

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

FOX MORaine, LLC)	
)	
Petitioner,)	
)	
v.)	PCB No. 07-146
)	(Pollution Control Facility Siting
)	Appeal)
UNITED CITY OF YORKVILLE, CITY)	
COUNCIL)	
)	
Respondent.)	

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on April 6, 2009, Leo P. Dombrowski, one of the attorneys for Respondent, United City of Yorkville, filed via electronic filing the attached **United City of Yorkville's Motion in Limine #5**, with the Clerk of the Illinois Pollution Control Board, a copy of which is herewith served upon you.

Respectfully submitted,

UNITED CITY OF YORKVILLE

By: /s/ Leo P. Dombrowski
One of their Attorneys

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YORKVILLE'S MOTION IN LIMINE # 5

Pursuant to the Hearing Officer's Order of March 23, 2009 and 35 Ill. Admin. Code § 101.610, Respondent, the United City of Yorkville, City Council ("Yorkville"), by and through its attorneys, moves the Hearing Officer in limine to exclude from the hearing on this matter the following information: any and all arguments statements, questions, testimony, or evidence of any kind from Petitioner Fox Moraine and its counsel and from any other party or fact witness, involving speculation or opinions regarding the beliefs or mental states of other persons, including but not limited to: (1) opinions, speculation, or beliefs regarding the feelings, impressions or mental processes of Yorkville Council Members or other persons at the hearings at issue; (2) opinions, speculation, or beliefs regarding the atmosphere of the pre-landfill and landfill hearings and/or its alleged effect on Council Members; and (3) opinions, speculation, or beliefs regarding alleged bias of Council Members. In support of its motion, Yorkville states as follows:

1. It is clear from the depositions in this matter that Fox Moraine will contend, and will seek to introduce evidence at the hearing, that the atmosphere of the pre-landfill and landfill hearings was "hostile" and "threatening" and that this "poisoned" atmosphere so "intimidated"

the Members of the Yorkville City Council that the City Council denied Fox Moraine's landfill application without any reasoned basis. At deposition, Fox Moraine was asked to provide factual support for its allegations, among others, that the hearings "were not fundamentally fair," Council Members were "biased against Fox Moraine," and the Council's decision was based upon "political considerations." (See Second Amd. Petition for Review, ¶ 5.)

2. The Fox Moraine deponents testified, in part, as follows:

Testimony of Devin Moose

- That the atmosphere of the landfill hearings was "hostile because of a small number of ignorant people who took over the – took over the town." (Moose Dep. 17)
- That, in Moose's opinion, the city council members were "intimidated" or that opponents were "coached."

Q: Did you perceive that the city council members were intimidated by this crowd?

A: Absolutely.

Q: And how did you perceive that?

A: I perceived it by the nature of their questions. I perceived it by the level of their attention during testimony. I perceived it by the catering to the opponents during breaks. **Facial gestures, body language**, the fact that they were allowed, that the opponents were allowed to talk for hours upon hours with absolutely no interruption, no schedule, repeating stuff off the Internet with no validity to it at all. Clearly, they were given an absolute wide berth to -- and purposefully -- to extend the hearing into the election. **And that was, in my opinion, done as a strategic plan by not only the opponents. I think it was the opponents with assistance from others that helped coach them on how to do that.** (Moose Dep. 17, emphasis added)

- That "it appeared that" the hearing officer was not running the hearing or "was ordered to not use his best judgment."

Q: Who was running the hearing?

A: Good question. I think the hearing officer made an attempt to run the hearing, but **it appeared to me that he was ordered to not use his best judgment and stick with what I considered to be ridiculous hours to conduct the hearing. . .**

I believe Mr. Clark, the hearing officer, was working at the direction, I believe, of the Mayor, but I don't know that for sure.

Q: That is pure speculation on your part; right?

A: Yes. . . .

Q: But you have no evidence or information or anything to indicate that the city council was telling him how to do his job; right?

A: I do not have any information. (Moose Dep. 24-27, emphasis added.)

- That Council Members "seemed" not to be "paying attention."

Q: What did you mean by that?

- **A: When critical testimony occurred, they were found not paying attention. . . . Some of them seemed to bear no interest in what I thought was a pretty important criteria, Criteria 2.** (Moose Dep. 27-28, emphasis added.)

- That he "belie[ved]" that the Council members were "biased" or "ignorant."

Q: Any evidence that the council members who voted on the application were biased against Fox Moraine?

A: I think that's the same question. Again, I focused on the technical component of the application. My belief is there was significant bias based on the way they viewed the evidence with virtually no weight given to the evidence that was submitted by the applicant and significant weight given to Internet fodder, and it's either bias or ignorance, I'm not sure which, but it has to be one of those two.

Q: And which council members did you say were biased?

A: I recall specifically Rose Spears and Valerie Burd, in my opinion, never gave --- never weighed the evidence at all. (Moose Dep. 44-45, emphasis added.)

- That the attorney for a citizens group attempted to "poison the well" by characterizing the landfill applicant as a poor operator. (Moose Dep. 62; Moose deposition excerpts are attached as Exhibit A.)

Testimony by Jesse Varsho

- That Council Members "could have been" intimidated or that there was bias or intimidation.

Q: What did you think was unfair about [the 90-day period between filing and the start of the hearings]?

A: . . . during the, -- you know, this 90-day period was, there was a reannexation hearing where there were threats made to the City Council by its citizens saying that if you vote for the annexation, we'll -- you know, during the elections, we'll vote you out. And you know, **it could have provided a bias or intimidation factor for the City Council before we even got to the public hearing.**

...

Q: So you're saying, for example, someone saying to an elected official if you vote for the landfill -- or for the annexation or whatever it was, you will be shunned at a restaurant, you're saying that tainted the process?

A: Yes.

Q: Why would that have tainted the process?

A: **I believe that's intimidation.** (Varsho Dep. 31-32, 33-34, emphasis added; Varsho deposition excerpts are attached as Exhibit B.)

Testimony by James Burnham

- That he "belie[ves]" city council members were biased.

A: **I believe that through the course of this -- this whole process, that [Mayor Burd] was generally against the landfill, and that's -- that's -- that's my perception.**

...

A: In -- in my belief that the city council people were bias [sic] against the project.

Q: Well, again, I'm asking you for facts that support that allegation.

A: **Outside of what we've offered, I do not -- I don't have anything.** (Burnham Dep. 38, 44, emphasis added; Burnham deposition excerpts are attached as Exhibit C.)

Testimony by Charles Murphy

- That the public was "aggressive" and "intimidating" to Council Members.

Q: Okay. Tell me how you think Alderman Spears was biased.

A: . . . **And I think the behavior of -- the aggressive nature of the behavior of the public and the opposition people, I think lends itself to be intimidating.**

...

Q: What behavior did you see that you claim to be hostile or intimidating?

A: **Aggressive, in your face accusations.**

Q: Well, can you give me any example --

A: If you approve the landfill -- or approve the annexation, you're approving a landfill. Throughout those times, the public was -- you know, you're going to be --

if you decide – make these decisions, you could be sitting alone. **I think things that were intimidating to me sitting there for someone who's been sitting in a crowd as one of the only people representing a project was intimidated by that. I'm sure that that had to be as difficult for someone that was in a decision-making position.** (Murphy Dep. 18-21, emphasis added.)

- Speculating that Council members might have “felt intimidated.”

Q: Just three left. How about Mr. Munns?

A: Mary Munns, again, subject to like the rest sitting through all the rancor and proceedings prior to the landfill leading up to the behavior, the comments by all who participated in that that potentially influences his ability to make a decision based on the fundamental weight of the – manifested weight of the proceedings to come. . . . **And if Mr. Munns was looking at – felt – or maybe felt intimidated or concerned that he could have – it could have affected his own political career or other activities in the area may have been weighted heavily on his decision to vote for or against.**

...

Q: How about Golinski?

A: Jerry [sic] Golinski, he replaced Dean Wolfer. And I guess Dean Wolfer is somebody that I don't think we can take off the list either, but Gary came into the process in the middle of all the craziness going on. . . .

Q: And didn't have enough time, you say, to get up to speed on everything?

A: I think that's an issue, but at the time he came on, he was in the height of the rancor and the craziness going on in these open meetings where you come in and you're shell-shocked. **You see the deer in the headlights and people coming at you and intimidating or threatening that you're going to be voted out, so on and so forth. You're not going to be sat by at a restaurant. You'll be alone at church. And then, he's got that in his mind, and then, he's got to sit through the landfill hearings to where that behavior and that goes on again.** (Murphy Dep. 113, 118-20, emphasis added; Murphy deposition excerpts are attached as Exhibit D.)

2. Speculative statements or opinions by lay witnesses are not admissible. *Freeding-Skokie Roll-Off Svc., Inc. v. Hamilton*, 108 Ill. 2d 217, 222 (1985); *Brennan v. Wisconsin Cent. Ltd.*, 227 Ill. App. 3d 1070, 1085 (2nd Dist. 1992) (affirming exclusion of witness' blanket statement where witness had no personal knowledge). Courts restrict fact witnesses to giving facts and details and allow only the trier of fact to draw inferences. *Freeding-Skokie Roll-Off*,

108 Ill. 2d at 222-23 (reversing judgment where trial court improperly allowed lay witness to opine that driver could not have avoided collision).

