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ILLINOIS POLLUTION CONTROL BOARD

MILTON C. KAMHOLZ and)
VIRGINIA L. KAMHOLZ,)
)
Complainants,)

and) No. PCB 02-41

LAWRENCE SPORLEDER and)
MARIANE SPORLEDER,)
)
Respondents.)

REPORT OF PROCEEDINGS before
BRADLEY P. HALLORAN, Hearing Officer, in the
above-entitled hearing at 414 West Judd, Woodstock,
Illinois, commencing at the hour of 9:00 o'clock
a.m. on the 19th day of November 2002.

1 APPEARANCES:

2 MR. MILTON C. KAMHOLZ
3 MS. VIRGINIA L. KAMHOLZ
4 1306 Sullivan Road
5 Woodstock, Illinois 60098
6 (815) 568-6166,

7 On behalf of the Complainants;

8 MADSEN, SUGDEN & GOTTEMOLLER
9 BY: MR. JOSEPH GOTTEMOLLER
10 One North Virginia Street
11 Crystal Lake, Illinois 60014
12 (815) 459-5152

13 On behalf of the Respondents.

14 ALSO PRESENT: Mr. Greg Zak
15 Ms. Tricia Zak
16 Mr. Lawrence Sporleder
17 Ms. Mariane Sporleder
18 Mr. Donald Peterson
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1 THE HEARING OFFICER: We are on the record.
2 Good morning. My name is Bradley Halloran. I am
3 the hearing officer with the Illinois Pollution
4 Control Board. I am also assigned to this matter
5 involving Milton C. And Virginia Kamholz, the
6 complainants, versus Lawrence and Mariane
7 Sporleder, PCB No. 02-41. Today's date is
8 November 19th in the year 2002. It is
9 approximately 9:10 a.m.

10 This matter has been publically noticed
11 pursuant to the board regulations and has been
12 publicly noticed in the local newspaper and will be
13 conducted in accordance with Section 103.212 and
14 101.600 in the Board's general provisions.

15 It is a citizen enforcement matter
16 alleging violations of 9(a) of the Act in
17 sections 900.102 and 901.102(a) of the Board's
18 regulations.

19 I also note for the record that I will

20 not be making the ultimate decision in the case.
21 In fact, the ultimate decision will be made by the
22 members of the Pollution Control Board. My job is
23 to ensure an orderly transcript and a clear record
24 and rule on any evidentiary matters here at the

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1 hearing.

2 There appears to be one member of the
3 public here. She stated that she is just here to
4 observe. If anyone wishes to testify, they may do
5 so under oath and be subject to cross-examination.
6 After -- before the close of the hearing, I will
7 set a post-hearing brief in which public comments
8 can and will be received.

9 With that said, I think we have some
10 preliminary matters. Let's introduce the parties
11 first.

12 The complainant?

13 MRS. KAMHOLZ: Pardon?

14 THE HEARING OFFICER: Would you introduce
15 yourself, please?

16 MRS. KAMHOLZ: Yes. I am Virginia Kamholz,
17 and I am representing ourselves.

18 MR. KAMHOLZ: Milton Kamholz.

19 THE HEARING OFFICER: Mr. Gottemoller.

20 MR. GOTTEMOLLER: Joseph Gottemoller. I am
21 here on behalf of my clients who are to my right,
22 the Sporleders. They also have their grandson with
23 them, Don Peterson.

24 THE HEARING OFFICER: Any preliminary

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1 motions or issues before we begin.

2 MR. GOTTEMOLLER: I would make a motion to
3 exclude witnesses that are not currently
4 testifying.

5 MRS. KAMHOLZ: I would object to that.

6 THE HEARING OFFICER: On what grounds?

7 MRS. KAMHOLZ: Well, this is --

8 MR. KAMHOLZ: Do you fully understand it? .

9 MRS. KAMHOLZ: That means Ms. Kate would
10 have to leave.

11 THE HEARING OFFICER: That is testimony.

12 MR. KAMHOLZ: That is from testimony.

13 THE HEARING OFFICER: Any party that you are
14 expected to call to the stand, Mr. Gottemoller has
15 made a motion to exclude --

16 MRS. KAMHOLZ: I see.

17 THE HEARING OFFICER: -- until they testify.
18 I assume after they testify they can remain in the
19 room.

20 MR. GOTTEMOLLER: Sure.

21 MRS. KAMHOLZ: Okay.

22 THE HEARING OFFICER: So any parties that
23 are going to testify today on behalf of
24 Mrs. Kamholz will have to leave the room and I

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1 guess make yourself comfortable out in the library.
2 We will call you when your time has come.

3 MR. GOTTEMOLLER: I would also make a motion
4 to prohibit the playing of the videotapes, at least
5 until we have a foundation for them. I know that
6 she has a couple hours -- probably about three and
7 a half hours of videotapes. I am assuming that at
8 the very least they would be limited to portions
9 that are particularly appropriate and not three and
10 a half hours worth.

11 But in addition to that, I don't think
12 that they do any more than demonstrative evidence
13 of motorcycle riding itself. They are not accurate
14 for standard purposes. And I would direct the

15 attention to Illinois Pollution Control Board case
16 Annino versus Browning Ferris, PCB No. 87-139,
17 concerning VCR recordings themselves.

18 THE HEARING OFFICER: Mrs. Kamholz, any
19 response?

20 MRS. KAMHOLZ: I object to that. I intend
21 to show my video. I do not intend to show three
22 and a half hours of video, but I do intend to show
23 it because that is what my case is all about. It
24 does consist of motorcycle riding, and that is why

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1 we are here today.

2 THE HEARING OFFICER: I understand during
3 prehearing conferences I thought it was a two-hour
4 video. Now, it is three and a half?

5 MRS. KAMHOLZ: Well, that is what he says.
6 I think it is about --

7 MR. GOTTEMOLLER: There is three -- for
8 whatever it is worth, there is three and a half
9 hours of tape that was produced in discovery. I
10 don't know that she intends to use all three and a
11 half hours.

12 MRS. KAMHOLZ: What he has got would be
13 that. I am not going to show it all.

14 THE HEARING OFFICER: We need the court
15 reporter to pick up everybody. So everybody needs
16 to talk one at a time, please.

17 MRS. KAMHOLZ: I do not intend to show
18 three and a half hours of video. But I do intend
19 to show some video of the activity we are here
20 about today.

21 THE HEARING OFFICER: I think -- and I guess
22 it is a little premature regarding the foundation.
23 I am assume you will lay a foundation for the
24 video. You are familiar --

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1 MRS. KAMHOLZ: I will do the best I can. I
2 am not sure I quite understand. I think the
3 foundation for the video is I would like to show
4 the activity that I complained about. It is my
5 evidence. It is my proof of activity. And I have
6 to show it. It is what it is all about.

7 MR. KAMHOLZ: If I might too. We are not --
8 we do not have our witnesses here at this point
9 because we intended to show the video in the early
10 part of the hearing.

11 MRS. KAMHOLZ: Most of our witnesses have

12 not viewed this video.

13 THE HEARING OFFICER: Okay. And as I
14 stated, I don't make the ultimate decision. So I
15 am reluctant to sit here through three hours of
16 videos.

17 MRS. KAMHOLZ: You will not have to.

18 THE HEARING OFFICER: And they will, you
19 know, obviously, look at it. I think with
20 Mr. Gottemoller's motion, I think it may be a tad
21 premature at this point, and we can address that at
22 the appropriate time.

23 What was your schedule of events this
24 morning, Mrs. Kamholz? It is your case-in-chief.

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1 MRS. KAMHOLZ: I believe I will start,
2 especially since my witnesses are not here yet
3 would be a good time for me to get started. And I
4 will just give you my opening statement and go from
5 there and do the best job I can.

6 THE HEARING OFFICER: Are you going to call
7 Mr. Zak first as a witness or are you going --

8 MRS. KAMHOLZ: I will be my own first
9 witness.

10 THE HEARING OFFICER: Okay.

11 MRS. KAMHOLZ: If I may have your
12 permission to do it in a narrative form, I would
13 appreciate that.

14 THE HEARING OFFICER: Okay. We will wait
15 until you take the stand and see what
16 Mr. Gottemoller has to say.

17 Sir, you just entered the room. Are
18 you one of Ms. Kamholz's witnesses?

19 MR. PRAZUCH: No, no. I am a -- we have a
20 similar case in our subdivision. Can I -- it is
21 open for public.

22 THE HEARING OFFICER: It is open to public.

23 MR. PRAZUCH: I am interested in how this
24 case will be.

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1 THE HEARING OFFICER: And your name, sir?

2 MR. PRAZUCH: Stanley Prazuch,
3 P-r-a-z-u-c-h.

4 THE HEARING OFFICER: Thank you very much.

5 MR. PRAZUCH: Thank you.

6 THE HEARING OFFICER: Mrs. Kamholz, you can
7 start with your opening statement if you would,
8 please.

9 MRS. KAMHOLZ: I am going to ask permission
10 if I can read this because I could not memorize it.
11 I could just talk to you if that would be all
12 right. But I would rather have -- I have certain
13 things to say, so I would appreciate it if I could
14 read this.

15 THE HEARING OFFICER: Mr. Gottemoller?

16 MR. GOTTEMOLLER: If she wants to give it to
17 me, if I can read it, we may just put it in the
18 record. If she wants to say it, that is fine too.
19 It is an opening statement. Go right ahead.

20 OPENING STATEMENT

21 BY MRS. KAMHOLZ:

22 Good morning. My name is Virginia
23 Kamholz. I am, along with my husband Milton, the
24 complainant in this case. And I am representing

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1 Milton and myself on our own behalf at this hearing
2 today. Milton and myself will testify, as will ten
3 other witnesses, one being an expert witness and
4 one being an opinion witness. I will do my best to
5 present our evidence, our witnesses and our entire
6 case as clearly and smoothly as possible.

7 Our evidence will consist of the video

8 recordings, photographs, letters and decibel
9 readings, along with the testimony of our witnesses
10 and will show just cause for our complaint. The
11 videos and decibel readings will show violations of
12 noise and air pollution. Our photographs will show
13 proof of activity and cause for concern and our
14 letters will show support for our a need for a
15 solution to our dilemma. We feel that the only
16 solution to our problem is to stop the source of
17 the noise and air pollution by stopping the
18 activity causing it.

19 The complainants are seeking to -- a
20 return to a peaceful normal life that offers some
21 tranquility in our home. We hope and trust that
22 after viewing and hearing our evidence, the Board
23 will agree and grant us our desperately need and
24 just relief.

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1 THE HEARING OFFICER: Thank you,
2 Mrs. Kamholz. Mr. Gottemoller?

3 OPENING STATEMENT

4 BY MR. GOTTEMOLLER:

5 Good morning. We are here today to

6 talk about the hearing itself to collect the
7 evidence for this matter. The concerns that we
8 have are really two-fold. And that is, one, we
9 want to make certain that the evidence that comes
10 in is accurate and that it truly reflects what is
11 or has been going on outside on that property. In
12 that respect, we know that we are going to have
13 some problems with the various readings and the
14 various tapes and other measures that they are
15 proposing to show as evidence today.

16 This matter is before the board really
17 on three different subparagraphs of the
18 regulations. The first one of those deals with air
19 pollution. The second one deals with noise
20 pollution. And as this board is well aware, that
21 can be proven in two different mechanisms. One of
22 those mechanisms deals with the actual regulations
23 in terms of sound readings and sound meters. And
24 there is some very specific regulations that must

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1 be followed for those meter readings to be
2 admitted. We do not believe that this Board or the
3 Pollution Control Board will be in a position to
4 verify that those readings meet the standards

5 required under the administrative code.

6 The second element, though, is a
7 looser standard. And that deals with the
8 unreasonable interference with the enjoyment of
9 life. And certainly opinion matters on those and
10 the mechanism or whether this activity has
11 interfered with her enjoyment for life will be
12 something the Board can determine afterwards.

13 Those two mechanisms are the two
14 separate paragraphs dealing with the noise
15 standards and the pollution that this Board will
16 ultimately decide whether it exists or not.

17 Finally, we will talk about whether it
18 is unreasonable and the unreasonable standard has
19 been met. We believe that in all reality when this
20 is done this is nothing more than a neighborhood
21 fight between two neighbors and that it really
22 shouldn't be something the Illinois Pollution
23 Control Board shouldn't be involved in, that this
24 is something that I am sorry to say that they have

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1 -- it has been fixated upon to the point where, you
2 know, what would be normal activity in a

3 neighborhood has caused bad feelings and here we
4 are today.

5 So at the end of this hearing, we are
6 going to be asking that you make a recommendation
7 to the Pollution Control Board that you create your
8 record that would show there were no findings or
9 insufficient findings to grant any relief.

10 THE HEARING OFFICER: Thank you,
11 Mr. Gottemoller.

12 THE HEARING OFFICER: Mrs. Kamholz, do you
13 want to take the stand as your first witness?

14 MRS. KAMHOLZ: Yes. I was wondering if I
15 could possibly call my first witness, let
16 Mr. Feffer be my first witness so that he can join
17 us because he hasn't viewed the video yet. I don't
18 want him to sit out there as long as he is here.

19 THE HEARING OFFICER: Okay.

20 MRS. KAMHOLZ: Should I just go get him?

21 (Witness duly sworn.)

22

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1

RAY FEFFER,

2 called as a witness herein on behalf of the
3 complainants, having been first duly sworn, was
4 examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MRS. KAMHOLZ:

7 Q. Well, that is my first question.
8 Please state and spell your name.

9 A. Ray Feffer, F-e-f-f-e-r.

10 THE HEARING OFFICER: Thank you.

11 BY MRS. KAMHOLZ:

12 Q. Where do you live, Mr. Feffer?

13 A. Crystal Lake, Illinois.

14 Q. What is your address?

15 A. 210 West Crystal Lake Avenue.

16 Q. What is your occupation?

17 A. I am retired now. I used to be a
18 contractor.

19 Q. You used to be a contractor. How long
20 were you a contractor?

21 A. 30 years.

22 Q. And how do you happen to know the
23 complainants, Milton and Virginia?

24 A. I have known them since grade school.

1 Q. Mr. Feffer, please tell us in your own
2 words what you witnessed while visiting the
3 complainants home one day.

4 MR. GOTTEMOLLER: I would object to -- she
5 needs to ask questions that can't be narrative of
6 this gentleman.

7 THE HEARING OFFICER: Correct. You have to
8 direct him towards the questions. I will allow you
9 a little leeway, but that is a little too much
10 leeway. For instance, the date you were out there
11 or the witness was out there, what he heard at that
12 time, that kind of thing.

13 BY MRS. KAMHOLZ:

14 Q. Mr. Feffer, do you happen to remember
15 the day that you visited?

16 A. Well, there is several days. One of
17 the days in particular was for Kurt's birthday.
18 And there was a crowd. And we are sitting around
19 listening to noise that is being generated no
20 further from here to --

21 THE HEARING OFFICER: Mr. Gottemoller?

22 MR. GOTTEMOLLER: Can we -- what day is
23 Kurt's birthday.

24 THE HEARING OFFICER: I have no idea.

1 BY MRS. KAMHOLZ:

2 Q. What date is Kurt's birthday?

3 A. Was it June or July, somewhere in
4 there.

5 Q. That is close enough. I don't think
6 the exact day is that important.

7 A. I didn't go this last year. It has
8 been years before that that I have been out there.

9 THE HEARING OFFICER: Mr. Gottemoller?

10 MR. GOTTEMOLLER: I object. When there is
11 an objection, I would ask that the witness be
12 directed to wait until that objection is clear. It
13 is not -- I understand you can't see me from that
14 direction.

15 THE HEARING OFFICER: That is fine.

16 Mr. Gottemoller?

17 MR. GOTTEMOLLER: I would ask specifically
18 that we set a foundation for the time and place and
19 location of these observations before we get into
20 the general narrative of what happened or didn't
21 happen or his opinion as to what kind of noise or
22 the description of that noise.

23 THE HEARING OFFICER: Mrs. Kamholz, do you
24 understand Mrs. Gottemoller's objection?

1 MRS. KAMHOLZ: I am trying to.

2 THE HEARING OFFICER: Sustained.

3 THE WITNESS: I can't give you an exact
4 date, other than I know it was for parties or
5 functions whenever I have been out at the house.

6 BY MRS. KAMHOLZ:

7 Q. All right. That is fine.

8 Approximately July of 199 --

9 A. -- 9, '98, 2000. I have been out
10 there lots of times for his birthdays.

11 MR. GOTTEMOLLER: I would object. You need
12 to let her ask the question before you answer.

13 THE HEARING OFFICER: I agree. Sir, just
14 wait until all the speaking is finished and then
15 Mrs. Kamholz will ask you a question and then you
16 will answer.

17 THE WITNESS: Fine.

18 THE HEARING OFFICER: Thank you, sir.

19 BY MRS. KAMHOLZ:

20 Q. We had a 35th birthday party for our
21 son Kurt. He is now 38. So it would have been
22 three years ago at this birthday party that you
23 attended.

24 A. Okay.

1 Q. Did anything --

2 THE HEARING OFFICER: I am sorry, is that
3 correct, sir?

4 THE WITNESS: Yes

5 MRS. KAMHOLZ:

6 Q. All right. Did you witness the riding
7 of a dirt bike on that day?

8 A. Well, yes, I did on that day and on
9 other days.

10 Q. Okay. We will just work on that day
11 for now.

12 A. Okay.

13 Q. There was another day that you came by
14 to visit and had a beer with the complainant,
15 Mr. Kamholz.

16 A. Okay.

17 Q. That was during the summer. I am not
18 sure of the date myself. But could you tell us,
19 please, when you came to the house what you
20 witnessed?

21 MR. GOTTEMOLLER: I would object again.
22 Which day are we talking about, the time when he
23 had the beer or the time at the party?

24

MRS. KAMHOLZ: We are done with the party.

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1 We are having a beer now.

2 MR. GOTTEMOLLER: Okay.

3 THE WITNESS: Well, I don't know the exact
4 date.

5 BY MRS. KAMHOLZ:

6 Q. Just the one time.

7 A. I don't know the exact date.

8 Q. The exact date won't matter, sir.

9 A. Because I have been out there many
10 different times on different days.

11 MR. GOTTEMOLLER: Objection. He is not
12 responsive to the question.

13 BY MRS. KAMHOLZ:

14 Q. Just this one time, this one
15 particular day that you were out there to have --
16 you stopped by and you had a beer with the
17 complainant, Mr. Kamholz.

18 A. Right.

19 Q. What happened when you sat on the deck
20 and had your beer?

21 A. This was on a weekend day, and I don't
22 know the exact date.

23 MR. GOTTEMOLLER: Could we have a year?
24 THE HEARING OFFICER: Sir, do you have a

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1 year?
2 THE WITNESS: Yes, last year, this year.
3 THE HEARING OFFICER: Last year or this
4 year?
5 BY MRS. KAMHOLZ:
6 Q. Take one.
7 A. Last year, on a particular date last
8 year, which would be 2001.
9 MRS. KAMHOLZ: Okay. I think the problem
10 here is that he comes quite often, and he has heard
11 this on numerous occasions. So we will just
12 concentrate on one today, okay, just one visit.
13 MR. GOTTEMOLLER: So you understand, I am
14 not -- he is going to ultimately get to testify,
15 ma'am. But when you say pick a date, you need to
16 tell us which date, where it is, when it is, what
17 happened.
18 THE HEARING OFFICER: Yes, I am a little
19 confused as well.
20 BY MRS. KAMHOLZ:

21 Q. All right. It was a summer day of the
22 year 2001.

23 A. Right.

24 Q. I don't know, it was probably June.

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1 It was a week day, I believe.

2 A. See, there has been so many times that
3 I have been out there that it is hard to me to take
4 -- unless I would take notes each time I was there,
5 which I never did.

6 Q. On this day that you visited, did you
7 have the opportunity to witness the riding of a
8 dirt bike next door?

9 A. I have witnessed that. But I can't
10 give you the exact date.

11 Q. You don't have to. Just did you
12 witness the riding of a dirt bike next door?

13 A. Yes, I did. Yes, I did.

14 Q. How would you describe the noise that
15 this dirt bike made?

16 A. Well, from where I sat first we are on
17 the deck in the screened porch and then I walked
18 out to the driveway to observe it even closer. And
19 the noise level was tremendous.

20 MR. GOTTEMOLLER: Objection to his opinion
21 of the noise level.

22 MRS. KAMHOLZ: He has ears. And if he
23 heard the noise, I asked him what -- how would he
24 describe the noise that he heard.

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1 THE HEARING OFFICER: I will overrule the
2 objection.

3 You may answer if you are able to.

4 THE WITNESS: I heard it as being very loud
5 in an unmuffled situation.

6 MR. GOTTEMOLLER: Objection to the term
7 unmuffled.

8 BY MRS. KAMHOLZ:

9 Q. You don't know if the bike was --

10 A. Well, all right. An exceptionally
11 loud noise. A staccato noise that comes out of an
12 exhaust system on a bike.

13 THE HEARING OFFICER: Sustained.

14 BY MRS. KAMHOLZ:

15 Q. What did you do after you heard this
16 noise and it was bothering you?

17 MR. GOTTEMOLLER: Objection to this

18 conclusion that it was disturbing him.

19 THE HEARING OFFICER: I agree. Sustained.

20 BY MRS. KAMHOLZ:

21 Q. What did you do upon hearing this
22 noise?

23 A. I ended up going back into the house
24 and getting away from it. And I don't know how

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1 long I stayed there afterwards, but the noise level
2 is still loud even when you are in the house. And
3 that is --

4 Q. Did it interfere --

5 A. You could not converse outside with
6 it.

7 Q. That was my next question.

8 A. Okay.

9 Q. Did it interfere with your
10 conversation with Mr. Kamholz?

11 A. You could not converse out there with
12 that noise because of the closeness of the noise.

13 Q. Did you ever view any of the video
14 that I have recorded?

15 A. No, I have not.

16 Q. If you lived next door to this

17 activity, would you be able to enjoy your life?

18 MR. GOTTEMOLLER: Objection. It is
19 hypothetical.

20 THE HEARING OFFICER: Sustained.

21 MRS. KAMHOLZ: Thank you, Mr. Feffer. No
22 further questions .

23 THE HEARING OFFICER: Thank you.

24 Mr. Gottemoller, any cross?

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1 MR. GOTTEMOLLER: No questions.

2 THE HEARING OFFICER: You may step down,
3 sir. Thank you very much.

4 MR. GOTTEMOLLER: Just as a warning, as long
5 as she understands, if he stays in, he can't be put
6 on the stand.

7 MRS. KAMHOLZ: That is fine.

8 THE HEARING OFFICER: Mrs. Kamholz, you are
9 going to take the stand now.

10 MR. GOTTEMOLLER: As a point of order, would
11 it be possible to turn that chair so maybe the
12 witness's back towards is towards the wall. That
13 way she can see me at the same time.

14 THE HEARING OFFICER: We can go off the

15 record.

16 (Discussion had off the
17 record.)

18 THE HEARING OFFICER: I want to note for the
19 record, ma'am, are you one of Mrs. Kamholz's
20 witnesses?

21 MS. GILMAN: Yes.

22 THE HEARING OFFICER: Mr. Gottemoller has
23 made a motion to exclude. So until your time to
24 testify is up --

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1 MRS. KAMHOLZ: May I please call her now so
2 she can go? She is a county board member and she
3 has other meetings is to attend.

4 THE HEARING OFFICER: She may take the
5 stand.

6 (Witness duly sworn.)

7 ANN GILMAN,
8 called as a witness herein on behalf of the
9 complainants, having been first duly sworn, was
10 examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MRS. KAMHOLZ:

13 Q. Good morning.

14 A. Morning.

15 Q. Would you please state and spell your
16 name?

17 A. Ann Gilman, A-n-n G-i-l-m-a-n.

18 Q. Where do you live, Ms. Gilman?

19 A. 19216 Bockman Road, B-o-c-k-m-a-n,
20 Marengo, Illinois. I am about a mile and a half
21 from Mrs. Kamholz.

22 MRS. KAMHOLZ: Okay. Would you rather I
23 stand over here so she can talk --

24 THE HEARING OFFICER: I think

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1 Mr. Gottemoller wants to view the witness as well.
2 But you can move over if you would like. Is that
3 fine?

4 MRS. KAMHOLZ: Uh-huh. Just so that the
5 reporter can see her.

6 BY MRS. KAMHOLZ:

7 Q. What is your occupation?

8 A. I am a county board member for McHenry
9 County and District 6.

10 Q. How long have you been a county board
11 member?

12 A. 12 years.

13 Q. When and how did you first become
14 aware of the complainants' alleged problems with
15 noise, dust and exhaust fumes do to the riding of
16 dirt bikes, ATVs and go carts?

17 A. Well, it was Mother's Day. So I
18 remember it pretty clearly.

19 MR. GOTTEMOLLER: What year?

20 THE WITNESS: If you want me to elaborate, I
21 will.

22 BY MRS. KAMHOLZ:

23 Q. We won't elaborate.

24 MR. GOTTEMOLLER: What year?

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1 THE HEARING OFFICER: What year?

2 MRS. KAMHOLZ:

3 Q. What year?

4 A. Last year.

5 Q. 2001?

6 A. Yes.

7 Q. Did you hear the noise from this
8 activity over the phone?

9 A. Yes. I could hardly hear Mrs. Kamholz
10 talk. It was so loud. I couldn't imagine what I

11 was hearing.

12 Q. How would you describe the noise that
13 you heard?

14 A. Very loud, a very, very loud buzzing
15 motorcycle machinery noise.

16 Q. Did you ever witness the riding of
17 these vehicles on the respondents' property?

18 A. Yes. I went over that day and saw it.
19 And I saw it another time when I was at
20 Mrs. Kamholz, and I do not remember the exact date,
21 but it was shortly thereafter. And then I kind of
22 made it a point to drive that way when I was going
23 into Woodstock. So I would see them on occasion
24 various times after that.

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1 Q. Could you hear them as you would drive
2 by and --

3 A. Yes, I could hear them from my own
4 house.

5 Q. Would you describe what this noise was
6 like? I think we have already answered that one.

7 Have you ever viewed the video that I
8 have taken of this activity?

9 A. Yes.

10 Q. Do you think the video gives an
11 accurate accounting of what the complainants are
12 trying to describe?

13 MR. GOTTEMOLLER: Objection. I would object
14 it to her opinion about the video, what she thinks
15 about the video.

16 THE HEARING OFFICER: Could you read the
17 question back, please?

18 (Record read as
19 requested.)

20 MR. GOTTEMOLLER: It calls for an opinion of
21 her about a video that is not in evidence, number
22 one. And number two, she can testify as to what
23 she saw or heard. And certainly she is free to do
24 that. But whether or not a video is accurate or

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1 accurately portrays something that she saw or heard
2 when it wasn't taken at her time or any of those
3 things is really beyond the scope of her expertise.

4 THE HEARING OFFICER: Mrs. Kamholz, any
5 response?

6 MRS. KAMHOLZ: I feel as long as she saw
7 the activity for real in person, she knows what she

8 is comparing it to, and she is entitled to think --
9 she is entitled to think. So she is entitled -- in
10 her view the video that she saw was very similar to
11 what she saw in real life.

12 THE HEARING OFFICER: Well, we don't have
13 the date or time yet established and the video is
14 not in evidence yet. So I am going to sustain
15 Mr. Gottemoller's objection. And you may proceed.
16 Thank you, Mrs. Kamholz.

17 MRS. KAMHOLZ: Okay.

18 BY MRS. KAMHOLZ:

19 Q. What did you do for the complainants
20 upon learning of this problem?

21 A. I tried to think what would be the
22 best route. There is -- it is kind of difficult to
23 deal with a noise issue. But I talked with Chief
24 Nygrant (phonetic) about it. And I believe he sent

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1 a deputy out.

2 Q. Was the sheriff able to solve the
3 problem?

4 A. Not really. Because it is really not
5 in his jurisdiction. Noise complaints are not

6 something that the sheriff really has any authority
7 over. But he was aware of it. I think he tried to
8 do what he could do.

9 MR. GOTTEMOLLER: Objection to what he tried
10 to do.

11 THE HEARING OFFICER: Overruled.

12 BY MRS. KAMHOLZ:

13 Q. And so what did the complainants do
14 next? Do you know what the complainants did next
15 to help find a solution to this problem?

16 MR. GOTTEMOLLER: I would object to what she
17 did. She is going to testify to that. Whether she
18 knows what Mrs. Kamholz did or not it is really
19 irrelevant.

20 THE HEARING OFFICER: Mrs. Kamholz?

21 MRS. KAMHOLZ: Well, I acted on her advice.
22 She advised me to attend a county board meeting, so
23 that is what I did. And she knows that because she
24 advised me to do it.

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1 THE HEARING OFFICER: I am going to overrule
2 your objection. She may answer if she is able.

3 THE WITNESS: I did advise Mrs. Kamholz to
4 come to a county board meeting. I felt that it was

5 important that the county board --

6 MR. GOTTEMOLLER: Objection to how she
7 feels. If she gave that advice, that is fine. But
8 how she feels is not relevant to this proceeding.

9 THE HEARING OFFICER: Sustained.

10 THE WITNESS: I advised her to come to the
11 county board and give an accurate description of
12 what was happening next to her property.

13 BY MRS. KAMHOLZ:

14 Q. Did this appearance before the board
15 help?

16 A. It just gave the county board some
17 information about noise problems in the county.

18 Q. Okay. With no immediate help there at
19 that time, did you -- what else did you advise the
20 complainants to do?

21 A. I advised Mrs. Kamholz to come make a
22 presentation to my planning and development
23 committee of which I am chairman.

24 Q. And did she do that?

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1 A. Yes.

2 Q. How long have you been the chairman?

3 A. Three years.

4 Q. Three years.

5 MRS. KAMHOLZ: I made my appearance at the
6 P and D committee and I had an introductory speech.
7 And I also -- I made another appearance at the --
8 at another meeting. And I had an introductory
9 speech for that one also. I would like to at this
10 time show them to her and admit them as an exhibit.
11 It was my opening -- it was my introductory speech
12 at both of these meetings.

13 THE HEARING OFFICER: Has Mr. Gottemoller
14 seen them?

15 MRS. KAMHOLZ: Yes, he has.

16 MR. GOTTEMOLLER: They were provided in
17 discovery.

18 MRS. KAMHOLZ: They were provided in
19 discovery.

20 MR. GOTTEMOLLER: The fact that she made an
21 opening speech I still think is irrelevant as to
22 the proceedings in this matter. We are here to
23 find out the facts about the noise itself, not
24 about how she presented herself at various

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1 meetings.

2 MRS. KAMHOLZ: I was at that meeting
3 because of the facts and because of the problem.
4 If I didn't have this problem, I wouldn't have been
5 at that meeting. So it is very relevant, and it
6 shows my seeking a solution. It shows my efforts,
7 and my -- it shows I am a desperate woman trying to
8 get some help. So it is important to me.

9 THE HEARING OFFICER: I am going to overrule
10 your objection, Mr. Gottemoller. I will accept
11 them as -- are you going to offer them?

12 MRS. KAMHOLZ: I was going to show them to
13 her to see if she would recognize them.

14 BY MRS. KAMHOLZ:

15 Q. There is two of them there, 1 and 2?

16 MR. GOTTEMOLLER: If they aren't admitted, I
17 would just assume they be collected in the record.
18 I don't know that having them repeated again is
19 going to make any difference since they are going
20 to be on record anyway.

21 THE HEARING OFFICER: I don't think you were
22 going to repeat them again, were you, Mrs. Kamholz?

23 MRS. KAMHOLZ: No. That would take a lot
24 of unnecessary time. Would you like to have a

1 copy?

2 MR. GOTTEMOLLER: Yes. Are these going to
3 be marked as a number?

4 MRS. KAMHOLZ: There is two of them there
5 stapled together. The bottom one is the second.
6 BY MRS. KAMHOLZ:

7 Q. Do these look familiar to you?

8 A. Yes. These are the two comments that
9 you had made before for the presentation.

10 THE HEARING OFFICER: Excuse me,
11 Mr. Gottemoller. What is this you have just given
12 me.

13 MRS. KAMHOLZ: It was my introductory --
14 like an opening statement type thing at the
15 planning and development committee.

16 THE HEARING OFFICER: Is this your Exhibit 1
17 or is it two exhibits here?

18 MRS. KAMHOLZ: We can do it as a group
19 Exhibit 1 or you can make it two, if you want. I
20 don't know how you want to handle that.

21 THE HEARING OFFICER: Go off the record for
22 a minute.

23

24 (Discussion had off the

1 record.)

2 THE HEARING OFFICER: On the record.

3 MRS. KAMHOLZ: Now, is this the one for the
4 Pollution Control Board? Because I have this for
5 the Pollution Control Board. When I present you
6 something, should it be for the --

7 THE HEARING OFFICER: Correct.

8 MRS. KAMHOLZ: We will trade then.

9 MR. GOTTEMOLLER: Just for record purposes,
10 are these going to be labeled 1 and 2 or 1?

11 THE HEARING OFFICER: We haven't decided,
12 Mr. Gottemoller. As soon as I make my decision, I
13 will let you know. I think we will do it
14 Petitioner's Exhibits 1 and 2. And they are
15 clearly marked on the exhibits themselves.
16 Complainants' Exhibit No. 1 is entitled "First
17 Appearance of the County Planning and Development
18 Committee, June 14th, 2001." And Complainants'
19 Exhibit No. 2 is the "Second Appearance before the
20 County Planning and Development Committee,
21 July 20th, 2001." These are accepted and admitted
22 into evidence.

23

24

1 (Whereupon documents so
2 offered were received in
3 evidence as Complainants
4 Exhibit Nos. 1 and 2.)

5 MRS. KAMHOLZ: Thank you.

6 THE HEARING OFFICER: Thank you.

7 BY MRS. KAMHOLZ:

8 Q. Ms. Gilman, would you please tell us
9 what advice Mrs. Kamholz received from the
10 committee?

11 A. Well, the advice was that the planning
12 and development committee and the department also
13 had very little jurisdiction over noise issues,
14 that it was essentially something that would have
15 to be rectified under the health department
16 ordinance. Virginia Pescie (phonetic), who is a
17 member of my committee, she is also a chairman of
18 the health committee -- and so the advice that was
19 given to Mrs. Kamholz was since the county did not
20 really have a decibel meter, did not have the
21 manpower to go out and wait for this activity to
22 occur, that the best thing would be for her to try
23 and do that herself, working directly with the IEPA
24 and that we were very interested in finding out how

1 that process resolved itself.

2 Q. Okay. As a direct result of that
3 meeting -- of those meetings, there was a reporter
4 in attendance at the meeting. And he wrote an
5 article in our local newspaper, the Northwest
6 Herald, and he used quotes. Do you remember him
7 being there that day?

8 A. Yes.

9 MRS. KAMHOLZ: I don't have him here as a
10 witness because I didn't want to call him as a
11 witness for just to say that, yes, he wrote the
12 article. He was in the meeting that day. She
13 knows it. He wrote some quotes --

14 MR. GOTTEMOLLER: Could we get to a
15 question?

16 MRS. KAMHOLZ: Yes.

17 BY MRS. KAMHOLZ:

18 Q. I am going to show you a news article
19 that appeared in our paper. Do you recognize this
20 as the article that?

21 MR. GOTTEMOLLER: Could I have a copy of
22 whatever you give the witness?

23 MRS. KAMHOLZ: Yes.

24

THE WITNESS: Yes.

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1 MRS. KAMHOLZ: I was going to wait until
2 she recognized it.

