

October 28, 2014

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Appeared on behalf of the Respondent,
Village of Caseyville and Village Board
of the Village of Caseyville;

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ALSO PRESENT: MR. JOHN SIEMSEN

REPORTED BY:

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1 HEARING OFFICER WEBB: Good morning.
2 My name is Carol Webb and this is the hearing for
3 PCB 15-65 and 15-69 Roxanna Landfill and Fairmont
4 City versus the Village of Caseyville and
5 Caseyville Transfer Station. It is October 28th
6 and we are beginning at 9:00 a.m. At issue in
7 this case is the Village of Caseyville's decision
8 to grant the Caseyville Transfer Station siting
9 application. The site is located in Caseyville,
10 St. Clair County, and the decision deadline is
11 December 18th.

12 The Pollution Control Board
13 members will make the final decision in this case.
14 My purpose is to conduct the hearing in a neutral
15 and orderly manner so that we have a clear record
16 of the proceedings.

17 This hearing was noticed
18 pursuant to the act and the Board's rules and will
19 be conducted pursuant to Section's 101.600 through
20 101.632 of the Board's procedural rules. Members
21 of the public, and there are some here today, may
22 make public comments at this hearing or may --
23 and/or may submit written comments to the
24 Pollution Control Board's clerk in accordance with

1 Section 101.628 of the Board's procedural rules.

2 Public comment will be due by
3 November 12th. At this time, I'd like to ask the
4 parties to please make their appearance on the
5 record beginning with Roxanna Landfill.

6 MS. SACKETT POHLENZ: My name is
7 Jennifer Sackett Pohlenz, S-A-C-K-E-T-T, space,
8 P-O-H-L-E-N-Z, and I represent participant and
9 petitioner Roxanna Landfill, Inc.

10 HEARING OFFICER WEBB: Thank you.

11 MR. MORAN: Donald Moran appearing
12 on behalf of the Village of Fairmont City.

13 MR. SPRAGUE: Robert Sprague
14 appearing on behalf of the Village of Fairmont
15 City.

16 MR. MANION: Brian Manion on behalf
17 of the Village of Caseyville and the Board --
18 Village Board of the Village of Caseyville.

19 MS. LIVINGSTON: And Penni
20 Livingston on behalf of the applicant Caseyville
21 Transfer Station.

22 HEARING OFFICER WEBB: Thank you.
23 Are there any preliminary matters to discuss on
24 the record?

1 MS. SACKETT POHLENZ: Yes, there
2 are. We have an agreed set of stipulations.
3 There is three stipulations to present to the
4 Hearing Officer. I have a document I'll tender.
5 Do you need it marked as an exhibit or --

6 HEARING OFFICER WEBB: No.

7 MS. SACKETT POHLENZ: -- just
8 because it's -- okay. It is -- references
9 transcripts that the parties have agreed to submit
10 to the Hearing Officer in lieu of testimony today
11 and those transcripts are Village Board Member
12 Walter Abernathy; Village Board Member Carrie
13 Davis; Village Board -- Village Clerk, excuse me,
14 Robert Watt and Deputy Village Clerk Leslie
15 McReynolds. I have just this morning e-mailed
16 those transcripts and exhibits over to the Hearing
17 Officer and all the parties so that electronically
18 they have been provided. In addition --

19 HEARING OFFICER WEBB: Did you file
20 them electronically with the clerk?

21 MS. SACKETT POHLENZ: I did not.

22 HEARING OFFICER WEBB: Okay.

23 MS. SACKETT POHLENZ: I did not know
24 if --

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1 HEARING OFFICER WEBB: Okay.

2 MS. SACKETT POHLENZ: -- that was
3 something I should do if the entire record would
4 then be filed with the clerk or online or just
5 sent by e-mail to the clerk.

6 HEARING OFFICER WEBB: Yeah. Can I
7 see the document, that first page?

8 MS. SACKETT POHLENZ: Sure. So the
9 transcripts were sent electronically and then I'm
10 also including and providing a certified copy of
11 Roxanna Landfill, Inc.'s May 29th, 2014, permit.

12 HEARING OFFICER WEBB: So we are
13 agreeing to admit into the record these deposition
14 transcripts as if read, is that correct?

15 MS. SACKETT POHLENZ: Well, the
16 exceptions on there are objections. There was an
17 offer of proof. We made the offer of proof at the
18 end and we would ask the Board to rule on that
19 offer of proof pursuant to the Hearing Officer's
20 order on that issue.

21 HEARING OFFICER WEBB: Okay.

22 MS. SACKETT POHLENZ: And then there
23 are some objections made during the course of the
24 depositions that we'd ask the Hearing Officer to

1 make rulings on and then the exhibits are also
2 submitted and agreed to be submitted as part of
3 that.

4 HEARING OFFICER WEBB: Do you need
5 the rulings on the depositions now?

6 MS. SACKETT POHLENZ: No.

7 HEARING OFFICER WEBB: Okay.

8 MS. SACKETT POHLENZ: Obviously not.

9 HEARING OFFICER WEBB: All right. I
10 will accept in for filing on behalf of the
11 Board -- I'm not sure what the correct terminology
12 would be. I don't want to say admitted into the
13 record when not all of it is admitted into the
14 record.

15 MS. SACKETT POHLENZ: Correct.

16 HEARING OFFICER WEBB: But I would
17 put -- yeah, this can go ahead and be
18 electronically filed with the Board. I can
19 take -- is this all of it? I can take -- I can
20 also file this paper copy, do you want --

21 MS. SACKETT POHLENZ: That paper
22 copy is the entire --

23 HEARING OFFICER WEBB: Is the entire
24 thing?

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1 MS. SACKETT POHLENZ: Yeah.

2 HEARING OFFICER WEBB: Okay. Okay.

3 We don't need to -- we'll just refer to this
4 document as agreed stipulations.

5 MS. SACKETT POHLENZ: Correct.

6 HEARING OFFICER WEBB: Okay. Is
7 there anything --

8 MS. SACKETT POHLENZ: Yes.

9 MS. LIVINGSTON: Yes, there is
10 something. Last night when we left the
11 stipulations I know that there were eight proposed
12 stipulations, but there had never been any
13 controversy about what we had as stipulation
14 number two, which was a stipulation about a
15 meeting on February 18th, 2014, and I noticed that
16 the petitioner has removed that stipulation and I
17 certainly thought that this --

18 MS. SACKETT POHLENZ: This is --

19 MS. LIVINGSTON: -- was part of what
20 we were stipulating to. If I could just finish
21 for the court reporter, I'll stop now.

22 MS. SACKETT POHLENZ: This is
23 parties agreed stipulations and they don't agree
24 to stipulations at 6:07 p.m. while I was driving

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1 down to Caseyville, the stipulations that I
2 proposed on Friday morning of the -- would be the
3 24th were all of a sudden objected to. Of the
4 eight, only four I think existed. So the fact
5 that after reviewing their issues, after reviewing
6 my case and what I'm going to present and all of
7 this being on such a compressed schedule and
8 having to respond to several, you know, motions
9 during the course of this that they happen such as
10 the motions for sanctions and other things that
11 had been thrown my way. You know, the fact that
12 what ended up being agreed was three, three of
13 eight that started the discussion. They removed
14 four of those and we, petitioners, removed one.

15 MS. LIVINGSTON: Well, the
16 stipulations that were removed had to do with new
17 documents that we had just received pursuant to a
18 subpoena duces tecum to the Village's attorney
19 Mr. John Gilbert and they also included his bills
20 with no explanation for the conversation. I
21 thought that was prejudicial. It turns out that
22 Mr. Gilbert is available this afternoon to testify
23 and he will appear to testify since the petitioner
24 also asked that his deposition or that his

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1 testimony be taken --

2 MS. SACKETT POHLENZ: I have not
3 subpoenaed Mr. Gilbert.

4 MS. LIVINGSTON: Well, they
5 subpoenaed duces tecum him a week ago, which by
6 the way a week ago is when I got the answers to
7 discovery to even know that there were any issues
8 about a meeting having taken place after the
9 application and since the petitioners have raised
10 the issue of ex parte communication, in full
11 disclosure we should know all ex parte
12 communication and so we intend to show you what
13 that is because we just learned about it last
14 week.

15 MS. SACKETT POHLENZ: We're not
16 presenting evidence -- any evidence at hearing
17 concerning ex parte communication. Our evidence
18 at hearing is going to concern the fact that this
19 application wasn't filed on the date that they
20 claim it was filed. Our evidence at hearing is
21 going to concern the fundamental unfairness of the
22 hearing process itself and our evidence at
23 hearing -- well, our evidence with respect to the
24 briefing on the record below we'll reserve because

1 that's going to be presented here today.

2 HEARING OFFICER WEBB: I will allow
3 everybody to make an opening statement if they
4 want one. I do have a question. What do I do
5 with this? Is this agreed by the parties or not?

6 MS. LIVINGSTON: It is agreed
7 because --

8 HEARING OFFICER WEBB: Okay.

9 MS. LIVINGSTON: -- it's a simple
10 fact.

11 MS. SACKETT POHLENZ: Okay. What is
12 your motion? Penni, do you have a motion?

13 MS. LIVINGSTON: I am merely
14 pointing out the unfairness of the proceeding when
15 people change things the night before.

16 MS. SACKETT POHLENZ: And then you
17 did the same. I don't understand where that is
18 going.

19 HEARING OFFICER WEBB: Okay.

20 MS. SACKETT POHLENZ: They are the
21 ones who compressed the schedule.

22 MS. LIVINGSTON: Where it is going
23 is there was a meeting that took place on February
24 18th. We had stipulated to that meeting. Now, I

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1 will have to present evidence about that meeting
2 which also leads to the next issue which is she
3 filed a motion to quash my subpoena.

4 HEARING OFFICER WEBB: Okay. Okay.
5 We'll get there. We'll get there. We don't have
6 to do the whole hearing before opening statements,
7 but this document --

8 MS. LIVINGSTON: Is agreed.

9 HEARING OFFICER WEBB: Okay. The
10 agreed stipulation is agreed. Okay. Are there
11 any other preliminary matters before we get to
12 opening arguments?

13 MS. SACKETT POHLENZ: There are.
14 There are a number of records that are not in the
15 record that was filed by the Village and were part
16 of the siting public record before -- at the
17 Village. So I can run through those documents,
18 but I did not have time to copy them and provide
19 them and I did not have time to upload them this
20 morning, but I can likely provide them -- I can
21 also provide them electronically.

22 The parties have reviewed these
23 and my understanding that they're in agreement to
24 it, but I will read them off for the record and

1 then they can say whether or not with respect to
2 each one they agree.

3 Excluded from the record filed
4 by the Village in this PCB petition for review was
5 the cover letter to the site location application
6 from Caseyville Transfer Station, LLC.

7 MS. LIVINGSTON: We agree it should
8 be added.

9 MR. MANION: Agreed.

10 MS. SACKETT POHLENZ: Does anyone
11 object? Let's put it -- make it easier. No
12 objection. Number two, Caseyville Transfer
13 Station, LLC, and I'll call it a siting handout
14 and if anyone doesn't understand what that is I'll
15 clarify it, but it was provided to the parties
16 prior to today and it was provided by Mr. Siemsen.

17 MS. LIVINGSTON: Does it have an
18 exhibit number?

19 MS. SACKETT POHLENZ: It does not
20 have an exhibit number. I labeled it Exhibit J to
21 the e-mail that I had sent out, but that's not
22 relevant to -- it is not how the numbers or
23 letters will go in this proceeding.

24

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1 (Document marked as Hearing
2 Exhibit No. J for
3 identification.)

4 MS. LIVINGSTON: No objection.

5 MR. MANION: No objection.

6 MS. SACKETT POHLENZ: Caseyville
7 Transfer Station, LLC, Exhibit C to its siting
8 application which is its pre-filing notice.

9 (Document marked as Hearing
10 Exhibit No. C for
11 identification.)

12 MR. MANION: No objection.

13 MS. LIVINGSTON: No objection.

14 MS. SACKETT POHLENZ: Caseyville
15 Transfer Station, LLC, Exhibit D to its siting
16 application. That is the host community
17 agreement.

18 (Document marked as Hearing
19 Exhibit No. D for
20 identification.)

21 MS. LIVINGSTON: No objection.

22 MR. MANION: No objection.

23 MS. SACKETT POHLENZ: Caseyville
24 Transfer Station, LLC, Exhibit E, which is the

1 siting application, which is US EPA publication, A
2 Manual For Decision-Making.

3 (Document marked as Hearing
4 Exhibit No. E for
5 identification.)

6 MS. LIVINGSTON: No objection.

7 MR. MANION: No objection.

8 MS. SACKETT POHLENZ: A color copy
9 of the exhibits from Roxanna Landfill, Inc.'s
10 witness presented at the public hearing on May
11 29th Mr. Dustin Riechmann's. The black and white
12 copy was included in the record, but we
13 specifically submitted a color copy of those
14 photographs into the record and we would like a
15 color copy to be reflected before the Board.

16 MS. LIVINGSTON: No objection.

17 MR. MANION: No objection.

18 MS. SACKETT POHLENZ: A copy of the
19 transcript from the July 16th, 2014, Village of
20 Caseyville committee meeting where the siting was
21 discussed at the public meeting before the
22 Village.

23 MS. LIVINGSTON: No objection.

24 MR. MANION: No objection.

1 MS. SACKETT POHLENZ: A copy of the
2 transcript from the August 6th, 2014, special
3 meeting when the Village Board of the Village of
4 Caseyville voted to approve the Caseyville
5 Transfer Station, LLC, application for site
6 location approval.

7 MS. LIVINGSTON: We have no
8 objection, but we would like to note that the
9 reason why these public meetings were transcribed
10 was because the petitioner hired a transcriber for
11 the meeting, but we have no objection.

12 MS. SACKETT POHLENZ: It is nice we
13 keep a good record. A copy of --

14 MR. MANION: Wait. On the August
15 6th meeting, isn't that already in the record?

16 MS. LIVINGSTON: Yes, it is.

17 MR. MANION: G1 to --

18 MS. SACKETT POHLENZ: Okay. Good.

19 MR. MANION: G1 to G30.

20 MS. SACKETT POHLENZ: So if the
21 August 6th is already in the record, then we don't
22 need to include that.

23 MR. MANION: Right. It is already
24 in there.

1 MS. SACKETT POHLENZ: Okay.

2 MR. MANION: Pages G1 to G30.

3 MS. SACKETT POHLENZ: A copy of my
4 cover letter, a corrected certificate of service
5 and notice of filing and appearance on behalf of
6 Roxanna Landfill, Inc. before -- filed before the
7 public hearing date of May 29th. We filed in
8 advance of that and it was provided to all the
9 parties. Any objection?

10 MS. LIVINGSTON: Nope.

11 MR. MANION: No.

12 MS. SACKETT POHLENZ: A copy of my
13 e-mail transmittal to the Village clerk and deputy
14 clerk on June 27th, 2014, that enclosed my
15 post-hearing written comment on behalf of Roxanna
16 Landfill, Inc. Any objection?

17 MS. LIVINGSTON: No objection.

18 MR. MANION: No.

19 MS. SACKETT POHLENZ: So those would
20 be -- we request -- the parties agreed and request
21 that those be supplemented to the record.

22 HEARING OFFICER WEBB: Okay. All of
23 those items are admitted into the record and you
24 will file a supplement to the record with the

1 Board after the hearing?

2 MS. SACKETT POHLENZ: Correct.

3 HEARING OFFICER WEBB: Okay.

4 MS. SACKETT POHLENZ: And should
5 that come from the Village or should that come
6 from us?

7 HEARING OFFICER WEBB: Well, I don't
8 know who has --

9 MS. SACKETT POHLENZ: The documents
10 are primarily the applicants.

11 HEARING OFFICER WEBB: Can you --

12 MS. LIVINGSTON: She is the person
13 who discovered them missing from the record and
14 she has them handy. Why not just uphold them to
15 the cloud that she's got setup?

16 MS. SACKETT POHLENZ: I can bring
17 them over to the Pollution Control Board Chicago's
18 office on a disk.

19 HEARING OFFICER WEBB: That would be
20 great. Thank you.

21 MS. LIVINGSTON: Thanks.

22 HEARING OFFICER WEBB: Are there any
23 other preliminary matters?

24 MS. SACKETT POHLENZ: There are.

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1 There is Roxanna -- on behalf of Roxanna Landfill,
2 Inc., I filed a joinder and a petition --
3 petitioner of Village of Fairmont City's motion to
4 exclude portions of the record. I don't know if
5 that will be heard today.

6 HEARING OFFICER WEBB: Well, my
7 ruling is that I'm going to deny the motion to
8 exclude because I know the Board accepts comments
9 from parties that respond, you know, after the --
10 you know, that respond to public comment. So that
11 is appealable to the Board, but my ruling is that
12 I'm going to deny the motion to exclude.

13 MS. LIVINGSTON: Thank you.

14 MS. SACKETT POHLENZ: Okay. And
15 then petitioner Roxanna Landfill, Inc. filed an
16 emergency motion to quash a subpoena duces tecum
17 directed to Susan Piazza, an employee of Allied
18 Waste Transportation, Inc.

19 HEARING OFFICER WEBB: What -- this
20 has been a little confusing. Is -- was she to
21 produce documents or testify? What was the
22 intent?

23 MS. SACKETT POHLENZ: I can --

24 HEARING OFFICER WEBB: I'm confused.

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1 MS. SACKETT POHLENZ: With respect
2 to the motion and with respect to my
3 understanding. So the documents filed by counsel
4 for the applicant show that the subpoena wasn't
5 served until Friday at 2:37 in the afternoon
6 around then. Sometime after 2:30. When I learned
7 of the subpoena, it was a subpoena duces tecum.
8 It was a subpoena for document production and
9 given the Hearing Officer's prior order concerning
10 discovery, you know, in the case and discovery
11 subpoenas specifically in the case, you know --
12 I -- I was -- I treated it as such, a subpoena
13 duces tecum which is what it says on its face. I
14 learned on Monday that it is -- they consider it
15 to be a subpoena for testimony.

16 It is not what the document
17 says. It doesn't follow the proper form of the
18 subpoena. It doesn't use the Pollution Control
19 Board form of the subpoena. It doesn't say
20 testimony anywhere on the face of the subpoena.
21 It is not filed and there was no leave to file or
22 other order entered by the Hearing Officer
23 concerning subpoenas for hearing being filed
24 outside the ten days required by the Pollution

1 Control Board rules and, you know, it is less than
2 24 hours before the hearing we're told that they
3 want to present someone for testimony on an issue
4 that has no relevance to anything that we're
5 presenting with respect to evidence on
6 jurisdiction or with respect to evidence on
7 fundamental unfairness.