3. A witness's speculation as to the thought processes of a decision-maker should also be excluded. *O'Regan v. Arbitration Forums, Inc.*, 246 F.3d 975, 986 (7th Cir. 2001) (upholding trial court's striking speculative statements in affidavit regarding company president's "thoughts" and purported characterization of president's hiring practices as "discriminatory" because speculation was not based on personal knowledge); *Chiaramonte v. Fashion Bed Group, Inc.*, 129 F.3d 391, 397 (7th Cir. 1997) (holding that speculative statements by person who did not make termination decision regarding motives for termination did not provide a basis for charging decision-maker with discrimination). In *Chiaramonte*, a witness speculated that "Age had to be a factor . . . [for terminations] but I don't know." 129 F.3d at 397. The court held that "[s]tatements by a non-decision-maker that amount to mere speculation as to the thoughts of the decision-maker are irrelevant to our inquiry." *Id.*

4. Here, while Fox Moraine's witnesses should be permitted to testify only as to events or things they witnessed; they should not be permitted to speculate or conjecture or draw inferences as to subjective matters such as the purported significance of a person's "facial gestures" or "body language," the "atmosphere" of the hearings, or whether Yorkville Council Members felt "threatened" or "intimidated." Notably, the Hearing Officer has already entered an order barring Fox Moraine from inquiring into the mental processes of the City Council members. Fox Moraine should be similarly forbidden from speculating as to those mental processes and from offering unsubstantiated, self-serving opinion testimony from lay witnesses about the hearings or what City Council members might have thought or how they might have felt.

EXHIBIT A

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p style="text-align: center;">BEFORE THE ILLINOIS POLLUTION CONTROL BOARD</p> <p>FOX MORaine, LLC,) Petitioner,) vs.) No. PCB 07 146 UNITED CITY OF YORKVILLE, CITY) COUNCIL,) Respondent.)</p> <p>The discovery deposition of DEVIN MOOSE, P.E., taken in the above-entitled cause, before JENNIFER CAMPBELL, a notary public of Kendall County, Illinois, on the 30th day of September, 2008 at 3:30 p.m., at 800 Game Farm Road, Yorkville, Illinois, pursuant to Notice.</p> <p>Reported by: Jennifer Campbell, CSR, RPR License No.: 084-003282</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p style="text-align: center;">INDEX</p> <p>WITNESS EXAMINATION DEVIN MOOSE By Mr. Dombrowski P. 4 By Mr. Blazer P. 76</p> <p style="text-align: center;">EXHIBITS</p> <p>NUMBER MARKED FOR ID Yorkville Deposition Exhibit No. 6 P. 5 No. 7 P. 34 No. 8 P. 55 (Retained by Mr. Dombrowski.)</p>
1	3
<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p>APPEARANCES:</p> <p>MUELLER ANDERSON, P.C., by MR. GEORGE MUELLER 609 Etna Road Ottawa, Illinois 61350 (815) 431-1500 Representing the Petitioner;</p> <p>WILDMAN HARROLD ALLEN & DIXON, LLP, by MR. LEO P. DOMBROWSKI 225 West Wacker Drive Chicago, Illinois 60606 (312) 201-2562 Representing the Respondent; JEEP & BLAZER, by MR. MICHAEL S. BLAZER 24 North Hillside Avenue Suite A Hillside, Illinois 60162 Representing the Kendall County.</p> <p>ALSO PRESENT: Mr. Charles J. Murphy, Fox Valley Consulting Services, Inc., and Mr. Don Hamman.</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p style="text-align: center;">(Witness duly sworn.)</p> <p>MR. DOMBROWSKI: Mr. Moose, my name is Leo Dombrowski. I represent the City of Yorkville in this landfill appeal. I'll be asking you some questions today.</p> <p>Is it okay if I call you Devin? THE WITNESS: It is. And Leo okay with you? MR. DOMBROWSKI: Fine.</p> <p>You understand that we have a court reporter here to record everything that you and I say. And please let me finish my question before you start your answer, and I won't step on your answer, as best I can do; fair enough.</p> <p>THE WITNESS: Fair enough.</p> <p>MR. DOMBROWSKI: If you don't understand a question, please let me know. Otherwise, I'll assume that you've understood it. Okay? THE WITNESS: Yes.</p> <p>DEVIN MOOSE, called as a witness herein, having been first duly sworn, was examined and testified as follows:</p> <p style="text-align: center;">EXAMINATION</p> <p>BY MR. DOMBROWSKI: Q. Are you on any medication or anything that</p>
2	4

1 about how people could participate. It was
2 hostile. It was hostile because of a small number
3 of ignorant people who took over the -- took over
4 the town.
5 Q. Did you perceive that the city council
6 members were intimidated by this crowd?
7 A. Absolutely.
8 Q. And how did you perceive that?
9 A. I perceived it by the nature of their
10 questions. I perceived it by the level of their
11 attention during testimony. I perceived it by the
12 catering to the opponents during breaks. Facial
13 gestures, body language, the fact that they were
14 allowed, that the opponents were allowed to talk
15 for hours upon hours with absolutely no
16 interruption, no schedule, repeating stuff off the
17 Internet with no validity to it at all. Clearly,
18 they were given an absolute wide berth to -- and
19 purposefully -- to extend the hearing into the
20 election. And that was, in my opinion, done as a
21 strategic plan by not only the opponents. I think
22 it was the opponents with assistance from others
23 that helped coach them on how to do that.
24 Q. Who do you think coached them?

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1 A. It would have to be somebody I think
2 experienced in this. Probably your firm. Maybe,
3 maybe Jennifer Sackett Polens, maybe
4 representatives from another waste company.
5 Q. Those are assumptions on your part?
6 A. Yeah.
7 Q. Are you saying otherwise the city council
8 would have voted before the elections?
9 A. I think otherwise the council would have
10 tried to follow the law. I think the council would
11 have listened to the evidence and hopefully voted
12 on the evidence.
13 I think they clearly were steered in the
14 wrong direction to prolong the hearing. Your firm
15 specifically I think -- I believe you're with
16 Michael Roth's firm. Anyway, Michael Roth clearly
17 gave them what I think is, at least based on my
18 limited knowledge of the law, bad legal advice to
19 purposefully skew the vote. So there were a lot of
20 things that were done.
21 Q. What legal advice did Mr. Roth give the
22 council to purposefully skew the vote?
23 A. Maybe it's not legal advice. Maybe it's
24 lack of legal advice.

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1 Let me refer to -- this is the meeting on
2 May 23rd, 2007, question from Page 22 starting at
3 Line 13. This is from Alderman Werderich. I
4 probably pronounced that wrong also.
5 Q. What page was that?
6 A. Page 22. "QUESTION: Can I ask one last
7 question of the City attorney? Can you clarify how
8 much weight the city council should put in the
9 written evidence that is provided by the applicant
10 at this point since it's not subject to
11 cross-examination?
12 "MR. ROTH: No, I can't. I can't tell you
13 how much weight to give it. I'm sorry."
14 I think that's a question that he should
15 have been able to answer.
16 And based on my nearly 50 hearings of this
17 nature, based on what I've seen at every other
18 hearing and evidence -- or advice that every other
19 attorney has given elected officials, that the
20 evidence should be weighed heavier for the
21 testimony for the expert that testifies when he has
22 the ability to cross examine. Evidence that's
23 simply pulled off the Internet and thrown in the
24 record should not be given the same weight. Here's

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1 a case where they're actually deliberating, trying
2 to find out how much weight to give the written
3 evidence, and nobody can give them any advice.
4 And I think Mr. Roth knows the answer,
5 because Mr. Roth has shown up at these hearings
6 before, not in Yorkville, but I've run across him
7 in DuPage County before, and he knew the answer to
8 that question.
9 Q. So it's your opinion that he purposefully
10 gave a wrong answer?
11 A. I don't know why he gave the wrong answer.
12 Maybe I'm wrong. Maybe you're supposed to give
13 stuff of the Internet equal weight. But my
14 experience at other hearings is the attorneys and
15 hearings officers have said that you ought to give
16 more weight to the experts that testify and subject
17 themselves to cross exam, cross-examination.
18 Q. How many witnesses did Fox Moraine put on?
19 A. I don't recall.
20 Q. Well, you had a traffic expert; correct?
21 A. Yes.
22 Q. You had a land use expert; correct?
23 A. Yes.
24 Q. How many people from Shaw Environmental

