorry.

11 MR. MANION: The way it works is she has to
12 ask you a question and you can't volunteer anything.

13 MS. POHLENZ: Please explain what you're
14 going to explain to me.

15 MR. MANION: Objection to the form of the
16 question. I'm not going to allow him just to give a
17 narrative on something that is not related to a
18 question.

19 MS. POHLENZ: I believe it is a question.
20 Are you instructing him not to answer?

21 MR. MANION: I think you have to ask a
22 question and he can answer the question. You can't
23 just inform him, give me a narrative on whatever you
24 want to state.

1 MS. POHLENZ: I didn't, I asked a question.

2 Q (By Ms. Pohlenz) Can you please explain for
3 me, how it was that you became aware that there was an
4 application for site location approval on file with
5 the Village of Caseyville?

6 A It would have been brought to my attention
7 during a committee meeting or a regular board meeting
8 but I do not recall which or when.

9 Q Okay. And is it at a committee meeting or a
10 board meeting, would it have been brought to your
11 attention in a manner that it would be reflected in
12 your minutes?

13 A It should have been if it was brought to us
14 at either of those meetings, it would have been
15 reflected in the minutes of the committee meeting or
16 the board meeting.

17 Q Okay. Did you have any advance notice that
18 an application was going to be filed? For example,
19 did someone contact you and say on this date specific
20 we're going to be filing this application? Or is it
21 your understanding that you learned of it at a
22 committee or a board meeting after it had already been
23 filed?

24 A I don't recall it being presented to us.

1 **I'm sorry, I don't recall when it was presented to us.**

2 Q Other than at a properly noticed Village of
3 Caseyville committee meeting or Village board meeting,
4 did you communicate with anyone orally or in writing
5 concerning the siting process generally?

6 **A No.**

7 Q Other than a properly noticed Village of
8 Caseyville committee meeting or board meeting, did you
9 communicate with anyone either in person, in writing,
10 in discussion about Caseyville Transfer Station, LLC?

11 **A Not that I recall, no, ma'am.**

12 Q Other than at a properly noticed Village of
13 Caseyville public committee meeting or Village board
14 meeting, did you communicate with anyone in person, in
15 writing, or in discussion concerning the Caseyville
16 Transfer Station, LLC application for site location
17 approval prior to your vote on August 6, 2014?

18 **A Not that I recall, no.**

19 Q Do you know why John Gilbert resigned
20 shortly after the May 29, 2014 siting hearing on the
21 Caseyville Transfer Station, LLC application for site
22 location approval?

23 **A Not firsthand, no.**

24 Q What's your understanding of why he

1 resigned?

2 MS. LIVINGSTON: Is this relevant to our
3 case here?

4 MS. POHLENZ: I don't know but that's why
5 I'm asking the question.

6 MS. LIVINGSTON: And then you're going to
7 ask that this transcript be submitted to the Pollution
8 Control Board and taint the record with activities
9 that have nothing to do with the siting application?

10 MS. POHLENZ: And you can say I agree to
11 that but we need to redact that portion.

12 MR. MANION: Well -- and I'm going to object
13 to the question if it calls for attorney/client
14 privilege as far as communications between John
15 Gilbert and the Village board. I don't know myself
16 what it was about. So I don't know if it's something
17 that's public knowledge or not public knowledge.

18 MS. LIVINGSTON: I would just ask you not to
19 speculate, if you know something. But, you know --
20 not start rumors.

21 Q (By Ms. Pohlenz) Let's ask this, was your --
22 Did you gain that understanding of why Mr. Gilbert
23 resigned from another attorney for the Village?

24 A I do not know the true reason why Mr.

1 **Gilbert resigned.**

2 Q Okay, that's fine.

3 Is it your understanding that Mr. John
4 Gilbert was the attorney for the Village board during
5 the siting process for the Caseyville Transfer
6 Station?

7 A **Mr. Gilbert along with Chris Cueto were both**
8 **representing the Village at different times. So who**
9 **did what and when I'm not clear on.**

10 Q Okay. Were they representing the Village
11 board or they were representing Village staff in that
12 process?

13 MS. LIVINGSTON: If you know. I mean, he
14 just gave you the answer. When you asked him if he
15 represented the Village board, he said he represented
16 the Village. He's not making a distinction. To the
17 extent that this is going to become a legal argument
18 later, I would say the man has already answered to the
19 best that he can. I don't even know if he is
20 qualified -- no offense to you -- to say if a person
21 represents the whole Village or represents the board
22 or represents staff or who do they represent. I mean,
23 you need to lay a foundation to see if he even
24 understands that.

1 MR. MANION: I'm going to join in that
2 objection and also object that I think you're asking
3 him for a legal conclusion about whether there's an
4 attorney/client relationship formed.

5 Q (By Ms. Pohlenz) Let me ask you this
6 question.

7 On August 6th, 2014, there was an attorney
8 sitting up on the board, where the board sits, when
9 you took your vote on the Caseyville Transfer Station.
10 I believe his name is Attorney Gras. Am I pronouncing
11 it correctly?

12 A Mike Gras, yes.

13 Q Mike Gras. Do you understand that he was
14 representing the Village board as he was sitting
15 there?

16 A Yes.

17 Q And so, Mr. Gilbert if he was in the same
18 position, would your understanding be that he was
19 representing the Village board as he would sitting
20 there, for example, during a hearing?

21 A The attorney sitting at the Village board
22 table is the Village attorney or one of the Village
23 attorneys. Who was doing what at any certain time, I
24 do not know.

1 Q Okay. Other than at -- Do you understand
2 who from the Village was the point person and that
3 could be Village staff or Village board, was the point
4 person for the Caseyville Transfer Station, LLC
5 project?

6 **A I do not know that.**

7 Q Do you know of -- Do you know any person who
8 is employed with or associated with Caseyville
9 Transfer Station, LLC other than -- now that you've
10 been introduced to Mr. Siemsen?

11 **A No.**

12 Q Do you know whether Mike Mitchell had any
13 role in the Caseyville Transfer Station, LLC site
14 application for site location approval?

15 **A I do not know.**

16 Q Do you know whether Brian Rader, if I'm
17 pronouncing that correctly, had any role in the
18 Caseyville Transfer Station, LLC application for site
19 location approval?

20 **A I do not know.**

21 Q And Brian Rader is the Director of Public
22 Works; is that accurate?

23 **A Yes.**

24 Q And is he also an engineer?

1 **A I believe he has a background in**
2 **engineering, yes.**

3 Q Are you aware of any communications, in
4 person meetings, discussions, telephone, in writing
5 that occurred between Caseyville Transfer Station, LLC
6 and the Mayor?

7 **A No.**

8 Q Are you aware of any communications in same
9 scope in person, in writing, over the phone, anything
10 at all that occurred between Caseyville Transfer
11 Station, LLC and any member of the Village board?

12 **A I'm not aware of any of those, no.**

13 Q Do you know who owns the property where the
14 Caseyville Transfer Station, LLC garbage transfer
15 station is proposed to be located?

16 **A I do not.**

17 Q Have you communicated with the owners of
18 that property?

19 **A No.**

20 Q Other than at a properly noticed committee
21 meeting or Village board meeting within the Village of
22 Caseyville, did you communicate with other board
23 members concerning the Caseyville Transfer Station,
24 LLC proposal?

1 **A No.**

2 Q Did you discuss the Caseyville Transfer
3 Station application for site location approval with
4 John Gilbert?

5 **A No.**

6 Q Were you aware of any documents that were
7 available to review concerning the Caseyville Transfer
8 Station, LLC application for site location approval?

9 **A There was some documentation that was put in**
10 **all the Trustee's In Box. I don't recall what they**
11 **are -- what they were.**

12 Q Okay.

13 **A I looked through them, I read them. But**
14 **I -- I don't -- I couldn't tell you what it was. I**
15 **don't really know.**

16 Q Is that the scope of the documentation that
17 you understood was available for your review?

18 **A Yes. I don't...**

19 Q And in terms of the quantity of documents in
20 your In Box -- about how many documents does your In
21 Box fit? I saw them hanging on the wall. Their --
22 you know, how thick do you think that is that you can
23 stick in there?

24 **A Well, usually -- it would depend on how much**

1 is in there when you start. Okay. It would probably
2 hold -- I'm just speculating on what it would hold.
3 It would hold, you know, a stack right here in front
4 of you, so, 10, 12 pages or more, you know.

5 Q Okay. Now, in terms of how many documents
6 are in that pack that you remember getting and
7 reviewing, in terms of quantity, can you tell us a
8 page estimate or inches?

9 A They weren't all at one time.

10 Q Okay.

11 A There might be a page of something a week --

12 Q Okay.

13 A -- or longer. You might have something with
14 two or three pages. Again, I'm sorry, I don't recall
15 when they were there, I can't even tell you what they
16 said.

17 Q Did you ever get four binders of documents
18 in your In Box?

19 A No.

20 Q You -- am I correct that you were not
21 present on May 29, 2014 for the siting hearing?

22 A No, I wasn't here.

23 Q Okay.

24 A Was that the public hearing you're talking

1 **about?**

2 Q It -- the May 29th, 2014 hearing is -- was
3 called a public siting hearing. It was not a hearing
4 at which the board voted.

5 **A I don't recall what --**

6 Q You know what, I can show you a transcript.

7 MR. MANION: Can't we look at the roll call
8 and be able to tell him for sure if he was there.

9 MS. POHLENZ: Sure, absolutely.

10 Q (By Ms. Pohlenz) If you don't mind, I'm going
11 to pull out the transcript for you from that public
12 meeting because that'll help refresh your recollection
13 as to --

14 **A If it was a public hearing --**

15 Q It was public hearing, yes.

16 **A I was not at a public hearing when -- I was**
17 **there for the public meeting when the vote was taken.**
18 **But the public hearing when people gave testimony for**
19 **or against that, I was not present at that.**

20 Q (By Ms. Pohlenz) Okay. And that's what I was
21 asking about, the public hearing. I'm glad you
22 clarified.

23 **A No. I'm just trying to -- the dates don't**
24 **really mean anything to me, so...**

1 Q Okay. I'm going to show you what's marked
2 as Exhibit No. 2.

3 (Prev. marked Exhibit 2.)

4 Q (By Ms. Pohlenz) And so, this is a special
5 meeting. This is a transcript from a special meeting.
6 I'm going to ask you some questions about the date
7 that that took place, August 6th, 2014.

8 At August 6th, 2014 it was a special meeting
9 called by the Village of Caseyville, a public meeting,
10 to vote on the Caseyville Transfer Station, LLC
11 application for site location approval. Were you --
12 is that correct?

13 A Yes.

14 Q And were you present at that meeting?

15 A Yes.

16 Q And on August -- on or before that date,
17 August 6th, 2014, did you understand what law governed
18 the decision that you were making that night on
19 August 6, 2014?

20 A No.

21 Q And as respects the siting process for a
22 facility like a garbage transfer station, are you
23 aware that there is a special process in the State of
24 Illinois that's governed by State statute for local

1 government, such as the Village of Caseyville, to
2 hear, review, and decide on a application like the
3 Caseyville Transfer Station, LLC application for site
4 location approval?

5 **A No.**

6 Q So, is it fair to say that on August 6,
7 2014, you did not know what the review was that was
8 supposed to be done under the applicable law?

9 **A I did not know.**

10 Q I'm going to ask you to take a look at
11 page 8 in Exhibit 2 that I handed you.

12 **A Okay.**

13 Q I'm going to call your attention first, to
14 lines eight to nine on Page 8. Where you raised a
15 question to the Village Attorney Gras concerning the
16 ten points. Then if you read down page 8 there's a
17 discussion. It appears from that discussion -- I'm
18 going to ask you. Is it a fair characterization of
19 that discussion to state that the Village attorney
20 handed out a document with a statute on it to everyone
21 at the Village board and you were asking him what that
22 was?

23 **A You asked me a lot of things right there.**
24 **To go to line 8 and look. What did you want from me**

1 **on this?**

2 Q I want you to look at that page, line 8, and
3 down the page.

4 **A Okay.**

5 Q And tell me if what's going on there, in
6 your question to the Village attorney about the ten
7 points, relates to a document that the Village
8 attorney passed out to everyone. If you recall?

9 **A I don't recall the ten points.**

10 Q Okay.

11 **A And that's why I said in line 9 I'm not**
12 **clear on that.**

13 Q Okay. Are you talking, though, about a
14 document that you have in front of you? Do you know
15 if that discussion concerns something you have in
16 front of you that was passed out to everyone by the
17 Village attorney or can you not tell from the
18 discussion?

19 **A I don't recall what document that Attorney**
20 **Gras provided us. I don't recall seeing anything that**
21 **mentioned nine points or ten points or whatever.**

22 Q Okay. At that August 6 meeting, a single
23 motion was made and a single vote taken to approve the
24 Caseyville Transfer Station, LLC application for site

1 location approval; is that correct?

2 **A Yes.**

3 Q And following that single vote, the Village
4 attorney and the Mayor separately asked the board
5 members for the reasons for the vote; is that correct?

6 **A The answer's yes.**

7 Q Okay. And I'm going to turn your attention
8 to Exhibit 2, pages 12 to 13 of the transcript. And
9 that's where you state your reasons for voting; is
10 that accurate?

11 MR. MANION: You're asking him just what the
12 transcript says?

13 MS. POHLENZ: Yes. That's what I'm asking
14 him.

15 **A Yes, it's accurate.**

16 Q (By Ms. Pohlenz) Okay. Is that the totality
17 of your reasons for voting that night?

18 MR. MANION: Objection, deliberative
19 process, privilege. I'm going to instruct the witness
20 not to answer.

21 MS. POHLENZ: We'll hold that to the end.
22 Do you want to continue, Don? I'm finished for now.
23 I just have questions -- the question that you've
24 objected to. So we'll wait until the end for that.

