

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2 ANTHONY and KAREN ROTI,)
3 PAUL ROSENSTROCK and)
4 LESLIE WEBER,)
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11 The following is the transcript of
12 a hearing held in the above-entitled matter taken
13 stenographically by GEANNA M. IAQUINTA, CSR, a
14 notary public within and for the County of Cook
15 and State of Illinois, before JOHN KNITTLE,
16 Hearing Officer, at 118 West Cook Avenue,
17 Libertyville, Illinois, on the 24th day of May,
18 2000, A.D., scheduled to commence at 9:30 a.m.,
19 commencing at 9:40 a.m.
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1 A P P E A R A N C E S:

2 STEVEN P. KAISER & ASSOCIATES,
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6 (847) 677-7066
7 BY: MR. STEVEN P. KAISER

8 Appeared on behalf of the Complainants,

9 BAIZER & KOLAR,
10 513 Central Avenue
11 5th Floor
12 Highland Park, Illinois 60035
13 (847) 433-6677
14 BY: MR. JOSEPH E. KOLAR

15 Appeared on behalf of the Respondent.

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1 HEARING OFFICER KNITTLE: My name is John
2 Knittle. It is May 24th at approximately 9:40
3 a.m. This is the seventh day of hearings in LTD
4 Commodities, the second day of this session. It
5 is, as I said, about 9:40 a.m.

6 I note for the record that there are
7 no members of the public here. We are conducting
8 this case in accordance with the Board's
9 procedural rules and the Illinois Environmental
10 Protection Act. We will be proceeding along
11 Sections 103.202 and 203, and just for the
12 record, one last time, this is PCB 1999-019.

13 We are currently in the middle of the
14 respondent's case in chief. Mr. Kolar, do you
15 want to call your next witness?

16 MR. KOLAR: Jack Voight.

17 HEARING OFFICER KNITTLE: Can you swear
18 Mr. Voight in, please?

19 (Witness sworn.)

20 WHEREUPON:

21 J A C K V O I G H T,
22 called as a witness herein, having been first

23 duly sworn, depose and saith as follows:

24

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1 DIRECT EXAMINATION

2 by Mr. Kolar

3 Q. State your name, please.

4 A. Jack Voight.

5 Q. And you work for LTD Commodities?

6 A. That's correct.

7 Q. And you've been there since 1990?

8 A. Yes.

9 Q. And, again, what's your position?

10 A. Vice-president of distribution.

11 Q. On the aerial map, number 89 here, to the
12 west of the southwest corner of the LTD building,
13 what's this thing right here (indicating)?

14 A. That's the tollbooth.

15 Q. So right here, what I circled, is the
16 tollbooth, right?

17 A. Yes.

18 Q. And just for anybody looking at this
19 aerial, the road here to the south, this is Route
20 22?

21 A. Route 22, yes.

22 Q. And Lakeside Drive goes north from 22 to
23 your property, correct?
24 A. That's correct.

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1 Q. And this is Lakeside?
2 A. That's correct.
3 Q. I'll put, I guess, an LSD there, Lake
4 Shore Drive and Lakeside Drive.
5 Now, LTD Exhibit 100 or Respondent's
6 Exhibit 100, what's this?
7 A. This is a carton that we use for shipping.
8 Q. And inside here -- you gave this to me
9 sometime ago, correct?
10 A. Correct.
11 Q. Filled with peanuts?
12 A. Correct.
13 Q. And I threw out a bunch of them.
14 What are those in the little envelope
15 inside?
16 A. Those are Styrofoam peanuts used for
17 dentage.
18 Q. What does that mean?
19 A. It's used to protect the product and to
20 fill the voids if there are any voids left in the

21 box after the product is put in.

22 Q. Is this the only size box that LTD uses at
23 its building?

24 A. No.

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1 Q. How many -- well, in terms of the various
2 sizes, where would you put this one in terms of
3 small, medium, large?

4 A. It's in the middle, maybe a little bit on
5 the smaller side.

6 Q. What would be the biggest size box that
7 you would use that says LTD Commodities on it?

8 A. We have a carton that's 37 by -- 37 inches
9 by 33 inches by 17 inches.

10 Q. And what do you put in these boxes?

11 A. We put product and merchandise that the
12 customers have ordered.

13 Q. And then the peanuts, if necessary?

14 A. Right.

15 Q. And then they go on the trucks?

16 A. Yes.

17 Q. What percent of the product in the
18 building that customers buy go out your doors by
19 use of a box that says LTD Commodities on it?

20 A. It's a very high percentage, probably 98
21 percent. It could be even higher simply because
22 most of the products are pretty small and we have
23 to put it into these boxes.

24 Q. Mr. Kaiser was asking a few questions

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1 yesterday that for a moment concerned me. I
2 wanted to clarify something.

3 Does LTD Commodities lease its
4 storage space to any third parties at all?

5 A. No, sir.

6 Q. Is the storage space used solely for LTD's
7 business purposes in terms of storing its goods
8 until they're packed in these boxes and shipped
9 out to customers?

10 A. That's correct.

11 MR. KOLAR: I don't have any other
12 questions.

13 HEARING OFFICER KNITTLE: Mr. Kaiser, do
14 you have a cross-examination?

15 MR. KAISER: Yes.

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

17 by Mr. Kaiser

18 Q. Mr. Voight, approximately how many square

19 feet at LTD's Bannockburn facility are committed
20 to the storage of boxes similar to Respondent's
21 Exhibit 100? That is, they may be larger than
22 maybe the 37 inch by 33-inch box, but boxes with
23 LTD's logo on it.
24 A. Ten percent of the building.

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1 Q. Ten percent has boxes with LTD's logo on
2 it?

3 A. When you talk about just empty boxes?

4 Q. No. Well, I appreciate the clarification,
5 and we'll work through this.

6 Ten percent of the space is committed
7 just to the storage of empty boxes?

8 A. Yes.

9 Q. And what percentage of the space is
10 committed to the storage of boxes that contain
11 products that have yet to be shipped to LTD's
12 customers?

13 A. When we talk about storage, we're talking
14 about rack storage and bulk storage. I would say
15 it probably represents 65 percent of the space.

16 Q. Sixty-five percent of the space of the
17 entire LTD space or of the warehouse area?

18 A. Of the warehouse area.

19 Q. Sixty-five percent of the warehouse area
20 is committed just to storage of product before
21 it's sent out to customers?

22 A. Yes.

23 Q. And then ten percent is, as I understood
24 it, committed just to storage of empty boxes?

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1 A. Well, that would be included in that 65
2 percent. I apologize for that.

3 Q. What goes on in that other 35 percent of
4 the space?

5 A. That is used for our picking operation,
6 for returns, maintenance, housekeeping. We also
7 do receiving. The products are brought in via
8 the dockyards.

9 Q. And the receiving, those are products that
10 LTD has ordered, right?

11 A. Yes.

12 Q. That LTD intends to then sell to its
13 customers, correct?

14 A. Yes.

15 Q. And, again, LTD isn't leasing space to
16 third parties, is it?

17 A. No.

18 Q. And LTD isn't storing goods for third
19 parties, is it?

20 A. No.

21 Q. And LTD isn't contracting with third
22 parties to perform crating or packaging for other
23 people's goods, is it?

24 A. No.

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1 Q. Is there anyplace in any LTD catalog where
2 a customer -- prospective customer can call up an
3 order from LTD packing and crating services?

4 MR. KOLAR: Objection, beyond the scope.

5 HEARING OFFICER KNITTLE: Sustained.

6 BY MR. KAISER:

7 Q. The inventory that comes in to LTD's
8 warehouse in Bannockburn, how long does it
9 usually stay on the shelf?

10 A. Two to four weeks. That would be an
11 average. Obviously, some longer and some less.

12 Q. And isn't it a goal in your business, in
13 LTD's business, to try to turn that inventory
14 quickly? There's no advantage to having it sit
15 four or eight weeks if you can turn it in two

16 weeks, correct?

17 MR. KOLAR: Beyond the scope.

18 MR. KAISER: But it has to do with these
19 boxes and how long they stay there. You open the
20 door when you bring the box in.

21 MR. KOLAR: I don't think it has anything
22 to do with the box. I didn't get into inventory
23 other than these boxes are used to ship product
24 out the door, and now we're getting into how long

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1 inventory is on the shelf, et cetera. It's
2 beyond the scope.

3 HEARING OFFICER KNITTLE: I'm just looking
4 at my notes. I think this question is okay. I
5 don't think it's beyond the scope.

6 Mr. Kaiser, I'm inclined to sustain
7 most further objections along these lines. It
8 was a very limited direct examination.

9 BY MR. KAISER:

10 Q. Do you recall the question or would you
11 like it read back?

12 A. Please read it back.

13 (Record read.)

14 BY THE WITNESS:

15 A. That is correct.

16 BY MR. KAISER:

17 Q. Now, boxes like LTD Exhibit 100 are used
18 by LTD to support its predominant activity, which
19 is sales, correct?

20 A. Boxes are used, yes, to ship the product.

21 Q. And the product is sold to LTD's
22 customers?

23 A. That's correct.

24 Q. Without the boxes, LTD couldn't do its

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1 business, right?

2 A. We could use envelopes, yeah, but
3 basically boxes do serve that purpose.

4 Q. And they support LTD's predominant
5 activity, which is sales of product, right?

6 A. Yes.

7 MR. KAISER: Thank you. I have no further
8 questions.

9 HEARING OFFICER KNITTLE: Mr. Kolar.

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

11 by Mr. Kolar

12 Q. Without LTD employees picking product off
13 the shelf, packing it in these boxes, putting in

14 peanuts, putting it on trucks, LTD would not be
15 able to do its business, correct?

16 A. That's correct.

17 MR. KOLAR: I don't have anything else.

18 HEARING OFFICER KNITTLE: Mr. Kaiser,
19 cross on that question?

20 MR. KAISER: Nothing further.

21 HEARING OFFICER KNITTLE: Discretion and
22 all. Thank you, sir. You can step down.

23 Mr. Kolar, your next witness.

24 MR. KOLAR: We would call Thomas Thunder.

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1 HEARING OFFICER KNITTLE: Mr. Thunder,
2 just have a seat there where Mr. Voight was.

3 HEARING OFFICER KNITTLE: Could you swear
4 him in, please?

5 (Witness sworn.)

6 WHEREUPON:

7 T H O M A S T H U N D E R,
8 called as a witness herein, having been first
9 duly sworn, deposeth and saith as follows:

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

11 by Mr. Kolar

12 Q. Can you state your name, please?

13 A. Thomas D. Thunder.
14 Q. Where do you live, Mr. Thunder?
15 A. I live at 57 Elizabeth Avenue in Palatine,
16 Illinois.
17 Q. What do you do for a living?
18 A. I'm a hearing and acoustical consultant.
19 Q. With what company?
20 A. Acoustic Associates Limited.
21 Q. What's your position there?
22 A. I'm principal of the firm.
23 Q. How long have you been with that company?
24 A. Since 1987.

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1 Q. Is that your company?
2 A. Yes, it is.
3 Q. And where is its office located?
4 A. It's at 305 East Northwest Highway in
5 Palatine, Illinois.
6 Q. You were hired by LTD regarding this noise
7 proceeding?
8 A. That's correct.
9 Q. Were you hired by LTD before or after
10 there was a Pollution Control Board complaint?
11 A. I believe it was before.

12 Q. Are you charging LTD for your services?
13 A. Yes.
14 Q. What's your hourly rate?
15 A. It's 195.
16 Q. Were you working for LTD Commodities
17 regarding noise issues at its headquarters in
18 Bannockburn before you ever met me?
19 A. Yes, I was.
20 Q. And in terms of your charges to LTD, did
21 you expect to testify last November?
22 A. Yes, I did.
23 Q. And you prepared as if you were going to
24 testify last November?

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1 A. That's correct.
2 Q. Then you had to prepare again here in May?
3 A. That's correct.
4 Q. What's your education after high school?
5 A. I have a bachelor's degree in
6 communication disorders from Northern Illinois
7 University, a master's degree in audiology from
8 Northern Illinois University, and postgraduate
9 work in acoustics from the Illinois Institute of
10 Technology.

11 Q. In one of your documents, it says, Thomas
12 D. Thunder, MA, FAAA, and INCE, correct?

13 A. That's correct.

14 Q. The MA stands for?

15 A. Master's of audiology, master's of arts.

16 Q. And the FAAA?

17 A. That's Fellow of the American Academy of
18 Audiology.

19 Q. And the INCE designation?

20 A. That represents a board certification by
21 the Institute of Noise Control Engineers.

22 Q. Now, how do you become a fellow of the
23 Triple A group?

24 A. Essentially, by passing a national

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1 examination and having a one-year clinical

2 fellowship year postgraduate.

3 Q. Audiology is the study of what?

4 A. Audiology is the study of hearing. It's
5 hearing science.

6 Q. What is acoustics?

7 A. Acoustics is the study of sound and the
8 propagation of sound and the effects of sound.

9 Q. And you have training and experience in

10 both those fields?

11 A. Yes, I do.

12 Q. You mentioned you were board certified by
13 the Institute of Noise Control Engineering?

14 A. That's correct.

15 Q. How did you obtain that board
16 certification?

17 A. That board certification is obtained after
18 passing a fundamentals exam and a much longer
19 professional exam after completing eight years of
20 supervised work in the area of noise and five
21 references of people that have worked with you
22 and then final board approval.

23 Q. Are you certified or licensed by the state
24 of Illinois in any respect?

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1 A. I am licensed by the state of Illinois in
2 the area of audiology and licensed by the state
3 of Illinois for hearing aid dispensing. There's
4 no such licensure for acoustical engineering.

5 Q. Have you taught in the areas of audiology
6 and/or acoustics?

7 A. Yes.

8 Q. Where?

9 A. I'm currently on staff at Rush University
10 downtown. I'm an assistant professor there.
11 I've been there for 12 years. I'm an adjunct
12 professor at Northern Illinois University, and
13 I'm currently constructing on-line courses for
14 the Pennsylvania College of Optometry and the
15 Arizona School of Health Sciences.

16 Q. Rush University, is that a medical school?

17 A. Yes.

18 Q. What do you teach there?

19 A. I teach in the audiology department, and
20 my specialty is industrial audiology and noise.

21 Q. And at Northern Illinois University, what
22 do you teach there?

23 A. Two courses. One is hearing science.

24 It's an upper level undergraduate course with 65

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1 students and a graduate level course called Noise
2 and its Effect on Man.

3 Q. How long have you been in the business of,
4 I guess, acoustics and audiology?

5 A. Almost 25 years.

6 Q. Have you testified in courts or
7 administrative proceedings as a noise control

8 expert audiologist?

9 A. Yes, I have.

10 Q. What courts have you testified in, at
11 least the counties where you appeared?

12 A. Well, most recently, in Aurora and then
13 for Cook County. Aurora would be, what, DuPage
14 County?

15 Q. Kane, maybe.

16 A. Kane.

17 HEARING OFFICER KNITTLE: I'm not sure.

18 THE WITNESS: Whatever.

19 HEARING OFFICER KNITTLE: We'll let the
20 board figure that out.

21 BY THE WITNESS:

22 A. Those are the hearings I've been in that's
23 related to noise.

24

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1 BY MR. KOLAR:

2 Q. What about administrative tribunals sort
3 of like -- I think the Pollution Control Board is
4 an administrative tribunal.

5 So things like that, have you
6 testified before agencies?

7 A. Well, the last two that I cited were
8 Illinois Pollution Control Board hearings.

9 Q. Have you testified other than Pollution
10 Control Board hearings?

11 A. Yes. I've testified before a number of
12 villages. Last night, before the village of
13 Glenview. The night before that, it was the
14 village of Bloomingdale on noise issues.

15 Q. Do you recall when you were first retained
16 by LTD?

17 A. Not specifically, but I believe it was
18 early '97.

19 Q. Let me show you a document. It sounds
20 right to me.

21 A. If you can refresh my memory with some
22 documentation.

23 Q. Here's Respondent's Exhibit 91.

24 A. That's pretty early. That's January of

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1 '97.

2 Q. So January '97 you were retained by LTD.

3 What were the circumstances of LTD
4 contacting you at that time?

5 A. I believe they had received complaints,

6 either verbally or in writing, from one or two of
7 the neighbors that abutted their property, and
8 they were interested in assessing the noise and
9 see what kind of options were available to
10 possibly reduce it.

11 Q. You've been to the LTD property?

12 A. Yes, I have.

13 Q. About how many times?

14 A. Maybe a half dozen times.

15 Q. Have you been inside the facility?

16 A. Yes.

17 Q. So when you first were retained by LTD,
18 there was not a Pollution Control Board
19 complaint?

20 A. I wasn't aware of one, no.

21 Q. And at some point, you became aware that
22 there was a Pollution Control Board complaint?

23 A. That's correct.

24 Q. And during the time you've been working

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1 with LTD on noise issues at its Bannockburn
2 facility, has LTD and its employees and officers
3 cooperated with you?

4 A. Absolutely.

5 Q. Who have you worked with at LTD in terms
6 of touring the property or answering questions?

7 A. Primarily, Jack Voight.

8 Q. Do you know Paul Schomer?

9 A. Yes.

10 Q. Did you have any contact with him
11 regarding this project?

12 A. Yes, we did. Before we did the sound
13 level surveys, Jack Voight, myself, and him had a
14 teleconference to discuss protocol.

15 Q. What does Mr. Schomer do for a living?

16 A. He's a noise consultant down mid-state.

17 Q. And who was he working for?

18 A. I believe he was working for the village
19 of Bannockburn.

20 Q. At some point, did your company have
21 measurements -- Strike that.

22 At some point, did your company make
23 measurements at the LTD site?

24 A. Yes, we did.

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1 Q. And before that, did you have contact with
2 Mr. Schomer as to how the measurements would be
3 performed, what time, et cetera?

4 A. We did.

5 Q. And did you consider some of his
6 suggestions and implement them in your
7 procedures?

8 A. Yes, we did, through our teleconference
9 meeting, which was then later summarized in
10 writing.

11 Q. In your work as a noise control
12 consultant, have you had the opportunity to
13 review the Pollution Control Board noise
14 regulations?

15 A. Yes, I have.

16 Q. Okay. So prior to working with LTD, were
17 you familiar with, for example, Section 901.102
18 regarding sound emitted to class A land during
19 the day and then at night as well?

20 A. Yes.

21 Q. And you were familiar before this project
22 with 901.104, the impulsive sound provisions of
23 the regulations?

24 A. Yes.

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1 Q. Okay. So before this project, did you
2 have a basic understanding that regulations

3 classified land uses?

4 A. Yes.

5 Q. So for this particular project, did you
6 form an opinion as to the proper letter
7 classification for LTD Commodities under the
8 regulations?

9 MR. KAISER: Objection, foundation.

10 HEARING OFFICER KNITTLE: Can you
11 expatiate on that, Mr. Kaiser?

12 MR. KAISER: I mean, I don't have a
13 problem with Mr. Thunder's qualifications to
14 measure noise and to interpret those
15 measurements, but to render an opinion with
16 respect to LTD's classification under the
17 Standard Land Use Coding Manual, I haven't heard
18 anything that would allow the Board to give his
19 opinion any weight.

20 THE WITNESS: Mr. Kolar, do you want to
21 respond?

22 MR. KOLAR: Well, I'm not going to ask him
23 for a number, for the record, a specific number,
24 but yet, I think that I'll show through testimony

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1 he had contact with Mr. Schomer on classification

2 issues. Let me ask him a few more questions.

3 HEARING OFFICER KNITTLE: Yeah. I'd be
4 prepared to rule, but if you want to ask
5 questions.

6 MR. KOLAR: No. I'll take your ruling.

7 HEARING OFFICER KNITTLE: I'm going to
8 overrule the objection and allow him to answer
9 this question. I think he's been qualified.

10 BY MR. KOLAR:

11 Q. I guess the question was, did you form an
12 opinion regarding the proper classification of
13 LTD?

14 A. Yes, I did.

15 Q. And during your work, did you have
16 communications, conversations with Mr. Schomer
17 regarding the proper classification?

18 A. Yes, we did.

19 Q. Let me show you Respondent's Exhibit 40,
20 an April 20, 1997, letter from Mr. Schomer to
21 David Lothspeich.

22 While working for LTD, did you get a
23 copy of that letter?

24 A. Yes.

1 Q. And did you read that letter when you got
2 a copy?

3 A. I looked it over, yes.

4 Q. Did you see in that letter that Mr.
5 Schomer was of the opinion that LTD was a class C
6 use?

7 A. That's correct.

8 Q. At some point after that, did you get a
9 copy --

10 MR. KAISER: Excuse me. Just by way of
11 clarification, that as of the time Schomer wrote
12 the letter on 4-20-97, it was his opinion that
13 LTD was a class C land use.

14 MR. KOLAR: I would stipulate that that
15 was his opinion as of April 20th, 1997.

16 HEARING OFFICER KNITTLE: Okay. Let's
17 move on.

18 MR. KOLAR: The letter speaks for itself
19 in that regard.

20 BY MR. KOLAR:

21 Q. Let me show you Respondent's Exhibit 41, a
22 July 10th, 1997, letter from Mr. Schomer to Jack
23 Voight.

24 Did you see a copy of that letter in

1 or about July 1997?

2 A. That's correct.

3 Q. And did you see the second page that as of
4 July 1997, Mr. Schomer was still of the opinion
5 that LTD was a class C land use?

6 A. I noted that.

7 Q. Okay. So during your -- you told us that
8 you had formed an opinion yourself regarding the
9 classification of LTD, correct?

10 A. Yes.

11 Q. And what's your opinion as to the letter
12 classification?

13 A. When I first met Jack Voight and took a
14 look at the operations and saw the trucks moving
15 in and out with material, I presumed at that
16 point it was a class C operation.

17 Q. And prior to September 1997 when noise
18 measurements were made, did you and Mr. Schomer
19 have any disagreement as to whether LTD was a
20 class C land use?

21 A. No, not at all.

22 Q. You were in concurrence during that time
23 that it was a class C land use?

24 A. Absolutely.

1 Q. And were you still in concurrence that it
2 was a class C land use until you came up with
3 your findings regarding the noise measured in
4 September?

5 A. Yes.

6 Q. And at some point, you reported your
7 numerical findings to LTD and Mr. Schomer?

8 A. That's correct.

9 Q. We'll go into those in a little more
10 detail later, but basically in terms of C to A
11 classification, were you able to demonstrate a
12 numerical violation?

13 A. No, I wasn't.

14 Q. And at some point after that, did you have
15 communications or contact with Mr. Schomer
16 regarding classification?

17 A. I didn't have contact with him at that
18 point, but I had read a letter of his review of
19 the report where he had indicated it was class B.

20 Q. He then changed his position?

21 A. Yes.

22 Q. Let me show you Respondent's Exhibit 92.
23 You have the original in the pile there.

24 The May 8th, 1997, letter, did you

1 prepare that letter?

2 A. Yes, I did.

3 Q. And in the first bullet point, you
4 indicate what regarding classification?

5 A. That the applicable limits are, indeed,
6 those given by IPCB for nighttime sound
7 transmitted from class C to class A land.

8 Q. The first sentence indicates that you had
9 received a letter from Paul Schomer, correct?

10 A. That's correct.

11 Q. As you sit here today, do you recall why
12 you used the word indeed when you said the
13 applicable limits are, indeed, those given by the
14 IPCB for nighttime sound transmitted from class C
15 to class A land?

16 A. I believe it was probably a bulleted item
17 in his letter that I just wanted to show that we
18 were both in agreement that it was class c.

19 Q. Then once Mr. Schomer was taking the
20 position that now it's a class B, did you have
21 any further involvement in terms of that issue?

22 A. Well, it struck me by surprise because Mr.
23 Schomer did not give any rationale for the change
24 of his opinion. He just indicated it was class

1 B.

2 MR. KAISER: Objection. Misstates Dr.
3 Schomer's testimony before the Board, which is
4 before the Board in the form of Schomer's
5 deposition transcript of October 29th, 1999. A
6 full explanation was given for Dr. Schomer's
7 change of opinion.

8 HEARING OFFICER KNITTLE: Mr. Kolar.

9 MR. KOLAR: This is his testimony
10 regarding what transpired. Mr. Schomer has his
11 own testimony.

12 HEARING OFFICER KNITTLE: Overruled.

13 BY MR. KOLAR:

14 Q. Can you finish?

15 A. I received no rationale from anyone. All
16 I saw is that class B appeared in his response
17 letter. At that point then, I advised LTD that
18 they should consult with their land planners and
19 their attorneys to resolve the issue.

