

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

FOX MORAINE, LLC,

Petitioner,

v.

UNITED CITY OF YORKVILLE, CITY  
COUNCIL,

Respondent.

PCB No. PCB 07-146

**NOTICE OF FILING**

TO: All counsel of Record (see attached Service List)

Please take notice that on September 29, 2008, the undersigned filed with the Illinois Pollution Control Board, 100 West Randolph Street, Chicago, Illinois 60601, Fox Moraine's Response to Yorkville's Motion in Limine #4.

Dated: September 29, 2008

Respectfully submitted,

On behalf of FOX MORAINE, LLC

/s/

George Mueller  
One of Its Attorneys

George Mueller  
MUELLER ANDERSON, P.C.  
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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

FOX MORaine, LLC	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 07- 146
	)	
UNITED CITY OF YORKVILLE,	)	
CITY COUNCIL	)	
	)	
Respondent.	)	

**FOX MORaine'S RESPONSE TO YORKVILLE'S MOTION *IN LIMINE* No. 4**

NOW COMES Fox Moraine, LLC, ("Fox Moraine"), by its attorneys, Charles Helsten and George Mueller and for its response to Yorkville's Motion *In Limine* No. 4 states and alleges as follows:

1. This motion seeks to bar any reference to the infamous Wildman, Harrold, Allen and Dixon invoice of June 15, 2007 in the amount of \$96,119.73 for 257.45 hours of legal services rendered in connection with the Fox Moraine siting application between April 27, 2007 and May 29, 2007. This invoice was previously the subject of an extensively briefed motion to return the same, which motion was denied by the Hearing Officer. Fox Moraine re-alleges all of the arguments in its brief in response to that motion, including arguments regarding the relevancy of this invoice to the issues in this appeal.

2. Since it has been determined that the subject invoice, a copy of which is attached hereto and made apart hereof, is not work product or otherwise privileged, the only issue left with regard to it is if it is relevant on any issue at the fundamental fairness hearing to be held by the Board. Recent discovery in this case and a close review of

the invoice itself make it exceeding relevant as circumstantial, if not direct, evidence of predisposition and bias.

3. The invoice itself indicates that the Wildman, Harrold, Allen and Dixon firm started work on this project on April 27, 2007 and between that date and May 4, 2007, the Wildman firm provided 29.65 hours of legal services to the United City of Yorkville. This is particularly troubling since the Wildman firm had apparently not been retained at that time nor authorized to perform any services. Said services as will be indicated further herein were clearly directed primarily to developing a rationale for denial of the application.

4. On June 18, 2008, the discovery deposition of Valerie Burd was taken in this case. A copy said deposition transcript is attached hereto and made a part hereof. Valerie Burd had been a Yorkville city alderman during the public hearing on the siting application and on April 17, 2007, she was elected to the position of mayor. However, she was not sworn in as mayor nor did she assume her duties as mayor until May 8, 2007. A copy of the May 8, 2007 city council meeting minutes have previously been attached to Fox Moraine's response to the original unsuccessful motion for return of the infamous invoice.

5. At her discovery deposition, Valerie Burd was asked, "Did you retain other attorneys on behalf of City business prior to your being sworn in?" Her response was, "No. I don't have the authority to do that." (Burd deposition pg. 46) She was further asked, "Who authorized that firm to begin work on April 27<sup>th</sup>?" Her answer was, "No one." (Burd Dep. pg. 46) Ms. Burd was further asked, "Did you direct the firm of

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Wildman, Harrold, Allen and Dixon to begin work on behalf of the City starting on April 27th?" Her answer was, "No. I did not." (Burd Dep. pg. 52) She was further asked, "Did you authorize them to do work on behalf of the City starting on that date?", and her answer was, "No. I could not do that." (Burd Dep. pg. 52) She was further asked, "And you knew you could not authorize them to do work until after you had been sworn in and they had been approved by the city council. Correct?" Her answer was, "That's correct." (Burd Dep. pp. 52, 53) Ms. Burd was further asked, "But it's your position now that all of the entries prior to May 9th represent work that was not authorized by you or the City is that correct?" Her answer was, "That's correct." She was then asked, "And it's also your position that all of the entries prior to May 9<sup>th</sup> represent work that you weren't even aware of?" Her answer was, "That's correct." (Burd Dep. Pp 55, 56)

6. The subject invoice shows an entry by Anthony Hopp, one of the Wildman attorneys on April 30, 2007 for 5 hours to "Complete preparation for and conduct meeting with mayor and city administration; post meeting work based on results of meeting." Now, based upon the foregoing, either Valerie Burd was not truthful in her deposition or the Wildman invoice is inaccurate. Either conclusion is powerful evidence of bias and prejudice against Petitioner, particularly since the first review of actual evidence related to the siting application referenced in the Wildman invoice in on April 29, 2007, the day before Anthony Hopp's meeting with the mayor (which she denied having any knowledge of) on which date Anthony Hopp billed 4.5 hours to "Review objections to landfill siting petition and exhibits submitted in support of objections..."

When the first evidence reviewed in a case by attorneys is objection evidence rather

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than the siting application itself or the sequential testimony at the siting hearing, it raises a powerful inference that those attorneys were instructed to find a rationale for denial of the application. When the person apparently instructing those attorneys to find that rationale (Valerie Burd) now denies authorizing the work and denies any knowledge that the work even existed, this invoice, coupled with the Burd deposition testimony, begins to rise to the level of a "smoking gun."

7. The May 8, 2007, city council meeting minutes, indicate that Michael Roth was hired on that date as City attorney to perform up to 50 hours per month in services for the City. No action was taken on retention of the Wildman firm (of which Roth was a member) or for the services to be provided by other members of the firm. The subject invoice in fact shows that of the 257.45 hours of legal services provided in only 33 calendar day, only 26.5 of those hours were actually provided by Michael Roth. In contrast, 190 hours combined were provided by Leo Dombrowski and Anthony Hopp who have been the City's lead attorneys during this appeal.

8. The Wildman invoices are otherwise full of references indicating that their assigned mission was to justify denial of the siting application. For example, on May 8, 2007, presumably before he was even officially hired, Michael Roth billed .70 hours to "Work on strategies concerning finality of decision, disconnection of territory and development of City's decision." This seems strangely premature in light of the fact that no prior billings by Mr. Roth relate to review of the evidence. Additionally, disconnection of territory can only refer to disconnection of the Fox Moraine territory, as the original annexation of that territory, a precursor to the filing of the siting application, was a highly

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controversial activity which Fox Moraine now alleges helped create the politically biased atmosphere.

9. The Wildman invoice also supports Fox Moraine's claim set forth in its motion filed on September 24, 2008, that in addition to the summaries of the evidence and recommendations prepared by Derke Price on behalf of the City expert technical staff and the hearing officer, Larry Clark (both of which summaries and recommendations were for approval with conditions, there was a third summary of the evidence and recommendations prepared by Michael Roth or one of his partners, which summary was considered and relied upon by City council members and which has never been placed into the record in this matter. Billing references on the subject invoice to preparation of a report or summary appear on May 11, 2007, May 14, 2007, May 16, 2007, May 21, 2007 and May 22, 2007, with that last reference being to "Continue to revise, edit and finalize legal memoranda to Mayor and city council..." References to review of the evidence are likewise abundant, so it is clear that the Wildman firm prepared a report for the city council.

10. At a landfill siting hearing there are three possible decisions, unconditional approval, approval with conditions and denial. That suggests that attorneys in anticipation of a council meeting to decide the case would prepare resolutions covering each alternative. In this case, the Wildman invoice indicates that only a single resolution was drafted as there are multiple references in the invoice to the drafting and revision of the "resolution," that term always used in the singular except on one occasion. On May 14, 2007, Anthony Hopp billed for the first draft of the need section

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of resolution. On the same date Michael Roth billed for work on resolution, on May 22, 2007, Anthony Hopp billed for work on resolution and on May 23, 2007, Leo Dombrowski billed for "Review and analyze hearing officer's findings and recommendations; prepare draft city council resolutions; revise memoranda regarding evaluation of siting criteria evidence, attend special meeting of city council" for a total of 10.50 hours on that date.

11. It is clear from the foregoing that the Roth/Wildman report served as a rebuttal to the reports prepared by Price and Clark and in fact, had to be revised based upon the content of those other reports. It is also clear that there was only a denial resolution ever contemplated and drafted by the Wildman firm.

12. The Wildman invoice is also instructive on the issue of whether or not the resolution purporting to be the final decision of the city council (Resolution No. 2007-36) was the resolution actually adopted on May 24, 2007, or whether it represents an illegal delegation by the city council to its attorneys of the duty to make the final decision. On May 24, 2007, the day after Resolution 2007-36 was allegedly adopted, Anthony Hopp billed 2.0 hours for, "Several revision to draft Resolution; review transcript of hearing and discuss which conditions could be included and which should not." On the same date, Leo Dombrowski billed 3.75 hours to "Revise city council resolution; review transcript of city council meeting, review additional hearing testimony regarding siting criteria." On the same date also, Michael Roth billed 1.90 hours to "Work on revisions to approved resolution to incorporate conditions requested by aldermen at meeting; finish working on revisions to landfill siting resolution and prepare memo to mayor and

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city council regarding execution.” On May 29, 2007, Michael Roth billed .5 hours for, “Conference with Mr. Olson regarding resolution revisions and work on legal requirements for service of resolution.” Clearly then the Wildman invoice demonstrates unequivocal evidence that the resolution purporting to be the final decision of the city council and incorporated in the record on appeal as a document dated May 24, 2007, was in fact not prepared on that date and that its execution was after the fact. It is also clear that the conditions set forth in said resolution were crafted by attorneys after the fact, based upon the city council’s illegal delegation to them of the power to include or omit conditions as they saw fit.

**WHEREFORE**, for the forgoing reasons, the Wildman invoices completely relevant in that it ties together a number of other issues raised by Petitioner and accordingly the Motion *In Limine* No. 4 be denied.

Respectfully submitted,  
FOX MORaine, LLC

By:     /s/George Mueller      
          One of its attorneys

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WILDMAN, HARROLD, ALLEN & DIXON LLP

225 West Wacker Drive, Chicago, Illinois 60606-1229  
312-201-2000

Tax ID No 36-2615899

JUNE 15, 2007  
INVOICE NO 350710

VALERIE BURD  
THE UNITED CITY OF YORKVILLE  
800 GAME FARM ROAD  
YORKVILLE, IL 60560

~~ARL~~landfill  
01-000-13-00-1375

FILE NO U0525.00002

IN THE MATTER OF:

LOCAL SITING ENGAGEMENT 

INTERIM STATEMENT FOR PROFESSIONAL SERVICES RENDERED THROUGH MAY 31, 2007

<u>DATE</u>	<u>INITIALS</u>	<u>HOURS</u>	<u>DESCRIPTION</u>
4/27/07	AGH	4.00	Begin review of siting petition and exhibits to same
4/27/07	LPD	4.25	Work on landfill application review process and requirements to receive siting approval; review and analyze case law regarding same; review City Siting Ordinance to determine procedures for review of application.
4/27/07	RMA	0.75	Analyze and process evidence, transcripts, and landfill application documents relating to the Yorkville matter onto 24 discs for attorney use.
4/28/07	LPD	2.00	Review and analyze case law to determine standard of review to be applied by Pollution Control Board and to determine what may be considered improper contacts
4/29/07	AGH	4.50	Review objections to landfill siting petition and exhibits submitted in support of objections; review legal research.
4/29/07	LPD	3.50	Review and analyze case law regarding local governing body's review of evidence presented at hearing and to determine how to prepare written decision; prepare memorandum regarding review of evidence and scope of improper contacts.
4/30/07	AGH	5.00	Complete preparation for and conduct meeting with Mayor and city administrators; post-meeting work based on results of meeting.
4/30/07	LPD	4.75	Review and analyze City's Siting Ordinance to determine requirements of same; review regulations and case law to determine whether decision deadline may be waived; begin to review evidence presented in opposition to landfill application.
5/4/07	MMR	0.90	Review Open Meetings Act regarding Executive Sessions to discuss and deliberate recommended findings and decision by

