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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

DAVID AND JACQUELYN McDONOUGH,

Petitioners,

vs.

PCB No. 00-163

GARY ROBKE,

Respondent.

Proceedings held on November 13, 2001, at 9:23 a.m., at the
St. Clair County Building, the Law Library, 10 Public Square,
Belleville, Illinois, before Steven C. Langhoff, Hearing Officer.

Reported by: Darlene M. Niemeyer, CSR, RPR
CSR License No.: 084-003677

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A P P E A R A N C E S

On behalf of the Petitioner:
Pro se

On behalf of the Respondent:

WEILMUNSTER & WIGGINTON, P.C.
BY: Stephen R. Wigginton
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I N D E X

WITNESS	PAGE NUMBER
DAVID McDONOUGH	
Direct Examination by Mr. McDonough.....	17
Cross-Examination by Mr. Wigginton.....	34
Redirect examination by Mr. McDonough.....	46
GREG ZAK	
Direct Examination by Mr. McDonough.....	47
JACQUELYN McDONOUGH	
Direct Examination by Mr. McDonough.....	66
GARY ROBKE	
Direct Examination by Mr. Wigginton.....	68
Cross-Examination by Mr. McDonough.....	87

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1 E X H I B I T S

2

3	NUMBER		MARKED FOR I.D.	ENTERED
4	Complainant Exhibit 1		17	65
	Complainant Exhibit 2		18	65
5	Complainant Exhibit 3		20	65
	Complainant Exhibit 4		21	65
6	Complainant Exhibit 5		23	65
	Complainant Exhibit 6		26	65
7	Complainant Exhibit 7		26	65
	Complainant Exhibit 8		29	65
8	Complainant Exhibit 9		30	65
	Complainant Exhibit 10		32	65
9	Complainant Exhibit 11		32	65
	Complainant Exhibit 12		--	65
10	Complainant Exhibit 13		--	65
	Complainant Exhibit 14		33	65
11	Complainant Exhibit 15		34	65
	Complainant Exhibit 16		--	65
12				
13	Respondent Exhibit 1		36	94
	Respondent Exhibit 2		73	94
14	Respondent Exhibit 3		78	94
	Respondent Exhibit 4		84	94
15	Respondent Exhibit 5		85	94

16

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1 P R O C E E D I N G S

2 (November 13, 2001; 9:23 a.m.)

3 HEARING OFFICER LANGHOFF: Good morning, everyone. My name
4 is Steven Langhoff. I am the Pollution Control Board Hearing
5 Officer who will be assigned this matter and will be conducting
6 the hearing today. This is PCB 00-163, David McDonough and
7 Jacquelyn McDonough, versus Gary Robke.

8 For the record, it is Tuesday, November the 13th, 2001, and
9 we are beginning at 9:23 a.m. I want to note for the record that
10 there are no members of the public present. Members of the
11 public are encouraged and allowed to provide public comment if
12 they so choose.

13 At issue in this case are allegations made in the complaint
14 filed by David McDonough and Jacquelyn McDonough, or the
15 McDonoughs or complainants. The violations alleged in the
16 complaint are for violations of Sections 24, 23 and 24 of the
17 Environmental Protection Act, or Act, 415 ILCS 5/23 and 24 2000.
18 The complaint also alleges a violation of 35 Ill. Admin. Code
19 900.102(a) 2000 or a noise nuisance. The Board accepted this
20 matter for hearing on May 4th of 2000.

21 I want to take a brief moment to let you know what is going
22 to happen today and after the proceeding today. You should know
23 that it is the Pollution Control Board, and not me, that will
24 make the final decision in this case. My job as Hearing Officer

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1 requires that I conduct the hearing in a neutral and orderly
2 manner so that we have a clear record of the proceedings here
3 today. It is also my responsibility to assess the credibility of
4 any witnesses giving testimony today. I will do so on the record
5 at the conclusion of the proceedings.

6 We will begin with opening statements from the parties, if
7 any, and then we will proceed with the McDonoughs case, followed
8 by Mr. Robke having an opportunity to put on a case in his
9 behalf. We will conclude with any closing arguments that the
10 parties wish to make and then we will discuss off the record a
11 briefing schedule which will be set on the record at the
12 conclusion of the proceedings.

13 The Board's procedural rules and the Act provide that
14 members of public shall be allowed to speak or submit written
15 statements at hearing. Any person offering such testimony today
16 shall be subject to cross-examination by both of the parties.
17 Any such statements offered by members of the public must be
18 relevant to the case at hand. I will call for any statements
19 from members of the public at the conclusion of the proceedings.

20 This hearing was noticed pursuant to the Act and the
21 Board's rules and regulations and will be conducted pursuant to
22 Sections 101.600 through 101.632 of the Board's procedural rules.

23 Before beginning, I would like to caution everyone that

24 this Board hearing is much the same as being in court and

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1 everyone should act appropriately and with proper decorum and
2 with due respect for all of the parties involved.

3 During the course of the hearing it is acceptable to call
4 me either Mr. Hearing Officer or Mr. Langhoff.

5 At this time I will ask the parties to make their
6 appearances on the record, beginning with the McDonoughs. Mr.
7 McDonough, would you make an appearance on the record. Just
8 state your name.

9 MR. McDONOUGH: David McDonough.

10 HEARING OFFICER LANGHOFF: Mr. McDonough, you are not an
11 attorney; is that correct?

12 MR. McDONOUGH: Correct.

13 HEARING OFFICER LANGHOFF: You have elected to proceed
14 today without the benefit of legal counsel; is that correct?

15 MR. McDONOUGH: That's correct.

16 HEARING OFFICER LANGHOFF: Thank you very much. Mrs.
17 McDonough.

18 JACQUELYN McDONOUGH: Yes.

19 HEARING OFFICER LANGHOFF: Would you please state your
20 name?

21 JACQUELYN McDONOUGH: Jacquelyn McDonough.

22 HEARING OFFICER LANGHOFF: Mrs. McDonough, you are not an
23 attorney; is that correct?

24 JACQUELYN McDONOUGH: Correct.

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1 HEARING OFFICER LANGHOFF: You have elected to proceed
2 today without the benefit of legal counsel; is that correct?

3 JACQUELYN McDONOUGH: Correct.

4 HEARING OFFICER LANGHOFF: Thank you very much. For Mr.
5 Robke.

6 MR. ROBKE: Gary Robke.

7 HEARING OFFICER LANGHOFF: Thank you. Mr. Wigginton?

8 MR. WIGGINTON: Yes. Stephen Wigginton with Weilmuenster &
9 Wigginton, P.C., Belleville, Illinois.

10 HEARING OFFICER LANGHOFF: Thank you. Are there any
11 outstanding or prehearing motions that the parties would like to
12 present before we proceed?

13 MR. WIGGINTON: I have one, Your Honor. I didn't know how
14 many copies I was required so I brought nine.

15 HEARING OFFICER LANGHOFF: Do you want to give one to Mrs.
16 McDonough?

17 MR. WIGGINTON: Yes.

18 HEARING OFFICER LANGHOFF: Thank you.

19 JACQUELYN McDONOUGH: Thank you.

20 HEARING OFFICER LANGHOFF: Go ahead, Mr. Wigginton.

21 MR. WIGGINTON: Your Honor, the respondent presents a
22 motion and an order in limine with respect to certain evidence

23 that may be attempted to be brought into this hearing today.
24 Item number one is a request that the court prohibit the

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1 complainant from attempting to admit any statements, photographs,
2 drawings, videos, documents, or other tangible objects or items
3 that have -- heretofore requested of the complaint which have not
4 been produced by the complainant, other than to use as
5 demonstrative materials or aids. Do you want me to go through
6 the --

7 HEARING OFFICER LANGHOFF: You don't have to read it, but
8 if you want to summarize it, it is pretty short.

9 MR. WIGGINTON: Right. On this one I have sent out
10 requests for production of documents.

11 HEARING OFFICER LANGHOFF: Okay.

12 MR. WIGGINTON: And objects and they have responded to
13 those and I am just asking that in order to prevent any surprise
14 or undue fairness -- or unfairness -- I am sorry -- that they be
15 limited to what they have produced to me so far.

16 HEARING OFFICER LANGHOFF: Okay. Good. Let's take one at
17 a time, and that is the first -- at least the first item. Mr.
18 McDonough, do you have any argument, or any --

19 MR. McDONOUGH: I don't plan to present anything that the
20 respondents have not had a chance to review already.

21 HEARING OFFICER LANGHOFF: Okay. Thank you. I will just
22 make my ruling after we are done. With number two, Mr.

23 Wigginton.

24 MR. McDONOUGH: Excuse Me. There is one picture, a

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1 photograph of my house that has no significance really other than
2 to explain --

3 JACQUELYN McDONOUGH: That would be demonstrative material.

4 MR. WIGGINTON: That's correct.

5 MR. McDONOUGH: Okay. So that's all right?

6 MR. WIGGINTON: Yes, as long as you are using the
7 photographs as demonstrative evidence, that is fine.

8 MR. McDONOUGH: Okay.

9 MR. WIGGINTON: In fact, you have already produced
10 photographs, and I have produced photographs to you.

11 MR. McDONOUGH: Correct.

12 MR. WIGGINTON: Okay.

13 HEARING OFFICER LANGHOFF: Thank you. Number two on the
14 motion in limine.

15 MR. WIGGINTON: Yes. This is a motion in limine to
16 preclude any reference, evidence or argument regarding any
17 numerical measurement testing of sound, which may have been
18 conducted by any consultant or retained opinion witness which has
19 not been produced.

20 HEARING OFFICER LANGHOFF: Okay.

21 MR. WIGGINTON: It is my understanding that Mr. Zak may

22 provide testimony on behalf of the complainants as an expert
23 witness now that he has retired from the Illinois EPA. And based
24 on my conversation that I had with Mr. Zak this summer, he

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1 indicated that he had not conducted any numerical testing. I
2 have not seen any reports from him. In my Rule 213
3 interrogatories they indicated there were no reports and no
4 testing documents.

5 HEARING OFFICER LANGHOFF: Okay. Thank you. Mr.
6 McDonough, any kind of argument or --

7 MR. McDONOUGH: No. That is correct. The only
8 measurements that I will present were taken by myself.

9 HEARING OFFICER LANGHOFF: Thank you. With regard to
10 number three, Mr. Wigginton.

11 MR. WIGGINTON: Yes. With respect to three, it is to
12 prohibit the complainant from attempting to admit or admitting
13 any measurement testing of sound unless he shows that the
14 measurement complies with the measurement procedures that are set
15 forth in Title 35, Subtitle 1, Chapter 1, Section 900.103, and
16 the applicable American National Standards Institute standards
17 and recommended practices. That particular section sets forth
18 requirements that a party must meet in order to have numerical
19 measurement testing allowed.

20 HEARING OFFICER LANGHOFF: Okay. Thank you. Mr.
21 McDonough.

22 MR. McDONOUGH: The only standards that I am aware of are
23 that the measuring device be held 25 feet from the common
24 property line and held in a manner to -- not moved around, held

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1 fairly steady in pointing at the noise source. That's basically
2 the way I proceeded to take measurements.

3 HEARING OFFICER LANGHOFF: Okay. Thank you. Anything
4 further, Mr. Wigginton?

5 MR. WIGGINTON: I would just ask the Hearing Officer to
6 order the complainant, in order to present such evidence, that
7 they comply with the standards as they are set forth in the law.

8 HEARING OFFICER LANGHOFF: Okay. Thank you. With regards
9 to your motion and order in limine, I will be sustaining your
10 motion in limine with regards to the first two paragraphs,
11 number one and two, any documents that have not been produced and
12 any numerical testing that has not been produced. And I am going
13 to deny, at this point, number three. If that comes up during
14 the hearing, please make a motion at that time or an objection at
15 that time.

16 MR. WIGGINTON: Thank you.

17 HEARING OFFICER LANGHOFF: We will see what happens during
18 the hearing. Anything further preliminarily?

19 MR. WIGGINTON: Nothing further from the respondents.

20 HEARING OFFICER LANGHOFF: Okay. Thank you. Mr.

21 McDonough, anything further?

22 MR. McDONOUGH: No, sir.

23 HEARING OFFICER LANGHOFF: Okay. Mr. McDonough, would you
24 like to give a brief opening statement? You don't have to.

12

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1 MR. McDONOUGH: I would.

2 HEARING OFFICER LANGHOFF: Okay.

3 MR. McDONOUGH: Good morning. My wife and I would like to
4 thank the Board for the opportunity to present our case. We had
5 hoped to resolve this matter without needing this hearing, but
6 that proved not to be possible.

7 As background, my wife and I live at 751 North Jefferson in
8 Mascoutah, Illinois. I will testify today that our property is
9 immediately adjacent to and shares a common property line with
10 the respondent's car wash.

11 Now, before the car wash was built, my family lived
12 reasonably well and enjoyed normal activities in both our yard
13 and in our house. But since the car wash was built and opened
14 for business in the early fall of 1998, the noise levels from car
15 wash equipment, patrons' vehicles, and the patrons themselves,
16 have created a noise environment around our home that is
17 unreasonable, illegal, and totally unacceptable to us. I will
18 testify that the noise levels from the car wash unreasonably
19 interfere with our routine daily activities to include, but not
20 limited to, relaxing or working in our yard, relaxing on our

21 porch, having the windows in our home open, and sleeping.

22 In demonstrating our case, I will present three types of
23 evidence. I will testify that the many activities at the car
24 wash cause noise and also that the noise caused by those

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1 activities unreasonably interfered with our daily lives. I will
2 introduce noise measurements and other documents showing the
3 frequency, duration and loudness of noises from the car wash. I
4 will also introduce an expert witness in noise matters who will
5 discuss the likely human response impacts due to noise.