20 Q. You were basically out of it then?

21 A. That's correct.

22 Q. As you sit here today, though, do you
23 still believe that it's your opinion that LTD is
24 a class C?

1 A. Yes, I do.

2 Q. At some point, did you complete a report,
3 final report, of the work measurements your
4 company took in the analyzing of that data?

5 A. Yes, we did.

6 Q. I show you Respondent's Exhibit 97. The
7 original is in my pile that I'm going to
8 introduce. Here's a copy. January 8th, 1998,
9 letter from you to Jack Voight.

10 What is this document?

11 A. This is our final report on our noise
12 measurements out at the site that were taken
13 September 23rd, that evening.

14 Q. Roger Harmon, he came and testified, but,
15 just generally, what was his role on this
16 project?

17 A. Roger works as our field engineer. So his
18 responsibility is to go out and conduct the
19 actual fieldwork and obtain the samples of data.

20 Q. And you rely upon Roger to collect the
21 data for you to analyze?

22 A. That's correct.

23 Q. So this Exhibit 97 is your report to LTD
24 of your analysis of the data that Roger

1 collected?

2 A. That's correct.

3 Q. And in terms of noise measurement, this
4 report relates to a particular day?

5 A. That's right.

6 Q. And that would be what day?

7 A. The evening of September 23rd, 1997.

8 Q. Any measurements taken by your company, to
9 your knowledge, of noise during the day at LTD?

10 A. I'm trying to recollect. It's been a
11 couple of years. I believe we had Roger go out
12 in the daytime to make measurements, preliminary
13 measurements, on the residential properties so
14 that we could define our protocol more clearly.

15 Q. In terms of your report, though, it
16 relates to nighttime measurements on September
17 23rd, 1997?

18 A. That's right.

19 Q. And in terms of testifying regarding
20 numerical findings, your testimony would relate
21 to that one particular evening in 1997?

22 A. That's right.

23 Q. Are there other people in the collar

24 county area who do what you do in terms of

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1 measuring noise and then analyzing it?

2 A. In what area?

3 Q. Chicago and the collar counties.

4 A. Yes, there are.

5 Q. Ambient noise, does that mean something to
6 you?

7 A. Yes.

8 Q. Can you define that for us?

9 A. American National Standards Institute
10 defines that as the all-encompassing noise from
11 sources near and distant that are always in the
12 background.

13 Q. So in terms of the use of the phrase
14 ambient noise relative to LTD, what noise are we
15 talking about?

16 A. Well, LTD is what we would call the target
17 noise. The ambient noise is that noise that
18 would exist if LTD operations were ceased.

19 Q. And what ambient noises exist in the LTD
20 complainant area?

21 A. Primarily, it's transportation noise, some
22 distant noise from airplanes, of course, because

23 this is common to this area, but most
24 predominately because of the noise along the

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1 expressway and Route 22.

2 Q. So by the expressway, you would be
3 referring to Tollway 294 to the west of LTD and
4 the complainants?

5 A. That's correct.

6 Q. And Route 22, the state route to the south
7 of LTD?

8 A. That's correct.

9 Q. By definition, if there was noise created
10 by a garbage truck on the Corporate 100 parking
11 lot, would that be ambient noise by definition?

12 A. That would be ambient noise, yes.

13 Q. And if Lakeside Drive is a public road not
14 owned by LTD, noise created on Lakeside Drive,
15 would that be ambient noise?

16 A. That would fall under ambient noise, yes.

17 Q. So in terms of analyzing noise and making
18 noise measurements of LTD operations, what do you
19 have to do regarding ambient noise?

20 A. Well --

21 MR. KAISER: Objection. What do you have

22 to do, the question is vague.

23 HEARING OFFICER KNITTLE: Mr. Kolar, can
24 you clarify the question, please?

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1 BY MR. KOLAR:

2 Q. As a noise professional in analyzing LTD
3 operations, do you attempt to subtract ambient
4 noise?

5 A. That is an ultimate goal, yes, to find out
6 how much the ambient noise contributes to the
7 measurement that you're making. Unfortunately,
8 sound level equipment, unlike the brain, is
9 unable to differentiate sounds.

10 So in order to subtract that out, the
11 target noise must cease for some time. That
12 gives you an opportunity to measure the ambient
13 noise and see how it contributes to your
14 measurement.

15 Q. Ambient noise is real noise that people
16 would hear if they're in the area, correct?

17 A. That's correct.

18 Q. And how did you and your company attempt
19 to measure ambient noise relative to the report
20 of January 8th, 1998, concerning September 23rd,

21 1997?

22 A. Well, our attempt was knowing that the
23 operations were done at 2:00 o'clock in the
24 morning, we simply make a measurement at 2:00

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1 o'clock in the morning when the operations were
2 down, but we were surprised with the results.

3 Q. And what did you find regarding ambient
4 noise on September 23rd, 1997?

5 A. What we thought was ambient noise went up
6 considerably, much higher than the noise that we
7 measured during the one-hour sampling when LTD
8 was in operation.

9 Q. Meaning that the ambient noise was louder
10 on that particular evening than the LTD
11 operations?

12 A. That's correct, at the particular point in
13 time. So we backtracked and consulted with Paul
14 Schomer and decided to estimate the background
15 noise based on a statistical analysis of the time
16 that we measured the noise during the one-hour
17 period.

18 Q. Is this explained in your report --

19 A. Yes.

20 Q. -- Exhibit 97?

21 A. I believe so.

22 Q. In terms of -- Strike that.

23 The ambient noise that you said you
24 found was louder than the operations, where was

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1 that ambient noise coming from?

2 A. Well, with the operation shut down and our
3 field engineer out at the site, he felt that the
4 predominant sound was from the expressway, 294.

5 Q. Page two of your report, Exhibit 97, it
6 says the major background noise observed was
7 vehicle traffic along I-94, a tollway to the
8 west?

9 A. That's correct.

10 Q. So you agreed with Roger's conclusion
11 regarding ambient noise?

12 A. That's correct.

13 Q. So how did you attempt to estimate noise
14 so that you could then accurately measure LTD
15 noise?

16 A. LTD doesn't have a continuously operating
17 noise source such as a fan on a roof or something
18 like that. It's what we would call intermittent

19 noise, a truck coming and going, things that are
20 happening on site, and so we used a statistical
21 analysis where we looked at all the one-second
22 data.

23 In other words, we had data for every
24 second during that whole period, and we looked

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1 for that point where the sound level was exceeded
2 90 percent of the time. Essentially what that
3 means is it would be a minimal average or average
4 minimum sound level.

5 Q. That's an L90 spectrum?

6 A. That's what's called an L90 spectrum.

7 It's an exceedance level. In other words, 90
8 percent of the time the sound level exceeded that
9 numeric value.

10 Q. In terms of the ambient noise actually
11 measured on September 23rd, 1997, did you analyze
12 that in terms whether the ambient noise itself
13 exceeded state octave band limits?

14 A. I didn't specifically look at how it
15 compared, and I don't think I made any references
16 to that.

17 Q. Maybe I misunderstand your report. Page

18 three of your report, if you can take a look.

19 Since the IPCB limits our state in
20 octave bands -- do you see that paragraph?

21 A. Okay.

22 Q. And what's the conclusion you reach there
23 regarding background noise or ambient noise?

24 A. That the background noise as measured

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1 around 3:00 o'clock in the morning after LTD
2 operations had ceased were well above the
3 Illinois Pollution Control Board limits.

4 Q. And that would be looking at C to A
5 tables?

6 A. That's correct.

7 Q. You said in every octave band. What does
8 that mean?

9 The background noise was well above
10 state limits in octave band.

11 Is there something that shows that to
12 us, a chart? You're looking at figure three?

13 MR. KOLAR: Here's the original, if you're
14 interested.

15 HEARING OFFICER KNITTLE: I am interested.

16 MR. KOLAR: Okay.

17 BY MR. KOLAR:

18 Q. What figure are you looking at?

19 A. Well, we're looking at figure three.

20 Q. And explain that figure for us.

21 A. Figure three is a figure that shows what
22 we call octave band spectrum. In other words,
23 the sound is split up into nine different
24 frequency bands. Thirty-two, 63 hertz, which are

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1 on the left, represent the low pitches. Five
2 hundred hertz would be a middle pitch, like a
3 teakettle whistle, and 4,000 hertz would be like
4 a bird sound.

5 So we split the sound up into
6 different frequencies because Illinois is unique
7 in the sense that they limit not the overall
8 sound level, but rather the sound of any of nine
9 specific octave bands. So our work is done in
10 this comparison by taking the measured data and
11 analyzing it into octave band data.

12 Q. And so for reference, the horizontal part
13 of this graph where we have 32, 63, 125, those
14 numbers correspond to the 901.102(a) --

15 A. That's correct.

16 Q. -- octave band center frequency hertz
17 column?
18 A. That's correct.
19 Q. And the vertical column, A-weighted sound
20 levels and dB -- actually, I guess that would be
21 the bar graph part, correct?
22 A. That's the decibel level, correct.
23 Q. That would correspond to another part of
24 the regulation?

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1 A. Yes. So each column here shows the limit
2 for class C to class A radiations. So at --
3 we'll pick one at 500 hertz, for example. In
4 that bar, the nighttime class C to class A limit
5 is not marked on there graphically with what the
6 number is, but it's about 46.
7 Q. Where would it be on 500 -- oh,
8 nighttime. Correct.
9 A. Forty-seven is the actual number shown in
10 the regulation.
11 Q. Okay. So each bar graph we have how many
12 other? Do you know that by heart?
13 A. There's nine total.
14 Q. So those nine bar graphs correspond to the

15 901.102(b) numbers under class C land?

16 A. That's correct.

17 Q. I'm sorry. If you can continue on.

18 A. Well, that shows the limits, and the
19 broken black trace that's at the very top is the
20 ambient noise that we measured from 3:07 to 3:21
21 a.m., which would actually have been on the 24th
22 by then because it was after midnight, and as you
23 can see, most of those bands exceed the state
24 limits right away.

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1 Q. So that would be it exceeds a 500, 1,000,
2 2,000, 4,000, and 8,000 hertz?

3 A. That's correct.

4 Q. That's the background noise?

5 A. That's right.

6 Q. Let me -- let's talk further about the
7 tollway noise.

8 Does wind have any effect on the
9 ability of residents east of the tollway to hear
10 tollway noise?

11 A. It would.

12 Q. In what circumstances would the wind
13 affect their ability to hear the tollway?

14 A. Well, if you're downwind from the noise
15 source, you would expect some increase in sound,
16 but that obviously is going to vary with the
17 wind. So it's going to fluctuate.

18 As the wind kicks up, you can hear
19 the sound a bit better. As the wind calms down,
20 then it decays away.

21 Q. You understand the complainants to be east
22 of the tollway?

23 A. That's correct.

24 Q. So what if the wind is blowing west to

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1 east, how does that affect it?

2 A. It would enhance the sound from the
3 tollway.

4 Q. Which direction was the wind blowing on
5 the date when measurements were being taken?

6 A. I'm not sure.

7 Q. Does your report indicate that?

8 A. It may, but our protocol is generally to
9 make those --

10 MR. KAISER: Objection to what generally
11 is done.

12 BY MR. KOLAR:

13 Q. Let me ask you do you recall which
14 direction the wind was blowing?

15 A. No, I don't.

16 Q. Take a look at page two of your report and
17 see if that refreshes your recollection?

18 A. Okay.

19 Q. Specifically, the second paragraph. Take
20 a look and then let me know when you've looked at
21 it.

22 A. Okay.

23 Q. Have you looked at that paragraph?

24 A. Okay. Yes.

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1 Q. Do you now recall which direction the wind
2 was blowing?

3 A. Five miles per hour from the east.

4 MR. KAISER: Objection. Excuse me. This
5 witness can't recall it. He wasn't there when
6 these measurements were taken. He didn't refresh
7 his recollection.

8 HEARING OFFICER KNITTLE: Mr. Kolar.

9 MR. KOLAR: I guess I'll just -- you don't
10 want his report in? I guess we'll just let Mr.
11 Thunder go and not introduce his report. His

12 report speaks for --

13 MR. KAISER: I don't have a problem with
14 his report going in. I just have a problem with
15 him saying he recalls things that he couldn't
16 even perceive.

17 HEARING OFFICER KNITTLE: I'd sustain
18 that.

19 MR. KOLAR: Okay.

20 BY MR. KOLAR:

21 Q. The note -- you've got a note in your
22 report the wind was blowing from east to west.

23 A. That would have been a report from Roger,
24 our field engineer, which would have found its

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1 way into our report. I'm just recalling not from
2 being there, but recalling what was written in
3 the report.

4 Q. Maybe I should have asked you do you
5 recall what you put in your report regarding
6 wind?

7 A. I do now. Five miles per hour from the
8 east, but that's a low wind. I mean, that's
9 generally not a good idea to make noise
10 measurements in a lot of wind because it has

11 artifacts that it introduces in your measurement.

12 Q. What mile per hour wind would that --

13 Strike that.

14 If the wind gets stronger, does that
15 carry noise more easily?

16 A. Yes, it would.

17 Q. Would wet pavement on the tollway at all
18 affect the level of the ambient noise from the
19 tollway?

20 A. It does somewhat, yes.

21 Q. In what regard?

22 A. Well, the water that's kicked up by the
23 tires creates a bit more high frequency sound,
24 high frequency meaning above 2,000 hertz.

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1 Q. What's a temperature inversion?

2 A. That's where the air above the ground is
3 warmer. It's a meteorological condition that can
4 affect the propagation of sound.

5 Q. And how does that affect the propagation
6 of sound?

7 A. Since sound travels faster in warmer air,
8 it has the propensity to bend or refract sound
9 waves back down as opposed to allowing those

10 sound waves to carry up into the atmosphere. So
11 the bottom line is that it enhances sound sources
12 that are at a distance from the measuring point.

13 Q. In terms of a temperature inversion, would
14 that have more of an impact on noise coming from
15 the tollway to the complainants' property or from
16 the LTD operations to the property?

17 A. It would enhance both. Actually, assuming
18 that the temperature inversion is uniform in that
19 entire area, then it would enhance the
20 propagation of all sources, but it's most notable
21 to sources that are at a distance.

22 In other words, when you're close to
23 a source, within a couple hundred feet or so,
24 you're not going to see much of that effect at

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1 all. On the other hand, when that source may be
2 several hundred feet to even a mile, you can see
3 that change quite readily.

4 Q. Are you familiar with the regulation in
5 exception 901.107(f) regarding vehicles
6 registered for highway use?

7 A. Somewhat.

8 Q. If the Pollution Control Board determined

9 in this case that that regulation was applicable
10 and that there was an exception for vehicles
11 ingressing and egressing the LTD truck staging
12 area, would noise created by those vehicles then
13 be basically ambient in nature under your
14 definition?

15 MR. KAISER: Objection, calls for a legal
16 conclusion, assumes facts not in evidence.

17 HEARING OFFICER KNITTLE: Mr. Kolar.

18 MR. KOLAR: I disagree. I guess it calls
19 for a noise control opinion. I'm asking if
20 that's ambient.

21 HEARING OFFICER KNITTLE: Yeah.

22 Overruled.

23 BY THE WITNESS:

24 A. Trucks that are moving on county and state

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1 highways are not considered property line noise
2 sources. It's considered a property line noise
3 source for movement and operations on that
4 specific property.

5 BY MR. KOLAR:

6 Q. I guess looking at more specifically, if
7 it was determined that that exception applied and

8 you were then hired to measure LTD noise, you
9 would have to account for ambient tollway noise,
10 correct?

11 A. That's correct.

12 Q. You'd have to account for any Corporate
13 100 noise, correct?

14 A. That's correct.

15 Q. And then you would have to account for any
16 noise of trucks ingressing and egressing from
17 Lakeside Drive?

18 A. If you wanted to be technical about it,
19 yes.

20 Q. In your report, were you able to, when you
21 completed your work, form an opinion as to
22 whether LTD was in violation of the numeric
23 regulations for sound from a class C, as in
24 Charles, to a class A land use?

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1 A. Yes.

2 Q. And what was your conclusion?

3 A. I could not demonstrate that the noise
4 during our one-hour sample exceeded the limits
5 that apply to class C to class A nighttime
6 radiation.

7 Q. Now, what's an impulsive noise?

8 A. Any type of sound that occurs very
9 rapidly. By rapidly, we mean over the course of,
10 say, a second. A clap of your hand, for example,
11 would be an impulsive sound. If I took these LTD
12 books and just dropped them onto the carpet, it
13 would make a thud sound. That would be an
14 impulsive sound.

15 Q. Is there a figure in your report that
16 addresses impulsive sounds?

17 A. There are actually two figures on figure
18 one that shows the actual A-weighted overall time
19 trace of the noise during the one-hour sampling
20 period. Our field engineer, who was out at the
21 site the whole time, had noted the exact time in
22 hours, minutes, and seconds that certain
23 prominent events occurred, and so you'll see
24 things like air brake and impacts that are noted

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1 on there.

2 Q. In case someone other than a Pollution
3 Control Board person who knows about noise reads
4 this record, what does A-weighted mean?

5 A. A-weighted is a summation of all the

6 frequencies, all the sound, and then filtered
7 using an A-weighting filter on a sound level
8 meter that mimics the way humans respond to
9 sound. In essence, it attenuates or diminishes
10 low frequency sound because our hearing is not as
11 sensitive in a low frequency area.

12 Q. Figure four, it says north residence
13 property impulse levels, right?

14 A. Correct.

15 Q. Now, is this -- what does one-hour LEQ
16 mean?

17 A. Well, a one-hour LEQ stands for a one-hour
18 equivalent level. Equivalent level is
19 essentially an average level, but it's not an
20 arithmetic average. It's a logarithmic average,
21 and, in essence, it tends to weigh the higher
22 noise levels that occur. Figure four is not an
23 LEQ.

24 Q. Okay.

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1 A. Figure four is just a ten-second elapsed
2 time that shows four individual prominent
3 impulses that were observed over the one-hour
4 sampling period.

5 Q. What's the pink solid line on here?

6 A. Well, the pink line is what I have
7 referenced as the Illinois impulse limit.
8 Actually, that's a daytime limit of 56, I
9 believe.

10 Q. Why don't you take a look at 901.104?

11 A. Yes, 56 decibels. The nighttime limit is
12 46, but as you can see from this graph, without
13 the impulses, the noise was around 46. So I just
14 drew a line to the next higher number, but the
15 most important thing to see is the actual rise
16 and fall of these individual impulses.

17 Q. And when you prepared your report and
18 these figures, what was your understanding
19 regarding how you were to examine impulse noise
20 in terms of the Pollution Control Board
21 regulations?

22 A. Well, there was some confusion about that
23 time because back in 1987 when the change had
24 been made by amending the regulations, it

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1 stipulated the use of LEQ one-hour reference in
2 all measurements, but somehow on the Internet
3 site, it didn't make that reference, and it

4 looked like it had changed back. So we had
5 prepared this based on the Internet site and as I
6 understood it at that time.

7 Q. So when you prepared your report, January
8 8th, 1998, it was your opinion that there were
9 impulse noise violations?

10 A. It would appear that way, yes.

11 Q. But that was based on your reliance on the
12 regulation on the Pollution Control Board
13 Internet site?

14 A. That's correct.

15 Q. And then at some point, what did you find
16 out regarding what the Internet showed for
17 impulsive noise regulations?

18 A. When I was in Springfield for some
19 meetings with some state legislators, I dropped
20 by Greg Zak's office, and I presented this to him
21 and asked him what -- if there had been any
22 changes that had occurred that I was unaware of,
23 and he said no, and I said are you aware that the
24 Internet site is wrong, and he said he would look

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1 into that, but he did indicate that it's not to
2 be viewed as a -- what was formerly written using

3 a sound level meter with fast dynamic
4 characteristics as what's represented on figure
5 four.

6 Q. So then following that in your
7 investigation, you concluded or learned that you
8 were to measure impulse sound in what manner?

9 A. That it's simply the LEQ over a one-hour
10 reference period that does not exceed 46
11 decibels.

12 Q. So then is there any particular figure
13 then in Exhibit 97 that we would look at which
14 would include impulse as well?

15 A. Well, then you just simply go back to
16 figure three which shows the LEQ over that
17 one-hour sample period, and off to the right,
18 you'll see what's noted as in the bottom right
19 A-weighted and linear.

20 Q. Right.

21 A. A-weighted is what the state is referring
22 to, and that A-weighting is 46 decibels.

23 Q. Okay. So what's the significance of the
24 red box with the 46?

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1 A. That would signify that the impulse

2 character of the noise does not exceed the state
3 limits.

4 Q. And then in terms of the red line going
5 from the point on the graph of 32 hertz to 8,000
6 hertz, what does that signify?

7 A. That just pertains to the separation of
8 all the frequencies in the octaves, and that
9 applies to a different section in the rules and
10 regulations.

11 Q. That red line is below the bar graphs at
12 every frequency but 2000?

13 A. That's correct.

14 Q. Did you further investigate the noise at
15 2000 hertz?

16 A. Yes, we did. When that came up, what we
17 had attributed that to possibly was cricket
18 sounds because you're in September and you've got
19 insects, and I was previously aware that insects
20 generate sounds at high frequencies.

21 I just previously testified, for
22 example, that birds generate sounds up around
23 4,000 hertz. Paul Schomer did not attribute it
24 to cricket noise indicating that crickets

1 generate higher frequency sounds. So we went to
2 one of our sound effects CDs, are you aware of
3 those, where they have 100 different sounds like
4 horses, pigs.

5 HEARING OFFICER KNITTLE: Sure.

6 I'm aware.

7 BY MR. KOLAR:

8 Q. So in investigating the 2,000 octave brand
9 frequency, you got some CDs that you have at your
10 office?

11 A. Yes, and I asked Roger, our field
12 engineer, to run those sounds through our
13 analyzer, and it's called an FFT analyzer, which
14 analyzes the specific frequencies, not octave
15 bands, but in a finer resolution, and the one
16 chart that he developed, which was marked
17 crickets, very clearly shows a peak up close to
18 2,000 hertz and another one a little bit beyond
19 4,000 hertz. That's what's called a harmonic
20 peak. It's related -- it's twice what the
21 fundamental peak is.

22 In contrast, I had him analyze bird
23 sounds, and bird sounds peak around 4,000 hertz.
24 So that was fairly definitive to me that crickets

1 had certainly confounded our ability or measure
2 the sound around 2,000 hertz, which was the only
3 band that exceeded the limits.

4 Q. So in terms of 2,000 hertz band, the
5 number 39, that's an A-weighted number?

6 A. No. That's -- I apologize for that. That
7 should just simply read sound pressure level.
8 Sound level in decibels, let's just leave it like
9 that. Thirty-nine decibels is what we measured
10 during that one-hour period in 2,000 hertz band,
11 but that's also where cricket sounds are.

12 Q. As you sit here today, it's your opinion
13 that that 39 level at 2,000 hertz --

14 MR. KAISER: Objection, leading.

15 HEARING OFFICER KNITTLE: Sustained.

16 BY MR. KOLAR:

17 Q. Did you form an opinion as to if that 39
18 level was caused by a noise from LTD?

19 A. My opinion is it's inconclusive. The red
20 line does not show a corrected level. In theory,
21 I'm supposed to take that shaded -- not shaded,
22 I'm sorry, broken line down below, which was our
23 estimate of the background noise, and subtract
24 that from the total one-hour sample to find out

1 what the noise is that LTD generates. That red
2 line shows the total noise.

3 So I would have every right to take
4 that ambient noise and subtract that at 2,000
5 hertz. The problem is is it's within three
6 decibels. The ambient noise is within three
7 decibels of the one-hour sample, and that's
8 generally not considered good acoustical practice
9 to subtract that.

10 If I were to subtract that, it would
11 bring that total level down from 39 down to three
12 decibels or so, more than that.

13 Q. Now, you did an analysis of LTD sound with
14 a B, as in boy, to A analysis, right?

15 A. That's right.

16 Q. And that was because Mr. Schomer said, no,
17 it's a B?

18 A. That's correct.

19 Q. Do you have an opinion whether it's
20 technically practical to eliminate the noise that
21 is the subject of the complainants' Pollution
22 Control Board complaint?

23 A. Well, I think that centers around what the
24 primary source problems are, and from our

1 analysis, it would appear that it would be
2 impact-type of noise that seems to be the biggest
3 problem.

4 Unfortunately, things have been tried
5 like rubber mounts on docks, and things of that
6 sort require a high degree of maintenance.
7 Unless they're taken care of very diligently,
8 they fail. One thing that may work would be
9 administrative changes. Most impulsive type of
10 sound occurs because somebody is not being overly
11 careful in what they're doing, and in the LTD
12 site, you have people that are coming onto the
13 site all the time that are not their employees.
14 So they don't always have direct control over
15 that.