WILDMAN, HARROLD, ALLEN & DIXON LLP

LOCAL SITING ENGAGEMENT

JUNE 15, 2007  
INVOICE NO. 350710

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<u>DATE</u>	<u>INITIALS</u>	<u>HOURS</u>	<u>DESCRIPTION</u>
			Yorkville City Council.
5/8/07	AGH	3.50	Prepare for City Council meeting; work on strategy issues related to procedure and format for advice to City.
5/8/07	MMR	0.70	Work on strategies concerning finality of decision, disconnection of territory and development of City's decision
5/9/07	AGH	8.50	Prepare for and attend meeting with Mayor; work on strategy; work on review of transcripts related to need criterion for siting
5/9/07	LPD	6.50	Work on review of evidence offered at hearing; conference call with Mayor Burd and Mr. Hopp to discuss procedure under Yorkville Siting Ordinance; review hearing transcripts and exhibits to determine scope of evidence offered for and against health, safety and welfare criterion.
5/9/07	MMR	1.00	Work on numerous legal and evidentiary issues.
5/9/07	RCD	2.00	Review background materials regarding City of Yorkville issue.
5/9/07	RMA	0.80	Analyze and process electronic data in preparation for printing and loading into a searchable database for attorney review.
5/10/07	AGH	4.50	Continue to review transcripts and evidence related to "need" criterion.
5/10/07	LPD	2.25	Review and analyze case law to determine how Pollution Control Board and Appellate Court have evaluated evidence offered in support of or opposition to siting criteria.
5/10/07	MMR	0.60	Legal memorandum regarding Open Meetings Act and landfill siting deliberations prepared.
5/10/07	RCD	1.90	Legal research of Illinois court opinions and Illinois Pollution Control Board opinions regarding standards for criteria to be applied in ruling on Section 39.2 siting applications.
5/10/07	RMA	2.30	Process and print electronic data from the Yorkville website for attorney review
5/11/07	AGH	6.00	Continue to review testimony and to work on "need" section.
5/11/07	LPD	1.75	Review and analyze testimony offered at public hearing to determine if applicant carried its burden on issue of traffic patterns
5/11/07	MMR	2.00	Work on landfill matter and several conferences Mr. Olson from City of Yorkville regarding meeting schedules and process.
5/11/07	RCD	5.50	Review and analyze state appellate and Supreme Court rulings regarding appeals from rulings of Illinois Pollution Control Board concerning pollution control center siting decisions.
5/11/07	RMA	2.60	Analyze and process electronic data from the Yorkville website into a searchable database for attorney review.
5/13/07	RCD	3.30	Review Illinois appellate court decisions regarding appeals from siting decisions of the Illinois Pollution Control Board.

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LOCAL SITING ENGAGEMENT

JUNE 15, 2007  
INVOICE NO. 350710

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<u>DATE</u>	<u>INITIALS</u>	<u>HOURS</u>	<u>DESCRIPTION</u>
5/17/07	MMR	0.70	Work on pending motions; conference with Mr. Clark, Hearing Officer, regarding same and telephone call to Attorney Mueller to advise of deliberation schedule.
5/17/07	RCD	3.50	Continue to draft and revise memorandum regarding PCB rulings upholding or overturning decisions of local boards related to siting permits.
5/18/07	AGH	1.00	Continue to work on incompatibility section of submission.
5/18/07	LPD	6.75	Review and analyze post-hearing comments; revise City Council memorandum regarding traffic criterion; review and analyze case law regarding same; review and analyze hearing testimony regarding groundwater and stormwater concerns.
5/18/07	MMR	0.30	Work on process for reviewing hearing officer's decision and status of transcript reviews.
5/19/07	LPD	3.00	Review and analyze hearing testimony to determine if applicant's landfill design meets statutory criteria.
5/20/07	AGH	4.00	Continue work on incompatibility section of written submission.
5/20/07	LPD	8.00	Continue to review and analyze hearing testimony to determine if applicant's landfill design meets statutory criteria; review and analyze testimony and exhibits to determine if stormwater concerns exist; review and analyze case law to determine how Pollution Control Board and Appellate Court evaluate statutory criteria.
5/21/07	AGH	6.00	Continue work on legal and factual issues related to siting application.
5/21/07	LPD	8.25	Prepare memoranda regarding issues to consider to determine whether applicant met traffic and health, safety and welfare criteria; continue to review and analyze hearing testimony and exhibits regarding same; review and analyze memorandum of Mr. Price and City Staff addressing siting criteria.
5/21/07	MMR	2.70	Work on proposed advice memos regarding landfill siting criteria and review Staff Report regarding same.
5/21/07	RCD	0.60	Legal research regarding questions posed to criterion 3, landfill siting requirements.
5/22/07	AGH	7.00	Continue to revise, edit and finalize legal memoranda to Mayor and City Council; work on resolution; review counsel for city staff's report and recent public comment.
5/22/07	LPD	7.00	Review case law to determine how siting authority should consider applicant's compliance history; review and analyze hearing testimony and exhibits regarding same; revise memorandum regarding applicant's and operator's environmental history.
5/22/07	RCD	2.60	Legal research regarding question of operator history (as part of

WILDMAN, HARROLD, ALLEN & DIXON LLP

LOCAL SITING ENGAGEMENT

JUNE 15, 2007  
INVOICE NO. 350710

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<u>DATE</u>	<u>INITIALS</u>	<u>HOURS</u>	<u>DESCRIPTION</u>
			criterion ix).
5/23/07	AGH	6.00	Complete memorandum and executive summary for City Council; work on resolution; attend City Council meeting; review recently-submitted public comments and evidence.
5/23/07	LPD	10.50	Review and analyze Hearing Officer's Findings and Recommendations; prepare draft City Council resolutions; revise memoranda regarding evaluation of siting criteria evidence; attend Special Meeting of City Council.
5/23/07	MMR	8.80	Work on strategies for City Council meeting; work on introductory statement for meeting, executive summary and final version of legal memorandum analyzing evidence and findings and recommendations; continue preparation and work with Mayor regarding special City Council meeting for decision on landfill siting; post-meeting conference with attorneys Hopp and Dombrowski regarding preparation of resolutions for City Council's consideration.
5/24/07	AGH	3.00	Revise resolutions; prepare for and attend final public meeting
5/24/07	LPD	4.25	Revise City Council resolutions; review additional hearing testimony regarding siting criteria.
5/24/07	MMR	0.70	Work on proposed resolutions.
5/24/07	MMR	2.90	Meet with aldermen regarding landfill issues and revise resolutions; attend City Council meeting to consider decision on landfill application.
5/25/07	AGH	2.00	Several revisions to draft resolution; review transcript of hearing and discuss which conditions could be included and which should not.
5/25/07	LPD	3.75	Revise City Council resolution; review transcript of City Council meeting; review additional hearing testimony regarding siting criteria.
5/25/07	MMR	1.90	Work on revisions to approved resolution to incorporate conditions requested by alderman at meeting; finish working on revisions to landfill siting resolution and prepare memo to Mayor and City Council regarding execution.
5/25/07	MMR	0.30	Conference with Mr. Olson regarding exhibits to final resolution and review final resolution.
5/29/07	MMR	0.50	Conference with Mr. Olson regarding resolution revisions and work on legal requirements for service of resolution
		257.45	TOTAL HOURS

WILDMAN, HARROLD, ALLEN & DIXON LLP

LOCAL SITTING ENGAGEMENT

JUNE 15, 2007  
INVOICE NO. 350710

FILE NO U0525.00002

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SUMMARY OF PROFESSIONAL SERVICES RENDERED:

<u>NAME</u>	<u>HOURS</u>		<u>RATE</u>		<u>AMOUNT</u>
RYAN M. ALDRICH	6.45	hours at	\$140.00	=	903.00
ROBERT C DEEGAN	34.00	hours at	\$230.00	=	7,820.00
MICHAEL M. ROTH	26.50	hours at	\$340.00	=	9,010.00
LEO P DOMBROWSKI	96.00	hours at	\$385.00	=	36,960.00
ANTHONY G. HOPP	94.50	hours at	\$435.00	=	41,107.50

CURRENT FEES \$95,800.50

DISBURSEMENTS INCURRED:

LEXIS 319.23

CURRENT DISBURSEMENTS \$319.23

CURRENT FEES AND DISBURSEMENTS \$96,119.73

TOTAL DUE THIS INVOICE \$96,119.73

PLEASE INCLUDE YOUR REMITTANCE ADVICE WITH YOUR PAYMENT

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

FOX MORaine, LLC, Petitioner, vs. UNITED CITY OF YORKVILLE, CITY COUNCIL, Respondent. PCB No. 07-146

Discovery deposition of VALERIE BURD, called as a witness herein, pursuant to the applicable provisions of the Code of Civil Procedure of the State of Illinois and the rules of the Supreme Court thereof, before Belinda A. Harr, CSR No. 84-003216, taken on June 18, 2008, at 1:30 p.m. at 800 Game Farm Road, Yorkville, Illinois.

LAUNIUS REPORTING SERVICE (815) 433-1103

PRESENT:

MOELLER ANDERSON, PC, by MR. GEORGE MOELLER 609 Etna Road Ottawa, Illinois 61350 (815) 431-1500

Appeared on behalf of Petitioner, Fox Moraine, LLC;

WILDMAN, HARROLD, ALLEN & DIXON, by MR. ANTHONY G. HOPP and MR. THOMAS MATYAS 225 West Wacker Drive, Suite 1000 Chicago, Illinois 60606-1229 (312) 201-2000

Appeared on behalf of Respondent, United City of Yorkville;

And

JERP & BLAZER, by MR. MICHAEL BLAZER 24 North Hillside Avenue, Suite A Hillside, Illinois 60162 (708) 216-0830

Appeared on behalf of Intervenor, Kendall County.

ALSO PRESENT:

Charles Murphy James Burnham

LAUNIUS REPORTING SERVICE (815) 433-1103

I N D E X

WITNESS:

Valerie Burd

EXAMINATION BY:

Mr. Mueller

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EXHIBITS:

- Exhibit No. 1 (marked).....21
Exhibit No. 2 (marked).....51
Exhibit No. 3 (marked).....58
Exhibit No. 4 (marked).....85
Exhibit No. 5 (marked).....93

(Exhibits attached.)

CERTIFIED QUESTION:

Page 37, Line 22

Q. When you confronted Mr. Price, can you tell us what you said to him and what he said to you?

LAUNIUS REPORTING SERVICE (815) 433-1103

(Witness sworn.)

VALERIE BURD,

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

EXAMINATION

BY MR. MOELLER:

Q. Would you state your full name please?

A. Valerie Lee Burd.

MR. MOELLER: Let the record show this is the discovery deposition of Valerie Lee Burd taken pursuant to rules and by agreement of the parties.

BY MR. MOELLER:

Q. Mayor, have you ever had your deposition taken before for any reason in a case?

A. Not that I recall, no.

Q. Let me go through a couple of ground rules with you then. First of all, everything that everyone in this room says during the deposition is being taken down by a court reporter, and that means that we should avoid talking over each other, and I'll make an effort to wait for you to finish your answers if you make

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1 an effort for me to wait to finish my question so  
2 that we're not speaking at once. Do you  
3 understand that?

4 A. Yes.

5 Q. Secondly, if I ask you a question  
6 and you don't understand it, feel free to have me  
7 rephrase that. Do you understand that?

8 A. Yes.

9 Q. Do you understand you're under oath?

10 A. Yes.

11 Q. And if you answer a question, I'm  
12 going to assume that you understood it and  
13 intended the answer. Is that fair?

14 A. Yes.

15 Q. What is your job position?

16 A. With the City?

17 Q. Yes.

18 A. I'm the mayor.

19 Q. And do you have any employment other  
20 than being mayor of the City of Yorkville?

21 A. Yes, I do. My husband and I own a  
22 business called Positive Approach Publishing.

23 Q. Where is that located?

1 A. We work out of our home. It's 300  
2 East Hydraulic Street, Yorkville.

3 Q. What kind of publishing does  
4 Positive Approach Publishing do?

5 A. We do public relations, marketing,  
6 community guides, and maps.

7 Q. And prior to your being elected  
8 mayor, did you have any other employment besides  
9 working in your own business?

10 A. How far back do you want?

11 Q. When is the last time you were  
12 employed outside the home?

13 A. Four years ago.

14 Q. What was your profession at that  
15 time?

16 A. I was marketing director for Kluber  
17 Skahan & Associates.

18 Q. What city are they in?

19 A. They are in Geneva.

20 Q. What's your educational background  
21 just briefly?

22 A. I have a degree in journalism with a  
23 minor in political science from Northern Illinois

1 University.

2 Q. That's a Bachelor of Science degree?

3 A. Yes, it is.

4 Q. Mayor, how long have you been or  
5 were you on the City Council before your election  
6 as mayor?

7 A. Nine years.

8 Q. When did you publicly announce that  
9 you were going to run for mayor of Yorkville?

10 A. I think it was August 2006.

11 Q. And at that time were you aware that  
12 the City was considering a host agreement and  
13 annexation with Fox Moraine?

