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BEFORE THE  
ILLINOIS POLLUTION CONTROL  
BOARD

IN THE MATTER OF: )  
DAVID AND SUSI SHELTON, )  
 )  
Complainants, )  
 )  
vs. )PCB 96-53  
 )Volume 6  
STEVEN AND NANCY CROWN, )  
 )  
Respondents. )

REPORT OF PROCEEDINGS taken in the  
above-entitled matter, taken before MS. JUNE  
EDVENSON, Hearing Officer for the Illinois  
Pollution Control Board, commencing on the 19th  
day of Augut, A.D., 1996 at the offices of the  
Illinois Pollution Control Board, 100 W. Randolph  
Street, Chicago, Illinois, at approximately 9:00  
a.m.

1           PRESENT:

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THE JEFF DIVER GROUP

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BY: MR. JEFFREY DIVER &

6

MR. KAISER

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For the Complainants;

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GOULD & RATNER

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BY: MR. RICHARD ELLEDGE &

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MR. ROBERT CARSON

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For Respondents

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## I N D E X

	D	C	RED	REC
DAVID SHELTON		1025	1076 1095	1093
BRADLEY EDWARD MAUTNER	1097	1124	1163	1168
ROBERT PAUL ELFERING	1174	1189		
PETER KELLER	1194	1210		

## E X H I B I T S

	OFR'D	REC'D
Respondent's Exhibit No. 8	1111	1112
Complainant's Exhibit No. 99; 5,6	1135	1138
Complainant's Exhibit No. 112	1170	1171
Complainant's Exhibit No. 109	1171	1172
Complainant's Exhibit No. 110	1171	1172
Respondent's Exhibit No. 9	1187	
Complainant's Exhibit No. 81	1219	
	1222	
Complainant's Exhibit No. 23	1249	1249

1 THE COURT: Good morning and welcome.  
2 This is the continuation of the hearing of the  
3 contested case of the Sheltons vs the Crowns. Case  
4 Number PCB 96-53. And, this is a noise  
5 enforcement action. My name is June Edvenson, I'm  
6 the Board's Hearing Officer for this case. And,  
7 counsel for the parties have entered their  
8 appearances. We are at the point in our  
9 proceedings where we are in the midst of the  
10 cross-examination of Mr. Shelton by counsel for  
11 Respondents, Mr. Robert Carson. Would you like to  
12 continue at this time, counsel?

13 MR. CARSON: Yes, we're ready to proceed.

14 MR. DIVER: Madam Hearing Officer, if I  
15 can indicate, on the record, that on behalf of the  
16 Complainants, there's one additional person in the  
17 room today that's our legal associate, Elizabeth  
18 Molson, just so the record is clear on that.

19 THE COURT: Thank you. Welcome. All  
20 right, then, let's have the re-swearing of the  
21 witness.

(Witness sworn)

22 D A V I D S H E L T O N,  
23 after having been first duly sworn on oath,  
24 deposes and testifies as follows:

CROSS EXAMINATION

BY MR. CARSON:

Q Good morning, Mr. Shelton.

A Good morning.

Q Mr. Shelton, I'd like to take you back to  
16 June of 1995, sir. Do you recall, at that time,  
17 that there were some sound readings that were done  
18 by Mr. Al Shiner in June of 1995?

A Yes.

Q And, you were present for those sound  
19 readings, were you not?

A Yes.

Q And, do you recall, sir, that those sound  
20 readings were taken after the acoustical enclosure  
21 was installed at the Crown residence--

A Yes.

Q -- around their air conditioning unit?

A Yes.

Q Did that acoustical enclosure result in a  
23 substantial reduction in the sound emitted from  
24 the unit?

A Not until the cones were removed.

1 Q After the removal of the cones, which was  
also in June of 1995?

2 A Yes.

3 Q At that time, sir, did those  
4 modifications of the enclosure and the cone  
removal result in substantial reduction in the  
5 sounds emitted from the unit?

6 A Yes.

7 Q You heard Mr. Shiner testify in these  
proceedings, did you not?

8 A Yes.

9 Q And, Mr. Shiner described, in his expert  
10 opinion, that the perceived reduction in sound to  
the listener would be that the perceived sound  
11 would be cut in half as a result of those  
modifications?

12 A Yes, he said that.

13 Q Do you agree with that, sir?

14 A I certainly don't disagree with it.

15 Q This is Exhibit No. 41. It was already  
16 placed into evidence as part of the Petitioner's  
case. And, this is your June 26th, 1995 letter to  
17 Steve Crown, is that what that is, sir?

18 A Yes.

19 Q Now, according to this letter, you have  
received and have reviewed Mr. Shiner's  
20 measurements at the time that he sent them, is  
that right?

21 A Yes.

22 Q And, it states, in the opening paragraph,  
that the results of Monday night's test show that  
the noise levels are still far in excess of IPCB  
standards. You see that?

23 A Yes, that's following the sentence where  
I said the unit enclosure --

24 Q Yes. The IPCB standards that you're  
referring to there were what?

A The Illinois Pollution Control Board  
Numeric Noise Standards.

Q Were you aware, sir, at the time that you  
sent this letter, that those numeric noise  
standards are not applicable to the sound emitted  
from one residence to another residence?

MR. KAISER: Objection, calls for a legal  
conclusion.

MR. CARSON: I'm asking for the witness'  
state of mind. He sent this letter. He made a

1 statement. I want to know what his belief was at  
the time he sent this letter.

2 MR. KAISER: Excuse me, Madam Hearing  
3 Officer. If Mr. Carson would rephrase the  
4 question so that, in Mr. Carson's opinion, the  
5 Illinois Pollution Control Board standards are  
6 inapplicable, because I don't believe that issue  
7 has been resolved, for purposes of this hearing.  
8 So, if Mr. Carson wants to state that there's  
9 question about the application of those  
10 standards--but, to state it as the law of this  
11 case, as Mr. Carson has done, is clearly  
12 inappropriate. There's not been a ruling by the  
13 Board as to whether those standards are, or are  
14 not, applicable. And, it's our position that they  
15 are, in fact, applicable.

16 MR. CARSON: Briefly responding, Ms.  
17 Edvenson, is think that what Mr. Kaiser is  
18 suggesting that I'm not allowed to ask leading  
19 questions on cross-examination. And, I believe  
20 that I am. I'm not intending to go make  
21 statements of what the law is. I'm asking the  
22 witness a leading question, and that's all that  
23 I'm intending to do, as to what his state of mind  
24 was at the time.

MR. KAISER: Parenthetically a misleading  
question.

THE COURT: We've already entertained a  
very similar question to this question when we  
last met. And, I asked that the witness not be  
asked to give any sort of legal opinion, because  
we wish to separate the examination of the law  
from the facts and stick with an examination of  
the facts before this witness. However, if your  
question is limited to whether or not he had an  
understanding that it was or was not applicable,  
although I find the relevance of it somewhat  
questionable, I'll permit him to answer whether or  
not he felt it was or was not, at the time that he  
wrote the letter.

MR. CARSON: Thank you, your Honor. I'll  
rephrase the question.

THE COURT: So, if you can rephrase it  
narrowly, we'll proceed with it.

BY MR. CARSON:

Q Mr. Shelton, at the time that you sent  
this letter, did you have an understanding as to

1 the applicability of those IPCB standards?

A It was my --

2 Q My question, sir, was did you have an  
understanding.

3 A Yes.

Q And, how did you gain that understanding?

4 A Through discussions with counsel and Greg  
Zak.

5 Q So, you had already consulted with  
counsel as to the applicability of the IPCB  
6 standards to the noise emitted from Mr. Crown's  
air conditioner onto your property, at the time  
7 you wrote this letter?

A Yes.

8 Q And, you had the benefit of counsel's  
interpretation of the statute at the time that you  
9 wrote this, the regulations, the standards, at the  
time you wrote this letter?

10 A I had a general impression that I had  
formed. I don't recall specifically asking  
11 counsel to give me a definitive answer as to the  
legal technicalities. But, I had a general  
12 understanding that the numeric standards would  
apply here.

13 Q It was your belief that the numeric  
standards did apply?

14 A Yes.

Q Looking to the bottom of Exhibit No. 41,  
15 on the first page, there's a statement that there  
are, or there were, certain other problems which  
16 Al was unable to measure at the time. And then,  
you described, for example, sound surges as  
17 components of the system cycling on and off. It  
was your belief, sir, that Mr. Shiner's  
18 measurements were not complete?

A I'm not sure how to answer the question.  
19 Insofar as what he measured, I had no reason to  
doubt that they were true and accurate readings.  
20 There were certain measurements that it would have  
been beneficial to have taken, that did not take  
21 place. And, they're described here in the  
attachment to this letter.

22 Q What you're suggesting, then, in this  
sentence about the certain other problems was that  
23 there was a problem creating the problem?

A I don't understand the question.

24 Q Well, you had Mr. Shiner there for the

1 purpose of measuring the problem. But, evidently,  
2 the problem could not be re-created through that  
method, is that what happened, sir?

3 MR. KAISER: Objection, excuse me, Madam  
Hearing Officer. We've had this objection as well  
4 where, through a leading question, Mr. Carson has  
attempted to characterize the function Mr. Shiner  
5 served in performing the sound measurement  
readings. And, to the extent he characterizes Mr.  
6 Shiner's involvement as an attempt to solve the  
problem, I don't believe that was the testimony by  
7 Mr. Shiner or Mr. Shelton. Mr. Shiner's role was  
to obtain noise measurements.

8 MR. CARSON: And, my question didn't say  
anything about solving the problem, it was  
measuring the problem.

9 THE COURT: Could you rephrase your  
question, Mr. Carson?

10 BY MR. CARSON:

11 Q Mr. Shelton, did you, or did you not,  
consent to having Mr. Shiner at your property that  
12 night to take these measurements?

13 A Yes. As agreed to in our January  
meeting with representatives of the Village,  
14 Steven Crown and I were jointly paying for the  
readings to be done that evening.

15 Q And, the purpose was to measure the sound  
emitted from Mr. Crown's air conditioner onto your  
property, right?

16 A At the lot line.

17 Q And, your concern, as expressed in this  
letter, was that the problem sounds couldn't be  
created for him to measure, is that right?

18 A We, there was an agreed upon protocol  
that Mr. Shiner reached with somebody.

19 Q I'm sorry, Mr. Shelton, I don't mean to  
interrupt you. But, my question was, in  
20 expressing this statement, certain other problems  
which Al was unable to measure. Were you  
expressing your opinion that there was a problem  
21 creating the problem?

22 A There were certain sound readings that  
were not taken that might have been helpful in  
23 letting us know about the totality of the problem,  
such as the second floor reading.

24 Q Well, there was also some difficulty  
getting the air conditioner to cycle on and off,



1 right?

2 A Mr. Carson is referencing the last  
paragraph of Page 1.

3 Q There's also a reference in the middle of  
Page 1 to the attachment, other issues, which is  
part of Exhibit No. 41.

4 A Could you repeat the question?

5 Q In addition to not being able to take  
measurements at the second story window, there was  
also some difficulty obtaining the sound surges  
6 that you described, right?

7 A Yes.

8 Q Now, looking to the second page of  
Exhibit No. 41, the third paragraph down, the  
opening sentence, "As you know, our house is on  
the market." You're referring there, sir, to your  
9 efforts to sell your home, is that right?

10 A Yes.

11 Q And, how long was it that you had your  
house listed for sale?

12 A I believe we listed it for sale  
officially in early 1995. I believe in February,  
if memory serves.

13 Q Is it correct that the house was listed  
for about seven months?

14 A Yes.

15 Q And, at that time, you entered into a  
lease?

16 A It was off the market for a period of  
time between when it was on the market for sale,  
and when we put it on the market for lease.

17 Q And, during the seven months that it was  
listed for sale, I take it you didn't receive any  
offers that were of a level that you believed you  
18 should receive for the house, is that correct?

19 A Yes.

20 Q Please turn to, in the attachment which  
is part of Exhibit No. 41, entitled "Other  
Issues". And, this description of other issues, I  
assume, is something you prepared?

21 A Yes.

22 Q Going on to Page 3 of the other issues,  
there's a section entitled Shelton Air  
Conditioner.

23 A Yes.

24 Q According to this statement, Mr. Shiner  
also tested the Shelton's air conditioners, is

1 that correct?

A Yes.

2 Q You were there when those tests were  
done?

3 A Yes.

4 Q And, evidently, one of the units was  
measured as exceeding the IPCB nighttime levels.  
That was your understanding, wasn't it?

5 A He tested with both of our air  
conditioners on. The weighted average was below  
6 the nighttime levels. However, at three or four  
frequencies, there was a very slight exceedance.

7 Q Now, it says here, nevertheless, there  
are three frequencies where the Shelton unit is  
8 slightly above the nighttime standards. I guess  
that's what you just said, right, there were three  
9 frequencies where it exceeded the IPCB nighttime  
standards?

10 A Slightly.

11 Q Is it your belief that slight exceedance  
isn't relevant?

MR. KAISER: Objection, argumentative.

12 THE COURT: Sustained.

BY MR. CARSON:

13 Q You stated, in this letter, that the unit  
slightly exceeded the nighttime standards. Is  
14 there some expertise that you're relying on that  
renders the exceedance only slight?

15 A I was basing that statement upon my  
knowledge, which I had developed some limited  
16 knowledge during the course of this case, about  
noise levels. And, 1, 2, or 3 decibels, 1 or 2  
17 decibels is frequently, as I understand it,  
generally not deemed to be major.

18 Q So, you viewed that slight exceedance to  
be not a big deal?

19 A Yes, compared to the Crown's exceedance.

Q You viewed it as not a big deal, right?

20 A Right, based on the Crown's exceedance.

21 Q Now, at the same time you were asking Mr.  
Crown, were you not, to not only meet, but meet an  
adequate margin of safety below the IPCB  
22 standards, isn't that right?

A We requested that, yes.

23 Q That was in your, we've already looked at  
your letter of July 21st, Exhibit No. 47 where you  
24 requested that the Crown unit meet an adequate

1 margin of safety below Illinois' Numeric  
Standards?

2 A Yes.

3 MR. KAISER: Objection. I believe that  
4 mischaracterizes that exhibit. I believe that  
5 Exhibit No. 47 had to do with the design, and  
6 factoring in a level of safety, in the design of  
7 an enclosure, and other steps to remediate the  
8 sound problem, and didn't establish the standards  
9 that Mr. Shelton was looking for.

10 MR. CARSON: I'm not sure if that was an  
objection, or whether that was a speech. Can I --

11 THE COURT: Let's just have it be  
12 clarification that the reference that you made,  
13 Mr. Carson, was solely for the purpose of  
14 reminding the Board what exhibit we're talking  
15 about, at this point.

You can proceed.

16 BY MR. CARSON:

17 Q Just so we're clear exactly what Exhibit  
18 No. 47 says, here's a copy of it. Did you, or did  
19 you not, say to Steve Crown, or rather to Alan  
20 Shiner, regarding the Crown air conditioner, that  
21 you want any changes done right so that there's an  
22 adequate margin of safety below Illinois' numeric  
23 standards? You did say that in that letter,  
24 didn't you?

1 A I did say that. And, the reason I said  
that --

2 Q Well, if your counsel wants to ask you a  
3 question, your counsel can ask you a question.  
4 I've asked you if you said that. You've told me  
5 you did. If you don't mind, I'll go to the next  
6 question.

7 A Yes.

8 Q Thank you. Now, regarding this, not a  
9 big deal, where your unit exceeded the standards  
10 at three frequencies. Was that one of your units  
11 or both of your units?

12 A Both of our units were on.

13 Q Now, in Exhibit No. 41, you just had the  
14 singular, you said "Nevertheless, there are three  
15 frequencies where the Shelton unit is slightly  
16 above the nighttime standards."

17 A To the best of my knowledge, both of the  
18 units were on. And, it may have been a slip when I  
19 used the number here, the singular rather than  
20

1 plural.

Q How many units did you have?

2 A We had two units.

Q Was one of them bigger than the other?

3 A I believe that one is three tons, and the other is two tons.

4 Q Where was the three ton unit located?

5 A I believe, and the reason I say I believe, is that I'm trying to recollect which of the units is which. The larger unit is located on the ground on the south side of our house. And, the smaller unit, at that time, was located rooftop, over our family room. It's since been relocated to insure that there isn't the slightest violation of the IPCB standards on the Crown lot line.

9 Q We have Exhibit No. 51 on the table in front of you. This is the plan which was represented in earlier testimony. And, right now, if you would, point to Exhibit No. 51 where the three ton unit was located at the time the measurements were taken in June of 1995? Please point, put a mark on it.

12 A I'm sorry, next to the word "garage".

13 Q And, the two ton unit, which you stated was on the roof, but has since been moved now, where was that located?

14 A Approximately here.

15 Q Maybe if we could just put a X --

16 THE COURT: If you'd like to use red or something--

Q Using this red pencil --

17 THE COURT: Contrasting color.

BY MR. CARSON:

18 Q Can you put maybe a two ton with a circle around it? And, the other unit, if you can put three ton with a circle around it? Thank you.

19 And those--you've marked Exhibit No. 51 in the manner I've asked you to. And, those are the units, the locations of the units that existed in June of 1995?

20 A Yes.

22 Q Now, regarding the configuration of your house. There's a seating area noted, and that would be to the east, the east side of your house?

23 A Yes.

24 Q That's the patio you testified about

1 earlier?

A Yes.

2 Q Is there also a screened in porch on that  
side of the house?

3 A No, no. There's a family room on the  
southeast side of the house, south of the patio.

4 Q So, the unit, the two ton unit was on the  
roof above the family room?

5 A Yes.

6 Q Which would be the east wall, exterior  
wall of the house. Could you draw that in a blue  
pencil?

7 A Roughly, this would be roughly the east  
wall. The family room.

8 Q So, the family room protrudes to the east  
of the house?

9 A Yes.

Q Beyond the rest --

10 A Yes.

11 Q And, the patio is adjacent to that family  
room?

A Yes.

12 Q And, also protrudes a little further--

A Yes.

13 Q --as shown on Exhibit No. 51. And, your  
son, David's, room is directly above the family  
14 room, or is it inside, or is it west?

A It's to the west.

15 Q And, above?

A And above.

16 Q Can you draw in where David's room was  
located?

17 Thank you. And, you testified that the  
rooftop unit was relocated, at some point. When  
18 was that done?

19 A It was supposed to have been done right  
after the readings in the summer of 1995.  
20 However, it did not, because of weather delays and  
scheduling problems with our air conditioning  
21 contractor, did not happen until this summer. It  
happened in July.

Q Where was it moved to?

22 A It was moved directly to the east of the  
house, on the west edge of the patio, between the  
23 house and the patio.

24 Q Maybe if we take this red pen and just  
put an arrow and indicate where it was relocated.

1                   Where's the master bedroom located?

2                   A     The master bedroom is located on the  
3                   northeast corner of the house. Would you like for  
4                   me to draw that?

5                   MR. DIVER: Let the record show the  
6                   witness is taking a black or blue pen --

7                   A     I'll note it as MB, master bedroom.  
8                   BY MR. CARSON:

9                   Q     Again, on Exhibit No. 41, sir, and the  
10                  page we were looking at, Page 3 of Other Issues  
11                  where you were talking about the Shelton air  
12                  conditioner.

13                 A     Yes.

14                 Q     It states, in the last sentence on that  
15                 page, "However, they are taking immediate steps to  
16                 insure that the unit complies with the IPCB  
17                 standards at all frequencies". And, the "they" in  
18                 that sentence is you?

19                 A     Yes.

20                 Q     You and your family?

21                 A     Yes.

22                 Q     And, according to this statement that was  
23                 made in June of 1995, you were taking immediate  
24                 steps to comply with the IPCB nighttime standards  
                  with respect to your own air conditioning units,  
                  right?

                  A     Yes, sir.

                  Q     And what, if I'm elaborating on what you  
                  said earlier, evidently what you deemed to be the  
                  appropriate response would be to move that rooftop  
                  unit down to the patio area?

                  A     We did two things. We first had two  
                  different air conditioning firms come out and look  
                  at our air conditioning situation. Based upon  
                  their recommendations, we hired Dave's Heating and  
                  Air Conditioning of Evanston, who had done work at  
                  our house before, to do two things. One, with the  
                  larger unit on the outside of the house, there  
                  were loose parts on it. We had them tightened up.  
                  This is an older unit, and he tightened those up.  
                  Second, he determined that we should put a  
                  compressor cover over the smaller unit rooftop,  
                  and that we should relocate it. And so, we engaged  
                  him to do that. Unfortunately, as I mentioned a  
                  moment ago, it was in the height of the summer.  
                  He was not able to get it done until this summer.

                  Q     So, with respect to that rooftop unit,

1 you not only moved it down to the patio, you also  
2 put a compressor cover over it?

3 A Yes. It was supposed to have one to  
4 begin with. But, apparently, it had never been  
5 installed, which we did not know at that time.

6 Q When that unit was on the roof, how far  
7 was it from David's window?

8 A It wasn't far at all. But, we very  
9 seldom used the unit. And, as I said here, as far  
10 as we knew, as of mid-summer of 1995, we hadn't  
11 had it on after 10:00 p.m. once. And, as my wife  
12 testified, if we used it six or seven times during  
13 the summer, that would be the maximum extent. So,  
14 it was never a problem.

15 Q So, when your son described the death hum  
16 that he was hearing in his bedroom, did you take  
17 any steps to determine whether that death hum was  
18 coming from your air conditioner?

19 A We knew it was coming from the Crown air  
20 conditioner.

21 Q Even though this loud unit, that which a  
22 compressor cover had never been installed, was  
23 right outside his window?

24 A We didn't use it at night. We seldom  
used it during the day.

Q How long had that rooftop unit been  
there?

A Since we put the original addition on the  
house, which would have been the summer of 1990.

Q By the way, Exhibit No. 47, which we  
looked at just a moment ago, has an attachment  
which, there was some discussion earlier in these  
proceedings about it being a portion of a Trane  
engineering bulletin?

A Yes.

Q And, you testified that you sent a copy  
of the letter, Exhibit No. 47, to Steve Crown in  
July of 1994?

A Yes.

Q It doesn't say, does it, on the letter,  
that the attachments were included with the  
letter?

A It doesn't say that, say it on the  
letter, no.

Q Did you put the letter in an envelope  
yourself?

A Yes, I did.

1 Q And, do you know, can you tell us, of  
2 your own recollection, as you sit here today, that  
the enclosure was also put into that envelope?

3 A To the best of my recollection, yes.

4 Q You can't really say for sure, can you?

5 A Well, I had the letter--

6 MR. KAISER: Objection, misstates his  
testimony.

7 MR. CARSON: I don't even understand that  
objection.

8 MR. KAISER: Argumentative.

9 THE COURT: Overruled. I'll let the  
witness attempt to recollect.

10 A I wrote the letter myself on the word  
11 processor, and printed it, and put it in an  
12 envelope. To the best of my recollection, it  
13 included the attachments.

14 BY MR. CARSON:

15 Q But, you can't really say for sure  
16 whether the attachment was part of it or not, can  
17 you?

18 A I suppose I can't testify -- I don't know  
19 quite how to answer that. To the best of my  
20 recollection, it was included.

21 Q Mr. Shelton, you were back in Winnetka in  
22 July of this year, at which time Mr. Zak took some  
23 sound measurements of the system, is that right?

24 A I believe it was in June.

Q In June?

A Yes.

Q And, at that time, it was your  
understanding that there had been some additional  
modifications to the system, which would limit the  
number of compressors and the number of fans that  
would be in operation at any one time?

A Yes.

Q And, you personally had an opportunity to  
listen to the sound emitted from the unit at that  
time, did you not?

A Yes.

Q And, would you agree that the  
modifications had resulted in a substantial,  
further substantial reductions in the sound?

A They had resulted in a reduction, as best  
I can judge.

Q It was a noticeable reduction, to your  
ears, right?



1 A Yes. I could notice a reduction, yes.

2 Q And, in fact, you told Greg Zak that  
evening that the unit was significantly quieter,  
3 didn't you?

4 A I don't recall specifically telling him  
that, but --

5 Q Words to that effect?

6 A Yes. It was my opinion, at that time,  
that there was a reduction in the sound.

7 Q And, did you visit the site again last  
week; that is, on Thursday, August 15th?

8 A Yes.

9 Q And, you gave a listen at that time, is  
that right?

10 A Yes.

11 Q And, some additional sound measurements  
were taken?

12 A Yes.

13 Q Did you make notes of the sound  
measurements as they were reported to you?

14 A I did.

15 Q Do you have those notes with you?

16 A Yes, I have them in my case.

17 MR. CARSON: With your Honor's  
permission, can the witness pull his notes out?

18 THE COURT: Yes.

19 A These are the notes that I took that  
evening. These are some, I transcribed those to a  
worksheet, which is my own --

20 MR. KAISER: Can we have just a moment to  
examine the documents?

21 THE COURT: Yes. Off the record to  
examine documents.

(Off the record)

22 THE COURT: We'll go back on the record,  
and there's been some concern expressed about  
whether the Respondent's counsel should be  
permitted to look at Mr. Shelton's notes, which  
were taken during the recent noise emission test.

23 MR. CARSON: And, your Honor, I'd like  
the record to also reflect that Mr. Shelton took  
the documents out of his briefcase and gave them  
to me. And, Mr. Elledge and I were reviewing  
them. And, Mr. Kaiser stood up across the room  
and removed them from Mr. Elledge's hands, and is  
now contending that we're not supposed to see them  
because they're Mr. Shelton's personal notes.

1                   MR. KAISER: Yes. Let me elaborate on  
2                   that, Madam Hearing Officer, if I may. These are,  
3                   in fact, Mr. Shelton's personal notes. Now, on  
4                   August 16th, 1996, the Respondent hired an  
5                   acoustical engineer to obtain noise measurement  
6                   readings. Clearly, the best evidence of what the  
7                   results that evening are, are the numbers obtained  
8                   by his paid technician. To the extent Mr.  
9                   Shelton's notes contain things other than a  
10                  reiteration of the numbers that Mr. Bob Elfering  
11                  provided to Mr. Shelton on the night of August  
12                  15th, 1996; to the extent they contained his  
13                  thoughts or conclusions about reductions, or lack  
14                  of reductions, to noise readings; to the extent  
15                  they contain information which would be  
16                  privileged, yes, I object to Mr. Carson, Mr.  
17                  Elledge, and Mr. Crown looking at those.

18                  THE COURT: Thank you. I believe that we  
19                  asked for the notes for the purpose of permitting  
20                  the witness to refresh his recollection with  
21                  respect to a line of questioning that Mr. Carson  
22                  was going to proceed with. Mr. Carson, did you  
23                  have questions with respect to these issues that  
24                  you would like to go on with at this time?

1                   MR. ELLEDGE: May I speak to this,  
2                   please, Madam Hearing Officer? On Friday evening,  
3                   I believe, I communicated to Jeff Diver personally  
4                   that I would like him to come and produce his  
5                   notes --

6                   MR. DIVER: The notes--

7                   MR. ELLEDGE: -- for my inspection.

8                   MR. DIVER: The notes of the readings,  
9                   yes. I said the notes of the readings themselves.

10                  MR. ELLEDGE: They were just pulled out  
11                  of my hands, your Honor.

12                  THE COURT: In other words, you said the  
13                  notes of the readings.

14                  MR. DIVER: The notes of the reading, not  
15                  the other notes.

16                  THE COURT: In other words, you said the  
17                  notes of the reading would be available to  
18                  Respondent's counsel?

19                  MR. DIVER: The notes of the readings,  
20                  yes.

21                  MR. KAISER: And, we're happy to provide  
22                  the two pages, which contain the notes of the  
23                  readings. And, what I've withdrawn from Mr.  
24

1 Elledge's hands are three pages of handwritten  
2 notes, prepared by Mr. Shelton, and one page  
worksheet that he also prepared.

3 MR. ELLEDGE: I know of no privilege  
4 which makes that not discoverable, under these  
circumstances.

5 MR. KAISER: Well, attorney-client work  
6 product might be one thing. Documents prepared in  
7 anticipation of litigation might be others. To  
8 the extent he hasn't shown those to anyone, other  
9 than his attorney, I think we can assert the  
privilege.

10 THE COURT: Counsel, thank you.

11 MR. KAISER: Thank you.

12 THE COURT: Has Respondent's counsel  
13 asked for any of the personal notes, or does  
14 Respondent's counsel simply want to look at the  
15 test results?

16 MR. ELLEDGE: He had a tablet that night,  
17 Thursday night. I asked to see his "notes". I  
18 did ask if they would be produced at hearing on  
19 Monday morning.

20 THE COURT: And, what was the response?

21 MR. ELLEDGE: He called, put a phone call  
22 in, at that point, on the spot, to Mr. Kaiser and  
23 I said please make sure that, if possible, Mr.  
24 Shelton bring his notes with him to the hearing on  
Monday morning.

MR. KAISER: That doesn't mean we waive  
the right to object. It indicates that, as of  
Friday, without having had the benefit to review  
the notes, Mr. Diver agreed that he would require,  
or ask Mr. Shelton to bring the notes to the  
hearing. It didn't necessarily mean that, without  
reviewing those notes, we would tender them to  
counsel for Respondents.

THE COURT: Without an offer of proof, I  
see no reason to proceed in that area with respect  
to Mr. Shelton's personal notes. With respect to  
the test results, I'm assuming that these are  
going to come into examination in the case before  
we conclude. So, let's proceed.

MR. CARSON: Allow me to ask the witness  
a few questions about the notes, for foundational  
purposes.

THE COURT: I'm sorry, did we have an  
objection, Mr. Elledge?

1                   MR. ELLEDGE: No, your Honor.  
BY MR. CARSON:  
2           Q     Mr. Shelton, on the table before you are  
some handwritten notes from a yellow pad, right?  
3           A     Yes.  
4           Q     How many pages do you have, sir?  
A     I have two pages of notes that I made of  
the evening of the 15th.  
5           Q     And, there are some other pages from a  
yellow pad?  
6           A     Yes.  
7           Q     How many pages are in there?  
A     Yes, I subsequently, the following day  
and over the weekend, made some comparisons to  
8     earlier readings and jotted down some subsequent  
notes. It's four pages of those, plus this  
9     worksheet.  
10          Q     And, for what purpose did you prepare  
those notes?  
11          A     To try to determine what progress had  
been made in reducing the noise level.  
12          Q     And, in preparing those notes, you  
reviewed the prior readings as they had been  
reported to you?  
13          A     Yes.  
14          Q     And, you compared those to the more  
current readings?  
15          A     Yes.  
16          Q     And, you made notes of that comparison?  
17          A     Yes.  
18          Q     And, were you making this evaluation, in  
part, to help yourself prepare for your testimony  
at this hearing?  
19          A     Yes.  
20          Q     At the time that you were present at the  
Winnetka property on last Thursday, August 15th,  
did you find the sound emissions to be again  
substantially reduced?  
21          A     They were substantially reduced at the  
second floor level. Though, I must say, I did not  
get on the roof, as did Mr. Elledge and Mr.  
Elfering, to do the readings. But, based upon the  
22     readings, there was a very significant reduction  
in those noise levels from when Mr. Zak had  
23     measured the noise levels in June. I did notice  
that when the air conditioner was operating at its  
24     low level of operation, with the fan speed

1 reduced, per the new variable speed fan mechanism,  
2 that it was much reduced. It was significantly  
3 reduced from the noise levels earlier. I came  
4 away having only two concerns there.

5 Q Can I stop you there and ask you another  
6 question? You stated that you found the noise to  
7 be substantially reduced at the second story,  
8 based on the readings as reported to you?

9 A Yes.

10 Q What about in the patio area?

11 A At the low level of operation, the noise  
12 was very significantly reduced in our backyard and  
13 the lot line.

14 Q The low level of operation, that's the  
15 operation that was in use last Thursday evening?

16 A Well, we tested both the low level of  
17 operation, and the maximum level of operation on  
18 Thursday evening. At the low level of operation,  
19 it was very significantly reduced. At the maximum  
20 level of operation, there was some improvement  
21 from where it had been, to the best of my  
22 recollection, in June. However, there was an  
23 extremely loud volume of cricket noise last  
24 Thursday night, which was not there in June. So,  
it was a little hard to distinguish the  
differential. The numbers would indicate that  
there was some modest reduction, from the June  
levels, when operating at max capacity. However,  
at two frequencies, one in particular, 2,000 hertz  
frequency, there's still a 12 decibel exceedance  
of the nighttime standards.

Q Now, you're telling us about what the  
numbers show, and I would like to ask you about  
what you perceived to your ear. You were there,  
right?

A Yes.

Q And, was the sound level emitted from the  
unit onto your property at a satisfactory level,  
to your ear?

A I have difficulty answering the question,  
only because of the ambient sound being so loud,  
with the crickets that evening. That evening, I  
thought that there was an improvement at the full  
level of operation. And, it may well be  
satisfactory. However, I'm concerned about the  
fact that the crickets caused the ambient sound to  
be so high, that it was a little hard to

1 distinguish. If the crickets were not there,  
2 which they aren't the better part of the year,  
3 there could, conceivably, be a problem,  
4 particularly at the higher levels.

5 Q I'd like to ask you a couple of  
6 questions, and I don't want to be impudent in  
7 asking these questions, but I think it's called  
8 into question to ask them, sir. Crickets don't  
9 keep you awake, do they?

10 A No.

11 Q Nor do they keep your wife awake?

12 MR. KAISER: Objection, calls for  
13 speculation.

14 BY MR. CARSON:

15 Q As far as you know, sir?

16 A As far as I know, crickets don't keep her  
17 awake.

18 Q Nor your son, David?

19 A As far as I know, they don't keep him  
20 awake.

21 Q Thank you. You stated that the system,  
22 the Crown system, was operated last Thursday  
23 evening at both the low level and at high level.  
24 And, I think, in your answers, you described that  
25 you're not sure if it was satisfactory at the high  
26 level because of the crickets. What about the low  
27 level?

28 A It was satisfactory.

29 Q I'd like to show you Exhibit No. 19, and  
30 this is going back to November of 1994, a letter  
31 that you sent to Steve Crown on that date, Exhibit  
32 No. 19. Do you recall that as a letter that you  
33 sent Mr. Crown at that time, sir?

34 A Yes.

35 Q And, according to this letter, you had  
36 four real estate firms appraise your house in  
37 anticipation of listing it for sale. Now, am I  
38 correct that the real estate firm that you hired  
39 for that purpose was Ann Montgomery's firm?

40 A Yes.

41 Q I think you said it was Kahn Realty or  
42 Kahn Realty?

43 A Yes.

44 Q Ann Montgomery is your partner's wife, is  
45 that right?

46 A Yes.

47 Q And, I think you said that Ann Montgomery

1 was of the belief that you should disclose the  
2 issue regarding the sound from the Crown air  
conditioner to perspective purchasers?

3 A It was not just Ann, it was the chief  
operating officer of the firm.

4 Q Okay. And, this was the same Ann  
5 Montgomery that you or your wife asked to come  
6 over specifically for the purpose of listening to  
7 the air conditioner, even before you were listing  
8 your house for sale, right?

9 A Yes. There were other brokers as well,  
10 but yes.

11 Q Did you ask Ann Montgomery to sign a  
petition, didn't you?

12 A I believe she did sign a petition, yes.

13 Q Now, with respect to the air conditioning  
14 unit that you marked on Exhibit No. 51, your  
15 units, did you ever conduct a test with your units  
16 running and the Crown unit not?

17 MR. KAISER: What's the time period, I'm  
18 sorry?

19 Q Ever.

20 A Yes.

21 BY MR. CARSON:

22 Q And, did you, under those conditions,  
23 experience the sound levels on your patio?

24 A We didn't during that test, no.

Q When was that?

A In the summer of 1995 when we had the  
joint readings. We did a test with just the  
Shelton units running, the one we talked about a  
few minutes ago.

Q That's when the unit was on the roof?

A Yes.

Q And, where were the measurements done?

A They were taken at the lot line between  
the Sheltons and Crowns, which would be roughly  
less than 30 feet from the units.

Q There was no test done, at that time, at  
David's bedroom window, was there?

A No, there wasn't.

Q And, you're sure that at the time of  
those tests with the Crown unit off, that both  
your units were on?

A I believe that they were, that was my  
understanding, that they were.

Q Bear with me one moment. I'm just trying

1 to get my exhibits together.

2 THE COURT: That's fine.  
BY MR. CARSON:

3 Q Sir, you stated, in July of 1994, and I'm  
referring to Exhibit No. 17, you stated --

4 MR. DIVER: What was the date, counsel?

5 MR. CARSON: July 6, 1994. "Solving the  
problem is our only goal. We are not trying to set  
the stage for litigation". That's a statement you  
made in a letter to Mr. Crown, is it not?

6 A Yes.

7 BY MR. CARSON:

8 Q And, you felt a desire to protect your  
family. You felt like your family was under  
attack, right?

9 A Yes.

10 Q And, you felt this way in 1994?

11 A Yes.

12 Q Even though you knew that there was an  
enclosure that was, that had been proposed, and  
was going to be installed, right?

13 A I was not clear that there was going to  
be an enclosure installed.

14 Q You had been informed that an enclosure  
was to be installed?

15 A Yes, but there was ample reason to doubt  
that they were going to follow through with it.  
They had gone back on several things before.

16 Q You felt, I assume you had a natural  
desire to protect your family, because you  
perceived your family was under attack, right?

17 A Yes.

18 Q In view of this history, and the  
frustration and the feelings associated with that,  
that you described, are you capable of evaluating  
the situation as it presently stands, in an  
unbiased way?

19 MR. KAISER: Objection. Mr. Carson, if  
you could clarify the term "this situation". Are  
you referring to the litigation, to the noise  
attenuation steps, what situation are we talking  
about?