16 Even if you were to issue memos to
17 those trucking companies, it would probably be
18 difficult to get them all to comply with that.
19 So from an administrative standpoint, one thing
20 that would be of some help is to have an employee
21 that's directly in charge of working with these
22 off-site truckers that come in at slowing things
23 down, you know, and not performing activities so
24 quickly that they're dropping things, and that

1 they're very carefully how they lock up onto the
2 trailers and so forth, somebody at LTD that has
3 that specific responsibility during those
4 nighttime hours.

5 Q. So if LTD had an employee stationed at
6 this Y part of the entrance to its staging area
7 and upper parking lot, that would be an
8 administrative control that you would recommend?

9 A. Yes. Not all that unlike a harbor pilot
10 who meets a captain out, you know, on the ocean
11 and takes over control of the ship. Why; because
12 the harbor pilot is completely aware of all the
13 dangers in the harbor and knows how to bring that
14 big ship in without damage.

15 So, in essence, we're talking about
16 an employee who's like a dock pilot who would
17 take over control and would be responsible for
18 ensuring that things are done slowly enough and
19 diligently enough to reduce impact sound.

20 Q. Now, if LTD were ordered to build a noise
21 wall along the south line of the employee parking
22 lot and basically just immediately north of the
23 truck staging area, would that eliminate tollway
24 noise from reaching the complainants' properties?

1 A. No, not at all.

2 Q. And if a noise wall were built in that
3 location, would that block noise from a garbage
4 truck picking up garbage at the Corporate 100
5 garbage facility?

6 A. No, it would not.

7 Q. And would that block noise from trucks
8 exiting LTD to go onto Lakeside Drive or coming
9 down Lakeside Drive to the LTD property?

10 A. No, it would not.

11 MR. KOLAR: I don't have any further
12 questions.

13 HEARING OFFICER KNITTLE: Let's take a
14 five-minutes recess.

15 (Break taken.)

16 HEARING OFFICER KNITTLE: We're finished
17 with the direct examination of Mr. --

18 THE WITNESS: Thunder.

19 HEARING OFFICER KNITTLE: -- Thunder. I
20 should remember that. I wanted to say Harmon for
21 some reason, who is also employed with the
22 company.

23 Mr. Thunder, let me remind you you're

24 still under oath, and we're going to proceed now

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1 with the cross-examination of Mr. Kaiser.

2 CROSS - EXAMINATION

3 by Mr. Kaiser

4 Q. Mr. Thunder, I'd like to show you what's
5 been previously marked for purposes of
6 identification as Complainants' Exhibit 59.
7 It's a list of invoices that Acoustic Associates
8 Limited had prepared and sent to Jack Voight,
9 who's still here in attendance at the hearing
10 this morning care of LTD Commodities, Inc.

11 I'd ask you to take a look at that
12 and tell me if you recognize that?

13 A. Yes, I recognize it.

14 Q. And are those, in fact, true and accurate
15 copies of invoices that you've sent to LTD in
16 connection with this project?

17 A. They appear to be.

18 Q. Do you have any doubt about that?

19 A. Let me look at all of them.

20 Q. Please, take a look.

21 A. They are.

22 Q. And since that time, now these were

23 documents that invoiced LTD through 1-29-98,
24 you've spent considerable more time on this

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1 project, haven't you?
2 A. Since then?
3 Q. Yes.
4 A. Significant time.
5 Q. Yes. I mean, I have invoices from May of
6 '97 through January of '98, but you did
7 additional work throughout 1998, did you not?
8 A. That would be correct.
9 Q. And in 1999 at a minimum, you sat for a
10 deposition in Mr. Kolar's office, correct?
11 A. That's correct.
12 Q. And you had to prepare for that
13 deposition, didn't you?
14 A. That's correct.
15 Q. And you sat through the deposition?
16 A. Well, I sat and answered questions.
17 Q. Yes. Exactly.
18 And as I recall, you told the Board
19 this morning that your rate is now \$195 an hour;
20 is that right?
21 A. That's correct.

22 Q. And as I recall, though, while you sat for
23 the deposition, you were getting paid \$350 an
24 hour; is that right?

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1 A. Only for court testimony.
2 Q. And deposition testimony?
3 A. And deposition. When I'm in a trial
4 situation under testimony, that's correct.
5 Q. Would you consider this a trial situation?
6 A. Yes, I would.
7 Q. So since you began testifying at 9:30 this
8 morning, it's now five after 11:00, you've been
9 charging \$350 an hour, correct?
10 A. That's correct.
11 Q. Do you have any idea how much Acoustic
12 Associates Limited has billed LTD Commodities in
13 connection with this project?
14 A. No, I don't.
15 Q. Have you had any trouble getting your
16 invoices paid by LTD?
17 A. Not that I'm aware of.
18 Q. Now, you testified towards the end of your
19 direct examination that if LTD built a 13-foot
20 high noise barrier along the northern edge of

21 LTD's dock and truck staging area and then if
22 that wall were extended towards Lakeside Drive
23 and to the west to the end of LTD's dock area,
24 that that wall wouldn't reduce noise transmission

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1 from the tollway to the Roti property.

2 That was your testimony, wasn't it?

3 A. That's correct.

4 Q. And that wall wouldn't reduce noise --
5 tollway noise transmission to Paul Rosenstock's
6 property, would it?

7 A. That's correct.

8 Q. And that noise wall wouldn't reduce noise
9 transmission from the tollway to Leslie and Henry
10 Weber's home, would it?

11 A. No, it wouldn't.

12 Q. But the tollway is not a respondent in
13 this action, is it?

14 A. No.

15 Q. And you read Karen Roti's deposition
16 transcript, did you not?

17 A. Sometime ago.

18 Q. Do you recall anywhere in Karen Roti's
19 deposition transcript her complaining about

20 tollway noise waking her up in the middle of the
21 night?

22 A. I don't recall.

23 Q. Do you recall -- did you read Paul
24 Rosenstock's deposition transcript?

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1 A. I looked through that sometime ago too.

2 Q. Do you recall anywhere in Paul
3 Rosenstock's deposition transcript Paul
4 complaining that noise from the tollway was
5 shaking items in his home?

6 A. I don't recall.

7 Q. Did you review Leslie or Henry Weber's
8 deposition transcript?

9 A. I believe so.

10 Q. Do you recall anywhere in either of their
11 deposition transcripts Leslie or Henry Weber
12 complaining that noise from the tollway
13 interfered with their ability to sit quietly in
14 their living room and carry on conversation or
15 read a book?

16 A. No, I don't recall.

17 Q. That's not -- tollway noise is not really
18 the issue here, is it?

19 MR. KOLAR: Objection, argumentative.

20 HEARING OFFICER KNITTLE: Sustained.

21 BY MR. KAISER:

22 Q. And that noise wall, that 13-foot noise
23 wall that would span the north end of LTD's dock
24 staging area, that wouldn't do a thing to reduce

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1 noise from the garbage truck that picks up
2 garbage from Corporate 100, would it?

3 A. That's correct.

4 Q. But a well-constructed, well-designed
5 noise wall, a 13-foot tall noise wall,
6 constructed along the northern edge of LTD's dock
7 staging area, that would reduce noise from LTD's
8 dock area to Karen Roti's home, wouldn't it?

9 A. That's correct.

10 Q. And that well-constructed, well-designed
11 noise wall would reduce noise transmission from
12 LTD's dock area to Paul Rosenstock house,
13 wouldn't it?

14 A. That's correct.

15 Q. And that well-designed and
16 well-constructed noise wall would reduce noise
17 from LTD's dock area to Henry and Leslie Weber's

18 home, would it not?

19 A. Yes.

20 Q. And, in fact, in other cases where you've
21 been hired by complainants, you've recommended
22 that truck dock areas install noise walls to
23 reduce noise transmission to adjacent properties,
24 haven't you?

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1 A. That's correct.

2 Q. That was an opinion you gave to this same
3 Pollution Control Board in the Overland Truck
4 case, wasn't it?

5 A. That's right.

6 Q. You're familiar with the Huff Company,
7 aren't you?

8 A. Correct.

9 Q. You know their reputation within the
10 community of sound and acoustical experts like
11 yourself, don't you?

12 A. Yes. They have a fine reputation.

13 Q. And their reputation is so good that you
14 put them in touch with Jack Voight, didn't you?

15 A. That's correct.

16 Q. And you had the Huff Company or

17 facilitated the Huff Company in providing Jack
18 Voight and LTD with a proposal for the
19 construction of a noise wall along the northern
20 edge of LTD's dock staging area, didn't you?

21 A. That's correct.

22 Q. And you went so far as to calculate the
23 effectiveness of a well-designed
24 and well-constructed noise wall in reducing

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1 transmission of noise from LTD's dock area to the
2 Roti, Weber, and Rosenstock homes, did you not?

3 A. Yes, I did.

4 Q. And you concluded that a well-designed and
5 well-constructed noise wall could substantially
6 reduce noise transmission from LTD's dock area to
7 the Roti, Weber, and Rosenstock homes, did you
8 not?

9 A. Yes, I did.

10 Q. Now, you've looked at some cost estimates
11 for constructing a noise wall along LTD's dock
12 staging area, have you not?

13 A. Yes, I have.

14 Q. And you've seen estimates that a
15 well-constructed and well-designed wall could be

16 built for as little as \$120,000, have you not?
17 A. Not that would work.
18 Q. Not that would work?
19 A. Yes.
20 Q. A wall that would work that would
21 effectively reduce -- and by effective, we're
22 talking about a reduction in noise from LTD's
23 dock area as the source to the Roti property, a
24 reduction of between five and ten decibels, are

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1 we not?
2 A. That would be the ballpark figure, yes.
3 Q. It's a substantial reduction, is it not?
4 A. Well, five dB is what we would consider
5 significant.
6 MR. KOLAR: Substantial calls for a
7 conclusion.
8 MR. KAISER: Well, he's just given us what
9 five dB is.
10 BY MR. KAISER:
11 Q. Is five dB --
12 MR. KOLAR: I object to substantial and
13 ask that it be stricken. It calls for a
14 conclusion.

15 HEARING OFFICER KNITTLE: Mr. Kaiser.

16 MR. KAISER: I withdraw the question.

17 HEARING OFFICER KNITTLE: We'll strike
18 that then.

19 BY MR. KAISER:

20 Q. If a noise wall were able to reduce by ten
21 decibels noise from LTD's dock activities as
22 measured at the Roti -- in the backyard of the
23 Roti home -- which is where you took your
24 measurements in September of 1998, correct?

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1 A. That's correct.

2 Q. If you could reduce LTD's dock noise by
3 ten decibels, would you consider that a
4 significant reduction in noise?

5 MR. KOLAR: Objection, calls for a
6 conclusion.

7 HEARING OFFICER KNITTLE: Mr. Kaiser.

8 MR. KAISER: He's perfectly capable of --
9 in light of his background, particularly his
10 professorship on issues of where he teaches on
11 the subject of noise and its impact on people,
12 human beings.

13 HEARING OFFICER KNITTLE: Mr. Kolar.

14 MR. KOLAR: You're not allowed to ask
15 questions that call for a conclusion like was the
16 area well lit. He asked him what decibel level
17 you would achieve, and that should be the end of
18 the inquiry. You don't get to then ask the
19 argumentative question that you might -- the
20 argumentative statement that you would make in a
21 closing statement typically.

22 HEARING OFFICER KNITTLE: I'm going to
23 overrule. I think the question is designed to
24 illicit some sort of fact.

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1 BY MR. KAISER:

2 Q. Do you recall the question, Mr. Thunder?

3 A. Better read that one back.

4 MR. KAISER: If you could, Madam Court
5 Reporter.

6 (Record read.)

7 BY THE WITNESS:

8 A. If I could, with that barrier, get a ten
9 decibel reduction, which is suspect because of
10 the field conditions there, that would a
11 noticeable change, yes.

12 BY MR. KAISER:

13 Q. Noticeable in that as a rule of thumb if
14 there's a difference in a noise of ten decibels,
15 the human ear perceives that, or if it's ten
16 decibels greater, as twice as loud; isn't that
17 right?

18 A. That's noticeable, yes. That's correct.

19 Q. Now, I want to show you what's previously
20 been marked as Complainants' Exhibit 36.

21 Do you recognize that one-page
22 document?

23 A. Yes, I do.

24 Q. You prepared that, didn't you?

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1 A. That's correct.

2 Q. Those are your barrier calculations, are
3 they not?

4 A. That's correct.

5 Q. You did that in connection with this case,
6 didn't you?

7 A. That's right.

8 Q. This is a true and accurate copy of your
9 barrier calculations, is it not?

10 A. These are calculations for theoretical
11 barrier performance under ideal conditions.

12 Q. And you did that at your office, did you
13 not?

14 A. Yes, I did.

15 Q. Using your computer programs that you have
16 at your office, correct?

17 A. That's correct.

18 Q. And you made certain assumptions about the
19 length of a wall, right?

20 A. Height of the wall.

21 Q. Certainly, the height of the wall, you
22 calculated you looked at a five foot high wall, a
23 nine foot high wall, and a 13-foot high wall, did
24 you not?

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1 A. I'm sorry. I'm having trouble focusing on
2 this.

3 That calculation there was solely for
4 cost estimates. For example, to achieve the
5 necessary height at one point to the east, the
6 wall would only have to be five foot high to
7 achieve that 13 foot distance, but by the time
8 you get to the west end, you have to go to the
9 full 13-foot barrier. Do you see what I mean?

10 Q. Yes, because the eastern part of LTD's

11 truck dock is higher than the western part? The
12 land slopes down --

13 A. Yes.

14 Q. -- from the east to the west?

15 A. It's recessed in that area.

16 Q. That's right.

17 A. There's already somewhat of a barrier
18 produced by the retaining wall that's already
19 there.

20 Q. And that's the wall where we see the
21 semi-tractor trailers back in, that's the wall
22 you're talking about, right?

23 A. That's correct.

24 Q. And I'm referring to -- we're looking at

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1 Respondent's Exhibit 89, the aerial photograph,
2 right?

3 A. Right.

4 Q. And you estimated certain reductions in
5 the specific octave band frequencies referenced
6 in the Illinois Pollution Control Board's
7 regulations, did you not?

8 A. That's correct.

9 Q. And those calculations or estimates of the

10 noise reduction are the bottom line?

11 A. Yes.

12 Q. I want to show you what's previously been
13 marked for purposes of identification as
14 Complainants' Exhibits 31, 32, and 35, which are
15 letters from you to Jack Voight dated May 19th,
16 1998; June 5th, 1998, and September 30th, 1998.

17 I'd ask you to take a look at those,
18 Mr. Thunder, and tell me if those are true
19 and accurate copies of the letters you sent to
20 Mr. Voight on those dates?

21 A. They're true and accurate, although on the
22 September 30th, 1998, letter there's lines that
23 are crossed out, which would not have originated
24 from my office.

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1 Q. And I'd represent to you that that was
2 information that Mr. Kolar redacted before
3 tendering those to me.

4 A. Okay.

5 Q. Thank you.

6 But with the exception of that change
7 on Complainants' Exhibit 35, are those true and
8 accurate copies of the letters you sent Mr.

9 Voight?

10 A. Yes.

11 Q. I'm showing you what's previously been
12 marked for purposes of identification as
13 Complainants' Exhibit 26. It's a letter from
14 David Mitchell to Jack Voight dated March 10th,
15 1998;.

16 Did you see a copy of this letter on
17 or about March 10th, 1998?

18 MR. KOLAR: Is it 36?

19 HEARING OFFICER KNITTLE: Thirty-six is
20 the barrier code.

21 BY MR. KAISER:

22 Q. What is this, 26, I think?

23 A. This is C26.

24 Q. C26. Thank you.

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1 A. Yes, I've seen this.

2 Q. And did you see it on or about probably in
3 the spring of '98, is that fair, shortly after
4 March of '98?

5 A. Yes.

6 Q. Do you know whether LTD had in place a
7 dock pilot or harbor master at the intersection

8 of Lakeside Drive and LTD's north entrance to its
9 dock area during the fall of 1999?

10 A. I wasn't told that there was any such
11 person.

12 Q. Were you ever out there in the fall of
13 1999 to see whether LTD had implemented that
14 recommendation, created the position of dock
15 master or harbor master?

16 A. No.

17 Q. Have you reviewed before today any portion
18 of the transcripts of the hearing back in
19 November of 1999?

20 A. Not the hearing, no.

21 Q. I understood you to testify on direct
22 examination that impact noise is the biggest
23 problem in terms of noise issues which originate
24 from LTD's dock area; is that right?

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1 A. That's how I would assess it, yes, based
2 on the noise study.

3 Q. And in terms of impact noise, one of the
4 impacts is a tractor trailer when it engages with
5 the semi-tractor itself, correct?

6 A. That's correct.

7 Q. There's the slamming of the tractor and
8 the trailer in the engaging of the fifth wheel;
9 is that right?

10 A. That's correct.

11 Q. And that's a loud, impulsive sound, is it
12 not?

13 A. Yes.

14 Q. And another impact noise or impulsive
15 noise is the release of air from the air brakes
16 of the semi-trailer and tractor; is that right?

17 A. That's correct.

18 Q. Banging of doors on the back of an empty
19 trailer, is that an impulsive noise?

20 A. That would be an impulsive noise.

21 Q. The impact of a semi-trailer being backed
22 into the dock staging area and hitting the piers
23 at the north end of the dock staging area, that
24 would be an impact?

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1 A. Yes, it would.

2 Q. And it would be an impact which would
3 generate noise?

4 A. That's correct.

5 Q. Acceleration of trucks up the incline,

6 which leads out of LTD's dock area and onto
7 Lakeside Drive, there would be noise generated as
8 the tractor dragged the trailer up that incline,
9 would it not?

10 A. Yes. That would be an acceleration noise.

11 Q. And the noise which originates at LTD's
12 dock area is not continuous in nature, is it?

13 A. No, it's not.

14 Q. It's periodic, is it not?

15 A. Intermittent.

16 Q. Intermittent.

17 There are moments that there isn't a
18 trailer being jockeyed around or a tractor going
19 up Lakeside Drive or an air brake being released
20 or a tractor and trailer being engaged. If those
21 things aren't going on, it's pretty quiet back
22 there, isn't it?

23 A. Yes.

24 Q. Now, people can grow accustomed to a

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1 steady level of background noise, can they not?

2 A. In some cases, depending on the character
3 of the noise.

4 Q. Well, for instance, in this hearing room

5 right now, there are air vents in this room,
6 aren't there?

7 A. Right.

8 Q. And there's a fan on drawing air through
9 this room even as this hearing is underway, is
10 there not?

11 A. That's correct, but what I mean by
12 character is if that same fan was defective and
13 produced a pure tone, humming sound, that's
14 probably not likely that somebody would get
15 accustomed to.

16 Q. Right. If there were a pure tone or a
17 discrete tone that stood out, that would be very
18 irritating, wouldn't it?

19 A. That's correct.

20 Q. But this fan doesn't have such a discrete
21 tone, does it?

22 A. No.

23 Q. And, typically, noise from the tollway
24 doesn't have that type of discrete tone, does it?

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1 A. No. It's characterized as broadband.

2 Q. Broadband.

3 And that's the type of sound lacking

4 in discrete tones that the human ear and mind and
5 soul can accustom itself to, correct?

6 A. For the most part.

7 Q. I mean, if it's at 110 dBs, even if it's
8 constant, it's going to be loud, right?

9 A. That's correct.

10 Q. But if it's a constant noise at even 55
11 dBs, you could get used to that, couldn't you?

12 A. Well, you could, yeah. I mean, it depends
13 on the individual. I couldn't state that I could
14 get used to it or you could, but if you look a
15 population's statistics, you could say, yeah,
16 there would be a certain percentage of people
17 that would get used to it, but there would be a
18 certain percentage that wouldn't.

19 Q. The sound of air being drawn through the
20 vents in this hearing room this morning, has that
21 interfered with your ability to listen to and
22 comprehend Mr. Kolar's questions?

23 A. No.

24 MR. KOLAR: I object to the analogy

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1 because I can't hear the fan from over here. So
2 I think it's an unfair line of questioning. He's

3 standing underneath the fan over there and we're
4 away from the fan.

5 BY MR. KAISER:

6 Q. Can you hear it from where you're seated,
7 Mr. Thunder?

8 A. What did you say? I'm sorry.

9 I can hear it, but that's because I
10 have calibrated ears. I mean, I go into spaces --

11 Q. I hadn't noticed it until I began
12 questioning you.

13 A. Yeah.

14 HEARING OFFICER KNITTLE: Mr. Kolar, do
15 you still have an objection to this line of
16 testimony?

17 MR. KOLAR: I guess I do because I don't
18 hear it. So, I mean, he's representing or
19 testifying that there's some sort of noise there
20 that is audible.

21 MR. KAISER: Forget it. I'll refrain from
22 a smart alec remark.

23 HEARING OFFICER KNITTLE: We appreciate
24 that, Mr. Kaiser.

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1 BY MR. KAISER:

2 Q. We'll talk about it in another context
3 when we look at the impulse noise measurements.

4 HEARING OFFICER KNITTLE: Right, and I'm
5 going to overrule the objection if, in fact, the
6 witness can understand and be able to refer to
7 what you're talking to him about, and I guess he
8 can hear the fan.

9 BY MR. KAISER:

10 Q. But you can hear it, Mr. Thunder. You can
11 tune in. It's not the dominant noise in the room
12 unless you listen for it, but then it's there,
13 right?

14 A. Well, particularly when you focus
15 somebody's mental tunnel toward that, then the
16 brain will focus on that and hear it. When I
17 first came in the room, I was unaware of it, but
18 now that you've mentioned it, my ears now are
19 attuned to listening for that kind of noise. So
20 yes, I do hear it now.

21 Q. But it's the sort of noise that if we then
22 began discussing other matters and get engaged in
23 looking at the aerial photograph, it's the type
24 of noise that will recede into the background.

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1 Our minds can filter out that noise;
2 isn't that correct?

3 A. Well, to a certain extent, but, obviously,
4 like you said before, if it's loud enough, then
5 no, which is obviously why the Illinois
6 Department of Transportation is building barriers
7 along a lot of new roadways.

8 Q. But my point is that the constant sound of
9 this fan running and drawing air through this
10 room is very different than, for instance, the
11 sound of me slamming my hand on the podium?

12 A. That's correct.

13 Q. And if you were to try to respond to an
14 examination by Mr. Kolar, and I were over here at
15 the podium periodically slamming it without you
16 knowing when the next pound would occur, that
17 might become difficult for you to concentrate,
18 right?

19 A. That's correct.

20 Q. And if you were trying to take a nap with
21 me pounding on the podium, it might make falling
22 asleep a little more difficult, wouldn't it, Mr.
23 Thunder?

24 A. That's how you can wake people up.

1 Q. Impulsive noise can wake people up, can't
2 it?

3 A. If it's loud enough, yes.

4 Q. If it's loud enough.

5 I'd like to take a moment and look at
6 the impulsive noise measurements you obtained on
7 September 24th, 1997. That is Respondent's
8 Exhibit 97.

9 Do you still have that in front of
10 you?

11 A. Yes.

12 Q. And, again, on January 8th, 1998, you
13 issued a final --

14 HEARING OFFICER KNITTLE: Mr. Kaiser. Do
15 you have a copy of this still, Mr. Kolar?

16 MR. KOLAR: Yes.

17 HEARING OFFICER KNITTLE: Okay. Sorry. I
18 was going to give you mine if you didn't. You
19 can go ahead, Mr. Kaiser.

20 BY MR. KAISER:

21 Q. On January 8th, 1998, you issued in final
22 form a report which you had shown Mr. Voight in
23 draft form on several previous occasions; isn't
24 that true?

1 A. I don't know about several, but I prepared
2 a draft and asked for LTD's comments.

3 Q. And the final report then is issued on
4 January 8th, 1998?

5 A. That's correct.

6 Q. And that summarizes the investigations you
7 performed, the noise measurements you performed
8 or your associate, Roger Harmon, performed, on
9 September 24th, 1997; is that right?

10 A. That's correct.

11 Q. And best you understand, Mr. Harmon set up
12 the receiving microphone in Karen Roti's
13 backyard, right?

14 A. That's correct.

15 Q. As I understood it, you took some
16 consideration so that it wasn't too close to the
17 fence line and yet it wasn't too far back from
18 the property line so that you would get a true
19 reading?

20 A. That's correct.

21 Q. But I understand that the microphone was
22 set at a distance of approximately five feet
23 above the ground.

24 Is that what you recall from

1 conversations with Mr. Harmon or looking at field
2 notes?