3 MR. GOTTEMOLLER: Do you have an exhibit
4 number for this? Is this going to be your Exhibit
5 No. 3?

6 MRS. KAMHOLZ: It is up to Mr. Halloran,
7 yes. I didn't number my exhibits because I didn't
8 know how they were going to be presented. And I
9 want Mr. Halloran to be in charge of the numbers.
10 If this will be admitted as Exhibit No. 3 --

11 THE HEARING OFFICER: You can --

12 MRS. KAMHOLZ: Yes.

13 THE HEARING OFFICER: -- offer it as --

14 MRS. KAMHOLZ: Here, I will trade you.

15 MR. GOTTEMOLLER: Can we go off the record
16 just to clarify how to do exhibit numbers?

17 THE HEARING OFFICER: We can go off the
18 record.

19 (Discussion had off the
20 record.)

21 THE HEARING OFFICER: Do you want Exhibit 3
22 to go into evidence? Have you moved for it to go

23 into evidence?

24 MRS. KAMHOLZ: I move that it go into

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1 evidence, please.

2 MR. GOTTEMOLLER: I would object. It is
3 clearly a hearsay statement. The person who
4 wrote the article is not here subject to
5 cross-examination. Even if someone can testify
6 that this is their memory as to the meeting, then
7 the best evidence would be for them to testify
8 about that meeting, not a newspaper account of it.

9 MRS. KAMHOLZ: The reporter that wrote it
10 was there at the meeting. Ms. Gilman has testified
11 under oath to that fact. I was at the meeting. I
12 talked with the reporter after the meeting. And it
13 is a true account of what has happened. And it was
14 in our -- it is news and it involves the county.
15 It involves noise. And it is a very important
16 piece of evidence.

17 THE HEARING OFFICER: It is clearly hearsay,
18 Mrs. Kamholz. So I am going to sustain
19 Mr. Gottemoller's objection. What I will do is
20 take it with the case as an offer of proof. And

21 the Board, if they feel so inclined to overrule me,
22 they may do so. So Complainants' Exhibit No. 3 is
23 denied but taken with the case as an offer of
24 proof.

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1 MRS. KAMHOLZ: Thank you. Did you want to
2 keep that?

3 MR. GOTTEMOLLER: Yes.

4 BY MRS. KAMHOLZ:

5 Q. Ms. Gilman, I have a letter here that
6 you wrote to me. I would like to enter this as 4.
7 Is that a letter you wrote to me --

8 A. Yes, it is.

9 Q. -- concerning this?

10 MRS. KAMHOLZ: I would like to enter that
11 as Exhibit No. 4.

12 THE HEARING OFFICER: Mr. Gottemoller?

13 MR. GOTTEMOLLER: She wrote it, she
14 testified she wrote it. It comes in for whatever
15 it is worth.

16 THE HEARING OFFICER: Exhibit No. 4 --
17 complainants' No. 4 is admitted. It is a letter to
18 Mrs. Kamholz dated September 10th, 2001, from the
19 witness, Ann Gilman.

20 (Whereupon document so
21 offered was received in
22 evidence as Complainants
23 Exhibit No. 4.)
24 MRS. KAMHOLZ: Thank you.

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1 BY MRS. KAMHOLZ:
2 Q. Is there anything else you would like
3 to add to your testimony at this time?
4 A. It would be just personal comments.
5 And it would be that --
6 MR. GOTTEMOLLER: I would object to her
7 personal comments. She needs to answer questions.
8 THE HEARING OFFICER: Mrs. Kamholz.
9 MRS. KAMHOLZ: There is no more questions
10 at this time. Thank you.
11 THE HEARING OFFICER: Mr. Gottemoller,
12 cross?
13 CROSS-EXAMINATION
14 BY MR. GOTTEMOLLER:
15 Q. The day, Mother's Day, when you heard
16 the noise over the phone, do you know where she was
17 standing when she had the phone?

18 A. I wasn't there. So, no, I don't know
19 where she was standing.

20 Q. You don't know where she was holding
21 the phone at the time that noise took place?

22 A. No.

23 Q. You didn't have any sound meters or
24 anything like that on the phone, did you?

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1 A. No, I did not.

2 Q. When you went and saw the motorcycles
3 being driven, do you know what kind of kind of
4 motorcycles were being driven?

5 A. They were dirt bikes.

6 Q. Was there anything besides dirt bikes?

7 A. I saw an ATV one time, but it was not
8 that day.

9 Q. Was the ATV as loud as the dirt bikes?

10 A. Yes.

11 Q. Did you have any -- when you watched
12 the ATV --

13 THE HEARING OFFICER: We are going to have
14 to stop.

15 (Discussion had off the
16 record.)

17 BY MR. GOTTEMOLLER:

18 Q. How long did you look at an ATV and
19 watch it? What did you have to compare it to?

20 A. What?

21 Q. You said you saw an ATV once and you
22 concluded that was the same level of noise. Where
23 were you standing when you heard that --

24 A. I didn't say that. I said it was very

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1 loud.

2 Q. But you are not certain it is the same
3 level of noise then; is that correct? I
4 misunderstood you.

5 A. I said it was very loud.

6 Q. In this letter you wrote on
7 September 10th, 2001, Exhibit No. 4, you have a
8 statement in here that it is "an intolerable
9 situation for you," applying to Mrs. Kamholz,
10 correct?

11 A. Yes.

12 Q. You are not in a position to know
13 whether that would be intolerable for anybody else,
14 just that she was --

15 A. Well, it would be intolerable for me
16 too.

17 Q. And you said you hear it from two
18 miles away; is that correct?

19 A. Yes.

20 Q. What else can you hear from two miles
21 a way? Is it a particularly loud noise from two
22 miles away?

23 A. I can hear it. I know where it is
24 coming from.

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1 Q. You can also hear any tractor that
2 would be in between or any other motor vehicles as
3 a practical matter that would be in between?

4 A. I don't usually hear a tractor from
5 that far. I can hear a tractor when it is on our
6 own farm and that is it.

7 MR. GOTTEMOLLER: No further questions of
8 this witness.

9 THE HEARING OFFICER: Thank you,
10 Mr. Gottemoller.

11 Mrs. Kamholz, any redirect?

12 MRS. KAMHOLZ: No redirect at this time.

13 THE HEARING OFFICER: Thank you very much,

14 Mrs. Gilman.

15 THE WITNESS: Do I need to stay?

16 THE HEARING OFFICER: It is your
17 prerogative. It is up -- I don't think
18 Mrs. Kamholz has any other questions.

19 MRS. KAMHOLZ: If you have the time, you
20 can stay if you would like, otherwise you may go.

21 THE HEARING OFFICER: You may call your next
22 witness.

23 MRS. KAMHOLZ: They are arriving a little
24 earlier than I expected. So I will take them.

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1 (Witness duly sworn.)

2 LILLIAN CARUCIO,

3 called as a witness herein on behalf of the
4 Complainants, having been first duly sworn, was
5 examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MRS. KAMHOLZ:

8 Q. Please state and spell your name.

9 A. Lillian Carucio, L-i-l-l-i-a-n
10 C-a-r-u-c-i-o.

11 Q. Where do you live?

12 A. 7220 Hill Road, Marengo, Illinois.
13 Q. And what is your occupation?
14 A. Real estate agent.
15 Q. How long have you been a real estate
16 agent?
17 A. 15 years.
18 Q. How do you happen to know the
19 complainants, Milton and Virginia Kamholz?
20 A. Through real estate.
21 Q. Did they contact you about looking for
22 a home?
23 A. Yes, they did, uh-huh.
24 Q. Okay. Did the complainants tell you

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1 about their alleged noise problem in case they were
2 to list their house with you?
3 A. Yes, they did.
4 Q. What did they tell you about their
5 concern?
6 MR. GOTTEMOLLER: Objection as to foundation
7 as to what she told them. My concern is is that if
8 we get into a double hearsay situation, we have got
9 a foundation -- she is not on the stand yet. And
10 as a result, she is asking her statements to be

11 used by this woman to support some future testimony
12 that --

13 THE HEARING OFFICER: I think you may be
14 correct where this is going. If you would like,
15 Mrs. Kamholz to take the stand first, I don't know,
16 that may resolve some matters.

17 MR. GOTTEMOLLER: Clearly, I mean I am
18 assuming that she is going to talk about real
19 estate. That was what she was disclosed for for
20 discovery purposes. I don't have a problem getting
21 there. But the method we are getting there seems
22 to be really confusing, and that is my concern
23 about it.

24 THE HEARING OFFICER: Mrs. Kamholz?

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1 MRS. KAMHOLZ: I am not sure I quite
2 understand what the problem is.

3 THE HEARING OFFICER: Ask your question
4 again and we will see where we are.

5 MRS. KAMHOLZ: Okay.

6 When we started looking for a home, we
7 told her about a problem that we were having and
8 we --

9 THE HEARING OFFICER: Was that the question?

10 BY MRS. KAMHOLZ:

11 Q. The question is what did you tell them
12 about their concern? We told them we were
13 concerned about something and she --

14 MR. GOTTEMOLLER: For hearsay statements, at
15 least the foundation, who, what, where, when.

16 THE HEARING OFFICER: And, Mrs. Kamholz,
17 again for foundation as Mr. Gottemoller pointed
18 out, you know, the timing is important, where,
19 when. We can't just launch into the unknown.

20 MR. KAMHOLZ: I think she is trying to take
21 the witnesses as they come in. So that -- because
22 they have been barred from the room. So that is
23 the case. And if it would simplify things for her
24 to testify before Lillian, if we can rearrange

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1 that, I think that would be the thing to do.

2 THE HEARING OFFICER: I don't know if it
3 will or not. Mr. Gottemoller, any --

4 MR. GOTTEMOLLER: I mean, it is the leading
5 nature of what she is doing. I couldn't agree more
6 that she is going to get in these statements, and
7 that is fine, if we can get to them. But she

8 preempts the question with basically laying out her
9 foundation instead of having the witness lay out
10 the foundation.

11 THE HEARING OFFICER: If you just ask the
12 witness and then just take it step by step, instead
13 of directing her or leading her into a spot where
14 you want her.

15 BY MRS. KAMHOLZ:

16 Q. Okay. I believe we already asked did
17 the complainants tell you about their alleged noise
18 problem?

19 A. Yes, they did.

20 Q. What did they tell -- what did you
21 tell them about their concern?

22 A. The concern was --

23 THE HEARING OFFICER: Excuse me,
24 Mr. Gottemoller?

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1 MR. GOTTEMOLLER: When, where, who was
2 present during the conversation, what did she say
3 to you, what did you say to her.

4 THE HEARING OFFICER: This could have
5 happened in the last ten years.

6 MR. GOTTEMOLLER: That is the standard
7 foundation questions for hearsay statements.

8 MRS. KAMHOLZ: Okay.

9 BY MRS. KAMHOLZ:

10 Q. Do you remember when the complainants
11 -- when you first become acquainted with the
12 complainants when they started looking for a new
13 home, approximately?

14 A. I believe it has been about two years.

15 Q. So about two years ago when you
16 started looking for a new home for the
17 complainants, did they tell you about an alleged
18 noise problem that they were having?

19 A. Well, eventually. I don't think it
20 was at first. But, yes, they did eventually.

21 Q. Maybe a couple of months later after
22 you showed them a couple places?

23 A. Right.

24 Q. All right. And what did you tell them

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1 about their concern?

2 A. Well, what I would tell anybody when I
3 am showing -- when I am working as a buyer's agent,
4 I have to disclose the truth. People are usually

5 looking for a quiet area. That is one of the
6 things they -- they are very concerned about the
7 neighborhood that they move into. And if there is
8 a lot of activity going on and a lot of noise, that
9 would be detrimental to a possible -- I don't want
10 to say sale.

11 MR. GOTTEMOLLER: I would object.

12 THE HEARING OFFICER: Mr. Gottemoller, your
13 objection?

14 MR. GOTTEMOLLER: We are far beyond the
15 actual question, and we are into her opinion.

16 THE WITNESS: This is --

17 THE HEARING OFFICER: Sustained.

18 THE WITNESS: This is definitely an opinion.
19 It is definitely an opinion.

20 THE HEARING OFFICER: Sustained.

21 MRS. KAMHOLZ: I will make a move that this
22 is my opinion witness. I mean -- would you please
23 accept her as my opinion witness? My expert -- my
24 other -- I stated that I had one expert witness and

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1 one opinion witness, and this is is my opinion
2 witness.

3 THE HEARING OFFICER: Mr. Gottemoller?

4 MR. GOTTEMOLLER: Well, I don't doubt that
5 she has disclosed her as an opinion witness. But
6 she still has to establish how she gets to this
7 opinion. She is not just entitled to give the
8 opinion without a foundation.

9 MRS. KAMHOLZ: We will back up and cover
10 that.

11 THE HEARING OFFICER: Please, Mrs. Kamholz.

12 MRS. KAMHOLZ: I am sorry.

13 THE HEARING OFFICER: That is fine. But
14 take it step by step.

15 MRS. KAMHOLZ: We will go step by step. We
16 kind of went a little further here and I have to
17 find my place again.

18 BY MRS. KAMHOLZ:

19 Q. Have you ever seen the dirt bikes or
20 ATVs?

21 A. Not the -- I have not seen the dirt
22 bikes. I have seen the video.

23 Q. Just answer as we go here. That was
24 my next question, did you see some video that

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1 Mrs. Kamholz took?

2 A. Yes, I did.

3 Q. Upon viewing this video, would you
4 agree that the complainants did have a concern?

5 MR. GOTTEMOLLER: Objection to what she
6 agrees to.

7 THE HEARING OFFICER: I am sorry, objection
8 to what?

9 MR. GOTTEMOLLER: To what she agrees to. We
10 haven't established --

11 MRS. KAMHOLZ: All right.

12 MR. GOTTEMOLLER: Whether she agrees with
13 you or not is really irrelevant. The issue is, you
14 know, what can she bring to the table in terms of
15 what she saw, heard, you know, and what ultimately
16 her opinion is to whatever you are going to ask her
17 opinion about. Whether she agrees or doesn't agree
18 with you is really not relevant.

19 THE HEARING OFFICER: Mrs. Kamholz, would
20 you rephrase the question, please?

21 MRS. KAMHOLZ: We have established that
22 Mrs. Carucio is a real estate agent for 15 years.
23 This is her experience. This is her profession.
24 And that is what she is basing her opinions on. So

1 she is entitled to an opinion.

2 THE HEARING OFFICER: You can't direct her
3 and say do you agree.

4 BY MRS. KAMHOLZ:

5 Q. Upon viewing the video, do you think
6 the complainants have a problem?

7 MR. GOTTEMOLLER: I would again object to
8 what she thinks. It is an opinion of a videotape.
9 It is not even an opinion of -- is she an expert
10 witness or an opinion witness based on sound or is
11 she an opinion witness based on real estate?

12 MRS. KAMHOLZ: Based on real estate.

13 MR. GOTTEMOLLER: Okay. Then in that case
14 her opinion of the videotape is clearly irrelevant.

15 THE HEARING OFFICER: Mrs. Kamholz, can she
16 give her opinion without the videotape?

17 MRS. KAMHOLZ: Yes, I think so.

18 BY MRS. KAMHOLZ:

19 Q. If you were to show a piece of
20 property to a perspective buyer and there were dirt
21 bikes racing up and down next door to this
22 property, would you -- could you lose -- all
23 right. Here. Would that be detrimental to the
24 sale of this property?

1 A. If I were showing a piece of property
2 and there was -- there were dirt bikes racing up
3 and down right next door, it certainly could make
4 people think twice about whether they would want to
5 buy that piece of property or not.

6 Q. And what do you base that opinion on?

7 A. I base that opinion on people wanting
8 a nice place to live and nothing they -- there are
9 certain -- I don't know how to explain it.

10 THE HEARING OFFICER: Take your time.

11 THE WITNESS: People are very concerned
12 about the areas they are going to move into, about
13 the neighborhood, what goes on in that
14 neighborhood. That is a big thing in buying a
15 home.

16 BY MRS. KAMHOLZ:

17 Q. Did you ever show a home to the
18 complainants that they liked and they said, no,
19 they were not interested because --

20 A. There was a home on -- a five-acre
21 home on Maple Street that we looked at. And
22 because they saw some bikes on the property behind
23 it, they decided that even though they might like
24 the home and the five-acres, they didn't want to

1 get into a situation where there were dirt bikes
2 again.

3 MR. GOTTEMOLLER: Who are we talking about?

4 THE HEARING OFFICER: Is this an objection,
5 Mr. Gottemoller?

6 MR. GOTTEMOLLER: I don't know who we are
7 talking about that she is showing.

8 THE WITNESS: These two people.

9 MRS. KAMHOLZ: The complainants.

10 MR. GOTTEMOLLER: So we are saying you show
11 the house to the complainants?

12 THE WITNESS: On Maple Street

13 THE HEARING OFFICER: Right.

14 MR. GOTTEMOLLER: I didn't know if we were
15 talking about some other party in general or some
16 other people.

17 THE HEARING OFFICER: Mrs. Kamholz did
18 preface it with the complainants.

19 I am sorry, go ahead.

20 THE WITNESS: That was it. They decided
21 that they could go no further with that piece of
22 property because of what they saw on the neighbor's
23 yard.

24

1 BY MRS. KAMHOLZ:

2 Q. So it not only involves the sale of
3 their own home, the complainants' home, it involves
4 the complainants' purchasing a home?

5 A. Well, that is true. They don't --
6 they don't want to get into the same situation.

7 MR. GOTTEMOLLER: I would object to her
8 testifying about the state of mind of the
9 complainants.

10 THE HEARING OFFICER: Mrs. Kamholz?

11 MRS. KAMHOLZ: I would clarify that by
12 saying that --

13 THE HEARING OFFICER: You could rephrase it
14 and ask the question.

15 MRS. KAMHOLZ: I forgot what it was.

16 BY MRS. KAMHOLZ:

17 Q. The fact that you lost a possible sale
18 from the complainants buying a house, this house,
19 has to do with the fact that there were dirt bikes
20 on it; is that correct?

21 A. That was it. That was a great part of
22 it.

23 Q. And so if the complainants are trying

24 to sell their house and there is dirt bikes next

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1 door, the same thing could happen, the buyer would
2 say, oh, I don't want to live next door to that; is
3 that correct?

4 A. Well, I can't say that every buyer
5 would say that. But if the bikes were running up
6 and down and making a lot of noise, they would be
7 more inclined to walk away.

8 Q. Would you have to tell a perspective
9 buyer that this activity -- in case it wasn't going
10 on at the time they showed their home, would you
11 have to tell a perspective buyer?

12 A. As the buyer's agent, I am supposed to
13 inform my buyer of whatever I know that would be
14 detrimental to the property.

15 Q. Morally, would it be the right thing
16 to do?

17 MR. GOTTEMOLLER: Objection to moral.

18 THE HEARING OFFICER: Sustained.

19 BY MRS. KAMHOLZ:

20 Q. Legally would you have to tell them?

21 MR. GOTTEMOLLER: Asked and answered. She
22 said she has to.

23 THE HEARING OFFICER: Overruled. You can
24 answer if you would like, if you are able.

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1 THE WITNESS: Legally, I would probably feel
2 inclined to mention it, if I knew of a situation
3 like that. Because I would have to live with it.
4 And when they moved in and found out what was going
5 on and they didn't like me anymore, I wouldn't be
6 very happy.

7 BY MRS. KAMHOLZ:

8 Q. Would you personally want to live next
9 door to this type of activity?

10 MR. GOTTEMOLLER: Objection to her personal
11 opinion as to what she would like to live next to.

12 THE HEARING OFFICER: Sustained.

13 BY MRS. KAMHOLZ:

14 Q. If you had a choice of where you could
15 live, would you pick a place to live that had this
16 activity going next door?

17 MR. GOTTEMOLLER: Objection to her personal
18 opinion as to what she would do for herself.

19 THE HEARING OFFICER: Mrs. Kamholz?

20 MRS. KAMHOLZ: I am sorry, I don't

21 understand the -- I think people have a mind, and
22 they are able to think. And I didn't know that
23 they couldn't do that.

24 THE HEARING OFFICER: They couldn't do what?

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1 MRS. KAMHOLZ: Think or say what they
2 think. This is a hearing.

3 THE HEARING OFFICER: Could you rephrase the
4 question? Let's try that tactic.

5 MRS. KAMHOLZ: It was one that came off my
6 head. It is not written down. So I have already
7 forgotten it. So let's just move on.

8 BY MRS. KAMHOLZ:

9 Q. Did you do an appraisal and analysis
10 of the complainants' property?

11 A. Yes, I did.

12 Q. When did you do this? Do you remember
13 the date?

14 A. Oh, I didn't bring it with me.

15 Q. I have a report here and the analysis
16 I would like to introduce as Exhibit 5. There is
17 two sections of this. On the second page, would
18 you look at that and tell me if that is the report
19 you made out for us?

20 I will be addressing this next
21 (indicating.)

22 A. Yes, this is the report.

23 Q. On the back of that first report
24 there, did you write an opinion?

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1 A. That is what it is. It is an opinion.

2 Q. Okay. Would you please read that?

3 A. "It is my opinion that the current
4 market value of the subject property should be
5 between 290 and 300,000. However, a noise nuisance
6 such as the continuous roaring sound resulting from
7 the operation of one or more dirt bikes within 70
8 feet of the subject property could be detrimental
9 to the sale of this property. The problem of dirt
10 bikes racing back and forth could not only diminish
11 the selling price of the property, but it could
12 also discourage potential buyers from making an
13 offer."

14 Q. Thank you. I would like to have this
15 admitted as Exhibit No. 5.

16 MR. GOTTEMOLLER: Subject to
17 cross-examination.

18 THE HEARING OFFICER: Okay. We will hold
19 off on that.

20 MRS. KAMHOLZ: You can keep that for a
21 minute. I am complete here. Thank you very much.

22 THE HEARING OFFICER: Thank you,
23 Mrs. Kamholz.

24 Mr. Gottemoller, cross?

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1 MR. GOTTEMOLLER: Thank you.

2 CROSS-EXAMINATION

3 BY MR. GOTTEMOLLER:

4 Q. You just testified you have been in
5 the real estate business for 15 years?

6 A. 15 years.

7 Q. Have you ever done any -- what are you
8 -- do you have any MAI appraisal credentials?

9 A. No.

10 Q. So are you a broker or a sales rep?

11 A. Sales agent.

12 Q. Do you do comparison sales very often
13 such as you have done on this market analysis?

14 A. Yes, I do.

15 Q. So your market analysis is something
16 you do quite often?

17 A. Right.

18 Q. And when you did this market analysis,
19 have you ever compared up a market analysis of
20 other properties that had motorcycle riding going
21 on next to them?

22 A. No.

23 Q. So this is your first and only market
24 analysis that you have ever done concerning a

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1 property value with a motorcycle next door?

2 A. Motorcycle, yes.

3 Q. Have you ever sold property to people
4 that are interested in riding motorcycles?

5 A. Who are interested in riding?

6 Q. Yes.

7 A. No. I had two men come in one day
8 looking for property where they could ride their
9 motorcycles.

10 Q. Okay. And did you take them to this
11 piece of property?

12 A. No.

13 Q. But they were specifically looking for
14 a piece of property that would allow this use?

15 A. Yes, they were.

16 Q. And would they have paid a higher
17 premium for that property because of that use?

18 A. I think they probably would have had
19 to. We did not find anything for them.

20 Q. So you didn't show them the Kamholz
21 property at that time?

22 A. No. Well, it really wasn't on the
23 market at that time anyway.

24 Q. Did you discuss with them their needs

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1 for what type of use this would be? You said they
2 came in looking for property they could ride a
3 motorcycle on. Did you consider their needs, those
4 motorcycle riders' needs when you created No. 4?

5 A. I did. But I also knew it would be
6 very difficult to find a place for what they
7 wanted. People don't want motorcycles running
8 around too close to their homes.

9 Q. But in fact, you had two people that
10 did want that, didn't you?

11 A. That is what they are looking for.

12 Q. And you testified a moment ago that
13 they probably would have paid a premium for that

14 use; is that correct?

15 A. No, they wouldn't. They wanted it
16 very cheap because they wanted to run their
17 motorcycles.

18 Q. You never saw these bikes themselves
19 being run, you just saw the tape; is that correct?

20 A. No, I didn't.

21 Q. And as far as the -- in your 15 years
22 in the real estate business, have you ever had a
23 sale come back with a complaint to you about the
24 noise from motorcycles next door?

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1 A. I don't think so.

2 Q. So in 15 years of operation in your
3 business, have you ever come across this problem
4 before?

5 A. Not -- well, I have never dealt with
6 property where they had motorcycles. However --
7 well, I don't think it is relevant that people do
8 complain.

9 Q. I didn't ask you whether you think it
10 was relevant. I asked you have you ever dealt with
11 this problem before?

12 A. Not with motorcycles.

13 MR. GOTTEMOLLER: No further questions of
14 this witness. I would renew my objection to this
15 being admissible. She has never dealt with the
16 problem before. She has no prior experience. She
17 has no other studies. This is a first and only --
18 this opinion a not based on anything other than her
19 personal opinion on a first-time event. She is not
20 an expert under those circumstances.

21 THE HEARING OFFICER: Mrs. Kamholz?

22 MRS. KAMHOLZ: I object to that. She has
23 been in the business for 15 years. She knows what
24 is -- what people like. She knows that loud noises

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1 like we have is detrimental to the neighborhood.
2 She has enough sense and enough knowledge to
3 understand that something like this could deter
4 someone from buying a house. It did deter us. And
5 it could deter someone else.

6 THE HEARING OFFICER: Any further argument,
7 Mr. Gottemoller?

8 MR. GOTTEMOLLER: I think under the
9 circumstances she may be able to say in the general
10 world of things that is true. But she is here

11 today to give us an expert opinion. And she is
12 submitting a written expert opinion that says this
13 specifically is a problem. And yet she doesn't
14 have the foundation to support that opinion.

15 THE HEARING OFFICER: I think what I am
16 going to do -- any deficiencies borne out by your
17 cross will affect the weight, not the admissibility
18 and the Board will note that. So I will admit
19 Complainants' Exhibit No. 5.

20 (Whereupon document so
21 offered was received in
22 evidence as Complainants
23 Exhibit No. 5.)

24 MRS. KAMHOLZ: Thank you. I have no

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1 further questions at this time.

2 THE HEARING OFFICER: No redirect --

3 MR. GOTTEMOLLER: I finish.

4 THE HEARING OFFICER: No redirect,
5 Mrs. Kamholz?

6 MRS. KAMHOLZ: No redirect.

7 THE HEARING OFFICER: Thank you very much,
8 ma'am. You may step down.

9 MRS. KAMHOLZ: It looks like I am next. I
10 have run out of witnesses for the time being.

11 (Witness duly sworn.)

12 VIRGINIA KAMHOLZ,
13 called as a witness herein on behalf of the
14 complainants, having been first duly sworn, was
15 examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MRS. KAMHOLZ:

18 I guess I am just going to talk.
19 Hopefully, I am going to be able to explain our
20 situation. In the early '90s, the respondents'
21 grandchildren -- grandson was quite young. And he
22 had a small ATV and go carts, different kinds of
23 go carts. There was more than one at the time.

24 But anyway, they built a dirt track

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1 and they would ride on that dirt track. The noise
2 wasn't bad. He was quite little then, and the toys
3 were little. We had a dust problem from the dirt
4 track because we were located north of their house,
5 and the winds are -- from the south during the
6 summertime. So any dust that they were kicking up
7 was -- with their riding was blowing over into our

8 house. This was not a real serious problem for us.
9 They were having fun and we kind just put up with
10 it.

11 In 1995, Donald was about, I would
12 guess, maybe 14 years old, approximately. Anyway,
13 he got his first dirt bike. This was the beginning
14 of our big problem. The dirt bike was so loud.
15 And he rode it like 20 feet from the dividing
16 property line. Our house is 50 feet from the
17 dividing property line. And the noise came into
18 our home. It filled our yard. Donald loved to
19 ride, and he rode every day after school. On
20 weekends he would ride all day long. We had no
21 peace. I could not -- I had to stop entertaining
22 people because we never knew when he was going to
23 ride. And when he rode, there is no way we could
24 sit on our patio or have a cookout or have company

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1 with that dirt bike riding.

2 I went to see the sheriff. I went to
3 the courthouse to talk to the sheriff about it.
4 And he said there was nothing we can do because
5 they were on their own property.

6 MR. GOTTEMOLLER: Objection to what the
7 sheriff said. It was hearsay.

8 THE HEARING OFFICER: Overruled. You may
9 proceed Mrs. Kamholz.

10 BY MRS. KAMHOLZ:

11 Thank you. We knew we couldn't take
12 -- we had no action to take. So we had to kind of
13 put up with it. At that time they did give me the
14 name of Mr. Greg Zak. I was not in the position to
15 call him and take action like this at that time in
16 my life. I was too busy. And I didn't know. I
17 was afraid of what it would involve, and now I know
18 why.

19 But anyway, we just kind of put up
20 with it for a year. And it was awful. It was
21 one of the worst years of our lives.

22 At the time we were not speaking with
23 our neighbor due to other circumstances. So I
24 wrote them a letter and I asked them to -- I kind

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1 of used the letter to review everything that we
2 have been through over the years. We have been
3 neighbors for over 30 years. And I used that
4 opportunity to review our 30 years of being

5 neighbors, the good years. And I asked them if --
6 I told them that their noise was driving us crazy.
7 And I asked them if they could please stop it. I
8 got no response from that letter other than more
9 riding. He would ride his bike over on the
10 dividing property line, rev his engine. We all
11 know the sound of a dirt bike. The sporadic sound
12 of the yang, yang, yang type thing that was --

13 MR. GOTTEMOLLER: She can't get that on the
14 record.

15 BY MRS. KAMHOLZ:

16 Okay. Anyway, the dirt bike broke
17 down -- by the way, the letter that I did send
18 them, I sent it registered mail and they did get
19 it. And the same day that they got that letter I
20 got the receipt back, so I know exactly when they
21 got it. He came over about --

22 MR. GOTTEMOLLER: Who is he?

23 BY MRS. KAMHOLZ:

24 I am sorry, Donald, the grandson, came

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1 over that same day, a little bit later on after the
2 mail was delivered and he pulled up along the

3 property line, looked in my window and revved that
4 bike. And in a way that was like my response to my
5 letter. It was like, okay, this is the way it is
6 going to be. And that is the way it remained. He
7 kept riding his bike, riding his bike, riding his
8 bike. We never heard anything from them.

9 So in the fall his bike broke down
10 and then winter came. So we had it kind of quiet
11 then. In the spring of the following -- that was
12 in -- I am sorry, I have to back up a little bit.
13 In 1996 was when I wrote that letter, August 10th
14 of 1996. So we had listened to that dirt bike for
15 one year because he got the bike in '95.

16 We had this quiet time throughout the
17 winter. In the early spring of 1997 his new toy
18 was a Ford pickup. He rode this Ford pickup, kind
19 of a junky truck. He rode it around the property
20 just like the dirt bike. He would come speeding
21 towards our house, turn at the property line, turn
22 the last minute and go speeding down to the road,
23 which is like 450 feet and then turn around, spin
24 around and come back up. This is all taking place

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1 like 70 feet from my window.

2 This is very frightening sometimes.
3 Here is a 14 or 15 year old -- about a 15 year old
4 boy at that time driving this truck, speeding
5 toward my house and spinning around. The dust he
6 kicked up, I have video which I am going to show
7 you. It will show the dust that he kicked up.
8 With southerly winds, the dust came over to our
9 house right into our windows. I don't know, maybe
10 I should just introduce my video of that truck
11 right now.

12 MR. GOTTEMOLLER: I would object to the
13 video being played until we establish the
14 foundation. If we can -- it is your case.

15 MRS. KAMHOLZ: Okay. How about if I show
16 you my photographs of the truck?

17 THE HEARING OFFICER: Sure.

18 MRS. KAMHOLZ: We will do that first.

19 I am sorry. I have to back up. I
20 have the letter that I wrote to -- I would like to
21 make it Exhibit No. 6. It is the letter that I
22 wrote to the respondents in August of 1996
23 concerning this noise and asking them to please
24 stop it.

1 THE HEARING OFFICER: Has Mr. Gottemoller
2 seen the letter?

3 MRS. KAMHOLZ: Yes, he has. It was given
4 to him during discovery.

5 MRS. KAMHOLZ: You can have the one with
6 the receipt on it that shows it was registered
7 mail.

8 Do you want do you understand me to
9 read the letter or may I just enter it as Exhibit
10 No. 6?

11 THE HEARING OFFICER: Mr. Gottemoller, do
12 you have any objection.

13 MR. KAMHOLZ: You might want to read it to
14 put it on record.

15 MRS. KAMHOLZ: It kind of puts it on record
16 and lays a foundation.

17 MR. GOTTEMOLLER: I believe that if it is
18 admitted it is on record.

19 THE HEARING OFFICER: It is on record. It
20 is in evidence. It lays a foundation for what?

21 MRS. KAMHOLZ: Well, for the problem we are
22 having and for the reason I want to show you
23 photographs and video.

24 THE HEARING OFFICER: Yeah, I think you can

1 get around that other than reading this whole thing
2 into evidence.

3 MRS. KAMHOLZ: I agree. It would just take
4 some more time.

5 THE HEARING OFFICER: Not that we are
6 pressed for time. The Board will look at this and
7 read it.

8 Anyway, complainants' Exhibit No. 6 is
9 admitted.

10 (Whereupon document so
11 offered was received in
12 evidence as Complainants
13 Exhibit No. 6.)

14 (Short recess taken.)

15 THE HEARING OFFICER: We are back on the
16 record. Mrs. Kamholz has -- are you going to offer
17 this --

18 MRS. KAMHOLZ: Yes, I am offering that.

19 THE HEARING OFFICER: -- Group Exhibit No. 7
20 photos 1 through 20. Mr. Gottemoller, I believe,
21 has an objection to the front page of this group
22 exhibit entitled "pictures relating to alleged
23 violations."

24 MR. GOTTEMOLLER: I would also object to the

1 -- at least in the copy that I have been handed,
2 there is a lot of commentary with these photographs
3 that is on these.

4 MRS. KAMHOLZ: I plan on going through
5 that.

6 MR. GOTTEMOLLER: My concern is that
7 although the photographs certainly might be
8 demonstrative evidence of what the property looks
9 like and what have you, I believe that the
10 statements that she has made in here and her
11 offhand comments really are inappropriate under the
12 circumstances. Although they might be her personal
13 feelings as to what is going on -- for instance, I
14 think on my case the third page maybe, "line up,
15 get ready go"; you know, "here they come, another
16 day another race," those are really sidebar
17 comments that are not appropriate with the
18 photographs. And I would ask that those be either
19 redacted or crossed out from this exhibit.

20 As far as the photographs are
21 concerned, she can certainly discuss what it is
22 that she has taken a photograph of since she is the
23 witness who apparently is taking these photographs.

24 THE HEARING OFFICER: Mrs. Kamholz, any

1 response?

2 MRS. KAMHOLZ: Well, yes, I have a response
3 to that. Which picture were you talking about,
4 please?

5 MR. GOTTEMOLLER: Well, if you --

6 MRS. KAMHOLZ: Photo number?

7 MR. GOTTEMOLLER: You have got things
8 written on virtually every picture.

9 THE HEARING OFFICER: I am going to short
10 circuit this. I am going ask the Board to
11 disregard the comments submitted or written on the
12 photographs 1 through 20. Any kind of direction on
13 the photographs, Mrs. Kamholz can describe as she
14 is speaking. But the -- you know, all written
15 comments on the photos are to be disregarded by the
16 Board.

17 Also Mr. Gottemoller's objection to
18 striking I think the first page of this group
19 Exhibit 7, I think it pretty much sets up a
20 foundation, and I think I will accept it on those
21 bases. So objection overruled.

22

23

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1 (Whereupon document so
2 offered was received in
3 evidence as Complainants
4 Exhibit No. 7.)

