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1 HEARING OFFICER HALLORAN: We are on the
2 record. Good morning. My name is Bradley Halloran. I
3 am with the Illinois Pollution Control Board, and I am
4 also a hearing officer assigned to this matter being
5 Rochelle Waste Disposal, LLC, Petitioner, versus the
6 City Council of the City of Rochelle, Illinois,
7 Respondent, PCB3-218. This is a pollution control
8 facility siting appeal.

9 Today is December 10th at 9:00 a.m. We do
10 have members of the public present. I will address that
11 in short order. We also have a staff attorney from
12 Pollution Control Board, Mr. John Knittle. This hearing
13 has been scheduled in accordance with the Illinois
14 Pollution Protection Act and the Pollution Control Board
15 Rules and Procedures. It will be conducted according to
16 the procedural rules found at Section 107.400 and 101
17 Subpart F.

18 Addressing the members of the public, I will
19 allow the public to make comments or statements. And we
20 can do so -- if you have to leave, we can do so right
21 after opening statements or just let me know at the
22 various breaks we'll have during the hearing; and you
23 can step up here.

24 If you come up and give public comment and

1 just say your peace and step down as opposed to a public
2 statement where you're sworn in, those two will be
3 weighed accordingly. In other words, if you're sworn
4 in, the Board will consider it and give it more weight.

5 And before I continue, I would like to just
6 talk a moment about the Board's hearing process. First
7 I think many of you know and are already familiar with
8 the process, and that is I will not be making the
9 ultimate decision in this matter, rather it's the
10 Pollution Control Board who will.

11 They will review the transcript of these
12 proceedings and the record below and also review the
13 post-hearing briefs from this hearing. My job is to
14 ensure that an orderly hearing and a clear record is
15 developed so that the Board can have all the proper and
16 relevant information before it when deciding the case.

17 Again after the hearing, the parties will
18 have an opportunity to submit post-hearing briefs.
19 These, too, will be considered by the Board, and also I
20 will set a public comment period, as well. And finally
21 I don't think I have to, but I do want to caution
22 everyone in that this hearing is much like a trial in
23 Circuit Court; and I expect everyone to act
24 appropriately and with proper decorum.

1 That's pretty much all I have, but I do want
2 to note and I want to read from the June 5th, 2003,
3 Board order, "The petitioner appeals on the grounds that
4 the procedures used by the City of Rochelle to reach its
5 siting decision were not fundamentally fair; and, 2, the
6 City of Rochelle's decision was against the manifest
7 weight of the evidence as to Criteria 1, 2, 3, 6 and 9.
8 As to the remaining criteria, Rochelle Waste Disposal
9 also seeks to challenge special conditions that the City
10 of Rochelle included as part of its finding of
11 compliance in these remaining criteria."

12 With that said, I think we will let the
13 parties introduce themselves. Mr. O'Brien?

14 MR. O'BRIEN: I'm Mike O'Brien, and I
15 represent Rochelle Waste Disposal. With me at counsel
16 table is Thomas Hilbert.

17 HEARING OFFICER HALLORAN: Thank you,
18 Mr. O'Brien. Mr. Porter?

19 MR. PORTER: Good morning. Rick Porter on
20 behalf of the City of Rochelle, and I am here with my
21 partner and boss, Chuck Helsten.

22 HEARING OFFICER HALLORAN: With that said, I
23 think my plan is to allow the parties to give opening
24 statements, and then I will ask any members of the

1 public if they would like to make comment or statement;
2 and they can step in and step up if they so choose.

3 Mr. O'Brien? You can remain seated if you'd
4 like.

5 MR. O'BRIEN: That would be fine.

6 Mr. Halloran, the Petitioner intends to address two
7 issues in the siting review hearing. One of issues is
8 our belief that the Rochelle City Council's findings
9 that we did not establish Criteria 1, need; 2, design
10 location and operation; 3, incompatibility and effect on
11 value; 6, traffic; and 9, regulated recharge zone, are
12 against the manifest weight of the evidence and that the
13 decisions were based on political considerations, not on
14 the record of the hearing.

15 Secondly, we believe that the siting process
16 and procedures are fundamentally unfair and that the
17 Council's decision was tainted by extensive,
18 inappropriate, prejudicial and undisclosed ex parte
19 communications resulting in a decision that was based on
20 the political influence of the CCOC, the so-called
21 Concerned Citizens of Ogle County, which was a party to
22 the proceedings significantly, which knew that the
23 rules prohibited the ex parte communications and,
24 nevertheless, engaged in extensive such communications

1 before, even during and after the hearing and before the
2 decision was rendered.

3 Those inappropriate contacts were made
4 essentially to persuade the Council of the CCOC's
5 political power, and that the decision should be based
6 not on the evidence in the hearing but on the basis of
7 political influence even if this aggregate theory were
8 met.

9 As far as the manifest weight of the evidence
10 is concerned, Mr. Halloran, you indicated that the
11 parties will have an opportunity to submit post-hearing
12 briefs. My understanding is that our brief will be due
13 in about mid January. Because of the manifest weight of
14 the evidence issue is based entirely on the record
15 developed in the hearing below and that no new evidence
16 could be introduced in this hearing on those issues, we
17 intend to concentrate today primarily in this hearing on
18 the fundamental fairness issues that necessitate
19 consideration of new evidence during this hearing.

20 Thus, although I will submit a preliminary
21 brief to you on the manifest weight of the evidence
22 issues as to why we feel the City Council's decision was
23 against the manifest weight of the evidence on the
24 various criterion, our primary purpose today will be in

1 establishing the fundamental unfairness of the hearing
2 based on those ex parte communications, as well as the
3 City Council's effort to change the decision once it had
4 been made by reconsidering supposedly it's final
5 decision of April 24th at a meeting four days later as
6 to which we have been told by the city's attorney, Mr.
7 Helsten, that no action would be taken.

8 Therefore, let me address primarily in my
9 opening statement the primary issue we are to take
10 evidence on today, the fundamental fairness. We think
11 there are two major reasons that the siting procedures
12 below violated fundamental fairness.

13 First, the CCOC, which was a party to the
14 proceedings -- and we think that's significant in terms
15 of the gravity element of the contacts -- knew full well
16 that the rules prohibited post-filing ex parte
17 communications and nevertheless engaged in extensive
18 such communications both through a letter writing
19 campaign and through personal contacts that occurred
20 before, even during and after the hearing and before a
21 decision was reached.

22 Secondly, the decision that was rendered on
23 April 24th was so blatantly and obviously wrong, for
24 example, finding that the property was in a regulated

1 recharge zone which was directly contrary to all of the
2 evidence, directly contrary to the City Staff's report
3 and Mr. Helsten's report, and directly contrary to the
4 hearing officer's report, that the City purported to
5 reconsider that decision four days later, to reverse
6 that finding and to impose new conditions in the event
7 of a PCB reversal, The City Staff having expressed the
8 view that the Criterion 9 filing was so obviously not
9 based on the record that the PCB might well reverse the
10 whole case.

11 Now, that reconsideration took place on
12 April 28th even though the City Staff attorney had
13 informed us that no action could be taken at that
14 meeting, thus effectively the City Council held an ex
15 parte hearing without notice or actually I should say it
16 was held with notice, notice that no action would be
17 taken at the meeting, to reconsider their vote and to
18 eliminate an obvious basis for reversal and effectively
19 to conceal from the PCB an important basis for precisely
20 such a reversal, that is, the decision had been based
21 not on the record at all but on the political influence
22 and arm twisting of the CCOC through those inappropriate
23 ex parte communications.

24 Now, as the hearing office undoubtedly knows,

1 it is not enough to show merely that such ex parte
2 communications took place. There must also be a showing
3 of prejudice resulting from those communications; and
4 obviously, Mr. Halloran, you're familiar with E&E
5 Hauling and Land-O-Lakes Company and other cases that
6 have dealt with ex parte communications.

7 And you're undoubtedly aware of the five-part
8 test that's repeatedly employed to measure prejudice
9 resulting from such ex parte communications, including
10 the factors of the gravity of the communication, whether
11 the contacts "may" have influenced the decision, whether
12 the party making the contacts benefited, whether the
13 contents of the communication were not disclosed and
14 unknown to the party victimized by the contact, and
15 whether vacating the decision would serve a useful
16 purpose. Now, all of that is I'm sure probably very
17 familiar territory to you --

18 HEARING OFFICER HALLORAN: Mr. O'Brien, can
19 you slow down just tad, please?

20 MR. O'BRIEN: Sure. I will.

21 HEARING OFFICER HALLORAN: Thank you.

22 MR. O'BRIEN: All that is probably well known
23 and familiar territory to you, Mr. Halloran, and to my
24 opposing counsel.

1 What is new, however, and what we will be
2 suggesting in the course of this hearing is that that
3 five-part test has really not been appropriately applied
4 by the PCB or in some instances by the courts because of
5 what I could would call a catch 22, whereby the
6 applicant has to show prejudice; but the applicant is
7 prohibited from exploring the mental processes of the
8 decision-makers; but by the same token, the decision-
9 makers themselves have in several cases been permitted
10 to testify without objection that the contacts did not
11 influence them or that they relied exclusively on the
12 record.

13 And that catch 22, we believe, is
14 inappropriate; and we will be submitting a brief to you
15 and arguing to the PCB and ultimately to the appellate
16 court, if necessary, that it is entirely improper for
17 the decision-makers to be permitted to dispel any
18 suggestion of prejudice by testifying that they were not
19 influenced.

20 Rather under the body of case law that the
21 PCB has cited as a basis for not permitting invasion of
22 the decision-makers' mental processes, it is equally
23 improper, we contend, to permit evidence of prejudice to
24 be dispelled by such self-serving testimony by the

1 decision-makers themselves.

2 Thus, right at the outset of this hearing I
3 want to make clear we believe that the PCB which should
4 review this issue of prejudice on an entirely objective
5 basis, just as would be done if a judge, an
6 administrative decision-maker or a juror were subjected
7 to such improper ex parte communications. Thus, for
8 example if a judge were approached with an ex parte
9 communication, the judge would not be permitted to
10 testify to his own mental process or to say well --

11 MR. PORTER: Mr. Halloran, I am very
12 reluctant to ever interrupt an opening statement, but we
13 are obviously getting into argument regarding the nature
14 of ex parte law which is not what the evidence will show
15 in this case. So I have to object. Sorry.

16 HEARING OFFICER HALLORAN: Mr. O'Brien?

17 MR. O'BRIEN: I just want to explain to you
18 the way I'm putting in the evidence and the test that I
19 intend to suggest as a proper measure of prejudice.

20 HEARING OFFICER HALLORAN: I will give you a
21 little latitude.

22 MR. O'BRIEN: I guess what I'm attempting to
23 say is if the judge were approached, the judge would not
24 be able to testify that the approach didn't influence

1 him. Under Cannon 3 of the Code of Judicial Conduct
2 which is clarified in Illinois Supreme Court Rule 63 as
3 well as for Federal judges 28VFC455, the issue is
4 whether because of the ex parte communication, quote,
5 "the judge's impartiality might reasonably be
6 questioned." The judge isn't even permitted to testify
7 on the issue. The question is an objective one with an
8 objective observer looking at the contact believed that
9 this may have tainted the judge's ability to be
10 impartial.

11 The same thing would be true for a juror
12 under Federal Rule of Evidence 606. The juror could
13 testify to the fact of the communication but not to,
14 quote, "the effect of anything upon that or any other
15 juror's mind or emotions as influencing the juror."

16 This case law also suggests, however, that
17 the post-decision comments of the decision-makers are
18 admissible as to their views of the decision; and I will
19 cite to you cases on that, also.

20 Now, what the evidence in this case will show
21 is that immediately following the decision on April
22 24th, two of the Council members walked right out of the
23 meeting and announced to the newspaper that they had
24 voted in accordance with what they believed to be

1 popular political sentiment, that as Councilman Kissick
2 says, "My job up there is to represent the majority of
3 the public," and as Councilman Bubik said, "I voted the
4 way the citizens of this town wanted to go." Thus, two
5 of the councilmen members acknowledged having voted in
6 accordance with public opinion and political arm
7 twisting.

8 That is, by the way, exactly the message that
9 the CCOC had already stressed in its letter writing
10 campaign and in its ex parte communications, that the
11 Council should vote against the expansion, not on the
12 merits but because that's what the CCOC wanted, not in
13 accordance with what the City Staff had recommended
14 because, after all, Mr. Helsten's report had recommended
15 that the siting be approved, not in accordance with the
16 hearing officer's report because that's what the hearing
17 officer had recommended, but in accordance with how the
18 CCOC wanted things to go.

19 Significantly the hearing officer below made
20 a specific finding that, for example, as to the need
21 criterion, that the CCOC's position on need was
22 essentially political and not legal. And indeed
23 Rochelle City Council on the basis of utterly no
24 evidence determined that there was no need for this

1 facility, even though the only suggestion that had been
2 made by the CCOC in any of its cross-examination was the
3 political argument noted by the hearing officer, which
4 was contrary to law, that the need expert should have
5 considered unpermitted facilities and should have
6 considered only the needs of Ogle County as opposed to
7 the service area the applicant had designated.

8 As the hearing officer suggested in his
9 report, any finding that need had not been established
10 on the basis of those types of political considerations,
11 which was the position of the CCOC, would have been
12 subject to reversal.

13 Now, what exactly were these ex parte
14 communications by the CCOC that led to this essentially
15 political result not based on the record of the hearing?
16 We believe that the evidence will show that as Council
17 members and others have admitted during the pre-hearing
18 depositions that Mr. Frank Beardin, the CCOC's
19 president, made repeated efforts before, during and
20 following the hearing and before the decision to contact
21 Council members and to influence their decision to vote
22 against the siting application.

23 Councilman Kissick, for example, says that
24 after the application was filed on November 22nd,

1 Mr. Beardin contacted him on approximately six occasions
2 to the point that Mr. Kissick finally instructed his
3 secretary to not take any further calls from
4 Mr. Beardin.

5 Now, Mr. Beardin denies making calls like
6 that; and significantly he admits that he knows the
7 rules, and he knows he's not supposed to be making these
8 ex parte communications. Nevertheless, he also
9 contacted other Council members including Council member
10 Don Bubik, Council member Colwill and Council member
11 Hann, all of whom we believe Mr. Beardin contacted while
12 the hearing was actually in progress.

13 The hearing took place, by the way, on
14 Monday, Tuesday and Wednesday, February 24th through
15 27th, 2003. There was a weekend recess. And it resumed
16 on Monday, March 3rd, and concluded on Tuesday, March
17 4th. On Monday -- excuse me; on Saturday, March 1st,
18 Mr. Beardin apparently saw a religiously oriented
19 television program, a syndicated program called Touched
20 By An Angel, the specific episode being entitled "The
21 Good Earth" that echoed many of the same themes that
22 Beardin had repeatedly hammered away at in his many
23 letters to the editor of the Rochelle newspaper, that
24 the Council should disregard the economic benefits of

1 the expansion, that they should do their Christian duty
2 and they should be concerned about the environment and
3 the legacy left to the children and grandchildren, and
4 that there were things like turning down the expansion
5 that were a lot more important than money.

6 The program Touched By An Angel that he saw
7 on that Saturday evening basically has angels coming
8 down to Earth from heaven and participating in the lives
9 of regular human beings. That particular episode an
10 inventor played by Chester from Gun Smoke, Dennis
11 Weaver, has almost completed building a machine which is
12 going to turn water into energy so that, for example, as
13 one of the angels pointed out, with a single glass of
14 water you could power a house.

15 Chester, the inventor, I forget his name in
16 the actual show, is basically quite concerned about the
17 environment. The show was largely about the
18 environment. The show was largely about the fact that
19 there are things that are much more important than
20 money; and just like Mr. Beardin says, there are
21 concerns that you shouldn't sell for money such as the
22 legacy of your children and grandchildren.

23 Ultimately in this show, one of the angels
24 gets herself into management of an energy company, and

1 Chester hasn't quite completed his invention. He's got
2 this prototype; but throughout the program, the angel is
3 convincing both the energy company to buy his invention
4 so he can finish it because, as the angels know, Chester
5 is about to die; and he's not going to be able to finish
6 his invention, and convincing the energy company to do
7 that.

8 So ultimately even though Chester says that
9 money isn't everything, he agrees to sell his prototype,
10 all of his drawings and all of his notes. He's just on
11 the verge of furnishing this machine to the energy
12 company so they can finish it; and on the way to the
13 airport, the evil energy company president says, well,
14 we're going to make a pit stop and takes the angel into
15 what appears to be a transfer station where the evil
16 energy company executive throws the prototype and all
17 the drawings and the notes into the back of a packer
18 truck and crushes it all up.

19 The angel, of course, is horrified; and the
20 motive of the story or the basic point of the episode is
21 that he's been cheated. And so in any event, the angels
22 make arrangements for this fellow Chester to teach a
23 small boy how to rebuild the machine.

24 All of those themes are exactly the themes

1 that Beardin pounded away at in his many letters to the
2 editor. Having seen that show, he then make copies of
3 that tape; and he states he takes that tape to four of
4 the alderman, and he then disingenuously says that he
5 didn't do that to influence them. He does that on the
6 Sunday during the recess in the hearing, and he gives
7 the tape to Councilman Bubik. He thinks he also gave it
8 to three of the other alderman.

9 He didn't give it to the mayor who actually
10 voted in favor of the expansion. When asked why he
11 didn't do that, he says, well, he knew the mayor's
12 stance on the expansion; but he contends that he did not
13 do this in order to influence the alderman. He just
14 thought it was a good show, had nothing to do with the
15 landfill siting. These just happened to be the only
16 three people in town who took the tape.

17 Now, Mr. Halloran, Mr. Beardin was a party to
18 the proceedings. He was the president of the CCOC. He
19 sat at counsel table. He participated with counsel in
20 cross-examining witnesses and putting a witness on the
21 stand. He will testify that he knew that the rules
22 prohibited this type of ex parte communication. He
23 nevertheless engaged it, and he went to their homes
24 during the hearing itself to attempt to influence them.

1 Significantly neither Mr. Beardin nor his
2 counsel, Mr. Mueller, nor the City Council members who
3 had been approached disclosed any appropriate ex parte
4 communication at any time prior to the decision.

5 A similar instance took place when a
6 gentleman by the name of Ken Roeglin, that's
7 R-o-e-g-l-i-n, went to Councilman Bubik again after the
8 hearing had concluded and before the decision and gave
9 him an article from a Florida newspaper which asserted
10 as a fact something that was directly contrary to the
11 evidence in this hearing.

12 The newspaper article asserted that all
13 landfill liners leak and ultimately contaminate the
14 ground water. The record in this hearing was directly
15 contrary to that. The only evidence on landfill liners
16 leaking was that the University of Illinois Engineering
17 School had done a study in which they said there had
18 been no documented instance of any Subtitle D liner ever
19 leaking anywhere, not only in Illinois but anywhere in
20 the country.

21 When asked afterwards by Mr. Hilbert, who is
22 sitting next to me, why he had apparently changed his
23 mind because he told Hilbert before the application was
24 filed that he thought it was an acceptable application

1 and a good application, he cited his concerns about the
2 ground water and specifically referenced this article
3 that he had gotten from Mr. Roeglin, knew he shouldn't
4 read, but went ahead and read.

5 The evidence will also show that Mr. Bubik
6 was told that if he voted in favor of the expansion, he
7 would be sitting alone in church; and a gentleman by the
8 name of John O'Brien has admitted to John Holmstrom, who
9 I will call as a witness, one of our in-house lawyers at
10 Rochelle Waste, that after the hearing began that
11 O'Brien and others began leaning on Council members to
12 get them to vote against the expansion and that there
13 were many such ex parte communications.

14 Now, all of that ex parte communication, much
15 of which took place by a party, the CCOC, was
16 inappropriate and led to the essentially political
17 decision that the Council made. The decision should
18 have been made on the basis of the actual evidence in
19 the record, not as it was on the basis of erroneous news
20 reports and ex parte communications. For all of those
21 reasons, we believe that the Council's decision should
22 be reversed on the basis of fundamental fairness.

23 Thanks.

24 HEARING OFFICER HALLORAN: Thank you,

1 Mr. O'Brien. Mr. Porter?

2 MR. PORTER: Thank you. Good morning.

3 Again, my name is Rick Porter; and I and Attorney Chuck
4 Helsten represent the City of Rochelle. The evidence
5 that will be submitted today will show that the process
6 employed by the City of Rochelle was not only
7 fundamentally fair, it was exceptionally fair; and it
8 was free from the usual and inevitable communications
9 that occur by members of the public to the City Council.

10 As a matter of fact, there will only be
11 testimony that a very few of these inevitable,
12 unsolicited comments were made by members of the public;
13 and there will be evidence that these inevitable,
14 unsolicited communications in no way prejudiced the
15 decision of the City Council.

16 To the contrary, each and every City Council
17 member will testify that when someone came up to them
18 after the application was filed and attempted to discuss
19 the landfill application, they were informed that it
20 could not be discussed by the City Council members; and
21 that was the end of the communication.

22 Apparently Mr. O'Brien has reviewed some of
23 the case law on the issue, and it is -- he must now be
24 aware that the PCB has acknowledged that as public

1 officials at a local level, these types of
2 communications are absolutely inevitable. The public
3 views these individuals as their elected officials and
4 wants an opportunity to talk to them. These particular
5 City Council members were aware that that might occur;
6 and, therefore, acted accordingly by informing the
7 public when they would do so that they could not discuss
8 the matter.

9 You will notice that Mr. O'Brien references
10 some communications of Mr. Beardin; and specifically
11 what he says is that Mr. Beardin made efforts to
12 communicate with some of the City Council members.
13 That's exactly what may have transpired, and I think
14 that evidence will be today that the City Council
15 members aren't even entirely clear as to the dates that
16 those communications took place or attempted
17 communications took place; but what the evidence will be
18 is that the attempts at communication were unsuccessful
19 because they refused to speak with Mr. Beardin about the
20 matter.

21 Amazingly, Mr. O'Brien talks about an episode
22 of a television series called Touched By An Angel, and
23 that was the major emphasis of his opening statement.
24 This epitomizes the lack of evidence in this case of

1 improper ex parte communications for a variety of
2 reasons. First, the evidence will be that only Mr.
3 Bubik recalls receiving that tape from Mr. Beardin, that
4 he was -- Mr. Beardin came to his house, put the tape in
5 his hand, turned around and left. Mr. Bubik never
6 watched the tape.

7 How in the world that is ever going to be
8 relevant to an ex parte communication is beyond me. And
9 the fact that -- or the assertion that the City Council
10 would somehow base its decision on a television series
11 is offensive and downright silly. None of the City
12 Council members will testify that that television series
13 had any impact whatsoever on their decision; and to the
14 contrary, each and every City Council member will
15 testify that their decision was based only on the record
16 that existed at the time that they went to make that
17 decision and that they considered each and every
18 criteria, not anything that was said or received outside
19 of the record.

20 Surprisingly, Mr. O'Brien also brings up an
21 article that was given by Mr. Kenneth Roeglin to
22 Mr. Bubik. Again, this is not an ex parte
23 communication. First of all, that article is in the
24 record. It cannot be an ex parte communication. It's

1 filed in the public comment period and was received
2 before the close of the public comment period, and the
3 evidence will be clear and is already clear as the
4 records have been filed with the PCB.

5 Furthermore, the applicant mischaracterizes
6 the content of that article. It doesn't even involve a
7 study of the propensity of a liner to leak. To the
8 contrary, what it involves is a study of whether or not
9 adding water to a landfill and recirculating water might
10 increase the -- or decrease the decay time such that you
11 may not need as many landfills. It has absolutely
12 nothing whatsoever to do with what the applicant
13 suggests, and finally it didn't have any impact upon
14 Mr. Bubik in this case. And, regardless, all the City
15 Council members necessarily were required to consider
16 the article because it was part of the record.

17 Finally, there was some discussion about
18 Criteria No. 9, and specifically the applicant rests on
19 the fact that the City Council initially had found that
20 Criteria 9 was not met and then met again on April 28th
21 and corrected that finding. Their reliance upon the
22 fact that the City Council found in favor of them on
23 Criteria 9 belies logic. How in the world could that be
24 unfair or prejudice them when they actually were found

1 to have met Criteria No. 9?

2 There will be evidence and there is evidence
3 in the record that there was discussion at the Section
4 39.2 hearing regarding recharge of areas underneath a
5 landfill. And undoubtedly some of the City Council
6 members confused that with a designated recharge area as
7 referenced in Criteria 9. That was brought to their
8 attention by the attorney for City Staff, my partner
9 Mr. Helsten, at the April 28th meeting; and they then
10 voted again and found in favor of Criteria 9.

11 The applicant's assertion that somehow they
12 were informed no action would be taken will be belied by
13 the testimony of Mr. Helsten, if it's necessary.
14 Furthermore, it's ridiculous because the applicant was
15 present. Tom Hilbert was there in the room at the time
16 that the matter was brought forward. It was on the
17 public agenda, which will be part of the record; and it
18 was also a regularly publicized meeting that was
19 published early in the year.

20 Finally, there will be evidence that
21 Mr. Helsten telephoned counsel for the applicant; and
22 apparently he is going to come testify, Mr. Holmstrom.
23 And Mr. Holmstrom elected not to be there, though he
24 didn't have any particular reason not to be there. So

1 obviously this process is not only fundamentally fair,
2 it is exceptionally clean.

3 Mr. Helsten and I have been down the road on
4 these cases on numerous occasions, and it's hard to
5 imagine one which involved less communications from the
6 public. For those reasons the PCB should deny the
7 request by the applicant to reverse or remand the
8 proceeding.

9 HEARING OFFICER HALLORAN: Thank you,
10 Mr. Porter. I think before we get on to public comment,
11 if there is any, I think counsel have some stipulations
12 they want to present.

13 MR. O'BRIEN: Yes.

14 HEARING OFFICER HALLORAN: And then we can go
15 right into public comment.

16 MR. O'BRIEN: I will just read them into the
17 record basically.

18 HEARING OFFICER HALLORAN: Okay. Thank you.

19 MR. O'BRIEN: There are essentially three of
20 them. First of all, we are going to do this in lieu of
21 live testimony; and if the witness were called, the
22 parties stipulate that this would be the thrust of their
23 testimony. If called as a witness to testify, the
24 Rochelle City Clerk, Bruce McKinney, would testify that

1 Petitioner's Exhibit 16 is a tape of the Rochelle City
2 Council meeting held on April 24th, 2003, when the final
3 decision was rendered. And Petitioner's Exhibit 18 is a
4 tape of the Rochelle City Council meeting held on
5 April 28th when the decision was reconsidered. So I
6 offer those two exhibits, Exhibit 16 and 18, based on
7 that stipulation.

8 HEARING OFFICER HALLORAN: Is that 16 and 18?

9 MR. O'BRIEN: Yes.

10 MR. PORTER: So stipulated, Mr. Halloran.

11 HEARING OFFICER HALLORAN: Thank you,
12 Mr. Porter.

13 MR. O'BRIEN: Secondly, if called to testify
14 my assistant, Susan McIntyre, would testify that
15 Petitioner's Exhibit 17 is a true and correct
16 transcription of the tape of the Rochelle City Council
17 meeting on April 24th, which is Exhibit 16, and that
18 Petitioner's Exhibit 19 is a true and correct
19 transcription of the tape of that portion of the
20 Rochelle City Council meeting on April 28th, 2003, that
21 dealt with the reconsideration of the landfill
22 conditions, and that where the tape was occasionally
23 inaudible, she has noted that; but it is otherwise a
24 true and accurate transcription of the tape.

1 HEARING OFFICER HALLORAN: That's 16, 17, 18
2 and 19 as exhibits?

3 MR. O'BRIEN: Yes, 16, 17, 18, 19.

4 MR. PORTER: 17 is the transcription of 4/24,
5 and 19 is the transcription of 4/28?

6 MR. O'BRIEN: Yes.

7 MR. PORTER: Would you like me to respond to
8 the stipulation now?

9 HEARING OFFICER HALLORAN: If you --

10 MR. PORTER: We do stipulate that indeed that
11 is what his secretary would testify. For the record,
12 there are published minutes of those meetings which are
13 not the same documents as 16, 17, 18 and 19.

14 MR. O'BRIEN: That's correct. We agree with
15 that.

16 HEARING OFFICER HALLORAN: Are you going to
17 offer those?

18 MR. PORTER: I may, yes.

19 HEARING OFFICER HALLORAN: Thank you.

20 MR. O'BRIEN: So we offer this in lieu of her
21 live testimony and offer these exhibits.

22 HEARING OFFICER HALLORAN: Thank you. I can
23 take them now.

24 MR. O'BRIEN: Yeah, I'll do that. Let me

1 just get one other one out of the way, and then I'll
2 hand them to you.

3 HEARING OFFICER HALLORAN: Okay. I'm sorry.

4 MR. O'BRIEN: And if called as a witness to
5 testify, that the program director of Channel 23 TV,
6 Carol Comilla, would testify the Petitioner's Exhibit 20
7 is an accurate description of the episode "The Good
8 Earth" of the TV program Touched By An Angel that was
9 broadcast in Rochelle on CBS on Saturday, March 1st,
10 2003, at 7:00 p.m. which was the first and only airing
11 of that show.

12 HEARING OFFICER HALLORAN: Mr. Porter?

13 MR. PORTER: Mr. Halloran, I think addressing
14 that stipulation now is improper. I think we should do
15 it when we attempt to bring in any type of evidence
16 regarding that videotape. The videotape is completely
17 irrelevant, and I would be objecting to its use or
18 admission at trial. Therefore, there's certainly no
19 reason to even lay the foundation for when the videotape
20 first aired. Having said that, I really don't care when
21 the videotape first aired. Therefore, I would stipulate
22 as to when it did.

23 HEARING OFFICER HALLORAN: So you're
24 stipulating to Petitioner's Exhibit 20 as to when it

1 aired?

2 MR. O'BRIEN: And that she would testify that
3 this is the description of the program.

4 MR. PORTER: So stipulated.

5 MR. O'BRIEN: Petitioner's Exhibit 20. So I
6 would then offer, 16, 17, 18, 19 and 20.

7 HEARING OFFICER HALLORAN: Admitted.

8 (Petitioner's Exhibits Nos. 16
9 through 20 were admitted into
10 evidence.)

11 HEARING OFFICER HALLORAN: While we are
12 waiting for Mr. O'Brien, I think there's a sign-up sheet
13 in the back. It would probably be good to sign in; but
14 nevertheless, if anyone wants to step up and make a
15 comment or a statement, they can do so now before
16 Mr. O'Brien starts his case in chief. Sir? Come on up.
17 Are you going to give public comment or statement? Do
18 you wish to be sworn in?

19 MR. LES SZEWCZYK: No. Just comment.

20 HEARING OFFICER HALLORAN: State your name
21 and spell it, please.

22 MR. LES SZEWCZYK: My name is Les Szewczyk.
23 Last name is spelled S-z-e-w-c-z-y-k. As an individual
24 homeowner -- first of all, let me compliment Rochelle

1 Waste Disposal, excellent garbage pickup, seems to be
2 more frequent emptying of the recycling container in the
3 Wal-Mart parking lot. I think these services are both
4 necessary and appropriate.

5 What's not necessary seems to me or a
6 appropriate to the Rochelle area is the proposal to
7 expand by 300 percent the current landfill. This plan
8 in my view will be detrimental to the area for the
9 following reasons: The expanded landfill will take in
10 2,500 tons per day versus the current 320 tons. Truck
11 traffic will increase dramatically, and since 2,000 of
12 these -- 2,500 tons will come from transfer stations, it
13 would not be possible to know entirely what kind of
14 substances enter the landfill.

15 I think landfill liners deteriorate, may
16 eventually leak. There's a possibility of future
17 contamination of the aquifer located beneath the
18 landfill. Our water supply could be threatened. Few
19 people care to live near a huge landfill. I think this
20 will negatively affect the desirability of living,
21 working in the area.

22 It's estimated Rochelle would receive
23 annually about 2.4 million in tax revenue from the
24 expansion. Currently it's about 600,000. I think that

1 much of this increase may have to be set aside for the
2 future cleanup and closure of this landfill. A decision
3 to expand will affect the Rochelle area for many years.
4 I hope that quality of life issues take priority over
5 economic considerations. I think the public good would
6 be better served by supporting Rochelle's decision to
7 deny expansion of the landfill. Thank you.

8 HEARING OFFICER HALLORAN: Thank you, sir.
9 Anyone else at this point in time? Would you like to be
10 sworn in, sir, or just give public comment?

11 MR. KEN BETTS: Just comment.

12 HEARING OFFICER HALLORAN: Thank you, sir.
13 Have a seat.

14 MR. KEN BETTS: Thank you. Good morning. I
15 am Ken Betts. I am 76 years old and have lived in this
16 area for more than 60 years. In those 60 years I have
17 seen many improvements which have made this a better
18 community in which to live. It is my belief that this
19 expansion of the present landfill will not be in the
20 best interest of this community. Sadly to say, it will
21 a giant step backward.

22 I do not claim to be an expert on the
23 technical phase of landfill operations. I am leaving
24 that to the true experts, and a number of them have

1 pretty well established that for many reasons we should
2 not significantly expand this landfill. However, when
3 we as civic-minded citizens considered the negative
4 aspect of this proposed expansion such as increased
5 traffic, fear of water contamination, devaluing of our
6 real estates, and compromising the quality of life which
7 we now enjoy, we are the experts.

8 It has been plainly stated time and time
9 again in many ways by the overwhelming percentage of the
10 local community that expanding this dump is a bad idea;
11 and this bad idea cannot be justified. Time and time
12 again all attempts to expand this landfill has been
13 rejected. Time and time again the operator has not
14 accepted no. Time and time again we have stated it is
15 not our responsibility to dispose of Chicago-area
16 garbage for the sole purpose of enhancing the profit of
17 the local operator.

18 In closing, I respectfully request that the
19 Illinois Pollution Control Board consider the concerns
20 of this community and uphold the voting of the siting
21 authority. Thank you.

22 HEARING OFFICER HALLORAN: Thank you, sir.
23 Could you spell your surname for the court reporter?

24 MR. BETTS: Ken Betts.

1 HEARING OFFICER HALLORAN: Could you spell
2 your last name?

3 MR. BETTS: B-e-t-t-s.

4 HEARING OFFICER HALLORAN: Thank you, sir.
5 Anyone else at this time? Yes, sir.

6 And if you all do get a chance, those who
7 have spoken, please sign the sheet in the back of the
8 room. I think Mr. McKinney has it. Would you like to
9 be sworn in or just public comment?

10 MR. CEDERHOLM: Does it make a difference?

11 HEARING OFFICER HALLORAN: If you are sworn
12 in, you are subject to cross-examination; and the Board
13 will weigh that accordingly. In other words, if you're
14 sworn in, the Board will probably give it more weight
15 than if you're not.

16 MR. CEDERHOLM: That's fine.

17 HEARING OFFICER HALLORAN: So you would like
18 to be sworn in?

19 MR. CEDERHOLM: Yes.

20 FRED CEDERHOLM,
21 having been first duly sworn, gave a public statement as
22 follows: I am Fred Cederholm, C-e-d-e-r-h-o-l-m; and I
23 am from Creston, Illinois. I have been thinking about
24 the landfill. Actually I have been thinking about the

1 whole siting process, and I am truly in awe of it. Last
2 winter we were all given the opportunity to observe and
3 to participate in the public hearings for the proposed
4 landfill expansion. We saw the American system at work,
5 and it was amazing.

6 The hearing officer bent over backwards to
7 give each and every person their chance to speak. We
8 had the opportunity to hear the expert witnesses make
9 their presentations for each side and then be questioned
10 by counsel for the other. We heard from the public,
11 both pro and con.

12 Some presentations were more technical than
13 others. Some were more emotional, and some were more
14 eloquent. Some were long, while some were short. They
15 all showed thought, and each came from the heart.
16 That's all in the record, and now that record must speak
17 for itself.

18 I learned a great deal from the presentations
19 that I heard. The engineering that now goes into
20 today's landfills amazed me. If approved, this one was
21 not going to be our father's landfill. It certainly was
22 not going to be our grandfather's dump. I listened to
23 the conflicting testimonies of the hydrogeologists; and
24 while I did not understand some of what they said, I was

1 impressed by their professionalism, consideration and
2 knowledge. That's all in the record, and now that
3 record must speak for itself.

4 I listened to the objections raised by
5 counsel for each side. Sometimes I agreed with the
6 objections, other times I didn't. Actually I found
7 myself mentally objecting to many more statements and
8 questions than those raised by the attorneys, but they
9 are the professionals in that regard. It is what they
10 do, and they're very good at it. That's all in the
11 record, and now that record must speak for itself.

12 When I was given the opportunity to speak, I
13 tried to focus on the mandated criteria and to put my
14 own personal twist on them. I made my comments in the
15 context of an economic indifference model and used the
16 example of a school yard teeter-toter to hammer home why
17 the proposed landfill was viewed so differently from the
18 Creston perspective than it was from the Rochelle one.
19 I tried to be fair in what I said. That's all in the
20 record, and now that record must speak for itself.