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<p>1 testified at the hearing? 2 A. Three. 3 Q. And we would call them landfill experts; 4 correct? 5 A. Need expert, geologist, and a landfill 6 expert, design engineer. 7 We had an appraiser that testified. 8 So what are we up to nine-ish, what's 9 that? 10 Q. Around there. 11 A. Yeah. Operator testified. 12 Q. But you're not claiming Fox Moraine was at 13 all prevented from putting on the evidence it 14 wanted to in support of its application; are you? 15 A. No. We weren't prevented from putting the 16 evidence on, it just wasn't listened to. 17 Q. All right. So you're not claiming that 18 you had anything less than a full and complete 19 opportunity to put on your case; right? 20 A. We had the opportunity to put on our case, 21 that's correct. 22 Q. Let's go back to a question I asked you 23 regarding whether you thought the city council 24 members were intimidated. And you said one way you</p> <p style="text-align: right;">21</p>	<p>1 is a very specific procedure on how you have to go 2 about estimating post closure costs for the IEPA, 3 and numbers were talked about. 4 People in the audience just took whatever 5 number was testified about and started 6 exaggerating, and said, "Well, if you require, 7 let's just say, and I don't remember the number 8 precisely, a hundred thousand dollars, people 9 started throwing around, well, make it 10 million, 10 make it 20 million. 11 And the question came from Rose Spears, on 12 Page 85, let me back up a couple lines here, about 13 that. And then we get into whether there's going 14 to be a drop-off facility. 15 The issue was that she was interested in 16 money. And you'll see throughout the transcripts 17 numerous times when Ms. Spears could not focus on 18 the criteria and the evidence and only focus on 19 money, despite it having absolutely nothing to do 20 with the criteria that was being testified at the 21 time. And that follows all the way through to the 22 meeting on the 24th where she started attaching 23 special conditions with arbitrary and extremely 24 large sums of money that she wanted -- if for some</p> <p style="text-align: right;">23</p>
<p>1 perceived it was by their questioning. 2 What did you mean by that? 3 A. Give me a minute, see if I can find an 4 example. 5 There were questions that were asked that 6 focused on what I recall as shouts from the 7 audience. They were during periods of time when we 8 were talking about something that was inconsistent 9 with the shouts from the audience. 10 It would have been, in my opinion, a lot 11 better served if the council members would have 12 focused on the testimony instead of the people in 13 the stands. 14 One of these examples is testimony of 15 March 22nd, 2007. We're talking about post closure 16 and the EPA requirements. 17 MR. MUELLER: What date is that, Devin? 18 MR. BLAZER: March 22nd. 19 THE WITNESS: This is on March 22nd. I'm on 20 Page 83 to 85, right in that area. 21 And then we get into how rules are 22 changed, kind of getting a little off, but there 23 were people in the stands that want to just, you 24 know, because the issue of money came up, and there</p> <p style="text-align: right;">22</p>	<p>1 reason the thing did get approved, she wanted these 2 big sums of money. I believe all of that was in 3 direct effort to placate the objectors and to show 4 them that she was after the money. 5 On Page 58, she talks about what percent 6 of the revenue she's going to be getting, or the 7 City, I should say. 8 The question is: "Are you going to go 9 ahead and be selling the recyclable materials? 10 "Yes. 11 "Is the City going to receive any percent 12 of the revenue that is coming in?" And it goes on. 13 But throughout this document, you can find 14 where Rose is constantly hearing the money, and 15 then she goes and talks about money or asks about 16 the money. I don't think it's relevant to the 17 evidence. 18 BY MR. DOMBROWSKI: 19 Q. Who was running the hearing? 20 A. Good question. I think the hearing 21 officer made an attempt to run the hearing, but it 22 appeared to me that he was ordered to not use his 23 best judgment and stick with what I considered 24 ridiculous hours to conduct the hearing. Many</p> <p style="text-align: right;">24</p>

1 small hearings over a short period of time ending
 2 at precisely 10:00 o'clock instead of 10:05,
 3 waiting for Ms. Polens, who was habitually late, I
 4 believe purposefully, to extend the hearings.
 5 We could have conducted this hearing in a
 6 much more efficient manner with more than ample
 7 opportunity for public input, but I believe
 8 Mr. Clark, the hearing officer, was working at the
 9 direction, I believe, of the mayor, but I don't
 10 know that for sure.
 11 Q. That is pure speculation on your part;
 12 right?
 13 A. Yes.
 14 Q. Same thing, for example, as to whether
 15 Ms. Sackett was habitually late on purpose is
 16 speculation on your part?
 17 A. Well, she knew where the place was. She
 18 knew when the time started. We all knew how to get
 19 here on time. There was only one person who had a
 20 problem getting here.
 21 Q. Were the starts of the meetings delayed
 22 until she showed up?
 23 A. Yes.
 24 Q. But it was Mr. Clark, it was -- he was

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1 authorized under the City ordinance to run the
 2 hearing; correct?
 3 A. He was hired as the City -- as the hearing
 4 officer. I don't know what direction he was to
 5 take from the client, the City. I don't know.
 6 Q. But he was the guy who ruled on
 7 objections, for example; correct?
 8 A. Yes.
 9 Q. And he was the guy who said, "Let's move
 10 the proceedings along, we're done with this
 11 witness," for example; correct?
 12 A. I don't recall him saying that.
 13 Q. But he was the person, and not the city
 14 council, charged with running these meetings in an
 15 orderly fashion, you make take issue with that
 16 characterization, but that was his role and no one
 17 else's; correct?
 18 A. I'm not sure what direction he took from
 19 the City at all.
 20 I know that the hearing officer is trying
 21 to rule on evidence and objections, trying to
 22 maintain order in somebody else's community.
 23 When the entire elected officials are
 24 sitting there, I think the elected officials have

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1 to bear some of that responsibility.
 2 Q. But you have no evidence or information or
 3 anything to indicate that the city council was
 4 telling him how to do his job; right?
 5 A. I do not have any information.
 6 Q. Another thing you mentioned was you
 7 perceive that they were threatened because of their
 8 level of attention. What did you mean by that?
 9 A. When critical testimony occurred, they
 10 were found not paying attention. Looking at their
 11 laptops. Typing, for whatever reason I would
 12 not -- you know, I can't venture a guess. Getting
 13 up and going to the restroom. You know.
 14 I remember I spent a fair amount of time
 15 up there, and I tried to get eye contact with each
 16 and every one of them.
 17 Some of them in particular seemed to bear
 18 no interest in what I thought was a pretty
 19 important criteria, Criteria 2.
 20 Q. And that's all pure speculation on your
 21 part; correct?
 22 A. Well, I think a teacher would have a good
 23 idea whether students are paying attention.
 24 I have been in nearly 50 hearings of this

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1 nature, and I think you have an idea whether
 2 somebody is paying attention to you when you're
 3 speaking.
 4 Q. Now, as far as you know, the city council
 5 members also had the opportunity to review the
 6 transcripts of every landfill hearing; correct?
 7 A. I would assume so. I don't know that.
 8 Q. You certainly received all the
 9 transcripts; correct?
 10 A. I did.
 11 Q. And as far as you know, every city council
 12 member did as well; right?
 13 A. Yes.
 14 Q. One other thing you mentioned was a
 15 catering to landfill opponents at the hearings by
 16 the council members.
 17 What did you mean by that?
 18 A. They were giving them much -- an
 19 inordinate amount of time and berth to get up and
 20 provide public comment that is, you know, A,
 21 factually wrong for the most part, B, repetitive,
 22 on and on, I don't know how many times we'd hear
 23 about G. Fred Lee, a famous landfill opponent and
 24 Internet predator who feeds to frightening people.

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1 Mr. Roth is saying, I can't help you, I'm
2 paraphrasing, I don't know, you know, creates a
3 fundamentally unfair decision. The council members
4 did not know whether to give equal weight to the
5 written material or should they give greater weight
6 to the experts and the testimony that were
7 subjected to cross-examination.
8 It was clear there was a high level of
9 frustration on the 23rd, to the degree that they
10 postponed the meeting to the next day to give them
11 24 hours, take sleep and work away, let's give them
12 16 hours there, eight hours to go through another
13 thousand pages of written material. I don't think
14 that's enough. I can't read a thousand page in
15 eight hours.
16 But despite that, the mayor ramrodded this
17 decision. The mayor decided that she, quote
18 unquote, is running the hearing, not the hearing
19 officer anymore. She was damn determined to have a
20 vote on that day. And people were dying for
21 direction. They wanted to know how to weigh the
22 evidence, and the attorney turned their back on
23 them. I think that created an unfair situation.
24 Q. Well, these meetings on the 23rd and the

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1 24th, these were not for the hearing officer to
2 run; correct?
3 A. She made that clear. It was her. It was
4 Ms. Burd that was going to run them. She had been
5 elected the mayor, she was damn bound determined to
6 get those votes.
7 Q. Well, who should have been running that
8 meeting?
9 A. I think I -- I'm not saying who should
10 have been running it.
11 What I said it should have been done in a
12 time that allowed people to read the material. It
13 should have been done in a manner that they had
14 good legal help when they called for legal
15 interpretation that somebody gave to it them, so
16 that they could fairly conduct the meeting.
17 The fact that it was inadequate time to
18 review the written material, that there was no
19 legal direction on how to weigh the evidence
20 created a fundamentally unfair atmosphere on those
21 two nights.
22 Q. When did Fox Moraine submit its
23 post-hearings comments?
24 A. I don't know. I don't recall.