5 MRS. KAMHOLZ: Thank you.

6 Photograph No. 1 shows Donald in his
7 truck coming toward the property line before his
8 turn. Photograph No. 2 is as he is turning, you
9 can see how close he is to the property line. The
10 white truck in the front is our truck parked there
11 in our driveway. Photo No. 3 is the truck coming
12 towards our house. These pictures are taken from
13 inside my house. I was not outside. These
14 pictures were from inside.

15 Photo No. 4 is another turn. And you
16 see a car there. He had a friend over that day,
17 and they were drag racing and riding around. You
18 can even see a little dust behind the car. Photo
19 No. 5 shows the -- almost the completion of this
20 drag race. The car is winning. Photo No. 6, they
21 were discussing something. They were both stopped.
22 The car is facing east. Donald is facing west.

23 And the comments on this one that we are going to
24 ignore, it was "here they come and another day

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1 another race." So it was a different day. And we
2 have two different cars involved here you will
3 notice.

4 THE HEARING OFFICER: What photo are we on,
5 Mrs. Kamholz?

6 MRS. KAMHOLZ: Number 7.

7 THE HEARING OFFICER: Okay.

8 MRS. KAMHOLZ: Number 8, Donald and the car
9 getting ready for a drag race. Photo No. 9 it
10 shows the car going -- you know, I really can't
11 tell if the car is going frontward or backward
12 there. I believe that is the drag race coming back
13 up. And Donald is winning this one.

14 And then photo No. 10, the car is
15 ahead of Donald. Photo No. 11 shows the ruts in
16 the grass from where they ride around and do
17 spinning and skidding. And you can see how close
18 it is to the property line. And our house is 50
19 feet from the property line. The fence you are
20 seeing in there was not there at the beginning of

21 this time. That was put up. At first I was kind
22 of glad to see it because I thought it would deter
23 him. Because if he did have an accident, it
24 wouldn't end up in our rec room.

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1 Number 12, this is another car now.
2 This is another person. So there is more than one
3 car involved here in these drag races. Just --
4 No. 13 is just a picture of the car riding. And I
5 am still inside my house. You can see my windows
6 and my window frame and my flowers. Number 14,
7 another day. Donald had the hood off of his truck.
8 I don't know what he was doing. Anyway, it shows
9 another day here and a car racing with him.

10 Number 15 shows he was riding at night
11 with his headlights on aiming towards our house.
12 He would turn when he would -- he would turn just
13 before he got to the property line. But that was
14 kind of troublesome to us, and it showed -- it gave
15 us some concern. Number 16 is a very good picture
16 of the ruts. And it shows the type of riding he
17 does. And Donald is no longer a little boy. He is
18 about -- he is getting ready to turn 16 here. He
19 is 15 at this time. This is like in April of 1997.

20 Number 17 is just more ruts. Number 18 is more
21 ruts.

22 MR. GOTTEMOLLER: Can I see what 18 looks
23 like? On my copy it is missing.

24 MRS. KAMHOLZ: I am sorry.

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1 MR. GOTTEMOLLER: Okay. That is fine. I
2 didn't know what it was.

3 MRS. KAMHOLZ: It is very similar to the
4 other rut pictures.

5 Number 19 shows a pretty good view of
6 the dirt track that they had built earlier. The
7 dirt track was still there, although Donald didn't
8 use it with his truck. He didn't -- I mean, he
9 wasn't using it. The younger grandson would come
10 and visit, and he would use it. The younger
11 grandson was living there for a while, and he would
12 use it to when -- their younger grandson's name was
13 Kelly. He liked the dirt track. He rode around on
14 it a lot.

15 Number 20 is just another picture of
16 the dirt track. At the time I didn't have these in
17 order. I didn't realize No. 19 was such a good one

18 of the dirt track. That is it for my photo
19 exhibit.

20 Okay. The next kind of ordeal that we
21 had was Donald turned 16 that June of 1997. I
22 believe he turned 16. He quit school. I know that
23 because he was home during the day then. And we
24 knew when his birthday was, so we figured he turned

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1 16 and he had his truck. And there was some
2 activity during the day when school hours were --
3 where he wouldn't have normally been there, he
4 would have been school. But he quit. So there was
5 some activity there. And then eventually he
6 started going out on the road because he got his
7 driver's license.

8 So we had -- again we had a little
9 lull in the activity, other than when he would
10 ride, when he was home or on weekends or when Kelly
11 was there visiting, which when Kelly is there he
12 rides all the time. That is all Kelly does is
13 ride. He can ride for ten hours a day. He loves
14 it and that is what he does.

15 Donald evidently got a job. And I
16 think he moved out for a little while. So Donald

17 wasn't around for a while. Eventually, he came
18 back home. And he had another new dirt bike. I
19 don't know if it was a new one or a used one. But
20 it was a different dirt bike and the riding started
21 again in the year 2000 and 2001.

22 Kelly had moved in. I know Kelly was
23 living there I believe in the end of 2000 and the
24 beginning of 2001. In fact, most of 2001 Kelly was

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1 living there. I believe he moved out around
2 November of 2001. So we had both boys living there
3 again. And the riding was pretty frequent and
4 weekends all day, ten hours a day. It is just more
5 than a person can expect to live with. And it is
6 not -- by any means it is not normal activity for
7 this area. There is no way that dirt bikes belong
8 where homes are. There is just no way. They are
9 too loud. They are obnoxious. They stink. And I
10 can't imagine for the life of me --

11 MR. GOTTEMOLLER: I would object at this
12 point in time. I know we have gone a long way on
13 narrative. But this is clearly beyond the normal
14 opinion. If she wants to talk about facts and

15 testimony, that is fine. But --

16 MRS. KAMHOLZ: This is a fact. I have a
17 nose. And the fact is they stink. There is no way
18 of getting around that. It is a fact.

19 THE HEARING OFFICER: I will overrule your
20 objection, Mr. Gottemoller. You may proceed.

21 MRS. KAMHOLZ: I think unless my husband can
22 add anything to -- no. I think I am pretty much
23 done. I think I have showed that we have -- in my
24 complaint I say that we are living with an

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1 intolerable, horrible situation. I do not
2 understand why they don't understand their noise.
3 I just cannot believe that we have been putting up
4 with this for seven years. I can't believe that
5 someone can do this to somebody else.

6 THE HEARING OFFICER: Mr. Gottemoller, your
7 witness.

8 MR. GOTTEMOLLER: Thank you.

9 CROSS-EXAMINATION

10 BY MR. GOTTEMOLLER:

11 Q. You testified at the beginning that at
12 the time you wrote the letter back in 1996 you
13 weren't speaking to your neighbors at that time; is

14 that correct?

15 A. That's correct. It is in the letter
16 also.

17 Q. And you folks have been arguing for
18 quite some time about other things; is that
19 correct?

20 A. No , not really. We -- there was not
21 much arguing.

22 Q. Well, you weren't speaking to them
23 nevertheless in 1996?

24 A. That's correct.

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1 Q. And at the time you wrote this letter,
2 your not speaking to them didn't involve
3 motorcycles or cars at that point?

4 A. That's correct.

5 Q. And the truck that you have talked
6 about now pretty extensively in 1997, I believe --

7 A. Uh-huh.

8 Q. -- that truck is gone and out of
9 existence? Since 1997, no one has been driving
10 trucks or cars around this property, have they?

11 A. That's correct.

12 Q. And the trucks and cars, we have
13 talked a little bit about the noise -- about the
14 dust from the trucks and cars. But those trucks
15 and cars, did they have mufflers on them?

16 A. I don't believe the truck had a
17 muffler on it. It was a junky truck.

18 Q. But that activity hasn't happened or
19 hasn't gone on any further since 1997; is that
20 correct?

21 A. No, it has not.

22 Q. Now, you have got a couple hours of
23 tape here. And I know we haven't admitted that
24 into evidence yet. But a lot of times on that tape

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1 you are talking during that time, aren't you?

2 A. Yes.

3 Q. And have you had a chance to review
4 those tapes recently to listen to hear what you had
5 to say on those tapes?

6 A. Yes, I have.

7 Q. Do you remember saying that --

8 THE HEARING OFFICER: Excuse me,
9 Mr. Gottemoller.

10 MR. GOTTEMOLLER: Certainly.

11 BY MR. GOTTEMOLLER:

12 Q. Well, did you keep a log of how often
13 they rode these motorcycles?

14 A. Yes. At times I did and sometimes I
15 didn't. It got tiring.

16 Q. In 2001 when you were filming these
17 things, did you film them every time that you saw
18 them?

19 A. No. There was a lot of riding going
20 on that I didn't film.

21 Q. Now, in discovery purposes in my
22 discovery, you only provided two tapes. But there
23 was actually several tapes consolidated onto these;
24 is that correct? Were there more than two tapes

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1 originally and then you just copied them for me?

2 A. You copied them for yourself. I
3 provided you with four tapes.

4 Q. Okay. And we put them on.

5 A. And then you consolidated them.

6 Q. Sorry. Do you remember making the
7 statement that "ATVs are not really the noise
8 problem"?

9 A. Yes. But that was before --
10 Q. You did make that statement?
11 A. Yes, I did.
12 MR. KAMHOLZ: Was that all ATVs?
13 THE WITNESS: Would say --
14 THE HEARING OFFICER: Mr. Kamholz, excuse
15 me. It is his cross.
16 MR. KAMHOLZ: I am sorry.
17 BY MR. GOTTEMOLLER:
18 Q. You also --
19 A. Would you repeat that last question
20 because I may want to correct my answer?
21 Q. No. We heard an answer already. I
22 have got another one. I will go forward. Thank
23 you.
24 ATVs, at another location on the tape

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1 you state "ATVs and mini bikes are no problem. We
2 don't care about that." Did you make that
3 statement?
4 A. If you are going to let me explain it,
5 yes.
6 Q. Well, you will have your opportunity
7 in direct to do whatever you want.

8 A. Yes, I made that statement.
9 Q. But you did make that statement?
10 A. Yes, I did.
11 Q. And you made that statement while you
12 were filming or running this video camera; is that
13 correct?
14 A. Yes.
15 Q. On July 19th of 2001, did you make the
16 statement that it has been, and I will quote, a
17 long time since we had riding going on, this bike
18 is a little quieter --
19 A. Uh-huh.
20 Q. -- end quote?
21 A. Yes, I did.
22 Q. On July 24th of 2001, at approximately
23 8:02 on your tape, did you make the statement "they
24 can ride quietly"?

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1 A. It is possible. Why don't we view the
2 tape before we go through this.
3 THE HEARING OFFICER: Just please,
4 Mrs. Kamholz.
5 MRS. KAMHOLZ: Just answer.

6 THE HEARING OFFICER: Just answer his
7 questions and you can explain.

8 THE WITNESS: It is possible I said that,
9 yes.

10 BY MR. GOTTEMOLLER:

11 Q. On your taping of May 19th of 2001 at
12 approximately 7:24 in the evening and 11 seconds to
13 be exact, according to your tape, did you make the
14 statement "he went up on the other side. That is
15 good. It is not so loud when he goes up there"?

16 A. Yes, possibly. Uh-huh.

17 Q. On October 7th, 2001, at about 5:20:50
18 on your videotape record, did you make the
19 statement in reference to the motorcycle, "it
20 stinks and he stinks," in reference to Mr. -- well,
21 to Donald?

22 A. No, I did not.

23 THE HEARING OFFICER: I am sorry,
24 Mr. Gottemoller. Ma'am, are you going to testify

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1 here today?

2 MS. ZIERER: Yes.

3 THE HEARING OFFICER: I am going to ask you
4 to leave the room and wait until you are called.

5 Thank you very much. I appreciate it.

6 THE HEARING OFFICER: Mr. Gottemoller, you
7 may proceed. Thank you.

8 BY MR. GOTTEMOLLER:

9 Q. If you want to grab your set of
10 pictures, I will be referring to those in a moment.
11 On the photographs I think they start about 16
12 where you are looking at ruts on the grounds and
13 the various ruts on the property --

14 A. Uh-huh.

15 Q. -- this isn't your property, correct?
16 They are riding on their own property?

17 A. They are on their own property.

18 Q. And your complaint doesn't really
19 involve ruts on the ground, does it?

20 A. It involves the riding they are doing.

21 Q. You are concerned about noise; you are
22 not really concerned with what their ground looks
23 like?

24 A. Noise, dust and smells. When you see

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1 ruts like that you know, there is dust.

2 Q. Okay. Well, aren't ruts usually

3 caused when the ground is soft?

4 A. No. It is caused from the revving of
5 tires and skidding around. As you can see, it is a
6 squeally rut. It is not a straight rut.

7 Q. So these ruts on photo 16, you are
8 saying these were made and they cause dust when
9 they are made; is that what you are saying?

10 A. Yes.

11 Q. And that is why we are looking at them
12 is because of that?

13 A. No.

14 Q. Okay.

15 A. You are looking at the ruts to show
16 the types of riding that Donald does. He is not a
17 little kid anymore and he is riding like an adult.
18 And he does --

19 Q. Well, these pictures on 16 were from
20 the cars riding; is that right?

21 A. Yes.

22 Q. And, in fact, the ruts that are shown
23 throughout this are from the cars being driven; is
24 that correct?

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1 A. That's correct.

2 Q. And the cars and trucks haven't been
3 driven as we stated a moment ago since 1997; is
4 that right?

5 A. That's correct.

6 Q. He was a much younger boy in 1997?

7 A. He turned 16 in 1997. Got a driver's
8 license and a job and smoked and quit school.

9 Q. But he -- in terms of whether he was
10 smoking or not, that is really not relevant to
11 these proceedings?

12 A. Well, he wasn't a child as you were
13 trying indicate.

14 Q. And he got his driver's license and
15 started driving on the road?

16 A. Yes, he did.

17 Q. And he didn't drive the truck and car
18 any more on the grass?

19 A. Occasionally, but not very often.

20 Q. And actually he never drove the car,
21 he drove the truck, correct?

22 A. I really don't know about that. They
23 very often --

24 Q. You don't have any pictures of him

1 driving a car on his property, do you?

2 A. No, I do not. But you can't see the
3 driver in the pictures anyway. They very often did
4 trade vehicles. His friends did drive his truck.
5 So I don't know whether he drove.

6 Q. Do you know if this truck -- well,
7 never mind.

8 I have no further questions of this
9 witness.

10 THE HEARING OFFICER: Thank you.

11 Mrs. Kamholz, earlier did you wish to
12 explain one of the questions put forth by
13 Mr. Gottemoller regarding the ATVs or --

14 MRS. KAMHOLZ: Yes. When these kids -- when
15 I make comments on my tapes, the noise that these
16 vehicles make, even though sometimes -- there are
17 times where it is quieter than other times. It is
18 kind of like -- it has to do with acceleration and
19 deceleration. When they ride by me and all of a
20 sudden they are not accelerating, that bike is
21 suddenly quiet because it is like a glide by,
22 rather than a drive by. And that is a quiet
23 reaction that I am getting through my camera. And
24 I tend to talk a lot. So I talk to myself while I

1 am videoing this stuff because that is the way I
2 am. If I have a pencil in my hand, I write. If I
3 have a camera in my face, I talk.

4 I say things that -- I have said
5 things there that I probably shouldn't have said
6 because of the -- because of what it implies. When
7 I say the ATV or that -- or the bike is quieter
8 that day, it does not mean that it is not still
9 very annoying and definitely into a nuisance area.

10 If he is further over on the property,
11 of course, it is not as loud as when he is right
12 near my window, but it is still loud enough to be a
13 very disturbing nuisance that does keep us from
14 enjoying our lives and our property. We absolutely
15 cannot enjoy our lives and our property when they
16 ride their bikes.

17 MR. GOTTEMOLLER: I would object at this
18 point. I believe if she wants to explain her
19 statements on the tape, I think she is within other
20 rights to do that. But I think she is introducing
21 new evidence at that point in time. I think she is
22 outside the scope.

23 THE HEARING OFFICER: I think she is
24 explaining the questions. But in any event, you

1 will have an opportunity when you run the video.

2 Any further?

3 THE HEARING OFFICER: One more thing. Like
4 I said, it is a matter of acceleration and
5 deceleration. And it is also a matter of when you
6 are putting up with something real bad and then all
7 of a sudden it is not quite as bad, the relief is
8 so great that you are like, oh, that wasn't so bad
9 or that wasn't as bad as it -- it is almost like a
10 wife getting beat up or something like that. She
11 gets one black eye instead of two.

12 MR. GOTTEMOLLER: I will object to that.

13 THE HEARING OFFICER: Sustained.

14 MRS. KAMHOLZ: Well, you know --

15 THE HEARING OFFICER: Sustained. Thank you.

16 Any further? Thank you. Any recross?

17 MR. GOTTEMOLLER: No, not of that.

18 THE HEARING OFFICER: Thank you. You may
19 step down. Mrs. Kamholz. Are you going to offer
20 Complainants' Exhibit 7 into evidence?

21 MRS. KAMHOLZ: Yes.

22 MR. GOTTEMOLLER: I thought it was already
23 offered. I thought you already admitted subject

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1 THE HEARING OFFICER: I know I noted your
2 objections.

3 MR. GOTTEMOLLER: You know, I think it is
4 admissible as demonstrative evidence. So I would
5 stand by my original objections concerning the
6 foundation and also the fact that it all deals with
7 cars and --

8 MRS. KAMHOLZ: It deals with noise and
9 smells and dust.

10 THE HEARING OFFICER: Other than my original
11 rulings that I direct the Board to strike and
12 disregard the comments written on the individual
13 photos, 1 through 20, I will allow Complainants'
14 Exhibit No. 7 into evidence. I am sure that -- I
15 am confident that the Board will give it the
16 exhibit its due weight.

17 MR. GOTTEMOLLER: If I might, my client
18 would like a bathroom break.

19 THE HEARING OFFICER: You know, I was
20 getting to that.

21 (Short recess taken.)

22 (Witness duly sworn.)

23

24

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1 MARY LOU ZIERER,
2 called as a witness herein on behalf of the
3 complainants, having been first duly sworn, was
4 examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MRS. KAMHOLZ:

7 Q. Hello. Would you please state your
8 name and spell it for the reporter?

9 A. My name is Mary Lou Zierer. The last
10 name is spelled Z-i-e-r-e-r.

11 Q. And where do you live Mrs. Zierer?

12 A. 707 Old Birch Road, Harvard, Illinois.

13 Q. What is your occupation?

14 A. Retired farmer and member of the
15 McHenry County Board.

16 Q. How long have you been a member of the
17 county board?

18 A. 14 years.

19 Q. Okay. How do you happen to know the
20 complainants, Milton and Virginia Kamholz?

21 A. I met or received a phone call from
22 Mrs. Kamholz on Mother's Day complaining about the
23 bikes and asking me what she should do.

24 Q. Could you hear anything when she

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1 called you on the phone?

2 A. Yes, I could very strongly hear the
3 dirt bikes.

4 Q. You could hear them in the background?

5 A. Yes.

6 Q. That was my next question, so we will
7 skip that one. What took place -- sorry.

8 How would you describe the noise that
9 you were hearing?

10 A. It was just as loud as if they were
11 outside of my window being open. I could hear them
12 very plainly and quite loud.

13 Q. Okay. Did you have any suggestions
14 for her?

15 A. I suggested Mrs. Kamholz called the
16 sheriff's office and ask them to come out. And I
17 also suggested that she go to the planning and
18 development committee meeting and talk over her
19 problem with them.

20 Q. Okay. Mrs. Kamholz wasn't sure at the
21 time whether she was going to be -- what she was
22 going to be doing until she got her advice from the
23 P and D committee. She asked you to write a letter
24 for her to the -- and she asked you to direct it to

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1 the Illinois Pollution Control Board. Did you
2 write a letter for her?

3 A. Yes, I did.

4 MRS. KAMHOLZ: I would enter this.

5 THE HEARING OFFICER: You can offer it.

6 MRS. KAMHOLZ: I will offer it as Exhibit
7 No. 8.

8 BY MRS. KAMHOLZ:

9 Q. Do you recognize this as your letter?

10 A. Yes.

11 Q. This is just a letter that she wrote
12 to the Board for me. I didn't know at the time who
13 she should write it to. But I figured if I was
14 going to have a hearing, I would need some support
15 from some qualified people. So I -- this is the
16 letter she wrote for me.

17 THE HEARING OFFICER: What date is this

18 letter?

19 MRS. KAMHOLZ: I received it
20 September 12th. I see there is no date on it. I
21 received it September 12th.

22 THE HEARING OFFICER: That is fine.

23 MRS. KAMHOLZ: Okay. We can switch copies
24 if you would like.

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1 THE HEARING OFFICER: No, that is fine.

2 Thanks.

3 MR. GOTTEMOLLER: You said September 12th?

4 MRS. KAMHOLZ: I think yours --

5 MR. GOTTEMOLLER: Mine does not have a date
6 on it. 2001?

7 MRS. KAMHOLZ: Yes. We can read it if you
8 would like; otherwise, if it is going to be
9 accepted as evidence.

10 MR. GOTTEMOLLER: I know that they can take
11 public comment. But if this is evidence, I would
12 ask that the foundation be laid for it before we --
13 and it is either in or out. I haven't heard any
14 evidence other than that she said she wrote it and
15 it appears to contain her opinions.

16 THE HEARING OFFICER: Mrs. Kamholz?

15 don't think -- for instance, the statement "no one
16 should have to listen to this all weekend," that is
17 her opinion as to whether they should have to
18 listen to it or not. And it may be a
19 recommendation to the Board; but it is certainly
20 not a fact statement of fact.

21 THE HEARING OFFICER: You know, I don't see
22 that statement no one should have to listen to
23 this.

24 MR. GOTTEMOLLER: It is the beginning of the

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1 second paragraph.

2 MRS. KAMHOLZ: Second paragraph on the
3 first page.

4 THE HEARING OFFICER: I am sorry.

5 MRS. KAMHOLZ: That is not giving the Board
6 any orders. That is just stating that she heard
7 the noise and she doesn't think anyone should have
8 to listen to that.

9 THE HEARING OFFICER: Over objection I am
10 going admit Complainants' Exhibit No. 8.

11 (Whereupon document so
12 offered was received in
13 evidence as Complainants

14

Exhibit No. 8.)

15

MRS. KAMHOLZ: Thank you, Mrs. Zierer. I

16

have no further questions for you.

17

THE HEARING OFFICER: Thank you.

18

Mr. Gottemoller?

19

CROSS-EXAMINATION

20

BY MR. GOTTEMOLLER:

21

Q. Other than on the phone that day, did

22

you ever see a -- you didn't see the motorcycles

23

that day, did you?

24

A. No, I did not.

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1

Q. Have you ever been to the property and

2

seen the motorcycles on any other day?

3

A. No. It was Mother's Day, and I did

4

not leave the house.

5

Q. You did not, in fact, actually witness

6

the motorcycle riding on the neighbor's property at

7

any time, did you?

8

A. No.

9

Q. And the best case scenario, you heard

10

it over the telephone?

11

A. Yes.

12 Q. And do you know where she was standing
13 when she was holding the telephone on her end?

14 A. It has been a while. But I believe
15 she was by -- she told me. I believe she was by a
16 bedroom window at the side of her house. I have
17 sort of forgotten.

18 Q. You weren't there? You don't know for
19 a fact?

20 A. No.

21 Q. Where she was at? You have no other
22 independent knowledge of where she was standing?

23 A. She did tell me, and I am sorry but I
24 have forgotten.

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1 Q. But anything that she would have told
2 you would have been just what you told over the
3 phone? You didn't have any witnessing other than
4 she said here is where I am standing; is that
5 correct?

6 A. No.

7 Q. You didn't see where she was standing?
8 You didn't go to her house and look at the property
9 and say this is where you are standing?

10 A. Yes, I looked at the property. But it

11 was a week later.

12 Q. And there was no motorcycle riding
13 going on at the time you were there, correct?

14 A. No.

15 Q. No, that is not correct or, no, there
16 was none going on? There was no motorcycle riding
17 when you were there?

18 A. No.

19 MR. GOTTEMOLLER: No further questions of
20 this witness.

21 THE HEARING OFFICER: Mrs. Kamholz, any
22 redirect?

23 MRS. KAMHOLZ: No.

24 THE HEARING OFFICER: Thank you, ma'am. You

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1 may step down.

2 I think at this juncture Mrs. Kamholz
3 has run out of witnesses for the time being. I
4 think we are going to try to start --

5 MR. GOTTEMOLLER: I would renew my objection
6 on the videotape issues as a practical matter. We
7 haven't had one iota of testimony about how these
8 were made, where they were made, who made them.

9 THE HEARING OFFICER: It hasn't been -- I
10 suspect she will try to lay somewhat of a
11 foundation. And again I -- you know we will cross
12 that bridge when we come to it. Mrs. Kamholz, you
13 are aware you will have to lay a foundation as to,
14 you know, what, when and where and who took the
15 video.

16 MRS. KAMHOLZ: Okay. I am prepared to do
17 that, I hope. I think I am prepared to do that. I
18 have my camera with me. If we wanted to take the
19 time, I will be glad to demonstrate the camera by
20 taking some pictures in here and show them to you
21 on the thing, but that would just take time.

22 I have videotape qualification. It
23 explains who did it and how. This is not marked
24 yet. I don't know if you need it for evidence or

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1 exhibit. It will go with tapes.

2 THE HEARING OFFICER: Why don't you read
3 this into the record.

4 MRS. KAMHOLZ: This is videotape
5 qualification. I, Virginia Kamholz, do state that
6 these videotapes are a true and accurate
7 representation of what actually occurred while I

8 was filming and taking meter readings. I,
9 Virginia, was the only operator of the RCA
10 camcorder used and the only person who has made
11 these recordings. These tapes are the first copy
12 of the original copy. These tapes will show the
13 driving of a pickup truck, the riding and revving
14 of dirt bikes, the driving of ATVs and go carts
15 from within 70 feet of the complainants' residence.

16 These recordings will show that this
17 activity creates excessive, intolerable noise and
18 annoying dust. The camera cannot show smells,
19 however visible exhaust and knowledge that
20 acceleration of these vehicles creates fumes, fumes
21 that exhaust is being admitted. These recordings
22 will show decibel readings of noise taken by
23 myself. These recordings will, indeed, show that
24 this activity does interfere with the complainants'

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1 enjoyment of life and property.

2 THE HEARING OFFICER: Okay. I assume as we
3 proceed to the tape, you will tell the Board, you
4 know, the date, the time, that kind of thing, what
5 is actually happening.

6 MRS. KAMHOLZ: Yes, it will be on the
7 thing. And I will repeat it so she can record it.

8 MR. GOTTEMOLLER: I would again raise some
9 objections. And for the record, number one, we
10 don't know what kind of microphone is on this
11 camera. We don't know if it is directional. We
12 don't know what type it is. I know that she
13 intends, and I am certain that Mr. Zak is going to
14 talk about a lot of these things, but they haven't
15 been placed on record yet. And it is very
16 important, for instance, she is going to talk about
17 her meter readings. Her meter readings in no way,
18 shape or form comply with the standards set by the
19 regulations concerning how meter readings are to be
20 taken and what kind of equipment and the ANSI
21 regulations for them. And I think to just show a
22 meter reading as they tapes contain is really a
23 random sample and not, in fact -- in fact, it is
24 not a random sample. I would say it is a direct

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1 example. The only thing that we see on these tapes
2 are when she is trying to get loud samples. When
3 they are not loud samples, she pulls the camera
4 away so we can't get the ten-minute average reading

5 time.

6 THE HEARING OFFICER: I am going overrule
7 your objection. There is a few cases out there
8 that support my decision. Again, I am not going to
9 at this point rule. But just to be -- have
10 everyone aware that the video won't go towards the
11 proof of the violation, but just to bolster
12 Mrs. Kamholz's claims that there is a violation out
13 there.

14 So with that, you can make your
15 individual objections as they go and -- or a
16 standing objection if you would like.

17 MR. GOTTEMOLLER: I would at least raise a
18 standing objection. It would probably make it
19 easier for everyone here if we didn't do it line by
20 line.

21 THE HEARING OFFICER: So the record will so
22 note the standing objection to the whole video
23 tape.

24 THE HEARING OFFICER: You made proceed,

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1 Mrs. Kamholz.

2 MRS. KAMHOLZ: Should I say something about

3 his objection at all?

4 THE HEARING OFFICER: You may.

5 MRS. KAMHOLZ: It is a video camera. It is
6 -- videos are used in all kinds of cases. It shows
7 what happens. It shows what -- it takes a picture
8 of what is happening. So I don't feel that there
9 should be any problem with it. I am not
10 experienced to know, but I know I can take a video.
11 Of course, when you see some of these, you are
12 going to wonder.

13 THE HEARING OFFICER: Mrs. Kamholz,
14 approximately how much video are we going to see
15 today?

16 MRS. KAMHOLZ: I will show you a little bit
17 of everything if I can. Probably 20 minutes.

18 THE HEARING OFFICER: Okay. That is fine.

19 MRS. KAMHOLZ: Thank you.

20 THE HEARING OFFICER: Thank you. I just
21 want to get a time estimate.

22 (Video played).

23 MRS. KAMHOLZ: This is June 15th at 4:42
24 p.m. You are going to see the truck with the dust.

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1 THE HEARING OFFICER: Mrs. Kamholz, could

2 you stand -- .

3 MRS. KAMHOLZ: I will show you one more
4 view of the truck. And then I will --

5 THE HEARING OFFICER: We are still on
6 June 15th.

7 MRS. KAMHOLZ: 4:42.

8 MR. GOTTEMOLLER: 1997. There is some more
9 dust.

10 THE HEARING OFFICER: We are at June 15th at
11 7:39 p.m., 1997.

12 MRS. KAMHOLZ: You can see I am in my
13 house. I am going out my window. This is where
14 most of my video has been taken from. Maybe I can
15 leave it there. You can see -- I will leave it on
16 fast forward there and you can see that. There is
17 some ruts. There is the dust.

18 THE HEARING OFFICER: We are still on
19 June 15th at 7:41 p.m., 1997.

20 MRS. KAMHOLZ: Look at that dust now.
21 There is where he skids around. Okay. We have an
22 idea about that. We will stop.

23 THE HEARING OFFICER: I will ask the Board
24 to disregard the gratuitous comments that are on

1 the tape.

2 MRS. KAMHOLZ: Yes. I have to go back to
3 where I was because.

4 MR. KAMHOLZ: Could I interject something at
5 that time? Mr. Halloran stated that you are going
6 to ask the Board to eliminate comments. Is that
7 going to be all comments?

8 THE HEARING OFFICER: Gratuitous comments.
9 For instance, we have to do the Christian thing and
10 look at all that dust and my gosh that is a lot of
11 dust. They can view it for themselves.

12 MR. KAMHOLZ: Well, Mr. Gottemoller has
13 entered comments into his cross-exam. I am
14 wondering if since these comments are being
15 stricken from the Board's considerations, would the
16 other comments also be stricken from the Board's
17 considerations.

18 THE HEARING OFFICER: Sir, I have no idea
19 what you are talking about.

20 MR. KAMHOLZ: Mr. Gottemoller brought to the
21 attention of the Board the commence that that is
22 not so loud, mini bikes aren't -- are -- what was
23 it -- ATVs, that one is no so bad. And those are
24 also comments that were taken off the videotapes.

1 So if these -- if you are proposing that we strike
2 these from the Board's considerations, shouldn't we
3 also strike the other ones from the considerations.

4 MR. GOTTEMOLLER: If I may respond to that?

5 THE HEARING OFFICER: Yes, you may,
6 Mr. Gottemoller.

7 MR. GOTTEMOLLER: Statements that she makes
8 that are against her interests are admissions
9 against her interest. And as such, they are
10 admissible as evidence because they are statements
11 she made that are directly contrary to her case.
12 Statements she is making on the videotapes is
13 clearly -- that is she is doing here are outside of
14 what would normally be evidence.

15 THE HEARING OFFICER: I agree.

16 Mr. Kamholz --

17 MRS. KAMHOLZ: May I say, you said like the
18 comment I made that is on the videotape where I
19 said, well, we have to be a little more Christian
20 than that, now that is going to be struck?

21 THE HEARING OFFICER: Well, I am going to
22 ask the Board to disregard that. That is
23 irrelevant to the matter at hand.

24 MRS. KAMHOLZ: Well, you mean the ones I

1 made about --

2 THE HEARING OFFICER: The Board can see --
3 other than directing the Board to the date, time,
4 whatever, the Board can see what is on the video
5 the amount of dust, so on and so forth.

6 MRS. KAMHOLZ: Now, when there is comments
7 made about the smell, are you going to ask the
8 Board disregard those because that is the only
9 thing I have to go on is my comments about the
10 smell on the days where they were riding a lot and
11 multiple bikes and the smell, and I would comment
12 that is stinks?

13 MR. KAMHOLZ: Was that obvious at the time
14 with the showing of exhaust on the --

15 MRS. KAMHOLZ: Yes. When you see exhaust
16 coming out of the back-end of a bike, you know
17 there has to be a smell to it because it is
18 exhaust. So comments about smell --

19 THE HEARING OFFICER: That is not --

20 MRS. KAMHOLZ: That is not --

21 THE HEARING OFFICER: Well, let me clear it
22 up. Comments about smell, that sort of stuff, that
23 is fine. I ask the Board not to disregard those.
24 Other comments that may arise that are on there

1 that are clearly gratuitous, clearly irrelevant, I
2 would ask the Board to disregard.

3 MRS. KAMHOLZ: I understand.

4 THE HEARING OFFICER: Again, I note
5 Mr. Gottemoller's continuing objection. And I
6 again am confident that the Board will give this
7 video its proper weight with or without its
8 deficiencies.

9 But you may move on, Mrs. Kamholz.

10 MRS. KAMHOLZ: I have no date on this part
11 of the video. This is a -- this is Mother's Day
12 this is going to be -- this is Mother's Day.

13 MR. GOTTEMOLLER: What year?

14 MRS. KAMHOLZ: This is Mother's Day 2001.

15 THE HEARING OFFICER: We can turn the sound
16 down a little. Also I note for the Board that
17 there is no time or date.

18 MRS. KAMHOLZ: There is no time or date on
19 this.

20 THE HEARING OFFICER: I am just going to
21 have to ask the Board to look at the whole thing
22 and try to discern what Mrs. Kamholz is talking
23 about in the video that we are now seeing.

24

MRS. KAMHOLZ: This is tape No. 1, by the

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1 way.

2 I am sorry, this is the date of -- a
3 few days before Mother's Day. This is the inside
4 of my house to show you how you can hear the noise
5 inside my house. My windows are open at this
6 picture. This is my front window.

7 THE HEARING OFFICER: Excuse me,
8 Mrs. Kamholz. Mr. Gottemoller?

9 MR. GOTTEMOLLER: The date has not changed
10 on this picture.

11 THE HEARING OFFICER: Can we turn down the
12 sound?

13 MR. GOTTEMOLLER: The date has not changed
14 on this picture. So is this Mother's Day or is
15 this before Mother's day.

16 MRS. KAMHOLZ: I corrected this. This is a
17 few days before Mother's Day. This is like
18 May 5th, I believe. And I don't know why the date
19 did not show up on my tape.

20 THE HEARING OFFICER: Again I did direct the
21 Board --

22 MR. GOTTEMOLLER: I am trying to clarify

23 because I think there is others on this tape that
24 have the Mother's Day date.

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1 THE HEARING OFFICER: I agree it is hard to
2 follow .

3 MRS. KAMHOLZ: This is the tape. We are
4 going to go into Mother's Day in a few seconds
5 here. We are going to go into Mother's Day. It
6 had a few minutes of the inside my house because I
7 wanted to show how you hear the noise inside my
8 house.

9 MR. GOTTEMOLLER: For clarification, you
10 changed the tapes. The first tape you showed was
11 from 1997. What number of tape is that?