14 A. Yes, I was.

15 Q. At the time that you announced your  
16 intention to run for mayor, did you publicly  
17 express any position with regard to either the  
18 annexation or the host agreement?

19 A. At the time I was running for -- at  
20 the time I made my announcement, no, I did not.

21 Q. At that time did you express a  
22 position with respect to the possible siting of a  
23 landfill in the city of Yorkville?

1 A. No, I did not.

2 Q. At some future date did you ever  
3 publicly express a position regarding siting of  
4 the landfill other than your ultimate vote on the  
5 application?

6 MR. HOPP: Object to the form. Assumes  
7 facts not in evidence. She never actually voted.

8 MR. MUELLER: Let me ask you that. That's  
9 a fair objection. I'll withdraw the question.  
10 That's right.

11 BY MR. MUELLER:

12 Q. At the time that the application  
13 came on for vote, you had already been sworn in as  
14 mayor, right?

15 A. Yes.

16 Q. So you did not vote on the  
17 application?

18 A. No, I did not.

19 Q. All right. Then let me ask the  
20 question again. At any time prior to  
21 deliberations on the application in the City  
22 Council meetings did you ever express an opinion  
23 publicly regarding whether or not the landfill or

any landfill should be sited by the City of Yorkville?

A. No, I did not.

Q. All right. Is it fair to characterize one of your campaign platforms in the campaign for mayor as having been an anti-landfill platform?

A. No, it is not fair.

Q. You do not believe that you ran as an anti-landfill candidate?

A. I did not run as an anti-landfill candidate.

Q. Was the City's position with respect to a landfill in your opinion an issue in your campaign against Art Prochaska?

A. The City had no position.

Q. Well, your position versus Mayor Prochaska's position. Do you believe that the siting of a landfill was an issue in that campaign?

A. No. We -- I did not discuss it as an issue.

Q. Did you form a campaign committee

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when you ran for mayor?

A. Yes, I did.

Q. Was that called Voters for Val?

A. Yes.

Q. Who was the treasurer of that organization?

A. Dan Michelson.

Q. And is he someone who lives in the city of Yorkville?

A. No, he does not.

Q. Was he a volunteer treasurer or a paid treasurer?

A. He was a volunteer treasurer.

Q. Did Voters for Val ever receive any campaign contributions from the POGY group or any individual known to you to be affiliated with them?

A. We never received campaign contributions to my knowledge from -- absolutely not from POGY. The second part of the question I cannot answer because I don't know.

Q. Well, did you to your knowledge ever receive any campaign contributions from George

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Gilson, Dan Kramer, Kelly Kramer, or Todd Milliron?

A. I don't -- my personal knowledge was of the large campaign contributions. If somebody wanted to make a contribution of over a hundred dollars, I came into the picture. If somebody wanted to come to a pizza party and pay \$20, I did not keep track of who did that. So I can't -- I can't recall who paid the \$20, but most of my campaign contributions -- a good portion of these were of a smaller increment.

Q. Well, with respect to contributions of a hundred dollars or more, --

A. Uh-huh.

Q. -- did you ever receive any contributions from any of the four individuals I named?

A. Could you repeat the names?

Q. George Gilson, Todd Milliron, Dan Kramer, Kelly Kramer.

A. I do remember Mr. Milliron making a contribution.

Q. Do you remember when that was made?

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A. No, I don't. I don't recall.

Q. And you accepted the contribution, correct?

A. Yes. He was on my campaign committee.

Q. When was he placed on your campaign committee?

A. This wasn't a matter of placing people. It was an informal gathering, and people just showed up who supported me.

Q. Well, you're the one that used the term campaign committee.

A. Right.

Q. What do you define that term to mean?

A. It was a group of people who supported me who showed up at my house on Sunday evenings.

Q. On a regular basis?

A. Yes.

Q. And can you identify the members of your campaign committee?

A. Yes. There was Mr. Milliron. There

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1 was Wally Werderich. He was my campaign manager.  
2 There was Ron and Becky Parrish. There was Dan  
3 Nicholson. There was Tom and Stephanie Todd and  
4 occasionally Arden Joe Plocher.

5 Q. Were you aware that Todd Milliron  
6 was a vocal anti-landfill spokesperson?

7 A. I'm not sure that I was aware of  
8 that when he joined my committee.

9 Q. Do you remember when he joined your  
10 committee?

11 A. He was -- as soon as I announced he  
12 was one of the earliest ones to show up.

13 Q. As I recall, in September of 2006  
14 the City conducted a number of meetings at larger  
15 venues, I want to say one of the grade schools or  
16 junior high schools right near here, to -- they  
17 were in the nature of a public hearing on the  
18 issue of annexation.

19 A. Right.

20 Q. Do you recall that?

21 A. Yes, I do.

22 Q. And I believe at that point  
23 Mr. Milliron was a very obvious and vocal

1 spokesperson against anything that might lead to a  
2 landfill. Is that a fair characterization?

3 A. He spoke vehemently against the  
4 annexation.

5 Q. And was it your understanding that  
6 his opposition to annexation was specifically  
7 related to the likelihood that that annexation  
8 would lead to the filing of a landfill  
9 application?

10 A. I can't recall his exact statement  
11 at that meeting.

12 Q. Ron Parrish was also a vocal  
13 spokesperson against annexation, correct?

14 A. Yes, he was.

15 Q. Did you understand at that time that  
16 Mr. Parrish and Mr. Milliron were opposed to a  
17 landfill siting by the City of Yorkville?

18 A. I had not at that time had  
19 discussions with them about it.

20 Q. Did you ever gain that understanding  
21 with regard to either of their positions?

22 A. I really didn't discuss the landfill  
23 with them privately, no.

1 Q. So it's your testimony that you  
2 never knew that Todd Milliron was opposed to the  
3 siting of a landfill?

4 A. I didn't discuss it with him.

5 Q. My question is did you know that he  
6 was opposed to the siting of a landfill?

7 A. I knew he was opposed to the  
8 annexation.

9 Q. So is it your testimony, ma'am, that  
10 you never knew that he was opposed to the siting  
11 of a landfill?

12 A. I don't recall his statements so I  
13 can't recall --

14 Q. So the answer to my question would  
15 be, yes, you did not know?

16 A. Yes.

17 Q. With regard to Ron Parrish, is it  
18 your testimony that you never knew that he was  
19 opposed to the siting of a landfill?

20 A. I don't -- I truly don't recall  
21 their comments during the sessions so I can't say  
22 what I knew at any certain time.

23 Q. So the answer to that question is

1 also, yes, you never knew?

2 A. No. I just don't recall.

3 Q. Now, with regard to Mr. Parrish you  
4 don't recall whether you knew or not that he was  
5 opposed to a landfill; is that correct?

6 A. That's correct.

7 Q. How about Mr. Werderich? Did you  
8 ever know that he was opposed to the siting of a  
9 landfill?

10 A. Mr. Werderich, I knew, had been  
11 involved with FOGY so I guess I had some concept  
12 that he may have been against the landfill, but we  
13 did not discuss it.

14 Q. And when did you get knowledge that  
15 he was involved with FOGY?

16 A. When he informed me that he had quit  
17 FOGY -- he had decided to quit FOGY and to -- that  
18 he was joining -- you know, he was going to stay  
19 with my committee. That he had to make a choice  
20 and he quit FOGY.

21 Q. Do you remember when that would have  
22 been in terms of the month in which it occurred?

23 A. No, I don't remember.

1 Q. Did Mr. Parrish ever leave your  
 2 campaign committee?  
 3 A. Did he leave it?  
 4 Q. Well, stop attending.  
 5 A. Near the end he did. He and his  
 6 wife did.  
 7 Q. How close to the end?  
 8 A. A month before.  
 9 Q. Did Mr. Milliron ever stop attending  
 10 your campaign committee meetings?  
 11 A. No, he didn't.  
 12 Q. Did Mr. Werderich ever stop  
 13 attending your campaign committee meetings?  
 14 A. No, he did not.  
 15 Q. Isn't it true he resigned from FOGY  
 16 when he announced his own candidacy for an  
 17 aldermanic position?  
 18 A. I don't know if that was the case.  
 19 I do know that he told me personally that to stay  
 20 on my committee he couldn't be on both so he  
 21 resigned. That's what he told me.  
 22 Q. Did you ever tell him that he had to  
 23 make a choice between remaining a member of FOGY

1 or remaining a member of your committee?  
 2 A. I told everybody who showed up at my  
 3 committee meetings that -- that I would not be  
 4 involved in any discussions or any providing of  
 5 information one way or the other on the landfill  
 6 issue and we would not discuss it at my meetings  
 7 and if they were involved in anything one way or  
 8 the other, that they could no longer participate.  
 9 Q. And that statement did not prevent  
 10 Mr. Milliron from continuing to participate, is  
 11 that correct?  
 12 MR. HOPP: Object to the form. You can go  
 13 ahead and answer if you know, if you know what  
 14 he's talking about.  
 15 THE WITNESS: Participate in what?  
 16 MR. MUELLER: In your campaign committee.  
 17 Mr. Milliron participated throughout the duration,  
 18 correct?  
 19 BY THE WITNESS:  
 20 A. Yes, he did.  
 21 BY MR. MUELLER:  
 22 Q. Did your campaign committee provide  
 23 you with any services in your campaign such as the

1 placement of signs, the writing of advertisements  
 2 and the like?  
 3 A. Some of them placed signs. I wrote  
 4 my own publicity and campaign literature.  
 5 Q. Obviously, you've got a background  
 6 in that area?  
 7 A. Right.  
 8 Q. But some of that grunt work such as  
 9 actually taking the signs around and putting them  
 10 in the ground was done by your campaign committee?  
 11 A. Actually, it was done by a gentleman  
 12 who did not -- was not on my -- the group that met  
 13 every Sunday. It was some other volunteer.  
 14 Q. Who was that?  
 15 A. Oh, he lives in Rivers Edge and let  
 16 me think. I can't remember his name. I'm sorry.  
 17 I can't recall his name.  
 18 Q. Who selected the sites for your  
 19 campaign signs?  
 20 A. We just gave signs to whoever called  
 21 up and asked for one.  
 22 Q. Do you know how many campaign signs  
 23 you had out at the maximum?

1 A. Probably 400.  
 2 Q. What was the total amount of money  
 3 spent by your campaign?  
 4 A. I don't recall the exact amount.  
 5 Q. Do you know an approximate amount?  
 6 A. I think it was around 5,000.  
 7 Q. Did anyone ever make you aware that  
 8 some of your campaign signs in the campaign for  
 9 mayor were placed in close proximity to  
 10 anti-landfill signs?  
 11 A. No, nobody commented on it to me.  
 12 Q. Did you ever become aware from any  
 13 source that your campaign signs or some of them  
 14 were placed in close proximity to your -- or to  
 15 anti-landfill signs?  
 16 A. Did I ever -- would you repeat the  
 17 question?  
 18 Q. Did you ever become aware of the  
 19 fact that some of your campaign signs were  
 20 physically placed in close proximity to  
 21 anti-landfill signs?  
 22 A. Yes, I saw them around the town.  
 23 Q. Did you make any effort to change

1 that placement after you saw the signs?

2 A. No, I did not.

3 Q. Did it occur to you that the close  
4 proximity of your campaign signs with  
5 anti-landfill signs might lead perspective voters  
6 to believe that you were an anti-landfill  
7 candidate?

8 A. My thoughts on this were that these  
9 people who wanted my signs were supporting me in  
10 the election. They were entitled to their  
11 opinions on other issues that was not relevant to  
12 placing of my signs. I actually had people who  
13 placed my sign in the same yard with Art Prochaska  
14 signs. So one person in the house wanted me and  
15 the other person in the house wanted Art. That  
16 doesn't mean I backed his campaign. So, no, I  
17 just let everybody decide for themselves who they  
18 were backing for mayor.

19 MR. MUELLER: Let me show you what we're  
20 going to mark as Burd Deposition Exhibit No. 1.  
21 (Exhibit No. 1 marked.)