1 [EXAMINATION]

2 BY MR. MORAN:

3 Q Good afternoon, Mr. Davis. My name is Don
4 Moran. I represent the Village of Fairmont City.
5 I'll be asking you a few questions regarding the
6 siting application that was filed.

7 Did you have any knowledge that the siting
8 application, the four volumes that has been discussed
9 here, was received by the Village and kept in this
10 room. Were you aware of that?

11 **A No.**

12 Q Did you have any discussions with anyone
13 about the vote to approve the siting application after
14 you voted on August 6th, 2014?

15 **A After I voted?**

16 Q Yes.

17 MR. MANION: Are you asking other than --
18 are you asking about what's been in board meetings or
19 just in general?

20 MR. MORAN: No. I just want to find out
21 initially whether he's had any discussions with any
22 person about the vote after the vote.

23 MR. MANION: That would be yes or no.

24 MR. MORAN: Right.

1 **A No.**

2 Q (By Mr. Moran) Now, let's focus on the time
3 period before the vote on August 6th.

4 Did you ask anyone how to vote on the siting
5 application?

6 MR. MANION: I'm -- wait, did you say
7 before?

8 MR. MORAN: This is all before the vote on
9 August 6th.

10 MR. MANION: Okay.

11 Q (By Mr. Moran) Did you ask anyone how you
12 should vote on that application?

13 **A Not that I recall, no.**

14 Q Did you ask any other person how they were
15 going to vote on the application prior to the vote?

16 **A I don't recall doing that either, no.**

17 Q Did anyone tell you how you should vote?

18 **A No.**

19 Q Did you tell anyone before the vote how you
20 were going to vote?

21 **A I don't recall.**

22 Q Is there anything that might help refresh
23 your recollection?

24 **A No. I don't -- I don't recall having that**

1 **conversation with anybody.**

2 Q Thank you. That's all I have at this time.

3 MS. LIVINGSTON: I don't think we have any
4 questions.

5 THE WITNESS: You don't have any questions?

6 MS. LIVINGSTON: No. We are leaving you
7 alone today.

8 MR. MANION: I don't have any questions.

9 Any other questions?

10 [EXAMINATION]

11 BY MS. POHLENZ:

12 Q I'm going to take this back, just one
13 moment. I want to -- I have one question to ask you
14 that's under the objection that your attorney made.
15 So we kept those to the end.

16 MR. MANION: So the discovery portion is
17 over and now we're in the offer of proof?

18 MS. POHLENZ: This is the offer of proof.

19 MR. MANION: Okay.

20 MS. POHLENZ: Okay. So that --

21 THE WITNESS: It's the what?

22 MS. POHLENZ: It's called an offer of proof.

23 And why we are doing this, it's a lawyerly thing that
24 we like to do, is because a hearing officer or someone

1 else is going to rule on whether or not what you say
2 will become part of the record. We put it at the very
3 end just to make it easy so that if we decide that
4 your transcript -- at the end of this I'm going to ask
5 counsel, everyone at the table -- it won't be today
6 but it will probably be Friday after I have a chance
7 to read this, is it okay if we submit the Board Member
8 Davis' transcript in place of his testimony at the
9 public hearing that's happening next week. If
10 everyone agrees, then you don't need to come back.
11 But to give everyone a fair opportunity to review that
12 and not have to chop up that transcript, we put this
13 offer of proof at the very end so that it can be
14 removed if the objection your attorney made is upheld.
15 Does that make sense?

16 THE WITNESS: Sure.

17 MS. POHLENZ: Okay.

18 Q (By Ms. Pohlenz) So, I don't mumble this, I'm
19 going to put on my glasses. I'll ask you to take a
20 look at pages 12 and 13 to Exhibit No. 2. Now, I
21 asked you previously about if you stated your reasons
22 on those two pages. My next question for you is:
23 Putting aside -- So other than the financial reasons
24 that you talk about there, the other things that you

1 discuss, other than the financial reasons, are the
2 reasons you state on pages 12 and 13 the totality of
3 your reasons for voting yes on this application?

4 **A I'm sorry, I'm not real clear on what you're**
5 **asking me.**

6 Q Certainly. I'll ask it --

7 **A Did I have other reasons? What are you...**

8 Q What I'm asking you is if we take out the
9 financial reasons out of the picture and we just look
10 at the other things that you say on pages 12 and 13 as
11 your reasons for approving the transfer station
12 proposal, is that a fair summary of your reasons for
13 approving the transfer station proposal other than
14 financial?

15 **A I'm not trying to be slow here or anything,**
16 **but I'm just -- the main reason I had was the**
17 **financial reason. Okay. What more --**

18 Q There's other things that you say on that
19 page.

20 **A Okay.**

21 Q So, the main reason may have been financial.
22 But -- is everything, basically, all of your reasons
23 on those two pages? Is that a fair summary of all of
24 your reasons?

1 **A Yes.**

2 Q That's all I have.

3 [EXAMINATION]

4 BY MS. LIVINGSTON:

5 Q For example, did you know where this
6 transfer station was going to be located?

7 **A Yes.**

8 Q Did you think it was compatible with the
9 surrounding area to be at that location?

10 **A Yes.**

11 Q Was that something that you considered?

12 **A Yes.**

13 Q And, for example, did you look at whether or
14 not the facility was located outside of the 100-year
15 flood plain; and did you see the maps showing that it
16 was?

17 **A I do not recall seeing a map.**

18 Q Okay. But was that something that you were
19 concerned with whether or not that area would flood?

20 **A It's a reason to be concerned. But it
21 wasn't an issue at the time as far as I was concerned.**

22 Q Okay. And did you hear anybody raise issues
23 about traffic patterns?

24 **A There was discussion of traffic.**

1 Q All right. So did you consider what you
2 thought the traffic was on Bunkum Road in that area?

3 **A Yes.**

4 Q Okay. And did you listen to some of the
5 proposals that had been made at the public meetings
6 and in any way develop a trust of whether or not you
7 thought this facility would be run properly?

8 MS. POHLENZ: Objection --

9 MR. MORAN: Objection, he's indicated that
10 he didn't attend the public hearing.

11 MS. POHLENZ: Right.

12 MS. LIVINGSTON: Right. But he said that he
13 attended board meetings and at board meetings things
14 were proposed and things were presented and he said
15 that he received things in his mailbox.

16 MR. MORAN: But you can't be suggesting that
17 there was any evidence or any other information
18 presented at those board meetings to address what was
19 submitted in the application.

20 MR. MANION: There was information in the
21 briefs that were put in the mailboxes, right?

22 MS. LIVINGSTON: You know, motions to
23 dismiss and responses and things or -- I haven't
24 attended board meetings in a while.

1 MR. MORAN: What you're asking is did he
2 consider evidence or information that may have been
3 presented at a board meeting other than the public
4 hearing.

5 MS. LIVINGSTON: What I asked him --

6 MS. POHLENZ: That is what you asked him.

7 MS. LIVINGSTON: If you go back and read how
8 I asked it -- and maybe you'd like to read it back
9 into the record. I was asking him if he developed any
10 sense of trust for the person who was running the
11 facility or an opinion about that person from the
12 context that he had had with him that might have led
13 him to believe that they would run a good outfit.

14 MS. POHLENZ: He just met him today.

15 MR. MORAN: Objection. Wait a minute. What
16 facility? There's no facility in operation so there
17 can't be any trust about operating a facility.

18 MS. LIVINGSTON: You know what, we're going
19 to forget it because it's all deliberative process and
20 you've shown that you considered the criteria, so I'm
21 done.

22 MR. MANION: I don't have any questions.

23 MR. MORAN: Let me follow-up with just one
24 based on what Penni just asked you.

1 [EXAMINATION]

2 BY MR. MORAN:

3 Q So what you have told us is, in your remarks
4 at the August 6th hearing you described your reasons
5 financial, traffic, and others as you identified for
6 voting as you did; is that correct?

7 **A Yes.**

8 Q Thanks.

9 MR. MANION: Anything else?

10 [EXAMINATION]

11 BY MS. LIVINGSTON:

12 Q Just other than you did just say that that
13 wasn't the totality of what you had considered because
14 you considered other things that you didn't mention in
15 the record.

16 MR. MORAN: Objection, he didn't say that.

17 MS. POHLENZ: Objection, that's not what
18 said.

19 MS. LIVINGSTON: Yeah, he did. I asked him
20 if he considered the compatibility with the
21 surrounding area and he said yes. I asked him if he
22 considered traffic patterns and he said yes. Well,
23 those are criteria and they're not mentioned on
24 page 12 that you asked him about. So I think it was a

1 fair question to ask.

2 MR. MANION: I've got a follow-up.

3 [EXAMINATION]

4 BY MR. MANION:

5 Q Your statement on page 12 --

6 MS. LIVINGSTON: Not that he answered it.

7 Q (By Mr. Manion) You considered -- you
8 listened to and considered everything that was
9 presented to you at the meeting; correct?

10 MR. MORAN: Objection. What meeting?

11 MS. POHLENZ: Objection. What meeting?

12 Q (By Mr. Manion) You mentioned you reviewed
13 several documents placed in your box; correct?

14 A Yes.

15 Q And at this meeting on August 6th different
16 people spoke; correct?

17 A Yes.

18 Q Okay. When you made your vote, you
19 considered all the things you had heard and read up to
20 that point; correct?

21 MR. MORAN: Objection. We haven't
22 established any foundation for what he has heard or
23 even, in fact, what he's read.

24 MS. POHLENZ: Join.

1 MR. MORAN: All we've heard is that he got
2 certain things in his In Box --

3 MR. MANION: That's fine. He can answer the
4 question.

5 MR. MORAN: -- which he doesn't recall and
6 he can't identify what he read. So, how can he answer
7 your question about what he heard or what he read? He
8 can't even identify what those items are.

9 MS. POHLENZ: I'm joining in the objection.

10 MR. MORAN: So, I object on that basis. You
11 can answer if you understand the question and can
12 respond to it.

13 **A Okay. I can answer the question. I can't**
14 **answer questions like that with yes or no answers. If**
15 **you want more than that, can I do more than that? I**
16 **mean, there's -- there's more to it than a yes or no**
17 **answer.**

18 Q (By Mr. Manion) Okay.

19 MS. LIVINGSTON: Well, we're in the portion
20 that's a prove up, not part of the discovery, so if
21 you feel like you have something to say, you probably
22 just you ought to say it.

23 Q (By Mr. Manion) Yeah.

24 **A There was public portion of the meeting**

1 where Norm Miller spoke, I think some others may have
2 spoke. The concerns that I was familiar with was,
3 one, the heavy traffic on Bunkum Road, I knew that
4 Bunkum Road was being improved to carry that traffic.
5 That was not an issue. There was a concern of school
6 buses, other heavy traffic on Bunkum Road, that is an
7 industrial/commercial area. There is a lot of heavy
8 truck traffic and bus traffic on that road. I didn't
9 feel that the additional traffic by the transportation
10 was going to create a problem. So, the issues that
11 were raised when I was present at the special meeting
12 were addressed. I knew that we had a ordinance in
13 place that prohibited trash trucks from spilling their
14 contents upon the roadway and that if we enforced that
15 ordinance then we could keep that from being a
16 problem.

17 My primary concern was, yes, financial. The
18 Village could use the income. The road can carry the
19 traffic. The zoning is -- the zoning is, this is
20 probably going to get me in trouble saying all this
21 stuff, you know, but...

22 MR. MANION: Just tell the truth.

23 THE WITNESS: That's what I'm trying to do.

24 A The area is compatible. The roadway's going

1 to be improved. It's heavy truck traffic. That's all
2 I knew about.

3 As far as the flood plains, the pollution
4 control boards, when this meeting -- this special
5 meeting was held, I thought by that time you all had
6 it worked out. I thought the pollution, EPA,
7 everybody was here, they had it all worked out. So
8 all it was a matter now was voting on the facts as we
9 saw them.

10 Q (By Mr. Manion) Did you have any worries that
11 the location for the transfer station would be flooded
12 at the time of the vote?

13 A No.

14 Q I don't have any other questions.

15 MR. MORAN: I have questions.

16 [EXAMINATION]

17 BY MR. MORAN:

18 Q Mr. Davis, what was the source of your
19 information that everything had been worked out? In
20 other words, with the Pollution Control Board, the
21 Enviromental Protection Agency, whatever other
22 agencies you thought might have to be involved. Where
23 did you hear that? How did you hear it? What was the
24 source of that information?

1 A There was no source. The fact that I had
2 known that there was ongoing communication and things
3 being done, you know. I'm not on the inside track
4 with this Village board anymore. Okay. So I wasn't
5 privy to all the meetings that may or may not have
6 taken place, but I knew that there was meetings going
7 on and action being taken. I could not tell you what
8 that was, but I assumed that this is what was being
9 hashed out. All the pollution concerns, all the other
10 concerns were being worked out.

11 Q What was the source of your information that
12 there were these ongoing meetings going on? Did
13 somebody tell you, did you overhear it, did you
14 receive some correspondence?

15 A No particular source, other than I would
16 receive a document, occasionally, in my box that would
17 indicate that there is ongoing action by somebody or
18 some group working with the Village and working with
19 the -- I thought all the different governing bodies
20 were involved with the EPA and everybody was all
21 working this thing out. So, no, I don't have -- I
22 wasn't privy to the meetings. I don't know what all
23 went on. But by the time it got to us out there, it
24 seemed like those concerns that we discussed with the

1 traffic and the roadway and all that kind of stuff was
2 the main concern with the people in the audience.

3 Q Did you have any information about who was
4 participating in these ongoing meetings?

5 A No, sir.

6 Q What was the source of your information
7 regarding the traffic in and around the site; and also
8 the fact that your understanding that improvements
9 were going to be made to Bunkum Road and other traffic
10 networks in that area?