12 MRS. KAMHOLZ: That tape is No. 2.

13 MR. GOTTEMOLLER: Number 2 is what we
14 started with?

15 MRS. KAMHOLZ: Yes.

16 THE HEARING OFFICER: I am confused now.

17 MRS. KAMHOLZ: We started out with tape
18 No. 2, the truck.

19 THE HEARING OFFICER: I have tape No. 1.

20 MRS. KAMHOLZ: I am sorry, tape No. 2 was

21 the truck. Tape No. 2 was the truck.

22 THE HEARING OFFICER: So you took tape No. 1
23 out already?

24 MRS. KAMHOLZ: No. Tape No. 1.

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1 MR. GOTTEMOLLER: And we are now into tape
2 No. 1?

3 THE HEARING OFFICER: And tape No. 1 is the
4 Mother's Day tape for --

5 MRS. KAMHOLZ: Yes.

6 THE HEARING OFFICER: -- for lack of a
7 better.

8 MRS. KAMHOLZ: Mother's Day tape.

9 THE HEARING OFFICER: With the dirt bike.

10 MRS. KAMHOLZ: Yes.

11 THE HEARING OFFICER: I ask the Board to
12 bear with us.

13 MRS. KAMHOLZ: They are clearly marked.
14 And it is.

15 THE HEARING OFFICER: Well, it is not
16 clearly marked. We don't have the time or day.

17 MRS. KAMHOLZ: I mean the tape is marked.

18 THE HEARING OFFICER: For tape 1 and tape 2?

19 MRS. KAMHOLZ: Yes. Tape 1 is in right now

20 and it is Mother's Day. We started out with tape
21 No. 2 and we will go back to tape No. 2 as soon as
22 this short little clip of Mother's day is over.

23 MR. KAMHOLZ: You have shown dates with the
24 camera taking dates off of the T.V. and they are

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1 throughout the video, is that not --

2 MRS. KAMHOLZ: Yes. But I didn't have it
3 on Mother's Day.

4 MR. KAMHOLZ: So they are going to be on
5 there.

6 THE HEARING OFFICER: Sir, Mother's Day was
7 not on there. The famous Mother's Day --

8 MRS. KAMHOLZ: Mother's Day will be on. It
9 will show you Mother's Day.

10 MR. KAMHOLZ: Throughout the tape she does
11 go to dates and times.

12 THE HEARING OFFICER: So far --

13 MR. KAMHOLZ: So that will be evidence shown
14 off of a T.V. on the date --

15 THE HEARING OFFICER: Sir, I don't want to
16 get into an argument, sir. I just watched tape 1,
17 there is no time, date.

18 MR. KAMHOLZ: But you didn't see the whole
19 tape. If you seen the whole tape, you will see --

20 THE HEARING OFFICER: But when it starts,
21 the Board has to know exactly they are viewing and
22 they can't sit there and figure it out.

23 MR. KAMHOLZ: I understand. I am saying
24 that the Board --

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1 THE HEARING OFFICER: I think the record
2 will bear that out.

3 MR. KAMHOLZ: -- throughout the tape, they
4 will see dates and times on there.

5 MRS. KAMHOLZ: Everybody be patient. We
6 will have dates in a few minutes. This is the only
7 part of the tape that didn't show a date. This is
8 still the no date. I am fast forwarding it. Where
9 it is still inside my house --

10 THE HEARING OFFICER: We can turn it down a
11 little.

12 MRS. KAMHOLZ: I am on my screened in
13 porch. This is why I say --

14 THE HEARING OFFICER: Can we turn it down a
15 little? Do you have a volume on that?

16 MRS. KAMHOLZ: You can hear my voice

17 compared to the sound of the bike also which gives
18 a good indication of how loud it really is.

19 THE HEARING OFFICER: You have to speak up
20 for the court reporter. That is why I want the
21 volume down low too.

22 MRS. KAMHOLZ: We are still on the no date.
23 We are on Mother's Day, May 13th, at 4:44.

24 THE HEARING OFFICER: Is that 2001? .

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1 MRS. KAMHOLZ: 2001, yes. We are going to
2 be viewing three dirt bikes and one ATV. This is
3 still May 13th at 4:59. This is Mother's Day.

4 THE HEARING OFFICER: Tape 1 still.

5 MRS. KAMHOLZ: This is tape 1, yes. This
6 is after the sheriff was there. I am inside my
7 house. This is still May 13th, 5:02. I think we
8 have seen enough on Mother's Day. You have the
9 idea. I will rewind it and we will go back to
10 tape 2. It is just more of the same on this
11 Mother's Day tape.

12 I am putting tape 2 back in. And we
13 will be continuing from this date probably because
14 the truck was just -- it was just on the wrong

15 tape. This is June 15th at 7:41 p.m.

16 MR. GOTTEMOLLER: What year?

17 MRS. KAMHOLZ: I am sorry, I am still on --
18 I will fast forward it. We will get away from the
19 truck now. We will go into the dirt bikes. You
20 will see a jump to 1998. I thought we were beyond
21 that.

22 There is a little more truck than I
23 thought. There is a dirt bike.

24 THE HEARING OFFICER: It looks like June

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1 19 --

2 MR. GOTTEMOLLER: 1997.

3 THE HEARING OFFICER: -- 1997.

4 MRS. KAMHOLZ: Well, that is back to the
5 truck. We don't want that. That was a day where
6 he was riding an ATV with the truck and I was
7 really worried they were going to -- May 25th,
8 1998, 4:35 p.m. I am inside my house. I should
9 probably get my guide out because I believe there
10 was no riding on May 25th. Here is a go cart,
11 May 30th, 1998, at 3:07.

12 THE HEARING OFFICER: Thank you.

13 MRS. KAMHOLZ: I am inside my home. You

14 can see my windows there. They are down by -- they
15 go back and forth. And when you hear them, he is
16 over there by the tree now. Here comes one. That
17 is my dog. I believe there is two or three go
18 carts there that day. We will move on.

19 I can see it is not all that important
20 that these tapes be viewed here as long as the
21 Board is going to view them.

22 THE HEARING OFFICER: I mean, if you have
23 any other -- if you have any other pertinent parts
24 you want everybody to look at, that is fine. I was

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1 just -- I was concerned I didn't want to get into
2 the three and a half hour --

3 MRS. KAMHOLZ: Well, the main thing I want
4 is to show what we are putting up with. Here is
5 some dust with the dirt bikes now.

6 MR. GOTTEMOLLER: Back to June 15th, 1997.

7 THE HEARING OFFICER: June 15th, 1997, at
8 7:46 p.m.

9 MR. GOTTEMOLLER: We are back to the truck.

10 MRS. KAMHOLZ: I am very sorry. I rewound
11 it. I am sorry. I rewound it, instead of fast

12 forward. I am sorry about that.

13 THE HEARING OFFICER: That is okay.

14 MRS. KAMHOLZ: May 30th, 1998, at 5:38. I
15 believe this is still the go carts. Still the go
16 carts. I will fast forward it to the dirt bikes.

17 This was covering up the dirt track.
18 They took away the dirt track.

19 MR. GOTTEMOLLER: This is one of the
20 objections I would have to this portion of the
21 tape.

22 THE HEARING OFFICER: I am sorry.

23 MR. GOTTEMOLLER: There is no motorcycle
24 riding. There is nothing. What he is doing is

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1 shoveling dirt from the back of his tractor.

2 THE HEARING OFFICER: I have no idea what
3 date or time we are talking about.

4 MR. GOTTEMOLLER: June 24th, 1998.

5 MRS. KAMHOLZ: There is no date on this.

6 MR. GOTTEMOLLER: The date that I objected
7 to had June 24th, 1998, on it. I don't know what
8 we are seeing now.

9 THE HEARING OFFICER: All right.

10 MRS. KAMHOLZ: We are at no date now.

11 THE HEARING OFFICER: The Board will note
12 your objection.

13 MR. GOTTEMOLLER: Thank you.

14 MRS. KAMHOLZ: May 19th, 12:01, year 2001,
15 and it is 12:01 p.m. I was verifying time there.
16 So we are verifying my time on my T.V. May 2001,
17 at 12:03 -- 12:04.

18 May 19th, 3:46 p.m. This is still
19 2001. I'm in my house, the T.V., you can hear it.

20 MRS. KAMHOLZ: Room, room, room, room.
21 I will fast forward here. I believe this is Kelly.
22 He rides a little differently than Donald does.
23 And he is -- it is a different bike. This is where
24 I made the comment he is quiet because he doesn't

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1 accelerate like -- he is just kind of learning, I
2 think. I don't remember when Donald -- or Kelly
3 got his first bike.

4 This is May 19th at 7:19. This was
5 after the sheriff had been there and it seemed like
6 they were riding a little differently. But it
7 didn't last long. May 19th, 7:24. But it is still
8 you hear it. I say that, but you hear it. You can

9 still hear how loud it really is. So, yes, it is
10 not so loud when he goes on the other side. But it
11 is still loud enough to be intolerable.

12 He was by the tree line over there and
13 that is over 100 feet away. And this was loud by
14 my house. When he is down by the road, he is like
15 400 feet from my window, and you can still hear it
16 loud in my house. Okay. We will move on.

17 THE HEARING OFFICER: Mrs. Kamholz, were the
18 windows open or closed during this video?

19 MRS. KAMHOLZ: The windows are open on
20 video. And that is so you can -- it is May. You
21 would want your windows open.

22 He came from the other side of the
23 property and you can see it. You can hear it.

24 THE HEARING OFFICER: What -- could you

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1 reference the frame we are looking at .

2 MRS. KAMHOLZ: It is June 8, 2001, at 6:32
3 p.m. Now, I do a time check. I always verify my
4 date and time with the T.V. We don't have to see
5 that. I just do that for the record. 6:34, same
6 day, June 8th, 6:34. Now, there is a jump that he
7 does. He turns in front of our window like that.

8 He comes over and turns in front of our window and
9 goes straight across and jumps and that is when the
10 exhaust fumes come into the house. He is going to
11 do it again you see. He goes across directly in
12 front of my windows there so that the back end of
13 his bike -- exhaust coming into my house. And it
14 does come into the screen, and you can smell it
15 into my rec room. There is two bikes.

16 Now, I am outside it is 6:35 p.m., the
17 same day.

18 MR. GOTTEMOLLER: He have a plane going
19 overhead.

20 THE HEARING OFFICER: I am sorry?

21 MR. GOTTEMOLLER: I would note the plane
22 going overhead for the record.

23 MRS. KAMHOLZ: There is a plane going over.
24 The airplane comes and goes, the dirt bike doesn't.

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1 MR. GOTTEMOLLER: Wait, I would like you to
2 go back to that. There was one of the statements
3 that you -- that I read into the record earlier as
4 long as you are going to it. If you go to 6:35:20.
5 You just passed it.

6 MRS. KAMHOLZ: 6:34. June 8th.
7 MRS. KAMHOLZ: There is the airplane. If
8 you --
9 MR. GOTTEMOLLER: Okay. You can go on now.
10 THE HEARING OFFICER: Mr. Gottemoller?
11 MR. GOTTEMOLLER: She can go forward. She
12 says usually the ATVs don't bother us.
13 MRS. KAMHOLZ: It used to be they didn't
14 bother us years back. You get this ATV and you get
15 a 90 decibel reading on it at 100 feet away.
16 MR. GOTTEMOLLER: Objection to her
17 comments --
18 THE HEARING OFFICER: Sustained.
19 MR. GOTTEMOLLER: -- on decibel readings.
20 That is not before us now.
21 THE HEARING OFFICER: Sustained.
22 MRS. KAMHOLZ: July 24th, 2001, 7:49. I am
23 having trouble finding him here. But I got the
24 noise.

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1 MR. GOTTEMOLLER: I would note for the
2 record the baseball game is on in the background.
3 THE HEARING OFFICER: I am sorry.
4 MRS. KAMHOLZ: I don't know the score,

5 though. Okay. We can go back.

6 THE HEARING OFFICER: Is this going to be
7 more of the same? It is going to be cumulative
8 and repetitive, and I know the Board will take a
9 look at it and watch the whole thing.

10 MRS. KAMHOLZ: We will shoot one more
11 little frame and go to the next tape.

12 THE HEARING OFFICER: There is another tape?

13 MRS. KAMHOLZ: Well, there is two more
14 tapes. Tape No. 3 is more of same. But tape No. 4
15 is different. So I want to show it to you.

16 THE HEARING OFFICER: Because we are really
17 getting repetitious and cumulative.

18 MRS. KAMHOLZ: All right. We will stop the
19 tapes. May I rewind it so it is set up for the
20 Board?

21 THE HEARING OFFICER: Yes, so it is set up
22 for the Board.

23 MRS. KAMHOLZ: We will let tape No. 3 go
24 unviewed because it is more of the same. It just

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1 contains a lot of riding.

2 Mr. Halloran, I don't know if you need

3 a picture of the video camera that I used or not.
4 If you think the Board would like to see that, we
5 can enter that as -- it is a snapshot of this
6 camera.

7 THE HEARING OFFICER: You know, I don't need
8 it. While we are on the topic, I don't need this
9 videotape qualifications statement that you read
10 into the record.

11 MRS. KAMHOLZ: Tape No. 4 I am going to
12 fast forward it right away so I won't give you the
13 time frame yet because the part we want to see is
14 not on there right away.

15 MR. GOTTEMOLLER: Approximate date you are
16 looking for?

17 MRS. KAMHOLZ: I don't know.

18 THE HEARING OFFICER: I think I am going to
19 allow no more than five minutes of this. We have
20 been about 40 minutes now and I promised about a 30
21 minute tape.

22 MRS. KAMHOLZ: You see a trailer here.
23 This is April 6th of 2002 at 4:16 p.m. There is a
24 trailer there and it is loaded with dirt bikes and

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1 ATVs on it. What this tape is to show is the

2 solution to the problem. It shows that they have
3 hauled these away and ridden -- gone to an
4 appropriate place to ride. They have the ways and
5 the means to do that. You see some exhaust there.
6 They were getting ready to load this on a trailer.

7 THE HEARING OFFICER: That is April 21st,
8 2002.

9 MRS. KAMHOLZ: Yes, at 10:29 a.m. Here is
10 Donald's truck. There is a trailer hooked to it.
11 This is the same day, 4/21/2002, at 10:31 a.m.
12 There is a white van also. That is some friend or
13 some -- I don't know who this is. That is a white
14 van that has a trailer hooked to it. That trailer
15 is full of dirt bikes and ATVs and so is Donald's
16 trailer. That is Donald's trailer right there.
17 And it is loaded with dirt bikes. I will show you
18 one leaving. As soon as they leave here, I will
19 turn -- there he goes. He is pulling away with his
20 load. He has got one in the truck. There is the
21 van in the front with his load on. Donald coming
22 out first. If they weren't going away that day, we
23 would have had at least eight vehicles driving by
24 our window.

1 MR. GOTTEMOLLER: Objection to her
2 speculation about what would have happened if
3 something else didn't happen.

4 THE HEARING OFFICER: Sustained.

5 MRS. KAMHOLZ: Here he goes and here is the
6 van behind them and their trailer. Okay. I think
7 we have seen enough. There is a repeat of that on
8 another day with a different truck. It is -- it
9 was not a van with a trailer. It was a truck with
10 a drop flat bed and that was loaded with -- they
11 loaded dirt bikes and ATVs on that and went
12 somewhere else to ride. And that was again for
13 review tape 4, solution to the problem.

14 THE HEARING OFFICER: Mr. Gottemoller?

15 MRS. KAMHOLZ: May --

16 THE HEARING OFFICER: Go ahead,
17 Mrs. Kamholz.

18 MRS. KAMHOLZ: May I enter this as Exhibit
19 No. 9?

20 THE HEARING OFFICER: Yes, you are right.
21 We can do group Exhibit No. 9.

22 THE HEARING OFFICER: Mr. Gottemoller, other
23 than your previous objections?

24 MR. GOTTEMOLLER: Well I think, first off,

1 they are very repetitive. As a for instance, No. 3
2 is so repetitive we never even had an offer to view
3 it in part.

4 THE HEARING OFFICER: I am sorry?

5 MR. GOTTEMOLLER: For instance, tape No. 3
6 we didn't see any part of it.

7 MRS. KAMHOLZ: Would you like to?

8 MR. GOTTEMOLLER: No, I don't particularly
9 want to see anything. But as a practical matter, I
10 think if you want to narrow this down and show five
11 minutes sometimes, that is one thing. But to
12 expect the Board or anybody to watch four
13 videotapes -- as I say, I have done the time. It
14 is about three and a half hours worth from end to
15 end, you know. And again for demonstrative
16 purposes, I think they are inadmissible. I don't
17 think they are admissible when you get to that
18 cumulative impact. And I would raise that impact
19 objection.

20 THE HEARING OFFICER: Your objection is so
21 noted. I think the Board has more than enough time
22 to watch three and a half hours of video. Again,
23 you know, the admission goes to the weight and not
24 the admissibility. It is basically -- I am

1 admitting it to bolster her allegations, and that
2 is all.

3 So with that said, I will admit
4 Mrs. Kamholz's group Exhibit No. 9, videos 1
5 through 4.

6 (Whereupon document so
7 offered was received in
8 evidence as Complainants
9 Exhibit No. 9.)

10 MRS. KAMHOLZ: Would you please bear with
11 me really -- I will do my best to make it as fast
12 as possible. But on video 3 that we did not view,
13 I would like to at least expose a few decibel
14 readings and how I did it.

15 MR. GOTTEMOLLER: They have been admitted at
16 this point in time.

17 THE HEARING OFFICER: They have been
18 admitted.

19 MRS. KAMHOLZ: Will the Board view them if
20 they have not been admitted? I mean, if they were
21 not viewed here?

22 THE HEARING OFFICER: Yes, they will view
23 them.

24 MRS. KAMHOLZ: They will view them.

1 THE HEARING OFFICER: I have admitted all of
2 them. I think we are going to take a lunch. Be
3 back here at 1:00 o'clock sharp.

4 MR. GOTTEMOLLER: She has one or two people
5 out there. I don't know if they are very short
6 witnesses. And I know it is late. But rather than
7 make them come back, I have no objection to --

8 THE HEARING OFFICER: You are kind,
9 Mr. Gottemoller. We can go off the record for a
10 minute.

11 (Discussion had off the
12 record.)

13 (Witness duly sworn.)

14 GREG WRIGHT,
15 called as a witness herein, having been first duly
16 sworn, was examined and testified as follows:

17 EXAMINATION

18 BY MRS. KAMHOLZ:

19 Q. Please state your name and spell it,
20 please?

21 A. Gregory S. Wright, W-r-i-g-h-t.

22 Q. Okay. Where do you live?

23 A. 446 Willow Road, Marengo.

24

Q. And what is your occupation?

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1 A. Carpenter.

2 Q. How long have you been a carpenter?

3 A. 28 years.

4 Q. That is why you are good.

5 How do you know the complainants,
6 Milton and Virginia Kamholz?

7 A. I have done work for them in the past.

8 Q. Mr. Wright, on Saturday August 10th or
9 11th of 2001 -- I am not sure if it was the 10th or
10 11th on a Saturday, did you have the occasion to
11 witness the riding of dirt bikes on the
12 respondent's property?

13 A. Yes, I did.

14 Q. Please tell us what you witnessed --
15 tell you us what you saw and heard.

16 A. Motorcycle running up and down the
17 property line. It was a two-cycle motorcycle.

18 Q. And how would you describe the noise
19 that you heard?

20 A. It is -- two cycles are very noisy.
21 That particular bike was noisy.

22 Q. Did the noise interfere with your

23 conversation with Mr. Kamholz?

24 A. When Mr. Kamholz and I were out in the

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1 front talking and the bike went by, it was
2 difficult to hear.

3 Q. Were you working there that day?

4 A. Yes, I was.

5 Q. Did you view any of the video of this
6 activity?

7 A. Yes, I did.

8 Q. Well, we will try it. Did the video
9 that you saw give an accurate --

10 MR. GOTTEMOLLER: The video is already in
11 the record.

12 THE HEARING OFFICER: The video is already
13 in the record.

14 MRS. KAMHOLZ: I am sorry. I didn't know
15 that. That is one of the rules I don't know.

16 THE HEARING OFFICER: I just admitted it,
17 admitted the videos.

18 BY MRS. KAMHOLZ:

19 Q. If you lived next door to this, would
20 you be able to enjoy your life?

21 MR. GOTTEMOLLER: Objection to his personal
22 -- it is a hypothetical as to what it is. I don't
23 think what he would enjoy or wouldn't enjoy is
24 relevant.

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1 MRS. KAMHOLZ: Well, we say we can't enjoy
2 our life because of this and he heard it. So I
3 just said can you enjoy your life if you lived next
4 door to this.

5 MR. GOTTEMOLLER: His personal opinion is
6 speculative. And I don't believe he is an opinion
7 witness either for that.

8 THE HEARING OFFICER: You know, I am -- if
9 he can answer. I am going to overrule your
10 objection. If you can answer, you can.

11 THE WITNESS: It would be very annoying.

12 MRS. KAMHOLZ: Thank you. No further
13 questions.

14 THE HEARING OFFICER: Mr. Gottemoller,
15 cross?

16 CROSS-EXAMINATION

17 BY MR. GOTTEMOLLER:

18 Q. Did you ever ride motorcycles as a
19 kid?

20 A. Yes.

21 Q. And did you enjoy riding motorcycles

22 as a kid?

23 A. Yes, I did.

24 Q. Were they noisy?

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1 A. They were four-cycle.

2 Q. Did you have mufflers on them all the

3 time?

4 A. Yes, I did.

5 Q. And they were stock mufflers?

6 A. Street legal.

7 Q. Okay. And street legal -- and I don't

8 know what your age is. But you look like you could

9 be up there with me. How old are you?

10 A. 47.

11 Q. When you were riding, how old were you

12 when you were riding?

13 A. 16.

14 Q. So when you were riding a motorcycle

15 at 16, it was street legal. Do you know if the

16 sounds standards were different back there 30 years

17 ago than they are today?

18 A. I couldn't tell you about that.

19 Q. So you don't know what the regulations
20 were, if anything, 30 years ago when you rode a
21 motorcycle?

22 A. No. I know that two-cycle, there was
23 a disparity between two-cycle and four-cycle
24 engines.

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1 Q. What kind of four-cycle engine did you
2 have?

3 A. Honda.

4 Q. So you had a Honda four-cycle. That
5 was the day before they came with Elsinores, right?

6 A. No. They had them out at the time,
7 but I had a four.

8 Q. How big was your motorcycle?

9 A. 125.

10 Q. So you had a Honda 125. Is it street
11 legal CB?

12 A. It was combination road and off road.

13 Q. So SL.

14 A. Pardon me?

15 Q. Back in those days when you had that,
16 though, you don't know what the sound standards

17 were at that time?

18 A. No, I don't.

19 Q. So when you say it was street legal,
20 you don't know if these bikes are street legal
21 today, the ones that we are talking about that are
22 riding by this house?

23 A. No, I don't.

24 Q. So you don't know, for instance, if

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1 those bikes are a legal sound level today, do you?

2 A. No, I don't.

3 MR. GOTTEMOLLER: No further questions.

4 THE HEARING OFFICER: Thank you,

5 Mr. Gottemoller.

6 Mrs. Kamholz, any redirect?

7 MRS. KAMHOLZ: No, I don't think so. Thank
8 you.

9 THE HEARING OFFICER: Thank you. You may
10 step down. Thank you very much.

11 All right. We are going to go off the
12 record. We are going to take -- everybody be back
13 here at 1:05 for from the lunch break. Thank you.

14 (Whereupon the hearing

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was recessed until 1:05
p.m. this date,
November 19, 2002.)

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A F T E R N O O N S E S S I O N

THE HEARING OFFICER: We are back on the
record. It is approximately 1:10. We just took a
lunch break. Mrs. Kamholz and Mr. Kamholz are
still in their case-in-chief. You may proceed.

MRS. KAMHOLZ: Okay. I have to go back to
my video to some -- I would like to show at least a
few minutes of how I took the video so that when I
-- for my expert witness. I have to show you how I
took my video of the -- I have to show you how I
took my decibel readings so that my expert witness
can testify as to how I did it, if I did it
correctly.

14 THE HEARING OFFICER: You may proceed. But
15 this is getting into -- the area was cumulative and
16 repetitious. And I was only going to allow 30
17 minutes, but it will be an hour now. But you may
18 proceed. Was that tape No. 3?

19 MRS. KAMHOLZ: Tape No. 3.

20 This is going at the show how I took
21 the decibel readings. I used a Radio Shack decibel
22 reader. And I videoed the meter reader while I was
23 taking the readings so that you can see the actual
24 reading happening and how I was doing it. We don't

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1 need sound on this unless this is my -- I also -- I
2 have quiet readings and noisy readings. I have
3 quiet readings of my property, what it sounds like
4 when they are not riding, and what -- this is a
5 quiet read it looks like. But you see how I use
6 the video to show what -- the reading is 8/26 of
7 2001, 7:54. Now, you see 90s, 80s, 70s. I keep
8 moving it so that the sun glare is not getting to
9 it. 8/26/2001 at 7:58. I didn't realize the date
10 had changed. The rest will be repetitious. I have
11 quite a few readings and it is the same stuff. So

12 if this is enough to show, then we will end this
13 part of it.

14 THE HEARING OFFICER: Thank you. Now, do
15 you want to --

16 MRS. KAMHOLZ: Thank you for letting me do
17 that.

18 THE HEARING OFFICER: Do you want to Mr. Zak
19 or do you want to call all your other witnesses to
20 say get in them in and out?

21 MRS. KAMHOLZ: If it is all right with
22 Mr. Zak, I know he has to travel today.

23 MR. ZAK: I am staying over. No problem.

24 MRS. KAMHOLZ: Then I will call my other

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1 witnesses and get them out of here.

2 (Witness duly sworn.)

3 STEPHEN D. SECOR,

4 called as a witness herein on behalf of the
5 complainants, having been first duly sworn, was
6 examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MRS. KAMHOLZ:

9 Q. Okay, hello. Please state and spell
10 your name.

11 A. Stephen Secor, S-t-e-p-h-e-n
12 S-e-c-o-r.
13 Q. And where do you live?
14 A. 214 School Court, Marengo.
15 Q. And what is your occupation?
16 A. I am a heavy equipment operator.
17 Q. How long have you been involved in
18 this line of work?
19 A. 32 years.
20 Q. Are you used to loud noise in your
21 line of work?
22 A. Yes, I am.
23 Q. Do you operate a backhoe?
24 A. Yes.

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1 Q. Is the noise of dirt bikes louder than
2 a backhoe?
3 MR. GOTTEMOLLER: Objection.
4 THE HEARING OFFICER: Sustained.
5 BY MRS. KAMHOLZ:
6 Q. What is your relationship to the
7 complainants?
8 A. You are my mother-in-law and

9 father-in-law.

10 Q. How long have you been married to the
11 complainants daughter Natalie?

12 A. 15 years.

13 Q. Have you witnessed dirt bike riding on
14 the respondent's property next door?

15 A. Yes, I have almost every holiday.

16 Q. And any other times?

17 A. Yes, in the summer a lot.

18 Q. Okay. And what -- how would you
19 describe the noise that they create?

20 A. Very loud, very loud.

21 Q. Does it interfere with your enjoyment
22 while you are visiting with them?

23 A. Yes, it interferes quite a bit. Also,
24 to the fact that you can't have time to sit and

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1 talk with your in-laws because of all the noise.

2 And it kind of raises havoc in the house.

3 Q. Can you tell me if you -- I don't know
4 if I am allowed to ask this. Do you operate a road
5 grader?

6 A. Yes.

7 Q. And a backhoe?

8 A. Yes.

9 Q. And an end loader?

10 A. Yes.

11 Q. How would you compare the noise to the
12 dirt bike to those he pieces?

13 MR. GOTTEMOLLER: I would object.

14 THE HEARING OFFICER: I am sorry,
15 Mr. Gottemoller?

16 MR. GOTTEMOLLER: Even if he has the ability
17 to make that comparison, I don't think it is
18 relevant under the circumstances. My clients are
19 not operating those pieces of equipment on this
20 property.

21 THE WITNESS: Well, can I add one thing to
22 it?

23 THE HEARING OFFICER: Mrs. Kamholz?

24 MRS. KAMHOLZ: They are not operating that

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1 equipment, no. But they are operating something
2 that is worse, louder. And that is what I am
3 trying to get at.

4 THE HEARING OFFICER: I will allow him to
5 answer. Overruled. You may answer.

6 THE WITNESS: The thing is today with heavy
7 equipment they have sound -- they are built
8 basically with sound regulations to protect the
9 operator's ears. Where dirt bikes, in my opinion,
10 are built for enjoyment or for fun and there are no
11 regulations on them. And I believe -- my feeling
12 is that is the difference.

13 MR. GOTTEMOLLER: I would object to his
14 feelings. And there has been no foundation
15 established that he has any basis of knowledge. It
16 is speculation as to what the regulations are for
17 dirt bikes or noise sound levels on dirt bikes.

18 THE HEARING OFFICER: Sustained. Sustained.

19 BY MRS. KAMHOLZ:

20 Q. Is the noise -- just simple, is the
21 noise that you hear when you hear this dirt bike,
22 is it louder than what you are hearing when you are
23 operating your equipment?

24 A. Yes, it is.

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1 Q. Have you ever known Natalie to ride a
2 dirt bike or anything else with the respondent's
3 grandchildren?

4 A. Golf cart.

5 MR. GOTTEMOLLER: Who is Natalie?

6 THE HEARING OFFICER: Excuse me?

7 THE WITNESS: No.

8 THE HEARING OFFICER: Excuse me, sir. We
9 don't know who Natalie is.

10 MRS. KAMHOLZ: Well, he is my -- she -- I
11 said how long have you been married to
12 complainants' daughter Natalie. She is our
13 daughter.

14 THE HEARING OFFICER: Okay. I didn't hear
15 that. I heard the daughter, but that is fine.

16 MRS. KAMHOLZ: I said how long have you
17 been married to the complainants' daughter Natalie
18 and he said 15 years.

19 THE HEARING OFFICER: Okay.

20 MRS. KAMHOLZ: And they come to visit
21 together.

22 THE HEARING OFFICER: I lost track of the
23 question. You can --

24

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1 BY MRS. KAMHOLZ:

2 Q. The question again was have you ever

3 known Natalie to ride a dirt bike or anything else
4 with the respondent's -- they are the respondent's
5 -- grandchildren?

6 A. No.

7 Q. Since you have known her, has she ever
8 ridden any vehicles on the complainants' property;
9 that is our property?

10 A. Golf cart and lawn mower.

11 Q. Has she ever ridden a mini bike during
12 the '90s or since you have known her?

13 A. No.

14 Q. I already asked you about the -- if
15 the noise from the ATVs and go carts and dirt bikes
16 interferes with your enjoyment while you are
17 visiting with the complainants. You said yes. Do
18 you have knowledge if this activity interferes with
19 the complainants' enjoyment of their lives and
20 property?

21 A. A lot. It is --

22 Q. How?

23 A. Like I said, it is hard for us to have
24 quality time together because of the noise. And it

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1 up sets you and Mickey so much. It ruins the whole

2 day.

3 Q. Okay. Do you wish this activity would
4 stop?

5 A. Well, yes.

6 MR. GOTTEMOLLER: Objection to what he
7 wishes.

8 THE HEARING OFFICER: Sustained.

9 BY MRS. KAMHOLZ:

10 Q. Would you like to have this --

11 MR. GOTTEMOLLER: Objection to what he
12 likes.

13 BY MRS. KAMHOLZ:

14 Q. Do you want this activity to stop?

15 A. Yes.

16 MRS. KAMHOLZ: Thank you. No further
17 questions.

18 THE HEARING OFFICER: Thank you,
19 Mrs. Kamholz.

20 Recross, Mr. Gottemoller?

21 CROSS-EXAMINATION

22 BY MR. GOTTEMOLLER:

23 Q. When did you first meet Natalie?

24 A. When.

1 Q. Uh-huh?

2 A. I believe it was in May the year
3 before we got married, 16 years ago.

4 Q. Mid '80s, '85?

5 A. Yes, roughly.

6 Q. How old was she then?

7 A. 25.

8 Q. And prior to that time, you don't know
9 what she did in terms of mini bike riding or
10 motorcycle riding or anything else, do you?

11 A. No.

12 Q. And so the fact that she may have been
13 riding mini bikes for ten years before you met her
14 isn't anything you would know anything about?

15 A. Well, yeah, that is -- you are right.

16 MRS. KAMHOLZ: Objection.

17 THE HEARING OFFICER: Mrs. Kamholz?

18 MRS. KAMHOLZ: The complaint is for ten
19 years, and he is going back beyond ten years. He
20 already answered the question that she has ridden
21 nothing in the past ten years. And he is going
22 further back.

23 THE HEARING OFFICER: Mr. Gottemoller?

24 MR. GOTTEMOLLER: I assume the reason we are

1 talking about Natalie is because Natalie used to
2 ride a mini bike that the complainants used to own.
3 And in fact, my clients will ultimately testify
4 that the first mini bike they had in their area was
5 from these people. And in fact, it was ultimately
6 given -- that mini bike was ultimately given to my
7 clients by them. You know, whatever that is worth,
8 I am not certain. But in reality --

9 THE HEARING OFFICER: I will allow it.
10 Objection overruled.

11 MR. GOTTEMOLLER: You know, he has testified
12 what he knows. I am saying he now testified that
13 he didn't know what she did prior to the time he
14 met her, which is certainly is obvious, I would
15 think.

16 BY MR. GOTTEMOLLER:

17 Q. Did she ever discuss with you riding
18 mini bikes when she was a kid?

19 A. She did today at lunch.

20 Q. And she acknowledged when she was a
21 kid she rode a mini bike?

22 A. She also acknowledged they could never
23 ride them unless their parents were home. And that
24 her father never bought them new, so they hardly

1 ever ran is what she did tell me.

2 Q. But she did have one or a couple of
3 them?

4 A. There was one there, yes.

5 Q. And her father, of course, is the
6 complainant?

7 A. Mickey.

8 Q. Did you ever ride mini bikes or go
9 carts or motorcycles when you were a kid?

10 A. I owned a motorcycle.

11 Q. What kind?

12 A. I had a Kawasaki 900.

13 Q. Not an off-road bike?

14 A. No, sir.

15 Q. All right. And you still own that
16 today?

17 A. No.

18 Q. How long ago did you sell it?

19 A. 1980.

20 Q. Did you ever ride when you were
21 younger than that? Did you ever ride any smaller
22 bikes?

23 A. No.

24 MR. GOTTEMOLLER: No further questions of

1 this witness.

2 THE HEARING OFFICER: Mrs. Kamholz, any
3 redirect?

4 MRS. KAMHOLZ: Yes, I forgot a question
5 here. I would like to say something about the mini
6 bike.

7 MR. GOTTEMOLLER: I would object to her. He
8 already testified he doesn't know about it other
9 than the conversation they had today at lunch.

10 MRS. KAMHOLZ: I would like to comment on
11 what you said.

12 THE HEARING OFFICER: What is your question?

13 MRS. KAMHOLZ: He is trying to compare a
14 mini bike to a dirt bike, and there is no
15 comparison. And he is talking about 25 years ago
16 when there was a little mini bike, no neighbors out
17 there except them.

18 THE HEARING OFFICER: I think it is a bit
19 outside the scope, but I will let you ask the one
20 question.

21 MRS. KAMHOLZ: I was just going to say the
22 different -- I was just going to point out the
23 difference between a mini bike and a dirt bike.

24 And I have one question about dust.

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1 THE HEARING OFFICER: You were going to
2 point out the difference between a mini bike and a
3 dirt bike?