6 We believe the evidence is overwhelming and will require
7 the Board to adopt the remedies we will request. For remedies
8 our technical expert in these matters will testify that
9 technically practical and economically reasonable remedies exist
10 and can either eliminate much of the noise from the car wash or
11 reduce it to reasonable levels.

12 Again, I thank the Board for hearing our case, and that
13 concludes my opening remarks.

14 HEARING OFFICER LANGHOFF: Thank you. Mr. Wigginton?

15 MR. WIGGINTON: Thank you. On behalf of the respondent,
16 we, too, would like to thank the Board for the opportunity to
17 have this matter heard today. We, too, tried to resolve this
18 issue without the Board's involvement. There have been various
19 offers made and various things done at the car wash prior to

20 today's hearing to try and mitigate any complaints that the
21 McDonoughs may have. Unfortunately, that was not the case.

22 We will present evidence that the car wash is properly
23 zoned, that it is properly permitted, that it is a viable,
24 economic business that provides tax revenues to the City of

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1 Mascoutah and the State of Illinois. That it is not your typical
2 car wash. That it is a first-class construction, of brick
3 construction.

4 We will also present evidence that the owners have not
5 received any complaints from the police department regarding any
6 type of nuisance or loud noise emanating from the property, nor
7 have they received any complaints from the City of Mascoutah
8 itself.

9 We will also introduce evidence that the McDonoughs'
10 property is surrounded by property zoned commercial and that
11 there is ongoing development, and that since the car wash has
12 been constructed there have been two other commercial businesses,
13 one that shares a common border with the McDonough's on the south
14 end of the property. The car wash is on the north end of the
15 property.

16 Unfortunately, the McDonoughs have purchased property that
17 is in a commercial district, and it is going to be in a
18 commercial district now that the property is part of an overall
19 large-scale development. We do not believe that the noise -- our

20 evidence will be that the noise that comes from the car wash is
21 not unreasonable and that it is not frequent or substantial in
22 nature. And given that, I do not believe that the court -- or
23 that the Board will find that the McDonoughs will meet the
24 two-prong test.

15

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1 I do not -- we will also have evidence that any remedies
2 that Mr. McDonough may seek to impose may be improper
3 economically, and more importantly may be improper
4 constitutionally. One of the remedies I anticipate that he may
5 suggest is the closing of the business which, in our opinion,
6 would be not only improper under the law but unconstitutional
7 under the law and may be a takings under the Constitution of the
8 United States and the State of Illinois. That will be a matter
9 that we will address in any post hearing briefs.

10 I would also reserve the right to interpose any objections
11 in the future as to -- I don't know what Mr. Zak's testimony may
12 be, but I know what Mr. Zak's responses were to the Supreme Court
13 Rule 213 interrogatories that I sent asking for his opinions, and
14 he will be limited -- I will ask the court to limit him to those
15 opinions that have been disclosed to us.

16 HEARING OFFICER LANGHOFF: Thank you.

17 MR. WIGGINTON: You are welcome.

18 HEARING OFFICER LANGHOFF: Okay. Mr. McDonough, do you

19 want to put on your case-in-chief? Do you want to call your
20 first witness? Is that going to be yourself or --

21 MR. McDONOUGH: That will be myself.

22 HEARING OFFICER LANGHOFF: Yourself?

23 MR. McDONOUGH: Yes.

24 HEARING OFFICER LANGHOFF: Okay. I will have the court

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1 reporter swear you in.

2 (Whereupon the witness was sworn by the Notary Public.)

3 HEARING OFFICER LANGHOFF: I am going to allow you just to
4 testify and give a narrative and maybe allow Mr. Wigginton, if he
5 has any objections, give him a second --

6 MR. McDONOUGH: Sure.

7 HEARING OFFICER LANGHOFF: -- if he states an objection and
8 then we will take it from there.

9 MR. McDONOUGH: Okay.

10 HEARING OFFICER LANGHOFF: Thank you. Go ahead.

11 MR. McDONOUGH: First of all, I have got the sets of
12 exhibits that have all been marked, as you had requested last
13 week.

14 HEARING OFFICER LANGHOFF: Thank you.

15 MR. McDONOUGH: And these are -- we will use as the
16 originals.

17 Initially I would like to provide a little background and
18 history and get us oriented into the situation, using first what

19 is marked for identification as Complainant's Exhibit Number 1.

20 HEARING OFFICER LANGHOFF: Or C1, for the record, Exhibit
21 C1 or C1. Okay.

22 (Whereupon said document was duly marked for purposes of
23 identification as Complainant's Exhibit 1 as of this
24 date.)

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1 MR. McDONOUGH: What this shows is an overhead of our
2 property, which is outlined in red and is bordered on the west by
3 Illinois 4 and in all other directions by farmland. And our
4 property existed this way until 1998, when the car wash, and as
5 Mr. Wigginton indicated, other -- another development occurred on
6 the south side of our property.

7 HEARING OFFICER LANGHOFF: For the record, is there a north
8 arrow on your overhead? I guess it is an aerial photograph, C1.

9 MR. McDONOUGH: No, there isn't. The north arrow would --

10 HEARING OFFICER LANGHOFF: Just real quickly if you could.

11 MR. McDONOUGH: It would point that way.

12 HEARING OFFICER LANGHOFF: Thank you. For the record, he
13 has marked a north arrow on C1. Okay. Thank you.

14 MR. McDONOUGH: Okay. I would like to use what is marked
15 as Complainant's Exhibit Number 2 to give you an idea of our yard
16 and our home and what we do at home in terms of our routine daily
17 activities.

18 (Whereupon said document was duly marked for purposes of
19 identification as Complainant's Exhibit 2 as of this
20 date.)

21 MR. McDONOUGH: What this shows first are the many gardens
22 that are in our yard which are the hatched areas both almost
23 encircling the house and garage. We have many gardens in that
24 area. There is a couple to the south of the house but close in.

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1 And then we have a garden, a vegetable garden and tree farm at
2 the west end of our property.

3 The larger trees that you see around there are pecan trees,
4 and during October and November of the fall during a good crop we
5 spend hours over many weeks out there picking the pecans off the
6 ground. The hours we spend in the gardens tending to them is
7 extremely large in terms of time. Also, the patio that you see
8 there is an area under one of the pecan trees with a table and
9 chairs which we used to like to sit under and relax.

10 Now, getting closer to the house itself, you note the porch
11 at the street side of the house and the master bedroom directly
12 behind it with the two windows on the north side of the master
13 bedroom. This is the area where we sleep and spend anywhere from
14 probably six to ten hours a day in that bedroom area. The porch,
15 on weekends -- we both work during the week. So the majority of
16 our time at home is spent in the evenings and then during the
17 weekends all day long, and the porch during the mornings and

18 evenings is often a pleasant place to relax.

19 The windows I want to note in particular, because these are
20 the -- this is where the noise from the car wash is -- disturbs
21 us most frequently and most seriously, I guess is the point.

22 Now, in 1998, the respondents built their car wash, and it
23 is shown here on the right-hand side. What I want to point out
24 is that the west boundary of their property is slightly closer to

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1 the road. Our west boundary extends further beyond theirs, and
2 that becomes important for certain noise aspects that I will
3 describe later.

4 Now, the final point is the berms here. Those are new.
5 Everything else on our property was that way before the car wash
6 came into existence. But the berms have been put in between the
7 car wash and our home to try to give us some break from the noise
8 and the visual activity that goes on there. It has been fairly
9 effective in breaking the visual, but has done very little to
10 reduce the noise problem.

11 Next, to give you an idea of the car wash itself, I have
12 what is marked as Complainant's Exhibit 3, which is an
13 engineering layout of the car wash.

14 (Whereupon said document was duly marked for purposes of
15 identification as Complainant's Exhibit 3 as of this
16 date.)

17 MR. McDONOUGH: The first feature to note is the concrete
18 pad, which is indicated by the edge of pavements which are
19 highlighted in red. That's the area where all of the vehicle and
20 car wash equipment activity takes place. And also to the
21 right -- or to the left -- I am sorry -- there is an "X" that
22 marks the spot of our home. From the north edge of our house to
23 the south edge of the car wash cement pad is approximately 95
24 feet. And the maximum distance to any other point on the pad is

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1 about 250 feet. So any noise or activity that takes place on the
2 car wash relative to our bedroom window is no less than 95 feet
3 and no more than 250 feet.

4 Now, getting to a little more detail, what is shown there
5 are the vacuum stations, three vacuum stations, then four car
6 wash bays that are hand-held high pressure spray bays, and then
7 to the far right is the automatic car wash bay which, again, is a
8 high pressure type of washing process.

9 Now, to give you a little bit more detail from actual
10 photographs, I would like to go to what has been marked as
11 Complainant's Exhibit Number 4.

12 (Whereupon said document was duly marked for purposes of
13 identification as Complainant's Exhibit 4 as of this
14 date.)

15 MR. McDONOUGH: It shows the car wash building on the -- in
16 the right top photo, our home in the left top photo, and a view

17 of the north face of our house in the bottom photo. I would like
18 to point out the berm that we have put in at our own expense in
19 between the car wash and our home for the purposes of cutting
20 down both the visual and the noise, but it has not had the effect
21 that we had hoped.

22 Now, when you get to the car wash picture itself we can
23 start to talk about some of the noise aspects. You see the
24 vacuums, and there are three vacuum stations each with two

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1 vacuums on each station, so a total of six vacuums. Each of
2 those are coin operated. When you put a coin in, it beeps. So
3 they are 75 cent machines. You take three coins and you get
4 three beeps. Then they operate for four minutes, and when it is
5 approximately a minute before the power is going to go off, they
6 get a sequence of approximately ten high-pitched beeps. And then
7 in addition to the beeps the vacuums operate for four straight
8 minutes, and the drone and hiss of the vacuums is another noise
9 nuisance.

10 The car wash bays themselves, it depends on where you are
11 in our yard as to the noise problem that they cause. When you
12 are at the point of our house you are really not subjected to a
13 lot of the car wash bay noise. Where the car wash bay noise
14 becomes a problem is in the front of the yard or in the back of
15 the yard where you have a more direct -- or it is diagonal, but

16 still a direct view into the bays, and at that point you can hear
17 them. The automatic bay is particularly noisy, just in the
18 mechanism that moves in the bay to distribute the water on the
19 cars.

20 And now the next thing and probably the most prevalent
21 noise producers are the vehicles themselves. What you see in
22 this photo are strictly cars. What are not shown here are the
23 motorcycles, the off-road two and four-wheelers that are brought
24 into the car wash on occasion. The high performance vehicles and

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1 trucks that are on the road today, all with fairly loud motors
2 and muffler characteristics.

3 The other thing with the cars or trucks, any vehicle, is
4 many of them have radios. And radios tend to be popular and are
5 often played at very loud levels, either for enjoyment or to be
6 heard above the other noises being created by vacuums and other
7 car wash noises. The other thing that all of the vehicles have
8 are tires, and the pad of the car wash is frequently wet and
9 whether it is out of intent or mistake, there is frequently
10 screeching of tires while people are either on the car wash or
11 departing the car wash toward the street.

12 The final thing that all vehicles have are horns, and those
13 are extremely loud when they are blown, and it is often not
14 malicious or for no purpose that the horns are blown. I think
15 what frequently happens is people are in their car washing the

16 dashboard and so on and hit the horn a couple of times, and so it
17 is -- it is my opinion that is how a lot of the horn noises
18 occur.

19 I think I have covered pretty much what I wanted to say
20 about the nature of the different types of noises at the car
21 wash.

22 (Whereupon a document was duly marked for purposes of
23 identification as Complainant's Exhibit 5 as of this
24 date.)

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1 MR. McDONOUGH: Now, to get an idea of the frequency and
2 the types of noises that occur, we kept a log of noises between
3 the periods of 08-23-99 to 12-22-99, basically a four-month
4 period. And then again from 07-30 of 2000 to 09-28 of 2000, an
5 approximate two-month period.

6 Now, the noise -- or the log is not as scientific as it
7 could have been, but it does provide a good overview of the types
8 and frequencies of disturbances. It was kept in our bedroom next
9 to our bed and mainly used to log disturbances after we had gone
10 to bed for the evening. Also the log was kept only Monday
11 through Friday. Weekends at the car wash tend to be the most
12 heavy traffic periods, and we felt that the nature of the
13 frequencies that we were logging during the weekdays were
14 sufficient to show the unreasonable nature of noise from the car

15 wash.

16 I would also like to note that the log disturbances
17 occurred with the bedroom windows closed. We had learned a long
18 time earlier that we were unable to keep our windows open any
19 longer and get any sleep. The windows being closed didn't
20 eliminate the noise disturbances, but it did help to some degree.
21 Just reading the log, you get an idea of the frequency of
22 disturbances.

23 For instance, in 1999, when we initially started keeping
24 the log, on 08-23, there were two occurrences that evening of

24

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1 loud engine and muffler noise and then a motorcycle. On 08-24,
2 three occurrences. On 08-26, a number more of occurrences. On
3 08-27, two occurrences. In going through here, it is -- what you
4 find is that two days in a row was the maximum of the Monday
5 through Friday period that we were not disturbed by one noise or
6 another over that four-month period. Really the two-month period
7 in 2000 is similar. So we have kind of focused on the 1999
8 period log.

9 One other point with the duration, if you refer to the
10 09-08 entry, we find that the noise problem began at 10:30 and
11 there was a period from 10:30 to 10:40 with loud revving motors
12 and squealing tires and doors slamming and loud talking. And
13 then a short break and then at 10:55 motors revving and tires
14 squealing again. At 11:15 engines racing. At 11:35 -- actually,

15 11:15 to 11:35 that entire period was engines racing and loud
16 radios and honking. And finally at 12:00 a.m. the noise picked
17 up again and at that point we called the police. So you have a
18 period of over an hour and a half that while the noise emissions
19 were different, it was a continual disturbance for a long period
20 of time.