21 While not being privy to any financial
22 projections or break-even point analyses, I drew from my
23 own experiences as a CPA and forensic accountant in my
24 comments regarding landfill need. I emphasized that

1 given the huge investment and fixed cost of today's
2 landfills, this expansion could not be limited solely to
3 local waste and be successful. I emphasized that if
4 this landfill expansion was to be approved, I wanted it
5 to be the most successful and profitable one in the
6 state and a model for all others to come.

7 I felt that our community would be far more
8 likely to experience problems if this proposed landfill
9 expansion was marginally profitable or showed recurring
10 financial losses. In my professional career, I
11 specialized in failures; so I know from where I speak.
12 I only ask throughout my presentation that the Rochelle
13 City Council acting as siting authority have the focused
14 thoughts and the wisdom of a Solomon.

15 In the days after I spoke last winter, I
16 heard far more negative comments about what I had said
17 than positive ones from both sides, the pros and the
18 cons. I must have been pretty objective since I seem to
19 have everybody mad at me. While I was strongly opposed
20 to the first proposal on expanding the Creston/Rochelle
21 landfill, I was slowly approaching my indifference point
22 regarding the second one, that is, if there were some
23 other considerations of concessions tossed into the mix.

24 I had major reservations about the traffic

1 impact of the expansion. I still do. Only time will
2 tell what we will face from the Global III Intermodal
3 and the projected population, residential, commercial
4 growth.

5 While I had major concerns about the impact
6 on ground water, I was very impressed by the
7 presentation of the landfill's engineer. I also thought
8 back to a much earlier afternoon when I joined Ron
9 Schroeder to watch engineers fill a cubic yard hole with
10 water for a percolator test for Creston's proposed sewer
11 system. When one man looked at his watch to start the
12 timing of the dissipation, Ron said, "This is Creston.
13 With that layer of red, hard, pan clay under us, Hell,
14 you're not going to need a watch, you're going to need a
15 calendar." While unscientific, Ron had a point. I miss
16 you, Ron.

17 Still, I felt that the ground water well
18 guarantees should be expanded to pick up Creston's three
19 existing wells. Such guarantees were ultimately agreed
20 to at the very next Creston Village Board meeting. This
21 was only fair, and it was the correct thing to do. So
22 thank you, Mr. G.

23 When I went to witness the siting authority
24 vote, I really didn't know what would be the outcome. I

1 must confess that I was surprised by the various
2 breakdowns of the votes that occurred. As an armchair
3 quarterback, I didn't do very well in my mental
4 predictions. While some of the votes were as I
5 expected, far more were not, expected ayes were nays,
6 and expected nays were ayes. I had only the information
7 from the public hearings which I attended. I did not
8 spend any time with or have access to all the written
9 submissions to the Rochelle City Council. That's all in
10 the record, and now that record must speak for itself.

11 I am Fred Cederholm, and I have been
12 thinking. Thank you for letting me share my thoughts.

13 HEARING OFFICER HALLORAN: Thank you,
14 Mr. Cederholm. Mr. O'Brien, any questions?

15 MR. O'BRIEN: No.

16 HEARING OFFICER HALLORAN: Mr. Porter?

17 MR. PORTER: No.

18 HEARING OFFICER HALLORAN: Thank you, sir.
19 You may step down. Anybody else at this time that would
20 like to give comment or statement? Yes, ma'am. Which,
21 by the way, the Board encourages. Would you like to
22 give comment or statement? In other words, would you
23 like to be sworn in?

24 MS. CHARLOTTE BERG: No.

1 HEARING OFFICER HALLORAN: Thank you. You
2 may proceed.

3 MS. CHARLOTTE BERG: My name is Charlotte
4 Berg, B-e-r-g. I live at 422 Cederholm Street,
5 Rochelle, Illinois. We appreciate and want to thank the
6 support and decision of the City Council to deny the
7 landfill expansion. We know a lot of thought was given
8 to the whole idea for the safety of the citizens, for
9 the questionable need of landfill space, for protecting
10 the environment, and also for the growth potential in
11 both Rochelle and Creston. Thank you, City Council.

12 According to the nine criteria that has to be
13 met, need for more landfill space is not necessary.
14 Recently the landfill at Orchard Hills has been granted
15 a 20-year expansion. It is away from housing
16 development, but the Rochelle landfill is not. It is
17 within approximately one-half mile of the town of
18 Creston.

19 As to travel, although Highway Route 38 has
20 placed turn lanes at Mulford, it hasn't eliminated or
21 cut the number of garbage trucks on the road. With
22 expansion, the number would increase greatly. Traffic
23 to and from Kishwaukee College and NIU make it very busy
24 especially for a two-lane highway. If semis are allowed

1 to bring in garbage from 6:00 a.m. to 7:00 p.m., traffic
2 hazards could multiply. More semis traveling certainly
3 could raise the cost of road maintenance.

4 There are many trains, long trains traveling
5 the United Pacific Railway, some causing cars to wait 15
6 to 20 minutes before crossing. Certainly that will
7 cause delays for trucks getting in and out of the
8 landfill entrance area. I doubt if much can be done
9 about that, so there are still traffic problems.

10 I have an article printed in the Aurora
11 Beacon News dated June 2nd, 2000. It states that
12 Settlers Hill landfill there may be closed in three to
13 four years, and that would be any time now, which would
14 leave the area cities without a place to take their
15 refuge. So the City Council that week approved a two-
16 year option to purchase 7.7 acres of land to be used as
17 a solid waste transfer station. It would have garbage
18 haulers bring in. Then it would be shipped to other
19 areas, and it goes on to say that it is adjacent to a
20 railroad spur. There are no residents anywhere near.

21 And then it goes on to say, quote, "Rail cars
22 would take the refuse cars to a large landfill site
23 along the United Pacific Railroad line in the area of
24 Rochelle or other communities to the west of it. It is

1 possible that some waste could be transferred by trucks,
2 depending upon the destination," unquote.

3 I wonder why they even thought the Rochelle
4 area landfill if no one ever said it would be or could
5 be available. Would the Rochelle Waste Disposal ever
6 ask for permission to accept rail deliveries in the
7 future? Garbage in and out of a transfer station is not
8 monitored by the IEPA, and also sludge is not
9 recommended by the IEPA to be sent to a landfill; but
10 the cleanings from the NI pond were sent to the Rochelle
11 landfill.

12 There's no proof that the landfill will ever
13 leak, but there's no proof that it won't. As a child, I
14 remember folks saying in this area of Illinois, there is
15 a fault line. We checked the Internet to see what
16 information was available. And the map shows two fault
17 lines in northern Illinois, and one of those travels
18 from the center of Ogle County to the southeast corner,
19 pretty close to the DeKalb/Ogle County line. Creston is
20 about two miles from that line.

21 Although there hasn't been any severe
22 earthquakes, the last earthquake in the area was
23 September of 1972, a 4.5 magnitude. Who can safely say
24 that there will never be one? And I wonder if the

1 landfill liner would split or tear if a quake ever
2 happened. Leakage into the aquifer could be very
3 possible. Once the watertable is contaminated, there's
4 not much that can be done to clean it up.

5 Knowing that Cell One of the present landfill
6 has been leaking since before the application of the
7 expansion of the Rochelle Waste Disposal in the year of
8 2000, why hasn't all effort been made to remove the
9 refuse from that cell even if it would mean that the
10 trash could not be accepted until the landfill cell was
11 empty and sealed. They don't want landfills near
12 Chicago. There are too many people. Don't we count as
13 people worth protecting?

14 I don't see people rushing to build around a
15 landfill. Why? Certainly there are other methods of
16 getting revenue than by destroying the landscape or
17 taking the chance of polluting our water or ruining our
18 roads with heavy traffic or devaluating our land values.
19 Until better methods of disposing of our garbage or
20 trash is established, we do need landfills; but we don't
21 need them right next to a village. Thank you.

22 HEARING OFFICER HALLORAN: Thank you, ma'am.
23 You may step down. Anyone else at this time like to
24 give comment or statement? Yes, sir. I want to note

1 for the record that as I see it there are approximately,
2 I don't know, 25 members of the public seated. Would
3 you like to give comment or statement?

4 MR. JIM RICH: I'll just give comment.

5 HEARING OFFICER HALLORAN: Just comment.

6 Thank you very much.

7 MR. JIM RICH: Good morning. My name is Jim
8 Rich. I live in Galesburg, Illinois. Prior to moving
9 to west central Illinois, we lived here in the Rochelle/
10 Creston area. For family reasons, we sold our house in
11 this community, left our friends behind, and moved
12 closer to our home area. Nonetheless, I have continued
13 to maintain contact regularly with community happenings
14 and events here in the Rochelle area.

15 First, I would like to comment briefly
16 regarding the sale of our former residence here in 2001.
17 19480 Creston Road is located slightly more than one
18 quarter mile east from the berms or dirt hills
19 constructed in 1999 by the landfill applicant on the
20 proposed landfill site in anticipation of siting
21 approval for a significant landfill expansion.

22 That's just down the road from where we used to live.

23 We all know that the applicant's real estate
24 professional employed to testify during the 2003

1 hearings regarding the impact of the landfill expansion
2 on local property values, Criteria No. 3, used the sale
3 of our former residence to document his position; and
4 that is landfills have no negative impact on local real
5 estate values. He cited the fact that we sold our
6 property in 2001 for more than we purchased it for in
7 1995.

8 Now I think it is only fitting and
9 appropriate to share with you the rest of the story
10 about the sale of our home. Before we listed our house
11 in 2000, we invited three different real estate brokers
12 to evaluate our property and provide their
13 recommendation for a listing value. Each recommendation
14 as provided by these brokers was significantly higher
15 than our final selling price, ranging, in fact, from 18
16 percent to nearly 28 percent higher which translates to
17 45,000 to 70,000 dollars.

18 Yes, the property did finally sell in 2001
19 for more than we paid for it six years earlier. Please
20 note, however, that we actually lost money on our
21 property. The lower selling price we received due the
22 proximity to and awareness of the proposed landfill
23 expansion did not exceed the original purchase price
24 plus the improvements that we made. And we did spend a

1 lot of money on our improvements.

2 Additionally, it is important to recognize
3 that we had several interested parties tour our house
4 and property while it was on the market at the higher
5 price. More than one prospective buyer turned away; and
6 according to the realtor was no longer interested after
7 learning about the proposed landfill expansion nearby
8 and having witnessed, "wonder what those hills are down
9 there on the edge of the road."

10 Our real estate broker/owner at the time,
11 Nancy Watson of DeKalb Caldwell Banker Primes Realty,
12 could verify these facts. Conclusion: Awareness of a
13 pending landfill expansion in the vicinity of our
14 property most definitely had a negative impact on our
15 real estate value.

16 Now, I would like to turn my remarks to the
17 appeal by Rochelle Waste Disposal to the Illinois
18 Pollution Control Board regarding the Rochelle City
19 Council's finding to deny the application for siting
20 approval. I am here today to express to you and for the
21 record the Illinois Pollution Control Board my full and
22 unconditional support for the April 24th, 2003, Rochelle
23 City Council findings on the nine criteria and the
24 subsequent resolution to deny the application for siting

1 approval for expansion of the Rochelle landfill.

2 More importantly, I respectfully request that
3 the Illinois Pollution Control Board concur with the
4 Rochelle City Council's findings on these criterion and
5 support the denial of the expansion application.

6 Without a doubt, more than one Council member made the
7 correct, obvious-choice decisions that day when asked to
8 vote aye or nay on each of the nine siting criterion.

9 Surely it has to be crystal clear that the
10 only outcome of these proceedings today and tomorrow can
11 only be to concur with the leaders of this community who
12 voted that day, those individuals who live here, work
13 here, send their children to school here, worship here,
14 people who call Rochelle their hometown, the same people
15 who will leave behind a legacy in this community forever
16 through family heritage, business acumen and especially
17 good sound judgment.

18 I cannot fathom how morally, rationally, or
19 ethically the decision which has already been made by
20 these community leaders based on fair proceedings and
21 unbiased consideration should go beyond the people in
22 this community. To do so would be to recklessly
23 question their individual integrity. To me that would
24 be an appalling disservice to these people.

1 Therefore, the outcome of these proceedings
2 can only be to deny this application for expansion, the
3 same outcome which resulted from the Council vote on
4 April 24th, 2003. The evidence was presented, digested,
5 studied, and reviewed over and over again. Scientists
6 and professionals in their fields did their very best to
7 convince the Council that this landfill expansion met
8 the criteria. And the outcome -- well, you know,
9 several individuals known as the siting authority,
10 community residents and businessmen, peer leaders,
11 people any community would be proud to have as leaders
12 in local government -- these people voted that the
13 applicant failed to meet not one, not two, but four of
14 the nine criteria as established by the Illinois EPA.
15 Lest we forget, four of five votes were cast as nay for
16 Criterion 1, need. Three of five votes were cast as nay
17 on Criterion No. 2, protecting the health, safety and
18 welfare. Three of five votes nay on Criterion 3,
19 location compatible. And four of five votes nay were
20 cast on Criterion 6, traffic impact.

21 Yes, these people were under a lot of
22 pressure. And that pressure came from many places,
23 including the applicant. Yet these people ignored the
24 pressure; and based upon the evidence presented by the

1 applicant and discussed during the hearings, these
2 people voted to deny the application for expansion based
3 upon the failure of the application to meet four of nine
4 criteria by a margin of 14 no votes out of 20 possible
5 on these four criterion alone.

6 Therefore, I say once again, I can only find
7 one logical outcome from these proceedings, that the
8 Illinois Pollution Control Board respect and support the
9 decisions made fairly based on the evidence presented by
10 this body of people on April 24th, 2003. These people
11 invested hours and hours of their time and energy into
12 this process. They ignored the pressures from outside.
13 They considered the evidence. They made a decision on
14 each criterion. I say the process has worked as it
15 should and as it was planned. Now, let's stand by their
16 vote to deny the application for expansion once and for
17 all, and let this community move ahead with its future.
18 Thank you.

19 HEARING OFFICER HALLORAN: Thank you, sir.
20 Anyone else at this time like to give public comment or
21 public statement? Yes, sir. Would you like to be sworn
22 in, sir?

23 MR. BRUCE MORRALL: I don't know for sure.
24 Can I interject anything, any new evidence at all,

1 anything into this hearing?

2 HEARING OFFICER HALLORAN: It's based
3 exclusively on the record below.

4 MR. BRUCE MORRALL: On the record that's
5 already been established?

6 HEARING OFFICER HALLORAN: That's correct.

7 MR. BRUCE MORRALL: Then I'll just make
8 comment. My name is Bruce Morrall. I am a resident of
9 Ogle County.

10 HEARING OFFICER HALLORAN: Could you spell
11 your last name, please?

12 MR. BRUCE MORRALL: M-o-r-r-a-l-l.

13 HEARING OFFICER HALLORAN: Thank you, sir.

14 MR. BRUCE MORRALL: And I live in Monroe
15 Center. First part of my life I lived in Chicago for
16 about 30 years, and you're familiar with that area. And
17 landfills that they had back at that time was just dump
18 it, leave it on the ground. Lake Calumet was one of the
19 big depositories of refuse and garbage at that time.
20 That was bad technology, just dumping and leaving it on
21 the ground, do whatever, the landfills back then.

22 I don't know when this -- when the rubber
23 overlay on the ground came in. Has that been here for
24 the last 20 years, 30 years, what? How long has that

1 been?

2 HEARING OFFICER HALLORAN: I have no idea,
3 sir.

4 MR. MORRALL: I don't know, either; but it
5 seems to me it's not a very good technology either.
6 It's a stop-gap thing. I think they leak regardless of
7 what everybody else says, but there's new technology
8 come on line here. Are you familiar with the change in
9 world technologies? Anybody? Okay. They have built a
10 plant in Carthage, Missouri, for the ConAgra Company,
11 and they are building one in Philadelphia.

12 What this does is it's flash cooking of solid
13 waste, everything from sewage, old tires to pulverized
14 electronics, industrial refuse, and turning them into
15 viable products. This process, it says, if America's
16 annual 12 billion tons of solid waste was pressure
17 cooked, it would yield 5 billion barrels of oil for 10
18 to 15 dollars a barrel, more than an enough to replace
19 the 4 billion barrels now imported each year.

20 What they do is use steam generated by the
21 methane gases taken off from the landfills and do this
22 process. Anybody who wants anything, I have handouts on
23 it all. But we got to stop the madness. We can't be
24 doing this to ourselves. In the news yesterday, there

1 was in Freeport, Taylor Park, people had a high case of
2 cancer there. So they went and finally got somebody to
3 investigate it. They found high levels of lead in the
4 soil. It's about the environment. It is the
5 environment. That's why we're here. We're trying to
6 protect the environment, not sell it. So that's all I
7 have got to say.

8 HEARING OFFICER HALLORAN: Thank you very
9 much, sir. Anyone else at this time would like to give
10 public comment or public statement? Yes, sir. Would
11 you like to be sworn in?

12 MR. HUGH McDERMITT: Just comment, public
13 comment. I have a cold and sore throat, so I hope I can
14 hold up to this.

15 HEARING OFFICER HALLORAN: I am sure you'll
16 do fine.

17 MR. HUGH McDERMITT: My name is Hugh
18 McDermitt, M-c-D-e-r-m-i-t-t. I live in Rochelle. I
19 have been here almost 20 years now on 207 School Avenue,
20 and I'd like to read some comments that I have put
21 together here.

22 Back in 1999 there were a group of citizens
23 that got together and was concerned about the expansion
24 of the Rochelle landfill. And from that a group was

1 formed called the Concerned Citizens of Ogle County.
2 The CCOC felt that the proposed expansion was
3 progressing without proper community support. The group
4 hoped to find solutions to some of Ogle County's public
5 concerns, help ordinary citizens become actively
6 involved in local issues, and would encourage them to
7 make a difference resulting in a higher quality of life
8 in Ogle County for now and in the future.

9 The CCOC has worked to increase public
10 awareness on issues relating to the health, welfare,
11 safety of Ogle County residents to encourage the
12 responsible use of resources and to find solutions to
13 public concerns as they relate to our community and to
14 motivate local citizens to express their viewpoints on
15 these issues.

16 As concerns and questions arose from the
17 initial study, the CCOC decided they should hire legal
18 counsel and technical experts to assist us in further
19 research on this landfill expansion issue. We started
20 holding public meetings to inform area residents of the
21 potential hazards inherent in the landfill expansion.

22 It was at these informal meetings -- these
23 informational meetings, excuse me, that we obtained our
24 large base for support was from the citizens of Rochelle

1 and the surrounding area. The CCOC would like to
2 emphasize that as a group we are not against landfills,
3 per se. Each side has to be judged on its own merits,
4 on the hydrogeology of the specific cite.

5 After all our investigating efforts, we
6 believe that this landfill located over the aquifer that
7 supplies water to the local area is not in the best
8 interest of the surrounding community. The CCOC would
9 like to take this opportunity to urge the IPCB to
10 support the Rochelle City Council's decision to deny the
11 siting application of RWD.

12 We believe the decision of the Rochelle City
13 Council was correct. It was not based on and was not
14 prejudged -- it was not bias, excuse me, and was not
15 prejudged; but rather a decision based on the submitted
16 evidence, thus making the proceedings fundamentally
17 fair. We believe the siting authority thoroughly
18 analyzed the evidence provided by all interested parties
19 at the hearings in February of 2003.

20 They took into consideration the actual
21 application, expert testimony and summary presented by
22 the applicant, expert testimony and summary presented by
23 the CCOC, the hearing officer's report and
24 recommendations, the Rochelle City attorney's report and

1 the public comments from citizens.

2 The CCOC contends that the hearing officer
3 did what he was hired to do. He recommended that all
4 nine criteria had been met by the applicant; but for
5 that nine that he approved, there were 50 special
6 conditions and 9 general special conditions attached.
7 It is a matter of opinion whether the application was
8 passed or not. The CCOC strongly believes that the
9 application did not pass.

10 We formed from -- we know from past history
11 that special conditions do not hold up after an
12 application has been approved. It is our understanding
13 that the City Council is free to accept or reject any or
14 all of the findings of fact, conclusions of law and
15 recommendations of the hearing officer. The Rochelle
16 City Council after researching and reviewing the
17 application, the hearing officer's findings, the
18 Rochelle City attorney's recommendation, CCOC, hearings,
19 briefings voted on each of the nine criteria. The four
20 criteria that failed are listed below here.

21 Criteria 1, need; Criteria 2, to protect
22 public health, safety and welfare; Criteria 3, minimize
23 the effect on the value of surrounding property;
24 Criteria 6 was traffic. All those were voted down.

1 The CCOC felt Rochelle's City Council's vote
2 on the night of April 24th, 2003, was fair and unbiased
3 because of what they did to arrive at that decision.
4 They did their homework. No. 2, they looked beyond some
5 of the applicants high-tech, generalized expert
6 witnesses. No. 3, they protected the health, safety and
7 welfare of the people they served. No. 4, they looked
8 at the applicant's past operational history.

9 No. 5, they realized that nothing had changed
10 between the first and second application except for
11 sizing down of a few acres. No. 6, they reviewed the
12 Illinois National History Survey in which Illinois
13 residents identified water quality as their most
14 important issue. No. 7, they considered the already
15 leaking cell at the landfill. No. 8, they considered
16 the potential battle brewing over who is responsible for
17 closing the leaking cell, the city of Rochelle or the
18 operator.

19 No. 9, they noted that approximately 60
20 percent of the waste accepted would originate from
21 transfer stations located in Chicago as well as Cook,
22 DuPage and Kane counties.
23 No. 10, they realized that the estimated 442 trucks per
24 day in and out would create a traffic hazard on Mulford

1 Road and Route 38, and no amount of turn lanes would
2 solve that problem.

3 As reflected in Item 6 above, the most
4 important issue to the people of this area is the
5 quality of our water. We believe it is wiser to be very
6 conservative about the risk of our water system. If
7 there is any likelihood of future ground water
8 contamination, error on the conservative side.

9 So what I'm saying here, let us uphold the
10 informed decision made by the Rochelle City Council to
11 deny the expansion application. Thank you very much.

12 HEARING OFFICER HALLORAN: Thank you, sir.
13 Anyone else would like to give public comment or
14 statement. Would you like to be sworn in or just give
15 public comment?

16 MRS. ANN McDERMITT: Comment is fine.

17 HEARING OFFICER HALLORAN: Thank you.

18 MRS. ANN McDERMITT: I am Ann McDermitt, 207
19 School Avenue, Rochelle. We have lived in Rochelle
20 nearly 20 years. We have children and grandchildren in
21 Creston. And there are many, many objections I have to
22 the location of this dump; but the primary one is the
23 fact that its location is over the aquifer that supplies
24 the water for Creston, Rochelle, and the surrounding

1 area.

2 It's in one half mile of a school, and it is
3 nearly adjacent to the city of Creston. This is a
4 decided threat to the health, safety and welfare of the
5 citizens of the community; and I urge you to stand
6 behind Rochelle City Council's decision to deny this
7 request. Thank you.

8 HEARING OFFICER HALLORAN: Thank you, ma'am.
9 Anyone else like to give public comment or statement? I
10 don't see any hands. Let's take a five-minute break.
11 And when we come back, we're going to start with
12 Mr. O'Brien's case in chief. Thank you.

13 (A brief recess was taken.)

14 HEARING OFFICER HALLORAN: We are back on the
15 record. It's approximately 10:28. Mr. O'Brien will
16 commence his case in chief. First witness?

17 MR. O'BRIEN: I'd call former Council member
18 Donald Bubik as if on cross-examination. I guess since
19 I'm kind of seated behind the witness, I'll move over to
20 the podium.

21 HEARING OFFICER HALLORAN: Okay. Sir, if you
22 could raise your right hand, the court reporter will
23 swear you in.

24 DONALD K. BUBIK,

1 called as a witness herein, having been first duly
2 sworn, was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MR. O'BRIEN:

5 Q. Sir, would you please state your full name
6 and spell your last name for the record.

7 A. Donald K. Bubik. That's spelled B-u-b-i-k.

8 Q. And, Mr. Bubik, where do you live?

9 A. 1206 Brookside Drive, Rochelle, Illinois.

10 Q. And, sir, you were on the City Council that
11 made the decision denying the application; is that
12 correct?

13 A. Yes.

14 Q. And you had been on the City Council for how
15 long approximately?

16 A. Two years.

17 Q. And you were appointed to your position in --
18 I think after the -- immediately after the 2001
19 election, is that correct?

20 A. Yes.

21 Q. So you served from 2001 until essentially
22 right after the decision in this case on May 1st when
23 the new council was sworn in?

24 A. Yes.

1 (Petitioner's Exhibit No. 2
2 was identified.)

3 BY MR. O'BRIEN:

4 Q. Now, I'd like to refer you to Petitioner's
5 Exhibit 2 which is a newspaper article about the
6 decision, and specifically to the --

7 HEARING OFFICER HALLORAN: Thank you, sir.

8 BY MR. O'BRIEN:

9 Q. Specifically to the comments that you made to
10 the newspaper immediately after the decision, which are
11 highlighted on the second to last --

12 A. In pink.

13 Q. -- in pink on the last --

14 A. Uh-huh, I see that.

15 Q. And ask you is it true that immediately after
16 the vote on the siting hearing, you told the newspaper
17 reporter, quote, "I voted the way the citizens of this
18 town wanted it to go." Did you say that?

19 A. Yes.

20 Q. And did you further say immediately after the
21 vote to that reporter, "The people of this area do not
22 want to make a landfill. The message I was getting was
23 that we didn't want it"?

24 A. Yes. Can I make another comment?

1 Q. You'll have an opportunity to respond.

2 A. Okay.

3 Q. And after the hearing which ended on -- I
4 believe it was March 4th and before the decision on
5 April 24th, is it true that you were approached by
6 several people who told you that they opposed the
7 siting?

8 A. Yes.

9 Q. And who were those people that approached you
10 after the hearing and before the decision?

11 A. Barb Renick.

12 Q. Spell that, please? R-e-n-i-c-k?

13 A. Yes, I believe that's correct. Frank
14 Kranbuhl.

15 Q. K-r-a-n-b-u-h-l?

16 A. Yes. And Richard Ohlinger.

17 Q. O-h-l-i-n-g-e-r?

18 A. Right.

19 Q. Did all three of them express to you their
20 opposition to the landfill?

21 A. Yes, they did.

22 Q. Were all three of those people members of the
23 CCOC, to your knowledge?

24 A. I don't know.

1 Q. Do you know if any of them were?

2 A. No.

3 Q. Now, during the hearing, did the president of
4 the CCOC, Frank Beardin, come to your house on the
5 Sunday of the hearing?

6 A. Yes, he did.

7 Q. And would you relate what happened at that
8 time? What did he do?

9 A. Frank came to the door, and I think he had
10 been out passing out signs. And he said, "I have this
11 tape that I'd like for you to see, Touched By An Angel."
12 And he gave it to me, and that was the extent of our
13 conversation.

14 Q. Did he tell you it was about landfills?

15 A. You know, I don't remember. Yeah, I think he
16 did mention that it could pertain to landfills. He said
17 there's some important information, although I did not
18 look at the tape.

19 Q. Okay. Is Petitioner's Exhibit 14 the
20 videotape that he gave you that day?

21 A. That's it.

22 Q. Now, this occurred on the Sunday during the
23 hearing; is that correct?

24 A. Yes, sir.

1 Q. And the hearing had taken place for three
2 days the previous week, there was a recess. So this is
3 on Sunday, March 2nd, that he came to your house?

4 A. Yes, I believe it was.

5 Q. Then the hearing resumed the following day?

6 A. Yes.

7 Q. Did you disclose to anyone that Mr. Beardin
8 had come to you and asked you to see this video?

9 MR. PORTER: Object. Obviously we disclosed
10 it. We're the ones that produced the videotape in
11 answer to interrogatories.

12 BY MR. O'BRIEN:

13 Q. Before the decision, did you disclose that to
14 anyone?

15 A. May I answer that?

16 MR. PORTER: Absolutely.

17 HEARING OFFICER HALLORAN: Is that fine with
18 you, Mr. Porter?

19 MR. PORTER: No objection.

20 HEARING OFFICER HALLORAN: Okay. You may
21 continue.

22 A. Repeat the question.

23 BY MR. O'BRIEN:

24 Q. Before the decision on April 24th, did you

1 disclose to anyone that Mr. Beardin had come to you and
2 made this ex parte contact?

3 A. No, except my wife. She knew that he had
4 stopped by.

5 Q. Now, Mr. Beardin during the hearing was
6 seated at counsel table with Mr. Mueller, is that
7 correct?

8 A. Yes, he was.

9 Q. And were you aware that the CCOC was a party
10 to the siting proceedings?

11 A. Oh, yes.

12 Q. Were you aware that Mr. Beardin was the
13 president of the CCOC?

14 A. Yes.

15 Q. During the hearing, did Mr. Beardin or his
16 counsel ever disclose that this ex parte communication
17 had taken place?

18 MR. PORTER: Objection, record speaks for
19 itself.

20 HEARING OFFICER HALLORAN: Mr. O'Brien?

21 MR. O'BRIEN: I'm just asking Mr. Bubik if he
22 knows whether it was disclosed. It was his ex parte
23 communication.

24 HEARING OFFICER HALLORAN: Overruled. He may

1 respond if he is able.

2 A. Would you repeat that again?

3 BY MR. O'BRIEN:

4 Q. Do you know if Mr. Beardin or his counsel
5 disclosed that this ex parte communication had been made
6 with you during the hearing?

7 A. No.

8 MR. PORTER: I have to object. I let it
9 slide a couple times. Mr. O'Brien keeps referring to it
10 as an ex parte communication. Clearly that calls for
11 legal communication this witness is not able to testify
12 to. If he wants to ask him if he was aware of the
13 communication --

14 MR. O'BRIEN: I'll rephrase the question.

15 HEARING OFFICER HALLORAN: Objection
16 sustained. Please rephrase.

17 BY MR. O'BRIEN:

18 Q. Are you aware of whether or not Mr. Beardin
19 or his counsel disclosed that he had had this
20 communication with you on the Sunday during the hearing?

21 A. No.

22 Q. Now, after the hearing began, were you
23 contacted by other people before the decision was
24 rendered to express their opposition to the landfill?

1 A. After the hearing began?

2 Q. After the hearing began.

3 A. No.

4 Q. Do you recall me asking you during your
5 deposition essentially that same question and asking you
6 how many times you were --

7 MR. PORTER: Objection. Counsel, can you
8 refer me to a page and line?

9 MR. O'BRIEN: Page 18, Line 16.

10 MR. PORTER: Give me a moment to dig that
11 out?

12 BY MR. O'BRIEN:

13 Q. Do you recall me asking you how many times
14 you were approached by people after the hearing began
15 and before the decision was rendered, and do you
16 remember saying you didn't recall? Do you remember
17 saying that?

18 MR. PORTER: Objection. That's not
19 impeachment.

20 HEARING OFFICER HALLORAN: Mr. O'Brien?

21 MR. O'BRIEN: I'm going to go on to the next
22 question.

23 HEARING OFFICER HALLORAN: Overruled.

24 BY MR. O'BRIEN:

1 Q. Do you recall that? Did I ask you that
2 question?

3 A. Yes.

4 Q. Do you recall that I said "Would it have been
5 as many as 20 times that you were approached by people
6 after the hearing began and before the decision was
7 made?"

8 A. Oh, that part.

9 Q. Do you remember that?

10 A. Yes, I remember it now.

11 Q. What was your answer?

12 A. No.

13 Q. Do you remember that I asked you, "Would it
14 have been as many 20 times," and your answer was under
15 oath, "I don't recall"?

16 A. I don't recall.

17 Q. That's correct; it could have been as many as
18 20 times?

19 MR. PORTER: Same objection, move to strike.
20 It's not impeachment.

21 HEARING OFFICER HALLORAN: Mr. O'Brien?

22 MR. O'BRIEN: I'm not impeaching. I'm asking
23 him the question.

24 BY MR. O'BRIEN:

1 Q. Could it have been as many as 20 times that
2 you were contacted by people expressing their
3 opposition?

4 A. No. People didn't --

5 Q. Do you remember me asking you that question
6 and asking you, would it have been as many 20 times and
7 you saying I don't recall?

8 A. I don't recall.

9 MR. PORTER: Same objection, move to strike.
10 It's not impeachment.

11 HEARING OFFICER HALLORAN: Overruled.

12 BY MR. O'BRIEN:

13 Q. Do you recall that I asked you, could it have
14 been as many as 100 times that people approached you
15 after the hearing began and before the --

16 A. I recall that.

17 Q. And what was your answer?

18 A. I don't recall.

19 Q. And then I asked you could it have been as
20 many as 1,000 times that you were contacted by people
21 after that the hearing began?

22 A. I remember that.

23 Q. And you said what?

24 A. I don't recall.

1 Q. No. You said you'd rather doubt it, but you
2 weren't keeping a score card.

3 A. Yeah.

4 MR. PORTER: Same objection.

5 HEARING OFFICER HALLORAN: Excuse me,
6 Mr. O'Brien, where is your impeachment? Mr. Porter has
7 an objection regarding improper impeachment.

8 MR. O'BRIEN: My impeachment is simply to
9 suggest, he says, no, he wasn't contacted by as many as
10 20 people. In the deposition he said he didn't recall.
11 That's the thrust of it.

12 BY MR. O'BRIEN:

13 Q. I'm asking him now an independent question,
14 which is: Were you contacted as many as 100 times?

15 A. I was not.

16 Q. You were not?

17 A. No, sir.

18 Q. You're sure of that now?

19 A. Yes, sir.

20 Q. But in the deposition you testified that you
21 did not recall if it was as many as 100 times?

22 A. Yeah, I -- yes.

23 Q. So how many times do you think you were
24 contacted after the hearing began by people to express

1 their opposition?

2 MR. PORTER: Objection, asked and answered.

3 He's already said none.

4 HEARING OFFICER HALLORAN: Sustained.

5 BY MR. O'BRIEN:

6 Q. Now, after the hearing had ended but before
7 the decision was rendered, were you approached by Ken
8 Roeglin?

9 A. Yes.

10 Q. And, in fact, did Mr. Roeglin give to you an
11 article from the Florida newspaper, The Bradenton
12 Florida Herald Tribune of March 16th?

13 A. Yes, he did. That was a part of the record.

14 (Petitioner's Exhibit No. 8
15 was identified.)

16 BY MR. O'BRIEN:

17 Q. And is Petitioner's Exhibit 8 that newspaper
18 article that he gave to you?

19 HEARING OFFICER HALLORAN: Thank you.

20 BY MR. O'BRIEN:

21 Q. Is that the newspaper article he gave to you?

22 A. Yes.

23 Q. And was Mr. Roeglin a member of the Concerned
24 Citizens of Ogle County?

1 A. I don't know.

2 Q. And did you read the article?

3 A. Yes.

4 Q. Did you know at that time that it was a part
5 of the record?

6 MR. PORTER: Objection, irrelevant.

7 HEARING OFFICER HALLORAN: Mr. O'Brien?

8 MR. O'BRIEN: I think it's relevant,
9 otherwise he shouldn't have been reading it. He
10 certainly knows that.

11 MR. PORTER: I have another objection then.
12 You cannot dive into the middle of impressions of a City
13 Council member. You actually cannot ask them whether or
14 not they have read a specific document. You can ask
15 them if a document was available, and this one was
16 available. He's already testified it's part of the
17 record.

18 MR. O'BRIEN: If an ex parte communication
19 takes place, the fact of that ex parte communication is
20 admissible. Whether he considered this in making a
21 decision, I would agree, his mental process is not; but
22 certainly the fact of whether he got this article in an
23 ex parte communication and read it, that fact --

24 HEARING OFFICER HALLORAN: I agree with

1 Mr. Porter. Objection sustained. Whether or not he
2 read it is irrelevant. Just the fact that he was aware
3 of it, that may be a better question at this point.

4 MR. O'BRIEN: Whether or not he read it is
5 irrelevant even though it's an ex parte communication?

6 HEARING OFFICER HALLORAN: As far as a
7 decision-maker.

8 MR. O'BRIEN: I guess what I would argue to
9 you, Mr. Halloran, is the fact of the communication, the
10 fact that he got this article outside the record.
11 Whether he got something in the record and read it, that
12 I agree I'm not allowed to explore. But if somebody
13 gives him something ex parte, I think the fact of that
14 communication -- it would be as if somebody came into a
15 juror and gave them an article that said that this
16 person on trial for burglary had committed five other
17 burglaries. The juror would be required to testify that
18 that communication took place and they read that
19 article. Whether it influenced them under Rule 606 of
20 the Federal Rules of Evidence would not be admissable.