20 MR. CARSON: The question goes to bias,  
yor Honor.

21 THE COURT: You can answer it, to the  
best of your ability. Objection overruled.

22 A I can only say that I think by about any



1 standard, and a number of people have told us  
2 this, we have been exceptionally patient and  
disciplined in how we've reacted to this. It's  
3 not only been our emotions, we've had all kinds of  
factual evidence from Trane and numerous sound  
4 readings showing this is not an emotional problem  
of the Sheltons. So, my answer is yes,  
unequivocably yes, I can be objective.

5 Q And, as you sit here today, you believe  
you can, in an unbiased way, evaluate the  
6 situation?

7 A Yes. I think I've just proved that by  
acknowledging the progress that's been made.

8 Q And, you also acknowledged that it was  
satisfactory, but for your question about the  
loudness of crickets?

9 A You didn't give me a chance to complete  
my answer. Some reservations were that we want to  
10 make sure that they're okay on these couple of  
reservations that I have. With those exceptions, I  
11 think that we're at an answer.

12 Q And, your letter that you sent in July of  
1994 says, "Solving the problem is our only goal.  
We're not trying to set the stage for litigation."  
13 What else do you expect from these proceedings?

14 MR. KAISER: Objection, argumentative.

THE COURT: I'll sustain.

15 MR. CARSON: This goes to bias also, your  
Honor. I'll withdraw it, and try it a different  
way.

16 BY MR. CARSON:

17 Q Do you expect the Illinois Pollution  
Control Board to award damages to you?

18 MR. KAISER: Objection.

THE COURT: Sustained.

19 BY MR. CARSON:

20 Q Are you planning to file a civil suit for  
damages against Mr. Crown?

21 MR. KAISER: Objection.

22 MR. CARSON: Your Honor, it goes to motive  
and bias. There's nothing wrong with the question.

23 THE COURT: Sustained. My difficulty with  
it is relevance.

24 MR. CARSON: Well, as my offer of proof,  
your Honor, then, I would like to state that I'm  
intending to ask this witness if he's pursuing  
this matter, for the purpose of setting up a later

1 claim for damages in a civil court. And, I  
2 suppose, for purposes of the offer of proof, we  
3 may assume that his answers would be in the  
4 affirmative. And, that he would say that he does  
5 intend to sue Mr. Crown for large amounts of  
6 money. And, the reason he's pursuing this case is  
7 for that reason. I think the relevance is obvious,  
8 your Honor. If those answers were given, would  
9 they not be relevant?

10 THE COURT: I question this relevance to  
11 identifying the violation of the Illinois  
12 Environmental Protection Act.

13 MR. CARSON: It goes to bias of the  
14 witness and motive to falsify. I'll pose another  
15 question.

16 BY MR. CARSON:

17 Q Is there something else that you would  
18 have Mr. Crown do?

19 MR. DIVER: Excuse me. With respect to  
20 what, counsel?

21 MR. CARSON: Well, what are we here  
22 litigating, Mr. Diver?

23 MR. DIVER: I'm not arguing with you.  
24 I'm asking you to please explain, for the person  
you're asking the question of, what it is you're  
asking. What additional you would ask Mr. Crown to  
do, with respect to what?

MR. CARSON: With respect to his air  
conditioner.

BY MR. CARSON:

Q Mr. Shelton, what would you have Mr.  
Crown do with respect to his air conditioner at  
the present time?

A We would like for the noise levels to be  
reduced to an acceptable level.

Q And, in light of your perceptions last  
Thursday, you still believe that they're not at an  
acceptable level, is that your testimony?

A As I said, though I haven't had a chance  
to give a complete answer, two possible  
reservations, which we simply want to clarify. I  
think there's been tremendous progress, and the  
noise levels are acceptable. If you would like  
for me to elaborate on what those reservations  
are, I'd be glad to.

Q My question to you, sir, is based on your  
perceptions on Thursday, is the sound at an

1 acceptable level. And, if you can answer with a  
2 yes or no, please do so.

3 THE COURT: I believe we've had some  
4 questioning in that area.

5 MR. KAISER: Asked and answered.

6 THE COURT: If you need additional  
7 testimony in that area, let's be more specific  
8 with the question.

9 At this time, it would be useful to  
10 take a brief recess for our morning break. Would  
11 that be acceptable to you, Mr. Carson?

12 MR. CARSON: Yes. I don't have much  
13 more. I have just a few more.

14 THE COURT: Okay. Let's take a short  
15 break.

16 (WHEREUPON, the morning break was taken.)

17 AFTER RECESS

18 THE COURT: We'll go back on the record,  
19 at this point in time.

20 BY MR. CARSON:

21 Q Mr. Shelton, I'd like to take you back to  
22 part of your testimony on direct examination  
23 concerning a meeting that you thought was going to  
24 occur involving a representative of Trane. Do you  
recall that testimony, sir?

A Yes, yes.

Q And, forgive me, I don't remember when it  
was, when you said the meeting was to occur.  
January?

A January of 1994.

Q January of 1994. And, I think your  
testimony was that you and your wife were waiting  
for the people to show up for the meeting, and  
nobody ever showed up?

A Yes.

Q Did you speak with anyone from Trane, as  
far as scheduling of the meeting is concerned?

A No, my wife had talked with Steven, who  
had indicated that --

MR. DIVER: Object to the hearsay. Your  
wife told you that somebody else said --

THE COURT: If you could limit your  
answer to --

A No, I did not talk with anyone from  
Trane.

BY MR. CARSON:

Q You did not. And, this meeting which you

- 1 believed had been scheduled, I take it Mr. Crown  
2 never confirmed to you that there was a meeting  
set up?
- 3 A It's my understanding that he did.  
4 Q That he didn't confirm it to you?  
5 A No.  
6 Q It's your belief that he did?  
7 A Yes.  
8 Q Do you know why it was that the meeting  
was to take place in January when, presumably, the  
9 air conditioner wouldn't be operating?  
10 A It was my understanding, it actually  
might have been speculation on my part, that it  
11 was simply to survey the situation, the landscape  
and so on.  
12 Q I'll now like to ask you about Exhibit  
No. 22, which was a handwritten letter that was  
13 placed in evidence, dated September 21, 1995.  
14 MR. DIVER: Okay.  
15 Q This was a letter that you sent to Mr.  
Crown in September of 1995?  
16 A Yes.  
17 Q And, you already testified that your wife  
was scheduled for surgery, and you felt that it  
18 was very important that she get adequate sleep.  
And, therefore, you had sent this letter in order  
19 to request that the Crowns turn the air  
conditioner off so she could sleep better?  
20 A Yes.  
21 Q In fact, did Mrs. Shelton stay at the  
Winnetka home after her surgery? She actually  
22 stayed somewhere else, didn't she?  
23 A She did, after the surgery, yes. This  
had to do with the night before the surgery.  
24 Q Did you, as well, stay somewhere else, or  
were you, did you stay home?  
A I stayed at home.  
Q She had a good night's sleep prior to the  
surgery?  
A That's the reason for the fax.  
Q And, are you aware of whether any  
modifictaions were made to this system, or the  
system's operations, in response to your request?  
A I didn't notice any. The unit did run  
that evening.  
Q You're not aware of whether any  
modifications were made to the operation of the

1 system?

A No, I'm not.

2 MR. CARSON: That's all the  
cross-examination I have.

3 THE COURT: All right. Thank you, Mr.  
4 Carson. At this point in time, we'll have the  
redirect.

5 MR. KAISER: Thank you, Madam Hearing  
Officer.

6 MR. CARSON: Can I, excuse me one second  
for interrupting, but I would renew our request to  
7 review Mr. Shelton's notes, based upon Mr.  
Shelton's own testimony that these were notes that  
8 he made to assist him in preparing for the  
testimony at this hearing.

9 THE COURT: And, are you referring to the  
notes, Pages 1 and 2, or also the additional  
pages?

10 MR. CARSON: Also the additional pages.

11 MR. KAISER: May I make some additional  
inquiry in that area, so that we can understand  
12 the full scope and purpose for which those notes  
were made?

13 THE COURT: Sure.

BY MR. KAISER:

14 Q Mr. Shelton, I have, in my hand, and I'm  
looking at several pages of notes that I believe  
15 it was your testimony you made over the past  
weekend, after the noise measurements were taken  
16 by Bob Elfering, is that correct? Is that when  
you made these notes?

A Yes.

17 Q And, can you describe, for the Board,  
18 what your purpose was in making these notes, and  
whether you intended to review the content of the  
notes with your attorneys?

19 A The purpose in making the notes was to  
20 help me gather my thoughts, to help me organize my  
thoughts, to use those collective thoughts to  
review, with my attorney, the situation.

21 MR. KAISER: I have no further questions  
in that area.

22 It's my position that these, this  
23 portion of his notes were made for the purpose of  
reviewing matters with his attorneys, and that  
they fall within the attorney/client privilege.  
24 And, therefore, are privileged from disclosure.

1 Madam Hearing Officer, it may be appropriate that  
2 you review this portion of his notes in an in  
camera inspection so that you can satisfy yourself  
as to the content and make a ruling.

3 THE COURT: I was considering it. Can my  
4 ruling on this wait until after the remainder of  
the cross-examination of the proceedings, or will  
5 this be something that interferes with our  
inability to go back to the witness?

6 MR. CARSON: Only to the extent that  
7 there may be something that I would want to  
inquire of this witness about, if we have a little  
8 bit of time. If your Honor's ruling is that we  
have the opportunity to review these notes, if I  
9 have a little bit of time to review them, with the  
right to recall the witness, then that timing  
would not be a problem.

10 THE COURT: Okay. I would like to take  
the opportunity to look at the notes, Mr. Kaiser.  
11 Let me do that over lunch today. And, at this  
point, let's proceed with the other areas of the  
redirect.

12 MR. DIVER: Madam Hearing Officer,  
there's one thing that we need, a copy of Exhibit  
13 No. 7, if Madam Hearing Officer has that.

14 Thank you, Madam Hearing Officer. Excuse  
me just one moment.

15 THE COURT: We'll pause for examination  
of documents.

(Off the record)

16 REDIRECT EXAMINATION

BY MR. KAISER:

17 Q Mr. Shelton, I'd like to review with you  
18 several portions of your testimony that you gave  
this morning on cross-examination with Mr. Carson.  
19 You'll recall that Mr. Carson inquired about your  
listing and placing of your home for sale in the  
early part of 1995. Do you recall that testimony?

20 A Yes.

21 Q And, can you tell the Board why it was,  
in 1995, you decided to place your home on the  
market?

22 A Yes, we did. There were basically two  
23 reasons. The first was that we had, for some  
time, been thinking that rather than constructing  
24 an addition, which we felt we needed in this  
house, it might make sense to move to someplace

1 where we didn't need to construct the addition.  
2 We were not very excited about living through a  
3 second addition. We had lived through one once  
4 before, and it was very disruptive. Also, we'd  
5 been living next door to the Crown construction,  
6 at that point, for some three years. And, for  
7 those reasons, we had concluded that we preferred  
8 to move rather than to live through another  
9 addition.

10 The second reason had to do with the fact  
11 that after the difficulties we had regarding the  
12 air conditioner noise next door, we had lost the  
13 joy of living in our home, and thought it would be  
14 best to go someplace where there weren't so many  
15 bad memories.

16 THE COURT: If you'll permit me to  
17 interrupt briefly, let the record reflect that the  
18 redirect examination also covers the  
19 cross-examination of July 16th.

20 MR. KAISER: Thank you.  
21 BY MR. KAISER:

22 Q And, moving to another area of the  
23 cross-examination, as I recall your testimony, you  
24 caused the two ton chiller unit that had  
previously been located on the roof of your family  
room, to be relocated to a patio area. And, that  
that occurred in the summer of 1996. Was that your  
testimony?

15 A Yes, it was.

16 Q And, why did you relocate that two ton  
chiller unit?

17 A The reason we relocated it is that we had  
18 committed, the prior summer when there had been  
19 noise readings that showed that our air  
20 conditioners were slightly in excess of the IPCB  
21 nighttime standards, we had, after those readings,  
22 we had committed to take steps to make sure there  
23 wasn't a violation. And, for that reason, we  
24 concluded that we should relocate the unit.

25 Q Do you have an opinion as -- well, let me  
26 put you back in time now to the summer of 1994  
27 when you first began to intensively experience the  
28 noise from the Crown air conditioning unit. Do  
29 you have an opinion as to whether the noise you  
30 were experiencing in your home, in your patio, in  
31 your backyard, was the result of your air  
32 conditioning units, or the Crown air conditioning

1 unit?

2 A The noise was, the noise problems were  
3 the result of the Crown unit. You could walk a  
4 relatively few feet away from our unit, during the  
5 summer of 1994, and when I say relatively few  
6 feet, 10, 12 feet, and at that point, you would  
7 start to hearing nothing but the Crown air  
8 conditioner. Even being that close to our unit,  
9 you couldn't hear it. That was in the summer of  
10 1994.

11 Q And, in the summer of 1995, were you able  
12 to tell whether the problem you were experiencing  
13 in your home, and on your property, was the result  
14 of your air conditioning unit, or the Crown's air  
15 conditioning unit?

16 A The problem was the result of the Crown  
17 air conditioning unit. The problem--I didn't  
18 complete my answer to the prior question. By the  
19 summer of 1995, once the cones were off and the  
20 enclosure was up, the noise difficulties with the  
21 Crown unit were somewhat reduced. Now, they were  
22 still a problem, though at that time you could,  
23 you had to walk quite a bit further away from our  
24 unit before the Crown noise would overwhelm those  
units. However, in both summers, and this is the  
completion to the prior question, again, we used  
our air conditioners very infrequently,  
particularly at night. And, particularly the  
upstairs unit. When we do use one, it's typically  
the downstairs unit, which is the one located on  
the south side of the house. And, certainly, when  
we do use our air conditioning system, we have our  
windows closed. Otherwise, we wouldn't be using  
the air conditioner.

18 So, the problems we had were on the vast  
19 majority of the nights when we didn't want to use  
20 any of our air conditioners. But, we had  
21 difficulty keeping our windows open because of the  
22 Crown air conditioner.

23 Q Did you ever go into your son, David's,  
24 bedroom to experience the noise about which he  
complained?

25 A Yes.

26 Q Did you form an opinion as to what the  
27 source of the noise about which your son was  
28 complaining, in 1994, what the source of that  
29 noise was?



1           A     It was the Crown air conditioner.  
2           Q     Did you make similar investigations in the  
3           A     Yes.  
4           Q     And, did you form an opinion as to what  
5           A     It was the Crown air conditioning.  
6           Q     Were you present when Bob Elfering took  
7           A     Yes.  
8           Q     Are you aware of whether a person by the  
9           A     Yes, Brad was present.  
10          Q     Did Mr. Mautner make any representations  
11          A     Yes.  
12          Q     Did Mr. Mautner make any representations  
13          A     Yes.  
14          Q     Did Mr. Mautner make any representations  
15          A     Yes.  
16          Q     Did Mr. Mautner make any representations  
17          A     Yes.  
18          Q     Did Mr. Mautner make any representations  
19          A     Yes.  
20          Q     Did Mr. Mautner make any representations  
21          A     Yes.  
22          Q     Did Mr. Mautner make any representations  
23          A     Yes.  
24          Q     Did Mr. Mautner make any representations

MR. CARSON: Objection, to the extent it calls for hearsay. Yes or no to that wouldn't be hearsay. But, if the witness is going to start telling what Brad Mautner said, then, obviously, it would be.

THE COURT: Could you rephrase your question?

BY MR. CARSON:

Q     Do you have any basis of your own for knowing -- were representations made as to whether the Crown unit was operating at a low level, that is a 30 hertz level, or a high level, a 60 hertz level?

A     Yes, it was my understanding that at the low level of operation, it was operating with the one compressor on, the ten ton compressor, and the fans at a reduced speed, using 20 to 30 hertz of electricity. And, that at the high level of operation, it was operating with both the 10 and 15 ton compressors on, and at the max of electrical capacity of 60 hertz.

Q     And, what was the basis for your understanding?

A     Conversations with Brad Mautner.

Q     Did you have any opportunity to independently confirm the statements made to you, by Brad Mautner, during the Elfering test in August of 1996?

1 A No.

2 Q Now, the sound about which you complained  
3 in the summer, throughout the summer of 1994, was  
4 that sound caused by crickets?

5 A No, it was not.

6 Q The sound about which you complained,  
7 throughout the summer of 1995, was that sound  
8 caused by crickets?

9 A No, it was not.

10 Q Have you ever complained to anyone about  
11 noise emanating from crickets?

12 A No, I have not.

13 Q When Greg Zak took noise measurements at  
14 your son's bedroom window, on June 27th, 1996, was  
15 your rooftop unit operating?

16 A No, it was not. Neither of our air  
17 conditioners was on.

18 Q You mentioned, during the course of your  
19 examination this morning, that you had certain  
20 reservations concerning the modifications that  
21 have recently been made to the Crown air  
22 conditioning system. Can you describe, for the  
23 Board, what those reservations are?

24 A Yes. The first reservation has to do with  
being confident that the operating circumstances,  
the kinds of noise levels we heard last Thursday  
night, will, in fact, be the kinds of noise levels  
we will hear on into the future, to the extent  
that the noise levels can be altered by simply  
changing the control pattern. However you're  
operating the unit, you know, that's cause for  
concern because we can't be confident that the  
operating level of the system won't be stepped up  
to a higher level, and cause noise levels to  
greatly exceed what they were last Thursday night.  
So, that's one reservation. A lot depends on  
certain operating protocols, and how confident can  
we be that that same operating protocol will be  
adhered to in the future. The second reservation  
has to do with the numeric readings themselves.  
You know, we just want to make sure that we have a  
solution here that's going to be a permanent  
solution, not a prescription for further debate  
and strife going forward. I mentioned the  
frequency level where the crickets were a problem.  
Elfering explained that that was a problem. By  
the way, I should add that that was not at all the

1 problem in 1994 and 1995. There, we had a  
2 Hovercraft next door, not a sound of crickets.  
3 That was a very different kind of phenomenon.  
4 But, at that time frequency, it was very,  
5 substantially in excess of the nighttime standards  
6 of some 12 decibels. Furthermore, the frequencies  
7 on either side have much lower decibel levels.  
8 That's also the case at the 63 hertz frequency.  
9 Those things might be an indication that it could  
10 be what's called a discreet tone problem. And, for  
11 those reasons, I simply wanted to make sure that  
12 Greg Zak or someone had a chance to look at the  
13 numbers and to be able to tell us whether or not  
14 we should be concerned about that.

15 Q Mr. Carson characterized feelings you  
16 might have experienced in 1994 and 1995 as your  
17 family being under attack. Did you, in fact, in  
18 1994, feel as if your family was under attack?

19 A I very much did. I saw my family being  
20 grievously harmed, devastated, and there was  
21 absolutely nothing I could do about it.

22 Q And, what was the source of the grievous  
23 harm and devastation?

24 A It was the noise from the Crown air  
25 conditioner. We were unable to sleep. And, as a  
26 consequence of that, we had teachers calling about  
27 my son being extremely tired at school. My wife  
28 unable to wear her corrective lense and,  
29 therefore, unable to play tennis, work at the  
30 computer, things she normally does. A lot of  
31 stress and anxiety in the family. There was  
32 nowhere to go to get away from this monstrous  
33 noise.

34 Q In 1995, did you feel as if your family  
35 were under attack?

36 A Yes, I did. Again, once the enclosure  
37 was put up, and the cones were removed, the level  
38 of attack was meaningfully reduced. I,  
39 nevertheless, continued to feel that we were under  
40 attack. We continued to have problems sleeping.  
41 My son continued to have to move out of his room.  
42 I continued to have all those emotional kinds of  
43 feelings that I described as having in 1994.

44 Q I want to show you what's previously been  
45 marked, for purposes of identification, Exhibit  
46 No. 7. It's a letter you wrote to the Winnetka  
47 Village counsel dated January 16th, 1995. Would

1 you please take a moment to look at that exhibit?

A Yes.

2 Q Do you recognize that exhibit?

A Yes, I do.

3 Q Is that a true and accurate copy of a  
4 letter you sent to the Village on or about January  
16th, 1995?

A It is.

5 Q I note that on Page 4 of the letter, it  
6 indicates that a carbon copy was sent to A. Steven  
Crown. Do you see that?

A Yes.

7 Q I see that there's a check by Mr. Crown's  
8 name. Do you know what that check indicates?

8 A Yes, that indicates that I, in this case,  
actually gave Steven a copy of it.

9 Q You hand delivered a copy to Mr. Crown?

10 A Yes, subsequent to a meeting we had at  
Village Hall in January of 1995.

11 Q Do you know whether the letter you hand  
12 delivered to Mr. Crown, in January of 1995,  
contained the attachments?

12 A Yes, it did.

13 Q Mr. Shelton, you'll recall that on your  
14 cross-examination this morning, Mr. Carson asked  
15 you, on several occasions, whether certain  
16 modifications, in connection with the Crown air  
conditioning unit, resulted in what Mr. Carson  
characterizes as substantial reductions in sound?  
Do you recall that testimony?

16 A Yes, I do.

17 Q Can you rank, for the Board's benefit,  
18 the different modifications made over the past  
19 almost two and a half years, to the Crown air  
conditioning system, and tell the Board which, in  
your opinion, resulted in substantial reduction of  
sound?

20 A I'll do my best. In my earlier  
21 cross-examination, Mr. Carson read a long list of  
22 things that had been done during early 1995,  
23 including putting on cones, removing cones,  
24 putting on compressor blankets, removing  
compressor blankets, landscaping, that kind of  
thing. I believe I testified that those had very  
little impact on the noise. On a scale of 1 to  
10, I would rank them a 1 or 2 kind of category,  
10 being the highest.

1 Q Well, if I may proceed a little more  
2 slowly. You'll recall that there was testimony in  
3 which you admitted that Mr. Crown caused to be  
4 planted a row of arbor vitae, trees, hedges. How  
5 would you characterize the reduction in noise from  
6 the Crown air conditioning unit as a result of the  
7 planting of the arbor vitae patch?

8 A There was no meaningful reduction as a  
9 result of that.

10 Q How would you characterize the reduction  
11 in noise from the air conditioning unit as a  
12 result of the construction of a stockade fence  
13 along the property line dividing your property  
14 from the Crown property?

15 A There was already a fence there. The new  
16 fence was a bit higher.

17 THE COURT: You can just answer the  
18 question, to the best of your ability.

19 A Since there was already a fence there,  
20 there was no reduction as a result of the fence.  
21 BY MR. KAISER:

22 Q Was there any reduction as a result of  
23 the placement of blanket-like insulation over the  
24 compressor units of the Crown air conditioning  
25 system?

26 A Not to our knowledge.

27 Q How would you characterize the reduction  
28 in noise obtained by the placement of cones over  
29 the fans of the Crown air conditioning unit?

30 A We noticed no difference.

31 Q What impact, or how would you describe  
32 the impact of the construction of the acoustical  
33 enclosure around the Crown air conditioning unit?

34 A The construction of the enclosure, it had  
35 a very small impact, an improvement. However,  
36 when the cones were removed, after the enclosure  
37 was built, that led to a marked improvement. I  
38 believe it was on the order of like 10 decibels,  
39 roughly, having the level of noise -- I must say,  
40 as I thought about it, it's a little akin to a  
41 boat leaking water. You can't stop and say I've  
42 cut the leak in half and rest on your hands  
43 because the boat is still going to sink, because  
44 there's still water coming in. So, while it was a  
45 significant improvement, it was far short of  
46 making the air conditioner livable.

47 Q And, how would you characterize the

1 reduction in noise achieved by modifying the  
2 program for the controls of the Crown air  
3 conditioning unit, those modifications put in  
4 place in June of 1996, prior to Greg Zak's  
5 measurement in the latter part of June, 1996?

6 A We were not living in the house at the  
7 time that that was done, so my frame of reference  
8 is somewhat limited. It seemed to me that it  
9 helped some, it helped some. Not as much as the  
10 enclosure with the cones off, it helped. But, it  
11 helped a little bit.

12 Q Is a moving van arriving at your home in  
13 Ohio and going to be loaded so that your family  
14 can return to Winnetka, Illinois?

15 MR. CARSON: Objection, leading.

16 THE COURT: Can you rephrae your question?

17 BY MR. KAISER:

18 Q What, if anything, unusual has happened  
19 at your home in Ohio as we sit in hearing today?

20 A We, as I indicated we probably were at  
21 our last hearing date, are moving back to  
22 Winnetka. And, the moving van is scheduled to be  
23 there today. My wife was not too happy, since I'm  
24 not there to help. It's happening today.

Q When you were on, in your yard area  
during the Elfering measurements in August of  
1996, did you notice any sounds generated by the  
Crown air conditioning unit, which gave rise to  
some concern or reservations as to whether or not  
a solution to the noise problem had been achieved?

A Did I hear any, excuse me, did I hear any  
sounds?

Q Yes. Any type of beating sound or any  
other type of sounds that might have given rise to  
certain reservations?

A The only sound that gave rise to  
reservation was we did notice a beating sound,  
particularly when we were back in the camping area  
for the readings, which we had heard earlier in  
1994, but had not heard during 1995. Those are  
the pulsations when different elements of the  
Crown air conditioning system are going in and out  
of phase with each other. We did notice that. In  
fact, I believe I mentioned it to you, or perhaps  
others who were at the readings that night.  
Otherwise, I didn't hear any sounds that gave me  
pause for concern. I was only looking at the

1 numbers, as I explained a moment ago, and just  
2 wanting to make sure that things are right,  
3 insofar as those two particular frequencies.

4 Q Mr. Shelton, if you could, we had run  
5 through and ranked some of the earlier efforts in  
6 modifications made in an attempt to reduce the  
7 noise emanating from the Crown air conditioning  
8 unit. How would you rank this most recent, these  
9 most recent efforts to reduce the noise emanating  
10 from the Crown air conditioning unit?

11 A They're quite significant. I would say,  
12 in terms of significance, to my mind, they are  
13 equivalent to the enclosure with the cones off.  
14 Very significant. Particularly on the second  
15 floor. Really, there was a big reduction in noise  
16 there. And, variable speed of the fans, the low  
17 level of the operations created a very significant  
18 reduction in the operation.

19 MR. KAISER: Thank you, Mr. Shelton. We  
20 have no further questions on redirect.

21 MR. CARSON: Just a couple on recross.

22 THE COURT: Okay.

23 RECROSS EXAMINATION

24 BY MR. CARSON:

1 Q For clarification, Mr. Shelton, you said  
2 that June 27, 1996, your rooftop unit was not  
3 operating. Did you, in fact, have a rooftop unit?

4 A Yes.

5 Q When was it moved?

6 A In July. It had been scheduled five times  
7 previously over the spring, but our rainy spring  
8 had sabotaged each of those dates.

9 Q And also, I take it you're going to be  
10 moving back to Winnetka?

11 A Yes.

12 Q Where are you moving to?

13 A We're moving on Oak Street near Skokie  
14 School until such time as our house is freed up  
15 next June, we'll be moving back to 707 Ardsley.

16 Q The name of the company that moved the  
17 rooftop unit down to the patio, I think you may  
18 have said it already.

19 A Dave's Heating and Cooling of Evanston.

20 Q Sorry, say it again, please?

21 A Dave's Heating and Cooling. It might be  
22 air conditioning, I'm not certain, of Evanston.

23 Q And, the purpose of moving it was to

1 insure that you would meet the IPCB nighttime  
standards?

2 A Yes.

3 Q Did they perform alterations to the unit  
itself in order to make it quieter?

4 A As I mentioned earlier, they put a  
compressor blanket on that was supposed to have  
5 been on before, but it apparently had not been put  
on.

6 Q Have you had any complaints from any of  
the neighbors concerning --

7 A No, it's far from the lot lines.

8 MR. CARSON: No further recross.

9 MR. KAISER: If I may, one question on  
re-redirect.

10 MR. CARSON: If it's on something that I  
covered on cross, I wouldn't object.

11 MR. KAISER: It is.

12 THE COURT: Go ahead.

REDIRECT EXAMINATION

13 BY MR. KAISER:

14 Q Have you ever had any complaints from any  
of your neighbors at any time concerning your air  
conditioning units?

15 A No, we have not.

16 THE COURT: All right. Any recross?

17 MR. CARSON: No.

18 THE COURT: All right. Thank you very  
much, Mr. Shelton. Let's go off the record for  
just a moment to discuss what our scheduling will  
19 be next.

(WHEREUPON, an off the record discussion  
was held.)

20 THE COURT: We have been discussing some  
details with respect to the closing of  
Complainant's case in chief, and counsel --

21 MR. DIVER: Yes. The Complainant is  
prepared to rest conditionally. Those two  
conditions being one stipulation by counsel for  
Respondent that we may have the opportunity to  
review our records concerning exhibits. And, in  
the event that there was exhibits that ought to  
22 have been moved for introduction or whatever, that  
those motions may be made at a later time. And,  
23 secondly, that we will reserve until after the  
lunch hour, the ruling upon the offer of the  
24 Village of Winnetka ordinances.



1 THE COURT: All right. Thank you. Also,  
2 for the record, I will be reviewing the  
3 discoverability of notes taken by Mr. Shelton.  
4 And, should that necessitate his continued  
5 testimony, I will revisit that as a separate  
6 segment a little later, if he would be available.

7 All right. Let's proceed with the  
8 Respondent's case in chief. And, would the  
9 Respondent like to make an opening statement?

10 MR. ELLEDGE: I waive opening statement.

11 THE COURT: All right.

12 MR. ELLEDGE: Madam Hearing Officer, we'd  
13 like to call our first witness, Mr. Mautner.

14 B R A D L E Y E D W A R D M A U T N E R,  
15 after having been first duly sworn on oath,  
16 deposes and testifies as follows:

17 DIRECT EXAMINATION

18 BY MR. ELLEDGE:

19 Q Would you state your full name, please?

20 A Bradley Edward Mautner.

21 Q And, where do you reside?

22 A Northbrook, Illinois.

23 Q By whom are you employed?

24 A Mid/Res, Inc., now named MidWesCo  
Services, Inc.

Q When did you first come to be employed by  
that company?

A 1978.

Q Prior to that time, would you tell us  
what your education, what degrees you have?

A I have a Bachelor of Science in  
Mechanical Engineering, and a Masters in Business  
Administration.

Q Okay. What was your first position with  
Mid/Res?

A I started as a Project Manager in the  
Construction Group.

Q And, what does that involve?

A Reviewing plans, ordering materials and  
equipment, performing some engineering  
calculations about projects that we were to  
implement, and visiting the project to see that we  
were maintaining the progress of that job.

Q And, how long were you Project Manager?

A Four, five years.

Q And, what position did you hold after  
the -- what was your next promotion?

- 1           A     Next promotion was to be the Vice  
2     President in charge of Construction and  
3     Engineering.  
4           Q     And, what did that job entail?  
5           A     It entailed a supervising of our Project  
6     Managers and our Field Superintendents, as well as  
7     an occasional project management responsibility.  
8           Q     And, how long did you hold that position,  
9     approximately?  
10          A     Another five years.  
11          Q     And, then, what position did you take?  
12          A     I had some period of time that I was in  
13     charge of our sales organization, and then I  
14     became President of Mid/Res.  
15          Q     And, for what period of time were you  
16     President?  
17          A     I was President up until February of this  
18     year.  
19          Q     And then, what did you become?  
20          A     Chief Executive Officer.  
21          Q     And, that's your current position?  
22          A     Yes.  
23          Q     Okay. Now, are you familiar with a HVAC  
24     system at the Crown's residence on Ardsley in  
   Winnetka?  
          A     Yes.  
          Q     What were the nature of your  
          responsibilities with regard to that system?  
          A     I discussed with Steve --  
          MR. DIVER: Objection.  
          A     I discussed with Mr. Crown --  
          THE COURT: Just answer the question, Mr.  
          Mautner.  
          A     I discussed with Mr. Crown -- my  
          responsibilities were to discuss with Mr. Crown  
          the system concepts and the business relationship  
          between our firm and him.  
          Q     And, are you familiar with the  
          installation?  
          A     Yes, generally.  
          Q     All right. Could you describe what we  
          have been referring to as the chiller unit in this  
          case? Do you know what we mean by "chiller unit"?  
          A     Yes.  
          Q     Could you describe the function of that  
          unit; what is its function, and how does it  
          operate, if you would?

1           A     Well, the chiller unit's function is to  
2     reject heat from inside the structure to the  
3     outdoor environment.

4           Q     How does it do that?

5           A     It does that by using a working fluid  
6     refrigerant, in this case. It's circulated  
7     through the system, and the key components that  
8     make that happen are compressors, heat exchanger  
9     device, and condenser fans that move outdoor air  
10    across heat exchanger devices.

11          Q     What's the function of the condenser --  
12    compressor?

13          A     Compressor?

14          Q     Yes.

15          A     The function of the compressor is to take  
16    a gas from a lower pressure and compress it to a  
17    higher pressure, and discharge it into the  
18    condenser, heat exchanger.

19          Q     What's the function -- what are the  
20    functions of the fans?

21          A     The fans are designed to move air across  
22    the heat exchanger surface to reject the heat  
23    that's accumulated in the condenser.

24          Q     How many compressors are there?

25          A     There are two.

26          Q     And, how many fans?

27          A     There are three.

28          Q     Could you describe how the chiller unit  
29    operates at this time?

30          A     Currently, we have two modes of  
31    operation. We have a daytime mode of operation,  
32    and a nighttime mode of operation. During the  
33    daytime mode of operation, both compressors are  
34    able to run, and run when there's a need for  
35    cooling inside the structure. When the  
36    compressor, when the first compressor energizes,  
37    all three condenser fans operate simultaneously,  
38    and are controlled by variable frequency drives.

39          Q     Would you describe what a variable  
40    frequency drive is?

41          A     A variable frequency drive is an  
42    electronic device that's used to allow a motor to  
43    operate at variable speed, and not be damaged  
44    during that operation.

45          Q     And, how do these -- what is the size of  
46    this, of the variable frequency drives?

47          A     Each, there are three variable frequency

1 drives, each one horsepower, which matches the  
motor horsepower of each of the condenser fans.

2 Q And, what controls the varying frequency  
in these drives?

3 A In this case, we've installed a pressure  
transducer inside the refrigerant circuit to  
4 measure the pressure of the refrigerant circuit.  
The higher the pressure on the circuit, the faster  
5 the drives will tell the fans to move.

6 Q All right. I believe you're describing  
the daytime mode.

7 A Yes.

8 Q Is there a second mode?

9 A Yes, there is a nighttime mode.

10 Q Could you tell us what that mode is?

11 A In the nighttime mode of operation, we've  
12 programmed the system to allow only one compressor  
to operate, which is the smaller of the two  
13 compressors. The fans run in the same sequence,  
14 same algorithm as during the daytime mode. That  
is, we sense pressure and use the minimum fan  
15 speed necessary to reject the heat.

16 Q All right. And, there is a relationship  
between the speed of the fans and the sounds  
17 produced?

18 A Yes.

19 Q Could you tell us what that is?

20 A The lower RPM that the fans operate at,  
21 the less sound is generated.

22 Q Now, is this the original configuration  
of the unit, as installed in 1992, 1993?

23 A No.

24 Q How was it originally configured?

A The original configuration was, as it  
18 came from the manufacturer, were the compressors  
would always energize independently as a function  
19 of demand for cooling in the past. But, all three  
condenser fans would operate at a fixed RPM when  
20 they were needed.

21 Q So, it was just one speed for the fans?

22 A Yes.

23 Q And, that was all?

24 A Yes. And, they were sequenced on in  
operation as a function of the number of  
compressors that were operating.

Q How many fans would -- how many fans, if  
any, would be operating when the first compressor

1 operates?

2 A When the first compressor operates, one  
3 fan initially starts, and the second fan would be  
4 brought on as the pressure requires.

5 Q And would, then, on some occasions, the  
6 second compressor start to operating?

7 A Yes, and a second fan would be brought  
8 on, and a third fan would be brought on, as  
9 pressure required.

10 Q And, in this configuration, then, the  
11 fans have just two speeds, all on or all off, is  
12 that correct?

13 A Each fan has only two modes of operation,  
14 either off or on full RPM.

15 Q Now, what speeds do the fans operate  
16 since the VFD has been attached?

17 A The speeds vary, as a function of the  
18 outdoor air temperature and the need for cooling.  
19 Fan speeds are as low as 10% of the RPM  
20 originally, and we have not observed yet full RPM  
21 operation.

22 Q All right. So, the fan speeds can  
23 gradually increase and gradually decrease, do I  
24 understand correctly?

A Yes, that's why they're variable  
frequency drives.

Q Okay. Now, when did you effect the  
change in -- when did you effect the changes which  
led to there being two modes of operation?

A I believe it was done in the end or  
towards the end of May, 1996.

Q And, when were the additional  
modifications made?

A The variable frequency drive  
modifications?

Q Yes.

A They were done during the week of August  
5th, I believe.

Q And, what kind of work was involved in  
terms of connecting that up?

A We had to power the variable frequency  
drives from independent power sources. We had to  
install the transducer and take the transducer  
signal and input it into the computer that already  
exists on this project. We then wired output from  
the computer to the variable frequency drives to  
tell the drives how to operate. And then, we had

1 to permanently wire the variable frequency drives  
to the motors.

2 Q All right. Now, when did you determine  
3 that this should be -- when did you order these  
4 modifications to take place? At what point did  
5 you direct that these changes be made?

6 A Well, we directed, the changes were made  
7 in response to the recommendation by George  
8 Kamperman. You gave me direction to install  
9 these, to implement these installations.

10 Q And, when did you, when was that?

11 A In mid-July.

12 Q Now, at -- when did you first start  
13 considering the use of the VFD's in this  
14 application?

15 A It was after the recommendation of George  
16 Kamperman in May of 1996.

17 Q All right. And, at that time, did you  
18 know, of your own knowledge, that VFD's for this  
19 application were available?