21 Now, another type of long duration disturbance would be a
22 radio, where that is just a persistent single noise emitter. And
23 we have -- at times the noise from radios can be a problem from
24 anywhere from a few seconds to a half an hour. It just depends

25

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1 on the particular situation.

2 (Whereupon documents were duly marked for purposes of
3 identification as Complainant's Exhibits 6 and 7 as of
4 this date.)

5 MR. McDONOUGH: Okay. Next I would like to summarize what
6 is in the log. To do this I would use what is marked for
7 identification as Complainant's Exhibit Number 6. What this did
8 was for the log period of 08-23 of 1999 to 12-23 of 1999, the
9 four-month period, we captured all the occurrences between 10:00
10 at night and 6:30 in the morning.

11 As you can see, the types of disturbances were quite
12 varied; engine and muffler noises, radios blaring, squealing
13 tires, vacuums, loud voices yelling, horn blowing, and dumpster

14 pick up is another one that is very loud. Also the slamming of
15 trunks and doors and mats, and even a dog barking was heard on
16 one occasion.

17 In terms of the frequencies, the vehicles with the loud
18 mufflers and engines were by far the most frequent. There was
19 another -- then you have another set, the radio squealing, tires
20 and vacuums, which occurred at a slightly less frequency, but
21 were still quite prevalent. And then the others at a much lower
22 level. And also I need to point out again that this was kept --
23 these noise disturbances occurred with our windows closed.

24 Now, noise can be a problem in a lot of different ways, but

26

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1 while all noise is unwanted, noise is disturbing. What probably
2 is the most disturbing and stressful noise is the noise that
3 either wakes you up while you are sleeping or prevents you from
4 falling asleep while you are drifting off.

5 So what I have done is my wife and I were normally in bed
6 by 10:00 to 10:30, but the lights are almost always off by 11:15,
7 after which time we drift off to sleep. And our alarms are set
8 in the morning for 6:30. So at 6:00 in the morning we are still
9 normally asleep. We may be starting to wake up, but we are not
10 yet awake.

11 What I have done from the four-month log, again, is
12 extracted those disturbances which occurred between the hours of
13 12:15 p.m. and 6:00 a.m., to indicate the number of disturbances

14 that actually woke us up or disturbed us from a period of near
15 sleep.

16 HEARING OFFICER LANGHOFF: Okay. Mr. McDonough, you said
17 12:15, but I assume you mean 11:15 p.m.?

18 MR. McDONOUGH: Thank you. 11:15 p.m.

19 HEARING OFFICER LANGHOFF: Okay. Thank you.

20 MR. McDONOUGH: Our lights are normally out. Again, the
21 same culprits, vehicle engines and mufflers, radios, dumpsters,
22 squealing tires and so on. But as you can see, it is not quite
23 as frequent. When you look at the specific dates that these
24 occurred on, there were multiple incidents on some dates, but

27

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1 there were 19 individual dates in that four-month period of just
2 weekdays again when we were either awoken from sleep or disturbed
3 while we were in the process of falling asleep or waking up.

4 Okay. To measure the loudness or intensity of the various
5 noises from the car wash, Mr. Zak recommended that we purchase a
6 Radio Shack sound level meter. Mr. Zak recommended it because it
7 is inexpensive, easy to use, and provides reliable measurements
8 of noise levels.

9 MR. WIGGINTON: I am going to object to that, what Mr. Zak
10 may have stated to this witness outside of this hearing, on
11 hearsay grounds. I would move to strike that testimony.

12 HEARING OFFICER LANGHOFF: Okay. I am going to overrule

13 your objection, finding that it is just background information.

14 MR. WIGGINTON: I will object as to what -- he qualified it
15 and said that Mr. Zak told him that this was a reliable tool.
16 That is more than just background. That is an opinion as to
17 whether or not a particular component is qualified to take
18 measurements or not.

19 HEARING OFFICER LANGHOFF: Okay. I am going to overrule
20 your objection.

21 MR. WIGGINTON: Thank you.

22 HEARING OFFICER LANGHOFF: Thank you. Okay, Mr. McDonough.

23 MR. McDONOUGH: In terms of the process of using this meter
24 to gain reliable measurements, Mr. Zak indicated that the meter

28

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1 should be held flat in the hand with the microphone pointed in
2 the direction of the noise source, and then the dial turned to
3 the appropriate noise level that was coming from the emitter.
4 Also, he indicated that the weighting should be set to either
5 A-weighting or C-weighting with a fast response. The other point
6 was that the meter had to be held a minimum of 25 feet from the
7 common property boundary.

8 In our case, the meter readings I took were from my bedroom
9 window, which is approximately 45 feet from the common property
10 boundary, so well beyond what the limitation in the law provides
11 for. But that is -- in using this instrument, I captured -- I
12 would also like to have this put into evidence as Complainant's

13 Exhibit 8.

14 (Whereupon the sound meter was duly marked for purposes
15 of identification as Complainant's Exhibit 8 as of this
16 date.)

17 HEARING OFFICER LANGHOFF: I would like to make a photocopy
18 of it, Mr. McDonough, instead of taking your sound meter. The
19 Board is pretty familiar with these kind of sound meters and I
20 don't want to take your meter.

21 MR. McDONOUGH: Okay.

22 HEARING OFFICER LANGHOFF: I will make a photocopy of it,
23 though, and the serial number.

24 MR. McDONOUGH: Okay. Thank you.

29

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1 HEARING OFFICER LANGHOFF: The Board has seen that before.

2 (Whereupon a document was duly marked for purposes of
3 identification as Complainant's Exhibit 9 as of this
4 date.)

5 MR. McDONOUGH: I performed the steps as Mr. Zak had
6 instructed on a number of occasions, and referring to what is
7 marked for identification as Complainant's Exhibit Number C9,
8 obtained the measurements listed at 16.1 through 16.8 on page
9 three, at the bottom of the page three and the top of page four.
10 Again, all the measurements were taken from behind the bedroom
11 window with the window open, and the distance from the common

12 property line was approximately 45 feet.

13 MR. WIGGINTON: Excuse me, Dave. Mr. Langhoff, again, I
14 would like to renew my objection in my motion in limine with
15 respect to any measurement testing of sound on the grounds that
16 there has been no foundation established that those testing
17 procedures meet the regulations set forth in the Illinois
18 Statutes and in the regulations promulgated by the Illinois
19 Pollution Control Board, nor do they meet the applicable American
20 National Standards Institute standards and recommended practices.

21 HEARING OFFICER LANGHOFF: I am going to overrule your
22 objection.

23 MR. WIGGINTON: I would also add that on exhibit -- this
24 most recent exhibit that Mr. McDonough testified to, on item 16,

30

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1 there is a -- well, strike that.

2 Were these taken on December 12th? Well, I will object.
3 It says these were taken on December 12th of 2000 through the
4 present. We have no indication as to what particular day any of
5 these noise measurements were taken on, what the weather
6 conditions were, and whether the instrument was properly
7 calibrated on that particular day.

8 HEARING OFFICER LANGHOFF: Okay. Thank you. I am going to
9 overrule your objection.

10 MR. McDONOUGH: Just looking down the list, we were able to
11 capture a horn, the vacuum noise on a number of occasions,

12 vehicle engine noise, and radio noise. And it is my opinion that
13 the frequency at which we are subjected to noises of these levels
14 at my bedroom window and in our yard and on our porch are always
15 unreasonable and often illegal.

16 MR. WIGGINTON: Well, I will object and move to strike
17 that, as to what his opinion is as to what is legal and illegal.

18 HEARING OFFICER LANGHOFF: Thank you. I am going to
19 overrule your objection.

20 Anything further with Exhibit C9, Mr. McDonough?

21 MR. McDONOUGH: No, sir.

22 HEARING OFFICER LANGHOFF: Okay. Thank you.

23 MR. McDONOUGH: Okay. As a somewhat separate matter, I
24 would now like to switch gears and show that my wife and I have

31

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1 been diligent in our attempt to resolve this issue without having
2 to resort to this hearing. Referring to what has been marked as
3 Complainant's Exhibit Number 10.

4 (Whereupon said document was duly marked for purposes of
5 identification as Complainant's Exhibit 10 as of this
6 date.)

7 MR. McDONOUGH: This is the -- our initial letter to the
8 respondents bringing to their attention the noise problem and
9 asking them to recommend steps to solve the problem. Attached to
10 that is their response, which basically indicated that they had

11 no responsibility for the noise by referring us to City
12 management as the appropriate people to take care of the problem.

13 (Whereupon a document was duly marked for purposes of
14 identification as Complainant's Exhibit 11 as of this
15 date.)

16 MR. McDONOUGH: After not hearing anything for some time,
17 on the 18th of September in 1999, as indicated in what is marked
18 for identification as Complainant's Exhibit Number 11, we sent a
19 second letter. And indicated that if they were not going to --
20 if they were not going to take steps to correct the problem, we
21 were going to initiate legal action. Again, we heard nothing
22 back from the respondents. So on the 20th of March in 2000 we
23 filed the formal complaint with the Board.

24 Now, on November 29th, in written discovery, after

32

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1 approximately a year and a half after initially informing or
2 bringing the problem to the respondent's attention, when they
3 were asked what steps they had taken to try to mitigate or solve
4 the noise problem, the response was that they had removed the
5 soda machine from the south end of the building. There was
6 nothing in anything that we had ever indicated to them that the
7 soda machine was any of the problems. So basically it was our
8 opinion that they were not very serious about taking steps to
9 correct the problem.

10 MR. WIGGINTON: I move to strike that testimony, as to what

11 his opinion is on whether they were moving to take care of the
12 problem.

13 HEARING OFFICER LANGHOFF: Overruled.

14 MR. McDONOUGH: Next on May 24th of 2001, they did come in
15 with a reasonable offer for steps, but an offer of steps that
16 really would have been ineffective in clearing up the noise.
17 What we did at that point -- I am sorry -- the Complainant's
18 Exhibit Number 14 was their -- was provided to us offering up
19 those steps.

20 (Whereupon said document was duly marked for purposes of
21 identification as Complainant's Exhibit 14 as of this
22 date.)

23 MR. McDONOUGH: What we did was went bank to them with a
24 counteroffer, which is provided in Complainant'S Exhibit Number

33

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1-800-244-0190

1 C15.

2 (Whereupon said document was duly marked for purposes of
3 identification as Complainant's Exhibit 15 as of this
4 date.)

5 MR. McDONOUGH: And after that point there was really no
6 further negotiations on the subject and, hence, we are at hearing
7 today to try to resolve the problem.

8 That concludes my testimony.

9 HEARING OFFICER LANGHOFF: Okay. Thank you. Mr.

10 Wigginton.

11 MR. WIGGINTON: Thank you.

12 CROSS EXAMINATION

13 BY MR. WIGGINTON:

14 Q. I guess we will start with the last exhibit first, Mr.
15 McDonough. In your letter, which is Exhibit C15, that was a
16 letter you wrote to me on June 1, 2001. And in that you
17 indicated that my clients had certainly made a substantive offer
18 towards resolution, one which you appreciated; is that correct?

19 A. Correct.

20 Q. And that you also indicated in here that you were very
21 appreciative of my client's intent and willingness to work with
22 you in this matter; is that correct?

23 A. Correct.

24 Q. It is my understanding that you and your wife, Jackie,

34

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1 both work outside the home; is that correct?

2 A. Correct.

3 Q. You work approximately Monday through Friday, 9:00 to
4 5:00 p.m.?

5 A. That's right.

6 Q. And you leave work at approximately 8:00 a.m. and return
7 around 6:00 p.m., generally?

8 A. (Nodded head up and down.)

9 HEARING OFFICER LANGHOFF: You have to answer out loud.

10 THE WITNESS: Yes.

11 HEARING OFFICER LANGHOFF: Thank you.

12 Q. (By Mr. Wigginton) At the time that you purchased this
13 home in 1992, you knew that the seller that you bought it from
14 wanted to develop the property to the north of you as commercial
15 development; is that correct?

16 A. No, that is not correct.

17 Q. When you tried to buy this home in 1992, it was
18 originally part of a three acre tract; is that correct?

19 A. Correct.

20 Q. The seller was only willing to sell you one and a half
21 acres; is that correct?

22 A. That's true.

23 Q. That is because the seller wanted to leave the other
24 acre and a half for development purposes?

35

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1 A. True. Not commercial development.

2 Q. What type of development?

3 A. Residential.

4 Q. Were you aware at that time that there was other
5 commercial development activity being planned for Route 4?

6 A. No, I was not.

7 Q. You learned in 1997, through the newspaper, I believe,
8 that the entire tract of ground surrounding your home was going

9 to be developed as a large retail development; is that correct?

10 A. Yes.

11 Q. Okay. That was part of a tax increment financing
12 district?

13 A. Correct.

14 Q. Okay.

15 A. Not a retail necessarily. It included plans for
16 apartments and those kinds of -- and a retirement facility. It
17 was not all retail.

18 (Whereupon a document was duly marked for purposes of
19 identification as Respondent's Exhibit 1 as of this
20 date.)

21 Q. (By Mr. Wigginton) Okay. I am going to hand you what I
22 have marked as Exhibit R1. Okay?

23 A. Uh-huh.

24 Q. And is this the newspaper article when you first learned

36

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1 of this large commercial development and residential that was
2 going to encircle your home?

3 A. That is --

4 Q. Okay.

5 A. -- the first time I had seen that.

6 Q. Okay. On here where it says red siding house, is that
7 your home on that tract?

8 A. Correct.

9 Q. Okay. And under the -- is it your understanding that
10 the TIF district has now overcome its legal obstacles and is up
11 and running?

12 A. It has been passed.

13 Q. Okay. And as part of the conceptual plan, your home was
14 going to be completely surrounded by commercial development; is
15 that correct?

16 A. That's correct.

17 Q. Okay. Under the original conceptual drawing I believe
18 the property where the car wash is now located was indicated to
19 be a fast food service station, a fast food restaurant?