8 HEARING OFFICER WEBB: Okay. I have
9 a question. Is this person present today?

10 MS. SACKETT POHLENZ: No.

11 HEARING OFFICER WEBB: Okay.

12 MS. LIVINGSTON: This person is
13 disobeying a lawfully issued subpoena served on
14 her by a process server with a check by the way.
15 Every subpoena that the city witnesses appeared on
16 did not include a check and case law under
17 Illinois says subpoenas are not legal without a
18 check, but we did bring witnesses and appear
19 pursuant to discovery. So it is interesting to
20 say that the subpoena is not lawful. The first
21 thing --

22 MS. SACKETT POHLENZ: It is
23 interesting to see your application isn't complete
24 on the record on the -- before the Board, but I'm

1 apparently the only one who has reviewed that
2 record to find inconsistencies. So there is a lot
3 of inconsistencies that have nothing to do with
4 the matter before this hearing officer and our
5 emergency motion to quash this harassing --

6 MS. LIVINGSTON: Wow.

7 MS. SACKETT POHLENZ: -- vexatious
8 subpoena.

9 HEARING OFFICER WEBB: Okay. Okay.
10 Okay.

11 MS. LIVINGSTON: If I could speak
12 to --

13 HEARING OFFICER WEBB: My ruling on
14 the motion to quash is that it appears to be moot.

15 MS. LIVINGSTON: Well, it is
16 actually not moot. It is actually not moot. You
17 see, we had a stipulation about this meeting that
18 occurred on February 18th and now we don't, but
19 here is what happened is I received -- even though
20 I submitted discovery answers to their discovery
21 within five days of receiving it and was ordered
22 to do it within eight days I did not get the
23 responses to my discovery until 16 days later
24 which happened to have been one week ago yesterday

1 at ten til 5:00 and the next day were the
2 depositions and so the first time I ever knew
3 Susan Piazza had a meeting with the mayor and the
4 city attorney was at 5:00 p.m. the day before
5 depositions. In other words, one week ago
6 yesterday at 5:00 p.m. is the first time I even
7 knew this woman existed. They answered in
8 discovery. She is the person who answers the
9 discovery answers.

10 MS. SACKETT POHLENZ: She doesn't.
11 I answered the discovery and I cite that they were
12 reviewed by her because I --

13 HEARING OFFICER WEBB: Okay. Just
14 explain.

15 MS. LIVINGSTON: Input --

16 HEARING OFFICER WEBB: Okay. Go.

17 MS. LIVINGSTON: On the facts
18 referenced from Ken Bli- -- from Ken Bleyer,
19 another attorney for petitioner, and Susan Piazza
20 an employee -- now my paper is not turning.

21 MS. SACKETT POHLENZ: Correct. And
22 the references in discovery concerned
23 unavailability of the record to Ms. Piazza.

24 MS. LIVINGSTON: But sure --

1 MS. SACKETT POHLENZ: And we are not
2 presenting that as evidence.

3 HEARING OFFICER WEBB: Okay.
4 Counsel, I think we're getting ahead of ourselves.
5 We'll get to the substance of this hearing. I
6 just want to get through some of these prehearing
7 issues.

8 MS. LIVINGSTON: Right. So here is
9 the issue.

10 HEARING OFFICER WEBB: Okay.

11 MS. LIVINGSTON: I asked her at that
12 deposition the next day because that's the first
13 time I knew about this person, right, so the next
14 day I asked her could I have Susan Piazza --

15 MS. SACKETT POHLENZ: Wait.

16 MS. LIVINGSTON: -- for testimony.

17 MS. SACKETT POHLENZ: What is going
18 on? Are you testifying now to the Board?

19 MS. LIVINGSTON: You have an e-mail
20 to me where you say to me yesterday after the
21 deposition of John Siemsen you raised with me for
22 the first time, well, yeah, I just got this
23 information, your desire to subpoena Susan Piazza.

24 MS. SACKETT POHLENZ: And you didn't

1 subpoena her.

2 HEARING OFFICER WEBB: Wait.

3 MS. SACKETT POHLENZ: But you didn't
4 because you were working on -- or show it to me
5 until less than 24 hours before today.

6 HEARING OFFICER WEBB: Okay.

7 Ms. Pohlenz, please. Please explain to me how
8 this is not a moot motion?

9 MS. LIVINGSTON: Because while the
10 application was on file at City Hall, Allied Waste
11 had a meeting with the mayor and the Village
12 attorney to turn them against this application.

13 MS. SACKETT POHLENZ: Oh, there is
14 no evidence of that at all.

15 MS. LIVINGSTON: There will be.

16 HEARING OFFICER WEBB: Hang on.

17 MS. SACKETT POHLENZ: No, there
18 won't be.

19 HEARING OFFICER WEBB: Hang on.

20 Hold on.

21 MS. SACKETT POHLENZ: That is
22 just --

23 HEARING OFFICER WEBB: This
24 individual is not here.

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1 MS. LIVINGSTON: Apparently.

2 HEARING OFFICER WEBB: So I don't
3 really know what I can do.

4 MS. LIVINGSTON: You can order the
5 petitioner to provide a witness who was lawfully
6 subpoenaed who they told me they would only give
7 me if I agreed to reduce the scope of what I would
8 ask. I don't have to reduce the scope or tell
9 them what I'm going to ask this witness that they
10 just notified me existed.

11 MS. SACKETT POHLENZ: That was --
12 you raised the issue of stipulations. You raised
13 it and we came up with a list of eight and then
14 6:07 last night as I'm on my way down here you
15 decide to pull the rug on four. So you want to
16 talk about good practice, good practice would have
17 been to talk to me about those stipulations, which
18 you did. All of them are agreeable you said
19 multiple times until 6:07 last night. You want to
20 talk about good practice, then show it yourself to
21 start with.

22 HEARING OFFICER WEBB: Well, in my
23 opinion, and my ruling is going to be that this
24 motion to quash is moot because we don't have the

1 witness. We don't have the documents. If you
2 want to make -- you can certainly bring this up in
3 your post-hearing brief. You can make -- all the
4 arguments you're making now would be appropriate
5 for that, but that is -- that is my ruling for now
6 on the motion to quash.

7 MS. LIVINGSTON: I appreciate it.
8 Then I would like to ask this question. Since we
9 have a person who was personally served, had a
10 check, disobeyed the subpoena, do you consider the
11 Board to be the appropriate mechanism for contempt
12 or do you think that I should bring it to a
13 St. Clair County judge?

14 HEARING OFFICER WEBB: I think you
15 should -- my decisions are appellate to the Board.

16 MS. LIVINGSTON: Okay.

17 HEARING OFFICER WEBB: And the
18 Board's decisions are appealable to the appellate
19 court as you know.

20 MS. LIVINGSTON: I appreciate it.

21 HEARING OFFICER WEBB: Any other --
22 I don't want -- please tell me there are no other
23 preliminary issues to discuss before hearing?

24 MS. LIVINGSTON: Well, maybe I

1 should. Before we stop then I guess I would like
2 this on the record. I move that Susan Piazza be
3 held in contempt of the Board for disobeying a
4 lawfully, personally served subpoena that included
5 a check.

6 MS. SACKETT POHLENZ: I disagree
7 that it was lawfully served -- lawfully in
8 compliance with the rules served. I disagree that
9 it was a subpoena for testimony. It was a
10 subpoena duces tecum and that's what it was.

11 MS. LIVINGSTON: It says appear.

12 MS. SACKETT POHLENZ: It says -- it
13 is not in compliance with the form before the
14 Board. If you would like to file a motion, file a
15 motion. I'll respond to it then because otherwise
16 all we're doing is wasting time on the record.

17 HEARING OFFICER WEBB: I'm -- I'm
18 going to deny that motion. You can appeal it to
19 the Board.

20 MS. LIVINGSTON: Right. I just
21 wanted it on the record.

22 HEARING OFFICER WEBB: Okay.

23 MS. LIVINGSTON: And it was properly
24 issued.

1 HEARING OFFICER WEBB: Okay.

2 Anything else?

3 MS. SACKETT POHLENZ: That is all
4 the administrative matters that we had to raise.

5 HEARING OFFICER WEBB: Okay.

6 Mr. Moran?

7 MR. MORAN: I have nothing.

8 HEARING OFFICER WEBB: Mr. Manion,
9 do you have any prehearing --

10 MR. MANION: No, your Honor.

11 HEARING OFFICER WEBB: We're still
12 prehearing by the way.

13 MR. MANION: No, I do not. Thank
14 you.

15 HEARING OFFICER WEBB: Anything
16 else, Ms. Livingston?

17 MS. LIVINGSTON: Well, just that
18 I -- that Mr. John Gilbert is available to testify
19 at 1:30 so he will be coming in to testify.

20 HEARING OFFICER WEBB: Okay. All
21 right. Ms. Pohlenz, would you like to make any
22 opening statement?

23 MS. SACKETT POHLENZ: Yes, I would.
24 The public hearing today is where participants

1 present evidence on jurisdiction and fundamental
2 unfairness not already in the record that they
3 will raise before the Pollution Control Board.
4 The public hearing today is not an opportunity for
5 the siting applicant, Caseyville Transfer Station,
6 LLC, to correct or add to the evidence on the
7 criteria under Section 39.2 of the Illinois
8 Environmental Protection Act.

9 I am Jennifer Sackett Pohlenz
10 and I represent Roxanna Landfill, Inc. Why -- why
11 is Roxanna Landfill, Inc. a participant and a
12 petitioner in this proceeding? Roxanna Landfill,
13 Inc. is the owner and operator of the landfill in
14 the service area. Caseyville Transfer Station,
15 LLC, is the only party in a siting that can choose
16 its service area and it chose a three county area:
17 St. Clair, Madison and Monroe. Caseyville
18 Transfer Station, Inc. identifies Roxanna, Inc.
19 Landfill, Inc., excuse me, several times in its
20 siting application as a landfill in the service
21 area and Caseyville Transfer Station, Inc. states
22 in its siting application that Roxanna Landfill,
23 Inc. is 19 miles from the proposed transfer
24 station. That is all information contained in the

1 siting application and put there by the applicant
2 Caseyville Transfer Station, LLC.

3 As a party who is in the service
4 area and has properly presented and obtained -- as
5 a party who is in the service area and has
6 properly presented and obtained approval of the
7 siting application on its own and approval of
8 permits from the Illinois EPA related to that
9 siting, as well as a party called-out in
10 Caseyville Transfer Station, Inc. LLC's site
11 location application, Roxanna has a right to
12 participate here today in these proceedings.

13 So what about jurisdiction and
14 fundamental unfairness? What is the evidence
15 going to show? Roxanna Landfill, Inc. has raised
16 jurisdictional issues in its motion to dismiss the
17 siting application concerning the pre-filing
18 notice. The evidence on that is within the
19 record. It was raised in a motion to dismiss
20 before the siting hearing and it was never ruled
21 on by the Village Board. In addition, the
22 evidence presented at this public hearing through
23 the transcripts that were just submitted will show
24 yet another jurisdictional failure that there is

1 absolutely no evidence that the Village of
2 Caseyville filed the siting application on
3 February 10th, 2014.

4 Why is that important? The
5 pre-filing notice that a siting applicant is
6 required to send to property owners within 250
7 feet minimum distance around the proposed facility
8 boundary under Section 39.2 under the Illinois
9 Environmental Protection Act provides that that
10 notice must contain the date of filing. The
11 Pollution Control Board informed and upheld that
12 even a one day deviation on what that date is will
13 lie -- will make an application juris- --
14 defective jurisdictionally and remove jurisdiction
15 from the Village Board that notice has been
16 presented.

17 The evidence presented at
18 hearing today through the transcripts from the
19 Village of Caseyville says -- show that there is
20 no evidence that the application was filed on
21 February 14th. Now, Mr. Siemsen may testify and
22 he may say he brought the application here. Why
23 would he say anything else? He knows the
24 consequences now, but he has nothing to show us.

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1 No proof that he was here. No receipt from the
2 clerk. No file stamp. Nothing.

3 As with respect to fundamental
4 unfairness, while a variety of issues could be
5 raised and without diminishing the importance of
6 any of them or the importance of them to the
7 public, which is not my purpose, is to make
8 those -- any of the issues less than what they
9 are, but the core issue of fundamental unfairness
10 and the issue that we're presenting today concerns
11 the fundamental unfairness of the hearing itself,
12 the siting hearing held on May 29th, 2014, and
13 that, again, was solely in the hands of Caseyville
14 Transfer Station, LLC. Caseyville Transfer
15 Station, LLC, decided to present its case for
16 public hearing without affidavit, without any
17 engineered seal or stamped plans. Without a
18 single word of testimony. Again, like the service
19 area, no one forced this on Caseyville Transfer
20 Station, LLC. Caseyville Transfer Station never
21 subjected itself to cross-examination at the
22 hearing.

23 It never testified. It merely
24 submitted a group of documents, the bulk of which

1 are general governmental publications, they gave a
2 public comment and called it a day. Not only did
3 this render the public hearing fundamentally
4 unfair, but it rendered the decision of the
5 Village Board to be against the manifest weight of
6 evidence as there is simply no evidence presented
7 by the applicant and that is an issue we'll
8 discuss further in our post-hearing briefs. Thus,
9 for this and the other reasons to be submitted in
10 post-hearing briefs in this matter, participant
11 Roxanna Landfill, Inc. respectfully requests that
12 the Illinois Pollution Control Board reverse the
13 decision of the Village Board of the Village of
14 Caseyville as it is against the manifest weight of
15 the evidence, there is no jurisdiction for the
16 Village Board's siting approval and that the
17 public hearing or the local siting processes were
18 fundamentally unfair due to the applicant's
19 decision to only give public comment.

20 HEARING OFFICER WEBB: Thank you.
21 Mr. Moran, would you like to make an opening
22 statement?

23 MR. MORAN: Just very briefly. The
24 Village of Fairmont City joins in the argument and

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1 the opening that was made by Roxanna Landfill,
2 Inc. and we would simply ask to reserve a right to
3 respond to any opening that is made by either of
4 the respondents.

5 HEARING OFFICER WEBB: Okay.
6 Mr. Manion, would you like to make an opening
7 statement?

8 MR. MANION: No, thank you.

9 HEARING OFFICER WEBB: Ms.
10 Livingston?

11 MS. LIVINGSTON: Thank you,
12 Ms. Webb. I guess I'll just respond to what was
13 said. On the issue of fundamental fairness in
14 discovery of, well, we'll figure it out because
15 there wasn't anything in advance, as far as
16 addressing the issues of fundamental unfairness, I
17 think that's exactly right. We're not here to
18 retry the issues that the Board decided upon. The
19 criteria have already been placed into the record.
20 As far as the claim that Mr. Siemsen did not give
21 testimony, the fact that the Hearing Officer or
22 the mayor who was running the public meeting did
23 not swear the witnesses in does not mean that the
24 testimony was not the truth, the whole truth so

1 help you God. Certainly in taking his deposition
2 and here today Mr. Siemsen will raise his right
3 hand and swear to tell the truth because that's
4 what he is telling is the truth. He put his
5 application together. It is in the record. It
6 speaks for itself. He did make statements about
7 each of the criteria and certainly the record will
8 show that when people from the public spoke to him
9 he definitely did answer their concerns or issues
10 that they were raising so I would say that is a
11 little bit subject to cross-examination.

12 While there didn't seem to be a
13 courtroom setting on this, that doesn't mean that
14 the Village did not take in evidence of the
15 criteria including the application, which is
16 evidence, and it doesn't mean that they didn't
17 consider all the criteria which when you read the
18 transcripts of the two trustees of the Board that
19 were deposed you'll see that they did, in fact,
20 take into consideration all of the criteria and
21 that they did base their testimony or base their
22 decision on the evidence. Ms. Pohlenz stated that
23 she is raising jurisdictional issues with the
24 pre-filing notice. Mr. Siemsen is going to give

1 his hotel receipt to show that he came down here
2 on February 10th and brought that to the Village
3 Board.

4 I believe Mr. Gilbert will also
5 testify this afternoon that he is aware that it
6 was at the City Village Hall on February 10th.
7 That is the day it was delivered, that is the day
8 in the notice and that's the day that it got here.
9 So as far as the city not having jurisdiction,
10 they most certainly do. The application was filed
11 appropriately, brought to City Hall and they have
12 jurisdiction.

13 No evidence that we filed it on
14 February 10th? Well, we do have evidence of that.
15 We have Mr. Siemsen's testimony, we have his hotel
16 receipt and we'll have Mr. Gilbert and also you'll
17 see from the record Leslie McReynolds testified
18 and her deposition has been put in and the real
19 issue on the fundamental unfairness of where is
20 this record, it seems to have been put on the
21 zoning director's desk. That would be Mike
22 Mitchell and he is the zoning God in St. Clair
23 County and he is doing zoning part-time for
24 Caseyville. So it does seem that there was a slip

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1 up in the beginning as to where this record got
2 placed. It got placed on the zoning directors
3 desk and so it does appear that for about a week
4 and a half the record was not available to the
5 public. I would note, and you'll be able to do
6 the calculations yourself, and this was one of the
7 reasons I wanted Susan Piazza is that they're
8 claiming fundamental unfairness yet the e-mails
9 show she came and ran copies of the entire record.
10 I believe it was February 24th. And so, in other
11 words, gee, you guys had the entire record more
12 than 90 days before that hearing. That doesn't
13 sound fundamentally unfair and so saying that
14 there is no evidence that it was filed, well,
15 there is evidence that it was filed. No proof?
16 Yes, there's proof and then she also said that he
17 didn't present his case with engineer stamped
18 plans.

19 I would point out to everyone
20 that after you get local siting approval that is
21 the very first thing you have to tell Illinois EPA
22 before you apply for a permit and Illinois EPA
23 would never give a permit to a permit applicant
24 unless they met all of the standards of the

1 Environmental Protection Act and they would put
2 conditions on that permit to ensure that the
3 provisions of the Environmental Protection Act
4 are, in fact, enforced. So this is just one step
5 is you get your local siting approval, then you
6 apply for a permit with Illinois EPA. That's when
7 you need to be getting your engineers involved.

8 So -- and the issue of, let's
9 see, nonchalantly saying, you know, that
10 Mr. Siemsen took -- just gave public comments and
11 called it a day, you know, Mr. Siemsen came in and
12 had a crowd of people and so did the Village Board
13 and they listened to that crowd of people. They
14 listened to all the testimony and they decided
15 what was good for their community.

16 One of the exhibits that I
17 thought would come in, and we'll get it under
18 Mr. Gilbert so I can talk about it, is a local
19 siting ordinance that Allied Waste brought to the
20 Village and asked them to adopt that has a
21 \$250,000 application fee. As a minor in
22 economics, we call that a barrier to entry that
23 you're trying to keep your competitors out by
24 creating a barrier to entry and they tried to

1 persuade the Village to pass that so that the
2 applicant could not go forward because of that
3 barrier entry and all of the fundamental
4 unfairness issues that are involved, well, there
5 seems to be a fumbling of the record during the
6 first week and a half, where is it, after that
7 when you get to the fundamental fairness issue it
8 is really the petitioners that have issues with
9 fundamental fairness and I think that you'll see
10 from the post trial briefs that -- post-hearing
11 briefs that we filed that is, in fact, the case
12 and I think you'll hear the testimony today that
13 is, in fact, the case. So they have jurisdiction.
14 They made a decision. It is interesting that the
15 Power Point that Ms. Pohlenz put together for the
16 Village makes it very clear that this is a local
17 issue --

18 MS. SACKETT POHLENZ: Objection.

19 MS. LIVINGSTON: -- where local --

20 MS. SACKETT POHLENZ: At this point
21 we're not -- I mean, there is nothing in evidence.

22 MS. LIVINGSTON: I will present it.

23 MS. SACKETT POHLENZ: We're straying
24 far away from the facts.

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1 MS. LIVINGSTON: Okay. I'll just
2 stop talking and you can hear the evidence when it
3 comes in.