20 A We have not applied VFD's in this  
21 application. I have not.

22 Q How long have VFD's been in, available on  
23 the market, in some size?

24 A I don't know how long, but VFD's have  
generally been around the last 10 to 15 years.

Q All right. As of the requested  
recommendation of George Kamperman, what was the  
smallest VFD's that you were aware of being  
available on the market?

A I knew there was some VFD's available in  
the 10 horsepower range, perhaps as low as 7 1/2  
horsepower. I have seen, in the Trane Journals in  
the last few years, smaller VFD's available.

Q So, how did you go about determining  
whether they would be available for this  
application?

A I asked Harry Akers to call some variable  
frequency drive manufacturers representatives, and  
we discovered that Trane Company, who we bought  
the original equipment from, was a representative  
for one of those manufacturers. And, he contacted  
them.

Q So, the equipment was obtained also  
through Trane?

A Yes.

Q All right. And, you referred to the

1 wiring as being permanently wired, is that  
correct?

2 A Yes.

3 Q So, this is a permanent installation, is  
that correct?

4 A Yes.

5 Q Now, could you describe the enclosure,  
the acoustic enclosure as it was originally  
constructed?

6 A The original acoustical enclosure is made  
of the panel sections that we purchased from a  
company called IAC. They're four inches thick,  
7 and they're sheet metal outside, with a perforated  
sheet metal inside, and a layer of insulating  
8 material in between the two pieces of metal. We  
originally constructed an enclosure that was  
9 immediately adjacent to the unit on three sides,  
and had an air inlet louver on the fourth side.  
10 The enclosure then extended approximately two feet  
above the height of the unit, which would be  
11 approximately 7 feet tall, total.

12 Q How much clearance was there around,  
vertical clearance was there between the unit and  
the enclosure?

13 A Horizontal?

14 Q Horizontal.

15 A On three sides, there's practically no  
clearance, a few inches. And, on the air inlet  
side, there's approximately two feet, and then a  
one foot deep louver.

16 Q At the time it was enclosed, was this  
consistent with Trane specifications for this  
17 unit?

18 A No.

19 Q In what regard?

20 A All of the sides of the enclosure are  
closer to the unit than they would recommend in  
their manual.

21 Q And, why did you make them closer?

22 A Well, we knew that the closer the panels  
would be to the unit, the better sound attenuating  
characteristics that it would have. So, we felt  
23 that on the air inlet side, which is the most  
critical dimension, we could use a louver. And,  
on the other three sides, the primary reason was  
for service access. So, we made the other three  
24 sides with panel sections that could be removed by

1 servicemen to gain access, for service purposes.

2 MR. ELLEDGE: Your Honor, I believe that  
the next exhibit is Respondent's Exhibit No. 8.?

3 THE COURT: Correct.

4 BY MR. ELLEDGE:

5 Q I want to show you what has been marked  
6 as Respondent's Exhibit No. 8. Could you tell us  
7 what that is, please?

8 A This was a drawing that I had Harry Akers  
9 make to show the original enclosure and the  
10 additional enclosure pieces that had been erected.

11 Q When were additional enclosure pieces  
erected?

12 A During the week of August 3rd.

13 Q Could you describe what those, what the  
14 additional materials are made of? Could you  
15 describe the additional pieces?

16 A The additional enclosure pieces are made  
17 of plywood. And, the inside surface of the plywood  
18 has attached to it a fiberglass insulation.

19 Q This is done to simulate the acoustic  
effects of the existing panels?

20 A Approximately, yes.

21 Q Now, what is the height of the additional  
enclosure?

22 A The additional enclosure pieces are four  
feet above the original enclosure elevation.

23 Q And, I see, in the middle of the lower  
drawing, a vertical piece. Could you tell us what  
that function is? It has diagonal stripes on it.

24 A Yes, it's referred to as air blocks.

Q Yes.

A There's actually two air block pieces.  
The vertical piece is also plywood, and is there  
to separate the vertical discharge warm air flow  
from being re-circulated back into the intake. The  
horizontal air block piece is also there for that  
same purpose.

Q Thank you.

MR. ELLEDGE: I move the introduction of  
Respondent's Exhibit No. 8.

MR. DIVER: No objection.

Q Now --

MR. DIVER: May we have a ruling?

THE COURT: Yes. Respondent's Exhibit  
No. 8 is entered into evidence.

MR. DIVER: Thank you.



1 MR. ELLEDGE: Thank you.  
2 BY MR. ELLEDGE:  
3 Q Have you had occasion recently to be on  
4 the Shelton property?  
5 A Yes.  
6 Q And, when was that?  
7 A The night of Thursday, August 15th.  
8 Q And, what was the purpose of your being  
9 there?  
10 A I was there to observe and assist in the  
11 taking of additional sound readings.  
12 Q About what time did you appear, did you  
13 get there?  
14 A Approximately 9:00 o'clock, 9:10.  
15 Q Now, I'd like to show you what's been  
16 marked as Exhibit No. 51. Can you take a look at  
17 it, please? Now, to the left of that drawing, as  
18 you're looking at it, there's, there are some  
19 drawings made in pencil. Do you see those?  
20 A Yes.  
21 Q Is that consistent with your observation  
22 of the configuration of that structure, the  
23 penciled structure? First of all, do you know  
24 what that structure is?  
A Yes.  
Q What is it, please?  
A The Shelton home. Yes, it is, it is  
consistent.  
Q All right. Now, where did you, where did  
people meet or where -- who all was present when  
you, when these measurements were taken, do you  
recall?  
A Representatives from Al Shiner's office,  
Bob, and I don't recall his last name, you, Reece  
Elledge, Mr. Kaiser was there, Mr. Shelton was  
there, and George Kamperman, and myself.  
Q Correct. Now, when the measurements  
started, in what configuration or what mode of  
operation was the Crown chiller unit?  
A In a nighttime mode.  
Q And, were measurements taken at various  
places while the chiller was in that mode of  
operation?  
A Yes.  
Q Did the mode of operation, was the mode  
of operation of the chiller unit changed, then?  
A Yes, on request.

1 Q Okay. And, what was that change, what was  
the next state of that?

2 A I was asked to have the unit turned off  
to get ambient sound readings.

3 Q And, how did you do that?

4 A I used a portable cellular telephone to  
call one of our engineers on duty, and asked them  
to turn off the unit.

5 Q Okay. And, after measurements had been  
taken in that mode, what were you next requested  
to do, with regard to the mode of operation?

6 A I was asked to have the unit operate in a  
daytime mode, with the fans at their full RPM.

7 Q And, how did you, did you cause that  
8 change to be made?

A Yes.

9 Q And, how was that change affected?

10 A I made a phone call again, on the  
cellular phone, called the engineer on duty, and  
asked him to make a manual program change, and  
11 operate the unit with both compressors operating  
and the fans at 100% RPM.

12 Q Were you able to observe that that  
occurred?

13 A I believe it occurred, yes.

14 Q Okay. During the course of that evening,  
did you have occasion to go around to the patio on  
the Shelton property?

15 A Yes.

Q What did you observe there?

16 A When we first walked on the patio, there  
was a condenser unit on the patio that was  
17 operating.

18 Q And, can you describe its mode of  
operation?

19 A It was operating like a normal condenser  
unit; that is, the condenser fan runs at a single  
speed and the compressor was operating.

20 Q Can we describe the sound emanating from  
that?

21 A Standing on the patio with that unit  
operating, normal conversation would not be easy  
22 to have.

23 Q Could you compare it to the sound that  
you could hear from the Shelton property of the  
Crown chiller unit operating, could you compare  
24 the sounds?

1           A     Well, when that unit was operating, we  
2     could not hear the Crown unit operating. When that  
3     unit went off, you could not noticeably hear the  
4     unit operating from the Crown property.

5           MR. DIVER: Madam Hearing Officer, if the  
6     witness could be asked to talk about "I" rather  
7     than "we", or others --

8           A     I.  
9           MR. DIVER: That would help.

10          THE COURT: Thank you.

11          A     This is me.

12          BY MR. ELLEDGE:

13          Q     Could you, I'd like to direct your  
14     attention to, again, Exhibit No. 51. Take this  
15     blue felt point tip -- let me get a black felt  
16     point tip and mark what you recall to be the  
17     location of that air conditioning unit right on  
18     the exhibit.

19          MR. DIVER: We're talking about the unit  
20     at the patio?

21          MR. ELLEDGE: The patio unit, yes.

22          BY MR. ELLEDGE:

23          Q     Is it in the vicinity of the red circle?

24          A     Approximatly the same as the red circle.

25          Q     Put an "X" there.

26          MR. ELLEDGE: Let the record show the  
27     witness has drawn a black circle with an "X" in  
28     it.

29          BY MR. ELLEDGE:

30          Q     Had you ever had occasion to observe the  
31     Shelton property at an earlier date -- let me  
32     withdraw that question and rephrase it.

33          Were you present in June of 1995 when  
34     other sound measurements were made of the air  
35     conditioning units in question?

36          A     Yes.

37          Q     Okay. And, where were you at that time?

38          A     Well, we were in the Crown driveway.

39          Q     In the general area where that has been  
40     marked on this with a, looks like a yellow Dayglo  
41     pen?

42          A     Yes.

43          Q     In that general area?

44          A     Yes.

45          Q     Did you observe any air conditioners on  
46     the Shelton property on that occasion?

47          A     Yes, there were two.

1 Q And, where were those two located?

2 A One was located where there's a red  
3 marking on this drawing that says three ton.

4 Q Right.

5 A And, the other was located where this red  
6 marking is that says two ton.

7 Q And, where would that be? Is that ground  
8 level, or is it above ground, or what?

9 A The two ton unit appeared on a low, one  
10 story roof that could be seen from the driveway on  
11 the Crown property.

12 Q Do you recall whether one or both of  
13 those units were operating at that time?

14 A I only recall that the three ton was  
15 operating at that time. I don't recall that the  
16 two ton was operating, if it is a two ton.

17 Q Okay. When you were at the Shelton  
18 property last Thursday, did you notice any  
19 indications that the unit had been moved, the  
20 patio unit?

21 A Well, the unit that was on top of a one  
22 story roof was not present. And, it was a unit  
23 that may or may not have been on grade level at  
24 the patio before.

Q Putting aside the question of the patio  
unit, how would you characterize the sound, that  
night being emitted by the Crown chiller unit?

15 MR. DIVER: Excuse me. What night are we  
16 talking about, Mr. Elledge?

17 MR. ELLEDGE: We're talking about the  
18 night of Thursday, August 15th.

19 A Characterize it from which location?

20 BY MR. ELLEDGE:

21 Q From the Shelton property.

22 A The sound levels were quite low. I  
23 wouldn't say that they were noticeable, in any  
24 material way, compared to any other residential  
applications.

25 Q Do you live in a residential area?

26 A Yes.

27 Q In or near your backyard, are there air  
28 conditioning units?

29 A Yes.

30 Q Would you compare the Crown unit to those  
31 units?

32 MR. DIVER: Objection, your Honor, to any  
33 attempt to establish that somehow this witness has

1 a hearing expertise with respect to the definition  
2 of sounds coming from various air conditioners. I  
3 have no objection to his testifying with respect  
4 to his, to the chiller. But, with respect to how  
5 his sounds with respect to his neighbors, I have  
6 an objection.

7 MR. ELLEDGE: Your Honor, we all have  
8 ears. We're all able to hear. That's what we're  
9 here about. And, he's perfectly competent to  
10 testify what he heard, in his own observation, as  
11 to the relative loudness of various sounds. I  
12 don't see any reason why he should not be  
13 permitted to testify with respect to his own  
14 experience.

15 MR. DIVER: Show a continuing objection  
16 to relevance with respect to this whole line of  
17 questioning.

18 THE COURT: I have a relevancy question.  
19 Unless the question is made more specific, it  
20 doesn't seem to be relevant. Objection sustained.

21 MR. ELLEDGE: We're trying to relate --  
22 BY MR. ELLEDGE:

23 Q How many HVAC systems have you had  
24 occasion to design or sell or work on, in your  
25 capacity as an employee, first as a project  
26 designer, and later as a Vice President, and  
27 currently a CEO, HVAC systems with, say,  
28 compressors of two tons or more? Would it be a  
29 matter of hundreds?

30 A I would say in the last 18 years, more  
31 than 500.

32 Q And, you've heard those, various of those  
33 in operation at various times, is that correct?

34 A I've heard in operation more than 100.

35 Q Okay. And, of those that you have  
36 personally heard, over 100, on a scale of just  
37 those experiences, where would you place the sound  
38 currently emanating from the Crown chiller unit?

39 MR. DIVER: Objection, your Honor. With  
40 respect to relevance, with respect to lack of  
41 foundation, there's no comparison. We don't know  
42 where these tests were, where the person was,  
43 where Mr. Mautner was with respect to those units,  
44 as compared to where he was with respect to the  
45 Shelton unit. And, it continues to be an  
46 irrelevant area of questioning.

47 MR. ELLEDGE: Your Honor, we're asking

1 him about what he observed last Thursday night,  
2 and asking him to compare it, in his experience,  
3 his vast experience in these things, as to the  
4 relative sound, sound reduction efficiencies of  
5 the unit as it is currently operating. I think  
6 it's perfectly relevant, and it's perfectly  
7 germane, and it has to do with his observation,  
8 common observation.

9 THE COURT: The question is a general  
10 question, and I'll permit the witness to answer  
11 the question. Objection overruled.

12 MR. ELLEDGE: Thank you.

13 A Well, as a general answer, because I have  
14 heard a lot of different variety of systems, I  
15 found in the current operating mode, with the  
16 current enclosure, this is extraordinarily quiet.

17 BY MR. ELLEDGE:

18 Q Extraordinarily?

19 A Quiet, as compared to other systems that  
20 I've heard.

21 MR. ELLEDGE: Can I have a minute,  
22 please?

23 THE COURT: Yes.

24 (Off the record)

BY MR. ELLEDGE:

Q Let me just make sure I'm clear on one  
point; that is, in terms of the controls of this  
machine, of this HVAC system, you say it's  
computer driven?

A Yes.

Q Could you describe what that means, in  
terms of the day-to-day operation of the system?

A Well, we've installed a computer that has  
software, created by us, that puts in specific  
operating algorithms for the system. And, once  
those algorithms are in place, the system runs  
automatically.

Q And, what does it take to change one of  
those algorithms?

A We have to re-write the program. We have  
to call up the system via modem, change the  
program code, the lines in the program. And,  
that's it, basically.

Q But, as long as the current program is in  
place, the current algorithms, it will continue to  
operate predictably in the same way, is that  
correct?

1 A Yes.

2 Q Does the resident have an opportunity to  
change that algorithm from his home?

3 A No, he cannot change the control  
algorithm.

4 Q That's in the hands of your --

5 A Yes, that's our firm.

6 Q Your firm?

7 MR. ELLEDGE: I have no further  
questions.

8 MR. DIVER: Madam Hearing Officer, we  
would ask that we continue the examination of this  
witness, during cross, following lunch, if that's  
possible.

9 THE COURT: All right. Off the record to  
discuss scheduling.

10 (WHEREUPON, a short recess was taken.)

AFTER RECESS

11 THE COURT: We'll proceed with the  
cross-examination of Mr. Mautner at this time.

12 MR. DIVER: Thank you, Madam Hearing  
Officer.

CROSS EXAMINATION

BY MR. DIVER:

13 Q Mr. Mautner, you had described, in your  
testimony a few minutes ago, the enclosure, the  
14 acoustical enclosure that was placed around the  
chiller unit sometime between July of 1994 and  
15 June of 1995. Is that correct?

16 A Yes.

17 Q Tell us again what the Trane design would  
have called for, in terms of the relative  
distances of the walls of that enclosure from the  
unit itself, and why it was that you did not  
18 pursue the Trane specs?

19 A If I remember correctly, on two sides of  
the unit, the Trane literature asked for  
approximately 3 1/2 feet of clearance. On the  
20 side opposite the air intake, I believe it asked  
for four feet of clearance. And, I think, on the  
21 inlet side, it took 8 feet of clearance.

22 Q Have you recently reviewed the Trane  
specifications that were then applicable to see  
whether or not your recollection was accurate?

23 A I flipped through a catalog in the last  
month, yes.

24 Q I'm going to show you a document of

1 February 8th, 1994, right after I show it to  
counsel.

2 MR. CARSON: This is going to be  
exhibit --

3 MR. DIVER: At this point, I'm just going  
4 to ask him to look at it and see if it refreshes  
his recollection as to what Trane's requirements  
were?

5 MR. ELLEDGE: The date?

6 MR. DIVER: The date of the document is  
February 8th, 1994.

7 MR. ELLEDGE: Thank you.

8 BY MR. DIVER:

9 Q Have you had a chance to look at that,  
Mr. Mautner?

10 A Yes.

11 Q Have you seen that document before?

12 A No.

13 Q Does that refresh your recollection as to  
14 what Trane's requirements were, in February of  
15 1994, concerning distances of walls from the  
16 chiller unit?

17 A No.

18 Q Could you reference us to the document  
19 that you used to determine what the appropriate  
20 distances ought to be?

21 A I believe it's the installation and  
operation and maintenance manual.

22 Q I show you now what's been previously  
23 marked as Exhibit No. 3. I'll ask you if that's  
24 the document that you had reference to?

25 A Yes.

26 Q Could you find in there the information  
27 that you've just testified to concerning the  
28 relative placement of walls around the air  
conditioning unit?

29 A Yes, there's one. You want me to circle  
the areas where they're marked?

30 Q Well, why don't you just indicate for me,  
I don't know if Mr. Elledge wants to be over here.

31 A This is what we're talking about for this  
32 unit. The indications on the diagram here show  
33 minimum clearance requirements on the two sides  
34 that I referred to as three.

35 THE COURT: Mr. Mautner, what page are  
you on?

36 A I'm on Page 7 of the document.



1 THE COURT: Thank you.

2 A Top view drawing or top most drawing also  
3 on the document shows minimum clearances of 3'6"  
4 to the two sides that I referred to. And, any  
5 minimum clearance on the third side that I  
6 referred to as four feet.

7 Q Right.

8 A This six foot minimum clearance that you  
9 referred to in the document that Mr. Doshi  
10 prepared is contradicted by Page 12, which refers  
11 to Table 1 on Page 13. So, what I saw on Page 13,  
12 for this size unit, was a 8 foot ceiling  
13 installation, air flow intake clearance.

14 Q Okay. Now, at the time that -- strike  
15 that -- did Mid/Res design the acoustical  
16 enclosure?

17 A We picked the dimensions, yes.

18 Q So, you determined, Mid/Res determined  
19 how close or far it would be from the relative  
20 faces of the chiller unit?

21 A Yes.

22 Q Who, in particular, did that?

23 A I did.

24 Q And, at the time you did it, did you do  
it knowing what the Trane requirements were?

A Yes.

Q You determined, then, that at the time  
that you chose those particular clearances, that  
the air flow to the system would be sufficient  
with the distances reduced, given your design?

A We believed that it would. I did,  
particularly.

Q Was there anything about the operation of  
the equipment; that is, the chiller unit, after  
the acoustical enclosure was created with those  
smaller dimensions, that indicated that you were  
correct; that is, that air flow was not unduly  
impeded?

A I'm not aware of any indications that we  
found impedence of the air flow that caused a  
mechanical failure of the unit.

Q Did Mid/Res design the height of the  
acoustical enclosure that was installed, that  
you've just been talking about?

A Yes, I picked the height.

Q What was the height that you picked?

A Seven feet.

1 Q That seven feet included how much panel  
and how much something else, was it all panel?

2 A It's all panel.

3 Q Okay. Just to help us out, I'm going to  
ask you to look at Exhibit No. 106 that was  
4 admitted, being a job order for this sound  
insulation system from Jack Doshi. Would you  
5 indicate to us where, on that document, a seven  
foot dimension is found?

6 Q I believe that document actually shows 72  
inches, does it not?

7 A 72 inches is correct.

8 Q Which would be six feet, correct?

9 A Six feet, that's correct.

10 Q That was the design that you chose?

11 A Give me just a minute.

12 Q Okay.

13 A The overall height was eight feet.

14 Q The height of the acoustical panel itself  
was eight feet?

15 A Overall height of the acoustical  
enclosure is eight feet.

16 Q All right. The acoustical enclosure is  
made up of acoustical panels, correct?

17 A Yes.

18 Q And, were the panels that were installed  
themselves eight feet in height?

19 A I believe so.

20 Q Okay. Is that shown somewhere in this  
document?

21 A On Line 1 on Page 3.

22 Q Which says, "Overall height of enclosure  
covers should be eight feet"?

23 A Correct.

24 Q Tell me what the enclosure covers were to  
be?

25 A I believe what he's indicating here is  
the overall height of the enclosure is eight feet.  
The access panel height, that you referred to at  
six feet, are the sections that are shown on the  
final page, which can be lifted out for service  
access. So, there's six foot sections, as  
observed by Mr. Kaiser, and two foot, a silent two  
foot section above that.

26 Q Does this diagram not indicate what the  
dimensions of these panels should be on all of the  
sides?

1           A     This diagram indicates only the plan  
view, not the elevation.

2           Q     Okay. Does the document, indicating the  
panel sizes that are to be ordered, indicate the  
3 height?

4           A     Yes, these panel sizes refer to removable  
portions of the panel.

5           THE COURT: And, you're referring, within  
the same exhibit, to page --

6           A     To Page 2 for the panel height, and Page  
4 for the plan view.

7           MR. DIVER: These are un-numbered pages,  
Madam Hearing Officer.

8           BY MR. DIVER:

9           Q     Okay. So, what you're saying is that  
some portion of the unit was eight feet in height,  
and some portion was six feet, is that correct?

10          A     No. The whole unit is eight feet. There  
are six foot sections that are made to be  
removable so that service can be accessed into the  
11 unit.

12          Q     All right. Is any portion of the eight  
feet the height of the concrete pad upon which the  
enclosure sits -- does the enclosure sit on a  
13 concrete pad?

14          A     Yes.

15          Q     Does any amount of the eight feet include  
the height of the concrete pad itself?

16          A     No.

17          Q     Why did you choose, was it seven feet or  
eight feet?

18          A     Eight feet.

19          Q     Why did you choose eight feet?

20          A     When you look at the Trane document that  
we received, after Mr. Shelton discovered it, it  
gives you some indication of elevations above the  
top of the unit that the Trane Company  
21 recommended.

22          MR. DIVER: Excuse me, Madam Hearing  
Officer, one moment.

23          BY MR. DIVER:

24          Q     I'm showing you now what was marked, but  
not admitted, as Plaintiff's Exhibit No. 99, being  
the engineering bulletin. Asking you if that's  
the document to which you have reference? And, if  
it is, can you show me the sections of it that you  
relied upon in providing for the design of this

1 enclosure?

2 A I don't know if this is the same date as  
3 the bulletin, but the paragraph on Page 6 looks  
4 similar.

5 Q Paragraph on Page 6 under Roman Numeral  
6 III, "Burial or Barrier Wall Enclosures". And,  
7 what particular language did you look to in that,  
8 in determining the height?

9 A Specifically, the line that says, "Also,  
10 the barrier wall height should be at least two  
11 feet minimum above the top of the unit, but not  
12 more than one and a half times the height of the  
13 split condensing unit when the barrier walls form  
14 an enclosure."

15 Q Okay. I'm asking you to just cast your  
16 eyes on the adjoining page, Page 5, and ask you  
17 if, in your design of the height of this system,  
18 you had reference at all to the information  
19 contained in Figure 7, which refers to use of a  
20 barrier wall in providing upper story sound  
21 attenuation?

22 A Yes.

23 Q And, in your design of the system, is it  
24 your opinion that an eight foot high unit would  
25 have provided the sound attenuation for the upper  
26 stories of the Shelton residence?

27 A When located immediately adjacent to the  
28 unit, yes.

29 Q And, that's because the face of the unit  
30 itself, looking up over the top of the acoustical  
31 enclosure, would go over the rooftop of the  
32 Shelton house, in essence, as indicated in this  
33 particular drawing?

34 A Yes. We did not make the calculation, I  
35 did not.

36 Q You did not make that?

37 A I did not make the calculation.

38 Q But, that was your intention, to  
39 accomplish that predicted result, as shown in this  
40 particular figure?

41 A Yes, yes, while staying within the  
42 guidelines.

43 MR. DIVER: Madam Hearing Officer,  
44 subject to reproduction having to be needed, I  
45 would move the introduction of Pages 5 and 6,  
46 particularly Figure 7 and the description of  
47 barrier walls and barrier wall enclosures, as

1 being relied upon by this witness in the design of  
2 the acoustical enclosure, would move the  
introduction of those two pages of this exhibit.

THE COURT: Is that Exhibit No. 99?

3 MR. DIVER: Yes.

4 THE COURT: Exhibit No. 99 was discussed  
on July 12th. It was not received, and it was  
5 stated, at that time, that it was subject to a  
confidentiality agreement with the company.

6 MR. DIVER: Right. That's correct.  
This witness has now testified that absent that  
7 confidentiality, he relied on this document in the  
design of that system. And, I believe that waives  
8 the confidentiality because there's another source  
of this information. The witness who received,  
with respect to this particular document, Mr.  
9 Seda, was also asked whether or not segments of  
this document, other pages of this document, were  
10 true and correct copies -- were true and correctly  
copied in the Trane documents that are seen in  
11 other of the exhibits that Madam Hearing Officer  
has allowed. With respect to this particular  
12 document, however, those two pages, we would move  
the introduction of now.

13 MR. ELLEDGE: Madam Hearing Officer, I'm  
not here to defend any confidentiality on behalf  
14 of Trane, or any arrangement counsel has with  
Trane. So, I have no concern as far as that is  
15 concerned. I just wonder if, at this point, it  
wouldn't make more sense to introduce the entire  
16 document.

17 THE COURT: Let's go off the record to  
discuss the, whether the parties wish to agree to  
18 introduce the entire document into evidence, at  
this time.

19 (WHEREUPON, an off-the-record discussion  
took place.)

20 THE COURT: We were refreshing our memory  
as to when this document came up earlier, and  
concerns about its introduction into evidence at  
21 that time. So, we will rephrase the introduction  
of the material at this time.

22 MR. DIVER: At this point, I would move  
the introduction of Pages 5 and 6 of what have  
23 been previously marked as Plaintiff's Exhibit No.  
99, certain other pages of which have already come  
24 into evidence, Madam Hearing Officer.

1 THE COURT: I understand there's no  
objection.

2 MR. ELLEDGE: No objection.

3 THE COURT: All right. Then, those pages  
of Exhibit No. 99 will be entered into evidence,  
4 and I will obtain a copy of those pages  
separately, and they will be so identified.

5 MR. DIVER: Madam Hearing Officer, I  
would propose that they be shown as Exhibit,  
6 what's our next exhibit number, 113, I think it  
is.

7 THE COURT: I show 112.

8 MR. CARSON: 99 A?

9 MR. DIVER: We can call it 99 A and B for  
5 and 6.

10 THE COURT: 99 A was not admitted, and 99  
B?

11 MR. DIVER: 99 A is Page 5.

12 MR. ELLEDGE: You have to go above A and  
B. I don't know what letter is the first one.

13 THE COURT: We already had discussion of  
it as Exhibit 99.

14 MR. DIVER: Right, right. What if we  
call it Exhibit No. 99, Pages 5 and 6. Is that  
15 acceptable?

16 MR. ELLEDGE: I have no objection.

17 MR. DIVER: We'll call it that.

18 THE COURT: Exhibit No. 99, Pages 5 and 6,  
19 are admitted into evidence.

20 BY MR. DIVER:

21 Q Mr. Mautner, do you recall when you  
completed the design of the acoustical enclosure  
that we've just been talking about?

22 A It was in the fall of 1994.

23 Q When was it actually constructed?

24 A When was it erected?

Q Yes, when was it put together, put in  
place?

A In the spring of 1995.

Q Was there a reason why it wasn't  
constructed during the heating season of 1994?

A We were waiting to receive the panels.  
And then, the weather wasn't conducive to doing  
outdoor construction at the time.

Q At what time?

A In the winter of 1994-95.

Q There are currently, there's now, in

1 August of 1996, some acoustical panels that have  
2 been erected on top of the original enclosure,  
correct?  
A Yes.  
3 Q Those additions would have been made  
sometime the week of August the 5th?  
4 A Yes.  
Q And, the actual materials of construction  
5 were plywood sheets with interior facing, with  
some kind of fiberglass?  
6 A Yes.  
Q Did you actually do the construction,  
7 Brad Mautner?  
A No.  
8 Q Did Mid/Res do the construction?  
A No.  
9 Q Did Mid/Res hire somebody to do the  
construction?  
10 A Yes.  
Q And, that gentleman's name is Gustafson?  
11 A Yes, Carpenter subcontractor.  
Q And, did you give, did you, yourself,  
12 give instructions to Mr. Gustafson as to how to  
construct those acoustical panels?  
13 A No.  
Q Did you give instructions to someone, to  
14 be passed on to Mr. Gustafson, as to how they were  
to be constructed?  
15 A Yes.  
Q And, what were the instructions that you  
16 gave?  
A Well, I gave the instructions that we  
17 would add an additional four feet of elevation to  
the existing enclosure. And, that we should have  
18 air separations to prevent air from re-circulating  
back into the intake. And, that there was supposed  
19 to be some type of insulating material on the  
inside of the plywood panels.  
20 Q Did you give any specifications as to the  
nature of the fiberglass?  
21 A In the phone conversation where we were  
given recommendations about what to put on the  
22 interior surfaces, there was a particular  
insulating material mentioned. I don't remember  
23 the exact make or model number, but it was, I was  
told that it was not readily available when we  
24 went to search for it. But, it was acceptable to

1 use, for test purposes, fiberglass. It's commonly  
available.

2 MR. DIVER: Madam Hearing Officer, we now  
3 have copies of what has been marked as Exhibit No.  
99, Pages 5 and 6, which we're providing to you  
and to counsel.

4 THE COURT: Thank you.

BY MR. DIVER:

5 Q You've just referenced a conversation  
6 which you were given instructions as to the  
specifications for this acoustical panel?

7 A Yes.

8 Q And, who was that conversation with?

9 A It was a telephone conference call with  
Reece Elledge and George Kamperman.

10 Q And, this is the same George Kamperman  
that, I believe, you said you spoke to in May or  
June of 1994 as well?

11 A Of 1996.

12 Q I'm sorry, of 1996?

13 A Yes.

14 Q Had you ever spoken to Mr. Kamperman  
before the May or June of 1996 conversation?

15 A Yes.

16 Q And, when had you first -- oh, in May.  
May or June of 1996?

17 A Yes.

18 Q When had you first spoken to Mr.  
Kamperman about the subject of the Crown air  
conditioner?

19 A It was in early May of 1996.

20 Q And, in that conversation of early May of  
1996, was anyone else involved in the  
conversation?

21 A Reece Elledge.

22 Q Okay. Was this a telephone conversation?

23 A We had a meeting at the site, as well as  
there was -- the one I'm referring to, the one you  
referenced was the telephone conversation.

24 Q This early May of 1996?

A Right, early May was at the site.

Q At the site. So, you actually were with  
Mr. Kamperman?

A Right.

Q And, during the course of that meeting  
with Mr. Kamperman, at the site with Mr. Elledge,  
did Mr. Kamperman indicate possible additional



1 steps that could be taken to reduce the sound  
2 being experienced from the Crown air conditioner?

3 A Yes. It was his recommendation to  
4 operate with a single compressor.

5 Q Did he make other recommendations?

6 A Well, he generally referred to the idea  
7 that he would like to see additional enclosure  
8 elevation height, and if we could find a mechanism  
9 to control the fan speed.

10 Q So, the variable frequency drive, the  
11 increased acoustical enclosure, as well as the  
12 operational change to a single compressor, single  
13 fan, were all the subject of Mr. Kamperman's  
14 recommendations in this meeting that you had with  
15 him and Mr. Elledge in early May of 1996?

16 A They were all part of a conversation,  
17 that's correct.

18 Q And, following that early May of 1996  
19 meeting, what did you begin to do with respect to  
20 the recommendation of additional height of the  
21 acoustical enclosure?

22 A Well, at that point in time, the first  
23 recommendation was to change the operating mode.

24 Q When you spoke to Mr. Kamperman, he told  
you that he thought these should be done  
sequentially, as opposed to in parallel?

A He didn't say specifically. We knew that  
the change in the operating mode could be  
accomplished through programming and some field  
hardware changes. And, we needed to research the  
impact of the additional elevation enclosure, as  
well as whether or not we could even obtain  
variable frequency drives.

Q What I'm asking you is, what did you do  
after your early May of 1996 meeting with respect  
to investigating the subject of additional  
enclosure height?

A I don't recall when we began to  
investigate that.

Q Isn't it true that you didn't begin to  
investigate it until you received a call from Mr.  
Elledge approximately one week after the  
commencement of trial of this matter?

A No. I believe I looked at the manual  
prior to that. But, he asked me to implement,  
specifically to implement the variable frequency  
drive and the elevation, additional elevation of

1 the enclosure at that time.

2 Q Okay. I just want to be clear about your  
3 testimony. Your testimony now is that in your  
4 first conversation with Mr. Elledge, following  
5 commencement of trial in this proceeding, that is  
6 sometime in or before the middle of July, that Mr.  
7 Elledge's instruction to you was to commence the  
8 implementation of these additional  
9 recommendations, as opposed to commencing the  
10 investigation of these additional pieces. Did he  
11 ask you to investigate or to implement in that  
12 first conversation?

13 A He asked me to implement the nighttime  
14 mode of operation, we discussed that, and  
15 implement the single compressor operation. And, I  
16 took it on myself to investigate the other two  
17 alternatives.

18 Q When had you completed your  
19 investigation, in particular, with respect to the  
20 feasibility of adding additional footage to the  
21 acoustical enclosure?

22 A Well, my investigation showed that it  
23 would be higher than the recommendations, and I  
24 don't remember exactly when it was completed. I  
25 know that we began the implementation immediately  
26 upon being informed that we could go ahead and  
27 proceed.

28 Q All right. With respect to the  
29 investigation into the variable frequency drives,  
30 when do you recall having learned about the  
31 availability or not of variable frequency drives  
32 for this particular chiller unit?

33 A It was in late July, mid to late July.

34 Q And when, with respect to your early May  
35 of 1996 conversation with George Kamperman and  
36 Reece Elledge at the site, on site, when, relative  
37 to that conversation, did you commence your  
38 investigation of the availability of variable  
39 frequency drives?

40 A In July.

41 Q And why did you wait approximately two or  
42 two and a half months before commencing the  
43 variable frequency drive investigation?

44 A Because it wasn't clear that that was a  
45 measure that was going to be implemented. There  
46 are other ways to control fan speed.

47 Q All right. Were you investigating other

1 mechanisms to control fan speed during that period  
of early May of 1996 and late July of 1996?

2 A The original conversation was to look for  
3 a multiple speed motor which could be two speeds  
4 or three fixed speeds. We did not spend much time  
5 investigating because it was not clear the  
variable speed drives could be successfully  
applied to this. So, we did not spend time, at  
that time, investigating it.

6 Q But, at some later time, you did make the  
effort to learn about that?

7 A Yes, in July.

8 Q And, that was after your conversation  
with Mr. Elledge on the telephone about a week  
after this trial commenced?

9 A Yes.

10 Q Is that correct?

11 A Yes.

12 Q Now, at the time that Mr. Elledge gave  
you these instructions to commence the  
13 implementation of the other two Kamperman  
recommendations, what exactly were you doing with  
14 respect to investigating additional corrective  
15 action that might be taken with respect to the  
16 chiller unit?

17 A After his instruction for implementation?

18 Q No, at the time, just before he called  
you, what had you been doing with respect to  
19 investigating other mechanisms?

20 A I had not been doing much with respect to  
that recommendation.

21 Q Isn't it true that you had not been asked  
to do anything, and so you were not doing  
22 anything?

23 A We had not been asked to do much, so we  
did not do anything, at the moment.

24 Q Is it not true that until that  
conversation with Mr. Elledge, the last thing that  
Mid/Res had done itself, with respect to  
identifying a sound attenuating mechanism for this  
chiller unit, was the recommendation of the  
acoustical panel that was installed sometime in  
early 1995?

A Yes, I think that's right.

Q You had indicated, in your earlier  
testimony, that you had been reading, the last  
couple of years, last two or three years, I think

1 you indicated, about the existence of variable  
2 frequency drives of a smaller stage than 10 or 7  
horsepower, is that correct?

A Yes.

3 Q And, had you been aware, at least through  
4 the literature for that period of time, of the  
existence of a one horsepower variable frequency  
drive?

5 A I had.

6 Q Did Mid/Res ever prepare any written  
7 plans with respect to the construction or  
materials for the acoustical enclosure that was to  
be added to the top of the existing acoustical  
enclosure?

8 A No.

9 Q Did MidWesCo, Mid/Res or MidWesCo ever  
10 prepare any plans or designs with respect to the  
installation, wiring, et cetera, for the variable  
frequency drive, in connection with the existing  
one horsepower fans?

11 A No, not that I'm aware of.

12 Q I believe the actual cost that was quoted  
to you by Magnatek for the three fans was \$2700,  
is that correct?

13 A The quote was from the Trane Company for  
14 Magnatek drives, for 3 one horsepower drives,  
approximately \$2700.

15 Q Magnatek, to your knowledge, is not part  
of Trane?

16 A No, I don't believe so.

17 Q When were you first advised that there  
had been sound measurements of the acoustical  
enclosure and variable frequency drive systems  
prior to the test that occurred on August 15th?

18 A I believe the sound measurements, there  
were sound measurements made in June.

19 Q In June. What about the sound  
20 measurements that were measuring the sound of the  
extended acoustical enclosure and the variable  
21 frequency drive that occurred prior to August  
15th, 1996?

22 A I believe they were made in the first  
week of August.

23 Q By Mr. Kamperman?

A I believe so. I was not present.