3 A. Five and a half feet.

4 Q. It wasn't on a boom up at the second floor
5 level of the Roti residence, was it?

6 A. No.

7 Q. And where the microphone receiver is
8 placed affects what sound is registered, correct?

9 A. Yes, it can.

10 Q. And there would be a possibility that
11 sound would be measured differently if instead of
12 the microphone being placed at five and a half
13 feet, it were placed at ten or 12 feet above the
14 ground, correct?

15 A. Possibly a small difference, yes.

16 Q. Now, the impulsive noise measurements are
17 set forth in figure four of Respondent's Exhibit
18 97, correct?

19 A. That's correct.

20 Q. And you told us that the nighttime
21 standards for impulsive noise in the state of
22 Illinois is an A-weighted average of 46 decibels?

23 A. That's correct.

24 Q. And the daytime level in the state of

1 Illinois for impulsive noise is an A-weighted
2 level of 56 decibels; is that right?

3 A. That's correct, with the understanding
4 that it's a one-hour LEQ reference.

5 Q. I understand.

6 Do you know why Pollution Control
7 Board regulations distinguish between and have
8 two sets of standards, one for daytime and one
9 for nighttime?

10 A. Well, yes.

11 Q. Why is that?

12 A. Nighttime periods are more sensitive
13 periods.

14 Q. And why do people experience nighttime as
15 a more sensitive period?

16 A. Because it's a time generally considered
17 for relaxation, comfort, and sleeping.

18 Q. And you've studied this issue, have you
19 not?

20 A. Have I studied the effects of noise on
21 sleep?

22 Q. Yes.

23 A. No.

24 Q. Not on sleep, but the need -- the

1 physiological need for people at the end of the
2 day to be able to slow their system down for
3 purposes of rest and regeneration?

4 A. Correct.

5 Q. That's a physiological need in all human
6 beings, is it not?

7 A. Yes, it is.

8 Q. And the Pollution Control Board has
9 recognized that by making more stringent
10 nighttime noise standards; is that true?

11 A. That's correct.

12 Q. Now, impulse noise is by definition noise
13 which rises quickly up out of the background and
14 then recedes into the ambient sound?

15 A. Yes, sir.

16 MR. KOLAR: Objection, vague. He's
17 indicating on the aerial map as if the noise was
18 going to go up towards -- up to the north, I
19 think, as opposed to some sort of a measurement
20 increase.

21 BY MR. KAISER:

22 Q. Well, what I'm trying to do -- I mean,
23 it's illustrated very vividly on figure four. I
24 mean, you have the background ambient noise, and

1 then you have a peak rising up out of it and
2 quickly falling back down to the ambient level.

3 Isn't that what we see in figure
4 four?

5 A. That's correct.

6 Q. And with this first line, this dotted line
7 which I believe records, and you'll confirm for
8 me, records measurements taken at 1:58:30 a.m. on
9 9-24-97, that appears to be ambient background
10 about 48 dBs, and then it spikes up to
11 approximately 61 dBs before falling back to an
12 ambient level of 47, 48; is that right?

13 A. That's correct.

14 Q. So that's a spike of 14 dBs?

15 A. That's right.

16 Q. And that's perceived by the human ear as
17 more than a doubling of the sound level in that
18 moment?

19 A. At that point in time, yes.

20 Q. At that point in time?

21 A. Right.

22 Q. And that impulsive noise, that sudden
23 burst, and it's really of energy, isn't it?

24 A. Yes.

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1 Q. Where the sound waves become more intense,
2 they're amplified, right?

3 A. That's correct.

4 Q. And we measure that as a change of
5 pressure in the eardrum, correct?

6 A. That's correct.

7 Q. And in that moment when it spikes up 14
8 decibels, that's something human beings perceive,
9 isn't it?

10 A. Yes, they would.

11 Q. And that spiking of the sound might even
12 startle a person, wouldn't it?

13 A. Depending on what mental state they are
14 in, it's possible, yes.

15 Q. Well, if one were sitting in their
16 favorite chair in their living room reading a
17 novel and then there were a sudden explosion of
18 sound energy, that could cause the person to look
19 up from their book, couldn't it?

20 A. Yes. They might not be startled until the
21 level gets maybe to 20 or 30 dBs above the
22 background, but they would be aware of it.

23 Q. They would certainly perceive --
24 A. And they would perceive.

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1 Q. -- a 14-decibel increase, wouldn't they?
2 A. That's correct.
3 Q. If a small -- if one of Karen Roti's
4 children was on the verge of sleep in the
5 second-story bedroom and there were a burst of
6 energy as an air brake released air in LTD's
7 north dock area, that could be perceived in the
8 Roti home, couldn't it?

9 A. Yes.

10 MR. KOLAR: Objection, foundation, whether
11 he's been in that bedroom.

12 HEARING OFFICER KNITTLE: Sustained.

13 BY MR. KAISER:

14 Q. You've read Karen Roti's deposition
15 transcript, have you not?

16 A. I looked it over sometime ago.

17 MR. KOLAR: I'd ask that his answer be
18 stricken to that question that you sustained my
19 objection on.

20 MR. KAISER: I have no objection.

21 HEARING OFFICER KNITTLE: Pardon me, Mr. Kaiser?

22 MR. KAISER: I have no objection to it
23 being stricken.

24 HEARING OFFICER KNITTLE: That's granted.

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1 BY MR. KAISER:

2 Q. You've read Karen Roti's deposition
3 transcript?

4 A. Yes.

5 Q. You've read Paul Rosenstock's deposition
6 transcript?

7 A. Yes.

8 Q. You've read Leslie and Henry Weber's
9 deposition transcripts?

10 A. Correct.

11 Q. You've --

12 MR. KOLAR: Objection, asked and
13 answered.

14 BY MR. KAISER:

15 Q. You've looked at letters Karen Roti has
16 sent to LTD --

17 HEARING OFFICER KNITTLE: Overruled.

18 BY MR. KAISER:

19 Q. You've looked at letters Karen Roti sent
20 to LTD and to the village of Bannockburn

21 complaining about noise from LTD's dock area,
22 have you not?

23 A. I'm not sure if it was Karen Roti, but I
24 think I know the letter you're referring to.

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1 Q. And you understand that these three
2 families are alleging in this complaint that
3 noise from LTD's dock area substantially and
4 unreasonably interferes with their use and
5 enjoyment of their properties.

6 Do you understand that what's at
7 issue in this case?

8 A. That's what I would understand, yes.

9 Q. That's what Jack Voight told you, isn't
10 it?

11 A. Well, that was the reason I was brought in
12 to assess the situation was because of the
13 complaint letters.

14 Q. Now, you recall giving testimony under
15 oath in the Charter Hall/Overland Truck case, do
16 you not?

17 A. Yes, I do.

18 Q. And you recall attorney Bill Forcade
19 directing your examination in that case, correct?

20 A. Correct.
21 Q. You recall there were a series of
22 questions where you were asked whether impulsive
23 noise could interfere with a person's use of
24 their patio for purposes of entertainment.

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1 Do you recall that question?
2 A. That's correct.
3 Q. And it was your testimony in the Overland
4 case that impulsive noise with spikes of 14
5 decibels could interfere with people entertaining
6 on their deck?
7 MR. KOLAR: Objection, foundation, because
8 we don't know the specific facts in Overland Park
9 compared to this particular case.
10 MR. KAISER: Well, we know the 14 decibel
11 impulsive noise spike.
12 HEARING OFFICER KNITTLE: I'll --
13 MR. KOLAR: Can I -- I'm sorry.
14 HEARING OFFICER KNITTLE: Go ahead.
15 MR. KOLAR: And, actually, relevance as
16 well. What he testified to there is not relevant
17 except for --
18 HEARING OFFICER KNITTLE: Yeah. I'm going

19 to sustain the objection on the foundation
20 basis. Mainly, Mr. Kaiser, we don't -- at least
21 I don't, off the top of my head, even though I
22 think I was hearing officer for that case, recall
23 the, you know, situation involved in the case
24 you're referring to, and I don't know if it

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1 applies here.

2 BY MR. KAISER:

3 Q. You, as part of your preparation for your
4 assignment in this case, gathered information so
5 that you understood what was the nature of the
6 Roti's, Weber's, and Rosenstock's complaint,
7 right?

8 A. That's correct.

9 Q. And you, on September 24th, 1997, obtained
10 sound measurements, didn't you?

11 A. Correct.

12 Q. I'm going to come back to that point,
13 Mr. Thunder.

14 A. All right.

15 MR. KOLAR: Is there a question pending?

16 HEARING OFFICER KNITTLE: Not at the
17 moment.

18 BY MR. KAISER:

19 Q. I want to show you what's previously been
20 marked as Complainants' Exhibit 18. It's a fax
21 transmission from you to Mr. Voight dated
22 December 23rd, 1997.

23 Does that appear to be the second
24 draft of what was eventually issued as your

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1 report on January 8th, 1998?

2 A. Yes.

3 Q. I want to show you what's been marked for
4 purposes of identification as Complainants'
5 Exhibit 14, a document from you to Jack Voight
6 dated November 14th, 1997.

7 Is this a true and accurate copy of a
8 memorandum you provided to Jack Voight on or
9 about November 14th, 1997?

10 A. Yes.

11 Q. And I note that the first paragraph reads
12 as follows: Since your attorney indicated your
13 land was commercially zoned, I reanalyzed the
14 data to evaluate the impact of using the state's
15 regulation for noise radiated from class B land.
16 As seen in figure 3(A), LTD would appear to

17 violate the limits in the three bands from 1,000
18 hertz to 4,000 hertz.

19 This type of noise tends to be
20 related to air brakes and impulses. Since the
21 noise around 2,000 hertz is related to nighttime
22 insect noise, our findings in this band are
23 inconclusive.

24 Was that, in fact, your opinion as of

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1 November 14th, 1997?

2 A. Well, I wrote it.

3 Q. And you stand by it?

4 A. I would stand by it.

5 MR. KOLAR: Relative to B to A?

6 MR. KAISER: Yes.

7 BY MR. KAISER:

8 Q. Now, that 1,000 hertz to 4,000 hertz band,
9 which is noise that is tended to be related to
10 air brakes and impulses, that's where you would
11 expect to measure within the 1,000 to 4,000
12 hertz? That's where you would measure noise from
13 air bakes or that's where air brake noise would
14 register in a noise measurement?

15 A. Yes. Those kinds of sources generally

16 produce higher frequency sounds.

17 Q. And those higher frequency sounds are
18 exactly the type or the frequencies in which --
19 to which the human ear is most attuned; isn't
20 that true?

21 A. Yes, which is why the state has more
22 severe limitations in the high frequencies.

23 Q. Conversation occurs within the thousand to
24 4,000 hertz bands typically, does it not?

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1 A. It's 500 to 4,000 hertz.

2 Q. And I note in the second full paragraph,
3 it says I'm working on another trucking facility
4 project. In this project, the attorney is
5 classifying the land as class B, although he's
6 working for the residents. As in our previous
7 conversation, it's important to have your
8 attorney review the land classification system I
9 sent you to see if class C zoning would apply.

10 Does that indicate that at least as
11 of November 14th, 1997, you viewed it as an issue
12 open to dispute whether LTD is properly
13 classified as a class B or class C land use under
14 the Standard Land Use Coding Manual?

15 A. It signifies that at that point in time I
16 was instructed to compare it with a class B
17 because the attorney at that time that reviewed
18 it viewed it as a class B property. So I
19 readjusted my analysis.

20 Q. And if it were viewed as a class B
21 property, there might be exceedances in the 1,000
22 to 4,000 hertz range?

23 A. That's correct.

24 Q. I'm showing you Complainants' Exhibit 13,

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1 a memorandum from you to Jack Voight dated
2 November 2nd, 1997.

3 Is that a true and accurate copy of
4 the memorandum draft noise study you sent Mr.
5 Voight in early November 1997?

6 A. That's true.

7 MR. KOLAR: I'm sorry. I wasn't paying
8 attention. What exhibit is that?

9 HEARING OFFICER KNITTLE: Thirteen.

10 MR. KOLAR: I was paying attention, but I
11 was writing something.

12 BY MR. KAISER:

13 Q. I want to show you what's been marked for

14 purposes of identification as Complainants'
15 Exhibit 6. It's a facsimile transmission from
16 you to John Scheimel at LTD Commodities dated
17 January 31st, 1997.

18 Is this, in fact, a true and accurate
19 copy of the documents you sent to LTD at that
20 time?

21 A. Yes.

22 Q. And I note that within that group of
23 documents, which comprise Complainants' Exhibit
24 6, you have a one-page document entitled

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1 environmental noise.

2 Is that something that you prepared?

3 A. Yes.

4 Q. And that was prepared on the basis of your
5 experience in the field and educational
6 background and study?

7 A. That's correct.

8 Q. And that was your statement and expression
9 of your opinions with respect to environmental
10 noise as of January 31st, 1997?

11 A. Yes. It's a promotional piece that we
12 send to prospective clients so they have a better

13 understanding of issues of environmental noise
14 and how the assessment is approached.

15 Q. And, for instance, in paragraph three, you
16 state there are physiological effects as well.
17 Noise is viewed as a stressing agent. As in any
18 stress-provoking situation, when repeated on a
19 regular basis, changes in blood chemistry and
20 cardiovascular function can occur. Many experts
21 believe that this leads to a susceptibility to
22 illness.

23 That was a paragraph you included --

24 A. That's correct.

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1 Q. -- in the environmental noise document?

2 A. That's correct.

3 Q. And you believed at the time you sent that
4 to Mr. Voight that these were true statements,
5 did you not?

6 A. That's correct.

7 Q. I want to show you what's previously been
8 marked for purposes of identification as
9 Complainants' Exhibit 20. It's a letter from
10 Paul Schomer to David Lothspeich dated January
11 26th, 1998.

12 I ask you if you've seen that letter
13 before?

14 A. I've seen this, yes.

15 Q. And that's essentially Paul Schomer's
16 response to or analysis of your report dated
17 January 8th, 1998, is it not?

18 A. That's correct.

19 Q. And this is where Dr. Schomer changed his
20 opinion and concluded that LTD was most
21 appropriately classified as a class B land use,
22 isn't it?

23 A. That's the first time I was aware of that
24 change, yes.

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1 Q. And Dr. Schomer wrote in the second
2 paragraph, the activity of LTD Commodities can be
3 described as, quote, retail trade, general
4 merchandise, mail-order houses, retail, close
5 quote, which is a standard system for identifying
6 and coding land use activity SLUCM code or
7 similar, which is classified as a class B land
8 use by IPCB.

9 You understood that as of January
10 26th, 1998, Dr. Schomer thought that LTD was best

11 described as retail trade general merchandise,
12 did you not?

13 A. I understood that was his opinion, not
14 mine.

15 Q. You still felt LTD was a trucking
16 facility?

17 A. It's not a retail operation. People don't
18 go to buy things there. They don't go to shop
19 there. That's the commercial use.

20 MR. KOLAR: Just for the record, C20 has
21 handwritten notes on it, and I think we had
22 clarified it once before. I don't think Mr.
23 Schomer sent it to David Lothspeich with
24 handwritten notes all over it.

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1 MR. KAISER: No. Those may very well be
2 Mr. Lothspeich's notes. I think my C20 has fewer
3 notes than yours.

4 MR. KOLAR: On the last page?

5 MR. KAISER: Yeah. I don't have that
6 notation.

7 MR. KOLAR: As long as the original has no
8 notes, I won't have a problem.

9 BY MR. KAISER:

10 Q. Now, when was it you -- you described a
11 first visit to the facility where Mr. Voight
12 walked you around LTD's Bannockburn facility.

13 Do you recall that testimony?

14 A. Yes.

15 Q. And you recalled seeing trucks coming in
16 and out and merchandise being handled, and as I
17 understood during that first meeting, site
18 investigation with Mr. Voight, you concluded that
19 under the Standard Land Use Coding Manual system,
20 LTD's Bannockburn facility was best described as
21 a class C land use; is that right?

22 A. Absolutely.

23 Q. Absolutely by that first visit that's what
24 you felt, right?

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1 A. That was my first impression, yes.

2 Q. Now, did you -- at the time you formed
3 that opinion, had you seen LTD's catalogues?

4 A. I was aware of them. We get them at our
5 office. I know that it's a mail-order operation.

6 Q. Do you know what percentage -- did you
7 know -- now, this first visit with Mr. Voight, I
8 take it this was in January or February of '97.

9 Would that be fair?

10 A. That would be correct.

11 Q. In January or February of '97, did you
12 know what percentage of LTD's gross revenues were
13 obtained as a result of contracts for crating and
14 packaging of goods?

15 A. I had no idea.

16 Q. In January or February of 1997, did you
17 know what percentage of LTD's gross revenues were
18 obtained as a result of contracts for
19 crate-forwarding services?

20 A. Not at all.

21 Q. In January or February of 1997, did you
22 know whether LTD owned the trucks that delivered
23 merchandise to its Bannockburn facility and took
24 product away from its Bannockburn facility?

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1 A. In January of '97?

2 Q. January or February of '97.

3 A. I later became aware that they were not
4 LTD-owned trucks, but at that point in time, I
5 was not aware.

6 Q. Because part of your testimony today was,
7 well, it's difficult for LTD to control noise at

8 its dock areas through administrative protocols
9 because they've got all these private truckers
10 coming in and out.

11 Wasn't that, in essence, your
12 testimony?

13 A. That's correct.

14 Q. But back in January and February of '97,
15 you didn't know whether LTD owned the trucks that
16 were coming in and out?

17 A. That's correct.

18 Q. Did you go inside LTD's Bannockburn
19 facility when Mr. Voight gave you the
20 opportunity?

21 A. I didn't get a full tour. I went inside
22 it, but only mostly around the dock area.

23 Q. Did you see thousands of brown cardboard
24 boxes stacked on shelves throughout LTD's

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1 Bannockburn facility when you were in there with
2 Mr. Voight in the winter of 1997?

3 HEARING OFFICER KNITTLE: Let's let the
4 record reflect that Mr. Kaiser is holding up LTD
5 Exhibit 100.

6 BY THE WITNESS:

7 A. Are you asking if I'd seen that size box?
8 BY MR. KAISER:
9 Q. Yes.
10 A. You know, I don't recall. That was over a
11 couple years ago. I just recall that there were
12 operations where people were assembling, packing,
13 crating, and stacking, and shipping off on the
14 trucks.
15 Q. Were they doing that packing, crating,
16 shipping, stacking on behalf of parties other
17 than LTD?
18 A. I don't know.
19 Q. And you didn't know when you observed that
20 activity, did you?
21 A. No.
22 MR. KOLAR: Are you done?
23 MR. KAISER: No.
24 HEARING OFFICER KNITTLE: Go off for a

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1 second.

2 (Discussion had
3 off the record.)

4 BY MR. KAISER:

5 Q. Now, I'd like to put back in front of you

6 or have you look at your own figure four on
7 Respondent's Exhibit 97, and you're looking at
8 the impulsive sound measurements that you have
9 there, right?
10 A. Correct.
11 Q. And assuming those sound measurements,
12 being the ones that your associate, Mr. Harmon,
13 obtained on 9-24-97, assuming those sound
14 measurements to be true and the sound
15 differentials to be accurate, and excluding from
16 that any opinions or conclusions of others
17 expressed at hearing today, do you, Mr. Thunder,
18 have an opinion based on a reasonable degree of
19 scientific certainty, whether a noise intensity
20 or a noise intensity increase of that level,
21 meaning those levels shown in figure four, would
22 unreasonably interfere with any of the following
23 activities; falling asleep, being awakened from
24 sleep, normal conversation in a quiet room,

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1 entertaining guests on a patio, or watching
2 television?
3 MR. KOLAR: Objection, foundation. During
4 the question, he said something about opinions of

5 others.

6 MR. KAISER: Yes. Excluding any opinions
7 or conclusions of others expressed at hearing and
8 relying solely on your own knowledge of noise,
9 noise measurements, and human response to noise.

10 HEARING OFFICER KNITTLE: Mr. Kolar, do
11 you still have an objection?

12 MR. KOLAR: No.

13 HEARING OFFICER KNITTLE: You can answer
14 the question, Mr. Thunder.

15 BY THE WITNESS:

16 A. Impulse levels that rise 12 dB above the
17 ambient have the potential to cause
18 interference.

19 BY MR. KAISER:

20 Q. With falling asleep?

21 A. Correct.

22 Q. Could such impulse noise, as shown on
23 figure four, cause a person to be awakened from
24 sleep?

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1 A. It could.

2 Q. Could such impulse levels, as shown on
3 figure four, unreasonably interfere with normal

4 conversation in a quiet room?

5 A. To a much lesser degree because it is
6 impulsive; whereas, conversation is more
7 long-term.

8 In other words, if the impulses were
9 frequent, the answer would be yes. If it was
10 just one impulse in a five-minute conversation,
11 it wouldn't affect it.

12 Q. That's a good point because when you
13 measured the sound on -- when Roger Harmon
14 measured the sound on September 24th, 1997 --
15 well, you personally don't know how many trucks
16 were going in and out of LTD's dock area that
17 evening, do you?

18 A. No.

19 Q. And you recall some discussion in letters
20 with Paul Schomer as to whether if there were
21 three noise events during the measurement period
22 or ten noise events during the measurement
23 period, that that would affect the A-weighted
24 average for impulsive sound, right?

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1 A. If there are more events, yes.

2 Q. And that is just as you described, if

3 there is only one impulsive event during a
4 one-minute period, that's not particularly
5 disruptive?

6 A. Correct.

7 Q. But if there were ten impulsive noises
8 during that one-minute period, it would be more
9 disruptive, correct?

10 A. That's why the state has us do a one-hour
11 average. It assesses the number of events that
12 occur in a time frame.

13 Q. All right. And if you increase the
14 activity and the number of noise impulses, you
15 would increase that A-weighted average?

16 A. That's correct.

17 Q. Now, impulsive noise of the sort that is
18 recorded on figure four on Respondent's Exhibit
19 97, if impulsive noise, as shown on figure four,
20 did not actually awaken the person from sleep,
21 could it, in your expert opinion, cause the
22 person to rise to a lighter -- from a deep level
23 of sleep to a lighter level of sleep?

24 A. That's my understanding, but I'm not a

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1 physiologist, a biophysiologicalist. I haven't done

2 research in that area, but it's plausible.

3 Q. But from your review of the literature,
4 that's your understanding, is it not?

5 A. Yes.

6 Q. And that that lighter level of sleep is
7 not as restorative -- well, you need both deep
8 sleep and light sleep to get the full benefits of
9 a good night's sleep, right?

10 MR. KOLAR: Objection, foundation. I
11 think he's going beyond -- he just indicated
12 that's not his area, and now he's going into more
13 detail.

14 HEARING OFFICER KNITTLE: I'll sustain
15 that.

16 MR. KAISER: Let's see. I think Mr.
17 Thunder was more willing to opine on this subject
18 during his deposition.

19 MR. KOLAR: That doesn't make it something
20 that's admissible here at the hearing just
21 because I didn't object at the deposition.

22 BY MR. KAISER:

23 Q. But it's your understanding from reviewing
24 the literature, Mr. Thunder, that impulsive

1 noise, that even if it didn't awaken you, it
2 could raise you to a lighter level of slumber?

3 MR. KOLAR: Objection, asked and answered.

4 HEARING OFFICER KNITTLE: Sustained.

5 MR. KAISER: I have no further questions.

6 HEARING OFFICER KNITTLE: Mr. Kolar,
7 redirect?

8 THE WITNESS: Could I take a one-minute
9 break, potty break, and I'll be right back?

10 HEARING OFFICER KNITTLE: Yeah. Let's
11 make it a two-and-a-half-minute recess.

12 (Break taken.)

13 HEARING OFFICER KNITTLE: Mr. Kolar.

14 MR. KOLAR: Thank you.

15 R E D I R E C T E X A M I N A T I O N
16 by Mr. Kolar

17 Q. Mr. Thunder, your invoices, Complainants'
18 Exhibit 59, Respondent's Exhibit 4, the Pollution
19 Control Board complaint, do you see on there it's
20 signed by Karen Roti July 18th, 1998?

21 A. Yes, I see that.

22 Q. Your first invoice is dated May 31st,
23 1997?

24 A. That's correct.

1 Q. So for over a year before a complaint was
2 on file, you were working with LTD based solely
3 on complaints from the neighbors about noise?

4 A. That's correct.

5 Q. And when you sat for your deposition and
6 charged LTD for that, Mr. Kaiser was asking you
7 all the questions during your deposition, right?

8 A. Oh, yes.

9 Q. You and I were just there -- I was just
10 there sitting there as your attorney, correct?

11 A. That's correct.

12 Q. Do you know, as you sit here today, if
13 Christopher Weber wakes up because of noise
14 allegedly coming from LTD?