22 BY MR. MUELLER:

23 Q. Can you identify this document?

1 A. This appears to be the campaign  
2 disclosure document.

3 Q. All right. These would appear to be  
4 disclosures of some larger contributions?

5 A. Right.

6 Q. It's a two-page document; correct?

7 A. That's correct.

8 Q. This is filed by your campaign  
9 committee or by your campaign organization Voters  
10 for Val?

11 A. Uh-huh.

12 Q. Right? Who is M & M Transport,  
13 Inc.?

14 A. This was a gentlemen who came to one  
15 of my coffees and he wanted to give me a check and  
16 so I told him at the time that I had to do some  
17 research on him. Mike Matesak is his name, and he  
18 lives out in Rose Hill.

19 Q. Do you want to spell his last name?

20 A. I think it is --

21 MR. MUELLER: If you can.

22 THE WITNESS: -- M-A-T-E-S-A-K, Michael  
23 Matesak.

1 BY MR. MUELLER:

2 Q. And what research did you do on him  
3 before you would agree to accept his contribu-  
4 tions?

5 A. Like I said, I asked him at the time  
6 if he was in any way connected with any landfill  
7 operation or any waste hauler, and he denied any  
8 connection. And then I went home and looked up  
9 his company on the internet, and they were  
10 affiliated with railroads, repairing cars for  
11 railroads. And so I told him that I couldn't see  
12 any connection and I would take his campaign  
13 contribution.

14 Q. So it was your position that you  
15 would not accept campaign contributions from any  
16 individuals or entities affiliated with waste  
17 hauling or disposal?

18 A. That was what I told everybody, yes.

19 Q. Did Mr. Matesak ever express a  
20 position to you with regard to the siting of a  
21 landfill?

22 A. No, but he said he thought I was  
23 doing a good job. He thought I was a good

1 candidate.

2 Q. So you don't even know what his  
3 position with regard to the siting of a landfill  
4 was; is that correct?

5 A. That's correct. He lived out on the  
6 east side of Yorkville.

7 Q. Who's Peter Newton?

8 A. Mr. Newton -- he's an attorney who  
9 lives in Grand Reserve, and I met him while I was  
10 walking around knocking on doors.

11 Q. Did he ever express a position to  
12 you with regard to a siting of the landfill?

13 A. No, he did not. He was one of those  
14 people -- when I was walking around, he started to  
15 say something. I held up -- we were given note  
16 cards. I said I can't discuss this with you, and  
17 so we never had a discussion.

18 Q. So you don't know what his position  
19 was with regard to the landfill?

20 A. I never discussed it with him.

21 Q. And the same would be true with  
22 Mr. Matesak? You don't know what his position  
23 was?

1 A. That's true.  
 2 Q. What about Rodney Olsen?  
 3 A. This gentleman I don't know. I  
 4 never -- I don't know him at all. I'm surprised  
 5 he's on here.  
 6 Q. So you had a \$500 contribution from  
 7 someone that you have no knowledge about?  
 8 A. That's correct.  
 9 Q. If we turn to the second page, you  
 10 have a Gary Frost. Who is he?  
 11 A. Mr. Frost I knew from my previous  
 12 employment with -- I used to be an editor for the  
 13 Naperville Sun, and Mr. Frost used to be a press  
 14 person with the Naperville Sun. And so when I  
 15 needed to print up some brochures, he kindly  
 16 volunteered to print them up for me.  
 17 Q. Okay. And who was O-Net?  
 18 A. This is a gentleman who owns a  
 19 web-site business in town and --  
 20 Q. What's the name of that website?  
 21 A. O-Net.  
 22 Q. What service -- what, if any, kind  
 23 of service did he provide to you?

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1 A. He put my website up. He got a  
 2 server for me and actually physically got it on  
 3 the internet.  
 4 Q. And that would be a campaign  
 5 website?  
 6 A. Yes.  
 7 Q. So you had a campaign website?  
 8 A. Yes, I did.  
 9 Q. What was the locator for that  
 10 website?  
 11 A. Elect Burd dot com.  
 12 Q. Do you have printed copies of all  
 13 the pages on that website?  
 14 A. No, I do not.  
 15 Q. I take it that website has since  
 16 been taken down?  
 17 A. Actually, I went and looked  
 18 yesterday, and it was still up.  
 19 Q. Did that website have a forum or  
 20 other means by which individuals could publicly  
 21 exchange thoughts that would be posted on your  
 22 website; in other words, was it interactive?  
 23 A. No. Except there was a poll asking

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1 what they thought of city government.  
 2 Q. Were there any questions with regard  
 3 to the landfill or potential siting of the  
 4 landfill?  
 5 A. No, there was not.  
 6 Q. Did anyone other than yourself and  
 7 O-Net provide content for the Elect Burd dot com  
 8 website?  
 9 A. Although I provided most of it, I  
 10 can't recall if anybody else had written anything  
 11 that I included so I can't recall for sure.  
 12 Q. What is the name of the gentleman at  
 13 O-Net that helped you with this?  
 14 A. I can't remember his name. He's on  
 15 the Chamber of Commerce though, and he also  
 16 provided the same service for Art Prochaska.  
 17 Q. Did FOGY to your knowledge have a  
 18 website?  
 19 A. I don't know. I don't recall.  
 20 Q. Did you ever --  
 21 A. I don't know.  
 22 Q. -- visit a FOGY website?  
 23 A. Not to my knowledge.

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1 Q. Did you ever provide content to a  
 2 FOGY website?  
 3 A. Not to my knowledge.  
 4 Q. By the way, do you have a social  
 5 relationship with either Mr. or Mrs. Parrish or  
 6 Mr. Milliron?  
 7 A. I do with Mr. Milliron.  
 8 Q. And how long have -- well, first of  
 9 all, would it be fair to characterize the two of  
 10 you as being friends?  
 11 A. Yes.  
 12 Q. How long have the two of you been  
 13 friends?  
 14 A. Since I got to know him when he  
 15 showed up at my house to volunteer.  
 16 Q. And that would be right after you  
 17 announced your candidacy?  
 18 A. Yes.  
 19 Q. Do you have a social relationship  
 20 with either Dan or Kelly Kramer?  
 21 A. No, I don't.  
 22 Q. Have you ever been a client of  
 23 either Dan or Kelly Kramer?

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A. Yes, I have. In fact, I am right now.

Q. What is the general nature of the legal business that you are a client of theirs now?

MR. HOFF: You can answer that question to the extent you don't disclose attorney/client communications.

BY THE WITNESS:

A. He is representing me in my capacity as mayor in an issue dealing with Mr. Weis and an investigation that Mr. Weis, the state's attorney, is currently apparently undertaking.

BY MR. MUELLER:

Q. We're going to get to that, actually, in a bit. Has Mr. Kramer represented you at any time in the past?

A. Yes, he has.

Q. When has he represented you in the past?

A. Numerous times. He's represented -- he represented me in an issue with the County over our taxes one time. He represented me when my

husband got incorporated. He represented us when we incorporated our business.

Q. Would it be fair to characterize him as having been for an extended period of time your personal and family attorney?

A. Yes. Off and on, yes. We don't have him on retainer though. Just as issues arise.

Q. You know, nobody has me on retainer no --

A. No, we're not that wealthy.

Q. Hardly a basis on which to distinguish. Do you know whether your candidacy was endorsed by FOGY?

A. It's my understanding that they were not endorsing anything. They were supposed to be non-political.

Q. Do you know whether or not -- or excuse me, did you finish your answer?

A. Uh-huh.

Q. Do you know whether or not your campaign website had a link to the FOGY website?

A. Absolutely not. It shouldn't have

had.

Q. Do you understand what I mean by links on a website?

A. Absolutely. That they could come to my website, click on it, and go to some other website.

Q. Did you have any section of useful links on your website?

A. I -- I don't recall, but I hope we didn't.

Q. Do you know whether the FOGY website had a link to your website?

A. No, I don't. I don't even know they had a website.

Q. Can you tell me specifically what purpose your campaign committee served in terms of what function they performed and what tasks they did?

A. One of the main tasks, of course, was raising funds and keeping track of them so that we could make an accounting to the State to make sure that we did everything on, you know, very stringent, ethical standards. To strategize.

To encourage each other. That was the main purpose of it.

Q. And none of this strategizing ever involved a discussion of the pending landfill siting application?

A. Absolutely not.

Q. Have you ever had any conversations with Jennifer Pohlenz outside of casual conversation during the siting hearings?

A. Absolutely not.

Q. What's your understanding of the role that Derke Price played in the landfill siting process?

A. It was my understanding that he was supposed to represent the employees of the United City of Yorkville, not the City Council, but the employees.

Q. What was your understanding as to why the employees needed a separate attorney or even needed an attorney at all?

A. I don't really have a clear understanding of that. If it was explained to me, I don't recall.

Q. But it was your understanding that his attorney/client relationship was with some entity known as the staff or what you call the employees?

A. That's correct.

Q. And was it also your understanding that the employees would include technically qualified people with regard to landfill siting who would review the application and make a recommendation?

A. That's correct.

Q. When was Mr. Price brought into the process?

A. My recollection is that he was brought in early on to help pre-hearing process. He came in when we were going through the siting ordinance and all those things. He was -- he was there early on.

Q. And did you approve his being brought in for the purpose that he was brought in?

A. Absolutely.

Q. Did you think he was qualified toward that end?

A. I did.

Q. Did your opinion about whether he was qualified ever change prior to the end of the process?

A. Yes, it did.

Q. When did your --

A. Well, actually, could I qualify that?

Q. Please.

A. I would like to say I had concerns about how he handled himself but not specifically about his qualifications legally. So his advice -- no, I didn't have concerns about his advice but just how he handled himself.

Q. When did you first have concerns about how he handled himself?

A. During the annexation process when we -- he was working with our former city attorney and during the annexation process we had to go into an executive session and he had -- he yelled at the members of the City Council trying to get them to vote the way he wanted us to vote, and I had major concerns with that.

Q. The former city attorney would be Mr. Wyeth?

A. Yes.

Q. So your concerns with Mr. Price were regarding his demeanor?

A. Yes, and his trying to coerce us into voting the way he thought we should vote.

Q. Was that just a one-time concern during this annexation meeting or was that a continuing concern?

A. Since once the hearing began I did not have any discussions with him, I did not feel that he was after that time in a position to demand anything of me so I didn't feel as uncomfortable later on. So it was more of a concern during the annexation.

Q. And it is your testimony then that in skipping ahead here once the siting hearings began you didn't have any business -- substantive contact with Mr. Price?

A. That's correct. I had no contact with him beyond hearing him in the hearing process.

Q. All right. Did you ever form a belief that Mr. Price had a bias in favor of FOX Moraine or its application?

A. I want to answer honestly so I'm thinking about it. To be honest, after he tried to browbeat some of the aldermen into voting a certain way, I had concerns that that might be true.

Q. Did you ever confront him regarding those concerns?

A. Yes, I did.

Q. When did you confront him?

A. In that executive session. As we were leaving the executive session.

Q. Do you remember if this executive session was before or after the vote on annexation?

A. I can't recall exactly, but I do recall what it was about, what that executive session was about. So I don't know where it fit into the time frame.

Q. What was the executive session about?

A. It was about the vacation of Sleepy Hollow Road.

Q. And if I tell you I believe that that occurred after the meeting in September when the host agreement and the annexation were accomplished, would that refresh your recollection?

A. I would --

MR. HOPP: You don't have to take his word for it. The question is whether it refreshes your recollection.

BY THE WITNESS:

A. No, it does not.

BY MR. MUELLER:

Q. It's not particularly material anyway because I think we can pin it down.

A. We could.

Q. When you confronted Mr. Price, can you tell us what you said to him and what he said to you?

MR. HOPP: Can I just caution the witness that you're not obligated to reveal anything that occurred in executive session. If you choose to,

that's up to you, but you're not obligated to reveal what occurred in executive session.

THE WITNESS: I would prefer not to discuss that.

MR. MUELLER: I don't believe there's any privilege against questions in this forum for what was said between two individuals in an executive session, particularly, when it deals with this witness' belief regarding the alleged bias on a material issue of someone who was not her attorney, and so I'll ask that the question be certified.

MR. HOPP: That's fine.

THE WITNESS: Could I ask a question?

MR. HOPP: Do you want to (indicating) --

THE WITNESS: No, I would just -- it's just a general question. Was he not -- I thought he was our attorney.

