

ILLINOIS POLLUTION CONTROL BOARD

FOX MORaine, L.L.C.,)

Petitioner,)

vs.) PCB 07-146

UNITED CITY OF YORKVILLE, CITY)

COUNCIL,)

Respondent,)

KENDALL COUNTY,)

Intervenor.)

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STATE OF ILLINOIS
Pollution Control Board

TRANSCRIPT OF PROCEEDINGS had in the
above-entitled cause on 22nd day of April, A.D., at
9:00 a.m.

BEFORE: BRADLEY P. HALLORAN,
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 West Randolph Street
Chicago, Illinois 60601
312-814-8917

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22 appeared on behalf of the City of

23 Yorkville;

24

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23 REPORTED BY: SHARON BERKERY, C.S.R.

24 CERTIFICATE NO. 84-4327.

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1 THE HEARING OFFICER: Good morning,
2 everyone.

3 This is day two of the hearing
4 April 22nd, 2009, at approximately 9:00 a.m.
5 My name is Bradley Halloran, I'm a hearing
6 officer with the Illinois Pollution Control
7 Board. I'm also assigned to this matter,
8 entitled Fox Moraine, LLC, Petitioner, versus
9 United City of Yorkville City Council,
10 Respondent, Kendall County is the intervenor,
11 our docket number reflects PCB 07-146.

12 Again, I note this is day two.
13 The hearing started on April 21st, yesterday,
14 and I do want to note for the public that we
15 welcome public comments or statements. And I
16 think after the first break, unless anybody
17 has an appointment right now they have to
18 leave, they can come up here and give their
19 statement. Do I see anybody needing to speak
20 right now? Okay.

21 For the record, I see about
22 15 people in the audience, nonparties. With
23 that said, I believe Fox Moraine is still in
24 their case in chief, Mr. Mueller, Mr. Porter.

1 And, by the way, Counsel, please
2 introduce yourselves.

3 MR. MUELLER: George Mueller, for
4 petitioner Fox Moraine Landfill.

5 MR. PORTER: Rick Porter also for
6 petitioner.

7 MR. DOMBROWSKI: Leo Dombrowski, on
8 behalf of the United City of Yorkville.

9 MR. HOPP: Anthony Hopp, H-O-P-P, also
10 on behalf of Yorkville.

11 And, Mr. Hearing Officer, before
12 we start today, we'd like to be heard very,
13 very briefly on a preliminary matter.

14 THE HEARING OFFICER: Okay. You may
15 proceed.

16 MR. HOPP: Yes, Your Honor.

17 This is a motion to strike. There
18 was some discussion yesterday of an ordinance
19 that eventually passed by the United City of
20 the Yorkville. Of the issue in the evidence
21 yesterday was whether the conditions that
22 were contained in the ordinance were the same
23 conditions that The City voted on.

24 Of course, Yorkville maintains

1 that the ordinance was handled appropriately,
2 and we believe that the record will bear that
3 out. But the ordinance was for denial of the
4 siting application with condition.

5 The conditions were contingent and
6 only come into play if the decision of the
7 City is ever reversed or remanded. That
8 hasn't happened and may never happen.

9 The straight up or down vote that
10 was the other party ordinance is separate
11 from the condition. So whether or not the
12 remote contingent condition were
13 appropriately handled has nothing to do with
14 the straight up or down vote.

15 The testimony in the argument on
16 the conditions was not relevant, therefore,
17 we believe, to the straight up or down vote.
18 And we ask that it be stricken, and no
19 further evidence on the conditions or how
20 they were handled be allowed.

21 THE HEARING OFFICER: Thank you,
22 Mr. Hopp.

23 Any response?

24 MR. MUELLER: Two things. Number one,

1 the questioning regarding that, I believe,
2 was primarily in the form of an offer of
3 proof, in that you felt that it was getting
4 into the deliberative process privileged
5 area. And, as such, I don't think you can
6 strike an offer of proof.

7 Secondly, it's an issue for the
8 PCB, for the entire board, to decide whether
9 or not the way that the ordinance was passed
10 and written was relevant. I mean, what we're
11 trying to do here, Mr. Halloran, was to
12 demonstrate that the ordinance, which is
13 dated May 24th, was in fact not created on
14 May 24th, and is a document created on a
15 subsequent day, and that much of the content
16 of document does not reflect the will of the
17 city counsel, but, rather, the discretion of
18 its attorneys as they try to create a final
19 resolution as late as May 29th of 2006.