11 A The Village was notified quite some time ago
12 by St. Clair County that improvements were going to be
13 made to Bunkum Road because we have to move the water
14 lines and other things along the road, you know, so
15 that the improvements can be made. I've worked for
16 the St. Clair County Highway Department for 25 years.
17 I've done a lot of work on Bunkum Road, so -- I did a
18 lot of repair work of damage caused by heavy trucks on
19 Bunkum Road, a lot of patching, repair work down
20 there. So, I knew the condition of the road. I knew
21 that it was being approved to carry heavy traffic.

22 Q And your understanding was that St. Clair
23 County was going to undertake these improvements?

24 A Yes.

1 Q Did you have any information about when St.
2 Clair County was going to implement or undertake these
3 improvements?

4 A I don't recall the date now, but was given
5 the date because we had to begin moving our utilities.

6 Q And were steps taken to begin moving the
7 utilities?

8 A Pardon me? Yes, we have started doing that.

9 Q And when did that begin?

10 A That has begun in the last -- I would say
11 the last couple months.

12 Q Did you have any information as to whether
13 the funding for these improvements had been obtained
14 or allocated by St. Clair County?

15 A No.

16 Q Then with respect to your information about
17 the traffic in and around the site, what was the basis
18 for your information on the level of traffic and any
19 other materials that you relied upon in making your
20 statements at the August 6th meeting?

21 A Again, I worked on Bunkum Road. I'm
22 familiar with the trucking companies on Bunkum Road.
23 I've stood alongside Bunkum Road with the
24 tractor-trailers going by me and the tandem dump

1 **trucks, you know, so there is a heavy amount of truck**
2 **traffic on Bunkum Road.**

3 Q So, it would be fair to say that this
4 information that you obtained was acquired by virtue
5 of your presence at or around the site or your visits
6 to the site and not any information that was presented
7 as part of this siting application or siting
8 application process?

9 A **No, I did not see -- I wasn't there during**
10 **the siting application hearing or whatever it was and**
11 **I did not hear the testimony.**

12 Q So that information you obtained simply by
13 being out at the site and from your own personal
14 experience?

15 A **From us being notified by St. Clair County**
16 **that the road was being -- was going to be improved**
17 **and then knowing the amount of traffic that is down**
18 **there and the businesses that are already there.**

19 Q So just so the record is clear, the answer
20 to my question is, yes, your information regarding
21 traffic and the improvements to Bunkum Road and in
22 that area came from materials or sources outside of
23 this siting process or this siting process record;
24 correct?

1 **A Yes.**

2 Q Thank you, sir, I have nothing further.

3 MS. LIVINGSTON: We should be done then,
4 right?

5 MS. POHLENZ: We're done. Nothing more.

6 MS. LIVINGSTON: Thank you for coming.

7 MR. MANION: All right. So, the last bit is
8 you have the chance to review the transcript that will
9 be created of this deposition and you can review it
10 and make sure she took down everything accurately or
11 you can waive that right. I'd suggest you waive it
12 unless you really want to spend time re-reading
13 everything that's just been said here.

14 THE WITNESS: I think she does a fine job
15 over there. I'll waive my right.

16 (Whereupon signature was waived, and
17 the deponent was excused.)

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REPORTER CERTIFICATE

I, Elizabeth A. Goodwin, RPR, MO-CCR,
IL-CSR, do hereby certify that there came before me at
Village of Caseyville, 909 South Main Street,
Caseyville, IL 62232,

KERRY DAVIS,

who was by me first duly sworn; that the witness was
carefully examined, that said examination was reported
by myself, translated and proofread using
computer-aided transcription, and the above transcript
of proceedings is a true and accurate transcript of my
notes as taken at the time of the examination of this
witness.

I further certify that I am neither attorney
nor counsel for nor related nor employed by any of the
parties to the action in which this examination is
taken; further, that I am not a relative or employee
of any attorney or counsel employed by the parties
hereto or financially interested in this action.

Dated this 23rd day of OCTOBER, 2014.

ELIZABETH A. GOODWIN, RPR, MO-CCR, IL-CSR

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ROXANA LANDFILL, INC.,)
)
Petitioner,)
	)No. PCB 15-65
vs.	)(Third Party Pollution
	)Control Facility Siting
	)Appeal)
VILLAGE BOARD OF THE VILLAGE OF)
CASEYVILLE, ILLINOIS; VILLAGE OF)
CASEYVILLE, ILLINOIS; AND)
CASEYVILLE TRANSFER STATION, LLC,)
)
Respondents.)
_____)
)
VILLAGE OF FAIRMONT CITY,)
ILLINOIS,)
)
Petitioner,	)No. PCB 15-69
	)(Third Party Pollution
vs.	)Control Facility Siting
	)Appeal)
VILLAGE OF CASEYVILLE, ILLINOIS	)(Consolidated)
BOARD OF TRUSTEES AND CASEYVILLE)
TRANSFER STATION, LLC.)
)
Respondents.)

DEPOSITION OF WALTER ABERNATHY

Taken on behalf of the Petitioner
October 21, 2014

Christopher C. Wieggers, CCR-MO, CSR-IL
PohlmanUSA Court Reporting
877-421-0099

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1 Respondent Caseyville Transfer Station, LLC represented
2 by Ms. Penni S. Livingston of the law offices of Livingston
Law Firm, 5701 Perrin Road, Fairview Heights, IL 62208.

3
4 Petitioner Village of Fairmont City, Illinois
5 represented by Mr. Donald J. Moran of the law offices of
Pedersen & Houpt, 161 N. Clark Street, Suite 3100, Chicago,
IL 60601.

6
7 Respondent Village Board of the Village of Caseyville,
8 Illinois and Village of Caseyville, Illinois represented by
Mr. J. Brian Manion of the law offices of Weilmuenster Law
Group, P.C., 3201 West Main Street, Belleville, IL 62226.

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1 IT IS HEREBY STIPULATED AND AGREED by and between
2 Counsel for the Plaintiffs and Counsel for the Defendants,
3 that this deposition may be taken by shorthand by
4 Christopher C. Wiegers, a Certified Court Reporter, and
5 afterwards transcribed into typewriting.

6
7 0-0-0

8
9 * * * * *

10
11 WALTER ABERNATHY,

12
13 Of lawful age, having been first duly sworn to testify the
14 truth, the whole truth, and nothing but the truth in the
15 case aforesaid, deposes and says in reply to oral
16 interrogatories propounded as follows:

17 EXAMINATION

18 BY MS. POHLENZ:

19 Q. Please state your name and spell it for the court
20 reporter.

21 A. **Walter Abernathy, W-a-l-t-e-r A-b-e-r-n-a-t-h-y.**

22 Q. And you're here today, Mr. Abernathy, in the matter
23 of Roxana Landfill, Inc. versus Village Board of the Village
24 of Caseyville, et al. It's an appeal of a pollution control

1 siting proceeding before Caseyville, and it's consolidated
2 with the appeal also taken by the Village of Fairmont City
3 for your deposition. Is that your understanding?

4 **A. That's true.**

5 Q. So your attorney has probably explained to you sort
6 of the basics of a deposition. Have you had your deposition
7 taken in the past?

8 **A. Yes.**

9 Q. And how many times?

10 **A. Once for sure.**

11 Q. Okay. And what kind of a matter did that involve?

12 **A. It was an asbestos-related case.**

13 Q. And have you ever testified at a trial?

14 **A. Yes.**

15 Q. And was it the same case?

16 **A. No. It was a construction project case. As a**
17 **matter of fact, there was a golf course, Cahokia Golf**
18 **Course.**

19 Q. In either of these cases were you testifying in a
20 role regarding the Village? In either of those cases, the
21 asbestos --

22 **A. No.**

23 Q. -- or the golf course, was your role related to the
24 Village?

1 **A. Neither.**

2 Q. Okay. And in either of those cases were you a
3 party to the case, meaning a plaintiff or a defendant to the
4 case?

5 **A. No.**

6 Q. Okay. So --

7 **A. The first -- the asbestos case was for my brother.**

8 Q. Okay. So the process here today is that I'm going
9 to ask you a question and you're going to answer it. Now,
10 if I ask you something that you don't understand, please let
11 me know. My intent isn't to be confusing, but sometimes I
12 garble my words, and I want you to let me know that you
13 didn't understand the question. Okay?

14 **A. Okay.**

15 Q. It's also important that -- and I don't think this
16 is going to happen with us, but it's also important that we
17 don't speak over one other. That's just because our court
18 reporter is taking down what we say, and so we need to have
19 him be able to write it clearly.

20 And if I ask you a question and you answer it, I'm
21 going to assume that you understood it. So are all of those
22 rules good with you?

23 **A. Fine.**

24 Q. Also, if at any time you need a break, if it's

1 getting too hot and we need to open the door, just let me
2 know and we'll do that. Okay?

3 **A. Okay.**

4 Q. So for how long have you been a Village board
5 member with the Village of Caseyville?

6 **A. Eight years.**

7 Q. And am I correct that at the May 29, 2014 public
8 hearing on the Village of Caseyville -- I'm sorry -- on the
9 Caseyville Transfer Station, LLC application for site
10 location approval that you were one of the Village board
11 members present?

12 **A. Yes.**

13 Q. Was Mayor Len Black also present?

14 **A. Yes.**

15 Q. Was Village board member Brenda Williams also
16 present?

17 **A. Yes.**

18 Q. And was John Gilbert also there at the May 29, 2014
19 public hearing sitting in between you and Mayor Black?

20 **A. Yes.**

21 Q. And John Gilbert was at the time a Village
22 attorney, correct?

23 **A. Yes.**

24 Q. And shortly after the May 29, 2014 public siting

1 hearing, John Gilbert resigned as a Village attorney, is
2 that correct?

3 **A. Yes.**

4 Q. So is it your understanding that at that May 29,
5 2014 siting public hearing that he was representing the
6 Village board?

7 **A. Yes.**

8 Q. Was the Caseyville transfer station -- was
9 Caseyville Transfer Station, LLC or its application for site
10 location approval ever discussed in a closed session by the
11 Village board at or prior to the time the Village board made
12 its decision on August 6, 2014?

13 **A. No.**

14 Q. Have you ever met someone representing Caseyville
15 Transfer Station, LLC -- representing that company, employed
16 by that company, or otherwise connected to that company
17 other than Mr. John Siemsen who is here with us?

18 **A. No.**

19 Q. When was the first time that you met or spoke with
20 Mr. Siemsen?

21 **A. The first time I seen him is when he came in to**
22 **discuss it with the board, present it to the board, and I**
23 **think everyone was here.**

24 Q. Are you referencing the May 29th public siting

1 hearing?

2 **A. Yes.**

3 Q. And had you communicated previously with him,
4 previous to that May 29, 2014 siting hearing?

5 **A. No.**

6 Q. Had you received any communications that had come
7 from him through others?

8 **A. No.**

9 Q. To your recollection, what was the first time that
10 you had ever heard about the Caseyville Transfer Station,
11 LLC project within the Village of Caseyville?

12 **A. When it was put on our agenda. I don't remember**
13 **what month that was or --**

14 Q. When it was put on your agenda in the form of a
15 siting application?

16 **A. It was brought up to the committee meeting to**
17 **discuss the application, I guess where it was going to be**
18 **and all of that.**

19 Q. Okay. And do you remember was that this year in
20 2014?

21 **A. I don't remember.**

22 Q. Okay. Would you be able, with help from the
23 Village, to locate the committee minutes that would reflect
24 that discussion?

1 MR. MANION: Objection, calls for speculation.

2 MS. POHLENZ: Okay. Let me strike that question
3 and I'll ask it this way.

4 Q. (By Ms. Pohlenz) If it was brought up at a
5 committee meeting, would the minutes of that committee
6 meeting reflect the discussion?

7 **A. Yes.**

8 Q. Did you have any knowledge about Caseyville
9 Transfer Station, LLC, Washington Park Transfer Station, LLC
10 in the year 2013?

11 **A. I don't remember any -- if any of that came up or
12 not.**

13 Q. Have you ever discussed the Caseyville Transfer
14 Station, LLC with -- prior to August 6, 2014 with anyone
15 outside of the Village board?

16 **A. No.**

17 Q. Have you ever discussed it with Village staff?

18 **A. They knew about it.**

19 Q. How did you know they knew about it?

20 **A. The minutes. The girls in the office type up the
21 minutes.**

22 Q. The minutes from the committee meeting, for
23 example, and for the public meetings?

24 **A. Yes.**

1 Q. Did you -- prior to the decision on August 6, 2014,
2 did you have occasion to discuss the Caseyville Transfer
3 Station, LLC application for site location approval with any
4 of the board members?

5 **A. Yes.**

6 THE WITNESS: That was the committee meeting,
7 correct?

8 Q. (By Ms . Pohlenz) Other than at a committee
9 meeting, did you have a discussion with board members?

10 **A. No.**

11 Q. So this committee meeting -- this is the same
12 committee meeting that you've been referencing in past
13 answers, also, or is there multiple committee meetings?

14 **A. It was multiple.**

15 Q. Multiple committee meetings?

16 **A. Yes.**

17 Q. Okay.

18 **A. I think it came up.**

19 MR. MANION: You need to wait for a question,
20 Walter.

21 Q. (By Ms. Pohlenz) Do you know about how many times,
22 to your recollection, it came up in a committee meeting?

23 **A. At least twice, I would say.**

24 Q. Did you ever discuss, prior to the decision on

1 August 6th, the Caseyville Transfer Station, LLC application
2 for site location approval with Mayor Len Black?

3 **A. No.**

4 Q. Did you ever discuss the siting application we've
5 been discussing or Caseyville Transfer Station, LLC with
6 John Gilbert?