15 A. No.

16 Q. Now, a person in your profession, can you
17 guarantee LTD that if a noise wall was put up, as
18 the complainants propose, that nobody else in the
19 future who owns the complainants' properties
20 would complain about noise?

21 MR. KAISER: Objection, relevance.

22 HEARING OFFICER KNITTLE: Mr. Kolar.

23 MR. KOLAR: Well, section 33(C) factors
24 talk about technical practicality of eliminating

1 and reducing noise. I think it's a relevant
2 question for that area.

3 Mr. Kaiser asked all kinds of
4 questions about performance you would receive
5 from a wall.

6 HEARING OFFICER KNITTLE: Overruled.

7 BY THE WITNESS:

8 A. Restate the question.

9 HEARING OFFICER KNITTLE: Do you want her
10 to read it back?

11 MR. KOLAR: Yes. Could you read it back,
12 please?

13 (Record read.)

14 BY THE WITNESS:

15 A. I couldn't guarantee it, certainly not if
16 it was the lower expensive wall because of field
17 conditions that exist there with reflections,
18 reverberations in the large trees that tend to
19 direct sound back down toward the neighbors.

20 Those are conditions that are above
21 and beyond the idealized performance of a
22 barrier. So even though I did barrier
23 calculations, again, that's for an idealized
24 barrier without those constraints. In the real

1 world, I would expect to get something somewhat
2 to significantly less than that based on those
3 real world situations.

4 BY MR. KOLAR:

5 Q. And if it's determined that LTD is not in
6 violation of numerical violations, then it's
7 not -- you can understand Mr. Hara's business
8 decision not wanting to put up a \$300,000 wall?

9 MR. KAISER: Objection. That's a fine
10 closing argument, but not a question that this
11 witness is qualified to answer.

12 HEARING OFFICER KNITTLE: Sustained.

13 MR. KOLAR: I appreciate the fine comment
14 there.

15 BY MR. KOLAR:

16 Q. Have you ever driven from approximately
17 the Bannockburn area south on the tollway all the
18 way down to I-55?

19 A. I'm sure I have.

20 Q. Are there barrier walls along the tollway
21 starting in the Deerfield area intermittently
22 down to Hinsdale?

23 A. Yes, there are.

24 Q. And those, I understand, they've been

1 constructed by the tollway?

2 A. I understand that, yes.

3 Q. And why do we have those walls along the
4 tollway?

5 A. Well, IDOT has specific noise criteria for
6 which they will fund barrier walls to reduce the
7 sound to neighboring residents. If the levels
8 exceed that criteria, then they will release
9 funds to build those walls.

10 Q. Have you seen noise walls constructed in
11 the last year, year and a half, in the area where
12 the Deerfield toll plaza used to be located?

13 A. I don't recall actually seeing that. I'm
14 aware that that's happened.

15 Q. You've seen more and more noise walls
16 constructed along the tollway in the last ten
17 years?

18 A. Oh, absolutely.

19 Q. Because people along the tollway complain
20 about the noise from the tollway?

21 MR. KAISER: Objection, foundation.

22 HEARING OFFICER KNITTLE: Sustained.

23 BY MR. KOLAR:

24 Q. The noise walls along the tollway, would

1 that indicate to you that at least in some areas
2 residents cannot get used to the tollway noise as
3 Mr. Kaiser indicated?

4 MR. KAISER: Objection, foundation. What
5 areas? What residents?

6 HEARING OFFICER KNITTLE: Mr. Kolar.

7 MR. KOLAR: Between Deerfield and
8 Hinsdale.

9 HEARING OFFICER KNITTLE: I'm going to
10 allow that question. Overruled.

11 BY THE WITNESS:

12 A. Well, that's the very nature for putting
13 up the walls is to satisfy the concerns of
14 neighbors because of excessive noise. So IDOT
15 has set a criterion, an objective criterion, to
16 use as a mark to determine whether funds should
17 be released for such purposes.

18 BY MR. KOLAR:

19 Q. Complainants' Exhibit 36, your barrier
20 calculations, this relates to Pollution Control
21 Board regulations class B to class A, correct?

22 A. That's correct.

23 Q. You did this because Paul Schomer had

24 changed his position and said no, it's a class B

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1 land use?

2 MR. KAISER: Objection, leading.

3 HEARING OFFICER KNITTLE: Sustained.

4 BY MR. KOLAR:

5 Q. Why did you do, on your barrier
6 calculations, Complainants' Exhibit 36, a B to A
7 analysis?

8 A. Because the new concern was that this
9 might be a class B or was a class B operation,
10 and my goal was to determine what form of
11 mitigation would be needed to reduce it to within
12 class B limits.

13 Q. Complainants' Exhibit 14, this November
14 14th, 1997, memo from you to Jack Voight, you saw
15 that?

16 A. Yes.

17 Q. Mr. Kaiser questioned you about this,
18 right?

19 A. That's correct.

20 Q. And he read the first and second
21 paragraphs basically, correct?

22 A. Yes.

23 Q. Now, as a layman and I guess as a noise
24 professional, do you understand that

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1 municipalities, such as Bannockburn, Lake Forest,
2 have zoning ordinances?

3 A. Yes.

4 Q. Where they will actually give a
5 designation, a zoning classification, for land
6 within their municipal boundaries, correct?

7 A. That's correct.

8 Q. Have you seen zoning maps before as well?

9 A. Yes, I have.

10 Q. And the map would indicate the particular
11 zoning for a piece of property, right?

12 A. That's correct.

13 Q. Now, on this Exhibit 14, the first part of
14 the first paragraph says, since your attorney
15 indicated your land was commercially zoned.

16 Those are your words, right?

17 A. Yes.

18 Q. Were you a party to any communications
19 between Jack Voight and LTD's attorney which
20 preceded this November 14th memo of yours?

21 A. It's been a while ago. I'm not certain.

22 I may have just heard that from Jack.

23 Q. As you sit here today, do you know if Jack

24 Voight or someone from LTD said to their

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1 attorney, what is the zoning of our land or if

2 they said to their attorney what is the

3 classification of our land under the Pollution

4 Control Board regulations?

5 Do you know exactly how the

6 conversation went?

7 A. That may differ.

8 Q. You would agree there's a difference

9 there?

10 A. Yes.

11 Q. Okay. You don't know if Jack Voight or

12 the person from LTD said to their attorney, what

13 is the zoning of our land or what is the

14 classification of our land under the regulations;

15 is that accurate?

16 A. I'm not aware of what the exact wording

17 was, no.

18 Q. So if LTD said to its attorney what's the

19 zoning of our land in Bannockburn, that would be

20 a completely different question than what's the

21 classification of our land under the Pollution
22 Control Board regulations?

23 A. Yes, it would.

24 Q. Did you, during the course of your work

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1 for LTD, ever see my May 4th, 1998, letter to the
2 president of the village of Bannockburn?

3 A. I believe I received a copy of this. It
4 looks familiar.

5 Q. Did you see a copy of this after you had a
6 conversation with Jack Voight when you told him
7 you need to have your attorney look at the
8 classification of your land under the
9 regulations?

10 A. Yes. That was something I thought he
11 needed to resolve legally.

12 Q. Now, on the brochure that you sent
13 prospective clients that comments on effects of
14 noise, Mr. Kaiser read the provision, and I think
15 it's C6, there's something in here about how
16 noise can cause illness, correct?

17 A. I think I mentioned that many experts have
18 indicated that.

19 Q. Right. Quote, many experts believe that

20 this leads to a susceptibility to illness,
21 correct?

22 A. That's correct.

23 Q. So if a person was, in fact, becoming ill
24 because of noise, you might expect them to go see

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1 their doctor?

2 A. Probably, but I wouldn't expect the doctor
3 to know necessarily it was due to noise or
4 anything.

5 Q. Bottom line, for a C to A analysis, you
6 don't find a violation of the numerical
7 provisions of the Pollution Control Board
8 regulations?

9 A. No. I don't find it conclusive.

10 MR. KOLAR: I don't have any further
11 questions.

12 HEARING OFFICER KNITTLE: Any recross,
13 Mr. Kaiser?

14 MR. KOLAR: Yes, briefly.

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

16 by Mr. Kaiser

17 Q. And the reason you don't find it
18 conclusively that there's a violation or that you

19 can't rule out the possibility that there's a
20 violation is because there is that exceedance at
21 2,000 hertz, right?

22 A. That's correct.

23 Q. And while it might be crickets, it could
24 also be air brakes, right?

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1 A. That's correct.

2 Q. Now, in responding to Mr. Kolar's question
3 about the effectiveness of a noise wall, you
4 talked about noise being reflected and
5 reverberations of noise.

6 Do you recall that?

7 A. That's correct.

8 Q. And, in fact, this entire north face of
9 LTD's dock area is all a hard, impervious
10 surface; is it not?

11 A. That's right.

12 Q. Very reflective surface, correct?

13 A. The upper portion of it, yes.

14 Q. Highly reflective of noise, right?

15 A. Yes.

16 Q. Noise can ricochet down in this dock area,
17 build up energy, and reflect off the upper

18 portions of LTD's northern wall to the north,
19 correct?

20 A. Well, that would be incorrect because it
21 doesn't build up energy. There's no source of
22 energy. I think what you're referring to is just
23 a reflection that can then just go over the
24 retaining wall, but it doesn't build up or

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1 amplify in any sense.

2 Q. But it can reverberate, bounce off of
3 LTD's north wall, and then go to the north
4 towards the Roti, Weber, and Rosenstock
5 residences?

6 A. For those sources that are away from the
7 dock area, yes. For those that are on the dock,
8 no.

9 Q. Well, on the dock meaning inside -- I
10 mean, the docks are actually inside under LTD's
11 roof, right?

12 A. Yes.

13 Q. So no noise is reflecting escaping out of
14 the dock door and then bouncing off of the north
15 wall?

16 A. Right.

17 Q. But an air brake being released to the
18 north and in this truck staging area, it could be
19 the noise from that could be reflected off of the
20 upper portion of LTD's dock area, right?

21 A. That's correct.

22 Q. And it's possible there are manufacturers
23 who construct materials that could be placed on
24 the upper portions of LTD's dock area in order to

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1 absorb reflective sound and sound that might
2 reverberate; is that right?

3 A. Esthetically, it might not look good, but
4 functionally, it could work.

5 Q. Now, Mr. Kolar told you that throughout
6 northern Illinois, the Illinois Department of
7 Transportation is building noise walls at certain
8 locations in order to minimize transmission of
9 noise from the tollway to adjacent residences; is
10 that right?

11 A. That's correct.

12 Q. And IDOT has certain criteria by which
13 they will approve construction of noise walls; is
14 that correct?

15 A. That's correct.

16 Q. And they put in these noise walls to
17 reduce -- to contain the noise so that it doesn't
18 migrate into residential neighborhoods, right?

19 A. Correct.

20 Q. And they put up noise walls because noise
21 walls work, right?

22 A. They work.

23 Q. They reduce noise, don't they?

24 A. For the people that are closest to it,

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1 right.

2 Q. Well, do you think IDOT is wasting the
3 taxpayers' money by building these noise walls?

4 A. I hope not. I'm just saying that people
5 shouldn't get the impression if they live, say,
6 3,000 feet from that wall that it's going to help
7 them. So I just wanted to define what you mean
8 by work; work for people that are close to the
9 wall, but probably not even work at all for
10 people that are distant from the source.

11 Q. All right. Now, it's axiomatic that noise
12 is loudest at the source, and then as it travels
13 out, the intensity of the noise diminishes?

14 A. Correct.

15 Q. And as I understand it, if the noise
16 source starts at 100 as it moves, is it 100 feet
17 out it's cut in half? At what distance does
18 noise have to travel before it's reduced by half?
19 A. About three times the distance, the
20 measurement distance. In other words, if you're
21 at 100 feet, you have to go out to 200 feet for
22 it to drop six decibels, and you have to go out
23 to 400 feet before it drops yet another six
24 decibels. So that's 12 decibels that would be

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1 the point of cutting it in half.
2 So you're going somewhere, to get to
3 ten decibels, about three times the distance.
4 Now, that would be for what we call point source
5 where the source is contained. When you have a
6 source like traffic, when you have it distributed
7 in a line, that reduction is closer to three per
8 doubling of distance.
9 Q. But LTD is a point source --
10 A. Correct.
11 Q. -- isn't it?
12 A. That's right.
13 Q. As distinguished from the tollway, which

14 is a nonpoint source?

15 A. That's correct.

16 Q. And Karen Roti's home is 200 feet from
17 LTD's truck dock, isn't it?

18 A. Correct.

19 Q. And not 3,000 feet from LTD's dock area?

20 A. Correct.

21 Q. And so you would expect that Karen Roti,
22 Paul Rosenstock, and Leslie and Henry Weber
23 would obtain benefits if LTD built a properly
24 designed and properly constructed noise wall

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1 along the northern boundary of its dock staging
2 area, correct?

3 A. Correct.

4 Q. And the effects of that noise wall might
5 be improved and made greater still if LTD were to
6 install on the upper portions of its north wall
7 materials which would absorb noise, correct?

8 A. That would enhance overall performance.

9 MR. KAISER: Thank you. No further
10 questions.

11 HEARING OFFICER KNITTLE: Mr. Kolar.

12 MR. KOLAR: I just have a couple

13 questions.

14 FURTHER REDIRECT EXAMINATION

15 by Mr. Kolar

16 Q. Can noise reverberate or bounce off of a
17 tractor trailer body?

18 A. Yes.

19 Q. So even with a noise wall, the third-party
20 trailers in the truck docking area, you can have
21 noise bouncing off the trailer bodies and go
22 above the wall?

23 A. Right, which is why the wall would have to
24 be taller than the trucks to help minimize that.

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1 Q. Could you build a wall high enough that
2 would completely preclude noise from going over
3 the wall by bouncing off of the truck bodies?

4 A. Well, in theory, yeah, if you wanted to
5 build 100 foot high wall or something like that,
6 but, obviously, you run into structural
7 limitations and wind loads. So you don't
8 commonly see barrier walls going over 15, 20
9 feet.

10 Q. The questions Mr. Kaiser asked you about
11 how as you get farther away from the noise

12 source, the sound energy or the level dissipates
13 or is less, that's generally true?

14 A. Yes. Right.

15 Q. And you testify to that when you appear
16 before village zoning bodies regarding noise
17 issues?

18 A. That's correct. It attenuates more for
19 point sources, somewhat less for traffic
20 patterns, and temperature inversions can
21 obviously compromise that.

22 Q. In your experience at times, village
23 planners decide where land uses should go based
24 on when noise from an existing use will be

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1 dissipated?

2 A. Yeah. I mean, for example, in land use
3 planning, you wouldn't want to attempt to put
4 residential tracts next to a busy road like
5 that. Your tendency is to put companies like LTD
6 close to those already noisy spots in the
7 village.

8 Q. Like a big tollway?

9 A. Exactly.

10 Q. But like when Lake Forest was considering

11 housing for the area north of LTD, a noise
12 consultant could have told them how far homes
13 should be to the north so that the sound has
14 dissipated before it reaches the homes, correct?

15 MR. KAISER: Objection, calls for
16 speculation.

17 HEARING OFFICER KNITTLE: Overruled. I
18 think this is in with his expertise.

19 BY THE WITNESS:

20 A. Well, if a village called me in, I'd look
21 at that and say, what are you trying to do here?
22 You know, you got residential places next to an
23 industrial use. Let's try to rezone. Let's
24 rework it. Let's put a buffer in, a berm, you

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1 know, those kinds of things if you want to put
2 residential.

3 BY MR. KOLAR:

4 Q. And if this is vacant and they say to you,
5 Mr. Thunder, we want to put homes in there, you
6 could tell them how far those homes should be
7 away to the north?

8 A. Oh, sure, sure. That's considered a valid
9 noise abatement approach is to determine how much

10 land is necessary to dissipate the sound.

11 MR. KOLAR: I don't have any further
12 questions.

13 MR. KAISER: Just briefly redirect?

14 HEARING OFFICER KNITTLE: Re-recross?

15 MR. KAISER: Yeah. Re-recross. Sorry.
16 If I may?

17 HEARING OFFICER KNITTLE: Yes, please.

18 FURTHER RECROSS - EXAMINATION
19 by Mr. Kaiser

20 Q. I just want to make sure I understand this
21 temperature inversion which you just referred to.

22 Do I understand --

23 MR. KOLAR: Objection, beyond the scope.

24 MR. KAISER: No, no. You used those words

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1 temperature inversion during your last redirect
2 because you asked him about the distance, and he
3 said yes, distance and temperature inversion.

4 HEARING OFFICER KNITTLE: Overruled, but
5 it's tenuous. So don't go too far with it, Mr.
6 Kaiser.

7 BY MR. KAISER:

8 Q. I just want to understand the concept.

9 Is it your testimony that noise
10 travels -- well, essentially travels -- is less
11 attenuated during cold weather.

12 MR. KOLAR: Objection. This is beyond the
13 scope. I think just because he mentioned
14 temperature inversion in a different line of
15 questioning doesn't allow him to go into
16 something he forgot to ask before.

17 HEARING OFFICER KNITTLE: Mr. Kaiser.

18 MR. KAISER: We are talking about planning
19 and the impact of distance and temperature
20 inversion. I just want to make sure I understand
21 it, and by extension, the Board understands how
22 temperature inversion affects noise levels and
23 planning in association with noise levels.

24 HEARING OFFICER KNITTLE: Overruled. I'll

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1 allow it, but, as I said, Mr. Kaiser.

2 BY MR. KAISER:

3 Q. I mean, in cold weather, noise travels
4 farther, right?

5 A. No.

6 Q. Clarify.

7 A. It has nothing to do -- well, sound can

8 propagate more favorably under certain
9 combinations of humidity and temperature, but I
10 think what you're looking at is with respect to
11 temperature inversion, it has nothing to do with
12 the absolute temperature, but rather the relative
13 temperature of the atmosphere up here relative to
14 that near the ground, and a temperature inversion
15 is when the air on top is warmer, and because
16 sound travels faster in warmer air, it has the
17 ability to refract or bend that sound back down
18 toward the residents.

19 So instead of getting the usual 60 dB
20 per doubling of distance attenuation, you may not
21 see that under temperature inversion conditions.
22 Shall I re-explain?

23 Q. No. I actually think I get it. I mean,
24 if you've got the warm air up top, the sound

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1 waves travel faster and they may end up
2 essentially falling or as they move out, they get
3 bigger and at --

4 A. Right.

5 Q. -- more distance, you would experience
6 those faster moving waves?

7 Can I just get an answer to my
8 question? If it's colder, does sound travel
9 farther?

10 MR. KOLAR: Objection, asked and answered.

11 HEARING OFFICER KNITTLE: Sustained. I
12 think he's already answered that.

13 MR. KAISER: Well, I think it was no, that
14 wasn't what temperature inversion meant, but not
15 necessarily no, that's not what happens. Again,
16 I'm just trying to make it clear.

17 BY MR. KAISER:

18 Q. Is that an axiom of --

19 A. No, no. It doesn't travel further. It
20 still goes through the same 60 dB attenuation per
21 doubling of distance, but what happens is if you
22 have a certain combination of humidity and
23 temperature, and there's charts, and I couldn't
24 recite the chart for you, they would be more

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1 favorable to low frequency transmission.

2 In other words, in addition to the
3 normal wave divergence, the atmosphere can absorb
4 some of that sound.

5 Q. If it's more humid?

6 A. If it's cold -- if it's colder mixed with
7 certain temperatures. That's why in doing these
8 calculations, they're normally done at what's
9 call standard conditions, which is about 70
10 degrees Fahrenheit, 50 percent relative
11 humidity. Those are what's called standard
12 conditions for doing propagation analysis.

13 MR. KAISER: Can I ask one more question?

14 HEARING OFFICER KNITTLE: You can ask.
15 I'm going to listen to Mr. Kolar's objection.

16 MR. KAISER: I'm curious, and I think it's
17 important.

18 BY MR. KAISER:

19 Q. Would the Rotis perceive noise differently
20 if it's 75 degrees out as opposed to if it's 35
21 degrees out; same noise, same intensity at the
22 source LTD dock area, but different temperature.

23 Would that affect the way the Rotis
24 would experience noise?

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1 MR. KOLAR: Objection, beyond the scope.

2 HEARING OFFICER KNITTLE: Sustained. I'm
3 going to have to sustain that, Mr. Kaiser.

4 MR. KAISER: I have no further questions.

5 Thank you.

6 MR. KOLAR: No questions.

7 HEARING OFFICER KNITTLE: Thank you, Mr.
8 Thunder. You can step down. Off the record.

9 (Discussion had
10 off the record.)

11 HEARING OFFICER KNITTLE: Mr. Kolar, are
12 you continuing your case-in-chief or are you
13 ready to rest?

14 MR. KOLAR: I don't have any further
15 witnesses. I'm ready to rest, but I would have
16 my exhibits to --

17 HEARING OFFICER KNITTLE: That would be
18 fine.

19 MR. KOLAR: Should we do that now?

20 HEARING OFFICER KNITTLE: Let's do it now,
21 your exhibits anyway. After the hearing, after
22 we finish with public comments and any rebuttal
23 testimony that we might have from the
24 complainants, we'll go over all the exhibits,

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1 except yours probably because we're going to do
2 them right now.

3 MR. KOLAR: I have no problem with waiting,

4 if you want.

5 MR. KAISER: It's up to you.

6 HEARING OFFICER KNITTLE: Mr. Kaiser, do
7 you want him doing it? It's up to you. It won't
8 be his case-in-chief anymore, but I don't --

9 MR. KAISER: No, I have no problem with
10 him offering them after we all rest.

11 HEARING OFFICER KNITTLE: Let's do it that
12 way then. Aside from that, Mr. Kolar, do you
13 have any other witnesses?

14 MR. KOLAR: No. We would rest subject to
15 offering our exhibits.

16 HEARING OFFICER KNITTLE: Mr. Kaiser, do
17 you have a case in rebuttal?

18 MR. KAISER: Yes. By way of rebuttal, I
19 would like to recall one of the complainants,
20 Karen Roti.

21 HEARING OFFICER KNITTLE: Okay. Ms. Roti,
22 if you'd come on up here. You've done this
23 before. Have a seat right over there. I'm going
24 to ask the court reporter to swear you in.

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1 R E B U T T A L

2 (Witness sworn.)

3 WHEREUPON:

4 K A R E N R O T I,

5 called as a witness herein, having been first

6 duly sworn, deposeth and saith as follows:

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

8 by Mr. Kaiser

9 Q. Ms. Roti, you're one of the complainants
10 in this matter?

11 A. Yes.

12 Q. And you recall we were here back in
13 November of 1999 when you offered direct
14 testimony in this hearing?

15 A. Yes.

16 Q. And now you're back as a rebuttal witness;
17 is that right?

18 A. Yes.

19 Q. Now, I'm showing you what's previously
20 been marked for purposes of identification as
21 Respondent's Exhibit 89. It's this aerial
22 photograph that's up on the easel here.

23 Can you see that from where you're
24 seated?

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1 A. Uh-huh.

2 Q. And are you able to identify LTD's
3 Bannockburn building on that aerial photograph?

4 A. Yes.

5 Q. And there's a house just to the north of
6 LTD's dock area that's circled and has the Roti
7 name above it.

8 Is that, in fact, your home?

9 A. Yes.

10 Q. You still live there, do you not?

11 A. Yes.

12 Q. And you still live there with your husband
13 Tony?

14 A. Yes.

15 Q. And your children?

16 A. Yes.

17 Q. And as I recall, you and your husband
18 purchased this home in either 1989 or 1990.

19 Is that accurate?

20 A. Yes.

21 Q. Do you recall what you paid for your home,
22 and at that point, the house was -- had been
23 built? You didn't buy just land. You bought
24 land and a house, right?

1 A. Right.

2 Q. And do you recall what you paid for your
3 home at that time?

4 A. 525.

5 Q. When you purchased your home, were you
6 aware that the boundary between the village of
7 Lake Forest and the village of Bannockburn was
8 essentially in your backyard?

9 A. Yes.

10 Q. And what did you know about the land uses
11 to the south when you and your husband purchased
12 your home?

13 A. I knew it was --

14 MR. KOLAR: Objection. This is not
15 rebuttal. This is going over his case once
16 again. She testified to all this before.

17 HEARING OFFICER KNITTLE: Mr. Kaiser, I'm
18 going to give you some latitude here when you're
19 starting off getting maybe to what you want to
20 use for rebuttal, but we have covered all this on
21 her direct examination during your case-in-chief.