21 HEARING OFFICER HALLORAN: Mr. Porter?

22 MR. PORTER: Again, this article is already
23 part of the record. It's acknowledged that it's part of
24 the record. I don't believe there is any case law that

1 establishes that the mere fact that it came to him other
2 than through the City Clerk's office is in any way
3 relevant. He's already admitted that anyhow. So
4 whether or not he read it necessarily gets to what his
5 decision process was in coming to the decision that was
6 made, and that's already -- the case law is absolutely
7 clear that if it's part of the record, he doesn't get an
8 opportunity to ask if it's been reviewed; and this is
9 part of the record.

10 HEARING OFFICER HALLORAN: I am going to
11 sustain Mr. Porter's objection. You may proceed as an
12 offer of proof, and the witness may answer.

13 MR. O'BRIEN: Okay.

14 BY MR. O'BRIEN:

15 Q. Did you read the article?

16 A. Yes.

17 Q. Did you read the statement in the article
18 that liners meant to contain leche often fail over time
19 allowing leche to leak out and contaminate the aquifer?
20 Did you read that sentence?

21 MR. PORTER: Objection, asked and answered.
22 He just said he read the article.

23 HEARING OFFICER HALLORAN: Overruled.

24 BY MR. O'BRIEN:

1 Q. Did you read that sentence?

2 A. Yes.

3 Q. And after the decision, did you have a
4 conversation with Tom Hilbert about why you had voted as
5 you did?

6 A. Oh, after it was made?

7 Q. Yes.

8 A. Yes, sir.

9 Q. And did you tell Hilbert among other
10 things --

11 HEARING OFFICER HALLORAN: Mr. Porter?

12 MR. PORTER: I'm going to let the question be
13 out, but I have an objection as soon as it does.

14 MR. O'BRIEN: I'll ask the question, and you
15 wait until the objection is ruled on.

16 BY MR. O'BRIEN:

17 Q. Did you tell Mr. Hilbert in the course of
18 explaining why you voted as you did that this article
19 was something you were concerned about?

20 MR. PORTER: Well --

21 HEARING OFFICER HALLORAN: Mr. Porter?

22 MR. PORTER: I object. If it's obviously
23 asking about the reasons that the City Council member
24 voted as to a specific criteria, it seeks testimony

1 regarding his mental impressions.

2 HEARING OFFICER HALLORAN: You have to
3 enlighten me. Who is Mr. Hilbert?

4 MR. O'BRIEN: He is seated next to me. He is
5 the project manager.

6 HEARING OFFICER HALLORAN: Okay.

7 MR. PORTER: The objection is it seeks
8 information regarding deliberative process.

9 MR. O'BRIEN: I'd like to address that issue.

10 HEARING OFFICER HALLORAN: You may,
11 Mr. O'Brien.

12 MR. O'BRIEN: I have a brief that basically
13 deals with the issue that I raise in my opening, and --

14 HEARING OFFICER HALLORAN: I can assure you,
15 I am not going to read it at this juncture. Probably it
16 would have been more appropriate to give it to me
17 beforehand, but that's fine.

18 MR. O'BRIEN: As I was arguing in my opening
19 statement, I won't reiterate all of that, this witness's
20 testimony as to whether or not any given piece of
21 information in or out of the hearing, how it affected
22 him is not admissable. Similarly it's not -- the
23 purpose of this brief predominantly is to -- this
24 D'Maggio line of authority that says you can't explore

1 the mental process, that's based on a larger body of
2 Federal and State case law that says you cannot invade
3 the decision-maker's mental processes. And it is
4 equally inappropriate for the decision-maker to dispel
5 the inference or implication of prejudice by testifying
6 that they weren't influenced by this or that piece of
7 evidence or this or that ex parte communication.

8 However, the case law also says that the
9 decision-maker's out-of-court statements,
10 post-decisional statements about their decision is
11 admissible. There are a number of cases that have said
12 that once the decision has been made on April 24th -- or
13 let's say even on April 28th when they reconsidered
14 it -- once that decision has been made, their
15 out-of-court statements as to why they made that
16 decision is admissible.

17 And the PCB and D'Maggio line of authority
18 has not dealt with that. What I'm saying is Mr. Bubik's
19 comments to Mr. Hilbert that he took this article into
20 consideration in rendering his decision is admissible,
21 and the cases that I cite in the brief stand for that
22 proposition.

23 HEARING OFFICER HALLORAN: Okay. At this
24 juncture, I am going to sustain Mr. Porter's objection.

1 You may proceed as an offer of proof, but again I think
2 it would have been better to brief this and hand it to
3 me prior to the hearing because it was a reasonable
4 probability this issue would have come up. And I will
5 not make a knee-jerk reaction based on new case law that
6 you have cited. So in any event, you may proceed. You
7 can ask the question as an offer of proof. Thank you,
8 Mr. O'Brien.

9 MR. O'BRIEN: I would say that's why I raised
10 it in the opening statement. That's the reason I raised
11 the issue.

12 HEARING OFFICER HALLORAN: Thank you.

13 BY MR. O'BRIEN:

14 Q. So, Mr. Bubik, did you tell Mr. Hilbert in
15 this May 7th conversation that one of the reasons you
16 were concerned about the ground water is because what
17 you had read in this article?

18 A. I don't recall my exact words, but yes.

19 MR. O'BRIEN: Just review my notes, and I
20 think I'm done.

21 HEARING OFFICER HALLORAN: Take your time,
22 Mr. O'Brien.

23 MR. O'BRIEN: That's all the questions I
24 have.

1 HEARING OFFICER HALLORAN: Thank you. I will
2 accept your hearing brief as Hearing Officer Exhibit
3 No. 1.

4 (Hearing Officer Exhibit No. 1
5 was identified.)

6 HEARING OFFICER HALLORAN: Mr. Porter?

7 MR. PORTER: Mr. Halloran, just to not be out
8 done, I happen to have a trial brief that addresses the
9 issue of mental processes, which I guess I will hand up,
10 as well. It does not regretfully address the issue of
11 whether or not a statement has been made about a mental
12 process outside of the hearing. I wasn't aware that
13 that was going to be an issue, but it does address the
14 fact that you can't get into mental processes.

15 HEARING OFFICER HALLORAN: Thank you, Mr.
16 Porter. I will mark that as Hearing Officer Exhibit
17 No. 2.

18 (Hearing Office Exhibit No. 2
19 was identified.)

20 MR. PORTER: Thank you. May I proceed?

21 HEARING OFFICER HALLORAN: You may.

22 CROSS-EXAMINATION

23 BY MR. PORTER:

24 Q. Mr. Bubik, you testified that there were I

1 think three individuals that tried to talk to you after
2 the application was filed on November 22nd, 2002, and
3 before decision. Can you repeat their names for me? I
4 missed one of them.

5 A. Dick Ohlinger, Frank Kranbuhl and Barb
6 Renick.

7 Q. When these individuals came up to you and
8 started to express their opinion regarding the landfill
9 application, what did you tell them?

10 A. I told them that I was unable to discuss
11 anything about the landfill. That was the end of our
12 conversation.

13 Q. Did any of those unsolicited statements have
14 any impact on your decision?

15 MR. O'BRIEN: I object, and I object for the
16 reasons set forth in my brief.

17 HEARING OFFICER HALLORAN: I'm sorry,
18 Mr. O'Brien. Could you read the question back, Tracy?

19 (The record was read.)

20 MR. O'BRIEN: I object for all the reasons
21 set forth in this brief. I think it's entirely
22 inappropriate for the decision-maker to state that self-
23 serving conclusion, and I think this is an important
24 issue that the hearing officer ought to consider right

1 at this time because it's going to come up time and
2 again.

3 HEARING OFFICER HALLORAN: I am going to
4 sustain your objection. Mr. Porter, you may ask as an
5 offer of proof.

6 MR. PORTER: The question has been asked. Do
7 you want me to reiterate it?

8 HEARING OFFICER HALLORAN: Yes, please,
9 Mr. Porter. And before you begin, since this was going
10 to be a foreseeable situation where it was going to
11 arise time and time again, I think we've had, I don't
12 know, four or five telephonic status conferences and
13 pre-hearing conferences. Nothing was said about this
14 possible issue coming up. With that said, Mr. Porter,
15 you may proceed.

16 MR. PORTER: And along those lines, I don't
17 have the research or the ability to at this second go
18 through the nine-page brief that's been handed to me to
19 respond, and obviously we will do so with the Board at
20 the appropriate time.

21 BY MR. PORTER:

22 Q. The question was: Did any of these
23 unsolicited statements by Mr. Renick -- I'm sorry;
24 Ms. Renick, Mr. Ohlinger or the other individual in any

1 way impact your decision?

2 A. No, sir.

3 Q. Did they in any way prejudice your decision?

4 A. No, sir.

5 MR. O'BRIEN: I understand this is all just
6 an offer of prove, and I have a standing objection.

7 HEARING OFFICER HALLORAN: That is correct.

8 MR. O'BRIEN: Thank you.

9 MR. PORTER: And this question I view as
10 different and not under the offer of proof, Mr. Hearing
11 Officer, the forthcoming question.

12 BY MR. PORTER:

13 Q. Was anything that those three individuals
14 said different than the statements you heard during the
15 hearing?

16 MR. O'BRIEN: Object to that question for the
17 same reason.

18 HEARING OFFICER HALLORAN: Overruled. You
19 may answer.

20 A. Would you repeat that again?

21 BY MR. PORTER:

22 Q. Was anything that those three individuals
23 said to you outside of the hearing anything different
24 than what you heard during the hearing? I want to

1 withdraw the question and ask it again.

2 MR. O'BRIEN: Can I address the objection a
3 little more thoroughly.

4 MR. PORTER: Let me ask the question again,
5 if you don't mind, Mr. O'Brien.

6 HEARING OFFICER HALLORAN: And then make your
7 objection if need be. Thanks.

8 BY MR. PORTER:

9 Q. Was anything that those three individuals
10 said to you different than what you heard during the
11 hearing or in the public comments that were filed within
12 the hearing?

13 MR. O'BRIEN: Before you answer, I would like
14 to object and state the reasons. Mr. Porter has argued
15 to me and I assume in his brief that what part of the
16 hearing the decision-maker attended, what evidence he
17 heard, what he considered, how it influenced him, none
18 of that is relevant. And now he's asking him to
19 basically say that something that he heard outside the
20 hearing was just like what he heard in the hearing, and
21 it seems to me that that's entirely inappropriate. In
22 other words, the Appellate Court has spoken to this
23 issue and said it's outside the realm of examination as
24 to what parts of the hearing they listen to, what

1 evidence they heard. And now Mr. Porter is asking him,
2 well, did you hear this kind of evidence, and then I'm
3 precluded from asking him well what phase of the hearing
4 did you actually even attend.

5 HEARING OFFICER HALLORAN: Mr. Porter, are
6 you trying to backdoor --

7 MR. PORTER: I am not. As the hearing
8 officer is aware, the issue is whether or not there was
9 any prejudice as to the decision; and that's one of the
10 things the Pollution Control Board is going to have to
11 determine. First, they're going to have to determine if
12 they even were ex parte communications. I would submit
13 that they are not because these individuals were not
14 parties to this proceeding. And, therefore, they
15 necessarily cannot be ex parte communications which are
16 discussions of a party with a trier of fact or trier of
17 law outside the presence of the other party.

18 Regretfully the Pollution Control Board
19 doesn't necessarily agree with me on that one point and
20 has in the past found that any communication, no matter
21 how trivial and inevitable, can be classified ex parte.

22 The next question is whether or not it's
23 prejudicial, and obviously we need to be able to ask
24 this individual if indeed the communications were

1 anything different than was heard during the hearing
2 that he indeed considered. And he has the ability to
3 answer that question and, therefore, should be allowed
4 to do so.

5 It's also been asked and answered in numerous
6 proceedings that I have been involved in without any
7 concern by the PCB.

8 HEARING OFFICER HALLORAN: I am going to
9 stand on my initial -- go ahead, Mr. O'Brien.

10 MR. O'BRIEN: I was only going to say what's
11 in the record -- what was in the record of the hearing
12 is a matter of record. This witness doesn't need to
13 testify to it. On the issue of prejudice, all he's
14 entitled to testify to or competent to testify to is the
15 fact of the communication. He is not supposed to be
16 testifying to what occurred during the hearing, either
17 in my examination or in Mr. Porter's.

18 HEARING OFFICER HALLORAN: I am going to
19 overrule your objection and stand on my initial ruling,
20 and I'll allow Mr. Porter to ask this one question for
21 the third time, I think.

22 MR. PORTER: Do I need to repeat it?

23 BY MR. PORTER:

24 Q. Was anything that these three individuals

1 walked up to you and said different than what you heard
2 during the hearing?

3 A. No.

4 Q. Counsel mentioned some statements that were
5 made in a newspaper article that was drafted after the
6 decision. Do you recall that testimony?

7 A. Yes.

8 Q. And isn't it true that during the hearing,
9 many members of the public voiced their concerns about
10 need, compatibility and traffic?

11 A. Yes, many.

12 MR. O'BRIEN: I am going to object to that
13 type of question as to what testimony did he hear, what
14 type of public comment did he hear for the same reasons
15 I've objected to.

16 HEARING OFFICER HALLORAN: Mr. Porter?

17 MR. PORTER: It's the same response.

18 HEARING OFFICER HALLORAN: I am going to
19 overrule your objection, Mr. O'Brien. You may proceed,
20 Mr. Porter.

21 BY MR. PORTER:

22 Q. Do you remember the question?

23 A. Yes. There were many comments made by the
24 public during the hearing that I heard that are a part

1 of the record.

2 Q. Was it your decision based on any -- strike
3 that.

4 (Respondent's Exhibit No. 1
5 was identified.)

6 BY MR. PORTER:

7 Q. As to the newspaper article, you started to
8 mention this. If I may, I'd like to show you what I
9 have had marked as Respondent's Exhibit No. 1. What is
10 that?

11 A. This is the article from the Florida
12 newspaper that Mr. Roeglin gave me.

13 Q. And it's the same article that was marked as
14 Petitioner's Exhibit No. 8, is that correct?

15 A. Yes.

16 Q. And is that a true and accurate copy of the
17 article that Mr. Roeglin gave you?

18 A. Yes, it is.

19 Q. What is in the upper right-hand corner of
20 that article?

21 A. It says, "received March 28th, 2003, Bruce W.
22 McKinney, City Clerk of Rochelle."

23 Q. And what does that indicate to you?

24 A. It indicates to me that this is a part of the

1 record that would be available for me to read.

2 MR. PORTER: Move to admit Respondent's
3 Exhibit No. 1.

4 HEARING OFFICER HALLORAN: Mr. O'Brien?

5 MR. O'BRIEN: No objection.

6 HEARING OFFICER HALLORAN: Respondent's
7 Exhibit No. 1 is admitted.

8 (Respondent's Exhibit No. 1 was
9 admitted into evidence.)

10 HEARING OFFICER HALLORAN: Were you going to
11 offer your Petitioner's Exhibit No. 8?

12 MR. O'BRIEN: I am. Let me take back the
13 lack of any objection. Do I understand the witness to
14 say that this is the actual copy he got from --

15 THE WITNESS: The actual copy?

16 MR. O'BRIEN: You got from Roeglin?

17 MR. PORTER: I'm sorry. Are we allowing a
18 voir dire at this point?

19 MR. O'BRIEN: I will withdraw the question.
20 Before I agree to the admissibility of the article, I'd
21 like to know the answer to that question.

22 HEARING OFFICER HALLORAN: Okay. You did
23 agree once at one time. I'm not sure what the question
24 is now.

1 MR. O'BRIEN: Really it's more a question to
2 counsel. Is this the copy that he was given by Roeglin
3 are you saying?

4 MR. PORTER: No. The question that's been
5 put to you is if you have any objection to the
6 admissibility of this document that I just tendered? If
7 you do, state your objection, and I'll respond.

8 MR. O'BRIEN: Well, if the purpose -- I just
9 want to know what the question is. Is he saying is this
10 the copy that you got from Roeglin?

11 MR. PORTER: I have already asked the
12 questions that I believe lay the foundation. I have
13 tendered it to the Hearing Officer.

14 HEARING OFFICER HALLORAN: Mr. Porter, could
15 you answer Mr. O'Brien's question?

16 MR. PORTER: I simply -- obviously, it is the
17 article that he received. It has a stamp on it that was
18 put on by another individual. Is that --

19 MR. O'BRIEN: Well, I don't mean to play
20 games here. I'm just saying I understood him to be
21 suggesting that he got a copy that had already been file
22 stamped by the clerk, and I obviously wouldn't object to
23 that if that's true. But now I'm beginning to think,
24 no, this isn't the case; he's just putting in a document

1 that subsequently was file stamped by the clerk. I will
2 cross-examine the witness, and I don't object.

3 HEARING OFFICER HALLORAN: Whatever the case,
4 I'm going to admit it.

5 MR. PORTER: Thank you.

6 BY MR. PORTER:

7 Q. Counsel also brought up various statements in
8 your deposition regarding whether or not you recall how
9 many people tried to talk to you after the hearing
10 started and before the decision. Is it possible in your
11 deposition you were just unclear as to the dates that he
12 was referring to?

13 A. Yes.

14 MR. PORTER: Nothing further.

15 HEARING OFFICER HALLORAN: Thank you.

16 Mr. O'Brien?

17 REDIRECT EXAMINATION

18 BY MR. O'BRIEN:

19 Q. Mr. Bubik, this copy of the article, did you
20 get it -- from Roeglin when you got the article, did you
21 get it with that stamp on it?

22 A. No.

23 MR. O'BRIEN: Okay. That's all I have.

24 HEARING OFFICER HALLORAN: Thank you,

1 Mr. O'Brien. Any questions, Mr. Porter?

2 MR. PORTER: No redirect.

3 HEARING OFFICER HALLORAN: You may step down,
4 sir. Thank you very much.

5 MR. O'BRIEN: I'd like to offer Exhibits 2
6 and 8 and 14, the video.

7 MR. PORTER: I have no objection to 8. I do
8 object to 14 as it's irrelevant. The witness testified
9 he never watched the video. And so there's absolutely
10 no relevance to the video. And as to No. 2, I also
11 object. There was no foundation laid for the admission
12 of that newspaper article.

13 HEARING OFFICER HALLORAN: Mr. O'Brien, would
14 you like to address Exhibit No. 2, please?

15 MR. O'BRIEN: Exhibit No. 2, the witness has
16 testified what he told the newspaper and is exactly set
17 forth in that article. I showed it to him.

18 HEARING OFFICER HALLORAN: I think there was
19 sufficient foundation laid. I will admit Petitioner's
20 Exhibit No. 2. Now, Mr. Porter, the video, the Touched
21 By An Angel video that was received by the witness from
22 -- was it Mr. Beardin?

23 MR. PORTER: Mr. Beardin. On direct
24 examination, Mr. Bubik explicitly testified he never

1 watched the videotape. So how in the world can that
2 possibly be relevant to an ex parte communication?

3 MR. O'BRIEN: Mr. Halloran, may I address?

4 HEARING OFFICER HALLORAN: Yes, you may,
5 Mr. O'Brien. Please do.

6 MR. O'BRIEN: I am not attempting to show
7 that Mr. Bubik watched the tape. What I'm getting to is
8 the gravity of the communication by the CCOC, and I
9 intend to examine Mr. Beardin quite thoroughly about the
10 tape and to suggest that despite his denials of these
11 various ex parte communications that he, in fact, did
12 make these statements and that he did it specifically to
13 influence the Council members and that goes to the
14 gravity of the contacts. And I believe that under the
15 liberal rules of admissibility set forth in the PCB's
16 general rules, the videotape should be admitted.

17 HEARING OFFICER HALLORAN: Mr. Porter,
18 anything further?

19 MR. PORTER: It doesn't matter what
20 Mr. Beardin's intent was. The question is whether or
21 not the City Council considered an ex parte
22 communication. He didn't. He never even looked at the
23 videotape. Irrelevant.

24 HEARING OFFICER HALLORAN: Okay. I do find

1 it relevant since there is an issue of fundamental
2 fairness. I think it will be helpful, I don't know, for
3 understanding of a fact of consequence in this
4 litigation. Again, it will go to its weight, not
5 admissibility; and I will accept Petitioner's Exhibit
6 No. 14 over objection.

7 (Petitioner's Exhibits Nos. 2, 8
8 and 14 were admitted into
9 evidence.)

10 MR. PORTER: May Mr. Bubik be excused?

11 HEARING OFFICER HALLORAN: Yeah. You may
12 step down, sir. Thank you.

13 (Discussion held off the record.)

14 HEARING OFFICER HALLORAN: Back on the
15 record. Mr. O'Brien, you wish to call your second
16 witness?

17 MR. O'BRIEN: I call Mr. Roeglin.

18 HEARING OFFICER HALLORAN: Just raise your
19 right hand. The court reporter will swear you in.

20 KENNETH C. ROEGLIN,
21 called as a witness herein, having been first duly
22 sworn, was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. O'BRIEN:

1 Q. Sir, would you state your full name and spell
2 your last name for the record?

3 A. Kenneth C. Roeglin, R-o-e-g-l-i-n. Do you
4 want my address?

5 Q. Yes, if you would, please.

6 A. 1113 McCall Court, Rochelle, Illinois.

7 Q. And, sir, are you now or have you ever been a
8 member of the Concerned Citizens of Ogle County? I
9 should get up in front of you. I'm sorry. Are you a
10 member of the Concerned Citizens of Ogle County?

11 A. No, I am not.

12 Q. Had you ever attended their meetings?

13 A. I attended one in Creston and one at the VFW.

14 Q. I'd like to show you what's been marked
15 previously and admitted as Petitioner's Exhibit 8 which
16 is that newspaper article we have been talking about and
17 ask you if you did give that article to Councilman Bubik
18 after the hearing and before the decision?

19 A. First, let me say that I was gone from 2/27
20 to 3/25. I am not sure of the dates of the hearing. I
21 was not in town. I was on vacation.

22 Q. So you got back to town from Florida on
23 March 25th?

24 A. Somewhere around there, yes, sir.

1 Q. Sometime between March 25th and the decision
2 on April 24th, you gave that article to Mr. Bubik?

3 A. Yes.

4 Q. Where were you when you gave that article to
5 him?

6 A. In Don's driveway.

7 Q. And had you gone to his house?

8 A. Yeah.

9 Q. And had you done that for the purpose of
10 giving him that article?

11 A. Pardon me?

12 Q. Had you gone there for the purpose of giving
13 him that article?

14 A. Yeah, I distributed several of them that day.

15 Q. And who else did you give the article to?

16 A. I don't recall who all I gave them to.

17 Q. Well, were the people you gave them to
18 Council members of the Rochelle City Council?

19 A. I can't say I recall that. I did give one to
20 Frank Beardin, I know that.

21 Q. You gave one to Frank Beardin, and you gave
22 one to Don Bubik. You can't remember anyone else?

23 A. And I just don't recall. I just thought I
24 was doing an educational factor because of the last

1 statement in that article.

2 Q. What last statement is that?

3 A. That article --

4 MR. PORTER: Objection. Article speaks for
5 itself.

6 HEARING OFFICER HALLORAN: He may answer if
7 he's able.

8 BY MR. O'BRIEN:

9 Q. What statement are you referring to?

10 A. "The leche through the garbage, injecting it
11 with air and water promotes bacteria growth, speeding up
12 the decay process by as much as 500 percent. It could
13 shorten the decaying process from 30 years to 5 years."
14 I thought that was an important factor. I understand
15 bacteria very well.

16 Q. Was your purpose of showing this article to
17 Mr. Bubik to get him to vote against the application?

18 A. Strictly education.

19 HEARING OFFICER HALLORAN: Excuse me.

20 Mr. Porter?

21 MR. PORTER: Again, I object. This is not a
22 decision-maker. His purpose in giving it is completely
23 irrelevant.

24 MR. O'BRIEN: Goes to the gravity of the

1 contact. If you intentionally are attempting to
2 influence with an ex parte communication, that's
3 different than doing it innocently and without such
4 intent; and it goes to the gravity of the content.

5 HEARING OFFICER HALLORAN: Mr. Porter?

6 MR. PORTER: Well, it would be grave if the
7 City Council member solicited such contact; but this
8 again is one of the recognized inevitable contacts, and
9 his intent in making the contact is irrelevant. He is
10 not --

11 HEARING OFFICER HALLORAN: I do find it
12 irrelevant, but you may ask the question under an offer
13 of proof. I sustain Mr. Porter's objection.

14 BY MR. O'BRIEN:

15 Q. Did you offer him this article in order to
16 get Mr. Bubik to vote against the expansion?

17 A. I'm not sure I understand. As I said before,
18 it was strictly something on my part that I thought
19 would be educational to everybody that I gave it to.

20 Q. Were you opposed to the expansion yourself?

21 MR. O'BRIEN: Offer of proof.

22 A. Pardon?

23 BY MR. O'BRIEN:

24 Q. Were you opposed to this expansion of the

1 landfill?

2 A. No. I had my own opinion about that.

3 Q. That's what I'm asking you about, your own
4 opinion. Were you opposed to the expansion?

5 MR. HELSTEN: I think his opinion, if I may
6 interject, I would object to even this part of the offer
7 of proof as to relevancy because I think his opinion is
8 not relevant unless he expressed it to the decision-
9 maker.

10 MR. O'BRIEN: I can get to that under an
11 offer of proof. I'm doing this under the offer of
12 proof.

13 HEARING OFFICER HALLORAN: Yeah. Do you want
14 to tag team over here, Mr. Helsten?

15 MR. HELSTEN: No. I'm sorry.

16 HEARING OFFICER HALLORAN: That's fine.
17 That's fine. I couldn't resist. Mr. O'Brien, please do
18 proceed under an offer of proof.

19 A. You want me --

20 BY MR. O'BRIEN:

21 Q. What was your opinion?

22 A. My opinion? I don't know if you're going to
23 like this or not. Let me tell you something. My
24 opinion is that if this Rochelle Waste Disposal would

1 have come out to increase that landfill by 80 acres
2 instead of 360, we wouldn't be sitting in this room here
3 today. That's my opinion.

4 Q. And your opinion was that you were opposed to
5 the application to expand?

6 A. I had heard about it, okay. I heard about
7 it. I am a paper-reading nut, okay. You can tell why I
8 cut that article out.

9 Q. And also you write letters to the editor?

10 A. Yeah. I just wanted to help the situation.
11 And if I knew it was going to do this, I would have
12 never really cut the damn thing out.

13 HEARING OFFICER HALLORAN: To make the record
14 clear, I still sustain Mr. Porter and Mr. Helsten's
15 objection. This is all under an offer of proof. I find
16 it irrelevant.

17 A. Thank you.

18 BY MR. O'BRIEN:

19 Q. You did write a letter to the editor of the
20 Rochelle News Leader, did you not?

21 A. Yes, sir, I did that.

22 Q. Opposing the application suggesting that
23 you --

24 A. No, I didn't oppose it.

1 MR. PORTER: Is this still under the offer of
2 proof? If not, I object.

3 A. Wait a minute. That letter did not --

4 HEARING OFFICER HALLORAN: Excuse me, sir.

5 THE WITNESS: Go ahead.

6 HEARING OFFICER HALLORAN: Mr. Porter?

7 MR. PORTER: If this is still under the offer
8 of proof, that's fine. If not, I object.

9 MR. O'BRIEN: It is.

10 HEARING OFFICER HALLORAN: It is still under
11 an offer of proof. Thank you. You may proceed.

12 A. You want to know about that letter?

13 BY MR. O'BRIEN:

14 Q. Let me show you and see if we're talking
15 about the same letter.

16 A. Yeah, go ahead.

17 (Petitioner's Exhibit No. 4
18 was identified.)

19 BY MR. O'BRIEN:

20 Q. I have an exhibit that are a series of
21 letters that were sent to Councilman Hann, which is
22 Petitioner's Exhibit 4. And one of the letters in there
23 is a letter to the editor from you.

24 MR. O'BRIEN: This is Petitioner's Exhibit 4.

1 HEARING OFFICER HALLORAN: Thank you.

2 MR. PORTER: Which letter are you referring
3 to?

4 MR. O'BRIEN: Petitioner's Exhibit 4 that is
5 Bates stamped, and this is the page which is 12,
6 BB00012.

7 BY MR. O'BRIEN:

8 Q. Is that the letter at the top of the page
9 that you wrote to the Rochelle News Leader?

10 A. Yeah. "Factor omitted from landfill
11 discussion."

12 Q. And was your purpose in writing this letter
13 to the editor to suggest that the expansion application
14 should not be approved?

15 A. No, sir. The purpose of that letter was, as
16 I say in here, why a total of 360 acres at this time
17 when the sludge and the slaughtering at the packing
18 house was discontinued? 25 pounds of every hog that's
19 killed would end up in the sludge, and I can prove that.

20 Q. When did you write this letter?

21 A. I wrote that letter --

22 MR. PORTER: While he's looking, Mr.
23 Halloran, I am not objecting to any of this until I hear
24 we are no longer within the offer of proof. Is that

1 acceptable?

2 MR. O'BRIEN: I accept that.

3 A. I wrote that letter on 3/28.

4 HEARING OFFICER HALLORAN: We are still in
5 the offer of proof. Continuing. Go ahead, Mr. O'Brien.

6 BY MR. O'BRIEN:

7 Q. You wrote that letter on 3/28?

8 A. Yes.

9 Q. Or it was published on that date?

10 A. It was published on 4/1/03.

11 Q. And at that time on 4/1/03 when this letter
12 was published, did you personally wish that the City
13 Council would deny this expansion application?

14 A. For the 320 acres?

15 Q. Yes.

16 A. Yes, sir.

17 Q. That was the application?

18 A. 320 acres, yes, sir.

19 Q. And was your purpose then -- this is also
20 under the offer of proof -- in going to Mr. Bubik with
21 that Florida newspaper article to convince him to feel
22 similarly, to oppose the application that had been
23 applied?

24 A. No, we never discussed anything like that.

1 MR. O'BRIEN: That's all the questions I
2 have.

3 HEARING OFFICER HALLORAN: Thank you,
4 Mr. O'Brien. Mr. Porter?

5 MR. PORTER: Thank you.

6 CROSS-EXAMINATION

7 BY MR. PORTER:

8 Q. First, did any City Council member discuss
9 the application with you after the application was filed
10 on November 22nd, 2002?

11 A. No, sir.

12 Q. At no time did any City Council member
13 indicate any opinion to you regarding the application,
14 correct?

15 A. No, sir.

16 Q. My statement was correct?

17 A. Yes.

18 Q. As for the newspaper article, you simply gave
19 it to Mr. Bubik, turned around and left; is that
20 correct?

21 A. Yes, sir.

22 Q. Did you file that newspaper article with the
23 City of Rochelle?

24 A. I filed both of my articles with Bruce

1 McKinney, the city clerk.

2 Q. So we're clear, Petitioner's Exhibit 8 was
3 indeed filed in the record; correct?

4 A. Yes, sir.

5 (Respondent's Exhibit No. 2
6 was identified.)

7 BY MR. PORTER:

8 Q. Let me show you what I have had marked as
9 Respondent's Exhibit No. 2. What is that? Respondent's
10 Exhibit No. 2, what is that?

11 A. This?

12 Q. What's the document? What is it?

13 A. This letter?

14 Q. Yes.

15 A. Okay. It's a factor that I felt was left
16 out. It has to do with the discontinuing of the
17 slaughtering at the Hormel Packing Company here in
18 Rochelle last December.

19 Q. Was that the letter to the editor that you
20 filed with the City Clerk on March 28th of 2003?

21 A. Yes.

22 Q. And did you file on that same date the
23 newspaper article that you gave to Mr. Bubik?

24 A. Yes, sir.

1 MR. PORTER: Move for admission of
2 Respondent's Exhibit No. 2.

3 MR. O'BRIEN: No objection.

4 HEARING OFFICER HALLORAN: Respondent's
5 Exhibit No. 2 admitted.

6 (Respondent's Exhibit No. 2 was
7 admitted into evidence.)

8 BY MR. PORTER:

9 Q. In the upper corner of Respondent's Exhibit
10 No. 2 is the City Clerk's stamp, is that right?

11 A. Say that again.

12 Q. At the upper corner of the exhibit you have
13 in your hand there, there's a stamp from the City Clerk
14 saying it was received March 28th; is that right?

15 A. Oh, yeah, the stamp; right.

16 Q. When you gave the article to Mr. Bubik, did
17 he at any time discuss with you the landfill?

18 A. No.

19 MR. PORTER: Nothing further.

20 HEARING OFFICER HALLORAN: Thank you,
21 Mr. Porter. Mr. O'Brien?

22 MR. O'BRIEN: No further questions.

23 HEARING OFFICER HALLORAN: Thank you. You
24 may step down, sir.

1 MR. O'BRIEN: Call Councilmen Ed Kissick.

2 HEARING OFFICER HALLORAN: Step up and raise
3 your right hand, and Tracy will swear you in.

4 EDWIN D. KISSICK,
5 called as a witness herein, having been first duly
6 sworn, was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. O'BRIEN:

9 Q. Sir, would you state your full name and spell
10 your last name for the record?

11 A. Edwin Dennis Kissick, K-i-s-s-i-c-k.

12 Q. And where do you live, Mr. Kissick?

13 A. 1237 Finney Court, Rochelle.

14 Q. Are you presently on the City Council of
15 Rochelle city?

16 A. Yes, I am.

17 Q. When were you first elected or appointed to
18 the Rochelle City Council?

19 A. I believe we were sworn in May 1st of 2001, I
20 believe.

21 Q. Was that the same election in which there was
22 a referendum -- advisory referendum on the landfill
23 expansion on the ballot?

24 A. I thought it was before that.

1 Q. So you don't recall that it was the same
2 election?

3 A. No.

4 Q. Were you endorsed by the CCOC at the time of
5 your election in April of 2001?

6 A. Yes.

7 Q. And do you consider that that endorsement was
8 helpful to your election?

9 A. No -- I don't know. I couldn't answer that.
10 I'm unsure.

11 HEARING OFFICER HALLORAN: After lunch, maybe
12 we can situate your desk so it's over farther.

13 MR. O'BRIEN: Good idea.

14 (Petitioner's Exhibit No. 5
15 was identified.)

16 BY MR. O'BRIEN:

17 Q. I show you Petitioner's Exhibit 5 which is a
18 double-sided election brochure. Do you recall seeing a
19 brochure like this at the time of your election?

20 A. No, I don't.

21 Q. You have never seen this?

22 A. I don't recall ever seeing it.

23 Q. Do you know if at the time of your election
24 that there were brochures passed out both endorsing you

1 and Councilman Colwill and also endorsing the passage of
2 the referendum against the landfill expansion? Do you
3 recall that?

4 A. No, I don't.

5 (Petitioner's Exhibit No. 6
6 was identified.)

7 MR. PORTER: What did you mark that as?

8 MR. O'BRIEN: They're all marked six.

9 BY MR. O'BRIEN:

10 Q. This is Petitioner's Exhibit 6, show you a
11 newspaper article from the Rochelle News Leader right
12 after your election in April of 2001, and I realize it's
13 a little bit difficult to read; but do you remember
14 telling a newspaper reporter immediately after your
15 election that you definitely thought that the CCOC
16 support played a part in your election?

17 MR. PORTER: Objection, irrelevant.

18 HEARING OFFICER HALLORAN: Mr. O'Brien?

19 MR. O'BRIEN: I think that it's relevant if
20 he was in effect elected and endorsed by the CCOC.

21 HEARING OFFICER HALLORAN: You know, I think
22 it could be relevant if we're talking about fundamental
23 fairness. He may answer. Objection overruled.

24 BY MR. O'BRIEN:

1 Q. Do you remember saying to the newspaper
2 reporter what you're quoted as saying there that you
3 felt it definitely played a part in your election?

4 A. I do not remember saying that.

5 Q. Did you say anything like that to the
6 reporter?

7 A. It seems to me that I got a phone call about
8 10:30, quarter to 11:00, after the election from maybe
9 Dixon and the Rochelle newspaper. I was in bed, and I
10 was half asleep; and I honestly do not remember what the
11 questions were asked or what answers that I answered.

12 Q. Do you now feel that your election was
13 assisted by the support you received from the CCOC?

14 MR. PORTER: Objection, asked and answered.
15 He's already said he didn't know.

16 HEARING OFFICER HALLORAN: I have heard it
17 asked once before. Sustained.

18 MR. O'BRIEN: Okay. Withdraw the question.

19 BY MR. O'BRIEN:

20 Q. Mr. Kissick, after the application was filed
21 in November, how many times did Frank Beardin, the
22 president of the CCOC, contact you to express his
23 opposition to the landfill application?

24 A. I believe after that point, that date, that I

1 had instructed my secretary to let me know who was
2 calling and not take any calls after that date.

3 Q. Mr. Kissick, do you remember providing
4 interrogatory answers to Mr. Porter?

5 A. Yes, sir.

6 Q. Do you remember that in your interrogatory
7 answers -- the interrogatory was to the effect how many
8 times were you contacted after the application was filed
9 before the decision, and that you said that Beardin had
10 contacted you on approximately half a dozen occasions?

11 A. I don't remember the exact date, but --

12 Q. The question is: Do you recall saying that
13 to Mr. Porter so that it would be recorded in the
14 interrogatory answers?