4 MRS. KAMHOLZ: Yes.

5 THE HEARING OFFICER: This is a direct of
6 your witness. You can ask him questions if he
7 knows.

8 REDIRECT EXAMINATION

9 BY MRS. KAMHOLZ:

10 Q. When you see these bikes riding, do
11 you ever see any dust from these bikes?

12 A. Yes.

13 Q. And ATVs?

14 A. ATV.

15 Q. Which is worse?

16 MR. GOTTEMOLLER: I object. This is way
17 outside the scope. If she wants to open a whole
18 new line of questioning, then --

19 THE HEARING OFFICER: I will allow her a
20 little leeway then. Mrs. Kamholz? The leeway, it
21 is outside the scope of direct is what I am saying.

22 MRS. KAMHOLZ: Well, I had it on here, but

23 I forgot to ask him about it.

24 THE HEARING OFFICER: Nonetheless, it is

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1 outside the scope.

2 MRS. KAMHOLZ: Well, the complaint is about
3 dust and exhaust fumes, so I want to ask if he saw
4 any dust. I asked him and Stephen answered, yes,
5 he saw dust.

6 THE WITNESS: Okay.

7 MRS. KAMHOLZ: I am done. Thank you.

8 THE HEARING OFFICER: Thank you.

9 MR. GOTTEMOLLER: No, nothing further.

10 THE HEARING OFFICER: Thank you, sir. You
11 may step down.

12 We can go off the record

13 (Discussion had off the
14 record.)

15 (Witness duly sworn.)

16 NATALIE SECOR,
17 called as a witness herein on behalf of the
18 complainants, having been first duly sworn, was
19 examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MRS. KAMHOLZ:

22 Q. Please state and spell your name.

23 A. Natalie Secor. N-a-t-a-l-i-e Secor,
24 S-e-c-o-r.

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1 Q. And where do you live?

2 A. I live at 214 School Court in Marengo.

3 Q. And what is your occupation?

4 A. I am a teacher's aid.

5 Q. Where do you work?

6 A. Zion Lutheran School in Marengo.

7 Q. And what is your relationship to the
8 complainants, Milton and Virginia Kamholz?

9 A. I am their daughter.

10 Q. Have you witnessed the riding of dirt
11 bikes, ATVs and go carts on the respondent's
12 property?

13 A. Yes, I have.

14 Q. Would you describe the noise you hear?

15 A. Loud and annoying.

16 Q. Does it interfere with your visits?

17 A. Yes.

18 Q. Do you like being at your parents
19 house when the riding is going on?

20 MR. GOTTEMOLLER: Objection to what she
21 likes.

22 THE HEARING OFFICER: Sustained.

23 BY MRS. KAMHOLZ:

24 Q. Have you ever not gone to your parents

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1 house because of the riding?

2 A. Yes.

3 Q. And when was that?

4 A. Mother's Day last year.

5 Q. Uh-huh. Okay. How did you know the
6 riding was going on?

7 A. I called and could hear it --

8 Q. And --

9 A. -- in the background.

10 Q. Okay. And what did you say to your
11 mother?

12 MR. GOTTEMOLLER: Objection. It is hearsay
13 what they said back and forth to each other.

14 THE HEARING OFFICER: Sustained.

15 BY MRS. KAMHOLZ:

16 Q. So you didn't go to your mother's
17 house on Mother's Day because of their dirt bike

18 riding; is that correct?

19 A. Yes.

20 Q. How did your mother feel about that?

21 MR. GOTTEMOLLER: Objection to how her
22 mother felt. Even if she knew, she doesn't have
23 any intimate knowledge of it.

24 THE HEARING OFFICER: Sustained.

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1 BY MRS. KAMHOLZ:

2 Q. Okay. Do you like it when your mother
3 takes video of the riding instead of enjoying the
4 company -- that is right, I can't ask if you like
5 something.

6 How many children do you have and what
7 are their ages?

8 A. I have three children, 14, 12 and 5.

9 Q. Did you go -- I already asked that, I
10 am sorry.

11 Do you have some idea how often this
12 riding takes place?

13 A. It takes place -- it has taken place
14 every time I have been there.

15 Q. Have you ever seen dust or smelled
16 exhaust fumes while the riding takes place?

17 A. Yes.

18 Q. Do you mind telling us your age?

19 A. I am 41.

20 Q. You are 41. So ten years ago you
21 would be 31. Were you married with children and
22 gone from home at that time?

23 A. Yes.

24 Q. The respondents said that you, well,

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1 participated in the riding at this time. Is this
2 true?

3 A. No.

4 Q. Have you ever ridden a dirt bike with
5 Donald or Kelly or any of the Sporleders?

6 A. No, I haven't.

7 Q. Did you ever ride a mini bike on your
8 property?

9 A. When I was younger.

10 Q. Approximately when was this?

11 A. 11, 12 years old, 13 maybe.

12 Q. How long did that last, period of
13 years or how long did you have it, ride it?

14 A. Maybe a year. I don't know. It

15 didn't last very long.

16 Q. Was the mini bike yours or somebody
17 else's in the family?

18 A. I think it was my brother's. We all
19 shared it.

20 Q. Do you know for sure, do you have
21 knowledge of the activity that takes place next
22 door on the respondents' property interferes with
23 your parents enjoyment of their lives and their
24 property?

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1 MR. GOTTEMOLLER: Objection, speculation as
2 to how it effects her parents. She can testify
3 about how it effects her, but not effects her
4 parents.

5 MRS. KAMHOLZ: I think when she is there
6 and she sees me get me upset and I am her mother
7 and she knows how it effects me.

8 MR. GOTTEMOLLER: She can describe what she
9 sees. But she doesn't have the right to describe
10 how you feel.

11 THE HEARING OFFICER: If you can rephrase
12 it.

13 BY MRS. KAMHOLZ:

14 Q. How do you see your mother react to
15 the riding that takes place next door?

16 A. Emotionally. She gets upset.

17 Q. Can you believe the noise that comes
18 into our house from these dirt bikes?

19 A. No. It is very loud.

20 Q. Can you believe or understand why they
21 don't understand that?

22 MR. GOTTEMOLLER: Objection.

23 THE HEARING OFFICER: Mrs. Kamholz, if you
24 could rephrase that maybe.

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1 BY MRS. KAMHOLZ:

2 Q. Can you -- how does it -- do you have
3 any thoughts about how they think about this?

4 MR. GOTTEMOLLER: Objection to what her
5 thoughts are.

6 THE HEARING OFFICER: Sustained.

7 BY MRS. KAMHOLZ:

8 Q. Do you wonder how they can do this?

9 MR. GOTTEMOLLER: Objection to what she
10 wonders.

11 THE HEARING OFFICER: Sustained

12 MRS. KAMHOLZ:

13 Q. Does it make you angry?

14 A. Yes.

15 Q. What would you like to see come of
16 this hearing for your parents?

17 MR. GOTTEMOLLER: Objection to what she
18 would like to see.

19 MRS. KAMHOLZ: You know, this is rather
20 silly.

21 MR. GOTTEMOLLER: She is your witness.

22 MRS. KAMHOLZ: I understand that.

23 MR. GOTTEMOLLER: I create --

24 MRS. KAMHOLZ: I am not a lawyer and I

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1 don't understand how to do all this.

2 THE HEARING OFFICER: Mrs. Kamholz, I am
3 allowing you a lot of leeway. You have to
4 understand that. I can't give you everything.

5 BY MRS. KAMHOLZ:

6 Q. Would you like to see this activity
7 stopped?

8 MR. GOTTEMOLLER: Objection to what she
9 would like to see.

10 BY MRS. KAMHOLZ:

11 Q. Do you want this activity to stop?
12 THE HEARING OFFICER: I will allow her to
13 answer.
14 THE WITNESS: Yes.
15 MRS. KAMHOLZ: Thank you no further
16 questions.
17 MR. KAMHOLZ: Pardon me.
18 BY MRS. KAMHOLZ:
19 Q. Backing up to when you rode the mini
20 bike -- I have a picture here of the mini bike we
21 would like to enter.
22 THE HEARING OFFICER: Has Mr. Gottemoller
23 seen it.
24 MRS. KAMHOLZ: I will give him a copy. I

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1 would like to show it to her first.
2 THE HEARING OFFICER: Yes.
3 THE WITNESS: Yeah, this is.
4 MRS. KAMHOLZ: This mini bike has a light
5 on it and it is a road legal bike. It is only a
6 small mini bike. It doesn't make much more noise
7 than a golf cart.
8 MR. GOTTEMOLLER: I will object to her

9 determination of how much noise it makes.

10 MR. KAMHOLZ: It is street legal.

11 MRS. KAMHOLZ: It is has the headlight.

12 And it is a street legal. I said road legal.

13 MR. GOTTEMOLLER: I can stipulate it has a

14 head light. I can see that.

15 MRS. KAMHOLZ: It is a road legal bike. It

16 has to be licensed to be on the road.

17 THE HEARING OFFICER: The objection was?

18 MR. GOTTEMOLLER: She is making a comparison

19 of the sound levels.

20 THE HEARING OFFICER: I agree.

21 MR. GOTTEMOLLER: She has at the top this

22 thing has been sitting for 25 years. So I don't

23 know how she can give the sound levels of a bike 25

24 years ago.

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1 MRS. KAMHOLZ: I hear it. If you ride a

2 golf cart, you hear the golf cart. When the kids

3 ride a mini bike, you hear it. I have ears.

4 THE HEARING OFFICER: If the witness can

5 answer, she may answer.

6 THE WITNESS: I am sorry, what was the

7 question?

8 MRS. KAMHOLZ: I don't know.
9 BY MRS. KAMHOLZ:
10 Q. Is this the bike?
11 A. Yes, that was the bike.
12 THE HEARING OFFICER: That wasn't the
13 question.
14 MR. GOTTEMOLLER: That wasn't the question.
15 MRS. KAMHOLZ: No further questions.
16 THE HEARING OFFICER: We can have Cheryl
17 read it back.
18 MRS. KAMHOLZ: All right, would you please
19 read the question?
20 (Record read as
21 requested.)
22 THE HEARING OFFICER: It wasn't really a
23 question.
24

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1 BY MRS. KAMHOLZ:
2 Q. The question okay --
3 MR. KAMHOLZ: I think you are trying to
4 enter into evidence it as a street legal mini bike.
5 THE HEARING OFFICER: Let's go off the

6 record.

7 (Discussion had off the
8 record.)

9 MRS. KAMHOLZ: No further questions.

10 THE HEARING OFFICER: Thank you,
11 Mrs. Kamholz.

12 MRS. KAMHOLZ: Would you accept this as an
13 entry?

14 MR. GOTTEMOLLER: Is that No. 10?

15 MRS. KAMHOLZ: It would show the difference
16 -- the bike that they actually rode.

17 THE HEARING OFFICER: Mr. Gottemoller?

18 MR. GOTTEMOLLER: I would ask that the other
19 things that she wrote on the top be stricken. But
20 other than that, I don't have an objection to it
21 coming in.

22 MRS. KAMHOLZ: It says sitting in the barn
23 for 25 years. Because it has been. It hasn't been
24 touched in 25 years.

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1 THE HEARING OFFICER: I will sustain
2 Mr. Gottemoller's objection. And I would ask the
3 Board to disregard the comments or notation on this
4 Exhibit 10 where it says "sitting in barn for 25

5 years." Other than that, I accept complainants'
6 Exhibit No. 10.

7 (Whereupon document so
8 offered was received in
9 evidence as Complainants
10 Exhibit No. 10.)

11 MR. GOTTEMOLLER: Are we ready for my
12 questioning?

13 THE HEARING OFFICER: I am sorry, you can
14 cross.

15 CROSS-EXAMINATION

16 BY MR. GOTTEMOLLER:

17 Q. Do any of your children ride mini
18 bikes or go carts or motorcycles or anything else?

19 A. No.

20 Q. Where you are living at right now, is
21 it in town of Marengo or --

22 A. It is in town.

23 Q. Okay. Have they ever gone out and
24 looked at that mini bike that is Exhibit No. 10?

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1 A. Yes, they have seen it.

2 Q. Have they ever tried to start it up?

3 A. No.

4 Q. Have they ever been prohibited from
5 playing with it?

6 A. It doesn't run.

7 Q. Do you know what the top speed of a
8 Trail 70 Honda is?

9 A. No, I really don't.

10 Q. Do you know what the 70 stands for?

11 A. Not really, no.

12 Q. Did you ever work on this motorcycle
13 or this mini bike as you referred to it?

14 A. No.

15 Q. Who did work on it when it was at your
16 house?

17 A. My father.

18 Q. And at the time this was brought to
19 your home, did the neighbors have any mini bikes or
20 go carts?

21 A. I don't remember. I don't think so.

22 Q. And this is the bike, though, that you
23 used to ride around your yard. And did you ever
24 occasionally ride it over and see the Sporleder's

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1 daughter?

2 A. No.

3 Q. Did you have any other mini bikes or
4 motorcycles in the house besides this one?

5 A. No.

6 Q. Do you know if your brothers or
7 sisters or anybody else had any?

8 A. No.

9 Q. So you are saying this is the only
10 mini bike that was ever in the house?

11 A. That I recall, yes.

12 Q. That you recall. Do you know anything
13 about the muffler on this bike?

14 A. No.

15 Q. Do you know anything about the
16 standards or different standards between the
17 motorcycles back in the '70s when this was 25 years
18 ago versus today?

19 A. No.

20 Q. Do you know anything about the
21 arguments that your parents and their neighbors
22 have had over the years?

23 MRS. KAMHOLZ: Objection. We are here
24 today for noise. And we are not going to open that

1 can of worms. That is another hearing.

2 THE HEARING OFFICER: Mr. Gottemoller?

3 MR. GOTTEMOLLER: Well, she said that when
4 she hears the noise her mother gets emotional, she
5 gets upset. And I want to find out if there is any
6 other reason she could be upset.

7 THE HEARING OFFICER: Mrs. Kamholz?

8 MRS. KAMHOLZ: No, I am not upset at all
9 about anything else. Just the noise. It is
10 enough -- the noise is enough to upset anyone.

11 THE HEARING OFFICER: I am going to overrule
12 your objection. She may answer if she is able.

13 THE HEARING OFFICER: Could you repeat it,
14 please?

15 BY MR. GOTTEMOLLER:

16 Q. Do you know of any other arguments
17 that your parents and the neighbors have had in the
18 last -- say the last ten years?

19 A. Yes.

20 Q. What other -- what else has upset your
21 parents with my clients?

22 A. Illegal burning.

23 Q. Illegal burning. And do your parents
24 ever do any burning out in their yard?

1 A. Not garbage.

2 Q. When was the illegal burning incident?

3 A. I don't recall how long ago.

4 Q. Do you know if these parties have ever

5 spoken to each other since that time?

6 A. I don't really know.

7 Q. Do you know if it was before or after

8 the motorcycle riding began?

9 A. The other argument?

10 Q. This argument, this argument with --

11 the illegal burning incident was before --

12 A. Before.

13 Q. -- before the motorcycle riding?

14 A. Yes.

15 Q. And do you know what the regulations

16 are about burning?

17 A. Then or now?

18 Q. What we referred to this as an illegal

19 burning incident, was there any tickets issued or

20 anything like that?

21 A. I don't know what.

22 THE HEARING OFFICER: If I may interject,

23 this is going a bit far afield on relevancy.

24 MR. GOTTEMOLLER: That is fine.

1 BY MR. GOTTEMOLLER:

2 Q. Besides that, have there been any
3 other things that your -- besides the noise and the
4 illegal burning, any other things that your parents
5 are upset with my clients over --

6 A. I can't think of any others, no.

7 Q. -- in the last few years at least?

8 Okay. No further questions of this witness.

9 THE HEARING OFFICER: Thank you.

10 Mrs. Kamholz, redirect?

11 REDIRECT EXAMINATION

12 BY MRS. KAMHOLZ:

13 Q. Did you know if there was ever a
14 citation issued to the respondents because of their
15 illegal burning?

16 A. I believe there may have been. They
17 were ordered to stop.

18 Q. That's correct. And --

19 MR. GOTTEMOLLER: Objection to her comments
20 about --

21 THE HEARING OFFICER: Sustained

22 MRS. KAMHOLZ:

23 Q. Every time this happens I get
24 flustered and lose my place.

1 THE HEARING OFFICER: Don't get flustered.

2 We are all family.

3 MRS. KAMHOLZ: For one this thing burning
4 issue shouldn't have come up. And since it has, we
5 live with -- well, I guess I can't do this. I am
6 sorry. No further questions.

7 THE HEARING OFFICER: Thank you,
8 Mrs. Kamholz.

9 Any recross, Mr. Gottemoller?

10 MR. GOTTEMOLLER: No.

11 THE HEARING OFFICER: You may step down.
12 Thanks.

13 The way this is going, we may have to
14 go into tomorrow. Because I think Mr. Zak will be
15 taking a while on the stand.

16 MRS. KAMHOLZ: We have the room until 9:00.

17 THE HEARING OFFICER: I am leaving at ten to
18 5:00. Off the record.

19 (Discussion had off the
20 record.)

21 (Witness duly sworn.)

22

23

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1 MICHAEL DWORZYNSKI,
2 called as a witness herein on behalf of the
3 complainants, having been first duly sworn, was
4 examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MRS. KAMHOLZ:

7 Q. Please state and spell your name.

8 A. Mike Dworzynski, D-w-o-r-z-y-n-s-k-i.

9 Q. And where do you live?

10 A. 1497 Woods Road in Belvidere.

11 Q. And what is your occupation?

12 A. I am a technical group leader for
13 Motorola.

14 Q. What is your relationship to the
15 complainants, Milton and Virginia Kamholz?

16 A. I am a son-in-law.

17 Q. When did you marry their daughter
18 Nadine?

19 A. September 3rd, 1994.

20 Q. Okay. Have you witnessed the riding
21 of dirt bikes, ATVs and go carts at your -- at the
22 complainants' home?

23 A. Yes.

24 Q. How would you describe the noise you

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1 hear when the riding is taking place?

2 A. Very loud.

3 Q. Do you ever smell exhaust fumes and
4 see the dust from these vehicles?

5 A. Yes.

6 Q. Have you ever witnessed multiple
7 vehicles riding at the same time?

8 A. Yes.

9 Q. Does the activity interfere with your
10 enjoyment while you are visiting?

11 A. Yes.

12 Q. Do you recall the events of Mother's
13 Day in 2001?

14 A. Yes.

15 Q. What did you see, hear and smell upon
16 your arrival?

17 A. Loud, multiple dirt bikes, smelling
18 exhaust fumes.

19 Q. What was your mother-in-law's
20 condition?

21 A. Very emotional, crying, very unstable.

22 Q. Would you say that the noise is
23 horrific and intolerable?

24 MR. GOTTEMOLLER: He already gave a

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1 statement as to what the noise was.

2 MRS. KAMHOLZ: I was going to carry it into
3 the complaint. I alleged in my complaint that the
4 noise was horrific and --

5 THE HEARING OFFICER: He may answer.

6 BY MRS. KAMHOLZ:

7 Q. Horrific and intolerable?

8 A. Yes.

9 Q. Did you witness Mrs. Kamholz taking
10 decibel readings?

11 A. Yes, I did.

12 Q. Describe what you saw.

13 A. I saw her pointing the decibel meter
14 at the source of the sound and videotaping it at
15 the same time.

16 Q. Did you assist her in any way?

17 A. Yes, I did.

18 Q. What did you do?

19 A. I noticed that she wasn't pointing the

20 meter directly at the source, so I helped her
21 direct the meter more toward the source of the
22 sound. And we got higher readings because of it.

23 Q. Have you ever viewed the videos
24 recorded by Mrs. Kamholz?

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1 A. No, I have not.

2 Q. So all your testimony is based on live
3 eyewitness viewing, hearing and smelling?

4 A. Yes, it is.

5 Q. Does the activity interfere with your
6 in-law's enjoyment of life and property?

7 A. Yes.

8 Q. In what way?

9 A. The enjoyment that we have and they
10 have with visiting on any particular day that the
11 activity was taking place.

12 Q. Are you familiar with the sound of
13 dirt bikes?

14 A. Yes, I am.

15 Q. Have you ever ridden dirt bikes?

16 A. Yes.

17 Q. Okay.

18 MRS. KAMHOLZ: No further questions.

19 THE HEARING OFFICER: Thank you,

20 Mrs. Kamholz.

21 Mr. Gottemoller, cross?

22 CROSS-EXAMINATION

23 BY MR. GOTTEMOLLER:

24 Q. When did you ride dirt bikes?

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1 A. Oh, growing up through childhood and
2 until adulthood. I used to race motocross. So I
3 know what it is all about.

4 Q. What kinds of bikes did you own?

5 A. I had -- we started off with Sears
6 mini bikes mix, Ruff mini bikes, Yamaha 80s, went
7 into the 100 ccs, 125s, 250s. Yamahas, Suzukis,
8 Hondas.

9 Q. Two-cycle or four-cycle?

10 A. Each. Both.

11 Q. Which did you prefer?

12 A. For competition -- well, it depends on
13 how old I was. Younger, you went with the little
14 mini bikes, the four-cycle, automatic mini bikes.
15 Got older into the competition, two stroke.

16 Q. Does the noise ever bother on those

17 mini bikes and motorcycles when you are riding
18 them?

19 A. No. We had helmets.

20 Q. And do you have any children now
21 yourself?

22 A. Yes, I do.

23 Q. Are they going to be riding mini bikes
24 or motorcycles?

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1 A. Yes.

2 Q. Are they going to be riding them out
3 here?

4 A. Pardon me?

5 Q. Are they going to be riding them out
6 on this property?

7 A. No.

8 Q. Where do you ride at?

9 A. On my own property.

10 Q. And how much property do you own?

11 A. I have ten acres.

12 Q. And where -- your ten acres -- where
13 do you live at?

14 A. Belvidere. Woods Road in Belvidere.

15 Q. Do you have any neighbors nearby?
16 A. Yes.
17 Q. And have your neighbors objected to
18 your use of your mini bikes or motorcycles?
19 A. No.
20 Q. Do you have any special mufflers or
21 sound devices on your mini bikes or motorcycles?
22 A. No.
23 Q. It is just whatever came off of the
24 shelf at the dealer?

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1 A. Yes.
2 Q. Where you are riding now at on your
3 ten acres, how many feet from the edge of wherever
4 you are riding to the edge of your property?
5 A. What do you mean?
6 Q. Do you have some place on your
7 property you ride?
8 A. Yes. On the back side.
9 Q. And how many feet from the edge of
10 your property to the -- from where you are riding
11 to the edge of your record?
12 A. To the next person's property or your.
13 Q. To the property line?

14 A. To the farm fields it is 30 feet.
15 Q. And to the nearest home?
16 A. I would say 7, 800 feet.
17 Q. Is that a sufficient distance to avoid
18 any noise problems as far as you can tell?
19 A. Oh, yes.
20 MRS. KAMHOLZ: Objection.
21 THE HEARING OFFICER: I am sorry?
22 MRS. KAMHOLZ: He is not a noise expert.
23 THE HEARING OFFICER: He may answer if he is
24 able.

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1 MR. GOTTEMOLLER: He already said.
2 BY MR. GOTTEMOLLER:
3 Q. Have you ever invited your in-laws to
4 your house when you were riding?
5 A. Not while I was riding, no.
6 Q. Did you ever ride a while they were
7 there at any time?
8 A. No.
9 Q. Have you ever discussed with them any
10 time your desire to ride mini bikes or motorcycles?
11 A. No, I haven't.

12 Q. Is that something that would upset
13 your mother-in-law?
14 A. My riding?
15 Q. Uh-huh.
16 A. I don't know.
17 Q. But you have never discussed it with
18 her?
19 A. No.
20 MR. GOTTEMOLLER: No further questions.
21 THE HEARING OFFICER: Thank you.
22 Mrs. Kamholz, redirect, please?
23
24

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1 REDIRECT EXAMINATION
2 BY MRS. KAMHOLZ:
3 Q. How far did you say your nearest
4 neighbor was from you?
5 A. 7, 800 feet is a guess.
6 Q. Isn't that more like what your house
7 is from the dirt track; maybe be your neighbor is
8 further away than that?
9 A. It is possible.
10 Q. Yeah, I think it is possible.

11 MR. GOTTEMOLLER: Objection. He can answer
12 his own questions.

13 THE HEARING OFFICER: Sustained.

14 MR. GOTTEMOLLER: If she wants to make a
15 statement, she can do it on her own.

16 BY MRS. KAMHOLZ:

17 Q. The edge of your property where your
18 son rides his dirt bike, what kind of a dirt bike
19 is this?

20 A. It is a mini bike.

21 Q. It is a mini bike. So it is not as --

22 A. No.

23 Q. What does the edge of the property
24 butt up to? What is the next to the edge of your

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1 property?

2 A. Agriculture, farm fields.

3 Q. So there is no residences or houses
4 there?

5 A. No.

6 Q. Have you ever taken your -- do you
7 take him to a proper place to ride also?

8 A. Yes, I have.

9 Q. Where do you take him?
10 A. To the Byron Motor Sports park track.
11 Q. And when you compete -- when you used
12 to compete, did you go to regular dirt track, a
13 proper place to ride and compete?
14 A. Yes.
15 Q. Would you ever let your son ride a
16 dirt bike right next to somebody's house? A full
17 -- a big dirt bike I am talking some day --
18 MR. GOTTEMOLLER: Speculative at best.
19 MRS. KAMHOLZ: Okay. I guess that is all.
20 THE HEARING OFFICER: Thank you.

21 Any recross?

22 RE-CROSS-EXAMINATION

23 BY MR. GOTTEMOLLER:

24 Q. When you were growing up, did you ever

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1 ride a mini bike or a motorcycle outside of an
2 organized track?
3 A. Yes.
4 Q. And the -- do you know the zoning
5 classification of the property that your in-laws
6 live on?
7 A. No, I don't.

8 MR. GOTTEMOLLER: No further questions.

9 THE HEARING OFFICER: Mrs. Kamholz, any
10 reredirect I guess?

11 MRS. KAMHOLZ: No. That is all.

12 THE HEARING OFFICER: You may step down.
13 Thank you very much.

14 (Witness duly sworn.)

15 NADINE DWORZYNSKI,
16 called as a witness herein on behalf of the
17 complainants, having been first duly sworn, was
18 examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MRS. KAMHOLZ:

21 Q. Please state and spell your name.

22 A. Nadine Louise Dworzynski. And spell
23 it?

24 Q. Yes, please.

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1 A. N-a-d-i-n-e L-o-u-i-s-e
2 D-w-o-r-z-y-n-s-k-i.

3 Q. And where do you live?

4 A. 1497 Woods Road in Belvidere,
5 Illinois.

6 Q. What is your occupation?
7 A. I am a house wife and day care
8 assistant.
9 Q. And what is your relationship to the
10 complainants?
11 A. Daughter.
12 Q. Okay. Now, a lot of my questions are
13 repetitive here again, so I am going to skip a few.
14 It has been said that you have
15 participated in the riding that we allege in our
16 complaint. Is this true?
17 A. No.
18 Q. Have you ever participated in any
19 activities with the respondents' grandchildren?
20 A. No.
21 Q. Why not?
22 MR. GOTTEMOLLER: Objection as to why --
23 THE HEARING OFFICER: She may answer if she
24 is able.

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1 THE WITNESS: I am a totally different
2 generation than them. And I have -- I don't think
3 I have ever lived at the home or -- I have no
4 relationship whatsoever. Last time I recall of

5 Donald was like when he would come trick or
6 treating at the door and we would give him a bunch
7 of candy pretty much.

8 BY MRS. KAMHOLZ:

9 Q. Did you ever ride a mini bike on your
10 property?

11 A. Yes.

12 Q. When was it and how often did you
13 ride?

14 A. It was about -- between 11 and 13
15 years old. And how often?

16 Q. Uh-huh.

17 A. Inconsistently. Maybe one to five
18 times a week, something like that.

19 Q. Okay. Does the riding activity on the
20 respondents' property happen often when you visit
21 your parents' home?

22 A. It did until this thing blew up and
23 things cooled off. But persistently for about the
24 past ten years.

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1 Q. Were you there when the sheriff
2 arrived on Mother's Day of 2001?

3 A. Yes.

4 Q. At that point in time -- was that
5 riding still going on?

6 A. Yes. No, not when the sheriff got
7 there. When we got there, it was. But not when
8 the sheriff got there.

9 Q. Okay. Have you ever viewed the videos
10 mother recorded?

11 A. No.

12 Q. So you are an eyewitness. And you
13 have seen, heard and smelled is the only experience
14 you have in knowing how they ride?

15 A. Yes.

16 Q. Would you like to see this riding
17 stopped?

18 A. Absolutely.

19 MR. GOTTEMOLLER: Objection to what she
20 would like.

21 THE HEARING OFFICER: Sustained.

22 BY MRS. KAMHOLZ:

23 Q. Do you want this riding to stop?

24 MR. GOTTEMOLLER: Objection to what she

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1 wants.

2 THE HEARING OFFICER: Sustained.

3 MRS. KAMHOLZ: No further questions.

4 MR. GOTTEMOLLER: No questions.

5 THE HEARING OFFICER: You may step down.

6 (Witness duly sworn.)

7 MILTON KAMHOLZ,

8 called as a witness herein on behalf of the
9 complainants, having been first duly sworn, was
10 examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MRS. KAMHOLZ:

13 Q. Please state and spell your name.

14 A. Milton Kamholz, M-i-l-t-o-n

15 K-a-m-h-o-l-z.

16 Q. And where do you live?

17 A. 1306 Sullivan Road, Woodstock.

18 Q. What is your occupation?

19 A. I am retired.

20 Q. How long have you been retired?

21 A. I think three years.

22 Q. What kind of work did you do before
23 you retired?

24 A. I was a heavy equipment operator.

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1 Q. Did you often work six days a week?
2 A. Yes, in the summertime.
3 Q. So Sunday is your only day to catch up
4 around the house and relax?
5 A. Yes, it was.
6 Q. If you choose to relax and riding
7 activity was taking place, could you?
8 A. No.
9 Q. Why not?
10 A. I guess it was stress caused -- caused
11 a stressful feeling.
12 Q. Because of?
13 A. The noise, probably mostly. I
14 probably wasn't as close to the dust and fumes
15 because usually I was working towards the other end
16 of the property.
17 Q. Were you ever able to take a nap on a
18 Sunday afternoon if they are riding?
19 A. No.
20 Q. Were you able to watch T.V.?
21 A. I probably could, but I wouldn't
22 because of the competition with the noise of the
23 dirt bikes and the sound of the T.V.
24 Q. Could or would you have your windows

1 open on a beautiful day?

2 A. I could again, but I wouldn't.

3 Q. Because of the noise?

4 A. Because of the noise and the dust
5 coming in and the fumes coming in.

6 Q. Could you sit out on your deck and
7 enjoy your screened porch?

8 A. I could sit out there, but I wouldn't
9 be enjoying it.

10 Q. Has this riding activity made you want
11 to move away from your property?

12 A. Yes, it has.

13 Q. Have you done anything about this
14 desire?

15 A. Yes, I have.

16 Q. How long have you been looking for a
17 different place to live?

18 A. I think going on three years. It is
19 somewhere between three and -- two and three years.

20 Q. Did you ever find a place you liked
21 but decided against it?

22 A. Yes, I did.

23 Q. What caused this decision?

24 A. There was evidence of dirt bike

1 riding.

2 Q. Did that make you think about your own
3 property and how someone looking at your place
4 would feel?

5 A. Yes, it did.

6 MR. GOTTEMOLLER: Objection to how someone
7 else might feel.

8 BY MRS. KAMHOLZ:

9 Q. Did that make you think about your own
10 property and how someone else looking at your
11 property and seeing dirt bikes would react?

12 A. Yes, it did.

13 Q. Do you think someone would want to buy
14 your house?

15 MR. GOTTEMOLLER: Objection to what someone
16 else would do.

17 THE HEARING OFFICER: Sustained.

18 BY MRS. KAMHOLZ:

19 Q. Would someone -- would you have
20 trouble selling your house and property if -- with
21 this activity going on next door?

22 MR. GOTTEMOLLER: Objection, it is
23 speculative.

24 THE HEARING OFFICER: Sustained.

1 BY MRS. KAMHOLZ:

2 Q. Do you think the sight of a dirt track
3 would deter someone from wanting to buy your house?

4 MR. GOTTEMOLLER: Objection to what he
5 thinks someone would do.

6 THE HEARING OFFICER: Sustained.

7 BY MRS. KAMHOLZ:

8 Q. If you were looking at a house to buy
9 and you saw a dirt track next door, would you buy
10 it?

11 A. No.

12 Q. If you saw and heard what you see and
13 hear next door to us at a house that you really
14 liked, would you buy it?

15 A. No.

16 Q. Do you think this activity lowers the
17 value of your property?

18 A. Yes.

19 Q. Does this activity keep you from
20 enjoying your life and property?

21 A. Yes.

22 Q. What do you want to see happen at this
23 hearing?

24

MR. GOTTEMOLLER: I would object to what he

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1 wants to see. As a practical matter, he can put
2 that in his motion at the end.

3 THE HEARING OFFICER: Being he is an
4 interested party, he may answer.

5 THE WITNESS: Would you state the question
6 again?

7 BY MRS. KAMHOLZ:

8 Q. What would you want to have happen as
9 a result of this hearing?

10 A. For the pollutants to stop.

11 Q. What should the respondents' family do
12 when they want to ride noisy vehicles?

13 A. Take the vehicles to a proper place
14 and pursue their recreation.

15 MRS. KAMHOLZ: Thank you. No further
16 questions.

17 THE HEARING OFFICER: Thank you,
18 Mrs. Kamholz.

19 Mr. Gottemoller?

20 CROSS-EXAMINATION

21 BY MR. GOTTEMOLLER:

22 Q. Do you have any background in real

23 estate?

24 A. Professional background?

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1 Q. Uh-huh.

2 A. No.

3 Q. Have you bought or sold any homes
4 since you purchased this home -- you built this
5 home in the '70s, right?

6 A. I had it built.

7 Q. Or had it built. Since purchasing
8 this home site and then putting the home up, have
9 you built any other homes?

10 A. Have I built any other homes?

11 Q. Yes.

12 A. No.

13 Q. Did you own any other homes?

14 A. Before this one?

15 Q. No, after this. And this was in '72
16 when you bought this lot; is that right?

17 A. Uh-huh.

18 Q. Yes?

19 A. Yes.

20 Q. And since that time, other than

21 looking at real estate in the last three years,
22 have you any other experience with valuing real
23 estate?

24 A. No.

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1 Q. So you don't have any particular
2 background in doing appraisals or anything like
3 that, correct?

4 A. No.

5 Q. You may have worked on real estate as
6 a machine operator; but you didn't appraise it,
7 correct?

8 A. Correct.

9 Q. Were you the purchaser of the bike
10 that is pictured in Exhibit No. 10?

11 A. Yes.

12 Q. And which child did you buy that bike
13 for?

14 A. My son Kurt.

15 Q. And did all of the children eventually
16 ride this bike at one time or another?

17 A. Not very much. It was mostly Kurt
18 that rode it.

19 Q. And where did Kurt ride it at?

20 A. On our property.

21 Q. And was it okay for him to ride this
22 kind of motorcycle or mini bike as you guys refer
23 to it?

24 A. I had conferred with the Sporleders on

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1 it, and they said it was fine. So yes.

2 Q. So it was all right with you too,
3 correct?

4 A. Uh-huh.

5 Q. And was it all right when the
6 Sporleders were using -- when their children were
7 riding this size bike?

8 A. Yes, we never had a problem with it.

9 Q. So you didn't have a problem with the
10 mini bikes when they were mini bikes, correct?

11 A. Well, I would have to say the location
12 had a lot to do with not having a problem with it.
13 But at the time that they were riding it, we didn't
14 have any problems.

15 Q. It was only when they got the larger
16 bikes?

17 A. And when they started running the

18 property line.

19 Q. So if they were off the property line
20 and back over where that track was kind of behind
21 of barn --

22 A. That is not off the property line.
23 No. And --

24 Q. I am sorry.

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1 A. That is 150 feet from the house.