20 And there are legal arguments that
21 can be made with regard to the fact that the
22 City has improperly delegated its
23 responsibility to decide these issues to its
24 attorneys with respect to the fact that the

1 written decision that we've been presented
2 doesn't conform to what was actually voted on
3 or what occurred at the hearing and so forth.
4 And, for those reasons, it's obviously an
5 issue that the entire board needs to deal
6 with.

7 MR. PORTER: May I briefly add
8 something, Mr. Halloran?

9 THE HEARING OFFICER: You may,
10 Mr. Porter.

11 MR. PORTER: I'd also like to point
12 out that the original ordinance that
13 allegedly was there May 24th, and there
14 were -- and these two copies, maybe three, we
15 don't know, has never been produced. So we
16 have no idea at the present time if indeed
17 the up and down vote that counsel references
18 is indeed the language that's contained in
19 the ordinance resultantly provided several
20 days later. That's what this evidence is
21 probative of.

22 MR. HOPP: Just to conclude. Nothing
23 further on the motion to strike, just on the
24 evidentiary issue and the production issue.

1 The three ordinances that were handed to city
2 counsel, provided to the city counsel, and
3 the ordinance that was eventually passed were
4 within Yorkville's document production. And
5 at a break I can read those Bates numbers
6 into the record, those that were produced.

7 THE HEARING OFFICER: Okay. Very
8 well.

9 You know, I can't recall how I
10 ruled yesterday. I thought it came in as an
11 offer of proof. But with that said, I would
12 ask the Board to note Yorkville's objection
13 to that issue. And -- but I'll leave it as
14 is.

15 But your objection is on record.
16 And I do want to note any -- I think any
17 appeals of my hearing officer rulings, I
18 think is due before the Board ten days after
19 the transcript. So you might want to keep
20 that in mind, as well.

21 In any event, anything further?

22 MR. HOPP: No, Your Honor.

23 THE HEARING OFFICER: Fox Moraine,
24 you're up.

1 MR. MUELLER: We'll call Arden
2 Plocher.

3 (WHEREUPON, the witness was duly
4 sworn.)

5 ARDEN PLOCHER,
6 called as a witness herein, having been first duly
7 sworn, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. MUELLER:

10 Q. Would you state your full name,
11 please?

12 A. Arden Joseph Plocher.

13 Q. Mr. Plocher, you're a Yorkville city
14 alderman?

15 A. Correct.

16 Q. When were you elected to that
17 position?

18 A. About two years ago.

19 Q. In April of 2007?

20 A. Yes.

21 Q. So you are in your first term?

22 A. Correct.

23 Q. In 2006 and the early part 2007, you
24 did not hold public office; correct?

1 A. Correct.

2 Q. You were just a member of the public
3 and a citizen of the community?

4 A. Correct.

5 Q. You were previously a candidate for
6 Kendall County Board; weren't you?

7 A. Correct.

8 Q. And that election took place in
9 November of 2006?

10 A. I believe so.

11 Q. And you were defeated in that
12 election; correct?

13 A. Yes.

14 Q. And it was after you lost that
15 election that you then declared your candidacy for
16 the city council seat being vacated by Alderman
17 Burd, who was running for mayor; is that right?

18 A. Yes.

19 Q. Do you remember on September 25th,
20 2006, attending a meeting of the Yorkville Plan
21 Commission that was held, I believe, at the junior
22 high school gym, with a rather large audience
23 sitting in the bleachers, to discuss an issue of
24 annexation of what was then called the North Star

1 property, but which is the Fox Moraine property?

2 A. Correct.

3 Q. And do you remember that there was
4 rather substantial crowd at that meeting?

5 A. Yeah, I guess so.

6 Q. Several hundred people?

7 A. I didn't count them.

8 Q. Well, were the bleachers pretty much
9 full on one side of the gym?

10 A. I would have to say yes.

11 Q. Do you remember at that meeting,
12 speaking on two different occasions?

13 A. Yes.

14 Q. And do you remember that on the first
15 of those occasions you said you understand if this
16 alleged proposal for a landfill goes through, the
17 councils on both sides, which represent you, the
18 taxpayers will be using your tax money with legal
19 ways to fight your tax money?