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1 Q. Well, we'll get into that later.
2 How many pages was it; do you know?
3 A. I don't remember the precise number of
4 pages. It was -- you know, it was a substantial
5 submittal.
6 Q. Around 1400?
7 A. Probably. I don't know.
8 Q. All right. 5D I assume refers to May 23rd
9 and 24th. Anything to add in addition to what
10 you've already testified to?
11 A. No.
12 Q. 5E, multiple members of the council were
13 biased against Fox Moraine and pre-judged the
14 application. What information or evidence have you
15 got to support that allegation?
16 A. All I have is -- I don't know have
17 evidence. All I have is their actions, their
18 behaviors, their body language. I don't have
19 evidence that shows that they were in collusion
20 with the FOGY members. That doesn't mean it does
21 not exist. That means that I was focusing more on
22 the technical components.
23 Q. Any evidence that the council members who
24 voted on the application were biased against Fox

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1 Moraine?
2 A. I think that's the same question.
3 Again, I focused on the technical
4 component of the application. My belief is there
5 was significant bias based on the way they viewed
6 the evidence, the way they weighed the evidence
7 with virtually no weight given to the evidence that
8 was submitted by the applicant and significant
9 weight given to Internet fodder, and it's either
10 bias or ignorance, I'm not sure which, but it has
11 to be one of those two.
12 Q. When you were reading articles that you
13 were receiving through the clipping services, did
14 you see anything in any of those articles that
15 indicated members of the city council might be
16 biased against Fox Moraine?
17 A. No. I don't recall.
18 Q. Do you recall seeing an article that
19 appeared on April 15th, 2007 in the Beacon News in
20 which candidates were asked about the landfill?
21 A. I do not recall.
22 Q. Did you ever say to anyone prior to May 23
23 and 24 of '07 that Fox Moraine should do something
24 to disqualify people because of bias or

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1 pre-judgment?
 2 A. No. It would not have been my roll.
 3 Q. I understand it might not have been your
 4 role, but did you ever mention that to anybody?
 5 A. I mentioned to the attorneys I thought
 6 they were bias. I don't remember what date, but I
 7 could tell by the atmosphere, by their questions,
 8 by their mannerisms, they weren't listening, they
 9 weren't paying attention.
 10 Q. And these were perceptions that you had in
 11 March and April of '07; correct?
 12 A. Yes.
 13 Q. And which attorneys did you mention to
 14 that you thought these people were biased?
 15 A. I would have mentioned it to George
 16 Mueller and Chuck Helsten.
 17 Q. And which council members did you say were
 18 biased?
 19 A. I recall specifically Rose Spears and
 20 Valerie Burd, in my opinion, never gave -- never
 21 weighed the evidence at all.
 22 Q. Anyone else other than those two?
 23 A. Not off the top of my head.
 24 Q. All right. Let me refer you to the last

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1 page of Exhibit 7 here.
 2 This lists the eight council members at
 3 the top of that last page who voted on the
 4 application.
 5 Did you think Mr. Werderich was biased
 6 against Fox Moraine?
 7 A. Was he a council member during the
 8 hearings?
 9 Q. He was elected on April 17th.
 10 A. See --
 11 Q. But he was running for office.
 12 A. He didn't sit in on the council -- he
 13 didn't sit in on the hearings. He wasn't sitting
 14 there. He wasn't the audience that I testified to.
 15 He wasn't the guy that I looked into the
 16 eye that I tried to show drawings to, that I passed
 17 around pieces of synthetic liner to.
 18 The people that I testified in front of
 19 are not the same group in total that voted on this,
 20 as you know.
 21 Q. I understand. But do you have any
 22 evidence or opinion that Mr. Werderich was biased
 23 against Fox Moraine?
 24 A. I don't even know if he attended a single

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1 hearing. I have no opinion. I don't know who he
 2 is.
 3 Q. How about Robyn Sutcliff?
 4 A. Was she elected at the time?
 5 Q. At the same time, yes.
 6 A. Okay. She wasn't at the hearings as far
 7 as I'm concerned. She didn't participate at the
 8 front table.
 9 Q. Do you have any evidence or information
 10 that she was biased against Fox Moraine?
 11 A. Don't know her.
 12 Q. How about Marty Munns?
 13 A. Marty seemed to weigh the evidence, pay
 14 attention. Marty in particular on the 23rd and
 15 24th asked a significant amount of questions and
 16 expressed a lot of frustration that he didn't have
 17 the time to review all of the evidence before the
 18 vote. And we can go through that testimony if you
 19 want, but I thought Marty was paying attention, and
 20 I think that he tried to listen. And on the 23rd
 21 he said, "I just can't get through all this stuff.
 22 I heed some help." He asked questions, he pleaded
 23 for help, but Valerie Burd had -- would have none
 24 of it.

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1 Q. Well, there was a vote on the 23rd as to
 2 whether to table the proceedings for another day;
 3 was there not?
 4 A. Yes.
 5 Q. And that was voted down?
 6 A. No. It was accepted to delay another day,
 7 but they took -- the comfort zone that people had
 8 the next day, there were still questions about the
 9 ability to read that or to go through the material.
 10 There was still questions about how to weigh the
 11 material.
 12 Q. So any evidence that Mr. Munns was biased?
 13 A. Not that I can think of.
 14 Q. How about Mr. Golinski?
 15 A. I don't believe he was on the council, or
 16 I don't remember him.
 17 Q. How about Mr. Leslie?
 18 A. No. I think Mr. Leslie weighed it fairly.
 19 Q. How about Mr. Plocher?
 20 A. I don't believe he was on the council
 21 during the hearings.
 22 Q. He was not.
 23 A. Then I have -- I have no idea who they
 24 are, whether they even looked at the evidence.

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1 A. I guess I have a problem. I've had the
2 same problem running an office for 25 years in the
3 Chicago area, so it's just, you know -- as opposed
4 to what most people think engineering is,
5 apparently Rose thinks it is, is to go on the
6 Internet and collect some ridiculous comment,
7 engineering actually requires calculations,
8 drawings, analyses, and time; so I don't think it's
9 unusual.

10 Q. Could it have been done any earlier?

11 A. I'm sure that it was expedited to the
12 degree that we could get it expedited.

13 Q. Why do you say that?

14 A. Because this was an important project for
15 an important client. We would have liked to
16 certainly resolve all the issues as quickly as
17 possible.

18 Q. Let me refer you to the next attachment,
19 which is a couple pages further.

20 It's a newspaper article listed as
21 attachment for the PDC agreement news article,
22 that's from February 24, 2007; correct?

23 A. Yes.

24 Q. Why were you submitting that?

1 This particular landfill I did the siting
2 expansion on back in early 2000s, I did the design.
3 And the attempt here was to try and show that this
4 facility is a well-run facility and can be a good
5 neighbor to the people that live around it.

6 In this particular landfill, since I have
7 personal information, we were able to obtain a
8 letter of support by every contiguous property
9 owner around the landfill supporting the expansion
10 of the landfill. It's a demonstration that the
11 people are good neighbors, that they know how to
12 run a landfill without impacting property values,
13 dust, noise, odors, litter, all of the things that
14 were thrown out there to try and scare the local
15 citizenry. These people wanted the landfill
16 expansion, and it demonstrates that PDC knows how
17 to run a landfill. And it goes directly in the
18 face of the other things that were given much more
19 considerable weight despite evidence to the
20 contrary.

21 Q. So these would have been documents that
22 you already had in your office because you had
23 worked on this landfill?

24 A. Yeah. I probably would have had these.

1 A. I didn't submit it.
2 Oh, why was it included in the --

3 Q. In the post-hearing comments.

4 A. I'll have to read it. I don't recall as I
5 sit here.

6 I think it has to do with trying to
7 straighten out the record about what was occurring
8 down in Peoria at the time.

9 Q. And this was an article you would have had
10 in your office?

11 A. Probably, yeah. It would have -- I don't
12 know for a fact it came from my office, but I most
13 likely would have obtained it.

14 Q. Let me refer you to Attachment 5, which is
15 Clinton County Indian Creek letters of support that
16 begin at C17571, and these run for 64 pages
17 according to my count. I included just three.

18 What did this have to do with the
19 post-hearing submittal?

20 A. My recollection there was an attempt by
21 Ms. Polens to poison the well and to characterize
22 the PDC as a poor operator.