MR. HOPP: He was an attorney retained by the City, that's correct.

THE WITNESS: Yes. I mean, this is before the hearing. He was acting as our attorney in conjunction with Mr. Nyeth during this executive

session. So he was acting as a city attorney at that time. He had not become the employees' attorney.

MR. HOPP: Let's move on.

BY MR. MUELLER:

Q. Now you have me a little bit confused. I thought you had testified that Mr. Nyeth -- or excuse me, Mr. Price was hired to be the employees' attorney and that that's the role he played?

A. That was during the hearing in December. He was there early on to somehow facilitate -- I don't know what he was doing. He was facilitating the process with Mr. Nyeth who had no experience in this process.

Q. When did you perceive that Mr. Price's role changed from a more generalized attorney for the City to just the employees' attorney?

A. Sometime in late fall they announced that he would be chosen to be the one who would represent -- that there had to be a separate attorney for the employees. There was a lot of

confusion with this whole thing.

Q. All right. Were you involved in the selection of technically qualified experts by the City to be part of that employees' group and to review the application and to make a recommendation?

A. No.

Q. Well, didn't the City Council have to approve those individuals?

A. Not to my knowledge. I don't -- I don't recall.

Q. Did you ever form an opinion either way as to whether or not those technically qualified experts were, in fact, technically qualified?

A. No. I -- I didn't. My opinion was that they were qualified.

Q. You're aware that these employees and Mr. Price prepared a report recommending siting approval?

A. Yes, I am.

Q. Did you agree or disagree with their conclusion?

A. I don't recall the details of their report at this time. So I can't -- I can't give my opinion on if -- what points of it I agreed with or what points of it I didn't agree with. I don't recall at this time.

Q. Well, their bottom-line recommendation was approval with conditions. Do you remember that?

A. Yes.

Q. Did you agree with that bottom-line recommendation?

A. At the conclusion of the hearings -- are you asking me how I would have voted?

Q. I'm asking you whether you agreed with the staff's -- staff report's bottom-line recommendation of approval with conditions?

MR. HOPP: Can I ask for a qualification as to when she would have agreed or disagreed?

MR. MUELLER: After the staff report came out which is after the substantive hearings were over. As I recall -- let's back up for a second. As I recall the staff's report came out a matter of days before the final decision.

THE WITNESS: Okay.

MR. HOPP: If -- again, you don't have to accept his characterization. If you recall, you can answer it. Technically there's no question pending.

BY MR. MUELLER:

Q. So assuming that to be the case, that there was an interval of only days between when the staff's report and recommendation came out and when the final vote happened, during that interval, did you agree with their bottom-line recommendation of approval with conditions?

A. No, I did not.

Q. Is there anything that you can recollect as you sit here that you specifically disagreed with in the staff's report?

A. No, I can't -- I can't recall the details of the report.

Q. All right. Did you at any time in the process ever form the belief that the staff or any -- or what you call the employees or any of them had a bias in favor of Fox Moraine?

A. No, I didn't think the staff had a

bias in favor of Fox Moraine.

Q. And that would include the staff's technically qualified experts, correct?

A. Correct.

Q. Did you participate in the hiring of Larry Clark as the hearing officer?

A. Could you qualify what you mean by the hiring? I voted to approve his hiring.

Q. Then I guess you've answered my question.

A. Okay. I didn't select him. I voted to approve him.

Q. Do you believe Mr. Clark was qualified for that function?

A. Yes, I did.

Q. Did anything happen during the siting hearings that caused you to change your belief?

A. No.

Q. You understood that one of the functions of a hearing officer under the City's ordinance was to make a recommendation regarding siting approval or denial?

A. That's correct.

Q. Are you aware that Mr. Clark made a recommendation for approval with conditions?

A. Yes, I am.

Q. Did you agree or disagree with his recommendation?

A. I did not agree with it.

Q. Is there anything specific that you recollect about his report and recommendations that you substantively disagreed with?

A. I don't recall his specific recommendations.

Q. If I can ask you for a second -- you've indicated you thought the staff was technically qualified and unbiased. You thought Mr. Clark was technically qualified and unbiased, and yet you disagreed with both of their recommendations. Is there a reason why?

A. Because I have a lot of confidence in my own ability to listen to facts and sift through them and come up with an independent decision based on all the facts and the nine criteria and weighing in all of the information



before I make a decision,

BY MR. MUELLER:

Q. Is that to say that you felt more qualified to evaluate the evidence than the technically qualified staff was?

MR. HOPP: I'm going to object to the form of the question as argumentative. You can certainly answer it if you understand it.

BY THE WITNESS:

A. I would say that I saw that I had been selected by the State to make this decision, not them, and that it was my role to make the decision. So I, hopefully, am more qualified to make that decision because the State obviously thinks I am.

BY MR. MUELLER:

Q. Fair enough. Now, at some point did you determine that Mr. Price should be replaced?

A. Not that I recall.

Q. When was the election?

A. The election was in April of 2007.

Q. Was that April 17?

A. Yes, I believe so.

Q. And when were you sworn in as mayor?

A. May 8, 2007.

Q. Did you retain other attorneys on behalf of any city business prior to your being sworn in?

A. No. I don't have the authority to do that.

Q. If I were to tell you that the law firm of Wildman, Harrold, Allen & Dixon as early as April 27, 2007, began work related to the landfill siting application and the decision on that application, would that come as a surprise to you?

A. No, it wouldn't come as a surprise.

Q. Who authorized that firm to begin work on April 17?

A. No one.

Q. They just on their own decided to start doing work on the landfill application?

MR. HOPP: If you know.

BY THE WITNESS:

A. I wasn't part of what their decision-making process was.

BY MR. MUELLER:

Q. Did you at any time on or before April 27, 2007, have any conversations with any member of the Wildman firm regarding doing work for the City?

A. Absolutely, yes.

Q. When would those conversations have taken place?

A. After I was sworn in as -- excuse me, after I was elected on April 17th I immediately began the process to look for a city attorney because Mr. Wyeth's term would run out with Mr. Prochaska's so he would be leaving with him, and I needed to find another city attorney for the City of Yorkville so I interviewed numerous attorneys. People called me. I talked to them. People sent me their resumes. I talked to them, and I also actively talked -- on my own called up different firms. And so one of the firms I talked to was Wildman Harrold, and after several weeks of this interview process I determined that they were the ones I was going to choose, and I notified them of the fact that on

May 8th they would -- their firm would be sworn in as the city attorney, and they informed me that they would have an attorney present that night who would then take on the duties of municipal attorney, that they were -- you know, if they got the vote by the City Council, which they did do.

Q. Who did you interview at the Wildman firm before you made your decision?

A. I talked to -- Mr. Matyas was the person I talked to, and he was one of the partners, I believe. And we discussed what I was looking for, and he felt confident, he said, that they could provide our city with good legal advice and municipal experience.

Q. And did you define the scope of the work that that firm was to do?

A. Did I define it? No.

Q. Did you tell them what scope of work you expected?

A. I told them I expected them to do all of the work that we would be facing as a municipality, development -- there was a lot of development work, annexation agreements. I did

1 mention that we were in the middle of a hearing  
2 process on the landfill that -- I detailed several  
3 things that were going on at the time that they  
4 would have to be up-to-date on, and there were a  
5 lot of things, a lot of issues before us.

6 Q. Did you tell them that their work  
7 was going to be restricted to landfill-related  
8 matters?

9 A. Restricted? Absolutely not. It  
10 wasn't restricted.

11 Q. Backing up for one second, is it  
12 true that on the night of April 17th when you  
13 became aware of your victory in the election that  
14 you publicly announced that one of your first  
15 formal acts was going to be to remove Mr. Wyeth?

16 A. Absolutely. Well, no. No, I didn't  
17 say I was going to remove him. I said -- I made a  
18 comment about him, but he automatically -- I don't  
19 remove him. He's out.

20 Q. What was the comment that you made  
21 about him?

22 A. I said that he was inept.

23 Q. And I take it you stand by that

comment?

1 A. Yes, I do.

2 Q. Did you ever have the belief at any  
3 time prior to Mr. Wyeth's resignation that he had  
4 a bias in favor of Fox Moraine?

5 A. I wouldn't say that I thought he had  
6 a bias. I just thought he was inept. I think he  
7 made mistakes that could hurt the City.

8 Q. Let me then ask a follow-up  
9 question. Was your opinion about Mr. Wyeth's  
10 ineptness based upon work that he did in  
11 connection with the Fox Moraine matter going all  
12 the way back to the annexation, or was it based  
13 upon other work he did for the City that was  
14 unrelated to the Fox Moraine matter or a  
15 combination of the two?

16 A. Combination of the two.

17 Q. So it was your understanding when  
18 you interviewed the Wildman firm that you were  
19 going to hire that firm to be the replacement city  
20 attorney for Mr. Wyeth or recommend the City's  
21 hiring of that firm?

22 A. It was a fact. Absolutely, that's

1 what -- that's what I was doing.

2 Q. And was there any particular  
3 individual in the firm that you wanted or was it  
4 the firm itself?

5 A. I -- I was attracted to the firm  
6 itself because they seemed very highly qualified  
7 and, hopefully, would know about the Open Meetings  
8 Act and other issues so that we would not once  
9 again end up on the Attorney General's website for  
10 violating the Open Meetings Act, which is very  
11 important to me. Hopefully, they would understand  
12 development issues. There were a lot of issues,  
13 and I just was looking for somebody who was very  
14 highly qualified and made that clear to them.

15 MR. MUELLER: Let's mark this as Burd  
16 Deposition Exhibit No. 2.

17 (Exhibit No. 2 marked.)

18 BY MR. MUELLER:

19 Q. Mayor, I'm showing you what's been  
20 marked as Burd Deposition Exhibit No. 2. Have you  
21 ever seen that document before?

22 A. Yes, I have.

23 Q. And the document purports to contain

1 time entries beginning on April 27, 2007; is that  
2 correct?

3 A. Yes.

4 Q. And that would be nine days before  
5 you were sworn in as mayor; is that correct?

6 A. That's correct, uh-huh.

7 Q. Did you direct the firm of Wildman,  
8 Harold, Allen & Dixon to begin work on behalf of  
9 the City starting on April 27?

10 A. No, I did not.

11 Q. Did you authorize them to do work on  
12 behalf of the City starting on that date?

13 A. No. I could not do that.

14 Q. Do you know if anyone at the City  
15 authorized them to start work on behalf of the  
16 City on that date?

17 A. No. That's -- I wouldn't know if  
18 they did, but since I'm the only one who has as  
19 mayor the ability to do so I -- I find that hard  
20 to believe that would have been the case.

21 Q. And you knew you could not authorize  
22 them to do work until after you had been sworn in  
and they had been approved by the City Council,

correct?

A. That's correct.

Q. Did the City pay this invoice?

A. Yes, they did.

Q. Did you recommend its payment?

A. No, I did not.

Q. Did you recommend against its payment?

A. No, I did not.

Q. You made no recommendation either way?

A. No. It didn't even come to me. It went to the finance director, and it goes from the finance director onto the bill list that the City Council reviewed.

Q. But it's your position now that all of the entries prior to May 5th represent work that was not authorized by you or the City; is that correct?

A. That's correct.

Q. And it's also your position that all of the entries prior to May 5th represent work that you weren't even aware of?

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A. That's correct.

Q. If I can direct you to April 30th, which is the third to the last entry on the front page.

A. Uh-huh.

Q. Do you see an entry there that says complete preparation for and conduct meeting with mayor?

A. That's correct.

Q. Did you meet with the firm on that day?

A. I don't recall, but I -- I know I met with them before they were sworn in several times.

Q. Did you believe that that meeting would not be billed?

A. I assumed it wouldn't be.

Q. Wouldn't, did you say?

A. Yeah. I didn't think it would be billed.

Q. Okay. If I can direct you to the next entry, which is also an April 30th entry, and I'm particularly interested in the very bottom

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portion of it which is begin to review evidence presented in opposition to landfill application. Do you see that?

A. Uh-huh.

Q. Did you ever direct this firm to review evidence in opposition?

A. No.

Q. Did you specifically direct them at any time to review evidence in opposition as opposed to evidence in favor or as opposed to all evidence?