20 A. Yes, but I thought we were talking
21 about a gas station at that time. I believe I
22 mentioned the gas station could be proposed there.

23 Q. Do you also remember then later on in
24 that meeting after it became clear that the

1 annexation could lead to a landfill, you getting up
2 and saying, "I live in Yorkville, and I don't want
3 it to smell already worse than it already is"?

4 A. I don't recall that.

5 Q. Well, let me show you a transcript of
6 the proceedings of that night. This is Fox Moraine
7 Exhibit No. 1.

8 And I'd ask you to turn to
9 Page 109. In fact, I'll get it for you, sir.

10 I'll hand you that. And at the
11 top of the page your statement begins. And do you
12 remember -- do you see at Line 8 where you said, "I
13 live in Yorkville and I don't want it to smell
14 already worse than it already does"?

15 A. Yes, I do see this.

16 Q. Does that refresh your recollection as
17 to had what you said at that time?

18 A. It's a possibility, but I'm sure I was
19 talking about a farm or the possibility. Because at
20 this time we weren't sure what was decided there. I
21 remember that being stated many times.

22 Q. Now, you also -- after that, had
23 conversations. And I'm done with that exhibit, by
24 the way, I won't have any other questions on it,

1 SO...

2 THE HEARING OFFICER: You can set that
3 down.

4 BY MR. MUELLER:

5 Q. Do you remember also that you talked
6 to the county attorneys, Mr. Jeep and Mr. Blazer. I
7 think you probably specifically talked to
8 Mr. Blazer; right?

9 A. I did.

10 Q. And he explained to you the landfill
11 siting process?

12 A. Yes.

13 Q. And you talked to him during these
14 meetings that were taking place in September,
15 October, and November of 2006?

16 A. I don't recall exact dates, but it's a
17 possibility.

18 Q. Certainly before the siting hearings
19 began; right?

20 A. Right. It was at a county meeting.

21 Q. And you were aware that the County at
22 that time was negotiating a host agreement with
23 Waste Management for a possible landfill in the
24 county; right?

1 A. I was privy to the information that
2 they were changing their solid waste land ordinance,
3 but I wasn't sure why. I never dug into it that
4 far.

5 Q. Now, who were the members of Valerie
6 Burd's campaign committee?

7 A. By my recollection, it was Wally,
8 Parrish, Milliron, and there were a couple others.

9 Q. And also Ed Sleezer; correct?

10 A. Correct.

11 Q. And did you attend, by the way, the
12 hearings on the siting application itself that
13 started in March?

14 A. Yes. I was probably at 99 percent of
15 them.

16 Q. Even though you were not on the
17 council at that time?

18 A. I knew there was a possibility I was
19 going to be.

20 Q. And you're aware, then, that Ed
21 Sleezer testified as an opposition expert witness?

22 A. That is possible. I don't recollect
23 if it was two years ago.

24 Q. Now, at the time that you were on

1 Valerie Burd's campaign committee, when you joined
2 the committee, you were aware that Werderich,
3 Sleezer, Parrish, and Milliron were all landfill
4 opponents; weren't you?

5 A. Correct.

6 Q. And you joined Valerie's committee
7 when, right after you lost the County Board
8 election?

9 A. Yeah, within a week or so. Actually
10 before.

11 Q. So before November of 2006?

12 A. Correct.

13 Q. And you were at a number of meetings,
14 I take it, where Milliron and Parrish both spoke out
15 against the possible landfill?

16 A. I don't recollect.

17 Q. Well, you -- I will come back to that.

18 Did you receive campaign
19 contributions from Mr. Parrish?

20 A. Yes.

21 Q. Did you receive campaign contributions
22 from Todd Milliron?

23 A. Yes.

24 Q. Did you receive campaign contributions

1 from Ed Sleezer?