20 A. I am not aware of that.

21 Q. Okay. Let me ask you this. With respect to Illinois
22 Route 4, which runs directly in front of your home --

23 A. Uh-huh.

24 Q. -- that is one of the main thoroughfares through the

37

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1 City of Mascoutah; is that correct?

2 A. That's correct.

3 Q. In fact, that road is connected to Interstate 64,
4 correct?

5 A. Uh-huh.

6 Q. Your home is also located --

7 A. Four miles away.

8 Q. Four miles --
9 A. (Nodded head up and down.)
10 Q. -- from the interstate?
11 A. Yes, from the interstate.
12 Q. And your home is also located four miles from Mid
13 America Airport?
14 A. Approximately.
15 Q. And your home is also located approximately six miles
16 from Scott Air Force Base, correct?
17 A. Correct.
18 Q. Okay. As we sit here today, your home is now -- has
19 commercial development on the north side?
20 A. Uh-huh.
21 Q. Where my client's car wash is, correct?
22 A. Correct.
23 Q. And it has commercial development on the south side
24 where there is now a medical clinic?

38

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1 A. Correct, and one with which we have no problem at all.
2 Q. I note that you did build a berm on the south side, as
3 well; is that correct?
4 A. Correct.
5 Q. To separate your property from the medical clinic?
6 A. Right.
7 Q. Then on the other side of the medical clinic is now a

8 McDonald's restaurant; is that correct?

9 A. That's true.

10 Q. Do you ever hear any noise from the McDonald's

11 restaurant?

12 A. Huh-uh.

13 Q. Do you know what their hours of operation are?

14 A. I think until 11:00 on the weekends and maybe until

15 10:00 during the week.

16 Q. Okay. The arterial road, for lack of a better word,

17 is --

18 A. Right.

19 Q. -- in place and is stubbed in, I believe, to the --

20 A. Correct.

21 Q. -- end of the McDonald's; is that correct?

22 A. (Nodded head up and down.)

23 Q. It is also my understanding that recently construction

24 began on the back, on to the west of you?

39

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1 A. No.

2 Q. Okay.

3 A. No.

4 Q. Now, you would agree that my client's property went

5 through a zoning process with the City of Mascoutah; is that

6 correct?

7 A. Uh-huh.

8 Q. And you attended those zoning hearings?

9 A. We did.

10 Q. And you were allowed to express your opinions at those
11 zoning hearings regarding your thoughts of this property and the
12 property surrounding you becoming commercial?

13 A. We did.

14 Q. Because they were changing the zoning from agricultural
15 to B2, I believe; is that correct?

16 A. Correct, of everything but my home. My home is still
17 zoned residential.

18 Q. Have you ever made any efforts to rezone your property?

19 A. No.

20 Q. The City of Mascoutah rezoned my client's property B2
21 commercial; is that correct?

22 A. That is correct.

23 Q. Okay. Now, in the evening hours after you are home you
24 spend most of your time in the living room and office area, which

40

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1 is in the center of your home, prior to bedtime?

2 A. The living room, yeah.

3 Q. Okay. Now, in that part of your home -- your home is an
4 older home?

5 A. Correct.

6 Q. That was originally of stone construction?

7 A. Brick.

8 Q. Then you added on the master bedroom and porch?

9 A. Correct.

10 Q. That's a wood frame construction, right?

11 A. True.

12 Q. Okay. During the evening hours and prior to bedtime, it

13 seems to me, from looking at your chart, you only began charting

14 after the 10:00 hour; is that correct?

15 A. That's true.

16 Q. Okay. I believe you indicated to me when we had a

17 chance to take your deposition that the problems you have with

18 the noise are typically after 10:00 p.m. and in the summer?

19 A. The problems with the noise are whenever we are faced

20 with it. The most serious problems with the noise are when we

21 are trying to go to sleep or are sleeping.

22 Q. Well, I mean, you are always going to have noise in your

23 lifetime, would you agree with that? You are going to have noise

24 from Route 4, correct?

41

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1-800-244-0190

1 A. Yeah, but the less noise the better, I guess.

2 Q. Well, would you agree that there is reasonable noise and

3 then unreasonable noise?

4 A. Sure.

5 Q. Okay. And just so I am clear on this, the noise that

6 you are complaining about is the unreasonable noise that occurs
7 after 10:00 p.m.?

8 A. The unreasonable noise from the car wash that occurs
9 after 10:00 p.m., correct.

10 Q. Okay. Because there could be reasonable noise that
11 comes from the car wash after 10:00 p.m., such as --

12 A. There could be no noise from the car wash after 10:00
13 p.m.

14 Q. Well, there could be no noise on Route 4 if they closed
15 down Route 4, too, right?

16 A. Sure.

17 Q. And you would not have trucks going past your house 120
18 feet away, correct?

19 A. That's correct.

20 Q. In fact, there has been an increase in truck traffic
21 because they have modified Route 4 in front of your home; is that
22 correct?

23 A. During the day I would think that it is more prevalent.

24 Q. Have you noticed an increase in the traffic on Route 4

42

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1 during the past few years since they reconstructed Route 4 and
2 made it a direct route into Interstate 64?

3 A. Somewhat. Route 4 has always been a major route, and I
4 think since they rerouted that it does have a little bit more
5 traffic during the peak hours.

6 Q. On Route 4 is there reasonable noise and unreasonable
7 noise coming into your home from Route 4?

8 A. Sure. I would say the heavy trucks that go by are less
9 reasonable than, you know, a small four cylinder vehicle going by
10 at 30 miles an hour.

11 Q. Okay. Recently have you gone over to my client's
12 property to examine some of the things that they have changed in
13 order to accommodate your complaints?

14 A. I have noticed the few signs that say no loitering,
15 although I still see loitering. I have seen the signs that say
16 no loud music, although I still hear loud music. So I have seen
17 some things that they have done. I don't know that they have
18 done anything effectively.

19 Q. In looking at your log and some of your summaries it
20 appears that your biggest complaint is with the vehicles and the
21 patrons. It does not seem to be a number of complaints with
22 regard to the actual car wash equipment?

23 A. They are all different. The vehicles with horns and
24 squealing tires and loud radios are certainly the most intense

43

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1-800-244-0190

1 noise emitters. But the -- whereas the vacuums and the beeps are
2 at a lower level. But when that is all that is there, and that's
3 the noise that you are hearing, that is then the unreasonable
4 noise.

5 Q. Well, that's not -- I appreciate that, Dave. But my
6 question is when I look at your own chart and your own summaries,
7 it appears that in the graphs that you prepared, the three major
8 complaints are vehicle engines and mufflers, radios, and
9 squealing tires?

10 A. No, those are not the three major complaints.

11 Q. Well, it says 59 --

12 A. Those are the three --

13 Q. -- 18 and 16.

14 A. -- most frequent occurrences.

15 Q. And then when I look at Exhibit Number 7, your Exhibit
16 Number 7 --

17 A. Uh-huh.

18 Q. -- there is no instances on Exhibit Number 7 related to
19 actual car wash equipment, such as a vacuum, a beeper, a car wash
20 bay going off, correct?

21 A. Yeah, I would say that the car wash equipment has never
22 woken us from sleep.

23 Q. Have you done any type of sound studies of the
24 commercial development just south of your property, the St.

1 Elizabeth's Medical Clinic and the McDonald's restaurant?

2 A. I have never done any sound studies primarily because
3 they are closed on weekends, and they are closed at 5:00 in the
4 evening, so basically during the hours we are home they are

5 closed. So there is no noise from them that we hear.

6 Q. What about traffic noise coming from the McDonald's
7 restaurant or from their dumpster being loaded and unloaded?

8 A. Never have heard any of that.

9 Q. Now, Mr. McDonough, it is my understanding that you work
10 as a -- is it a statistician at Scott Air Force?

11 A. Uh-huh.

12 Q. As a civilian employee?

13 A. Correct.

14 Q. Okay. You work in an office setting?

15 A. A group office setting. It is not single offices. It
16 is modular furniture, I guess.

17 Q. It is my understanding that your wife, Mrs. McDonough,
18 works at Washington University in a laboratory setting?

19 A. Correct.

20 MR. WIGGINTON: Okay. That's all I believe that I have.

21 HEARING OFFICER LANGHOFF: Okay. Thank you. Mr.
22 McDonough, you have a brief opportunity to testify, if you want
23 to, concerning any of the questions that Mr. Wigginton asked on
24 cross-examination.

45

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1-800-244-0190

1 MR. McDONOUGH: Okay.

2 HEARING OFFICER LANGHOFF: So is there any testimony that
3 his cross-examination might have brought out that you wish to

4 give to the Board?

5 MR. McDONOUGH: No. The only piece of information is that
6 I don't dispute that the businesses around me have rights to
7 operate, but they also have responsibilities to operate within
8 the law, and that is where my complaint is directed.

9 HEARING OFFICER LANGHOFF: Okay. Anything further, Mr.
10 McDonough?

11 MR. McDONOUGH: No.

12 HEARING OFFICER LANGHOFF: Okay. Mr. Wigginton, any
13 recross on that statement?

14 MR. WIGGINTON: No.

15 HEARING OFFICER LANGHOFF: Okay. Thank you. Your next
16 witness.

17 MR. McDONOUGH: Okay. My next witness is Mr. Zak.

18 HEARING OFFICER LANGHOFF: Okay. Thank you.

19 MR. McDONOUGH: Do we need to switch seats?

20 HEARING OFFICER LANGHOFF: No, that is fine.

21 MR. McDONOUGH: Okay.

22 HEARING OFFICER LANGHOFF: Darlene, would you swear the
23 witness, please.

24 (Whereupon the witness was sworn by the Notary Public.)

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46

1 HEARING OFFICER LANGHOFF: Thank you. Mr. McDonough.

2 MR. McDONOUGH: Thank you.

3 G R E G Z A K,

4 having been first duly sworn by the Notary Public, saith as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. McDONOUGH:

8 Q. Mr. Zak, could you briefly describe your history of work
9 experience in the areas of sound measurement and noise control
10 and in the impact of sound on human response?

11 A. My work history goes back to 1972 as far as taking noise
12 measurements are concerned. I began employment with the Illinois
13 Environmental Protection Agency in the spring of 1972. The job
14 entailed answering noise complaints from the public, taking
15 instrumentation out in the field and measuring noise emissions in
16 the field and then writing a detailed technical report on the
17 nature of the measurements and how the measurements were taken,
18 describing the noise source.

19 After that I would pursue the case, the Agency, it would be
20 the Illinois EPA, called the Agency, would -- in situations where
21 the violator -- or maybe I shouldn't say violator -- but perhaps
22 the alleged violator would not solve the problem, the Agency
23 would prepare a case against the alleged violator, and part of my
24 duty was to perform noise control engineering to determine the

47

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1 economic reasonableness and technical practicability of remedying
2 the problem using noise control engineering.

3 After preparing that documentation, the case -- if the case
4 went to hearing, I would then testify as an expert in the case
5 describing the measurements and the nature of how to perform the
6 noise control engineering to solve the problem. And that would
7 be true from about 1972 until 1978.

8 In 1978 I became regional manager for noise pollution for
9 Central and Southern Illinois. My duties changed somewhat at
10 that time. I had a management position and was responsible for
11 four or five people. I would spend probably half my time in the
12 office and half my time in the field. So the management position
13 did entail a little more office work, but I still maintained my
14 field experience.

15 Then in 1981 funding for the noise program was cut to zero,
16 and I transferred over into compliance for the Division of Land
17 Pollution. I then was responsible for managing a program of
18 permitting waste haulers in the state, another program for
19 tracking all of the shipments of both hazardous and industrial
20 waste throughout the state. The other part of the program was
21 monitoring water contaminants at various landfills at potential
22 Superfund sites in the state.

23 And also I developed a process to enforce the annual --
24 what they called the annual hazardous waste report. All industry

48

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1 that generated a significant amount of hazardous waste had to
2 complete that form and we tracked that. There was about a five

3 year period where I was doing this type of work.

4 But secondary to my responsibilities was also continuing to
5 do some noise work, simply because the Agency had so many calls
6 on noise pollution that I was called upon fairly frequently to
7 answer the public's inquiries and basically explain that we
8 didn't have -- we had no resources to really do anything to
9 investigate the problem or to really even advise them on how to
10 solve the problem, other than perhaps going out and looking for a
11 private consultant or an attorney.

12 Then in 1987, the Agency began a hazardous waste
13 incineration program. The nature of the hazardous waste
14 incinerators -- one of the natures of the incinerator was being
15 very noisy. I was asked to take charge of the noise program at
16 that time and do the noise control engineering work in order to
17 solve the problems with the hazardous waste incinerators. I did
18 that for about two or three years.

19 At the same time we began to get a lot of citizen calls on
20 noise pollution. I began to develop what I call a self-help
21 program whereby citizens could handle their own complaint with
22 some guidance from myself and different files that I had
23 available to me. And they could, if necessary, pursue relief
24 before the Pollution Control Board.

49

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1 And then in about 1991, 1992, the incineration program was

2 no longer used, and at that point in time I did the citizen noise
3 complaint process nearly full-time, at which time I was receiving
4 2,000 or 3,000 calls a year on noise problems. And I did that
5 until July 31st of this year, 2001.

6 I retired on July 31st of 2001. And then on August the 1st
7 of 2001 I went into business as Noise Solutions by Greg Zak. In
8 essence, it is a consulting operation. I am the sole person
9 involved. The duties are very, very similar to what I did at the
10 Illinois EPA.

11 Q. Could you elaborate just a little bit more on your
12 experience with the impact of sound on human response?

13 A. As --

14 MR. WIGGINTON: I am sorry. Mr. Langhoff, we can avoid
15 this background. I mean, if this is -- I will stipulate that he
16 is an expert. I believe even the Board has retained him before
17 as an expert witness in the Terminal Railroad Case. So, I mean,
18 we don't have to go through all portions of his resume.