A. No. In fact, my assumption was they were reviewing all evidence.

Q. Did you have a fee agreement with the Wildman firm prior to May 5th?

A. No. I couldn't have an agreement with them prior to May 5th.

Q. That was not a very artfully-asked question. I think what I was trying to say is did you have an understanding as to what the fee structure would be for the Wildman firm's representation of the City?

A. We had discussed it generally. They

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had told me -- Mr. Matyas told me what their fees are for partners and associates just generally and how they would deal with the city attorney, the person who would be designated to come to our municipal meetings, and I told them how many meetings there were and what we would be requiring as far as attending those meetings and just general discussions.

Q. You never proposed an upward limit to the Wildman firm?

A. Unfortunately not.

Q. Did you -- did they ever propose to you some type of fixed fee on a periodic basis such as X dollars per month?

A. Not at that time. Later on I think we had discussed that. I'm more familiar because of the current attorney how we work things out. I don't remember exactly how Mike Roth and I worked things out, but that was after.

Q. Well, Mike Roth was a member of the firm, wasn't he?

A. Absolutely. He was their -- the person that they chose to send.

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D. But you understood that you were going to be engaging the entire firm and all of its resources --

A. Right.

Q. -- in addition to Mr. Roth?

A. Yes.

Q. Now, in looking at this invoice, which is Burd Deposition Exhibit No. 2 dated June 15, 2007, I cannot in the \$94,000 plus worth of billing on this invoice find any time entries for work done for the City that was not related to the landfill siting application. Was there a separate invoice sent to the City for work that was not related to the landfill but related to the general legal requirements that a City has from day to day?

A. Yes.

Q. And did you ever direct the Wildman firm to separate those invoices, meaning landfill-related and not landfill-related?

A. No, I didn't.

Q. Do you know whether anyone did?

A. No, I don't know.

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MR. MUELLER: If we can mark now Burd Deposition Exhibit No. 3.

(Exhibit No. 3 marked.)

BY MR. MUELLER:

Q. I'm showing you, Mayor, a copy of what's been marked as Burd Deposition Exhibit No. 3.

A. Oh-huh.

Q. Have you ever seen that document before?

A. No.

Q. If I tell you that this is a copy of the minutes of the Yorkville City Council meeting of May 8, 2007, printed out from the archive of minutes on the City Council's website, would you be able to review this document and confirm whether or not that appears to be the case?

A. It looks -- looks like what I would expect it to look like, yes.

Q. All right. If I can direct your attention to page 3 of these minutes to the section underneath Mayor's Report?

A. Okay. So he's saying yes it was --

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MR. HOPP: There's no question pending.

THE WITNESS: Oh, okay.

BY MR. MUELLER:

Q. I guess what I would ask you is to review for yourself the entire section under the caption Appointment of city attorney, which is basically the balance of that page.

A. Okay.

Q. Now, Mayor, you've read the section I asked you to review which is from Appointment of city attorney to the bottom of page 3, correct?

A. Correct.

Q. Is that an accurate recitation of your recollection of what occurred at the May 8th board meeting or City Council meeting?

A. I don't recollect it, but I have no problem accepting this.

Q. Okay. You'll, first of all, notice that your request was to appoint Mike Roth rather than the firm of Wildman, Harrold, Allen & Dixon, correct?

A. That's correct.

Q. Is there something that had changed

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between the time you interviewed the Wildman firm when you said it was your intention to recommend appointment to the firm and the meeting on May 8th when you recommended the specific appointment of Mike Roth?

A. My understanding -- I had been told that it had to be a specific individual who was appointed city attorney and that that specific individual would then be able to determine as city attorney other facilities or other resources he could use legally.

Q. Now, it also says in here that the appointment was to be as interim city attorney and it uses the term short-term; is that correct?

A. Uh-huh.

Q. I thought you had indicated that you had settled on the Wildman firm to be the City's attorney indefinitely going forward?

A. That's true. I -- my recollection at that time was I had felt confident with them, but I -- it appears that according to this that's not the case.

Q. And then you'll notice in the second

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paragraph here that there is reference to a flat fee that was proposed. Excuse me, a fixed number of hours not to exceed 50 hours per month was proposed. Was that your understanding of the upper limit on the Wildman firm's activities?

A. My understanding was that was for a specific -- attending the meetings and dealing with those issues that came out of the meetings.

Q. So your understanding was that the 50 hours per month for a fixed fee was not the extent of the full work for the Wildman firm; is that correct?

A. That's correct.

Q. Was there any written fee proposal that was circulated among the aldermen prior to this meeting?

A. I don't recall. I don't know if there was one attached to this or not. I don't recall.

Q. Well, it says she indicated that the City Council had information before them. Had you presented them with any written information regarding the scope and cost of any attorneys

activities on behalf of the City?

A. I don't recall. I don't recall if there was something -- I would -- based on this I would assume there was something in the packet because that's what that would mean. It would have come to -- it would have come to the staff, and they would have included it in the packet.

Q. Now, you never indicated to the City Council that either Mr. Roth or Mr. Wildman was going to be given carte blanche to bill for landfill-related activities, did you?

MR. HOPP: Object to the form of the question, argumentative.

MR. MUELLER: You can answer the question.

THE WITNESS: Could you restate that question?

BY MR. MUELLER:

Q. All right. You never indicated to the City Council that the Wildman firm or any member of it was also being hired to perform services related to the landfill siting application with no upper limit on the amount or cost of those services?

A. No, I didn't indicate that to the City Council.

Q. In your opinion does the action of the City Council on May 8th constitute retaining the Wildman firm to perform services related to the landfill siting application with no upper limit on the amount or cost of those services?

MR. HOPP: Object to the form of the question.

MR. MUELLER: You can answer if you understand the question.

THE WITNESS: I -- that's not the same question I just answered? Would you say it again? I don't see the difference between what I just said.

BY MR. MUELLER:

Q. Do you believe that the City Council's action of May 8th constituted approval for unlimited services by the Wildman firm related to the landfill matter?

MR. HOPP: Object to the form of the question. I don't think anybody has ever said unlimited, and I think it's argumentative.

MR. MUELLER: She's never proposed that there was a limit. So you can answer if you know.  
BY THE WITNESS:

A. I haven't had any thoughts on it.

BY MR. MUELLER:

Q. Was there on or before May 8th ever a limit placed on the amount of landfill-related services that the Wildman firm would be performing?

A. No. And I would just like to point out that the City Council at every meeting approves a bill list so, obviously, it's in their hands at any moment to put a limit on it. It's up to the City Council.

Q. Are you aware of any subsequent City Council meeting when the performance of services by the Wildman firm was ratified by the Council other than indirect ratification through the approval of bills?

MR. HOPP: Object to the form of the question. If you understand it, you can answer it.

THE WITNESS: I don't understand it.

MR. MUELLER: Why don't you read that one back please?

(Record read as requested.)

MR. MUELLER: Do you understand the question?

THE WITNESS: No, I don't.

BY MR. MUELLER:

Q. All right. Well, it's actually not a trick question, Mayor. What I'm trying to get at is was there a subsequent meeting when the City's relationship with the Wildman firm was either re-ratified or more explicitly formalized to your knowledge?

A. A subsequent meeting to this? Yes, there was.

Q. When did that happen so I can know what minutes to look at?

A. Apparently, I can't give you an exact date, but it would have had to have been when Mr. -- well, I guess -- no, I guess that's not true. I was thinking that something would have occurred when Mr. Roth left the firm to clarify what was going on, but I don't think that

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happened because I think he still -- he still kept then on as the attorneys.

Q. All right.

A. So I can't -- I can't say that there was something before the City Council.

Q. So there's nothing that jumps out at you now as in like I just didn't see it in the minutes but you're aware of --

A. No, I don't recall any specifics.

Q. Okay. Let me follow up then. Sometime shortly after May 8th Mr. Wyeth -- or, excuse me, Mr. Roth left the Wildman firm, correct?

A. Several months after.

Q. At that time the Wildman firm continued to perform services, right?

A. Right.

Q. And Mr. Roth continued to perform services?

A. Right.

Q. Would it be fair to say that after that -- after Mr. Roth left the Wildman firm he did not perform any services related to the

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landfill siting appeal and that those were performed exclusively by the Wildman firm?

A. I -- I can't -- I can't make a statement on that because I don't know what Mr. Roth specifically did.

Q. You didn't review his bills on a monthly basis?

A. No. The finance director does that.

Q. When did Mr. Roth resign as city attorney?

A. I think it was somewhere around October of 2007.

Q. And his replacement is?

A. Kathleen Field Orr.

Q. What is the name of her firm?

A. Kathleen Field Orr & Associates.

Q. That firm has no connection to the Wildman firm, does it?

A. I -- I don't know what her connections are.

Q. Well, I mean, to your knowledge it's not a subsidiary of the Wildman firm, is it?

A. No. It's not.

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Q. Was there any action taken after Mr. Roth's resignation as city attorney to now formalize the continued performance of legal services on behalf of the City by the Wildman firm?

MR. HOPP: Object to the form. You can answer if you know and if you understand the question.

BY THE WITNESS:

A. If you're asking if there was any vote, --

MR. MUELLER: Yes?

THE WITNESS: -- in the City Council, not to my knowledge.

MR. MUELLER: All right. Let's mark --

MR. HOPP: We have been at this for over an hour. Can we --

MR. MUELLER: Do you want to take a break?

MR. HOPP: -- take a break?

MR. MUELLER: Sure.

MR. HOPP: Especially if you're changing subjects.

(Brief break.)

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BY MR. MUELLER:

Q. Do you remember, Mayor, toward the end of March of 2007 advising or releasing some reports that had been given to City Council members in executive session?

A. Some memos, --

Q. Memos.

A. -- yes.

Q. Were you the person that released those memos?

A. I released the memos. I did -- I did give some memos out.

Q. And who did you give the memos out to?

A. I gave them to Heather Gillers from the Beacon News after she called me and asked me for them.

Q. And why did you release executive session memos to a member of the press?

A. They weren't executive session memos.

Q. What was your understanding of the memos?

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A. They were memos sent to the aldermen from the city attorney.

Q. What was your purpose in releasing them to Heather Gillers?

A. My -- she asked me for them. She asked me if I had them, and I said yes, and she asked me if she could see them, and I said yes.

Q. What public purpose were you hoping to further in giving a reporter memos that had been sent by the city attorney to City Council members?

A. Well, as a former reporter who covered meetings, as an editor who oversaw these kinds of things coming in to the City, as somebody who follows government for all my adult life, what I saw in these memos was something going on with the way we treated developers and how we handled our personal integrity, and it concerned me because it just didn't seem like as a resident of this community something I would like my government to be doing and I thought that people should be aware of it. And it was a high concern as far as open meetings and keeping our integrity

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istact as a city. So I felt that it was a concern of mine and it no longer affected anything that was going on, and so after thinking about it very seriously I decided to share them with her.

Q. How did those memos reflect on the City's integrity or the Council's integrity in your opinion?

A. Because there was a certain element in it of let's not tell these people something. Let's -- let's make them think that we want them to come in to the city because we like them and we want to promote them and encourage their development when we really had some other, you know, goal in mind.

Q. What was the other goal that you had in mind?

A. It was the annexation of some other property for some other purpose.

Q. What was the other property and what was the other purpose?

A. Well, the other property was the North Star property.

Q. And what was your understanding of

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the purpose of annexing the North Star property?

A. It was coming in as industrial, manufacturing.

Q. That was your understanding of the extent and the purpose of annexing the North Star property?

A. Oh-huh.

Q. You never understood that North Star intended to file an application for landfill siting application and the purpose of annexation was to facilitate the filing of that application?

A. Yes, I did know that.

Q. And you were opposed to the annexation at the time, weren't you?

MR. HOPP: Object to the form. Assumes facts not in evidence.

MR. MUELLER: She was a City Council member. You voted against the annexation, didn't you?

MR. HOPP: Maybe not at the time. It assumes facts not in evidence. You can answer if you understand the question and understand the sequence.

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MR. MUELLER: Do you understand the question?

THE WITNESS: I guess I got kind of lost here because I thought we were -- I thought we were talking about the memos.

MR. MUELLER: Well, my question now is you were opposed to annexation, correct?

MR. HOPP: Objection. At what time?

MR. MUELLER: At the time the decision was made on annexation you were opposed, weren't you?

BY THE WITNESS:

A. I think we took several votes on it. I know I voted against it at least once, uh-huh.

BY MR. MUELLER:

Q. And is the reason that you were or that you voted against annexation because you did not want the possibility of a landfill to be sited in the city of Yorkville?