24 Q And, were you told of the result of that  
test?

1           A     Just generally. I didn't see any  
particular data.

2           Q     Okay. And, by whom were you  
communicating with?

3           A     Harry Akers.

4           Q     Do you know if Mr. Akers had been present  
at the time of those tests?

5           A     I believe he was.

6           Q     Okay. You indicated that this particular  
system is computer driven, correct?

7           A     It's computer controlled, yes.

8           Q     Utilizing a Mid/Res or MidWesCo software,  
correct?

9           A     Well, control algorithms were written by  
us, but the software is the manufacturer's  
property.

10          Q     So, that's somebody else's. You  
indicated that those algorithms could be  
re-written?

11          A     They were written and could be  
re-written.

12          Q     What's to stop their being re-written to  
change the manner of operation of this particular  
chiller unit?

13          A     Well, you would have to be instructed to  
do it.

14          Q     Further, you indicated that the resident,  
in the system that's now in existence, does not  
have the ability to control the particular  
operation of fans, is that correct?

15          A     I'm not sure what you just asked me.

16          Q     All right. My understanding was, from  
your previous testimony, you said that the  
resident does not have the ability to control the  
system?

17          A     Oh, the residents, the Crowns.

18          Q     The resident, yes, I'm sorry.

19          A     The Crowns do not have the ability to  
change the control algorithms.

20          Q     Could they?

21          A     No.

22          Q     Could they call you up and say change the  
algorithm?

23          A     They could instruct us to, and I don't  
recall he has the programming skills, and I know  
he does not have the password skill, to get into  
the program to change it.

24

1 Q All that would be required would be a  
call to you to ask you to change it.

2 A He would have to instruct us to change  
it.

3 Q In your testimony, you indicated, I  
believe, that you had never seen the system  
4 operating at full RPM since the changeover to the  
variable frequency drive, is that correct?

5 A It's my understanding that the variable  
frequency drives have not needed to operate at  
6 full RPM.

7 Q And, when you say have needed to be  
operated, what do you mean by that, haven't needed  
to be?

8 A The conditions of outdoor and indoor  
temperature have not required it.

9 Q What are the conditions of indoor and  
outdoor temperature mode that would be required to  
10 exist, that would have to exist in order for these  
three fans to operate at full RPM?

11 A Well, I have to speculate a little here,  
but we would anticipate that the full RPM would be  
12 needed when the outdoor air temperature was above  
what we call a design day in Chicago. For our  
13 purposes, in this discussion, we'll call it 95  
degrees farenheit. It's not clear, though, if the  
14 fans will operte at 100% RPM at that condition.

15 Q Is it equally not 100% that they will not  
operate at full speed at a temperature less than  
95?

16 A It's a certainty that it will operate at  
a less speed below 95 degrees.

17 Q No. What I'm asking you is whether or not  
you can tell me that, from what you know of this  
18 system, it's not possible for the three fans to  
operate at full speed when the outdoor temperature  
19 is less than 95 degrees?

20 A It's possible, if there's a problem with  
the system.

21 Q And, that's because the system isn't  
triggered on the basis of temperature itself, as  
measured by a thermometer, but by the pressure in  
22 this refrigerant line, correct?

23 A Yes. But, they're related.

24 Q I understand. But, there are also  
possibilities, I take it, for difficulties,  
mechanical problems of some sort or another, that

1 would cause the pressure in the refrigerant to be  
2 increased, even though the outdoor temperature is  
not excessively hot.

3 A Yes, but under that circumstance, the  
system would stop operating.

4 Q Because?

A It has safety controls to prevent it from  
causing damage.

5 Q So, you're saying, for any conceivable  
6 mechanical problem that could occur, that would  
cause the refrigerant line pressure to increase,  
the system would automatically shut down?

7 A That's what it's intended to do.

8 Q I understand that. I'm asking you whether  
9 or not you're telling me that, is it possible for  
the system to operate, continue to operate where  
something other than outdoor temperature is  
10 causing an increase in the refrigerant line  
pressure?

11 A I think impossible is too hard to say,  
because I suppose we could construct a scenario  
12 where the safety controls failed, and the system  
continued to operate to the point of failure.

13 Q I believe we had a couple of those design  
days within the last week or two, is that correct?

14 A No, I don't believe so.

15 Q I could have sworn that you told me last  
Friday that we'd had two of the design days the  
week before?

16 A That's not what I told you.

17 Q What did you tell me, with respect to the  
last time we've had a design day in Chicago?

18 A I don't know if we reached a design day.  
I said it was in the 90's during the week of the  
19 5th, and I left for vacation on the 7th. And, it  
was my understanding that, I believe on the 6th,  
it was in the 90's, the low 90's. But, after that,  
I was not here and I don't know.

20 Q Did you experience the actual operation  
of the fans at any time when the temperature was  
21 in excess of 90 degrees at the time the  
measurement was being made?

22 A I was not there.

23 Q Did you know of anybody who was there at  
the time when the temperature outside was 90  
degrees and the fans were operating on the basis  
24 of this computerized system?

1           A     I don't know.

2           Q     I believe you stated that these two  
3 pieces of the program, that is the increase in the  
4 height of the enclosure and the variable frequency  
5 drives were installed in or about August 5th?

6           A     During the week of August 5th?

7           Q     Prior to that time, the nighttime  
8 operation of the system was, as I understood it,  
9 one compressor and one fan, is that correct?

10          A     Yes.

11          Q     Now, the nighttime operation is one  
12 compressor and one, two, or three fans, depending  
13 upon the demands of the pressure in the  
14 refrigerant line?

15          A     No.

16          Q     All three fans will operate, but at a  
17 reduced level.

18          A     Yes.

19          Q     Will they all operate at the same reduced  
20 level?

21          A     Yes.

22          Q     So, they are synchronized in the sense  
23 that each one is not operating at a different  
24 speed, but they are in unison, operating at  
different speeds?

          A     Yes.

          Q     In establishing this particular system  
that you talked about, the increase in the  
enclosure and the variable frequency drives, did  
you receive instructions with respect to how this  
system should be designed and operated from anyone  
other than Reece Elledge and George Kamperman?

          A     No.

          Q     The actual acoustical panels, should I  
understand now that the height of the acoustical  
construction right now is 12 feet?

          A     Yes.

          Q     How are those panels affixed to the old  
enclosure?

          A     I believe they're affixed with sheet  
metal screws.

          Q     Is that a permanent change?

          A     It's anticipated it's a permanent change.

          Q     That it's anticipated that that four feet  
addition will stay on top of the 8 foot enclosure,  
is that what you're saying?

          A     I don't know that. I've not been



1 instructed to remove it.

2 Q Have you been instructed that at some  
3 future point in time, that that particular unit  
4 will change to be a 12 foot high unit as opposed  
5 to a 9 foot and a 4 foot unit?

6 A I don't know.

7 Q You're saying you haven't been told that?

8 A No, I haven't been told that.

9 Q You indicated on the night of the test,  
10 August 15th, 1996, that in order to establish the  
11 various operating modes for the unit, you had to  
12 call an engineer at a remote location?

13 A Yes.

14 Q And, you provided that engineer a set of  
15 instructions as to how to change the operating  
16 mode of the unit, correct?

17 A Yes.

18 Q And, was the person in charge, that  
19 engineer on duty, required to change the  
20 algorithms for the system in order to do that?

21 A In this particular case, what he did was  
22 override the system for a temporary change, at my  
23 request.

24 Q Is it possible, then, in order to have  
this system operating in a function different from  
that which the computer ordinarily would do, not  
only to change the algorithms, but also to  
override the system?

A It's possible.

Q How do you determine, if you determined,  
whether or not the instructions that you had  
communicated by telephone were actually followed?  
That is, whether, in particular, the protocol that  
was identified as full power was, indeed, full  
power?

A I didn't determine it.

Q Was there any way you could have  
determined it?

A Well, I determined it by asking the  
engineer on duty to read to me the level from the  
computer. I didn't determine it independently.

Q I'm asking was there a way that you could  
have determined it independently?

A Me?

Q You.

A No.

Q Was there a way that anybody on site that

1 night could have determined independently whether  
2 or not the operating modes that the equipment was  
3 supposed to be running in for the sound tests were  
4 actually the modes that it was operating in?

5 A Part of it, we could determine.

6 Q That's when it was off?

7 A Off, as well as two compressor operation.

8 Q You could tell whether there were two  
9 compressors on? How could you tell that?

10 A You can go near the unit and see that the  
11 two systems were operating. You can hear the two  
12 independently operating.

13 Q Is that what you did, to determine that  
14 when it was supposed to be in the two compressor  
15 operation, that that was the circumstance?

16 A I did not, no.

17 Q Again, your expertise is not in  
18 acoustics, is that correct?

19 A Yes.

20 Q Yes, I'm correct, it's not?

21 A Yes, you're correct.

22 Q Or, in sound measurement?

23 A Not in sound measurement, no.

24 Q Or in designing soundproofing systems?

25 A No.

26 MR. DIVER: Could we have a quick huddle,  
27 Madam Hearing Officer, just to see if we're done?

28 THE COURT: Yes. Take a minute off the  
29 record.

(Off the record)

30 THE COURT: Back on the record.

31 BY MR. DIVER:

32 Q It's my understanding that you'd been  
33 told about the various suggestions that had been  
34 made by Greg Zak during his testimony in this  
35 proceeding with respect to additional changes or  
36 add-ons that might be made to reduce the amount of  
37 sound perceived from this system, is that correct?

38 A Briefly, yes.

39 Q And, one of those concerns was the  
40 establishment of a ground cooling system, correct?

41 A Generally speaking, yes.

42 Q And, did you investigate that?

43 A I did not.

44 Q Did you ask somebody to investigate it?

45 A I asked Harry Akers.

46 Q And, what did Harry report back to you

1 concerning that particular system?

2 A His report to me in general was that it  
3 didn't seem feasible or reasonable for this  
4 application. And, in light of other changes that  
5 were contemplated, could be implemented more  
6 quickly, they seemed more favorable. And, we had  
7 no further conversation about it.

8 Q Okay. So, do I understand, then, that Mr.  
9 Akers was cognizant of these other changes that  
10 had been proposed by George Kamperman as well?

11 A Yes, I mentioned them to him.

12 Q Do you know whether or not there was any  
13 investigation of Mr. Zak's recommendation of an  
14 air tight enclosure around the chiller unit?

15 A There was not, that I'm aware of.

16 Q One more thing. What was the actual cost  
17 that the contractor gave you for erecting the  
18 acoustical panels?

19 A I don't have a cost yet. We're waiting  
20 for his bill.

21 MR. DIVER: No further questions.

22 MR. ELLEDGE: I have a few brief ones.

23 REDIRECT EXAMINATION

24 BY MR. ELLEDGE:

1 Q Mr. Mautner, I'd like you to cast your  
2 mind back to the question of activities during  
3 May, June, and July. And, the first time you met  
4 George Kamperman was at the site, did you say?

5 A I met him in early May.

6 Q In early May, at the site?

7 A Yes.

8 Q And, was there a subsequent meeting at  
9 your offices?

10 A Yes.

11 Q Okay. And, there have been subsequent  
12 telephone conversations?

13 A Yes.

14 Q Okay. And, during those, during that  
15 period, there have been a number of different  
16 ideas mooted, is that not so?

17 A Yes.

18 Q Okay. Did you, was there any exploration  
19 of the question of fan design, was that  
20 considered?

21 A Well, we dicussed briefly that there  
22 could be different propellers on these fans, but  
23 we did not explore different propeller types.  
24

1 Q Could you tell us what active sound  
reduction is?

2 A We also had, that's true. We also  
discussed briefly active noise reduction.

3 Q And, did you pursue that issue?

A I looked into it briefly.

4 Q And, to whom, with whom did you  
correspond on that?

5 A I called a company called Digisonix to  
see if they had any products that would make sense  
6 as an active noise reduction product.

Q And, what were you told?

7 MR. DIVER: Objection, hearsay.

8 MR. ELLEDGE: I think this is, really  
goes to the question of, as we've talked about  
before, as to what his state of mind was, and  
9 whether things were pursued or not pursued. And,  
the issue of whether he was encouraged or  
discouraged becomes very significant in that  
10 regard, your Honor.

11 MR. DIVER: Madam Hearing Officer, if  
this witness' state of mind were at issue, I'd  
12 concur, but it's not. This witness is here to  
testify as to what factual matters he did. He's  
13 not the Respondent or Complainant, unless he wants  
to be Respondent.

14 THE COURT: Could you rephrase your  
question?

15 BY MR. ELLEDGE:

16 Q What conclusion did you reach as a result  
of that conversation?

MR. DIVER: Objection, same --

17 MR. ELLEDGE: What conclusions did you  
reach, that's my question.

18 THE COURT: Overruled.

19 A The conclusion from my conversation with  
Digisonix was that they did not have a product  
available that they thought was appropriate for  
20 this application. And, led me to make one further  
phone call to a consulting company on the east  
21 coast called BBN, stands for three names, which I  
can't remember the exact names.

22 Q What conclusion did you draw from, if  
any, after your contact with BBN?

23 A BBN, my conclusion was after, after  
speaking with them, was that active noise  
24 reduction, in this particular application, didn't

1 seem appropriate. They were unaware of any  
commercially available products to do so.

2 Q Did you, during this period, look into or  
cause someone to look into the question of a water  
3 cooled --

MR. DIVER: Objection, leading.

4 MR. ELLEDGE: Well, this is  
cross-examination.

5 MR. DIVER: It's your witness.

6 MR. ELLEDGE: Let me withdraw the  
question and phrase it in a different way.

BY MR. ELLEDGE:

7 Q What consideration, if any, did you give  
to a water cooled system? And, by water cooled,  
8 I'm assuming that means wells.

9 A Well, when the subject came up of using  
the ground as part of the heat sink\*, if you will,  
for this operation, I believe Harry Akers also  
10 looked at using ground water as a condenser water  
medium. His conclusion to me was that we could  
11 not acquire enough water flow to use that in this  
particular application. So, we didn't spend a lot  
12 of time looking at it.

13 Q What consideration, if any, did you give  
to the possibility of installing additional fans  
on the enclosure to increase air circulation?

14 A Well, I had mentioned to George that if  
the additional elevation of the four foot  
15 enclosure caused too large a restriction of air  
movement, that I thought we might be able to put a  
16 small fan in one opening in that part of the  
enclosure, to be sure that the discharge airways  
17 relieved properly.

18 Q What, if you can recall, was the genesis  
of that idea?

19 A It was kind of a hybrid idea that came up  
from George Zak's comment originally.

20 MR. ELLEDGE: I have nothing further.

REXCROSS EXAMINATION

BY MR. DIVER:

21 Q Mr. Mautner, when was all this  
brainstorming done that you've just been  
22 describing to Mr. Elledge?

23 A In June.

Q June of 1996?

24 A Yes.

Q After the sound measurement had been made

1 of the single compressor, single fan operations?

2 A I believe so, yes. No -- I don't  
remember. I believe so.

3 Q Did Mr. Elledge just tell you the answer  
was wrong?

4 A I know it was in June. I don't remember  
the timing or the sequence, but --

5 Q Did you just look to Mr. Elledge for some  
indication of whether your answer was correct?

6 A No, I just looked at Mr. Elledge, and he  
was shaking his head.

7 Q As though your answer was wrong?

8 A Perhaps.

9 Q Is that what you understood it to mean?

10 A Perhaps.

11 MR. DIVER: I have no further questions.

12 THE COURT: Does that conclude your  
re-cross?

13 MR. DIVER: Yes, it does.

14 THE COURT: All right, then, at this  
15 point in time--thank you, Mr. Mautner, and we'll  
16 take a lunch break. And, we'll discuss our return  
17 time off the record.

18 (WHEREUPON, the luncheon recess was  
19 taken.)

AFTER RECESS

20 THE COURT: Okay. We're back on the  
21 record after lunch, and we have two preliminary  
22 items. We have the introduction of exhibits  
23 related to the Village of Winnetka ordinance  
24 concerning sound emissions. And, we also have a  
ruling on the request for in camera review of  
discoverability of certain notes made by Mr.  
Shelton. First, let's take care of the ordinance.

18 MR. DIVER: Yes, Madam Hearing Officer.  
19 At our last hearing, we tendered the court and to  
20 counsel for the Respondent a copy of an amendment  
21 to the Village of Winnetka ordinances of January  
22 of 1996, as well as a copy of the ordinances as  
23 amended by that amendment. We tendered today a  
24 copy of the Village of Winnetka ordinance in  
effect at the time that the air conditioning unit  
was installed at the Crown property, relative to  
the subject of permitting or licensing of air  
conditioning units. The latter has been given  
Exhibit No. 112. The two former documents were  
109 and 110. It's my understanding that counsel

1 for Respondent has no objection to the admission  
2 of Exhibit No. 112, being the ordinance that was  
in effect at the time of the installation of the  
unit.

3 MR. CARSON: That's right, we have no  
objection to 112.

4 THE COURT: 112 will be admitted into  
evidence.

5 MR. DIVER: We, again, re-offer 109 and  
6 110, being the ordinance of the Village of  
Winnetka concerning air conditioning units, which  
7 have been amended since the date of the  
installation of the Crown air conditioner, to  
8 reflect the position of the Village of Winnetka  
concerning the need to control noise emissions  
9 from those units, not for the purpose of  
establishing that there's been any violation of  
10 that ordinance. We don't believe there is. We  
concede that there has not been, but for the  
11 purpose of establishing the position of the  
Village of Winnetka, with respect to noise  
12 emissions from air conditioning equipment and the  
reasonableness of those noise emissions, as  
expressed by ordinance.

13 MR. CARSON: We're objecting to 109 and  
14 110 on the basis that it's not relevant what the  
position of the Village of Winnetka is, by  
15 ordinance, as to emissions from air conditioning  
units. These are ordinances which, on their face,  
16 came into being in 1995 and/or 1996. And,  
therefore, have no relevance whatsoever to this  
17 installation, which occurred in and was first  
operated in 1993.

18 MR. DIVER: Your Honor, if I just may  
respond briefly. Our response is that, indeed,  
19 the noise emissions that have been ongoing through  
today or at least through August the 16th of 1996  
20 have been occurring during 1995 and 1996. It was  
the expression of the Village of Winnetka as to  
21 what it considers to be reasonable and what is  
necessary to be controlled is most relevant,  
particularly in context of a piece of  
22 correspondence from Mr. Crown in which he  
indicated that he would await the development of  
23 regulations by the Village of Winnetka concerning  
the limitations that he would be subject to.

24 THE COURT: I believe the Board will be

1 interested in seeing the ordinance in all its  
2 permutations and, therefore, the objection is  
3 overruled. Exhibits No. 109 and 110 will be  
4 entered into evidence.

5 All right. We have a request this morning  
6 by Respondents for the production of notes made by  
7 Mr. Shelton with respect to certain readings that  
8 were performed on Mr. Crown's air conditioning  
9 system. And, the first two pages of the notes  
10 were not at issue. The first two pages of the  
11 notes will be provided to Respondent by agreement  
12 between the parties. The remainder of those are  
13 Pages 3 through 7. And, briefly, I'll describe  
14 those. Pages 3 through 7 are personal analysis  
15 notes of Mr. Shelton in which he compares and  
16 contrasts some of the numerical readings of  
17 various noise tests that had been performed, and  
18 readings of which had been entered into evidence.  
19 However, it also includes conclusions and concerns  
20 of his with respect to his comparison of these  
21 figures. And, clearly indicates that these notes  
22 are of a personal nature. And, clearly, it is  
23 apparent that he intended to discuss this with  
24 counsel with respect to the continuation of the  
case. It includes two pages of handwritten notes,  
and it also includes notes that he made on his  
personal computer for the same purpose. Those  
will not be discoverable. All right.

MR. DIVER: Thank you, Madam Hearing  
Officer. We'll have copies made of 109, 110 and  
112.

THE COURT: And, the first two pages of  
the notes, and then please return these to Mr.  
Shelton.

MS. MOLSON: How many copies?

THE COURT: Let's make three copies of  
the first two pages.

Would Respondents like to call their  
next witness?

MR. ELLEDGE: Yes, Mr. Elfering, please.

R O B E R T P A U L E L F E R I N G,  
after having been first duly sworn on oath,  
deposes and testifies as follows:

DIRECT EXAMINATION

BY MR. ELLEDGE:

Q Mr. Elfering, would you state your full  
name, please?



1 A Robert Paul Elfering, Junior.

Q And, where do you reside?

2 A 37033 North George Court, Lake Villa,  
Illinois.

3 Q And, by whom are you employed, sir?

A Shiner and Associates.

4 Q And, how long have you been with Shiner  
and Associates?

5 A It will be six years in November.

Q In what capacity?

6 A I'm an acoustical consultant.

7 Q How did you prepare yourself to become an  
acoustical consultant?

A Well, I have a Bachelor of Arts in Math  
8 and Physics, and I was employed by USG  
Corporation. We have a research facility in Round  
9 Lake. I was employed by them for 13 years. I've  
been employed by Shiner and Associates for almost  
10 six years, and I've been a registered, licensed  
professional engineer in the State of Illinois  
11 since 1988.

12 Q And, are there any specific areas of  
which you specialize with regard to your  
employment with Shiner and Associates?

13 A We do a variety of acoustical work.  
We've worked in concert halls, we've done  
14 environmental studies for traffic noise, for  
mechanical noise sources, for industrial acoustics  
15 within plants. We've worked with architects for  
the design of highrise construction, which  
16 involves partition systems and floor-ceiling  
construction, a variety of different acoustical --

17 Q And, among other things, do you measure  
sound?

18 A Yes.

19 Q What kind of equipment do you normally  
use, or what kinds of equipment do you use?

20 A Well, we have several types. We had hand  
held sound level meters. We have a real time  
analyzer, which is also a sound level meter. But,  
21 it performs all of the frequency analysis at one  
time. The instrument we used, that I used  
22 Thursday night is, the manufacturer is  
Bruel-Kjaer. It's a type 2230 integrated sound  
23 level meter, which means it's accurate to within  
plus or minus one decibel. It has a filter set.  
24 You're measuring in, overall, weighted sound

1 levels and sound levels that were filtered into  
2 octave bands from 1000 to 8000 hertz, per Illinois  
Pollution Control Board limitatins.

3 Q Now, may I ask you if you had occasion to  
4 go to the Shelton residence on Ardsley in Winnetka  
within the past week?

5 A On Thursday evening when we did our  
measurements.

6 Q All right. And, that was Thursday, August  
15th?

7 A Correct.

8 Q And, what time did you arrive and  
commence?

9 A I arrived approximately 9:00 o'clock,  
10 9:00 p.m., I believe. The measurements lasted  
between roughly 9:30 and 11:30 in the evening.

11 Q And, would you, once again, tell us the  
equipment that you used to make these  
measurements?

12 A It was the Bruel-Kjaer Type 2230  
integrated sound level meter.

13 Q And, did you record the -- well, let me  
talk--first, let me direct your attention, if I  
may, to what has been marked as Exhibit No. 51.  
And, do you, are you able to identify -- are you  
able to recognize what's depicted there?

14 A Yes. This is, appears to be the Crown  
residence. And this, with the red line, appears  
15 to mark the location of the air conditioning unit.

16 Q Why don't you, with respect to the red  
line you just spoke of, put a black "X" inside  
that and put Crown A.C.

17 Now, continuing further north on  
that drawing.

18 A Well, this is the property line which, I  
assume, the fence, there's a stockade fence there.

19 MR. ELLEDGE: The record will show that  
he's pointing to a dark dashed line. Continue.

20 A Across from the fence, there's foliage  
and there's the Shelton residence. And, this would  
21 be the southeast corner. There's a glass enclosed  
porch or family room. Do you want me to describe  
22 the positions?

23 Q Yes, if you would. I'm going to give you  
a blue felt pen, and if you would locate--let me  
ask you this. Did you measure more than one  
24 position?

- 1           A     I measured a total of five different  
positions.
- 2           Q     Why don't we do them numerically. So, if  
you'd mark Position No. 1?
- 3           A     Position No. 1 was just to the north of  
4           the fence, probably around 10 feet, 6 to 10 foot  
north of the fence opposite the unit.
- 5           Q     All right.
- 6           A     Position 2 was out on the top patio  
opposite, the Shelton's have an outdoor AC  
7           condenser next to the house.
- 8           Q     Is that condenser marked on that?
- 9           A     Well, there's a black circle with an X,  
that it's approximately in that location.
- 10          Q     Okay.
- 11          A     Position 3 was along the fence, but  
further east.
- 12          MR. DIVER: That's along the north fence  
line.
- 13          A     North on the Crown property?
- 14          MR. DIVER: Right.
- 15          A     Yes. Somewhere here, approximately 50  
16          foot, I would say east of Position No. 1.  
BY MR. ELLEDGE:
- 17          Q     That's being marked with an X and a No.  
18          3.
- 19          A     No. 3. No. 4 was on top or on the roof  
of this glassed-in house addition, along the,  
20          close to the south eve.
- 21          Q     You said there was a fifth.
- 22          A     There was a fifth that was within the  
Crown property. It was on the north side of the  
23          driveway. It looks like it's been, this Position  
A is close to it. I thought it was closer to  
24          this.
- 25          Q     We'll put it where you think it is, and  
then mark that.
- 26          A     Mark that No. 5. And, that was at the  
north end of the paved driveway that continues  
27          around to the back of the house.
- 28          Q     Okay. Now, how did you get yourself in  
position to measure No. 4?
- 29          A     We climbed a step ladder, a ladder that  
was put against the house.
- 30          Q     All right.
- 31          A     We stood on the roof. We were  
approximately, might be approximately four feet

1 above the roof edge.

2 Q And, about how far was it from the --  
3 well, were there windows nearby? Did the rest of  
4 the house have a second floor?

5 A It had a second floor. We were, I would  
6 say, roughly 10 foot from that, from the corner of  
7 the main house.

8 Q Okay.

9 A So, I don't anticipate there was  
10 reflection off of the house back into the  
11 measurement position.

12 Q Now, did you measure sound in each of  
13 those positions, at least the first four  
14 positions, at different times and in different  
15 circumstances?

16 A We measured it, noise under maybe four  
17 different operating conditions. We measured at  
18 positions 1 and 2 with both the Crown AC unit  
19 operating and the Shelton unit operating. I have  
20 a copy of my report. I may need that to refresh  
21 my memory.

22 Q Well, let me show you what has been  
23 marked as Respondent's Exhibit No. 9.

24 MR. ELLEDGE: Madam Hearing Officer,  
disregard the post it note. This is a copy of the  
report the witness has. Would you take a minute  
to review what has been identified as Exhibit No.  
9, and then would you tell us what it is?

A Exhibit No. 9 is a letter in which I  
summarized the readings taken on Thursday, August  
15th. It describes several different operating  
conditions of the air conditioning unit, and the  
measurements taken at the identified measurement  
locations. It lists measurements taken at 1 and  
2, the Crown unit operating under what was termed  
the nighttime mode, and with the Shelton units on.  
Measurements were taken at positions 1 to 4 with  
the Crown unit on and the Shelton unit off. The  
Crown unit was also operating at nighttime mode.  
There were ambient measurements taken. Ambient,  
meaning both units were off and the noise sources  
were whatever was being produced from neighboring  
areas. We tried to take the measurements during  
quiet periods. There were aircraft flyovers, and  
dogs barking, and so forth. But, we tried to take  
the measurements when none of that was happening.  
The one sound we could not avoid was, I believe it

1 was insects or frogs or something. It was some  
2 critters were making noise, and that appeared in  
3 the 2000 hertz, primarily. Also, in the 4000  
4 hertz matter. We also made measurements with the  
5 Crown unit on, the Shelton unit off. The Crown  
6 unit was operating what was called the daytime  
7 mode, at 20 hertz. That pertains to measurement  
8 Position No. 4.

9 MR. DIVER: Madam Hearing Officer, I'm  
10 going to have to object, at this point, because  
11 there's been no foundation, at this point, as to  
12 the operating level at which the air conditioners  
13 were being operated. I haven't heard a foundation  
14 yet, anyway. So, I'm going to object to his  
15 testifying as to their actually operating at that  
16 level, or if he's just saying whatever level it  
17 was, we're calling it this.

18 A This is what it was termed.

19 THE COURT: Excuse me.

20 MR. ELLEDGE: We do have a foundation for  
21 measurements that were taken, and the operating  
22 mode it was in, and how it is, from the previous  
23 witness, Mr. Mautner. And, as far as the specific  
24 objection is concerned, the report is what it is,  
and he's testifying as to what he understood, I  
assume. And, I think there's nothing wrong with  
his testimony saying, describing in a narrative  
form what he heard.

MR. DIVER: That clearly isn't, as far as  
we're concerned, Madam Hearing Officer. As long  
as what he's saying, what I've written down under  
this column is under this column, I can't testify  
what the level was it was actually operating at, I  
don't know that.

THE COURT: Overruled. You may proceed.

A What I understood to be the Crown unit  
operating under daytime mode of 20 hertz, the  
Shelton unit off, was measured at Position 4. I  
believe there's an error here with Position 5. I  
believe that's in the wrong location.

Q I want you to take a pen and mark where  
you feel it should have gone.

A I believe it should be under the  
nighttime mode with the Shelton unit off. This was  
the very last measurement that we took. There was  
two, what they call daytime modes. One was 20  
hertz, then it was, I understood it to be cranked

1 up to 60 hertz, and set at that.

2 Q Let me stop you there. Were you asked to  
re-measure certain -- were you asked to reconduct  
3 certain tests at that point?

4 A After we had measured Position 4, what I  
understood to be daytime mode at 20 hertz, the  
5 unit was, the operating conditions were modified  
to operate daytime mode at 60 hertz, which I  
6 assume to be the most, under the most, the unit  
was under the most load, which should correspond  
to the loudest operating mode.

7 Q Did you notice any difference in the  
unit?

8 A Yes, it was louder. It shows in the  
measurements.

9 Q So, the latter measurement --

10 A The very last measurements would be under  
the most critical noise producing condition.

11 THE COURT: Sir, did you testify that  
there's an inaccuracy in that description of that  
12 position, or--is that correct?

13 A I'm saying that where it says Position 5  
was listed under the wrong heading. It was the  
14 last measurement taken. I had, I believe, after  
measurements 1 through 4 in that last section, I  
15 think we had thought that the measurements were  
over, and I believe they switched back to  
nighttime mode. That's my recollection.

16 Q You're not absolutely sure?

17 A I'm not absolutely sure.

18 Q But, in any case, Position 5 was the last  
measurement taken.

19 A And, I believe it was done, I think, I  
believe they had switched back to the nighttime  
20 mode.

21 THE COURT: So, what's shown under Crown  
unit daytime mode, 20 hertz on, Shelton unit off,  
22 where it says 5, Line 5 really should have been at  
the very bottom?

23 A It should have been two categories up,  
under where it says Crown unit nighttime mode on,  
Shelton unit off.

24 THE COURT: Okay.

MR. ELLEDGE: May I show this, please, to  
the Hearing Officer?

MR. DIVER: What's the Exhibit Number on  
this, Reece?

1 MR. ELLEDGE: 9.

2 THE COURT: All right. The clarification  
has been identified on the exhibit.

3 BY MR. ELLEDGE:

4 Q Now, what you have in front of you is  
Exhibit No. 9. Who prepared that?

5 A I prepared this.

6 Q And, does it truly and accurately reflect  
the sound measurement recordings that you made on  
the evening in question?

7 A Yes.

8 MR. ELLEDGE: I have no further  
9 questions. But, I would move the introduction of  
this document.

10 MR. DIVER: Madam Hearing Officer, if I  
could conduct a small voir dire with respect to  
these data. Obviously, he did not type these up  
on the spot.

11 THE COURT: Proceed.

VOIR DIRE EXAMINATION

12 BY MR. DIVER:

13 Q If I may. Mr. Elfering, did you prepare  
handwritten notes at the time of the recordation  
of the sound measurement levels?

14 A I have a handwritten tabulation of the  
data, and there was a heading, and I listed  
operating conditions.

15 Q Do you have that document with you?

16 A I do not. I faxed a copy to Reece.

17 MR. DIVER: Okay. I wonder if we can  
have that document marked as an exhibit number.  
You want to mark it yours or ours?

18 MR. ELLEDGE: Ours. Mark it as  
Respondent's No. 10. You want to take a look at  
it?

19 MR. DIVER: Sure, please, thank you.

20 BY MR. DIVER:

21 Q Okay. Mr. Elfering, the document that  
has just been marked as Exhibit No. 10, is that a  
true and correct copy of the handwritten notes  
that you made?

22 A Yes, sir.

23 Q On the evening of August the 15th, 1996,  
during these sound measurements?

24 A Yes.

Q And, can you tell us whether there's any  
information contained on those handwritten notes

1 that has not made its way onto the typewritten  
2 page dated August 16th, 1996, being Exhibit No. 9?

3 A I don't believe so. I believe all the  
4 information here is contained in Exhibit No. 9.

5 Q Okay. And, have you made, yourself, a  
6 cross-comparison for each of these numeric entries  
7 from the raw copy to the typewritten copy to  
8 verify that it's, indeed, the same number?

9 A Yes.

10 MR. DIVER: With that, I'd have no  
11 objection, providing 10 and 9 both come in.

12 MR. ELLEDGE: I move the introduction of  
13 both 9 and 10.

14 THE COURT: Respondent's Exhibits No. 9  
15 and 10 are entered into evidence. Thank you.

16 MR. ELLEDGE: I have no further questions  
17 of this witness.

18 THE COURT: Do you have  
19 cross-examination?

20 MR. DIVER: One moment.

21 CROSS EXAMINATION

22 BY MR. DIVER:

23 Q Mr. Elfering, on Exhibit No. 9,  
24 Respondent's No. 9, looking at the last mode,  
being Crown unit daytime mode, 60 hertz on,  
Shelton unit off. Looking at data set one and  
looking particularly at the number under 2000  
hertz.

A Yes.

Q That number is 42 decibels, is that  
correct?

A Correct.

Q That number itself, as compared against  
the IPCB nighttime standard of 30, is 12 decibels  
higher, correct?

A That number is 12 decibels higher.

Q All right. And, what does, what's the  
significance of the entry of 42 compared to the  
nighttime standards of 30?

A The number is higher. However, it's high  
for all locations. And, my belief is that this was  
caused by insect levels or animal life of some  
kind.

Q Is it your belief that the 42 itself is a  
recording of insect sound as opposed to the air  
conditioner?

A Yes.



1 Q Is sound additive in the environemnt?

2 A Sound is additive. However, you cannot  
3 discriminate between -- I can say that the air  
4 conditioner was not measurable in that respect  
5 because the sound was dominated by the insect  
6 level.

7 Q So, when we look at the section called  
8 Crown and Shelton units off, ambient noise for the  
9 same 2000 hertz level, we see 39. Then, we see 42  
10 under the --

11 A Two different locations, for Location 4  
12 ambient was 39, and Position 4 was the daytime  
13 mode, it was 40, undoubtedly, is variation in the  
14 animal noise. So, I don't see any significance of  
15 one decibel.

16 Q Looking at the same condition that we  
17 looked at initially in the Crown unit daytime  
18 mode, 60 hertz on, Shelton unit off. Looking at  
19 the 63 hertz band, you see an entry of 62.

20 A Yes.

21 Q Which, in and of itself, I guess, to my  
22 eye, doesn't appear so significant, except as  
23 compared to the two numbers on eiither side; that  
24 is the 54 at the 3100 hertz level, and the 55 at  
25 the 125 hertz level. Is there any possibility,  
26 within a reasonable degree -- strike that -- is it  
27 probable, within a reasonable degree of scientific  
28 certainty, that that recordation of a 62 indicates  
29 the finding of a discreet tone?

30 A It's possible, I don't know that you  
31 could say it's probable. It's an octave band.  
32 And, what's registered there as 62 could be due to  
33 either broad band source there, or a discreet  
34 tone.

35 Q What's a discreet tone?

36 A It would be -- well, a tone is it would  
37 be a single frequency, sound at a single  
38 frequency, something like a sign wave. A typical  
39 broad band noise has energy at the, over a band of  
40 frequencies, and that is what mind cannot  
41 discriminate between pure and broad band sound  
42 within an octave band, whatever an octave band is  
43 registered.

44 Q Is there a machine which can measure --

45 A Sure. You can get a Finner Filter  
46 setting to 1/3rd octave or 1/12th octave, or you  
47 can measure with what's called a FFT, that's a

1 transformer machine which will more closely  
pinpoint the individual frequency, FFT analyzer.

2 Q And what, if anything, is the  
significance of a discreet tone to the human ear?

3 A Discreet tone might be more noticeable  
than a broad band sound. I believe there's some,  
4 I believe it's -- a discreet tone can be more  
noticeable than a broad band source of sound. To  
5 my ear, I did not detect a discreet tone. The  
sound appeared to be broad band in nature.

6 Q Okay. Did you, on the evening of the  
test, detect any sound that might be described as  
7 a beating sound?

8 A I did not hear a beat, beating sound.  
Beating, meaning it's caused by two frequencies  
that are close together. And, the overall  
9 impression might be that it raises and lowers in  
level. I did not hear that.

10 Q At any of the locations?

A No.

11 Q Did anybody at the scene that evening  
bring to your attention that he or she had  
12 experienced a beating sound at one of those  
locations?

13 A I believe David Shelton made some comment  
when we were walking from Position No. 3. I did  
14 not hear that beating.

15 Q Would that position have been the  
so-called campground position?

16 A I'm not sure what you mean by campground.  
Position No. 3 was east of Position No. 1.

17 Q About 50 feet east?

A Correct.

18 Q Okay.

MR. DIVER: No further questions.

THE COURT: All right. No redirect?

19 MR. ELLEDGE: No, thank you.

THE COURT: Off the record for a moment.

20 (Off the record)

THE COURT: Back on the record.