4 HEARING OFFICER WEBB: Sounds good.

5 MS. LIVINGSTON: But I agree the
6 evidence today is on fundamental fairness and
7 jurisdiction and I'm glad to see that the issues
8 of ex parte communication have been dealt with
9 because when you look at the answers to discovery
10 that seems to have been an issue and I'm glad they
11 can see that it's not an issue, but I would tell
12 you it's not an issue for Mr. Siemsen, but it is
13 an issue for Allied Waste.

14 HEARING OFFICER WEBB: Okay.
15 Ms. Pohlenz, would you like to call your first
16 witness?

17 MS. SACKETT POHLENZ: We're going to
18 rest on the transcripts that have been submitted
19 in lieu of testimony.

20 HEARING OFFICER WEBB: Do you have
21 anything else you would like to present today for
22 your case?

23 MS. SACKETT POHLENZ: No.

24 HEARING OFFICER WEBB: Does Fairmont

1 City --

2 MS. SACKETT POHLENZ: I reserve --
3 reserve obviously the right to file post-hearing
4 briefs.

5 HEARING OFFICER WEBB: Of course,
6 yes. Fairmont City, anything to present today?

7 MR. MORAN: We learned this morning
8 that Mr. Gilbert apparently will be appearing this
9 afternoon. While I wouldn't identify Mr. Gilbert
10 as being Fairmont City's witness, we would
11 certainly ask for the opportunity to examine
12 Mr. Gilbert, but we have no witnesses to present
13 at this time and no other material that we wish to
14 offer.

15 MS. SACKETT POHLENZ: And, likewise,
16 Roxanna Landfill, Inc. I didn't know -- I would
17 reserve the right to cross-examine or respond to
18 any evidence presented by any of the respondents
19 in the case.

20 HEARING OFFICER WEBB: Oh, of
21 course. Yes. Does the Village have anything to
22 present today?

23 MR. MANION: I'd like to call
24 Mr. Penny as a witness.

1 HEARING OFFICER WEBB: I'm sorry.

2 Mr. who?

3 MR. MANION: Penny. Scott Penny.

4 MR. MORAN: We object. There has
5 been no subpoena issued for Mr. Penny. Mr. Penny
6 is here as a participant. There is no right on
7 the part of any party to be able to request the
8 witness be called in a PCB hearing.

9 MR. MANION: They filed a motion for
10 sanctions against all of us and it involves the
11 relationship between Waste Management and Fairmont
12 City. So I'd like to ask some questions. It is
13 all raised in the motion. This motion was just
14 filed, what, Wednesday.

15 MS. LIVINGSTON: In other words, we
16 filed a motion to dismiss or strike the joint
17 motion -- Fairmont's petition saying they did
18 not -- that they were not an effective party.

19 HEARING OFFICER WEBB: Okay. Let's
20 go off the record for a minute and then I will
21 summarize what we discussed off the record when
22 we're back on the record, but I'm very confused
23 right now. So let's go off the record for a
24 minute.

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1 (Whereupon, a break was taken
2 after which the following
3 proceedings were had.)

4 HEARING OFFICER WEBB: Okay. We're
5 back on the record. Let me summarize what was
6 discussed off the record. We -- the Village of
7 Caseyville has asked to call a witness who is --
8 what is his title for Fairmont City?

9 MS. LIVINGSTON: We can ask him when
10 he gets on the stand.

11 HEARING OFFICER WEBB: Someone from
12 Fairmont City.

13 MS. LIVINGSTON: He has a couple of
14 titles.

15 MR. MANION: Mr. Scott Penny.

16 HEARING OFFICER WEBB: Mr. Scott
17 Penny from Fairmont City. Two things. The
18 petitioners did not have any notice of this
19 witness and this witness may be testifying to
20 items that -- or to information that has already
21 been ruled as not relevant in some discovery
22 requests. However, I have advised the Village of
23 Caseyville that I will allow them to make an offer
24 of proof for this witness as long as it is

1 narrowly tailored to any fundamental fairness
2 claims or the motion for sanctions that was filed
3 against them by Fairmont City. So, having said
4 that, this is an offer of proof.

5 Mr. Penny, you may approach.
6 You may take a seat on the witness stand and the
7 court reporter will swear you in, please.

8 WHEREUPON:

9 SCOTT PENNY
10 called as a witness herein, having been first duly
11 sworn, deposeth and saith as follows:

12 D I R E C T E X A M I N A T I O N

13 BY MR. MANION

14 **Q. Can you please state your full name?**

15 A. Scott B. Penny, P-E-N-N-Y.

16 **Q. And how are you currently employed?**

17 A. I am the chief of police in the
18 Village -- administrator for the Village of
19 Fairmont City, Illinois.

20 **Q. Okay. How did you first become**
21 **aware that there was a siting application for a**
22 **waste transfer station in the Village of**
23 **Caseyville?**

24 A. I saw a notice -- a public notice in

1 the newspaper.

2 **Q. Okay. Did you ever get contacted**
3 **about objecting to the siting application by**
4 **anyone?**

5 A. No, I contacted our mayor and city
6 council members and said "We need to review this
7 very closely."

8 **Q. Okay. After you spoke with them,**
9 **what happened next as far as objecting to the**
10 **application?**

11 A. In our discussion, I commented to
12 the mayor "If we're getting involved in this, we
13 need a specialist that is an environmental
14 attorney." The next thing that happened is the
15 mayor asked me to do some research and find out
16 who was the top environmental attorney in the
17 area. I said "Well, I know from our transactions
18 negotiating in resolving issues with my old
19 landfill the attorney that they have beats us at
20 every opportunity and we always end up on the
21 losing end. I would say we need to hire him."

22 **Q. I want to show you what has been**
23 **marked as Exhibit 1. Can you take a look at the**
24 **first paragraph on page three, please?**

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**(Document marked as Hearing
Exhibit No. 1 for
identification.)**

MR. MORAN: May I see the document
that he's showing the witness?

HEARING OFFICER WEBB: Do you have
another -- yeah, show him.

MS. LIVINGSTON: And, for the
record, these are meeting agenda minutes dated May
7th, 2014, Village of Fairmont City, Illinois.

MS. SACKETT POHLENZ: And what was
it marked?

MR. MANION: Exhibit 1.

BY THE WITNESS:

A. Paragraph three?

BY MR. MANION:

**Q. The first paragraph at the top of
the page.**

A. What about?

**Q. First, can you identify that
document and is that a true and accurate copy of
the meeting minutes?**

A. This is on Fairmont City Village
letterhead dated May 7th.

1 **Q. Okay.**

2 A. Beyond that, I can't.

3 **Q. Does it appear to be a --**

4 A. It appears to be in good form.

5 **Q. Okay. Can you read that first**
6 **paragraph on page three, please?**

7 A. "Chief reported he had received a
8 phone call from an attorney representing Waste
9 Management Don Moran regarding a proposed
10 Caseyville Transfer Station. Village of
11 Caseyville is trying to get their own transfer
12 station to haul trash to Du Quoin. The landfill
13 is opposed to this station and believes it is not
14 in the best interest of the Village. A hearing
15 regarding the transfer station will be held on May
16 29th, 2014. Mr. Moran will represent the Village
17 of Fairmont City. He forward an agreement and
18 Chief Penny asked the Board to approve the
19 agreement."

20 **Q. Is that a true and accurate summary**
21 **of the statements you made at that meeting?**

22 A. Not necessarily.

23 **Q. What is inaccurate about it?**

24 A. It is not fully accurate with all

1 details concerning the conversation.

2 **Q. Well, what is inaccurate about that**
3 **paragraph?**

4 A. The fact that I had contacted Don
5 Moran before receiving a call from Don Moran.

6 **Q. Okay. Did you?**

7 A. This should reflect -- what this
8 should reflect is I had discussion with Don Moran.

9 **Q. But that's not what the minutes say,**
10 **fair enough?**

11 A. Yes, you're right.

12 MR. MANION: I don't have any other
13 questions.

14 HEARING OFFICER WEBB: Okay.
15 Ms. Livingston, do you have any questions?

16 C R O S S E X A M I N A T I O N

17 BY MS. LIVINGSTON

18 **Q. Did you discuss in the public**
19 **meeting of May 7th, 2014, why the city -- why it**
20 **would not be good for the Village of Fairmont?**

21 MR. MORAN: Ms. Hearing Officer,
22 this is going well beyond any reasonable question
23 relating to any reasonably relevant issue in this
24 case. We've just addressed this. We're going to

1 go over it again?

2 HEARING OFFICER WEBB: Well, it is
3 already -- I mean, the testimony is already not
4 admitted. You know, I'll -- I'll give you a
5 little leeway to make your offer of proof, but I
6 agree. I don't -- I don't believe this is
7 relevant, but if you'd like to appeal it to the
8 Board I'll let you make -- get whatever
9 information you want on paper.

10 BY THE WITNESS:

11 A. Could you repeat the question?

12 BY MS. LIVINGSTON:

13 **Q. My question was did you discuss any**
14 **of the criteria on the record that day as to why**
15 **the Village of Fairmont was concerned about --**

16 A. Looking at the criteria that were in
17 your proposal and --

18 **Q. Yes.**

19 A. -- justification?

20 **Q. Right.**

21 A. No, we would not have discussed
22 this.

23 **Q. No discussion happened?**

24 A. No.

1 **Q. And is it -- is it fair to say that**
2 **the biggest concern for the Village of Fairmont**
3 **would be that if waste was hauled to another**
4 **landfill in another county, then you would receive**
5 **less tipping fees?**

6 A. No, what was at issue with the
7 Village of Fairmont City was that the way that the
8 siting -- the physical location of the site was
9 constructed was that all the garbage trucks would
10 drive -- drive through Washington Park and
11 Fairmont City. None would drive through
12 Caseyville and that's what had everyone offended.

13 **Q. Do you agree that Bunkum Road is**
14 **easily accessible to the interstate by coming back**
15 **to 157?**

16 A. Trucks are prohibited at the weight
17 levels of self-compacting trash trucks -- trucks
18 are prohibited from accessing that road from
19 Highway 157.

20 **Q. And are you aware that the St. Clair**
21 **County Highway Department has already given funds**
22 **to upgrade that road and that that is their**
23 **intention?**

24 A. We hear many things said about

1 highway improvements in this area, especially at
2 election time, and when we see that road improved
3 we'll believe it then.

4 **Q. All right. You would agree -- you**
5 **would agree that in May of this year it wasn't**
6 **election time, right?**

7 A. Yes, it wasn't an election in May.
8 It was in April.

9 **Q. I don't have anything else.**

10 HEARING OFFICER WEBB: Okay.

11 MR. MORAN: I have a request.

12 HEARING OFFICER WEBB: Yes.

13 MR. MORAN: I move that the
14 testimony that Mr. Penny has provided be, in fact,
15 admitted at this hearing because I believe based
16 upon what we've heard it does address the very
17 issue which is raised by the motion for sanctions
18 and that was the basis for the location of
19 Fairmont City as to be effected by this proposed
20 facility and I think it would be relevant to the
21 Board to consider that in considering the motion
22 for sanctions.

23 MS. LIVINGSTON: I think it is
24 particularly relevant for you to consider on the

1 motion for sanctions as well because the only
2 thing that we had were these minutes where the
3 chief had not been able to explain himself and we
4 were seeing that the minutes reflect that he got a
5 phone call from an attorney who seemed to be
6 creating a facade to represent the city as opposed
7 to the big waste management company and so this is
8 what we relied upon in filing our motion and so it
9 is relevant to us as well to not be sanctioned.
10 This is what we relied on.

11 HEARING OFFICER WEBB: Do you concur
12 with Mr. Moran?

13 MS. SACKETT POHLENZ: Roxanna
14 Landfill, Inc?

15 HEARING OFFICER WEBB: Yes.

16 MS. SACKETT POHLENZ: I don't
17 object. I won't object.

18 HEARING OFFICER WEBB: You won't
19 object. Okay. Well, I -- I guess if the Village
20 of Fairmont agrees to the admission of the
21 evidence from this witness no reason not to admit
22 it. Does anyone have anything else for this
23 witness? Okay. Thank you, sir.

24 THE WITNESS: Thank you.

1 HEARING OFFICER WEBB: Mr. Manion,
2 do you have anything further you would like to
3 present?

4 MR. MANION: No, your Honor. Thank
5 you.

6 HEARING OFFICER WEBB: Ms.
7 Livingston, do you have anything else?

8 MS. LIVINGSTON: Yes, I have
9 Mr. Siemsen here, but also Mr. Gilbert had prior
10 arrangements this morning and he cannot make it
11 here until 1:30. He did tell me that if I gave
12 him a call at noon he might be able to make it by
13 1:00. So I don't -- I don't know what time.

14 HEARING OFFICER WEBB: Okay. Well,
15 let's try to get him here at 1:00 if we can
16 because it looks like -- it is only 10:00 and if
17 we're sitting around waiting for him --

18 MS. LIVINGSTON: Exactly.

19 MS. SACKETT POHLENZ: For the
20 record, and this is someone who -- there is no
21 subpoena that has been issued for testimony by any
22 party. My subpoena to Mr. Gilbert was a subpoena
23 duces tecum for document production and he
24 produced the document.

1 HEARING OFFICER WEBB: Remind me who
2 he is.

3 MS. SACKETT POHLENZ: He is the
4 Village Board and Village of Caseyville attorney
5 or was.

6 MS. LIVINGSTON: I would say he is
7 the former Village of Caseyville attorney who was
8 involved in things that are relevant to
9 fundamental fairness.

10 HEARING OFFICER WEBB: Okay. Well,
11 should we start with Mr. Siemsen?

12 MS. LIVINGSTON: I think that would
13 be good.

14 HEARING OFFICER WEBB: Would the
15 court reporter please swear in the witness.

16 WHEREUPON:

17 JOHN SIEMSEN
18 called as a witness herein, having been first duly
19 sworn, deposeth and saith as follows:

20 D I R E C T E X A M I N A T I O N

21 BY MS. LIVINGSTON

22 **Q. Would you state your name for the**
23 **record?**

24 **A. Yes. John Siemsen, J-O-H-N,**

1 S-I-E-M-S-E-N.

2 Q. Mr. Siemsen, do you own the company
3 that is the applicant in this proceeding?

4 A. I do.

5 Q. I'm going to show you what I have
6 marked as Exhibit No. 2.

7 (Document marked as Hearing
8 Exhibit No. 2 for
9 identification.)

10 BY MS. LIVINGSTON:

11 Q. Can you identify that?

12 A. Yes, this is a receipt from the
13 Super 8 Motel in Belleville for my stay at that
14 motel on the evening of February 10, 2014.

15 Q. All right. And why were you staying
16 at the Super 8 Motel in Belleville on February
17 10th?

18 A. Because I had driven down from my
19 home in suburban Chicago to file the application
20 for local siting with the Village of Caseyville.

21 Q. And did you publish in a newspaper
22 of general circulation that you were going to file
23 your application on that day?

24 A. Yes, I did.

1 **Q. And what is that newspaper of**
2 **general circulation that you published your notice**
3 **in?**

4 A. The Belleville News Democrat.

5 **Q. Okay. And how do you know for sure**
6 **that you delivered the application on February**
7 **10th?**

8 A. Well, in addition to the hotel
9 receipt, obviously this was a very important
10 matter to me as the principal of the company. So
11 I was acutely aware that February 10th was the day
12 that I said that I was going to file it. I think
13 the record shows that there is a cover letter
14 dated February 10th that was used to transmit the
15 documents and I personally recollect being here on
16 February the 10th and hand delivering the
17 application to the Village of Caseyville.

18 **Q. And when you hand delivered that**
19 **application, what did it consist of?**

20 A. It consisted of four three-ring
21 binders which were contained within a cardboard
22 box.

23 **Q. All right. And did you actually**
24 **physically carry the application into Village**

1 **Hall?**

2 A. I definitely carried it into the
3 building. I don't recall whether I carried it
4 actually behind the door or whether a Village
5 employee carried it into the administrative
6 offices, but I know that I -- that it physically
7 went into the -- the Village Hall offices.

8 **Q. Okay. Now, the petitioners here**
9 **have raised a lot of issues that haven't been**
10 **before the people here at this hearing, but I want**
11 **to address them and that is that there were claims**
12 **of fundamental unfairness, part of the previous**
13 **claim of fundamental unfairness that seems to have**
14 **been wisely dropped about ex parte communications**
15 **so I just want to ask you some questions.**

16 **Did you have any communication**
17 **other than in public meetings with any Village**
18 **Board member?**

19 A. Yes. But if you can narrow down the
20 time period. I had -- beginning as of the
21 application date of February 10th through the
22 decision date of October 6th of 2014 I had no
23 communications with any Caseyville board member or
24 the mayor.

1 **Q. Okay. And prior to that time, what**
2 **would any communication have been about?**

3 A. Well, I had -- there was an initial
4 meeting that took place on November 5th where
5 there were representatives from the Village in
6 which I had made a general presentation about what
7 a transfer station was and some other information
8 about the project.

9 **Q. And was that a public meeting?**

10 A. That was not a public meeting.

11 **Q. Okay. And do you know who was in**
12 **attendance?**

13 A. I believe that it was Mayor Len
14 Black, Planning and Zoning Administrator Michael
15 Mitchell, the Public Works Superintendant for the
16 Caseyville Village which I believe his name is
17 Mr. Rader, R-A-D-E-R, and I believe that there was
18 a board member there. I believe that it was
19 Walter Abernathy.

20 **Q. And did you have a host agreement**
21 **that you entered into with the Village of**
22 **Caseyville?**

23 A. Yes.

24 **Q. And was that -- was that passed at a**

1 **public meeting?**

2 A. It was.

3 **Q. Okay. And did you have any contact**
4 **with the Village attorney John Gilbert?**

5 A. Yes.

6 **Q. And -- and what were your**
7 **conversations with John Gilbert about?**

8 A. Principally they were about -- well,
9 they were all about the Caseyville Transfer
10 Station application for local siting approval. I
11 needed to coordinate with Mr. Gilbert so that we
12 could determine the notice date for the public
13 hearing. In other words, I needed to learn from
14 him when the Village Board would be available and
15 the Village also has their own procedures for
16 noticing up a meeting. So we had communications
17 on that issue and other matters related to the
18 procedural aspects of the public hearing.

19 **Q. Did you have any conversations with**
20 **Mr. Gilbert about the substance of your**
21 **application or about the nine criteria after**
22 **you -- after the time for your notice?**

23 A. No.

24 **Q. Did you have any conversations with**

1 him about the specific criteria even before that?

2 A. No.

3 Q. And is it fair to say that every
4 conversation that you had with Mr. Gilbert as the
5 Village attorney was to determine some issue that
6 was procedural?

7 A. Yes.

8 MS. LIVINGSTON: I don't have
9 anything else.

10 HEARING OFFICER WEBB: Would you
11 like -- Mr. Manion?

12 MR. MANION: I don't have any
13 questions. Thank you, your Honor.

14 HEARING OFFICER WEBB: Ms. Pohlenz?

15 C R O S S E X A M I N A T I O N

16 BY MS. SACKETT POHLENZ

17 Q. So let's walk through this a little
18 bit what you just testified to today.

19 Am I correct that your testimony
20 is that on February 10th, 2014, you personally
21 drove to the Village of Caseyville to file the
22 siting application?