7 **A. No, I haven't.**

8 Q. Do you have an understanding of who on the village
9 staff side or the Village board side took the lead role in
10 communicating with Caseyville Transfer Station, LLC about
11 their project?

12 **A. That would be the chairman of that committee.**

13 Q. Who was that?

14 **A. I think it's Scott. If it's under the public works
15 it would be Scott.**

16 MR. MANION: I don't want you to guess. Are you
17 sure?

18 **A. Well, Scott is chairman of the public works
19 committee.**

20 Q. (By Ms. Pohlenz) Okay.

21 **A. G.W. Scott, Gerald Scott.**

22 Q. And the committee -- the at least two committee
23 meetings that you recall this being raised, would that have
24 been public works committee meetings?

1 **A. It may have been. I'm not sure.**

2 Q. How many committees are there?

3 **A. Let's see. Seven -- seven chairmen.**

4 Q. Okay.

5 **A. And some chair two or three committees.**

6 Q. So of the chairmen, if it's easier to do the
7 breakdown, which chairmen would have potentially in your
8 mind been the chairman to chair a committee where this
9 application or Caseyville Transfer Station, LLC would have
10 been discussed?

11 **A. Public works.**

12 Q. And no other committees that you can think of would
13 cover it or chairmen would cover it?

14 **A. Well, the planning committee, but I'm pretty sure
15 that it came up under the public works.**

16 Q. Okay. So if I were to look for committee meeting
17 minutes, looking at the planning committee meetings and
18 looking at the public works committee meeting minutes, I
19 should be able to find the two committee meetings that
20 you're looking for?

21 **A. Yes.**

22 Q. At some point did you become aware of a host
23 agreement between Washington Park Transfer Station, LLC or
24 Caseyville Transfer Station, LLC and the Village?

1 **A. No.**

2 Q. Did you vote on a host agreement?

3 **A. No.**

4 Q. Are you aware of any agreement between Caseyville
5 Transfer Station, LLC and its name Caseyville Transfer
6 Station, LLC or by any other name in which it agrees to give
7 the Village fees generated per quantity of waste that either
8 comes to you or goes through the transfer station when the
9 transfer station becomes operating?

10 **A. Yes.**

11 Q. And what's your understanding of what that
12 agreement is referenced or called?

13 **A. I don't know. It's so much per ton that the
14 Village was going to receive. I don't remember if it was
15 \$0.60 a ton or whatever the number was. I don't remember.**

16 Q. Do you remember when that agreement was first
17 discussed with you by anyone?

18 **A. No, I don't.**

19 Q. How did you first become aware of that type of an
20 agreement?

21 **A. It come up in a meeting.**

22 Q. So in advance of the meeting you received an
23 agenda, and that would have been your first notification
24 that there was an agreement?

1 **A. Yes.**

2 Q. How are agreements traditionally handled with the
3 Village when something is proposed to the Village? Is there
4 a particular person or persons that then negotiate that
5 agreement?

6 **A. Well, usually the mayor is the first one to hear
7 about it, and he'll -- he puts stuff on the agenda to bring
8 it up in the committee meetings.**

9 Q. What is your understanding of this fee agreement
10 between Caseyville Transfer Station, LLC and the Village is
11 called?

12 **A. I don't remember what it's called.**

13 Q. Do you remember if it was accepted by the Village?

14 **A. Yes.**

15 Q. Did you vote on that acceptance?

16 **A. Yes.**

17 Q. And do you know who, other than the mayor, was
18 involved with the discussion with Caseyville Transfer
19 Station, LLC concerning that agreement?

20 **A. It was in a committee meeting.**

21 Q. And where would -- what committee would the host
22 agreement have been discussed?

23 **A. I don't remember, but just in the meeting.**

24 Q. And do you recall being there at this committee

1 meeting where it was discussed?

2 **A. Yes.**

3 Q. Do you recall it being more than one committee
4 meeting or just one committee meeting?

5 **A. When it came up it was one committee meeting.**

6 Q. And then following that committee meeting was it
7 placed on an agenda to be voted on?

8 **A. Yes.**

9 Q. And was it then approved by the board?

10 **A. Yes.**

11 Q. So if we looked backwards at the board date agenda
12 where they approved the fee agreement with Caseyville
13 Transfer Station, we could then see whatever committee
14 meetings happened just prior to that meeting and it would
15 have been one of those agendas?

16 **A. Yes.**

17 Q. Do you have any understanding as to whether the
18 Village negotiated any terms of that fee agreement or
19 whether they just accepted it as is?

20 **A. No.**

21 Q. Have you --

22 MS. POHLENZ: Sorry, Mr. Abernathy. I just need a
23 minute to show you something.

24 Q. (By Ms. Pohlenz) When you saw the host agreement

1 at the -- or did you see the host agreement at the committee
2 meeting and at the board meeting prior to approval of it?

3 MR. MANION: Objection. I think he testified he
4 didn't know what the agreement was called.

5 Q. (By Ms. Pohlenz) Okay. The agreement that you
6 referenced as a fee agreement between Caseyville Transfer
7 Station, LLC and the Village of Caseyville, did you -- was
8 that agreement available to you for review at the committee
9 meeting or prior to the committee meeting where it was
10 discussed?

11 **A. It was at the committee meeting when we got it.**

12 Q. And do you recall it being complete at that time?
13 And I'm asking because there's an Exhibit A that's
14 referenced in the agreement that hasn't been attached.

15 **A. I don't know if there was two agreements -- or I
16 don't know.**

17 Q. Did you take a look at what was there?

18 **A. The agreement on the amount of money the Village
19 would receive --**

20 Q. Okay.

21 **A. -- that agreement, whichever that one was.**

22 Q. Did you take a look at it to see whether or not it
23 was complete and had all of its exhibits that were
24 referenced at the time of the committee meeting or the board

1 meeting?

2 **A. I don't know what exhibits would have been.**

3 Q. Okay. So is that a no to my question then? Is
4 that a no answer to my question?

5 MR. MANION: Objection. Do you understand the
6 question?

7 THE WITNESS: Not really because I don't know how
8 many references there was, you know, if there was two parts
9 to the agreement or just one part. I'm not sure what the --

10 Q. (By Ms. Pohlenz) Okay. What was Mike Mitchell's
11 role in the host agreement, to the extent you know?

12 **A. He's zoning administrator.**

13 Q. And do you know if he had a role in the host
14 agreement -- or not the host agreement. I'm sorry. Do you
15 know if he had a role in the agreement for fees between
16 Caseyville Transfer Station, LLC and the Village that you've
17 talked about?

18 **A. I don't know.**

19 Q. What was Mike Mitchell's role in the Caseyville
20 Transfer Station, LLC application for site location
21 approval?

22 **A. I don't know that.**

23 Q. Who is Brian Rader?

24 **A. Public works superintendent.**

1 Q. And what was Brian Rader's role with respect to the
2 fee agreement between Caseyville Transfer Station, LLC and
3 the Village that you've acknowledged?

4 **A. I don't know.**

5 Q. And what about Brian Rader's role with respect to
6 Caseyville Transfer Station, LLC application for site
7 location approval?

8 **A. I don't know.**

9 Q. Did you ever speak with Brian about Caseyville
10 Transfer Station?

11 **A. No.**

12 Q. Did you ever speak with Mike about the proposed
13 transfer station?

14 **A. I don't remember.**

15 Q. How would you have done it? Would you have
16 communicated with him in person, by e-mail, phone call, if
17 you did?

18 **A. In person.**

19 Q. Did you have any role in negotiating the
20 agreement -- the fee agreement that we've discussed?

21 **A. No.**

22 Q. Did you have any role, prior to the submittal by
23 Caseyville Transfer Station, LLC of a siting application, in
24 discussions with Mr. Siemsen or the Caseyville Transfer

1 Station, LLC entity?

2 **A. No.**

3 Q. Is it your understanding that Mayor Black would
4 have had the most communication from anyone within the
5 Village with Mr. Siemsen?

6 **A. Yes.**

7 Q. And do you know about when that communication
8 occurred or first started occurring?

9 **A. No.**

10 Q. No?

11 **A. No.**

12 Q. Have you ever heard of, spoken to, met, or
13 communicated in any way with a person named Patrick Mazza?

14 **A. No.**

15 Q. Do you know who owns the property where the
16 Caseyville Transfer Station, LLC transfer station is
17 proposed to be located?

18 **A. No.**

19 Q. Who first introduced you to just the idea of a
20 transfer station -- waste transfer station being located in
21 Caseyville?

22 **A. Would you repeat that?**

23 Q. Certainly. Who first introduced you to the idea of
24 a waste transfer station being located in Caseyville?

1 **A. I don't remember.**

2 Q. Is it an idea that's just been recently in your
3 mind for the Village or is that something that has been
4 floating around the Village for a few years?

5 **A. No, just recently when this came about.**

6 Q. Okay. You mentioned that you had communication --

7 THE WITNESS: I need to talk to you for a second.

8 MR. MANION: Can we take a break for a minute?

9 MS. POHLENZ: Yeah, that's fine.

10 (A short break was taken.)

11 MR. MANION: I think on one of the questions Wally
12 wants to clear something up.

13 **A. On the transfer station, a couple years ago we had**
14 **a fellow -- and I don't remember if it was him. I don't**
15 **remember, but it's been at least two years because George**
16 **Chance was mayor at the time. They wanted to build one over**
17 **off of Black Lane and Old Caseyville Road. It's a county**
18 **road there, Old Caseyville Road, and the county would not**
19 **redo that because it doesn't run between two highways. You**
20 **know, they can't -- in fact, they can get money for that if**
21 **it's between two highways. And they wouldn't do that --**
22 **redo that road over there from blacktop to concrete, so the**
23 **station didn't happen. So I don't want to lie and say that**
24 **I never heard about one. It didn't go anywhere.**

1 Q. (By Ms. Pohlenz) Well, I appreciate the
2 clarification. And you can stop me if you recall something
3 as we're talking.

4 Do you recall who the applicant was or who the
5 entity was who approached you?

6 **A. I don't remember who it was.**

7 Q. Do you recall from the Village side of it or the
8 Village board side of it who was involved in that
9 discussion?

10 **A. I don't remember. It was just brought up and it**
11 **didn't go anywhere.**

12 Q. You had mentioned that you had some discussions
13 with board members before the decision on August 6, 2014
14 concerning the transfer station. Which board members?

15 **A. Well, I would assume all six board members, but I'm**
16 **not sure if they were all at the meeting. Sometimes one or**
17 **two may not be at a meeting.**

18 Q. So the discussions you would have had would have
19 been at a committee meeting or would have been at the public
20 meeting where you made your decision?

21 **A. Yes.**

22 Q. And other than that, you weren't communicating with
23 the board members?

24 **A. No.**

1 Q. No one asked you what happened at the siting
2 hearing, the public hearing that we had on May 29, 2014?

3 A. No. Well, there was -- people asked. I said we
4 just sat and listened, the board members.

5 Q. Who would have asked you about that?

6 A. Well, the other board members that weren't there.

7 Q. Did you discuss with them any specifics about what
8 was presented at that public hearing?

9 A. No. Just everybody was discussing it, and we were
10 sitting and listening.

11 Q. Did you discuss with them your opinion, if you had
12 formed one at the time?

13 A. None.

14 Q. Was there any discussion about how you were going
15 to vote?

16 MR. MANION: I'm going to object that that gets
17 into deliberative process privilege.

18 MS. POHLENZ: Well, we'll hold that one to the end.

19 Q. (By Ms. Pohlenz) When was the first time you
20 became aware that the Caseyville Transfer Station, LLC
21 application for site location approval was in the building
22 at the Village Hall?

23 MR. MANION: Objection. I think that was asked and
24 answered, but you can answer the question subject to that

1 objection.

2 Q. (By Ms. Pohlenz) Do you need me to say the
3 question again?

4 MR. MANION: You can go ahead and answer it subject
5 to my objection.

6 **A. It was brought up at the public meeting, and it was**
7 **in the building, the book, the application packet.**

8 Q. (By Ms. Pohlenz) So at the May 29, 2014 meeting
9 was the first time you became aware that the application
10 packet was at the Village Hall?

11 **A. Well, I'm not sure if it was that meeting.**

12 Q. Okay.

13 **A. But when it was in here in the building.**

14 Q. Okay. And do you know when the application was
15 first brought to the Village Hall?

16 **A. I don't remember.**

17 Q. Who told you that the application was at the
18 Village Hall?

19 **A. It was on the agenda.**

20 Q. Okay. What was the first agenda following when the
21 application was brought to the Village Hall where it was
22 discussed?

23 **A. I don't remember.**

24 Q. So am I correct to say your first notification that

1 an application was on file with the Village was on an agenda
2 for a committee meeting or a board meeting?

3 **A. Yes.**

4 Q. And you received no other notification such as a
5 note or a call or an e-mail or a text or any type of
6 communication that this was on file other than through your
7 agenda packets for committee or board meetings?

8 **A. Not that I remember.**

9 Q. Do you know where the application was being kept?

10 **A. It was in here on the table for a while.**

11 Q. When was that?

12 **A. I don't remember when it was put in here, but it
13 was in here.**

14 Q. Were you given your own copy of the application?

15 **A. I don't remember.**

16 Q. The application is a pretty thick document, right?

17 **A. Yes, it is.**

18 Q. And you're saying you don't remember whether you
19 got that thick document to have as your own copy or not?

20 **A. I've got a stack that high in my mailbox now of
21 stuff. I don't know what all is in there.**

22 Q. Okay. As it respects the pollution control
23 facility siting process, in general, when was the first time
24 you learned about this process?