A. No. I was against it because I didn't like the process and the way it went together and all the secret meetings, and I wanted it to be more open, and I wanted people to be more aware of what was going on, and I wanted the

aldermen to be more aware of what was going on because our former city administrator did not like to share facts with us, nor did our former city attorney. So --

Q. Which city administrator was that?

A. Mr. Graff.

Q. Do you want to spell his last name for the court reporter?

A. G-R-A-F-F.

Q. And all of that thinking is what prompted you to release the memos?

A. Yes.

Q. And the fact that they were released some three weeks prior to the election was just coincidental?

MR. HOPP: Object to the form of the question, argumentative.

MR. MUELLER: Either it was coincidental or it wasn't?

BY THE WITNESS:

A. Coincidental? Accidental?

BY MR. MUELLER:

Q. Did you release the memos when you

did in the hope -- in the hope of enhancing your opportunity to be elected?

A. I released the memos in the hope of making people understand some of the issues that I had been facing with the former administration.

Q. When did Mr. Graff leave as city administrator?

A. He had left, I think -- I think he had left the year before.

Q. He left -- he left well before the annexation, didn't he?

A. Yes, he did.

Q. Did you run with a slate of other candidates?

A. Yes.

Q. Who was on that slate?

A. Wally Werderich, Joe Flocher. Kathy Sibensallax was running for clerk.

Q. Would you characterize Mr. Werderich as being an open landfill siting opponent during his campaign?

A. No.

Q. He had never publicly spoken out

against it to your knowledge?

A. No.

Q. Even at these meetings relating to annexation when a lot of the public speakers wanted to talk about landfills you don't recall Mr. Werderich ever speaking out against the landfill?

A. No, I don't.

Q. Would you characterize Mr. Flocher as being a public landfill opponent?

A. No, I wouldn't characterize him that way.

Q. Now, you previously indicated that privately you knew Mr. Werderich was opposed because he had previously been affiliated with FOBY?

A. I heard that from other people that he was, yes.

Q. Did you privately -- or did you know Mr. Flocher's private view on landfill siting?

A. No. He and I never talked about that.

Q. Now, the City came in for quite a



1 bit of criticism from the public because of this  
2 process revolving around the annexation. Would  
3 you say that's a fair statement?

4 A. Yes.

5 Q. And that some members of the public  
6 at least and some vocal members perceived some  
7 excessive degree of secrecy and urgency in the  
8 process that led up to annexation.

9 MR. HOPP: Object to the form.

10 MR. MUELLER: Is that -- is that a fair  
11 characterization?

12 MR. HOPP: Object to the form. He's asking  
13 you what the public perceived. If you understand  
14 the question, you can answer.

15 BY THE WITNESS:

16 A. I don't know what the public  
17 perceives.

18 BY MR. MUELLER:

19 Q. Well, did you view the public as  
20 perceiving that there was excessive urgency and  
21 secrecy in the process?

22 A. I -- did I view them as -- I got  
23 lost in that question. I don't know that I viewed

1 -- I could tell you what I felt but I --

2 Q. Well, what did you feel, first of  
3 all?

4 A. Yeah, I felt we were definitely  
5 moving along quickly, that we were holding -- we  
6 weren't doing everything in the open for the  
7 annexation as I had hoped that we would, and we  
8 actually in the process were cited by the Attorney  
9 General for a violation of the Open Meetings Act  
10 which I think is a red flag right there. I think  
11 we should have been cautious and done everything  
12 very openly so everybody would know what was going  
13 on.

14 Q. When were you cited for violation of  
15 the Open Meetings Act?

16 A. Sometime in 2006. We took a --  
17 Mr. Wyeth had us take a vote during a committee of  
18 the whole meeting. I believe it was on the -- one  
19 of the issues -- it could have been the vacation  
20 of Sleepy Hollow Road or some -- some issue anyway  
21 that we had to -- that was then null and void, and  
22 we had to take another vote at another City  
23 Council meeting.

1 Q. Now, you've got me completely at a  
2 loss here. I'm unaware of the Attorney General  
3 ever citing you. Can you be more specific as to  
4 how that citation occurred and what evidence of it  
5 there is?

6 A. Yeah. The Kendall County Record  
7 made a complaint against the City of Yorkville  
8 with the Attorney General of the State of  
9 Illinois, and we received a letter that we were in  
10 violation of the Open Meetings Act because we took  
11 a vote in a committee of the whole meeting. Even  
12 though we informed -- I informed Mr. Wyeth at the  
13 time that I was concerned about this, he still --  
14 he asserted that that was perfectly legal. I  
15 don't know where he got that from, but -- so they  
16 took the vote, and then he was informed that was  
17 illegal so we had to do it again.

18 Q. So you've given us your view of what  
19 was wrong with the annexation process and you've  
20 acknowledged that the City came in for a fair  
21 amount of public criticism with regard to that  
22 process, correct?

23 A. Correct, and legally.

1 Q. What was the nature of the criticism  
2 that you -- that the City got from the public as  
3 you understood it?

4 A. Well, the City -- at the annexation  
5 hearing when the people got to voice their  
6 concerns, they felt that the whole process was  
7 rushed along before they could mobilize and ask  
8 more questions and be more involved and it was  
9 done much quicker than we had ever done anything  
10 previously. There wasn't enough time for the  
11 aldermen to even understand the issues to  
12 understand how to safeguard the city when we  
13 entered into agreements. They just felt that, I  
14 think, that this was rushed along too quickly.

15 Q. Now, did all of that criticism in  
16 your opinion leave a little bit of a hangover with  
17 the City Council as we went into the sitting  
18 hearings?

19 MR. HOPP: Object to the form of the  
20 question. I think it's vague, but you can answer  
21 it if you understand it.

22 BY THE WITNESS:

23 A. I can't speak for the City Council,

only myself.

BY MR. MUELLER:

Q. Well, did it -- did all of that criticism leave you a little sensitized as the landfill siting hearing itself began?

A. It left me feeling that I wanted to see that everything was done according to strict ethics and the state statutes and that nothing again would be done that would in any way look illegal to anybody and everything would be above board and open.

Q. And that is why you commissioned the Wildman firm to start working on the landfill application nine days before you were sworn in as mayor?

A. I didn't commission them to begin working. I've already stated that for the record.

Q. They completely took it upon themselves to do that?

MR. HOPP: Objection. This is -- this is something we just covered. It's been asked and answered.

MR. MUELLER: That question has not been

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asked and answered.

MR. HOPP: Yes, it has. You can answer it if you like.

BY THE WITNESS:

A. All I can speak to is what I did. I don't know what their reasoning is, what -- I can't speak for them.

BY MR. MUELLER:

Q. Did you ever say to anyone at the Wildman firm please don't do anything until our May 8th meeting when I'm going to present this and you to the City Council?

A. No.

Q. Did you just assume that they understood that?

A. I would hope that they -- if they didn't understand that they were going to be sworn in on May 8th and if they didn't understand what my authority was and that it would only begin on May 8th, then I would have had, you know, deep concerns. I assumed they already know the law. That's why I hired them.

Q. So the City in effect paid bills for

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the Wildman firm that were for unauthorized work, correct?

MR. HOPP: Object to the form of the question.

MR. MUELLER: I don't understand what's wrong with the form of the question. Either she knows or she didn't.

MR. HOPP: You can answer the question if you understand it, if you accept his characterization, and you don't need to accept his characterization. You can answer the question if you like.

BY THE WITNESS:

A. The City paid Wildman Harold's bill. That does not -- that's the fact. They paid it.

BY MR. MUELLER:

Q. And you're telling me that the work before May 8th was not authorized?

A. I did not tell them to do it.

Q. So, therefore, do you conclude now after the fact that the City paid for unauthorized work?

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A. I don't -- I don't conclude anything. All know is the City paid the bill.

Q. Do you believe the City is entitled to a refund for the work before May 8th?

A. I don't know why they would be entitled to a refund. They paid the bill. They knew what the bill was. It was in the bill list. They looked it over. They felt comfortable paying it, and they paid it. They knew what they were doing when they paid it. I don't know what they are thinking now, but I haven't heard anything to the contrary that they're unhappy with the service we have been getting.

Q. Have you ever seen an engagement letter from the Wildman firm?

A. An engagement letter?

Q. Yes.

A. I've -- I've seen -- I guess that's what it is, yes. I think that's what it was, yes.

Q. When did you see the engagement letter?

A. I think it came through the end of May.

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Q. Who signed that letter on behalf of the City?

A. I don't know if -- it wasn't signed. I don't believe it was signed.

Q. The firm did not ask you to acknowledge the engagement by signing and returning the letter?

MR. HOPP: If you know. If you remember. BY THE WITNESS:

A. I don't recall. BY MR. MUELLER:

Q. Did you or anyone else on behalf of the City ever execute a scope of services agreement with the Wildman firm?

A. Not that I recall.

MR. MUELLER: Going back to the release of the memos, let me show you what we are going to have marked as Burd Deposition Exhibit No. 4, I believe, or is it 3?

THE REPORTER: 4.

MR. MUELLER: 4.

(Exhibit No. 4 marked.)

BY MR. MUELLER:

Q. You're looking at what's been marked as Burd Deposition Exhibit No. 4 which is a three-page article on the release of the memos and other subjects. Have you ever seen that article before?

A. Yes.

Q. Okay. Is there anything in the article that is attributed to you which is not accurate?

MR. HOPP: Do you want a break so you can read the whole thing?

THE WITNESS: Well, yeah, I'm going to read it all.

BY MR. MUELLER:

Q. Actually, I'm going to withdraw the question because that's not my primary area of interest, and rather than take five minutes to read it, we'll move to the third page. On the third page of this exhibit there is a section in the middle column with the headline "Slams Opposition Group." Do you see that?

A. Oh-huh.

Q. And there is a lengthy quotation starting in the third paragraph in that section attributed to John Nyeth, and I would like you to read the three para- -- not for the record but just to yourself the three paragraphs beginning with a very small but energetic group of concerned citizens. Have you read that, Mayor?

A. Oh-huh.

Q. Assuming that Mr. Nyeth actually said that, do you agree with any or all of the sentiments he expressed there?

MR. HOPP: I'm going to object to the form of the question in that it asks her to make an assumption that she can't verify.

MR. MUELLER: Well, that's why I asked her to make the assumption. And assuming it's true, I mean, do you agree with what he said?

THE WITNESS: Which part of it?

MR. MUELLER: Any or all of the three paragraphs.

BY THE WITNESS:

A. No. I very seldom agree with Mr. Nyeth.

BY MR. MUELLER:

Q. Did you think that a small but energetic group of concerned citizens dominated the discussions?

MR. HOPP: I'm going to object to the form, vague. Which discussions?

MR. MUELLER: The discussions regarding the landfill.

MR. HOPP: Discussions with whom? It's --

MR. MUELLER: Well, if she can -- if she understands the question, she can answer it.

MR. HOPP: Fair enough.

BY THE WITNESS:

A. At the time he was saying this we were in the middle of this landfill hearing process, and they -- you know, they, obviously, were -- there was a group participating so that group was -- at that time I suppose you could -- you could say that they were dominating it because -- well, actually, no, because we were getting both sides so I wouldn't agree with that.

BY MR. MUELLER:

Q. Well, let's go all the way back to

when the annexation hearings began. Did you ever feel that the opposition groups or any of their members conducted themselves inappropriately during any public meetings or hearings that you were present for?

A. The opposition groups?

Q. Yes.

A. I would -- I would probably say yes. I think they were sometimes very emotional and a little too -- you know, they sometimes disrupted meetings so, yes.

Q. And actually --

A. Both sides.

Q. Wasn't Mr. Milliron one of the most disruptive members of those opposition groups in terms of interrupting meetings and acting in a way that you would characterize as disruptive?

A. I don't recall who the individuals were that I took exception to, but I think there seemed to be a lot of them.

Q. You testified that Mr. Milliron was a member of your committee and actually became your friend in the process?

A. Yes, he did.

Q. Did you ever pull him aside and tell him to cool it or something to that effect?

A. No, I didn't talk to him about the landfill or the -- if you're depicting at the time with the landfill issues, no.

Q. Even at the time of the annexation issues.

A. No.

Q. Did you ever during the annexation and road vacation process pull Ron Parrish aside and tell him that he was being disruptive and to calm down at the meetings?