22 MR. KAISER: And I've asked Ms. Roti to
23 come back essentially to rebut the expert opinion
24 of Kevin Byrnes where he talked about value, who

1 would buy a home near a loading dock, and whether
2 a person would consider the market value to be
3 affected by operations of the dock for ten hours
4 a day and operations of the dock for in excess of
5 20 hours a day, and it was his opinion that a
6 buyer would not distinguish between those two
7 types of operations, and so I've brought Ms. Roti
8 back to ask her whether that is her opinion, so
9 just to give the Board and you, Mr. Knittle, a
10 sense of where I'm going.

11 HEARING OFFICER KNITTLE: I understand.
12 Based on that representation, I'm going to let
13 him go a little ways with this, but I agree, Mr.
14 Kolar, we do not want to have a redirect
15 examination of this witness as we did before. So
16 the objection is overruled.

17 Did you have something else to add?

18 MR. KOLAR: Yeah. I have a further
19 objection because that was my understanding of
20 why she was here, and I don't think it's rebuttal
21 because Mr. Byrnes' testimony and opinion was
22 that a prospective buyer of the Roti home would
23 not distinguish between a trucking operation that
24 went 14 hours a day or 20 hours a day, whatever

1 his differential was.

2 She's not a prospective buyer. She's
3 the owner. So I don't think it's appropriate for
4 her to come in here and now say what a
5 prospective buyer would do. It's not rebuttal.

6 HEARING OFFICER KNITTLE: I'm going to
7 overrule that as well. I'll allow it to go on,
8 and I'll leave it to the Board to give the
9 appropriate weight to her testimony and note that
10 she is the owner, although at one time she was a
11 prospective buyer of the property.

12 MR. KOLAR: Just one further point.

13 HEARING OFFICER KNITTLE: Yeah. You can
14 make any -- put any objection you want on the
15 record.

16 MR. KOLAR: In their complaint signed by
17 Ms. Roti, they say that LTD's operation depresses
18 the value of their property, and that was the
19 hypothesis, so to speak, that Mr. Byrnes was
20 testing. Again, it's not proper rebuttal for the
21 complainant to come in to rebut Mr. Byrnes on the
22 point of whether prospective buyers of the Roti
23 home, how they would act.

24 HEARING OFFICER KNITTLE: Mr. Kaiser,

1 anything further on this before we move on.

2 MR. KAISER: No, nothing further.

3 HEARING OFFICER KNITTLE: It's noted for
4 the record, but I'm going to allow it to go on on
5 a limited basis.

6 MR. KAISER: Thank you.

7 BY MR. KAISER:

8 Q. When you purchased your home, you paid
9 \$525,000 for it --

10 A. Right.

11 Q. -- didn't you?

12 And during 1990, 1991, 1992, 1993,
13 1994, you didn't have a problem being located
14 next door to LTD and its dock area, did you?

15 A. No, not at all.

16 Q. Without going over all your testimony, as
17 I understand it, when LTD added a second shift
18 and began operating until 12:30 at night during
19 the fall months and on occasion until 1:30 or
20 even 2:30 in the morning, you and your children
21 began to experience the noise from LTD's dock
22 operations as a problem; is that right?

23 A. Absolutely.

24 Q. Now, originally, you were willing to pay

1 \$525,000 for your home and the lot, right?

2 A. Yes.

3 Q. What would you pay for your home and your
4 lot now knowing that during the months of August,
5 September, October, November, and much of
6 December LTD operates its loading docks between
7 6:00 a.m. in the morning and 12:30 a.m. the
8 following day five and a half days a week, what
9 would you now pay for your home?

10 A. I wouldn't buy it. I wouldn't give it
11 away.

12 Q. I'm sorry.

13 A. I wouldn't give it away.

14 Q. What has changed since you purchased your
15 home in 1990?

16 A. The fact that -- it's one thing to put up
17 with some noise every once in a while during the
18 day, but when it's all day and all night and
19 disrupts your sleep and waking you up and going
20 to sleep, it's another story.

21 Q. Now, yesterday, we heard testimony from
22 Marcia Rowley.

23 You know Ms. Rowley, don't you?

24 A. Yes.

1 Q. She's a person with whom you've listed
2 your home for sale on two occasions; isn't that
3 correct?

4 A. Yes.

5 Q. And your house is not presently listed --

6 A. No.

7 Q. -- for sale, is it?

8 A. No.

9 Q. Do you expect to place your home back on
10 the market after you get a ruling from the
11 Illinois Pollution Control Board?

12 A. I doubt it at this point.

13 Q. Do you have an opinion as to whether or
14 not the expansion of LTD's dock operations, and
15 by expansion, I mean expansion in the time sense,
16 that they went from a one-shift operation to a
17 two-shift operation, whether that expansion has
18 had any affect on the fair market value of your
19 property?

20 MR. KOLAR: Objection. Now, this is not
21 rebuttal.

22 MR. KAISER: Sure, it is.

23 MS. KARASIK: Yeah, it is.

24 HEARING OFFICER KNITTLE: I have to ask

1 you to be quiet back there, ma'am.

2 MR. KAISER: Ms. Karasik feels it's
3 rebuttal.

4 MR. KOLAR: I don't remember her
5 testifying.

6 MR. KAISER: A person is always entitled
7 to testify with respect to the value of their own
8 personal or real property. So it's not a matter
9 of foundation or lack of expertise. Certainly,
10 it would be relevant because Mr. Byrnes has come
11 in at \$175 an hour and expressed an opinion.
12 There's no reason why Ms. Roti can't.

13 HEARING OFFICER KNITTLE: Anything
14 further, Mr. Kolar?

15 MR. KOLAR: I would agree generally that
16 people can testify to the fair market value of
17 their property, but the issue is is it rebuttal,
18 and I think we covered this in direct.

19 HEARING OFFICER KNITTLE: What was the
20 question again? Mr. Kaiser, do you remember the
21 question?

22 MR. KAISER: Yes, I do.

23 HEARING OFFICER KNITTLE: Could you relay

24 it to me one more time?

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1 MR. KAISER: I asked Ms. Roti whether she
2 has an opinion whether the expansion of LTD's
3 dock operations has affected the fair market
4 value of her property.

5 HEARING OFFICER KNITTLE: I'm going to
6 overrule the objection. I think that, at least
7 peripherally, it rebuts Mr. Byrnes' testimony.
8 So you can answer that question.

9 BY MR. KAISER:

10 Q. Would you like it read back?

11 A. Yes.

12 HEARING OFFICER KNITTLE: The most recent
13 one.

14 (Record read.)

15 HEARING OFFICER KNITTLE: Ms. Roti, do you
16 remember the question now?

17 THE WITNESS: I think so.

18 HEARING OFFICER KNITTLE: Give it a shot.

19 BY THE WITNESS:

20 A. I'm sure it has. I'm sure it has. I
21 mean, I don't know what we could sell it for, I
22 mean.

23 BY MR. KAISER:

24 Q. Well, do you think the value -- because of

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1 LTD's expanded operations, has the value of your
2 home appreciated, gone up, or depreciated, gone
3 down?

4 A. It's probably depreciated. I mean, it
5 used to be a relatively small building, and now
6 it's huge.

7 Q. And in addition to its change in size,
8 have you noticed any change in its operations
9 over the last five years?

10 A. The operations have grown.

11 MR. KOLAR: Objection, this is not
12 rebuttal.

13 BY THE WITNESS:

14 A. Exponentially --

15 HEARING OFFICER KNITTLE: Ma'am, if you
16 could hold it a sec. Mr. Kaiser?

17 MR. KAISER: Well, it's just, again,
18 getting to the basis of her opinion.

19 HEARING OFFICER KNITTLE: I'm going to
20 sustain the objection, not that it's not proper
21 rebuttal, but I do think this has been covered in

22 great detail on direct examination the first
23 time. I guess, Mr. Kaiser, I don't really think
24 it's necessary for her to go back and recount how

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1 it's changed over the --

2 MR. KAISER: No. Absolutely.

3 HEARING OFFICER KNITTLE: As long as she
4 can answer the question based on the fact that it
5 has changed, then that's her opinion, of course.
6 I think that's sufficient.

7 BY MR. KAISER:

8 Q. So it's your opinion that LTD's expanded
9 operations have caused the price of your home to
10 fall; is that right?

11 MR. KAISER: Thank you. No further
12 questions.

13 HEARING OFFICER KNITTLE: Mr. Kolar, do
14 you have a cross-examination for this witness?

15 MR. KOLAR: Yes. Thank you.

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

17 by Mr. Kolar

18 Q. Ms. Roti, on Exhibit 89, you see we have
19 1995 written on the LTD warehouse expansion,
20 correct?

21 A. Uh-huh.
22 Q. Yes?
23 A. Yes.
24 HEARING OFFICER KNITTLE: Ma'am, yeah, you

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1 do have to say yes for the court reporter.
2 BY MR. KOLAR:
3 Q. And you paid \$525,000 for your property,
4 right?
5 A. Yes.
6 Q. And it's your opinion that it's not worth
7 \$525,000 anymore?
8 MR. KAISER: Objection, misstates the
9 opinion.
10 HEARING OFFICER KNITTLE: Overruled.
11 BY THE WITNESS:
12 A. I would be happy to list it at 525 and see
13 if it sold. I don't know if it would.
14 BY MR. KOLAR:
15 Q. On June 1996, you and your husband listed
16 your home for \$695,000, right?
17 A. Yes.
18 Q. And then you had another listing where it
19 was for \$674,000, right?

20 A. Yes.

21 Q. Your husband was the one who determined
22 the value to put on the listing originally,
23 right, \$695,000? That was your husband's
24 decision?

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1 A. Yes, it was, I think.

2 Q. You're saying that circumstances have
3 changed so much since 1995 that nobody would buy
4 the Roti house now, right?

5 A. I wouldn't buy it again.

6 Q. Nobody is going to move on Wedgewood
7 since 1995? That's what you're telling the
8 Pollution Control Board?

9 A. I'm saying that when we listed the house,
10 we wanted to see if we could get approximately
11 around there, you know, based on several
12 different things, a lot of different factors,
13 part of which was whatever we -- whatever amount
14 we were paying taxes on.

15 Q. But the question is are you telling the
16 Pollution Control Board that since LTD built its
17 warehouse in 1995, since that point, people
18 aren't going to move to Wedgewood Drive anymore?

19 A. I'm saying I wouldn't buy my house. I
20 wouldn't buy it. I wouldn't sell it to anybody I
21 know. That's what I'm saying. I don't know what
22 somebody would pay for it. Hi, would you like to
23 buy my house for \$100,000? You'll be up all
24 night for four months out of the year. Maybe you

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1 travel.

2 Q. You would sell your house to someone you
3 don't know?

4 A. I wouldn't sell it to somebody I don't
5 know or somebody I know.

6 Q. And you brought a neighbor with you today
7 for the public comment section, right?

8 A. I brought her with me? She followed me
9 here.

10 Q. Okay. You're the one who asked her to
11 come last November for the public comments?

12 A. I did not ask her to come. She approached
13 me.

14 Q. You told her about the Pollution Control
15 Board hearing at some point, right?

16 A. I think she approached me. I was leaving
17 to pick up the kids from school, and she was

18 getting her mail, and she stopped me and asked me
19 what was going on.

20 Q. At some point, you had advised her that
21 you had this Pollution Control Board matter with
22 LTD Commodities, right?

23 A. After that, I'm sure I told her that it
24 was something I had been working on for the past

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1 three and a half, four years, and it really
2 hadn't been resolved.

3 Q. You're saying that she found out about the
4 Pollution Control Board complaint you filed on
5 her own and then approached you to discuss it?

6 A. She approached me because of the noise.
7 She didn't -- I don't think she knew that there
8 was a -- she wanted to know what was going on.

9 Q. For the record, your neighbor who's here,
10 what's her name?

11 A. Kendra.

12 Q. Kendra who?

13 A. Karasik.

14 Q. Last name?

15 A. Karasik.

16 Q. Kendra moved in across the street from you

17 in 1998, right? Sound about right?

18 A. If you say it's right.

19 Q. Does that sound about right to you?

20 A. Yeah.

21 Q. Were you and your husband financially able
22 to move to another location in Lake Forest?

23 MR. KAISER: Objection, relevance.

24 HEARING OFFICER KNITTLE: How is that

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1 relevant, Mr. Kolar?

2 MR. KOLAR: Well, I guess it goes to the
3 credibility of her testimony regarding fair
4 market value, the credibility of how LTD's
5 operations affect her. They're financially able
6 to move and they're still there.

7 HEARING OFFICER KNITTLE: I'm going to
8 sustain that objection. I don't think it's
9 relevant to these proceedings.

10 BY MR. KOLAR:

11 Q. So despite the problems you've complained
12 LTD caused you and your family members, you're
13 not going to put your house on the market, right?

14 A. Call me an optimist, but I'm sure I can
15 work this out.

16 Q. Is it true what I said?

17 A. We probably will not put the house on the
18 market. I mean, as of today, I have no plans to
19 put my house on the market.

20 Q. Do you and your family still need more
21 space?

22 A. You know, I have kids -- two kids that are
23 leaving in the next year and the year after.
24 They're on their way out the door.

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1 Q. College or something?

2 A. Right. So, I mean, four years ago, it was
3 a different story. Now, it's, you know, a
4 different picture. They're leaving.

5 Q. And you think if a 13 foot high noise wall
6 was built along the LTD property that that would
7 make your property more attractive to prospective
8 buyers?

9 A. I don't know. It would make it more
10 peaceful for me.

11 Q. And it's your testimony here again today,
12 I guess, that LTD operates all day and all
13 night? Did I hear you say that on direct
14 examination?

15 MR. KAISER: Misstates the testimony.

16 HEARING OFFICER KNITTLE: I'm going to
17 allow her to answer the question. The objection
18 is noted.

19 BY THE WITNESS:

20 A. They bother me all day and all night?

21 That's the question?

22 BY MR. KOLAR:

23 Q. Right. That's your testimony here, right?

24 A. During certain times of the year.

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1 Q. And it's your testimony that before the
2 warehouse was expanded in 1995, there were no
3 nighttime operations in the LTD trucking area?

4 A. I would hear -- you know, in the late
5 fall, I would be out with the dog or something
6 and I would hear a horn every once in a while or
7 I would hear, you know, a truck pull in, but
8 never to the point where it was disruptive.

9 MR. KOLAR: I don't have any other
10 questions.

11 HEARING OFFICER KNITTLE: Do you have a
12 redirect, Mr. Kaiser?

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

14 by Mr. Kaiser

15 Q. Just with respect to that all day and all
16 night, is there a moment at, perhaps, 3:00 in the
17 morning after everybody has gone home, after
18 overtime has been authorized by Mr. Voight, and
19 before trucks arrive in the vicinity of the LTD
20 dock area at 5:45 or 5:30 in the morning where
21 you're actually not disturbed by LTD's dock
22 operations?

23 MR. KOLAR: Objection, leading.

24 HEARING OFFICER KNITTLE: Sustained.

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1 BY MR. KAISER:

2 Q. When, if ever, is there a moment when you
3 don't feel the effects of LTD's dock operations?

4 A. When I don't actually physically hear
5 them?

6 Q. Yes.

7 A. Like, when I'm not at home? There is a
8 period during the night where yes, you can, go to
9 sleep, and it's probably around that 3:00 to 4:30
10 hour, somewhere around there.

11 Q. And that's 3:00 to 4:30 in the morning?

12 A. Correct.

13 MR. KAISER: Thank you. No further
14 questions.

15 HEARING OFFICER KNITTLE: Mr. Kolar.

16 MR. KOLAR: No questions.

17 HEARING OFFICER KNITTLE: Thank you,
18 ma'am. You can step down. Mr. Kaiser, do you
19 have any other rebuttal witnesses?

20 MR. KAISER: Can we go off the record?

21 HEARING OFFICER KNITTLE: Yes, we may.
22 Let's go off.

23 (Discussion had
24 off the record.)

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1 MR. KAISER: I had expected Mr. Weber here
2 at 1:30. If he happens to appear before the
3 close of the public comment period, that the
4 Board might allow us to reopen for the limited
5 purpose of taking his rebuttal testimony.

6 HEARING OFFICER KNITTLE: Do you want to
7 address that now?

8 MR. KAISER: No. Why don't we hold it.
9 It may be moot if he doesn't appear anytime
10 before we finish public comment, but we are
11 resting, but we may beg to reopen if

12 circumstances present themselves.

13 HEARING OFFICER KNITTLE: Thank you very
14 much.

15 MR. KAISER: Thank you.

16 HEARING OFFICER KNITTLE: Let's see. We
17 are now --

18 MR. KOLAR: May the record reflect that
19 Jack Voight has been here all day today?

20 HEARING OFFICER KNITTLE: The record may
21 so reflect that Mr. Voight is here, even though
22 it's such a lovely day outside and the park is
23 within easy walking distance.

24 We are now to the public comment

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1 portion of the proceedings, otherwise known as
2 section 103.202(f), statements from interested
3 citizens as authorized by the hearing officer. I
4 note we have one member of the public who wishes
5 to provide a public comment.

6 Ma'am, is that correct?

7 MS. KARASIK: That's correct.

8 HEARING OFFICER KNITTLE: What we're going
9 to do and what we do -- what I do when we have
10 members of the public who want to provide

11 comment, we allow them to get up and speak their
12 piece. I'm going to ask that you be sworn in,
13 and you'll also be subject to cross-examination
14 on what you testify to from both parties.

15 So that being said, do you still wish
16 to provide public comment?

17 MS. KARASIK: Yes.

18 HEARING OFFICER KNITTLE: Why don't you
19 come on up and have a seat then. If you'd
20 identify yourself. Well, I'll let you sit down
21 before I make you identify yourself.

22 Can you give your name to the court
23 reporter?

24 MS. KARASIK: It's Kendra, K-e-n-d-r-a,

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1 Karasik. K-a-r-a-s-i-k.

2 HEARING OFFICER KNITTLE: Can you swear
3 her in, please?

4 (Witness sworn.)

5 HEARING OFFICER KNITTLE: Ma'am, you can
6 provide your public comment now.

7 MS. KARASIK: Okay. I'm just here -- we
8 moved to the area two years ago, July of 1998.
9 We were really excited. We bought the house,

10 like, on a weekend and moved three weeks later.
11 I didn't really know LTD Commodities. Everything
12 happened so fast.

13 I knew it was there, but just I
14 didn't really know. I knew the tollway was over
15 there. I knew kind of where we were, et cetera.
16 It was like in the fall right after we moved in.
17 I was driving the children back and forth to
18 school for two weeks. We moved in Labor Day
19 weekend, and, you know, being out in the country
20 from where we were in Highland Park, it was
21 refreshing, opening the windows, leaving them
22 open at night, not using the air-conditioning,
23 and we started to hear the noises.

24 I didn't really know what it was.

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1 Our dogs were reacting. They were wild. They're
2 guard dogs. They're protecting my family, and,
3 you know, they would bark and whine and complain,
4 and the thumps -- and I didn't know -- it wasn't
5 the tollway. The tollway has a consistent hmmmmmm
6 that we -- you know, but this was --

7 HEARING OFFICER KNITTLE: Can you pick
8 that up?

9 MS. KARASIK: Hum noises. I approached
10 Karen. I asked her what's going on with all this
11 noise? I can't stand it. I think that the
12 trigger was when my children had tests in
13 November, state tests, I-GAPS or ERBs, and it was
14 critical. I have a child in special ed that has
15 to get -- you know, they send notes home from
16 school, please have him get plenty of sleep, have
17 a good breakfast. I did my job. I couldn't do
18 the job outside, and they just were -- they were
19 sick. They were not feeling well. They were
20 tired. This was, again, the second week in
21 November. It was a hard week.

22 Then it goes on throughout the
23 winter. Basically, it's just -- you know, we
24 hear all these noises all night long. The dogs

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1 are disruptive. My child who takes a long time,
2 my child with special needs, takes a long time to
3 get settled into bed. He gets in bed, and he
4 rushes out when these big thumps happen
5 hysterical, what's going on. You know, he thinks
6 that there's problems. I have to take him back,
7 say everything is okay, you know, get him back to

8 sleep again.

9 You know, one day it might be
10 something, and he won't run out, and I worry
11 about that. You know, to be alarmed and he won't
12 run out thinking, oh, it's just LTD, and he won't
13 come running.

14 My other son is in the front.
15 Literally, at night when I get in bed with my
16 husband, I can't watch a 9:00 o'clock program. I
17 have to have the volume up so loud. I can't have
18 the volume up because the children are trying to
19 go to sleep. So, you know, it defeats the
20 purpose of living in this beautiful home in Lake
21 Forest, a quiet community, and it's just, you
22 know, we can't sleep in the basement.

23 So, you know, it's upsetting, and
24 neighbors have told me the most recent thing they

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1 have seen people in this area -- now, again, I'm
2 married to a lawyer, so I know this is hearsay.
3 I have not seen this myself, but they have moved
4 in the woods. They have seen --

5 MR. KOLAR: Can I object to public
6 comment?

7 MS. KARASIK: -- people coming in and
8 out. This is public comment. They've seen
9 people --

10 HEARING OFFICER KNITTLE: Hold on, ma'am.
11 Ma'am. I'm sorry.

12 MR. KOLAR: I was overruled by her.

13 MS. KARASIK: Oh. I didn't know. I
14 didn't hear you. I get lost.

15 HEARING OFFICER KNITTLE: That's okay.

16 MS. KARASIK: I don't know. I haven't --
17 it's hearsay. I don't know anything about it.

18 HEARING OFFICER KNITTLE: Ma'am, can you
19 hold a second?

20 Mr. Kolar, are you objecting during
21 public comment?

22 MR. KOLAR: I think I have a right to
23 object to hearsay in public comment.

24 HEARING OFFICER KNITTLE: You can object,

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1 but I do allow the citizens a lot of leeway just
2 because we want to hear what they have to say.
3 So if you object, I think I'll consider it.

4 MR. KOLAR: I object to her not having
5 personal knowledge of what she's going to testify

6 to. She didn't see it and didn't --

7 MS. KARASIK: Well, like I said, it's
8 hearsay.

9 HEARING OFFICER KNITTLE: Ma'am, let me --
10 I know you've got a lawyer for a husband, but let
11 me rule on this.

12 I am going to allow her to testify.
13 Public comment isn't weighed as heavily as
14 testimony that's elicited by one of the
15 attorneys, and they do have a certain amount of
16 latitude. The Board will also give the
17 appropriate weight to her testimony, and if it's
18 hearsay testimony, they'll consider that as well.

19 MS. KARASIK: Well, because then it
20 becomes another issue, which is highly critical
21 for my family, and it is safety. We send our
22 children to go to school to be safe and come home
23 to be safe, and now that's planted in my head.
24 I've got eyeballs everywhere.

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1 Every time I'm in and out, I look to
2 make sure if there's landscapers, they are people
3 with emblems on their shirts or some kind of
4 thing that I know that these people are -- they

5 belong. You know who drives up and down our
6 street. We know all the cars. It's a small
7 street. We know who belongs and who doesn't
8 belong, but now since this was brought to my
9 attention, again, I've not seen this, but it's in
10 my head, and now I'm looking extra, extra hard.

11 HEARING OFFICER KNITTLE: Anything
12 further, ma'am?

13 MS. KARASIK: No.

14 HEARING OFFICER KNITTLE: Okay. Thank you
15 for your testimony. If you'll stay there for one
16 second, I want to caution both attorneys when I
17 say cross-examination of the public comment, I do
18 allow that, but it's not something the Board
19 requires. It's something that I allow to kind of
20 safeguard parties from additional information
21 being elicited without the opportunity to
22 cross-examine that witness that the Board will
23 consider, but I don't want either side to get too
24 in-depth on cross-examination, nor do I want

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1 either side to present their case through the
2 public comment portion.

3 So that being said, Mr. Kaiser do you

4 have any questions of this witness?

5 MR. KAISER: Briefly, if I may.

6 WHEREUPON:

7 K E N D R A K A R A S I K,

8 called as a witness herein, having been first

9 duly sworn, deposeth and saith as follows:

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

11 by Mr. Kaiser

12 Q. You told the Board that you moved into
13 your home on Wedgewood Drive in, was it, August
14 of 1998?

15 A. Labor Day weekend.

16 Q. Labor Day, September of 1998.

17 And you approached this large aerial
18 photograph. You see it from where you're seated,
19 right?

20 A. Uh-huh.

21 Q. And you can see on Respondent's Exhibit 89
22 where LTD's facility is located?

23 A. Uh-huh, yes.

24 Q. And you can see just to the north of Karen

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1 Roti's house?

2 A. Yes.

3 Q. And can you describe for the Board, either
4 from where you're seated or if you need to come
5 over and point where your home is located in
6 relation to the LTD facility?