1 **A. I don't understand it.**

2 Q. Okay.

3 **A. Process?**

4 Q. Do you understand that a transfer station is a type
5 of pollution control facility?

6 **A. I don't know.**

7 Q. Okay. Do you understand that there's a special
8 procedure that's given for local -- by state law for
9 municipalities to use when presented with an application for
10 a facility like a transfer station?

11 **A. I don't know.**

12 Q. So is it fair to say that with respect to the
13 special process I've referenced, no one gave you an
14 introduction to what it is and what a Village board does
15 with respect to it?

16 **A. No.**

17 Q. Is it fair for me to say that you do not have an
18 introduction to it? Is that correct?

19 **A. Yes.**

20 Q. Have you -- prior to the August 6th meeting in 2014
21 where the Village board made its decision to approve the
22 Caseyville Transfer Station, LLC application for site
23 location approval, did you speak with Rob Watt about the
24 application or anything that people were filing in the

1 public record?

2 **A. I don't remember.**

3 Q. How would you have communicated with Rob Watt had
4 you spoken with him? Would it have been e-mail, text,
5 in-person conversation, telephone call?

6 **A. In-person conversation.**

7 Q. Did you ever, to your recollection, go to Rob and
8 ask him for documents concerning the Caseyville Transfer
9 Station, LLC application for site location approval?

10 MR. MANION: Objection, that gets into the
11 deliberative process privilege.

12 MS. POHLENZ: We'll ask him that at the end. And
13 just for the record, we've -- before we went on record we
14 talked about the procedure to use due to hearing officer
15 orders. So we're going to reserve -- I want to reserve --
16 reserve on his objections, and at the end of the deposition
17 we'll ask you those questions. So if I don't say reserve, I
18 still -- that's the intent here.

19 MR. MANION: That's fine.

20 Q. (By Ms. Pohlenz) The process for you to be
21 notified for when things are filed with the clerk, what's
22 that process?

23 **A. I'm not sure.**

24 Q. Okay. Do you know if there was any special process

1 implemented by the Village or any of its departments because
2 of the Caseyville Transfer Station, LLC application for site
3 location approval?

4 **A. I don't know.**

5 Q. At the Village board meetings -- at the Village
6 board meeting on July 16, 2014 -- that was a regularly
7 scheduled board meeting -- you had mentioned that you
8 thought there were going to be three hearings. Do you
9 recall that?

10 **A. I don't remember.**

11 **(Deposition Exhibit No. 1 marked for**
12 **identification.)**

13 Q. (By Ms. Pohlenz) I'm going to show you what we've
14 marked as Exhibit No. 1. It's a transcript of the board
15 meeting from July 16, 2014.

16 MR. MANION: Is this in the record?

17 MS. POHLENZ: I don't know if you put that in the
18 record or not.

19 MR. MANION: Was this disclosed in your document
20 production?

21 MS. POHLENZ: It's a public meeting where the
22 siting was -- application was discussed, so it should have
23 been in the record. But I didn't have the record in time to
24 make all of nuances and checks.

1 MR. MANION: Well, I think there were
2 interrogatories and requests for production directed at
3 documents that you intended to question witnesses on, and I
4 don't think that was produced, was it?

5 MS. LIVINGSTON: I didn't see it. I didn't even
6 know that the public hearings were transcribed. That's
7 good.

8 MR. MANION: Well, I object to untimely production.

9 MS. POHLENZ: It's not untimely production. This
10 should have been in the public record, and the fact that you
11 didn't put it in there -- if that's what you're telling me
12 now that it's not in there --

13 MR. MANION: Well, I don't know.

14 MS. POHLENZ: -- is a mistake on the Village's part
15 and it shouldn't be -- the witness shouldn't be prevented
16 from answering a question based on a public document.

17 MR. MANION: Well, I think yesterday at 4:30 p.m.
18 you provided us our answers. So did you not know at
19 4:30 p.m. that you were going to question him about that
20 document?

21 MS. POHLENZ: No, I knew what I was going to
22 question -- not about this document, no, I didn't know that
23 until this morning because I've been responding to all of
24 your motions and other things, some of them which are

1 completely baseless.

2 MS. LIVINGSTON: How about we do this? Why don't
3 you lay the foundation for your document, what you want to
4 ask him, and we'll see where it goes. But it seems like the
5 bickering is probably not going to help us. But we can take
6 up this issue, and we'll have a standing objection, as you
7 have on this issue, due to discovery issues. How would that
8 be?

9 MR. MANION: That's acceptable to me. Standing
10 objection to any questioning on this new document.

11 Q. (By Ms. Pohlenz) Mr. Abernathy, I'm going to turn
12 your attention to page 8 of the transcript from the Village
13 of Caseyville board meeting on July 16, 2014. I'm going to
14 ask you to read that and whether that -- let me know when
15 you're done reading that. Are you done?

16 **A. Yes.**

17 Q. Okay. Does that refresh your recollection as to
18 whether you asked about there being three meetings?

19 **A. It does.**

20 Q. Did you ask at that meeting on July 16, 2014
21 whether there would be three public hearings?

22 **A. Because I thought someone said there was going to**
23 **be three hearings on your side when you were at the first**
24 **one. I thought I heard somebody say there was going to be**

1 **three hearings.**

2 MR. MANION: Well, I would like to take a moment,
3 because I'm reading down the page and it looks like there's
4 more stuff that has to do with what was said by
5 Mr. Abernathy. I would like to give him a chance to read
6 the entire exchange.

7 MS. POHLENZ: Certainly.

8 THE WITNESS: Well, yeah, I guess that's my
9 misunderstanding because I thought someone said --

10 MR. MANION: I think you went in the wrong
11 direction. So it continues here. So you can read to
12 yourself. I just want you to be able to read all of your
13 comments.

14 MS. LIVINGSTON: Perhaps for those of us not
15 receiving a copy you can tell us what page you're reading
16 from.

17 MR. MANION: That's 8 to 9.

18 **A. Okay. And that's just what I've got on here, that**
19 **I thought someone from the audience that night said there**
20 **was going to be three public hearings, the night you were**
21 **all there.**

22 Q. (By Ms. Pohlenz) Are you talking about the public
23 hearing on May 29, 2014?

24 **A. Yes.**

1 Q. It's your understanding that someone from the
2 audience that night referenced three public hearings?

3 **A. Correct.**

4 Q. Do you recall who it was that referenced it?

5 **A. No.**

6 Q. Do you recall if it was from Mr. Siemsen or from
7 Mr. Moran or from me?

8 **A. No, I don't remember.**

9 Q. Do you recall if it was someone who wasn't an
10 attorney but in the audience?

11 **A. It was someone that was in the audience that night.
12 Now, whether it was one of the attorneys -- I don't know who
13 it was, but I thought I heard someone say there was supposed
14 to be three public hearings.**

15 Q. Okay. Thank you, Mr. Abernathy. I'm going to
16 bring you now to August 6, 2014. That's the public meeting
17 at which the Village board voted on Caseyville Transfer
18 Station, LLC's application for site location approval. Was
19 it at that meeting that it was the first time you became
20 aware that there are ten statutory criteria that were going
21 to be applied to your decision in this application?

22 MR. MANION: Objection. I think that goes into his
23 deliberative process privilege.

24 MS. POHLENZ: Okay. We'll hold that one to the

1 end. And just so we're clear, I'm reserving a response to
2 those objections, too, so we don't debate that here.

3 MR. MANION: That's fine.

4 Q. (By Ms. Pohlenz) At that Village board meeting,
5 the same one on August 6, 2014, do you recall referencing
6 that you had not been given literature prior to that
7 meeting?

8 **A. I don't remember.**

9 Q. (By Ms. Pohlenz) Okay. I am going to give you a
10 copy of the transcript of the special meeting to approve the
11 siting application on August 6, 2014. Your counsel has
12 this, so I'm assuming --

13 MS. POHLENZ: Is it in the record?

14 MR. MANION: G8.

15 Q. (By Ms. Pohlenz) I'm looking at page 8. And you
16 can read any portion of this. I'm referring you to page 8
17 in kind of the middle of the page, because that's where you
18 make the statement that I'm asking you about.

19 MS. LIVINGSTON: I'm sorry to interrupt you. Is
20 this a new exhibit? This is different than the last
21 transcript?

22 MS. POHLENZ: This is different. This is where
23 they actually made their decision, and counsel for the
24 Village had included that in the record.

1 MS. LIVINGSTON: I understand. Is it now marked as
2 Exhibit 2?

3 MS. POHLENZ: We will mark it as Exhibit 2.

4 MS. LIVINGSTON: I appreciate it. I don't think we
5 should show the witness anything that's not marked and
6 attached to the transcript.

7 **A. Yes, I do remember this now.**

8 Q. (By Ms. Pohlenz) May I have it back just for a
9 moment, Mr. Abernathy. Thank you.

10 (Deposition Exhibit No. 2 marked for
11 identification.)

12 MS. POHLENZ: So he was looking at page 8 of what's
13 marked as Deposition Exhibit 2.

14 And what page is that in the record, Brian?

15 MR. MANION: G8.

16 MS. POHLENZ: It's G8 in the record on appeal.

17 Q. (By Mr. Pohlenz) Okay. What literature were you
18 referring to in making that statement?

19 **A. I don't remember what I was referring to. I**
20 **thought it was that -- I didn't know it was the ten point --**
21 **or the nine point letter that was with the application.**

22 Q. Now, what document is that, the nine point letter
23 that's with the application?

24 **A. That was all talking about the property, the road,**

1 everything in there.

2 Q. And this is something that you --

3 A. The one that I was talking about was what
4 Mr. Miller gave us. It was something that was -- Washington
5 Park was against the --

6 MR. MANION: I don't know. Do you want to read
7 through -- I think he had spoken before that. So this is --
8 he's looking at G5 now.

9 THE WITNESS: He passed something out. I thought
10 he gave us some paperwork that night, didn't he? I thought
11 he gave us something that was against -- he passed something
12 out in that meeting.

13 MS. LIVINGSTON: When you say he, who are you
14 referring to?

15 THE WITNESS: Mr. Miller. He's the Canteen
16 Township supervisor. He handed some paper that was I think
17 talking about the traffic study. He gave us something.

18 MS. POHLENZ: What page are you looking at now?

19 MR. MANION: Bottom of G7.

20 THE WITNESS: He handed something out there. I
21 don't remember what the --

22 Q. (By Ms. Pohlenz) In reading pages G5 through G8,
23 which include Mr. Miller's statement -- comment to the board
24 that night of the meeting, August 6, 2014, is there any

1 indication from him speaking that he was handing something
2 out to the board?

3 **A. I thought he gave us a piece of paper that --**
4 **something that was against the traffic or about the traffic**
5 **study, and I said, you know, we never had this before or I**
6 **never seen this.**

7 Q. Are you referencing a resolution from the Canteen
8 Township objecting to --

9 **A. It was something -- it was some paper. I don't**
10 **know what it was. I don't remember what it was now, but he**
11 **had something that he passed out to us.**

12 MS. POHLENZ: Brian, do you recall what page number
13 you put the resolution from Canteen in the record?

14 MR. MANION: I don't know.

15 MS. LIVINGSTON: Perhaps while you're searching for
16 that I might be able to view the exhibit? Do you mind?

17 MS. POHLENZ: He has it, too. It's been marked.

18 MS. LIVINGSTON: Sorry. You seem to be showing the
19 witness yours. I just like to look at exhibits before
20 they're shown to witnesses. I'm accustomed to it being
21 done.

22 Well, I don't know if this helps you or not. I'm
23 not even sure where we are since we've been looking for
24 documents for a while, but at the top of page 9 there seems

1 to be an attorney saying again, we're really basing our
2 decision on what's already been in the record. So I'm
3 wondering if he's referring to the new document being placed
4 in the record that day.

5 MS. POHLENZ: There wasn't any new document placed
6 in the record. I was sitting there. He didn't hand that to
7 him --

8 MR. MANION: Right.

9 MS. POHLENZ: -- but I'm trying to figure out what
10 the document is that he's referring to.

11 MS. LIVINGSTON: Well, if you look previously,
12 there seems to be -- the attorney seems to have also given a
13 document that showed the nine criteria. Maybe it was the
14 statute. Maybe that was a new document.

15 MS. POHLENZ: Can you mark this No. 3?

16 (Deposition Exhibit No. 3 marked for
17 identification.)

18 Q. (By Ms. Pohlenz) Mr. Abernathy, I'm going to hand
19 you what I've marked as Deposition Exhibit No. 3. It's
20 pages B0012, 13, 14, and 15 of the record on appeal that the
21 Village attorney has filed. And I just want you to take a
22 look at it and tell me if that's what you're recalling as
23 being something from Canteen Township and Norm Miller, a
24 document from them?

1 **A. Well, he passed something out.**

2 MR. MANION: I don't want you to speculate.

3 **A. I don't remember what it was, but he -- something**
4 **was given to us.**

5 Q. (By Ms. Pohlenz) Okay. But looking at the
6 document that you received, is this a document that you
7 received from --

8 **A. I don't remember.**

9 **(Deposition Exhibit No. 4 marked for**
10 **identification.)**

11 Q. (By Ms. Pohlenz) Okay. I'm going to show you what
12 I've marked as Deposition Exhibit No. 4. This is page B0023
13 and B0024 in the record on appeal. If you could take a look
14 at that and tell me is that the document that you saw?

15 **A. I don't remember.**

16 Q. Do you recall seeing this document before today?

17 MR. MANION: I'm going to object on the
18 deliberative process as to whether he reviewed it before
19 making the vote. I think you can ask him if that's what was
20 presented in the open hearing, but subject to that.

21 MS. LIVINGSTON: Well, he's currently now testified
22 about six times that he has no idea what document he was
23 referring to, but that he thought he was given something
24 from Norm Miller. So he's repeatedly testified that he

1 doesn't recall, but he thinks that was what it is. So you
2 can keep showing him documents and asking him if that's
3 that, but it doesn't seem like his recollection is getting
4 refreshed for the question that you were asking.