15 MR. PORTER: I object. If he's going to
16 phrase the question what he said to me, there's another
17 way to go about that without invading the attorney/
18 client privilege.

19 MR. O'BRIEN: What he said to the attorney in
20 order to pass to the interrogatories is not privileged.
21 It's for the purpose of disclosure, not non-disclosure.

22 HEARING OFFICER HALLORAN: Mr. Porter?

23 MR. O'BRIEN: I would still prefer the
24 question be asked a different way.

1 HEARING OFFICER HALLORAN: If you would
2 rephrase it, I tend to agree with Mr. Porter if you can
3 restate the question.

4 MR. O'BRIEN: Well, to rephrase it, I'm not
5 sure how I would do that.

6 BY MR. O'BRIEN:

7 Q. What I want to know is did you tell
8 Mr. Porter when he asked you that same question that
9 Beardin had contacted you six times after the
10 application was filed to express his opposition? Did
11 you say that, Mr. Kissick? You don't have to look at
12 Mr. Porter for that answer.

13 MR. PORTER: Objection.

14 HEARING OFFICER HALLORAN: Sustained.

15 A. I don't remember the exact date that I gave
16 my secretary --

17 BY MR. O'BRIEN:

18 Q. I am not asking that question.

19 A. Okay. So without remembering --

20 Q. Did you tell Mr. Porter --

21 A. Yes.

22 MR. PORTER: I'd object here.

23 HEARING OFFICER HALLORAN: Excuse me.

24 Mr. Porter?

1 MR. PORTER: I think he needs to allow the
2 witness to complete his answer.

3 HEARING OFFICER HALLORAN: I agree.
4 Mr. O'Brien, you're interjecting while Mr. Kissick is
5 trying to explain. Go ahead, Mr. Kissick.

6 A. I don't remember the exact date that I
7 instructed my secretary not to take any more calls from
8 Mr. Beardin or anybody else regarding the landfill
9 issues. I don't remember that exact date, but I did
10 give her those instructions not to send any calls to my
11 office or give out my cell phone.

12 MR. O'BRIEN: Excuse me, your Honor.

13 HEARING OFFICER HALLORAN: Sure.
14 Mr. O'Brien, before I forget, your Petitioner's Exhibit
15 No. 6, you know, I have these cheap, Walgreen's reading
16 glasses, but I still can't -- I am having a hard time
17 reading exactly what is highlighted here. And I have no
18 idea what date this article came out, in April of
19 something, you stated. April, 2001.

20 MR. O'BRIEN: It's shortly after the
21 election. I don't know the date either. I am not
22 seeing it on the document.

23 HEARING OFFICER HALLORAN: Is there going to
24 be a clearer copy submitted to the Board?

1 MR. O'BRIEN: I will try to do that. I will
2 try to get a better copy.

3 HEARING OFFICER HALLORAN: You may proceed.
4 Thanks.

5 (Petitioner's Exhibit No. 1
6 was identified.)

7 BY MR. O'BRIEN:

8 Q. Okay. I'd like to show you first of all
9 Exhibit 1 I believe it is. Specifically it's your
10 answer to the interrogatory who contacted you after the
11 application was filed and before the decision. This is
12 Petitioner's Exhibit 1. This is the City's sworn
13 interrogatory response. And on the second page under
14 your name and response to the question, would you read
15 into the record the answer that was given on your
16 behalf?

17 MR. PORTER: Well, I guess I have to object.
18 This is a hearsay statement he is just reading into the
19 record.

20 MR. O'BRIEN: This is his interrogatory
21 answer. It's not hearsay.

22 MR. PORTER: Right. It's discovery, and it's
23 a hearsay statement. The witness is on the stand. If
24 you want to ask him the question that's been referenced

1 in the discovery, you can do so; but I don't know what's
2 the authority for filing discovery --

3 MR. O'BRIEN: It's a prior inconsistent
4 statement which he said that he --

5 MR. PORTER: So the purpose of it is
6 impeachment. At least I understand the purpose. Go
7 ahead and ask the question.

8 HEARING OFFICER HALLORAN: Go ahead.
9 Proceed, Mr. O'Brien.

10 BY MR. O'BRIEN:

11 Q. Would you read into the record your answer to
12 the sworn interrogatory?

13 A. "Mr. Kissick received several correspondences
14 from individuals indicating their opposition to the
15 landfill. These correspondences were primarily form
16 letters, and all such correspondences were discarded.
17 Frank Beardin telephoned Mr. Kissick in Mr. Kissick's
18 office on approximately one-half dozen occasions after
19 the filing of the application and before the decision
20 was rendered, and on these occasions Mr. Kissick would
21 inform Mr. Beardin that Mr. Kissick was not at liberty
22 to discuss the pending application."

23 Q. And was that interrogatory answer on your
24 behalf true?

1 A. With the exception of the dates that I don't
2 remember, the dates that I instructed my secretary not
3 to take any more calls.

4 Q. But the interrogatory answer says after the
5 application was filed, he contacted you six times; that
6 was true?

7 MR. PORTER: I object. He just got done
8 saying except for the dates, the rest was true.

9 MR. O'BRIEN: I am asking -- the question is
10 very clear about it. It didn't ask anything about
11 things that happened before the application was filed.

12 HEARING OFFICER HALLORAN: Objection
13 overruled. He may answer if he is able.

14 A. Yes, it appears to reflect that in this
15 paragraph.

16 BY MR. O'BRIEN:

17 Q. That paragraph is true?

18 A. That paragraph is what we talked about during
19 the deposition. We didn't talk -- I did not bring up
20 any dates regarding my secretary and when to take calls
21 and when not to take calls.

22 Q. And in the deposition when I asked you about
23 the interrogatory responses, this would be Page 20, Line
24 2 of this deposition -- you don't have it, Mr. Kissick.

1 I asked you -- and you were under oath in
2 your deposition, right? You were sworn?

3 A. Yes, sir.

4 Q. And I asked you, "Now, you say in the
5 interrogatory response that after the application was
6 filed, you received about half a dozen phone calls from
7 Frank Beardin"; and you answered yes. Do you recall
8 that?

9 A. Yes.

10 Q. And so -- and do you remember that I asked
11 you this question. This is Page 21, Line 15, "And he
12 called you about six times?" And your answer was,
13 "Probably once a week maybe, give or take." Do you
14 remember that?

15 A. Yes.

16 Q. And in the very first conversation you told
17 him that you couldn't talk to him about the application,
18 is that correct?

19 A. Yes.

20 Q. But he called you nevertheless again and
21 again after that, is that not correct?

22 A. I don't remember how many times, but he
23 called several times; and I told him that I was not at
24 liberty to discuss it. And whatever date that was from

1 that point on, I told my secretary not to accept any
2 more calls.

3 Q. Did any of these conversations take place
4 during the hearing?

5 A. No.

6 Q. Did Mr. Beardin come to your home and offer
7 you this Touched By An Angel video?

8 A. No.

9 Q. Did he call you and talk to you about it?

10 A. No.

11 Q. Did anyone else from the CCOC contact you at
12 any time after the application was filed to discuss the
13 application?

14 A. No.

15 Q. Did anyone contact you who was not with the
16 CCOC after the application was filed?

17 A. No.

18 Q. Did you ever talk to anyone from the time the
19 application was filed about the application or the
20 expansion on the street, in the grocery store? Did you
21 have any conversation like that with anyone?

22 A. No.

23 Q. Only Frank Beardin?

24 A. Prior to the application?

1 Q. No. I'm talking about after the application.

2 A. No. No, other than to say, no, I can't talk
3 to you. And I don't remember what that date was when I
4 instructed my secretary not to take any more calls.

5 Q. But you remembered in your interrogatory
6 answer and you remembered in your deposition that that
7 date was after the application was filed, did you not?

8 A. I don't remember what date that I told my
9 secretary not to take any more phone calls; but any time
10 Mr. Beardin called, whether it was after the application
11 was filed, the answer was I cannot talk to you regarding
12 this issue.

13 MR. O'BRIEN: No further questions.

14 HEARING OFFICER HALLORAN: Thank you,
15 Mr. O'Brien. Mr. Porter.

16 CROSS-EXAMINATION

17 BY MR. PORTER:

18 Q. In hindsight regarding the interrogatory
19 answers and the deposition response regarding the
20 interrogatory answers, were you unclear at the time we
21 answered the interrogatories as to what dates
22 Mr. Beardin called you?

23 MR. O'BRIEN: Objection, leading.

24 HEARING OFFICER HALLORAN: Overruled. He may

1 answer if he is able.

2 A. From the start to the stop of those phone
3 calls, I am not sure of the date when I instructed my
4 secretary not to take any more calls.

5 BY MR. PORTER:

6 Q. So if the interrogatory answers indicate that
7 it was between those dates that he called, that could be
8 in error; correct?

9 A. Correct.

10 Q. Now, regardless, when Mr. Beardin would call,
11 would you discuss the application with him?

12 A. No, sir.

13 Q. Did you keep an open mind throughout the
14 hearing process?

15 A. Yes.

16 MR. O'BRIEN: Objection, for the same reason.

17 HEARING OFFICER HALLORAN: Go ahead,
18 Mr. O'Brien.

19 MR. O'BRIEN: I want to object for the same
20 reason that I have submitted this brief. I don't think
21 that it's appropriate for the decision-makers to testify
22 to their mental process. I think more than it is --

23 HEARING OFFICER HALLORAN: I agree.
24 Objection sustained.

1 MR. PORTER: As an offer of proof?

2 HEARING OFFICER HALLORAN: As an offer of
3 proof.

4 BY MR. PORTER:

5 Q. Did you keep an open mind throughout the
6 hearing process?

7 A. Yes, sir.

8 Q. Same offer of proof. Did you do your best to
9 impartially weigh the evidence?

10 A. Yes, sir.

11 HEARING OFFICER HALLORAN: Your objection is
12 noted, Mr. O'Brien. This is an offer of proof.

13 MR. O'BRIEN: I assume I have a standing
14 objection.

15 HEARING OFFICER HALLORAN: Thanks.

16 BY MR. PORTER:

17 Q. Counsel brought up the CCOC endorsement early
18 on in your questioning. Do you recall that?

19 A. Yes, sir.

20 Q. And at any time did you voice to the CCOC
21 that you were going to vote one way or the other?

22 A. No.

23 Q. At any time did you agree to exchange your
24 vote in exchange for a CCOC endorsement?

1 A. No, sir.

2 Q. In opening statement, counsel brought up a
3 newspaper article in which you referenced that your job
4 was to listen to the public. What did you mean by that?

5 MR. O'BRIEN: Objection. This is all within
6 the offer proof? Otherwise I will object.

7 HEARING OFFICER HALLORAN: No. Your
8 objection. Please, state your objection for the record.
9 This is not under an offer of proof.

10 MR. PORTER: No. When I was under the offer
11 of proof, I explicitly indicated when I was under the
12 offer of proof.

13 HEARING OFFICER HALLORAN: That was my
14 understanding. Mr. O'Brien, your objection to his last
15 question? And before we begin, can you read the last
16 question back, Tracy?

17 (The record was read.)

18 MR. O'BRIEN: My objection is that although
19 his out-of-court post-decisional statements about the
20 decision are admissible, his in-court statements as to
21 his mental processes are not. And I rely on the brief
22 that I submitted.

23 HEARING OFFICER HALLORAN: Objection
24 overruled. You may answer if you're able.

1 A. To listen to all the pros and cons and to
2 keep an open mind, people that were for it, people that
3 were against it prior to the filing of the application,
4 to keep an open mind.

5 BY MR. PORTER:

6 Q. And at the hearing, the public voiced
7 opposition; is that correct?

8 A. Yes, sir.

9 Q. At any time did you consider anything you
10 heard outside of the hearing process as evidence for the
11 hearing?

12 HEARING OFFICER HALLORAN: Mr. O'Brien?

13 MR. O'BRIEN: I do object to that. Mental
14 process, if he's asking that substantively, I certainly
15 object to that question.

16 HEARING OFFICER HALLORAN: Mr. Porter?

17 MR. PORTER: I think this is different. Now
18 I'm asking if he actually considered anything outside of
19 the hearing as evidence, and it's not -- I'm not asking
20 for his mental process in coming to a decision.

21 MR. O'BRIEN: What he means is as evidence,
22 in other words, did he consider it? Did it influence
23 me? Did I take it into consideration? It's all the
24 same thing, and I think he is coming in through the back

1 door. It's the same objection.

2 MR. PORTER: Well, no. If it's evidence, it
3 may not impact your decision whatsoever; but you might
4 believe that it was evidence, and that's what my
5 question is. Did he believe that anything stated
6 outside of the hearing process was evidence?

7 MR. O'BRIEN: That goes right to his mental
8 process, and I object.

9 MR. PORTER: I think I've stated my position.

10 HEARING OFFICER HALLORAN: You know, I don't
11 think it goes to his mental processes. He may answer if
12 he is able.

13 A. No, sir.

14 MR. PORTER: Nothing further. Thank you.

15 HEARING OFFICER HALLORAN: Mr. O'Brien?

16 MR. O'BRIEN: Nothing further.

17 HEARING OFFICER HALLORAN: You may step down,
18 Mr. Kissick. Thank you. Let's go off the record for a
19 second.

20 (Discussion held off the record.)

21 HEARING OFFICER HALLORAN: We will back here
22 at 12:35. Thank you very much.

23 (A lunch recess was taken from
24 11:35 a.m. to 12:35 p.m.)

1 (The proceedings resumed at
2 12:36 p.m.)

3 HEARING OFFICER HALLORAN: Good afternoon,
4 everybody. It's approximately 12:40. We have some
5 members of the local high school here; there are three
6 of them. Ladies and gentleman could you state your name
7 for the court reporter, please, and spell it?

8 MS. STOUFFER: I am Lindsey Stouffer.

9 HEARING OFFICER HALLORAN: And your spelling?

10 MS. STOUFFER: L-i-n-d-s-e-y S-t-o-u-f-f-e-r.

11 HEARING OFFICER HALLORAN: Thank you. Sir?

12 MR. CARMICHAEL: I am Grant Carmichael,
13 G-r-a-n-t C-a-r-m-i-c-h-a-e-l.

14 HEARING OFFICER HALLORAN: Thank you.

15 MS. NORKUS: Alison Norkus, A-l-i-s-o-n
16 N-o-r-k-u-s.

17 HEARING OFFICER HALLORAN: Thank you. And
18 they were going to show -- I have in my possession a DVD
19 which is in the record of the record below; however,
20 they decided to offer it as an exhibit, and I'm taking
21 it as Hearing Officer Exhibit No. 3. And they have
22 elected not to expound on the DVD or make any public
23 statements. They stated that pretty much what they have
24 to say they said down at the local siting hearing. Is

1 that my understanding?

2 MR. CARMICHAEL: Correct.

3 (Hearing Officer Exhibit No. 3
4 was identified.)

5 HEARING OFFICER HALLORAN: I see nods. In
6 any event, thank you very much. You can stick around
7 and stay and watch the fun or go back to school. Thank
8 you very much. Mr. O'Brien? Off the record for a
9 second.

10 (Discussion held off the record.)

11 HEARING OFFICER HALLORAN: All right. We are
12 back on the record. Mr. O'Brien.

13 MR. O'BRIEN: I was going to call Councilman
14 Colwill as if on cross.

15 HEARING OFFICER HALLORAN: Raise your right
16 hand, and Tracy will swear you in, please.

17 WENDELL COLWILL,
18 called as a witness herein, having been first duly
19 sworn, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. O'BRIEN:

22 Q. Sir, would you state your full name and spell
23 your last name for the record?

24 A. Wendell, I'm going to spell that, too,

1 because nobody spells it right, W-e-n-d-e-l-l, Colwill,
2 C-o-l-w-i-l-l.

3 Q. Nickname Al?

4 A. That's correct.

5 Q. And where do you live, Mr. Colwill?

6 A. 1221 Springdale Drive, Rochelle.

7 Q. And when were you first elected to the
8 Rochelle City Council?

9 A. I took office May 1st, 2001.

10 Q. And are you still a member of the council?

11 A. Yes, sir.

12 Q. And did you get elected in the same election
13 in 2001 when the advisory referendum was on the ballot
14 regarding the expansion of the landfill?

15 A. I believe it was, yes.

16 Q. Were you endorsed by the CCOC in connection
17 with that election?

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

19 Q. Did you ever see any fliers during the
20 campaign that endorsed both the non-expansion of the
21 landfill as well as your candidacy?

22 A. No.

23 Q. After the application was filed, is it
24 correct that you were contacted by the president of --

1 the application was filed November 22nd, 2002. After
2 that application was filed, is it correct that you were
3 contacted on two occasions by the president of the CCOC,
4 Frank Beardin, to express his opposition to the
5 expansion?

6 A. I believe I stated before that it's possible.
7 I don't recall what dates or when he did contact me, but
8 that's possible.

9 Q. Do you recall being deposed in this case?

10 A. Yes.

11 Q. And that took place on September 2nd?

12 A. I would assume so.

13 Q. Do you recall me asking you this question and
14 you giving this answer: "After the application was
15 filed in November -- on November 22nd, 2002, the
16 application for the expansion, after that was filed, did
17 you ever speak to Frank Beardin about the proposed
18 expansion or the application?" And your answer was,
19 "Yeah, he called me a couple of times. I let him talk,
20 but I never expressed an opinion."

21 MR. PORTER: Page and line, Counsel?

22 MR. O'BRIEN: That's 11, Line 1.

23 BY MR. O'BRIEN:

24 Q. Do you now recall that you --

1 A. Yes, I do remember saying that; yes.

2 Q. And I asked you a question, "And this was
3 after the application was filed?" And your answer was,
4 "Yes." Do you remember that?

5 A. Yes.

6 Q. And are you saying that your recollection
7 would be better today than it was back in September?

8 A. Sir, I don't keep a record of people that
9 contact me or dates or what was said or who was -- I do
10 not keep a record of that.

11 Q. Mr. Colwill, you knew that after the
12 application was filed you weren't supposed to be talking
13 to people outside the record; right?

14 A. Any time anybody would talk to me, I would
15 state that I could not speak of it because I was on the
16 siting committee.

17 Q. And you knew that that was true after the
18 application -- once the application had been filed?

19 A. That's correct.

20 Q. So that's what you told Mr. Beardin on the
21 occasions that he contacted you after the application
22 was filed?

23 A. Yes.

24 Q. Did other people approach you after the

1 application was filed to express their opposition to the
2 landfill?

3 A. All kinds of people.

4 Q. Many people?

5 A. Many people.

6 Q. Were any of them members of the CCOC?

7 A. Very possible.

8 Q. And approximately how many times did this
9 happen after the application was filed?

10 A. I wouldn't have a clue.

11 Q. Was it in the hundreds that people contacted?

12 A. I wouldn't know.

13 Q. Could have been as many as 100 --

14 A. I do not keep a record, sir, of who contacted
15 me, so I do not know.

16 Q. But you know it was more than just few times,
17 it was hundreds of people?

18 A. I will tell you this: I was campaigning for
19 mayor at that time. I was ringing doorbells. People
20 would ask me how I stood on the landfill, and I told
21 them I could not comment because I was on the siting
22 committee.

23 Q. Did they, nevertheless, go ahead and express
24 their opinions to you?

1 A. Some of them did.

2 Q. Did Mr. Beardin come to you during the
3 hearing and offer you a copy of his Touched By An Angel
4 video?

5 A. No.

6 Q. Had you ever heard of that before?

7 A. I haven't heard of it, no. I didn't know
8 about it until you mentioned it today.

9 MR. O'BRIEN: That's all the questions I
10 have.

11 HEARING OFFICER HALLORAN: Thank you,
12 Mr. O'Brien. Mr. Porter?

13 CROSS-EXAMINATION

14 BY MR. PORTER:

15 Q. When you were campaigning for mayor, people
16 would blurt out their opinion to you; is that correct?

17 A. At times, yes.

18 Q. Did you tell those people you couldn't
19 discuss the landfill?

20 A. That's correct.

21 Q. You did not believe that those inevitable
22 statements by people while you were on the campaign
23 trail was evidence, did you?

24 MR. O'BRIEN: I would object to that

1 question. Same reason I stated previously.

2 HEARING OFFICER HALLORAN: I'm sorry. Could
3 you read the question back, Tracy?

4 (The record was read.)

5 HEARING OFFICER HALLORAN: Your objection?

6 MR. O'BRIEN: My objection is that goes to
7 his mental process, what he considered evidence. I
8 don't think that he should be permitted to testify to
9 that, but I made my record.

10 HEARING OFFICER HALLORAN: Mr. Porter?

11 MR. PORTER: It's the same argument we had
12 before, which I believe was overruled. It's not his
13 mental process. It's as to how he came to his decision,
14 and it's not deliberative process. It's rather what he
15 understood to be evidence at the hearing.

16 HEARING OFFICER HALLORAN: I'll allow him to
17 answer if he's able. Objection overruled.

18 A. I did not allow that to influence my
19 decision.

20 MR. O'BRIEN: Object to his answer as
21 nonresponsive, ask that it be stricken.

22 HEARING OFFICER HALLORAN: Would you qualify?

23 MR. O'BRIEN: Well, he's now attempted to go
24 right to the heart of the issue and say it didn't

1 influence him, and that clearly is inadmissible. It's a
2 subtle difference. I think it's somewhat subtle as to
3 whether he considered an ex parte communication evidence
4 or not that perhaps implies that it didn't influence
5 him, but I think his answer is nonresponsive.

6 HEARING OFFICER HALLORAN: All right. The
7 answer is stricken. Mr. Porter, will you ask the
8 question again, please?

9 MR. PORTER: Right. So the record is clear,
10 I believe that the answer was appropriate and would ask
11 that it be allowed as an offer of proof. And then I
12 will ask the question again if that's allowed.

13 HEARING OFFICER HALLORAN: Okay. The
14 objection is sustained. I'll allow it as an offer of
15 proof. Mr. Porter, proceed.

16 BY MR. PORTER:

17 Q. Did you believe that the statement -- strike
18 that.

19 I am not asking you at the present time
20 whether or not the statements influenced you. What I am
21 asking you is if you thought those statements that were
22 made while you were on the campaign trail were evidence
23 to be considered at the hearing?

24 MR. O'BRIEN: Restate the same objection.

1 HEARING OFFICER HALLORAN: Overruled.

2 THE WITNESS: Should I answer?

3 HEARING OFFICER HALLORAN: Yes, you may.

4 A. The answer was no.

5 BY MR. PORTER:

6 Q. Did you send to the City Clerk some form
7 letters that were sent to you at your home?

8 A. I believe I turned over the first one. After
9 that, they were repetitive, and I threw them away.

10 Q. Now, when you were on the campaign trail and
11 people would blurt out their opinion regarding whether
12 or not they wanted a landfill in Rochelle, were those
13 statements any different than what you heard during the
14 hearing?

15 MR. O'BRIEN: Objection, same reasons I
16 stated.

17 HEARING OFFICER HALLORAN: Overruled. You
18 may answer.

19 A. Okay. You're talking about public
20 statements, sir?

21 BY MR. PORTER:

22 Q. Right. Well, strike that. Let me lay some
23 foundation. Some public statements were made at the
24 39.2 hearing that was held here, correct?

1 A. Yes.

2 Q. And --

3 A. Well, not here, the siting hearing up in --

4 Q. I'm sorry; you're right. The siting hearing
5 was at a hotel?

6 A. Yeah.

7 Q. Were the statements that were made to you
8 while you were on the campaign trail by members of the
9 public about their feelings regarding a landfill any
10 different than the public statements that you heard that
11 were admitted at the hearing?

12 A. They were in the same tone.

13 MR. O'BRIEN: I do have a standing objection
14 if that's the question.

15 HEARING OFFICER HALLORAN: The record will so
16 note.

17 BY MR. PORTER:

18 Q. At any time did you ever agree to vote
19 against the landfill in exchange for endorsement by the
20 CCOC?

21 A. No, I did not.

22 Q. Was your decision grounded upon the Section
23 39.2 criteria?

24 MR. O'BRIEN: Objection.

1 HEARING OFFICER HALLORAN: Mr. Porter? I'm
2 sorry; let me hear your objection, Mr. O'Brien.

3 MR. O'BRIEN: That asks him what was the
4 basis for his opinion.

5 HEARING OFFICER HALLORAN: Mr. Porter?

6 MR. PORTER: Again it gets to whether or not
7 he considered evidence outside of the record.

8 HEARING OFFICER HALLORAN: I sustain the
9 objection.

10 MR. PORTER: And I'd, if I may, let him
11 answer as an offer of proof.

12 HEARING OFFICER HALLORAN: The witness may
13 answer as an offer of proof.

14 A. Okay. Repeat the question for me, please.

15 BY MR. PORTER:

16 Q. Did you base your decision on anything
17 outside of the record?

18 A. No.

19 MR. PORTER: Nothing further.

20 HEARING OFFICER HALLORAN: That wasn't the
21 question before, but that's --

22 MR. PORTER: I assumed that it would have the
23 same objection. Let me -- am I correct on that,
24 Mr. O'Brien?

1 MR. O'BRIEN: Sure, I'd object to that, too.

2 MR. PORTER: Would the ruling have been the
3 same?

4 HEARING OFFICER HALLORAN: The ruling would
5 have been the same.

6 MR. PORTER: So that was an offer of proof.

7 HEARING OFFICER HALLORAN: Mr. O'Brien?

8 MR. O'BRIEN: I have no further questions.

9 HEARING OFFICER HALLORAN: Thank you. You
10 may step down, sir.

11 MR. O'BRIEN: I call Alan Hann.

12 HEARING OFFICER HALLORAN: Would you raise
13 your right hand, and the court reporter will swear you
14 in, please.

15 ALAN HANN,
16 called as a witness herein, having been first duly
17 sworn, was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. O'BRIEN:

20 Q. Sir, would you state your full name and spell
21 your last name for the record, please?

22 A. Alan Theodore Hann, last name H-a-n-n.

23 Q. And where do you live, sir?

24 A. 1225 Crest Lane, Rochelle.

1 Q. And are you presently on the City Council?

2 A. No.

3 Q. And when did you leave the City Council?

4 A. May 1st of '03.

5 Q. And when were you first appointed or elected
6 to the City Council?

7 A. May 1st of '96, I think, or '95. '95.

8 Q. And were you elected at that time to the
9 office?

10 A. Yes.

11 Q. I'd like to show you what's been marked
12 Petitioner's Exhibit 4 and ask you if these are letters
13 that you received from citizens before, during and after
14 the hearing?

15 HEARING OFFICER HALLORAN: Mr. O'Brien, I
16 think I already have this.

17 MR. O'BRIEN: Do you have 4?

18 HEARING OFFICER HALLORAN: Yeah, it's been
19 sitting up here a while.

20 MR. O'BRIEN: Do you have 4?

21 MR. PORTER: I have a copy.

22 A. Yes, these appear to be that. I don't
23 recognize all of them because I didn't open all of them.

24 BY MR. O'BRIEN:

1 Q. In essence, there was a request to produce
2 any documents that you had received from citizens, and
3 you provided a stack of these letters to Mr. Porter?

4 A. That's correct.

5 Q. And you received these after the application
6 was filed and before the hearing, during the hearing and
7 after the hearing, is that correct, as indicated by
8 their postmarks?

9 A. Correct.

10 Q. And are you aware whether other City Council
11 members also received these letters?

12 A. No, I am not aware.

13 Q. You don't know one way or the other. And do
14 you know what organization in town arranged for this
15 letter writing campaign that resulted in all these
16 letters coming to you?

17 A. Yes.

18 Q. And who was that?

19 A. The CCOC.

20 Q. And how do you know that?

21 A. A lot of the letters were just form letters
22 and just with signatures.

23 Q. And do you know these people to be members of
24 the CCOC from your conversations with them?

1 A. No.

2 Q. During the hearing, did -- you know who Frank
3 Beardin is?

4 A. Yes.

5 Q. President of the CCOC?

6 A. Yes.

7 Q. During the hearing, did he come to you and
8 offer you a videotape of a television program called
9 Touched By An Angel?

10 A. Yes, he did.

11 Q. When did he do that?

12 A. I don't recall the exact date, but I'm -- I
13 think it was before the hearing.

14 Q. Well, if I tell you that the hearing took
15 place on February 24th through 27th and that there was
16 then a recess over the weekend of March 1st and 2nd and
17 then it resumed on the 3rd and concluded on the 4th of
18 March, does that refresh your recollection that he came
19 to you on a Sunday, March 2nd, and brought you the
20 videotape of the program that had aired the night
21 before?

22 A. It was on a Sunday that he came, but I don't
23 remember the date.

24 Q. Did he come to your house?

1 A. Yes.

2 Q. Was it during the day or at night?

3 A. It was during the day.

4 Q. During the day. And did he come to your
5 door, or did you meet him in the driveway?

6 A. He came to the door.

7 Q. And what did he say to you?

8 A. He said he had a tape he wanted me to see,
9 and I said -- I told him no, I -- he told me it was the
10 Touched By An Angel program, and I told him I probably
11 already seen it. I have seen it because I watch the
12 program, but I really hadn't seen it.

13 Q. So did you take the videotape from him?

14 A. No.

15 Q. Did he tell you anything about the program?

16 A. No.

17 Q. Did he say whether it was relevant to the
18 landfill hearings?

19 A. No, he didn't.

20 Q. Did he say anything that led you to believe
21 that this had anything to do with the landfill hearings?

22 A. Well, he said it was interesting, that I'd be
23 interested in it is all.

24 Q. Did that lead you to believe that it had to

1 do something with the hearings that you were in the
2 midst of?

3 A. Yeah, so I didn't accept it.

4 Q. Did he express any disappointment to you that
5 you wouldn't take his video?

6 A. No.

7 Q. Did he say anything else to you?

8 A. No.

9 MR. O'BRIEN: That's all the questions I
10 have.

11 HEARING OFFICER HALLORAN: Thank you,
12 Mr. O'Brien. Mr. Porter?

13 CROSS-EXAMINATION

14 BY MR. PORTER:

15 Q. The letters that were sent to you, they were
16 sent to you at your house, is that right?

17 A. That's correct.

18 Q. And you did not consider those letters to be
19 evidence admitted at the hearing, did you?

20 MR. O'BRIEN: Objection, not restated, but
21 same objection that I've made.

22 HEARING OFFICER HALLORAN: You know, he may
23 answer if he's able.

24 A. No, I did not consider them.

1 BY MR. PORTER:

2 Q. And you never watched the videotape?

3 A. No.

4 Q. As a matter of fact, you never even took the
5 videotape?

6 A. No.

7 MR. PORTER: Nothing further.

8 HEARING OFFICER HALLORAN: Thank you.

9 MR. O'BRIEN: No further questions.

10 HEARING OFFICER HALLORAN: Sir, you may step
11 down. Thank you very much.

12 MR. O'BRIEN: I'd like to offer 4 which are
13 the letters that he received from the citizens.

14 HEARING OFFICER HALLORAN: Mr. Porter?

15 MR. PORTER: No objection.

16 HEARING OFFICER HALLORAN: Thank you.

17 Petitioner's Exhibit No. 4 is admitted into evidence.

18 (Petitioner's Exhibit No. 4 was
19 admitted into evidence.)

20 HEARING OFFICER HALLORAN: Before you call
21 your next witness, Mr. O'Brien, I just want to take a
22 moment. Does any member of the public out there need to
23 come up and make their statement or comments now, or do
24 you want to wait a while? Raise your hand if you want

1 to come up now. I see no hands, so we can proceed.

2 MR. O'BRIEN: I call -- oh, I'm not sure that
3 I did. Is Mr. Mueller here yet? I was not going to
4 call Mr. Beardin until Mr. Mueller got here.

5 Mr. Mueller represents the CCOC and said he wouldn't be
6 able to be here until about 1:00. I guess I would
7 call -- if I could have about a five-minute recess, I'd
8 call John Holmstrom as my next witness. I wasn't
9 anticipating getting to him quite this quickly.

10 HEARING OFFICER HALLORAN: Five minutes. Off
11 the record.

12 (A brief recess was taken.)

13 HEARING OFFICER HALLORAN: We are about
14 ready. We are going to go back on the record now. We
15 took a short, five-minute break. Mr. O'Brien?

16 MR. O'BRIEN: Call Mr. John O'Brien as my
17 next witness.

18 HEARING OFFICER HALLORAN: Raise your right
19 hand, and Tracy will swear you in, please.

20 JOHN O'BRIEN,
21 called as a witness herein, having been first duly
22 sworn, was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. O'BRIEN:

1 Q. Sir, would you state your full name and spell
2 your last name for the record?

3 A. John O'Brien, O'B-r-i-e-n, just like yours.

4 Q. Where do you live?

5 A. 10282 Kite Road, Rochelle, Illinois.

6 Q. After the application was filed in November
7 and before the City Council rendered a decision on the
8 landfill siting application, did you express your
9 opinion to any City Council members on the proposed
10 landfill siting application outside the hearing?

11 A. Outside the hearing, yes.

12 Q. To whom did you do that?

13 A. I believe I expressed my opinion maybe to
14 Mr. Colwill and Mr. Bubik.

15 Q. How about Mr. Hann?

16 A. It could very well have been, yes.

17 Q. Now, did you speak to any of these gentlemen
18 during the hearing itself?

19 A. Well, I may have. You know, if I would have
20 known that we were going to have these kind of things, I
21 would have wrote all this down.

22 Q. Just tell us your best recollection.

23 A. My best recollection is I may have, yes.

24 Q. And so during -- while the hearing was in

1 progress, you spoke to which of these City Council
2 members?

3 A. I believe Mr. Bubik.

4 Q. Where were you when you had that
5 conversation?

6 A. I believe it was on the phone.

7 Q. On the phone. And did you call him, or did
8 he call you?

9 A. I believe I may have called him.

10 Q. And was this while the hearing was in
11 progress?

12 A. I don't remember that.

13 Q. And what was your purpose in calling him?

14 A. Well, I wanted to express my views on the
15 landfill decision that was going to be made.

16 Q. And what were your views?

17 A. My views were that the application was a poor
18 application, and it shouldn't be passed.

19 Q. And did you call Mr. Bubik and say that?

20 A. Yes.

21 Q. And tell me what the conversation was between
22 you and Mr. Bubik.

23 A. It was -- it really wasn't much of a
24 conversation. It was me just expressing my views to him

1 with the understanding that I knew he couldn't speak
2 because of the process.

3 Q. And what else did you say to him?

4 A. I said that if he were to vote for something
5 like this, it's much like being ostracized or like
6 being -- without having friends because the community
7 was so against this.

8 Q. Anything else, Mr. O'Brien?

9 A. I may have reflected that it's kind of like
10 being in the back of a church alone from the back pew.

11 Q. You told him if he voted for this, in favor
12 of this, he would be sitting alone in church?

13 A. With that idea insomuch as because the
14 general public was so against this.

15 Q. Including you?

16 A. I was against this particular application.

17 Q. And then did you have another conversation
18 with Mr. Bubik?

19 A. I don't know that I -- well, you have the
20 information right there.

21 Q. You were present. I wasn't. So let's talk
22 about what you know.

23 A. I don't remember any other real specific
24 conversation.

1 MR. O'BRIEN: I'd like to -- by the way, I
2 have called this witness. I'd like to call this witness
3 on cross subject to impeachment. I consider him an
4 adverse witness who opposed the application and attempt
5 to cross-examine and impeach the witness.

6 HEARING OFFICER HALLORAN: Mr. Porter?

7 MR. PORTER: Well, I object. I haven't heard
8 anything the least bit adverse to Mr. O'Brien's
9 questions.

10 HEARING OFFICER HALLORAN: I agree. Thanks
11 for letting us know ahead of time. I think we'll wait
12 until it becomes necessary.

13 BY MR. O'BRIEN:

14 Q. Okay. So that's Mr. Bubik. You think you
15 had one, maybe two conversations with him?

16 A. Correct.

17 Q. Were both of these conversations after the
18 hearing had begun?

19 A. No. I don't know that they were both after
20 the hearing. I don't know exactly when they were.

21 Q. Before the decision in any event?

22 A. Correct; yes.

23 Q. How about Mr. Hann?

24 A. Mr. Hann, I may have made a mention to

1 Mr. Hann also that I thought the application wasn't the
2 correct application.

3 Q. Did you do that after the hearing had begun?

4 A. No. I think that was before the hearing.

5 Q. How long before the hearing?

6 A. I don't recall.

7 Q. Certainly after the application was filed?

8 A. Sure.

9 Q. How about Mr. Colwill, you said you thought
10 you also made a comment like that to Mr. Colwill?

11 A. I made a comment to Mr. Colwill about it.
12 Again, there was no response; but I did make a comment
13 that I didn't think the application was a correct
14 application.