21 MR. ELLEDGE: Would you swear the  
witness, please?

22 (Witness sworn)

P E T E R K E L L E R

23 after having been first duly sworn on oath,  
deposes and testifies as follows:

24 DIRECT EXAMINATION

1 BY MR. ELLEDGE:  
2 Q Would you state your name, sir?  
3 A Peter Keller.  
4 Q And, where do you reside?  
5 A 645 Sunset Lane, Glencoe.  
6 Q And, could you tell us what is your  
7 business or profession?  
8 A I'm a general contractor.  
9 Q How long have you been a general  
10 contractor?  
11 A Approximately 12 years.  
12 Q And, do you have a speciality in terms of  
13 types of construction you do?  
14 A Basically, single family home renovation.  
15 Q In the last 12 years, how many single  
16 family home renovation projects have you worked  
17 on, approximately?  
18 A Probably three or four per year, on  
19 average.  
20 Q So, we can do the math ourselves. Are  
21 you familiar with the residence of Steve and Nancy  
22 Crown on Ardsley?  
23 A Yes, I am.  
24 Q And, did you have some association with  
that residence?  
A Yes, I was general superintendent on that  
project.  
Q During what period were you doing so?  
A From May 8th of 1992 through March 15th  
of 1995.  
Q I'd like to show you what's been marked  
as Exhibit No. 49, which is a letter dated October  
11th, 1993. Have you seen that before?  
A Yes, I have.  
Q Okay. Do you recall having a meeting,  
prior to that date, with -- first of all, do you  
know David and Susi Shelton?  
A Yes, I do.  
Q And, have you had occasion to meet  
them -- did you have occasion to meet them during  
the course of the Crown project?  
A Yes, I did.  
Q And, did you have occasion to meet with  
them in early October of 1993?  
A Dates are going to be tough, but I met  
with them several times during the course of the  
job.

1 Q All right. Could you describe -- did you  
2 have occasion, when you met them, both at the same  
time, on the Crown property?

3 A I think that was just after we had turned  
4 on the air conditioning for the first time, and  
left it running at night.

5 Q All right. Who was present at that  
meeting?

6 A Just myself and the Sheltons.

7 Q Both Mr. And Mrs. Shelton?

8 A That's correct.

9 Q And, where did that meeting take place?

10 A Right at the front door to the property.

11 Q And, could you describe that, the  
12 conversation you had or that they had with you?  
13 Could you describe that meeting?

14 A Basically, Mr. Shelton was concerned with  
15 the air conditioning. He had informed me that he  
16 was part owner, I believe, of an air conditioning  
17 firm, if I'm not mistaken, in Ohio, and he asked  
18 me or -- no, actually, he told me that the air  
19 conditioning unit was about 8 tons, in a question  
20 form. And, I didn't disagree with that. At this  
21 point, I wasn't going to say anything until I  
22 talked to my boss.

23 Q Did you have any conversation with  
24 respect to moving the unit?

A I think the question was posed to me,  
could the unit be placed somewhere else on the  
property. And, yes, it could be placed somewhere  
else on the property. But, I built strictly by  
prescription. The unit was placed in a proscribed  
spot when I put it there, and I didn't have any  
alternative in the matter. As far as moving it  
somewhere else on the property, in construction,  
anything can be done. I could move the house on  
the property also. I mean, anything can be done.

Q All right. Could you tell us, at that  
time, what was the status of the HVAC project?

MR. DIVER: What date are we talking  
about?

MR. ELLEDGE: We're talking the date of  
the meeting, which has previously been identified  
early October, 1993.

MR. DIVER: Prior to the letter?

MR. ELLEDGE: Prior to the letter.

BY MR. ELLEDGE:

1 Q Now, could you tell me what was the state  
2 of the HVAC system at about that, in that period,  
early October?

3 A We fired the units up. We needed the  
4 units running to pull the moisture out of the  
5 building so we could continue with the millwork.  
6 And, obviously, to fire the units up, we were  
7 probably at somewhere in 95% completion at that  
8 point.

9 Q What other trades were working in the  
10 building at that time?

11 A All trades.

12 Q Could you name, generally, what those  
13 trades were?

14 A Well, all mechanical trades were still  
15 involved, plasterers were still touching up crown  
16 mouldings, millworkers were installing millwork,  
17 floormen were installing stone. So, basically, all  
18 trades were still involved.

19 Q Was there plumbing involved?

20 A Yes.

21 Q What was the state of the plumbing work?

22 A At that point, we were roughed in  
23 mechanically across the board. And, plumbing was  
24 being trimmed out as we completed the tile  
project.

25 Q What does it mean to be "roughed in"?

26 A That means the basic pipes are in place  
27 for the walls to be closed up, and the millwork to  
28 begin; cabinet placement, countertop placement,  
29 and so forth.

30 Q And, what generally is millwork, what is  
31 that? What kind of work is that?

32 A Wood.

33 Q Wook working?

34 A Right.

35 Q And, what was the state of the  
36 millworking at that point?

37 A It was probably, it was underway, and it  
38 was probably at something like, right now, I'm  
39 going to guess and say maybe 30%. And, that was  
40 the, that created the need to keep the air  
41 conditioners on, to pump the moisture out of the  
42 building.

43 Q Could you tell me what the state of the  
44 electrical work was?

45 A Once again, all mechanical trades were

1           roughed in, at that point. And, the electrical was  
being trimmed as we closed up certain walls.

2           Q       What would have been necessary in terms  
3 of all trades, to have undertaken to relocate the  
chiller unit at that time?

4           A       Well, the first thing we'd have to do is  
go through an engineering study, a feasibility  
5 study. But, as far as actually relocating it, you  
would involve HVAC, plumbing, concrete,  
6 landscaping, electrical, almost every mechanical  
trade would be involved in that procedure.

7           Q       Would this have been a lengthy process?

8           A       Very lengthy. And, at this point, since  
we are into millwork, very costly. It would have  
stopped the job.

9           Q       To relocate would have stopped the job?

10          A       Or risk the millwork, or the woodwork  
taking on so much moisture, that it would buckle,  
11 bow, and warp.

12          Q       And, can you make an estimate of what it  
would have done to the completion date for the  
13 job?

14          A       I think the engineering, you know, to  
move that HVAC unit, the engineering and  
15 feasibility studies would take longer than you  
could take, how could you say this, let's see.  
Engineering studies, and then move the thing,  
probably add somewhere to a year to the project,  
16 six months to a year, easily.

17          Q       Okay. In your judgment, would it have  
been feasible, at that stage, to have undertaken  
18 to relocate that unit?

19          A       Feasible?

20          Q       Feasible. Would it have been practical?

21          A       Not practical. Feasible, probably.  
Practical, no.

22          Q       After that meeting in 1993 that you've  
just described, were any, what steps were taken to  
23 control or reduce the sound from the unit, if you  
recall?

24          A       As I recall, we started with wooden  
fences. Then, we moved into landscaping. Then, we  
rotated the unit 90 degrees on its axis. Then, we  
went into sound blanketing on the compressors. And  
then, we went into quiet flow panel systems.

          Q       Now, let me direct your attention --  
those steps that you've mentioned took place over

1 a period of time, is that not right?

A That's correct.

2 Q Okay. I'd like to direct your attention  
to the summer of 1994, the following year.

3 A Okay.

4 Q On or about the end of June or the  
beginning of July, did you have occasion to have  
any conversations with either Mr. or Mrs. Shelton?

5 A I know that the Sheltons were over on the  
property a couple of times, taking pictures of the  
6 unit and so forth. I did see them a couple of  
times.

7 Q During that period that we're talking  
about, which is the June, July period of 1994, was  
8 the project visited by the police?

A Yes.

9 Q Can you describe what happened then?

10 A Well, there were a couple of incidents of  
noise not related to the air conditioning, and  
then there was an incident when the air  
11 conditioning was left on overnight, but I wasn't  
present for that.

12 Q Did you have occasion, during that  
summer, to visit with the Chief of Police, to meet  
13 with the Chief of Police of Wilmette?

A I did, I met with the Chief of Police to  
14 find out how we could resolve this because --

15 Q I'm sorry, I said the wrong name. I think  
it's Winnetka.

16 A Right, Winnetka. I met with him to find  
out how we could resolve this to leave the unit on  
so I could continue the project.

17 Q And, where was that meeting? Where did  
that meeting take place?

18 A At the chief's office.

19 Q And, did he direct you to stop the  
project?

20 A Negative. He indicated to me that it was,  
he was only following up on a nuisance complaint,  
and that it was pretty much out of his hands. He  
21 has, there's nothing more he can do than to ask  
everybody to go to neutral corners and go through  
22 legal action, I guess.

23 Q Are you familiar with people named Ken  
King and Ann Kirshner?

A They're Winnetka Village Officials.

24 Q During any time during that same period,

1 June, July of 1994, did you have occasion to meet  
with them?

2 A Yes.

3 Q And, where did that take place?

4 A I met them both in the Village Hall, and  
on the property.

5 Q Starting at the Village Hall, what time  
of day was it?

6 A In the morning.

7 Q And, who was present?

8 A Myself, the Village officials that you  
named, and Steve Crown.

9 Q And, what did you say, and what was said  
to you?

10 MR. DIVER: I'll object as to what was  
said to him, Madam Hearing Officer, as being rank  
hearsay.

11 Q What did you say to them -- yes, what did  
you say to them?

12 A Well, the meeting was to start the  
groundwork for the resolution of this whole  
problem. So, exactly what was said verbatim, I do  
not remember.

13 Q And, you said that later, I think you  
said later, there was, that meeting was adjourned  
and reconvened on the site?

14 A That's correct.

15 Q And, at that point, was the air  
conditioner, the Crown air conditioner unit,  
operating?

16 A Yes, it was turned on for that meeting,  
everybody listened to it. This was before the  
quiet flow panels, as I recall. It may have even  
been before the fence, but I'm not sure, to be  
honest with you.

17 Q All right. In July or in approximately  
that period, did you have occasion to meet Al  
Shiner?

18 A Yes, I met Mr. Shiner.

19 Q Could you tell us where that meeting took  
place?

20 A On the property, on the job site.

21 Q Do you know approximately what time of  
day?

22 A It was before lunch, as I recall.

23 Q And at that, what was the subject of that  
meeting?



1           A     He was there, as a sound engineer, to  
2     take some readings and come up with some kind of  
3     solution.

4           Q     And, were some solutions arrived at  
5     during the course of, or as a result of that  
6     meeting?

7           A     I think that's how we arrived at the  
8     quiet flow panel introduction.

9           Q     Thereafter, did you have another occasion  
10    to meet with the Sheltons or visit the Sheltons?

11          A     Steve Crown and I went over to see the  
12    Sheltons early one morning. It was a warm summer  
13    morning, and we walked around the property line,  
14    and over to the Shelton's side door. And, I do  
15    remember that, curiously enough, while you were  
16    standing there and the Shelton's air conditioning  
17    unit was on, you really couldn't hear the Crown  
18    air conditioning unit, which was on. But, Susi  
19    Shelton came to the door, and Steve and I assured  
20    her that we were taking all steps and making haste  
21    to resolve the problem.

22          Q     Okay. An air conditioning unit that you  
23    mentioned, where was it located on the Shelton  
24    house, on or near?

25          A     The one that I recall was on the ground,  
26    just to the west of their side door.

27          Q     Now, thereafter, you referred to quiet  
28    flow panels. Could you tell me what those are?

29          A     They are --

30                MR. DIVER: Objection, no foundation.

31                MR. ELLEDGE: It was in his testimony.  
32    I'm asking him to describe his own testimony.

33                THE COURT: Overruled.

34          A     They're a steel, they're steel insulated  
35    panels to direct noise.

36          Q     What, if anything, was done after the  
37    meeting you just described with Mrs. Shelton, with  
38    regard to sound attenuation in relation to the  
39    unit, the Crown unit?

40          A     What was done, I'm sorry?

41          Q     Yes. Was anything constructed?

42          A     Well, we went through a lot of different  
43    phases or steps to try and determine which would  
44    be the best approach to solve the problem.

45                MR. DIVER: Objection, Madam Hearing  
46    Officer, to further use of the word "we". I ask  
47    that this witness be instructed to testify about

1 what he experienced.

2 A When I say "we", I'm talking about myself  
3 and my crew of carpenters. They work directly for  
4 me. We constructed plywood fences up to 8 feet  
5 tall, took sound readings at various locations on  
6 the property, changed the height of the plywood  
7 fences. We were trying to enclose the noise and  
8 direct it upward, and see what that did for the  
9 noise level at the property line, and close to the  
10 unit.

11 BY MR. ELLEDGE:

12 Q Tell me about, did you employ the quiet  
13 flow panels that you've just mentioned?

14 A Yes, they were directed to be installed  
15 by Climate Temp.

16 Q What did they, could you describe the  
17 structure that was built?

18 A Well, to install the quiet flow panels,  
19 we had to extend the concrete base on the unit,  
20 and the quiet flow panels are bolted directly to  
21 the concrete base. And, it's a very tight,  
22 overlapping system that has access doors that you  
23 can disassemble to get to the unit for  
24 maintenance.

Q Okay. Now, after this structure was  
constructed, was the Crown air conditioning unit  
then operating?

A Yes, it was.

Q Did that enclosure have any noticeable  
impact, as far as you're concerned, on the sound  
coming from the unit?

A Well, I thought it did, yes. I thought  
it was much quieter. But, that wasn't the end of  
it. Then, we went to larger --

18 MR. DIVER: There's no question pending,  
19 Madam Hearing Officer.

20 A Sorry, pardon me.

21 BY MR. DIVER:

22 Q What further steps were taken after that?

23 A We went to different vegetation. We put  
24 up 16 foot arbor vitaes, stacked them very closely  
around the unit, and went to, we tried sound  
blankets on the compressors, as I recall.

Q During the course of this two year  
period, were you working closely with Mr. Crown?

A Absolutely, I reported to him on a daily  
basis.

1 Q And, were you in a position to observe  
2 what his response was to the various noise  
complaints?

3 A Yes, he was very concerned about it, and  
4 had made a statement to me, more than once, that  
5 he wanted to move into this neighborhood with no  
6 disturbance to the residents or his new neighbors  
7 around him, so that his family could move in, you  
8 know, congenially.

9 Q In your judgment, did he take this  
10 problem seriously?

11 A Absolutely. I was directed to take all  
12 steps and push all subcontractors in a high gear  
13 effort to resolve this problem.

14 MR. ELLEDGE: I have no further  
15 questions.

16 THE COURT: Do we have cross-examination?

17 MR. DIVER: Yes, Madam Hearing Officer.  
18 CROSS EXAMINATION

19 BY MR. DIVER:

20 Q Mr. Keller, you spoke just a moment ago  
21 about many things. But, one of the things you  
22 spoke about was an event involving the man held  
23 placement of plywood boards around the chiller  
24 unit to determine, presumably, what the effect of  
various heights of plywood boards would be on  
sound experienced outside the boards, is that  
correct?

1 A No, sir, that's not correct. They were  
not man held.

2 Q Oh, they were put in place?

3 A They were fixed, they were stationary. We  
4 built framework and affixed them to the framework.

5 Q Good. How many times did you do that?

6 A Three times, as I recall.

7 Q When was the first time that you did  
8 that?

9 A Dates are going to be tough here. I'm not  
10 going to be able to quote dates on this.

11 Q You've been telling us about an awful lot  
12 so far. If you can do that with precision --

13 A I looked up the date I started the job,  
14 and the date I quit the job, those you can take as  
15 fact. The rest of it's my best recollection. We  
16 have a noise problem here, and it was shortly  
17 after that noise problem that we started this  
18 panel system because -- actually, now that you  
19

1 mention it, it was probably in conjunction with  
2 Mr. Shiner. Because quiet flow, that's what the  
3 quiet flow system does, it directs the noise and  
4 air velocity up.

5 Q That's your understanding of what the  
6 quiet flow system does, that it directs sound up  
7 through the chiller unit?

8 A Not through the chiller unit, no.

9 Q Through what?

10 A Sound escapes from the chiller unit. It  
11 directs sound encased in the quiet flow system,  
12 up.

13 Q Up through what?

14 A Through nothing, there's no roof on it.

15 Q What's at the top of the chiller unit?

16 A Fans.

17 Q Okay. The fans open to the atmosphere,  
18 correct?

19 A That's correct.

20 Q So, the sound goes through the fan  
21 openings? No?

22 A I would have to say the air velocity goes  
23 through, at least --

24 Q What does the quiet flow system do with  
respect to the sound going through the fan  
openings?

A The quiet flow system is not tall enough  
to, I think, do much of anything with the air  
going through.

Q Okay. Let's get back to the  
experimentation with the plywood boards. I had  
asked you when, relative to your first hearing  
about a noise complaint, when, relative to that  
event, did you first experiment with placement of  
various sizes of plywood board around the chiller  
unit to see what their effect would be on sound?

A Well, I think that the first thing that  
was done was Mid/Res was notified of the sound  
problem. And, at some point, Mid/Res probably  
directed me or suggested that we try this as an  
experiment to see if panels would do any good.

Q Okay. Do you recall that being fairly  
close upon the heels of your being told of a noise  
complaint?

A Well, it had to be, because there was no  
fence around it, and we had put a fence around it.  
We put vegetation around it. And so, these things

1 were not there, in our way.

2 Q When you say you put a fence, you put  
some kind of fence around it later on?

3 A Stockade fence, that's correct.

4 Q This would be a cedar stockade fence,  
about six and a half feet tall?

5 A Yes.

6 Q Part of the original design of the  
condensor unit was to screen it visually from the  
residents of the house, as well as others?

7 A And, to muffle the sounds, I'm sure.

8 Q Was it also intended to muffle the sound?

9 A Sure, I would think so.

10 Q Do you recall whether or not the fence,  
as designed, had any insulation on the interior  
portion so of it?

11 A No.

12 Q It did not have?

13 A No.

14 Q Okay. Coming back, again, to the timing  
of the first incident with the placement of the  
plywood boards. I asked you whether that was  
fairly soon on following the complaint of noise  
that you knew about. I'm going to show you a  
document, which has been previously identified as  
Exhibit No. 78, and admitted into evidence, being  
a letter from Jack Doshi to you dated September  
21, 1993. Ask you to look at that, if you would.

15 A Okay.

16 Q Do you recall getting this letter?

17 A I recall it. I got letters, a lot of  
letters from Jack.

18 Q I'm sure you did. I'm sure you did. You  
recall him telling you he was going to be about  
the business of renting some sound measuring  
equipment for the purpose of measuring the sound  
which was emanating from the air conditioning  
unit. You recall his doing that?

19 A I know that Mid/Res was going to do that,  
yes, sir.

20 Q And, that he reported that to you,  
correct? And, the date here is September 21,  
1993. When, relative to that date, would you have  
been advised first of a complaint by the Sheltons  
of noise from this system? When, prior to this  
particular communication about measuring sound,  
would you have been told the Sheltons complained?

1           A     I don't know that, I don't know what the  
2     answer is to that question, to be honest with you.  
3     I don't know the date of the original complaint.

4           Q     Would it have been this month, the month  
5     of September of 1993?

6           A     You got me.

7           Q     Okay. Do you recall when the unit was  
8     actually installed and fired up; that is, when it  
9     first began operating?

10          A     No, I don't recall the exact date.

11          Q     Was it much before September of 1993?

12          A     No, I don't think it was much before  
13     that. But, I know it was hot and muggy, so we're  
14     on the right track. I mean, it was a necessity of  
15     having the unit to, you know --

16          Q     Do you recall actually being involved in  
17     a sound measurement event at the chiller unit  
18     shortly after you received this letter from Mr.  
19     Doshi in September of 1993?

20          A     I was present when Mid/Res came out and  
21     took sound measurements on the property.

22          Q     Do you recall participating in the sound  
23     measurements at all?

24          A     I did not. I was just, I was running the  
25     job at the time. I was in and out of that. I had  
26     carpenters, you know, if we were raising and  
27     lowering the wood at that time, we started with  
28     four foot barricades and we went up to 8 foot  
29     barricades. So, I was directing the carpenters.

30          Q     Do you recall this taking a couple of  
31     days to do; that is, that the experimentation with  
32     four foot, six foot, and eight foot panels  
33     occurred over a two-day period?

34          A     No, I don't. I recall one day. I don't  
35     recall a couple of days, but it's possible, I  
36     supposed.

37          Q     I'm going to show you a document which  
38     has previously been identified -- marked, excuse  
39     me, as Exhibit No. 81 and ask you to look at that,  
40     if you would, and tell me whether or not the  
41     markings on that diagram are, in any respect, in  
42     your hand?

43          A     Yes.

44          Q     Are those numbers in your hand?

45          A     Some of them look like they are, but  
46     these are not my 8's.

47          Q     What about the notation?

1           A     I think these, some of these side numbers  
2     are, you know, but I don't make a 8 like this.  
3     Somebody else made some of these notations.  
4           Q     You also see a fax note on that diagram?  
5           A     Yes, I do. Yes.  
6           Q     Indicating October 6th, 1993?  
7           A     Yes.  
8           Q     Do you recall faxing that document to  
9     somebody on or about October 6th, 1993?  
10          A     I may have faxed it, yes.  
11          Q     Do you recall faxing it to somebody?  
12          A     Oh, certainly, I probably did. We had a  
13     fax in the office.  
14          Q     Who did you fax it to?  
15          A     I probably would have faxed this to  
16     Mid/Res and faxed it to Steve Crown.  
17          Q     Okay.  
18          A     All parties concerned.  
19          Q     Okay. Do you recall actually  
20     participating in the reading of the noise  
21     measuring equipment; that is, actually looking at  
22     the numbers that were shown on the noise measuring  
23     equipment, and then recording them in these  
24     columns?  
25          A     No, I think the closest I got was with a  
26     gentleman named Harry Akers. And, I was standing  
27     next to him, and he was holding a unit.  
28          Q     Do any of these numbers appear to be  
29     numbers that you entered on the actual diagram?  
30          A     Well, that's pretty tough to say. You  
31     know, some of them could be my numbers. I mean, I  
32     probably was standing there and writing down what  
33     they told me, you know. I was helping out in any  
34     way I could.  
35          Q     Do you remember a gentleman by the name  
36     of John Gazelle being present?  
37          A     Yes, he was the head mechanic for Mid/Res  
38     that installed the system.  
39          Q     Do you recall ever having seen what has  
40     been previously marked as Exhibit 80 C?  
41          A     I've seen this.  
42                 MR. DIVER: Okay. Madam Hearing Officer,  
43     before I forget, let me move the introduction of  
44     Exhibit No. 81 into evidence.  
45                 MR. CARSON: I just don't recall what  
46     other foundation there was. Was there any other  
47     testimony regarding Exhibit No. 81, other than

1 what we just heard? If that's all, I don't  
recall --

2 MR. DIVER: Other than the fact that a  
3 less clear copy of it appears in John Gazelle's  
4 testimony as it's being admitted, Exhibit No. 80  
B.

5 THE COURT: Yes, Exhibit No. 81 has not,  
per se, been introduced into evidence until today.

6 MR. DIVER: This is Exhibit 80 B and this  
is, apparently --

7 THE COURT: Exhibit 80 Sub B was entered  
into evidence for a limited purpose on July 12th.

8 MR. DIVER: We now have the author of at  
least a large part of this document, and a clearer  
9 copy of it, also indicating the date of it, and  
indicating the transmission of it. And, that's why  
I'm moving for its admission, Madam Hearing  
Officer, as a separate document.

10 MR. CARSON: I don't believe these are  
the same numbers that are in there, or the same  
11 document. If you look here, under six foot fence,  
four sides, it looks like a 58. And here, it's a  
12 58.3. And, it appears to be in different hand.

13 MR. DIVER: Okay. Let me ask this  
witness -- you're right, it does.

14 MR. CARSON: Yes, no, they are.

15 THE COURT: I have a related question.  
Mr. Keller, are you the author of this document?

16 A I set up the format. I set up the grid  
pattern and --

17 THE COURT: Who would have filled it in?

18 A Probably the gentlemen that were doing  
the sound tests.

19 THE COURT: And, who were those  
gentlemen?

20 A As I recall, it was Harry Akers and John  
Gazelle. It was Mid/Res. It was their team.

21 THE COURT: Okay. Proceed, counsellor.  
BY MR. DIVER:

22 Q Showing you now what's been previously  
marked as Exhibit No. 80 B. Looking at the  
23 numbers on that document, do those numbers appear  
to be in your hand at all?

24 A No.

Q Okay. So, those numbers aren't in your  
hand?

A I don't think so, no, no, sir.



1 Q But, you believe that the numbers on  
Exhibit No. 81 --

2 A I think that the perimeter, actually, not  
even the perimeter. I don't make 8's like this.  
3 These are not my 8's, but I did write property  
line, front door, adjoining property, I set up the  
4 grid pattern and was trying to assist, yes.

5 Q Do you recall when you actually did that  
on site?

6 A Well, let's shoot for on or about October  
6th.

7 Q Okay.

8 MR. DIVER: I would move, again, Madam  
Hearing Officer, that this document be admitted as  
being information that had been transmitted, by  
9 this particular witness, to Mid/Res and to Steven  
Crown with respect to the noise readings that  
10 occurred on or about October 6th or 7th, according  
to other witnesses.

11 MR. CARSON: We're objecting to this  
because there's no foundation with respect to the  
12 measurement. Your Honor may recall the, at least  
one of the gentlemen that was operating the  
equipment was here, and he didn't know what it  
13 was, how to calibrate it, had never done it  
before. The measurements themselves, there's just  
14 no foundation for it.

15 MR. DIVER: Madam Hearing Officer, if  
that's the objection, similarly, to the other  
document, I'll restrict its utilization to being  
16 information that was communicated, not for the  
proof of establishing that these are, indeed,  
17 proper numbers read by an IPCB proper piece of  
equipment in a proper protocol, but that these  
18 were numbers that were communicated by this  
witness to the Respondent.

19 THE COURT: To the Respondent?

20 MR. DIVER: To Steven Crown.

21 THE COURT: Mr. Keller, was that your  
testimony?

22 A Well, I mean, I set up the grid pattern  
and I was assisting Mid/Res in taking the sound  
readings. What I know of sound readings is  
nothing. But, I was trying to assist, yes.

23 THE COURT: Who did you send it to?

24 A I probably -- well, obviously, it was on  
file in my office. And, I would assume that I

1 sent it to Mid/Res probably to -- well, I mean,  
2 that was the only company that was really involved  
at the time.

3 THE COURT: Would you also have sent it  
to Mr. Crown?

4 A Well, it would be in my office, if I  
5 didn't send it to him, it's in my office. So,  
6 he's privy to everything that's there. But, I  
7 mean, whether I sent it to Steve's office, I don't  
know. Actually, at that point in time, I really  
think it was a Mid/Res issue because we were  
looking to Mid/Res to quiet this thing. They  
installed it.

8 THE COURT: Okay. Then, that I think my  
9 question clarifies your limitation for its  
introduction. Is there an objection to that, to  
the introduction of it as an exhibit, with that  
limitation?

10 MR. CARSON: Yes, we object to it because  
11 there's no fondation for the numbers themselves.  
12 And, without any foundation for the numbers  
13 themselves, the document doesn't have any meaning.  
It's unuseable. I don't think it's, there's a  
sufficient foundation laid for it. We don't even  
know how this document was created.

14 THE COURT: The objection is overruled,  
15 and the document will be entered into evidence.  
The Board will determine the weight of the  
evidence.

BY MR. DIVER:

16 Q Ask you now to look at Exhibit No. 80 C,  
17 and ask you if you've ever seen that drawing  
before?

A Yes, I have.

18 Q Okay. Any part of that drawing in your  
hand?

19 A No.

20 Q Okay. Do you recall having seen that  
drawing at or about the time that it was made?

21 A Well, I've seen the drawing. I don't know  
exactly when I saw it, but I have seen it.

22 Q Okay. Were you present at the time that  
gentleman by the name of John Gazelle prepared it?

A Well, I was on the job site.

23 Q Okay. Do you recall seeing it at the time  
24 that it was being prepared during the tests for  
noise, on or about October 7th of 1993?

1           A     No. I wasn't, I didn't hang around and  
2     take part in this because, number one, I don't  
3     know anything about it. And, number two, it's a  
4     18,000 square foot project, and I was very busy.

5           Q     No, I understand that. But, my question  
6     was --

7           A     I knew it was going on, I know that they  
8     were doing it.

9           Q     And, they were using your carpenters for  
10    the purpose of putting up the boards?

11          A     That's correct.

12          Q     And, did somebody report to you as to  
13    what the consequence of, in sound testing was?

14          A     Well, even if they had told me the  
15    decibel numbers, I wouldn't know whether it was  
16    good, bad, or indifferent. I do recall the noise  
17    from overhead jets, and we're right under a  
18    traffic pattern at that point. And, I thought that  
19    that was something that should be taken into  
20    account.

21          Q     But, did somebody report to you the  
22    consequences of the test, other than in decibels,  
23    even in terms of the amount of noise from the  
24    equipment, or the effect of the placement of the  
25    plywood boards?

26          A     I'm sure somebody told me that it was a  
27    couple of points up, down, or around, yes, sir.

28          Q     Do you recall what it was that they  
29    reported to you?

30          A     No, I did not.

31          Q     Is it your recollection that this noise  
32    measurement occurred prior to the time that you  
33    met with Mr. and Mrs. Shelton for the first time  
34    at their doorstep?

35          A     I didn't meet at their doorstep. I only  
36    met Mrs. Shelton at the doorstep with Steve Crown.

37          Q     Okay. Where did you meet Mr. and Mrs.  
38    Shelton on or about October 11th or just before  
39    their October 11th letter?

40          A     They came over to the property and were  
41    looking at the unit, and I came out and met them.

42          Q     Okay. Is it your recollection that prior  
43    to the time that you met them, that these noise  
44    measurements had already been taken?

45          A     No, sir, I don't think so.

46          Q     Your recollection is that the noise  
47    measurements occurred after you met with them?

1           A     Well, I guess I can't answer that  
question, I'm sorry.

2           Q     Do you recall that the noise measurements  
3           occurred before the October 11th, 1993 letter that  
kind of began your testimony?

4           A     I'm sorry, I can't answer, I don't know.

5           Q     Do you recall ever reporting any to Mr.  
and Mrs. Crown in any of these conversations,  
6           October of 1993, the consequences of the noise  
testing that was done?

7           A     The contents?

8           Q     The consequences, what was learned from  
the noise testing?

9           A     No. I'm sure that Mid/Res was reporting  
directly --

10          Q     To the Sheltons?

11          A     No, to Mr. Crown.

12          Q     All right. Did you tell Mr. and Mrs.  
Shelton, at any time during October of 1993, in  
13          any of your meetings that you may have had with  
them, or conversations, about the fact that noise  
14          testing had been done early in the month of  
October?

15          A     If they had asked me, I probably would  
have told them I don't recall.

16          Q     Do you recall offering that information  
to them?

17          A     I only met with them a couple of times.  
I don't know that noise testing came up in  
18          conversation.

19          Q     Okay. You recall the actual  
configuration of the plywood boards around the  
20          chiller unit, where they were with respect to the  
various faces of the chiller itself?

21          A     Yes. All four sides.

22          Q     Okay. At about what distance were these  
plywood boards located from the actual respective  
23          chiller faces?

24          A     It would have been just over the edge of  
the concrete pad, which puts them at roughly  
inside two feet off the chiller.

          Q     Now, the location that had been  
established for erecting those plywood boards,  
that was not the location, was it, for the fence  
that was to go around the unit?

          A     The fence was basically far enough away  
from the chiller so the service man could get to

1           it on 360 degrees.

2           Q     Right.  But, my recollection -- strike  
3           that -- was the actual proposed fence that was  
4           supposed to go around the unit, further away from  
5           the chiller faces than the location where you put  
6           the plywood boards?

7           A     Yes, probably by about a foot or so.

8           Q     Is it your understanding, from the  
9           experimentation with the plywood boards, that this  
10  
11  
12  
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24

1 was their intention, to actually erect some kind  
of pen around the system to quiet it?

2 A Well, that's what I assumed. What we  
were doing was trying to figure out a way to quiet  
3 it, yes.

4 Q When was a pen ultimately put around the  
facility; that is, a pen whose function it was to  
actually attenuate the sound?

5 A Quiet flow system.

6 Q Yes.

7 A Probably the following, I'm going to  
guess here the following spring or --

8 Q Would the spring of 1995 ring a bell?

9 A I'm trying to think if we assembled that  
during the winter or not, but I'm sorry, I can't  
10 tell you.

11 Q Do you recall whether the quiet flow  
system was actually installed after the Shiner  
test of the sound from this system in July of  
1994?

12 A Well, that was -- I'm sorry, I can't  
recall. I know that the whole procedure was long  
and drawn out. Answers come very slowly.

13 Q Okay. Would you consider it to be an  
incorrect statement in the fall of 1993, that's  
September, October, November of 1993, an incorrect  
14 statement to say that the air conditioning system  
was not necessary because there was no millwork to  
15 preserve and protect?

16 A Yes, I think that's incorrect.

17 Q Is there a possibility that you're  
incorrect on your attention of the years in which  
the millwork became an issue. Is it possible that  
the millwork issue is a 1994 summer issue and not  
18 a 1993 issue?

19 A The only thing I can remember, the one  
thing I do remember is the fact that I needed the  
air conditioning system, and when we fired it up,  
20 I needed it at that point. That much, I remember.  
See, the floors go in first. So, before the  
21 millwork goes in, in certain rooms like the family  
room, which is wall-to-wall millwork, and the  
22 kitchen, which is wall-to-wall cabinets, the  
floors had to go down first. And, to get the  
23 moisture out of the building, so we could put the  
floors in, we needed the air conditioning system.  
24 And, in fact, we didn't have it, and we put it

1 down and the floors did buckle. So, I do remember  
2 that by the time the air conditioning system went  
on, I was in desperate need of it.

3 Q Do you recall that buckling issue  
occurring in the late spring, early summer of  
1994?

4 A No, earlier than that, I believe.

5 Q Showing you now what's an unmarked  
document, entitled Draft, with a date July 8th,  
1994. That, again, it says the following is from  
6 Pete Keller. I'd like you to look at this  
document, and tell me if that document was first  
7 prepared by you.

8 A Well, it wasn't prepared by me, no.

9 Q All right. Would you review the  
information that's contained in it, and tell me if  
it refreshes your recollection as to the timing of  
the issue with the floor buckling?

10 A My recollection on dates is pretty vague,  
so it sounds to me like the timing could be right.  
11 It's summertime. The floor did buckle.

12 Q But, in 1994, not 1993, is that your  
recollection now?

13 A All right, that's fine.

14 Q Okay. Were you responsible for the  
landscaping in the sense that, responsible for the  
whole job? Was landscaping one of the  
responsibilities that you had as the general  
15 contractor?

16 A No.

17 Q Who was responsible for that, as best you  
understand?

18 A Scott Byron.

19 Q And, to whom did Mr. Byron report?

20 A Steve Crown.

21 Q Okay. So, he did not report to or through  
you?

22 A No.

23 Q Do you, then, know what Scott Byron's  
plan was for providing a visual screen around the  
chiller unit in October of 1993?

24 A I'd seen a couple of renditions of what  
was going on on the paper.

Q Okay. In October of 1992, what was your  
recollection, or what's your recollection that the  
design by Byron was for landscaping activities  
around the chiller unit?

1           A     Actually, I don't think, in October of  
2 anything of it, in that early stage. I had just  
3 started that spring, and that was the last thing  
4 on my mind, at that point, believe me.

5           Q     When do you recall first becoming  
6 involved with the landscaping aspect of this  
7 development?

8           A     I never became involved in it.

9           Q     When did you first become cognizant of  
10 what it was that the landscapers were doing or  
11 planning? When, in the process of your  
12 involvement?

13          A     Somewhere during the course of my job,  
14 what would you like?

15          Q     A time.

16          A     A time.

17          Q     Uh huh.

18          A     Somewhere between 7:00 and 3:30.

19          Q     Okay. I'm talking about now, a date.

20          A     Well, I'm sorry, I mean, I had seen -- I  
21 was not invited into the landscaping. But, did I  
22 see plans, I may have glanced at some plans, yes.  
23 It was not in the scope of my contract.

24          Q     When you first recall seeing a plan, with  
respect to the nature of the landscaping around  
the condensor unit, what was that plan?

          A     I don't know that I saw a plan, I just, I  
was told that we were going to stand 16 foot arbor  
vitaes around, and also told that we were going to  
stand 16 foot arbor vitaes on the north property  
line, full length of the property line, which we  
did.

          Q     Do you have any knowledge whether or not  
that was a part of the plan for landscaping, prior  
to the noise complaint from the Sheltons?

          A     I was under the impression it was a  
direct result.

          Q     Who do you recall being the source of the  
suggestion that a planting of arbor vitae would  
diminish sound being experienced on the Shelton  
property?

          A     I don't recall anybody saying that that  
would diminish sound. I don't recall that.

          Q     When do you first recall having a --  
strike that -- when do you first recall having  
knowledge of a proposed fence as opposed to an



1           acoustical enclosure, some kind of a fence around  
the chiller unit?

2           A       The fence around the chiller unit and the  
fence on the property line went hand-in-hand.

3           Q       Okay. Had there been a fence proposed  
4           for the chiller unit before the sound, before the  
noise complaint by the Sheltons?

5           A       I think there was, to screen it so you  
wouldn't see it.

6           Q       Right. And, was there any change made to  
that fence after the noise complaint?

7           A       Yes. We put a stockade fence the full  
length of the north property line.

8           Q       Other than the property line fence, I'm  
9           talking about the fence around the chiller unit  
itself, was there any change in it from what had  
been proposed as a screen, to something with  
respect to noise control?

10          A       No, not to my recollection.

11          Q       Now, I'm showing you now what have  
12          previously been marked and admitted, Exhibits 101  
and 27, being a document from Jack Doshi to Chuck  
Himes with a c.c. to you. And, an attachment to  
13          that fax being a Jack Doshi diagram of 10-5-92.  
The first being Exhibit No. 101, the second being  
14          Exhibit No. 7. I ask if you would look at that,  
please. Tell me whether or not you recall  
receiving those two documents.