5 MS. POHLENZ: Okay. But I can still ask him if
6 this refreshes his recollection, if this is the document he
7 saw.

8 **A. I don't remember.**

9 MS. LIVINGSTON: That would be the second time he
10 said that, too.

11 Q. (By Ms. Pohlenz) Okay. Going back to that August
12 6, 2014 meeting. You also stated at that meeting that there
13 was already lots of traffic in the location where Caseyville
14 Transfer Station proposes to locate its transfer station, is
15 that right?

16 **A. I don't remember if I said that or not.**

17 Q. I'm going to show you the transcript. This has
18 already been marked as Deposition Exhibit No. 2.

19 MR. MANION: I think we would stipulate that he
20 said what he said in the transcript, if that helps.

21 Q. (By Ms. Pohlenz) I'm going to turn your attention
22 to your statements made on page 10 to 11, and tell me if
23 that helps refresh your recollection as to what you said
24 that night.

1 **A. I did.**

2 Q. And who was -- in that statement there who was the
3 no one you were referencing? Was it another municipality?

4 MR. MANION: Objection, deliberative process
5 privilege.

6 MS. POHLENZ: I'll reserve that to the end.

7 Q. (By Ms. Pohlenz) Were there businesses that --
8 were the businesses that create traffic that you were
9 referencing on pages 10 and 11 of Exhibit No. 2 a trucking
10 company, Henderson and Corman?

11 MR. MANION: Objection, deliberative process
12 privilege.

13 MS. POHLENZ: That's just a -- whether that's a
14 business. We'll reserve --

15 MR. MANION: I'm going to object to any explanation
16 or questioning about what he meant. His statement is what
17 the statement is.

18 MS. POHLENZ: Okay.

19 Q. (By Ms. Pohlenz) To your knowledge, is Henderson a
20 business located on Bunkum Road, a pollution control
21 facility?

22 **A. What is it?**

23 Q. What's Henderson? What business does Henderson do?

24 MR. MANION: Objection, relevance.

1 Q. (By Ms. Pohlenz) You can answer.

2 MR. MANION: You can answer.

3 **A. It's a trucking company, over-the-road trucking**
4 **company.**

5 Q. (By Ms. Pohlenz) And do they -- do you know
6 whether or not they have a waste transfer station at
7 Henderson?

8 **A. I don't know.**

9 Q. But you understand that it's just an over-the-road
10 trucking company and that's what they do?

11 **A. It is, yes.**

12 Q. What about Corman? What's Corman?

13 **A. A railroad -- they do railroad wrecks, train**
14 **wrecks, they clean up train wrecks.**

15 Q. And in what municipalities or government entities
16 are Henderson and Corman located?

17 **A. They're in the county.**

18 Q. So they're unincorporated?

19 **A. St. Clair County, unincorporated.**

20 Q. And to your knowledge -- do you have any knowledge
21 about what process Henderson and Corman would have had to
22 have gone through to be able to occupy their business at
23 that location in unincorporated St. Clair County and utilize
24 it for their business purposes?

1 **A. No.**

2 Q. Do you know whether, when Henderson and/or Corman
3 moved their businesses to their locations on Bunkum Road in
4 unincorporated St. Clair County, they had to prepare a
5 traffic study?

6 **A. I don't remember.**

7 Q. Did Caseyville Transfer Station, LLC give the
8 Village board a traffic study to review for its proposed
9 business on Bunkum Road?

10 **A. I don't remember.**

11 Q. Did you have a traffic study available to you from
12 Caseyville Transfer Station, LLC in its application for site
13 location approval to review?

14 **A. I don't remember.**

15 Q. Do you know whether it included one in the
16 application?

17 MR. MANION: I'm going to object to any further
18 questions quizzing Mr. Abernathy about what was or wasn't in
19 the record, because I think that goes to the deliberative
20 process and what was relevant to him, what he reviewed, and
21 what he remembers.

22 MS. POHLENZ: I'll move on.

23 MS. LIVINGSTON: If he even remembers at this
24 point.

1 Q. (By Ms. Pohlenz) Is it fair to say that because
2 you're unincorporated because St. Clair County didn't give
3 you input on when Henderson and Corman got located there?

4 MR. MANION: I'm going to object. Again, I think
5 this is going to the deliberative process privilege and what
6 was relevant to him.

7 MS. LIVINGSTON: It's not just that. It
8 mischaracterizes his testimony. He said he doesn't know.
9 So that doesn't mean he didn't get input. It means he
10 didn't know; although, he probably didn't.

11 MS. POHLENZ: I didn't ask him the question, so we
12 don't know whether or not he knew.

13 MS. LIVINGSTON: Well, you did. You asked him if
14 he understood the St. Clair County process for how those
15 people were able to occupy their businesses in
16 unincorporated St. Clair County, and he said no, he didn't
17 know it.

18 MS. POHLENZ: But he also mentioned that he -- he
19 referenced having -- whether he had something to review or
20 not, he doesn't recall. He doesn't remember.

21 MS. LIVINGSTON: But he also said he didn't know
22 the process.

23 MS. POHLENZ: Okay. I'm going to reserve that for
24 the end.

1 MS. LIVINGSTON: While you ask the next questions,
2 would it be okay if I look at the last two exhibits since
3 we're not showing them to counsel before the witnesses?

4 MS. POHLENZ: I'm happy to pass them down.

5 MS. LIVINGSTON: Thank you.

6 MS. POHLENZ: Since I'm referencing the record, I
7 was assuming people would bring their record along.

8 Q. (By Ms. Pohlenz) Okay. I'm going to -- we're
9 going to turn to pages F1 to F22.01 in the record on appeal.
10 And it's a document that we're going to mark as our next
11 exhibit.

12 (Deposition Exhibit No. 5 marked for
13 identification.)

14 MS. POHLENZ: I'm happy to pass it down for
15 everyone to take a look at.

16 MS. LIVINGSTON: Thank you.

17 Q. (By Ms. Pohlenz) So I'm showing you what's been
18 marked as Exhibit No. 5, and that is pages F1 to F22.01 on
19 the record on appeal. Can you take a look at that document,
20 please?

21 **A. Okay.**

22 Q. Let me know when you've had a chance to look
23 through it. I'm going to ask you a question.

24 MR. MANION: While he's looking at that, if you're

1 going to ask him if he's seen this before I'm going to
2 object because it's the deliberative process.

3 MS. POHLENZ: Let's just go into that portion then
4 of the transcript or do you want other people to ask
5 questions first and then do that at the very end?

6 MR. MANION: Is there any preference?

7 MS. POHLENZ: The idea here was that everything
8 that was being objected to as deliberative process I wasn't
9 going to -- obviously I will reserve all rights with. I'm
10 not agreeing that it is a deliberative process, but I am
11 agreeing to put it at the end of the transcript so that if
12 we do end up cutting some or all of it, it's easy for us to
13 find those portions.

14 MR. MORAN: Well, it would seem to make sense to
15 allow others to ask their questions, because there are going
16 to be similar objections lodged and then those questions
17 have to be held. So we might as well hold them all to the
18 end rather than doing it piecemeal.

19 (Deposition Exhibit No. 6 marked for
20 identification.)

21 MS. POHLENZ: Okay. And then the next -- because I
22 have a feeling you'll ask the same -- the next document I
23 had that I was going to ask him about is Exhibit 6. And
24 after you review it, if you could pass it down.

1 MS. LIVINGSTON: And Exhibit 6 is what?

2 MS. POHLENZ: It's also in the record on appeal.

3 MR. MANION: Written comment on Roxana Landfill.

4 It looks like F182 to 208.

5 MS. POHLENZ: But we can hold the questions
6 concerning that to the end, too, because I'm assuming you're
7 going to make the same objection?

8 MR. MANION: Correct. So can we just set these
9 aside for now.

10 MS. POHLENZ: If I can get them back, I'll just
11 hold them aside.

12 MR. MANION: Okay. I don't care which order we go.

13 EXAMINATION

14 BY MR. MORAN:

15 Q. Good afternoon, Mr. Abernathy. My name is Don
16 Moran. I'm going to ask you a few questions regarding this
17 siting application filed by Caseyville Transfer Station,
18 LLC. When did you first learn that anyone was going to file
19 a request to Caseyville to approve a transfer station on
20 Bunkum Road?

21 MR. MANION: Mr. Abernathy, objection asked and
22 answered.

23 MR. MORAN: This question was not asked.

24 Q. (By Mr. Moran) Do you understand my question?

1 **A. Yes. I don't remember when I seen it, what date.**

2 Q. I didn't say when you saw it. I said when did you
3 first learn from anybody that somebody was going to file a
4 request to approve a siting -- to approve a transfer station
5 on Bunkum Road? You could have heard it from someone,
6 somebody told you I think somebody is going to be filing an
7 application or filing a request. When is the first time you
8 ever heard about a proposal for a transfer station on Bunkum
9 Road?

10 **A. I don't remember.**

11 Q. You said in response to one of Ms. Sacket Pohlenz's
12 questions that the first time you remember the application
13 being filed was because it was on an agenda item for the
14 public works committee, is that correct?

15 **A. Yes.**

16 Q. Now, we talked before about the fact that the
17 hearing on this application was May 29, 2014, correct?

18 **A. Yes.**

19 Q. How long before May 29th of 2014 was this agenda
20 item identified in some committee meeting at the Village?
21 Was it a couple of weeks, a couple of months, a couple of
22 years?

23 **A. Well, it was a prior committee meeting, but I don't**
24 **remember what meeting it was.**

1 Q. And I'm just asking you, if you can, to just
2 identify a time frame. Was it in March, in April, in May,
3 or you have no idea whatsoever?

4 **A. I don't have any idea.**

5 Q. Okay. Fair enough. Do you have any information as
6 to when this application was filed -- when the application
7 for site location approval was actually filed?

8 **A. I don't remember the date.**

9 Q. That's not my question. My question was do you
10 have any information about when it was filed?

11 **A. No.**

12 Q. Now, you said the application, when it was filed,
13 was kept here. And when you said here, did you mean in this
14 very room?

15 **A. Yes.**

16 Q. And what is the name of this room?

17 **A. Conference room.**

18 Q. And who's responsible for maintaining any documents
19 that might be kept in this room?

20 **A. I don't know.**

21 Q. Did anyone ever tell you that you had the
22 opportunity to come in here and review the application if
23 you so desired?

24 **A. Yes.**

1 Q. Who told you that?

2 A. It was just common knowledge that it was in here,
3 come in here and see -- go through the application if you
4 wanted to.

5 Q. When you say common knowledge --

6 A. Well, the board.

7 Q. -- does that mean that someone didn't tell you, but
8 you just somehow came to that understanding? Is what you're
9 saying?

10 A. Well, they filed and they brought that in here and
11 left it in here for everyone to come through -- go through
12 it.

13 Q. Well, we've already established that you understood
14 that when the application was filed it was brought in here
15 and kept here. But my question is did someone tell you that
16 you could come in here at any time and look at the
17 application?

18 A. I don't remember who it was, but it was there. I
19 don't remember.

20 Q. So it would be fair to say that you don't recall
21 whether anyone told you that you could come in here and
22 review the application?

23 A. Yes.

24 Q. Were you aware that there were other documents that

1 were submitted with respect to the siting application that
2 had been filed? In other words, submitted with the Village.

3 **A. Not at the time.**

4 Q. Did you ever learn that?

5 **A. I don't remember.**

6 Q. Well, would it be fair to say that as of today you
7 can tell us that you never learned that there were any other
8 documents that were submitted to the Village in connection
9 with the application for siting approval?

10 **A. I don't remember.**

11 Q. Would that be a fair statement then, what I said?

12 **A. I don't know.**

13 Q. Did anyone ever tell you that there were documents
14 in addition to the siting application that were available
15 for your review?

16 **A. I don't remember.**

17 Q. And do you have any knowledge about if there were
18 other documents that were submitted with respect to the
19 application, would those documents have been kept with the
20 siting application that was maintained in this room?

21 **A. I don't know.**

22 Q. Did you ask anyone, any person, how you should vote
23 on this siting application?

24 MR. MANION: Objection, deliberative process.

1 MR. MORAN: Do we argue that now or -- because that
2 certainly has nothing to do with deliberative process. It
3 has to do with any statements he made to any persons as it
4 related to the siting application. It doesn't invoke or
5 require him to describe any form of his thought process
6 about how he was going to vote on the application. It
7 simply asks whether he made a statement or asked a question
8 or had a communication with any person relating to how he
9 should vote on the application.

10 MR. MANION: It's a statement to another board
11 member in a board meeting about how he should vote or the
12 merits of what the vote should be. That would be
13 deliberating on the question.

14 MR. MORAN: Right. And I didn't ask him that.
15 What I asked him was whether he made a statement. And if he
16 says he did make a statement, then we can determine who he
17 may have made the statement to and then determine whether or
18 not it might implicate deliberative process.

19 MR. MANION: Okay. You can ask him if he made a
20 statement.

21 So that's a yes or no question as to if you made a
22 statement.

23 **A. I don't remember.**

24 Q. (By Mr. Moran) I'm sorry. Your response is you

1 don't remember if you asked somebody, is that correct?

2 **A. Yes.**

3 Q. Did anyone tell you how to vote on the siting
4 application?

5 **A. No.**

6 MS. LIVINGSTON: That's what I thought your
7 question was at first.

8 Q. (By Mr. Moran) Did you at any point tell anyone
9 how you were going to vote on this application?

10 **A. No.**

11 MR. MORAN: Thank you.

12 EXAMINATION

13 BY MS. LIVINGSTON:

14 Q. I'm Penni Livingston. I introduced myself to you
15 at the beginning here. I noticed in Exhibit 3 that there
16 appeared to be letters signed by various people, and the
17 first letter is signed by a Kathy Mertzke. Do you know her
18 personally?