23 A. That's correct.

24 Q. What was your starting point for

1 **that drive to Caseyville on February 10th?**

2 A. Glen Ellyn, Illinois.

3 **Q. And about how many miles is Glen**
4 **Ellyn, Illinois from the Village of Caseyville**
5 **Hall?**

6 A. Approximately, 285 miles.

7 **Q. What time did you leave?**

8 A. I don't recall.

9 **Q. What time did you arrive at the**
10 **Village Hall?**

11 A. I only remember that it was late
12 morning to early afternoon.

13 **Q. And am I correct that your testimony**
14 **is that you had the siting application consisting**
15 **of four binders in a banker's box and a cover**
16 **letter?**

17 A. That's correct.

18 **Q. And I'm going to mark -- did you --**
19 MS. SACKETT POHLENZ: Penni, did you
20 mark this?

21 MS. LIVINGSTON: I did. It's
22 Exhibit No. 2.

23 MS. SACKETT POHLENZ: Okay. I'm
24 going to show the witness a document that is part

1 of the record. Mr. Manion, do you want to see it?

2 I just showed it to Ms. Livingston.

3 MR. MANION: Thank you.

4 MS. SACKETT POHLENZ: Mr. Moran,
5 would you like to see it?

6 MR. MORAN: No, thank you. I have a
7 copy.

8 MS. SACKETT POHLENZ: I'd like to
9 mark this Hearing Exhibit No. 3, please.

10 (Document marked as Hearing
11 Exhibit No. 3 for
12 identification.)

13 BY MS. SACKETT POHLENZ:

14 Q. Mr. Siemsen, I'm showing you what I
15 have marked as Hearing Exhibit 3. I'll give you a
16 moment and I have a question to ask about that.

17 Is Hearing Exhibit No. 3 a true
18 and correct copy of your cover letter that
19 accompanied the four binders, siting application
20 in the banker's boxes?

21 A. I believe that it is, yes.

22 Q. And when you came to the Village
23 Hall when you testified today, did you go to --
24 you said you went to the administrative office, is

1 that the glass windows to the right of when you
2 enter Village Hall?

3 A. That's correct.

4 Q. And did you speak with someone that
5 you believe is Leslie McReynolds, the deputy
6 clerk, but you're not positive?

7 A. That's correct. I am not positive
8 whether or not it was Leslie McReynolds, but I
9 spoke to somebody behind the administrative
10 counter.

11 Q. And the next step that you testified
12 to is that you said -- did you tell them
13 anything -- well, let me ask the question.

14 When you came up there to this
15 glass window with the banker boxes -- with the
16 banker's box, I apologize, with four binders and a
17 cover letter in it, did you say anything to that
18 person behind the window that you specifically
19 recall?

20 A. I said something to the effect of
21 "I'm here to file an application for local siting
22 approval of a transfer station" or words to that
23 effect.

24 Q. And at that point you left the

1 **building? You gave -- either someone came around**
2 **the glass and grabbed the boxes or you left the**
3 **boxes for them and you walked out, is that**
4 **correct?**

5 A. Yes, the boxes went --

6 **Q. Yes or no is fine.**

7 A. Yes.

8 **Q. And you left the building, correct?**

9 A. That's right.

10 **Q. Now, Mr. Siemsen, you're an attorney**
11 **who is licensed to practice law in the State of**
12 **Illinois, is that correct?**

13 A. I'm currently on the rolls of the
14 State of Illinois, but I'm not currently
15 practicing.

16 **Q. But my question, Mr. Siemsen, is are**
17 **you an attorney currently licensed to practice law**
18 **in the State of Illinois --**

19 A. Yes.

20 **Q. -- yes or no? And what year were**
21 **you licensed?**

22 A. 2000.

23 **Q. Not only do you have a license to**
24 **practice law, but you actually have practiced law**

1 in the State of Illinois, right?

2 A. That's correct.

3 Q. And that would include some
4 litigation experience having taken four to five
5 depositions in your past history, right?

6 A. It's correct that I had a small
7 amount of litigation experience.

8 Q. And Hearing Exhibit No. 3, is it
9 correct that you wrote that cover letter?

10 A. It is.

11 Q. And did you write anything on the
12 cover letter to indicate you hand delivering the
13 siting application to the Village Hall?

14 A. Yes.

15 Q. Can you show me where on that cover
16 letter you wrote something to indicate the hand
17 delivering?

18 A. Yes, right here where it says "hand
19 delivered."

20 Q. Okay. And did you get any receipt
21 from the Village Hall after you -- after you
22 delivered that application?

23 A. I did not.

24 Q. And did you get a receipt stamped

1 copy of your cover letter on any other portion of
2 the siting application?

3 A. I did not.

4 Q. Do you have any notice of filing and
5 proof of service that you prepared and certified
6 on February 10th, 2014, acknowledging the hand
7 delivering of that application?

8 A. I'm sorry. A notice of filing and
9 proof of service?

10 Q. Correct.

11 A. No, there is no such document.

12 Q. As you sit here today, is it a fair
13 summary to say that you have absolutely no
14 document from the Village of Caseyville showing
15 the filing to have occurred on February 10th,
16 2014?

17 A. I have this document.

18 Q. Listen to my question, please,
19 Mr. Siemsen.

20 As you sit here today, is it
21 fair to say that you have absolutely no document
22 from the Village of Caseyville showing and
23 acknowledging a filing having occurred on February
24 10th, 2014?

1 A. No document. That is correct.

2 MS. SACKETT POHLENZ: That's all.

3 HEARING OFFICER WEBB: Does Fairmont
4 City have any questions for this witness?

5 MR. MORAN: Yes. Thank you.

6 C R O S S E X A M I N A T I O N

7 BY MR. MORAN

8 Q. Mr. Siemsen, did you prepare the
9 notices of public hearing that were to be
10 published both in a newspaper of general
11 circulation and served upon certain interested
12 entities in and around the facility?

13 A. I did.

14 Q. Did you also cause that notice of
15 public hearing to be published in the newspaper of
16 general circulation in St. Clair County?

17 A. I did.

18 Q. Did you also arrange to have the
19 notices of public hearing mailed by either
20 registered or certified mail to those entities or
21 persons who were identified as interested parties?

22 A. I did.

23 Q. And was one of those notices of
24 public hearing sent to the Village of Fairmont

1 City?

2 A. Yes.

3 Q. And was that notice, in fact,
4 received by Fairmont City?

5 A. Yes.

6 MR. MORAN: Thank you. Nothing
7 further.

8 HEARING OFFICER WEBB: Anything?

9 MS. LIVINGSTON: Nothing further.

10 HEARING OFFICER WEBB: Okay. Thank
11 you, Mr. Siemsen. You know, I don't have
12 Exhibit's 1 or 3.

13 MS. LIVINGSTON: Exhibit's 3 and 2
14 are here. I'll bring them up to you.

15 HEARING OFFICER WEBB: I've got 2.

16 MS. LIVINGSTON: We'd ask for
17 admission of all the exhibits.

18 HEARING OFFICER WEBB: Ms.
19 Livingston, do you have anything further you'd
20 like to -- to present?

21 MS. LIVINGSTON: Well, I'd like to
22 present Mr. John Gilbert.

23 HEARING OFFICER WEBB: Right.

24 Right. Right. At this point since Mr. Gilbert

1 isn't here --

2 MS. LIVINGSTON: I've been texting
3 to try to get him here faster.

4 HEARING OFFICER WEBB: Okay. Should
5 we --

6 MS. LIVINGSTON: Would you like to
7 take public comment?

8 HEARING OFFICER WEBB: We'll take
9 public comment. Also, what are we doing with
10 respect to these exhibits? Are these part of the
11 record or was there --

12 MS. LIVINGSTON: I think they're
13 part of the public hearing. I think the only
14 way --

15 HEARING OFFICER WEBB: Is anybody
16 asking -- I mean, are we -- is anybody asking to
17 admit these exhibits?

18 MS. LIVINGSTON: Yes, I would like
19 the exhibits admitted and, in particular, Exhibit
20 No. 2 is a rebuttal to the claim that Mr. Siemsen
21 did not file the application on February 10th and
22 this is backing his testimony that he did, in
23 fact, file it on that day. So I would ask that it
24 be admitted since they made it an issue of fact.

1 MS. SACKETT POHLENZ: I object to
2 the hotel receipt, which is Exhibit 2 being
3 admitted into evidence.

4 HEARING OFFICER WEBB: I'm going to
5 admit it only because it is relevant to the claim
6 that you're making that he didn't.

7 MS. LIVINGSTON: Thank you.

8 HEARING OFFICER WEBB: Didn't file
9 it. What is -- No. 1 is the meeting minutes. We
10 decided to go ahead and admit the testimony. Do
11 you want to admit -- are we -- is everyone okay
12 with admitting the meeting minutes?

13 MR. MORAN: I'm not offering that
14 exhibit.

15 HEARING OFFICER WEBB: I know you're
16 not. Are you objecting, I guess, is what I'm
17 asking?

18 MR. MORAN: Well, we heard testimony
19 from Mr. Penny on it.

20 HEARING OFFICER WEBB: I guess it
21 wasn't offered. Did you want to offer it?

22 MR. MANION: Yes. I'll move to
23 offer to admit it into evidence.

24 MR. MORAN: I'm not going to object.

1 HEARING OFFICER WEBB: Okay. Then
2 I'll go ahead and admit Exhibit 1. So Exhibit 1
3 and 2 are admitted. Exhibit 3 --

4 MS. SACKETT POHLENZ: Is already
5 part of the record.

6 HEARING OFFICER WEBB: It's already
7 part of the record. So that's already admitted.
8 Okay. At this time, let's take public comment.
9 Norman Miller?

10 MR. MILLER: Thank you for giving me
11 the opportunity to come here and speak this
12 morning. First of all, my name is Norman Miller,
13 N-O-R-M-A-N. My last name is M-I-L-L-E-R. We had
14 a meeting with Mr. Siemsen at our township down in
15 Canteen and he came to our meeting to give his
16 proposal about the facility here that he wanted to
17 move down here in Caseyville. So we let him
18 speak. We heard what he was wanting to bring
19 forward and then when he got done speaking several
20 of our Board members asked questions and none of
21 those questions was even answered except one.
22 There was one gentleman sitting in the audience
23 that asked "When you build this facility, is there
24 any chance that I could get a job here?" He was

1 told no. He said there would only be two people
2 working here at that time. Since we had the
3 second meeting, I understand it is probably going
4 to be four or five people working there. So that
5 was the answer that we got from that meeting. I
6 want to go on now.

7 At the public meeting, the
8 Caseyville Board of Trustees did not take into
9 consideration how this would effect our community
10 on Bunkum Road. This is in an area at the end of
11 the Caseyville jurisdiction on Bunkum Road. This
12 area is in Canteen Township and Washington Park
13 also. In my opinion, the public hearing was not
14 fair. After fliers went out, the date, times were
15 changed. The council room was not able to let the
16 residents in there. There were around 50 to 75
17 residents in the hallway who were not able to talk
18 or even sit. Many of them left this hearing. It
19 lasted around two and a half to three hours.

20 The residents and myself were
21 under the understanding that the hearing would be
22 held in the community room. The room was packed
23 with residents and attorneys and others. There is
24 probably maybe 30 seats in here. That is all that

1 could get in. The people all came and net at the
2 Township building and we all drove down here
3 together. So most of them was in the hallway.
4 They never got a chance to come in here and see
5 him. They never got a chance to come in here and
6 speak. Is that fair? No.

7 The only seats available were
8 the four Village trustee seats that did not show
9 up for the public hearing. There were four vacant
10 seats and four trustees that wasn't here. Those
11 were the only vacant seats in this entire room.
12 The papers were submitted to the mayor and two
13 Board members that showed up. No one else got a
14 copy of what was submitted. There was no overhead
15 screen to watch -- to watch it. Poster boards
16 that most residents couldn't see. It was
17 impossible to hear and see from the back of the
18 room. There was a tripod over there where the
19 poster boards were at. The people in the back
20 could not hear what was being said and the ones in
21 the hallway definitely couldn't get in and see.

22 As the Township supervisor of
23 Canteen, it is part of my job to protect our
24 residents and community. All of these traffic

1 problems will hurt our community. There was a
2 traffic study done and it showed that it would
3 lower the value of their homes. All of the extra
4 weight would damage their homes. Most of all,
5 they would be backing out of their driveways onto
6 Bunkum Road. No one took any time to drive down
7 Bunkum Road and see how it was going to effect the
8 residents there because all the ones that live
9 down there by the township and the health district
10 board have to back out on Bunkum Road. They don't
11 pull out forward. Their driveways won't allow
12 that.

13 We already have trucks, school
14 buses and regular traffic. All the buses that
15 handle all of the East St. Louis school districts
16 are right down the road here, which has put quite
17 a few buses on our road. As I leave work, I go
18 home for lunch. Only two buses or two tractor
19 trailers can make it through the light at one
20 time. That -- that is all that can make it
21 through there.

22 Now, one thing that I really
23 want to touch on that I never heard anybody talk
24 about at the two prior meetings was we're here

1 today to talk about pollution and what I heard
2 Mr. Siemsen say is that his workers in the evening
3 would wash down the floors and everything after
4 the trash trucks come in and dump them out and
5 pick them up, put them in the tractor trailers.

6 Okay.

7 My concern is when the floors
8 and stuff are being washed down, where is this
9 water and waste going to go to? Is it going to go
10 to each property on each side? There is no
11 drainage down through. There is no off street
12 drainage on the road. So it is very concerning to
13 me and the residents because when you take these
14 trucks and stuff down the road, things are going
15 to come out. They fly out of all trucks and who
16 is going to clean up after this? They are not
17 going to clean up after this. These people are
18 going to have to live with this.

19 The way this was setup is wrong.
20 All of the traffic will come in off of 111, then
21 turn and then come back the same because of a
22 weight limit on Bunkum Road that goes to 157.
23 There is a weight limit of five tons. So the
24 Village of Washington Park down there where the

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1 township is is going to catch all of this traffic
2 that we didn't have before coming in and going
3 because they cannot go out through the Village of
4 Caseyville onto 157.

5 You talk about that being fair.
6 You had two trustees and the mayor sitting here
7 and when I came to the meeting when they voted on
8 this, they asked -- they asked the mayor "How come
9 are we just now getting this packet?" So they
10 voted on this right after that. They voted on
11 this and not one of them ever took a look at it or
12 even seen it. To me, that is not doing your job
13 when you're a trustee. They didn't take the time
14 to look at what they was voting on. They didn't
15 take the time to drive down there and see what
16 problems this will cause because guess what? It
17 is out of Caseyville, but there was many people in
18 here from Caseyville who live right over across
19 the street over here that were here protesting
20 against this here and they were turned away
21 because it is out of sight and I guess out of mind
22 for them. That is not the way you do things.

23 Now, I'll just let everybody
24 know, too, Mr. Siemsen before he came here he also

1 went to the City of East St. Louis. He was
2 returned -- he was turned down in the City of East
3 St. Louis to locate there. He also went to the
4 Village of Washington Park. He was also turned
5 down when he went there. So now he just moved
6 down the road a little bit further, but with the
7 trustees and the rest of them not checking things
8 out, not looking at the packet and not voting on
9 it -- I mean, voting on it without looking at it
10 just that is not good. You know, you should take
11 time to check things out before you cast voting
12 one way or the other. I want to thank you for
13 your time. I appreciate it. Thank you.

14 HEARING OFFICER WEBB: No applause,
15 please. Please don't applause. Mr. Penny, would
16 you like to make a public comment?

17 MR. PENNY: Thank you. As you heard
18 previously, I'm here on behalf of Fairmont City
19 and the only point I would like to make is for you
20 as Hearing Officer to realize that on the day or
21 the evening when we had this hearing this room was
22 packed with residents of the area that was going
23 to be affected, which is Fairmont City,
24 Unincorporated Canteen Township and Washington

1 Park. With me here today -- and I should point
2 out the mayor of the Village of Washington Park,
3 Ann Rogers, is here. This room was so crowded
4 that the Mayor of Washington Park couldn't even
5 get a seat and had to sit -- or stand outside
6 throughout the entire hearing process and I was
7 sending her text messages telling her that -- we
8 were communicating with our thumbs trying to keep
9 abreast of what was going on.

10 There was only one person other
11 than the principals involved in this that spoke in
12 favor and that was a person who had an employment
13 relationship as a truck driver for a sanitation
14 company. Everyone was overwhelmingly against it.
15 There are a number of good reasons in your file
16 before you as to why and just to summarize that I
17 don't think the attendance today represents the
18 community interest because everyone has to work
19 and that's where they're at right now. Thank you
20 very much.

21 HEARING OFFICER WEBB: Thank you. I
22 don't remember so I'm going to repeat it for the
23 record. The first public speaker was Norman
24 Miller and the second was Scott Penny. I wasn't

1 sure if we had got those names. Kathy Mertzke?

2 How do you spell it?

3 MS. MERTZKE: M-E-R-T-Z-K-E.

4 HEARING OFFICER WEBB: T-Z-K-E.

5 Okay. Kathy Mertzke, M-E-R-T-Z-K-E. Okay.

6 MS. MERTZKE: I'm a property owner
7 across the street from where this is going to go
8 and first I'd like to address the hearing that was
9 conducted by Caseyville. The date was changed a
10 couple of times. The hearing was held at 5:00
11 which meant a lot of people couldn't get home from
12 work in time to come to the meeting. The meeting
13 was supposed to be in the community center and was
14 switched to the council chambers, which was too
15 small for the hearing. There was limited seating
16 and many people left standing in the back of the
17 room and the hall. Some of the people left early
18 due to frustration and limited physical abilities.
19 Older people can't stand as long. Caseyville had
20 only two members of the Board there, which I
21 thought was a very poor showing for such an
22 important issue.

23 The applicant, Mr. Siemsen, was
24 not sworn in. There was not -- he was not under

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1 any obligation to tell the truth. He presented
2 himself as a retired entrepreneur. He presented
3 this as a small operation, which he has no
4 experience in. We all know people go into
5 business to make money and grow. There is
6 potential for growth there and this will only
7 exaggerate the problems that will be, exist.
8 Mr. Siemsen was allowed to comment on public
9 comments.

10 Next, I would like to address
11 the unfairness of Caseyville's decision.
12 Caseyville failed to take into consideration the
13 community which is affected by this decision.
14 This includes the residents of Bunkum, Canteen
15 Township and Washington Park. They did not take
16 into consideration that Bunkum is a two lane road
17 already in poor condition and we've been hearing
18 for years that they're going to widen this road.
19 That has not occurred so I'll see it -- when it
20 happens, I'll believe it. They did not take into
21 consideration the transfer trucks will be
22 accessing and exiting Bunkum off 111. They did
23 not take into consideration that there is no plan
24 addressing the clean up of the trash left on the

1 side of the road by trucks hauling in and out.
2 They did not take into consideration that these
3 trucks will be passing coming and going a health
4 district, a headstone and many private homes and
5 businesses. They didn't take into consideration
6 the Harding Ditch, which is known to flood. They
7 did not take into consideration infestation of
8 rodents, odor, air quality and health hazards as
9 it presents to the people of the area. They did
10 not take into consideration that there will be
11 times when due to bad roads or landfill conditions
12 that these trucks will be left with loads and
13 trash stored overnight and maybe longer. They did
14 not take into consideration how this will affect
15 property values. Why didn't Caseyville take these
16 things into consideration? Because it doesn't
17 affect Caseyville. Thank you.