19 MR. McDONOUGH: Okay. So we can tender Mr. Zak as the
20 expert witness in this case in matters of --

21 HEARING OFFICER LANGHOFF: It has been stipulated and
22 accepted by the Board.

23 MR. McDONOUGH: Okay. Thank you.

24 Q. (By Mr. McDonough) All right. Then I would like to show

1 you Mr. Zak, what has been marked as Complainant's Exhibit Number

2 8, and ask if you would not mind looking at that?

3 A. Yes, I have looked at it.

4 Q. Are you familiar with those type of meters?

5 A. Yes, I am. It is a digital sound level meter,
6 manufactured for Radio Shack. It is the type of meter that I
7 frequently recommend to folks that have noise problems to
8 purchase in order to find out approximately what the sound levels
9 are that they are dealing with. It is a reasonably accurate
10 instrument. It is not listed as an ANSI type one or an ANSI type
11 two, but typically when calibrating these instruments with a
12 precision calibrator, I find that they are usually anywhere from
13 exactly correct to no more than two or three decibels off. And
14 this particular meter I did calibrate myself this morning and I
15 checked it and it was exactly right on.

16 Q. So based on the way you looked at it this morning, you
17 would say it is capable of fairly accurately measuring noise
18 levels?

19 A. Yes, especially for a nuisance type case. I would not
20 want to use it for -- it would not suffice for a numerical case,
21 but for a nuisance case I think it would.

22 Q. Okay.

23 MR. WIGGINTON: Let me just, for the record, object to that
24 question and that response and move to strike that response on

1 the grounds of Supreme Court Rule 213. That was an undisclosed
2 opinion that was generated based upon a review this morning,
3 prior to the hearing.

4 HEARING OFFICER LANGHOFF: Okay. Thank you. Mr.
5 McDonough, any argument? Do you have any legal argument in
6 response to Mr. Wigginton's objection to that evidence and the
7 motion to strike?

8 MR. McDONOUGH: No. The only argument I would have is that
9 in previous cases, you know, these have been used and accepted as
10 fairly reliable.

11 HEARING OFFICER LANGHOFF: I am going to sustain your
12 objection, Mr. Wigginton, with regards to the Rule 213 parts of
13 the testimony, and grant your motion to strike that testimony,
14 that portion.

15 MR. WIGGINTON: Thank you.

16 MR. McDONOUGH: Would it help if I restated the question?

17 HEARING OFFICER LANGHOFF: I doubt it, Mr. McDonough, but
18 you can if you want to. What I have done is I have stricken the
19 testimony that Mr. Zak gave concerning his actions today, what he
20 did today with the meter, that he tested the meter and that it is
21 right on.

22 MR. McDONOUGH: Okay.

23 HEARING OFFICER LANGHOFF: I have left intact his testimony
24 that in the past it has been reasonably accurate in his opinion.

1 MR. McDONOUGH: Okay. That's good.

2 HEARING OFFICER LANGHOFF: It is your witness, Mr.
3 McDonough.

4 MR. McDONOUGH: Okay. Thank you.

5 Q. (By Mr. McDonough) Okay. Assuming that is an accurate
6 recorder and that the sound levels that you have heard testified
7 to earlier are true and accurate, do you have an opinion, based
8 on a reasonable degree of scientific certainty, as to whether the
9 noise levels of the magnitudes that have been testified to would
10 unreasonably interfere with any of the following activities, such
11 as falling asleep with the windows opened or closed, relaxing in
12 the yard, or relaxing and reading on the porch?

13 A. Yes.

14 MR. WIGGINTON: Let me, again, object on the grounds of
15 Supreme Court Rule 213 that any opinions that he generates in
16 response to that are based upon information that was not
17 disclosed in response to Rule 213 interrogatories.

18 HEARING OFFICER LANGHOFF: Mr. Zak, can you answer that
19 question? Do you understand the objection?

20 THE WITNESS: Yes, I do.

21 HEARING OFFICER LANGHOFF: Can you answer that question
22 without using information that has not been disclosed or using
23 just information that has been disclosed in the past?

24 THE WITNESS: Yes.

1 HEARING OFFICER LANGHOFF: Can you answer that?

2 THE WITNESS: I think I can, yes.

3 HEARING OFFICER LANGHOFF: Okay. Please answer the
4 question. Mr. Wigginton, if you have an objection as his answer
5 comes out, please make it.

6 MR. WIGGINTON: Thank you.

7 THE WITNESS: Based on the measurements that were shown to
8 me and the paperwork supplied by Mr. McDonough, which I believe
9 was provided to the respondent's Counsel, the levels are
10 sufficiently high that it would be expected to wake someone who
11 was sleeping or prevent someone from sleeping. It would disturb
12 a reasonable person, in my opinion, who is using their backyard
13 for gardening or any type of recreational activity that is a
14 relatively sedate and quiet type of activity.

15 MR. McDONOUGH: Okay. Thank you.

16 MR. WIGGINTON: Again, just for the record, I renew my
17 objection and move to strike that testimony.

18 HEARING OFFICER LANGHOFF: On the grounds that it was not
19 provided --

20 MR. WIGGINTON: That it was --

21 HEARING OFFICER LANGHOFF: -- to you?

22 MR. WIGGINTON: That is correct. Those opinions that he
23 just stated were not provided to me.

24 HEARING OFFICER LANGHOFF: Okay. Mr. McDonough, do you

1 have any argument? Were those opinions provided to Mr. Wigginton
2 and the respondents?

3 MR. McDONOUGH: The opinions were not, no.

4 HEARING OFFICER LANGHOFF: Okay. I am going to sustain the
5 objection and grant the motion to strike that testimony, all the
6 testimony of the question -- in response to your question, Mr.
7 McDonough.

8 MR. McDONOUGH: Okay. Can I make an offer of proof --

9 HEARING OFFICER LANGHOFF: Yes.

10 MR. McDONOUGH: -- on this?

11 HEARING OFFICER LANGHOFF: Sure, you may. And it is in, so
12 you have already made it. It is on the record.

13 MR. McDONOUGH: Okay.

14 HEARING OFFICER LANGHOFF: We will take the answer as it
15 has been given as your offer of proof.

16 MR. McDONOUGH: Okay. Thank you.

17 HEARING OFFICER LANGHOFF: Any --

18 MR. WIGGINTON: No, that's fine.

19 HEARING OFFICER LANGHOFF: Okay. Thank you.

20 Q. (By Mr. McDonough) Okay. Then, moving on, the -- you
21 have heard the noise problems and you are also a noise control
22 expert. Do you have an opinion, again, within a reasonable
23 degree of scientific certainty, as to what would be required to
24 alleviate the noise, or eliminate it, or reduce it?

1 A. Yes.

2 Q. Could you tell us what those opinions are?

3 A. My opinion is based on a number of factors. First of
4 all, looking at previous Pollution Control Board cases,
5 specifically the case of People versus a car wash in Lincoln.
6 The name of the car wash right now escapes my memory. There was
7 a car wash case before the Board, and a number of things were
8 tried as far as vacuums and sprayers were concerned. And the
9 results were less than satisfactory.

10 Then there was another case before the Board in Maywood,
11 Illinois, back in the 1980s. And, again, that case was one where
12 solutions on the vacuums, sprayers, and things like that just had
13 very little effect. But in those cases what they did was to
14 construct a barrier between the facility and the complainant's
15 home. The barrier was relatively effective in solving the
16 problem. In this case, from what I have observed, and especially
17 in looking at the record, I have -- I stopped at the site for
18 about a half hour this morning on my way here to look it over.

19 HEARING OFFICER LANGHOFF: Okay. Mr. Wigginton, I will
20 allow you to have a running objection --

21 MR. WIGGINTON: Right.

22 HEARING OFFICER LANGHOFF: -- concerning all of the
23 opinions that were not provided to you pursuant to Supreme Court
24 Rule 213, and I am going to -- I have already --

1 MR. WIGGINTON: That's fine.

2 HEARING OFFICER LANGHOFF: -- sustained that objection.

3 MR. WIGGINTON: And I would just like to add also, as you
4 know, Mr. Langhoff, that not only are the experts that come into
5 our courtrooms and our hearings in the State of Illinois required
6 to disclose their opinions, but they are also required to
7 disclose the basis for that opinion. Here I have never been
8 disclosed any basis regarding any car wash case in Lincoln or any
9 case in Maywood.

10 HEARING OFFICER LANGHOFF: It is noted.

11 MR. WIGGINTON: Thank you.

12 HEARING OFFICER LANGHOFF: Mr. McDonough, I am treating all
13 this testimony now as being struck, and this is your offer of
14 proof.

15 MR. McDONOUGH: Okay.

16 HEARING OFFICER LANGHOFF: Okay. I am sorry, Mr. Zak. Can
17 you continue?

18 THE WITNESS: I am not quite sure where I was.

19 HEARING OFFICER LANGHOFF: You said that you had stopped by
20 there this morning.

21 MR. McDONOUGH: And about the barrier.

22 THE WITNESS: Thank you, Mr. Hearing Officer. I stopped
23 there for approximately a half hour this morning and then looked
24 everything over. I noted signs up that people would be

1 prosecuted -- words to the effect that people would be prosecuted
2 for dumping oil or trash on the site, but I didn't see any
3 corresponding signs asking -- or threatening to prosecute for
4 noise violations. The other thing that I observed was the berm
5 between the McDonough residence and the car wash.

6 Getting to the point of as far as a noise barrier is
7 concerned, probably one of the most common noise solutions used
8 throughout Illinois are noise barriers. A noise barrier of
9 approximately 150 feet in length running parallel with the
10 McDonough residence and the car wash, and it would be running
11 from east to west. At the western end I would recommend an
12 additional wing be placed on there approximately 75 feet long.
13 That would deflect the sound, a large portion of the sound away
14 from the McDonough residence and back into the car wash. The
15 height of that fence should be around 12 foot high. It could be
16 constructed of half inch outdoor grade plywood, fitted so that it
17 is air tight, caulked where necessary, flush with the ground.

18 And I also thought about the economics involved there, and
19 looking at -- thinking back to the case of Thomas versus Kerry
20 (spelled phonetically) Companies, and in that specific case the
21 -- part of the solution for that problem was to construct an
22 approximately 12 foot high fence about 200 feet long. And
23 documentation was supplied to me by the respondent in that case
24 that the cost was around \$12,000.00. I would fairly confidently

1 say that in this case the cost of that type of fence would be in
2 the neighborhood of say \$12,000.00 to \$15,000.00, allowing some
3 inflation in there.

4 The other problem that is -- that has been demonstrated to
5 me in the paperwork is exhaust noise from vehicles and radio
6 noise and other noise associated with patrons at the facility.
7 The barrier that I just described would take care of some of the
8 problem in the daytime. At night, the barrier would fail to
9 provide sufficient reduction, in my opinion, to meet the Board's
10 standards.

11 The solution would appear to me to be to suspend operations
12 at the facility between the hours of 10:00 p.m. and 7:00 a.m.
13 The reason I come up with this conclusion is that if we look at
14 the nature of the exhaust noise, typically exhaust noise is in
15 the 125 hertz octave band. That particular octave band does not
16 lend itself to work well with barriers. The low frequency 125
17 hertz octave band will tend to go up over the barrier, and the
18 barrier has very little effect. So what I would expect to see is
19 a constant recurrence of the problem of being awakened at night
20 due to vehicles that have exhaust noise problems. The barrier
21 would be effective for screeching tires or radio noise that is --
22 as long as it is not a very low frequency or base type of radio
23 noise.

24 Again, the barrier is effective for the mid frequency range

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1 in the spectrum of noise and the high frequency spectrum, but not
2 in the low end. For example, between 100 -- let me rephrase
3 that. From 125 hertz on down the barrier would have very little,
4 if any, effect. Given that situation, I would suggest either --
5 I would suggest ceasing operation again between the hours of
6 10:00 p.m. and 7:00 a.m.

7 Looking at the technical solution to that and the economics
8 of it, I would suggest something in the order of an electronic
9 timer on the facility that would cut the power off at 10:00 and
10 simultaneously turn a light on a small sign saying that the
11 facility is closed, and there should also be a no trespassing
12 sign wherein the respondent would be willing to prosecute people
13 who do trespass and create enough noise that the complainant
14 calls up and complains about it.

15 Any other alternative -- there are other alternatives, but
16 the cost goes way up. Now, as far as cost for the timers,
17 typically most timers range anywhere from \$10.00 to \$200.00. I
18 am confident that in that price range a timer could be found that
19 would both operate during -- turn the main power to the facility
20 off and also -- or at least turn enough power off that the
21 facility would not be used by patrons, and also turn a light on a
22 sign to indicate that the facility is closed and there is to be
23 no trespassing.

24 An alternative to that, which would be much more expensive,

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1 would be to hire a security person to be there at night. And the
2 facility could stay open then but the security person would then
3 be responsible for policing the area, advising anybody that has
4 loud exhaust that they are not to use that facility, having the
5 facility posted that any vehicles coming in would have to have a
6 legal exhaust system, and only allow vehicles that are registered
7 for use on the road into the facility. Again, that would be a
8 much more expensive alternative there, probably in excess of
9 \$15,000.00 or \$20,000.00 a year using a guard or a watchman at
10 night.

11 I think that pretty much covers it. I may have missed
12 something there, but I think that covers it.

13 Q. Thank you.

14 HEARING OFFICER LANGHOFF: Excuse me and let me interrupt.
15 Mr. Zak, are you familiar with the Supreme Court Rule 213
16 interrogatories that disclose your opinion and the basis for your
17 opinion that Mr. McDonough provided to the respondents?

18 THE WITNESS: I am not familiar with it, Mr. Hearing
19 Officer. I have heard of it and I have --

20 HEARING OFFICER LANGHOFF: Okay. So you have not read it.

21 THE WITNESS: -- an idea of what it is.

22 HEARING OFFICER LANGHOFF: Okay. But you are not familiar
23 right now with what was in that disclosure?

24 THE WITNESS: I am sorry, Mr. Hearing Officer. What was

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1 disclosed from Mr. McDonough to respondent's Counsel?