2 Q. Well, I want to --

3 A. My answer to the question would be no.

4 Q. I am not certain I still understand
5 your answer. Anyway --

6 A. Maybe rephrase it.

7 Q. Let me clarify. They used to ride
8 mini bikes and go carts and ATVs maybe on the back
9 of the barn where your wife has talked about the
10 track --

11 A. Uh-huh.

12 Q. -- that used to be. Now, that track
13 is different from riding the property line,
14 correct? It is a different location necessarily
15 than riding the property line?

16 A. The track is at a different location

17 than the property line; that is correct.

18 Q. And so when they rode the mini bikes
19 and the smaller bikes, they were riding those on
20 that track?

21 A. No.

22 Q. No. Did they ever -- what were they
23 riding on that track, just go carts?

24 A. At the time that they had the little

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1 mini bike, they didn't have the track. The girls
2 rode all over the property.

3 Q. But afterwards, the first bikes that
4 the Sporleders had were mini bikes. Were they like
5 this one --

6 A. The first --

7 Q. -- on Exhibit 10?

8 A. The first recreation vehicle they had
9 wasn't a mini bike.

10 Q. What was the first recreation vehicle?

11 A. A smaller ATV.

12 Q. Was there any problem with the smaller
13 ATV?

14 A. Yes.

15 Q. What was the problem with the smaller
16 ATV?

17 A. Dust.

18 Q. But it wasn't a noise problem; it was
19 a dust problem?

20 A. It was less of a noise problem. But
21 with that, it was -- the majority was a dust
22 problem.

23 Q. And did this mini bike ever cause any
24 dust problems, this Exhibit No. 10?

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1 A. No one ever complained about it. So I
2 don't know if it created a problem for anyone or
3 not.

4 Q. It was being ridden by your children,
5 though, on your property?

6 A. Right.

7 Q. And you didn't have a problem with it?

8 A. No. It was ridden where the
9 prevailing breezes would not carry the dust or
10 anything in any direction because there were no
11 houses to the north of us.

12 Q. Does this mini bike in Exhibit No. 10
13 have an exhaust system?

14 A. Yes.

15 Q. Does it give out pollutants?

16 A. All gasoline engines give out
17 pollutants.

18 Q. And the pollutants that were given out
19 by this one when your children were riding it, that
20 was okay.

21 A. No ever complained about it.

22 Q. Including you?

23 A. Including me.

24 Q. Including your wife?

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1 A. Including my wife.

2 MR. GOTTEMOLLER: No further questions of
3 this witness.

4 THE HEARING OFFICER: Thank you.

5 Mrs. Kamholz, redirect?

6 MRS. KAMHOLZ: Uh-huh.

7 REDIRECT EXAMINATION

8 BY MRS. KAMHOLZ:

9 Q. The little mini bike that we give them
10 and the one that our kids rode, where did they ride
11 them?

12 A. In no -- they didn't ride in any
13 specific place. They just rode all over the
14 property.

15 Q. Which is where compared to our house?

16 A. In measurements?

17 Q. No. Where is -- where did they ride
18 in comparison to where our house it?

19 A. To the south of us.

20 Q. I am talking about this mini bike and
21 our children when they rode. Did they ride in
22 front of the house, in back?

23 A. Our children?

24 Q. Yes.

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1 A. Our children rode in front of our
2 house.

3 Q. Okay. Which was where in -- it was
4 not near -- was it near any of our windows or --

5 A. No.

6 Q. Was it loud?

7 A. No.

8 Q. Did you even know they were there?

9 A. Well, I knew they were there.

10 Q. Okay. The bike definitely sends off
11 some pollutants because it is a machine that
12 does --

13 A. A lesser amount than a lawn mower.

14 Q. Right. I was just going to say this
15 bike does not -- okay.

16 Comparing how they rode and how we
17 ride, these -- this mini bike was nothing like --
18 is it anything at all like the dirt bikes that this
19 generation is riding?

20 A. No.

21 MRS. KAMHOLZ: No further questions.

22 THE HEARING OFFICER: Thank you.

23 Any recross, Mr. Gottemoller?

24 MR. GOTTEMOLLER: No.

1 THE HEARING OFFICER: Thank you.
2 Mr. Kamholz, you may step down. Thank you. Let's
3 go off the record for a minute.

4 (Short recess taken.)

5 THE HEARING OFFICER: We are back on the
6 record at approximately 2:22.

7 Mrs. Kamholz is still proceeding with
8 her case-in-chief. Mrs. Kamholz?

9 MRS. KAMHOLZ: I am ready to call my expert
10 witness, Mr. Greg Zak.

11 (Witness duly sworn.)

12 GREG ZAK,
13 called as a witness herein on behalf of the
14 complainants, having been first duly sworn, was
15 examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MRS. KAMHOLZ:

18 Q. Please state and spell your name?

19 A. My name is Greg Zak. That is spelled
20 G-r-e-g Z-a-k.

21 Q. Where do you live?

22 A. I live at 36 Birch Drive, Chatham,
23 Illinois 62629.

24

Q. What is your occupation?

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1 A. My occupation is owner of noise
2 Solutions by Greg Zak.

3 MRS. KAMHOLZ: Okay. I request that he be
4 accepted as my expert witness. And I have a resume
5 here I would like to enter as Exhibit 11.

6 MR. GOTTEMOLLER: I will stipulate to his
7 resume. I think the Board is well familiar with
8 Mr. Zak's prior testimony over the years. I don't
9 see any reason to take us through that.

10 THE HEARING OFFICER: Okay. Thank you.

11 MRS. KAMHOLZ: Do you have a copy of it?

12 MR. GOTTEMOLLER: I would like a copy so it
13 is marked.

14 THE HEARING OFFICER: So stipulated.

15 MRS. KAMHOLZ: Exhibit 10.

16 MR. GOTTEMOLLER: It is Exhibit 11. Exhibit
17 10 was the motorcycle or mini bike pictures.

18 THE HEARING OFFICER: I am sorry. Thank
19 you.

20 BY MRS. KAMHOLZ:

21 Q. I am sorry, Mr. Zak, did I ask you
22 your occupation?

23 A. Yes, you did.
24 Q. And what is your answer?

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1 A. My answer was owner of Noise Solutions
2 by Greg Zak.
3 Q. And what is that?
4 A. This is a consulting company that
5 specializes in noise and vibration control,
6 measurement and the influence and impact on people
7 from noise and vibration.
8 Q. And how long have you been Noise
9 Solutions by Greg Zak?
10 A. A little over a year and a half.
11 Q. What did you do before that?
12 A. Prior to that, I worked for the
13 Illinois Environmental Protection Agency as their
14 noise adviser. And I was employed by the Illinois
15 EPA for 29 years, two months and 16 days.
16 Q. Okay. Most of his information is in
17 his resume if you want me to --
18 THE HEARING OFFICER: No. I think we have
19 already stipulated to his qualifications.
20 MRS. KAMHOLZ: Okay.

21 MRS. KAMHOLZ:

22 Q. In a quick summary of your resume,
23 without going into it too deeply, would you
24 describe for us your education?

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1 MR. GOTTEMOLLER: I would object. We are
2 stipulating that his whole resume is in the record.

3 MRS. KAMHOLZ: Okay. Fine. We will pass
4 that up.

5 BY MRS. KAMHOLZ:

6 Q. Mr. Zak, do you remember approximately
7 when Mrs. Kamholz first contacted you about their
8 alleged noise problem?

9 A. Yes. I believe it was in June of
10 2001.

11 Q. Okay. Did you tell Mrs. Kamholz, the
12 complainant, at this time about the procedure and
13 format of the steps involved with filing a formal
14 complaint and possibly having a hearing?

15 A. I believe I received the phone call
16 when I was still employed by the Illinois
17 Environmental Protection Agency. And I believe I
18 advised Mrs. Kamholz to see if the matter could be
19 settled between herself and the other folks

20 involved. Should that fail, then the problem could
21 be referred to to the Illinois Pollution Control
22 Board. And I believe I gave her an outline of the
23 procedural manner necessary in order to file a
24 formal complaint and pursue the formal complaint.

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1 Q. Okay. I have a copy of that
2 information letter. And I would like to at this
3 time --

4 MR. GOTTEMOLLER: I would object to the
5 information letter. I mean this is --

6 MRS. KAMHOLZ: This is the advice that he
7 gave me.

8 MR. GOTTEMOLLER: It might have been
9 wonderful advice. The fact of the matter is it
10 doesn't have any basis other than saying how we got
11 here, ultimately what he has done to investigate or
12 do the things necessary to form an opinion in this
13 case.

14 THE HEARING OFFICER: Mrs. Kamholz?

15 MRS. KAMHOLZ: Well, I got here -- I needed
16 information and I needed advice on how -- the steps
17 to take to get here today.

18 THE HEARING OFFICER: I am going to sustain
19 Mr. Gottemoller's objection. But I will take it as
20 an offer of proof if you want me to do that.

21 MRS. KAMHOLZ: Okay.

22 THE HEARING OFFICER: That is complainants'
23 Exhibit No. 12 was denied and taken with the case
24 as an offer of proof.

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1 MR. GOTTEMOLLER: I need a copy of it.

2 MRS. KAMHOLZ: Sorry.

3 BY MRS. KAMHOLZ:

4 Q. After learning the complainants were,
5 indeed, going to file a complaint and would be
6 requesting your services, did you inform her about
7 the advantages and the necessity of taking noise
8 measurements?

9 A. Yes, I did.

10 Q. What advice did you offer her about
11 this?

12 A. I suggested --

13 MR. GOTTEMOLLER: Object to the form of the
14 question. I mean, he can certainly say what he has
15 done, but it is a matter of advice.

16 THE HEARING OFFICER: Mrs. Kamholz, can you

17 rephrase that, please? And I am going allow
18 Mrs. Kamholz a little leeway.

19 MR. GOTTEMOLLER: I understand.

20 THE HEARING OFFICER: We have a little more
21 relaxed rules. Go ahead.

22 BY MRS. KAMHOLZ:

23 Q. What did you tell her to do?

24 A. I advised her to purchase a Radio

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1 Shack digital sound level meter and begin taking
2 measurements along with videotape of the noise
3 problem in order to better document her problem.

4 Q. After Mrs. Kamholz bought her Radio
5 Shack decibel noise meter, did you tell her about
6 function of it and how to operate it?

7 A. Yes. She sent me some videotape of
8 her using the meter. She called me on the
9 telephone. And between phone conversations and the
10 videotape, I was able to instruct her in the proper
11 use of the meter and using that meter in order to
12 obtain sound level measurements that would be in my
13 opinion admissible under Section 900.102 of the
14 Board's regulations for noise.

15 Q. I have the meter here. I would like
16 to have you look at it. I would offer as evidence
17 a copy of this so that I don't have to turn my
18 meter in.

19 THE HEARING OFFICER: I don't think we need
20 a copy as long as Mr. Zak describes accurately what
21 he is looking at.

22 BY MRS. KAMHOLZ:

23 Q. Would you please identify this
24 instrument and tell us about its function and

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1 operation?

2 A. Yes, it is a Radio Shack sound level
3 meter. It is the digital model. And it suffices
4 for taking measurements with an accuracy in my
5 experience of within plus or minus one to two
6 decibels of a precision meter.

7 Q. How does this instrument compare to
8 the more precision type and more expensive type
9 meters?

10 A. It normally will be within -- it will
11 produce the same exact result as a precision meter
12 or it may be off a couple of decibels high or a
13 couple of decibels low. But not -- not more than

14 about two decibels off in either direction. Or in
15 a lot of cases, it will be right on compared to a
16 precision meter. I use these all the time myself
17 in my business.

18 Q. So this meter is considered a reliable
19 sound measurement instrument?

20 A. Yes, it is.

21 Q. Have you personally checked the
22 calibration of this instrument?

23 A. Yes, I have.

24 Q. And what did -- when did you do this

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1 and what was the result of this test?

2 A. I did it on the morning of
3 September 3rd, 2002, when I visited your residence.
4 And the calibration indicated that the meter was
5 exactly on -- 100 percent correct.

6 Q. So did you do an on-site inspection of
7 the complainants' property?

8 A. Yes, I did.

9 Q. What was the atmosphere of the
10 complainants' property?

11 A. It is a very quiet rural setting. I

12 had noticed this the background sound was very low.
13 And having a precision analyzer with me, I switched
14 the analyzer on and it indicated that the sound
15 level in the area was 45 dba or A-weighted sound,
16 which again is a very quiet area.

17 Q. Can you tell us is there any -- about
18 the other duties and testing that you did during
19 this inspection?

20 A. I walked the area and looked the area
21 over in detail as far as the lay of the land,
22 location of the Kamholz residents, Sporleder
23 residence, the area around the Kamholz residence,
24 looked over at where the motorcycle activity and

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1 ATV and truck activity from the videotapes had
2 taken place and again just generally observed the
3 area.

4 Q. At this time I would like to show you
5 a diagram, a map-type thing that I made up. And I
6 would like to show it to you and see if it is a
7 documentation of what you found on your inspection.
8 It opens up. And I would like to enter this as
9 Exhibit 13. Are you done looking at it?

10 A. Yes.

11 Q. Is it an accurate documentation of the
12 two properties and the layout of the -- from what
13 you saw in the on-site inspection?

14 A. With an explanation. And the
15 explanation would be that it does appear to be
16 accurate from my observations of September the 3rd.
17 The -- some of the labeling here, for example, the
18 heaviest riding area having watched the videotape,
19 all three and a half hours worth twice, if I --
20 keep in mind I think the labeling on there is in
21 relation to what was on the videotape, it is
22 accurate. As I said, the day I was there, there
23 was very little evidence of any riding having taken
24 place for some time. Yes, it is an accurate

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1 diagram from my observation.

2 MRS. KAMHOLZ: I would like to enter it.

3 MR. GOTTEMOLLER: As far as the diagram
4 portion, again, I don't necessarily have an
5 objection to it. But there is several comments
6 again that really have not been testified to and
7 probably would not be allowed. If you look I guess
8 what would really amount to be the northern edge of

9 this property, there is several comments that have
10 been written in supposedly from neighbors or what
11 have you. I would ask that those items be
12 stricken. Along with the statements about south
13 winds and those type of things.

14 As far as the document, accurate
15 description of the property, that is fine. But I
16 don't think those things are relevant to the
17 proceedings or that they can be testified to by
18 this document.

19 THE HEARING OFFICER: Mrs. Kamholz?

20 MRS. KAMHOLZ: I agree with part of that.
21 But I don't agree with the south wind part because
22 we are north of them. And the south winds are the
23 prevailing winds during the summer, which is when
24 they ride. And everything that comes from those

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1 bikes, comes to us because of the south winds.

2 THE HEARING OFFICER: You know, I do
3 remember some testimony to that effect. I will
4 sustain Mr. Gottemoller's objection regarding these
5 comments at the bottom and ask the Board to strike
6 and disregard. I can understand why neighbors
7 don't want to get involved. Actually, nobody does.

8 It is a hassle. And there is a few more comments I
9 would ask the Board to disregard those.

10 Otherwise, Exhibit 13 is accepted.

11 (Whereupon document so
12 offered was received in
13 evidence as Complainants
14 Exhibit No. 13.)

15 MRS. KAMHOLZ: I actually put those comments
16 on there for -- I didn't put them on there for the
17 Pollution Control Board's use. But they were on
18 there when I made my copies.

19 BY MRS. KAMHOLZ:

20 Q. Mr. Zak, did you ever personally -- I
21 have -- also in connection with that, I have
22 photographs that I would like to enter. Would you
23 look at these photographs, please, and see --

24 MR. GOTTEMOLLER: 21 through 28?

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1 MRS. KAMHOLZ: Yes

2 BY MRS. KAMHOLZ:

3 Q. Is this -- these are photographs of
4 the property. This is -- the first one is the
5 inside of my rec room and you can see it is just

6 more or less what is on the video also. This is
7 the room we live in and this is the room that is so
8 extremely noisy.

9 A. Photo 21?

10 Q. Yes, 21. I believe there might be one
11 more of the inside of the house, and then the rest
12 of them are where -- the pictures of the driveway,
13 up an down the driveway where they ride, along the
14 property line, position of the house, ruts from the
15 bike. Now, these ruts are from the bikes, not from
16 the truck. These are ruts that are made from the
17 dirt bikes as they ride.

18 MR. GOTTEMOLLER: I would ask that her
19 comments be stricken. She is not testifying at the
20 moment.

21 THE HEARING OFFICER: I agree, Mrs. Kamholz.

22 MRS. KAMHOLZ: I was explaining the
23 pictures.

24 THE HEARING OFFICER: The witness will

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1 explain, if he is able, if the question is asked or
2 posed.

3 THE WITNESS: I missed the question.

4 MRS. KAMHOLZ: I didn't ask it.

5 THE WITNESS: Excuse me.

6 BY MRS. KAMHOLZ:

7 Q. Does this represent a good -- is this
8 a good representation of what you saw in your
9 inspection? This is a photograph rather than my
10 map diagram. This is the property. Does it give
11 an accurate representation of the property and the
12 property line and --

13 MR. GOTTEMOLLER: For shortness, I will
14 stipulate that these pictures are of the property
15 or her home or what have you. I would again ask
16 that the same objection that the sidebar comments
17 be stricken. And I don't think there is any doubt
18 about what the pictures are of.

19 THE HEARING OFFICER: Mrs. Kamholz?

20 MRS. KAMHOLZ: That is fine.

21 THE HEARING OFFICER: Okay. As before, I
22 sustain Mr. Gottemoller's objection regarding the
23 comments that really aren't necessary or explain
24 the picture itself. And I would ask the Board to

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1 disregard those comments. For instance, photo
2 No. 21, last sentence, we cannot stand to be in

3 this room or any other room when respondents are
4 riding. Other than that, the location of the
5 photos I will admit. Complainants' Exhibit 14 --

6 MR. GOTTEMOLLER: Yes.

7 MRS. KAMHOLZ: 14.

8 THE HEARING OFFICER: -- Group Exhibit 14,
9 photos 21 to 28, are admitted.

10 (Whereupon document so
11 offered was received in
12 evidence as Complainants
13 Exhibit No. 14.)

14 MRS. KAMHOLZ: Okay. Thank you.

15 BY MRS. KAMHOLZ:

16 Q. Mr. Zak, did you ever personally take
17 -- record any decibel readings of the riding
18 activity?

19 A. No, I did not.

20 Q. Did you ever see the riding activity
21 for real?

22 A. By for real you mean --

23 Q. Actual.

24 A. -- in person as opposed to watching it

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1 on videotape?

2 Q. Right.

3 A. No, I have never observed it in
4 person.

5 Q. I have a list -- how did you -- how
6 were you familiar with the decibel readings that I
7 took?

8 A. I was familiar through your videotape.

9 Q. What range of sound levels did you see
10 on the tape?

11 MR. GOTTEMOLLER: Object to what he saw on
12 the tape. The sound levels and tapes are there.
13 It is whatever they are.

14 THE HEARING OFFICER: I am sorry, could you
15 read the question back, Cheryl, please?

16 (Record read as
17 requested.)

18 MR. GOTTEMOLLER: He is being asked to
19 repeat the evidence that is already in the record.

20 THE HEARING OFFICER: Mrs. Kamholz?

21 MRS. KAMHOLZ: Well, I think he -- being an
22 expert witness, he should tell us -- it would be in
23 the transcript a little bit easier to --

24 THE HEARING OFFICER: I agree. I think it

1 will help assist the Board. Objection overruled.

2 THE WITNESS: In answer to your question,
3 the levels in general would run in the range of,
4 say, 75 dba or A-weighted when the motorcycles were
5 3 to 400 feet distance to as high as the mid 90 dba
6 range when they were close to the property line.
7 These types of levels would represent those levels
8 that one would expect for two-cycle off-road
9 motorcycles.

10 Q. I have a list here of decibel
11 readings. I would like to enter this as
12 Exhibit 15. Would you look at these? And I color
13 coded them to make them easier to read. I believe
14 I have colors for bikes, ATVs and distance -- no.
15 Dates, information and distance.

16 Would you tell us what you see here or
17 is that the question you just answered?

18 A. Well, I am looking at a document that
19 lists dates. For example, under item 4 answer in
20 bold, and then there is a small "yes" after that.
21 For example, I see the date Tuesday, July 24th,
22 2001, at 7:58 p.m. highlighted in yellow and
23 distance is there of approximately, say, 60 to --
24 60 feet from the property line. The range on the

1 measurements runs an A-weighted level of between 73
2 and 88. And I would say that those levels would be
3 on the lower side probably at a point where there
4 was almost neutral throttle, whereas the higher
5 levels are probably at a point of medium to heavy
6 throttle, depending the bike.

7 MR. GOTTEMOLLER: I would object to what he
8 is saying, translating these levels to what he is
9 seeing on the bike. He hasn't seen the bike. He
10 can't testify to what he has seen on the bike. He
11 can testify certainly as to what this piece of
12 paper says. But he has not demonstrated any area
13 of expertise that would allow him to translate what
14 he says into readings on the specific bikes that
15 are riding outside when he hasn't even seen them.

16 THE HEARING OFFICER: Mrs. Kamholz?

17 MRS. KAMHOLZ: I am sorry, I don't quite
18 understand.

19 THE HEARING OFFICER: He can testify to what
20 is on the sheet.

21 MRS. KAMHOLZ: Yes.

22 THE HEARING OFFICER: But anything outside
23 of this sheet, there has been no showing about
24 whether he has seen the bikes or familiar with the

1 bikes or whatnot. So I am going to sustain
2 Mr. Gottemoller's objection.

3 MRS. KAMHOLZ: Okay. Well, he saw the
4 bikes on the video. He has viewed the video twice,
5 the entire video. So I mean he knows what kind of
6 a dirt bike we are talking about -- dirt bikes and
7 ATVs we are talking about.

8 MR. GOTTEMOLLER: Is he going to be
9 testifying as an expert on motorcycle riding? Or
10 is he going to be testifying as an expert on sound.

11 MRS. KAMHOLZ: When you are an expert on
12 sound, that includes knowing about a sound that a
13 motorcycle makes or a dirt bike makes or mini bike
14 makes. That is what a sound expert knows about.

15 THE HEARING OFFICER: I am just going to
16 allow him to testify basically what he has here,
17 the alleged numerical violations.

18 BY MRS. KAMHOLZ:

19 Q. Would you say that these readings do
20 show excessive noise and definite violations of the
21 law?

22 MR. GOTTEMOLLER: Objection. What they --
23 he has got to establish how these readings were
24 made, whether they comply with the standards. He

1 knows what the standards are. He helped write the
2 standards. We certainly don't have ten minute
3 A-weighted averages over an hour period of time
4 with these dates and times and places here. I
5 don't think these are drowned noises. These are
6 the readings that she happened to take in those few
7 seconds or those few minutes.

8 THE HEARING OFFICER: I agree with you. I
9 think we have to delve into this a little further.
10 I think at this point I will allow Mr. Zak to give
11 a brief narrative of this Complainants' Exhibit 15
12 how these numbers are arrived and what they mean.

13 THE WITNESS: If we look at the numbers in
14 general, kind of looking at again under the bold
15 answer and the lower case A, and we have a lot of
16 lines of data in there. And we have different
17 dates on there. I think what we are -- I see in
18 this representation here is a pretty significant
19 variation of sound level. I am seeing levels that
20 tend to run anywhere from, say, the mid 60s up and
21 to close to 90. And there may be a 90 in there. I
22 haven't taken the time to go through there and look
23 for --

24 BY MRS. KAMHOLZ:

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1 Q. I believe there is two pages there.

2 A. Okay. Excuse me, looking -- comparing
3 the two pages again, the continuation of the table,
4 I apologize for missing the second page there. We
5 are seeing levels that run from the 60s up to the
6 mid 90s, really a span of 30 decibels. 30 decibel
7 span being a sound ratio of 1,000 to 1 with 90 --
8 something in the mid 90s being 1,000 times greater
9 than mid 60s. So we are seeing a tremendous span
10 of decibel range here going up and down. Again,
11 the ratio of 1,000 to 1.

12 And keeping in mind that the
13 industrial noise limit is around 61. A residential
14 area would normally have a limit, say, if you had a
15 commercial source in a residential area, the limit
16 is approximately 55 dba. So we are -- virtually
17 all our numbers in there is entirely -- a very
18 lengthy table of numbers ranging up to more than
19 1,000 times greater in sound power than would be
20 allowed for an industrial noise source. Up to
21 10,000 times the sound power, which would be
22 allowed for a commercial sound source, which might

23 typically be located close to a residential area.

24 So we are seeing levels here that

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1 based on my several 1,000 measurements of
2 motorcycle noise would have a very significant
3 impact actually. One of the most significant sound
4 impacts I have seen in many, many years.

5 MR. GOTTEMOLLER: Again, I would object at
6 this point in time. First off, we are at a
7 narrative. Second, he still hasn't talked about
8 how these numbers were arrived at. And to take
9 these numbers on a piece of paper and not have them
10 established to the standards that are outlined in
11 the ANSI requirements, again certainly Mr. Zak of
12 all people in this room must be familiar with.
13 That is the problem with the things -- with the
14 numbers.

15 They are not adjusted for A-weighted
16 averages over an hour's period of time. They
17 simply aren't. And for him to testify about his
18 opinions until he has established the veracities of
19 numbers is improper.

20 THE HEARING OFFICER: I still am going to

21 allow him a little narrative room. If Mr. Zak
22 would address Mr. Gottemoller's concerns regarding
23 the A-weighted and so forth -- and I assume you are
24 having a problem with the proper procedures too, as

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1 far as the measuring the noise?

2 MR. GOTTEMOLLER: That's correct. I don't
3 have any -- you know, we have got testimony -- a
4 small amount of testimony concerning a Radio Shack
5 hand-held machine that was calibrated once. And
6 now we have jumped from that to automatically
7 assuming that all of these readings are accurate
8 and that they somehow meet the state guidelines.
9 And there has been no such testimony. And I don't
10 even know at this point in time if Mr. Zak has that
11 knowledge to know that he has the ability to
12 testify to that.

13 THE HEARING OFFICER: Mr --

14 MRS. KAMHOLZ: Objection.

15 THE HEARING OFFICER: I am sorry?

16 MRS. KAMHOLZ: I was objecting to his
17 statement.

18 THE HEARING OFFICER: Overruled.

19 Mr. Zak, are you able to address

20 whether the proper procedures of measurements were
21 followed and so on and so forth in this case?

22 THE WITNESS: Yes, I think so. If I could
23 address that. As far as the one-hour LEQ, that is
24 the appropriate way to measure noise that would

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1 relate to Section 901 of the Board's regulations.
2 For a 900 nuisance, there is a lot more leeway
3 given. What we see here are measurements that are
4 taken on vats and slow meter response, which is by
5 the way the standard way vehicle noise is currently
6 measured under the vehicle regulations.

7 Also the type of meter response we are
8 seeing here was the method used by both the
9 Illinois EPA and the Pollution Control Board up
10 through 1987. In '87 they changed to the LEQ
11 measurement. But using a fast or slow response to
12 obtain measurements for establishing a nuisance
13 situation is a perfectly acceptable methodology to
14 use. And the numbers for that purpose are --
15 should be reasonably accurate.

16 Given the fact it is a Radio Shack
17 meter, it is not a precision meter. Given the fact

18 that we have a person who is not highly trained in
19 using the instrumentation, can we have a degree of
20 error here, yes, I am sure we do. We may have a
21 degree of error five, six, seven decibels possibly.
22 But when we are talking orders or magnitude of
23 1,000 to 1 and 10,000 to 1, an error rate of, say,
24 five or six decibels possible, possibly no error in

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1 there would -- let's take the worst case. If we
2 have a five or six decibel error in there, that is
3 the point of being inconsequential when compared to
4 the great amount of sound levels we see here.

5 THE HEARING OFFICER: Thank you, Mr. Zak.
6 Mrs. Kamholz?

7 BY MRS. KAMHOLZ:

8 Q. You just answered my next three
9 questions. This one I am going to say just in case
10 it is not completely covered. Awhile ago when I
11 showed some video of myself taking decibel
12 readings, even though it was not at all
13 professional or smoothly done, would you say it was
14 well enough to show the accuracy and authenticity
15 of the readings?

16 A. Again, the error there would possibly

17 be a few decibels. I think -- I believe you
18 mentioned the tape when -- during your posture
19 there at times you had the meter not pointed at the
20 noise source, but pointed up, which would give you
21 a slightly lower reading. So if anything, your
22 error in taking the measurements might have caused
23 to you measure a slightly lower number than
24 somebody who has had more experience might measure.

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1 That was my observation of the way you performed
2 the measurements. And you performed the
3 measurements in what appeared to be an acceptable
4 manner.

5 Q. If the Pollution Control Board allows
6 citizen enforcement cases, and this is the way they
7 are advised to go, how would a person go about
8 getting a more professional reading or proof of the
9 noise? I mean, what would a person do to -- how
10 would I be able to hire you to come up and take
11 decibel readings with your expensive equipment when
12 I don't know for sure when they are going to be
13 riding? You know, so is this acceptable
14 considering the way this is set up that citizens

15 can do this? Is what I have done here today
16 acceptable?

17 A. I think your question is the idea
18 behind the methodology here. And the idea behind
19 the methodology is exactly as you state. To put
20 the burden on the average citizen to pay someone
21 like myself to bring the precision instrumentation
22 up and set it up at the right time and catch the --
23 in this case the bike riding would be extremely
24 expensive for the average individual to do.

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1 You would be putting the person in a
2 position where it would be really prohibitively
3 expensive for the average person to afford to do
4 that. It would become something where only a
5 wealthy person could afford to have those kinds of
6 measurements taken. In order to provide the person
7 of average means a means of some documentation --

8 MR. GOTTEMOLLER: I am objecting to his
9 narrative about the people of average means.

10 THE HEARING OFFICER: I agree. Sustained.

11 BY MRS. KAMHOLZ:

12 Q. So what I have done here with my meter
13 reader and my video camera has been done in the

14 past for these type of hearings?

15 A. Yes, it is it has.

16 Q. It is acceptable to the Illinois
17 Pollution Control Board?

18 A. It has in other cases.

19 Q. The respondent's attorney stated in
20 his third affirmative defense that was --

21 MR. GOTTEMOLLER: I object. Affirmative
22 defenses have been stricken by the Pollution
23 Control Board.

24 MRS. KAMHOLZ: You are right.

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1 THE HEARING OFFICER: As I recall, yes, that
2 is true. Sustained.

3 BY MRS. KAMHOLZ:

4 Q. Would you explain what it means to
5 apply point source noise standards to a moving
6 vehicle? What does that statement mean and why?

7 A. Point source in relation to line
8 source are two terms that are used for different
9 types of noise phenomenon. A point source would be
10 a single source of noise. An example would be
11 something that is -- could be moving but is a

12 single point. A line source of noise is typically
13 several objects, for example, traffic where you
14 have a number of vehicles moving in a line. And
15 that then would be considered a line source of
16 sound. And the physics and the methodology used to
17 predict and solve problems of that nature are
18 somewhat different than you do for a point source.

19 What we would be dealing with, for
20 example, in a situation you have in this case, a
21 point would be one where you are dealing with a
22 point source. In other words, the noise source
23 itself is -- while moving, would be still
24 considered a point.

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1 Q. Okay. Why doesn't the dirt bike fall
2 under the same ruling as the motorcycle, the
3 on-the-road bike?

4 A. Probably for the -- one of the same
5 reasons -- a number of reasons. One reason being
6 the same reason that truck traffic -- once it
7 enters property is no longer considered to be --
8 have the protection of a highway vehicle but has
9 been held by the Pollution Control Board to be a
10 property line noise source and dealt with as such.

11 In a situation taking the case we are
12 looking at right now, we have got noise sources
13 that are not licensed for highway use. But even if
14 they were licensed for highway use would still fall
15 under the category of a property line noise source
16 and would be dealt with as such. The vehicle
17 regulations were designed for public roads and
18 taking measurements under very control specific
19 conditions for public roads that basically ensure
20 that individual vehicles meet the manufacturers
21 requirements or the state requirements for the
22 amount of sound they are allowed to be emit on a
23 public road under road conditions.

24 Q. So in other words, a dirt bike is

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1 allowed to make a lot more noise than a motorcycle?

2 A. It all depends where it is operated.

3 Q. That is the next question.

4 A. If it is operated in a remote area,
5 yes, it can make as much noise that it wants. If
6 it is located in an area where you have close
7 proximity of residences or places where people
8 sleep, for example, motels, things like that, or

9 even commercial businesses and it is creating a
10 disturbance, no, it would be in violation of the
11 board regulations for stationary noise.

12 Q. So the off-the-road dirt bike is for
13 competitive activity, racing, stunt riding and high
14 performance. What are some of the obvious reasons
15 these bikes are not at all suitable or acceptable
16 vehicles for a residence area?

17 A. My opinion would be noise as my area
18 of expertise.

19 Q. In your opinion -- scratch that one.

20 Okay. Would it be understandable with
21 these decibel readings that this activity would be
22 upsetting and have an adverse effect on
23 complainants' life?

24 A. Yes.

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1 Q. Could this activity cause fear, stress
2 and concern to the complainants?

3 MR. GOTTEMOLLER: Objection as to what it
4 does to the complainants. He can testify to people
5 in general.

6 THE HEARING OFFICER: I am sorry, Cheryl,
7 could you read the question back?

8 (Record read as
9 requested.)

10 THE HEARING OFFICER: And your objection?

11 MR. GOTTEMOLLER: I don't think that his
12 opinion as to what it is doing to individual
13 complainants is relevant. I think he can talk
14 about it in terms of the general population.

15 THE HEARING OFFICER: Sustained.

16 BY MRS. KAMHOLZ:

17 Q. In your opinion could this level of
18 noise cause emotional stress as claimed by the
19 complainant?

20 A. It could.

21 Q. These vehicles -- the ATVs -- we have
22 some readings on there where the ATV is as loud as
23 the dirt bike. Would you say that that is a -- why
24 could that be?

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1 A. My experience would be -- would tell
2 me it is due to the muffling of the vehicle. That
3 the ATV levels in my experience here are a bit on
4 the high side and would be due to the -- you are
5 comparing the ATV to the dirt bike. And I would

6 say that would fall back on the muffling of both
7 vehicles. And that would be the reason that the
8 ATV would produce as much sound as a dirt bike.

9 Q. Would you say that after viewing the
10 video, the activity of the riding and the decibel
11 readings recorded by the complainant, Mrs. Kamholz,
12 are sufficient enough to prove continuous violation
13 of the act of excessive noise, smelly exhaust fumes
14 and dust as stated by the complainant?

15 MR. GOTTEMOLLER: Objection to smelly
16 exhaust fumes and dust. He is a noise expert.

17 THE HEARING OFFICER: Sustained.

18 BY MRS. KAMHOLZ:

19 Q. Excessive noise?

20 THE HEARING OFFICER: You may answer.

21 THE WITNESS: Could you repeat the question
22 on the noise part, please?

23 BY MRS. KAMHOLZ:

24 Q. After viewing the video, the activity

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1 of the riding and the decibel readings recorded by
2 the complainant, are they sufficient enough to
3 prove continuous violations of excess noise?

4 MR. GOTTEMOLLER: Objection to the word

5 continuous.

6 THE HEARING OFFICER: Sustained.

7 BY MRS. KAMHOLZ:

8 Q. We will take that out. Prove
9 violations of excess noise?

10 A. Yes.

11 Q. Okay. The reason I had continuous in
12 there was because of the continuous riding.

13 Please tell us your ideas and views
14 regarding a solution to this problem.

15 A. I studied the problem and thought
16 about possible solutions to it. Possibly a noise
17 barrier would be in my opinion draconian and would
18 be killing a fly with a sledge hammer. We would be
19 looking at a huge noise barrier between the two
20 residential areas. And even with the barrier of,
21 let's say, 20 feet high and how ever many hundreds
22 of feet long you would want it, the barrier would
23 reduce the sound about 15 dba or A-weighted. And
24 we are looking at a needed reduction of more on the

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1 record of 40 decibels, which the barrier simply
2 cannot provide.