18 HEARING OFFICER WEBB: Thank you.
19 Ken?

20 MR. PETROSKI: Ken Petroski.

21 HEARING OFFICER WEBB: Can you spell
22 your -- come up to the stand?

23 MR. PETROSKI: Yes, ma'am.

24 HEARING OFFICER WEBB: How do you

1 spell your last name?

2 MR. PETROSKI: P, as in Paul,
3 P-E-T-R-O-S-K-I.

4 HEARING OFFICER WEBB:
5 P-A-T-R-O-S-K-I.

6 MR. PETROSKI: P-E-T. Yes.

7 HEARING OFFICER WEBB: P-E-T.

8 MR. PETROSKI: Yes.

9 HEARING OFFICER WEBB: Okay.

10 MR. PETROSKI: I live within Canteen
11 Township and I was wanting to speak about this
12 trash being brought into our area. The people all
13 have a home within this area. Our homes are going
14 to be decreased, our property value is going to be
15 down and we won't have any -- this is nothing
16 within the -- all this pollution we're going to
17 have pollution all over. We're going to have
18 rats, mice, all of this. Who is going to take
19 care of all of this? Nobody says a word about
20 anything, all the pollution and all the disease
21 that we could catch, especially the people in
22 Washington Park. Nobody feels sorry for the
23 people. Everyone wants to -- seems like it is
24 money to me. Don't seem like it is anything to

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1 help us. With living on 81st Street, I feel that
2 all of our properties within the area is going to
3 go down. So why should we put up with all of this
4 trash coming within our area? That's all I have
5 to say. Thank you.

6 HEARING OFFICER WEBB: Thank you.
7 Patricia Morrison?

8 MS. MORRISON: I'm Patricia
9 Morrison. My husband would have been here today,
10 but, of course, he has to work. So I have -- I
11 own a property on North 81st. I'm a neighbor of
12 Ken. I actually have three properties on North
13 81st. I'm pretty much in agreement with everyone
14 here. We're not happy about this happening. I
15 really wasn't aware of it. The first time when
16 the crowd came and I probably would have been one
17 of the people out in the lobby, too, but the
18 condition of Bunkum Road has just gone down
19 steadily because of all the trucks. Henderson
20 Trucking coming in and it just gets worse and
21 worse. I can't imagine what it is going to be
22 like with trash trucks coming through. So I've
23 heard just recently that they were going to
24 improve it. I don't know. I will wait to see it,

1 too.

2 But I don't know if it is going
3 to improve, but that's not the answer. I don't
4 know with trash coming in that that is just not
5 going to be good. So I'm in agreement with pretty
6 much everyone here. So it's not -- it's not what
7 we want to see to our neighbors and neighborhood.
8 Thank you.

9 HEARING OFFICER WEBB: Thank you.
10 Charles Thenian?

11 MR. THENIAN: No comment. I just
12 wanted to come.

13 HEARING OFFICER WEBB: Okay. Mayor
14 Ann Rogers?

15 MS. ROGERS: Hello. Hello. Again,
16 I'm going to actually piggyback off what Norm
17 Miller -- not piggyback, but I do have something
18 to say is that, first of all, you go to a
19 depressed community. I don't know who all that
20 Mr. Siemsen went to, but we know East St. Louis.
21 Everybody in here is familiar with East St. Louis.
22 We go to Washington Park. Everybody is familiar
23 with the conditions of Washington Park. I have to
24 ask the request to the Hearing Officer. Why go to

1 the depressed communities where a lot of people
2 don't think that we want anything? I have to say
3 that. Why come to East St. Louis first? Why go
4 to Washington Park and then why come to
5 Caseyville? I have to say that.

6 Now, I heard Mr. Siemsen say he
7 come from a suburban area. Why did you not stay
8 there? Why did you not present it there in
9 Chicago? You come to a black community and you
10 wanted to bring it here where a lot of you all
11 know already how it is. I'm the first black mayor
12 here in Washington Park and we're striving. We're
13 not trying to go down. We're trying to go up. So
14 what I want to say is when I came to that meeting
15 two trustees -- where was everybody else at?
16 Where were they at? Is this a thing of money for
17 Caseyville? What are you going to get? That is
18 what I want to know. What is Washington Park --
19 we already know what we're going to get. So is it
20 the tax dollars that Caseyville is going to get?

21 Would anybody in here -- would
22 Mr. Siemsen -- would the attorney for Mr. Siemsen,
23 would anybody in here put a transfer station down
24 the street from you? That is what I want to know

1 today because you're bringing it in a black
2 community. That is what I have a problem with.
3 That is what I have a problem with. The room was
4 packed on May 29th. It was packed.

5 So, again, the people came out,
6 the residents came out. So what did that
7 represent? The board members for Caseyville where
8 do you stay? Where do -- you stay in Caseyville,
9 but will the transfer station be down the street
10 from you? Will it be down the street from you?
11 So, again, you're here. Two trustees showed up,
12 not all six, and I have a problem with that
13 because the trustees and the attorney they needed
14 to hear what the people had to say on May 29th. I
15 don't turn down businesses, but what the attorney
16 said "Is it good for Caseyville?" Why is it good
17 for Caseyville?" Is the tax dollars coming in?
18 That's why it is good. But everybody around in
19 Caseyville, Washington Park we will be affected.
20 That's what I want to know. I mean, we will be
21 affected. So that's why I'm here today.

22 He came to Washington Park and,
23 again, I normally -- we don't turn down business,
24 but like the attorney said "Was it good for

1 Washington Park?" Evidently, it wasn't good for
2 Washington Park. So if you come from a suburban
3 area, you're not going to take a waste transfer
4 station to Fairview Heights. You're not going to
5 take it there. You're not going to take it to a
6 suburban Chicago area. You're not going to take
7 it there.

8 So, again, my question is why
9 East St. Louis? Why Washington Park? Because
10 everybody say that we don't want anything. I need
11 you guys to hear me. We don't want anything down
12 here so why bring it here? That's what I want to
13 ask. Why bring it here? To the attorney, would
14 you take one down to your area? You will not. To
15 Mr. Siemens again, you won't take it down the
16 street from where you staying at.

17 So, again, I need everybody to
18 hear us today that regardless of the fact this is
19 all about money. That is all it is. It is all
20 about money. What is Caseyville going to get?
21 That's it. And I'm done.

22 HEARING OFFICER WEBB: Thank you.
23 Michael Norton? No Michael Norton? I guess let's
24 go off the record for a minute.

1 (Whereupon, a break was taken
2 after which the following
3 proceedings were had.)

4 HEARING OFFICER WEBB: All right.
5 Let's go back on the record. It is right now
6 11:00 in the morning. We are expecting our next
7 witness at 1:00 p.m. There is no more public
8 comment to take at this time, but I will be
9 available over the lunch hour in case anybody
10 comes. We are -- some items of business first.
11 I'm going to deny the Caseyville Transfer
12 Station's motion for a site visit.

13 MS. SACKETT POHLENZ: I believe it
14 was the Village who also joined in that.

15 HEARING OFFICER WEBB: The Village
16 also. So that motion is denied and I think -- I
17 think that is all that we have for now. We will
18 take a two-hour recess.

19 MS. LIVINGSTON: I'm sorry.

20 HEARING OFFICER WEBB: I'm sorry.

21 MS. LIVINGSTON: I'm certainly not
22 going to appeal your decision to not do a site
23 visit, but we did argue it off the record. So I
24 would like to at least state on the record --

1 HEARING OFFICER WEBB: I'm sorry.

2 Go ahead.

3 MS. LIVINGSTON: -- that I thought
4 it would be good for you to see the compatibility
5 of the surrounding area since there are no homes
6 and we heard testimony here today about homes and
7 it would allow you to see the condition of the
8 area, but I do understand your denial.

9 HEARING OFFICER WEBB: Okay. Thank
10 you. We will reconvene at 1:00 p.m.

11 (Whereupon, a break was taken
12 after which the following
13 proceedings were had.)

14 HEARING OFFICER WEBB: Okay. We are
15 going back on the record. It is 1:00 p.m. I will
16 note for the record that no members of the public
17 came during the lunch hour to give public comment.
18 So we will go ahead and resume with the Caseyville
19 Transfer Station.

20 Ms. Livingston, you may proceed
21 with your case.

22 MS. LIVINGSTON: All right. Thank
23 you. I would call John Gilbert to the stand.

24 HEARING OFFICER WEBB: Mr. Gilbert,

1 we're putting the witness stand at that chair in
2 front of the microphone.

3 MR. GILBERT: Okay.

4 HEARING OFFICER WEBB: You are now
5 G.W. Scott, Senior.

6 MR. GILBERT: And proud of it.

7 HEARING OFFICER WEBB: The court
8 reporter will swear you in, please.

9 WHEREUPON:

10 JOHN GILBERT

11 called as a witness herein, having been first duly
12 sworn, deposeth and saith as follows:

13 D I R E C T E X A M I N A T I O N

14 BY MS. LIVINGSTON

15 Q. Could you state your name for the
16 record?

17 A. John Gilbert.

18 Q. And, Mr. Gilbert, what do you do for
19 a living?

20 A. I'm an attorney.

21 Q. And how long have you been an
22 attorney?

23 A. Thirty-nine years.

24 Q. And during a period of time were you

1 **the attorney for the Village of Caseyville?**

2 A. I was.

3 **Q. And about what period of time was**
4 **that?**

5 A. Approximately, May of 2013 until
6 June 6th of 2014.

7 **Q. All right. And you left the employ**
8 **of the Village of Caseyville?**

9 A. I did.

10 **Q. Is it fair to say it had nothing to**
11 **do with the proceedings that we are here for**
12 **today?**

13 A. That is correct.

14 **Q. Is it fair to say that the last time**
15 **I saw you in person was at a federal seminar?**

16 THE COURT REPORTER: What seminar?

17 MS. LIVINGSTON: Federal.

18 BY THE WITNESS:

19 A. Yes.

20 BY MS. LIVINGSTON:

21 **Q. And other than talking to you about**
22 **five minutes yesterday and about five minutes**
23 **today and five minutes when you just got here,**
24 **have you and I had any other conversations about**

1 anything since that federal seminar?

2 A. We have not.

3 Q. Now, one of the things that you
4 received in this case was a subpoena duces tecum,
5 do you remember that?

6 A. That is correct.

7 Q. And I noticed that one of the things
8 that you gave them was your bill records with
9 redactions in it?

10 A. Yes.

11 Q. And there seems to have been several
12 phone calls from Mr. Siemsen that were pointed out
13 in those bills because that's what they asked you
14 about your comments -- contacts with Mr. Siemsen?

15 A. Correct.

16 Q. And those phone calls that you had
17 with Mr. Siemsen, could you tell us what the gist
18 of those phone calls was about?

19 A. To the best of my recollection, when
20 Mr. Siemsen and I spoke on the phone it was about
21 the process -- the application process itself
22 because I knew nothing about the waste transfer
23 station process. So before I went to the statute
24 and the annotations Mr. Siemsen had called me, had

1 told me about the -- there would be a host
2 agreement submitted to the Village and it was
3 scheduled to be on one of our agendas. He had
4 sent that to me. It also had been given, I think,
5 to some of the Village officials and then our
6 subsequent conversations I had with him were about
7 the process, what the statute required in terms of
8 due process, how the hearing was going to be
9 required, how that hearing was going to be
10 conducted from a procedural standpoint.

11 Also, we talked about -- I was
12 very concerned about making sure that all the
13 notices were proper pursuant to the statute. So
14 we had a few conversations about who was going to
15 get notice, did he have the right people and
16 entities to whom to give notice and also to make
17 sure that I had actually had for the Village files
18 proof of service of those notices and certificates
19 of notification. So what we talked about was the
20 process, getting the hearing done and things of
21 that nature.

22 **Q. All right. Did you ever have any**
23 **conversation with him about the substance of his**
24 **application or the substance of the facility with**

1 **respect to the nine criteria?**

2 A. Only that -- I remember that we had
3 one conversation where he told me what the nine
4 criteria were and that -- that the application
5 that he was going to file would address those nine
6 criteria.

7 Q. All right. Now, issues of
8 fundamental fairness have been raised by the other
9 side as well as jurisdiction has been raised by
10 the other side.

11 So I want to ask you. Have you
12 seen the notice that Mr. Simpson -- Siemens filed
13 in January that said that he would file the
14 application on February 10th?

15 A. I saw it at some point. It's been
16 quite a long time, but I did see it.

17 Q. All right. And so it would be your
18 understanding that his intent was to file the
19 application on February 10th according to the
20 notice that he filed on the --

21 MS. SACKETT POHLENZ: Objection. He
22 can't testify to someone else's intent.

23 MR. MORAN: Join.

24 HEARING OFFICER WEBB: Sustained.

1 BY THE WITNESS:

2 A. The objection was sustained.

3 BY MS. LIVINGSTON:

4 Q. I'm sorry. It helps to pay
5 attention. Okay.

6 So did you have occasion to have
7 a meeting with persons from Allied Waste?

8 A. Yes.

9 MS. SACKETT POHLENZ: Objection.

10 This is not an issue in this proceeding. She is
11 trying to go into what she is going to say is ex
12 parte communications with an entity called Allied
13 Waste when the applicant here got his application
14 approved and there is no allegation that they
15 would have been prejudiced by any such
16 communications even if she is able to establish
17 that they were held during a period of time that
18 was between the filing and the decision with the
19 decisionmaker or someone advising the
20 decisionmaker. None of which has been done.

21 HEARING OFFICER WEBB: We have
22 already -- or I have already ruled that the
23 relationship with the other waste company is not
24 relevant to this proceeding, but --

1 MS. LIVINGSTON: I understand.

2 HEARING OFFICER WEBB: -- as I
3 allowed the Village to do, I'll let you ask a few
4 questions as an offer of proof. I'm not sure
5 where this is going. I'm not sure -- it doesn't
6 sound like it is going to be relevant to their
7 claims, but --

8 MS. LIVINGSTON: Well, they're
9 claiming fundamental fairness and in one of the
10 pleadings they do claim this ex parte
11 communication so I think we've nipped that, but I
12 think it's important for the Board to see the full
13 picture of the contacts that have been made. I
14 appreciate the ability to present an offer of
15 proof then.

16 HEARING OFFICER WEBB: Okay. Then
17 as an offer of proof, I'll let you ask a few
18 questions.

19 MS. LIVINGSTON: Okay. This was
20 part of what I thought would be stipulated to, but
21 here we go.

22 BY MS. LIVINGSTON:

23 **Q. So did you have occasion to have a**
24 **meeting with members of Allied Waste?**

1 A. Yes.

2 Q. And do you recall when that meeting
3 was?

4 A. Sometime in February of 2014. I do
5 not know -- middle of the month.

6 Q. If I told you it was on February
7 18th, would you have a reason to disagree with
8 that?

9 A. No, I wouldn't.

10 Q. Okay. And you did provide e-mails
11 pursuant to the subpoena duces tecum to give an
12 idea of the range of conversations taking place
13 after that date --

14 A. Correct.

15 Q. -- with Allied?

16 A. Yes, correct.

17 Q. All right. And who else was at that
18 meeting?

19 A. To my recollection --

20 MS. SACKETT POHLENZ: You know, I'm
21 going to object to that because the inference
22 there is subpoena documents related -- the
23 subpoena requested documents for communications
24 between Mr. Gilbert and Mr. Siemsen and the

1 inference in her question was that it -- somehow
2 the subpoena documents related to my client who is
3 Roxanna Landfill, Inc. or this entity Allied
4 Waste, which is not the case. The subpoena duces
5 tecum does not state that. So misstatement of the
6 record.

7 MS. LIVINGSTON: I certainly didn't
8 mean to misstate anything. I have copies of
9 e-mails. I presumed they were provided by
10 Mr. Gilbert since they were to him. They could
11 have been easily provided in another forum. I was
12 merely establishing that there were e-mails with
13 them after this meeting.

14 HEARING OFFICER WEBB: Would you
15 like to rephrase the question?

16 BY MS. LIVINGSTON:

17 Q. Did you have e-mails with the people
18 that you met with after you met with them?

19 A. I believe so.

20 Q. Okay. And can you tell us who was
21 at the meeting?

22 A. The mayor, Mayor Black, I believe
23 was present. I was there, of course. Ken Bleyer
24 from -- I think he is from Carbondale was at the

1 meeting and Susan Piazza who I understood to be
2 the local representative of Republic and I
3 think -- those are the only people that I recall
4 being at the meeting.

5 **Q. Okay. And at that meeting -- by the**
6 **way, how long did that meeting last?**

7 A. A couple of hours at least.

8 **Q. Could it have lasted more than a**
9 **couple of hours?**

10 A. I wouldn't want to say. It could
11 have been. But it was between two and three
12 hours.

13 **Q. All right. And did they ask you for**
14 **this meeting?**

15 A. They did.

16 **Q. In advance?**

17 A. Yes.

18 **Q. And what was the discussion at the**
19 **meeting -- at this meeting?**

20 A. They wanted to present information
21 to us. They -- on three subjects as I recall.
22 One was they thought we should enact an ordinance
23 governing applications for waste transfer stations
24 and they brought a Power Point presentation -- no.

1 They brought a sample ordinance about a process
2 for the Village regarding these types of
3 applications.

4 Second thing was a Power Point
5 that explained the waste transfer station process,
6 which was very helpful actually and I believe it
7 was prepared by Ms. Sackett Pohlenz and it was
8 very good because it really helped educate me on
9 this as we were going through it.

10 Third thing was a Power Point
11 presentation that was a comparison of host
12 agreements because it was their contention -- when
13 I say they, Mr. Bleyer, Ms. Piazza, that
14 Mr. Siemsen had provided us with a host agreement
15 that was inadequate. Not as a matter of law, but
16 just inadequate in terms of what was provided for
17 the Village and they were suggesting we could have
18 gotten and could get a better deal.

19 So that was the -- but I have to
20 say the major thrust was trying to get us to enact
21 an ordinance with an extremely high application
22 fee that would -- as they put it to me that would
23 keep people from filing applications who didn't
24 have the financial wherewithal to actually follow

1 through on a project of this nature.

2 Q. I'm going to show you what the court
3 reporter has previously marked as Exhibit No. 4
4 already shown to counsel.

5 (Document marked as Hearing
6 Exhibit No. 4 for
7 identification.)

8 BY MS. LIVINGSTON:

9 Q. At the top it says Ordinance Number
10 and it says "An Ordinance Establishing a Siting
11 Committee and Rules of Procedure for Pollution
12 Control Facility Siting Application and Herein."

13 If you take a look at that to
14 see if that is, in fact, the ordinance -- draft
15 ordinance that they provided to you?

16 MS. SACKETT POHLENZ: What exhibit
17 is that?

18 MS. LIVINGSTON: Four.

19 HEARING OFFICER WEBB: Is that
20 Exhibit 4?

21 MS. LIVINGSTON: Yes.

22 HEARING OFFICER WEBB: Do you have
23 an extra copy for me?

24 MS. LIVINGSTON: I do not, but I

1 will hand it over to you in just a moment and I
2 apologize.