2 HEARING OFFICER LANGHOFF: Yes. That's okay. I was just
3 asking, Mr. Zak. I was going to posit you a question, but I
4 don't think that I can now.

5 Okay. Mr. McDonough, it is still your witness.

6 MR. McDONOUGH: I have no further questions.

7 HEARING OFFICER LANGHOFF: All right.

8 MR. McDONOUGH: Can we go off the record?

9 HEARING OFFICER LANGHOFF: Yes. Off the record.

10 (Discussion off the record.)

11 HEARING OFFICER LANGHOFF: We are on the record again. Mr.
12 McDonough, I think you had a question for me.

13 MR. McDONOUGH: Yes. Could you explain to me, Mr. Hearing
14 Officer, what you had just discussed with Mr. Zak?

15 HEARING OFFICER LANGHOFF: I just asked Mr. Zak if he was
16 familiar with the Rule 213 disclosure that you provided to Mr.
17 Wigginton, and he was not. That's all that happened.

18 MR. McDONOUGH: Okay.

19 HEARING OFFICER LANGHOFF: Okay.

20 MR. McDONOUGH: Okay. So that has no bearing on the
21 testimony or the --

22 HEARING OFFICER LANGHOFF: It has no bearing on the
23 proceedings.

24 MR. McDONOUGH: Okay. Thank you.

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1 HEARING OFFICER LANGHOFF: Mr. Wigginton.

2 MR. WIGGINTON: Thank you. Again, I would just renew my
3 objection to all of those opinions and the basis that --

4 HEARING OFFICER LANGHOFF: There is no need to -- I have
5 already sustained all of your objections and granted your motion
6 to strike on that testimony from the point of your objection on.

7 MR. WIGGINTON: Okay.

8 HEARING OFFICER LANGHOFF: Do you have anything on cross
9 for Mr. Zak?

10 MR. WIGGINTON: No. Given that ruling, I don't have
11 anything.

12 HEARING OFFICER LANGHOFF: Okay. Thank you. Another
13 witness, Mr. McDonough, Mrs. McDonough?

14 MR. McDONOUGH: No.

15 HEARING OFFICER LANGHOFF: Do you have any further
16 witnesses?

17 MR. McDONOUGH: No, sir.

18 HEARING OFFICER LANGHOFF: Okay. At this time would you
19 like to tender C1 through C16? That's all your exhibits?

20 MR. McDONOUGH: Uh-huh.

21 HEARING OFFICER LANGHOFF: Okay.

22 MR. McDONOUGH: All right.

23 HEARING OFFICER LANGHOFF: Any objections? I have changed

24 my mind. I will take the noise meter back as an exhibit if you

63

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1 want. You can make arrangements with the clerk's office to get
2 it back.

3 MR. McDONOUGH: Okay.

4 HEARING OFFICER LANGHOFF: So C1 through 16. Are there any
5 objections or problems, Mr. Wigginton?

6 MR. WIGGINTON: No objection to C1, C2, C3, C4, and C5. I
7 do object to C6 and C7.

8 HEARING OFFICER LANGHOFF: I am sorry. Are those the
9 summaries?

10 MR. WIGGINTON: Yes.

11 HEARING OFFICER LANGHOFF: Okay. What is your objection?

12 MR. WIGGINTON: On the grounds that those have been
13 requested and were not produced, and that was also part of my
14 motion in limine, any documents that they intended to use as
15 exhibits.

16 HEARING OFFICER LANGHOFF: Okay. Thank you. I am going to
17 overrule your objection. I find that this information has been
18 disclosed to you in a different form in the log.

19 MR. WIGGINTON: Okay. I have no objection to C9.

20 HEARING OFFICER LANGHOFF: What about C8, the meter?

21 MR. WIGGINTON: Oh, I am sorry. Yes. I would just object
22 on the grounds that this is not an ANSI level or an ANSI type one
23 or an ANSI type two sound testing meter, and it does not comport

24 with the regulations or statutes of the State of Illinois.

64

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1 HEARING OFFICER LANGHOFF: Okay. Thank you. I am going to
2 overrule your objection on that.

3 MR. WIGGINTON: Okay.

4 HEARING OFFICER LANGHOFF: C9.

5 MR. WIGGINTON: I have no objection to C9. I have no
6 objection to C10. I have no objection to C11. I have no
7 objection to C12. That is the complaint, and the answer that I
8 filed in response to the complaint. C13, I have no objection to.
9 C14, I have no objection to. C15, I have no objection to.

10 HEARING OFFICER LANGHOFF: Okay. And C16 is the resume, I
11 believe.

12 MR. McDONOUGH: That is correct.

13 MR. WIGGINTON: I have no objection to C16.

14 HEARING OFFICER LANGHOFF: Okay. Thank you. At this time
15 I am going to accept C1 through C16 into the record.

16 Are they all here, Mr. McDonough?

17 MR. McDONOUGH: Yes.

18 (Whereupon said documents were admitted into evidence as
19 Complainant's Exhibits 1 through 16 as of this date.)

20 HEARING OFFICER LANGHOFF: Okay. You can have these copies
21 back.

22 MR. McDONOUGH: Thank you.

23 HEARING OFFICER LANGHOFF: Let's go off the record for a
24 moment.

65

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1 (Discussion off the record.)

2 HEARING OFFICER LANGHOFF: We are going to take ten
3 minutes. We will be back at 11:15.

4 (Whereupon a short recess was taken.)

5 HEARING OFFICER LANGHOFF: Mr. McDonough, you indicated to
6 me that you now wish to call Mrs. McDonough?

7 MR. McDONOUGH: Correct.

8 HEARING OFFICER LANGHOFF: Okay. Would you swear her in,
9 please.

10 (Whereupon the witness was sworn by the Notary Public.)

11 J A C Q U E L Y N M C D O N O U G H,
12 having been first duly sworn by the Notary Public, saith as
13 follows:

14 DIRECT EXAMINATION

15 BY MR. McDONOUGH:

16 Q. Jackie, we have spent a lot of time talking about the
17 nighttime disturbances and the problems with noise at night, but
18 we have not talked much about what the daytime and weekend noise
19 situation is like. Could you describe for us just a little bit
20 of how the daytime noise impacts our daily activities?

21 A. Well, Monday through Friday we are at work, so it is not
22 really a problem. The problem is on the weekends. If it is a

23 nice day, you can't open your windows. If you are outside, it is
24 kind of a constant barrage of noise from the vacuums and the

66

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1 beeps and the car bays and the automatic washers and, of course,
2 again, the patrons and their cars. So you are just kind of
3 inundated with a constant stream of noise. If it is a nice day
4 and you want to be out enjoying your yard and work out in the
5 yard, everybody wants to be out washing their car, too. So you
6 are both always out there at the same time.

7 Q. Okay. Thank you. Do you find that you ever have to
8 limit the time you spend outside because of the noise?

9 A. Well, I don't use the porch much anymore because it is
10 just too annoying to be out there. The yard work you still have
11 to do whether it is noisy or not. So you don't really have much
12 choice.

13 MR. McDONOUGH: Okay. Thank you.

14 HEARING OFFICER LANGHOFF: Is that all?

15 MR. McDONOUGH: That's it. Thanks.

16 HEARING OFFICER LANGHOFF: Mr. Wigginton?

17 MR. WIGGINTON: No questions.

18 HEARING OFFICER LANGHOFF: Thank you. Thank you, Mrs.
19 McDonough.

20 Anything further, Mr. McDonough?

21 MR. McDONOUGH: No thanks.

22 HEARING OFFICER LANGHOFF: Okay. Thank you. Mr.
23 Wigginton.

24 MR. WIGGINTON: Yes. Thank you. Once I get organized here

67

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1 I will ask Gary Robke to testify here today.

2 Gary, do you want to switch here so that you can sit by the
3 court reporter.

4 HEARING OFFICER LANGHOFF: Okay. Thank you, Mr. Wigginton.
5 Would you swear in the witness.

6 (Whereupon the witness was sworn by the Notary Public.)

7 G A R Y R O B K E,

8 having been first duly sworn by the Notary Public, saith as
9 follows:

10 DIRECT EXAMINATION

11 BY MR. WIGGINTON:

12 Q. Would you please state your name.

13 A. Gary Robke.

14 Q. Where do you live, Gary?

15 A. Germantown, Illinois.

16 Q. And where do you work?

17 A. Solutia in Sauget, Illinois.

18 Q. What do you do at Solutia?

19 A. I am a maintenance man.

20 Q. How long have you been there?

21 A. For 27 years.

22 Q. Do you have any outside businesses outside of your
23 regular employment at Solutia?

24 A. Yes, me and Dan, my partner, we own a car wash, a

68

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1 self-serve, three-bay car wash in Germantown also.

2 Q. Okay. And you also own a car wash located in Mascoutah,
3 Illinois?

4 A. Yes.

5 Q. And what is the name of that car wash?

6 A. Just Mascoutah Car Wash.

7 Q. All right. And when did you become interested in
8 building a car wash in Mascoutah?

9 A. Some of the people that I work with live in the
10 Mascoutah area and just some other people mentioned that
11 Mascoutah does not have a real good car wash and they need a good
12 one. So at first we just kind of said that we didn't want to
13 mess with it. Then me and Dan just started looking for some
14 ground, and that is how it developed. We went to the City
15 manager, and they said this was going to be developing. So we
16 just started asking questions and went from there.

17 Q. Okay. And was that in approximately 1997 or 1998?

18 A. That was probably 1997 when we started asking and
19 looking around.

20 Q. And what attracted you to this particular location where

21 you ultimately constructed your car wash?

22 A. Basically the road, the count for the traffic was a good
23 reason to put one there.

24 Q. Okay. Why is that?

69

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1 A. Well, it brings volume past, you know, and more people,
2 it is more -- the people see it more, and it is -- they will use
3 it on the way wherever they go from on Route 4 to 64 or down
4 south to the Freeburg, Fayetteville area, St. Libory.

5 Q. Okay. Did you then purchase the property in 1998?

6 A. I think it was in the middle of 1998. Wasn't it, Dan?
7 I think in the middle of 1998 we bought the property.

8 Q. All right.

9 A. Or early 1998.

10 Q. Okay. And when you bought it what was the property
11 zoned?

12 A. It was zoned B2 commercial.

13 Q. Okay. And did your use as a car wash fit that zoning
14 classification?

15 A. Yes.

16 Q. Did you go through the City approval process to build a
17 car wash on that location?

18 A. Yes.

19 Q. All right. You were granted a permit to build a car
20 wash there, correct?

21 A. Right.

22 Q. All right. When you were -- I am going to hand you what
23 we have marked as R1.

24 A. Okay.

70

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1 Q. Can you identify Exhibit R1 for us, please?

2 A. Yes. That is -- this was in the paper, the Mascoutah
3 paper where they were going to develop this as a commercial area
4 through I guess it would be Don Nornburns (spelled phonetically)
5 is the one who started it, him and several other people. And it
6 just basically had their lots set out where they were going to --
7 it is a general idea of how they were going to have it set up.
8 But it is not to the tee the way this is set up.

9 Q. Okay.

10 A. You know, they changed a few things around, the way it
11 looks.

12 Q. Since that article ran on April the 10th of 1997, along
13 Route 4 there, there is -- can you tell us what has been
14 constructed near Mr. & Mrs. McDonough's home?

15 A. Well, we first -- we were the first ones to buy a lot
16 and we bought lot number five, and we built the car wash and it
17 was up and running. And then the St. Elizabeth's Hospital bought
18 this lot number eight, and they put a medical center on there.
19 And then I guess about six months later than that, then

20 McDonald's bought lot number nine.

21 Q. Okay.

22 A. And they built there.

23 Q. All right. And then what about along I guess that would
24 be the southern edge here, the bottom edge. Were there any

71

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1 existing commercial developments, or has there been any new
2 commercial developments that run along that edge?

3 A. I think, yes, Tom's Super Market was there and there is
4 like a Dollar General Store there. There is a little strip mall
5 there, too. I don't exactly know what all is in there, though.

6 Q. This is on Harnet (spelled phonetically) Street?

7 A. Yes.

8 Q. Okay. And that runs -- that intersects with Route 4,
9 correct?

10 A. Yes.

11 Q. Okay. And you said there was an existing Tom's Super
12 Market there?

13 A. Uh-huh.

14 Q. All right. Now, in the strip center, how many stores
15 are located in the strip center?

16 A. I think there is probably about five or six, I believe.

17 Q. Okay.

18 A. There is like insurance offices there or something like
19 that. I didn't really pay that close attention. But there is a

20 Dollar General Store on the other side of Tom's Super Market
21 here.

22 Q. In the back?

23 A. Just directly north of it.

24 Q. Like where lot eleven is?

72

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1 A. No, it is part of this -- whatever they got here, it is
2 part of the Tom's Super Market Store. The building is all
3 together. It is not a separate building.

4 Q. Okay. And what was -- what is the purpose of a
5 self-service car wash?

6 A. Just for people to go there to use it anytime they feel
7 like it and help themselves to whatever is there to use the
8 facility and clean their car.

9 Q. Okay. When you -- I will set this aside now.

10 A. Okay.

11 MR. WIGGINTON: This I am going to have as a group exhibit,
12 R2.

13 HEARING OFFICER LANGHOFF: Okay.

14 (Whereupon said document was duly marked for purposes of
15 identification as Respondent's Exhibit 2 as of this
16 date.)

17 Q. (By Mr. Wigginton) R2 consists of four photographs. I
18 am going to have you identify these and describe for everyone

19 here at the hearing what each photo depicts. Okay?