23 Again, cherry-picking information out of
24 Peoria or from the newspapers.

1 Q. All right. The next attachment is
2 Attachment 6, which is listed as a noise
3 evaluation.

4 It begins at C17635. I included just the
5 first page. It's about a 28-page attachment.

6 This is something that Shaw had done as of
7 March 27, 2007; correct?

8 A. Correct.

9 Q. Let me refer you to the first page of
10 Attachment 8, which is the PM analysis.

11 MR. MUELLER: What's the date on that or
12 the --

13 MR. DOMBROWSKI: The number is C17665.

14 THE WITNESS: Okay.

15 BY MR. DOMBROWSKI:

16 Q. And this was something that Shaw had
17 completed as of what date?

18 A. Around May 15th. Well, it would have
19 been -- the way -- we have a three-level check
20 system.

21 The work is done by a -- in this case, an
22 engineer, Zach Christ, the data input for that
23 would be done by somebody else, so that we have
24 data collection by Zach. The data input would be

EXHIBIT B

<p>BEFORE THE ILLINOIS POLLUTION CONTROL BOARD FOX MORaine, LLC,) Petitioner,) vs.) No. PCB-07-146 UNITED CITY OF YORKVILLE,) CITY COUNCIL,) Respondent.) The discovery deposition of JESSE VARSHO, taken in the above-entitled cause, before Elizabeth L. Vela, a notary public of Cook County, Illinois, on the 29th day of August, 2008 at the time of 1:30 p.m. at 24 North Hillside, Hillside, Illinois, pursuant to Notice.</p> <p>Reported by: Elizabeth L. Vela, CSR License No.: 084-003650</p>	<p style="text-align: center;">I N D E X</p> <p>1</p> <p>2 WITNESS EXAMINATION</p> <p>3 JESSE VARSHO</p> <p>4 BY MR. DOMBROWSKI 5</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p style="text-align: center;">E X H I B I T S</p> <p>11</p> <p>12 NUMBER MARKED FOR ID</p> <p>13</p> <p>14 (NO EXHIBITS MARKED)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p style="text-align: right;">3</p>
<p>1 APPEARANCES:</p> <p>2 MUELLER ANDERSON, by</p> <p>3 MR. GEORGE MUELLER,,</p> <p>4 628 Columbus Street, Suite 204</p> <p>5 Ottawa, IL 61350</p> <p>6 (815) 431-1500</p> <p>7 Representing Fox Moraine, LLC,</p> <p>8</p> <p>9 WILDMAN, HARROLD, ALLEN & DIXON, by</p> <p>10 MR. LEO P. DOMBROWSKI,</p> <p>11 225 West Wacker Drive</p> <p>12 Chicago, IL 60606</p> <p>13 (312) 201-2562</p> <p>14 Representing United City of</p> <p>15 Yorkville.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p style="text-align: right;">2</p>	<p>1 (Witness sworn.)</p> <p>2 MR. DOMBROWSKI: Would you state your name,</p> <p>3 please, sir?</p> <p>4 THE WITNESS: Jesse Varsho.</p> <p>5 MR. DOMBROWSKI: Mr. Varsho, my name is</p> <p>6 Leo Dombrowski. I represent the United City of</p> <p>7 Yorkville in this landfill appeal. We're going to</p> <p>8 be asking you some questions.</p> <p>9 Do you understand we have a court reporter</p> <p>10 here and she'll be taking down everything you, I,</p> <p>11 and your lawyer say?</p> <p>12 THE WITNESS: Yes, I understand that.</p> <p>13 MR. DOMBROWSKI: Please answer audibly so that</p> <p>14 she can get that down.</p> <p>15 Also, let me finish my question before you</p> <p>16 start answering. Is that all right?</p> <p>17 THE WITNESS: That is understandable.</p> <p>18 MR. DOMBROWSKI: And I will let you finish your</p> <p>19 answer before I proceed on to my next question.</p> <p>20 Now, if you don't understand a question,</p> <p>21 would you let me know?</p> <p>22 THE WITNESS: Okay.</p> <p>23 MR. DOMBROWSKI: So if you don't understand it,</p> <p>24 I'll rephrase it.</p> <p style="text-align: right;">4</p>

1 MR. MUELLER: You never asked him whether he
2 was present. You asked him whether he had anything
3 to do with the annexation process.
4 BY MR. DOMBROWSKI:
5 Q. How many of these preapplication meetings
6 were you at?
7 A. You mean prefiling meetings?
8 Q. Yes.
9 A. Probably three or four.
10 Q. And these were separate from the two
11 meetings that Shaw and Fox Moraine put on, correct?
12 A. Correct.
13 Q. Now, at those two meetings, you certainly
14 had an opportunity to provide information about the
15 landfill and to address people's concerns, correct?
16 A. It was an informational meeting.
17 Q. And you took questions from the public,
18 correct?
19 A. Yes.
20 Q. Well, why do you think that having
21 citizens of Yorkville voice their displeasure or
22 however you want to put it with the annexation
23 process rendered the proceedings fundamentally
24 unfair?

29

1 A. Well, there's a couple reasons. I mean,
2 first is, the City Council is essentially required
3 to attend the annexation meeting. They were not
4 required to attend the Fox Moraine informational
5 meetings.
6 Second of all is, one of the things I
7 think makes the siting SB 172 process a very good
8 process, it requires experts to go under testimony
9 and provide scientific data or evidence, where at
10 these meetings, these public meetings, people can
11 go up and just voice their displeasure.
12 They're not recognized as experts, they're
13 not experts, they're not being -- providing
14 evidence under sworn testimony.
15 So there is a very large difference, you
16 know, between that process. And I believe that's
17 why the -- our State Government set up the SB 172
18 process, to help separate evidence from concerns by
19 the public.
20 Q. And during the landfill hearings, people
21 also had the same opportunity to get up and say
22 whether they were pro-landfill or anti-landfill,
23 correct?
24 A. Correct.

30

1 Q. So as far as that goes, there was no
2 difference between these annexation meetings and
3 the landfill meetings, right?
4 A. No.
5 Q. All right. So have we exhausted
6 everything that you thought was unfair about the
7 prefiling period?
8 A. Yes.
9 Q. All right. And next, you were, I believe,
10 talking about the 90-day period between filing and
11 the start of the hearings, is that right?
12 A. Correct.
13 Q. And what did you think was unfair about
14 that?
15 A. Well, I think the -- there's a couple
16 conditions.
17 First of all, the County lawyers showed
18 up. And this kind of transitions to the prefiling,
19 but during the prefiling, the County showed up and
20 threatened a lawsuit if the City annexed it and
21 already was providing a -- you know, an attitude
22 that we're going to fight you, you know, if you
23 annex this piece of property prior to the siting.
24 Then, during the 90-day kind of stand-by

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1 period between filing the hearings, the County's
2 attorneys showed up and essentially threatened the
3 City on their choice of a hearing officer at that
4 time and made statements that I thought were really
5 inappropriate, stating that -- taking attacks on
6 personnel from Fox Moraine that weren't even at the
7 meeting, alleging connections or innuendos about,
8 you know, behind-the-room deals, and then, just,
9 you know, offering legal advice to the City Council
10 even though they were -- had already showed bias
11 towards this application.
12 In addition, during the -- you know, this
13 90-day period was, there was a reannexation hearing
14 where there were threats made to the City Council
15 by its citizens saying that if you vote for the
16 annexation, you know, we won't sit next to you at
17 church, we'll -- you know, during the elections,
18 we'll vote you out.
19 And you know, it could have provided a
20 bias or intimidation factor to the City Council
21 before we even got to the public hearing.
22 Q. So you think the citizens of Yorkville did
23 not have a right to voice their concerns about the
24 landfill?

32

1 A. I didn't say that.
2 Q. You think they did have a right to voice
3 their concerns about the landfill?
4 A. They have a right to voice their concerns
5 about the landfill at the appropriate time.
6 Q. You mean they can't as citizens register
7 their concerns during some time that doesn't fall
8 within a landfill hearing?
9 A. That's how the process was set up.
10 Q. Was anything illegal done by the citizens?
11 MR. MUELLER: Objection. I think you're asking
12 him for a legal conclusion. He's not a lawyer.
13 BY MR. DOMBROWSKI:
14 Q. Anything you know to be illegal done?
15 MR. MUELLER: If you know, Jesse.
16 THE WITNESS: No.
17 MR. MUELLER: No, you don't know, or no,
18 nothing illegal was done?
19 THE WITNESS: No, I don't know.
20 BY MR. DOMBROWSKI:
21 Q. So you're saying, for example, someone
22 saying to an elected official if you vote for the
23 landfill -- or for the annexation or whatever it
24 was, you will be shunned at a restaurant, you're

33

1 saying that tainted the process?
2 A. Yes.
3 Q. Why would that have tainted the process?
4 A. I believe that's intimidation.
5 Q. Well, certainly, it wasn't any -- there
6 were no threats of physical intimidation, were
7 there?
8 A. Not to my knowledge.
9 Q. So let me ask you a couple of things about
10 the County.
11 And this is Kendall County we're talking
12 about, right?
13 A. Correct.
14 Q. What's wrong with the County saying we're
15 going to sue you if you take certain action if the
16 County has a right to do that?
17 A. Can you specify what action you're
18 referring to?
19 Q. Well, you're saying that the Kendall
20 County attorneys threatened who? The City?
21 A. Yes.
22 Q. All right. Threatened the City of
23 Yorkville that they would sue if the City annexed
24 the property? Was that it?