3 HEARING OFFICER WEBB: That's okay.

4 BY THE WITNESS:

5 A. I believe this is it, yes.

6 BY MS. LIVINGSTON:

7 Q. All right. And so they provided you
8 with this draft ordinance on February 18th.

9 A. Yes.

10 Q. All right. And I notice when I read
11 this ordinance that under Section 5 there is a
12 filing fee and the filing fee would be \$250,000,
13 is that right?

14 A. Right.

15 Q. And it could actually go up another
16 \$50,000, too?

17 A. That was my understanding, yes.

18 Q. All right.

19 MS. LIVINGSTON: I'd like to ask for
20 admission of -- this is so awkward how we have
21 this setup, but I'd like to ask for admission of
22 Exhibit No. 4.

23 MS. SACKETT POHLENZ: We would
24 object on the same basis that we objected to the

1 testimony to start with and in addition it is
2 irrelevant to the proceeding. If they actually
3 had a siting ordinance, they may not be in this
4 position.

5 MS. LIVINGSTON: These will be the
6 next two because you asked me about it. I do have
7 extra of those.

8 MS. SACKETT POHLENZ: If you have
9 extras, I only have one of those two.

10 MS. LIVINGSTON: The other one was
11 your color Power Point. I'll give you the Hearing
12 Officer's extra.

13 HEARING OFFICER WEBB: This isn't
14 anything that was used by the Village of
15 Caseyville? I mean --

16 MS. SACKETT POHLENZ: No, they
17 didn't and, in fact, you'll hear that it is based
18 on public -- other ordinances passed by other
19 government entities.

20 MR. MORAN: Are we still in the
21 offer of proof?

22 HEARING OFFICER WEBB: We are still
23 in the offer of proof. We are still in the offer
24 of proof and as such I am going to accept this as

1 an offer of proof so that you can make your
2 argument later to the Board, but it doesn't appear
3 admissible.

4 BY MS. LIVINGSTON:

5 **Q. John, I'm going to show you what has**
6 **been marked as Exhibit No. 5 and Exhibit No. 6.**

7 **(Document marked as Hearing**
8 **Exhibit No. 5 for**
9 **identification.)**

10 **(Document marked as Hearing**
11 **Exhibit No. 6 for**
12 **identification.)**

13 BY MS. LIVINGSTON:

14 **Q. Is Exhibit No. 6 "The Basics of**
15 **Siting a Pollution Control Facility: An overview**
16 **of the Law and Procedure by Jennifer J. Sackett**
17 **Pohlenz," the Power Point that you were referring**
18 **to that you thought was very helpful?**

19 **A. I'll take a look at the entire**
20 **exhibit here. Yes. I mean, I didn't have it in**
21 **color, but these are in color.**

22 **Q. That's how I printed it.**

23 **A. But this is the -- but that is the**
24 **exhibit. I had it in black and white.**

1 **Q. All right. And that's Exhibit**
2 **No. 6?**

3 A. Correct.

4 **Q. And then Exhibit No. 5, can you tell**
5 **us what that is?**

6 A. This --

7 **Q. And it is entitled "A Comparison of**
8 **Host Agreements to the Washington Park Transfer**
9 **Station, LLC, HCA" and it also says Jennifer**
10 **Sackett Pohlenz.**

11 A. Right. And this -- I'll look
12 through the exhibits. Yes, this exhibit which is
13 Exhibit 5 was provided to me at the meeting with
14 Mr. Bleyer and Ms. Piazza.

15 **Q. And did they have discussion with**
16 **you about this?**

17 A. They did. They wanted -- Mr. Bleyer
18 went through it and went through all of the slides
19 and, you know, it was there -- it was -- he
20 indicated or he said that he believed that we were
21 not getting as good a deal as we could get and
22 that -- you know, I had a comparison between what
23 Mr. Siemsen was proposing and three other
24 scenarios.

1 **Q. All right.**

2 A. And as I recall this was after we
3 had already executed the host agreement. So it
4 was a little late.

5 **Q. Right. If the host agreement in the**
6 **record is right, that would have been December**
7 **18th?**

8 A. Right.

9 **Q. And were you at that hearing?**

10 A. I was. It was at a council or
11 trustees meeting.

12 **Q. Do you know if Susan Piazza was at**
13 **that particular hearing?**

14 A. I believe.

15 MS. SACKETT POHLENZ: Objection.
16 There is no relevancy here and it is in the offer
17 of proof.

18 HEARING OFFICER WEBB: It is
19 still -- still within an offer of proof.

20 MS. LIVINGSTON: Here we are.

21 HEARING OFFICER WEBB: Here we are.

22 MS. LIVINGSTON: You know, I mean,
23 if she -- if she knew about this coming, then she
24 shouldn't have been meeting with the city attorney

1 trying to turn him against this project.

2 MS. SACKETT POHLENZ: Oh, come on.

3 HEARING OFFICER WEBB: I mean --

4 MS. SACKETT POHLENZ: Oh, come on.

5 HEARING OFFICER WEBB: I think we're
6 getting -- okay. Hang on. I think we're getting
7 a little away from this proceeding. Do you have
8 any questions that could --

9 MS. LIVINGSTON: I have a couple
10 more questions.

11 HEARING OFFICER WEBB: -- relate to
12 this proceeding?

13 MS. LIVINGSTON: Certainly.

14 BY MS. LIVINGSTON:

15 **Q. So at this meeting was there**
16 **discussion about whether or not an application had**
17 **been received by the Village as of that date?**

18 A. At the meeting with Bleyer and
19 Piazza?

20 **Q. Yes.**

21 A. Yes.

22 **Q. And what was that discussion like?**

23 A. Mr. Bleyer -- well, one of the two
24 asked if we had yet received the application and I

1 was unaware of whether we had received it. So I
2 told them I didn't believe so. Then Susan
3 mentioned that she didn't think so either because
4 she had -- she had been scouring the newspapers
5 for the public notice of intent to file, whatever
6 it was called, and hadn't seen it. So we talked
7 about that and Mr. Bleyer said "Well, if you hurry
8 up and enact the ordinance then, you know, you can
9 get all the benefits of this draft ordinance ahead
10 of the filing" and so that -- that was the
11 substance of that conversation.

12 **Q. Okay. And after you had this**
13 **meeting, did you check with anyone at the Village**
14 **Hall to see if an application had been received?**

15 A. I did. I talked to Leslie
16 McReynolds who was the deputy clerk and I'm not --
17 I don't recall how the conversation came about,
18 but it was either that day or shortly thereafter
19 when I said to her, you know, that was --
20 something to the effect "That was supposed to be
21 filed on February 10th. Did we ever get it?"

22 MS. SACKETT POHLENZ: Objection.
23 Hearsay.

24 HEARING OFFICER WEBB: Sustained.

1 BY THE WITNESS:

2 A. So I checked and learned that it
3 actually had been filed and put in a room back
4 here which is now Mike Mitchell's office because
5 the information I had was she didn't know what to
6 do with it when it was filed.

7 BY MS. LIVINGSTON:

8 Q. Okay. So during that conversation
9 with her that you had in February of this year, at
10 the time you had the conversation were you able to
11 determine whether or not the application was
12 actually received on February 10th?

13 A. Yes.

14 Q. And is it your belief that it was
15 received on February 10th?

16 A. Yes.

17 Q. Thank you.

18 MS. LIVINGSTON: I really appreciate
19 that you modified your schedule to come here and
20 testify for us and tell us what went on. I don't
21 have any further questions.

22 HEARING OFFICER WEBB: Mr. Manion,
23 do you have anything you'd like to add?

24 MR. MANION: No, your Honor. Thank

1 you.

2 HEARING OFFICER WEBB: Ms. Pohlenz?

3 MS. SACKETT POHLENZ: Yes.

4 MR. MORAN: And we're now out of the
5 offer of proof?

6 HEARING OFFICER WEBB: Well, I guess
7 it depends. It depends on whether you -- what you
8 wanted to cross on. What are we doing with
9 Exhibit 4? Did we -- did you mention anything
10 about Exhibit's 5 and 6? Are these being offered
11 as --

12 MS. LIVINGSTON: Yes.

13 HEARING OFFICER WEBB: Do you want
14 to take it in an offer of proof as well to go with
15 your --

16 MS. LIVINGSTON: Yes, I would. But
17 the questions I just asked about the receiving of
18 the record or the receiving of the application
19 were not an offer of proof. That was proof that
20 I'm offering of the receipt. Not proof of the
21 February meeting. So, I mean, I frankly think all
22 of this is admissible because there have been
23 issues raised to fundamental fairness and the
24 people raising the issue of fundamental fairness

1 have their own issues with fundamental fairness,
2 but after asking him the questions about the
3 meeting I just asked him, the question about
4 receiving the application in the office, I don't
5 believe that was part of my offer of proof. That
6 was part of me finishing my questions.

7 HEARING OFFICER WEBB: Well, I would
8 have liked to have been clear on that.

9 MR. MORAN: No. No.

10 MS. SACKETT POHLENZ: That fell --
11 that fell --

12 MR. MORAN: That -- that is
13 absolutely correct. You have to make the
14 determination that that question is outside the
15 offer of proof.

16 MS. LIVINGSTON: Then I'd like to
17 ask him again.

18 HEARING OFFICER WEBB: Okay.

19 MR. MORAN: You can't simply have
20 the applicant deciding whether it is in and
21 outside the offer of proof. Otherwise, we may be
22 objecting to more than we object to.

23 MS. SACKETT POHLENZ: Exactly.

24 HEARING OFFICER WEBB: Right. Well,

1 I'll let you ask the last question about his
2 belief as to when the document was filed --

3 MS. LIVINGSTON: Fine.

4 HEARING OFFICER WEBB: -- as outside
5 the offer of proof, but I wasn't -- I wasn't aware
6 that we had gone off the offer of proof, but I'll
7 let -- you can re-ask that last question.

8 MS. LIVINGSTON: I appreciate that.
9 I'm going to.

10 BY MS. LIVINGSTON:

11 Q. Mr. Gilbert --

12 A. Yes.

13 Q. -- after the meeting that we just
14 discussed in the offer of proof, did you check on
15 whether or not the application had been filed with
16 the Village Hall?

17 A. Yes.

18 Q. And what determination were you able
19 to make from that?

20 MS. SACKETT POHLENZ: Objection.
21 Speculative, no personal knowledge, hearsay.

22 HEARING OFFICER WEBB: Overruled.
23 I'll -- you can answer.

24

1 BY THE WITNESS:

2 A. Yes, I -- I checked the application,
3 the physical application, what is now in Mike
4 Mitchell's office, and there was a letter with it
5 dated February 10th and then I also investigated
6 with appropriate Village personnel and came to the
7 conclusion that it was filed --

8 MS. SACKETT POHLENZ: Objection.

9 BY THE WITNESS:

10 A. -- that it was filed --

11 MS. SACKETT POHLENZ: Foundation and
12 hearsay.

13 MS. LIVINGSTON: They have deposed
14 Leslie McReynolds, the person that he testified in
15 the offer of proof time that he had a discussion
16 with and now he has a recollection of when it was
17 received and that is important since they're
18 claiming that it wasn't received on the 10th and
19 his recollection --

20 MS. SACKETT POHLENZ: He didn't
21 receive it.

22 MR. MANION: They offered -- they
23 offered testimony of Leslie McReynolds which has
24 been received into evidence.

1 MS. SACKETT POHLENZ: That you
2 stipulated to.

3 MR. MANION: Right. But he gets to
4 explain what his conversation was about.

5 MS. SACKETT POHLENZ: But he's not
6 firsthand knowledge. Mr. Siemens said he thinks
7 he handed it to McReynolds. McReynolds testified
8 as to what she testified to there. What he has to
9 say after the fact having discussions with people
10 or not is not relevant, is hearsay and it doesn't
11 belong in the record. It's what he said and what
12 McReynolds said and what the Village clerk said
13 who's the only person authorized to file it.

14 HEARING OFFICER WEBB: I know we can
15 characterize his testimony in a way that avoids
16 hearsay because we just did it five minutes ago.
17 Can we just --

18 MS. LIVINGSTON: He is the Village
19 attorney. He was making a determination that he
20 then communicated to the people that he met with
21 and I'm asking him what his determination was. I
22 believe his testimony just was that he determined
23 that it had been filed in a timely fashion on
24 February 10th and I think he is entitled to say

1 that if that's the truth of his investigation.

2 HEARING OFFICER WEBB: Is that your
3 testimony?

4 THE WITNESS: It is, yes.

5 HEARING OFFICER WEBB: Okay.

6 MS. LIVINGSTON: I appreciate it.

7 HEARING OFFICER WEBB: Now, is there
8 any cross?

9 MS. SACKETT POHLENZ: Yes.

10 HEARING OFFICER WEBB: Okay.

11 MS. SACKETT POHLENZ: Okay. So this
12 is not part of the offer cross. This is part of
13 what was presented outside the offer --

14 HEARING OFFICER WEBB: Okay.

15 MS. SACKETT POHLENZ -- of proof and
16 then we'll go into the offer of proof.

17 C R O S S E X A M I N A T I O N

18 BY MS. SACKETT POHLENZ

19 Q. So, Mr. Gilbert, is it fair to say
20 that between the time you knew the application was
21 filed until you left the employee of the Village,
22 that you communicated with Mr. Siemsen outside of
23 a public meeting or public hearing approximately a
24 dozen times?

1 A. I don't know how many times, but I
2 did communicate with him outside of a form of a
3 public hearing. I don't know how many times.

4 **Q. You produced e-mails to me as well**
5 **records -- redacted records --**

6 A. Correct.

7 **Q. -- and your timesheets, right?**

8 A. Yes.

9 **Q. All right. And in those redacted as**
10 **records and e-mails, what do you think? Was there**
11 **around more than five?**

12 A. I didn't count.

13 **Q. More than five pages?**

14 A. Pardon me?

15 **Q. Was there more than five pages?**

16 A. Of what I produced to you?

17 **Q. Mm-hmm.**

18 A. I think so.

19 **Q. More than five pages of timesheets,**
20 **for example?**

21 A. Could be.

22 **Q. With multiple references on some --**
23 **at least one reference and sometimes multiple**
24 **references on each timesheet to communications**

1 **that you had with Mr. Siemsen?**

2 A. Yeah, I don't know because I did not
3 review them -- I was in Chicago when your subpoena
4 came giving me 48 hours to comply. So my legal
5 assistant handled that so we could comply with
6 your subpoena and I did not review the final
7 product that you got.

8 So I don't know how many times
9 those records reveal the number of contacts with
10 Mr. Siemsen. I mean, if you counted it up and you
11 know, I mean, I would have no reason to argue with
12 you, but, you know, I'm doing what I tell
13 witnesses in my cases to do and that is don't
14 guess. So I don't want to guess. If I knew, I
15 would tell you, but I don't know.

16 **Q. But certainly more than two times?**

17 A. That I contacted -- that we
18 contacted --

19 **Q. Absolutely.**

20 A. Yes. Certainly more than two.

21 **Q. And how many times did you meet with**
22 **Susan Piazza and Mr. Bleyer on or after February**
23 **18th -- or on or after February 10th for that**
24 **matter?**

1 A. I met with the two of them one time
2 and then they came to subsequent --

3 **Q. Outside the Village Hall, public**
4 **meeting type scenarios, just like I said with**
5 **Mr. Siemsen?**

6 A. Just the one. Just the one meeting.

7 **Q. Okay. And it was understood at that**
8 **one meeting that no one at that meeting had**
9 **knowledge of a siting application being on file on**
10 **February 18th, 2014, correct?**

11 A. That's fair to say, yes.

12 **Q. And in addition to that at that one**
13 **meeting on February 18th, 2014, the actual siting**
14 **application since nobody even knew about it**
15 **couldn't have possibly been discussed, is that**
16 **accurate?**

17 A. Yes. You mean Mr. Siemsen's
18 specific application?

19 **Q. Yes.**

20 A. Yes.

21 **Q. The Caseyville Transfer Station,**
22 **LLC, application for site location approval.**

23 A. That is -- the specific one he filed
24 was not discussed, correct.

1 **Q. Is there some other one that he**
2 **identified?**

3 A. Well, no, but Mr. Bleyer and
4 Ms. Piazza were addressing the contemplated filing
5 of an application with the Village at the meeting
6 that we had.

7 **Q. Certainly. About a process,**
8 **correct?**

9 A. Well --

10 **Q. A siting ordinance is process. It**
11 **is implemented by a Village.**

12 A. I'm not sure I would agree with
13 that. There is substance in that ordinance, too.
14 I mean, that are standards. There are things
15 besides just process, but what -- to answer your
16 specific question, his specific application that
17 was actually filed was not discussed.

18 **Q. Okay. And you would consider, for**
19 **example, a standard implemented at a hearing to be**
20 **substantive rather than just process?**

21 A. What kind of a standard?

22 **Q. Something that was, for example,**
23 **discussed at the siting ordinance?**

24 A. It depends. There is procedural

1 standards. There is subsequent standards. It
2 depends. If it is a substantive standard, then it
3 would be substantive, but if it is just strictly
4 procedural in the ordinance, it is process.
5 Sorry. You're asking questions of a lawyer. I'm
6 sorry. I can't.

7 **Q. Is there anything in that siting**
8 **ordinance to your recollection that talks about**
9 **Bunkum Road specifically?**

10 A. Not that I recall.

11 **Q. Was there anything in that siting**
12 **ordinance that says -- specifically relates to the**
13 **Village of Caseyville?**

14 A. It's mentioned. It's a draft
15 ordinance for the Village of Caseyville. So the
16 Village of Caseyville is all over as I recall.

17 **Q. Do you recall -- well, okay.**

18 MS. SACKETT POHLENZ: In terms of
19 the offer of proof -- I'm sorry. That siting
20 ordinance question should have been part of the
21 offer of proof. This is now a continuation of
22 that offer of proof. I am showing you what I have
23 marked --

24 MS. LIVINGSTON: I'm sorry. We just

1 started offer of proof?

2 MS. SACKETT POHLENZ: With a siting
3 ordinance.

4 MS. LIVINGSTON: All right. We can
5 now go to offer of proof.

6 MS. SACKETT POHLENZ: Can you please
7 mark this the next exhibit number and this will be
8 part of the offer of proof.

9 (Document marked as Hearing
10 Exhibit No. 7 for
11 identification.)

12 BY MS. SACKETT POHLENZ:

13 **Q. So I'm showing you what I have**
14 **marked as Hearing Exhibit No. 7. It's a group of**
15 **e-mails. I've marked in the lower right-hand**
16 **corner page numbers one through five. I have**
17 **copies of this also that I can pass out.**

18 MS. SACKETT POHLENZ: If you can
19 pass that down, please.

20 MR. MORAN: Sure.

21 BY MS. SACKETT POHLENZ:

22 **Q. What I'd like you to turn your**
23 **attention to is page four of five and I'll look**
24 **over your shoulder because I gave my copies away.**

1 A. Okay.

2 Q. On page four of five, the e-mail
3 sent on February 19th, 2014, at 11:19 a.m. to you
4 from Ken Bleyer, can you please take a look at
5 that e-mail and confirm for me that is a true and
6 accurate copy of an e-mail that you received from
7 Mr. Bleyer?

8 A. Yes, I remember receiving this and
9 this is accurate.

10 Q. And am I correct in the second
11 paragraph of that e-mail where it says "As I
12 mention" it actually references where that
13 ordinance he brought to your attention came from
14 and references another one? He gives you a link.