2 A. No.

3 Q. And you also used Dan Cramer as an
4 attorney; is that correct?

5 A. Yes.

6 Q. And he was recommended to you by
7 Valerie Burd?

8 A. Yes.

9 Q. You had campaign signs --

10 A. Yes.

11 Q. -- when you were running?

12 Were some of them placed in close
13 proximity to landfill signs or anti-landfill signs?

14 A. That's a possibility. I didn't put my
15 signs out.

16 Q. Well, did you notice that some of your
17 signs were in close proximity to anti-landfill
18 signs?

19 A. What's "close proximity"?

20 Q. Well, I'm -- so the answer is you
21 don't know whether it was or not?

22 A. It was two, three, years ago.

23 Q. Let me show you, sir, what's a copy of
24 your discovery deposition, which was taken on

1 June 18th, 2008, and ask you if you remember your
2 deposition being taken on that day?

3 A. I do remember it being taken on that
4 day.

5 Q. All right. If I can direct you to
6 Page 27 of your deposition. And you'll need to look
7 at the numbers not at the very bottom, but the ones
8 sort of at the top right that don't necessarily
9 correlate with the page breaks.

10 A. Okay. Are you talking about
11 (indicating) --

12 Q. Do you remember being asked the
13 question do you notice that some --

14 A. Is this what you're talking about
15 (indicating)?

16 Q. Yeah.

17 Do you see at Line 11 there where
18 it says -- were you asked the question?

19 Q. "Did you notice that most
20 of your -- that some of
21 your signs were in close
22 proximity to anti-landfill
23 signs?"

24 A. Yes.

1 Q. And was your answer yes?

2 A. Yes.

3 Q. Now, if I could have you turn to
4 Page 18 of your deposition.

5 A. This one (indicating)?

6 Q. Yes, I think so. Do you see on
7 Page 19 a question that starts, "And I assume" -- or
8 Line 19?

9 A. Line 19. No.

10 There we are. I found it.

11 Q. Great.

12 Do you remember being asked:

13 Q. "And I assume that at the
14 meeting that, the one public
15 meeting you attended while
16 you were County Board
17 candidate, you would have
18 heard Ron Parrish get up and
19 voice anti-landfill sentiments
20 and Todd Milliron do the same
21 thing"?

22 A. That is correct. I did hear them.

23 Q. And your answer in fact was correct;
24 right?

1 A. Yes.

2 Q. Now, you have a social relationship
3 with Ron Parrish; correct?

4 A. I talk to him on occasion.

5 Q. Do you consider him a friend?

6 A. Yeah.

7 Q. You guys are both into cars; right?

8 A. Yeah.

9 Q. And you also have a social
10 relationship with George Gilson, who is president of
11 FOGY?

12 A. I talk to him.

13 Q. And you actually had drinks with him
14 at the Kendall Pub; right?

15 A. Yeah. Okay.

16 Q. Now, do you ever read the Beacon News?

17 A. Occasionally.

18 Q. Did you ever see a Beacon News article
19 of November 7th, 2006, which indicated that you were
20 a FOGY member?

21 A. I don't recall.

22 Q. And the article reported that you were
23 asked by FOGY to run for the seat being vacated by
24 Valerie Burd. Is that a true statement?

1 A. No, I was not asked by FOGY.

2 Q. Did you ever call Heather Gillis to
3 indicate that she had the fax wrong?

4 A. Heather Gillis was often misquoting
5 me, so I really don't read the paper.

6 Q. So you didn't call her?

7 A. No, I wouldn't have called her. I
8 didn't even know about it.

9 Q. Did you see the Beacon News article of
10 April 15th, two days before the election, where the
11 cover story was the Yorkville candidates' opinions
12 on the landfill?

13 A. I have now.

14 Q. You've seen that since?

15 A. Right.

16 THE HEARING OFFICER: Alderman, will
17 you please keep your voice up?

18 I'm sorry, Mr. Mueller.

19 Keep you voice up.

20 THE WITNESS: No problem.

21 THE HEARING OFFICER: Thank you.

22 MR. MUELLER: Mr. Halloran, you're the
23 hearing officer, you don't need to be sorry.

24 THE HEARING OFFICER: Sorry I cut you

1 off.

2 BY MR. MUELLER:

3 Q. Do you remember being asked in
4 response to the question -- or saying in response to
5 the question of would a safe state compliant
6 landfill be a positive, negative or neutral addition
7 to Yorkville, saying, "I don't think there's any
8 such thing as a safe state-compliant landfill"?