34

1 A. Yes.
2 Q. And what's wrong with that?
3 A. I don't -- the reason they were
4 threatening a lawsuit was that they couldn't have a
5 landfill within the City of Yorkville. And that
6 was based on their determination.
7 And it was not the appropriate time,
8 because during the annexation, this was about
9 annexing the property into the United City of
10 Yorkville. It was not about siting a landfill.
11 And if they wanted to threaten to sue the
12 City about siting a landfill, that should have
13 occurred during the landfill siting process where
14 Fox Moraine would have had the opportunity to
15 either rebut, agree, or disagree with that
16 assertion.
17 Q. Well, if they had to, Fox Moraine would
18 have had an opportunity to take a position on the
19 lawsuit, right?
20 A. If they -- yes, you're correct.
21 Q. Now, you mentioned something about
22 backroom deals. Did I hear that right?
23 A. Correct.
24 Q. And who said what about that?

35

1 A. There was concerns about the relationship
2 between the proposed hearing officer at that time
3 and his relationship to Charlie Murphy, PDC.
4 Q. That's Peoria Disposal?
5 A. Correct, Company.
6 Q. Well, again, who said what?
7 A. I believe it was Mr. Blazer came in and at
8 the beginning of the meeting stood up, said he
9 represented the County and made, you know, four or
10 five claims, which again, in my professional
11 opinion were not appropriate at that time,
12 especially considering that at that time, he had
13 also made it clear that they were going to fight
14 the facility, showing bias towards this
15 application.
16 Q. Well, Kendall County is not the
17 decision-maker on your application, right?
18 A. Correct.
19 Q. Who was the proposed hearing officer?
20 A. At that meeting, it was Glen Seshon
21 (phonetic).
22 Q. And some of the City Council also had
23 concerns about Mr. Seshon, did they not?
24 A. Correct.

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EXHIBIT C

1 gone on the property and moved a sign or no?
 2 A. I don't know.
 3 Q. How far should she have moved one sign
 4 from the other?
 5 MR. MUELLER: Leo, we're beating this to death.
 6 What he thinks is not relevant in terms of what the
 7 Pollution Control Board is going to think on this
 8 issue.
 9 MR. DOMBROWSKI: I'm almost done. Go ahead.
 10 THE WITNESS: Repeat the question.
 11 BY MR. DOMBROWSKI:
 12 Q. How far do you think she should have moved
 13 one sign from the other?
 14 A. I don't know.
 15 Q. Anything else that you would like to add
 16 to this Item No. 1 on Page 2?
 17 A. That's all I can think of at this time.
 18 Q. You say that Mayor Burd ran on an
 19 anti-landfill platform; correct?
 20 A. I didn't say landfill platform, but I
 21 believe that she did.
 22 Q. And you mention the one statement in the
 23 newspaper something to the effect that landfills
 24 aren't safe.

1 What other statements, if any, did she
 2 make that you would consider to be biased against
 3 the landfill?
 4 MR. MUELLER: That you can remember as you sit
 5 here now.
 6 MR. DOMBROWSKI: He's a big boy, George, he can
 7 testify for himself.
 8 MR. MUELLER: I think it's a pretty broad
 9 question. He didn't memorize all of those
 10 statements.
 11 THE WITNESS: My comment is -- is general in
 12 nature. I believe that -- I believe that through
 13 the course of this -- this whole process, that she
 14 was generally against the landfill, and that's --
 15 that's -- that's my perception.
 16 BY MR. DOMBROWSKI:
 17 Q. Well, I'd like to go beyond your
 18 perception or belief or your feelings and ask you
 19 if you have any facts in support of these
 20 allegations. That's the point of this deposition.
 21 I understand that it's your feeling, and
 22 it's Fox Moraine's feeling and Charlie Murphy's
 23 feelings that the process wasn't fair.
 24 We're sitting here today so that I could

1 ask you questions and get facts from you. Her
 2 being quoted in a newspaper is a fact, whether she
 3 was correctly quoted or not, but, as I say, I'd
 4 like to go beyond your perceptions. Do you get me?
 5 A. I can't recall anything at this time.
 6 Q. All right. So all you have is the one
 7 statement by Mayor Burd in the newspaper; correct?
 8 A. If you have a copy of those newspaper
 9 clippings, I can look at that to refresh my memory.
 10 Q. Well, those say whatever they say. We
 11 don't have to go through those. I'm asking you if
 12 you know of anything other than what's in those
 13 newspaper articles?
 14 MR. MUELLER: All right. Now we're getting
 15 someplace. Anything besides what's in the
 16 newspaper articles that we've already produced.
 17 MR. DOMBROWSKI: Correct.
 18 THE WITNESS: Anything inside or outside?
 19 MR. MUELLER: Anything outside that.
 20 THE WITNESS: I'm trying to think at this
 21 point. I can't think of anything.
 22 MR. DOMBROWSKI: That's fine. You know of no
 23 campaign literature, for example, that said, "I'm
 24 opposed to the landfill."

1 BY MR. DOMBROWSKI:
 2 A. I'm not aware of that. I'm aware of that
 3 Wally Wederich was involved in her campaign, and he
 4 was a vocal opponent of the landfill, and I thought
 5 it -- it, to me, made sense that she was
 6 surrounding herself with people that were against
 7 the landfill.
 8 Q. Other than the one statement that you
 9 mentioned of Mr. Wederich and other statements that
 10 might be in the articles you've given us, do you
 11 know of anything that Mr. Wederich said that was
 12 anti-landfill?
 13 A. I can't recall.
 14 Q. And, again, not only as to Mayor Burd and
 15 Alderman Wederich, but as to anyone either on the
 16 city council before the elections of April 17th or
 17 who was running for a spot, you know of no one who
 18 had any campaign literature that proclaimed an
 19 anti-landfill position; correct?
 20 A. I did not see any physically myself.
 21 MR. DOMBROWSKI: All right. We've been going a
 22 little over an hour. Why don't we take a
 23 five-minute break.
 24 MR. MUELLER: How much more do you think you

1 have?
2 MR. DOMBROWSKI: I guess that all depends on
3 how much Jim has. An hour maybe.
4 MR. MUELLER: I think your question is does he
5 know anything other than what's in our discovery
6 responses, the answer is going to be no.
7 MR. DOMBROWSKI: That would make it quick then.
8 MR. MUELLER: In a hurry then.
9 (Discussion off the record.)
10 MR. DOMBROWSKI: Let's go back on.
11 BY MR. DOMBROWSKI:
12 Q. Mr. Burnham, as we go through the
13 remainder of my questions here, you can exclude any
14 statements that are made in the newspaper articles
15 you've given us, so we don't have to retread that
16 ground. Okay?
17 A. Okay.
18 Q. So when I ask you what information or
19 evidence, et cetera, that you have in support of
20 one of these allegations, you can tell me if
21 there's anything that -- that is not in the
22 newspaper articles. Okay?
23 A. Okay.
24 Q. All right. Let's go on to 2, which is

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1 that the vote taken by the city council was not
2 taken in accordance with Section 39.2.
3 What is Fox Moraine's basis for that
4 statement?
5 A. I believe that the official action was a
6 denial of sorts. And I was under the impression or
7 I believe they need to go through each individual
8 criterion to say why the applicant proved or did
9 not prove that it satisfied that criteria. And, to
10 my recollection, they didn't do that. They just
11 summarily denied the application.
12 Q. Let me refer you to Exhibit No. 2, and
13 attached to that exhibit is the City Council's
14 resolution of May 24, 2007. Do you see that?
15 A. Is it this one?
16 Q. Yes.
17 A. Okay.
18 Q. And on Page 2, Paragraph 2, if you would
19 turn to that, please.
20 Do you see that the city council voted
21 that certain criteria, I believe six or seven
22 criteria had not been met; do you see that?
23 A. Yes.
24 Q. That's different from a summary denial; is

42

1 it not?
2 MR. MUELLER: That's asking him to draw a legal
3 conclusion.
4 BY MR. DOMBROWSKI:
5 Q. Well, I don't think it is. I mean, he
6 said he thought it was a summary denial.
7 So my question is: Is this what you would
8 consider to be a summary denial?
9 A. My -- my comment on summary denial was
10 that I don't recall them going through each
11 individual criterion and discussing them, the
12 merits of why they felt the applicant did or did
13 not meet that criteria.
14 Q. Anything else in support of No. 2 here?
15 A. Well, I believe that some of the council
16 people, you know, basically did not take into
17 account or had, you know, reservations about not
18 being able to review some of the work product from
19 the hearing officer and or the attorney
20 representing the staff. And I thought that their
21 recommendations as being professionals was
22 important to the process. And some of them said
23 that they didn't have the time or they did not
24 review it.

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1 Q. Anything else in support of this No. 2?
2 A. Not that I can think of at the moment.
3 Q. Let's go on to No. 3. The allegation here
4 is that the city council failed to comply with its
5 siting ordinance, and that this failure rendered
6 the proceedings unfair.
7 What does Fox Moraine have to support that
8 allegation?
9 A. Well, I believe that the -- that the
10 siting ordinance, that the Yorkville siting
11 ordinance, the framework for that siting ordinance
12 is to demonstrate compliance with, you know, the
13 Section 39.2, and I believe the obligation is to
14 render a fundamentally fair hearing, and, in not
15 doing so, I believe that that's the basis for
16 No. 3.
17 Q. When you say in not doing so, what are you
18 referring to?
19 A. In -- in my belief that the city council
20 people were bias against the project.
21 Q. Well, again, I'm asking you for facts that
22 support that allegation.
23 A. Outside of what we've offered, I do not --
24 I don't have anything.