A. No. I feel that everybody is entitled to their free speech, and as long as it doesn't -- if they're not representing me -- if they had showed up there and said I'm here on behalf of Valerie Hurd and this is what I say, then I would have said absolutely not, but they're entitled to their own opinions.

Q. Do you remember if Mr. Milliron was ever threatened to be removed from a City Council meeting during the annexation and landfill hearing

and decision process?

A. I don't specifically remember that time frame. I know he has been threatened periodically. There was more than one time, but I don't remember the exact time.

Q. And it never embarrassed you that a member of your campaign committee had to be threatened with removal from the City Council meeting?

A. No.

Q. Did you think that the threats to remove him were inappropriate and should not have been made?

A. It doesn't embarrass me that people express themselves because it doesn't reflect on me, but what I said was I don't remember who specifically -- I don't remember -- I just know that there were some times in there, and it doesn't reflect on me so no.

Q. Did the City annex some property owned by Virginia Wells in the summer or fall of 2007?

A. Yes.

Q. How long did it take from the beginning of that annexation process until it was completed?

A. I don't remember.

Q. Would it be fair to characterize that as a very speedy annexation?

MR. MOFF: I object to the form. She said she didn't remember.

MR. MUELLER: Well, --

BY THE WITNESS:

A. No, I can't characterize it as anything. I don't remember.

BY MR. MUELLER:

Q. You don't remember anything about the timing or the duration of the Wells annexation process?

A. No.

Q. I take it then you don't believe that anything about the Wells annexation would subject the City to the same criticisms about secrecy, hidden agendas, and moving too fast that you've characterized as having been made during the North Star annexation?

A. No. I feel that this was a piece that was contiguous to us and it was a simple annexation.

MR. MUELLER: All right. Let me show you another exhibit, and we're going to call this Burd Deposition Exhibit No. 5.

(Exhibit No. 5 marked.)

BY MR. MUELLER:

Q. This is a page that purports to be from the Sunday Beacon News on April 15, 2007. Did you ever see this before?

A. Yes.

Q. Well, that puts you ahead of Alderman Spears. Do you remember being interviewed by the Beacon News --

A. Yes.

Q. -- for this article?

A. Uh-huh.

Q. And would I be correct that Heather Gillers was the one that interviewed you?

A. Uh-huh.

Q. Were you, in fact, asked whether a state -- or safe state-compliant landfill would be

a positive, negative, or neutral for Yorkville?

A. Yes.

Q. And can you read for the record your answer to that question as quoted in the newspaper?

A. "Is there such a thing as a safe state-compliant landfill? I don't know if that's an oxymoron."

Q. Is that, in fact, what you said?

A. Yes.

Q. Does that statement imply that in your opinion a safe state-compliant landfill was an impossibility?

A. I said I don't know -- I don't know at that time. I didn't know. We were still going through the hearings, and we had on the record heard people who said that all landfills leaked. So based on testimony that I had heard, I wasn't sure that if that was a possibility or not. I was concerned that they all leaked based on what I had heard during the hearings.

Q. Do you remember who testified that all landfills leaked?

A. No, but I remember part of the testimony was the 80 acre -- the 80 feet, I believe it is, of clay, that that would be a good barrier because of the leakage.

Q. I understand the word oxymoron as being -- meaning that two things -- two words are really opposite when used together. Is that your understanding of an oxymoron?

A. Yes.

Q. And, I mean, were you saying here that landfill and safe are oxymorons?

A. No.

MR. HOPP: Objection, asked and answered, but go ahead and answer.

THE WITNESS: I'm sorry?

MR. HOPP: Go ahead.

MR. MUELLER: She answered it.

BY MR. MUELLER:

Q. Then what are the words here or the concepts that in your opinion were oxymorons?

A. I said I don't know if it's an oxymoron. I'm still trying to determine that. I haven't made --

Q. Did you write --

A. -- a decision.

Q. Did you write that out for Heather Gillers or just give it to her verbatim?

A. On the phone.

Q. During the process of annexation, road vacation, and re-annexation, all of the ancillary Fox Moraine-related events that led up to the siting hearings, did you ever have any conversations other than a casual hello or something to that effect with Mike Blazer or Jeff Jeep?

A. Could you state that again so I get the time frame?

Q. From September of '06 until the hearing started in March of '07 --

A. Did I have any --

Q. Any conversations with Mike Blazer other than a casual hello at a public meeting?

A. Not that I recall.

Q. How about with Jeff Jeep?

A. No.

Q. Did you ever have any telephone

conversations with either one of them?

A. No.

Q. And I'm correct that you never discussed the landfill application with any members of your campaign committee; is that right?

A. Landfill application? I can't recall. We might have discussed the siting ordinance. I can't recall.

Q. The siting ordinance you said?

A. Yes.

Q. Other than the siting ordinance did you ever discuss with your campaign committee the landfill siting application or the evidence at the public hearing?

A. No, absolutely not.

Q. That's with no member of your committee?

A. No.

Q. Did you ever discuss that with any member of the public?

A. Not that I can recall.

Q. You were recently quoted -- and I'm sorry, I don't have the article -- as talking

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about there being traffic problems with the landfill application. I don't know if you saw that article. It might have been yesterday or today in the Beacon News. And I think you were quoted in response to some concern about rising waste disposal rates in the community. Do you recall what I'm talking about?

A. In the newspaper?

Q. Yes.

A. No.

Q. Have you -- or did you believe there were traffic problems with the siting application?

MR. HOPP: Objection to the form. It doesn't state a time frame.

MR. MUELLER: At any time did you believe there were traffic problems with the siting application?

BY THE WITNESS:

A. Traffic problems? I did believe it didn't meet the criteria for the transportation.

BY MR. MUELLER:

Q. Now, does the Village put out a newsletter?

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A. City, yes.

Q. Does the City put out a newsletter?

A. Yes, we do.

Q. Who writes that newsletter?

A. The community relations officer, Olorin Spies.

Q. I think there's a reference in there to your talking about traffic problems with the siting application. Did you review the last issue of the newsletter?

A. Yes, I did. Well, no, I've been -- I've got it at my house. It came to me.

Q. Now, Rose Spears testified that any additional traffic on Route 47 without that road becoming a four-lane road through Yorkville in her opinion would make it impossible to meet the traffic criterion. Do you agree with that statement?

MR. HOPP: I object to the form. I'm not sure that adequately characterizes Ms. Spear's testimony.

BY MR. MUELLER:

Q. Well, assuming she said that, would

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you agree with that statement?

A. No.

Q. During the siting hearings and -- well, let's say during the period of September 1, 2007, until the end of May -- or strike that. September 1, 2006, until the end of May 2007 did you use e-mail?

A. Yes.

Q. Did you use a City e-mail address or a personal e-mail address?

A. Personal.

Q. What was your personal e-mail address during that period of time?

A. Val.Burd@comcast.net.

Q. And is that still your e-mail address?

A. Yes, it is.

Q. Did you receive any e-mails at that address from anyone expressing anti-landfill opinions during anytime in the time frame that I've given you?

A. The thing -- the City also forwarded any e-mails sent here to the City to my home

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e-mail address and any e-mails that I got at all that said anything in the landfill I didn't read them. So I just e-mailed people back I'm sorry I can't talk about this. So one way or the other I just didn't pay attention to them.

Q. Approximately how many anti-landfill e-mails would you have received in that period from September 1, '06, to May 31st of '07?

A. I wouldn't know because I didn't read them. I just told people if you -- whatever your feelings are on this, either way, I can't discuss it, I'm sorry.

Q. Well, approximately how many responses in the nature of I'm sorry I can't read this and discuss it would you have sent out to people?

A. I don't recall. I -- everything that I did I packaged up and gave it to the attorneys so I --

Q. Did you print out all of the e-mails that you had received --

A. Yes.

Q. -- and gave them or had you deleted

them prior?

A. No, I didn't delete any. I didn't delete any because I thought we were supposed to keep a record of everything so I just left -- left it in there.

Q. Now, I don't recall seeing in discovery any e-mails by you to people saying I'm sorry I can't talk about this or words to that effect.

A. Well, see, the problem is on my computer after ten days -- after a month it deletes all of the things that I send out, but it doesn't delete what's in my file.

Q. So as I understand you're saying your sent box is purged automatically by Comcast but your inbox accumulates indefinitely?

A. Right, until it gets to a certain too many and then --

Q. Do you pull messages off your Comcast server onto a program that exists on your hard drive such as Outlook Express?

A. No.

Q. So you use basically web-based mail?

A. Yeah. I have a Mac so I don't use -- I have a Macintosh.

Q. Approximately how many phone calls would you have received during the period from September 1 of '06 to May 31st of '07 relating to the landfill?

A. I don't recall. I don't recall getting many.

Q. Would you have returned any of the ones that you did receive?

A. No.

Q. Would you have received those calls on your cell phone or your home phone?

A. My home phone.

Q. Did you converse on a regular basis on either of those phones with the members of your campaign committee?

A. Yes.

Q. And that would include Mr. Parrish and Mr. Milliron?

A. Yes.

Q. What was your home phone number during the period of time in question?

A. 530-553-7510.

Q. And what was your cell phone number during the period in question?

A. 638-228-6464.

MR. MUELLER: All right. If we can take about three minutes, I may actually be done.

MR. ROFF: Okay.

[Brief break.]

BY MR. MUELLER:

Q. Okay. I've just got a couple more.

Do you have a social relationship with Dallas Ingemansson or either of -- or any of his children?

A. No.

Q. Has the Ingemansson Law Firm ever done any work for you or your husband?

A. Not that I recall.

Q. Did you receive any phone calls from Dallas Ingemansson during the period September 1, 2006, through May 31, 2007?

A. No.

Q. Would that also be true of Mr. Ingemansson's sons?

A. I don't recall talking to them.

Q. Did anyone named Ingemanson contribute anything to your election campaign to your knowledge?

A. Not to my knowledge, no.

Q. Did Mr. Ingemanson come to your election night victory celebration?

A. I don't think so. I didn't see him. In fact, I think Boyd was -- Boyd Ingemanson was supportive of Art, the former mayor.

MR. MUELLER: That's all the questions I have. Thank you.

MR. BLAZER: Nothing.

MR. HOPP: No questions.

THE REPORTER: Signature?

MR. HOPP: We will reserve signature.

MR. MUELLER: Go ahead and write this and send me the original and send him the signature page, and you're ordering a copy, right?

MR. HOPP: That's right, yes.

Reporter: Belinda Harr  
BEFORE THE  
ILLINOIS POLLUTION CONTROL BOARD

FOX MORaine, LLC, v. UNITED CITY OF YORKVILLE  
PCB 07-146

I hereby certify that I have read the foregoing transcript of my deposition given on June 18, 2008, consisting of page 1 through 105 inclusive, and I do again subscribe and make oath that the same is a true, correct, and complete transcript of my deposition as given as aforesaid, as it now appears.

Please check one:

\_\_\_\_\_ I have no corrections.

\_\_\_\_\_ Number of errata sheets enclosed.

\_\_\_\_\_  
VALERIE BURD

Case Name: Fox Moraine v. Yorkville

Deposition of: Valerie Burd

Date taken: June 18, 2008

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STATE OF ILLINOIS)  
                          ) SS.  
COUNTY OF GRUNDY)

I, Belinda A. Harr, CSR No. 04-003215, do hereby certify that VALERIE BURD was first duly sworn by me to testify the truth; that the above deposition was recorded stenographically by me and reduced to typewriting under my personal direction; and that the foregoing is a true and correct transcript of the testimony given by the said witness at the time and place previously specified.

I further certify that I am not counsel for nor in any way related to any of the parties to this suit, nor am I in any way interested in the outcome thereof.

IN WITNESS WHEREOF I have hereunto set my hand this 7th day of July, 2008.

\_\_\_\_\_  
Certified Shorthand Reporter



AFFIDAVIT OF SERVICE

The undersigned, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, hereby under penalty of perjury under the laws of the United States of America, certifies that on September 29, 2008, she served a copy of the foregoing upon:

Via E-Mail – hallorab@ipcb.state.il.us Bradley P. Halloran Hearing Officer Illinois Pollution Control Board James R. Thompson Center 1000 W. Randolph St., Ste. 11-500 Chicago, IL 60601	Via E-Mail – dombrowski@wildman.com Leo P. Dombrowski Wildman, Harrold, Allen & Dixon 225 West Wacker Dr. Suite 3000 Chicago, IL 60606-1229
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