9 A. I said it was very hard coming up with
10 a state-compliant landfill based on
11 cross-contamination reasons.

12 Q. So you think that you were misquoted
13 by Heather Gillis?

14 A. Yes.

15 Q. Now, let me hand you a copy of Fox
16 Moraine Exhibit No. 18, which is the transcript of
17 the city council proceedings of May 23rd, 2007.

18 Do you remember being at that city
19 council meeting, sir? And I can retrieve the
20 deposition, I'm done with it, thanks.

21 A. Okay.

22 Is this from the night of the
23 vote?

24 Q. That's actually the night before.

1 A. The night before.

2 Q. Yeah. We'll get to the night of the
3 vote in a second. If I can direct you to Page 56 of
4 that transcript.

5 The page numbers are at the bottom
6 right of each of these many mini pages.

7 A. So it would be 53 at the top?

8 Q. Yep. No, it's -- it would be 53 at
9 the top.

10 A. Okay. Yeah.

11 Q. And you see that on Page 56 you began
12 making the statement?

13 A. I did.

14 Q. And do you remember saying, "The
15 applicant said that the landfill leaked"?

16 MR. HOPP: Objection, deliberative
17 process, first of all. Second, this is an
18 impeachment, he's trying to -- he's using the
19 document without refreshing his recollection.

20 MR. MUELLER: Well, that question is
21 preliminary.

22 MR. HOPP: And I'm not finished.

23 And third, the document was
24 actually in the record of the Pollution

1 Control Board, it's been admitted into
2 evidence, and it speaks for itself.

3 THE HEARING OFFICER: I'll allow him.
4 He's just confirming whether the alderman
5 stated that in the minutes.

6 Objection overruled.

7 BY MR. MUELLER:

8 Q. Do you understand that the applicant
9 said that the landfill leaked?

10 A. I recollect that being stated by
11 somebody two years ago at the hearings.

12 Q. Can you direct me to where in the
13 record it says that the applicant said that the
14 landfill leaked?

15 MR. HOPP: Objection. Deliberate
16 process. He's asking for the reason why he
17 said that. It's a clever question, but it
18 still gets to deliberate process.

19 MR. WITNESS: I'm asking if you can
20 direct me to a place in the record.

21 THE HEARING OFFICER: Maybe the next
22 question Mr. Mueller asks, that could be
23 objectionable.

24 But I overrule your objection,

1 Mr. Mueller.

2 BY THE WITNESS:

3 A. How much time do we have for me to go
4 over it?

5 BY MR. MUELLER:

6 Q. As much time as you want, sir. We'll
7 waive the decision deadline if you want to read the
8 whole record?

9 A. I'm sure it is. But if I can direct
10 you to the page, no.

11 Q. Now, if we turn to -- if we go to the
12 very bottom of the page.

13 A. Same one we were on?

14 Q. Yep.

15 A. Okay.

16 Q. Where you go, and secondly, I could
17 also never personally jeopardize my friends and
18 family. And then that flips over to the next page,
19 which is 57. You can read the rest of that
20 paragraph.

21 My question is, was there any --
22 are you done reading the rest of that paragraph?

23 A. I'm fully aware of that paragraph,
24 sir.

1 Q. Now, you're talking about your brother
2 having cerebral palsy; correct?

3 A. Correct.

4 Q. Is there any evidence in this record
5 indicating that the proposed Fox Moraine Landfill
6 would cause disease or birth defects to any
7 individual?

8 MR. HOPP: Objection. Deliberative
9 process.

10 MR. MUELLER: I'm asking --

11 THE HEARING OFFICER: Again,
12 Mr. Mueller is just asking if there's
13 anyplace in the record that the alderman saw.

14 MR. HOPP: I --

15 THE HEARING OFFICER: It may be a
16 premature objection. But overruled.

17 BY THE WITNESS:

18 A. I don't recollect if there's an exact
19 sentence that way.

20 BY MUELLER:

21 Q. All right.

22 Mr. Plocher, I'm going to hand you
23 now what is Fox Moraine Exhibit No. 19, which are
24 the deliberations and the transcripts of the vote on