7 A. It's across the street.

8 Q. Directly across the street from Karen
9 Roti's?

10 A. Yes.

11 Q. And is that your circular driveway that's
12 right at the front of your house?

13 A. Yes.

14 Q. So if the Board was looking at this or one
15 of the Board members, they would just look at the
16 house due north of Karen Roti's and that would be
17 your home?

18 A. Yes.

19 Q. Now, you described this noise. You first
20 heard it when you moved in on Labor Day weekend
21 of '98, and you described that it continued and
22 was a problem in November of 1998 before your
23 children had to take the state exams?

24 A. Right. They were I-GAPS -- not I-GAPS.

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1 There was some test. ERBs, writing, very

2 important tests, whatever. Any test they take
3 is.

4 Q. Did that noise continue? Did you --
5 during September, October, November, and December
6 of 1999, did you still hear noise from LTD's dock
7 operations?

8 A. Yes, I did, and there were lights, too,
9 and when we moved in, I didn't see all this
10 because it was September -- it was July when we
11 bought the house. We moved three weeks later, so
12 the last week of July. So it was beautiful.
13 There was foliage. It was Lake Forest. I didn't
14 see this -- really what was back there.

15 Like I said, we heard the expressway,
16 hmmm, I knew what was there, the hum, but I did
17 not know this. I didn't hear it because I didn't
18 live in the house before we bought it.

19 Q. Does the noise from the expressway keep
20 your son from falling asleep at night?

21 A. No, no.

22 MR. KAISER: Thanks. I have no further
23 questions.

24 HEARING OFFICER KNITTLE: Mr. Kolar.

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

2 by Mr. Kolar

3 Q. How much did you pay your for your house?

4 A. 795.

5 Q. \$795,000?

6 A. Uh-huh.

7 Q. Yes?

8 A. Yes. I think so.

9 Q. What?

10 A. I think so. It could be off a little, not
11 much.

12 Q. Could it be a million?

13 A. No.

14 Q. What was the name of the people that you
15 bought the house from?

16 A. Walter Huskey.

17 Q. Did he have a wife?

18 A. Yes.

19 Q. Did she live there with him as well?

20 A. I believe so.

21 Q. Apparently, Walter and his wife did not
22 mention anything to you about noise from LTD; is
23 that correct?

24 A. That's correct.

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1 Q. Did you talk to any neighbors before you
2 bought your house?

3 A. No.

4 Q. Did you see any of the neighbors out when
5 you had visited your house?

6 A. No.

7 Q. You moved from Highland Park?

8 A. Yes.

9 Q. You had been down Route 22 during the
10 years when you lived in Highland Park, right?

11 A. Not much.

12 Q. You had been down --

13 A. I had been down, but that wasn't where I
14 traveled.

15 Q. But before you bought the house on
16 Wedgewood, you and your husband knew of the
17 tollway being just to the west, correct?

18 A. I knew half we got there where the tollway
19 was. I never -- I don't drive on expressways.
20 So I really -- I knew it was kind of there, but
21 it just didn't -- you know, it didn't pertain to
22 me because I don't drive on expressways.

23 Q. You knew it was in the vicinity of your
24 house?

1 A. Yes. I wasn't sure really where, but I
2 knew it was there.

3 Q. Before you bought your house, did you know
4 that the LTD building and its trucking operations
5 were just to the south?

6 A. No.

7 Q. Did you know that there was this Corporate
8 100 office building just to the southeast before
9 you bought your house?

10 A. I vaguely remember a building, like, just
11 another building. I didn't know know what it was
12 or anything about it.

13 Q. Your husband, he works as an attorney at
14 Baker & McKenzie?

15 A. That's correct.

16 Q. In Chicago?

17 A. Chicago.

18 Q. The largest law firm in the world, right?

19 A. That's correct.

20 Q. How many children do you have?

21 A. I have two boys.

22 Q. And one of them has special education
23 needs?

24 A. Yes.

1 Q. And that's the one that's most affected by
2 the LTD --

3 A. No. They both are. My other son has the
4 front bedroom. He's very affected.

5 Q. And the LTD operations affect you, as you
6 said, all night long?

7 A. They affect my children, my husband, and
8 my dogs, two dogs, that are guard dogs that
9 protect us, and if anything moves, they jump.
10 They're trained to do that.

11 Q. But it's your public comment that LTD
12 operations affect you all night long?

13 A. Intermittently throughout the night. You
14 know, lots of times when we're just going to
15 sleep, there's no pattern. I mean, you can look
16 at the trucking records yourself and see what
17 time the trucks come and answer your question.

18 Whenever they come in and drop that hood, that's
19 when it affects us, unload, you know, that truck.

20 Q. I understand it can change from day to day
21 you're stating, but it can be on one day 2:00 in
22 the morning, and the next day you can be affected
23 by LTD at 3:30 in the morning?

24 A. Yeah, and a lot during the day too.

1 Q. And is it your comment that you're
2 affected by LTD 12 months a year?

3 A. No, but I've -- you know, lately I've
4 heard noises. You know, they come at different
5 times. There's no pattern when you hear them.
6 It could be the way the wind blows. Who knows?

7 Q. So why was it that you and your husband
8 bought a house and moved in so quickly? Did you
9 have any time period that you had to get out of
10 your Highland Park house?

11 A. No. We built our home in Highland Park.
12 We were going to stay there for a long time. We
13 were on a great street, a real kid street. My
14 son was at a traveling baseball game. We drove
15 over the tracks, saw this house, and my husband
16 said, oh, look at that house, and he said, oh,
17 don't call, and I said I'm going to call. We
18 always tell the boys they've got nothing to lose
19 but to ask and to try. So I picked up the phone,
20 and I called.

21 The guy had to get out of the house.
22 It was one of those things. We made an offer.
23 My husband gave him the old hour to decide, and
24 he said I'll take it. We moved three weeks

1 later, and that was not what the house was
2 originally listed for. It was -- we were very
3 lucky.

4 Q. And you were here last November when this
5 hearing was going on, right?

6 A. Right.

7 Q. At that time, did Karen Roti ask you to
8 come down and make a public comment?

9 A. No. I asked her what -- what's going on,
10 and she said that, you know, she'd been working
11 on this, and I said well, what can we do? Cindy
12 Lakin, who can't be here today because her babies
13 are sleeping right now, she can't be here, she
14 would have been here. Everybody wants to do
15 something, but we all have -- and I wanted to
16 know what I can do.

17 Q. So you and Karen Roti were talking, and
18 she told you what you can do is come down and
19 make a comment during the public comment section?

20 A. She gave me the name of the lawyer, and I
21 called you, and my husband called you, what can
22 we do, and he said this in --

23 Q. Did you speak to Mr. Kaiser?

24 A. Yes.

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1 Q. And he told you come on down and talk
2 during the public comment section of the case?

3 A. This was before in November. So, I mean,
4 what can we -- you know, Karen said for me to
5 call the lawyer, that that was the best approach,
6 and we wrote letters. I'm sure you all have
7 those.

8 Q. No.

9 A. No?

10 Q. In any event, the trees to the west of the
11 Roti home --

12 A. Yes.

13 Q. -- you were pointing to those --

14 A. Right.

15 Q. -- when I made my objection?

16 A. Right.

17 Q. You have some safety concerns regarding
18 the trees?

19 A. Somebody said that there were people in
20 there, and my children play out in front. That's
21 why we live on this street.

22 Q. But you have no personal knowledge as to

23 where the people came from?

24 A. I do not. Like I said, it's hearsay. I

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1 have never seen it. I've never heard it, but now
2 it's in my head.

3 Q. You have no personal knowledge if anybody
4 in there would have anything to do with LTD,
5 true?

6 A. True.

7 MR. KOLAR: I don't have anything else.

8 HEARING OFFICER KNITTLE: Thank you very
9 much, ma'am.

10 MR. KAISER: If I may, Mr. Knittle, just
11 briefly, just to clarify something.

12 HEARING OFFICER KNITTLE: (Shaking head.)

13 MR. KOLAR: How about just the names and
14 ages of her sons.

15 HEARING OFFICER KNITTLE: That, I'll
16 allow, but that's it.

17 Ma'am, can you provide the names and
18 ages of your sons?

19 MS. KARASIK: Jack is 13 and in seventh
20 grade, and Alex is 12 in sixth grade.

21 HEARING OFFICER KNITTLE: And which is the

22 one with special education needs?

23 MS. KARASIK: Jack, who's 13.

24 HEARING OFFICER KNITTLE: Thirteen,

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1 correct?

2 MS. KARASIK: Right. I mean, everything
3 is stressful for him. You know, something is
4 coming up. You know, everything is high pressure
5 for him. So these noises are very intrusive to
6 him.

7 You know, it takes a while to get him
8 settled down. He's not crazy. He doesn't jump
9 around, but he's what is that, what is that, what
10 is that?

11 HEARING OFFICER KNITTLE: Sure. No. I
12 understand. And I want to thank you for your
13 time and your comments.

14 MS. KARASIK: Okay.

15 HEARING OFFICER KNITTLE: The Pollution
16 Control Board does appreciate the comments of
17 people not directly involved with the case.

18 MS. KARASIK: Okay.

19 HEARING OFFICER KNITTLE: So thank you
20 very much.

21 MS. KARASIK: Thank you.

22 HEARING OFFICER KNITTLE: Is there anybody
23 else present? I see nobody else wishing to
24 provide public comment at this point, which

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1 pretty much means the case is over.

2 Mr. Kaiser, was that phone call you
3 received during the public comment from your
4 witness?

5 MR. KAISER: Yes. That was from Mr. Weber
6 who's unable to appear and present testimony this
7 afternoon. We would not ask the Board to
8 continue the hearing, and we would close our
9 proofs at this time.

10 HEARING OFFICER KNITTLE: Before we get
11 into whether or not we want to do closing
12 arguments or reserve those for your briefs, let's
13 go over the exhibits that have been offered and
14 not offered.

15 MR. KAISER: And I'll state right now I'm
16 going to reserve it for the brief.

17 MR. KOLAR: Me too.

18 HEARING OFFICER KNITTLE: That's good to
19 know. Mr. Kolar, you have a number of exhibits

20 you want to offer at this point in time.

21 MR. KOLAR: Yes. I did spend some time
22 and went through.

23 HEARING OFFICER KNITTLE: I'm going to use
24 your list.

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1 MR. KOLAR: Right.

2 HEARING OFFICER KNITTLE: We'll give Mr.
3 Kaiser a second.

4 MS. KARASIK: Thank you.

5 HEARING OFFICER KNITTLE: Thank you,
6 ma'am.

7 MR. KOLAR: Thank you.

8 HEARING OFFICER KNITTLE: We're going to
9 go over the exhibits that Mr. Kolar wants to
10 offer. Here, I can give you my old one.

11 MR. KAISER: Thank you.

12 HEARING OFFICER KNITTLE: Is that pretty
13 much the same?

14 MR. KOLAR: Pretty much.

15 MR. KAISER: These are yours though,
16 right?

17 MR. KOLAR: Yeah. These are all mine.

18 HEARING OFFICER KNITTLE: We're going to

19 go over his first, and then we're going to go
20 over the ones that have been offered at this
21 point.

22 MR. KOLAR: So I have eight and nine, I'm
23 offering.

24 HEARING OFFICER KNITTLE: Nothing up until

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1 to eight and nine?

2 MR. KOLAR: Right.

3 HEARING OFFICER KNITTLE: I have eight as
4 a September 18th -- well, you can read this as
5 well as I can -- listing agreement between Rowley
6 and Roti.

7 MR. KAISER: No objection.

8 HEARING OFFICER KNITTLE: That's
9 admitted.

10 MR. KAISER: I have no objection to either
11 eight or nine.

12 MR. KOLAR: Maybe yours is the middle
13 column if you want to keep track. Then what I
14 have next is ten, an October 22, 1998, letter
15 from Karen Roti to neighbors.

16 MR. KAISER: No objection.

17 HEARING OFFICER KNITTLE: That's admitted.

18 MR. KOLAR: Twelve.
19 MR. KAISER: No objection.
20 HEARING OFFICER KNITTLE: That's admitted.
21 MR. KOLAR: Fifteen.
22 MR. KAISER: No objection.
23 HEARING OFFICER KNITTLE: That's admitted.
24 MR. KOLAR: Eighteen.

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1 HEARING OFFICER KNITTLE: January 28th,
2 '97.
3 MR. KAISER: No objection.
4 HEARING OFFICER KNITTLE: That's
5 admitted. That one that he's looking at and
6 using for his basis of not objecting is the same
7 you said mostly, right? If something pops up
8 differently, just -- I just don't want Mr. Kaiser
9 to run in to the unfortunate, you know --
10 MR. KAISER: No. I'm looking at the
11 discretion as well.
12 MR. KOLAR: I had given him an updated
13 one, which is --
14 HEARING OFFICER KNITTLE: Yeah, I know,
15 but I don't if he has that.
16 MR. KAISER: I may have misplaced it.

17 HEARING OFFICER KNITTLE: That's okay.

18 Let's keep going. If there looks to be a

19 problem, we'll address it.

20 MR. KOLAR: Twenty-eight, neither one of
21 you have. This is a survey that we had shown of
22 the LTD property.

23 HEARING OFFICER KNITTLE: Survey of LTD
24 property.

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1 MR. KOLAR: Which the purpose was just to
2 show Lakeside Drive versus the LTD --

3 MR. KAISER: No objection.

4 HEARING OFFICER KNITTLE: It's admitted.

5 MR. KOLAR: Thirty-four, the manual, SLUCM
6 manual.

7 HEARING OFFICER KNITTLE: Mr. Kaiser?

8 MR. KAISER: No objection.

9 HEARING OFFICER KNITTLE: That's admitted.

10 MR. KOLAR: I guess I should know that. I
11 think I'm missing a couple pages. I am missing a
12 couple pages. I got this from somebody in
13 Washington, D.C.

14 HEARING OFFICER KNITTLE: Are you looking
15 to replace those pages later?

16 MR. KOLAR: If I can get those pages and
17 send them to Mr. Kaiser?

18 HEARING OFFICER KNITTLE: Yes.

19 MR. KOLAR: And if he has an objection,
20 then I guess it will go in without the pages. If
21 he doesn't have an objection, I'll transmit them
22 to you.

23 MR. KAISER: I mean, I'm going to be using
24 -- I have a SLUCM code as well, and to the

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1 extent I reference it in argument, I'll assume
2 that the pages are there.

3 HEARING OFFICER KNITTLE: Do you mind if
4 Mr. Kolar provides --

5 MR. KAISER: No.

6 HEARING OFFICER KNITTLE: -- those pages
7 at a later point in time?

8 MR. KOLAR: Just for the record, it looks
9 like I'm missing seven and eight of this very
10 lengthy manual.

11 HEARING OFFICER KNITTLE: We'll admit it,
12 and you are granted leave to replace those pages
13 at a later point in time because I take it,
14 Mr. Kaiser, you did not object, correct?

15 MR. KAISER: No, no objection.
16 MR. KOLAR: Thirty-six, good neighbor
17 documents.
18 MR. KAISER: I'll object, self-serving.
19 No, no objection.
20 HEARING OFFICER KNITTLE: That's admitted.
21 MR. KOLAR: Thirty-nine, you already
22 admitted, the real estate tax bill.
23 HEARING OFFICER KNITTLE: Yes. That's
24 admitted already.

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1 MR. KAISER: No objection.
2 MR. KOLAR: Then I have 40, 41, and 42,
3 the Paul Schomer letters.
4 MR. KAISER: No objection.
5 HEARING OFFICER KNITTLE: Those are all
6 admitted.
7 MR. KOLAR: I have 46 and 47 used in the
8 Paul Schomer evidence deposition.
9 HEARING OFFICER KNITTLE: Mr. Kaiser.
10 MR. KAISER: No objection.
11 HEARING OFFICER KNITTLE: Forty-six and 47
12 are admitted.
13 MR. KOLAR: Then I have the photographs,

14 51 through 85.

15 HEARING OFFICER KNITTLE: I remember
16 those.

17 MR. KAISER: No objection.

18 HEARING OFFICER KNITTLE: Would that be 34
19 of them, Mr. Kaiser?

20 MR. KAISER: Yeah, all of them, no
21 objection.

22 HEARING OFFICER KNITTLE: Those are all
23 admitted.

24 MR. KOLAR: Then I have the aeriels 86,

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1 87, 88, and 89.

2 MR. KAISER: No objection.

3 MR. KOLAR: Just for the record, 86 and 87
4 are each two-page exhibits, and what I put on
5 here is like 86 one of two, 86 two of two,
6 because LTD is in two townships. So one is like
7 Deerfield township, and I think the next one is
8 Vernon township, but basically the same view.

9 HEARING OFFICER KNITTLE: Eighty-six, 87,
10 88, and 89 are all admitted.

11 MR. KOLAR: Then 90, the Bannockburn
12 zoning map.

13 HEARING OFFICER KNITTLE: Mr. Kaiser?
14 MR. KAISER: No objection.
15 HEARING OFFICER KNITTLE: It's admitted.
16 MR. KOLAR: Then I had Thunder documents
17 92 and 93.
18 HEARING OFFICER KNITTLE: Mr. Kaiser?
19 MR. KAISER: No objection.
20 HEARING OFFICER KNITTLE: Both admitted.
21 MR. KOLAR: And 97, the Thunder study.
22 HEARING OFFICER KNITTLE: Mr. Kaiser?
23 MR. KAISER: No objection.
24 HEARING OFFICER KNITTLE: Admitted.

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1 MR. KOLAR: Ninety-eight, the May 6th,
2 '98, to Jack Voight by Mr. Thunder.
3 MR. KAISER: No objection.
4 HEARING OFFICER KNITTLE: Admitted.
5 MR. KOLAR: And then, finally, the box and
6 the little envelope of peanuts, No. 100.
7 MR. KAISER: No objection.
8 HEARING OFFICER KNITTLE: I think we
9 admitted that already, but that's readmitted.
10 MR. KOLAR: That's all I have.
11 HEARING OFFICER KNITTLE: Let's go over

12 what I have.

13 MR. KOLAR: I'll put those in the peanut
14 box.

15 HEARING OFFICER KNITTLE: Thank you. Are
16 all the aerials rolled up into that? Oh, I see.
17 I forgot about those.

18 MR. KOLAR: I'll add those.

19 HEARING OFFICER KNITTLE: Yeah. We can do
20 those later.

21 MR. KOLAR: I'll rubber band them all
22 together.

23 HEARING OFFICER KNITTLE: I have a very
24 small foreign car. We'll be okay. All right.

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1 Mr. Kaiser?

2 MR. KAISER: Yes.

3 HEARING OFFICER KNITTLE: I'm assuming all
4 the exhibits are on the shelf somewhere, but I'm
5 just going to go through my notes.

6 MR. KAISER: Yeah. I'm trying to just put
7 them --

8 HEARING OFFICER KNITTLE: Do you want to
9 go through them in order? You want to take a
10 recess while we do this?

11 THE REPORTER: Sure.

12 HEARING OFFICER KNITTLE: Let's go off for
13 a little bit.

14 (Discussion had
15 off the record.)

16 HEARING OFFICER KNITTLE: I'm going to go
17 through them one by one and tell you what I've
18 got.

19 MR. KOLAR: Could I get a copy of that
20 then or something?

21 HEARING OFFICER KNITTLE: Actually, you
22 can if you -- well, I don't know about my notes.
23 It could be embarrassing, but I do do a hearing
24 report where I itemize all the exhibits offered

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1 and those accepted, and that will come out when I
2 get the transcript.

3 MR. KOLAR: That will be fine.

4 HEARING OFFICER KNITTLE: That will be in
5 typewritten form. It won't be so hard to read.
6 C1 -- I've labeled everything C1 and R1, C number
7 and then R number.

8 C1 is the Valentine's Day catalogue.
9 That was admitted. C2 is Christmas catalogue,

10 '98. That was admitted. C3 was deeds, LTD
11 Commodities deeds it looks like.

12 MR. KOLAR: Right. Definitely.

13 HEARING OFFICER KNITTLE: Those were
14 admitted. C4 was a memo to Jack Voight from John
15 Scheimel dated November 13th, 1996. That was
16 admitted. C5 is a letter to Mr. Voight from
17 William Kaufman dated 12-10-96. That was
18 admitted. C6 was Acoustic Associates Limited
19 facsimile transmittal. This is dated January
20 31st, 1997. That was admitted.

21 C7, a February 7th letter to Mike
22 Hara from David Lothspeich. Is that the right
23 way to say that? That was admitted.

24 MR. KOLAR: Good enough.

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1 HEARING OFFICER KNITTLE: C8, a Weber
2 letter to Lothspeich, 1-30-97. That was
3 admitted. C9, fax, Voight to Lothspeich,
4 4-7-97. That was admitted. Here we skipped
5 some. Oh, I was right. C10 Lothspeich to Hara
6 letter, 4-25-97. That was admitted.

7 C11, Lothspeich to Hara letter,
8 7-11-97. That was admitted. C12, Kaufman to

9 Hara letter, 7-30-97. That was admitted. C13,
10 memo, Thunder to Voight, November 2nd, 1997.
11 That was admitted. C14, memo, Thunder to Voight,
12 11-14-97. That was admitted.

13 C15, Lothspeich to Voight facsimile
14 dated 12-1-97. It was admitted. C16 is letter
15 Hara from Berman dated 12-5-97. This was
16 admitted for the notice that it was received, for
17 that sole purpose only, and this will be more
18 clear in the transcript, and I will identify this
19 in the hearing report. C17, Lothspeich to Voight
20 fax dated 12-8-97. This was admitted. C18,
21 Acoustic Association, 12-23-97, draft report.
22 This was admitted.

23 C19, report Acoustic Association it
24 looks like to Mr. Voight dated 1-8-98. That was

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1 admitted. Schomer to Lothspeich letter, 1-26-98,
2 is C20. That was admitted. C21, Berman to Hara
3 letter, 2-12-98. That was admitted. C22,
4 Lothspeich to Hara letter dated 2-18-98. That
5 was admitted. C23, Schomer to Thunder letter
6 dated 2-27-98. This was reserved. Remember we
7 had talked about this earlier?

8 MR. KOLAR: Can I see it?

9 HEARING OFFICER KNITTLE: Go ahead.

10 MR. KAISER: Was it reserved because Mr. Kolar
11 anticipated having Mr. Thunder verify the
12 accuracy of Dr. Schomer's summary?

13 HEARING OFFICER KNITTLE: I think so, but
14 without looking at the transcript from November
15 1st, 1999, I can't be sure.

16 MR. KOLAR: I think the issue was that I
17 guess it was more of a question for Mr. Schomer
18 by Steve, but you said LTD Industries wanted to
19 better measure the background sounds since they
20 now had to meet the class B requirements. I
21 guess as long as it's admitted and understood
22 that that's Mr. Schomer's opinion, that's his
23 statement as opposed to any position by LTD.

24 MR. KAISER: I have no objection.

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1 HEARING OFFICER KNITTLE: Or a judicatory
2 body?

3 MR. KOLAR: Right.

4 MR. KAISER: I have no objection to it
5 being --

6 HEARING OFFICER KNITTLE: Admitted for

7 that purpose, Mr. Kaiser?

8 MR. KAISER: Yes.

9 HEARING OFFICER KNITTLE: This will be
10 admitted subject to that restriction. That was
11 C23. C24 is an e-mail from John Sejud to Jack
12 Voight dated March 5th, 1998. That was
13 admitted. C25, a letter from Voight to Berman
14 dated 3-9-98. That was admitted. C26, letter
15 from Voight to Mitchell dated 3-10-98. That was
16 admitted. C27, a letter from Roti to Hara, an
17 unsigned letter, I note, dated 3-21-98. This was
18 admitted.

19 C28, a letter from Hara to Roti dated
20 4-16-98. That was admitted. C29, a letter from
21 Roti to Hara dated 4-20-98. That was also
22 admitted. C30, a letter -- pardon me, a
23 facsimile from Lothspeich to Hara and Voight
24 dated 4-23-98. That was admitted.

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1 C31, a letter from Thunder to Voight
2 dated 5-19-98. That was admitted. C32, letter
3 from Thunder to Voight dated 6-5-98. That was
4 admitted. C33, a letter from Hara to Garutza
5 dated 6-29-98. That was admitted. C34 was the

6 complaint before the Pollution Control Board.
7 This was admitted. This is dated July 18th,
8 1998. C35, Thunder to Voight letter with
9 redactions dated 9-30-98. This was admitted. C36
10 were the barrier calculations by Thunder. I
11 don't have this as being offered or admitted.