3 However, the problem from what I
4 observed from the tapes and from the information
5 you supplied to me is that the problem has been
6 solved by simply loading the vehicles up on a
7 trailer and taking them off to be ridden in an area
8 that is suited for riding those kind of vehicles.
9 It seems to me that the cost involved there is
10 minimal and the -- that idea of doing that has been
11 proven to be a good idea and very workable because
12 it has been done now for approximately a year. So
13 I can see the alleged violator has solved the
14 problem.

15 MRS. KAMHOLZ: Thank you, Mr. Zak. I have
16 no further questions.

17 THE HEARING OFFICER: Thank you,
18 Mrs. Kamholz.

19 Mr. Gottemoller?

20 CROSS-EXAMINATION

21 BY MR. GOTTEMOLLER:

22 Q. The LEQ readings that you talked about
23 a while ago, those are normally done over at least
24 a one hour's time and averaged for that hour; is

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1 that correct?

2 A. That's correct.

3 Q. And that recorder that -- neither the
4 tape recorder, nor the meter itself were ever used
5 for an hour just watching the tape, were they?

6 A. They are not capable of LEQ.

7 Q. Okay. So these machines aren't even
8 -- this machine that was tested couldn't have done
9 the measurement that would have been required under
10 the 902.102(a) that actually sets the standards; is
11 that correct or is it 901?

12 THE HEARING OFFICER: 901.

13 BY MR. GOTTEMOLLER:

14 Q. 901.102(a).

15 A. That's correct.

16 Q. As far as you are saying the nuisance
17 value, it might show a nuisance because it shows an
18 individual point in time what the meter reading
19 was?

20 A. Correct.

21 Q. But it does not show -- it does not
22 even attempt to show the impact, as you just said
23 the machine is not capable of showing the
24 requirements of the standards under the other

1 section of the statute?

2 A. That's correct.

3 Q. And this meter doesn't do anything in
4 terms of pollution sources, does it, other than
5 noise? It doesn't have a dust meter reading, it
6 doesn't have an air pollution meter reading on it,
7 does it?

8 A. No, it does not.

9 Q. And when you are looking at these
10 readings that were on this exhibit -- you know
11 what, I am sorry, did we mark this exhibit?

12 THE HEARING OFFICER: 15. It has not been
13 admitted yet.

14 BY MR. GOTTEMOLLER:

15 Q. I understand. When you are looking at
16 15, other than as provided to you as ATV or
17 motorcycle or bike, you don't have any independent
18 way of knowing that information, do you?

19 A. The only independent information would
20 be the videotape and having observed the videotape
21 twice.

22 Q. But you didn't match up these readings
23 with the videotape, did you, yourself?

24 A. I didn't actually match them up very

1 carefully. But the numbers represented there
2 versus what I remember from seeing on the videotape
3 seem to correspond fairly well.

4 Q. But you yourself didn't take the
5 effort to do that?

6 A. That's correct.

7 Q. And so you yourself don't know for
8 instance whether the ATV is in this range or the
9 bike is in this range because you didn't make that
10 corresponding jump from one point to the other?

11 A. I would say it is in a general range,
12 though, without actually saying it is exactly 80
13 decibels. But it is in that general vicinity.

14 Q. Well, but the general vicinity you are
15 using is based on your experience in taking
16 motorcycles and ATVs over the years, not based on
17 Exhibit No. 15, is it?

18 A. It is based on Exhibit 15 compared to
19 the videotape that Mrs. Kamholz has taken.

20 Q. When you listened to the videotape,
21 were you also -- did you also hear Mrs. Kamholz'
22 comments in the videotape?

23 A. Some of them, yes.

24 Q. And her comments on the videotape

1 concerning the fact that mini bikes and ATVs were
2 not the problem?

3 A. Yes, I heard that.

4 Q. And yet you are saying today that they
5 should be all banded from this property?

6 A. Yes. Again just from the sound levels
7 that were on the videotape and the ones on
8 Exhibit 15, I would say that that is the most
9 logical solution of the problem.

10 Q. Are you familiar with how the video
11 camera works in this -- that took the tapes?

12 A. In general, yes.

13 Q. Do you know what kind of microphone it
14 has on it?

15 A. Yes.

16 Q. What kind of microphone is it?

17 A. What I would characterize as a very
18 inexpensive one. Typically, it is going to be a --
19 the same type of microphone that you really would
20 find on most video equipment, including the Radio
21 Shack meter.

22 Q. And so that -- does that microphone
23 take an accurate depiction of the sound that is in
24 front of it?

1 A. I need to -- I am not quite sure what
2 you mean by accurate.

3 Q. Well, is it possible that different
4 noises will pick up differently on that camcorder?
5 For instance --

6 A. By different noises, tell me --

7 Q. For instance, there was a point where
8 I made a point in the record earlier this morning
9 that you can hear the airplane at the same time you
10 can hear the motorcycles?

11 A. Yes.

12 Q. Now, would that airplane have been
13 then projecting at the same decibel levels as the
14 motorcycles or is that just a problem with the
15 microphone?

16 A. The camcorder is going to bring up
17 sound levels that are somewhat quieter to make them
18 more audible. And it is going to tend to reduce
19 some of the louder sounds again to prevent the
20 slipping or overloading or distortion of the sound.
21 So you have what they call automatic level control
22 in the camcorder. And that is going to allow you
23 to hear the airplane flying over, hear the ATVs.

24 If one sound source, however, is loud enough that

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1 it can dominate the other one, what you will tend
2 to hear -- and you can hear it on tapes it with
3 T.V. in the background or even the airplane flying
4 over, at certain points in time the motorcycle
5 going by would be able to completely dominate the
6 sound field indicating that it was definitely the
7 loudest source in the area. And that is due to the
8 automatic level control in the camcorder.

9 Q. But as a practical matter, it is not
10 the type of equipment that would -- you would use
11 if you, in fact, were going to try to reproduce
12 this sound; is that correct?

13 A. No. Actually, it is exactly what I
14 would use. It isn't what I would use to get a
15 measure -- measure it, say, according to the Board
16 standards. But as far as presenting a presentation
17 to a group of folks or people in order to have them
18 understand sound, it would be a very good way to do
19 it.

20 Q. But it was not something that normally
21 the Pollution Control Board would permit; is that
22 correct? It is not a standard they would endorse?

23 A. I think they would endorse it as long
24 as there are meter measurements to go along with

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1 the camcorder measurements.

2 Q. But in this instance, we don't have
3 meter measurements other than point in time
4 measurements; we don't have LEQ pursuant to those
5 standards, do we?

6 A. That is true.

7 Q. And in fact in 1987 is when the change
8 was made; is that correct? Since 1987, this type
9 of reading has not been allowed to support the
10 other section of the statute?

11 A. Now, the other section I take it you
12 are referring to 901?

13 Q. 901.102(a) that has the standards
14 outlined.

15 A. Right. Also (b) and 104 also and 106.

16 Q. Okay. But I believe in this instance
17 we were only -- this particular complaint isn't
18 dealing with 104 and 106.

19 A. Okay.

20 Q. So those issues aren't raised?

21 A. I see.

22 Q. But that is not how it would be done
23 today, correct?

24 A. Not to prove a numerical violation,

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1 no.

2 Q. So we don't have any evidence here
3 today of a numerical violation, correct?

4 A. That's correct.

5 MR. GOTTEMOLLER: No further questions of
6 this witness.

7 THE HEARING OFFICER: I am sorry.

8 MR. GOTTEMOLLER: No further questions of
9 this witness.

10 THE HEARING OFFICER: Mrs. Kamholz,
11 redirect?

12 REDIRECT EXAMINATION

13 BY MRS. KAMHOLZ:

14 Q. Just because it is impossible to meter
15 a bike for ten minutes, does that make it
16 ineligible to determine that it is excessive noise?

17 A. No. Quite the contrary. For example,
18 you bring up the time frame of ten minutes and we
19 are talking -- we were just talking about one hour

20 LEQ. If we were to measure, for example, something
21 that was 90 decibels for ten minutes and the next
22 50 minutes there is no sound at all, we would see
23 that sound level of that reading of 90 gradually
24 decay over the next 50 minutes. It would decay

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1 down to a level of perhaps the upper 80s.
2 So -- let me correct that. Upper 70s.
3 So we would see perhaps a 10 or 12 decibel decay in
4 that measurement, but we would have a measurement
5 that would greatly exceed the numerical standards
6 because of the peculiarity of LEQ being an average
7 over a one hour period of time. If we have a very
8 loud sound in a short span of that one hour and
9 then the rest of the hour is total silence, we see
10 that -- we average in all that total silence with
11 the very high measurement and we end up with a
12 lower measurement but a measurement still is
13 considerably -- fairly high compared to the
14 standards for numerical noise. I don't know if I
15 helped you out there or not.

16 MRS. KAMHOLZ: That is all I have.

17 THE HEARING OFFICER: Thank you.

18 Mr. Gottemoller, any recross?

19 MR. GOTTEMOLLER: No recross.

20 THE HEARING OFFICER: Mrs. Kamholz, were you
21 going to ask for this to be admitted into evidence,
22 Exhibit 15?

23 MRS. KAMHOLZ: Yes.

24 THE HEARING OFFICER: Mr. Gottemoller,

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1 objection?

2 MR. GOTTEMOLLER: Yes. I believe that we
3 have already established that, first off, this may
4 or may not be an accurate transcription of what is
5 on the tape. In that respect it is redundant to
6 what is on the tape.

7 THE HEARING OFFICER: I am sorry, I am
8 having --

9 (Short pause in
10 proceedings.)

11 THE HEARING OFFICER: I am sorry,
12 Mr. Gottemoller.

13 MR. GOTTEMOLLER: First off, my first issue
14 is that it is redundant to what is on tape, if this
15 purports to be an accurate reflection of what is on
16 the tape. The problem is we don't have testimony

17 in front of us as to how this list was created,
18 other than it appears to have been the answer to
19 one of her interrogatories that she gave me in the
20 past. This witness cannot corroborate these
21 individual readings. He does not have any basis of
22 doing that. They aren't his measurements. He
23 didn't, in fact, look at the tape to corroborate
24 them.

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1 THE HEARING OFFICER: Here is what I am
2 going to do. I am going to admit it. It will be
3 weighed accordingly, not so much for the alleged
4 numerical violations, but to support or bolster her
5 claim of a nuisance noise violation. So exhibit --
6 Complainants Exhibit 15 is admitted with that
7 caveat. Thank you.

8 (Whereupon document so
9 offered was received in
10 evidence as Complainants
11 Exhibit No. 15.)

12 THE HEARING OFFICER: No further questions,
13 Mr. Zak. You can step down.

14 Mrs. Kamholz, are you finished with

15 your case-in-chief?

16 MRS. KAMHOLZ: Yes, I am.

17 THE HEARING OFFICER: Do you want to take a
18 minute?

19 MR. GOTTEMOLLER: Give me five minutes. Let
20 me talk to my clients and maybe we can wrap this.

21 THE HEARING OFFICER: We are off the record.

22 (Short recess taken.)

23 THE HEARING OFFICER: We are back on the
24 record. It is approximately 3:30. The

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1 complainants have rested in their case-in-chief. I
2 turn it over to Mr. Gottemoller and the
3 respondents.

4 MR. GOTTEMOLLER: Mrs. Sporleder, please.

5 (Witness duly sworn.)

6 MARIANE SPORLEDER,
7 called as a witness herein on behalf of the
8 respondents, having been first duly sworn, was
9 examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. GOTTEMOLLER:

12 Q. Would you state your full name for the
13 record and spell your last name?

14 A. Mariane Sporleder, S-p-o-r-l-e-d-e-r.
15 Q. And where do you live?
16 A. 1316 Sullivan Road, Woodstock,
17 Illinois.
18 Q. Which is immediately next door to the
19 Kamholzes; is that correct?
20 A. Yes, correct.
21 Q. And how long have you lived there?
22 A. About 30 years.
23 Q. 1973?
24 A. Correct.

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1 Q. And when is the last time you had a
2 conversation with Mrs. Kamholz?
3 A. It has been a long time, I know that.
4 It was way back when the burning started.
5 Q. What happened with the burning issue?
6 A. She called me on the phone and she
7 asked me what Larry was doing. And I said I did
8 not know what he was to doing. And she asked me if
9 I was brain dead. And I said excuse me. And she
10 says you don't know what he is doing. I says, no,
11 I don't keep tabs on him when he is outside. He is

12 a grown man.

13 Q. And that is the last -- that was right
14 before the ticket with the -- or the citation
15 concerning the burn pile?

16 A. Correct.

17 Q. And whatever happened to that ticket
18 when it got to court?

19 A. It was thrown out.

20 Q. And that was about 1993?

21 A. Correct.

22 Q. And since 1993, you have not had any
23 phone conversations or calls from these people?

24 A. No, none.

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1 Q. And that decision to not have any
2 other conversations, has that caused a lot of
3 stress between the two families?

4 A. Yes, it has.

5 Q. And do you think -- well, it doesn't
6 matter.

7 Going on to the bike riding itself,
8 when was there first mini bikes or motorcycles
9 ridden in this area?

10 A. Oh, my, seventeen years ago I think,

11 '75, 1975.

12 Q. 1975 was when the first motorcycles
13 were --

14 A. '76.

15 Q. When the first motorcycles or mini
16 bikes showed up?

17 A. Yes.

18 Q. Did your children ride them too?

19 A. Yes.

20 Q. And who provided those mini bikes at
21 the time?

22 A. Well, the first mini bikes came from
23 Mr. And Mrs. Kamholz. They -- their girls had one.
24 They had a little blue mini bike which they come

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1 over and rode with our girls. And that is how it
2 all started.

3 Q. And fast forward 20 years, and it is
4 1995 or '96, '97, excuse me, we have seen some
5 pictures of the truck being driven around the yard.
6 Where did that truck come from?

7 A. Donald purchased that -- or got that
8 given to him from the neighbor, the farmer down the

9 road. It was not running. And he likes to work on
10 engines and do things like this. So we got the
11 truck and left him work on it to make it run
12 because he was -- he wasn't of age yet to drive.

13 Q. And so that is why he was driving it
14 on the property?

15 A. Correct.

16 Q. Now, has he driven that truck or any
17 truck or car since 1997 on the property other than
18 in and out the driveway maybe when he was going
19 some place?

20 A. Correct.

21 Q. But since 1997, there have been no
22 other truck incidents on this property?

23 A. Not that I can recall, other than him
24 driving back to hook up on the trailer or something

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1 like that.

2 Q. Well, but the incidents complained of
3 are really not someone going to pick up a trailer
4 that is behind the barn or something like that, is
5 it?

6 A. I wouldn't think so.

7 Q. Did your grandson have the opportunity

8 to learn anything from working on the bikes and
9 cars?

10 A. Yes.

11 Q. Was there any value -- I mean besides
12 -- has it been his hobby over the years --

13 MRS. KAMHOLZ: Objection.

14 THE HEARING OFFICER: Mrs. Kamholz?

15 MRS. KAMHOLZ: It is irrelevant.

16 THE HEARING OFFICER: I am sorry. Cheryl,
17 could you read the question back, please?

18 (Record read as
19 requested.)

20 BY MR. GOTTEMOLLER:

21 Q. And the rest of my question is to work
22 on motorcycles, cars, engines?

23 A. Correct.

24 THE HEARING OFFICER: Overruled.

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1 MRS. KAMHOLZ: I wasn't objecting to that.
2 I was objecting to the question of was it a value
3 to his education working on the truck.

4 THE HEARING OFFICER: I agree it is
5 irrelevant, but she didn't answer.

6 MR. KAMHOLZ: It was an objection before she
7 answered.

8 THE HEARING OFFICER: Thank you, until it
9 comes up again.

10 BY MR. GOTTEMOLLER:

11 Q. For clarification purposes, it was my
12 understanding that the socioeconomic value of the
13 pollution source ultimately could be an issue if,
14 in fact, the Board were to review that a declared
15 nuisance source. And I think that their grandson's
16 education in terms of his learning and the value of
17 learning about vehicles and -- that has some -- or
18 the value of pursuing his hobby is relevant to --

19 MRS. KAMHOLZ: What does that have to do
20 with the noise and the -- it has nothing do with
21 the noise and him driving the truck around the
22 property like he did.

23 THE HEARING OFFICER: Well, I think
24 Mr. Gottemoller is correct when the Board looks at

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1 the socioeconomic value. So I will allow the
2 question to remain. You can ask it again,
3 Mr. Gottemoller.

4 BY MR. GOTTEMOLLER:

5 Q. Was there any social value in him
6 learning to work on motorcycles and cars?

7 A. Yes.

8 Q. What was that value in your mind?

9 A. Well, he has learned how to fix
10 motors. And with him driving in the back end after
11 he fixes them, he is testing them to see if they
12 run.

13 Q. And --

14 MRS. KAMHOLZ: Objection.

15 THE HEARING OFFICER: You can direct the
16 objection to me and then lay your grounds.

17 MRS. KAMHOLZ: Objection. I am sorry, I
18 forgot the question now. Could you repeat that
19 last question, please?

20 (Record read as
21 requested.)

22 MR. GOTTEMOLLER: The vehicle -- the trucks
23 themselves --

24 THE HEARING OFFICER: Where are we on this

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1 objection?

2 MR. KAMHOLZ: Well, the driving took place

3 every day.

4 MRS. KAMHOLZ: He wasn't testing anything.

5 MR. KAMHOLZ: It wasn't in between working
6 on them, so it couldn't have been for testing.

7 THE HEARING OFFICER: Mr. Gottemoller?

8 MR. GOTTEMOLLER: Well, as a practical
9 matter, her answer is that he used to, in fact,
10 test these vehicles. They can certainly dispute
11 the factual allegations as to whether or not he was
12 testing them or what he was doing, and the
13 Pollution Control Board can make that decision. It
14 is not a proper objection to the question.

15 THE HEARING OFFICER: I am going to allow
16 the answer to stand. I am not sure if it was
17 answered or not.

18 MR. GOTTEMOLLER: It was answered.

19 BY MR. GOTTEMOLLER:

20 Q. Did you ever object to the riding of
21 motorcycles or mini bikes when your neighbors were
22 doing it?

23 A. Pardon me?

24 Q. Did you ever object to the riding of

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1 motorcycles or mini bikes when your neighbors were

2 doing it?

3 A. No.

4 Q. Has the noise produced by these

5 machines ever impacted your health?

6 A. No.

7 Q. Has it ever caused you loss of sleep?

8 A. No.

9 Q. Have you ever allowed your grandson to

10 ride these in the middle of night?

11 A. No.

12 Q. Never after 10:00 p.m.?

13 A. After 8:00 was our cutoff.

14 Q. And how early in the morning would you

15 allow it to be?

16 A. Not before 11:00.

17 Q. So roughly 11:00 in the morning to

18 8:00 at night would be the absolute outer limits of

19 the time you would allow?

20 A. Correct.

21 Q. And did he ride these vehicles every

22 single day of the week?

23 A. No.

24 Q. How often did he ride them?

1 bike.

2 Q. Are there any other ATVs on the
3 property?

4 A. Yes. Larry has one he owns, which he
5 uses for garden work, watering trees and pulling
6 his little trailer around.

7 Q. When he is using his -- Larry you are
8 referring to is your husband, correct?

9 A. Yes.

10 Q. When he is using the ATV, what is he
11 doing? He is pulling behind it with a trailer or
12 what is he doing?

13 A. He is pulling a little trailer that he
14 uses, like I said, to water the trees and do garden
15 work.

16 Q. And has there -- has anyone ever
17 raised a complaint concerning the use of that
18 vehicle under those circumstances?

19 A. I have never heard one.

20 Q. Do the children ever ride that ATV?

21 A. Yes. I even do. I give the little
22 ones a ride around the property on it. They like
23 doing that.

24 Q. Any idea what the noise levels are

1 when you are giving them -- the kids a ride?

2 A. I am sure it is not that much because
3 I don't go that fast with little kids on there.

4 Q. But when you are not going fast with
5 these vehicles, it is not a problem?

6 A. No.

7 Q. Did your neighbors ever contact you to
8 try to resolve this issue from 1993 on?

9 A. No. If she would have called me on
10 the phone and tried talking to me in a nice manner,
11 I would have said, okay, I will have them stop
12 riding over there on our property.

13 Q. In fact, at some point in time you had
14 them stop riding that direction, didn't you?

15 A. Yes, I did.

16 Q. Showing you Exhibit No. 13 on the
17 portion marked Sporleder property, is that -- can
18 you tell me how you had the pattern changed to try
19 to avoid this problem? Did you get your bearings
20 on that document or not?

21 A. Well, up here they usually rode behind
22 the barn, which she called a dirt bike
23 (indicating).

24 Q. The dirt bike track behind the barn?

1 A. Yes, from them going around and around
2 in circles. And then he would cut through -- I had
3 them cut off the corner up there by the Kamholz'
4 house. So they would going around here and cut
5 through down here and go around and back.

6 Q. So your intention to try to solve some
7 of this problem was to have them avoid the corner
8 by their home; is that right?

9 A. Yes, correct.

10 Q. And that corner is the northwest
11 corner of your property -- northeast corner of your
12 property?

13 A. Yes.

14 Q. And then it would have been -- their
15 home is actually located on their parcel of land on
16 their southeast corner?

17 A. Correct.

18 Q. That's correct?

19 A. Correct.

20 Q. And whatever -- and Mrs. Kamholz when
21 she created that document, the bike path is kind of
22 an angled bike path? That is the one that you had
23 the boys ride in order to avoid going past her

24 home; is that right?

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1 A. Correct.

2 Q. Did you do anything else to try to
3 hold the noise down?

4 A. Well, Don just quit riding. We are
5 not going to ride there anymore.

6 Q. So as a practical matter, he hasn't
7 ridden there in almost a year; is that right?

8 A. We built a fence up there now, a
9 privacy fence. And we had evergreens we put up
10 there to try and block the noise.

11 Q. But he also hasn't been by riding
12 there since that time, correct?

13 A. Correct.

14 MR. GOTTEMOLLER: I have no further
15 questions.

16 THE HEARING OFFICER: Thank you.

17 Mrs. Kamholz, cross, please.

18 CROSS-EXAMINATION

19 BY MRS. KAMHOLZ:

20 Q. You said that the last time we spoke
21 was about 1993 and I had called you on the phone.

22 A. Correct.

23 Q. And you said I asked you if you are
24 brain dead.

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1 A. Yes, that's correct.

2 Q. Didn't I say, in fact, are you dead?

3 A. No. You said are you brain dead
4 because I was very angry and upset over it.

5 Q. In fact, didn't I say are you alive,
6 Mariane?

7 A. I don't recall any of that.

8 Q. I don't believe -- I think -- didn't
9 I, in fact, say are you alive, Mariane?

10 A. No, you did not.

11 Q. And when I called to ask you about the
12 fire that Larry was burning -- Lawrence, I am
13 sorry, what did I tell you about the fire -- why
14 did I call you about the fire?

15 A. You said because you couldn't stand
16 the smell.

17 Q. What was Larry burning?

18 A. I don't recall any more what it was
19 because this is -- you are talking way back over 10
20 years, 15, 20 years ago.

21 Q. Isn't it a fact that the burning
22 started about 1993?

23 A. Yeah, yes.

24 Q. And how long did it last?

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1 A. I don't recall.

2 Q. Did I ever complain about the burning
3 before that phone call?

4 A. I don't remember. I think you did.

5 Q. In fact, I --

6 A. We burned in a burn barrel, which was
7 okay'd by the county. And burning was permissible.
8 I mean when he trimmed the bushes or the trees, he
9 would stick it in the burn barrel and burn it.

10 Q. You are saying that he burned -- are
11 you saying that he only burned branches and trees?

12 A. And maybe some papers.

13 Q. And maybe some papers. You never
14 burned garbage?

15 A. No.

16 Q. You never burned diapers?

17 A. No.

18 Q. And garbage?

19 A. No.

20 MR. GOTTEMOLLER: I believe this is well
21 outside the --
22 MRS. KAMHOLZ: It is not.
23 MR. GOTTEMOLLER: -- petition itself.
24 THE HEARING OFFICER: I will allow a little

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1 leeway. The fire issue was brought up.
2 BY MRS. KAMHOLZ:
3 Q. Isn't it true that you never had
4 garbage pickup?
5 A. No. We share our garbage with our
6 neighbor.
7 Q. When did you start sharing your
8 garbage?
9 A. We have been doing that for a long
10 time.
11 Q. Do you know when?
12 A. '91.
13 Q. Isn't it true that I offered my
14 garbage service to you --
15 A. Well, our neighbor did not complain
16 over things we did. And they didn't have hardly no
17 garbage. So he says you ain't got much garbage, so

18 why don't we combine.

19 Q. Why did I offer Larry our garbage
20 service?

21 A. I have no idea.

22 Q. What was Larry burning on a daily
23 basis?

24 A. I have no idea.

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1 Q. Okay. In our county it is illegal to
2 burn garbage.

3 A. We did not burn garbage.

4 Q. And it was determined that you were
5 burning garbage --

6 A. No, ma'am.

7 Q. -- before you started using a garbage
8 -- the neighbor's garbage pickup. And for three
9 years --

10 MR. GOTTEMOLLER: If she wants to testify,
11 we will put her back under oath.

12 THE HEARING OFFICER: Is that an objection?

13 MR. GOTTEMOLLER: Yes.

14 THE HEARING OFFICER: Sustained.

15 MRS. KAMHOLZ: She can't seem to answer any
16 of my questions for me, so I don't know how to get

17 my point across.

18 BY MRS. KAMHOLZ:

19 Q. Isn't it true that I used to ask Larry
20 almost on a daily basis towards the end of our
21 friendship to please stop burning noxious smelling
22 items?

23 A. You have to talk to him about that
24 because --

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1 Q. Okay.

2 A. I do not know about that. As far as I
3 know, he did not burn anything like that.

4 Q. Isn't it true that the last time we
5 spoke I called you and said there was a six-hour
6 fire going and what is he burning?

7 A. Where was the fire?

8 Q. In your burn barrel and that is when I
9 called you to ask you what is he burning and you
10 got mad and I said --

11 A. We have never had a six-hour fire
12 burning.

13 Q. Was there a citation issued to you?

14 A. Yes. But it was also thrown out of

15 court.
16 Q. Did -- court?
17 A. Yes.
18 Q. Did this go to court?
19 A. Yes.
20 Q. Why was I not informed?
21 A. I have no idea.
22 Q. I am --
23 A. You turned it in.
24 Q. I was the one that turned it in, and I

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1 was not informed of any court date.
2 A. I have no idea.
3 Q. You did away the with the burn barrel
4 at that time, didn't you?
5 A. Yes, we did.
6 Q. Did they order you to?
7 A. I don't remember. I don't believe so.
8 No.
9 Q. Did they find you were guilty of
10 burning garbage and noxious stuff?
11 A. No.
12 Q. And order you to stop burning it?
13 A. No.

14 Q. Isn't it true that the last time we
15 spoke when you -- when I asked you what the six
16 hour -- what he is burning for six hours and you
17 said I don't know and that is when I made the
18 remark are you alive?

19 A. You didn't say are you alive. You
20 said are you brain dead.

21 Q. And what did you say after that?

22 A. I was shocked to here you call me
23 brain dead.

24 Q. Did you call me something at that

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1 point?

2 A. No, I never called you anything.

3 Q. You did not call me anything and tell
4 Larry to take the phone and talk to the --

5 A. I never said anything like that.

6 MR. KAMHOLZ: Like what?

7 THE WITNESS: Don't even insinuate or go
8 that route because I never said that.

9 BY MRS. KAMHOLZ:

10 Q. You understand you are under oath.

11 A. Yes, ma'am.

12 Q. Okay. Are you saying that every time
13 Donald drove that truck he was just testing it?

14 A. Yes. He would put different parts on
15 the truck and then he would take for a ride.

16 Q. A ride?

17 A. Yes, down through --

18 Q. Is testing it for two hours at a
19 time --

20 A. He never tested that tuck for two
21 hours at a time, Ginnie.

22 Q. How do you explain what you have seen
23 on the video?

24 A. I can put a video together and say

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1 this was running two hours, four hours, six hours.

2 Q. The time is on the video.

3 A. I don't care. You can start it and
4 you can put a time on it, but that doesn't mean he
5 was running for six hours.

6 Q. Was the boy riding with him? Was he
7 testing something too?

8 A. He was checking the speedometer to
9 see.

10 Q. Is that why they were drag racing?

11 A. They were not drag racing.

12 Q. Okay. Okay. You said on this
13 property that they only rode this way (indicating)?

14 A. To start out, they were doing an L.
15 But after you complained, I had them go around here
16 and go down towards our garden and back. So they
17 would not go to the corner by your house.

18 Q. When did they --

19 THE HEARING OFFICER: For the record and for
20 the Board, Mrs. Sporleder is pointing to the
21 diagonal track on the diagram.

22 MRS. KAMHOLZ: Yes.

23 THE HEARING OFFICER: You may proceed.

24 Thank you, Mrs. Kamholz.

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1

2 BY MRS. KAMHOLZ:

3 Q. Now, he had this truck in 1997. I
4 wrote to you in 1995, August of 1995. Did you get
5 my letter?

6 A. No.

7 Q. It was sent registered and you signed
8 for it.

9 A. In '95?

10 Q. August of 1995 I wrote you a letter
11 asking you to please stop the noise.

12 A. Is that the -- is that one registered.
13 No.

14 Q. You never got the registered letter?
15 You never read that letter?

16 A. Un-un.

17 Q. You claim if I had called you and
18 asked you to stop the noise you would have stopped
19 it.

20 A. Yes, ma'am.

21 Q. The letter didn't work and we weren't
22 speaking. Why would -- if I had called you, you
23 would have stopped the riding?

24 A. Yes, ma'am.

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1 Q. You said you stopped the boys from
2 riding up around our house after we complained. We
3 complained in 1995. I didn't even start
4 videotaping --

5 MR. GOTTEMOLLER: I have to object at this
6 point. The only letter ever admitted in this
7 matter is Exhibit No. 6, and it is dated

8 August 8th, 1996.

9 THE HEARING OFFICER: Mrs. Kamholz?

10 MRS. KAMHOLZ: I am sorry, 1996. That is
11 my mistake. 1995 is when Donald was riding. And
12 then the letter came in 1996 to complain about the
13 noise from Donald's riding after we listened to it
14 for a year. I am sorry for the mistake. It was
15 1996 that I wrote and asked you to please stop it.
16 But you say you didn't get that letter.

17 THE WITNESS: Could I say something here?

18 BY MRS. KAMHOLZ:

19 Q. Yes.

20 A. The only reason why we let Donald do
21 this was to give him things to do to keep him out
22 of trouble, keep him off the streets. We knew
23 where he was. He was enjoying himself.

24 Q. Aren't there other ways to keep boys

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1 busy? There is basketball, football, sports, did
2 he ever participate in any sports?

3 A. All kids don't like things like that,
4 Ginnie. They like more stock car racing, things
5 like that.

6 Q. But didn't you realize that by letting
7 him do what he was doing, that he was ruining our
8 lives or causing -- annoying us terribly?

9 A. No.

10 Q. The letter says that?

11 A. I sat right out on my patio and
12 watched him. And he rode right by me sitting
13 there.

14 Q. Do you hear him when he rides?

15 A. Yes.

16 Q. How loud do you -- I have never seen
17 you sit on your patio when he is riding. How would
18 you describe the noise that you hear when he is
19 riding?

20 A. I must be used to it because it don't
21 bother me. I go to the stock car races. I sit and
22 listen to stock car races. This does not bother
23 me. I enjoy these sort of things. I enjoy
24 watching the kids ride.

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1 Q. Okay. Well, the fact that he doesn't
2 ride near your patio might have something to do
3 with that. You said he rides this diagonal thing,
4 and that you stopped him after we complained, that

5 you stopped him from coming by our house.

6 A. Right.

7 Q. I didn't start videotaping until the
8 1997 because I didn't have a camcorder. Every bit
9 of my video shows them riding the property line and
10 turning around. Even the truck pictures will show
11 Exhibit No --

12 MR. GOTTEMOLLER: I think we are going to a
13 location in time. She talking about the complaint
14 in this case, not the complaint in -- not in your
15 letter of 1996 that she didn't get.

16 THE HEARING OFFICER: Mrs. Kamholz, I am a
17 little confused as well.

18 MRS. KAMHOLZ: Where did I get lost?

19 MR. KAMHOLZ: There is some conflict in the
20 statements and I think you are trying to prove it
21 and you got out of the length of time. She stated
22 that they would have stopped the riding had you
23 asked them to. And your problem was you did ask
24 them to in 1996. And from there on, it never did

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1 stop.

2 BY MRS. KAMHOLZ:

3 Q. I am sorry, I thought I established
4 that. My mistake. I did establish that in 1996 I
5 wrote you the letter. So I don't know why would
6 you say that you would stop it if I was to call you
7 after I wrote you a letter and --

8 A. Because I think we should have
9 discussed it like adults.

10 Q. Could you have called me after you
11 received that letter? Do you know what the letter
12 said?

13 MR. GOTTEMOLLER: She already established
14 she didn't receive the letter.

15 THE HEARING OFFICER: She established about
16 eight times that she did not -- she testified she
17 did not receive the 1996 letter.

18 MRS. KAMHOLZ: A certified letter, how can
19 she state she didn't receive it?

20 THE HEARING OFFICER: Ma'am, that is what
21 the record will bear out. That is what she
22 testified to.

23 BY MRS. KAMHOLZ:

24 Q. So it was my mistake because I didn't

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1 call you. So since then, we are listening to this

2 noise because I didn't call you or notify you that
3 you were disturbing us.

4 You stated -- I am going back to the
5 riding now of the truck and where she said they
6 could ride and where they couldn't ride. If you
7 look at picture No. 1 in Exhibit 7, picture No. 1
8 and picture No. 2 -- this is in 1997. This is
9 after the dirt bike, in fact. He didn't have the
10 dirt bike at that time. He just had the truck.
11 Now, where is his truck compared to the property
12 line?

13 A. Well, here is our fence (indicating).
14 I would say he is about 30 feet from the property
15 line --

16 Q. Now, look at page 2.

17 A. -- if not more. I am not good at
18 these judgment of feet, I will tell you that.

19 Q. Well, he is about approximately --
20 what would you say? Is he where you said he rides?
21 Is he in this diagonal area and cutting across?

22 A. No, this is before.

23 Q. This is in 1997.

24 A. This is before he stopped riding up in

1 that area.

2 Q. He has never stopped riding in that
3 area. Do you --

4 MR. GOTTEMOLLER: If she wants to testify,
5 she can.

6 THE HEARING OFFICER: Mrs. Kamholz, please.

7 MRS. KAMHOLZ: Sorry.

8 BY MRS. KAMHOLZ:

9 Q. Have you ever seen him ride the
10 property line?

11 A. Yes, I watched him.

12 Q. Well, you just said he goes this way
13 (indicating.)

14 A. After we told him to stop --

15 Q. You have not --

16 A. -- he goes diagonal.

17 Q. He always goes diagonal now?

18 A. After we told him to stop. Lately he
19 has not been riding.

20 Q. The ATV you talked about, the ATV on
21 video, is that the same ATV -- which ATV is that,
22 is that Larry's ATV or Donald's ATV?