15 Q. Now, after the decision came down -- did
16 other people do this with you?

17 A. No.

18 Q. Were other people also leaning on these
19 Council members to get them to vote against the
20 expansion?

21 MR. PORTER: Objection.

22 HEARING OFFICER HALLORAN: Mr. O'Brien?

23 MR. O'BRIEN: I'm just asking him.

24 HEARING OFFICER HALLORAN: Sustained.

1 A. I don't know that.

2 HEARING OFFICER HALLORAN: Go ahead.

3 BY MR. O'BRIEN:

4 Q. I am asking him the question: Do you know if
5 other people also were contacting these alderman -- I
6 mean, City Council members --

7 A. I don't know specifically.

8 Q. Let me finish the question. Then wait for
9 the objection.

10 A. Okay.

11 Q. Of your knowledge, were other people also
12 contacting these Council members after the hearing began
13 to convince them to vote against the application?

14 A. I suppose it's entirely possible. To my
15 knowledge, I don't know specific individuals.

16 Q. Did you ever tell anyone that you and others
17 were leaning on the Council members after the hearing
18 began to vote against the application?

19 MR. PORTER: I'm going to object. That's
20 completely irrelevant. This is not a City Council
21 member. This is --

22 THE WITNESS: A nobody.

23 MR. PORTER: I didn't say that. I'm sorry.

24 THE WITNESS: That's okay.

1 MR. PORTER: This is a member of the public.
2 And whether or not he told somebody else that others had
3 been contacting the City Council is completely
4 irrelevant to the issue. He just said that he didn't
5 have any knowledge of anybody else contacting them. So
6 what you're doing is you're impeaching on a collateral
7 issue.

8 MR. O'BRIEN: No. If he has said that he and
9 others were leaning on the City Council members, which
10 he has said, I think that's relevant.

11 HEARING OFFICER HALLORAN: I think I will let
12 him answer if he is able. Objection overruled.
13 Mr. O'Brien?

14 THE WITNESS: What do I do now?

15 HEARING OFFICER HALLORAN: Well, if
16 Mr. O'Brien remembers the question. If not, then I can
17 have it read --

18 A. No, I remember the question. I guess what
19 I'm trying to say it is common knowledge in the general
20 public that others had shared the same views I did, and
21 I'm sure that others had talked to Council members.

22 BY MR. O'BRIEN:

23 Q. And so you remember speaking with John
24 Holmstrom in June of 2003, right?

1 A. Sure; that's correct.

2 Q. And do you remember saying to him that when
3 it looked like things were not going the way you wanted
4 after the hearing started, that you and others started
5 to lean on the Council members and began meeting with
6 them?

7 A. I certainly can answer for myself, and others
8 may have said they would or did. I don't know who did
9 or did what. I can't specifically say. I wasn't there.

10 Q. So when you told Holmstrom that that had
11 happened, you were just surmising that this happened?

12 A. Surmising, just a guesstimate.

13 MR. O'BRIEN: That's all the questions I
14 have.

15 HEARING OFFICER HALLORAN: Thank you,
16 Mr. O'Brien. Mr. Porter?

17 CROSS-EXAMINATION

18 BY MR. PORTER:

19 Q. You have no specific knowledge of anybody
20 else contacting a City Council member after the
21 application was filed and before the decision, correct?

22 A. Not specifically.

23 Q. You have no personal knowledge of that, you
24 never witnessed it; correct?

1 A. No; that's correct.

2 Q. Nobody ever told you they did that, correct?

3 A. Correct.

4 Q. Now, you telephoned Mr. Bubik. And isn't it
5 true that your actual purpose for telephoning Mr. Bubik
6 was to offer him a place to put up a sign while he was
7 running for re-election?

8 A. That's correct.

9 Q. And in the course of that -- well, strike
10 that. Let's lay some foundation. You own a business,
11 is that right?

12 A. That's correct.

13 Q. And what is that business?

14 A. I own a little rental business.

15 Q. And it has a window where many candidates
16 posted their election posters, is that right?

17 A. Over the years, many, many, sure.

18 Q. And which election are we talking about now;
19 this would have been 2003, is that correct?

20 A. Yes; that's correct.

21 Q. And isn't it true that many City Council
22 members posted their signs in your building during that
23 election?

24 A. That's correct.

1 Q. And you were calling Mr. Bubik to offer him
2 the same service?

3 A. That's correct.

4 Q. And during that conversation, you informed
5 him your opinions regarding this landfill application;
6 right?

7 A. That's correct.

8 Q. And at no time did Mr. Bubik ever solicit
9 those opinions from you, correct?

10 A. That is correct.

11 Q. At no time did he offer any opinions of his
12 own, correct?

13 A. That is correct.

14 Q. At no time did he ever indicate to you that
15 he had his mind made up in any way, is that right?

16 A. That is correct.

17 Q. As a matter of fact, he didn't respond at all
18 when you made that statement to him?

19 A. That's correct.

20 Q. Now, you also made a statement about you
21 could find yourself in the back of the church. Were you
22 trying to threaten him?

23 A. Not at all, just a phrase, try to make him
24 understand how people feel, how strong they feel.

1 Q. Were you trying to impress upon him that you
2 understood he had a difficult decision to make?

3 A. Absolutely.

4 Q. And understood that if he had to find in
5 favor of the landfill, that might be an unpopular
6 decision; is that right?

7 A. It may be an unpopular decision, of course.

8 Q. But you weren't threatening to ostracize him
9 from his church, were you?

10 A. Not at all.

11 Q. Are you even a member of his church?

12 A. No, I am not.

13 Q. To your knowledge, did Mr. Bubik think you
14 were threatening him in any way?

15 MR. O'BRIEN: Objection.

16 HEARING OFFICER HALLORAN: He can answer to
17 his knowledge, his understanding, state of mind. Go
18 ahead, Mr. O'Brien.

19 A. I didn't feel as though he did. I hope not.

20 BY MR. PORTER:

21 Q. Did you attend some of the hearing?

22 A. Yes, I did.

23 Q. And the unsolicited comment that you made to
24 Mr. Bubik and may have made to Mr. Hann, were they any

1 different than what you heard at the hearings?

2 A. Not at all.

3 MR. PORTER: Nothing further.

4 HEARING OFFICER HALLORAN: Thank you.

5 Mr. O'Brien?

6 MR. O'BRIEN: No other questions.

7 HEARING OFFICER HALLORAN: You may step down.

8 THE WITNESS: May I make any statement or

9 not, sir?

10 HEARING OFFICER HALLORAN: Mr. O'Brien, do

11 you have any objection?

12 MR. O'BRIEN: He can make public comment if

13 he wants to?

14 THE WITNESS: May I?

15 HEARING OFFICER HALLORAN: Yes, you may.

16 MR. JOHN O'BRIEN: I want to just say for the

17 record --

18 HEARING OFFICER HALLORAN: Excuse me.

19 Mr. O'Brien, whatever say, you are subject to cross

20 because you are already sworn in. So it would be public

21 statement as opposed to public comment.

22 MR. JOHN O'BRIEN: I can make a public

23 comment?

24 HEARING OFFICER HALLORAN: Go ahead, public

1 statement.

2 MR. JOHN O'BRIEN: I just wanted to say that
3 I think a lot of people felt as though this application
4 may not have been reasonable; but I really think that
5 for those of us like myself and many of the other people
6 that feel strongly against it, we feel as though we're
7 living in a free country with the ability for free
8 speech. And we wanted to talk to our elected officials,
9 and I think the process is very cumbersome. And I think
10 it's a difficult one in small communities such as ours
11 to ask the City Councilmen to sit in judgment and go
12 through these processes that are extremely rigid. I
13 just think it's a difficult thing, but I do appreciate
14 the opportunity to make the statement.

15 HEARING OFFICER HALLORAN: Thank you.

16 Mr. O'Brien?

17 MR. O'BRIEN: No questions.

18 HEARING OFFICER HALLORAN: Mr. Porter?

19 MR. PORTER: No questions.

20 HEARING OFFICER HALLORAN: You may step down.

21 MR. JOHN O'BRIEN: Thank you.

22 MR. O'BRIEN: I call John Holmstrom.

23 HEARING OFFICER HALLORAN: Raise your right
24 hand, sir, and Tracy will swear you in.

1 JOHN HOLMSTROM,
2 called as a witness herein, having been first duly
3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. O'BRIEN:

6 Q. Sir, would you state your full name and spell
7 your last name for the record?

8 A. John Holmstrom, last name is
9 H-o-l-m-s-t-r-o-m.

10 Q. And by whom are you employed and in what
11 capacity?

12 A. I am general counsel with William Charles,
13 Limited.

14 Q. Is that one of the partners in this Rochelle
15 Waste Disposal, LLC?

16 A. A subsidiary of William Charles is one of the
17 partners in Rochelle Waste Disposal, yes.

18 Q. On the day that the Rochelle City Council
19 voted to reconsider their April 24th, 2003, decision,
20 that is on April 28th, on the day that they voted to
21 reconsider that decision, did you receive a phone call
22 from the City's attorney, Charles Helsten?

23 A. Yes, I did.

24 Q. About what time?

1 A. About 3:00 o'clock in the afternoon.

2 Q. And would you relate the conversation that
3 you had with Helsten to the best of your recollection at
4 that time?

5 A. Yes. Mr. Helsten said that he planned to
6 appear before the Rochelle City Council that evening,
7 that he intended to request the counsel to take some
8 action to incorporate the conditions which had been
9 recommended by the hearing officer and the staff into
10 their decision so that if the decision were reversed on
11 appeal, the conditions that had been recommended by the
12 staff would be incorporated in the reversal.

13 Q. Did he say anything further about any of the
14 findings specifically?

15 A. He said he was concerned about the finding
16 with respect to Criteria 9, and that that was the reason
17 he was urging the -- intended to urge the Council to
18 take this action.

19 Q. And did he tell you what would happen?

20 A. He told me that nothing would happen that
21 evening, that if anything it would be necessary to have
22 a special hearing on Wednesday.

23 Q. That was on Monday?

24 A. Yes.

1 MR. O'BRIEN: That's all I have.

2 HEARING OFFICER HALLORAN: Thank you,

3 Mr. O'Brien. Mr. Porter?

4 CROSS-EXAMINATION

5 BY MR. PORTER:

6 Q. Isn't it true that Mr. Helsten actually told
7 you that he did not know if the City Council would take
8 action that evening?

9 A. No.

10 Q. Well, isn't it true -- strike that.

11 I have taken your deposition in this case, is
12 that right?

13 A. Yes.

14 Q. And when I took your deposition, you swore to
15 tell the truth and you did so; correct?

16 A. Yes.

17 Q. And that deposition occurred a few months ago
18 on September 10 of 2003, right?

19 A. Yes.

20 Q. And at Page 16, Line 21, isn't it true that I
21 asked you, "Isn't it true that Mr. Helsten told you that
22 he did not know if the City Council would take action
23 that evening?" to which you responded "I don't recall"?

24 A. Yes.

1 Q. You understood that the City Council's
2 decision as to Criterion 9 and their consideration of
3 conditions was going to be a topic that evening,
4 correct?

5 A. Yes.

6 Q. And you actually are an attorney, correct?

7 A. Yes.

8 Q. You even hired Mr. O'Brien, correct?

9 A. My company did, yes.

10 Q. And you informed Mr. O'Brien that that was
11 going to be a topic that evening, right?

12 A. Yes.

13 Q. And as a matter of fact, you didn't have any
14 scheduling conflict that would have kept you from being
15 able to come that evening; correct?

16 A. That's correct.

17 Q. As a matter of fact, a representative of the
18 applicant was present that evening, isn't that right?

19 A. I believe that that's correct.

20 Q. Well, isn't it true that Mr. Tom Hilbert was
21 there?

22 A. Yes, I believe he attended most every
23 meeting.

24 Q. You knew that Mr. Helsten represented City

1 Staff at the time that he telephoned you, is that
2 correct?

3 A. Yes.

4 Q. You at no time voiced any objection to
5 Mr. Helsten about the meeting taking place concerning
6 Criterion 9 or the conditions, correct?

7 A. That's correct.

8 Q. You never told him that you couldn't make it,
9 right?

10 A. No.

11 Q. And indeed you could have made it?

12 A. That's correct.

13 Q. You are aware that public agenda had been
14 published listing the consideration of Criterion 9 and
15 the conditions as a topic?

16 MR. O'BRIEN: This is not an objection. I
17 didn't understand the question. Did you say he is now
18 aware or was he aware?

19 MR. PORTER: I believe it is you are aware.

20 MR. O'BRIEN: You are aware now?

21 MR. PORTER: I am only interested in what he
22 is aware of now.

23 A. No.

24 BY MR. PORTER:

1 Q. You have no reason to believe that an agenda
2 was not published that evening, do you?

3 A. Correct. I have no reason to believe that.

4 Q. As a matter of fact, you even knew that there
5 was going to be a City Council meeting that evening
6 before Mr. Helsten called you; isn't that right?

7 A. I think yes.

8 Q. Now, you understood that what was going to be
9 taken up that evening was a reconsideration as to
10 Criterion 9 which had been previously found not met by
11 the City Council; correct?

12 A. I understood that that was what Mr. Helsten
13 planned to tell the City Council.

14 Q. You certainly don't have any objection to the
15 City Council finding that your company met Criterion 9,
16 do you?

17 A. I would have had no objection.

18 Q. And so the only reason that you have even
19 brought up the fact that that's been reconsidered is
20 because it removed a potential issue for appeal, is that
21 right?

22 A. I think it indicates the overall manner in
23 which the Council's decision was made, and the fact that
24 it was overturned or reconsidered is a part of the

1 packet.

2 Q. So in hindsight, you would have preferred
3 that they not reconsider Criterion 9 because you didn't
4 feel there was any basis for their finding against
5 Criterion 9; right?

6 A. As I sit here today, I suppose that's true.

7 Q. Now, isn't it true that your company was
8 perfectly able and willing to comply with the conditions
9 had there been approval with the conditions?

10 A. Yes.

11 Q. So you would agree that there's certainly no
12 prejudice to the City Council finding that at some point
13 the PCB or some other body were to reverse the decision
14 that those conditions be imposed; right?

15 A. No, I don't agree with that statement.

16 Q. Well, the only prejudice is -- strike that.
17 Tell me, what's the prejudice?

18 MR. O'BRIEN: Object. He is asking for legal
19 conclusions at this point.

20 MR. PORTER: He's a lawyer.

21 HEARING OFFICER HALLORAN: Mr. Porter?

22 MR. PORTER: He is perfectly capable of
23 giving me his philosophy as to why he believes this is
24 prejudice. He is an attorney practicing in the

1 industry.

2 MR. O'BRIEN: I can explain those matters in
3 briefs, but this is the witness who is testifying to
4 facts.

5 HEARING OFFICER HALLORAN: I'll allow
6 Mr. Porter a little latitude. If you can answer, please
7 do so.

8 A. Repeat the question, please.

9 BY MR. PORTER:

10 Q. What possible prejudice could there be to
11 your company when you were perfectly able and willing to
12 comply with conditions?

13 A. If the decision were reversed on appeal
14 without the conditions, we would not have been subject
15 to them; and that would have been to our advantage as
16 compared with having the conditions made a part of our
17 siting approval.

18 Q. But at no time that evening did you come and
19 voice any objection to the City Council; correct?

20 A. There was no reason to.

21 Q. Okay. As to Criterion 9, isn't it true that
22 recharge areas were a topic of discussion at the Section
23 39.2 hearing?

24 A. I'm sure they were.

1 Q. And you don't know whether or not the City
2 Council simply confused the recharge areas that were
3 discussed at the hearing with a regulated recharge area
4 as referenced in Criterion 9; is that correct?

5 MR. O'BRIEN: Object, relevance, your Honor,
6 whether he knows about the hearing or doesn't know about
7 the hearing really isn't relevant.

8 HEARING OFFICER HALLORAN: Tracy, one more
9 time, read the question back.

10 (The record was read.)

11 HEARING OFFICER HALLORAN: Again, I'll allow
12 Mr. Porter a little latitude if the witness can answer.

13 A. I surely don't know.

14 BY MR. PORTER:

15 Q. Well, I need to backtrack a little bit
16 regarding the conditions. Isn't it true that the
17 reconsideration by the City Council to impose those
18 conditions if their decision was reversed was in no way
19 prejudicial to your client?

20 MR. O'BRIEN: Objection.

21 MR. PORTER: What's the objection?

22 MR. O'BRIEN: Asking for legal conclusion.

23 HEARING OFFICER HALLORAN: I have given you a
24 lot of latitude, Mr. Porter.

1 MR. PORTER: It's the last question on the
2 topic.

3 HEARING OFFICER HALLORAN: Okay. Objection
4 overruled. If the witness can answer, please do so.

5 A. No, I don't agree with that. I think it
6 would be prejudicial in the sense that if the decision
7 were reversed on appeal without conditions, that result
8 would have been to a minor degree more advantageous to
9 us than a decision which reversed on appeal and imposed
10 the conditions.

11 BY MR. PORTER:

12 Q. Okay. Isn't it true that at the deposition
13 on Pages 31 to 32 I asked you, "You earlier testified
14 that the applicant was able and prepared to meet the
15 conditions if they had been imposed. Therefore, the
16 reconsideration by the City Council to impose those
17 conditions if their decision was reversed was in no way
18 prejudicial to your client?" Mr. O'Brien objected as it
19 called for a legal conclusion, and then you answered,
20 "In a practical sense, I think that is correct, that in
21 a practical sense it was not prejudicial." Did you give
22 that response when I asked you that question before?

23 A. Correct.

24 MR. PORTER: Nothing further.

1 HEARING OFFICER HALLORAN: Mr. O'Brien,
2 redirect?

3 REDIRECT EXAMINATION

4 BY MR. O'BRIEN:

5 Q. Did you do a memorandum of your conversation
6 with Helsten immediately following the conversation?

7 A. Yes, I did.

8 (Petitioner's Exhibit No. 22
9 was identified.)

10 BY MR. O'BRIEN:

11 Q. This is Petitioner's Exhibit 22. Is that a
12 copy of that memorandum?

13 A. Yes.

14 MR. O'BRIEN: I'd offer 22. It's not on our
15 exhibit list.

16 MR. PORTER: I am not as concerned about it
17 not being on the exhibit list as it being irrelevant.
18 It's a hearsay statement for present recollection
19 recorded. It in no way -- it would be different if I
20 had impeached him in some part of that statement, but I
21 did not; and I don't see what relevancy it has then.
22 It's hearsay.

23 HEARING OFFICER HALLORAN: Mr. O'Brien?

24 MR. O'BRIEN: He specifically references the

1 fact that Helsten had told him that the Council could
2 not do anything that night, and it would have to come up
3 in a special meeting on Wednesday. That's the last
4 statement. I think under the liberal rules of the PCB's
5 evidence rules, it says if there's any question about
6 admissibility, this memorandum should come in.

7 HEARING OFFICER HALLORAN: Let me take look
8 at it.

9 MR. O'BRIEN: Sure. It's the last paragraph.

10 MR. PORTER: I have one parting comment.

11 HEARING OFFICER HALLORAN: Sure, Mr. Porter.

12 MR. PORTER: What he is doing is bolstering
13 testimony when I didn't impeach it, that's why it's
14 improper.

15 MR. O'BRIEN: He did, though, in a way; he
16 impeached him with his deposition, attempted to.

17 MR. PORTER: Not on the issue that you're
18 offering the exhibit for. The issue you're offering the
19 exhibit for is what he purports to have told
20 Mr. Helsten, and I didn't impeach him on that.

21 MR. O'BRIEN: No; no. This is -- the
22 memorandum is not what Holmstrom told --

23 MR. PORTER: I'm sorry. I misspoke, other
24 way around. What Mr. Helsten told Mr. Holmstrom.

1 HEARING OFFICER HALLORAN: You know, it is a
2 pretty close call, Mr. O'Brien, so I will accept
3 Petitioner's Exhibit No. 22 over Mr. Porter's objection.

4 (Petitioner's Exhibit No. 22 was
5 admitted into evidence.)

6 MR. PORTER: Mike, do you have another copy
7 of that?

8 MR. O'BRIEN: I do.

9 HEARING OFFICER HALLORAN: If not,
10 Mr. McKinney --

11 MR. O'BRIEN: No, I've got it.

12 MR. PORTER: Thank you.

13 MR. O'BRIEN: That's all the questions I
14 have.

15 HEARING OFFICER HALLORAN: Thank you,
16 Mr. O'Brien. Mr. Porter, any recross?

17 MR. PORTER: No.

18 HEARING OFFICER HALLORAN: Thank you. You
19 may step down.

20 MR. O'BRIEN: Is Mr. Mueller here yet? Is
21 he? We call Mr. Beardin.

22 HEARING OFFICER HALLORAN: Raise your right
23 hand, and the court reporter will swear you in, please.

24 FRANK BEARDIN,

1 called as a witness herein, having been first duly
2 sworn, was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MR. O'BRIEN:

5 Q. Sir, would you state your full name and spell
6 your last name for the record?

7 A. Frank Lee Beardin, B-e-a-r-d-i-n.

8 Q. And where do you live, sir?

9 A. At Route 2, Rochelle, 18143 Highway 38 East.

10 Q. And are you president of the Concerned
11 Citizens of Ogle County?

12 A. Yes, sir.

13 Q. When were you elected to that position?

14 A. I'm guessing around in the middle of 2000
15 approximately.

16 Q. So for several years now you have been the
17 president of the CCOC?

18 A. Year, year and a half.

19 Q. And did the CCOC become established primarily
20 as a group animated by the proposed landfill expansion
21 that we're talking about here today?

22 A. I would say that was what originally got it
23 started. I was not at the original meetings, but I
24 would assume that was the original; but once again, I

1 was not one of the originators.

2 Q. And the CCOC participated as a party in the
3 hearing below, the siting hearing in front of the City
4 Council; is that correct?

5 A. Yes, sir.

6 Q. And you were represented by counsel, is that
7 correct?

8 A. Yes, sir.

9 Q. Who was that?

10 A. Mr. George Mueller.

11 Q. Who is here with you today?

12 A. Yes, sir.

13 Q. And did you sit with -- did you personally as
14 president of CCOC sit with Mr. Mueller at the counsel
15 table during the siting hearings?

16 A. At the second siting hearing, yes, not at the
17 first.

18 Q. The second siting hearing being the one that
19 we're concerned about today that took place at the end
20 of February, beginning of March, 2003?

21 A. Yes, sir.

22 Q. Now, did you know that it was not appropriate
23 to have ex parte communications outside the hearing with
24 Council members about the landfill application once the

1 application had been filed?

2 A. Mr. Helsten had mentioned some of the public
3 might approach the people in church or something, asking
4 them questions; but they were not to communicate
5 anything with them.

6 Q. And did you know that it was inappropriate to
7 contact Council members yourself?

8 A. Yes, sir.

9 Q. You knew that was the rule, that you as the
10 president of the CCOC were not supposed to be contacting
11 Council members?

12 A. Well, I didn't realize that it was as
13 stringent as it is, as I'm finding out it is; but as
14 most individuals -- most people, right, so as the
15 president of the CCOC I'm finding out more now than I
16 did then; but we were not to talk to them. It's more
17 stringent than we thought anticipated -- or I thought
18 anticipated.

19 Q. Well, you knew after the application was
20 filed, did you not, that you were not supposed to be
21 contacting City Council members?

22 MR. PORTER: Objection, asked and answered a
23 couple times.

24 MR. O'BRIEN: No, I haven't gotten quite that

1 answer.

2 HEARING OFFICER HALLORAN: I'll allow this
3 once, but I think it has been asked and answered, but
4 one more time.

5 BY MR. O'BRIEN:

6 Q. Did you know that?

7 A. Basically, yes, I knew that we were not to
8 talk to them; but like I say, once again, we did not
9 know it was as stringent as it is. We're just a local
10 community, and everybody knows everyone.

11 Q. And did you know that you weren't supposed to
12 contact Ed Kissick, say, after the application was filed
13 up to six times? Did you know that?

14 A. As I stated at the deposition earlier, I did
15 not remember contacting Mr. Kissick.

16 Q. But did you know --

17 A. His memory may be better than mine, but I did
18 not remember contacting him.

19 Q. Whether you remember contacting him or not,
20 did you know you weren't supposed to contact him after
21 the application was filed?

22 MR. PORTER: Again, this is four times.

23 HEARING OFFICER HALLORAN: I have counted
24 close to five, Mr. O'Brien, so drop it and go on to

1 another line of questioning. I believe he said --

2 BY MR. O'BRIEN:

3 Q. Now, Mr. Beardin, is it correct that you
4 wrote repeated letters to the editor expressing your
5 opposition and the CCOC's opposition to the landfill
6 expansion application?

7 MR. PORTER: Objection, irrelevant.

8 HEARING OFFICER HALLORAN: Mr. O'Brien?

9 MR. O'BRIEN: I think it's completely
10 relevant if he's taking a position. I mean it's the
11 point that I'm attempting to make with this video, your
12 Honor.

13 HEARING OFFICER HALLORAN: Objection
14 overruled.

15 BY MR. O'BRIEN:

16 Q. He is going to let me ask you again.

17 A. Could I have the question one more time?

18 Q. Sure. I'm asking you simply at this point
19 you wrote repeated letters to the editor opposing the
20 landfill application, is that correct?

21 A. Yes, sir. The majority of the letters were
22 wrote in response to letters and information supplied by
23 the Rochelle Waste Disposal. They made approximately
24 30; and every time they would have one, I tried to give

1 a response to it.

2 Q. And one of the themes that you repeatedly hit
3 on is that Council should not sell out your children's
4 and grandchildren's environmental legacy for mere
5 dollars, mere money? Isn't that a theme that you
6 repeatedly hit on in your letters?

7 A. That could be one which is mostly --

8 MR. PORTER: Same objection. If necessary,
9 can I show an ongoing objection to the line of
10 questioning about what was in the editor's letters?

11 HEARING OFFICER HALLORAN: Yeah, it's an
12 ongoing objection; however, the objection is overruled,
13 but it is an ongoing objection.

14 (Petitioner's Exhibit No. 9
15 was identified.)

16 BY MR. O'BRIEN:

17 Q. Show you Petitioner's Exhibit 9 and refer you
18 to the highlighted paragraph. First of all, is that a
19 letter that you wrote to the editor of the Rochelle News
20 Leader?

21 A. It has my signature on it, so it could very
22 well be.

23 Q. Do you remember writing the paragraph that
24 says, "If they realize these dump dollars really aren't

1 worth selling the city's future generations out and vote
2 no to the expansion, they lose the second \$200,000"?

3 Do you remember writing that?

4 A. I remember having that as a very strong
5 opinion because it looked like in the agreement with the
6 City that if the City Council would vote yes, they would
7 be given another \$200,000. If they vote no, it
8 indicated that that \$200,000 would dry up and go away.

9 Q. You wanted them to ignore the host fees and
10 not to pay attention to the money because it wasn't
11 about money, it was about the environment is what your
12 point was; is that right?

13 MR. PORTER: I object. The question is
14 vague. You wanted who to do that?

15 MR. O'BRIEN: You wanted the City Council to
16 ignore the host fees and to be concerned about the
17 environment.

18 MR. PORTER: Again, I object. This isn't a
19 letter to the City Council. This is a letter to the
20 editor of the newspaper.

21 MR. O'BRIEN: I understand. I'm trying to
22 develop the theme that he was developing through his
23 arguments to these Council members and through these
24 letters.

1 HEARING OFFICER HALLORAN: I'll allow it.

2 You may proceed.

3 A. The majority of the letters I wrote, I didn't
4 know who -- if the City Council was reading the Rochelle
5 News Leader or not, but it was something that I thought
6 that was important that the citizens of Rochelle know
7 also what's going on.

8 BY MR. O'BRIEN:

9 Q. But my point to you, Mr. Beardin, is that one
10 of the themes that you were hitting was that it wasn't
11 about money, the City Council should not worry about the
12 money; they should worry about the environment and the
13 legacy to their children and grandchildren; right?

14 A. I think that's human nature. Everyone should
15 worry about their grandchildren over money. I wouldn't
16 sell my grandchildren out for money, and I wouldn't
17 think that anybody else would.

18 Q. I'm asking you a different question. Is that
19 a theme that you repeatedly hit on in your letters?

20 A. Not necessarily. I made mention maybe in one
21 or two, but I won't say it was a -- no, I would not say
22 it was a main theme.

23 Q. Did you quote the Bible and invoke the name
24 of the Lord as this being a Christian duty?

1 MR. PORTER: I have to object. I think
2 that's completely inappropriate to be asking --

3 HEARING OFFICER HALLORAN: Wait a minute,
4 Mr. O'Brien. Mr. Porter, can you finish that?

5 MR. PORTER: I think that's completely
6 inappropriate to be asking if someone is quoting the
7 Bible or quoting the Lord. I mean, it clearly gets to
8 religious affiliation. I don't see how it's relevant at
9 all to this proceeding, just seems inappropriate.

10 HEARING OFFICER HALLORAN: I usually let
11 people a little latitude, but I think you're going
12 beyond the bounds. I think the letters pretty much
13 speak for themselves.

14 MR. O'BRIEN: Okay. I will go on.

15 (Petitioner's Exhibit No. 10
16 was identified.)

17 BY MR. O'BRIEN:

18 Q. I'll show you Exhibit 10. It's another
19 letter to the editor that I believe you wrote right
20 before the decision on April 22nd, 2003. Is that a
21 letter that you did right to the newspaper?

22 MR. PORTER: Obviously, same objection.

23 HEARING OFFICER HALLORAN: Objection
24 overruled.

1 Q. Did you write that letter in April of 2000,
2 starting out, "For what monetary amount would you sell
3 your children's and grandchildren's health?" Did you
4 write that letter?

5 A. Once again, it has my name on it, so I very
6 possibly did. It has some statements that I agree with
7 for thought, and once again who would sell their
8 children and their future out. Family has some --
9 family values have to weigh very strongly.

10 (Petitioner's Exhibit No. 12
11 was identified.)

12 BY MR. O'BRIEN:

13 Q. Exhibit 12 is another letter that you wrote
14 in June of 2000?

15 MR. PORTER: Again so the record is clear,
16 this is a letter to the editor; and I still object.
17 It's not an ex parte communication. It's irrelevant.

18 HEARING OFFICER HALLORAN: Objection
19 overruled.

20 BY MR. O'BRIEN:

21 Q. Did you write that letter that says, "Is it
22 really worth the chance of some short-term, quick money
23 to sacrifice the good water for a dump? You be the
24 judge. It's your family and grandkids"? Did you write

1 that letter?

2 A. Once again, it has my name on it, and it has
3 some of the opinions that I have. And once again it
4 went to the community -- to the newspaper.

5 HEARING OFFICER HALLORAN: What's the date on
6 this, Mr. O'Brien?

7 MR. O'BRIEN: That last one, Judge?

8 HEARING OFFICER HALLORAN: Yes. June of
9 2000?

10 MR. O'BRIEN: Yes.

11 HEARING OFFICER HALLORAN: These print once a
12 month?

13 MR. O'BRIEN: June of 2000, that's the only
14 date on it.

15 BY MR. O'BRIEN:

16 Q. These are all documents, by the way, that you
17 produced in discovery, are they not, Mr. Beardin? You
18 gave me all the letters that you had done over the
19 years?

20 A. That's what was asked for, and once again at
21 the time I was strictly a member of the CCOC.

22 MR. O'BRIEN: Pardon me just a minute,
23 Mr. Hearing officer.

24 MR. PORTER: I also object because this is

1 way before the application was even filed.

2 HEARING OFFICER HALLORAN: Well, we are on
3 the fundamental fairness issue, Mr. Porter, so
4 pre-filing contacts --

5 MR. PORTER: But it's not a contact.

6 MR. O'BRIEN: You are aware that there was a
7 previous application, and we filed this application? I
8 don't know if you knew that or not.

9 HEARING OFFICER HALLORAN: Yes.

10 MR. PORTER: I just --

11 HEARING OFFICER HALLORAN: Go ahead,
12 Mr. Porter. You can make a record.

13 MR. PORTER: I just have absolutely no clue
14 what the relevancy is of any of this. I guess that's
15 why I just keep reiterating my objection. I apologize
16 for --

17 MR. O'BRIEN: Smirking.

18 BY MR. O'BRIEN:

19 Q. Now, Mr. Beardin even though you knew it was
20 not appropriate to contact Council members after the
21 application was filed and particularly during the
22 hearing and while you were sitting at counsel table as a
23 representative of the party, isn't it true that you went
24 to Mr. Bubik's house to give him a videotape of a

1 television program that you had seen during the hearing?

2 A. Yes, as Mr. Bubik stated, and as Mr. Bubik
3 very correctly stated when I walked up, I says, as a
4 friend, this is something you might be interested in,
5 end of conversation.

6 Q. What was your purpose in going to him with
7 this videotape of this television program that you had
8 seen on Saturday night, March 1st, during the hearing?

9 A. Basically the same as what I stated,
10 whatever, at the last deposition. It was just to bring
11 the point that -- what some big business stated don't
12 always end up being the end results.

13 Q. Were you doing that in order to influence
14 Mr. Bubik's decision that he would be making with
15 respect to the landfill?

16 MR. PORTER: Objection, calls for conjecture.
17 Again, it's completely irrelevant to the line of
18 questioning. There's no evidence that any City Council
19 member watched the videotape.

20 HEARING OFFICER HALLORAN: Tracy, could you
21 read the question back?

22 (The record was read.)

23 MR. PORTER: And it was conjecture and
24 irrelevant because there is no evidence that anybody

1 watched it.

2 MR. O'BRIEN: I argue that this goes to the
3 gravity of the contact. It was done purposely and
4 intentionally to influence the vote, an ex parte
5 communication during the hearing. That evidence is
6 relevant and should be considered by the PCB.

7 HEARING OFFICER HALLORAN: I think, I am --
8 to remain consistent, I think I am going to sustain
9 Mr. Porter's objection; and you can ask it as an offer
10 of proof, and he can answer.

11 BY MR. O'BRIEN:

12 Q. Okay. I will ask you this way as an offer of
13 proof: Was it your purpose in offering him that video
14 to persuade him to vote against the landfill
15 application?

16 A. No, sir, it was not. As Mr. Roeglin
17 mentioned, everything was pretty well -- you know, it
18 was just information.

19 Q. Information about what?

20 A. Just a broad information. It was just
21 nothing in particular. There was -- back up. No, at
22 the time.

23 Q. Did this television episode Touched By An
24 Angel have to do with the environment?

1 MR. PORTER: Same objection, which is
2 relevancy because there's no evidence it was ever
3 watched by the City Council member.

4 MR. O'BRIEN: Has to do with the gravity of
5 the contact.

6 HEARING OFFICER HALLORAN: Same ruling,
7 objection sustained.

8 MR. O'BRIEN: I can go ahead with an offer of
9 proof?

10 HEARING OFFICER HALLORAN: Offer of proof,
11 Mr. O'Brien.

12 MR. O'BRIEN: I will do that.

13 A. I'm sorry. One more time?

14 BY MR. O'BRIEN:

15 Q. Did this have anything to do with the
16 landfill hearings?

17 A. No, sir.

18 Q. Had nothing to do?

19 A. Had nothing to do.

20 Q. Well, let's see now. You watched this
21 program on Saturday night, March 1st, right, during the
22 hearing; right? And it's a religiously kind of oriented
23 program with angels coming down from heaven and
24 interacting with people, right?

1 A. It was a very good program. Some people may
2 not think so, but it was good program. It was at that
3 time. And one more time, I'm sorry, again on the
4 question.

5 Q. And the thrust of it was that angels come
6 down, and they deal with an inventor who is about to
7 invent a machine that's going to make energy from water?

8 MR. PORTER: Can I show an ongoing objection
9 to any questions regarding the Touched By the Angel
10 episode?

11 MR. O'BRIEN: I'm assuming that this is all
12 an offer of proof.

13 HEARING OFFICER HALLORAN: It's an offer of
14 proof.

15 MR. O'BRIEN: I will do this all as an offer
16 of proof.

17 HEARING OFFICER HALLORAN: Are we going to go
18 through the same thing we did in opening? I feel like
19 I've watched the episode twice now. What are we doing
20 now, Mr. O'Brien?

21 MR. O'BRIEN: I'm going to show the episode,
22 a little bit of the episode.

23 HEARING OFFICER HALLORAN: For the record, we
24 are showing a little bit of the touched by the video

1 (sic) episode that was Petitioner's Exhibit 14.

2 MR. O'BRIEN: It's actually a DVD made from
3 that video, same thing. It's easier to pop in.

4 BY MR. O'BRIEN:

5 Q. So what happens? Just explain to the hearing
6 officer what happens in this episode.

7 A. Basically what you had stated is fairly
8 correct. Someone had invented -- had an invention that
9 was close to being complete, and it was turning a glass
10 of water into electricity.

11 Q. And this inventor, Chester from Gun Smoke,
12 he's very concerned about the environment and thinks a
13 lot more about the environment than he does about money;
14 right?

15 A. That could be construed as the main thought
16 of the video or movie.

17 Q. And so the movie, it sort of starts out with
18 the angels, you know, talking about how wonderful the
19 earth was before man came along and began to destroy it,
20 build, right?