15          A       Okay. I think I remember these.

16          Q       Okay.

17          A       Yes.

18          Q       Asking you to look at what has been  
19          marked as Exhibit No. 27 first, Item 2 at the  
bottom.

20          A       Uh huh.

21          Q       That asks the question, will there be any  
22          insulation in this wall or fence? Do you recall  
23          reading that sentence at or about the time you  
received it?

24          A       Probably, yes, sir.

25          Q       Do you recall whether there was to be any  
insulation in that fence at that time?

26          A       Not to my knowledge.

27          Q       You understood insultation to be sound  
insulation?

28          A       Sound attenuating material of some kind.

29          Q       Thank you. I'm showing you what has been

1 previously marked and admitted as Exhibit No. 103,  
2 being a memo from Jack Doshi to you with an  
3 attached diagram. And then, Exhibit No. 104, which  
4 has been admitted. And, I'll ask you to look at  
5 those, if you would.

6 A Okay.

7 Q Do you recall receiving the memo from Mr.  
8 Doshi with the diagram?

9 A Yes, this was in regard to turning the  
10 unit 90 degrees.

11 Q Right, right. But, you recall receiving  
12 that memo from him, and the diagram?

13 A Well, I see it now, yes.

14 Q Let's look at Exhibit No. 104. Any of  
15 your handwriting on that document?

16 A The dimensions, he asked me for  
17 dimensions.

18 Q Okay. And, dimension were written down by  
19 you, and transmitted back by fax to Mr. Doshi,  
20 correct?

21 A I think so, yes, sir.

22 Q Okay. And, would you have any reason to  
23 have put the wrong dimensions down on this  
24 document?

A No.

Q Showing you now what's been admitted as  
Exhibit No. 31, purporting to be a letter from  
Gary Elfering to you dated March 7th, 1994,  
concerning some proposed changes to the HVAC  
system.

A Okay.

Q Asking you if you recall receiving that  
document?

A I recall receiving it.

Q Do you recall receiving a proposal with  
respect to changes to the HVAC system necessitated  
by the Shelton noise complaint?

A Yes -- say it again, sir.

(WHEREUPON, the record was read by  
the Court Reporter.)

A I remember that Mid/Res was trying to  
solve the noise problem.

Q Look at the proposals that are indicated  
there.

A I see it, sound blanketing, which burned  
up the compressors. I remember that, yes.

Q When do you recall the sound blanketing

1 was put on, after this proposal to you?

2 A I can't tell you, I'm sorry, I can't tell  
3 you. The job spanned three years. I'm not going  
4 to be able to tell you when these dates were or  
5 what, you know. I remember the problem, and I  
6 remember the steps we took to alleviate the  
7 problem. I know that the blanketing, I believe,  
8 was put on -- well, it didn't take long to burn up  
9 the compressor. The blanketing smothered the  
10 compressor. It overheated and burned up, I  
11 remember that.

12 Q So, it was removed?

13 A It was, the blanketing, correct. It had  
14 to be.

15 Q That would have been in 1994?

16 A Here we go again.

17 Q If you don't recall, all you have to say  
18 is you don't recall.

19 A Okay. I don't recall, sorry.

20 Q I'm not here to make you think of things.

21 MR. CARSON: Ms. Edvenson, may --

22 THE COURT: I'd like to go off the record  
23 for a five minute recess.

24 (WHEREUPON, a short recess was  
taken.)

AFTER RECESS

1 THE COURT: We've had our afternoon  
2 break, and we'll go back on the record and  
3 continue the cross-examination of Mr. Keller.  
4 BY MR. DIVER:

5 Q Mr. Keller, do you recall that the sound  
6 insulation and the compressor blanket were  
7 actually installed in the chiller unit itself, at  
8 the time of the sound test in early October of  
9 1993?

10 A I do not recall the exact timing. I do  
11 recall the product and seeing the product  
12 installed. I don't recall the exact time, whether  
13 it was before the test or after the test, I'm  
14 sorry.

15 Q My question is whether you recall Mid/Res  
16 telling you, before they sent you this proposal  
17 for work to be done in March of 1994, whether they  
18 told you before that, March of 1994, that they had  
19 seven months earlier, already installed the  
20 insulation in the unit?

21 A No, I don't recall that.

1 Q Do you recall that being the fact, that  
2 they had installed the insulation in this chiller  
3 unit -- not 7 months, let's see, 5 months before  
4 this letter to you?

5 A I'm sorry, no, I do not recall one way or  
6 the other.

7 Q Okay. Showing you now what has been  
8 previously marked as Exhibit No. 68 and admitted  
9 as such. Ask you to look at that document, if you  
10 would. Ask you first, if the first page of that  
11 document is in your hand?

12 A Yes, it is.

13 Q And, this would be a document that you  
14 sent to Mid/Res on July 12th, 1994?

15 A Right.

16 Q Do you recall this being on the day of or  
17 immediately after a meeting where Brad Mautner was  
18 present and yourself, to discuss a solution to the  
19 noise problem?

20 A There was a meeting, and it was about the  
21 noise, and this was a, this was my rendition of  
22 how to solve it.

23 Q All right. Was this particular rendition,  
24 this diagram, something that was the subject of  
discussion, if not as a diagram, as a concept, at  
that meeting?

A Yes, it was discussed, yes.

Q All right. And, part of that concept  
involved, as you indicate here, on Page 1, that  
you're shooting for a full roof cover, less the  
chiller area, correct?

A That's correct.

Q Okay. I'm showing you now what has been  
previously marked as Exhibit No. 34, being a  
letter from Alan Shiner to David Shelton on which  
you're shown as c.c. of the same date, July 12,  
1994. Ask you to look at the letter and at the  
diagram that's attached to it.

A Okay.

Q Ask you to compare the diagram that I've  
shown you in Exhibit No. 68 with the diagram in  
Exhibit No. 34.

A Okay.

Q Are there any changes, are there any  
differences in the two documents?

A Acoustical baffles, fiberglass lining,  
sound, the sound bats were there, but there are

1 some additional sound bats, I see those.

2 Q All right. You see over the three fans  
3 on Exhibit No. 34 an indication of acoustical  
4 baffles, correct?

5 A Yes.

6 Q Was it your understanding, at the meeting  
7 with Mr. Mautner, that the subject of putting  
8 acoustical baffles over the fans themselves was a  
9 discussion item?

10 A Yes.

11 Q Okay. That over the rest of the chiller  
12 unit, which is described as the area called "flat"  
13 on your diagram, the rest of that was to be a  
14 solid cover, is that correct?

15 A Yes, that was my idea.

16 Q Was that shared by anybody else at the  
17 meeting?

18 A Well, I was shot down on it because of  
19 breathing capacity for the unit.

20 Q You were shot down, on this day, on this  
21 document?

22 A No -- well, no. Shortly after I drew  
23 this, I was told that, you know, the unit is going  
24 to choke itself off. It's not going to have  
25 enough breathing capacity.

26 Q And, who told you that?

27 A I don't know if it was Gary Elfering or  
28 Harry Akers or somebody at Mid/Res. They just  
29 thought it wasn't such a good idea.

30 Q What about the sound bats that are shown  
31 on Exhibit No. 34 that are not shown on the roof  
32 line of your Exhibit No. 68? Do you recall that  
33 those sound bats on the roof line were a  
34 discussion item at the meeting with Mr. Mautner?

35 A Sound attenuating material inside the  
36 structure was a discussion.

37 Q Right. What about sound attenuation  
38 material in a rooftop structure?

39 A Well, obviously, they added it.

40 Q All right. But, was that something that  
41 was discussed at the meeting that you had with Mr.  
42 Mautner, in which you discussed solutions to the  
43 problem?

44 A No, I don't think it was discussed  
45 originally, or I probably would have drawn it on  
46 here. It looks like it was added after the fact.

47 Q All right. The two documents are dated

1 the same date, July 12th, am I correct?  
A They are, yes.

2 Q The difference being one is from you and  
one is from Mr. Shiner, correct?

3 A Okay.

4 Q When you received Mr. Shiner's diagram,  
did you call him and tell him hey, those weren't  
things that we discussed, those additions he made?

5 A No, he's the engineer.

6 Q And, your testimony is, as best you  
recall it, you don't know who it was with Mid/Res  
who shot down the idea of the rooftop cover, is  
that correct?

7 A I just remember somebody telling me that  
8 this unit has to breathe, you know, and we're  
going to need more air movement.

9 Q Do you recall when, relative to this  
discussion of July 12, 1994, that communication  
10 was made to you, even if you don't remember who  
did it?

11 A Well, I mean, I drew it with the best of  
intention, thinking that would be the way to  
12 enclose the unit and make it quieter. And,  
obviously, we didn't build that because I'm not an  
13 engineer, and it wasn't going to work, I guess.

14 Q Was a rooftop unit discussed in the July  
11th or 12th meeting?

15 A Rooftop, on the top of the house?

16 Q Rooftop, on the top of the chiller unit,  
some kind of housing over the top.

17 A Oh, baffling.

18 Q Baffling.

19 A Yes, baffling was discussed, that's  
correct.

20 Q Was there a consensus, among the people  
that were there, that that was something that  
ought to be tried?

21 A No. As far as I remember, the consensus  
was that you would slow the flow of air down.

22 Q At the meeting that you drew this diagram  
in response to?

23 A At the time that was drawn, baffling was  
the idea.

24 Q Okay.

A But, the follow up was that not only the  
flat roof, but baffles over the fans would choke  
the unit off.

1 Q Do you recall why the people who were  
2 having the discussion about baffles, including  
3 yourself, why there was that discussion about  
4 having some kind of control mechanism over the  
5 fans themselves?

6 A They were trying to quiet the wind, air  
7 velocity.

8 Q Was there discussion, at that time, that  
9 the fans were, at least at that time, the lowest  
10 single element of the system?

11 A No, I think that low velocity noise was  
12 the biggest concern at the time.

13 Q And, the low velocity noise was coming  
14 from?

15 A The compressors.

16 Q And, how was the low velocity noise to be  
17 controlled, as best you understand it?

18 A I think, with the, eventually, through  
19 the quiet flow panels.

20 Q That would be the panels on the side of  
21 the chiller unit?

22 A Right.

23 Q And the enclosure around the sides?

24 A That's right.

Q Showing you what's been previously marked  
as Exhibit No. 23, and ask if you would look at  
that document, please, sir.

THE COURT: This is the first  
introduction of Exhibit No. 23?

MR. DIVER: Yes. I believe it is, Madam  
Hearing Officer.

BY MR. DIVER:

Q Do you recall that communication, and the  
documents that are attached to it?

18 A Yes.

19 Q And, you actually signed it and accepted  
it on September 9th, 1994?

20 A Right.

21 Q This is the cost package for the quiet  
flow panels that you've described?

22 A That's correct.

23 MR. DIVER: Move the introduction of  
Exhibit No. 23, your Honor.

24 THE COURT: Is there an objection?

MR. ELLEDGE: No objection.

THE COURT: It will be entered into  
evidence. Exhibit No. 23 is entered into evidence.

1 BY MR. DIVER:

2 Q I'm showing you what's been previously  
3 marked as Exhibit No. 87 and admitted, and the  
4 testimony being a statement dated April 11, 1995  
5 from Mid/Res, stating the cost, at that point, of  
6 the HVAC system. The document was addressed to  
7 you. Do you recall receiving the document?

8 A Yes, I recall this.

9 MR. DIVER: No further questions about  
10 that.

11 BY MR. DIVER:

12 Q Earlier in your testimony, you talked  
13 about your attendance at the site, and the fact  
14 that there were all manner of tradespeople  
15 working; mechanical, millworkers, stone people,  
16 electrical people, et cetera. You recall that  
17 testimony?

18 A Yes, sir.

19 Q Were the Crowns living in the residence  
20 at that time?

21 A Negative.

22 Q Approximately how many people would be  
23 working on the job site at any given time during  
24 that period?

25 A 28 to 30, 35, around in that  
26 neighborhood.

27 Q All right. You had given us an  
28 expression of opinion with respect to the cost, or  
29 at least the elements that would be involved in  
30 the cost of relocating the HVAC, the chiller unit.  
31 Do you recall that testimony?

32 A Yes, I do.

33 MR. ELLEDGE: Object -- I'm sorry, I do  
34 not recall him answering any question with regard  
35 to cost.

36 MR. DIVER: It would cost a lot of money.  
37 You recall saying it would cost a lot of money to  
38 do it, it would stop the job?

39 A Well, if I don't recall, I'll say it now.  
40 It will cost a lot of money.

41 THE COURT: I believe there was some  
42 general testimony to that effect.

43 A Certainly, it would have cost a lot of  
44 money.

45 BY MR. DIVER:

46 Q Sure. Was that opinion based upon your  
47 assumption that, at the time that you talked to



1 the Sheltons about relocation -- was it your  
2 assumption that, at that time, you talked to the  
3 Sheltons about relocation, that the millwork was  
4 already 40% done, and the electrical was roughed  
5 in and being trimmed, and that all these things  
6 were pretty far advanced down the line?

7 A Well, the piping for the AC unit is  
8 behind the walls. So, to change the AC unit, you  
9 got to open the walls and ceiling.

10 Q Okay.

11 A What's the question?

12 Q The question is, did you assume that the  
13 millwork was more than 40% done at the time that  
14 you made your estimate as to whether it would be  
15 feasible?

16 A I think I said 30%, didn't I?

17 Q I wrote 40, but if you said 30, I'll  
18 accept it.

19 A Whatever, 30, 40%, we were in there.

20 Q What I'm trying to determine is whether  
21 or not your assumptions of the level of the work,  
22 that the place where work was, is assuming the  
23 work level in the summer of 1994, as opposed to  
24 the work level in the Fall of 1993. What I'm  
trying to find out now is, if there's still that  
possibility that when you made the assumptions  
with respect to the efforts that would be needed  
to be undertaken to relocate the air conditioner  
to another location in October of 1993, whether  
you assumed that, actually, the 1994 status of  
development was existing?

A Well, I don't think, it really doesn't  
have much to do with millwork. The millwork issue  
is that the millwork expands and contracts, and we  
needed to pump the moisture out of the building  
unit. It takes about 8% moisture to install  
millwork safely. It's not so much a millwork  
issues, it's the fact that you have to go backwards  
on the job because you have to stop installing  
millwork, remove the ceilings, change the piping,  
and then re-install piping and put the ceilings  
back in. You can't install the millwork and do  
heavy plastering at the same time.

Q Is it your testimony that the air  
conditioning system was left on 24 hours a day for  
an extended period during the summer of 1994,  
essentially, to protect the millwork?

1           A     That would be the reason we needed the  
2     air conditioning on, yes, sir. It pumps the  
3     moisture out of the building. It certainly wasn't  
4     for comfort.

5           Q     Because no one was living there?

6           A     No one was living there.

7           Q     Have you ever met George Kamperman?

8           A     I don't recall the name. I've met a lot  
9     of George's, but --

10          Q     Did anybody tell you that the purpose of  
11     rotating this unit was for sound control?

12          A     Yes, sir.

13          Q     Who?

14          A     I think it was a Mid/Res discussion. The  
15     problem was that we were trying to get the  
16     noise -- we turned it so that the intake grills  
17     would not be facing the limestone wall of the  
18     garage, so the noise from the compressors would  
19     not reflect off, directly off the the limestone  
20     walls, that's what it was.

21          Q     But, your recollection was it was  
22     somebody at Mid/Res that told you that this would  
23     have an effect on reducing the sound being  
24     generated by this unit?

25          A     Well, let me put it to you this way. We  
26     did it, and only Mid/Res would direct that. I  
27     mean, I wouldn't direct it, I'm not an engineer.  
28     Steve Crown wouldn't direct it, it wouldn't be my  
29     carpenters. I mean, anything that was done with  
30     that air conditioning unit was a direct, you know,  
31     had direct bearing on whatever Mid/Res was trying  
32     to do to solve their own problem.

33          Q     Okay. So, if the Mid/Res people were to  
34     say that they had no sound oriented reason for  
35     changing that, you couldn't challenge that?

36          A     Somebody directed me to do it.

37          Q     No, I'm not saying you weren't directed  
38     to do it. And, I'm not saying it wasn't done.  
39     I'm trying to figure out the purpose for its being  
40     done, that's all.

41          A     Yes, my understanding was we did it  
42     because there were louvers on that side of the  
43     unit, and so that's the easiest way for the sound  
44     of the compressors to escape the sound attenuating  
45     material that had been put on the other three  
46     sides of the unit.

47          Q     Okay. You indicated that, in your

1 testimony, that from the time you heard about the  
2 complaint of noise from the Sheltons, you pushed  
3 everyone on the job site to find a solution, is  
4 that correct?

5 A I was directed to do that.

6 Q Who were you directed to do that by?

7 A Steve Crown.

8 Q And, who did you push and how?

9 A I pushed Mid/Res.

10 Q To do what?

11 A To get on the job site with sound  
12 readings, I mean, whatever it takes, to get, you  
13 know, let's get answers, let's get answers and  
14 let's find a way to quiet this unit.

15 Q And, having directed Mid/Res to do that,  
16 did you ask them to report back to you as to what  
17 it was they were doing?

18 A They were reporting back to me, yes.

19 Q And, again, I'll ask you, did they report  
20 back to you about these sound readings?

21 A Well, I was aware of them. Did I  
22 understand them? No, but I was aware of them.

23 Q Do you recall asking them to do them,  
24 though?

A I recall that they were necessary.  
That's the groundwork, I mean, what's the problem?  
Noise. All right. How much noise do we have?  
Well, let's take a reading. That's somewhere to  
start.

Q Right. And then, from there, you make a  
plan on the basis of what you've learned, correct?

A There were so many meetings out there on  
that job to figure out what actions should be  
taken, what action would be viable, what would be  
worthwhile and what would not. There were a lot of  
questions and answers.

Q Were you present on the job site on July  
5th, 1994 when sound measurement readings were  
made by Al Shiner? Was it during working hours?

A I believe it was during the afternoon.  
If it was between 7:00 and 3:30, I was probably  
there.

Q Do you recall, prior to that, do you  
recall a sound measurement occurring, though, even  
if you weren't there?

A I remember some sound measurements  
occurring. I was, I made up that little chart

1 and, you know, I, at least watched for a short  
2 time while they did some sound measurements,  
right.

3 Q Was that chart that we were talking about  
4 earlier, a chart that you recollect occurring at  
the time that Al Shiner was there for some sound  
measurements?

5 A The key player I remember is Harry Akers.

6 Q Okay. Do you recall sound measurements  
being taken in July of 1994, after the October,  
1993 measurements by Akers?

7 A No, I don't recall. It could very well  
have been taken, but --

8 Q Do you recall receiving a report from  
anyone about the fact that there were sound  
measurements made in July of 1994?

9 A I don't recall.

10 Q Do you recall what precipitated your  
getting together in July of 1994 with Mr. Mautner  
and Mr. Shiner to discuss solutions to a sound  
11 problem?

12 A A noisy compressor, noisy chiller unit.

13 Q Okay. And, what do you understand, as of  
the time that you had your meeting, what do you  
understand had been done to this chiller unit,  
14 other than the chiller unit as delivered to the  
site, in order to quiet it?

15 A At this point, I can't recall whether  
they already tried the blankets at that point or  
not, you know. But, I know that the quiet flow  
16 panels, you know, were installed at that point, or  
that was the last thing that was done, the quiet  
17 flow panels.

18 Q Do I assume that after March 15th, 1995,  
you disengaged yourself from both the project and  
the noise problem?

19 A That's correct.

20 Q You have no direct knowledge, then, of  
any changes that have been made to the equipment  
ince that day, or any sound measurements that have  
21 been made since that date?

22 A That's correct.

23 Q Mr. Keller, a question about the  
incidents that would be involved in removing this  
particular chiller unit to another location in the  
24 fall of 1993, within a month of the time that it  
had been installed. Tell us, in particular, what

1 would have to be removed from the building, that  
2 was already installed, in order to move that  
3 chiller unit to another location on the property?

4 A Line sizing, the lines that run from  
5 the --

6 Q From?

7 A -- from the fan coils that are in various  
8 locations of the building, run towards the  
9 chiller, all right. And, they're stepped in size.  
10 So, if you step the lines in one direction, and  
11 then you move the chiller to another direction, it  
12 becomes obvious to me that your sizing is wrong,  
13 okay. So now, you have to re-size the pipes in a  
14 different direction to handle, you know, the  
15 chiller unit in another location.

16 Q Is the sizing inside the building larger  
17 or smaller than that closer to the chiller unit?

18 A I'm not an engineer, I'm not going to get  
19 into this. If you need answers to those  
20 questions, you need to talk to Mid/Res.

21 Q Okay. Did you ever talk to Mid/Res about  
22 what exactly would be involved in relocating this  
23 equipment?

24 A Negative.

Q Did you ever prepare anything in writing  
to anyone about your recommendations, whether or  
not this equipment should be or could be  
relocated?

A Negative, no.

Q Have you prepared a cost estimate for  
anyone as to what it would cost to remove this  
chiller unit to another location on the Crown  
property, at this point?

A I was never directed to do that.

Q And, you never did it, either?

A No, not that I can recall.

MR. DIVER: No further questions.

THE COURT: Okay. Any redirect?

MR. ELLEDGE: No redirect.

THE COURT: All right. Thank you very  
much, Mr. Keller.

A Thank you.

THE COURT: Off the record for just a  
moment to discuss Tom's schedule.

(Off the record)

THE COURT: Tomorrow, then, we'll--this  
hearing is adjourned today, and tomorrow we'll

1 continue the hearing at 9:30 a.m. And, today's  
2 testimony we've heard from Mr. David Shelton,  
3 we've heard from Bradley Mautner, Robert Elfering,  
4 and Peter Keller. And, I have identified no issue  
5 of witness credibility with respect to those  
6 witnesses.

7 So, we'll be in recess until the  
8 morning. Thank you.

9 (WHEREUPON, the hearing was  
10 adjourned at 5:00 p.m. to be  
11 continued on August 20, 1996 at 9:30  
12 a.m.)

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## CERTIFICATION

I, VERNETTA MCCREE, A Certified  
Shorthand Reporter doing business in the State of  
Illinois, certify that I reported in shorthand the  
testimony taken in the above-entitled matter, and  
that this constitutes a true and accurate  
transcription of my shorthand notes so taken as  
aforesaid.

---

VERNETTA MCCREE, CSR

BEFORE THE  
ILLINOIS POLLUTION CONTROL  
BOARD

1			
2			
3	IN THE MATTER OF:	)	
4	DAVID AND SUSI SHELTON,	)	
5		)	
6	Complainants,	)	
7		)	
8	vs.	)	PCB 96-53
9		)	VOLUME 6
10	STEVEN AND NANCY CROWN,	)	
11		)	
12	Respondents.	)	

REPORT OF PROCEEDINGS taken in the  
above-entitled matter, taken before MS. JUNE  
EDVENSON, Hearing Officer for the Illinois  
Pollution Control Board, commencing on the 19th  
day of August, A.D., 1996 at the offices of the  
Illinois Pollution Control Board, 100 W. Randolph  
Street, Chicago, Illinois, at approximately 9:30  
a.m.



1           PRESENT:

2

3

THE JEFFREY DIVER GROUP

4

BY: MR. JEFFREY DIVER &

5

MR. KAISER

6

For Complainants;

7

8

GOULD & RATNER

9

BY: Mr. RICHARD ELLEDGE &

10

MR. ROBERT CARSON

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For Respondents.

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I N D E X

D C RED

A. STEVEN CROWN 1266

E X H I B I T S

OFR'D REC'D

Complainants Exhibit No. 44 1344 1344

Respondent's Exhibit No. 7 1351 1351

1                   MR. CARSON: Good morning. As our next  
2 witness, as part of the Respondent's case in  
3 chief, we call A. Steven Crown.

4                   THE COURT: Will the witness be sworn?

5                                   (Witness sworn)

6                   A R I E    S T E V E N    C R O W N,  
7 after having been first duly sworn on oath,  
8 deposes and testifies as follows:

9                                   DIRECT EXAMINATION

10                  BY MR. CARSON:

11                  Q     State our name, please?

12                  A     Arie, A-r-i-e, Steven Crown, C-r-o-w-n.

13                  Q     And, you're the same Steven Crown that  
14 testified at the outset of these proceedings?

15                  A     Yes, I am.

16                  Q     And, since the time that you testified at  
17 the outset of these proceedings, Mr. Crown, you've  
18 been here for the duration of the proceedings,  
19 have you not?

20                  A     Yes, I have.

21                  Q     And, you've listened to all the other  
22 testimony?

23                  A     Yes.

24                  Q     And, you've had the opportunity to review

1 all the exhibits that have been offered?

2 A For the most part, I have, yes.

3 Q Mr. Crown, you purchased the property at  
4 685 Ardsley when?

5 A We closed in June of 1991.

6 Q And, what plans did you have for the  
7 property at the time you purchased it, sir?

8 A The house did not conform to our space  
9 needs, so we had hired Paul Constant of Constant  
10 Architecture to help lay out a space plan for  
11 remodel of the house. And that, I'm not sure if  
12 it began before we closed. I think the ideas were  
13 floating around. Some of the needs were there,  
14 at least on paper. And then, after closing, got  
15 into some drawings, some layouts, and ultimately  
16 went into a remodel of the house. A fairly  
17 significant project, as it turned out to be.

18 Q And, when did the construction on that  
19 project start?

20 A The demolition began in either October,  
21 November of 1991. At the time, we didn't have  
22 complete sets of plans. We just had the shell  
23 drawings, and we had a demolition permit that  
24 allowed us to demolish one wing of the house.

1           Q     And, you described it as a fairly  
2           significant project, as it turned out.

3                     As the project commenced and was under  
4           way, did you consider possible inconvenience to  
5           the neighbors that might result from the  
6           construction project itself?

7           A     Yes. In fact, we, one of the first  
8           criteria was -- first thing we did was in the  
9           selection of the contractors. We went with some  
10          of the larger contractors initially; Pepper,  
11          Turner, Gerhardt-Miney, (ph) even though they  
12          didn't do residential homes because we felt that  
13          they would have a much better handle on a larger  
14          job. We were very, we interviewed personally the  
15          on-site supervisor and the general contractor who  
16          would be responsible for the job. And, we wanted  
17          to make sure, from the onset, that we had the  
18          right personality, a responsible person, and an  
19          individual that we could look to, to try and  
20          maintain an orderly and efficient operation. And,  
21          that was from the beginning. As the job  
22          progresed, we tried to implement, or we requested  
23          that it be implemented, good housekeeping  
24          practices such that records were cleaned up and

1 swept, such that the job site was kept in an  
2 orderly, neat fashion. And, throughout the job,  
3 we took --

4 MR. DIVER: Madam Hearing Officer, again,  
5 I wonder if the witness could be instructed to  
6 talk about what he did as opposed to what the  
7 "we", or else identify who the "we" is?

8 A I instructed all parties--

9 MR. DIVER: That would be fine.

10 THE COURT: Thank you.

11 A -- to do the following.

12 Q Before you get into the narrative, let me  
13 make sure we're all on the same wavelength here.  
14 Did you take steps specifically addressed toward  
15 keeping the inconvenience to the neighbors at a  
16 minimum?

17 A I instructed our general contractors and,  
18 therefore, I instructed them to instruct the subs.

19 Q And, what steps was it that you took as  
20 far as your instructions are concerned?

21 A Outside of what I would consider good  
22 housekeeping practices, I, we talked about, and I  
23 authorized them to install a hall road off of  
24 Pelham in order not to inconvenience the neighbors

1 on Ardsley. It provided a much more direct access  
2 into the house, although it did tear up the lawn  
3 and put a number of the trees at risk. It was  
4 clearly a much more convenient way to get trucks  
5 in and out of there without causing inconvenience  
6 to the neighborhood.

7 Q With respect to the hall road, perhaps it  
8 would be helpful if we looked at Exhibit No. 52.

9 MR. ELLEDGE: 51, I think it's 51 you  
10 want.

11 MR. CARSON: 51, excuse me.

12 BY MR. CARSON:

13 Q This is Exhibit No. 51. And, you had  
14 previously given testimony concerning this  
15 particular exhibit in response to Mr. Diver's  
16 questions. And, this exhibit shows the  
17 configuration of the home that was to be  
18 constructed, is that right?

19 A Correct.

20 Q And, it also has, since the time that you  
21 testified concerning this exhibit, there have been  
22 a number of markings added to it, particularly to  
23 the north, which you understand show the general  
24 configuration of the Shelton home?

1           A     That's my understanding.

2           Q     Okay.  And, using this red felt tip pen,  
3           would you show, on Exhibit No. 51, where the hall  
4           road was located that you just described?

5           A     Well, there actually were, there were two  
6           roads that came into the property.  There was an  
7           existing drive that came in off of Pelham, and was  
8           part of a complete driveway that was at the  
9           existing house.

10          Q     And, you've marked that with the felt  
11          tip?

12          A     That's the red with the little hash  
13          markings on it.  That was already in place.  We kept  
14          that in place until it was no longer needed.  For  
15          the larger trucks, we brought in a road roughly,  
16          that looked like that.  They had a much larger  
17          turnaround area in there.  But, essentially, it  
18          attempted -- that tree, for example, would not be,  
19          it would be slightly off of the tree.  But, it  
20          allowed for larger semis to come in off of Ardsley  
21          and, therefore, not have them go any further north  
22          than Pelham.  It also prevented traffic from  
23          coming down Pelham and trying to get into the  
24          property.  Essentially, they came off of Pine onto



1           Ardsley for the short stretch onto the property,  
2           and had a way of turning around and getting out,  
3           and prevented any real traffic from occurring,  
4           heavy traffic from occurring.

5           Q       And, just for the record, you've also  
6           marked with red felt tip marker, coming from south  
7           to north off of Pelham Road, this other hall road  
8           that you described?

9           A       It ran both ways, but, yes, it was  
10          entering the property in a gradual curve coming  
11          off of Pelham.

12          Q       And, this hall road, which was for the  
13          larger trucks, went on the opposite side of the  
14          property from the portion of the property which  
15          abuts the Shelton property, is that right?

16          A       It was on the south side of the property.

17          Q       And, the Shelton property is to the  
18          north?

19          A       I'll put little X's in it.

20          Q       Okay.

21          A       The hall road. You want me to continue  
22          answering?

23          Q       Yes. You were describing any steps that  
24          you undertook to keep inconvenience to the

1 neighbors to a minimum. Were there others?

2 A Yes. I asked that all cars be parked on  
3 our property, to get them off of the roads.  
4 Ardsley and Pelham are private roads, there isn't  
5 much room. And, therefore, I instructed our  
6 contractors to make sure that all the service  
7 trucks and cars be parked on the property. And,  
8 we would take the necessary, make the necessary  
9 correction to the landscaping or the grass that  
10 was destroyed, as it usually would have been,  
11 after the job was completed. Also, later on in the  
12 job, I instructed Pete Keller to contact me  
13 immediately if we had, if there were any comments,  
14 complaints, or concerns from neighbors in the  
15 area. I wanted to know that immediately.

16 Q Now, putting aside, for the moment, any  
17 complaints or concerns regarding the air  
18 conditioner unit, which was later installed, did  
19 you have any complaints from neighbors, other than  
20 the Sheltons --

21 A Yes.

22 Q -- concerning the construction project?

23 A Yes, we did.

24 Q Can you give us examples of the types of

1 things that came up?

2 A There was a complaint from the  
3 Alexanders, who live across the street off of  
4 Pelham, concerning a transformer that was  
5 installed at the, I guess it's the southeast  
6 corner of our property. They didn't like the idea  
7 that it was visible. So, we put shrubbery around  
8 it to hide it, disguise it, and get it out of  
9 view. There was a question as to some curbs that  
10 had been run over by trucks, and some landscaping  
11 that had been run over by vehicles. We're not the  
12 only house on the block, we did not have all the  
13 trucks coming down the street relating to our job.  
14 There were landscaping trucks, delivery trucks,  
15 there were other types of vehicles down there.  
16 But, we never took issue with the neighbors. We  
17 basically went out and fixed the problem, re-did  
18 the landscaping, re-did the curbs. There was a  
19 question of debris or litter on the streets. Art  
20 Nelson had made a complaint, and he said, you  
21 know, we know you're good in cleaning it up. We  
22 were, we took whatever measures to remedy the  
23 situation. And then, later in the project, Don  
24 Rycroft,(ph) who is our then neighbor to the

1 east, and I believe Marge Julian, more  
2 specifically Don Rycroft said that we had created  
3 potholes in the street, which I found somewhat  
4 suspect since, again, we weren't the only set of  
5 trucks running around. There were other projects  
6 going on. Nonetheless, we went out and repaired  
7 the potholes, at our expense. I instructed the  
8 contractor to have them repaired, at my expense.

9 Q Now, with respect to the construction  
10 project, can you describe how you planned for your  
11 heating and cooling needs for the new home?

12 A During the course of subcontractor  
13 selection -- well, actually prior to that, we sat  
14 down with our architect, Paul Constant, who has a  
15 fairly substantial book of specifications for  
16 heating and air conditioning requirements,  
17 operational requirements, not specific equipment,  
18 and he laid out an operational spec; cooling,  
19 heating ranges and so forth, which were then sent  
20 out to different subs, at least two subs that I'm  
21 aware of that were felt that could generally  
22 handle the project. One was Althoff, and the other  
23 one was Mid/Res.

24 Q And, you ultimately selected Mid/Res?

1           A     After receiving proposals from both,  
2     after receiving the bids from both, after doing  
3     some checking on the references and on the two  
4     different companies, we had a lot better  
5     information on Mid/Res. I had some personal  
6     friends that had used Mid/Res very successfully in  
7     their house renovation, and decided--and, they  
8     were more, Mid/Res was actually, as we understood  
9     at the time, more geared towards residential type  
10    projects or had a lot more experience with  
11    residential type project. And, therefore, we chose  
12    them.

13           Q     And, you described the reasoning or the  
14    logic underlying your selection of Mid/Res.

15           A     The logic was the quality of work, the  
16    experience, and the personal reference, personal  
17    references we received.

18           Q     Okay. At the outset of your work with  
19    Mid/Res, who was it that you were working with?

20           A     I'm sorry?

21           Q     Who, specifically, at Mid/Res?

22           A     At Mid/Res, Bob Abele was the first  
23    representative, I believe, A-b-e-l-e, was the  
24    first representative that we were contacted by. He

1 worked with Paul Constant. Actually, I think he  
2 had communications with our architect regarding  
3 the, a preliminary letter to help set up the  
4 technical specifications more specifically, and  
5 that then evolved into a formal proposal. There  
6 were, the names I recall, Gary Elfering was in the  
7 picture at one point in time, as a representative  
8 from Mid/Res. And then, ultimately after we had  
9 selected them, I found out that Brad Mautner was  
10 the then President of Mid/Res, who was a friend  
11 that I had grown up with. And, he came into the  
12 project and was part of the discussions.

13 Q Did you receive a recommendation from  
14 Mid/Res as to the equipment that would meet the  
15 specification requirements for the home?

16 A Yes. We were given, I believe, two  
17 alternatives. One was a multiple type system,  
18 multiple little units. And, the second was one a  
19 consolidated, stand alone unit.

20 Q And, which of those alternatives was  
21 selected?

22 A The stand alone, consolidated unit.

23 Q How was it that that selection process  
24 went? How was the decision made to go with the

1 single integrated unit?

2 MR. DIVER: The question is ambiguous,  
3 Madam Hearing Officer, as to how the decision was  
4 made. Are we asking for who made a particular  
5 decision and how that person made it?

6 MR. CARSON: I can try to rephrase it.

7 THE COURT: Okay.

8 BY MR. CARSON:

9 Q Can you describe how the selection  
10 process went; who participated?

11 A The participants, since I didn't know  
12 that much about air conditioning, per se, we sat  
13 down, I sat down with the general on the job, I  
14 sat down with the architect present, I sat down  
15 with an owner's representative, sat down with the  
16 representatives from Mid/Res and all talked at the  
17 same time. Then, subsequently, Mid/Res selected  
18 them as the subcontractor. I think Mautner and  
19 Elfering were present at the time. Abele was out  
20 of the picture. He was just a sales  
21 representative. And, there may well have been one  
22 more person. Harry Akers may well have been in  
23 attendance at the time, or somebody from the  
24 construction staff may well have been in

1 attendance. I don't remember it at this time.  
2 And, we requested them to explain what the options  
3 were and help educate us as to what the  
4 alternatives were relating to the two different  
5 approaches.

6 Q And, this would have been when?

7 A This would have been late 1991, 1992.  
8 Sometime in that time frame, towards the early  
9 stages of the job. Probably 1992.

10 Q And, who was it that had the final  
11 decision, as far as the single integrated unit, as  
12 opposed to the multiple units scattered around the  
13 site?

14 A Well, if you mean who, I ultimately paid  
15 the bill. So, the ultimate decision was mine.  
16 But, as to the recommendation, I talked to Brad  
17 specifically, who said that the --

18 MR. DIVER: Madam Hearing Officer, I'll  
19 object to what Brad said.

20 MR. CARSON: What Brad said concerning  
21 this is not offered for the truth of what Brad  
22 said. It goes into the witness' state of mind as  
23 to how the selection was made.

24 MR. DIVER: On that basis, I'll withdraw



1 my objection.

2 A He said that the single unit would be  
3 more efficient. It would perform the task required  
4 in a much better fashion, and would do what the  
5 unit was designed to do. The multiple units,  
6 again, you're looking at a multiplicity of the  
7 same type of units. It would be cosmetically,  
8 maybe a little less attractive, and maybe a little  
9 less efficient in operation. And, it was his  
10 recommendation that we go with the one unit, which  
11 is ultimately what we decided on.