20 A. This photo here is standing on Route 4 looking at our
21 car wash.

22 MR. WIGGINTON: Okay. On the back, Your Honor, it says
23 picture taken standing on Route 4.

24 HEARING OFFICER LANGHOFF: Okay. Thank you.

73

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1 Q. (By Mr. Wigginton) Just so the record is clear, your car
2 wash is constructed of masonry brick material?

3 A. Yes, block.

4 Q. What type of block did you use on the exterior walls?

5 A. It is called split-faced block.

6 Q. How thick is it?

7 A. Eight inches, eight inch block.

8 Q. Okay. What type of equipment did you use for the
9 vacuum?

10 A. You mean the company name?

11 Q. Yes.

12 A. I really don't -- I think it is J.E. Adams vacuum
13 sweepers, I believe.

14 Q. Okay.

15 A. There is four of them there.

16 Q. There is four vacuums there?

17 A. (Nodded head up and down.)

18 Q. Okay. Now photo number two of Group R2?

19 A. This is standing on the edge of our property looking
20 north, just parallel with our car wash.

21 Q. Okay. Does this photo depict the vacuums that are on
22 your property?

23 A. Yes.

24 MR. McDONOUGH: I have seen them before.

74

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1 HEARING OFFICER LANGHOFF: Thank you.

2 Q. (By Mr. Wigginton) Can you identify the third
3 photograph?

4 A. This was standing right there by our doorway going into
5 our equipment room, looking towards the McDonough's house.

6 Q. Okay. Can you identify the fourth photograph of R2?

7 A. This is standing right there by our equipment room,
8 taking a picture of the vehicles on Route 4.

9 Q. Approximately how far away is Route 4 from your car
10 wash, from the building itself, any idea?

11 A. I really don't know how far it is.

12 Q. Okay. Does your car wash have garage doors on it?

13 A. On the one end.

14 Q. Okay. Why does it only have garage doors on one end?

15 A. I believe you can only have them on one end. I think
16 the ruling is that you can't have two doors because if somebody
17 would go in there and close both doors and leave the vehicle

18 running they could get asphyxiated. And I think that has
19 happened before. So that is one reason why I think you are only
20 allowed to have one door.

21 Q. Okay. Can you tell us during the time that you became
22 interested in this property, have there been any modifications to
23 Route 4 that caused an increase or a decrease in traffic along
24 Route 4 that runs in front of Mr. McDonough's house and your car

75

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1 wash?

2 A. Since we have built there?

3 Q. Yes.

4 A. I can't really -- I couldn't really say, because I don't
5 know how much traffic that they had there before. But there is
6 quite a bit of traffic on that road. I think it used to go
7 through town, and then they averted it over towards -- I don't
8 know what street that used to be there, but they averted that
9 before we even got involved with, you know, putting a car wash
10 there. So I don't really know how much traffic there is, but it
11 had to be more because with the interstate set up there now, too,
12 I guess.

13 Q. What type of traffic normally travels along Route 4 in
14 terms of passenger vehicles? You see those, correct?

15 A. Right.

16 Q. Motorcycles?

17 A. Uh-huh, all kinds.

18 Q. Tractor-trailers?
19 A. Yeah.
20 Q. Do you know whether it is a designated truck route?
21 A. Please?
22 Q. Do you know whether it is a designated truck route?
23 A. No, I couldn't tell you that. I don't know.
24 Q. Okay. You said you looked into traffic counts. Did you

76

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1 actually obtain any average daily traffic counts from the
2 Department of Transportation?
3 A. Yes.
4 Q. Okay. When did you do that?
5 A. Oh, it was before we built that we actually did that.
6 Q. Okay.
7 A. I think we had -- I talked to somebody from
8 Collinsville, I believe, and they sent the information out --
9 Q. All right.
10 A. -- of the traffic count.
11 Q. Did you provide me with a copy of the 1999 average daily
12 total traffic count for this roadway?
13 A. Yes.
14 MR. McDONOUGH: Can I object to any of this based --
15 HEARING OFFICER LANGHOFF: What is your objection?
16 MR. McDONOUGH: -- on Rule 213, where I have not seen any

17 of this either?

18 HEARING OFFICER LANGHOFF: That's a different rule, but
19 your objection is you have not seen this before?

20 MR. McDONOUGH: Correct.

21 HEARING OFFICER LANGHOFF: Any response, Mr. Wigginton?

22 MR. WIGGINTON: I thought this was produced, honestly. I
23 could go back and check. I don't think he filed a 213.

24 HEARING OFFICER LANGHOFF: No, no, on --

77

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1 MR. McDONOUGH: Oh, I would have had to file?

2 HEARING OFFICER LANGHOFF: No, no. Rule 213 is a different
3 rule. It deals with experts.

4 MR. McDONOUGH: Okay.

5 HEARING OFFICER LANGHOFF: Mr. McDonough is objecting on
6 the basis that he has not received it in discovery. I am going
7 to overrule the objection.

8 MR. WIGGINTON: Okay.

9 HEARING OFFICER LANGHOFF: I am going to overrule the
10 objection on several grounds. Number one, that Mr. Wigginton has
11 represented that it was disclosed. And, number two, that it is,
12 again, background information and it is an official state
13 document.

14 MR. WIGGINTON: I had one more copy.

15 HEARING OFFICER LANGHOFF: You can use that.

16 MR. WIGGINTON: Okay. Thank you. We will call this R3.

17 HEARING OFFICER LANGHOFF: Yes.

18 (Whereupon said document was duly marked for purposes of
19 identification as Respondent's Exhibit 3 as of this
20 date.)

21 Q. (By Mr. Wigginton) Okay. Can you identify Exhibit R3,
22 please?

23 A. Yes, that's what I sent in for from the Department of
24 Transportation from Collinsville. I believe they gave me a

78

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1 complete map for that, and you just copied part of the map,
2 right? That's what --

3 Q. I didn't. You may have.

4 A. Maybe I did that then.

5 Q. On here does it show what the traffic count is for Route
6 4 in front of your location?

7 A. I don't have my glasses.

8 Q. Can you point it to me, and then I will read it for you?

9 A. Well --

10 Q. This says 177 and that's Route 4.

11 A. I can't see it. I am sorry.

12 JACQUELYN McDONOUGH: Maybe he can borrow your glasses.

13 MR. McDONOUGH: Here.

14 (Mr. McDonough passing his glasses to the witness.)

15 MR. WIGGINTON: This is a map, Your Honor, prepared by the

16 Illinois Department of Transportation.

17 THE WITNESS: I can see with Dave's glasses. Okay. It
18 would be 6,800 cars. That's what I see. Thank you, Dave.

19 MR. McDONOUGH: Sure.

20 HEARING OFFICER LANGHOFF: Is that daily, Mr. Wigginton?
21 Is that a daily --

22 MR. WIGGINTON: Yes, this is the 1999 average daily total
23 traffic.

24 HEARING OFFICER LANGHOFF: Okay. Thank you.

79

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1 Q. (By Mr. Wigginton) Gary, have you ever been contacted by
2 the Mascoutah Police Department or any law enforcement agency
3 regarding any complaints at your car wash?

4 A. No.

5 Q. Have you ever received any calls from any City officials
6 in Mascoutah regarding any complaints at your car wash?

7 A. No.

8 Q. Okay. Since Mr. & Mrs. McDonough first brought their
9 complaints to your attention, have you and your partner, Dan
10 Schroeder, made any changes to the car wash to try to accommodate
11 their situation?

12 A. We did put -- like he mentioned, we put up stickers --
13 signs that say no loud music, stickers on every vacuum. We
14 installed three signs for no loitering on each light pole. And
15 we did change the vacuum motors on four of the six vacuums to

16 reduce the noise for just the four of them. The other two had
17 the other quiet motors on them already.

18 Q. How do you know that? Did you make any effort to check
19 into changing out the vacuum motors on the other two?

20 A. Well, we called the company and told them they were
21 ultra quiet motors, and you can't get them any quieter than that.

22 Q. Okay. On the four you did change out, do you recall
23 what that cost you?

24 A. They were like another \$20.00, \$25.00 per motor extra.

80

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1 Q. You also indicated that you moved -- in your answers to
2 interrogatories, that you had moved a soda machine off the
3 property?

4 A. Yes.

5 Q. Why did you do that?

6 A. Well, we just figured it was probably an area that some
7 people would go to, you know, high school kids after school
8 probably would go there, so we just figured that would be good to
9 get rid of it so that we would not have a problem with people
10 moving in and out of there all of the time.

11 Q. Where was that soda machine originally located?

12 A. It was on the south end of the building.

13 Q. Okay. So that would be on the end closest to Mr. & Mrs.
14 McDonough's home?

15 A. Yes.

16 Q. Now, have you taken any other actions to surveil the
17 property or add security to the property since Mr. & Mrs.
18 McDonough have been engaged in this litigation with you?

19 A. No, not really. We do have a guy that comes there to
20 check up on things and he cleans up for us. And we tell him to
21 kind of patrol it and, you know, look around. I have already
22 called the police several times and told them that they need to
23 patrol around there more often and check things out, you know,
24 all hours of the day.

81

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1 Q. Okay.

2 A. They have told us that they have been doing that.

3 Q. Have you installed any security systems?

4 A. Yes, we did. We got a security system with four
5 cameras, with --

6 Q. And where -- go ahead.

7 A. The two cameras are mounted on a light pole that cover
8 two bays, two self-service bays. The other pole, the other
9 covers the rest of the car wash here in the front. We have a
10 camera on the back side of the car wash that looks the length of
11 the car wash. And then we also have one mounted inside the
12 building.

13 Q. Okay. When did you install the video camera security
14 system?

15 A. It has been about three months ago.

16 Q. Okay. Looking at Complainant's Exhibit Number 3, which
17 is a schematic preliminary site plan for your car wash; is that
18 correct?

19 A. Yes.

20 MR. WIGGINTON: Would you mind if I have him mark on this
21 copy?

22 MR. McDONOUGH: No.

23 MR. WIGGINTON: And I will submit that mark.

24 HEARING OFFICER LANGHOFF: That's fine.

82

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1 Q. (By Mr. Wigginton) With this blue pen here could you
2 mark on Exhibit C3 where you have installed security cameras to
3 surveil the property?

4 A. Yes. There is one right here on the wall.

5 Q. Okay. And put a big enough mark so that everyone can
6 see it.

7 A. Okay. And there is one here.

8 Q. Okay. Label that one.

9 A. One.

10 Q. Okay.

11 A. There is two here. There are two cameras, one here and
12 here.

13 Q. Okay. Would you please label that two and three?

14 A. Two and three.

15 Q. Okay.

16 A. And we do have one inside the building in case somebody
17 would break in, is what it amounts to, for the entrance.

18 Q. You have also posted a sign advising people that they
19 are under surveillance?

20 A. Yes, it is on the door to the equipment room.

21 HEARING OFFICER LANGHOFF: Mr. Wigginton, are your other
22 exhibits labeled R4 and R5?

23 MR. WIGGINTON: Yes, they are.

24 HEARING OFFICER LANGHOFF: I am just trying to figure out

83

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1 what we will call that C3 that is marked on. What is your last
2 exhibit number?

3 MR. WIGGINTON: I believe it is R3. So we could call --

4 HEARING OFFICER LANGHOFF: We can call it R4?

5 MR. WIGGINTON: Yes, we could call this R4.

6 HEARING OFFICER LANGHOFF: Okay. We will call it R4.

7 MR. WIGGINTON: Okay.

8 HEARING OFFICER LANGHOFF: Let the record reflect that it
9 is a copy of C3.

10 (Whereupon said document was duly marked for purposes of
11 identification as Respondent's Exhibit 4 as of this
12 date.)

13 Q. (By Mr. Wigginton) Now, have you also investigated the

14 possibility of building a fence --

15 A. Yes.

16 Q. -- to serve as a barrier between the two properties?

17 A. Yes.

18 Q. Okay. Tell us what you did in that respect?

19 A. We had people from Trost Plastics come out, and they
20 said that they could build us a fence, either plastic or wood,
21 and we could install it along -- you know, as Mr. Zak said
22 earlier, along from east to west, along that whole length of our
23 boundary. And we did check with the City code and they said the
24 highest that we can build one would be six foot tall.

84

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1 Q. Okay. Did you get an estimated cost for the
2 construction of this fence?

3 A. Yes, it is right there.

4 Q. Okay. What is that? Will this refresh your memory?

5 A. Yes. It is \$6,437.06.

6 Q. Okay. Did you indicate to Mr. & Mrs. McDonough in one
7 of the letters that you would be willing to install that fence?

8 A. Yes.

9 Q. Okay.

10 HEARING OFFICER LANGHOFF: Okay. Mr. Wigginton, is that
11 R5, the -- are you going to tender that?

12 MR. WIGGINTON: I don't know. Dave, have you seen that? I

13 don't know if he has seen that or not.

14 MR. McDONOUGH: No, I have not seen that. That's the fence
15 estimate?

16 MR. WIGGINTON: Yes.

17 MR. McDONOUGH: No.

18 MR. WIGGINTON: I will tender it.

19 HEARING OFFICER LANGHOFF: Okay. Could you mark it R5,
20 please.

21 MR. WIGGINTON: Okay.

22 (Whereupon said document was duly marked for purposes of
23 identification as Respondent's Exhibit 5 as of this
24 date.)

85

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1 Q. (By Mr. Wigginton) Can you -- R5, is that the estimate
2 that you received from Trost Plastics, Inc., of Columbia,
3 Illinois?

4 A. Yes.

5 Q. That is for the construction of 200 feet of a six foot
6 high fence; is that correct?

7 A. Yes.

8 Q. What type of tax revenues does the Mascoutah Car Wash
9 generate for the City of Mascoutah and the State of Illinois?

10 A. Off the vending, we pay sales tax on the vending
11 machines, and we pay real estate tax, which however they disperse
12 that I don't know, as far as how that all goes, the schools and

13 all that system, I guess. We do buy a couple of permits from the
14 City to use vending machines and a yearly permit just to operate
15 a business.