12 MR. KAISER: I'd offer it now.

13 HEARING OFFICER KNITTLE: It was in
14 testimony. Mr. Kolar, do you have an objection
15 to that?

16 MR. KOLAR: No, I have no objection. He
17 explained what it was.

18 HEARING OFFICER KNITTLE: Okay. This is
19 admitted. C37 is a map of LTD Commodities,
20 8-by-11. This was admitted.

21 MR. KAISER: I'm sorry. I'm losing you
22 here. C37?

23 HEARING OFFICER KNITTLE: C37, 8-by-11
24 representation of LTD Commodities and the

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1 surrounding area with certain portions
2 highlighted in yellow highlighter. C38-A, fax
3 from Huff to Figalo dated 1-28-97. This was
4 admitted. C -- I think we have a bunch here.

5 I think this is a group exhibit.
6 C38-B, a letter from Voight to Mitchell March
7 10th, 1998. This was admitted. I also note that
8 this is the same as C26. C38-C is a letter from
9 Thunder to Mitchell dated 5-18-98. It was
10 admitted. C38-B, a fax from Mitchell to Voight
11 dated 6-5-98. That was admitted. C38-E is a
12 Mitchell to Graham facsimile dated 11-10-98.
13 That was admitted. C38-F is a memo to Graham
14 from Mitchell dated 11-10-98. That was
15 admitted. C38-G was another facsimile from
16 Mitchell dated 11-16-98. This was admitted.
17 Without taking out staples, I can't see who this
18 is to, and I don't have it in my notes. Can you
19 make that out?

20 MR. KOLAR: Duroweld?

21 HEARING OFFICER KNITTLE: Rich from
22 Duroweld. That was admitted.

23 MR. KOLAR: I remember him. He testified,
24 didn't he, Rich from Duroweld?

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1 MR. KAISER: I think we called him.

2 HEARING OFFICER KNITTLE: C38-H is a
3 facsimile from Huff to Bronji dated 11-16-98.

4 That was admitted. C38-I, facsimile from
5 Mitchell to Voight dated 11-17-98. That was
6 admitted. C38-J, facsimile from Mitchell to
7 Voight dated 1-13-99. That was admitted.

8 C38-K was a facsimile from Mitchell
9 to Voight dated 2-13-99. That was also
10 admitted. C38-L is a brochure entitled Building
11 the Sound Barrier by Industrial Acoustics
12 Company. That was admitted. C39-M, I have this
13 as diagrams of LTD dock area, two. Yes, it is
14 two pages, and they were both admitted. That
15 ends the exhibits submitted on 11-1.

16 11-2, we had C39, noise regulations
17 of the Illinois Pollution Control Board. These
18 were admitted.

19 MR. KOLAR: Can I see those for a second?

20 HEARING OFFICER KNITTLE: Yes, you may.

21 Do you want to stop for a little bit?

22 MR. KOLAR: They look like the ones that I
23 have, but I would take a look at the impulsive.

24 HEARING OFFICER KNITTLE: We can identify

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1 the date that those were printed, if you'd like.

2 MR. KAISER: What do you see there, Joe?

3 MR. KOLAR: It looks like the ones that
4 are current. I think the web site has the fast
5 dynamic characteristic phrase in impulsive, which
6 is not part of the regulation, and this one does
7 not have that phrase.

8 HEARING OFFICER KNITTLE: They haven't
9 fixed that yet?

10 MR. KOLAR: Right. We looked at it the
11 other day.

12 HEARING OFFICER KNITTLE: That's good to
13 know, isn't it? I should bring that to
14 somebody's attention.

15 These were admitted printed by the
16 authority of the state of Illinois in 7-91. I'd
17 like to think we had a more current copy, but it
18 does include the amendments through January 28th,
19 1987. I would assume that it was printed in
20 1987, and this was the permission to print them.
21 So these are admitted, and they are dated January
22 28th, 1987, amendments including -- up to and
23 including those of that date.

24 C40 is Zak documents, five pages off

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1 the Internet. It looks to be five pages from the

2 LTD Commodities site. That was admitted. C41
3 are the handwritten notes from last week. I
4 don't know whose handwritten notes these are.
5 MR. KAISER: Would it be one of the
6 complainants? I don't know if that's --
7 HEARING OFFICER KNITTLE: This was denied.
8 MR. KAISER: Denied?
9 HEARING OFFICER KNITTLE: Not supplied.
10 MR. KOLAR: Right.
11 MR. KAISER: Forty-one?
12 HEARING OFFICER KNITTLE: This is C41.
13 I'll identify the complainant in the exhibit list
14 when I do it, but without the benefit of the
15 transcript, I can't remember which complainant it
16 is, and I didn't write it down.
17 MR. KAISER: I don't want to be guessing.
18 I can't tell by the handwriting.
19 MR. KOLAR: You don't put that in the pile
20 then, do you?
21 HEARING OFFICER KNITTLE: I put it in the
22 pile. I direct the Board not to look at it. I
23 keep it in case Mr. Kaiser wants to file a motion
24 to reconsider with the Board and they overrule my

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1 decision. Then they'll have it to look at.

2 Otherwise, I can assure you that the Pollution
3 Control Board will not take that document into
4 consideration.

5 MR. KAISER: Can we go off the record just
6 real quick?

7 HEARING OFFICER KNITTLE: Let's go off the
8 record.

9 (Discussion had
10 off the record.)

11 HEARING OFFICER KNITTLE: C42 is a log of
12 Rosenstock. This was admitted. C43 was a photo
13 driver's license of Paul Rosenstock. That was
14 admitted. C44 was a Roti to councilmen letter
15 dated November 21st, 1997. That was admitted.
16 C45 was an April 1st, 1998, letter from, it
17 looks, like Zak to Roti dated 4-1-98. This was
18 also noted as Respondent's Exhibit 15. Has this
19 been admitted under that as well?

20 MR. KAISER: Yes.

21 HEARING OFFICER KNITTLE: This was
22 admitted back in November. This is another one
23 that's been admitted twice. I'll note it on both
24 of the parties' exhibit lists. C46 is a Zak to

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1 Roti letter dated 5-20-98. I'll also note that
2 this is Respondent's Exhibit 16. That's also
3 admitted.

4 MR. KOLAR: I don't think we admitted that
5 under this.

6 MR. KAISER: You admitted it in your
7 case.

8 HEARING OFFICER KNITTLE: You didn't offer
9 that one?

10 MR. KOLAR: Right.

11 HEARING OFFICER KNITTLE: That's admitted
12 only as C46 then.

13 MR. KAISER: Now, C47, I don't know where
14 it is or what it is.

15 HEARING OFFICER KNITTLE: I don't see that
16 either.

17 MR. KAISER: It's possible that we skipped
18 one.

19 HEARING OFFICER KNITTLE: I think we
20 missed one because I go right to C48. I'll check
21 the transcript to make sure though.

22 C48, notes of Karen Roti. That was
23 admitted. It's notes on the back of an
24 envelope. That was admitted. C49, notes of

1 Karen Roti, plain piece of paper, dated 11-98.
2 That was admitted. C50 -- I'm missing one. I
3 have C50 as last Thursday night's logs from Roti,
4 and those were denied, but I do not have a copy
5 of those. If for some reason the board overrules
6 me, Mr. Kaiser, or if you even ask them to do so,
7 you're going to have to supply another copy.
8 I'll go back and check my office, but I kept
9 everything in the same folder, and I don't
10 anticipate --

11 MR. KAISER: It's entirely possible I hung
12 on to all the copies. Maybe Joe has them.

13 MR. KOLAR: Well, I do have a copy of 50,
14 but I'd like to keep my copy.

15 MR. KAISER: Keep your copy.

16 HEARING OFFICER KNITTLE: You want to hold
17 on to that? Note for the record that Mr. Kolar
18 has a copy, and I'm sure Mr. Kaiser has a copy,
19 and if, in fact, we need to get that sent in, we
20 will do so, but 50 was denied.

21 C51 -- actually, I'm going to change
22 that. Mr. Kaiser, I want you to submit that to
23 me at some point. I want you to submit it to Joe
24 first to make sure it's the same one he has, and

1 if he agrees that it's what he has, send it in to
2 me just so I have everything. Do that at your
3 leisure.

4 MR. KAISER: But before my response brief
5 or closing brief is due.

6 HEARING OFFICER KNITTLE: Probably before
7 the Board -- yeah. Exactly. C51 is a 17-page
8 document of notes. Once again, I do not have
9 whose notes those are.

10 MR. KAISER: Those look like Ms. Roti's.

11 HEARING OFFICER KNITTLE: This was
12 denied. This is also Respondent's 23, but I know
13 you didn't offer those. I jump now to C55, which
14 means we're missing 52, 53, and 54. They could
15 just be out of order here. These are all
16 admitted exhibits that we're missing. Nope, we
17 don't have them.

18 MR. KOLAR: I can tell you what I have is
19 --

20 HEARING OFFICER KNITTLE: I know what they
21 are. Fifty-two is a Schomer to Lothspeich
22 4-20-97 letter.

23 MR. KOLAR: Right. That's already in, for
24 what it's worth, as my exhibit.

1 HEARING OFFICER KNITTLE: It was admitted
2 on November 4th as well.

3 MR. KAISER: What's the date of it,
4 4-20-97? Fifty-two is 4-20-97?

5 HEARING OFFICER KNITTLE: Right. Was that
6 admitted -- was that offered by you as well, Mr.
7 Kolar?

8 MR. KOLAR: Yes.

9 HEARING OFFICER KNITTLE: Do you know the
10 exhibit number?

11 MR. KOLAR: Yes.

12 HEARING OFFICER KNITTLE: I think 52 is
13 probably admitted and 54 as well.

14 MR. KOLAR: His Complainants' 52 is the
15 same as Respondent's 40.

16 HEARING OFFICER KNITTLE: Okay. That's
17 admitted, and I have a copy of that. Well, it's
18 in the box, right, with the peanuts?

19 MR. KOLAR: Wait. Is that 52 you're
20 asking about?

21 HEARING OFFICER KNITTLE: Fifty-four is a
22 Thunder 5-6-98 letter report, which has been
23 offered and admitted as R98. No. Actually,
24 there's two. I don't know which one this was,

1 but we have R98 and R99, which was not offered.

2 MR. KOLAR: What do you have down as 54?

3 HEARING OFFICER KNITTLE: I have 5-6-98
4 Thunder letter report.

5 MR. KOLAR: I've got 54 as this May 6th,
6 '98, document.

7 HEARING OFFICER KNITTLE: Which one of
8 yours, though? See, because I have two May 6th,
9 '98, documents on your list, and one has been
10 offered and one has not. I don't know which one
11 that is.

12 MR. KOLAR: That's May 19th.

13 HEARING OFFICER KNITTLE: Oh.

14 MR. KAISER: What is C53?

15 HEARING OFFICER KNITTLE: C53, we'll get
16 to that, but we do have a copy of C54, and that
17 is the same as R98. That was admitted. C53,
18 notes of Harmon, which I do not have.

19 MR. KAISER: But they were admitted?

20 HEARING OFFICER KNITTLE: They were
21 admitted on November 4th. Do you have a copy of
22 those, Mr. Kolar?

23 MR. KOLAR: Yes.

24 HEARING OFFICER KNITTLE: Is that the

1 original copy or is that just yours?

2 MR. KOLAR: This is my copy that Steve
3 gave me.

4 HEARING OFFICER KNITTLE: Mr. Kaiser, do
5 you have a copy of that?

6 MR. KAISER: I'll see what I can do. I
7 must, but --

8 HEARING OFFICER KNITTLE: Right. If you
9 can't get a copy of that, Joe can send you a copy
10 and make a copy and send it because that is
11 admitted as well. That takes us to C55, overtime
12 work for 1998, I'm assuming for LTD employees,
13 overtime schedule for 1998. This was admitted.
14 C56 is a trailer chart for LTD dated 12-98. This
15 is admitted. C57, monthly summary of LTD from
16 '96 and '97 Christmas seasons. This was
17 admitted. C58 was a Lothspeich to Voight
18 facsimile dated 12-19-96. This was denied.

19 MR. KAISER: Denied?

20 HEARING OFFICER KNITTLE: Denied.

21 MR. KAISER: Lothspeich to whom?

22 HEARING OFFICER KNITTLE: Voight.

23 12-19-96. Do you want to take a look?

24 MR. KAISER: I don't expect to file any

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1 motion in connection with that.

2 HEARING OFFICER KNITTLE: C59, invoices of
3 Acoustic Associates, Ltd., sent attention Jack
4 Voight, LTD Commodities. These are a variety of
5 dates from 5-31-97 to 1-29-98. These were
6 admitted. I have R36 as the photos. Those were
7 admitted as well on November 5th. We've admitted
8 them here again today. C60 is 2-17-94 zoning
9 approval request and application. I guess
10 actually it's the building permit preapplication
11 for zoning and architectural review approval.
12 This was admitted. C61 is the 93-37 Bannockburn
13 ordinance, which was reserved, and I do not have
14 a copy of that. I think you kept that one.

15 MR. KOLAR: What are we talking about,
16 61?

17 HEARING OFFICER KNITTLE: Yeah. I have
18 93-37 Bannockburn ordinance, and I have no copy
19 of that, and it was reserved. What do we want to
20 do with that?

21 MR. KOLAR: I don't have a copy.

22 MR. KAISER: Let me take a quick look.

23 HEARING OFFICER KNITTLE: Do it at the
24 end.

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1 MR. KOLAR: Yeah.

2 HEARING OFFICER KNITTLE: I'll circle it
3 here. C62 is a letter from Lohn Associates to
4 Lothspeich dated 2-21-94. This was admitted.
5 C63 was a Lohn & Associates letter to Lothspeich
6 dated 2-21-94. This was admitted. They're both
7 admitted. C64 is Bannockburn ordinance number
8 94-12. This was admitted. C65 is the evidence
9 deposition from Paul Schomer dated October 29th,
10 1999. This was admitted subject to the
11 objections contained in the transcript, which
12 will be ruled upon by me, and decisions will be
13 forthcoming in the hearing report.

14 MR. KAISER: Do you want to just go off
15 the record real quick?

16 HEARING OFFICER KNITTLE: Yeah. I'd be
17 happy to. Before we go off the record, this was
18 admitted, correct?

19 MR. KAISER: Yes.

20 HEARING OFFICER KNITTLE: Mr. Kaiser and
21 Mr. Kolar, this was admitted subject to that?

22 MR. KOLAR: Schomer evidence?
23 HEARING OFFICER KNITTLE: Right.
24 MR. KOLAR: Right.

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1 HEARING OFFICER KNITTLE: Admitted subject
2 to my rulings on the objections contained in the
3 transcript. We can go off.

4 (Discussion had
5 off the record.)

6 MR. KOLAR: I think then with Mr. Schomer
7 I did forget. Respondent's 35, this relates to
8 objections. In his transcript, the complainants'
9 supplemental responses to interrogatories where
10 we asked them to identify trial witnesses and
11 opinion witnesses and the subject of their
12 testimony, and some of my objections are that
13 they're beyond the scope of the disclosure. So
14 you would need 35.

15 HEARING OFFICER KNITTLE: Do you have
16 an objection to that, Mr. Kaiser?

17 MR. KAISER: There's the disclosure, and
18 then there was the opportunity to depose Dr. Schomer
19 at length, and some of the opinions Dr. Schomer --
20 I mean, without knowing exactly which portions of

21 the Schomer transcript Mr. Kolar believes were
22 subject to objection or not disclosed, it's
23 difficult for me to argue. I mean, I think he
24 had ample opportunity. Mr. Schomer was there and

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1 was willing to sit there as long as Mr. Kolar had
2 questions.

3 So I don't think --

4 HEARING OFFICER KNITTLE: But are you
5 objecting to the admittance of this document
6 then, which is --

7 MR. KOLAR: Thirty-five.

8 HEARING OFFICER KNITTLE: Yeah. R35 is, I
9 think, your supplemental response to the
10 interrogatories. I can tell you right now I'll
11 allow you to note any objection on the record,
12 but I'm going to admit that.

13 MR. KAISER: Oh, I have no problem
14 admitting it.

15 HEARING OFFICER KNITTLE: Oh, okay.

16 MR. KAISER: I think what he's arguing is
17 that there's a paragraph on page four where I
18 disclosed what I expect Dr. Schomer will testify
19 to.

20 HEARING OFFICER KNITTLE: Oh, I see.

21 MR. KAISER: And I think Mr. Kolar's
22 objection may be that opinions contained in the
23 transcript go beyond what was set forth. I think
24 to the extent they go beyond, they go beyond in

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1 order to explain the method by which he reached
2 opinions or information he may have considered or
3 information that was introduced by way of a
4 question or --

5 HEARING OFFICER KNITTLE: You don't have
6 to order it -- you can throw it on top.

7 MR. KAISER: So I would hope that as you
8 review the relevance of Dr. Schomer's testimony,
9 you take all those things into consideration.

10 HEARING OFFICER KNITTLE: I definitely
11 will take that into account. I'm sure you made a
12 similar argument during the objection portion of
13 the evidence deposition, one would hope.

14 MR. KAISER: If I didn't -- one would
15 hope. If I didn't, I'm making it now.

16 HEARING OFFICER KNITTLE: He gave me his
17 copy from the peanut box.

18 MR. KOLAR: Just to clarify, what I was

19 stating is that during the evidence dep, using
20 that very document, as I recall, I objected to
21 certain things saying it was beyond the scope.
22 So it's not a new objection. I'm just saying you
23 need that document because I believe I referred
24 to it in the evidence dep.

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1 MR. KAISER: Fair enough. Then I trust
2 you'll exercise your judgment and discretion.

3 HEARING OFFICER KNITTLE: I will do so to
4 the best of my ability. This is admitted, R35.

5 Which takes us to C65, which we have
6 just covered as admitted subject to the objection
7 that is yet to be ruled upon. The rest of these
8 are Respondent's. C66 is a Kolar letter to
9 Bannockburn dated 5-4-98. That was admitted.
10 Let me check the date.

11 MR. KOLAR: You've got it highlighted.
12 Can we use mine that's not highlighted?

13 HEARING OFFICER KNITTLE: I have no
14 problem with that. Mr. Kaiser?

15 MR. KAISER: I have no objection.

16 HEARING OFFICER KNITTLE: Let's substitute
17 that.

18 MR. KOLAR: He can even change the
19 numbering on mine if he wants.

20 HEARING OFFICER KNITTLE: I note for the
21 record that exhibits today, 5-24-00, the
22 complainant offered no exhibits today. So the
23 last exhibit was C66. That was yesterday.

24 MR. KOLAR: So Respondent's 26 is the same

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1 thing as Complainants' 66?

2 HEARING OFFICER KNITTLE: Right. That was
3 admitted as well. That's all I have. Mr. Kaiser,
4 did I miss anything to the best of your
5 knowledge?

6 MR. KAISER: No, nothing further. I think
7 we've accounted for everything or at least
8 identified those which are missing or which I
9 need to provide. There's this C61 Bannockburn
10 ordinance, which was reserved. I'm not sure I
11 have a copy of that with me today.

12 HEARING OFFICER KNITTLE: Are you offering
13 that at this point? I'll tell you what, if you
14 don't have it before you, I would grant you leave
15 to move to offer it after the hearing subject to
16 any objection that Mr. Kolar may have.

17 MR. KAISER: If we could just leave it in
18 that posture, I'd be comfortable with that.

19 HEARING OFFICER KNITTLE: Mr. Kolar, if
20 you have an objection, you can make it when he
21 sends it in.

22 You've both waived your closing
23 arguments, correct?

24 MR. KAISER: Yes.

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1 MR. KOLAR: Yes.

2 HEARING OFFICER KNITTLE: Are there any
3 other motions or matters we have to address here
4 today?

5 MR. KOLAR: I'd move for a directed
6 verdict -- I guess not a directed verdict --

7 HEARING OFFICER KNITTLE: It's not within
8 my authority, but it's duly noted. Mr. Kaiser?

9 MR. KAISER: Nothing further, Mr. Knittle.
10 Thank you for your time.

11 HEARING OFFICER KNITTLE: We're not quite
12 done yet. First, I have a credibility
13 determination I'm going to make right now. Based
14 on my legal experience and judgment in this area,
15 I find that credibility is not an issue with any

16 of the witnesses. We also want to go over a
17 briefing schedule. Let's go off the record and
18 come up with something real quick.

19 (Discussion had
20 off the record.)

21 HEARING OFFICER KNITTLE: Pursuant to an
22 off-the-record discussion, we agreed on a
23 briefing schedule. Complainants' post-hearing
24 brief will be due on or before July 10th, 2000.

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1 The Respondent's brief will be due on or before
2 8-7-2000, and the reply brief of the complainants
3 will be due on or before August 21st, 2000. We
4 didn't cover service. I don't think time frames
5 are tight enough to require anything other than
6 mailing. Does anyone need a fax or an
7 overnight?

8 HEARING OFFICER KNITTLE: I don't at the
9 Board, but, Mr. Kolar, if you want to, we can put
10 in there that Mr. Kaiser has to overnight it to
11 you or get it to you by the seventh -- excuse me,
12 the tenth.

13 MR. KOLAR: And I'd be willing to do the
14 same for him just because we're dealing with the

15 mail. So I would like it on the -- no later than
16 the day after it's due. I mean, if he wants on
17 the 10th to overnight it so I get it on the
18 11th --

19 MR. KAISER: That's fine. I expect I'm
20 going to be filing it not on that Monday because
21 I'm going to be out of town that day, but
22 somewhere in the -- you know probably, before the
23 fourth to be honest. So you'll have it.

24 HEARING OFFICER KNITTLE: Let's do this

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1 then. Service before the Board can be by mailbox
2 rule, but you are directed to serve it on the
3 other party by the date which it is due. So it
4 will be due in the other party's hands --
5 complainants' post-hearing brief will be due on
6 7-10-2000. Respondent's brief will be due at the
7 complainants on August 7th, and the reply brief,
8 get to it Mr. Kolar by 8-21. That's in the
9 hands. There's no mailbox rule that will apply,
10 but the Board doesn't need an overnight delivery
11 in this case. Just feel free to put it in the
12 mail.

13 MR. KAISER: But they would need ten

14 copies?

15 HEARING OFFICER KNITTLE: Yeah. I think
16 it's nine and one original. That's the rules.

17 MR. KOLAR: Is there a page limit on --

18 HEARING OFFICER KNITTLE: There isn't
19 generally, but we can -- actually, there might
20 be, but we could set one. Sometimes we do.

21 MR. KAISER: I think in this case where we
22 have so much testimony and so many documents --

23 HEARING OFFICER KNITTLE: Hold on, Mr. Kaiser.
24 There is. No post-hearing brief -- this is

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1 101.104(b). Briefs submitted in response to
2 Board order or public comments submitted in lieu
3 of a brief shall exceed 50 pages --

4 MR. KAISER: I can live with that.

5 HEARING OFFICER KNITTLE: -- without prior
6 approval of the Board hearing officer. Mr. Kolar --
7 oh, no, no. This is a no reply brief, and this
8 is for your reply brief, none shall exceed 25
9 pages. So the limits are 50 for the first two
10 briefs and then 25 for the second. I'd be
11 willing to consider extending that if you need me
12 to. Let me know.

13 MR. KAISER: No.

14 HEARING OFFICER KNITTLE: Of course, that
15 will be subject to Mr. Kolar's objection.

16 MR. KOLAR: I would move to shorten the
17 briefs actually.

18 MR. KAISER: I'd object to that.

19 HEARING OFFICER KNITTLE: Let's leave it
20 then at the regulation standards. That's all I
21 have. Thank you both very much. Let's go off
22 the record.

23 MR. KOLAR: Thank you.

24 MR. KAISER: Thank you. Mr. Knittle.

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1 HEARING OFFICER KNITTLE: I want to note
2 for the record that no members of the public are
3 here wishing to provide public comment at this
4 point in time. It's approximately 3:25 on
5 Wednesday, May 25th (sic) -- the court reporter
6 corrected me that it is Wednesday, May 24th.
7 Thank you very much. The hearing is ended.

8 (Whereupon, these were all the
9 proceedings held in the
10 above-entitled matter.)

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1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF C O O K)
3
4 I, GEANNA M. IAQUINTA, CSR, do
5 hereby state that I am a court reporter doing
6 business in the City of Chicago, County of Cook,
7 and State of Illinois; that I reported by means
8 of machine shorthand the proceedings held in the
9 foregoing cause, and that the foregoing is a true
10 and correct transcript of my shorthand notes so

11 taken as aforesaid.

12

13

14 Geanna M. Iaquina, CSR
15 Notary Public, Cook County, IL
16 Illinois License No. 084-004096

16

17 SUBSCRIBED AND SWORN TO
18 before me this _____ day
19 of _____, A.D., 2000.

19 _____
20 Notary Public

20

21

22

23

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