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EXHIBIT D

<p>1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD 2 FOX MORaine, LLC,) 3 Petitioner,) 4 vs.) No. PCB-07-146 5 UNITED CITY OF YORKVILLE,) 6 CITY COUNCIL,) 7 Respondent.) 8 The discovery deposition of CHARLES MURPHY, 9 taken in the above-entitled cause, before 10 Elizabeth L. Vela, a notary public of Cook County, 11 Illinois, on the 29th day of August, 2008 at the 12 time of 9:35 a.m. at 24 North Hillside, Hillside, 13 Illinois, pursuant to Notice. 14 15 16 17 18 19 20 21 22 23 Reported by: Elizabeth L. Vela, CSR 24 License No.: 084-003650</p>	<p>1 I N D E X 2 WITNESS EXAMINATION 3 CHARLES MURPHY 4 BY MR. DOMBROWSKI 4 5 BY MR. PORTER 127 6 7 8 9 10 11 E X H I B I T S 12 NUMBER MARKED FOR ID 13 Yorkville Deposition Exhibit 14 No. 1 7 15 No. 2 13 16 No. 3 14 17 No. 4 15 18 19 20 21 22 23 24</p>
1	3
<p>1 APPEARANCES: 2 HINSHAW & CULBERTSON, by 3 MR. RICHARD S. PORTER, 4 100 Park Avenue 5 P.O. Box 1389 6 Rockford, IL 61105 7 (815) 490-4900 8 Representing Fox Moraine, LLC, 9 10 WILDMAN, HARROLD, ALLEN & DIXON, by 11 MR. LEO P. DOMBROWSKI, 12 225 West Wacker Drive 13 Chicago, IL 60606 14 (312) 201-2562 15 Representing United City of Yorkville, 16 17 JEEP & BLAZER, LLC by 18 MR. MICHAEL S. BLAZER, 19 24 North Hillside Avenue, Suite A 20 Hillside, IL 60162 21 (708) 236-0830 22 Representing Kendall County. 23 24</p>	<p>1 (Witness sworn.) 2 CHARLES MURPHY, 3 called as a witness herein, having been first duly 4 sworn, was examined and testified as follows: 5 EXAMINATION 6 BY MR. DOMBROWSKI: 7 Q. Good morning, Mr. Murphy. 8 A. Good morning. 9 Q. My name is Leo Dombrowski. I represent 10 the United City of Yorkville. I'll be asking you 11 some questions today. 12 What do you understand this deposition to 13 be about? 14 MR. PORTER: Objection. Vague. 15 THE WITNESS: Could you clarify that? 16 BY MR. DOMBROWSKI: 17 Q. Pardon? 18 A. Could you clarify that? 19 Q. Well, I think it's a simple question. Do 20 you have any understanding of what this deposition 21 is about? 22 MR. PORTER: Objection. Vague. Argumentative. 23 Counsel, if you want to ask him a question, feel 24 free. It's your deposition. You tell us what it's</p>
2	4

1 counsel for the County and comments that were made
2 that were preadjudication of the merits of our
3 application prior to basically filing where it was
4 made to be of issue that the -- whether it was an
5 annexation or host agreement or such, there were
6 many comments and rancorous activity amongst
7 members of the opposition group that led to a
8 prejudgment, I believe, on the Council's part in
9 their ability to make a fundamentally fair decision
10 on the merits of the hearing and process that
11 subsequently followed all of those activities.

12 Q. So which members of the Council do you say
13 were biased?

14 A. Well, I believe Alderman Spears.
15 Alderman Burd at the time prior to being elected, I
16 believe as well.

17 And subsequent to filing, I guess Plocher,
18 Sutcliff, Werderich, were biased in their decision
19 ultimately in the ultimate vote. I'm forgetting
20 what --

21 Q. Well, if you look at Exhibit 2, there's
22 a -- the last page of Exhibit 2 lists the mayor and
23 the eight alderman.

24 A. Spears, Sutcliff, Plocher --

17

1 And the behavior of -- during those
2 times -- or meetings was made to be an open forum
3 by the opposition group, the public, other members
4 of the public.

5 The County had weighed in on their
6 position regarding consistency with the plan and
7 the threat of suit.

8 And I think that the behavior of -- the
9 aggressive nature of the behavior of the public and
10 the opposition people, I think lends itself to be
11 intimidating, and as well, showing that at the time
12 of consideration of these prior issues to a
13 landfill application that it was more about a
14 landfill than it was about the issues at hand.

15 And I think that her legislative position
16 was compromised -- or compromised her ability to be
17 a quasi-judicial judge for a subsequent landfill
18 application.

19 Rose Spears had also had during the --
20 during -- had also had outside contact regarding
21 issues relative to the process.

22 I believe she's had communications and
23 open communications with the County's attorneys
24 regarding process and host agreement -- other

19

1 Q. You've given me five names of people you
2 are claiming were biased.

3 A. Munns.

4 Q. Pardon?

5 A. Munns.

6 Q. Munns was biased?

7 A. Actually, Leslie, Golinski.

8 Q. So everyone but Mr. Besco was biased?

9 A. I believe that is the case.

10 Q. Okay. I'm going to ask you some follow-up
11 questions. I want you to be as specific as you can
12 for me, because you can say someone was biased.

13 It's, I think, a very general statement,
14 but I want you to give me any facts that you
15 have -- any facts that Fox Moraine has to support
16 these allegations. Fair enough?

17 A. Fair enough.

18 Q. Okay. Tell me how you think
19 Alderman Spears was biased.

20 A. Well, I believe she was party to the
21 process which was the initiation of this ultimate
22 landfill application by annexation, host agreement,
23 siting ordinance preparation, reannexation and so
24 forth.

18

1 comparisons, potential hearing officers.

2 And as well, she had out -- information
3 gained outside of the process through
4 communications that she had with Kane County
5 Environmental Group regarding issues that weren't
6 the subject of the -- the subject of the
7 application.

8 Q. Okay. Let's go through those. So you say
9 her legislative position was compromised because of
10 the -- are we talking about Friends of Greater
11 Yorkville, that group?

12 A. That -- yes, that would be the most
13 boisterous group, along with, I guess,
14 Todd Milliron, who was or wasn't a member but the
15 most aggressive behavior at these meetings.

16 Q. But these were public meetings, correct?

17 A. They were public meetings.

18 Q. And were you present at these meetings?

19 A. I was.

20 Q. What behavior did you see that you claim
21 to be hostile or intimidating?

22 A. Aggressive, in your face accusations.

23 Q. Well, can you give me any example --

24 A. If you approve the landfill -- or approve

20

1 the annexation, you're approving a landfill.
2 Throughout those times, the public was --
3 you know, you're going to be -- if you decide --
4 make these decisions, you could be sitting alone.
5 You know, going to the restaurant, you'll
6 be sitting alone. If you're going to church,
7 you'll be sitting alone. I think things that were
8 intimidating to me sitting there for someone who's
9 been sitting in a crowd as one of the only people
10 representing a project was intimidated by that.
11 I'm sure that that had to be as difficult
12 for someone that was in a decision-making position.
13 Q. All right. Who made what statements?
14 A. It would be the group. It was
15 George Gilson to Todd Milliron to Gilmour, Judy and
16 Tom, and others who were very aggressive in their
17 behaviors, along with other residents.
18 I don't have specific recollection of the
19 exact statements by each. I think the records from
20 those meetings would reflect that and I think that
21 would show in specific, I guess.
22 Q. You're not claiming any of these people
23 did anything illegal, are you?
24 MR. PORTER: Objection. It calls for a legal

21

1 conclusion. You can answer to the extent you know.
2 THE WITNESS: I am aware of threats to people
3 at their home, be it -- Alderman Munns, I believe,
4 was one who represent -- or Alderman Besco had
5 represented he had threats at home.
6 And I believe, as well, Alderman Munns had
7 concerning phone calls, as well as, I believe at
8 the time, the Mayor, Mayor Prochaska, had
9 concerning phone calls to his home.
10 Q. Well, when you say concerning phone calls,
11 can't a constituent call up --
12 A. Threatening phone calls.
13 Q. -- his or her elected officials and make a
14 comment as to an important issue in the community?
15 MR. PORTER: I'll object to the extent that
16 calls for a legal conclusion.
17 Counsel, as you probably know, no, they
18 cannot. That's the decision-maker. That is an
19 improper ex parte communication. Having said that,
20 if you know, go ahead and answer.
21 MR. DOMBROWSKI: Well, you can make an
22 objection. I think that's in the nature of a
23 speaking objection. You're coaching him.
24 MR. PORTER: You asked for a legal conclusion.