16 Q. Okay. What about water usage? Does your facility
17 generate any water revenue for the City of Mascoutah?

18 A. Yes. Should I give the amounts?

19 Q. Do you know the amounts?

20 A. On average I would think we probably -- it averages
21 \$800.00 a month for water and sewer, and \$400.00 a month for the
22 electric, which is provided by the City of Mascoutah, also. They
23 have their own power plant.

24 MR. WIGGINTON: Okay. I believe that's all I have.

86

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1 HEARING OFFICER LANGHOFF: Okay. Thank you. Mr.
2 McDonough, any cross-examination?

3 MR. McDONOUGH: Yes.

4 CROSS EXAMINATION

5 BY MR. McDONOUGH:

6 Q. Hi, Gary.

7 A. Hello.

8 Q. Gary, do you or Dan belong to any professional
9 associations related to the car wash business?

10 A. No. We do get a magazine. That's it.

11 Q. In that magazine are noise issues ever addressed?

12 A. No, I have never seen it. It is basically a magazine
13 where you can buy new equipment and they show different car
14 washes and stuff like that.

15 Q. So the community noise kind of problem that I have seen
16 on the internet from the car industry site is not part of this
17 equipment magazine?

18 A. No. I imagine there is all kinds of magazines out, you
19 know. This one is just called Car Washing and they just send it.
20 I don't even know how we started getting it. They started
21 sending it to us. We don't subscribe to it. I guess from
22 certain places that we buy equipment I guess they just send it to
23 us.

24 Q. Were you ever aware of the noise characteristics of car

87

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1 washes?

2 A. No. And some of the people that we have bought
3 equipment from, these guys from You Wash install car washes and
4 this is the first case that they have heard of a noise problem.

5 Q. So when you bought this piece of property, which was,
6 you know, so close to our home, the idea that there may be noise
7 issues never crossed your mind?

8 A. No.

9 Q. You mentioned that you see tractor-trailers and
10 motorcycles on Route 4. Do you ever see tractor-trailers or
11 motorcycles using the car wash?

12 A. Motorcycles I do. I have never seen a tractor-trailer.
13 I don't think it is high enough for a tractor-trailer to get in
14 there.

15 Q. To get in where?

16 A. In our bays.

17 Q. Could they use the vacuums?

18 A. I imagine they could.

19 Q. The only reason I ask is that I have seen them there on
20 occasion and know they can't get into the bays, but they do use
21 the vacuums.

22 MR. WIGGINTON: Objection. Move to strike.

23 HEARING OFFICER LANGHOFF: Okay. I will sustain the
24 objection and strike the question.

88

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1 It is impermissible testimony really, Mr. McDonough, in the
2 form of a question.

3 MR. McDONOUGH: So --

4 HEARING OFFICER LANGHOFF: I have struck your question.

5 MR. McDONOUGH: Just on the motorcycles?

6 HEARING OFFICER LANGHOFF: Just on your comment, really.

7 MR. McDONOUGH: Okay. I didn't know if I could do that or
8 not.

9 MR. WIGGINTON: Just so you know, you can ask questions.
10 You can't testify.

11 MR. McDONOUGH: Okay. I apologize.

12 MR. WIGGINTON: You are doing all right.

13 HEARING OFFICER LANGHOFF: And that's my job.

14 (Laughter.)

15 Q. (By Mr. McDonough) You also testified to the traffic
16 flows, which look to be substantial at 6,800 cars. Was there any
17 time information to show whether, you know, there was low traffic
18 from 8:00 in the morning until 10:00 in the morning and then
19 high, any kind of time distribution to those numbers?

20 A. No, it was just I guess a general count of the traffic
21 for the whole day.

22 Q. So it is possible that a great majority of that traffic
23 could be in a fairly small portion of time, so that the other
24 time there could be relatively little traffic?

89

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1 A. Yes, that's possible.

2 Q. Also the fence, the City said six foot was the limit?

3 A. Yeah, we talked to Danny Shrimp about it.

4 Q. Did you ask him anything about a variance to get a
5 higher fence because the six foot fence --

6 A. No.

7 Q. -- really according to Mr. Zak's testimony would have
8 really no effect on the noise problem?

9 A. I have never asked about a variance, no, I didn't.

10 Q. Would that be something that you could check on, I

11 guess?

12 A. I could.

13 Q. And the other -- you made a comment about having put new
14 motors in the vacuums. Is there -- you know, given the earlier
15 testimony where the patrons are perhaps the largest noise
16 creators, is there anything that you have done to lessen that
17 source of noise?

18 A. The vacuums you said?

19 Q. The patron noise.

20 A. Other than just put the stickers up saying no loud music
21 and no loitering.

22 Q. But no positive steps?

23 MR. WIGGINTON: I will object to that.

24 THE WITNESS: I don't know what you mean.

90

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1 HEARING OFFICER LANGHOFF: Just a minute. There is an
2 objection. What is the grounds?

3 MR. WIGGINTON: That it is argumentative.

4 HEARING OFFICER LANGHOFF: Okay.

5 MR. McDONOUGH: Okay. Well -- do you have -- have you --

6 HEARING OFFICER LANGHOFF: Just a minute, Mr. McDonough.
7 Is there anything in response to his objection that your question
8 is argumentative? No? I am going to sustain the objection,
9 then. You can ask another question.

10 MR. McDONOUGH: Okay.

11 Q. (By Mr. McDonough) How many hours a day do you have
12 somebody on the site, you know, either working or monitoring what
13 is going on there?

14 A. Oh, he is probably there -- he comes there in the
15 morning and the evenings. He is probably there two or three
16 hours out of the day.

17 Q. Okay. So he is there two or three hours, so 21 to 22
18 hours of the day is just totally --

19 A. Right.

20 Q. -- unattended?

21 A. But that's the reason for being self-serve.

22 Q. And also we made the point about taxes and revenue to
23 the City through water use. Does there -- is there any -- do you
24 think at all that the fact that taxes and revenues go to the City

91

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1 provides a business owner the right to operate illegally?

2 MR. WIGGINTON: Objection.

3 HEARING OFFICER LANGHOFF: I will sustain that objection.

4 And that question is not a question. It is argumentative, Mr.

5 McDonough. So you can ask another question.

6 MR. McDONOUGH: Can I go off the record for one second?

7 HEARING OFFICER LANGHOFF: No.

8 MR. McDONOUGH: Okay.

9 Q. (By Mr. McDonough) We talked about the security cameras.

10 Do the security cameras have any microphones or sound meters as
11 part of them?

12 A. No.

13 Q. So the security cameras do nothing to address the sound
14 issue?

15 A. No.

16 MR. McDONOUGH: Okay. That's all of the questions I have.
17 Thanks.

18 HEARING OFFICER LANGHOFF: All right. Thank you, Mr.
19 McDonough.

20 Mr. Wigginton, any redirect?

21 MR. WIGGINTON: No, Your Honor.

22 HEARING OFFICER LANGHOFF: Okay. Thank you. Thank you,
23 Mr. Robke.

24 THE WITNESS: Thank you.

92

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1 HEARING OFFICER LANGHOFF: Mr. Wigginton, your next
2 witness.

3 MR. WIGGINTON: Let me confer with my client just one
4 moment. I don't know if their testimony would be duplicative.

5 HEARING OFFICER LANGHOFF: Okay.

6 (Whereupon a short recess was taken.)

7 HEARING OFFICER LANGHOFF: Are you ready to go back on the
8 record?

9 MR. WIGGINTON: Yes.

10 HEARING OFFICER LANGHOFF: Okay. Do you have another
11 witness?

12 MR. WIGGINTON: No, Mr. Langhoff, I don't believe I do. I
13 conferred with my clients and I believe Mr. Robke's partner's
14 testimony would duplicate that of what has already been given.

15 HEARING OFFICER LANGHOFF: Okay.

16 MR. WIGGINTON: So Mr. Schroeder and Mr. Robke and I have
17 decided that there is no need to call any further witnesses.

18 HEARING OFFICER LANGHOFF: Okay. At this time would you
19 like to offer your exhibits, all of them?

20 MR. WIGGINTON: Yes, I would. I would like to offer into
21 evidence Exhibit R1, Group Exhibit R2, which consists of four
22 photographs, Exhibit R3, Exhibit R4, which was formerly C3, and
23 just so that the record is clear that depicts what I will circle.

24 HEARING OFFICER LANGHOFF: The fourth camera is inside, and

93

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1 so that depicts the four cameras on R4?

2 MR. WIGGINTON: Right. And R5 is the estimate for the
3 fence.

4 HEARING OFFICER LANGHOFF: Okay. Anything else?

5 MR. WIGGINTON: Let me make sure.

6 HEARING OFFICER LANGHOFF: Okay.

7 MR. WIGGINTON: No, I don't believe that we have anything
8 further, Your Honor.

9 HEARING OFFICER LANGHOFF: Okay. Thank you.

10 MR. WIGGINTON: Thank you.

11 HEARING OFFICER LANGHOFF: Mr. McDonough, any objections to
12 any of this evidence that is being offered? Let's just go
13 through them. R1?

14 MR. McDONOUGH: No, I have no objections to any of them.

15 HEARING OFFICER LANGHOFF: No objections to any of them.
16 Okay. R1 through R5 will be admitted into the record.

17 (Whereupon said documents were admitted into evidence as
18 Respondent's Exhibits 1 through 5 as of this date.)

19 HEARING OFFICER LANGHOFF: Okay. Mr. McDonough, anything
20 further today?

21 MR. McDONOUGH: Testimony wise?

22 HEARING OFFICER LANGHOFF: Uh-huh.

23 MR. McDONOUGH: No.

24 HEARING OFFICER LANGHOFF: Okay. Thank you. Let's go off

94

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1 the record to discuss availability of the transcript and the
2 schedule of the briefs.

3 (Discussion off the record.)

4 HEARING OFFICER LANGHOFF: Okay. We have just had an
5 off-the-record discussion regarding the filing of post hearing
6 briefs. The parties are going to be subject to a briefing
7 schedule. Before we get to any closing arguments, I will go

8 ahead and read that briefing schedule into the record. The
9 transcript of these proceedings will be available from the court
10 reporter by November 27th. I will establish a public comment
11 period of 14 days. The parties know to talk to the court
12 reporter following the hearing regarding the availability of the
13 transcript.

14 The McDonoughs' brief, if any, will be due by December
15 12th. The mailbox rule will apply, so you need to get it in the
16 mail by that date.

17 MR. McDONOUGH: Okay.

18 HEARING OFFICER LANGHOFF: Mr. Robke's brief, if any, will
19 be due by December 26th. Again, the mailbox rule will apply.
20 The transcript is usually put on the Board's website within a few
21 days of its availability. I would just like to note the Board's
22 website is www.ipcb.state.il.us.

23 Any post hearing comments must be filed in accordance with
24 Section 101.628 of the Board's procedural rules. Public comments

95

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1 must be filed by December 12th. The mailbox rule set forth at 35
2 Ill. Admin. Code 101.102(d) and 101.144(c) will apply to any post
3 hearing filings.

4 Mr. McDonough, would you like to make a brief closing
5 argument?

6 MR. McDONOUGH: Again, thanks for the opportunity to state
7 our case. Not being an attorney, I am a little confused by some

8 of the procedure. But relative to the 213 issue that Mr.
9 Wigginton brought up it seems to be somewhat of a technicality.
10 He had the opportunity to deposition Mr. Zak, which he chose not
11 to do. And he had also talked to Mr. Zak on the phone previously
12 when these -- when the barrier and electrical shut-offs and the
13 mitigating steps were discussed. So now to say that I had not
14 provided them to them previously, it is strictly correct, but
15 that same information had been provided to them previously.

16 The other point was that relative to the police being
17 notified about any problems, we personally have called the police
18 on numerous occasions, and the fact that they have not chosen to
19 inform the car wash owners or that the car wash owners have not,
20 you know, asked the police whether any complaints had been placed
21 against them is something that I just wanted to make a point of.
22 Thank you.

23 HEARING OFFICER LANGHOFF: Thank you. Okay. At this time
24 I want to note again that there are no members of the public

96

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1 present that wish to make any statements for the record.

2 I am required to make a statement as to the credibility of
3 witnesses testifying during this hearing. This statement is to
4 be based on my legal judgment and experience, and accordingly I
5 state that I found all of the witnesses testifying to be
6 credible. Credibility should not be an issue for the Board to

7 consider in rendering its decision in this matter today.

8 At this time I will go ahead and conclude the proceedings.

9 It is Tuesday, November 13th, at approximately noon, and we stand
10 adjourned.

11 Thank you all very much, and everyone have a good day.

12 MR. WIGGINTON: Thank you.

13 MR. McDONOUGH: Thank you.

14 HEARING OFFICER LANGHOFF: Thank you.

15 (Hearing exhibits were retained by
16 Hearing Officer Steven C. Langhoff.)

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1 STATE OF ILLINOIS)
) SS
2 COUNTY OF MONTGOMERY)

3 C E R T I F I C A T E

4

5 I, DARLENE M. NIEMEYER, a Notary Public in and for the
6 County of Montgomery, State of Illinois, DO HEREBY CERTIFY that

7 the foregoing 97 pages comprise a true, complete and correct
8 transcript of the proceedings held on the 13th of November A.D.,
9 2001, at the St. Clair County Building, the Law Library, 10
10 Public Square, Belleville, Illinois, in the case of David and
11 Jacquelyn McDonough v. Gary Robke, in proceedings held before
12 Steven C. Langhoff, Hearing Officer, and recorded in machine
13 shorthand by me.

14 IN WITNESS WHEREOF I have hereunto set my hand and affixed
15 my Notarial Seal this 26th day of November A.D., 2001.

16

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Notary Public and
Certified Shorthand Reporter and
Registered Professional Reporter

21

CSR License No. 084-003677

22

My Commission Expires: 03-02-2003

23

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