1 May 24th. Do you remember being at that meeting?

2 A. Yes.

3 Q. If I can direct your attention to
4 Page 28.

5 THE HEARING OFFICER: What were we
6 looking at, Mr. Mueller?

7 MR. MUELLER: Fox Moraine Exhibit
8 No. 19, the transcript of the city council
9 final deliberations and vote.

10 THE HEARING OFFICER: Thank you.

11 BY MR. MUELLER:

12 Q. Do you have that, Mr. Plocher?

13 A. I do. Is that what you meant
14 (indicating)?

15 Q. Yeah. And do you see where you start
16 making a statement on Line 8?

17 A. Uh-huh.

18 Q. And at this point you proposed some
19 additional conditions. Is that correct?

20 A. Yes.

21 Q. One was a \$10 million a year flat fee
22 instead of tipping fees; correct?

23 A. Yes.

24 Q. And the second was that all monitoring

1 wells be installed before opening the operation?

2 A. That is correct.

3 Q. Now, let me show you, sir, a copy of
4 Resolution No. 07-36. Let me show you, sir, a copy
5 of the resolution and ask you if you could please
6 turn to the page with the conditions.

7 Do you see that, sir?

8 A. Yeah.

9 Q. Pardon me?

10 A. It's on Page 2.

11 Q. And do you see that your condition
12 regarding installation of the monitoring wells
13 before they accept waste, is included as I think
14 it's Condition S; is that right?

15 A. Yes, I see it in there.

16 Q. And if you would look, can you find
17 whether or not your condition regarding the \$10
18 million a year flat fee is included as one of the
19 conditions?

20 A. No. But we agreed upon later that you
21 weren't going to give me the \$10 million if it ever
22 got sited, unfortunately.

23 Q. Well, who agreed on it? You said "we
24 agreed." I didn't agree with you. Who did you

1 agree with on --

2 A. Whoever was one of your lawyers. He
3 said it was unconstitutional for me to ask for \$10
4 million based on some reason.

5 I got denied the \$10 million.

6 Q. You got denied the \$10 million
7 condition?

8 A. Yeah.

9 Q. By who?

10 A. By, I believe, it was -- it was one of
11 the attorneys.

12 Q. It wasn't me; was it?

13 A. I don't recollect.

14 Q. It wasn't Mr. Porter; was it?

15 A. Who is Mr. Porter?

16 Q. He's the guy that was here sitting
17 here, he's in the back now.

18 A. It could have. I remember him saying
19 I can't have \$10 million, and agreeing to that.

20 Q. An attorney told you you couldn't have
21 ten million dollars?

22 A. An attorney.

23 MR. MUELLER: That's all I have.

24 Thank you, Mr. Plocher.

1 THE HEARING OFFICER: Thank you,
2 Mr. Mueller.

3 Mr. Hopp?

4 MR. HOPP: Yes, Hearing Officer.

5 CROSS-EXAMINATION

6 BY MR. HOPP:

7 Q. Mr. Plocher -- Alderman Plocher, a
8 couple things.

9 Have you ever worn an
10 anti-landfill button at a landfill siting hearing or
11 an annexation hearing?

12 A. No.

13 Q. That's a no?

14 A. That's a no.

15 Q. At some point did you or do you -- at
16 some point, did you live at your parents' home?

17 A. Yes.

18 Q. Are you aware of your parents ever
19 having an anti-landfill sign in their front yard or
20 back?

21 A. Not that I recollect.

22 Q. Now, you said that you were elected in
23 April of '07 and sworn in in May of '07; is that
24 right?

1 A. Right.

2 Q. And I think you previously testified
3 that you attended 99 percent of the landfill
4 hearings before you were elected?

5 A. I would say that's true.

6 Q. Did you read the transcripts for the
7 other hearings?

8 A. The few that I didn't attend, yes, I
9 read the transcripts.

10 Q. Did some of the hearings get a little
11 boisterous?

12 A. Not any more boisterous than many of
13 our hearings do.

14 Q. Were you ever intimidated or
15 frightened by any of the boisterous activity that
16 went on at the hearings?

17 A. No.

18 Q. Mr. Mueller asked you earlier about
19 the annexation hearings in September of 2006. And
20 do you remember attending those hearings?

21 A. I remember attending one of them.

22 Q. And is it accurate -- that this is
23 what I perceive from your testimony. But is it
24 accurate to say that even at the end of that

1 annexation hearing in September of 2006, you didn't
2 know what the property was being annexed for; is
3 that right?