22

1 I gave you one.
2 MR. DOMBROWSKI: Well, then, you make that
3 objection.
4 BY MR. DOMBROWSKI:
5 Q. Go ahead and answer.
6 A. I believe that would be subject to the ex
7 parte rules.
8 Q. So you're claiming that would be an
9 example of an improper ex parte contact?
10 A. I believe it would.
11 Q. Now, when you say threatening calls or
12 statements, did they go be -- did those statements
13 go beyond anything like we're not going to vote for
14 you if you vote for the landfill?
15 Were these people threatened with physical
16 harm?
17 A. My understanding, it was more of the
18 nature of threatening physical harm.
19 The comments of you're going to lose your
20 seat if you vote for this, that was definitely in
21 the conversation throughout all of these meetings.
22 They were --
23 Q. But they --
24 A. They were told that they were going to be,

23

1 you know, voted out. People were going to vote
2 them out of office if they pursued this.
3 Q. Okay. I understand that, but my question
4 is, there were no threats of physical harm to
5 anyone, correct?
6 A. My understanding is, there was threats to
7 physical harm.
8 Q. And what is your understanding based on?
9 A. Conversations with -- from those people at
10 meetings that they had had calls to their home
11 threatening them and to where they had actually
12 called and talked to the police about it.
13 Q. Okay. Who -- now, when you say
14 threatening, go deeper for me. What do you mean by
15 that?
16 A. Some sort of threat that related to a
17 positive vote supporting this process, be it
18 annexation or the landfill potentially would lead
19 to some type of harm to them.
20 Q. Some sort of physical harm?
21 A. Some sort of harm. I don't know if it was
22 physical or what.
23 Again, it's a secondhand conversation or
24 understanding. I don't have the specific details

24

1 annexations and ultimately approval of a landfill.
2 And I believe that he was biased in that a
3 member of the community with some political
4 horsepower. And if Mr. Munns was looking at --
5 felt -- or maybe felt intimidated or concerned that
6 he could have -- it could have affected his own
7 political career or other activities in the area
8 may have been weighted heavily on his decision to
9 vote for or against.
10 Q. That's just speculation on your part? I
11 mean --
12 A. No. That's conversation I got from one of
13 the Council people. And it was either
14 Alderman Munns directly or Alderman Besco at some
15 point.
16 Q. So did Alderman Munns tell you he had
17 spoken with Greg Ingemunson or did you get that
18 information from someone else?
19 A. I got that from Mr. Munns.
20 Q. When did he tell you that?
21 A. And that was prior to our filing the
22 application that the concern for Ingemunson was out
23 there, contact.
24 Q. So did Ingemunson say to Munns that he

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1 wanted the landfill property annexed or --
2 A. No.
3 Q. -- he didn't want it?
4 A. He would prefer it didn't get annexed.
5 Q. But Munns voted in favor of the
6 application -- in favor of the annexation, correct?
7 A. He voted in favor of the application but
8 ultimately denied -- voted in denial of the
9 landfill.
10 Q. Right. You said application. I think you
11 meant annexation, right?
12 A. He voted in favor of the annexation and
13 ultimately voted -- or denied the application for
14 the landfill.
15 Q. Right. So he took a position contrary to
16 what Mr. Ingemunson may have wanted him to?
17 A. I don't know that you can say that.
18 Ultimately, the landfill was denied.
19 And I think ultimately, the concern for
20 the landfill was as much the concern versus the
21 annexation.
22 His client was part of the annexation
23 corridor, but I think ultimately, the concern was
24 for the landfill. His father has ties to the

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1 competing landfill in the county and political
2 influence, I believe, hoping to swing a vote there.
3 Q. So the father, Dallas, has ties to waste
4 management?
5 A. To their application, yes.
6 Q. Does he represent them?
7 A. He is -- he is representing them not
8 specifically on the application but on other
9 issues.
10 Q. But again, if Mr. -- if Greg Ingemunson
11 told Marty Munns to vote against the annexation,
12 Munns would have disregarded that admonition,
13 correct?
14 MR. PORTER: Objection. It calls for
15 conjecture.
16 THE WITNESS: If you could restate that or
17 re --
18 BY MR. DOMBROWSKI:
19 Q. Right. Are you saying Greg Ingemunson
20 told Marty Munns to vote against annexation of the
21 landfill property?
22 A. He was concerned about annexation and
23 subsequent to have a landfill.
24 Q. Right, but let's just stick with the

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1 annexation.
2 A. I don't take it that he wanted him to deny
3 the annexation. I took it that his ultimate goal
4 was that the landfill didn't get sited.
5 Q. But the annexation was all part of that,
6 right?
7 A. The annexation was a part of the property
8 being brought into Yorkville.
9 Q. Anything else --
10 A. Additionally, with -- as far as
11 Ingemunson -- Boyd Ingemunson, who ran for State's
12 Attorney, it was knowledge that, as well, the
13 Ingemunsons' campaign or Boyd Ingemunson's
14 campaign, they had peppered the community with
15 anti-Eric Weiss brochures that I believe created --
16 intending to create a bias to Eric because he took
17 campaign donations from Hammon and had pictures of
18 Eric Weiss in front of garbage -- or in front of a
19 landfill with garbage behind him and they sent out
20 these fliers.
21 So the knowledge of the Ingemunsons or --
22 and the play of them to market in a campaign prior
23 and during this period of time also showed that
24 there was a bias on their part, certainly in

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1 influencing the public to try to intimidate them or
2 to vote for someone other than Eric Weiss or to
3 vote for Boyd because of the landfill connection.
4 Q. Wasn't their a bias on the part of Fox
5 Moraine to influence the landfill -- to influence
6 the public and the aldermen to vote in favor of the
7 landfill?
8 A. Is there a bias --
9 Q. Right.
10 A. -- on Fox Moraine's part to influence the
11 public?
12 Q. And the aldermen to vote in favor of the
13 landfill.
14 A. How was that?
15 Q. I'm asking you.
16 A. No, I don't see how we biased that. We
17 presented our application and we're looking for a
18 fundamentally fair hearing down the road.
19 Q. Right. And you put on your case, correct?
20 A. We put on our case.
21 Q. And the objectors put on their case,
22 correct?
23 A. That's correct.
24 Q. And you had competing interests, am I

1 And I guess Dean Wolfer is somebody that I don't
2 think we can take off the list either, but Gary
3 came into the process in the middle of all of the
4 craziness going on. I don't remember exactly when
5 he was seated.
6 He was appointed by Mayor Prochaska, but
7 he would have been subject to all of the acrimony
8 and rancorous behavior and public comment and so
9 forth in these public forums that were not about
10 the landfill prior to the landfill.
11 And he sat through the hearings and
12 listened to all of the testimony on both sides and
13 then was subject to making a decision based on
14 something short of all of the record without having
15 the ability to -- and he commented in the decision
16 meetings that they were unable to and it wasn't
17 fair and it would be hard for them to consume the
18 hearing officer's transcript and the -- their
19 attorney and their experts and then subsequently
20 Fox Moraine's, as well.
21 So I believe that that puts him in a
22 fundamentally unfair position to vote on the merits
23 or the manifested weight of the evidence for Fox
24 Moraine.

1 right?
2 A. I did. I didn't have competing
3 influences.
4 Q. Anything else on Mr. Munns?
5 A. Mr. Munns, as well, during the hearing was
6 evaluating or looking at alternative energy sources
7 and --
8 Q. That's the one article you had referred to
9 earlier?
10 A. The Popular Science.
11 Q. Anything else?
12 A. His -- well, I think I started with his
13 overall participation from stem to stern of the
14 open meetings and public meetings from annexation
15 and all the way up to filing and subsequently
16 participated in the meetings that the public
17 commented on that were clearly ex parte or were on
18 the issue of landfill when the landfill was not up
19 for consideration yet. We hadn't had our day in
20 court yet.
21 Q. Anything else on Munns?
22 A. I think that will tie him up.
23 Q. How about Golinski?
24 A. Jerry Golinski, he replaced Dean Wolfer.

1 Q. Because he was replacing Alderman Wolfer?
2 A. Not just --
3 Q. And --
4 A. Go ahead.
5 Q. And didn't have enough time, you say, to
6 get up to speed on everything?
7 A. I think that time was an issue, but at the
8 time he came on, he was in the height of the rancor
9 and the craziness going on in these open meetings
10 where you come in and you're shell-shocked.
11 You see the deer in the headlights and
12 people coming at you and intimidating or
13 threatening that you're going to be voted out, so
14 on and so forth. You're not going to be sat by at
15 a restaurant. You'll be alone at church.
16 And then, he's got that in his mind, and
17 then, he's got to sit through the landfill hearings
18 to where that behavior and that goes on again.
19 We never had any -- we didn't present
20 during any time prior to the application -- or the
21 hearing, I should say, we didn't present anything
22 to -- or we didn't have that opportunity because it
23 was time to shut up.
24 It was time to wait to put it on at the

CERTIFICATE OF SERVICE

I, Susan Hardt, a non-attorney, certify that I caused a copy of the foregoing **Notice of Filing and United City of Yorkville's Motion in Limine #5**, to be served upon the Hearing Officer and all Counsel of Record listed on the attached Service list by sending it via Electronic Mail on April 6, 2009.

/s/ Susan Hardt

[x] Under penalties as provided by law pursuant to ILL. REV. STAT. CHAP. 110 – SEC 1-109, I certify that the statements set forth herein are true and correct.

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