15 A. Correct.

16 Q. And those are both counties within
17 the State of Illinois, correct?

18 A. Correct. Yes, that's correct.

19 Q. Turning your attention to the same
20 exhibit, No. 7, please look at the top third of
21 page four.

22 A. Mm-hmm. I mean, yes.

23 Q. It's an e-mail from you to Ken
24 Bleyer at 2:34 p.m. on February 19th, 2014. Is

1 that a true and correct copy of an e-mail that you
2 sent to Mr. Bleyer on that date and at that time?

3 A. Yes, it is.

4 Q. And then I would like to turn your
5 attention to -- oh, and what you wrote on February
6 19th at 2:34 to Mr. Bleyer in that e-mail, is what
7 you're discussing true as far as your knowledge at
8 the time you wrote it?

9 A. Yes.

10 Q. Turning backwards and I'm going to
11 have you look at pages two to three of this
12 Exhibit No. 7.

13 A. All right.

14 Q. Is that an e-mail from Ken Bleyer to
15 you at 1:14 p.m. and is that a true and correct
16 copy of an e-mail that you received from Ken on --
17 at 1:14 p.m. on the date of -- sorry -- February
18 20th, 2014?

19 A. It is.

20 Q. Now, if you can turn, please, to
21 page one of the exhibit.

22 A. Okay. I've done that.

23 Q. Okay. And on page one of the
24 exhibit, is that a true and correct copy of an

1 e-mail dated Friday, February 23rd, 2014, at
2 5:27 p.m. to you and from Ken Bleyer? Is that a
3 true and correct copy of that e-mail I just
4 referenced --

5 A. It is.

6 Q. -- that you received?

7 A. Sorry. It is.

8 MS. SACKETT POHLENZ: I'm going to
9 go outside of the offer of proof now.

10 BY MS. SACKETT POHLENZ:

11 Q. You were asked outside of the offer
12 of proof concerning the determination you made
13 that the application for site location approval by
14 Caseyville Transfer Station, LLC, was filed on
15 February 10th, 2014.

16 Did you put that determination
17 in writing?

18 A. Other than what you see in Exhibit 7
19 when I advised Mr. Bleyer, no.

20 Q. Did you place that determination in
21 writing in the public record?

22 A. No. I'm assuming this is not --
23 Exhibit 7 is not a public record, no.

24 Q. Did you at any time advise the

1 **Village clerk of the Village of Caseyville to file**
2 **stamp it?**

3 A. I did. Not file stamp, but to make
4 a notation on Mr. Siemsen's letter of the date
5 that it was received. Not on the day that it was
6 received, but I advised Ms. McReynolds to make a
7 notation on his letter of the date she received
8 it. That's a better way to say it.

9 Q. Okay. So you advised Ms. McReynolds
10 to make a notation as to the date received of the
11 application?

12 A. That's correct.

13 Q. And, to your knowledge, did
14 Ms. McReynolds ever make that notation?

15 A. I don't know.

16 Q. Did you ever follow up to find out
17 whether Ms. McReynolds made that notation?

18 A. I did not.

19 Q. And you were fully aware at the time
20 that the date of filing -- is it fair to say --
21 let me strike that previous question.

22 Is it fair to say that at the
23 time you made this determination you were fully
24 aware of the impact on the date of filing

1 jurisdictionally on the application for site
2 location and approval?

3 A. Yes.

4 Q. Do you have any personal knowledge
5 of the receipt by the Village on February 10th,
6 2014, of the Caseyville Transfer Station, LLC,
7 site location application?

8 A. It depends on how you define
9 personal knowledge.

10 Q. Did you see the application come in
11 to the door?

12 A. I did not.

13 Q. Did you see Ms. McReynolds take the
14 application from Mr. Siemsen?

15 A. I did not.

16 Q. Did you on February 10th see the
17 application in Village Hall in any location
18 whatsoever?

19 A. I did not.

20 Q. So you're relying on your belief of
21 what Ms. McReynolds said to you in making your
22 determination, is that accurate?

23 A. That plus when I went to look at the
24 actual application that was in the office back

1 here there was --

2 **Q. When you reference "office back**
3 **here," you're talking about Mike Mitchell?**

4 A. Mike Mitchell's office, right, which
5 is where Leslie put it. When I looked at it,
6 opened it up, there was a cover letter on top
7 dated February 10th, 2014, that indicated whatever
8 it says that we're filing this application. So I
9 concluded --

10 **Q. So the basis of your decision was**
11 **Ms. -- your belief of what Ms. McReynolds told you**
12 **and a cover letter inside the banker's box of four**
13 **binders that was delivered here by the applicant**
14 **at some point?**

15 A. That plus Mr. Siemsen had told me
16 that he filed it, but, again, that is what he told
17 me that he had filed it on February 10th.

18 **Q. Okay. And that's the total basis of**
19 **your determination?**

20 A. That's correct.

21 **Q. Okay.**

22 MS. SACKETT POHLENZ: I have nothing
23 further.

24 MR. MORAN: Thank you.

C R O S S E X A M I N A T I O N

BY MR. MORAN

1 Q. Mr. Gilbert, as of February 18th,
2 2014, it was your belief that no site location
3 application for the Caseyville Transfer Station
4 had been filed, is that correct?
5

6 A. Yes, that's correct.
7

8 Q. And you had not in any way seen any
9 application on the premises of the Village through
10 February 18th of 2014, correct?

11 A. That's correct.

12 Q. Isn't it true that the regular and
13 ordinary practice of the Village clerk's office
14 was to date stamp any submission of any document
15 that was submitted to the Village?

16 A. I hate to say this, but I honestly
17 don't know what their regular practice was.

18 Q. If I were to indicate to you that
19 both the Village clerk and Leslie McReynolds
20 indicated that that was the regular and ordinary
21 practice of the clerk's office to date and file
22 stamp any submissions that were made to it, would
23 you accept that and agree that that was the
24 appropriate practice?

1 MR. MANION: I'm going to object to
2 the form of the question. I think it
3 mischaracterizes the testimony of Clerk Watt and
4 of Ms. McReynolds.

5 MS. LIVINGSTON: You haven't read
6 them yet.

7 HEARING OFFICER WEBB: Pardon me?

8 MS. LIVINGSTON: You haven't read
9 that testimony yet.

10 HEARING OFFICER WEBB: Oh, that's
11 apparently why I didn't know. Well, I mean, I
12 guess I can't -- I'll have to overrule it for now
13 because I don't know. Go ahead.

14 BY THE WITNESS:

15 A. Yes.

16 BY MR. MORAN:

17 Q. In conducting your investigation as
18 to when this application was filed, did you at any
19 point come across any date file stamp from the
20 Village of Caseyville with respect to this site
21 location application?

22 A. Not that I recall.

23 Q. Now, you indicated in your
24 discussions with Mr. Siemsen that one of the

1 things you were very concerned about were the
2 notices of public hearing that were going to be
3 sent to the necessary parties, correct?

4 A. That is correct.

5 Q. And you had a specific conversation
6 with Mr. Siemsen about that very issue?

7 A. I did.

8 Q. Did you have a discussion with him
9 about who would determine which entities or
10 individuals should be identified as those for whom
11 notice would need to be sent?

12 A. Yes, he mentioned to me that he had
13 a list of the entities and individuals who had to
14 be notified and asked if the Village was aware or
15 if I could check with the clerk's office to
16 determine if there was anyone else who should be
17 notified that he didn't have on his list.

18 Q. So Mr. Siemsen provided you with a
19 preliminary list of entities or persons who should
20 be served with the notice?

21 A. Yes.

22 Q. And you had an opportunity to review
23 that list?

24 A. I reviewed it, sent it to the clerk

1 and asked if there was anybody else that should be
2 added.

3 **Q. And did the clerk respond with any**
4 **additional names or identifications of parties who**
5 **needed to be served?**

6 A. He responded, but with no additional
7 parties to be noticed.

8 **Q. So the full list that Mr. Siemsen**
9 **had provided to you was the final list used in**
10 **sending out those notices of public hearing?**

11 A. I believe that's correct.

12 **Q. And you recall that one of the**
13 **entities identified on that list was the Village**
14 **of Fairmont City?**

15 A. Yes.

16 **Q. Do you remember a discussion with**
17 **Mr. Siemsen about Fairmont City being on that**
18 **list?**

19 A. Not specifically. They were just on
20 the list with all the other entities who were to
21 receive notice.

22 **Q. And it was Mr. Siemsen who arranged**
23 **to have that notice published in a newspaper of**
24 **general circulation in St. Clair County?**

1 A. Yes.

2 Q. And it was Mr. Siemsen who arranged
3 to serve by either registered or certified mail
4 that notice of public hearing to all of the
5 entities identified on that service list?

6 A. Yes.

7 Q. And to the best of your knowledge
8 one of those was the Village of Fairmont City?

9 A. Yes.

10 Q. Did you also have a discussion with
11 Mr. Siemsen about how the public hearing, which
12 was held on May 29th, was to be conducted?

13 A. Yes.

14 Q. And Mr. Siemsen indicated to you
15 that it was his belief that he would be able to
16 present unsworn testimony on behalf of the
17 applicant in order to address the nine statutory
18 criteria, would that be correct?

19 A. That is correct.

20 Q. And he indicated to you that he had
21 looked into the matter and had determined that
22 this would be an appropriate means of presenting
23 the applicant's case at the public hearing, would
24 that be correct?

1 A. That is correct.

2 **Q. And did you undertake any**
3 **independent investigation or analysis as to**
4 **whether -- what Mr. Siemsen had indicated to you**
5 **about the way of presenting the applicant's case**
6 **was, in fact, appropriate or valid?**

7 A. I did.

8 **Q. And what specific evaluation did you**
9 **make with regard to that issue?**

10 A. I looked at the statutes, looked at
11 the annotations under the statute with respect to
12 due process and the conduct of hearings and I
13 couldn't find -- I didn't find any of the cases
14 that indicated that sworn testimony was required.
15 I mean, I saw some cases where they were raised,
16 but by my analysis of it I didn't see a case that
17 led me to believe that what he told me was
18 although maybe not as desirable as I would have
19 liked that it was prohibited or that due process
20 required otherwise.

21 **Q. Do you recall having reviewed a**
22 **reported decision from the Third District**
23 **Appellate Court entitled Sierra Club versus Will**
24 **County Board in which the issue of the fundamental**

1 fairness rights of non-applicants was addressed
2 and that that decision basically stated or clearly
3 stated that non-applicants have fundamental
4 fairness, not due process rights, in siting
5 hearings and that those fundamental fairness
6 rights included the opportunity to present
7 evidence --

8 A. I do recall.

9 Q. -- a right to cross-examine
10 witnesses and a right to impartial rulings on the
11 evidence?

12 A. I don't know if I recall it to that
13 specific level, but I do remember seeing the case.

14 Q. And yet despite that decision it was
15 your conclusion that Mr. Siemsen's views was
16 correct that an applicant could basically just
17 present unsworn testimony in support of its case?

18 A. I did reach that conclusion. I
19 don't know how it related to that case.

20 Q. You didn't see any other case law or
21 anything else in statute or in the common law that
22 in any way indicated that that would not really be
23 an appropriate way to present an applicant's case?

24 A. I think that's fair to say. I mean,

1 I looked for Fifth District cases especially and
2 didn't see anything.

3 **Q. Now, with respect to this**
4 **discussion, did you then tell Mr. Siemsen that you**
5 **agreed with his analysis and that this would be an**
6 **appropriate way to present his case?**

7 A. I didn't tell him I agreed with his
8 analysis. I told him that if that's how he wanted
9 to proceed that I would not interfere with that.

10 **Q. So you indicated to him that if you**
11 **wanted to proceed in that fashion you wouldn't**
12 **object?**

13 A. Correct. Because, I mean, my
14 conclusion was he is the applicant. It is his
15 case to make or not make. I'm not his legal
16 advisor and I advised the Village and, you know,
17 he presents what he presents the way he wants to
18 present it and I hate to say it at his peril, but,
19 you know, I'm not his lawyer.

20 **Q. Your legal research basically**
21 **concurred with what he was telling you?**

22 A. I reached that conclusion, yes. I
23 think that's fair to say.

24 **Q. And you also had discussions with**

1 **Ms. Sackett Pohlenz during this period?**

2 A. I did.

3 **Q. Did you have any discussion with**
4 **Ms. Sackett Pohlenz about how the application was**
5 **going to present its case at the public hearing?**

6 A. Yes, I believe so, but I don't
7 recall the substance of those, but I do believe we
8 addressed it.

9 **Q. Well, would it be accurate to say**
10 **that you told Ms. Sackett Pohlenz that the**
11 **applicant was, indeed, going to present its case**
12 **through unsworn testimony at the public hearing?**

13 A. No. I didn't -- I didn't get that
14 specific. I think that I told her -- well, you
15 know, to be honest I don't recall, but I do
16 recall -- I don't believe I told her that he would
17 be presenting his case through unsworn testimony.
18 I don't recall saying that.

19 **Q. Did you say anything to her about**
20 **how the applicant was going to be presenting its**
21 **case?**

22 A. I believe I told her he'd put on his
23 case. Everybody who was at the hearing would have
24 a right to be heard, that objections would be

1 considered either on the spot or with the case and
2 that she would -- her client would get -- and
3 everybody that was there would get an opportunity
4 to be heard and to be able to object and state
5 whatever they wanted for the record.

6 Q. You at no point told Mr. Siemsen
7 that his approach of presenting unsworn testimony
8 would be unacceptable to the Village, is that
9 correct?

10 A. That is correct.

11 Q. And at no point did you indicate to
12 Mr. Siemsen that his approach of presenting
13 unsworn testimony ought to be reconsidered and,
14 perhaps, presented in some different fashion?

15 A. That is correct.

16 Q. There were -- there was some
17 testimony that was presented and comment presented
18 at various times today and also previously by
19 various citizens who described the venue and the
20 public hearing on May 29th and you were present
21 during that public hearing, correct?

22 A. I was.

23 MS. LIVINGSTON: I'm going to object
24 to Mr. Moran testifying before he asks questions

1 that are not related to the exact testimony that
2 he gives before the question. By the way, we're
3 way beyond the scope, but, you know, in
4 transparency I'm not objecting on those grounds,
5 but I don't think he should testify.

6 MS. SACKETT POHLENZ: I'm not sure I
7 understand what that objection was.

8 MS. LIVINGSTON: Well, he went on
9 people testified to all this stuff. Were you
10 there? Well, were you there?

11 MS. SACKETT POHLENZ: It's called
12 cross-examination.

13 MS. LIVINGSTON: But he is
14 testifying. It wasn't related to the question.

15 HEARING OFFICER WEBB: Overruled.
16 Go ahead.

17 BY MR. MORAN:

18 **Q. In fact, you were one of the two**
19 **persons who were serving as hearing officer at**
20 **that public hearing, correct?**

21 A. That's not correct. I was there.
22 The mayor was the -- if you're going to say
23 hearing officer, the mayor was the hearing
24 officer, but actually the Board heard it as a

1 committee of the whole, if you will. I was
2 advising the mayor, but I was not in a position of
3 hearing officer. I wasn't going to make any
4 findings of fact or conclusions or decisions.

5 **Q. So it would be fair to say then that**
6 **the mayor was the hearing officer for this public**
7 **hearing?**

8 A. If -- if you're going to force me
9 into an answer, it was the hearing officer, who
10 was it, it would be the mayor. He was the
11 presiding officer, but my perception was that the
12 Board as a whole, those who were there was hearing
13 it as a body of the whole, if you will.

14 **Q. Well, if I'm mistaken, I'm happy to**
15 **be corrected, but if there was no hearing officer**
16 **at that public hearing, it's certainly appropriate**
17 **to say that that was your understanding that there**
18 **was no hearing officer. That is certainly**
19 **something you can state.**

20 A. Well, I would say the mayor was the
21 presiding officer. So, I mean, you know, it is
22 really -- I don't think we had like someone who
23 was appointed hearing officer. The mayor was the
24 presiding officer for the public hearing. I was

1 advising him, but my impression was that the Board
2 as a whole was really hearing it, if you will.

3 Q. And that public hearing was
4 scheduled to commence at 5:00 p.m. on May 29th?

5 A. I believe so.

6 Q. And at 5:00 p.m. could you
7 describe -- and that hearing was in this very
8 room, correct?

9 A. That's correct.

10 Q. And at 5:00 p.m. could you describe
11 for us how many people were in this room at
12 that -- approximately and also indicate whether
13 this room was full or whether there were people
14 who couldn't get in because of the limited
15 capacity?

16 MR. MANION: Objection. I think it
17 is way beyond the scope of the direct.

18 HEARING OFFICER WEBB: I think it
19 is. It is beyond the scope, but, I mean, we can
20 do this -- I mean, if you want him to separately
21 call him as a witness I'll allow that. It might
22 just be more expedient to --

23 MS. LIVINGSTON: We're just pointing
24 it out.

1 HEARING OFFICER WEBB: Okay. All
2 right. Go ahead.

3 BY THE WITNESS:

4 A. I would be more comfortable with
5 saying that the room was full and there were
6 people in the hall outside than guessing how many
7 people were here.

8 BY MR. MORAN:

9 Q. That's fair enough. And could you
10 give us any kind of an estimate as to how many
11 people were unable to get into the hearing room
12 and were waiting outside in the hall hoping to get
13 in?

14 A. I couldn't tell. I mean, there were
15 quite a few. From where I was sitting, I couldn't
16 see into the hall really well, but there were a
17 lot of people.

18 Q. Was there any discussion about
19 adjourning the public hearing to be able to
20 provide accommodations for all who wished to
21 attend?

22 A. I think there was.

23 Q. And did you have that discussion
24 with the mayor or with some other member of the

1 **Village or did somebody else have that discussion?**

2 A. You know, Mr. Moran, to the best of
3 my recollection, I could be wrong, you guys were
4 there I think that there was a discussion among
5 the Board members about whether we should move it
6 to the community center next door and I think it
7 was decided by consensus that we would just keep
8 it here. That's my recollection.

9 **Q. Did you make any recommendation with**
10 **regard to that issue?**

11 A. I did not, no.

12 **Q. So that decision was made by someone**
13 **other than you?**

14 A. I believe so, yes.

15 **Q. And do you have any information as**
16 **to the reasons why that decision was made or, in**
17 **other words, not to move from this limited venue**
18 **to one that could accommodate all the people who**
19 **had come to the meeting?**

20 A. You know, I just don't recall.

21 MS. LIVINGSTON: I do object to the
22 term limited venue. We're all sitting in this
23 room and it's not exactly tiny. You can roll your
24 eyes if you want.

1 HEARING OFFICER WEBB: I don't know
2 what to do with that. Overruled. Overruled. Go
3 ahead.

4 MR. MORAN: I have no further
5 questions.

6 HEARING OFFICER WEBB: Okay. Any
7 redirect?

8 MS. LIVINGSTON: Yeah.

9 R E D I R E C T E X A M I N A T I O N

10 BY MS. LIVINGSTON

11 **Q. Mr. Gilbert, did Don Moran, Jennifer**
12 **Pohlenz or any other person ask to cross-examine**
13 **Mr. Siemsen and get denied?**

14 MS. SACKETT POHLENZ: Objection. He
15 wasn't even under oath.

16 MR. MORAN: Yeah. The objection is
17 obviously that request could not have been made
18 because it was made very clear during the course
19 of the hearing that he was not going to be sworn
20 and he was not subject to cross-examination.