21 A. Best I remember.

22 HEARING OFFICER HALLORAN: Mr. O'Brien, why
23 are we watching this?

24 MR. O'BRIEN: I just want to take him through

1 a few of the themes and see if they aren't precisely the
2 same themes that he struck in his letters to the editor,
3 and this indeed had everything to do with the hearings
4 that were ongoing.

5 HEARING OFFICER HALLORAN: You can't ask that
6 orally without the video?

7 MR. O'BRIEN: I think a few of the statements
8 will be helpful.

9 HEARING OFFICER HALLORAN: I'll be the judge
10 of that, but let's proceed.

11 MR. PORTER: We're still under an offer of
12 proof?

13 HEARING OFFICER HALLORAN: Yes.

14 MR. O'BRIEN: Yes, I understand this is an
15 offer of proof.

16 BY MR. O'BRIEN:

17 Q. So the movie starts out with the angels
18 talking about the earth, right? You remember this part
19 of the video?

20 HEARING OFFICER HALLORAN: By the way, the
21 court reporter is not taking down the script.

22 MR. O'BRIEN: The DVD will be of record.

23 BY MR. O'BRIEN:

24 Q. So, Mr. Beardin, basically the energy company

1 would help the angels convince this Chester to buy the
2 device so they can supposedly finish it, complete it
3 because he's going to die; do you remember that?

4 A. Best I recollect, that's the drift of the
5 program.

6 Q. So he gets visited by one of the angels here,
7 right?

8 A. Yes, she is one of them.

9 Q. And she's driving an old clunker, and he
10 says, well, let somebody else worry about the ozone
11 layer. He's very environmentally concerned, right?

12 A. He appears to be, yes.

13 Q. He is really not concerned about money,
14 right?

15 A. It don't indicate that, and he only has six
16 months to live approximately.

17 HEARING OFFICER HALLORAN: We're talking
18 about Dennis Weaver?

19 THE WITNESS: Yes.

20 BY MR. O'BRIEN:

21 Q. Do you remember that part?

22 HEARING OFFICER HALLORAN: You're going to
23 have to turn it off while Mr. Beardin answers.

24 BY MR. O'BRIEN:

1 Q. Do you remember that part of the movie?

2 A. After revisiting it, yes, it seems familiar.

3 Q. And that guy who is telling the little kid
4 money isn't everything, he is one of the angels sent
5 down from heaven? Do you remember that?

6 A. Can I visit -- who was talking, was that not
7 Dennis Weaver?

8 Q. No, that was one of the angels.

9 A. Oh, okay.

10 MR. PORTER: If it helps, I'll stipulate that
11 that's an angel.

12 HEARING OFFICER HALLORAN: Mr. Porter
13 stipulates that it's an angel.

14 MR. O'BRIEN: I'll take that stipulation.

15 BY MR. O'BRIEN:

16 Q. Do you remember that?

17 A. It's familiar, yes.

18 HEARING OFFICER HALLORAN: Mr. O'Brien, I am
19 not sure what this is about.

20 MR. O'BRIEN: This is about --

21 HEARING OFFICER HALLORAN: Turn it mute or
22 something. I can't talk and listen to angels and
23 Mr. Beardin as well as you. I am not sure -- I think
24 Mr. Beardin understands the point you're driving. I'm

1 certainly understanding it. And I think it will be
2 reflected to the Board. As far as you showing bits and
3 pieces of the video, I'm not sure -- if you can clarify
4 again why you're doing that?

5 MR. O'BRIEN: Your Honor, I am trying to
6 simply demonstrate, which I think is obvious, which is
7 he was attempting to give to a Council member a
8 dramatization of precisely the same arguments that he'd
9 been making for several years in his letters to the
10 editor. And he was president of the CCOC. He was a
11 party to the proceedings. He knew he shouldn't be doing
12 that, and he clearly did it to influence the Council
13 members' decision. And he denies it, and I'm trying to
14 impeach him.

15 HEARING OFFICER HALLORAN: But -- but --

16 MR. O'BRIEN: If it helps, is that not
17 obvious? I mean, is it not obvious that that was what
18 he was doing?

19 HEARING OFFICER HALLORAN: I am not the
20 ultimate decision-maker.

21 MR. O'BRIEN: I understand that.

22 HEARING OFFICER HALLORAN: It's obvious that
23 I'm not sure why we need this and why we can't just do
24 an oral without injecting, you know, every two seconds a

1 five-minute part of this. I don't know. Again, we are
2 under an offer of proof, but --

3 MR. O'BRIEN: I'm happy to not go further --

4 HEARING OFFICER HALLORAN: -- I don't want to
5 quell your day in court.

6 MR. O'BRIEN: I'm happy to not go further
7 with the video, but that's the point of the video.

8 HEARING OFFICER HALLORAN: Okay. Thanks.

9 BY MR. O'BRIEN:

10 Q. So you see this television program dramatized
11 in your argument on Saturday night during the hearing,
12 and you decide it's a really good program, right? And
13 you decide you're going to tape it and give it to some
14 people. Which people did you give it to?

15 A. I believe the only one, which it was stated,
16 was Mr. Bubdik. I had mentioned to Mr. Hann who he
17 said -- who he denies as he had already seen it. Like I
18 say I walked up to him, I said, as a friend this might
19 be something you would be interested in seeing,
20 something like that.

21 Q. Did you offer this to any people who were not
22 on the City Council in the midst of that hearing?

23 A. Yes, I did.

24 Q. That same next day on Sunday?

1 A. It was not maybe the same day. It may have
2 been before or it may have been after.

3 Q. You saw it on Saturday night? The program
4 aired on Saturday night, there's a stipulation to that
5 effect, on Saturday night, March 1st, at 7:00. How many
6 copies of this video did you make?

7 A. There may be six, I don't know, thereabouts;
8 and I may have passed one of them around.

9 Q. Who did you offer the video to, Hann, Bubik?
10 How about Kissick?

11 A. To the best of my knowledge, no.

12 Q. You said in your deposition you thought you
13 maybe gave it to Kissick, too?

14 A. I may have. I may have went to his house,
15 but I don't think anybody was home; and I did not go
16 back. I may have.

17 MR. PORTER: I realize we are in an offer of
18 proof, but it seems like we're not getting the answer
19 out before the questions are coming.

20 MR. O'BRIEN: I will try to be better about
21 that.

22 BY MR. O'BRIEN:

23 Q. Did you offer it to Colwill?

24 A. I don't remember honestly. I may have gone

1 by to offer it to him. He may not have been home. I
2 don't remember 100 percent.

3 Q. Did you offer it to Mayor Gingrich who voted
4 in favor of the application expansion?

5 A. Not to my knowledge, no, I did not offer it
6 to him. He may not have been home, but I may not have
7 offered it to him.

8 Q. Didn't you say in your deposition you didn't
9 offer it to Mayor Gingrich because you knew his stance
10 on the landfill? Do you remember saying that?

11 A. I may not have offered it to him. I wasn't
12 100 percent sure of his stance.

13 Q. Didn't you say in your deposition that the
14 reason you didn't offer it to Gingrich is because you
15 knew his stance on the landfill? Didn't you say that?
16 MR. PORTER: Again, we're in an impeachment
17 within an offer of proof so it's a little awkward; but
18 I'd like a page and line.

19 HEARING OFFICER HALLORAN: Page and line,

20 Mr. O'Brien?

21 MR. O'BRIEN: 18, 4.

22 BY MR. O'BRIEN:

23 Q. "Did you offer it to Gingrich? No."

24 Question, "Why not? Why did you not offer it to

1 Gingrich?" Answer, "There was no reason. Just I didn't
2 go by his place. I didn't see any reason to offer it to
3 Mr. Gingrich." Question, "Was that because you thought
4 he had his mind made up about the landfill expansion?"
5 Answer, "I knew his stance on it. That was about it."
6 Do you remember that question and answer?

7 A. Okay. That I may have -- I probably said
8 that I knew his stance on it, but that doesn't mean that
9 I knew his stance for or against the landfill. I just
10 thought I knew his stance on it.

11 Q. Let me understand that one now. If you knew
12 his stance on it, how can you know his stance and not
13 know what his stance was?

14 A. Well, that was the question you said, did I
15 know his stance on it.

16 Q. My question was: The reason you didn't give
17 him the videotape is because you knew his stance on the
18 landfill?

19 A. And my answer was?

20 Q. You said, "I knew his stance on it. That was
21 about it."

22 A. Oh, okay. That was about it.

23 MR. PORTER: Again, I'm trying to shut up
24 because this is supposed to be an offer of proof, but

1 that is not an impeaching statement. So it would be
2 improper impeachment if somehow my objection is
3 ultimately overruled by the PCB.

4 HEARING OFFICER HALLORAN: You know, I am a
5 little unclear where the offer of proof begins and ends
6 right now.

7 MR. O'BRIEN: I'm assuming I am still in the
8 offer of proof. I'll concede that.

9 HEARING OFFICER HALLORAN: Right. And the
10 impeachment, if that's what it was, is weak at best. I
11 am not sure where you're going with that. But I would
12 direct Mr. Beardin to be a little more, I guess, clearer
13 on your answers, yes and no, if that's what it calls for
14 because I'm having a little trouble understanding what
15 you're saying. But in any event, we can proceed.

16 BY MR. O'BRIEN:

17 Q. Who other than the City Council members did
18 you offer this video to on Sunday, the following day?

19 A. That I'm not sure who I offered it to. I say
20 I had some others, and I did mention it to the people.
21 I don't know for sure at this time.

22 Q. Okay. Did you contact Councilman Kissick up
23 to six times to express your views on the landfill
24 expansion, to express your opposition after the

1 application was filed on November 22nd, 2002?

2 A. As I stated in the deposition, I did not
3 remember Mr. Kissick. He may have a better memory than
4 I do, but I did not remember I believe was very close to
5 my statement.

6 Q. Did you contact Councilman Colwill a couple
7 of times after the application was filed to express your
8 opposition to the application?

9 HEARING OFFICER HALLORAN: As far as I'm
10 concerned, this is not in an offer of proof.

11 MR. O'BRIEN: I'm sorry. I should have said.
12 When I left the video, I stopped my offer of proof.

13 MR. PORTER: I apologize. Can I have that
14 one read back? I wasn't paying as close of attention as
15 I should have been.

16 HEARING OFFICER HALLORAN: Right. Tracy?

17 (The record was read.)

18 A. I believe I stated I'm not sure. I may have
19 stated that I'm not sure, I don't remember; but if
20 Mr. Colwill says I did, his memory may be better than
21 mine. But I do not remember I think was my answer at
22 the time, was it not?

23 BY MR. O'BRIEN:

24 Q. Did the CCOC organize a letter writing

1 campaign so that letters would be sent to the councilmen
2 before, during and after the hearing to convince them to
3 vote against the expansion?

4 A. They had letters made up if someone -- if it
5 was a public -- the way the public felt, if that was
6 what the public wanted to say to the Council members, it
7 was offered to them for them to sign and to mail in.

8 Q. This exhibit has already been identified.
9 Would you take a look through Petitioner's Exhibit 4?
10 It's a series of letters that Councilman Hann says he
11 received.

12 A. Correct.

13 Q. And you looked through that before
14 previously?

15 A. Yes, sir.

16 Q. Are those the kinds of form letters that were
17 sent to Council members?

18 A. Once again, these were possibly typed up by a
19 member of the CCOC and taken out and handed out if the
20 public -- if that was the public's opinion and they so
21 wished, they would sign one and take it and mail it in.
22 It was not forced upon anyone. It was just we asked --
23 it was asked, you know, is this your opinion on the
24 landfill; if it is --

1 Q. Those letters were sent before, during and
2 after the hearing; is that correct?

3 A. I'm not sure. If they're postmarked as such,
4 that would be so.

5 Q. Well, did the CCOC organize this letter
6 writing campaign?

7 A. Well, we -- it looks like it's one that we
8 had typed up. And if it was the opinion of the citizens
9 of the community, they would sign it.

10 Q. Did you supply them with envelopes addressed
11 to the Council members?

12 A. We may have supplied them. I'm not sure what
13 my statement was at the time. Do you have that?

14 Q. I'm sorry. What?

15 A. We may have supplied envelopes. I am not
16 sure at the time. I don't remember what my statement
17 was on that at the time.

18 MR. O'BRIEN: That's all the questions I
19 have.

20 HEARING OFFICER HALLORAN: Thank you,
21 Mr. O'Brien. Mr. Porter?

22 CROSS-EXAMINATION

23 BY MR. PORTER:

24 Q. Do you have a recollection of ever attempting

1 to contact a City Council member after the application
2 was filed before the decision?

3 A. No, sir, I don't. If they stated I had
4 called, I honestly do not remember if I did contact
5 them. I don't remember.

6 Q. Do you ever remember a City Council member
7 just telling you I can't discuss it?

8 A. It sounds like the answer they gave. If I
9 contacted them, that was the answers they gave to me.
10 That is how they were instructed.

11 Q. But you simply don't have a recollection one
12 way or the other, is that right?

13 A. No, sir, I do not.

14 Q. When you handed the tape to Mr. Bubik, he
15 didn't talk to you about the landfill, did he?

16 A. No, sir, he did not.

17 Q. At no time did Mr. Colwill or Mr. Kissick
18 ever indicate to you or anyone at the CCOC that they
19 would vote against the landfill in exchange for a CCOC
20 endorsement, did they?

21 A. No, sir. There was no indication of that,
22 and I was not in charge of the CCOC at the time that
23 occurred.

24 Q. The videotape --

1 MR. PORTER: Mr. Halloran, this is in way of
2 questions that I'm asking only in case somewhere along
3 the way the PCB overrules your sustaining of my
4 objection as to the videotape. I don't want this to be
5 construed as some waiver of that objection. I guess I
6 just wanted to make that record.

7 HEARING OFFICER HALLORAN: Okay.

8 MR. O'BRIEN: That's fair.

9 HEARING OFFICER HALLORAN: Proceed.

10 BY MR. PORTER:

11 Q. The videotape doesn't even involve a
12 landfill, does it?

13 A. No, sir, it does not.

14 Q. You don't have any personal knowledge that
15 any City Council member ever watched the videotape, do
16 you?

17 A. No, sir, I do not.

18 Q. To your knowledge, no City Council member
19 ever based -- strike that.

20 To your knowledge, no City Council member
21 based his decision on an episode of Touched By the
22 Angel?

23 A. No, sir, I don't believe they did.

24 Q. That concept is pretty silly, isn't it?

1 A. It's carrying a whole lot more weight than --
2 like I said, than it's authorized. It is very silly.

3 MR. PORTER: I have nothing further.

4 HEARING OFFICER HALLORAN: Thank you.
5 Mr. O'Brien?

6 MR. O'BRIEN: No further questions.

7 HEARING OFFICER HALLORAN: Thank you. You
8 may step down. Does anybody need a quick break, or do
9 we have one more witness from you, Mr. O'Brien?

10 MR. O'BRIEN: I don't think so.

11 THE COURT REPORTER: I would.

12 HEARING OFFICER HALLORAN: If the court
13 reporter wants a break, she gets a break.

14 (A brief recess was taken.)

15 HEARING OFFICER HALLORAN: I think we are
16 going to go back on the record. At this point, Mr.
17 O'Brien, the petitioner has rested?

18 MR. O'BRIEN: Just like to offer some
19 exhibits is all.

20 HEARING OFFICER HALLORAN: Right. We got
21 some housekeeping matters to do. Thank you,
22 Mr. O'Brien. What exhibits are you going to offer? I
23 don't have 21. Is that --

24 MR. O'BRIEN: No. You won't have 21. I

1 didn't use it. I will give you that which is an
2 updated, and there's a 22 which is Holmstrom's memo.
3 That's just an updated list, and I've taken out the ones
4 I didn't use. I will go through the exhibits one by one
5 and just make sure I've offered them all.

6 HEARING OFFICER HALLORAN: As far as
7 housekeeping matters, Petitioner's Exhibit No. 1,
8 Petitioner's Exhibit No. 6 and Petitioner's Exhibit
9 No. 5 for starters, I have them up here; but as far as I
10 know they have not been offered.

11 MR. O'BRIEN: You're right. Let's see,
12 No. 5, what was the other you mentioned, 6?

13 HEARING OFFICER HALLORAN: 6, 5.

14 MR. O'BRIEN: 6 is the one that was difficult
15 to read, and I won't offer 6.

16 HEARING OFFICER HALLORAN: You are going
17 to --

18 MR. O'BRIEN: Get a better copy. It's the
19 one that basically Kissick says something to the effect
20 that the CCOC endorsement helped him, so I'm offering
21 that. I did not offer it previously.

22 HEARING OFFICER HALLORAN: And 5 you offered.

23 MR. O'BRIEN: I had it identified, and I'm
24 not using it. It was a flier. And 7 I'm not using.

1 MR. PORTER: Did we address 1?

2 HEARING OFFICER HALLORAN: If you hold on,
3 Mr. Porter, I'm trying to go as fast as I can here.
4 No. 7?

5 MR. O'BRIEN: Not used.

6 HEARING OFFICER HALLORAN: You are offering
7 No. 6 and No. 1.

8 MR. O'BRIEN: Actually 6 has already been
9 admitted, and I am offering No. 1; and that has not yet
10 been admitted. That's the interrogatory answers.

11 HEARING OFFICER HALLORAN: No. 6, Mr. Porter,
12 I think you had an objection.

13 MR. PORTER: No. 6, I do believe I did
14 object. I need -- can I take a look at it? This is not
15 dated, and there's a couple or several Rochelle
16 articles; so if I could just take a look at what 6 is.
17 If it is what I'm thinking, it is already admitted.

18 HEARING OFFICER HALLORAN: I'm thinking the
19 transcript will reflect the date; but, you know, I don't
20 see it on here.

21 MR. O'BRIEN: It's only datable by the
22 events. It recites the election.

23 MR. PORTER: 6 is the one that's difficult to
24 read.

1 MR. O'BRIEN: You have a copy of it. You can
2 have that one, too, if you want it.

3 MR. PORTER: And the date is sometime in
4 2001?

5 MR. O'BRIEN: Probably right after the
6 election in April.

7 MR. PORTER: Objection, irrelevant.

8 HEARING OFFICER HALLORAN: Okay. I'm going
9 to admit it over objection.

10 (Petitioner's Exhibit No. 6 is
11 admitted into evidence.)

12 HEARING OFFICER HALLORAN: And No. 1, Answers
13 to Petitioner's First Set of Interrogatories.

14 MR. PORTER: I would object. It's a hearsay
15 document, and I don't believe the foundation was laid as
16 to whether or not all of the answers that are obtained
17 therein were indeed the individual's answers.

18 MR. O'BRIEN: I think it's relevant to
19 Kissick's impeachment.

20 HEARING OFFICER HALLORAN: I'm sorry, Mr.
21 O'Brien?

22 MR. O'BRIEN: I think it's relevant to
23 Councilman Kissick's impeachment. He said he was
24 contacted by Beardin six times after the application was

1 filed. It was a sworn interrogatory answer. I think it
2 should come into the record now.

3 HEARING OFFICER HALLORAN: I am going to
4 admit it over objection.

5 (Petitioner's Exhibit No. 1 was
6 admitted into evidence.)

7 HEARING OFFICER HALLORAN: We have
8 Petitioner's Exhibit No. 9.

9 MR. O'BRIEN: I would offer the Beardin
10 letters which are 9, 10, 11, 12, and I did not use 13.

11 HEARING OFFICER HALLORAN: Mr. Porter, I
12 think you have stated your objection; correct?

13 MR. PORTER: Correct, irrelevant,
14 inadmissible, does not indicate any ex parte
15 communication. These are just letters to the editor.

16 HEARING OFFICER HALLORAN: Okay, and I think
17 I made my ruling. I am going to admit it. It may be
18 relevant, as I stated before, to address any of his
19 fundamental fairness issues. So Petitioner's Exhibit
20 Nos. 9, 10, 11, 12 are admitted over objection.

21 (Petitioner's Exhibits Nos. 9
22 through 12 were admitted into
23 evidence.)

24 MR. O'BRIEN: 13 wasn't used. You have

1 already admitted 14, the videotape. I think Rick and I
2 have a stipulation that 15 is simply a DVD copy of the
3 same videotape.

4 MR. PORTER: My recollection is those were
5 admitted as an offer of proof only. 14 -- no; no, I
6 stand corrected. That was -- I think it was admitted.

7 HEARING OFFICER HALLORAN: Admitted over
8 objection.

9 MR. O'BRIEN: Right. DVD is simply a copy.

10 HEARING OFFICER HALLORAN: Again, I made the
11 ruling that it may be helpful to corroborate or
12 illustrate what the witness was testifying to. With
13 that said, I think we can -- I think before the City
14 proceeds with its case in chief, any members of the
15 public here wish to make public comment or statement at
16 this time? Yes, ma'am.

17 MR. O'BRIEN: Mr. Halloran, one other exhibit
18 was 4. 4 was the Hann letters, and I offer that. Those
19 are the letters -- copies of the letters that Councilman
20 Hann received.

21 MR. PORTER: No objection.

22 HEARING OFFICER HALLORAN: Yeah, that was
23 admitted.

24 MR. O'BRIEN: Okay.

1 HEARING OFFICER HALLORAN: I'm sorry. Step
2 up, please. And here's what happens. You can take the
3 seat. If you just want to give public comment and state
4 your peace, so be it. If you want to give public
5 statement, that means you will be sworn in and subject
6 to cross-examination. And with that said if you're
7 sworn in, the Board will most probably give it more
8 weight than if you're not. What would your druthers be?

9 MS. LINDSEY STOUFFER: I would say I don't
10 mind being sworn in.

11 HEARING OFFICER HALLORAN: Great. You can
12 step up here and raise your right hand, and Tracy will
13 swear you in.

14 LINDSEY STOUFFER,
15 having been firstly duly sworn, gave a public statement
16 as follows: Okay. I would just like to start by saying
17 that I don't see how the Council's decisions could have
18 been biased because in today's society we are run by
19 greed and also by the power to be liked by other people.
20 And I think for the decision to be biased, the entire
21 council would have to have the same mindset; and I can
22 tell by with the differences in these gentlemen that
23 there was no difference -- or there was difference in
24 their minds at the time that they made the decision.

1 I don't know what their mindset was at the
2 time, but I can honestly say that I don't believe that
3 their decision was biased. I can also say that I am
4 hurt to be at this hearing today because I was here with
5 a few of my partners in school, and we heard both sides
6 of the argument. We heard the CCOC's argument, and we
7 spoke in one of their hearings that they had at the VFW;
8 and we also visited the landfill to hear Mr. Hilbert and
9 Mr. Gelderloos's stories. And we asked them few
10 questions while we were there.

11 And we asked Mr. Hilbert and Mr. Gelderloos
12 whether or not if the siting hearing did not go as they
13 had hoped, which was in their favor, would they pursue
14 anything further? We were told by both of them no, they
15 would not pursue anything further if the siting hearing
16 did not go as they had intended. And we also asked if
17 the landfill expansion did not go through, would they
18 exhume site one, they said no.

19 And I believe that it would be irresponsible
20 on our part to allow them to have the expansion at this
21 time. I believe that they are unready for the expansion
22 at this time.

23 HEARING OFFICER HALLORAN: Thank you.
24 Mr. O'Brien?

1 MR. O'BRIEN: Just didn't get a name is all.

2 HEARING OFFICER HALLORAN: I'm sorry. Your
3 name and spell it?

4 MS. STOUFFER: Lindsey Stouffer. My last
5 name is S-t-o-u-f-f-e-r.

6 MR. O'BRIEN: You were here before?

7 MS. STOUFFER: Yes.

8 HEARING OFFICER HALLORAN: Thank you.

9 MR. PORTER: No questions.

10 HEARING OFFICER HALLORAN: Thank you. You
11 may step down.

12 HEARING OFFICER HALLORAN: Any other
13 comments, statements at this time? Seeing no hands --
14 yes, ma'am. You can come up, please.

15 HEARING OFFICER HALLORAN: Again, would you
16 like to make comment or statement? Would you like to be
17 sworn in and subject to cross?

18 MS. SHIRLEY KERSTEN: I will be sworn in.

19 SHIRLEY KERSTEN,
20 having been first duly sworn, gave a public statement as
21 follows: My name is Shirley Kersten. I live on a farm
22 about six miles southeast of here, just northwest of the
23 Village of Steward downstream from the landfill. My
24 husband and I farmed in Reynolds Township in Lee County

1 for 47 years. My husband is now deceased, but I am now
2 still actively engaged in farming and have been managing
3 my own land, some of which is very near Rochelle as well
4 as my family's farm which is near Steward.

5 I have taught quite a few years in the public
6 schools of Illinois, including six years as a special
7 reading teacher at Central School here in Rochelle and
8 two years teaching fourth grade in Steward Elementary
9 School. At present I am a volunteer mentor in third and
10 fourth grades at Steward School. I also work part time
11 for the Wal-Mart Pharmacy delivering medicine.

12 I would like to get away from my script just
13 a little bit here to say that I have not been coerced
14 into coming up here to speak. We farmers are pretty
15 busy, and we don't always hear what's going on with
16 Rochelle and yet it concerns us much. And sometimes
17 we're just glad to have people let us know, such as the
18 CCOC what is going on; and that way we're a pretty
19 independent bunch. We decide what we think is right,
20 and we go ahead with that.

21 I have given you all these facts of my
22 background because I have been told by a person involved
23 in Rochelle city planning that we farmers really have no
24 business meddling in the government affairs of Rochelle.

1 I have not only taught school and worked in Rochelle, I
2 also pay a large amount of real estate taxes on land to
3 the schools in Rochelle and help support the Ogle/Lee
4 Fire District.

5 As you might guess having been a teacher, I
6 am all for the schools and voted for both the new school
7 in Steward and the new high school in Rochelle, even
8 though my vote placed a disproportionate land tax on two
9 of my siblings who live outside the school district and
10 cannot vote. So I think farmers do have a reason to be
11 interested in what happens in Rochelle.

12 I think the City Council in their vote
13 against expansion of the landfill made a very wise,
14 well-thought-out, intelligent, sensible, and courageous
15 decision.

16 I would like to give you some more reasons
17 why we as farmers are so concerned. First of all,
18 couldn't the removal of prime class one soils around
19 Rochelle for a landfill be considered pollution? Soil
20 that can no longer be used to produce food and fiber,
21 the best soil in the world which has provided the
22 greatest quantity, the highest quality of food at the
23 lowest price in the world in proportion to incomes.

24 Second, we farmers have been very

1 conscientious about applying herbicides and insecticides
2 to the soil. At one time the EPA was very concerned
3 about Atrazine herbicide which we applied to our corn
4 fields. They said we should not use Atrazine anymore.
5 This was bad news to the farmers because Atrazine did
6 such a good, economical job of controlling weeds.
7 Chemical companies had to come up with other new, safe
8 chemicals to take the place of Atrazine.

9 This is a very lengthy, costly process for
10 the chemical companies; and they passed this extra cost
11 down to the farmers. Which means that the farmers' cost
12 of growing corn is growing much higher.

13 Ironically I have just read recently of more
14 exact studies on the use of Atrazine which proves that
15 Atrazine wasn't harmful in the first place. We farmers
16 have worked especially hard over the past 20 years to
17 keep our soil in our fields so that soil runoff will not
18 pollute ditches, creeks, and streams. We build grass
19 waterways, filter strips along creeks and streams; we
20 have many other methods of controlling runoff.

21 We are particularly careful not to
22 contaminate the ground water which is our source of
23 drinking water. Shouldn't the city of Rochelle and the
24 Illinois Pollution Board be as concerned?

1 Now, I know that it has been said many times
2 by the promoters of expanding the landfill that there
3 will be no hazardous materials deposited in the landfill
4 and that the landfill will not leak and contaminate the
5 ground water. History has proved otherwise. At some
6 point in time the landfill will leak.

7 Third, if Rochelle is going to grow in leaps
8 and bounds as the city planners tell us, will we not
9 have enough of a problem taking care of the waste of
10 Rochelle and the community without taking garbage from
11 other cities? No one can really convince me that the
12 big city planners and garbage haulers coming out from
13 the suburbs are not going to dump as much hazard
14 material as they can get by with.

15 When big cities, and I'm not talking about
16 Rochelle; but when big cities and city politics, power,
17 greed and money of these big cities get involved with
18 our garbage business, anything is liable to happen.

19 Lastly, there are other ways of disposing
20 waste material rather than burying it in landfills.
21 Couldn't the City of Rochelle research ways of
22 converting waste into power and other useful materials
23 as many other cities do and thus do away with the odor,
24 the runoff, the huge amount of traffic with its

1 problems, and all the possibilities of sicknesses that
2 could be caused by ground water pollution?

3 These new methods will not bring in all the
4 fees that cities and towns and counties now receive, but
5 they surely would do away with the pollution. We have
6 enough pollution in Rochelle without taking in more from
7 cities all over northern Illinois.

8 In summary, let me mention two points of
9 utmost importance that I think are true. One, since the
10 City of Rochelle is growing so rapidly, it seems to me
11 that the duty of the city should be to take care of the
12 garbage of only Rochelle and surrounding communities.
13 Why should the city have to worry about the garbage of
14 far-off cities?

15 That leads me to the second point. It is
16 possible to take care of garbage without covering super-
17 prime farmland for eternity. I am firmly convinced that
18 the City Council, which made such a wise decision in
19 voting down the landfill, has the intelligence, the
20 common sense, the talent, the moral courage and the
21 dedication to the well-being of this community to tackle
22 just such a challenge in order to dispose of garbage
23 without all the pollution of an expansion of the
24 landfill. And perhaps the garbage disposal company

1 might take this modern technology into mind and go about
2 making their money that way. Perhaps the Illinois
3 Pollution Control Board could give them some help on
4 that subject. Those are my thoughts, and I thank you
5 for letting me speak before your Board.

6 HEARING OFFICER HALLORAN: Thank you, ma'am.
7 Any questions, Mr. O'Brien?

8 MR. O'BRIEN: No.

9 HEARING OFFICER HALLORAN: Mr. Porter?

10 MR. PORTER: No.

11 HEARING OFFICER HALLORAN: Thank you, ma'am.
12 If we could refrain from clapping, this is kind of like
13 a court of law. Anybody else want to come up? Okay.
14 Yes, sir. Public comment or statement? You want to get
15 sworn in?

16 HEARING OFFICER HALLORAN: Okay. Just state
17 your name and spell it for the record.

18 MR. BILL HAYES: I am Bill Hayes, with two
19 l's, B-i-l-l H-a-y-e-s.

20 HEARING OFFICER HALLORAN: Thank you.

21 MR. BILL HAYES: Is that all you need?

22 HEARING OFFICER HALLORAN: Sure.

23 BILL HAYES,
24 having been first duly sworn, gave a public statement as

1 follows: I just have -- one of the things I have been
2 looking at for a long time, I was on the county board
3 when we had the same kind of problem with the BFI at the
4 time of the Onyx expansion up on 251. I have studied a
5 lot of these problems. One of the things that I
6 don't -- nobody can give me an answer. And what happens
7 if this doesn't go through for the people -- if it
8 doesn't pass? Is there anybody responsible for putting
9 in the layer of the presently operated -- new layer of
10 the presently operated landfill, and what's that going
11 to cost and who pays it? Is the city responsible,
12 client responsible? Who is responsible for this
13 magnanimous, probably millions -- more than a million
14 dollars clean-up? And I think that should -- and
15 here's another thing. People should -- I have asked
16 many people, and I haven't gotten any answer. Anybody
17 here can answer that?

18 HEARING OFFICER HALLORAN: I think that's
19 more rhetorical. You can proceed and I guess find your
20 answers elsewhere. This is just a forum to make public
21 comment or statement.

22 MR. BILL HAYES: That's all. I haven't been
23 able to find that out.

24 HEARING OFFICER HALLORAN: Any questions,

1 Mr. O'Brien?

2 MR. O'BRIEN: No.

3 HEARING OFFICER HALLORAN: Mr. Porter?

4 MR. PORTER: No.

5 HEARING OFFICER HALLORAN: Thank you, sir. I
6 hope you find the answer to your question.

7 MR. BILL HAYES: Okay.

8 HEARING OFFICER HALLORAN: Anyone else at
9 this time? Yes, ma'am.

10 MRS. ELLEN HILL: Comment.

11 HEARING OFFICER HALLORAN: Comment. Okay.
12 Thank you, ma'am.

13 MRS. ELLEN HILL: My name is Ellen Hill, and
14 I live near Creston, although my mail comes Route 2,
15 Woodlawn Road, Rochelle. There is some Rochelle
16 residents who do not know where Rochelle's landfill is
17 located. It is located on the very west edge of the
18 village of Creston. Creston's water tower is nearby.
19 Creston's grade school is about half to three-quarters
20 mile away, and Creston's wells are less than a mile
21 away. It has been proven that there is an aquifer under
22 the current landfill. We are told in the mid '90s that
23 the landfill was leaking.

24 I have lived in Creston area for more than 50

1 years. And in that time I can name almost 50 people of
2 my friends who have either died of cancer or are cancer
3 survivors. Within the last two years, we have had two
4 Creston people in there early 50s, born and raised in
5 Creston, who have had kidney cancer. It is my
6 understanding that this is a rather rare type of cancer.
7 This scares me.

8 Is it fair that Rochelle dumps on another
9 town and may be contaminating their water? Rochelle's
10 wells are on the same aquifer as Creston but farther
11 away from the landfill than Creston wells are. Do you
12 think this is worth a gamble? I don't, and I sincerely
13 thank the Council for their decision against the
14 landfill expansion. Thank you.

15 HEARING OFFICER HALLORAN: Thank you, ma'am.
16 Anyone else at this time? Yes, please step up.

17 MS. JANET STALHEBER: Just comment.

18 HEARING OFFICER HALLORAN: Okay.

19 MS. JANET STALHEBER: My name is Janet
20 Stalheber. I live within the city of Rochelle and vote
21 within the city of Rochelle. My question is, why are we
22 here? I sat through all of the hearings whenever it
23 was, February, March, back. I was here when the City
24 Council voted against expanding the landfill. And, you

1 know, why are we doing this again? And how many more
2 times are we going to have to do it?

3 I was interested in hearing some of the
4 questions this morning or this afternoon concerning free
5 speech letters to the editor, and the CCOC organization
6 of which I am not a member formulating letters for
7 people to send, if they wished, to the City Council
8 members. And I don't know if anyone has mentioned, but
9 there was a non-binding referendum in Rochelle, not
10 Creston, just Rochelle; and 75 percent of the people who
11 voted voted no against the landfill expansion.

12 That seems very clear that that's what the
13 people wanted. And the City Council voted what the
14 people wanted. I can't imagine why we have more
15 questions about an expansion of the landfill when the
16 people decided that this was not worth whatever we were
17 going to get for it; and we don't know what it is we are
18 going to get for it. I don't know what are the benefits
19 for Rochelle and environs other than money.

20 And, of course, Faust sold his soul to the
21 devil and paid for it dearly ever afterwards. In our
22 case, we can sell our soul to the devil and get lots of
23 money for it; and our children and grandchildren and
24 future generations may very well pay for it.

1 The technology supposedly is going to solve
2 all of our problems, just like the last landfill liner
3 technology which is now leaking is going to solve all of
4 our problems. The only thing that's going to solve our
5 problems, friends, is integrity and responsibility. We
6 can take the responsibility for our own waste and other
7 people, other cities can take the responsibility for
8 their waste and deal with it effectively.

9 Did you know that a large percentage of the
10 trash that we generate that's the recycled stuff is
11 being bought by China? And they're using it very
12 effectively to make all kinds of neat stuff because we
13 don't have the will to do it ourselves.

14 I asked about the benefits for Rochelle. If
15 the landfill expansion were to go through, what will we
16 get from it? And what kind of guarantees are going to
17 be put up that, one, it will never, ever leak, never,
18 under any circumstances, and that no one will ever get
19 sick or die or that the land and the water will never,
20 ever be polluted? Is somebody willing to put up enough
21 money in an escrow account to take care of any of these
22 problems should they arise? I sincerely doubt it.

23 Again, it's all about integrity and
24 responsibility. That's what is going to solve our

1 problems and a little forward thinking, not relying on
2 technology and not looking at the all mighty dollar.
3 Thank you.

4 HEARING OFFICER HALLORAN: Thank you, ma'am.
5 Anyone else at this time, comment, statement? And I
6 will -- yes, sir.

7 MR. ROGER BEARDIN: Good afternoon.

8 HEARING OFFICER HALLORAN: Would you like to
9 be sworn in or give public comment?

10 MR. ROGER BEARDIN: Public comment.

11 HEARING OFFICER HALLORAN: Okay. Thank you.

12 MR. ROGER BEARDIN: My name is Roger Beardin.
13 I live on 18725 Illinois East Route 38. Our property
14 backs up to the landfill. The only thing that separates
15 us from the landfill is the railroad track. We have
16 quite a few concerns against the landfill going in, one
17 of them first being traffic.