12 Q When you use the term "efficient", to  
13 your understanding, what do you understand as far  
14 as the relative efficiency of the single unit as  
15 opposed to the multiple?

16 A At the time, efficiently meant that it  
17 would have less maintenance requirements, that it  
18 would provide the cooling that the house needed,  
19 when it needed it. And, I was attempting, in this  
20 construction process, to create, as best possible,  
21 a trouble-free house, realizing that that's not  
22 entirely possible. But, just the same, efficiency,  
23 I understood it to mean that it would operate  
24 within the ranges required and operate for a long

1 period of time.

2 Q At the time that this selection process  
3 was under way, did you have a specific  
4 understanding as to the unit, the manufacturer,  
5 the size, the precise type of unit that was being  
6 discussed?

7 A No, I did not.

8 Q When was it that you learned,  
9 specifically, what the unit would be, in terms of  
10 its size, and manufacturer, or any other specific  
11 information about it?

12 A The first time I saw the unit, when it  
13 arrived on the job site, and I pulled up for a  
14 meeting, it was sitting on the ground.

15 Q In selecting the single unit, as opposed  
16 to the multiple units, what, if any, consideration  
17 did you give to the possibility of an annoyance  
18 from sound?

19 A On the selection of the unit?

20 Q The selection of the single unit versus  
21 the multiple units.

22 A Sound really wasn't much of an issue at  
23 the time. It was more efficiency and the  
24 operational requirements. I don't think we really

1           talked, I mean, it may have been that sound, on  
2           the smaller units, because there are a lot of  
3           them, and there are a lot more moving parts. But,  
4           it was negligible. It wasn't really discussed.

5           Q       It wasn't the focus of discussion?

6           A       No, definitely not.

7           Q       Now, this single chiller unit, was this  
8           planned for an inside location, or an outside  
9           location?

10          A       It was planned for an outside location.

11          Q       In these meetings, was the subject  
12          discussed as to where it would be located?

13          A       Yes, we talked about, we talked about  
14          locations. Mid/Res gave us --

15                 MR. DIVER: Ma'am, I'm afraid, could the  
16          witness again be asked to talk about what he did?  
17          I keep hearing "we", and I'm not sure who it is  
18          that he's talking about.

19          A       Mid/Res gave me different alternative  
20          locations that I could choose from.

21                 MR. CARSON: And, I don't know whether we  
22          don't necessarily have to mark it, but in  
23          reviewing it, would it be helpful to have this in  
24          front of you, Exhibit No. 51?

1           A     Again, it's fairly --

2           Q     What discussion or what considerations  
3 did you make in terms of a north or south or east  
4 or west location for this chiller unit?

5           A     I was given, essentially, two preferred  
6 locations. One was --

7                     MR. DIVER: Madam Hearing Officer, I'm  
8 going to have to object again. If he could tell  
9 us who it was that was giving these  
10 instructions --

11          A     Brad Mautner, President of Mid/Res --

12                     MR. DIVER: Thank you.

13          A     -- gave me two locations that I could  
14 choose from, both being equally, both without any  
15 bias towards either. One was located where the  
16 current air conditioning unit sits today, on the  
17 north end of the house.

18          Q     And, as I recall, that was marked by you  
19 in the opening of this hearing?

20          A     It may well, it looks like my  
21 handwriting.

22          Q     That one box?

23          A     Mid/Res, the says Crown A/C. A second  
24 location would have been on the south side of the

1 house. The east side of the house was very, very  
2 narrow, and it would be difficult to service. And,  
3 I also don't think that we would have been able to  
4 put the unit in and get passage behind it. So, we  
5 decided that was inappropriate. Also, the west  
6 side of the house. The house is a long house, and  
7 I was told that, from an operational point, it's  
8 more efficient to put it somewhere in the middle  
9 section than on either side. So, essentially,  
10 we're talking about the north side and the south  
11 side.

12 Q Your understanding, then, was that the  
13 east and the west side were not good options?

14 A Not good. They were not as good as the  
15 other options.

16 Q And, why not?

17 A Because the length of the house, and the  
18 fact that you had to push from, air and whatever  
19 from one end to the other, it's starting to get  
20 technical. But, from my recollection is that  
21 pushing it along the long distance of the house  
22 was not as efficient as taking it and going from  
23 side to side.

24 Q And, who was it that selected the

1 location that it ultimately ended up with?

2 A I think it was a combination of all of  
3 the, I ultimately made the, or blessed the  
4 decision, since it was my house. And, because of  
5 the ease of serviceability, because it was, even  
6 though it was going to be one of the first things  
7 seen as you drove in our driveway, we figured we  
8 could put trees around it. It, operationally,  
9 seemed to be in a good location. And, at the  
10 time, our contractor, giving us the choices, we  
11 figured that was as good a choice as any.

12 Q What, if any, consideration did you give  
13 to the possibility of annoyance from sound in that  
14 location?

15 A The only discussion we had, at the time,  
16 was that the unit, if placed on the north end of  
17 the house, next to the garage, it was directly  
18 under the window of the guest bedroom that was  
19 going to be built above it. And, Brad told me that  
20 we might, the guests living there might hear some  
21 fan noise, if they opened up their window. But,  
22 that didn't seem to, at that time, that didn't  
23 seem to be an issue. That was the only mention of  
24 noise that I recall.

1           Q     Okay. And, that particular issue didn't  
2           cause you any concern?

3           A     No, it did not cause me any concern. Air  
4           conditioning units make noise when they operate.  
5           And, fan are fans.

6           Q     And, do you know the, or can you state  
7           the approximate distance from the top of that  
8           chiller unit to the guest bedroom window in your  
9           home, as it exists today?

10          A     I guess it's about 8 to 10 feet. The  
11          second bedroom, maybe 9 feet. The bedroom window  
12          is about midway up the second floor. The unit is  
13          about, I guess, 7 feet, 6, 7, 8 feet off the  
14          ground. And, it's about, I guess, about 5 feet  
15          from the wall.

16          Q     Now, taking you back to a point in time  
17          before the unit was installed and operating, did  
18          you have occasion to speak with your new neighbor,  
19          David Shelton?

20          A     Yes. Mr. Shelton called me before we had  
21          gone in. As I recall, during that conversation,  
22          mentioned, had asked me if I was interested in  
23          considering purchasing his house.

24          Q     And, how did you respond to that?

1           A     I responded by saying that we would  
2           probably have a fairly wide difference of opinion  
3           as to value. He was selling a house. I looked at  
4           it as a piece of property with an encumbrance on  
5           it. I already had a project underfoot in the  
6           renovation of our place next door. And, thanked  
7           him very much for the call and consideration, but  
8           told him, at this time, it just wasn't in our  
9           plans. And, that was that.

10          Q     The air conditioning unit, the single,  
11          integrated chiller unit, was ultimately installed  
12          in the location that's shown, Crown A/C on Exhibit  
13          No. 51?

14          A     Generally speaking, yes, that's the  
15          location.

16          Q     And, when was the unit first operated, to  
17          your knowledge?

18          A     In September of 1993.

19          Q     How did you learn that the unit had  
20          become operational?

21          A     I visited the job site on a fairly  
22          regular basis in the morning before I came down to  
23          work. And, during one of the occasions, I had  
24          asked when are we going to start the unit? I was



1 surprised to find out that we had already been  
2 operating the unit for a number of days. I don't  
3 know whether it had been operating the full day or  
4 a couple of hours during the day, but it had been  
5 fired up and, I guess, had been operational during  
6 some of the work days.

7 Q Did you have occasion to hear the unit in  
8 operation in those early, in those visits to the  
9 site in the early stages?

10 A Yes.

11 Q What did it sound like?

12 A It sounded like an air conditioning unit.

13 Q Did it come to your attention that a  
14 neighbor had a complaint concerning the sound from  
15 that air conditioner?

16 A Yes.

17 MR. DIVER: Excuse me, what was this  
18 prior to, just in terms of time, are we talking  
19 about the complaint being prior to his hearing the  
20 sounds and experiencing them, or after?

21 A After.

22 MR. CARSON: Well, I haven't asked that  
23 question.

24 MR. DIVER: That's what I'm asking. Please

1 put it in perspective so --

2 BY MR. CARSON:

3 Q Did it come to your attention, sir, that  
4 the, that a neighbor had a complaint concerning  
5 noise for the air conditioner?

6 A Yes.

7 Q How did that come to your attention?

8 A One night, while I was home, we were  
9 living at 35 Linden in Wilmette, I received a call  
10 from Susi Shelton.

11 Q And, can you put a date, an approximate  
12 date on that call?

13 A It was, I believe, sometime in September  
14 of 1993.

15 Q Okay. What time was it?

16 A Between 10:00, 11:00 o'clock at night,  
17 something like that. The kids were down, so it was  
18 sometime after that.

19 Q Okay. Was this before or after you had  
20 been to the site and learned that the unit had  
21 become operational?

22 A This was afterwards.

23 Q Describe the conversation in this phone  
24 call that you received?

1           A     I received a call -- well, I received a  
2           call from Susi Shelton, who told me that he had  
3           called the police. She had heard our unit, our air  
4           conditioning unit go on. She had called the police  
5           because she couldn't find our telephone number.  
6           And, she was able to find our telephone number,  
7           and gave us a call to let us know that our unit,  
8           our air conditioning unit, was on, asked us, asked  
9           me if I would turn it off because it was making a  
10          noise. And, I told her that I would take care of  
11          it, and proceeded to get dressed and drive out to  
12          the job site.

13          Q     Did she describe the noise?

14          A     No, she just said it was making a noise.

15          Q     And, what did you do after that  
16          conversation?

17          A     I got in my car, stopped off and got a  
18          flashlight, because I didn't have one at the time,  
19          and just forgot one at the house. En route, I  
20          called Pete Keller on my car phone to ask him how  
21          you turn the unit off. And, Pete told me that I  
22          needed to go down to the basement and pull a  
23          couple of switches in order to shut it down  
24          entirely. Then, entered the property, couldn't

1 find the kill switch outside that he talked about,  
2 went down into the basement and completely shut  
3 the unit down.

4 Q By the way, I don't think, in your  
5 testimony here, we've identified who Pete Keller  
6 was.

7 A Pete Keller, at the time, was the, we had  
8 changed general contractors from Pepper  
9 Construction to Pete Keller.

10 Q So, you arrived at the job site?

11 A Arrived at the job site, went down, shut  
12 off the unit, and then left the job site. And, on  
13 my way back, I stopped off, I noticed that there  
14 was a Winnetka policeman parked in the parking lot  
15 at the corner, on the east side of Elder &  
16 Sheridan, and pulled in and told him that,  
17 introduced myself, that I was the resident at 685  
18 Ardsley. That there had been a complaint, as I  
19 understood it, registered on my property. I  
20 wanted him to know that I had gone to the house, I  
21 had taken care of the complaint. And, that he  
22 should, you know, advise his, advise the main  
23 office that it had been taken care of.

24 Q And, did he have any knowledge concerning

1 a complaint that had been made?

2 A He called the office and told me that  
3 they had no knowledge of any complaint; that he  
4 appreciated me informing them of the events, but  
5 that they had nothing registered, at the time.

6 Q And, when you went to the job site, were  
7 there any police in the area?

8 A No, there were not.

9 Q So, you had shut the unit off and  
10 ultimately, I assume, you returned home that  
11 evening?

12 A Yes.

13 Q Did you do anything the next day  
14 regarding the air conditioning unit?

15 A Well, the next morning, I got up early,  
16 went to the job site, and met with Pete and told  
17 him of what I had done the night before. He  
18 already was aware that I had been to the job site  
19 that evening, and turning off the unit. I  
20 instructed him to contact Mid/Res and let them  
21 know that our neighbors to the north had  
22 registered a complaint regarding the noise from  
23 the unit, and wanted him to work with Mid/Res to  
24 try and see what, you know, what the program was

1 and what things were going to be done  
2 prospectively, relating to the unit.

3 Q Thereafter -- well, I'll show you Exhibit  
4 No. 49, which has already been placed into  
5 evidence.

6 MR. CARSON: Can we go off the record for  
7 just a second with respect to these exhibits?

8 THE COURT: Off the record.

9 (WHEREUPON, a brief discussion was  
10 held)

11 THE COURT: We'll go back on the record.

12 BY MR. CARSON:

13 Q You now have before you Exhibit No. 49,  
14 Mr. Crown.

15 A Yes.

16 Q And, this is a letter that you received  
17 from David Shelton, it's dated October 11th, 1993,  
18 is that right?

19 A That's correct.

20 Q And, this would, you said, stated that  
21 this earlier conversation, about the events that  
22 you just related, occurred in September. So, this  
23 would have been a number of weeks later?

24 A Yes.

1           Q     Prior to your receipt of this letter, the  
2           subject of this letter obviously is the complaints  
3           about the noise from the air conditioning unit,  
4           right?

5           A     Yes, it is.

6           Q     Prior to your receipt of this letter, had  
7           you done anything to address the issue of noise  
8           emitted from the air conditioning unit?

9           A     After the conversation with Susi Shelton,  
10          and after talking with Pete, we'd been in  
11          conversations with Mid/Res to advise them that our  
12          neighbor--I had been in conversation with Pete  
13          Keller --

14          THE COURT:   Okay.  Just, let's take a  
15          moment to discuss this.  Mr. Crown, let me ask  
16          you, when you refer to "we", who are you referring  
17          to?  Are you referring to you and your wife?

18          A     No, I'm not.

19          THE COURT:   Are you referring to  
20          yourself?

21          A     Me, myself.

22          THE COURT:   All right.  Then, I'll permit  
23          the witness to continue to use that expression  
24          because it's familiar to him and is natural for

1 him to use it in his conversation.

2 A I work in a family business. It's tough  
3 to get away from the "we".

4 THE COURT: That will be permitted.  
5 Proceed.

6 A Thank you. I, after talking with Pete  
7 and then having Pete having conversations with  
8 Mid/Res, I was told that the unit still had to be  
9 tweaked, fine-tuned, that the installation of the  
10 unit was not yet complete. We were still  
11 intending on putting up some buffer around it,  
12 trees and fences, and so forth. And, we hadn't  
13 yet, the unit had not yet been fine tuned. And,  
14 until it was, it's a mechanical device, we felt  
15 that Mid/Res was still in the process of the  
16 installation.

17 Q According to this letter, Mr. Shelton  
18 states, in the middle of the second page, "We know  
19 that you plan various steps to reduce the noise."  
20 Had you had conversations with Mr. Shelton  
21 prior to your receipt of this letter, concerning  
22 this issue?

23 A Either David or Susi Shelton, one of the  
24 two. I believe we told them of our plans to



1 surround it with trees and put fencing up, and  
2 that the unit needed to be fine tuned and tweaked.

3 Q Did you take any further steps? You say  
4 instead that they were planning the fine-tuning or  
5 the tweaking, and you were planning the  
6 landscaping and the fencing around the unit. Were  
7 there any further steps that you took, in the fall  
8 of 1993, to address the Shelton's concerns about  
9 noise?

10 A Oh, well, I instructed Pete not to run  
11 the unit at night. We were just going to run it  
12 during the daylight hours, the work day hours,  
13 from 7:00 to 3:30, 4:00 o'clock, whenever the work  
14 crews left. We felt that that was the least we  
15 could do to accommodate our neighbors until we had  
16 at least more landscaping up, and we had a real  
17 need for the system to be on.

18 Q What was the status of construction, as  
19 far as the interior of the house is concerned, in  
20 the fall of 1993?

21 A Actually, in the fall of 1993, we had had  
22 a number of trades working inside of the house. We  
23 had stone, marble, tile trades in there, which are  
24 wet trades, putting down floors for bathrooms and

1           what, then, what has now become the sunroom area.  
2           We had wooden floors, hickory floors put down in  
3           the kitchen area. Those are planks on which the  
4           kitchen cabinet would sit. And, I believe we had  
5           also some of the kitchen cabinets installed. They,  
6           the small Bolten kitchen cabinets from England, it  
7           was a pine cabinet, that were installed in the  
8           kitchen area. And, I believe some of the millwork  
9           pieces were installed in the second floor  
10          bedrooms. We had some built-in bookshelves and  
11          door jambs and things of that sort. Actually, the  
12          door jambs probably were not in, but some of the  
13          bookshelves and some of the molding might well  
14          have been put in. And, also, we had plaster work  
15          being done on the walls. We were closing up walls.  
16          The combination of the plaster and the wet tile  
17          and stone trade created an additional amount of  
18          moisture in the house. And, it actually competed  
19          with or created problems for all the wood trades  
20          because the woods absorbed the moisture and, I  
21          believe, as I was told, you needed a moisture  
22          content in the air of, or in the wood at least of  
23          8%, 7, 8, 9% in order for the wood to go down  
24          properly, adhere properly and not create a problem

1 for you going forward.

2 Q Were any concerns expressed to you  
3 concerning this decision to operate the air  
4 conditioning unit only during daytime hours?

5 A Yes. It was not preferred by the subs.  
6 It was clearly not preferred by our general. Pete  
7 wanted to see the job move forward. Pete was  
8 interested in progress, and he felt that we needed  
9 to dry out the house, remove the water as best we  
10 could from the air. And, not having the air  
11 conditioning system on slowed down that process.  
12 And, essentially, extended the job. It became  
13 more costly, as a result. It prolonged subsequent  
14 trades from coming in and completing their job,  
15 and ultimately, kept us out of the house, kept us  
16 from moving in at an earlier date.

17 Q And, in weighing these considerations,  
18 you opted for what?

19 A We chose to still go the route of keeping  
20 it on only during the working construction hours,  
21 not having it on at night, in order not to disturb  
22 the neighbors. And, essentially, running the risk  
23 of having some problems with the installations for  
24 the balance of the year. It was fall, it was

1 going towards winter. We felt that we would take a  
2 gamble and not have the unit operate at night.

3 Q Now, in this time frame, in the fall of  
4 1993, did you have occasion to hear what the air  
5 conditioning unit sounded like, from the Shelton  
6 property?

7 A Yes. We, I went over --

8 MR. DIVER: I'm sorry, what?

9 A I went over --

10 MR. DIVER: I understand, the timing of  
11 this?

12 MR. CARSON: Fall of 1993, sorry.

13 A I went over to the Shelton house, stood  
14 on the patio and listened to the unit.

15 Q Who else was present?

16 A Pete was with me, maybe both times.  
17 Definitieely one of the times, might have been with  
18 me this other time.

19 Q So, you were on the Shelton property to  
20 listen on two occasions?

21 A On two occasions, yes.

22 Q Okay. So, this would be the first?

23 A This was the first occasion.

24 Q And, Pete Keller may have been there?

1           A     He may have well been there.

2           Q     And, was either Susi or David there?

3           A     Yes, one of them. Susi Shelton may have  
4     been there. One of the Sheltons was there. I'd  
5     only go on their property when they were present,  
6     and with their permission.

7           Q     And, you listened to the unit from their  
8     patio?

9           A     Yes.

10          Q     And, your unit was operating at the time?

11          A     Yes.

12          Q     And, what did it sound like?

13          A     It didn't sound obtrusive. It sounded  
14     like an air conditioning unit. You could hear the  
15     unit operating, but it did not seem to be  
16     bothersome to me.

17          Q     Did you have any conversation with Susi  
18     Shelton at that time?

19          A     Probably did, but it was very short,  
20     didn't last very long.

21          Q     Did she say anything at all about the  
22     upstairs bedroom?

23          A     No, it was never mentioned.

24          Q     Since it's an air conditionoing unit, I

1           assume it wasn't operating in the wintertime?

2           A     No.

3           Q     By the following spring, spring of 1994,  
4           were there any additional steps taken with an idea  
5           towards reducing the sound emissions from the  
6           unit?

7           A     Mid/Res, during the course of the fall  
8           and into the winter, I was in conversation with  
9           all the subs, Mid/Res being one of them. This was  
10          one of the issues that was front and center as a  
11          discussion piece, and Mid/Res had suggested, and I  
12          had agreed, that we ought to try what could be  
13          tried to try and ameliorate or reduce the noise.

14          Q     Did Mid/Res make specific suggestions?

15          A     Yes. Mid/Res suggested that we rotate  
16          the unit 90 degrees on its axis, that we try, I  
17          guess, blankets for the compressors, what they  
18          call them, and put some cones, extensions on the  
19          fan portion on the top to try and move the noise  
20          or direct the noise to go straight up.

21          Q     Okay. Who, specifically, recommended the  
22          rotating of the unit?

23          A     It could have been either Brad or Gary  
24          Elfering.

1 Q It came from Mid/Res?

2 A It came from Mid/Res, that much I know. I  
3 don't remember the specifics.

4 Q And, what was the purpose of rotating the  
5 unit, as you understood it?

6 A As I understood it, the noisiest portion  
7 of the base unit was pointing towards the north,  
8 toward the Shelton's property. That's where, I  
9 guess, the air intake and the open area of the  
10 unit was located. And, as opposed to having the  
11 noisy area facing north, we moved it so it was  
12 facing to the east and directing it away from the  
13 Shelton property. We felt that that would, at  
14 least, lessen the sound.

15 Q And, did you authorize that work to be  
16 done?

17 A Yes, I did.

18 Q And, you also mentioned that you had a  
19 recommendation that blankets be placed over the  
20 compressors?

21 A That was Mid/Res' suggestion, that there  
22 be blankets. I never, blankets I guess muffle  
23 sound. So it, and quite honestly, they suggested  
24 to put the blanket on. I guess we put the blankets

1 on and subsequently took the blankets off.

2 Q But, it was your understanding, though,  
3 that it was intended to muffle the sound?

4 A That was my understanding.

5 Q And, that was work that you also  
6 authorized?

7 A Yes, it was.

8 Q And, you also mentioned extensions or  
9 cones?

10 A Right.

11 Q Was that a recommendation received from  
12 Mid/Res?

13 A Yes. The cones were essentially  
14 extensions of the circular portion above the fans  
15 to redirect the, to increase the height of the fan  
16 portion and, I guess, redirect the noise. Noise,  
17 I guess, travels in a straight line, at least  
18 that's my understanding that it does. I'm not a  
19 sound expert.

20 MR. CARSON: So, the record, I'd like  
21 the record to show the witness is holding his  
22 hands straight up like a touchdown. You understood  
23 the noise would be directed upwards?

24 A That was my understanding, yes, on all



1 three of the fans up top.

2 Q And, you authorized that work to be done  
3 as well?

4 A Yes, I did.

5 Q And, at whose expense was that? Were  
6 those sound attenuation steps undertaken?

7 A I believe they were mine. The bills are,  
8 I guess, part of the record. I think we paid  
9 \$3,000 or something like that, for that.

10 MR. CARSON: The record can show that  
11 there was a stipulation at the outset as to the  
12 cost of 1994 sound attenuation.

13 MR. DIVER: I think there's better  
14 evidence than that yet in the record. I think  
15 there's an actual bill for the services, which  
16 indicates, among other things, that there was no  
17 charge whatsoever for rotating the unit on its  
18 axis.

19 MR. CARSON: You tell me if that was a  
20 stipulation the first day, and that the first 1994  
21 set of acoustic controls, including rotation,  
22 acoustic blankets --

23 MR. DIVER: The purpose of this  
24 stipulation was to establish the cost of

1 activities, yes, and that's what we stipulated to.  
2 Not that those were for acoustical control.

3 MR. CARSON: \$820 was the number, and  
4 that was stipulated to, right?

5 MR. DIVER: Yes. But, I'm telling you,  
6 there's a document in the record that says no  
7 charge was made for the rotation of this device on  
8 its axis.

9 THE COURT: Mr. Carson, could I see the  
10 document that you're discussing?

11 MR. CARSON: Can we go off the record to  
12 discuss the stipulation?

13 THE COURT: Let's go off the record to  
14 discuss the cost information that is in the  
15 record, and that has been made part of the  
16 evidence.

17 (Off the record)

18 THE COURT: At this point, we have the  
19 introduction of a stipulation, Stipulation Number  
20 1, and it's a stipulation by the parties to  
21 specific costs that were incurred related to the  
22 HVAC system. Is that an accurate reflection of  
23 the stipulation?

24 MR. DIVER: Yes, that these are specific

1 costs that were incurred for the activities that  
2 are listed on the document, yes.

3 THE COURT: And, that you agree that  
4 these are the actual costs?

5 MR. CARSON: Yes, that's the stipulation.

6 MR. DIVER: Yes, that's the stipulation.

7 THE COURT: Thank you very much. You may  
8 proceed.

9 MR. CARSON: That's marked Stipulation  
10 No. 1.

11 THE COURT: Yes. And, let the record  
12 reflect that the stipulation does not reflect all  
13 costs related to the HVAC system, but does reflect  
14 the costs that are identified on the document as  
15 being actual costs.

16 BY MR. CARSON:

17 Q Did you apprise the Sheltons of the steps  
18 that were being taken; that is, rotating the unit,  
19 putting blankets on the compressors, cones on  
20 fans?

21 A Yes, either I apprised them or I asked  
22 Pete to apprise them. They were apprised.

23 Q And, with respect to the plans for  
24 installing plantings and a stockade fence, were

1           they made aware of those plans, as well?

2           A     Yes, there were actually two fences.  
3           There was a fence that we put around the unit, and  
4           a second fence that was on our joint property  
5           line. I needed to ask their permission to take  
6           down an old, rickety fence and put up a brand new  
7           one. I needed their permission in order to do  
8           that. So, they were apprised at the time that  
9           there would be a fence and also trees, that would  
10          be on the property line. Trees on our side, that  
11          is.

12          Q     Did you have an understanding as to  
13          whether these trees that were planned would have  
14          any effect on the transmission of sound from your  
15          property to the Shelton's property?

16          A     At the time, I believed they would, yes.

17          Q     And, what was your understanding?

18          A     If you put something in the way of a  
19          sound, it will muffle the sound.

20          Q     Did you also have an understanding, with  
21          respect to the effect of a stockade fence, with  
22          respect to the transmission of sound from your  
23          property to the Shelton property?

24          A     Basically, the same understanding that

1           you put a barrier up between the noise and end  
2           point, that it will retard it, in some fashion.

3           Q     In the spring and summer of 1994, was  
4           your family occupying the home?

5           A     No, they were not.

6           Q     Were you operating the air conditioning  
7           unit at that time?

8           A     In the spring and -- well, late spring,  
9           early summer, yes, we were.

10          Q     Of 1994?

11          A     Of 1994, yes.

12          Q     And, why were you operating the air  
13          conditioning at that time, if your family was not  
14          occupying the home?

15          A     Well, at the time over the winter and  
16          into the spring and summer, more parts of the  
17          house were being installed. We were still doing  
18          plastering, and there was still an additional  
19          level of moisture in the house. We have a fair  
20          amount of plaster moldings, which were creating a  
21          problem getting rid of the moisture. We also were  
22          putting in more and more woodwork, millwork. I  
23          think the second floor was now complete, virtually  
24          complete, except for the master bedroom. And, the

1           downstairs, first floor, was starting to get its  
2           installation of woodwork. We also had the kitchen,  
3           I believe, fully installed. And, we were just  
4           trying to protect and preserve the work that was  
5           there. And also, provide for an environment that  
6           was conducive for the continuing installation of  
7           the millwork product that we had ordered.

8           Q     Did you experience any specific problems  
9           regarding humidity as far as the work that was in  
10          place?

11          A     We ended up having a number of problems,  
12          particularly in the floors. The wood planks were  
13          buckling because they were taking in more humidity  
14          than we were able to get out of the house. We  
15          tried. We put humidifiers and all sorts of other  
16          ancillary type rental units in to try and help  
17          expedite the matter and move the humidity out.  
18          But, we were still experiencing the buckling  
19          problem, and actually had to have the floors  
20          replaced. I think they've been replaced now,  
21          three times.

22          Q     In this time frame, let's say the late  
23          spring, early summer of 1994, did you have  
24          occasion to speak with a Winnetka Police Officer

1 concerning a complaint?

2 A I believe it was in June of 1994, I  
3 received a phone call from an officer from the  
4 Winnetka Police main station who said that he had  
5 received a complaint from a neighbor about the air  
6 conditioning unit, and asked me to turn it off.

7 Q And, what did you say to him in that  
8 conversation?

9 A I asked him, I said, would you help me  
10 understand what I've done wrong? Am I, you know,  
11 am I in violation of something? Are you telling  
12 me that I have to turn it off? He said, no, I'm  
13 just asking you to turn off the unit. I said  
14 well, if you're telling me to turn it off, I'll be  
15 happy to turn it off. He said no, I can't tell you  
16 to turn it off. It's not part of our  
17 jurisdiction. All I can do is make the call and  
18 ask you to turn it off. I said, what do you  
19 suggest? He said, I would appreciate it if you  
20 would turn it off. I said fine, I'll go turn it  
21 off. So, I went and turned it off.

22 Q What, if anything, did you do after that,  
23 as a result of that phone conversation?

24 A The next morning, I went to the job site

1 and talked with Pete about my conversation the  
2 evening prior, and said to Pete, let's go talk to  
3 some folks at city hall, Village Hall, and let's  
4 talk to the police and find out exactly where we  
5 stand. I don't want to create any problems. I'm  
6 moving into the area, I'd like to know if I'm  
7 doing something wrong. I guess I'd like to know,  
8 as soon as possible, so I can take corrective  
9 action.

10 Q By the way, in your conversation with the  
11 police officer, did he identify who had  
12 complained?

13 A He said it was one of my neighbors. I  
14 asked him if it was the neighbor to the north, and  
15 he said yes.

16 Q So, after your conversation with Pete  
17 Keller the next morning at the job site, what, if  
18 anything, did you do?

19 A Pete and I got in our respective cars and  
20 I drove to Village Hall and it opens up, I  
21 believe, at 8:00 o'clock. And, we went inside,  
22 looking for Wayne Brennan, who was the then, in  
23 charge of the inspectors. I thought in charge of  
24 the inspectors for residential work. Wayne was,



1 had taken vacation that week, and I then asked, I  
2 actually met his supervisor, Ken King. Ken was  
3 familiar with the situation.

4 MR. DIVER: Objection, your Honor, as to  
5 what Mr. King told him as to either his  
6 familiarity with or anything else he told him,  
7 It's pure hearsay as to what Ken King had to say.

8 MR. CARSON: Again, your Honor, this is  
9 in the nature of testimony to establish the  
10 witness' state of mind and his response to  
11 complaints, and what steps he took in response to  
12 the complaints. It's no different, really, than  
13 the multitude of exhibits that have gone in to  
14 show that Mr. Crown was put on notice that there  
15 was a complaint. This is simply what information  
16 he gathered and learned in response to those  
17 complaints. It's not offered for the truth.

18 THE COURT: Objection overruled. I'll  
19 permit the witness to answer the question.

20 BY MR. CARSON:

21 Q Before you get to that, Mr. Crown, you  
22 had a conversation with Ken King at the Village  
23 Hall that morning?

24 A Ken King and one of his associates, Ann

1 Kirshner, I believe her name is.

2 Q Pete Keller was also there?

3 A Pete was next to me at the time.

4 Q Anyone else?

5 A At the time, no, that was just, and Ann  
6 Kirshner. I believe she was very familiar with  
7 the situation, inasmuch as she had been talking to  
8 the Sheltons in previous conversations.

9 Q And, what transpired at that meeting?

10 A I explained to them the situation, that I  
11 had gotten a call from the police chief the night  
12 before or not the chief, but one of the police  
13 officers of the Winnetka Department the night  
14 before. That I was concerned that I didn't  
15 understand, I wanted to know that I was not  
16 creating a, that I was not out of compliance of  
17 some code or ordinance. That if there was  
18 something that I was doing that was inappropriate,  
19 I at least wanted to know that firsthand, as  
20 opposed to being told that later on down the line,  
21 I wanted to address it up front. And, therefore, I  
22 wanted to come and talk to Wayne Brennan  
23 personally and address the situation with him  
24 face-to-face. I was told that Wayne was on

1 vacation for the week and --

2 MR. DIVER: I'll object, unless we hear  
3 from whom he was told this.

4 A Ken King told me that Wayne Brennan was  
5 on vacation for the week, that he was Wayne's  
6 supervisor. Ken King was Wayne's supervisor, to  
7 which I suggested if they had 15 minutes, Ann  
8 Kirshner and Ken King had 15 minutes, would they  
9 mind following Pete and me back to my house so  
10 that we could show them the unit, listen to the  
11 unit, and talk about it on the premises.

12 Q And, did they agree to do that?

13 A They agreed. They got into, I think, one  
14 car and followed us back, followed me back,  
15 followed Pete back to the house, which is not that  
16 far away. And, we proceeded to stand next to the  
17 unit, walk around the unit, talk in a very, you  
18 know, low, normal, conversational tone.

19 Q Was the unit operating at that time?

20 A Yes, it was.

21 Q And, you had a conversation, again, with  
22 Mr. King and Ms. Kirshner, and Mr. Keller, at the  
23 unit?

24 A Right next to the unit, about a little

1 closer than you are from me.

2 Q Okay. Indicating about 8 feet?

3 A Actually, we were about a foot and a half  
4 to two feet away.

5 Q Okay. And, what was said by whom in that  
6 conversation?

7 A I explained to them, I said this is the  
8 unit that seems to be creating the problems. And,  
9 I just wanted to know whether or not there was  
10 anything that I had done or hadn't done that I  
11 needed to take action on, or be aware of. And,  
12 Ann Kirshner apprised me that I was in compliance  
13 with ordinances and codes.

14 MR. DIVER: Madam Hearing Officer, I'm  
15 assuming that my objection to this entire line of  
16 questioning, it still stands; that this is being  
17 offered just for the purpose of what she said, but  
18 not for the purpose of whether or not he was in  
19 compliance with codes.

20 MR. CARSON: It's not our intent to  
21 introduce this for the truth. This is simply to  
22 establish this witness' state of mind.

23 MR. DIVER: It's a hearsay statement that  
24 the witness received.

1           A     And, I was told that I was, that I had  
2           done that which was necessary and required by the  
3           Village, and they also, Ken King also commented  
4           that he thought the unit was, he said this seems  
5           to be a quiet unit to me.

6           MR. DIVER:   Again, that's not offered for  
7           the truth of it, I assume, is that true, that that  
8           was not offered for the purpose of the truth of  
9           whether or not it was quiet or not?

10          MR. CARSON:   I would refer, Madam Hearing  
11          Officer, if Mr. Diver makes his objection rather  
12          than direct questions to me.

13          MR. DIVER:   I've made an objection. This  
14          is a dialogue question. The point is, counsel,  
15          you're allowing this witness to get in all kinds  
16          of information that's going to be willy-nilly  
17          treated as either part of his mental state, or for  
18          the truth. And, I want to make it clear that it's  
19          not being offered for the purpose of establishing  
20          the truth of it, but merely for the purpose of  
21          saying this is something somebody said to  
22          somebody, and it was for the purpose of  
23          determining what Steven's mental state was.  If  
24          that's the only purpose of this line of

1           questioning, fine. Otherwise, I'll move to strike  
2           the entire line of questioning.

3                       MR. CARSON: Madam Hearing Officer, if  
4           you wish me to respond, I'm happy to respond.

5                       THE COURT: I believe you responded on  
6           this point previously.

7                       MR. CARSON: Thank you.

8                       THE COURT: This testimony appears to be  
9           for the purpose of establishing Mr. Crown's mental  
10          state with respect to the HVAC system, and sounds  
11          that were emitted by the system. And, it also  
12          reflects efforts that he took with respect to  
13          those emissions. So, I'll permit the witness to  
14          continue testifying in this manner. And, at this  
15          point, it would be a good idea for us to take our  
16          morning break, albeit late. So, let's take a five  
17          to ten minute break and then we'll come back and  
18          continue.

19                      MR. CARSON: Thank you.

20                               (WHEREUPON, a short recess was  
21                               taken.)

22                      THE COURT: Back on the record.

23                      MR. CARSON: Yes, thank you.

24           BY MR. CARSON:

1           Q     I'd like to turn your attention back to  
2           Exhibit No. 49, which was the October 11, 1993  
3           letter, and, specifically, the comment at the  
4           bottom of Page 2. Pete says that your unit can be  
5           located anywhere around your house. We ask that  
6           you relocate it. First, did you have any  
7           conversations with Pete Keller in the timeframe of  
8           this letter, that is the fall of 1993 or, let's  
9           say, prior to your receipt of this letter,  
10          concerning the possibility of relocating the unit?

11          A     No.

12          Q     After your receipt of this letter, did  
13          you have any conversation with Pete Keller  
14          concerning the possibility of relocating the unit?

15          A     I approached Pete after I got the letter,  
16          and asked him if he had made that statement to the  
17          Sheltons. And, it concerned me that he had made a  
18          statement like that without first at least  
19          conferring with me.

20          Q     And, how did he respond?

21          A     Pete's response was, he said well, it can  
22          be relocated, the house can be relocated. He said  
23          in construction, anything is possible. Whether  
24          it's feasible or practicable, or whether it's

1           advisable, he wasn't really in a position to say.  
2           But, if asked if it could be moved, he said yes, I  
3           told them it could be moved. But, he was talking  
4           about just a physical picking up and putting some  
5           someplace else.

6           Q       Did you have, did you form an impression  
7           in October of 1993 as to the practicability of  
8           moving the unit to another location, at that stage  
9           of the project?

10          A       At that time, we were in the early stages  
11          of the installation. We were still working on the  
12          fencing, the landscaping.

13          MR. DIVER: Madam Hearing Officer, I'm  
14          going to have to object, again, unless it's a  
15          continuing understanding that when he's using this  
16          word "we", he's talking about what he's doing. I  
17          don't believe he's talking about what he's doing,  
18          and I can't tell if he's talking about what he's  
19          doing or what somebody else is doing.