23 A. I don't know. Let's see that one. It
24 is Larry's.

- 1 Q. Does Donald ever ride Larry's ATV?
- 2 A. Once in awhile. But not that --
- 3 Q. Does the loud ATV belong to Donald or
4 Larry?
- 5 A. Larry is the only one that owns that.
6 Donald does not own an ATV.
- 7 Q. Does Donald ride an ATV?
- 8 A. Once in awhile he will ride on it.
- 9 Q. Are there two ATVs at your house?
- 10 A. Yes.
- 11 Q. Is one very, very loud?
- 12 A. No. Neither one of them is loud.
13 They both got mufflers on. And they are not loud.
14 One is a brand-new one.
- 15 Q. You stated that you gave the kids
16 rides. How often have you ridden that ATV?
- 17 A. I don't know, whenever she brings her
18 little kids over and they want to ride. I don't
19 monitor how often she comes over, Ginnie, and when
20 they want to ride.
- 21 Q. You said that when you ride, you give
22 the kids a ride, that noise and dust is not a
23 problem because you don't go that fast.
- 24 A. No.

1 Q. When Donald rides, is noise a problem?

2 A. Not with me.

3 Q. Not with you?

4 A. No. You can't create a dust on grass.

5 Q. Well, how about when you ride over and
6 over and over and you ruin the grass and then you
7 leave dirt?

8 A. Yes, correct.

9 Q. When wheels hit dirt, they create
10 dust?

11 A. Correct.

12 Q. The faster the wheel goes on dirt, the
13 more dust it raises; is that correct?

14 A. That's correct.

15 Q. Okay. The way Donald rides, would you
16 say that he kills the grass and raises dust?

17 A. Maybe by going over and over and over
18 again, yes.

19 Q. Does Donald ride the same way you do?

20 A. Sometimes.

21 Q. Does he ride the same way the little
22 grandchildren do?

23 A. Now, Ginnie, no.

24 Q. How does Kelly ride?

1 A. He rides the same way Don does.

2 Q. Yes. Of course.

3 MRS. KAMHOLZ: I have no further questions.

4 THE HEARING OFFICER: Thank you,
5 Mrs. Kamholz.

6 Any redirect, Mr. Gottemoller?

7 MR. GOTTEMOLLER: Just a couple.

8 THE WITNESS: Could I say one thing. We
9 were talking about burning and everything, what
10 about last Thursday night when Mickey and you had
11 the biggest bonfire going over there at your house?

12 MRS. KAMHOLZ: It has nothing to do with
13 this case.

14 THE WITNESS: Well, that is pollution.

15 MRS. KAMHOLZ: But burning yard waste is
16 legal when you are over 600 feet away from
17 someone's residence.

18 THE WITNESS: Not after 5:00 o'clock. No,
19 Ginnie.

20 MR. GOTTEMOLLER: That is a county
21 regulation.

22 REDIRECT EXAMINATION

23 BY MR. GOTTEMOLLER:

24 Q. Just to clarify things, the first time

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1 you --

2 MRS. KAMHOLZ: Is this off the record?

3 THE HEARING OFFICER: This is on the record.

4 MR. GOTTEMOLLER: This is redirect.

5 THE HEARING OFFICER: He is redirecting.

6 BY MR. GOTTEMOLLER:

7 Q. The first time you told your grandson
8 to go the diagonal route was after the complaint
9 was filed; is that correct?

10 A. Correct.

11 Q. As far as the various ATVs in the
12 household are concerned, do you know who owns what?

13 A. Yes.

14 Q. I will call your husband. He can talk
15 about which one is his.

16 A. You have the picture there in front of
17 you.

18 MR. GOTTEMOLLER: I have no further
19 questions.

20 THE HEARING OFFICER: Mrs. Kamholz, any
21 recross?

22 MRS. KAMHOLZ: Yes. One quick one.

23

REXCROSS-EXAMINATION

24 BY MRS. KAMHOLZ:

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1 Q. The complaint was filed in September.
2 It was sent registered mail. They didn't get that
3 one either. So she is saying -- you are saying
4 that you told -- that he has ridden only diagonally
5 since you got the complaint?

6 A. Yes. And then later on he quit riding
7 because he goes elsewhere. He hasn't been riding,
8 if you noticed.

9 Q. Okay. Well, we have him on video on
10 the property line. Did you see the video?

11 A. Yes. It was hard for me to see, but I
12 seen it.

13 Q. In November, and he was riding the
14 property line; is that correct?

15 MR. GOTTEMOLLER: I will note for the record
16 that the complaint was served in December of 2001.

17 THE HEARING OFFICER: Thank you.

18 MRS. KAMHOLZ: Objection. The complaint
19 was -- I have verification and documentation of the
20 complaint being delivered on November 11th by a

21 service.

22 THE HEARING OFFICER: I think there was a
23 board order addressing that.

24 MR. GOTTEMOLLER: It is whatever it is. I

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1 will stipulate.

2 THE HEARING OFFICER: The Board will take
3 notice and is cognizant of its own orders and when,
4 in fact, the complaint in their eyes was served.

5 So you may proceed.

6 MRS. KAMHOLZ: So you don't need the proof?
7 I have evidence of it.

8 MR. GOTTEMOLLER: It is already in the
9 record.

10 THE HEARING OFFICER: I think it is in the
11 record already.

12 MRS. KAMHOLZ: Yes. Okay. No further
13 questions.

14 THE HEARING OFFICER: Thank you.

15 MR. GOTTEMOLLER: Mr. Sporleder.

16 (Witness duly sworn.)

17 LAWRENCE SPORLEDER,
18 called as a witness herein on behalf of the
19 respondents, having been first duly sworn, was

20 examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. GOTTEMOLLER:

23 Q. Would you state your full name for the
24 record please?

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1 A. Lawrence Sporleder, S-p-o-r-l-e-d-e-r.

2 Q. And you lived at your current
3 residence since 1973?

4 A. Right.

5 Q. And currently you use several vehicles
6 in order to maintain your property; is that
7 correct?

8 A. That I do.

9 Q. What vehicles do you use to maintain
10 your property?

11 A. I have a '93 Polaris 350 ATV. I also
12 have a 1946 Ellis Chalmer tractor with a motor on
13 it.

14 Q. Is this a picture of your '93 Polaris?

15 A. Yes, it is.

16 Q. I have it marked as Exhibit No. 1.

17 And have either of your sons ridden this very often

18 -- or grandsons, excuse me, do they ride that?

19 A. They don't ride it too much because it
20 is mine.

21 Q. And when you use that vehicle, what do
22 you do with it in terms of maintaining your yard
23 work?

24 A. I have a trailer that I hook to the

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1 back end. And I haul yard waste around and dirt
2 and whatnot.

3 Q. Now, there is some piles of dirt on
4 your yard; is that correct?

5 A. Correct.

6 Q. What were those piles for?

7 A. They were to be spread around my house
8 in low spots and her now flower garden and some
9 friend of mine, his grandson, said he could use
10 part of it. So I said he can come and get it any
11 time he wanted to.

12 Q. In fact, in the tapes that have been
13 admitted, there is probably 15 or 20 minutes of you
14 shoveling from those dirt piles; is that correct?

15 A. Yes.

16 Q. And when you shovel those dirt piles,

17 you weren't riding a motorcycle or anything else?

18 A. No.

19 Q. In fact, in those pictures you are
20 driving a tractor and the trailer hooked to the
21 tractor; is that correct?

22 A. That is correct.

23 Q. And your use of this when you use
24 these vehicles, do you make any loud noises on

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1 them?

2 A. How can you with a muffler on it?

3 Q. There is no pictures of you or
4 videotape of you riding up and down the property
5 line, is there?

6 A. Not that I am aware of.

7 Q. In fact, have you ever ridden up and
8 down the property line on this --

9 A. Many times.

10 Q. At high rate of speed?

11 A. I probably have at one time or
12 another.

13 Q. And when this hearing is over, do you
14 intend to be able to use your ATV to go and work on

15 your property?

16 A. I didn't buy it to satisfy the
17 neighbors.

18 Q. Your neighborhood itself, what are the
19 surrounding properties to your home? Do you have a
20 neighbor on the other side of you from the Kamholz?

21 A. Very nice individual. Him and I get
22 along fine.

23 Q. Is that parcel a five-acre parcel?

24 A. It is six.

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1 Q. So the road that you are on has
2 several five or six-acre family home sites?

3 A. Correct.

4 Q. Do you know what the zone
5 classification of your property is?

6 A. It is estate zoning, I believe.

7 Q. Estate 5?

8 A. Right.

9 Q. And the property to the other side of
10 the road from you, the other side of Sullivan Road,
11 do you know what that is zoned?

12 A. That is still zone farm. But they
13 have ATVs also.

14 Q. And in fact, do people ride ATVs on
15 that property?

16 A. Yes, they do.

17 Q. Are any -- you are not the people that
18 are riding the ATVs on that property?

19 A. No.

20 Q. But there are others that have?

21 A. Yes.

22 Q. Do they ride them up and down Sullivan
23 Road?

24 A. I have never seen them actually on the

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1 road. But I have seen them on the ditch line.

2 Q. On the ditch line on the other side of
3 your home?

4 A. Correct.

5 Q. Are you aware of the Kamholz that are
6 complaining about that use?

7 A. I have never heard of them complaining
8 of them, nor the neighbors to the north who has a
9 dirt bike.

10 Q. Have you had any conversations with
11 the Kamholzes since 1993?

12 A. Not that would amount to anything.

13 Q. Has the noise from your grandson's
14 riding ever bothered you?

15 A. No.

16 Q. Do you have any problem with kids
17 riding motorcycles, mini bikes, ATVs, go carts?

18 A. I used to encourage him to have his
19 friends come over and ride with him.

20 Q. And why was that?

21 A. What else can a kid do out in the
22 country like that.

23 Q. Did they ever cause any real damage to
24 your property as a result of this?

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1 A. Not as far as I was concerned.

2 Q. Did they ever -- did the air pollution
3 ever impact you?

4 A. No.

5 Q. Is there anything unusual about these
6 vehicles that would make them more -- that would
7 give them a greater degree of pollution from
8 these --

9 A. I don't see how. There is nothing
10 been changed on them.

11 Q. These are all standard and --
12 A. It came from the factory that way.
13 Q. So they are all factory-built
14 machines?
15 A. Yes.
16 Q. It doesn't have any custom rods in the
17 house or anything like that?
18 A. No.
19 Q. The property along the rear of your
20 property, what is that zoned for?
21 A. That right now it is zoned a three
22 acre estate.
23 Q. How recently was that?
24 A. Just this past year they sub divided

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1 that.
2 Q. Before that, what was the use?
3 A. Farm.
4 Q. Was it actually activity farmed?
5 A. Yes.
6 Q. So there were crops or grow crops of
7 some sort there?
8 A. That is correct.

9 Q. When the farmers' tractors took the
10 crops down, was that any problem in terms of
11 noises?

12 A. The noise never bothered me.

13 Q. Could you hear the tractors and the
14 combines when they came through?

15 A. Yes, you can.

16 Q. Did you often go outside and watch
17 your grandsons ride?

18 A. Often, many times.

19 Q. And did it stop you from having
20 conversations?

21 A. No.

22 Q. Did it stop you from enjoying the
23 outdoors?

24 A. Not me, no.

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1 Q. Did you ever have family or friends
2 over when they were doing that?

3 A. Yes, I did.

4 Q. And did it ever give any of them --
5 any of those people, did they complain about the
6 noise?

7 A. No.

8 Q. Did anyone other than the Kamholzes
9 ever complain about this?

10 A. No.

11 Q. And the Kamholzes never complained to
12 you directly about it until this action was filed;
13 is that correct?

14 A. No, they haven't.

15 Q. Did you ever get the letter on -- the
16 August 19, 1996 letter?

17 A. I never received a letter back then.

18 Q. Did you ever sign for a letter? Do
19 you remember signing for a letter?

20 A. No, I did not. The only time I signed
21 for a letter was when they had it hand delivered by
22 -- I don't know who the individual was. I didn't
23 sign for that, my wife did.

24 Q. That was much later. And that was the

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1 beginning of this suit, correct?

2 A. Right.

3 MR. GOTTEMOLLER: No further questions of
4 this witness.

5 THE HEARING OFFICER: Mrs. Kamholz, cross?

6 MRS. KAMHOLZ: Yes. May I see the yours
7 because -- the one we entered in.
8 MR. GOTTEMOLLER: Number. 6.
9 MRS. KAMHOLZ: Because you have the
10 receipt. Number 6.
11 THE HEARING OFFICER: Here we go.
12 MRS. KAMHOLZ: You have this receipt. I
13 would like to see who signed for that letter.
14 Received by Mariane Sporleder.
15 THE WITNESS: Check the date.
16 MRS. KAMHOLZ: August 10th of 1996.
17 THE WITNESS: That was when it was written.
18 MR. KAMHOLZ: It is signed that date.
19 MRS. KAMHOLZ: Date of delivery,
20 August 10th. It was written August 8th.
21 THE WITNESS: Received in December.
22 MRS. KAMHOLZ: No, this is the --
23 THE HEARING OFFICER: No, this is different.
24 MR. GOTTEMOLLER: Listen to the question.

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1

2

CROSS-EXAMINATION

3

BY MRS. KAMHOLZ:

4

Q. Which ATV does Donald drive?

5 A. Two of them, mine and his
6 girlfriends's.

7 Q. His girlfriend's. Which one is the
8 noisy one?

9 A. I don't think either one of them are
10 noisy.

11 Q. You said you use an Alice Chambers
12 tractor for -- what do you use it for?

13 A. Cutting grass and hauling everything
14 else around with my trailer.

15 Q. Is it true that you use that to haul
16 your trailer around also?

17 A. That is what I said.

18 Q. Isn't it true you use your ATV for
19 that once a year?

20 A. Could be.

21 Q. So, in fact, it is really not a
22 utility vehicle, more of a recreational vehicle?

23 A. I wouldn't say so. I bought it for
24 hauling around the yard.

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1 Q. Yeah, but you only use it about once a
2 year you said.

3 A. That is irrelevant.

4 Q. And the --

5 MR. GOTTEMOLLER: Just answer the question.

6 BY MRS. KAMHOLZ:

7 Q. -- the boys use them to ride around
8 the property?

9 A. Yes, they do.

10 Q. Yes. Would you tell me what
11 occasional means to you?

12 A. Every now and then.

13 Q. Every now and then. Would you say
14 that your grandsons ride occasionally?

15 A. I would assume that, yes.

16 Q. Would you say more than occasionally?

17 A. No.

18 Q. Would you say often?

19 A. No.

20 Q. Okay. These -- getting back to the
21 burning part when they asked you if -- did we ever
22 have conversations before you were told about the
23 burning -- before I turned you in for burning, did
24 we have conversations?

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1 A. I believe you had said something at

2 different times.

3 Q. How often do you think I asked you to
4 quit burning noxious smelling stuff?

5 A. I don't remember you ever asking me
6 that.

7 Q. Did I ever tell you that I didn't care
8 if you burned garbage, but to please not burn
9 noxious stuff?

10 A. I never burned garbage.

11 Q. Did you ever burn the coating off of
12 copper wire?

13 A. Not that I recall.

14 Q. Did you ever burn anything that
15 smelled noxious?

16 A. Maybe a wet piece of cardboard now and
17 then.

18 Q. The complainants had a party one day
19 with a lot of company, a huge party, and --

20 MR. GOTTEMOLLER: Is she going to testify or
21 is she going to ask the question?

22 MRS. KAMHOLZ: I am sorry.

23 BY MRS. KAMHOLZ:

24 Q. Did you burn one day when the party --

1 when the complainants were having a big party?

2 A. Maybe. I don't know.

3 Q. Did I come over and talk to you about
4 it?

5 A. Oh, yes, you did.

6 Q. And what was it you were burning that
7 day?

8 A. Papers.

9 Q. Oh, just papers?

10 A. Just papers.

11 Q. Didn't you tell me you were cleaning
12 the basement and that you burned some wet pillows
13 and --

14 A. Why would I tell you something like
15 that?

16 Q. Because that is what you told me.
17 And --

18 A. I don't believe so.

19 Q. Okay. Did my guests -- did you see my
20 guests leave?

21 A. I figured they had enough of you.

22 Q. Okay.

23 MR. GOTTEMOLLER: Please just answer the
24 question.

1

2 BY MRS. KAMHOLZ:

3 Q. The county came out and -- did they
4 come out and tell you to do away with your burn
5 barrel?

6 A. No. They asked me to move it.

7 Q. Did you move it?

8 A. Yes, I did.

9 Q. Then a few days later you did away
10 with it. Why did you do that?

11 A. I had no more use for it.

12 Q. Did I ever offer you my garbage
13 service?

14 A. Yes, you did.

15 Q. And you turned me down?

16 A. Yes, I did.

17 Q. Why was that?

18 A. Because I used to take it to work with
19 me then.

20 Q. And when you didn't take it to work
21 with you anymore, what did you do with it?

22 A. Waited until the next time I went to
23 work.

24 Q. Okay. These dirt piles that we talked

1 -- that was brought up. Isn't it a fact that you
2 have two different areas on your property directly
3 across from each other where you had a John Deere
4 skidster come in and actually excavate mounds of
5 dirt and place them in strategically?

6 MR. GOTTEMOLLER: I would object to -- I
7 mean, he could place it. He can put a mountain on
8 his property. It doesn't have anything to do with
9 the noise, pollution complaint that is filed.

10 THE HEARING OFFICER: I am not sure where
11 you are going with this, Mrs. Kamholz.

12 MRS. KAMHOLZ: Mr. Gottemoller brought it
13 up. I thought I would -- because I brought it up
14 before and I was told I couldn't and he did bring
15 it up, so I would like to find out what the dirt
16 hills are for. I am assuming they are for a future
17 dirt track, and I would like to ask Mr. Sporleder
18 are they for a future dirt track.

19 THE HEARING OFFICER: I will overrule
20 Mr. Gottemoller's objection. I will allow you a
21 very limited question on this. And we have to move
22 on.

23 BY MRS. KAMHOLZ:

24 Q. Mr. Sporleder, why would someone pile

1 up six huge piles of dirt because they are going to
2 eventually move it to their flower beds or around
3 their house?

4 A. Because I had no place to do it right
5 at the particular time.

6 Q. Why was it dug up at that particular
7 time then?

8 A. I don't think that has anything to do
9 with what is going on today.

10 Q. Does a wheel turning on dirt create
11 dust?

12 A. I assume, yes.

13 Q. And the faster the wheels go the more
14 dust it raises?

15 A. Yes.

16 Q. And the fatter the wheels, the more
17 dust it raises?

18 A. I would think so.

19 Q. Do ATVs have huge wheels and throw a
20 lot of dust?

21 A. Huge wheels, no.

22 Q. They have big fat wheels?

23 A. Much smaller than the tractor I have.

24

Q. That is true. But you don't drive

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1 your fat tractor around at 40 miles an hour?

2 A. Do I have to answer that?

3 Q. I am sorry, do you drive your tractor
4 around at 40 miles an hour?

5 A. Who said I drive the ATVs around at 40
6 miles an hour.

7 Q. I didn't ask you that. I am asking
8 you did you drive your tractor around the property
9 at 40 miles an hour?

10 A. No.

11 Q. Isn't it true that off-the-record dirt
12 bikes such as the ones your grandchildren ride
13 don't even require mufflers?

14 A. They certainly do require mufflers.

15 Q. Off-the-road bikes I believe they have
16 spark -- do they have spark arrestors or mufflers?

17 A. Mufflers.

18 Q. Okay. Farm noise from the tractors
19 that do the plowing and the planting and the field
20 work, that is kind of like a temporary noise, isn't
21 it? It is around for a couple days and then it
22 goes away for a while?

23 A. I guess.
24 Q. How is that different from the way

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1 your boys ride on their noisy vehicles?
2 A. They ride temporary, now and then.
3 Q. They don't ride -- there aren't times
4 where they actually ride as many as five times a
5 week?
6 A. Could have been at times. I don't
7 know.
8 Q. Do they ever ride as long as eight
9 hours?
10 A. No.
11 Q. On a weekend they don't ride from --
12 A. No, not steady eight hours.
13 Q. The time that you let them start in
14 the morning is what?
15 A. 10:00 o'clock.
16 Q. Okay. Your wife said 11:00 o'clock.
17 It is 10:00 o'clock until what?
18 A. 8:00 o'clock at night.
19 Q. Why do you have that time on them?
20 A. Because I assumed you are out taking

21 pictures. That was time to shut the kids down.

22 Q. They used to ride at 9:30 in the
23 morning and all of a sudden they changed and rode
24 at 10:00?

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1 A. Wasn't that after the sheriff came?

2 THE HEARING OFFICER: Wait until the
3 question is posed.

4 MRS. KAMHOLZ: No, it was before the
5 sheriff came.

6 THE HEARING OFFICER: Mrs. Kamholz, when I
7 am speaking, just kind of stop and listen to what I
8 have to say. I know it is hard. A lot of people
9 don't listen. And then depending what I say, you
10 can go ahead and ask the question. Thank you.
11 That goes to both of you. Thank you.

12 MRS. KAMHOLZ: Sorry.

13 BY MRS. KAMHOLZ:

14 Q. It was just this past year -- in the
15 year 2000 that you put a 10:00 to 8:00 time limit
16 on the kids. And I would like to know why you did
17 that?

18 A. I didn't realize it was just this past
19 year.

20 Q. Why did you do that?
21 A. I think I just answered that before.
22 THE HEARING OFFICER: Could you answer it
23 again, please?
24 THE WITNESS: In trying to please the

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1 neighbors from the noise.
2 BY MRS. KAMHOLZ:
3 Q. So you admit there is noise?
4 A. Well, that is what I assumed from your
5 letter.
6 Q. I thought you didn't get my letter?
7 A. Not until later I told you.
8 Q. How big are the evergreen trees that
9 you planted along the property line to stop the
10 noise?
11 A. Which group are you talking about?
12 Q. The first group that you planted.
13 A. They are probably eight foot tall by
14 now.
15 Q. How big were they when you planted
16 them?
17 A. Three foot.

18 Q. And how big are the second batch you
19 planted?

20 A. They are about three foot now.

21 Q. Do you think that is going to stop
22 noise?

23 A. It will a little, I would assume.

24 Q. The new fence you put up, do you think

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1 that is going to stop noise?

2 A. Partially, yes.

3 Q. It is a wood slated fence with cracks
4 in it and it is only six-feet high. Do you think
5 it is going to stop any noise?

6 A. It is a privacy fence, yes, I think it
7 would.

8 Q. MRS. KAMHOLZ: I don't think I have
9 any more questions.

10 THE HEARING OFFICER: Mr. Gottemoller,
11 redirect?

12 MR. GOTTEMOLLER: None.

13 THE HEARING OFFICER: Then you may step
14 down. Thank you very much.

15 MR. GOTTEMOLLER: We will rest.

16 THE HEARING OFFICER: Okay. Respondents

17 have rested.

18 Do you have any rebuttal,

19 Mrs. Kamholz?

20 MRS. KAMHOLZ: No. Just my closing

21 statement.

22 THE HEARING OFFICER: Do you want to make it

23 a closing statement or do you want to make it in a

24 post-hearing brief. You can make it on record.

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1 MRS. KAMHOLZ: I would like to make my
2 closing statement.

3 THE HEARING OFFICER: Mr. Gottemoller?

4 MR. GOTTEMOLLER: That will be fine.

5 THE HEARING OFFICER: Before I forget, I am
6 required to make a credibility determination. And
7 based on my observations, judgment and legal
8 experience, I find that there are no credibility
9 issues with the witnesses testifying here today.
10 By that I mean I think everyone testified to the
11 best of their ability and recollection.

12 Let's go off the record.

13 (Discussion had off the
14 record.)

15 THE HEARING OFFICER: We are back on the
16 record. Before we go to closing arguments, a
17 couple of housekeeping matters. Mr. Gottemoller?

18 MR. GOTTEMOLLER: I would ask that No. 1 be
19 admitted.

20 THE HEARING OFFICER: Mr. Gottemoller has
21 requested that Respondent's Exhibit No. 1 be
22 admitted. Any objection, Mrs. Kamholz?

23 MRS. KAMHOLZ: Respondent Exhibit No. 1?

24 MR. GOTTEMOLLER: This is the photograph of

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1 his Polaris.

2 MRS. KAMHOLZ: No objection.

3 (Whereupon document so
4 offered was received in
5 evidence as Respondents
6 Exhibit No. 1.)

7 THE HEARING OFFICER: It is admitted. And
8 we also mapped out a breaching schedule --
9 post-hearing briefing schedule. We assume the
10 record transcript will be ready by December 2nd.
11 The complainants' opening brief is due
12 December 20th. Respondents' opening brief is due
13 January 10th and complainants' reply, if any, is

14 due January 24th. And I am setting December 13th
15 as a cut off date for public comment.

16 With that said, Mrs. Kamholz, would
17 you like to give your closing?

18 MRS. KAMHOLZ: Yes, I would.

19 THE HEARING OFFICER: Thank you.

20 CLOSING ARGUMENT

21 BY MRS. KAMHOLZ:

22 We have all heard the saying beyond
23 your wildest imagination. Please imagine, if you
24 can, the sound of a revving dirt bike. If you are

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1 familiar with this sound, you know what I am
2 talking about. Imagine listening to this sound
3 two, four, six, sometimes eight hours a day, two,
4 three, sometimes six and seven days a week. You
5 now have some idea what the complainants have been
6 listening to off and on for the past seven years.

7 Can you imagine trying to watch T.V.
8 with a dirt bike racing by three or four times a
9 minute, maybe two or three dirt bikes? Try talking
10 on the phone, taking a nap, eating a meal or doing
11 anything with the constant racket created by this

12 activity. Imagine the smell of exhaust fumes
13 filling up your house and dust filtering in through
14 your screens and landing all over your recreation
15 room, imagine telling your friends that you can't
16 have them over for a cookout as the neighbors will
17 probably ride their bikes, ATVs and go carts. The
18 noise, dust and exhaust fumes would drive you into
19 the house, force you to close your windows and you
20 would still hear them.

21 Our video recordings, decibel
22 readings, photographs and testimony from our
23 qualified witnesses brings this activity out of the
24 realm of imagination and into reality. We the

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1 complainants have presented sound and solid
2 evidence proving continuous violations of the act
3 and continuous violations between the complainants'
4 right to a peaceful existence in their home and on
5 their property. This right has been void in their
6 lives for seven long years due to the respondents'
7 allowance of this activity. And it is time to
8 right the wrong.

9 The respondents have clearly shown
10 total disregard to the complainants' rights and for

11 the law. We have a constitutional right to the
12 pursuit of happiness and if possible a peaceful
13 existence. We do not feel that riding of noxious,
14 loud recreational vehicles that emit horrible
15 noise, dust and smelly exhaust fumes onto their
16 neighbors property and into their home is a
17 constitutional right for the respondents or anybody
18 else.

19 We ask for relief and resolve of this
20 situation by stopping all the riding activities on
21 the respondents' property. We suggest that the
22 respondents continue the practice of having the
23 vehicles hauled away to an appropriate riding
24 place, as they have been doing for the past year.

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1 They have shown that they have the ways and means
2 to do this, and it is the right thing to do.

3 Upon this suggestion for a workable
4 solution, along with Mr. Greg Zak's recommendation,
5 we now turn everything over to the Board and ask
6 that they review our evidence, our efforts and
7 consider a resolution to this unique case.

8 I use the term unique because in our

9 minds it is very unusual that anyone could think
10 this that activity is acceptable simply because
11 there is no county ordinance prohibiting it.
12 Fortunately, there is a state law that prohibits it
13 and hopefully this law shall prevail.

14 The lack of simple social behavior,
15 basic common courtesy and compassion for another
16 human being is mind boggling to say the least. It
17 puts reality back out into the realm of one's
18 wildest imagination.

19 We the complainants would like to
20 thank hearing officer Brad Halloran at this time
21 for his time and attention throughout this past
22 year. And we also thank the board for their time
23 and consideration in this matter.

24 THE HEARING OFFICER: Thank you,

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1 Mrs. Kamholz.

2 Mr. Gottemoller?

3 CLOSING ARGUMENT

4 BY MR. GOTTEMOLLER:

5 Yes, as the hearing officer is well
6 aware of, the burden on this matter is very, very
7 clearly with the complainant. The Board at the

8 commencement of this proceeding found certain
9 things to be frivolous and others not to be. So we
10 have been the directing this hearing to proceed
11 with all due speed. It left three basic elements
12 to talk about, air pollution, noise pollution under
13 two different standards.

14 The air pollution is probably the
15 easiest thing to deal with. We don't have a single
16 measurement offer. We don't have a single reading
17 offer. We don't have any indication of any sort
18 from anybody's testimony other than Mrs. Kamholz's
19 nose concerning air pollution and the standards to
20 be met in this area. Those standards are not met.
21 That type of unreasonable -- the standard is
22 unreasonable interference with a person's lifestyle
23 under these circumstances simply is not met with
24 the testimony that is before you today.

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1 And that count in particular I don't
2 believe that the Board has anything that could
3 sustain a judgment on.

4 That brings us to the second element
5 and the second area that we need to talk about,

6 which is 900.102(a). And that is the noise level
7 violations where they are set by a sound meter and
8 actually have the ANSI standards they need to meet.
9 Mr. Zak was very clear with that. I asked him that
10 question twice, as a matter of fact. None of the
11 readings that you have before you would support a
12 finding under that section.

13 So as a result, those first two areas
14 the Pollution Control Board doesn't have anything
15 it can base a decision on. There has been no
16 testimony today about that.

17 All of the testimony today that was
18 from the complainants' side has been directed at
19 900.102, which is considering the noise standards
20 whether it is unreasonable interference with the
21 enjoyment of life. Unreasonable as the Board knows
22 deals with objective standards. It is not a
23 question of whether the Kamholzes view it
24 unreasonable. It is whether the average person on

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1 the street would view it as unreasonable.

2 Under these circumstances, you have
3 two families that are next door to each other. The
4 reality of this situation is that we have two

5 people that have been fighting for ten years and
6 maybe longer. The activities complained of today
7 were once undertaken by the complainants. They
8 have shown you Exhibit 10, a picture of a mini bike
9 -- they refer to as a mini bike. It may be smaller
10 than the current bike that the grandson rides, but
11 it is a mini bike. It is a motorcycle. It is a
12 70 CC Honda Trail Bike. That is the one they admit
13 to having. In addition, my clients have testified
14 they have ones before that, yet for all those years
15 it is okay because it was their children. It was
16 okay by them for those children to be riding those
17 things.

18 Now, we fast forward ten years. They
19 get in a fight over trash burning in 1993. Four
20 years later in 1997 they complain about trucks
21 being driven around. They don't call my client and
22 talk to them. They don't do what a reasonable
23 neighbor might do and say you know what, this is
24 really too much, can we talk about moving this or

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1 changing the noise, they don't do that.

2 They claim they sent a certified

3 letter which my clients say they never received. I
4 don't where that goes. But that would have been in
5 1996. They have no taping of any accidents or
6 incidents in 1996. All you have is a video tape
7 showing somebody driving around on motorcycles.
8 Most of that videotape of the three and a half
9 hours of video, you have -- three hours of it are
10 in the -- were filmed during 2001 or 2002. All of
11 the video taping in 2002 is done of showing the
12 vehicles being removed from the site.

13 As a practical matter, all of the
14 complaints you have is in the year 2001. And
15 instead of talking to the neighbors, they go out
16 and call the sheriff's department. The bottom line
17 is it is a very serious question as to whether or
18 not this is unreasonable interference, but whether
19 or not these people are extra sensitive. And that
20 is a problem. And they are extra sensitive because
21 they have been upset with their neighbors for
22 years. And it goes both ways. They both have been
23 upset with each other for years. If there is a
24 divorce case, we would send them off to mediation.

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1 It is not. It is before the Pollution Control

2 Board.

3 And the result is that we have had to
4 spend thousands of dollars on both sides to bring
5 this matter before the Pollution Control Board to
6 determine whether or not this was an unreasonable
7 interference. And then the Board gets to look at
8 what makes it unreasonable. We didn't hear
9 anything at all.

10 There is five factors, one of them
11 deals with health. You know, did this impact
12 somehow or other her health or any other of the
13 relationships, we didn't hear about hospital
14 visits. The complaint talks about sore throats,
15 but we didn't hear about those today. We didn't
16 hear about any allegations. The only thing we
17 heard was that, in fact, when they are doing this I
18 don't like to have people out on my porch because I
19 can't have a cookout.

20 We then need to talk about the other
21 factors besides the character and degree. General
22 welfare and physical property of the people. There
23 has been no showing that this dust has done
24 anything other than possibly require her to dust

1 once in awhile, and that hasn't been testified to.

2 The social and economic value of the
3 pollution source, even some of her witnesses
4 testified that they continue to ride motorcycles
5 and mini bikes today. It is a common hobby that is
6 undertaken by a very large percentage of the United
7 States. Should it be undertaken 20 feet from her
8 doorway, certainly the Pollution Board can decide
9 that. Working on engines and -- having teenagers
10 working on engines and cars and engines on
11 motorcycles or mini bikes is a very, very common
12 hobby. And it had some social value because it
13 does teach the next generation how to care for
14 machines and engines, which is something we need to
15 continue to do. Again it was okay to do that when
16 it was their children. It just became not okay
17 when it became the next generation.

18 The suitability or unsuitability of
19 the pollution source to the area which it is
20 located to the question of the priority of the
21 location. Again, it is interesting that this was a
22 use that was okay in this location in this area
23 when their family was doing it. It became not okay
24 when the neighbors began doing it. The suitability

1 of the area, they are out in the countryside.
2 There is testimony it is really undisputed that
3 across the street -- in the ditch across the
4 street ATVs are run. It is not unusual that
5 motorcycles, mini bikes, ATVs are run out in the
6 countryside. I would think it would be much more
7 unusual to be run inside in a quiet town or
8 neighborhood. But that is not what we have. We
9 are out in the countryside on five acres where the
10 business community of farmers work, where combines
11 are used every day or every year at harvesting and
12 every time at planting and whatever they do in
13 between. Those vehicles, that type of activity is
14 commonplace out on the farm.

15 You probably can't find too many
16 farmers in the area that don't have ATVs or
17 tractors or other sources of equipment. This is
18 the location that you are going to use these. We
19 kept hearing about locations that we are going to
20 use go to use this equipment and that there is some
21 other more appropriate place. Her son-in-law and
22 her daughter have this equipment on a ten-acre
23 plot. So, you know -- and it was okay to use that
24 same type of motorcycle and equipment in that

1 location. But apparently it is not okay to use it
2 because we are next door to the Kamholzes, and they
3 have a special area for that because they don't
4 like it. At least they don't like it anymore.

5 The testimony is really undisputed
6 that if you are going to run these machines in
7 terms of quick running, as the children have been
8 running them, that there is no economically
9 reasonable way to reduce that. However, you will
10 hear the tapes when you listen to the tapes and you
11 pay attention to what Mrs. Kamholz has to say, you
12 will find that there are times when she doesn't
13 mind them running on the tapes. That is what is so
14 important about it. ATVs and mini bikes, she is
15 absolutely adamant on that tape are not the problem
16 and are not the source of the problem. The source
17 of the problem is two motorcycles. And if this
18 Board in the end were to say we can't ride two
19 motorcycles, it would have a very different impact
20 on my clients that if, in fact, mini bikes and ATVs
21 and tractors and lawn mowers and everything else
22 are out. Because it is true that lawn mowers
23 create a bigger pollution source than the other
24 vehicles that are complained of here.

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1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF LAKE)

3 I, Cheryl L. Sandeck, a Notary Public
4 within and for the County of Lake and State of
5 Illinois, and a Certified Shorthand Reporter of the
6 State of Illinois, do hereby certify that I
7 reported in shorthand the proceedings had at the
8 taking of said hearing and that the foregoing is a
9 true, complete, and correct transcript of my
10 shorthand notes so taken as aforesaid, and contains
11 all the proceedings given at said hearing.

12

13

Notary Public, Cook County, Illinois
C.S.R. License No. 084-03710

14

15