18 The traffic going to be coming in as the
19 semis coming down 38 are going to be turning right next
20 to my mother's property where my brother and my mother
21 live at. They have widened supposedly this turning
22 section, which is fine. They have put in a turning lane
23 to turn onto Mulford Road; but for the traffic coming
24 off of Mulford Road back onto 38, there's no accel lane

1 or any place for these people to accel to when they pull
2 back on the highway headed back for Rochelle. You're
3 going to have a slow truck with traffic coming over the
4 hill with no place to go. So there's a very large
5 concern of traffic coming down through there.

6 They're wanting to open the landfill at 4:00
7 o'clock in the morning. All these truck drivers get
8 paid by the load. So if that landfill is going to open
9 at 4:00 o'clock in the morning, we're going to be
10 sitting there at 3:00 o'clock in the morning waiting to
11 get in this landfill. So we're going to be having
12 traffic coming in front of our houses down through
13 there. The house is very close to the road now since
14 they've widened it. It's close to Mulford Road.

15 If it does go through, they're going to want
16 to take Mulford Road and widen Mulford. Our land is for
17 farmland. It's not for a road. We don't feel that we
18 want to sell land. At that time it'll have to be
19 approached.

20 One of our other concerns is water. We have
21 two houses on this farmland. We're within a half mile
22 of the landfill. The landfill says we will give you
23 well protection. Okay. If you have got well
24 protection, it's fine. If it does contaminate the

1 water, what are they going to do for us? You're not
2 going to drill a new well if the water down there is
3 contaminated unless you want to drill down into farther
4 contamination, the same way with Creston and everybody
5 else.

6 If it contaminates the water, it's all done.
7 They're not going to go fix it. They're not going to go
8 clean it. It's our source of water. 30 years ago, did
9 you buy bottled water? No. We didn't have any worry
10 about water. Now you buy water. You've got water in
11 your house because you don't know what you're drinking.
12 You go buy water and keep it in there because we don't
13 know.

14 So if you come and ruin my well, where am I
15 going to get water at? Where is my brother and his
16 family going to get water at? Where is Creston going to
17 get their water from? You're not going to truck it in.
18 You're not going to keep purifying it. So we have got a
19 concern about that.

20 Also the landfill used to have a -- has a
21 drainage ditch running through the middle of the
22 property. People say they're going to take and
23 change -- take the drainage ditch out, put a water
24 retention pond in to catch the drainage, water coming

1 off of there. Well, our farmland drains under the
2 railroad track through that property, has for the last
3 90 some years, 100 years. Now, they're changing that.
4 If we have a problem with flooding and everything else,
5 they say, well, they'll take care of it for us or do
6 something; but right now, you know, if it goes through,
7 we're not guaranteed anything on this. So we have got a
8 drainage problem that we're worried about.

9 There was an application, I think it was
10 three years ago. We sat in this same room, sat through
11 the hearings for a week, two weeks, got ready to have
12 the answer, the vote and everything else. They withdrew
13 the application because their application -- they knew
14 it was going to get defeated. There was a lot of flaws
15 in it.

16 Okay. We came back in February. We sat
17 through another one. All these people came up here and
18 talked again, said we do not want the landfill. We
19 don't want the expansion. It's not we don't want the
20 landfill. We have got to have a place for our garbage
21 and like I say the surrounding area. We want to take
22 care of it. And here we are again. It got voted down,
23 but here we are for the third time, everybody coming
24 back saying the same thing. We don't want it.

1 Like they say, how many times do we have to
2 keep telling people that we don't want it? If it has to
3 go down state, I'm sure everybody that has sat in here
4 and talked, they're willing to go down state and say the
5 same thing. Pay our money to go down there. We're
6 fighting -- we're arguing with a big identity. They
7 have got lots of moneys. All their hearings, they pay
8 the people to come up here and talk big bucks. The last
9 hearing they asked one of the ladies, and she told how
10 much she was paid to be a professional witness. Okay.

11 Everybody that's talking in here, they're not
12 professional witnesses. They're the people that live in
13 Rochelle. They're the people that live in Creston. We
14 keep telling everybody, we don't want it. They voted
15 in -- the people of Rochelle voted in their City
16 Council, and the City Council listened to what they
17 said; but here we are again saying we don't want the
18 expansion.

19 There's so many concerns here that it just
20 boggles your mind. You know, you could go on and on and
21 on; but, you know, you just don't know where to stop.
22 That's my feelings on it, and I appreciate you taking
23 the time to let me come up and talk and express my
24 opinions, saying anything. If there's any questions?

1 HEARING OFFICER HALLORAN: Thank you,
2 Mr. Beardin. The Board appreciates your time.

3 MR. ROGER BEARDIN: Thank you.

4 HEARING OFFICER HALLORAN: Anyone else at
5 this point in time? I see no hands. I spoke to soon.
6 Sir?

7 HEARING OFFICER HALLORAN: You want to give
8 comment, sir, or statement?

9 MR. THOMAS VILLA: Comment, sir.

10 HEARING OFFICER HALLORAN: Just state your
11 name and spell it for the record.

12 MR. THOMAS VILLA: If I don't speak up, I'm
13 going to say to myself tomorrow, tonight, why didn't I
14 open up? Why didn't I say something? I thank you for
15 the opportunity. My name is Tom Villa, spelled like
16 villa. I live at 1261 Tilton Park Drive. I have been a
17 resident of Rochelle for about 30, 35 years, close to
18 it.

19 I was appointed to the landfill committee,
20 and I am no expert, not in the least. I knew nothing
21 about landfills; but here I am, I was appointed to the
22 landfill committee. And I was to sit there and make
23 some kind of decision and judgment about what the city
24 was going to do. So with the help of the computer, with

1 the help of friends, I was able to solicit some material
2 from the EPA, a lot of watch groups on the computer; and
3 it gave me some sleepless nights.

4 We are in a situation in this town like other
5 towns that are on record of having their water
6 contaminated. We have Cell One that I don't know how
7 long it's been in operation or been there. I know that
8 I have been here 30 years, and 30 years ago we were
9 remodeling a house on Lincoln Highway; and I was using
10 my father-in-law's station wagon to get rid of some
11 lumber and drywall.

12 And so I pulled into the landfill. They told
13 me where to go. And as I'm throwing the stuff out of
14 the back of my van, station wagon, up pulls this
15 humongous, humongous truck next to me, and out started
16 oozing I don't know how many tons of hog heads and hide
17 and blood and crap and slime. It got on my father-in-
18 law's truck. We couldn't get the smell off the tires
19 and off the truck, off my shoes, out of my nostrils for
20 a long time, long time.

21 And I thought -- at the time I didn't know.
22 It was just like one of those deals where you're not an
23 expert. You don't know what's going on. That's one of
24 the things they dump into a landfill. Fine.

1 Well, later I find out that the EPA put out
2 some regulations, and a lot of that stuff that was being
3 dumped into that landfill can't be dumped there anymore.
4 So years and years of this crap that was legally put in
5 at the time is in the ground. And after all the
6 research that I did, as I said, I had some sleepless
7 nights because I realized that every time it rains,
8 every time it snows, that seepage gets into that cover;
9 and it sinks a little more, penetrates a little more,
10 and gets into that crap and just starts that oozing
11 again.

12 It's on record. It's on record that there
13 were a lot of violations out there where the leche was
14 flowing. That thing is full. And I want to tell you
15 folks, we're going to pay some day for that No. 1 Cell.

16 The other thing that I want to say that --
17 the comment that I really want to make at this point as
18 I'm leaving you, it seems disgraceful that a council who
19 listens to the people is being penalized and being
20 scrutinized for their decisions. It's disgraceful.
21 Thank you.

22 HEARING OFFICER HALLORAN: Thank you,
23 Mr. Villa. Anyone else at this point in time. Okay.
24 Mr. Porter?

1 MR. PORTER: I have one witness. First of
2 all, did Counsel rest?

3 HEARING OFFICER HALLORAN: Counsel did rest.

4 MR. PORTER: I have one witness. It's
5 Mr. Helsten. I call Charles Helsten to the stand.

6 HEARING OFFICER HALLORAN: Mr. Helsten?

7 THE WITNESS: Good afternoon, Hearing
8 Officer.

9 HEARING OFFICER HALLORAN: Raise your right
10 hand, and the court reporter will swear you in.

11 CHARLES HELSTEN,
12 called as a witness herein, having been first duly
13 sworn, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. PORTER:

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. So, Mr. Helsten, where do you work?

19 A. Hinshaw & Culbertson. I am a partner,
20 residence in the Rockford office.

21 Q. I hear you have some of the finest help
22 available. Who did you represent at the time that the
23 City of Rochelle 39.2 hearings were commencing?

24 A. I represented City Staff.

1 Q. At some point on April 28th, 2003, did you
2 telephone Mr. Holmstrom?

3 A. Yes.

4 Q. Why?

5 A. We should back up for me to explain to give
6 you full explanation as to why I contacted Mr. Holmstrom
7 on April 28. On Friday, I believe it was April 25th,
8 the morning after the vote, I contacted City Staff and
9 said I would like to approach the City Council in a
10 public meeting so we did not have any ex parte problems
11 and point out to them that there is only one regulated
12 recharge zone in the state of Illinois as a matter of
13 law. That's located in Tazewell County outside east
14 Peoria. And as such their determination that -- this
15 was on Criterion 9 that, in essence, this was within a
16 regulated recharge zone was against the manifest weight
17 of the evidence.

18 I said, while I'm there because I like to be
19 a cautious practitioner, I would also like to ask the
20 Council to consider adopting the conditions in the event
21 there was ever a reversal. It wouldn't constitute
22 conditional siting. As I said, that Monday night,
23 April 28th, I said it's not considered conditional
24 siting.

1 I just would like you to consider that.

2 I asked City Staff to both put it on the
3 agenda because we were coming down to the end of the
4 time period that this City Council, the one that
5 considered the application, would be holding office. I
6 also said we need to send notice out in the siting
7 proceeding as well to the parties, to the participants
8 because although we are taking it up as part of the City
9 Council meeting which we can, it's really a part of the
10 process. It's really a part of the siting process.

11 On Monday, early afternoon, I was in the
12 Chicago area. I called Mr. Saletros (phonetic) again to
13 see if it was on the agenda and if notice had gone out
14 to the participants. I learned at that time that it was
15 on the agenda, but that notice had not gone out under
16 the siting caption, under the caption of the siting
17 matter to the participants such as the applicant
18 Rochelle Waste Disposal, LLC, and to the Concerned
19 Citizens of Ogle County.

20 At that point in time, here was my thought
21 process. I want to make sure that the applicant and the
22 objectors have actual notice of the fact that I am going
23 to appear on Monday night and present these issues to
24 them. So I better get on the phone. My first call

1 would have been to Mr. O'Brien had I remembered his
2 phone number. I could not remember Mr. O'Brien's phone
3 number other than the 639 prefix.

4 However, since Mr. Holmstrom, as he said, is
5 also counsel for the applicant, I have his number
6 memorized because I have dealt with Mr. Holmstrom for
7 years, both in Rochelle where we had permitting issues
8 where I represented the City and he represented the
9 landfill on the host agreement where he was -- when we
10 negotiated that when he was on one side and I was on
11 another side. There's another site where he represents
12 the operator Freeport, and I represent the city.
13 So I knew his number by heart.

14 I was on the road in the West Chicago area,
15 DuPage County area. So I dialed him up. What I told
16 Mr. Holmstrom is I had intended that you get both
17 separate notice that it would be on the agenda and that
18 it would be put on the agenda. I just called City
19 Staff, and I understand that it is simply on the agenda;
20 thereby, I am giving you notice.

21 Mr. Holmstrom and I then had a conversation
22 which is roughly consistent with the memo that was
23 introduced other than the last paragraph of that where
24 we talked about certain things. I said I'm not sure

1 that the City Council will even entertain it tonight.
2 They may entertain it. They may not. Or because you
3 didn't get notice as part of the siting proceeding, they
4 may kick it over to Wednesday night; but I emphasized to
5 Mr. Holmstrom, Wednesday night is the last night that
6 they could act.

7 Q. Why was that?

8 A. Because the City Council -- the new City
9 Council I believe was empaneled on May 1st, 2003. That
10 was my recollection.

11 Q. Okay. So we're clear, at any time did you
12 tell Mr. Holmstrom that no action would be taken on
13 April 28th, 2003?

14 A. No. I told him specifically I was going down
15 there to put the matter before the council. Whether
16 they considered it or not was another matter is what I
17 told him.

18 Q. And you relied on Mr. Holmstrom then to
19 contact his counsel, Mr. O'Brien?

20 A. I asked him to contact Mr. O'Brien if he
21 would.

22 Q. And --

23 A. After that I called Mr. Mueller who
24 represented the Concerned Citizens, got his voice mail,

1 left him a voice mail message consistent with or
2 substantially similar to the conversation I had with
3 Mr. Holmstrom.

4 Q. And did you attend the City Council meeting
5 on April 28th, 2003?

6 A. Yes.

7 Q. And did anybody on behalf of the applicant
8 attend?

9 A. Yes, I remember Mr. Hilbert being there.
10 Mr. Gelderloos may have been there, too; but I remember
11 Mr. Hilbert being there and speaking.

12 MR. PORTER: Nothing further.

13 HEARING OFFICER HALLORAN: Thank you. Before
14 you proceed, Mr. O'Brien, I want to make the record
15 clear, the document Mr. Helsten was referring to I
16 believe is Petitioner's Exhibit No. 22. Thank you, Mr.
17 O'Brien.

18 (Petitioner's Exhibit No. 23
19 was identified.)

20 CROSS-EXAMINATION

21 BY MR. O'BRIEN:

22 Q. Mr. Helsten, I want to show Petitioner's
23 Exhibit 23 which is Respondent's Request to Admit to
24 Petitioner and ask you to take a look at that document.

1 MR. O'BRIEN: Do you have it?

2 MR. PORTER: I don't have it with me.

3 MR. O'BRIEN: I only have one copy.

4 MR. PORTER: I'll look over his shoulder real
5 quick.

6 A. Yes.

7 BY MR. O'BRIEN:

8 Q. Did you draft that request to admit?

9 A. I can't remember if I drafted it or if
10 Mr. Porter since he was doing some of the discovery work
11 drafted it and provided it to me for my review.

12 Q. Did you sign it?

13 A. Yes.

14 Q. And basically the request to admit was you
15 were asking us to admit what had happened in the phone
16 exchange between you and Holmstrom, is that right?

17 A. I think so.

18 Q. And you characterized that in Paragraph 3.
19 Would you read Paragraph 3 into the record as to how you
20 characterized what occurred?

21 A. It says, "Mr. Helsten left a phone message
22 informing Mr. Holmstrom that the City Council of
23 Rochelle, Illinois, may reconsider its vote on several
24 issues pertaining to the siting proceedings had in this

1 matter at its regularly scheduled meeting of Monday
2 evening, April 28, 2003."

3 Q. So you were asking us to admit that all you
4 had done was leave a phone message for Mr. Holmstrom?

5 A. That's what it appears now, but I can tell
6 you my best recollection is -- and I don't know if this
7 is a disconnect between Mr. Porter and I, and I signed
8 this without looking at it carefully, which I have been
9 accused of doing because I'm on the run a lot; and
10 that's my sin to which I will readily confess, but I --
11 my best recollection is I talked to Mr. Holmstrom.

12 Q. But you said in the request to admit, which
13 was prepared on August 8th?

14 A. Yes.

15 Q. Which was much closer to the incident, that
16 all you did was leave a phone message for Holmstrom?

17 A. That's what the request to admit says, but as
18 I stated I might not have looked at it closely.

19 Q. Well, let me just understand, Mr. Helsten,
20 are you uncertain as to whether you actually talked to
21 Holmstrom?

22 A. No. I believe I did talk to him on the
23 phone.

24 Q. So the request to admit, regardless of who

1 drafted it, you or Porter, is inaccurate to the extent
2 that it says you merely left a phone message?

3 A. I believe so, yes.

4 MR. O'BRIEN: No further questions.

5 HEARING OFFICER HALLORAN: Thank you.

6 Mr. Porter?

7 MR. PORTER: Nothing further.

8 HEARING OFFICER HALLORAN: You may step down,

9 Mr. Helsten. Thank you very much.

10 MR. O'BRIEN: I'll have to make a copy of
11 this to put it in the record.

12 HEARING OFFICER HALLORAN: At break.

13 MR. O'BRIEN: I would offer that document.

14 HEARING OFFICER HALLORAN: While we are still
15 on the record, Petitioner's Exhibit No. 15

16 MR. O'BRIEN: That's the DVD.

17 HEARING OFFICER HALLORAN: Yeah. I don't
18 remember you offering this.

19 MR. O'BRIEN: I said that we had agreed that
20 it's -- by stipulation, it's simply a copy of the video.

21 HEARING OFFICER HALLORAN: Oh, okay.

22 MR. O'BRIEN: Right?

23 MR. PORTER: I have never seen the DVD. If
24 indeed it is just a copy of the video, I believe that

1 the hearing officer has already allowed it over my
2 objection.

3 HEARING OFFICER HALLORAN: Indeed, if it is a
4 copy, subject to Mr. Porter's comments, I will admit it
5 into --

6 MR. O'BRIEN: It's a bookmark copy, in other
7 words, you can switch ahead to the particular shots that
8 I wanted to get to; but it has the whole video on it.

9 HEARING OFFICER HALLORAN: Petitioner's
10 Exhibit No. 15 is admitted.

11 (Petitioner's Exhibit No. 15 is
12 admitted into evidence.)

13 MR. O'BRIEN: And 23, the Request to Admit
14 drafted by Hinshaw.

15 MR. PORTER: I would object to the relevancy.
16 It was our request to them to which I believe they
17 denied.

18 MR. O'BRIEN: But it characterizes
19 Mr. Helsten's version of the initial exchange between he
20 and Mr. Holmstrom. I think it's relevant.

21 HEARING OFFICER HALLORAN: Mr. Porter?

22 MR. PORTER: If I can respond to that.
23 Mr. Holmstrom admitted that he spoke to Mr. Helsten, and
24 Mr. Helsten said he admitted that he spoke to Mr.

1 Holmstrom. So I just don't see how that's relevant.

2 HEARING OFFICER HALLORAN: I think it's
3 relevant. It may be overkill, but I think I will admit
4 it over Mr. Porter's objection, Petitioner's Exhibit 23;
5 and you'll give me a copy of that.

6 (Petitioner's Exhibit No. 23 was
7 admitted into evidence.)

8 MR. O'BRIEN: I will. Would it be
9 satisfactory to put that in the mail to you tomorrow?

10 HEARING OFFICER HALLORAN: I think you can
11 copy it now. Mr. McKinney has been very, very good at
12 that. I may have to do this again; but before I forget,
13 I'm supposed to make a credibility determination.

14 MR. PORTER: Mr. Hearing Officer, we haven't
15 rested yet. I just have some exhibits, as well.

16 HEARING OFFICER HALLORAN: I just wanted to
17 put it on record before I forget. Mr. Porter, before
18 you forget, you can --

19 MR. PORTER: I'm sorry to interrupt.

20 HEARING OFFICER HALLORAN: That's okay
21 because I have tendency to forget.

22 MR. PORTER: You normally do that at the
23 end of the hearing. I have just four exhibits that
24 Mr. O'Brien has agreed to stipulate to. It's

1 Respondent's Exhibit 3 which is a certified copy of
2 the agenda for the April 28th meeting, as well as
3 Respondent's Exhibit No. 4 which is a certified copy of
4 the general published schedule of City Council meetings
5 which references that a meeting would indeed occur.

6 HEARING OFFICER HALLORAN: I'm sorry.

7 Respondent's Exhibit No. 3 is a certified copy of the
8 April 28th meeting?

9 MR. PORTER: Agenda of the April 28th
10 meeting.

11 HEARING OFFICER HALLORAN: Okay. I'm sorry.

12 MR. PORTER: And Respondent's 4 is a copy of
13 the schedule of regular meetings of the Rochelle City
14 Council, which references that a meeting would take
15 place on that date. Respondent's Exhibit 5 is a copy of
16 the minutes to the April 24th, 2003, City Council
17 meeting; and Respondent's Exhibit 6 is a copy of the
18 April 28th, 2003, minutes to the City Council meeting.
19 And I believe Mr. O'Brien has stipulated to all of
20 those.

21 MR. O'BRIEN: So stipulated.

22 HEARING OFFICER HALLORAN: Terrific. They
23 are admitted.

24 (Respondent's Exhibits Nos. 3

1 through 6 were admitted into
2 evidence.)

3 MR. HELSTEN: May I speak with Mr. Porter for
4 a second?

5 HEARING OFFICER HALLORAN: Sure. We can go
6 off the record for a few minutes.

7 (A brief recess was taken.)

8 HEARING OFFICER HALLORAN: Back on the
9 record.

10 MR. PORTER: First, I would offer all of
11 those, and were they admitted?

12 MR. O'BRIEN: No objection.

13 HEARING OFFICER HALLORAN: They were
14 admitted.

15 MR. PORTER: Second, I do have one additional
16 witness. He was on Mr. O'Brien's witness list which
17 would be Mr. Hilbert.

18 HEARING OFFICER HALLORAN: All right.
19 Please, raise your right hand, Mr. Hilbert, and Tracy
20 will swear you in.

21 THOMAS A. HILBERT,
22 called as a witness herein, having been first duly
23 sworn, was examined and testified as follows:

24 DIRECT EXAMINATION

1 BY MR. PORTER:

2 Q. Good afternoon. State your name for the
3 record?

4 A. My name is Thomas Adams Hilbert, spelled
5 H-i-l-b-e-r-t.

6 Q. And how are you employed?

7 A. I am employed by Winnebago Reclamation
8 Service.

9 Q. Which was -- were you employed by the
10 applicant at issue in this case?

11 A. Yes.

12 Q. And you are still employed by the applicant
13 at issue in this case, correct?

14 A. Yes.

15 Q. Isn't it true that you were e-mailed all City
16 of Rochelle agendas when they came out?

17 A. I do now receive the Rochelle City agendas by
18 e-mail.

19 Q. Did you receive them as of April 24th of
20 2003?

21 A. No, I did not.

22 Q. Did you attend the April 28th, 2003, meeting?

23 A. Yes, I did.

24 MR. PORTER: Nothing further.

1 HEARING OFFICER HALLORAN: Thank you.

2 Mr. O'Brien?

3 MR. O'BRIEN: No questions.

4 HEARING OFFICER HALLORAN: You may step down.
5 Geez, I almost forgot again. Here we go. I'm supposed
6 to make a credibility determination of the witnesses
7 that testified here today; and based on my legal
8 experience and judgment, I find that there are no issues
9 of credibility with any of the witnesses that have
10 testified. With that said, I think we are going to -- I
11 want to take a 30-minute break for a number of reasons.

12 We've got some housekeeping matters regarding
13 post-hearing briefing schedule. I want to give an
14 opportunity for any members that may want to speak or
15 make a comment to come here. My knee-jerk reaction at
16 this point is this has ended a little sooner than I
17 anticipated, and I think -- and I'm a little leery about
18 letting us all go at 4:00 o'clock. So I am going to
19 have to beg your indulgence, and I think I'm going to
20 leave the hearing open until 6:00 o'clock to see if any
21 members of the public are still out there coming in
22 after work to make a comment. I want everybody to have
23 an opportunity to speak if they so choose. With that
24 said, I think we're going to take a 35-minute break.

1 We'll be back here at 4:00 o'clock, and we will talk
2 then. Thank you.

3 (A recess was taken from
4 3:20 p.m. to 4:05 p.m.)

5 HEARING OFFICER HALLORAN: We are back on the
6 record. It's approximately 4:10. Off the record the
7 parties discussed a briefing schedule; and based on my
8 calculations, the transcript will be ready and hopefully
9 on our website on December 22nd. With that said, public
10 comment is due to be filed January 5th. The Petitioner's
11 opening brief is due to be filed January 16th, 2004.
12 The City's response, the Respondent's response is due
13 February 6th, 2004. Petitioner's reply, if any, is due
14 February 13th, 2004. And the Petitioner has stated that
15 he is going to waive the statutory decision deadline to
16 and including April 29th, 2004; and he will send in a
17 written waiver of that sort.

18 With that said, I would welcome I guess at
19 this time any further public comment, public statement.
20 And what I plan to do is after the public statement,
21 public comment, is take a break for a little while. And
22 if nobody comes in, you know, prior to 6:00, I'll
23 probably close the hearing then. And I will not be back
24 tomorrow. The notice says December 10th and 11th it

1 will continue as necessary. If we wrap it up today, we
2 wrap it up today. But I should digress, Mr. O'Brien,
3 would you like to give a closing?

4 MR. O'BRIEN: Mr. Porter and I have agreed to
5 waive closing and do it in our written briefs.

6 HEARING OFFICER HALLORAN: Thank you very
7 much. Okay. Any further public comments, statements?
8 Yes, sir. Would you like to be give public statement or
9 comment. Would you like to be sworn in then?

10 MR. CLIFF SIMONSON: Yes.

11 CLIFF SIMONSON,
12 having been first duly sworn, gave a public statement as
13 follows: My name is Cliff Simonson, S-i-m-o-n-s-o-n,
14 154 Park Avenue, DeKalb. I am also on the DeKalb County
15 Board and on the planning committee; but my testimony
16 tonight is as individual testimony. I am not
17 representing the board.

18 I'll give some of my background in brief to
19 shed more light on my testimony. I got my Ph.D. in soil
20 and plant science, but I had over 80 hours of course
21 hours in chemistry and over 40 hours in biological
22 sciences. And my career has a lot of it gone into those
23 two areas. It's basically split into soils, terrain and
24 plant use, one kind or another, or into areas of

1 chemistry.

2 Detailed soil surveys I began in Illinois,
3 spent two years on the Illinois State Soil Survey, One
4 of the years in Iroquois County where I mapped soils.
5 About half of the soils in DeKalb County and in eastern
6 Ogle County are soils that I mapped in Iroquois County
7 back in 1940. Then I mapped also detailed surveys in
8 the state of Maryland and in British Ganna in South
9 America. I carried out the world's only soil survey by
10 helicopter, a Bell G 47 with pontoons on it, about 5,000
11 square miles of fresh water marshes and swamps in
12 British Ganna. That would be about seven times the area
13 of DeKalb County, maybe six times the area of Ogle
14 County.

15 I spent six years in strategic military
16 intelligence doing soils, terrain and the movement of
17 all kinds of vehicles and troops over about 7 million
18 square miles in Europe and Asia, 13 countries. That
19 would be about two-and-a-third times the size of the
20 United States in that period of time.

21 Most of the information was in foreign
22 languages which Americans don't generally bother to
23 read; but if you read foreign language from other
24 countries, you get quite a different picture of that

1 country than you do reading what the Americans say about
2 foreign countries.

3 I will start with the -- we're in a global
4 economy whether we like it or not. And in that economy
5 with the world as a whole, we're adding about 380,000
6 people born per day, a growing population and a
7 shrinking availability of soils. The first global
8 survey of farmland in the United States was done about
9 four, five years ago. And they have concluded that half
10 of the agricultural land in the world is sick; that due
11 to salinity and erosion and other problems, that only
12 about half of the current land is in decent shape. And
13 it's shrinking.

14 In the United States we started out with
15 about 600 million acres of suitable farmland. We're
16 losing approximately one-and-one-half million acres a
17 year, mostly to urban sprawl. And we think we've got
18 unlimited amounts of land, but we're importing more and
19 more products. We're exporting less and less products.

20 The last figures I saw made by the Illinois
21 and State Farm Bureau had from 1992 to 1997. In 1992
22 our surplus of exports over imports of agricultural
23 products was 26 billion dollars. Five years later it
24 was down to 12 billion dollars. There will come a time

1 not too far down the road when our farmland is not going
2 to supply all of the agricultural products that we need,
3 and we will have to be importing.

4 And when that time comes, I predict that from
5 having traveled in foreign countries and seeing what
6 prices are there and the subsidies that are given to the
7 farmers there to produce those goods, that our prices
8 for agricultural products is going to somewhere between
9 double and triple when we reach that stage. Right now
10 we are importing more than 40 percent of all the fruits
11 that we consume in the United States.

12 Going on down then to the other half where
13 most of my life has been spent, chemistry, I spent the
14 four war years in 1942 to '45 in chemical warfare
15 research. And there were 60 of us at Northwestern
16 University working in pairs or trios over a variety of
17 approaches to dealing with poison gases and other
18 problems in chemical warfare.

19 And I was fortunate to be working in an area
20 where I came up with the answer, developed a catalyst
21 that neutralized the poison gas the Germans were ready
22 to use in World War II. They had tens of thousands of
23 gallons of it up behind the front lines ready to go.
24 They never turned it loose because they never had

1 protection against it; we did.

2 I made the first batch August 17th, 1942, and
3 continued with that. After we wrapped up our projects
4 at Northwestern, I was transferred to the University of
5 Illinois where, working with a nuclear physicist, we
6 developed the spray to knock out the Anopheles
7 mosquitoes and control malaria out in the Pacific
8 theater because we were losing more casualties to
9 malaria than we were Japanese gunfire.

10 Once we developed that solution, the
11 engineers took over and made a new exhaust manifold to
12 put on fighter planes that were used to go in and lay
13 down the sprays before any Americans went ashore.

14 After the war, then I taught analytical
15 chemistry for three semesters at the University of
16 Illinois, Champaign-Urbana; and my students broke every
17 record in the book for laboratory grades. My entire
18 class had an A average in their laboratory experiments.

19 I was able to pass on my expertise in the
20 laboratory to my students. Much of the rest of the time
21 I was with the -- before I came to Maryland -- Illinois,
22 I was with the U.S. Department of Agriculture at
23 Beltsville, Maryland, and doing research in soil, plant,
24 animal relationships.

1 In 1968 I came to Northern Illinois
2 University to teach earth science in which I taught six
3 different courses in soils, world-soil geography,
4 conservation of natural resources. Then to -- going off
5 on to the hearing examiner's area, I took in the first
6 EPA state of the art conference in Philadelphia in 1980.
7 And then they moved them to Cincinnati where I attended
8 five or six of those conferences in the '80s and '90s.
9 And they dealt with one area of toxic chemicals. The
10 other one was dealing with landfills.

11 And the one thing that showed up there, they
12 gave the success in experiments -- successes and
13 failures of the different experiments they were running,
14 and the liners were showing up with one failure after
15 another, no matter -- and this was state of the art
16 where they were reporting the newest research from
17 government, from universities, from other organizations.

18 I just want to close with a few comments
19 about the general characteristics of chemical compounds,
20 organic and inorganic. I have worked with hundreds of
21 them including a whole lot of toxic ones, but a number
22 of them that aren't so toxic, as well. Inorganic metals
23 and elements are practically all susceptible to
24 reactions with other chemicals in their environment.

1 The only ones that practically are not
2 affected by their environment are the noble metals
3 especially platinum and iridium. And I had the pleasure
4 of when I worked at Beltsville for a few years of
5 working with practically all the platinum-ware and
6 iridium-ware that the U.S. Department of Agriculture
7 had. We could run it 168 hours a week for a while; and
8 then because somebody stole some of it downtown, then we
9 had to put it in a safe every night, which cut you back
10 from using the stuff 168 hours a week to 40 hours or
11 more a week.

12 Going to organic chemicals, all organic
13 chemicals react with some things in their environment.
14 There's no such thing as a durable organic compound.
15 And that includes your liners because they undergo
16 changes due to the environment they're in. They will
17 dry up. They will crack. They will have other problems
18 in there. It's impossible to make anything out of
19 organic material that has the kind of sustainability
20 that, by the way, farmland has.

21 I have walked on soils in China that have
22 been farmed for more than 4,000 years. I have walked on
23 soils in northern Europe and Scandinavia that have been
24 farmed for over 2,000 years. Actually farmland, farming

1 is the only sustainable economic use of land that human
2 beings have ever discovered.

3 There is no other use. Buildings go up, tear
4 down. Some of the Greek coliseums, 15 feet of soil
5 material piled on top of them. Farming is the only
6 thing that lasts.

7 And when urban sprawl comes along, which it's
8 coming along very well in the United States, still
9 moving in high gear, it destroys the farmland in the
10 first place and destroys the water under that farmland.
11 Then we get the situation like here where they have the
12 urban sprawl, and they produce all this garbage; and
13 you've got to haul it out and dump it on more farmland.
14 And in addition to destroying the farmland where they
15 have the sprawl, they also wind up destroying more
16 farmland to put garbage in.

17 Now, I'm seeing this from a personal
18 standpoint, the problem here, because I live less than a
19 block from Route 38 in DeKalb. So I will be looking --
20 if this goes through, I will be looking at a bunch of
21 the trucks that come through DeKalb. But if we continue
22 destroying our natural resources which, by the way,
23 every other developed country in the world except the
24 United States has by national action made preservation

1 of farmland the highest and best use, using the real
2 estate terminology. The Netherlands did it in 1933.
3 Great Britain did it in 1947.

4 And actually what the British did, it even
5 went up on the totem pole above the right of eminent
6 domain. Eminent domain still remains in the English
7 law; but if you use it, you cannot convert agricultural
8 land into any other use. You have to leave it, and
9 that's every other developed country in the world.
10 Either we're a lot smarter than the rest of the
11 countries are, or we're are a lot dumber. I will let
12 other people decide.

13 But that is -- those are facts and figures
14 that bear down on this case like they bear down on any
15 other case where we're considering destroying the best
16 farmland in the world. By the way, from all I've seen,
17 Drummer silty clay loam is still the best soil in the
18 world when it's properly tile drained. And in DeKalb
19 County, 98 percent of our soils -- and in the eastern
20 part Ogle County you have got similar soils; 98 percent
21 in DeKalb County is made up of the best soils,
22 topography and climate in the world. And it's being
23 destroyed at a pitiful rate. So that is my testimony.
24 If there are any questions, I will be happy to answer.

1 HEARING OFFICER HALLORAN: Thank you, sir.

2 Mr. O'Brien?

3 MR. O'BRIEN: I have no questions.

4 HEARING OFFICER HALLORAN: Mr. Porter?

5 MR. PORTER: No questions.

6 HEARING OFFICER HALLORAN: Thank you. You
7 may step down. Anybody else? I know there was a
8 sign-up list back there, and it looked like, I don't
9 know, at quick glance maybe 45 people signed up; and I
10 think there's probably been 16 or 17 speakers so far.
11 That's just as an aside. I guess speak now or forever
12 hold your peace. I will come back and open up the
13 record again depending on when we leave here right now.
14 Anybody else at this time?

15 HEARING OFFICER HALLORAN: Were you up here
16 before?

17 MS. JANET STALHEBER: Yes, I was. May I
18 speak again?

19 HEARING OFFICER HALLORAN: Sure. As a
20 comment or a statement?

21 MS. STALHEBER: I will make a statement this
22 time since we're talking about some facts here.

23 JANET STALHEBER,
24 having been first duly sworn, gave a public statement as

1 follows: During the break, I ran home and got my notes
2 from the City Council meeting where they voted on the
3 acceptance or rejection of the landfill. As I was
4 sitting in the audience listening to the questions, it
5 seemed that there was some indication that, perhaps, Mr.
6 Beardin was attempting to influence City Council
7 members. And the only consistency in the voting on the
8 proposal on all nine criteria was Mayor Gingrich who
9 voted yes on all criteria. Everyone else had mixed
10 votes. And looking at them, how many yes votes, there
11 were a total of 45 votes, 5 Council members and 9
12 criteria they voted on for a total of 45 votes.

13 And there were 27 yes's and 18 no's, giving
14 us a 60 percent, that's with Mayor Gingrich's votes. If
15 we discount his total yes vote, we have 18 yes, and 18
16 no out of a total of 36; which is 50 percent yes and 50
17 percent no.

18 So whatever you're trying -- if you're trying
19 to influence them, Mr. Beardin, I am afraid it probably
20 didn't work; and I can assume that they voted on the
21 basis of what they learned at the hearings.

22 Oh, and just one other little thing. I grew
23 up on a farm near Madison, Wisconsin. And after I was
24 married, we lived here in Ogle County out in the country

1 near a number of farms. And I have never ever seen a
2 farmer, I have never even known of a farmer who would
3 build his manure pile next to his well.

4 HEARING OFFICER HALLORAN: Please try to
5 refrain from clapping. This is a hearing. Anybody
6 else? Yes, ma'am.

7 MS. WOLANDA THUESTAD: I would just like to
8 give a comment.

9 HEARING OFFICER HALLORAN: Okay.

10 MS. WOLANDO THUESTAD: I am Wolanda Thuestad,
11 T-h-u-e-s-t-a-d. And I live at 7756 South Locust Road.
12 That's about three-quarters of a mile south of the
13 landfill. And I have taken vacation days from my work
14 to be here during these proceedings, and I took vacation
15 days in the spring to be at the siting hearing. I could
16 have gone almost anywhere on my vacation days, but I
17 chose to be in Rochelle, sitting in on some important
18 and interesting hearings about my future.

19 Yes, I think this landfill expansion will
20 affect my future. It's going to affect all of us in
21 negative ways if it gets approved. Most of us here in
22 this room listen to testimony from experts, both pro and
23 con. We have all learned a great deal. I certainly
24 would have learned nothing if I had gone fishing on my

1 vacation days.