19 **A. No.**

20 Q. Do you know of Mertzke Trucking in O'Fallon?

21 **A. Yes.**

22 MS. POHLENZ: Just one clarification. Exhibit 3
23 doesn't include that. Exhibit 3 is B12.

24 MS. LIVINGSTON: And on the back who signed it?

1 MS. POHLENZ: But this isn't part of what will be
2 the exhibit. B12, B13, B14, and B15 is what I referenced.

3 MS. LIVINGSTON: The page that's on the back of it
4 you didn't intend to --

5 MS. POHLENZ: For environmental purposes it's been
6 double-copied. But for the exhibit that -- we're asking the
7 witness to look -- we referenced the page numbers and we'll
8 copy it like that and attach it to the transcript like that.

9 MS. LIVINGSTON: I see what you're saying.

10 Q. (By Ms. Livingston) Did you -- do you recall
11 receiving any correspondence from a Kathy Mertzke?

12 A. Yes.

13 Q. Okay. And you knew that she was from Mertzke
14 Trucking in O'Fallon?

15 A. Yes.

16 Q. Were you aware that Mertzke Trucking in O'Fallon
17 has been sued for noise and dust issues at their own
18 facility?

19 A. No.

20 MS. LIVINGSTON: That's all I had.

21 MR. MANION: I don't have any questions. Do you
22 have any follow-up before we go to the --

23 MS. POHLENZ: No, no follow-up until we go to
24 the --

1 MR. MANION: So this will be the offer of proof
2 then?

3 MS. POHLENZ: I'm not agreeing that any of these
4 are properly made objections to you, but yes, I'm going --
5 we'll agree that we'll disagree on that and let the hearing
6 officer decide after she sees the questions asked and what's
7 answered.

8 MR. MANION: Right. So just so I'm clear for the
9 court order from this morning, this is the offer of proof
10 now at this time?

11 MS. POHLENZ: Can I see a printout of the court
12 order?

13 MR. MANION: Here is a copy here.

14 MS. LIVINGSTON: I guess I have this question, too.
15 It seems -- you don't need to reveal your strategy, I guess,
16 but I want to make sure I understand. The issue of
17 fundamental fairness with respect to this witness is based
18 on a statement in the record on page 8 of a transcript where
19 he talks about receiving some piece of literature that he's
20 now said he thought was from Norm Miller?

21 MS. POHLENZ: No, that's not the basis of the --
22 that's not --

23 MS. LIVINGSTON: With respect to this witness,
24 that's not it?

1 MS. POHLENZ: Well, the fundamental fairness isn't
2 a singular witness. The fundamental fairness is arguments
3 that have been -- you know, a pre-judgment, for example,
4 that we're currently under discovery for, so the argument
5 hasn't been fully formed; and fundamental fairness issues
6 that were disclosed in our motions to dismiss at the very
7 beginning of the hearing; and fundamental fairness issues
8 I've otherwise disclosed are the ones that I'm aware of.

9 MS. LIVINGSTON: Okay. I just failed to get what
10 this was all about. It seemed like it was about one
11 question about some piece of literature, and I was just
12 confused if there was something more. I'm looking for some
13 smoking gun here and I didn't even see a loaded gun.

14 MR. MANION: So if I understand based on the order,
15 the discovery deposition portion is over and now this is
16 the --

17 MS. POHLENZ: No. I'm going to ask him questions
18 about these documents and whether they were -- he recognizes
19 them and whether they were available to him to review, and
20 that's not part of any deliberative process. And then we
21 can go into the questions about what he said and what he may
22 have done or thought about them.

23 MR. MANION: Well, if he's looked at them, that
24 goes to his mental processes of what was relevant to him or

1 not.

2 MS. POHLENZ: He's able to testify as to what was
3 available to him and what wasn't.

4 MS. LIVINGSTON: It seems like Mr. Abernathy
5 doesn't remember very much, so --

6 FURTHER EXAMINATION

7 BY MS. POHLENZ:

8 Q. So I'll show you what's been marked as Exhibit No.
9 5. We've already passed it around. And this is one you've
10 had a chance to take a look at earlier in the deposition.
11 Is this a document that you recognize, Mr. Abernathy?

12 **A. It was put in my mailbox, yes.**

13 Q. And do you know when -- approximately when this was
14 put in your mailbox?

15 **A. I don't remember.**

16 Q. Do you recall whether this was put in your mailbox
17 around July when it's dated?

18 **A. I don't remember that.**

19 Q. Do you recall whether it was received by you prior
20 to or after the decision you made on August 6, 2014
21 concerning the Caseyville Transfer Station?

22 **A. I don't remember.**

23 Q. How could we find out when this was put in your
24 mailbox?

1 **A. The clerk would have that because he gets it and he**
2 **forwards it to us. What's in our mailbox may not come in**
3 **for a week.**

4 Q. So Rob Watt. Anyone else that would possibly put
5 it into your mailbox besides Rob?

6 **A. Well, it would be the assistant clerk.**

7 Q. And who is that?

8 **A. Leslie.**

9 Q. Leslie McReynolds?

10 **A. Yes.**

11 Q. And do you have an understanding with respect to
12 the time frame from when they receive documents to when they
13 put them in your mailbox?

14 **A. No.**

15 Q. Do you have an understanding as to their process
16 for whether all documents received by them are placed into
17 your mailbox or not?

18 **A. Usually they are by them.**

19 Q. Okay.

20 **A. Usually the clerk or her.**

21 Q. And I'm showing you what I've marked and passed
22 around as Exhibit No. 6. This is F182 to F208 of the record
23 on appeal. And if you could take a look at that and tell me
24 if you recognize that document?

1 **A. Yes.**

2 Q. And how did you receive this document?

3 **A. In my mailbox.**

4 Q. Do you know when you received that document?

5 **A. I don't remember.**

6 Q. Do you recall if it was prior to your decision on
7 August 6, 2014?

8 **A. I don't remember.**

9 MS. LIVINGSTON: For the record, is Exhibit 6
10 comments from Roxana Landfill?

11 MS. POHLENZ: It's the written comment, yes.

12 Q. (By Ms. Pohlenz) Okay. So was the Village board
13 meeting on August 6, 2014 the first time you were aware that
14 there were ten statutory criteria?

15 **A. I don't know.**

16 MR. MANION: Objection, deliberative process.

17 MS. POHLENZ: This will be the offer of proof.

18 MS. LIVINGSTON: I also think there are nine
19 criteria, but that's all right.

20 MR. MANION: Just so the record is clear, the
21 discovery portion of the deposition is over or did you have
22 any follow-up questions?

23 MR. MORAN: No, I did have a follow-up question
24 with regard to what we just now learned from Mr. Abernathy.

1 MS. POHLENZ: Go ahead.

2 FURTHER EXAMINATION

3 BY MR. MORAN:

4 Q. Mr. Abernathy, was a copy of the siting application
5 sent to you in your mailbox?

6 **A. I don't remember.**

7 Q. Okay. You mentioned that you had received certain
8 documents in your mailbox that Ms. Sacket Pohlenz had shown
9 to you. On how many occasions did you receive materials in
10 your mailbox that related to this siting application?

11 **A. I don't remember.**

12 Q. Was it more than a dozen?

13 **A. I don't know.**

14 Q. Less than half or you have no idea?

15 **A. No idea.**

16 Q. And do you have any idea whether any of these
17 documents you received in your mailbox were sent to you
18 after the public hearing on May 29, 2014?

19 **A. I don't know.**

20 Q. So what you're saying is you don't know if any of
21 these documents that were sent to you were sent to you
22 before or after May 29th of 2014, is that correct?

23 **A. I don't think so.**

24 Q. So it's correct or --

1 **A. No.**

2 Q. -- you just don't know?

3 **A. I just -- I don't know.**

4 Q. Do you know if any other of the Village trustees
5 received any materials in their mailboxes regarding the
6 siting application?

7 **A. I guess everyone did.**

8 Q. Well, you say you guess.

9 MR. MANION: I don't want you to speculate.

10 Q. (By Mr. Moran) Yeah, we don't want you to guess.
11 Either you know they did or you don't know?

12 **A. I don't know.**

13 Q. Did you have a discussion with anyone at the
14 Village about whether documents related to the siting
15 application were being delivered to each of the trustees'
16 mailboxes?

17 **A. No.**

18 Q. Are you able to tell us whether any of the
19 documents that you received in your mailbox regarding the
20 siting application were received by you after August 6th of
21 2014?

22 **A. I don't know.**

23 MR. MORAN: Thank you, sir. That's all I have.

24

1 FURTHER EXAMINATION

2 BY MS. LIVINGSTON:

3 Q. So would you say it's fair to say that it's likely
4 that you received any documents regarding the transfer
5 station prior to the vote?

6 MR. MORAN: Objection, leading.

7 MS. POHLENZ: Yeah, I join in that objection.

8 MS. LIVINGSTON: Well, you're trying to establish
9 this August 6th date. Maybe if you flush it out a little
10 clearer.

11 Q. (By Ms. Livingston) Is it fair to say that it's
12 more likely that you received documents in advance of the
13 vote than after the vote?

14 MR. MORAN: Objection, it's leading. Penni, you
15 can ask the question about --

16 MR. MANION: It's a discovery deposition. I don't
17 see any problem with a leading question.

18 MS. POHLENZ: And he's already answered that he
19 doesn't know.

20 MR. MANION: He was asked whether he received it
21 before or after, not whether it was more likely that he
22 received it before or after. So it's a different question.

23 **A. I don't remember. There's so much stuff in our**
24 **mailboxes. We don't come in here every day.**

1 Q. (By Mr. Livingston) I just have one more question
2 for you. Could you tell us how old you are?

3 **A. 76.**

4 MS. LIVINGSTON: Thank you.

5 MS. POHLENZ: I have just a couple follow-up
6 questions.

7 FURTHER EXAMINATION

8 BY MS. POHLENZ:

9 Q. How big is your mailbox?

10 **A. It's in the back if you want to look at it. I'm**
11 **not going to guess how big it is. It's full of stuff right**
12 **now back there.**

13 Q. Is it large enough that it could hold, you know,
14 documents that are three inches in height?

15 **A. It's back there if you want to look at it.**

16 Q. Okay. I'm going to just ask you -- looking at
17 Exhibit No. 3, is this a document that you recall whether
18 you received or not in your mailbox?

19 **A. I don't remember.**

20 Q. Okay. And going to Exhibit No. 4. Is this a
21 document -- do you recall whether or not you received
22 Exhibit No. 4 in your mailbox?

23 **A. I don't remember.**

24 MS. POHLENZ: Okay. So we're moving on to the

1 offer of proof.

2 MR. MANION: Okay.

3 Q. (By Ms. Pohlenz) At the Village board meeting on
4 August 6, 2014 when the Village board voted to approve the
5 Caseyville Transfer Station, was that the first time you
6 became aware of the statutory criteria for your vote?

7 **A. I don't understand your question.**

8 Q. Okay. Is the Village board meeting on August 6,
9 2014 the first time you became aware that there were certain
10 criteria that were to be taken into consideration when you
11 voted on Caseyville Transfer Station, LLC's application for
12 site location approval?

13 **A. Yes.**

14 Q. And were you aware of each of those criteria and
15 what the expectation was -- strike that question.

16 Do you know -- did you know on August 6, 2014 when
17 those criteria were first presented to you how each of those
18 related to what happened at the public hearing on May 29,
19 2014?

20 **A. I was aware of it.**

21 Q. What were you aware of?

22 **A. That all of -- what they talked about in that
23 hearing, that that's what all the criteria was about.**

24 Q. And with respect to each individual criteria, did

1 you know what was talked about related to each one?

2 **A. And I didn't think there was a problem with it.**

3 Q. Okay. So do you know what is meant when reference
4 is made to, for example, a need criteria?

5 **A. To what?**

6 Q. A need criteria.

7 **A. No.**

8 Q. And what evidence did you look at, if any, when
9 considering -- strike that.

10 Did you consider whether there was a need for this
11 facility in your vote?

12 **A. Well, I thought it was a good thing for Caseyville.**

13 Q. But did you consider -- were you aware of the
14 specific statutory criteria for proving a need for the
15 facility at the time you made your vote?

16 **A. I didn't think about it.**

17 Q. Okay. And what about the specific statutory
18 criteria that the facility be designed, located, and
19 operated so the public health, safety, and welfare are
20 protected? Did you think about that criteria when you made
21 your vote?

22 **A. I thought the people that were building it knew
23 what they were doing and they had that all under
24 consideration or they wouldn't have brought it to**

1 **Caseyville.**

2 Q. Are you aware of whether or not an engineer
3 testified on behalf of Caseyville Transfer Station, LLC
4 concerning how that transfer station would be built and
5 operated?

6 **A. No.**

7 Q. You're not aware?

8 **A. No.**

9 Q. With respect to the existing traffic flows -- I'm
10 going to strike that.

11 What was the -- what was the standard -- or what
12 was your consideration with respect to traffic before you
13 voted to approve the Caseyville Transfer Station application
14 for site location approval?

15 **A. There was never any question about the traffic on
16 that road before.**

17 Q. What does that -- what does that mean?

18 **A. Well, nobody ever complained that there was too
19 much traffic on that road.**

20 Q. Were there -- was there evidence presented at the
21 hearing on May 29, 2014 about traffic problems concerning
22 Bunkum Road?

23 **A. There was. That was the first I had ever heard of
24 it.**

1 Q. Do you know of any evidence that was presented that
2 those traffic problems would be fixed?

3 **A. No.**

4 Q. Do you know what the county's solid waste
5 management plan says, if anything, with respect to a
6 transfer station?