20          A       I'll try and be more specific, Madam  
21          Hearing Officer.

22          THE COURT: The objection is overruled.

23          A       During that time, Mid/Res was still in  
24          the final phases of tweaking the machine, or at



1           least it was still in the process of fine-tuning  
2           the equipment. We had not yet installed all of  
3           the surrounding trees. I had not, they had not  
4           been installed as I had authorized. Also,  
5           essentially, we weren't done yet with the  
6           installation. And, I didn't feel that it was a  
7           fair time to make any type of judgment as to  
8           whether or not the unit was or wasn't operating in  
9           the manner in which it was hoped to, or designed  
10          to.

11           Q     So, on the basis of those considerations,  
12           did you make a determination as to whether or not  
13           the unit should be moved?

14           A     At the time, it didn't seem as though  
15           that would be a rational, thoughtful, next step.

16           Q     Why not?

17           A     Well, first of all, I was relying on  
18           experts in the field of HVAC, Mid/Res. David  
19           Shelton, to my knowledge, wasn't an expert in the  
20           field. I had had numerous conversations with our  
21           experts, as it related to location, and the  
22           equipment. It had been a very long, thoughtful  
23           process. It was a fairly elaborate, complex  
24           system. And, I was relying on our experts, in

1 large part, for, you know, as to their  
2 recommendations, and then implementing the  
3 recommendations. And, it didn't seem, at least  
4 prudent at the time, to stop mid-stream and go  
5 another direction, based upon a statement or a  
6 recommendation from someone who I had no idea  
7 where they were getting their facts or  
8 information.

9 Q Did you have occasion to speak with Susi  
10 Shelton concerning this letter, this Exhibit No.  
11 49?

12 A I believe we spoke after I received the  
13 letter. Sometime, we'd run into each other on  
14 occasion.

15 Q Can you put a time frame on that  
16 conversation?

17 A It was in the fall of 1993. I don't know  
18 exactly when.

19 Q And, who was present in that  
20 conversation?

21 A Well, I don't recall. Susi Shelton and  
22 me, I guess the two of us. I don't know if there  
23 were other people around.

24 Q And, what did she say to you and what did

1           you say to her, in that conversation?

2           A       She said that she was still concerned  
3           about the sound. I believe I told her that we  
4           were still taking steps to try and put the shields  
5           up or the trees up around it, and the fence. And,  
6           that she asked me if I had received her husband,  
7           David's, letter. I said yes, I did. I told her  
8           that, you know, we were taking actions to try and  
9           remedy the situation.

10          Q       Did you ever tell Susi Shelton that you  
11          did not intend to respond to her husband's stupid  
12          letter, or words to that effect?

13          A       No, I never used words to that effect. I  
14          may have told her that I didn't intend to write a  
15          written response to her letter, that I was going  
16          to just verbally tell them what we were going to  
17          be doing. And, more of a good neighbor approach,  
18          just keep them apprised of where we were and what  
19          the progress was. But, I didn't intend on getting  
20          into a litany of letters going back and forth  
21          between neighbors when I could just as easily talk  
22          to them.

23          Q       I now show you Exhibit No. 17, which is a  
24          July 6th, 1994 letter.

1 A 1994?

2 Q Yes, July 6th, 1994, Exhibit No. 17?

3 A Right.

4 Q This is a letter that you received from  
5 David Shelton, is that right?

6 A Yes.

7 Q Calling your attention to the second  
8 paragraph, Mr. Shelton, stated in this letter to  
9 you that, "We had intended to press the Village  
10 for action at last Tuesday's council meeting.  
11 However, after talking with Bill Devers, we did  
12 not do this." Who is Bill Devers?

13 A Bill Devers is a neighbor, part of the  
14 Ardsley-Pelham neighborhood.

15 Q And, are you acquainted with Bill Devers?

16 A Actually, my wife and his wife are  
17 friends, or have been friends over the years.  
18 I've met Bill, on occasion.

19 Q And, showing you Exhibit No. 14, which is  
20 a July 1, 1994 letter from Bill Devers to you, is  
21 that a letter that you received from Bill Devers  
22 at the beginning of July, 1994?

23 A Yes. I actually received the letter  
24 after returning back to town from Colorado.

1           Q     Okay. Did you have occasion to speak with  
2 Bill Devers on the subject of the Shelton  
3 complaint?

4           A     Yes.

5           Q     Where did that conversation take place?

6           A     It took place in Aspen, Colorado, at a  
7 4th of July party that was held at the Little Nell  
8 Hotel.

9           Q     And, that would have been after the  
10 letter, which is Exhibit No. 14, was sent by Mr.  
11 Devers to you?

12          A     Yes.

13          Q     But, you just testified you didn't see it  
14 yet?

15          A     No, the letter, I hadn't received the  
16 letter as yet.

17          Q     And, it was also before you received the  
18 July 6th letter, which is Exhibit No. 17, from Mr.  
19 Shelton?

20          A     That's correct.

21          Q     And, who else was present for that  
22 conversation between you and Mr. Devers?

23          A     We're at a party, there were a whole host  
24 of people there, but nobody was present for the

1 conversation, other than Bill and I were just  
2 talking to each other.

3 Q What did he say to you, and what did you  
4 say to him?

5 MR. DIVER: Objection, hearsay, to the  
6 extent that we're going to hear what Mr. Devers  
7 had to say to him.

8 MR. CARSON: This, again, your Honor,  
9 this is not offered for the truth. It goes to the  
10 witness' state of mind in his response to the  
11 neighbor's complaints.

12 MR. DIVER: His state of mind as to what?

13 THE COURT: Overruled. The objection is,  
14 therefore, overruled.

15 A I can answer?

16 MR. CARSON: Yes.

17 A Okay. You're asking me?

18 BY MR. CARSON:

19 Q What did Mr. Devers say to you and what  
20 did you say to him in that conversation?

21 A At the party, Bill Devers came over to me  
22 and said hello, and said Steve, could I speak to  
23 you a second? He pulled me aside, he said first  
24 of all, I'd like to apologize. I sent a letter out

1           and I just wanted, I was asked to send a letter  
2           out, and I just wanted to let you know you will be  
3           receiving it after you get home. He says we seem  
4           to have a problem as it relates to you and the  
5           Sheltons. I'd just like to see it get resolved.  
6           I responded to Bill, I said I'm aware that there's  
7           a problem, but I said, are you aware, and then he  
8           asked, he said well, you know, you need to do  
9           something to address the situation. I said Bill,  
10          are you aware that we have been taking action, and  
11          we're continuing to take actions as it relates to  
12          this particular situation, to the air conditioning  
13          unit. Bill was unaware of any actions that either  
14          had been taken, or were planned to be taken. So, I  
15          went through the list of the turning of the unit,  
16          the cones, the blankets, the shielding, the  
17          fences, the nighttime activities being turned off,  
18          and so on. Bill was very much surprised that we  
19          had been taking these type of actions. And, he  
20          said well, I'm hopeful that you and David Shelton  
21          can resolve this thing. And, that's pretty much  
22          the extent of our conversation.

23                 A       I think he did invite me to come over to  
24          his house when we got back with my wife, just to

1 visit. I think that was the last part of it,  
2 actually.

3 Q And, thereafter, upon your return to  
4 Chicago, you received the letter, which is Exhibit  
5 No. 17, wherein Mr. Shelton states, "However,  
6 after talking with Bill Devers, we did not press  
7 the Village for action."

8 A Yes. I received a letter, upon my  
9 return, by fax, I think.

10 Q This letter, Exhibit No. 17, also  
11 contains, in the fourth paragraph, a statement  
12 that, "Your air conditioner contractor, MidWesCo,  
13 yesterday asked our acoustical engineer to consult  
14 with them on your noise problem." Do you  
15 understand that that's a reference to Al Shiner?

16 A Yes.

17 Q The acoustical engineer?

18 A Yes, it is.

19 Q And, did you, in fact, authorize or  
20 suggest to Mid/Res that they make contact with Al  
21 Shiner?

22 A I talked to Brad, I had been continually  
23 talking to Brad about this. Brad Mautner, and Brad  
24 suggested that, during one of our conversations,



1           that maybe we ought to bring in somebody who is an  
2           expert in the field of acoustics and sound to help  
3           provide some insight to the situation. He said, I  
4           know a fellow by the name of Al Shiner, I'd like  
5           to give him a call. I said fine, give him a call.  
6           Brad called Al Shiner and started explaining to  
7           him the situation, and was surprised to find out  
8           that Al Shiner was very much aware of the  
9           situation, inasmuch as he had been contacted by  
10          David Shelton previously, and was asked to perform  
11          some testing or work on Mr. Shelton's behalf.  
12          Brad then called me back and we talked about it,  
13          and decided that David obviously felt comfortable  
14          with Mr. Shiner. MidWesCo felt confident in Mr.  
15          Shiner's credentials and capability, maybe the  
16          best solution was to have a consultant that can't  
17          argue with himself as to the direction and  
18          solutions. And, I don't know whether it was my  
19          suggestion or Brad's, but it was clearly our  
20          joint, concurred position that we should go back  
21          and ask Al Shiner if he would be willing to work  
22          on both of our behalfs. We'd split the costs,  
23          obviously, and allow him to come up with a set of  
24          recommendations or what have you, relating to the

1 situation, or the problem. I wanted to get this  
2 resolved as much as anybody. And, it seemed that  
3 we didn't need to pick sides in order to find a  
4 consultant because each one we felt might have its  
5 own vested interest in wanting to come up with the  
6 solution.

7 Q So, as a result of this discussion  
8 between you and Brad, to your understanding, Al  
9 Shiner undertook the engagement?

10 A Brad called Al Shiner. Al Shiner then  
11 called David Shelton and asked permission to work  
12 on both of our behalfts.

13 Q And, do you know, it's your  
14 understanding, was that permission given?

15 A Permission was given, with a caveat that  
16 if it got into a situation where Al Shiner --  
17 David Shelton said it was, you know, it was  
18 unusual to have somebody work on both accounts,  
19 but that if it got into a situation, legal  
20 situation otherwise, he didn't want Shiner working  
21 on our behalf. But, that's understandable. At  
22 this point, we weren't looking at going that  
23 route. We were looking more toward trying to find  
24 a solution or at least recommendations to get us

1 to a solution.

2 Q And, did you learn that Al Shiner  
3 conducted sound measurements at the Shelton  
4 property?

5 A I learned of it. I think I received  
6 from, I think, David Shelton, a letter with some  
7 sound measurement readings that Shiner had taken.

8 Q And, after your receipt of those sound  
9 readings, what, if anything, did you do?

10 A I passed them on to Brad Mautner. I  
11 relied on Brad to help interpret, explain to me  
12 what it meant.

13 Q Did you have occasion to meet with Brad  
14 Mautner to, for that purpose, to have someone  
15 explain them to you?

16 A I talked to Brad on the phone. I don't  
17 know if I met with him in person. He had a copy, I  
18 had a copy, we probably talked by phone. I don't  
19 know that we personally got together and went  
20 through the numbers, or went through the  
21 information. But, I asked him to take a look at it  
22 and help explain to me what it meant.

23 Q Did you have a meeting with Brad Mautner,  
24 Al Shiner, and Pete Keller after your receipt of

1           those sound readings?

2           A     Afterwards, we arranged, I arranged with  
3           Brad and Pete and Al Shiner to meet at my house to  
4           talk, to take a look at the unit, to discuss what  
5           possible approaches or possible suggestions he  
6           might have to address the situation.

7           Q     And, that meeting took place  
8           approximately when?

9           A     I want to say late July, 1994.

10          Q     Okay. Looking at Exhibit No. 34, which  
11          is a July 12, 1994 letter.

12          A     Mid July, 1994.

13          Q     Does this refresh your recollection as to  
14          when the meeting took place?

15          A     Yes, it's not long after the letter I  
16          received from David Shelton. So, mid-July would  
17          probably be right.

18          Q     Okay. And, Exhibit No. 34 is a letter to  
19          David Shelton from Al Shiner showing copies to you  
20          and to Pete Keller and Brad Mautner. And, it  
21          references a meeting that occurred on July 11,  
22          1994.

23          A     Right.

24          Q     There was such a meeting?

1           A     Yes, there was.

2           Q     And, was the subject of available options  
3           for the further attenuation of the sound discussed  
4           at that meeting?

5           A     Yes. We looked at, we were discussing a  
6           number of different approaches.

7           Q     Okay. What was discussed at the meeting?  
8           What approaches were discussed?

9           A     I don't know if I can, I don't know if I  
10          remember all the approaches, but we were trying to  
11          figure out, when I say "we", in this case, I'm  
12          talking about Shiner and Mautner. Pete and I are  
13          not acoustical experts. Essentially, Brad and Al  
14          were talking about possibly enclosing the unit  
15          differently than we had previously decided, as  
16          opposed to putting a stockade fence or trees, to  
17          put some much different type of structure around  
18          it. And, one of the ideas that was put forth was  
19          to build a building around it, essentially, with  
20          walls, concrete block walls or 8 inch concrete  
21          block walls and a roof.

22          Q     And, looking at the attachment, the  
23          second page of Exhibit No. 34, is that a drawing  
24          that was created at that meeting?

1           A     I don't believe it was created at the  
2 meeting. It may well have been a, it was a result  
3 of the meeting, but it, I don't think that it  
4 looks like Pete Keller's handwriting. And, I  
5 think that this is more Pete's understanding of  
6 one of the directions that we were talking about.

7           Q     And, on the drawing, you could see that  
8 it references a roof line, and there's what  
9 appears to be a roof drawn on this drawing,  
10 correct?

11          A     On the right hand side, it says roof,  
12 line of roof, yes.

13          Q     What, if any, discussion was there at  
14 this meeting concerning creating an enclosure with  
15 a roof on it?

16          A     There were a couple of issues that were  
17 of concern. One was related to Mid/Res' concern  
18 as to the operational, functional question of air  
19 and how air moves, if it were in a building. And  
20 then, that was the one issue that the technical  
21 folks were addressing. Pete's concern was if you  
22 put a roof over it, you're essentially coming  
23 under, he was not sure whether or not this was  
24 something that could be built on a concrete pad or

1           whether it qualified as a structure and required  
2           footings and foundations.  And, we also had,  
3           because of a change in the FAR, floor area ratio  
4           calculation of the Village of Winnetka, we had  
5           maxed out, as I understod it, our allowable floor  
6           area useage.  So, this would require a special  
7           variance in order to be built, if we were to build  
8           a structure with a roof.  So, Pete was concerned  
9           about the timeframe and the process.  And, in order  
10          to expedite and get at least a preliminary reading  
11          from the Village, Pete threw together a drawing,  
12          which was his understanding as to what this  
13          structure would look like, and wanted to present  
14          it to people in the Building Department at the  
15          Village to get their read as to whether or not we  
16          had, as you can see, on the right hand side, it  
17          says above grade.  You can see a foundation and a  
18          footing below grade, which meant that this is  
19          going to become a permanent structure.  It's no  
20          different than an addition, and would, therefore,  
21          require a special variance as it related to our  
22          property.

23                 Q       And, when you say Pete threw together  
24          this drawing, looking at Exhibit No. 34, it

1 appears that the drawing that's attached to it was  
2 created within a day after the meeting.

3 A It was.

4 Q Is that your recollection?

5 A It was within a day or so after the  
6 meeting. Pete just wanted to get moving on it.  
7 Our whole intent here was to try and find a  
8 resolution and move as quickly as we possibly  
9 could to get this matter behind us.

10 Q I'm showing you now Exhibit No. 47, which  
11 is a letter dated July 21, 1994 from David Shelton  
12 to Alan Shiner. And, this letter also shows you as  
13 a c.c., as well as Greg Zak. Did you receive a  
14 copy of this letter in the latter part of July,  
15 1994?

16 A I received the letter portion of it. I'm  
17 not sure if I received the last couple of pages of  
18 the, I don't think I received the last three  
19 pages.

20 Q So, you did receive the first two?

21 A Yes, I recall seeing the first two. The  
22 Trane engineering bulletin, what it says up on the  
23 top, Pages 1, 2, 3, I didn't get that until, I  
24 think, a second letter that was sent to me by



1 David Shelton.

2 Q According to this letter, Mr. Shelton was  
3 raising some questions concerning the proposed  
4 enclosure. Had you authorized the construction of  
5 the enclosure that was shown on Exhibit No. 34?

6 A No.

7 Q Why not?

8 A Because at the time, there were some  
9 questions raised by Mid/Res as to the operational  
10 efficiency of it. There were still some other  
11 ideas that were--in fact, Brad Mautner told me  
12 that he had some other thoughts that might work,  
13 as well as the proposed enclosure, and still  
14 provide the air flow requirements. And, we were,  
15 you know, this was hopefully going to be a  
16 permanent fix, not a Band-Aid or create additional  
17 problems as we moved along. So, we wanted to do  
18 this in a very thoughtful fashion from the get go.

19 Q So, it was your understanding that  
20 Mid/Res was working on another alternative?

21 A They were. As I understood it, from Brad,  
22 they were exploring some other possible ways of  
23 enclosing the unit, which ultimately resulted in,  
24 I guess what are called the quiet flow panels or

1 the metal panels that surround it today.

2 Q Did you hear from other neighbors, aside  
3 from the Sheltons, in 1994, concerning sound  
4 emissions from the air conditioner?

5 A I received letters from neighbors, yes.

6 Q This is Exhibit No. 38, which is a group  
7 exhibit comprised of a number of letters dated  
8 July 27, 1994. Are these letters that you sent,  
9 at that time, July 27, 1994?

10 A Yes.

11 Q And, what was the purpose of sending the  
12 letters?

13 A The purpose was simply that I had  
14 thought, from the beginning, that David Shelton  
15 and I could resolve this issue neighbor to  
16 neighbor, that we didn't need to go outside of our  
17 own respective household, and that I thought that  
18 I was working on this in a very diligent, very  
19 thoughtful fashion. But, it was becoming apparent  
20 that other neighbors, in fact the neighborhood,  
21 was being brought into this, this apparent  
22 conflict or disagreement. It was also apparent  
23 that one side of the story was being told, as was  
24 relayed to me by Bill Devers. And, it seemed that,

1 as opposed to staying quiet and not taking a, it  
2 wasn't our position to go out and put this in the  
3 press or put this in the neighborhood as an issue,  
4 because of the level it had escalated to, it  
5 seemed appropriate to maybe set the record  
6 straight and just bring the neighborhood up to  
7 date so that at least everybody had a common base  
8 of information and heard from me. I felt that  
9 this letter, at least would shed some light on the  
10 other side of the issue, my side. And, therefore,  
11 I felt it appropriate to send the letter. And, I  
12 also felt it appropriate to carbon copy David  
13 Shelton on all copies of it. So, I guess he  
14 received a package of 20 or 30 some letters some  
15 day, all identical, but addressed to the different  
16 neighbors in the neighborhood.

17 Q In this letter, you make a statement that  
18 your neighbor has worked to create a certain  
19 frenzy in the neighborhood. What is it that  
20 you're referring to?

21 A In the conversations that I had with  
22 neighbors, we were, I was told that the Sheltons  
23 had been inviting people over to their house. Susi  
24 Shelton had run over to our new neighbors, the

1           Neal's next door, and started a conversation, have  
2           you heard the air conditioning unit? And then,  
3           that, and the visits down to the Village Hall for  
4           the Tuesday meetings. And then, the article that  
5           ultimately came out in the "Pioneer Press", it  
6           was, this was becoming a cause celebre. The  
7           project, in and of itself, was a large enough  
8           project in the Village. Actually, there were two  
9           big projects going on at the time, ours and the  
10          one down the street. So, we were somewhat visible  
11          and now, all of a sudden, the neighbors were being  
12          brought into this. Facts were being thrown about,  
13          statements were being made, and the neighbors, we  
14          were, we had not yet moved into the neighborhood  
15          and we, I, along with my wife this time, so it's  
16          we, were very concerned about moving into the  
17          neighborhood on a bad foot. We didn't want our  
18          neighbors to think we were building a house,  
19          putting a wall around it, and that was it. So, I  
20          was concerned that the perception that the  
21          neighborhood might have of me or my family would  
22          be somewhat skewed improperly. And, also felt  
23          that it was important that I communicate with them  
24          in some fashion, since now Mr. Shelton saw fit to

1 include them in this conversation. So, the frenzy  
2 was that all of a sudden, people are now involved  
3 with half facts or partial facts, or bits and  
4 pieces of information, and were signing documents  
5 that were generic documents, that really didn't  
6 have any, they weren't really clear on what the  
7 problem or the programs were to try and address  
8 them.

9 Q And, in this letter, Exhibit No. 38, you  
10 describe some of the things that were done toward  
11 sound attenuation, with the statement, "We have  
12 done all these things." And, indeed, you had done  
13 those things, correct?

14 A That's correct.

15 Q Looking in the third paragraph. And, you  
16 were concerned that these neighbors weren't aware  
17 that you had taken these steps?

18 A I wasn't sure what the neighbors were  
19 aware of. I was aware that the Devers were  
20 unaware of what actions we had taken. And, I  
21 assumed that, I made the assumption that if Bill  
22 Devers wasn't aware, other neighbors may not be  
23 aware. And, therefore, it probably didn't hurt to  
24 make sure everybody was brought up to the same

1 level of understanding and awareness.

2 Q Now, showing you Exhibit No. 45, which is  
3 a letter that is dated September 14th, 1994 from  
4 David Shelton and Robert Julian to you. This one,  
5 showing c.c.'s to Doug Williams, the Winnetka  
6 Village counsel, and Greg Zak. Did you receive  
7 this letter?

8 A Yes, I did.

9 MR. DIVER: Might I have a copy of that,  
10 Bob? I don't seem to find a copy in my file. Do  
11 you have it?

12 MR. CARSON: Yes.

13 MR. DIVER: Thank you.

14 BY MR. CARSON:

15 Q I'm looking for the reference here. It  
16 states, in Exhibit No. 45, bear with me one  
17 second. It states, in the second paragraph, "You  
18 have essentially ignored us", concerning their  
19 complaints regarding the sound from your air  
20 conditioner. Is that true? Were you essentially  
21 ignoring their complaints?

22 A Quite the contrary. We were trying to  
23 address the complaints in a thoughtful,  
24 constructive fashion. And, continued to work with

1 David Sheltons' chosen consultant, Al Shiner, and  
2 I worked with Brad Mautner and I felt that Shiner  
3 working for Shelton would be apprising him of  
4 either progress, steps or information as it arose.  
5 And, occasionally, would talk to the Sheltons.  
6 And, their first comment was, you aren't doing  
7 anything. And, I would try to give them an  
8 update. I didn't see fit, at this point, to even  
9 paper the trail.

10 Q Showing you now what has been marked  
11 Exhibit No. 44, a letter dated September 15, 1994  
12 addressed to David Shelton and Robert Julian. And,  
13 this one, Exhibit No. 44, by the way, has a  
14 handwritten P.S. to Mr. Zak. You did send this  
15 letter, without that P.S., to Mr. Shelton and Mr.  
16 Julian?

17 A That's correct.

18 Q And, this was in response to Exhibit No.  
19 45?

20 A That's correct.

21 MR. DIVER: Madam Hearing Officer, has  
22 Exhibit No. 44 been admitted?

23 THE COURT: I'll check.

24 MR. DIVER: Are you seeking to have it

1 admitted, Bob? I'm not.

2 MR. CARSON: Yes, I will. I thought it  
3 was in, but I thought --

4 MR. DIVER: My records indicate that it's  
5 not.

6 THE COURT: Exhibit No. 44 has not yet  
7 been introduced.

8 MR. DIVER: Right.

9 BY MR. CARSON:

10 Q Exhibit No. 44, is that a true and  
11 correct copy of a letter that you sent to Mr.  
12 Shelton and Mr. Julian, excluding, for purposes of  
13 this question, the P.S. to Mr. Zak?

14 A 44 is a copy of a letter sent to Greg  
15 Zak, but it's a copy of a letter, the content of  
16 which was sent to David Shelton and Bob Julian.  
17 Does that help?

18 Q Yes. You sent a copy of the letter also  
19 to Greg Zak?

20 A Yes. What I have, 44, at least in front  
21 of me, is the copy of the letter sent to Greg Zak.  
22 The letter sent to David Shelton and Bob Julian is  
23 the same text, except for the postscript,  
24 handwritten postscript.



1 Q And, this letter was sent in response to  
2 the letter which is Exhibit No. 45?

3 A That's correct. The letter dated  
4 September 14, 1995.

5 MR. CARSON: Move for the admission of  
6 Exhibit No. 44.

7 MR. DIVER: No objection.

8 THE COURT: Exhibit No. 44 is entered  
9 into evidence.

10 BY MR. CARSON:

11 Q According to this letter, you make the  
12 statement, in the closing or on the second page,  
13 that you had been informed that you were not in  
14 violation of any applicable statute, code, or  
15 regulation. Is that correct?

16 A That's correct.

17 Q You were so informed at --

18 A No, I was informed prior to that,  
19 partially through my conversation with Ken King  
20 and Ann Kirshner, that we were not doing anything  
21 wrong.

22 Q Did you have occasion to speak with Susi  
23 Shelton again on the subject of the sound from  
24 your air conditioner in or about the fall of 1994?

1           A     I believe we talked in front of Hoover  
2           Woods School prior to, there was some sort of  
3           event, the kids walk-a-thon or some sort of kids  
4           event that was taking place.

5           Q     And, was anybody else present for that  
6           conversation?

7           A     Lots of people around, our kids were  
8           around, but the conversation would have been  
9           between Susi Shelton and me.

10          Q     And, what did she say to you and what did  
11          you say to her in that conversation?

12          A     It started out very friendly, saying that  
13          I hope we can get this resolved. I said well,  
14          we're working on it. And then, she immediately  
15          said well, I don't know that this is going to  
16          work. We really need to get this thing off. I  
17          said, we're taking these steps. We'll be, we're  
18          working on an enclosure to muffle the sound and,  
19          you know, this should resolve it. We're working  
20          with the appropriate -- we're working with people  
21          who seem to know what they're doing. I told her  
22          that, you know, if it doesn't work, I don't know  
23          where else to take this thing. We'll just have to  
24          let the authorities tell us what appropriate steps

1 need to be taken to, what levels are appropriate.

2 Q Did you ever make a statement to Susi  
3 Shelton, either in that conversation or any other  
4 time, we'll see you in court, or words to that  
5 effect?

6 A No, the last thing I wanted to do was  
7 turn this into a legal matter. I was hoping to  
8 resolve this in a very friendly, amicable,  
9 neighborly way. As a matter of fact, as I  
10 mentioned earlier, I didn't take any steps to try  
11 and paper this trail. I was trying to let actions  
12 speak louder than written words, and take the  
13 steps to try to correct the problem that was  
14 bothering the Sheltons.

15 Q In the Shelton and Julian letter, Exhibit  
16 No. 45, there's a statement that, of their  
17 intention to take the matter to the Village of  
18 Winnetka, to take the necessary steps to remedy  
19 the situation. Did they, to your knowledge, did  
20 they do so?

21 A I don't know if they took it. They,  
22 there was a meeting -- I'm not sure if they took  
23 it there. There was a meeting.

24 Q Did you learn that the Village of

1 Winnetka was to address this issue?

2 A In January of 1995, I received a call on,  
3 I believe, either a Friday or a Monday, I can't  
4 remember which, from Doug Williams, who was the  
5 Winnetka Village Manager, who asked me if I had  
6 received notice of a meeting that was going to be,  
7 I guess it was a discussion session or some sort  
8 of a meeting that was going to be held regarding  
9 air conditioners and sizes and those sorts of  
10 issues. I said I had not received anything. He  
11 asked me if I was going to be present. I said  
12 well, I've got other, I've got a conflict at that  
13 time, I'm not going to be able to make it. But,  
14 that I wish I had received notice previously so  
15 that I could have made other plans. But, I asked  
16 him if it would be, if I could submit a letter or  
17 some sort of a statement which helped the Village  
18 council, or whoever was going to be attending that  
19 meeting, in understanding my position, and the  
20 chronology, and what had been done. And, Doug  
21 Williams said that he thought that would be very  
22 helpful. And so, for the balance of the day, I  
23 put together, to the best of my recollection, a  
24 chronology and a letter which presented the facts

1 relating to the history of the installation of  
2 this system.

3 MR. CARSON: If I could address a  
4 question to Madam Hearing Officer. Respondent's  
5 Exhibit No. 7, according to my notes, was  
6 introduced at some point, but I don't believe it  
7 would have been admitted into evidence yet. I  
8 show it's admitted into evidence.

9 MR. DIVER: Yes.

10 MR. CARSON: That would explain, for some  
11 reason I don't have a copy that has the sticker on  
12 it. I just have this.

13 MR. DIVER: Do you have an extra copy of  
14 this?

15 MR. CARSON: Isn't that the same thing?

16 MR. DIVER: I don't believe so. I  
17 believe 7 was Mr. Shelton's response to this.

18 THE COURT: Respondent's Exhibit No. 7  
19 has been introduced, but not yet admitted into  
20 evidence.

21 MR. DIVER: Respondent's Exhibit No. 7 is  
22 introduced and not admitted.

23 THE COURT: Correct.

24 MR. CARSON: Can we go off the record for

1 just a moment?

2 THE COURT: We'll go off the record to  
3 discuss exhibits.

4 (Off the record)

5 BY MR. CARSON:

6 Q I'm going to tender to the witness now  
7 Respondent's Exhibit No. 7. I have a copy for your  
8 Honor.

9 THE COURT: Thank you.

10 MR. CARSON: And, counsel has already  
11 been provided the copy.

12 MR. DIVER: That's the 1-10-95 letter?

13 MR. CARSON: Yes, it bears a date of  
14 January 10, 1995.

15 BY MR. CARSON:

16 Q Mr. Crown, this is a transmittal letter  
17 with an attachment bearing the date of January 10,  
18 1995, addressed to Douglas G. Williams, is it not?

19 A Yes, it is.

20 Q And, that bears your signature?

21 A Yes, it does.

22 Q And, the attachment is a collection of  
23 correspondence, including another letter that you  
24 wrote dated January 10, 1995, addressed to the

1 Winnetka Village Council, is that correct?

2 A That's correct.

3 Q And, did you transmit this information to  
4 Douglas G. Williams on or about January 10, 1995?

5 A Yes, I did.

6 Q Who is Douglas G. Williams?

7 A He's the Winnetka Village Manager.

8 Q And, what was the purpose for your  
9 sending this information to Mr. Williams?

10 A This package of information was sent in  
11 response to the call I received from Doug Williams  
12 regarding the study session to be held, I think,  
13 on or maybe it may well have been on the night of  
14 January 10th, at the Village of Winnetka, which  
15 was going to involve sound, noise, air conditioner  
16 sizes, a whole host of issues. And, I just wanted  
17 to have at least our position, coupled with what I  
18 thought were some of the communications leading up  
19 to it, put in one, concise package so that the  
20 Village council had a complete picture of what was  
21 going on.

22 Q And, in referring to the five page  
23 letter, which is attached to the transmittal to  
24 Mr. Williams, that's a letter that you sent to the

1 Winnetka Village Council on or about January 10,  
2 1995?

3 A I sent it to Doug and asked him to  
4 distribute it to the Village Council.

5 Q I see. And, the recitation of events that  
6 is set forth in this letter, is that an accurate  
7 recitation of the events, as you perceived them,  
8 as of July 10, 1995?

9 A Yes, to the best of my knowledge, that's  
10 an accurate recitation.

11 MR. CARSON: Move to admit Respondent's  
12 Exhibit No. 7 into evidence.

13 MR. DIVER: No objection.

14 THE COURT: Respondent's Exhibit No. 7 is  
15 entered into evidence.

16 BY MR. CARSON:

17 Q Was the matter addressed by the Village,  
18 to your knowledge?

19 A When you say addressed, was it discussed?

20 Q Well, did you participate in a meeting  
21 with Village officials?

22 A We're talking two different -- the study  
23 session, which occurred around the January 10th  
24 date, I only participated by means of the letter.



1           At the time, I don't know whether I talked to Doug  
2           before or after it, but I had suggested that I was  
3           more than willing, and encouraged him to pull us  
4           all together; the Sheltons, me, whomever else was  
5           an interested party at the Village. I said, let's  
6           sit down and talk about this. I'm not trying to  
7           sidestep the issue, I'd like to sit down and make  
8           sure everybody is on the same page. I recommended  
9           to Doug that I would come and meet with him any  
10          time, any place, anywhere, to discuss the matter.  
11          And, he took me up on my offer, and requested a  
12          meeting to be held at Village Hall shortly  
13          thereafter.

14                 Q       Showing you Exhibit No. 35 which, I  
15                 believe, is already in evidence.

16                         MR. DIVER: The date, I'm sorry?

17                         MR. CARSON: This bears a date of January  
18                 21, 1995. Does this document deal with a meeting  
19                 that you attended?

20                 A       Yes, it deals with a meeting that, I  
21                 believe, was on the 17th of January, at Winnetka  
22                 Village Hall.

23                 Q       Okay. And, showing you Exhibit No. 54,  
24                 which I also wish to confirm has been entered into

1 evidence?

2 THE COURT: Correct.

3 MR. CARSON: Thank you.

4 BY MR. CARSON:

5 Q Is that your response?

6 MR. DIVER: The date of this?

7 MR. CARSON: This bears the date of  
8 January 27, 1995.

9 A I'm sorry, the question?

10 BY MR. CARSON:

11 Q Is Exhibit No. 54 your response to Mr.  
12 Shelton's summary of the meeting, which is  
13 contained as part of Exhibit No. 35?

14 A Yes. David Shelton had, I guess, put  
15 together a two-page memorandum as to his  
16 understanding of what had occurred. And I, at  
17 least responding to those portions relating to the  
18 per Steve Crown sections, wanted to at least go on  
19 record as not agreeing with them in their  
20 entirety, as much as I felt Mr. Shelton had either  
21 misunderstood or had improperly conveyed in the  
22 text what had been said.

23 MR. DIVER: Bob, do you have an extra copy  
24 of 54?

1 MR. CARSON: Yes.

2 BY MR. CARSON:

3 Q At that meeting with the Village on  
4 January 17, 1995, who was present

5 A Really, it was at the, the meeting was at  
6 the Village Hall and Peter Krunkshank (ph), Katie  
7 Janega, Doug Williams, those were the parties  
8 representing the Village. I was there, Bob  
9 Julian, thoe neighbors to the north of the  
10 Sheltons, and David and Susi Shelton were present.

11 Q And, at that meeting, did you make any  
12 promise of specific actions as stated under future  
13 actions on Exhibit No. 35, per Steven Crown?

14 A Correct one thing. Al Shiner was tied in  
15 by phone at that meeting because he was unable to  
16 attend on such short notice. Sorry. In answer to  
17 your question, as to the Number 4, future actions,  
18 is that what you're talking about?

19 Q Yes.

20 A No. In fact, after having a fairly  
21 lengthy discussion with all parties and explaining  
22 what the steps were as it related to what is now  
23 called the quiet flow panel pen, this is actually  
24 consistent with what David Shelton understood at

1 the end of the meeting, which I corrected him on  
2 at the meeting also; that we did not say we would  
3 take whatever steps are necessary to comply with  
4 the standards at the time. There was no  
5 understanding, at least in my mind, that the  
6 standards were or were not applicable. It was  
7 unclear. Also, it was also unclear because Mr.  
8 Shelton had suggested, well, maybe you, if you get  
9 the readings to be 10% above the standards, that  
10 might be acceptable. I mean, a lot of things were  
11 being thrown around at the time, and it just  
12 didn't seem prudent or appropriate to accept  
13 anything, in addition to when she asked me to turn  
14 the unit off until we could come to a solution,  
15 none of which were satisfactory. And, I also told  
16 him so at the meeting. And, I just wanted to make  
17 sure that it was clear as to what my position was.  
18 I believe Mr. Krunkshank, Ms. Janega and Mr.  
19 Williams, you know, all heard the same thing that  
20 I had.

21 Q Your position, then, was what?

22 A That we were taking steps to try and  
23 address the sound issue. That we were going to be  
24 putting an enclosure around the unit, that the

1 enclosure was designed by an acoustical sound  
2 expert that both, found by Mr. Shelton, that we  
3 had also employed. That, we had yet not  
4 constructed the surrounding enclosure, nor taken  
5 readings, nor understood what the effects were.  
6 And, that it would be premature to do anything, at  
7 this point, until we had the benefit of that  
8 information. And then, make a judgment and go from  
9 there.

10 Q When you stated that the concept that was  
11 mentioned at that meeting, the 10% above the IPCB  
12 standards might be acceptable. Who made that  
13 statement?

14 A David Shelton. He threw it out as a  
15 possibility. I'm not sure it was actually an  
16 offer on the table, but he said I might be willing  
17 to even accept 10% above. And, quite honestly,  
18 I'm not sure if it was a serious offer on his  
19 part. I certainly didn't take it as a proposal.  
20 And, I think it was more just conversation.

21 Q At that time, this acoustical enclosure  
22 had not been constructed, I take it?

23 A It wasn't completely in place, it was on  
24 order. It may well have been delivered to the

1 site because it was wintertime. I don't think it  
2 had been constructed. It may have been delivered  
3 in February, I'm not sure what the timing was, in  
4 fact.

5 Q By the spring of 1995, was the acoustical  
6 enclosure installed?

7 A Yes, it was constructed before the start  
8 up of the next season.

9 Q Okay. Showing you Exhibit No. 36, which,  
10 I believe, is already in evidence. This is a  
11 letter dated March 16, 1995 from David Shelton to  
12 you.

13 THE COURT: And, I show Exhibit No. 36  
14 has not been introduced, to date.

15 MR. CARSON: One moment, please.

16 THE COURT: Let's go off the record to  
17 change court reporters.

18 (WHEREUPON, the following  
19 proceedings were recorded by Vernita  
20 Powell.)

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## CERTIFICATION

I, VERNETTA MCCREE, A Certified  
Shorthand Reporter, doing business in the State of  
Illinois, certify that I reported in shorthand the  
testimony taken in the above-entitled matter, and  
that this constitutes a true and accurate  
transcription of my shorthand notes so taken as  
aforesaid.

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VERNETTA MCCREE, CSR 083-001830