2 I also feel the Rochelle City Council members
3 learned a great deal regarding a landfill, its
4 construction, its composition, the daily activities, and
5 the closer procedures. I feel the Council members
6 listened to the testimony and voted for what was in the
7 best interest of the community they served.

8 There was a community referendum, and again
9 that's just Rochelle people, no other communities could
10 vote, just Rochelle; and they had a 74 percent vote no.
11 That's 74 percent. That's a very loud voice on any
12 issue, a very loud message. And it's also a very clear
13 message.

14 The Rochelle City Council members didn't take
15 a vacation from their responsibilities, and I want to
16 thank the Council members for listening to all of the
17 evidence and voting on the facts. Thank you.

18 HEARING OFFICER HALLORAN: Thank you, ma'am.
19 Next? Yes, sir.

20 MR. THUESTAD: I will just give comment.

21 HEARING OFFICER HALLORAN: Okay. Terrific.

22 MR. THUESTAD: Like I said, my glasses broke,
23 but I will try.

24 HEARING OFFICER HALLORAN: I got a cheap pair

1 of Wallgreen's 1. 25.

2 MR. THUESTAD: That's all right. My name is
3 Roger Thuestad, that's T-h-e-u-s-t-a-d. I also live at
4 7756 Locust Road, Rochelle, Illinois. And it's located
5 three-quarters of a mile south of the existing landfill
6 in question. I would like to thank the Rochelle City
7 Council for not only hearing the applicant's material
8 requesting the expansion of the present landfill from 80
9 acres to 320 acres once, but a second time.

10 You listened to many expert witnesses
11 provided by the applicant. You listened to public
12 comment from many concerned citizens, and you read
13 letters from residents filed with the City Clerk. You
14 had a lot of information from which you could base your
15 decision. I believe your decision was not biased in any
16 way, nor do I think that you had your mind made up
17 before hearing all of the evidence.

18 As a concerned citizen, none of us had any
19 idea which way the vote would go; but I believe the
20 evidence spoke for itself, and you made the correct
21 decision based on the nine criterion. After the first
22 hearing, the applicant Rochelle Waste Disposal withdrew
23 its application. One would assume for a lack of being
24 able to prove their case.

1 The hearing officer, Christine Zeman, on this
2 first application finished her report. She felt that
3 the applicant did not meet the criteria with this
4 application. After hearing the evidence for the second
5 application, the Rochelle City Council voted the
6 landfill expansion down. When in session, the hearing
7 officer for the second hearing felt the applicant met
8 the criteria; but he went on to add 50 specific special
9 conditions. This hardly seems as though it was an
10 outright endorsement of the facts.

11 Water protection was a big issue in this
12 application. This application is located over the
13 aquifer that provides the people of Rochelle, Creston
14 and rural residences with their water supply. Some of
15 these rural, private wells are shallow, about 150 to 160
16 feet deep. These wells could become contaminated quite
17 easily -- these wells could become contaminated quite
18 easily during contamination of the shallow aquifer, and
19 Rochelle Waste Disposal in their application only wanted
20 to provide protection for people's water and real estate
21 value for a distance of 1,000 feet around the perimeter
22 of the landfill. This included about three residents.
23 That's an awful amount of risk for so little protection.

24 This landfill expansion application was

1 proposing to increase its daily tonnage per day from 250
2 tons to 2,500 tons with 2,000 tons per day coming from
3 transfer stations. This would increase truck traffic
4 from 6 trucks per hour to 22 trucks per hour. This led
5 to concerns over traffic safety especially for our
6 children. Some ride the bus to the Creston Grade
7 School. Some ride the bus to the Rochelle High School,
8 while some may drive to either Kishwaukee Community
9 College or Northern Illinois University. There could be
10 as many as 200 semis a day traveling in and out of this
11 landfill.

12 I am proud of this Council for looking past
13 the dangling bait of shear tipping fees and considering
14 the long-term effects of the health, welfare and safety
15 of this community. Thank you.

16 HEARING OFFICER HALLORAN: Thank you, sir.
17 Yes, sir.

18 MR. EKBERG: I'd like to make a statement
19 okay.

20 HEARING OFFICER HALLORAN: Raise your right
21 hand, and Tracy will swear you in.

22 DEAN EKBERG,
23 having been first duly sworn, gave a public statement as
24 follows: My name is Dean Ekberg, E-k-b-e-r-g. I am a

1 resident of Rockford, Illinois, 4332 O'Connell Street in
2 Rockford. I am also a doctoral student at NIU in
3 hydrogeology. I got my Bachelor's Degree in geology
4 from Wheaton College. I got my Master in Science Degree
5 from University of Missouri at Rolla, Rolla, Missouri,
6 in geological engineering. And I am currently a year
7 into my doctoral studies in hydrogeology at NIU.

8 So I drive by -- drive down 38 -- come down
9 39 and drive in 38 into school pretty much every day.
10 Because of the commute, I am considering moving to
11 Creston. One of my concerns is about this landfill
12 that's been talked about or extension that's been talked
13 about. As a hydro -- also I have worked in Africa as a
14 hydrogeologist developing water resources, water supply
15 in Zimbabwe, Liberia, Sierra Leone and Ganna.

16 So I have worked a lot with water supply, and
17 my current doctoral research is in ground water in
18 northern Illinois, particularly in the fractured
19 limestone.

20 I have got a lot of concerns about this
21 particular site. As a hydrogeologist, there is several
22 factors that concern me about this extension of the land
23 for the Rochelle landfill. Probably the biggest problem
24 that I have with this siting is the proximity of the

1 Creston municipal water supply wells to the east side of
2 the Rochelle landfill. The distance, which is about a
3 half a mile, 2,500 feet, whatever, from the landfill to
4 the water wells is a serious concern.

5 The second major thing is that the landfill
6 by the tracks there, the railroad tracks, is underlaine
7 by a sand-and-gravel aquifer. It's a tributary to the
8 Rock bedrock valley. The tributary valley runs east/
9 west. The flow is east toward the Creston water well.
10 The Creston water well is actually right in the Rock
11 bedrock valley. It's a north/south valley about 250
12 feet deep. And that is underlaine by the Saint Peter
13 sandstone which is where the Creston wells get their
14 water.

15 So aside from the "liner," quote, unquote,
16 that's underneath the landfill -- the current landfill
17 or any future liners that would be under extensions of
18 the landfill, once those are compromised -- and the
19 other gentleman testified as far as the durability of
20 organic compounds in liners. Once that liner is
21 compromised, you are in direct communication with the
22 sand and gravel in the tributary aquifer which is in
23 communication -- and the flow is toward the Creston
24 wells which are in the main rock valley; and then that

1 is in communication with the Saint Peter sandstone. So
2 you have got a direct conduit once the liner is
3 compromised with the municipal water supply.

4 So those factors tied together raise grave
5 concerns as far as the safety of the people of Creston
6 and rural -- the people on private wells surrounding the
7 landfill site. Just running some quick numbers on just
8 regular Darcy flow, you can come up -- depending on the
9 gradient that you're talking about, how far down the
10 Creston well draws the water level when they switch on
11 their pumping, anywhere from 2 to 10 years. Once the
12 liner is compromised, you have got about 2 to 10 years
13 before the water reaches the water well.

14 And that to me -- that's assuming 30 percent
15 porosity, assuming .005 -- either .0005 -- .05 or .001
16 on the gradient; and that's a serious concern when you
17 are siting something. You have got to look at how safe
18 is Creston with their water. As a hydrogeologist, I
19 would say it's not a very good gamble. Once a community
20 losses their water supply, it's not good.

21 I also have been observing the landfill
22 operation that William Charles has up in the south of
23 Rockford called Pagel Pit as another example of how well
24 they do with landfills; and that's currently a super

1 fund. So I guess they're not doing too good of a job;
2 but there's been a lot of pollution that's spread out
3 from Pagel Pit, and it's concerned a lot of the
4 residents around Pagel Pit.

5 But the fact that this one is also leaking in
6 the proximity to everybody's water supply, as a
7 hydrogeologist I have got a lot of concerns. And it
8 concerns me because I'd like to move to Creston, and it
9 raises a lot of red flags with me.

10 I appreciate the City Council that turned
11 this down this spring and two years ago, and I'd just
12 like to express my appreciation for that. Thank you.

13 HEARING OFFICER HALLORAN: Thank you.

14 Mr. O'Brien?

15 MR. O'BRIEN: No questions.

16 HEARING OFFICER HALLORAN: Mr. Porter?

17 MR. PORTER: No questions.

18 HEARING OFFICER HALLORAN: Anyone else?

19 Yes, sir. Would you like to make public comment or be
20 sworn in?

21 MR. GEORGE BALSTER: Sworn in.

22 HEARING OFFICER HALLORAN: Tracy.

23 GEORGE BALSTER,

24 having been first duly sworn, gave public statement as

1 follows: Thanks for hanging around here. I actually
2 was planning on doing this tomorrow, so I'm glad I got a
3 call and was able to do this today. My name is George
4 Balster, spelled B-a-l-s-t-e-r. I live at 401 West
5 North Street in Creston, Illinois.

6 I would say that -- of course, we said no to
7 this landfill expansion once, and then we said no twice;
8 and I am here to say no again. I applaud the Rochelle
9 City Council's decision as in the past. Putting a mega
10 dump literally on the top of a city and village is a bad
11 idea. And I think the previous person talked about
12 proximity. I think that's my biggest problem with this
13 whole thing.

14 And I am just going -- I don't think anything
15 has changed on this whole deal. I have given basically
16 the same talk every time I have come here. And so I am
17 just going to reiterate my concerns for this issue -- on
18 this issue. And I understand there's only so much that
19 you can say about this topic, and I'm sure that
20 everybody that's heard this hashed over and over have
21 heard the same points maybe over and over again; but I
22 think it's important that this occur because the scope
23 of this decision -- because of the scope of the decision
24 that's being made.

1 This decision will be one that will affect
2 two communities, not just one, and future generations.
3 So it darn well better be the right decision. I did
4 bring one exhibit with me today. This is the third trip
5 for the pickle jar full of garbage.

6 I think when we talk about this issue and we
7 talk about a landfill or a sanitary landfill or a dump,
8 but it's still garbage. And it's basically a smelly and
9 toxic combination of everything that's leftover from
10 society. My question has always been in the past, and
11 it's still a question that I have is what good is there
12 in this garbage? Why would Rochelle actually invite a
13 company to dump thousands of tons of this garbage on our
14 back door? And the other thing is, also, has anything
15 really changed since the last landfill application? I
16 would say definitely not.

17 I think the first point is that there really
18 was no need two or three years ago for this expansion as
19 far as our local needs, and there's no need now. We
20 have ample capacity for our future needs, and we do not
21 need to be the dumping grounds for all 20 counties of
22 northern Illinois.

23 No. 2, we would be putting a huge mega dump,
24 as I mentioned before, between the city and the village;

1 and especially as far as Creston is concerned, I'm
2 concerned that with the prevailing winds, basically we
3 are going to have the stench of garbage in Creston as a
4 common occurrence. And as a bi-product of that, I know
5 when the first application was made, they were trying to
6 make a point that our property values were going to go
7 up because of this.

8 I will just tell you that I have lived in
9 Creston since 1996; and if this proposal had been on the
10 table then or there had been a dump there, there's no
11 way that I would have moved to Creston. So -- and if it
12 comes, I'm actually going to leave. So I just don't
13 see, you know -- I see the only way for this to go as
14 far as property values is down.

15 Geology of this area has stayed the same. If
16 we put this in there, basically we're putting in a mile
17 long, man-made bathtub; and it's not as tight as this
18 pickle jar, for sure, with a heavy potential for leaking
19 into our water resources. The liner that we are
20 supposed to rely on for this proposed dump has only been
21 in existence for a few years, not generations.

22 So the bottom line is let's not be naive
23 enough to think that we can fix the soil and water after
24 it's been polluted. I just don't think it's possible.

1 Another point is that the local traffic on
2 Highway 38 is still the same or worse. In traveling
3 from Creston to the Nelson Road west of DeKalb, which I
4 do every day, I have counted as many as 85 cars in those
5 10 miles. Huge trucks, not pickup trucks will be
6 hauling in 2,500 tons or more of garbage instead of the
7 current 300 tons a day. I just can't imagine mixing 200
8 semi trucks or whatever the number is going to be a day,
9 mix that with bad weather and college and high school
10 students that are in a hurry, I think you're -- on
11 Highway 38, and I think you're asking for a lot of
12 trouble.

13 There have been some improvements on Highway
14 38 on the Ogle County side. There has been a turning
15 lane put in at Mulford Road, but I think this is merely
16 going to speed up the traffic. I don't think -- it's
17 still a two-lane road, and there's not enough room for
18 semis and cars on the same road.

19 The cost of road repairs is high, and I
20 just -- one of my concerns is who is going to pay for
21 this. These trucks are not going to use the interstate
22 I don't believe because of the tolls.

23 The other point is this is a limited
24 liability company. If this dump has problems and leaks

1 after the dump is full and the company is gone, who is
2 going to pay for this even if it's correctable? That's
3 a basic question.

4 In closing, if we really care about our
5 future generations in this community, just ask this
6 basic question again. Why would we even consider having
7 tons and tons of this smelly and toxic material dumped
8 next to our city and village? The potential is very
9 high for polluted air, water and soil. I know that
10 there is a potential for millions of dollars of profit
11 for the landfill companies, whoever they are going to be
12 at the time as the years go by and if this goes through.
13 But my play on this is I think what we have here as a
14 community as far as our air and our water and the soil
15 is priceless, and it shouldn't be for sale. We do not
16 want the title of the biggest dump county in Illinois.

17 And I know there's been -- I know the first
18 time or the second time I came to the hearings, I came
19 in the morning; and I saw these people bringing in
20 literally armfuls of boxes and binders full of technical
21 material. If the health, safety and welfare of the
22 public of these communities is taken into account, the
23 answer to this problem lies in the realm of common sense
24 and not in a mountain of binders filled with arguable

1 facts. I think that's important. So I just -- it's
2 just a bad idea to put a dump right on top of two
3 cities.

4 I have served on numerous boards when I lived
5 in DeKalb County including the Board of Health. I have
6 never had to make a decision concerning the dump; but in
7 this case, I would strongly urge that you uphold
8 previous verdicts on this issue for the reasons
9 presented. I applaud the Rochelle City Council's
10 previous decisions. Thank you very much.

11 HEARING OFFICER HALLORAN: Thank you.
12 Mr. O'Brien?

13 MR. O'BRIEN: No questions.

14 MR. PORTER: No questions.

15 HEARING OFFICER HALLORAN: Thank you. You
16 may step down. Anyone else? Yes, sir.

17 MR. THOMAS VILLA: Can I speak from here?

18 HEARING OFFICER HALLORAN: Did you speak
19 already, sir?

20 MR. THOMAS VILLA: Yes.

21 HEARING OFFICER HALLORAN: We are normally
22 limited to one time. I know I let the lady do it. If
23 you could stand up here maybe. You want to make a
24 comment or a statement?

1 MR. THOMAS VILLA: Comment. Thomas Villa.

2 HEARING OFFICER HALLORAN: V-i-l-l-a?

3 MR. THOMAS VILLA: V-i-l-l-a. Two days ago,
4 three days ago I'm driving to DeKalb; and for whatever
5 reason I go on the Creston Road. And I see where
6 they're putting down a huge liner. My question is: Is
7 that part of the land that they have control of, or are
8 they just making this expansion without the authority?
9 Go look and see for yourselves. It's a huge liner.
10 Okay. Thank you.

11 HEARING OFFICER HALLORAN: Thank you, sir. I
12 had another hand back there I think. Yes, sir.

13 MR. JOSEPH WIEGAND: I'd like to make a
14 statement, sir.

15 HEARING OFFICER HALLORAN: Okay. Thank you.
16 Raise your right hand, and the court reporter will swear
17 you in.

18 JOSEPH WIEGAND,
19 having been first duly sworn, gave a public statement as
20 follows: Good evening, sir, my name is Joseph M.
21 Wiegand, spelled W-i-e-g-a-n-d. I live at 32486 White
22 Street, Fairdale, Kirkland, 60146. And I thank you for
23 the opportunity to address the hearing officer this
24 evening.

1 In the last month, I have had the opportunity
2 to review the transcripts of the first and second
3 hearings, the minutes of the siting -- the City Council
4 siting meeting, the Rochelle City Council minutes and
5 the filings with regards to this appeal both by the
6 petitioner and by respondents; and in my analysis, the
7 issue on appeal is that -- by the petitioner is a claim
8 that their application was not given fair consideration
9 and that the decision ignored the facts, that it was
10 contrary to the evidence presented at the hearing and
11 data contained in the application.

12 I wanted to just back up for a moment.
13 Like Mr. Simonson, I'm a member of the DeKalb County
14 Board and in that capacity have sat and reviewed public
15 hearings and participated in public hearings in that
16 venue. I have also done so here in Ogle County working
17 with the citizens of Monroe Township. I also have an
18 extensive background in political science especially the
19 processes of American government and public policy with
20 a Bachelor's Degree in political science from the
21 University of the South in Sewanee, Tennessee, two years
22 plus of graduate work at Northern Illinois University in
23 those two fields and a graduate assistantship at the
24 Center for Governmental Studies.

1 My work has been awarded the Thomas Watson
2 Fellowship and the Harry S. Truman Scholarship. I have
3 also studied public policy on the ground in Costa Rica,
4 South Africa, Italy, the Philippines and South Korea;
5 but my passion is about American government. And I was
6 alarmed today to hear in oral arguments an extension of
7 arguments petitioner made in their filing for appeal.
8 And that is to call into question the actions of
9 citizens in the public square when an issue of
10 importance is being considered by the decision-makers in
11 their city or in any other governmental entity.

12 To hear this evening, this afternoon, to see
13 evidence put into the record when that evidence is a set
14 of letters to the editor to the local paper, which for
15 some folks in our community is the way that they get the
16 truth delivered to their doorstep. They might not be
17 able to get out and attend a public hearing. They might
18 not get out and attend a local government body, but they
19 read their local paper.

20 And the letters to the editor balance and
21 augment the coverage that a newspaper writer, a staff
22 writer might write in a story on a particular item.
23 That phone calls to siting officials, that is, the
24 sitting members of the City Council were made or that

1 personal visits were made, I think the record has shown
2 throughout that City Council members were extremely
3 diligent and disciplined in their refusal to discuss the
4 items of a pending or ongoing or concluded public
5 hearing with any of those folks who called them on the
6 phone or visited them at the door.

7 A word of praise is to be spoken for the city
8 fathers and mothers of Rochelle for their discipline in
9 conducting their affairs. But when you read the record
10 of the hearing, what is evident from the many days of
11 testimony that were given is that petitioner in no way
12 proved conclusively that they met the nine criteria for
13 the expansion to be granted.

14 The evidence that was presented by objectors,
15 learned and scholarly evidence, folks who have a
16 thorough and expert understanding of issues related to
17 hydrology and water contamination, it is -- I believe
18 any rational judge, any rational hearing officer, any
19 rational member of the Illinois Pollution Control Board
20 will be able to agree that petitioner failed to
21 demonstrate that they met a need for the expansion; that
22 petitioner failed to meet standards to protect the
23 public health, safety and welfare; that petitioner
24 failed to prove that they would not negatively affect

1 the surrounding properties; and that petitioner failed
2 to prove that the increased traffic for the proposed
3 expansion would not be detrimental to the traffic
4 patterns of the immediate area.

5 But again I just want to reiterate the
6 scariest thing through this whole process, scarier than
7 the fact that folks down state might reverse and
8 overthrow a well-reasoned decision of local decision-
9 makers is that through this process citizens might
10 actually be coerced or intimidated from occupying the
11 rightful place in the public square in writing or on the
12 telephone or in conversations with one another or in
13 conversations with decision-makers who statutorily
14 cannot respond to what they hear.

15 It would be a chilling and icy effect on a
16 public that in many ways is on life support in any case
17 with regards to its ability and its willingness and its
18 belief that participating in the system will actually
19 bring about good outcomes. I would hope that the
20 Illinois Pollution Control Board will not only sustain
21 the well-reasoned and based-on-fact decision of the City
22 Council, but that as they do so they will be careful
23 about the right of the citizens of the State of Illinois
24 to have their say on matters of public policy. I

1 appreciate the time of the hearing officer.

2 HEARING OFFICER HALLORAN: Thank you, sir.

3 Mr. O'Brien?

4 MR. O'BRIEN: No questions.

5 MR. PORTER: No questions.

6 HEARING OFFICER HALLORAN: Thank you, sir.

7 It's now a little after five. Anybody else? Yes,
8 ma'am. Would you like to be sworn in or just a comment?

9 MS. JANICE CICH: I'll be sworn in.

10 HEARING OFFICER HALLORAN: You'd like to be
11 sworn in.

12 JANICE CICH,

13 having been first duly sworn, gave a public statement as
14 follows: My name is Janice Cich, C-i-c-h. I reside at
15 304 East Cederholm in Creston. After sitting through
16 the first part of this afternoon's session and listening
17 to all of the questioning, it appears that the
18 fundamental fairness of the decision made by the
19 Rochelle City Council as siting authority is being
20 questioned; and that fact which I didn't realize before
21 today changed a little bit what I had intended to say in
22 my public comment.

23 During the course of all the landfill
24 hearings, I have written many letters to the editor; and

1 most of my letters were in response to information in
2 the newspaper provided by Rochelle Waste Disposal. As I
3 recall, before and during the hearings, RWD had a weekly
4 column "Get The Facts." And the only way for ordinary
5 citizens to express their opinion and to present an
6 opposing view to those facts was through letters to the
7 editor and letters to the Council members. It was
8 always my understanding that members of the community
9 were allowed to give our opinion to the Council members.

10 I was here in this chamber on the night of --
11 the night that the city attorney gave charge to the
12 Council members for the first siting hearing back in --
13 I guess it was 2000. And at that time he told them that
14 they could not discuss it with anybody after the
15 application was granted, but they could listen to what
16 people wanted to tell them. They just couldn't discuss
17 it, that they were prohibited.

18 So I was always under the understanding that
19 they could listen and that there was a difference
20 between listening and actually discussing. I believe
21 the siting authority was impartial and didn't prejudge
22 the application. And it appears to me that they weighed
23 the long-term potential risk to the community. Those
24 risks were all discussed thoroughly during the course of

1 the hearings with a lot of conflicting information
2 submitted.

3 Shouldn't the views of the public be a
4 consideration when weighing those risks? Because the
5 siting authority is asking the public to live with the
6 consequences. In my opinion, a few of the important
7 issues that the siting authority considered were on
8 Criterion 1, the need. The application proposed 2,000
9 tons per day to come from transfer stations outside of
10 Ogle County, in counties that prohibited additional
11 landfills being built in their jurisdictions.

12 Now, to preserve the life of the existing
13 landfill by continuing to only accept Ogle County area
14 and Region 1 waste would ensure many years of site life.

15 And Criterion 2, the health, safety and
16 welfare, area residents are extremely concerned about
17 maintaining the quality of water in our wells.
18 Conflicting testimony was presented as to the risk to
19 the aquifer. Is any risk worth taking a chance?
20 Because we have been told that once the aquifer becomes
21 contaminated, the water can never, ever again be used.

22 And as I recall at one point during the
23 hearings, it was pointed out that there was missing data
24 from the operating information that was turned over to

1 the CCOC technical experts. The applicant was allowed
2 to submit that missing data a few days later during the
3 hearings. However, the hearing officer then denied a
4 request for additional time to study this information.
5 Where was the fundamental fairness in that?

6 In Criterion 6, the large trucks, they don't
7 stop quickly or they don't accelerate quickly. The Gap
8 studies don't allow for the drivers who are impatient
9 and tired of waiting for a break in traffic before
10 pulling out to Mulford Road onto Route 38. More than
11 once I have had to slam on my brakes to avoid hitting a
12 truck that pulled out in front of me. And increasing
13 truck traffic by over 250 percent will only make the
14 problem worse.

15 Now, it seems to me the obligation of the
16 siting authority to consider everything submitted in the
17 application and during the hearings, as well as the
18 public comment given at the hearings and submitted in
19 writing was met. The fundamental fairness issue could
20 be invoked if they didn't take into consideration all of
21 that. I believe they did their job. I believe they
22 listened, studied and voted on the merits of all the
23 information submitted. And I sincerely hope that the
24 Pollution Control Board will uphold their decision to

1 deny the expansion. And I thank you.

2 HEARING OFFICER HALLORAN: Thank you.

3 Mr. O'Brien?

4 MR. O'BRIEN: No questions.

5 MR. PORTER: No questions.

6 HEARING OFFICER HALLORAN: Thank you. You
7 may step down. We're on a roll. Anybody next? Yes,
8 ma'am.

9 MS. PATRICIA SANDERSON: Thank you very much.

10 HEARING OFFICER HALLORAN: Raise your right
11 hand, and Tracy will swear you in.

12 PATRICIA SANDERSON,

13 having been first duly sworn, gave public statement as
14 follows: Like some of the others who have spoken, I
15 came here in one capacity and find myself quite taken
16 aback by what's apparently gone on here today. My name
17 is Patricia Sanderson. I live at 2329 13th Avenue in
18 Rockford, Illinois. I am a Rochelle native. I was born
19 here and graduated from Rochelle Township High School.

20 I am here first of all today representing my
21 children, Grant and Loren Sanderson, who are trustees
22 for their grandmother, 88-year-old Frances Sanderson,
23 for whose benefit the land immediately east of the
24 current and proposed landfill is held. The land has

1 been in the family for approximately 50 years.

2 After what I've heard from the testimony
3 since I arrived, I also want to speak as a professional
4 journalist. I have a Bachelor of Arts degree in
5 journalism from Drake University. I also have a
6 Bachelor of Arts degree in organization management from
7 Concordia University in River Forest. I am a former
8 employee of the United States House of Representatives,
9 and I want to speak in that capacity, too.

10 The write of free speech in the United States
11 of America is the most fundamental right of our
12 democracy. The City Council of Rochelle and the
13 citizens of Rochelle and Creston have spoken loud and
14 clear. There should be no expansion of the landfill in
15 question. Common sense and science have converged to
16 confirm the denial of the application is absolutely the
17 right decision to protect the quality of life in these
18 communities, the value of local property, and the health
19 of the citizens even those not yet born, and the general
20 safety of the community.

21 Importing garbage is a bad idea, one
22 wastebasket full or 2,000 tons a day. Heavy truck
23 traffic, air pollution, water pollution, and wasted
24 agricultural land do not enhance the quality of life or

1 public health.

2 I sat through most of the hearings that came
3 to the -- that brought the City Council to the decision
4 to deny this application, and I strongly and firmly
5 believe that they were eminently fair. For anyone to
6 suggest that local citizens should not have the right to
7 express their opinions and concerns about a matter of
8 such incredible importance to their community through
9 letters to the editor in their newspapers, through radio
10 programs which I participated in along with Frank
11 Beardin and others, and should be silenced, is just
12 beyond my comprehension.

13 And I'm sure that you can hear in my voice
14 how passionately I feel about this. I cannot believe
15 that I'm sitting here in my own hometown hearing people
16 say that fellow citizens should be denied the right to
17 speak out. I sat in Congressman Anderson's office years
18 ago day after day with people bringing forth to me and
19 then onto the congressman their concerns about what was
20 happening locally. This is where democracy hits the
21 road folks, right here. And the City Council has
22 spoken.

23 Local communities should and, in fact, they
24 must have the right to determine their own destinies.

1 This is America. We live in the world's model
2 democracy. The democratic process has spoken, and the
3 democratic process has worked.

4 Yesterday democracy lost one of its very best
5 friends in Senator Paul Simon, whom I had the privilege
6 of knowing and working with. He was a champion for
7 matters just like this and believed in the absolute
8 essence of the fundamental democracy that's been at work
9 right here.

10 Not coincidentally, Senator Simon also owned
11 13 small-town newspapers; and he believed they were the
12 essence of what makes America great and makes it
13 possible for us to communicate with each other and that
14 they have an extraordinary responsibility to produce all
15 sides of all issues so that people can make up their own
16 minds.

17 Finally I want to remind you, and I don't
18 need to in this town, that's for sure, Teek Cortz
19 (phonetic) was a friend of mine when I was child. We
20 have got young people dying as we sit here right now to
21 protect democracy. They're dying in Iraq to try to give
22 people there what we have here. Stop and think about
23 that. The democratic process has worked. The
24 overwhelming preponderance of evidence is that this

1 would be a horrible plight on this community; and it
2 must not be allowed.

3 I implore you as the hearing officer, I
4 implore the Pollution Control Board to simply reaffirm
5 what these communities have said and leave their destiny
6 to the people in their own hands. Thank you for hearing
7 me.

8 HEARING OFFICER HALLORAN: Thank you, ma'am.
9 Mr. O'Brien?

10 MR. O'BRIEN: No questions.

11 MR. PORTER: No questions.

12 HEARING OFFICER HALLORAN: Anybody else? I
13 have asked you before, and I appreciate it if you
14 refrain from clapping. Thank you very much. Anybody
15 else wish to give comments, statement?

16 MR. BEARDIN: Can I give a closing one after
17 everybody else?

18 HEARING OFFICER HALLORAN: Let's go now.
19 Mr. Beardin, statement or public comment?

20 MR. BEARDIN: Statement, under oath.

21 FRANK BEARDIN,
22 having been first duly sworn, gave a public statement as
23 follows: Once again, Frank Beardin, B-e-a-r-d-i-n, same
24 address as before. All the people that have been here

1 today have been -- they live here. This is their home
2 community. Whether what they did or we did or I did was
3 right or wrong, we were out to protect what we have. We
4 love this community. We look out for our neighbors.
5 And we are very protective of what we have. There was
6 no one here today that spoke up for the dump.

7 We are not paid to be up here speaking.
8 We're just common, ordinary citizens who look out for
9 each other and what we have once again. We have not and
10 will not put a price on our children's heads. We look
11 out for our future generations because if we don't
12 lookout for our own, it's very obvious that others will
13 not.

14 And one last line out of Red Skeleton's
15 breakdown on what The Pledge Of Allegiance stands for,
16 which I'm sure everyone has heard, the portion "And to
17 the Republic: The republic is the state in which
18 sovereign power is invested in representatives chosen by
19 the people to govern. And government is the people.
20 And it's from the people to the leaders, not from the
21 leaders to the people."

22 Mr. Halloran, I thank you for your time, and
23 everyone concerned.

24 HEARING OFFICER HALLORAN: Thank you,

1 Mr. Beardin. Mr. O'Brien, any questions?

2 MR. O'BRIEN: No.

3 HEARING OFFICER HALLORAN: Mr. Porter?

4 MR. PORTER: No questions.

5 HEARING OFFICER HALLORAN: You may step down.
6 Anybody else? If there's nobody else right now, I plan
7 to --

8 MR. CLIFF SIMONSON: I was going to turn in
9 three exhibits.

10 HEARING OFFICER HALLORAN: Well, I can take
11 them as -- I guess it's already written -- did you read
12 that into the record? Is that what you read up here?

13 MR. CLIFF SIMONSON: You want me to take an
14 oath again to put them in the record?

15 HEARING OFFICER HALLORAN: Did you --

16 MR. CLIFF SIMONSON: These are three --

17 HEARING OFFICER HALLORAN: Did you read this
18 into the record before when you were up here?

19 MR. CLIFF SIMONSON: Do you want me to read
20 the whole thing?

21 HEARING OFFICER HALLORAN: You can either --
22 there's a lot in here. You can submit it as public
23 comment.

24 MR. CLIFF SIMONSON: I don't want to take up

1 any more of your time.

2 HEARING OFFICER HALLORAN: That's not the
3 issue. There are quite a number of pages here. You can
4 submit it as public comment. You can send it into the
5 Board as public comment. That will be no problem.

6 MR. CLIFF SIMONSON: Will it go in with your
7 records here or not?

8 HEARING OFFICER HALLORAN: Or I can take it
9 as public comment right now.

10 MR. CLIFF SIMONSON: That's probably the most
11 expedient way.

12 HEARING OFFICER HALLORAN: And I don't know
13 what public comment we're in. As of yesterday there was
14 only three public comments filed at the Board. So I'm
15 going to hold off right now labeling this, but it will
16 be a public comment; and I will bring it with the record
17 and the transcript to the Board. Is that satisfactory?

18 MR. CLIFF SIMONSON: That's fine. Thank you.

19 HEARING OFFICER HALLORAN: Your name again
20 please?

21 MR. CLIFF SIMONSON: Cliff Simonson. It's on
22 each document.

23 HEARING OFFICER HALLORAN: There's three
24 documents, and two of the documents there's

1 approximately five or six pages on here.

2 MR. CLIFF SIMONSON: That deals with the
3 farmland situation, which is a very important national
4 and local issue.

5 HEARING OFFICER HALLORAN: Thank you. I'll
6 take it as public comment back to the Board. Thank you,
7 sir.

8 Any further comments or statements now or --
9 we're going to take a 15-minute break, and I'll come
10 back and see if anybody else wants to do it. But I
11 appreciate not waiting until the very last person
12 because we got to get moving. So if you have to speak,
13 we can speak now. Okay. If not, I guess there will be
14 some newcomers coming in the room in maybe 15, 20
15 minutes. But I plan to if in nobody else comes in by
16 6:00 close the record and close the hearing. Thank you.
17 We are off the record.

18 (A brief recess was taken.)

19 HEARING OFFICER HALLORAN: I think we are
20 going to go back on the record. It's approximately, I
21 don't know, two minutes to 6:00. We waited around. It
22 doesn't look like anybody else wants to give public
23 comment and statements. I see no hands. I want to
24 reiterate that public comment is due on January 5th.

1 What I mean by that, you can slip it in the
2 mailbox on January 5th, and the Board will get it that
3 way. I do want to give our address. I think the media
4 has it, but it's the Illinois Pollution Control Board,
5 100 West Randolph Street, James R. Thompson Center,
6 Suite 11-500, Chicago, Illinois 60601. And you just
7 address it to the clerk of the Board, and she will get
8 it.

9 I also want to give you our website, and you
10 can get on there and punch in the case number; and it
11 will give you any kind of updates or recent statuses,
12 recent filings that have been had in this matter or any
13 other matter that for reason. The website is
14 www.ipcb.state.il.us, again www.ipcb.state.il.us.

15 I also have another public comment, a person
16 came up and gave it to me. So I will take that with my
17 other stuff, and I will give it to the clerk; and she
18 will file it as public comment. It's a public comment
19 from Lyle Heden. I also want to note for the record
20 that I am taking the sign-up list, and it looks like --
21 I don't know what I counted -- maybe 24 people gave
22 comment, actually probably 26, but two of them did it
23 twice. In any event, I will bring this back; and it
24 will be taken with the case, the sign-up sheet. I think

1 I will mark it Hearing Officer Exhibit 4.

2 (Hearing Office Exhibit No. 4
3 was identified.)

4 HEARING OFFICER HALLORAN: I don't know if
5 the mike is getting tired, but I do want to thank both
6 parties for their presentation today. I want to thank
7 the public. As I said earlier, the Board encourages
8 statements, comments of any kind. I also want to
9 especially thank Mr. McKinney and the City of Rochelle
10 for their hospitality and excellent accommodations.

11 If there's no further questions? Yes, ma'am.

12 MS. SANDERSON: There were a couple of us
13 here who did not sign in. Does that matter?

14 HEARING OFFICER HALLORAN: No, it does not
15 matter. You were on record, and we have got it
16 transcribed.

17 MS. SANDERSON: The other question I have for
18 you, sir, is: Will the members of the Pollution Control
19 Board have access to the actual vote of the City Council
20 on each of the nine points?

21 HEARING OFFICER HALLORAN: Whatever is in the
22 record, they have. I don't have it in front of me.

23 MR. PORTER: They have that. That's in the
24 record as well as the minutes of the vote.

1 MS. SANDERSON: So they will have the actual
2 vote.

3 MR. PORTER: They have got it all?

4 MS. SANDERSON: Good, because I was afraid
5 that some of the testimony might have been a little
6 misleading today; but if they have that, that will clear
7 it up.

8 HEARING OFFICER HALLORAN: I see nothing
9 else. Thanks again and have a safe drive home. It's a
10 little icky out there. Thanks. Bye-bye.

11 (Whereupon, the preceding hearing
12 concluded at 6:00 p.m.)

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1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF WINNEBAGO)
3

4 I, TRACY L. ABBOTT, CSR, a Notary Public
5 within and for the County of Winnebago, State of
6 Illinois, do hereby certify that I am a court reporter
7 doing business in the State of Illinois, that I reported
8 in shorthand the proceedings given at the Illinois
9 Pollution Control Board Hearing on December 10, 2003, at
10 the Rochelle City Hall Council Chambers, 420 North Sixth
11 Street, Rochelle, Illinois, and that the foregoing is a
12 true and correct transcript of my shorthand notes so
13 taken as aforesaid.

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Tracy L. Abbott
Tracy L. Abbott, CSR
License Number 084-003182
Notary Public, Winnebago County,
Illinois