7 **A. Excuse me?**

8 Q. Do you know what the county's solid waste
9 management plan says about a transfer station, if anything
10 at all?

11 **A. Nothing.**

12 Q. And did you consider the county's solid waste
13 management plan when making your decision or not?

14 **A. I don't know anything about the county.**

15 Q. Okay. So I take that as a no?

16 **A. No.**

17 Q. Okay. When you were -- on August 6, 2014 -- we're
18 going to turn -- this is the transcript from the meeting
19 where -- the special meeting where the Village board
20 approved the transfer station. And I'm going to turn to
21 page -- I'm going to turn to page no. 8. This is a
22 discussion -- I'm referring you to where the Village
23 attorney starts talking. I believe Trustee Davis starts
24 talking. He has a question for the Village attorney. And

1 the context seems to be some criteria, and then you have a
2 question later on. Your question is why weren't we given
3 the literature here prior to this meeting? Are you
4 referencing then those criteria or are you referencing
5 something else?

6 **A. I was referencing that letter.**

7 Q. You were referencing the Canteen Township letter?

8 **A. Yeah. Because that ended with Kerry I believe**
9 **right there. There was no more said.**

10 Q. Okay. I'm going to turn your attention now to your
11 statement on the bottom of page 10 and the top of page 11 of
12 Exhibit No. 2. I think I'm turning that over to you in the
13 right direction. Who was the no one that you were
14 referencing in that statement? Was that another
15 municipality or was that the county?

16 **A. Just a general statement. No one has ever come in**
17 **and complained about traffic or trucks or buses or anything**
18 **down there.**

19 Q. I think the reference was with respect to no one
20 having come and asked the Village about doing business down
21 there.

22 MS. LIVINGSTON: Perhaps you would like to read it
23 into the record so we know exactly what it says when we
24 compare the transcript later?

1 MS. POHLENZ: I'm going to actually point it out to
2 Mr. Abernathy.

3 Q. (By Ms. Pohlenz) Here on page 10, line 24, and
4 going on to page 11, line 2, you state -- and I'll read this
5 with you so that you can see it while I'm reading it. You
6 state we had the trucking company, Henderson, Corman, and
7 there was never any questions on them being there or nobody
8 asked us about whether they could be there or not, or they
9 were going to be there. Who are you referencing as nobody
10 asking you about whether they could be there or not?

11 **A. The county.**

12 MR. MANION: Just for the record, that's G10 to
13 G11.

14 Q. (By Ms. Pohlenz) Is it fair to say that because
15 the county didn't give you input on the businesses that it
16 had control over in its jurisdiction on Bunkum concerning
17 their impact on traffic on Bunkum that it wasn't important
18 to you what impact the Caseyville Transfer Station would
19 have on Bunkum?

20 **A. That's fair to say.**

21 Q. I have one more question about Exhibit No. 5 that
22 you previously received. This is F001 to F22.01. Did you
23 take that into consideration in making your determination
24 and voting on the application?

1 **A. Not at the time I read it.**

2 Q. You read it prior to voting?

3 **A. Yes.**

4 Q. And was -- does anything stick out to you from that
5 document prior to voting?

6 **A. No.**

7 MS. POHLENZ: Okay. Go ahead, Don.

8 MR. MANION: Were there any offer of proof
9 issues -- I didn't think there were any offer of proof
10 issues raised in any questions that you had for
11 Mr. Abernathy.

12 MS. POHLENZ: He was reserving them until the end.
13 That's what we had agreed.

14 MR. MANION: I didn't catch that.

15 MR. MORAN: Well, I thought what I said was in
16 terms of asking questions, let's have everyone ask
17 questions, and then if we have issues with any of the
18 protective order provisions we would simply hold all of
19 those questions until the very end.

20 MR. MANION: Okay. That's fine.

21 FURTHER EXAMINATION

22 BY MR. MORAN:

23 Q. Mr. Abernathy, in your mind, why was the transfer
24 station a good thing for Caseyville?

1 **A. Well, we need business in Caseyville. And anyone**
2 **that wants to build something in Caseyville, we're for it.**
3 **I mean, basically, if it's -- why not take the business.**

4 Q. And those were your reasons for voting to approve
5 the application?

6 **A. Well, that was a consideration.**

7 Q. Well, just directing your attention to page G10 and
8 G11 of Exhibit 5, which counsel is showing you. If you
9 direct your attention to your comment beginning at line 22,
10 it says Trustee Abernathy --

11 MS. LIVINGSTON: That's Exhibit 2.

12 Q. (By Mr. Moran) I'm sorry. It's Exhibit 2. I
13 think you were looking at the right -- it's the August 6,
14 2014 transcript of the meeting of the trustees in which the
15 application was voted upon. And I'm directing your
16 attention to page G10 and 11. Line 22 on page G10, which
17 begins with your comment in which you say I think it would
18 be a good thing for Caseyville. When you made that comment
19 and made these statements you were giving your reasons why
20 you were going to vote to approve the application, is that
21 correct?

22 **A. Well, it was consideration.**

23 Q. But these were the reasons you were voting to
24 approve, is that correct?

1 MR. MANION: Objection, asked and answered.

2 MR. MORAN: He didn't answer it.

3 Q. (By Mr. Moran) Is that correct?

4 **A. Yes.**

5 MR. MORAN: Thank you. That's all I need. Thank
6 you.

7 FURTHER EXAMINATION

8 BY MS. LIVINGSTON:

9 Q. Were there other considerations as well?

10 **A. Yeah, several. I mean, I listened to everybody's**
11 **input.**

12 Q. You attended the hearing and you listened to the
13 testimony and you listened to all of the public comments?

14 **A. Yes.**

15 Q. And you considered all of those things?

16 **A. Yes.**

17 Q. And you determined that it was good for your
18 community?

19 **A. Yes.**

20 Q. When Ms. Pohlenz asked you if you were aware of the
21 need criteria, did you even know what she was talking about?

22 **A. I didn't understand. I didn't -- couldn't hardly**
23 **hear her. I don't hear too well out of my right ear.**

24 Q. So because she asked that question, I'm going to

1 ask you this question then since we're delving into the area
2 that we're not going to be able to delve into, but we are.
3 Is it fair to say that that you considered in your thought
4 process whether or not the community or this region would
5 need this type of facility or whether or not this was a
6 waste of time?

7 **A. Well, I just thought it might be a good thing and**
8 **we'd go ahead with it if we could get everybody to go with**
9 **it.**

10 Q. Okay. So it's fair to say that you did look at
11 whether or not this facility would be needed to accommodate
12 waste needs in our community?

13 **A. Well, yeah.**

14 Q. And there seems to be some testimony about whether
15 or not you care about what the county thinks or not.

16 **A. Well, the issue I had with the county down there**
17 **with those two trucking companies -- or two companies -- our**
18 **police department is down there 24/7 when they have -- they**
19 **have a lot of break-ins down there. And when they call the**
20 **county, the county says we don't have a car in that area,**
21 **call Caseyville. It's not in the Village of Caseyville and**
22 **we're sending our officers down there and taking them off**
23 **the streets.**

24 Q. Okay.

1 **A. And we're working on annexing them in.**

2 Q. So when you were hearing all of the testimony of
3 all of the people and you were hearing all of the public
4 comments, did anyone present anything about whether or not
5 having a transfer station or having a landfill or having
6 anything would or would not be consistent with the county's
7 solid waste plan? Do you recall if it was even discussed?

8 **A. I don't know anything about the county's waste**
9 **plan.**

10 MS. LIVINGSTON: Okay. I don't have anything else.

11 MR. MANION: I don't have any questions.

12 MR. MORAN: I have a follow-up based on what Penni
13 asked.

14 MR. MANION: Do you have any --

15 MS. POHLENZ: I have a follow-up based on --

16 MR. MANION: Why don't we stay in order then.

17 FURTHER EXAMINATION

18 BY MS. POHLENZ:

19 Q. When Ms. Livingston just asked you about waste
20 needs, what's your understanding of what a waste need is?

21 **A. Ma'am?**

22 Q. Ms. Livingston just asked you about waste needs.
23 What's your understanding of what is a waste need?

24 **A. Well, just somewhere to haul your trash. That's as**

1 **far as I'm concerned.**

2 Q. And --

3 **A. And be local instead of going far away; you know,**
4 **going to Granite City or Bethalto or wherever they have to**
5 **go. I don't know where they go.**

6 Q. And do you know where the waste that would be
7 hauled to Caseyville Transfer Station would go?

8 **A. Well, I did see that it would go to Perry County.**

9 Q. Okay. And is your reference to me that -- do you
10 have any understanding as to whether there is -- what area
11 that Caseyville Transfer Station intends to serve?

12 **A. Well, I figured they were going to take care of**
13 **Caseyville for sure. That's no. 1.**

14 Q. And when you --

15 **A. And I don't care about where what trash company**
16 **hauls trash from Caseyville. It makes no difference to me.**

17 Q. Your understanding is that they would be hauling
18 trash from Caseyville or they would be having a transfer
19 station?

20 **A. They would be collecting it and transferring it out**
21 **of Caseyville.**

22 Q. So is it your understanding that the application
23 they submitted to you was for both collection and transfer
24 of the waste from Caseyville?

1 **A. Yes. That's what I said. They would be getting**
2 **here and taking it out of here and all over, I guess,**
3 **different areas.**

4 Q. So with respect to a need, do you have any
5 understanding as to whether there's sufficient
6 capacity/space to dispose of Caseyville's waste?

7 **A. I wouldn't know that.**

8 Q. Do you know that there was evidence presented at
9 the hearing on May 29th -- whether there was evidence
10 presented at the hearing on May 29th that specifically
11 talked about that capacity?

12 **A. Yes.**

13 Q. And do you recall -- and did you consider that
14 evidence in making your decision?

15 **A. Yes.**

16 Q. What do you think needs to be shown to show a waste
17 need to be able to approve the applicant's siting
18 application?

19 MR. MANION: Objection, calls for speculation.

20 Q. (By Ms. Pohlenz) What's your understanding as to
21 what needs to be shown to you for you to vote yes?

22 **A. I wouldn't know how much trash you need to --**

23 Q. Is it your understanding that this applicant showed
24 any need for the facility in terms of space to bring waste

1 to?

2 **A. Well, I'm sure they did.**

3 Q. Do you know of any -- do you know where he showed
4 that to you?

5 **A. Well, I don't know how much trash you have to have
6 to have a facility. I don't know. I can't answer that.**

7 Q. What is your understanding as to how much trash
8 that Caseyville Transfer Station will take?

9 **A. I don't know.**

10 MS. POHLENZ: Thank you.

11 MR. MORAN: Can we mark this as Exhibit No. 7?

12 (Deposition Exhibit No. 7 marked for
13 identification.)

14 MS. LIVINGSTON: Just so it's nice and pretty in
15 the record, Don has just marked Exhibit No. 7 which appears
16 to be --

17 MR. MORAN: I will identify it.

18 MS. LIVINGSTON: Thank you.

19 MR. MORAN: Exhibit 7 is a document entitled
20 Village of Fairmont City memorandum of law regarding
21 sufficiency of siting application and proposed findings of
22 fact and conclusions of law. It was submitted on June 26,
23 2014.

24

1 FURTHER EXAMINATION

2 BY MR. MORAN:

3 Q. Mr. Abernathy, let me show you what we have marked
4 as Exhibit 7. Was Exhibit 7 sent to you at your mailbox
5 here at the Village?

6 A. I don't remember. I guess it was in there with
7 everything else.

8 Q. Well, again, we don't want you to speculate. Do
9 you remember specifically that that had been received in
10 your mailbox sometime this year?

11 A. I don't know. There was quite a bit of stuff in
12 there.

13 Q. Do you recall ever seeing this document before?

14 A. I think so.

15 Q. When?

16 A. I don't remember when it was.

17 Q. Where did you see it?

18 A. In my mailbox.

19 Q. But you don't remember that it was sent to your
20 mailbox?

21 A. Well, I said I don't know when it was put in there.

22 Q. Are you saying that you haven't --

23 A. I don't know the dates.

24 Q. Do you have a specific recollection that this

1 Exhibit 7 was sent to your mailbox?

2 **A. I don't remember.**

3 MR. MORAN: Okay. Nothing more.

4 MR. MANION: Any more questions? I don't have any
5 questions.

6 MS. POHLENZ: So you have the -- this is a
7 discovery deposition, Mr. Abernathy. And although we have
8 an offer of proof, your attorney may have explained to you
9 that you have the option -- or the Village attorney may have
10 explained to you that you have the option to reserve, read
11 the testimony over before you sign off on it, or you can
12 trust that the court reporter took it down as accurate and
13 waive signature. That's up to you.

14 MR. MANION: I don't see any reason not to waive
15 it. If you want to waive it, tell him you're waiving the
16 right to read it.

17 THE WITNESS: I'll waive it.

18 MS. POHLENZ: Thank you for your time,
19 Mr. Abernathy.

20 MS. LIVINGSTON: Yeah, thanks.

21 MR. MORAN: Thank you, sir.

22 (Wherein, the deposition concluded.)
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CERTIFICATE

I, Christopher C. Wieggers, Certified Court Reporter, DO
HEREBY CERTIFY that pursuant to agreement between the
parties, the aforementioned witness came before me at the
time and place hereinbefore mentioned, and having been duly
sworn to tell the whole truth of his knowledge touching upon
the matter in controversy aforesaid; that he was examined on
the day, and his examination was taken in shorthand and
later reduced to printing; that signature by the witness is
waived and said deposition is herewith forwarded to the
taking attorney for filing with the Court.

IN WITNESS WHEREOF, I have hereunto subscribed my name
this 23rd day of October, 2014.

Christopher C. Wieggers

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