21 MS. SACKETT POHLENZ: I join in
22 Mr. Moran's more eloquent version of what I said.

23 HEARING OFFICER WEBB: What was --
24 what was the question again?

1 MS. LIVINGSTON: Did Don Moran,
2 Jennifer Pohlenz or anyone else ask to
3 cross-examine Mr. Siemsen and get denied? Let me
4 rephrase it.

5 HEARING OFFICER WEBB: Okay.

6 BY MS. LIVINGSTON:

7 **Q. Did Don Moran, Jennifer Pohlenz or**
8 **anyone else ask to ask Mr. Siemsen questions and**
9 **get denied?**

10 MS. SACKETT POHLENZ: Objection.

11 HEARING OFFICER WEBB: I will allow
12 the witness to answer that question.

13 BY THE WITNESS:

14 A. To my recollection, no, because
15 their position was his testimony shouldn't be
16 considered at all because it wasn't under oath.

17 MS. SACKETT POHLENZ: It wasn't?

18 BY THE WITNESS:

19 A. It wasn't sworn.

20 BY MS. LIVINGSTON:

21 **Q. And since there was a line of**
22 **questions asking you about whether or not you were**
23 **specifically present when the box of materials was**
24 **delivered to City Hall, is it fair to say that you**

1 **don't -- that you don't have your office at**
2 **Village Hall?**

3 A. That's correct.

4 **Q. And you wouldn't have had a reason**
5 **to be here on February 10th?**

6 A. Not in the normal course of
7 business, correct.

8 MS. LIVINGSTON: (Negative nod.)

9 HEARING OFFICER WEBB: Anything -- I
10 have a question about -- also, upon further
11 consideration I have decided that this room is
12 officially medium size. What am I doing with
13 this? I don't have an exhibit label on this
14 document.

15 MS. SACKETT POHLENZ: The witness
16 has the exhibit label. So we can give that one to
17 you and that is part of the offer of proof and
18 subject to. So I would request its admission
19 should the offer of proof over our objection be
20 allowed into evidence. So it is conditioned on --

21 MS. LIVINGSTON: No objection.

22 MR. MANION: No objection.

23 MS. SACKETT POHLENZ: -- our
24 objection is made.

1 MS. LIVINGSTON: We don't object.

2 HEARING OFFICER WEBB: Okay. All
3 right. And this is accepted as an offer of proof
4 as are Exhibit's 4 through 6, correct? And who --
5 remind me who Kenneth Bleyer is. What is his --

6 MS. SACKETT POHLENZ: He is my
7 co-counsel in this matter.

8 HEARING OFFICER WEBB: Anyone have
9 anything further for Mr. Gilbert? Okay. Thank
10 you, sir.

11 MR. GILBERT: Thank you.

12 HEARING OFFICER WEBB: Ms.
13 Livingston, do you have anything further to
14 present?

15 MS. LIVINGSTON: I do not. Thank
16 you for doing this on such short notice.

17 MR. GILBERT: You're welcome.

18 HEARING OFFICER WEBB: I'll make a
19 few announcements and then we'll do closing
20 arguments. The transcript is due by October 31st
21 and will be posted on the Board's website. The
22 public comment deadline is November 12th. The
23 public comment must be filed in accordance with
24 Section 101.628 of the Board's procedural rules.

1 The petitioner's briefs are due by November 7th
2 and the respondent's briefs are due by November
3 14th and petitioner's reply briefs are due by
4 November 18th. The mailbox rule will not apply
5 and all electronic filings are due by 4:30 p.m. on
6 the due date. Would the petitioner like to make a
7 closing argument?

8 MS. SACKETT POHLENZ: May I clarify
9 one thing just --

10 HEARING OFFICER WEBB: Please.

11 MS. SACKETT POHLENZ: -- for public
12 participants who may read this? In terms of the
13 public comment period closing November 12th, with
14 the exception of those parties represented by
15 counsel in this proceeding if someone from the
16 public mails it on November 12th, does the mailbox
17 rule apply to that or not just to clarify so they
18 know one way or the other?

19 HEARING OFFICER WEBB: I would say
20 not.

21 MS. SACKETT POHLENZ: Okay.

22 HEARING OFFICER WEBB: Because, you
23 know, you know --

24 MS. SACKETT POHLENZ: But if they

1 don't know how to work the electronic filing with
2 the Pollution Control Board, e-mail will be
3 accepted?

4 HEARING OFFICER WEBB: Yeah, call.
5 Call. John Therriault is the best person. If
6 they call me, I will give them John Therriault's
7 phone number.

8 MS. SACKETT POHLENZ: Very good.

9 HEARING OFFICER WEBB: He can work
10 them through it. We can make accommodations.
11 They can e-mail or fax if they need to do that.
12 Okay. Ms. Pohlenz, would you like to make any
13 closing argument?

14 MS. SACKETT POHLENZ: I will reserve
15 closing argument for petitioner's brief that is
16 due on November 7th.

17 HEARING OFFICER WEBB: Okay. Would
18 you like to make any closing argument?

19 MR. MORAN: I would reserve as well.

20 HEARING OFFICER WEBB: Okay. Would
21 the Village like to make any closing argument?

22 MR. MANION: No, thank you. I'll
23 reserve.

24 HEARING OFFICER WEBB: Ms.

1 Livingston?

2 MS. LIVINGSTON: I guess that leaves
3 the last man standing, right? Definitely. I
4 think we're going to deal with the issues in the
5 post-hearing brief and, of course, the standard is
6 against the manifest weight of evidence and the
7 burden is on the petitioners.

8 I did hear some things here
9 today so I did want to a little bit respond to
10 those public comments because it is certainly not
11 something I think I would write in a post-hearing
12 brief. For example, it seems to me from the
13 testimony of Chief Scott Penny that we had a
14 not-in-my-backyard kind of centrum going on there
15 and also I would note that at this point in time
16 the applicant and the Village would like to waive
17 their claim for deliberative process privilege and
18 allow all of the transcripts of the depositions
19 into evidence.

20 I believe that during the offer
21 of proof of what the Village trustees were
22 considering in the nine criteria that you will see
23 that Bunkum Road was about to be upgraded and that
24 the county has, in fact, put funds forward for

1 that road to be upgraded. If you go the other
2 direction on Bunkum where I live off of, the Mayor
3 of Washington Park mentioning to me as the
4 attorney "Would I live off of this road" I live
5 off of this road and our road is brand new and so
6 his testimony was that the utilities have already
7 been moved to accommodate a new road and I think
8 that that is significant to the issue of traffic
9 which there seemed to be two criterias at issue;
10 traffic and the need basis.

11 So I would just mention that
12 that seemed to be -- there also seemed to be some
13 testimony today from citizens saying something
14 about the property value and I don't know about a
15 study about property value, but I would note that
16 the property value expert is sitting in the room
17 today and they didn't bring him to testify. So I
18 imagine that wasn't an issue for them.

19 I also heard the Mayor of
20 Washington Park state, if my hearing is correct,
21 that she was the first black mayor of Washington
22 Park and I sued Mayor Sylvester Jackson. I sued
23 Washington Park for open dumping in East St.
24 Louis's park and --

1 MS. SACKETT POHLENZ: I believe
2 you're misrepresenting what people said. I
3 believe she said she was the first woman.

4 MS. LIVINGSTON: I heard her say I'm
5 the first black mayor of Washington Park.

6 HEARING OFFICER WEBB: I don't
7 remember.

8 MS. LIVINGSTON: Well, we'll see
9 when we get the record, but when she talked about,
10 you know, would you want a transfer station put
11 down from you? Well, you know, we all live in
12 this community. Anyway, when she said not to
13 bring it here and she talked about this being
14 offensive to black people I wasn't at this hearing
15 so I don't know who all came to this hearing, but,
16 you know, we all live here and around that.

17 So she asked questions so I just
18 thought I would mention it. At any rate, she did
19 say also that she thought this was about money and
20 I would agree with that and I think that you'll
21 see when you look at the whole record that this is
22 about creating an entry -- a barrier to
23 competitors and if you saw our garbage bills of
24 \$45 a month you would understand why you might

1 want to have a transfer station.

2 MS. SACKETT POHLENZ: You know, I
3 have no idea what this just was and I would move
4 to strike the entire thing --

5 MS. LIVINGSTON: I live here so take
6 it as a public comment.

7 MS. SACKETT POHLENZ: -- of
8 rambling --

9 HEARING OFFICER WEBB: I will
10 allow -- this is your closing argument. It's not
11 testimony.

12 MS. LIVINGSTON: And the last thing
13 that I would mention is that I had a whole line of
14 questions for Susan Piazza about, gee, you know,
15 if you already know that it is here because you've
16 been going to the meetings, you know, do you check
17 the public notices? I don't know if she really
18 did or didn't know, but I really feel like her
19 subpoena should have been honored and the fact
20 that she was advised not to come here when she was
21 served by a process server with a lawful subpoena
22 seems to me to absolutely be in contempt and if
23 you want to talk about fundamental fairness
24 denying us access to someone that we've only known

1 about for a week seems to me to be quite unfair.

2 MS. SACKETT POHLENZ: You know what,
3 that is absolutely false. If you want to go into
4 stuff that is not on the record and spew it out --

5 HEARING OFFICER WEBB: Let --

6 MS. SACKETT POHLENZ: -- because
7 Mr. Siemsen --

8 MS. LIVINGSTON: What part is false?

9 MS. SACKETT POHLENZ: Oh, absolutely
10 false.

11 MS. LIVINGSTON: Which part?

12 MS. SACKETT POHLENZ: When he came
13 to deliver the application after February 18th to
14 Mr. Gilbert's office, Mr. Gilbert told him about
15 the meeting on February 18th.

16 MS. LIVINGSTON: Well, I didn't know
17 that.

18 MS. SACKETT POHLENZ: Really? You
19 were at the deposition when your client testified
20 to it.

21 MS. LIVINGSTON: Right. And that's
22 when I asked Ms. Piazza --

23 HEARING OFFICER WEBB: Hold on.

24 MS. SACKETT POHLENZ: Okay.

1 MS. LIVINGSTON: And that's when you
2 did a subpoena duces tecum on the records and we
3 got them.

4 MS. SACKETT POHLENZ: That's
5 after -- you are --

6 HEARING OFFICER WEBB: The court
7 reporter can't hear both of you at same time
8 anyway. So you might as well reserve your
9 argument for your post-hearing brief because I'm
10 suspecting some of it may not make it into the
11 transcript understandably so.

12 MS. LIVINGSTON: And I'd like to
13 apologize. I'm not accustomed to trying to
14 protect the pollution --

15 HEARING OFFICER WEBB: Hang on.
16 Hang on. I just want to make sure that there is
17 nobody -- no one else wants to make any public
18 comment here today?

19 MS. LIVINGSTON: Okay.

20 HEARING OFFICER WEBB: At this time
21 I would --

22 MR. MORAN: Madame Hearing Officer,
23 before you -- if you're going to close this, there
24 was a request that Ms. Livingston made in the

1 little presentation that she just gave a couple
2 minutes ago about waiving the deposition
3 transcripts as it related to deliberative process.
4 I don't know if you heard that.

5 HEARING OFFICER WEBB: I did hear
6 that.

7 MR. MORAN: I'm going to object to
8 that for a number of reasons. First reason is is
9 the reason she is trying to get it in apparently
10 is she likes certain things that the trustees said
11 about evidence relating to the criteria which
12 obviously is not appropriate in any way for this
13 proceeding and should not be allowed.

14 Secondly, it is not timely to be
15 in a position to be asking for now the
16 deliberative process privilege such as it is to be
17 waived at this last date when we now can't go back
18 and re-examine and depose, perhaps not just those
19 trustees, but others if this is going to be the
20 position of the Village waiving deliberative
21 process.

22 So for those two reasons I would
23 object to the admission of any of that testimony
24 offered under the offer of proof going to

1 deliberative process.

2 HEARING OFFICER WEBB: Now, I have
3 not seen the depositions. How -- how is it -- is
4 it instructive? In the depositions, is it clear?

5 MS. SACKETT POHLENZ: We kept it at
6 the very end.

7 HEARING OFFICER WEBB: Okay.

8 MS. SACKETT POHLENZ: So we tried to
9 keep it and group it at the end. So there will be
10 questions that will occur and not Ms. Livingston,
11 but Mr. Manion on behalf of the Village was
12 raising the deliberative process objection at that
13 point and then it was referred and asked at the
14 end of the deposition so it would be all grouped
15 together.

16 HEARING OFFICER WEBB: I'm not sure
17 if you have the authority to waive that privilege.

18 MS. LIVINGSTON: Well, we raised it.
19 I said the Village and I are the --

20 HEARING OFFICER WEBB: The witnesses
21 are -- I think the Village arguably has --

22 MS. LIVINGSTON: Right. Here is
23 what happened. When they did the offer of proof,
24 other information came in in answer to it that I

1 think is valuable for you to hear and it wasn't
2 necessarily related. I find it very interesting
3 that we raised the deliberative process privilege
4 because we don't want them to ask "What were you
5 thinking about" and when they did their offer of
6 proof that the information was not deliberative
7 process. Now that we agree, they object to our
8 letting in their questioning of the Village's
9 witnesses.

10 HEARING OFFICER WEBB: Does the
11 Village attorney, do you -- Mr. Manion, does the
12 Village waive the privilege?

13 MR. MANION: I'm willing on behalf
14 of the Village to waive it.

15 MS. SACKETT POHLENZ: And I'm
16 joining in the objection that was articulated by
17 counsel for the Village of Fairmont City because
18 at this point having that waived we gauge our
19 discovery based on your ruling on deliberative
20 process. We only examined those two witnesses in
21 that limited scope not only due to time
22 constraints, but also due to that being an issue.

23 MS. LIVINGSTON: They had the
24 opportunity to pick any of the people they wanted

1 to depose and we were all on a short timeframe and
2 they're the ones who asked the questions and got
3 the answers.

4 MS. SACKETT POHLENZ: You were also
5 the ones that asked questions.

6 MS. LIVINGSTON: All we're saying is
7 in the interest of transparency, just like beyond
8 the scope, we think that all of the information
9 should be presented and should be considered and
10 as you go through it you'll see that not all of it
11 was deliberative process privilege in the answers
12 to the questions and all we're saying is we think
13 the whole deposition should be considered.

14 HEARING OFFICER WEBB: Okay. Well,
15 since I haven't seen any of the depositions I'm
16 going to just keep everything as it is at the
17 offers of proof as they are. When the Board sees
18 what the testimony is, they can decide whether to
19 admit it at that time.

20 MS. LIVINGSTON: Right.

21 HEARING OFFICER WEBB: So that's all
22 I can --

23 MS. LIVINGSTON: It does seem a
24 little odd to object to your own offer of proof,

1 which is essentially what they're doing now. Now
2 that we accept their offer of proof, they want to
3 walk away from it because, in fact, there is
4 really good testimony in there about what those
5 people considered and why it was a good idea for
6 this community.

7 MR. MORAN: But that's -- but one of
8 the reasons why it is so inappropriate is to the
9 extent those trustees were testifying as to
10 matters both outside the record, there were
11 evidentiary matters that were, perhaps, not
12 presented or if they were they related to the
13 criteria. We cannot consider in this hearing new
14 evidence as it relates to the criteria.

15 MS. LIVINGSTON: I agree.

16 MR. MORAN: That's the other
17 significant issue.

18 HEARING OFFICER WEBB: Okay. Well,
19 if you want to argue this point any more, I would
20 ask that you do so in your post-hearing brief, but
21 we'll let the offer of proof stand as it is.
22 Anything else?

23 MS. LIVINGSTON: Are you saying
24 anything else before we absolutely close?

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1 HEARING OFFICER WEBB: Yes.

2 MS. LIVINGSTON: Okay. So I did
3 have this question, too. So we have two
4 petitioners who will be writing briefs and we will
5 be responding to those. Do you -- I mean, we have
6 now consolidated the case, right?

7 HEARING OFFICER WEBB: Yes.

8 MS. LIVINGSTON: Okay. Because I
9 wasn't sure. I think when we go to file we still
10 have to pick one or the other and maybe it was
11 more recent. You might want to check on that.

12 HEARING OFFICER WEBB: Everything
13 should be showing up under both dockets.

14 MS. LIVINGSTON: Okay.

15 HEARING OFFICER WEBB: But they were
16 consolidated.

17 MS. LIVINGSTON: Okay. So I'm just
18 wondering, and maybe this doesn't need to be on
19 the record, so if they each write 50-page briefs,
20 can we respond since the cases have been
21 consolidated as one response or do we need two
22 responses and, if so, how does that effect the
23 page limit?

24 HEARING OFFICER WEBB: Um --

1 MS. LIVINGSTON: And then there are
2 two of us and we might file jointly. So I just
3 wasn't -- I mean, not that I want to write more
4 than 50 pages and neither does Brian, but I'm
5 asking before we do it. Then does that mean if we
6 file an answer jointly together to two briefs that
7 we then have a hundred pages? We're not going to
8 take it.

9 MS. SACKETT POHLENZ: May I just
10 suggest that you figure out what you're going to
11 do and then if it's in excess of 50 pages you ask
12 for leave which is what the Hearing Officer said
13 and the rules provide.

14 MS. LIVINGSTON: I understand.

15 MS. SACKETT POHLENZ: We'll do it as
16 well.

17 MS. LIVINGSTON: My client doesn't
18 need to have more procedural issues and file
19 things. I'm just asking you do we together have a
20 hundred pages to respond to their together --

21 HEARING OFFICER WEBB: No. Each
22 party has 50 pages --

23 MS. LIVINGSTON: Right.

24 HEARING OFFICER WEBB: --

1 separately. If you want to combine briefs, I
2 would suppose that you could, you know.

3 MR. MORAN: Well, I can say
4 definitively on behalf of the Village of Fairmont
5 City we are not preparing a 50-page brief.

6 MS. LIVINGSTON: Thank you.

7 MR. MORAN: There is not going to be
8 any issue about having to deal with 50 pages from
9 what we file.

10 HEARING OFFICER WEBB: And we
11 consolidate -- usually when the Board consolidates
12 cases, it is for purposes of hearing, but they
13 still reserve the right to issue two separate
14 opinions and orders if they feel they need to do
15 that. So they always say consolidated for
16 hearing.

17 MS. LIVINGSTON: Okay. But we can
18 treat it like they're consolidated when we write
19 our briefs?

20 HEARING OFFICER WEBB: Yes.

21 MS. LIVINGSTON: Okay. I appreciate
22 it.

23 HEARING OFFICER WEBB: Anything
24 else?

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MR. MORAN: Nothing further.

HEARING OFFICER WEBB: All right.

At this time, I will conclude the proceedings. We stand adjourned and I thank you all for your participation.

MR. MORAN: Thank you.

MS. SACKETT POHLENZ: Thank you.

October 28, 2014

1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF COOK)
4

5 I, Steven Brickey, Certified Shorthand
6 Reporter, do hereby certify that I reported in
7 shorthand the proceedings had at the hearing
8 aforesaid, and that the foregoing is a true,
9 complete and correct transcript of the audio
10 proceedings of said hearing as appears from my
11 stenographic notes so taken and transcribed under
12 my personal direction.

13 Witness my official signature in and for
14 Cook County, Illinois, on this _____ day of
15 _____, A.D., 2014.

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