4 MR. MUELLER: I'm going to object.

5 Because that was leading.

6 MR. HOPP: I'll ask it a different
7 way. Withdrawn.

8 BY MR. HOPP:

9 Q. At the end of the September 2006
10 annexation meeting that you went to, did you know
11 what they were going to use the property for?

12 A. No.

13 Q. In fact, at that meeting did the
14 lawyers for the party who is seeking annexation tell
15 you that they hadn't decided yet what to use the
16 property for?

17 A. Yes.

18 Q. And you're aware that the actual
19 application for the landfill was filed some two and
20 a half months later; right?

21 A. True.

22 Q. Now, you remember Mr. Sleezer; right?

23 A. Yes.

24 Q. Was Mr. Sleezer in fact on Valerie

1 Burd's campaign committee? Are you positive of
2 that?

3 A. Yes.

4 Q. Do you know if Mr. Sleezer and Mayor
5 Burd are old friends?

6 A. I don't know their history.

7 Q. Let's go back to your deposition.

8 Mr. Mueller asked you about
9 whether your campaign signs were in close proximity
10 to anti-landfill signs, and that's on Page 27. I
11 don't know if you still have it --

12 A. No.

13 Q. I can give you my copy. Let me ask
14 you this, was it intentional that your campaign
15 signs may have been in close proximity to some
16 anti-landfill signs?

17 A. No, I didn't -- I handed them to a
18 couple people, and they distributed them out to
19 people.

20 Q. So you don't know who put your signs
21 where?

22 A. No. I have a general clue who had
23 them, but I was never the one that physically stuck
24 them in anybody's -- I stuck them in my parents'

1 yard. I'll admit that.

2 Q. Did you ever direct anybody to put
3 your signs next to anti-landfill signs?

4 A. No.

5 Q. You've had drinks with Mr. Gilson at
6 the Kendall Pub?

7 A. Yes.

8 Q. Have you ever had any drinks with
9 anyone else at the Kendall Pub?

10 A. Oh, yeah.

11 Q. Did you ever have drinks with
12 Mr. Mueller at the Kendall Pub?

13 A. I don't think so.

14 MR. HOPP: That's all I have.

15 THE HEARING OFFICER: Thank you,
16 Mr. Hopp.

17 Mr. Mueller?

18 REDIRECT EXAMINATION

19 BY MR. MUELLER:

20 Q. Just so that we're clear, there was an
21 anti-landfill sign in your parents' yard that you
22 stuck there yourself; right?

23 A. No.

24 Q. I thought that's what you said?

1 MR. DOMBROWSKI: No, that's not what
2 he said.

3 THE HEARING OFFICER: I don't recall
4 that, Mr. Mueller.

5 MR. DOMBROWSKI: It was his own sign.

6 MR. MUELLER: No further questions.

7 THE HEARING OFFICER: Thank you.

8 MR. HOPP: That's all.

9 THE HEARING OFFICER: Alderman, you
10 may step down. Thank you.

11 (WHEREUPON, the witness was
12 excused.)

13 MR. DOMBROWSKI: Can we go off the
14 record?

15 THE HEARING OFFICER: Off the record
16 for a second.

17 (WHEREUPON, a recess was had.)

18 THE HEARING OFFICER: All right.
19 We're back on the record.

20 Before we have our next witness, a
21 member of the public -- ma'am, you can step
22 up to the podium. Would you like to give an
23 oral statement? If you give an oral
24 statement, then you're sworn in and you're

1 subject to cross-examination. Or you can
2 just give public comment, anything that's
3 relevant in the matter.

4 MS. WOODWORTH: This will be public
5 comment.

6 THE HEARING OFFICER: Okay. Terrific.
7 Thank you.

8 MS. WOODWORTH: My name an Alice
9 Woodworth. I've been a citizen of Kendall
10 County for over 60 years.

11 THE HEARING OFFICER: Could you spell
12 you last name for the --

13 MS. WOODWORTH: W-O-O-D-W-O-R-T-H.

14 THE HEARING OFFICER: Thank you.

15 MS. WOODWORTH: You highly-paid
16 lawyers are nitpicking and trying to trip up
17 people who are forced to take days off work
18 to testify. If our future is determined by
19 this nitpicking, we Kendall County citizens
20 will all lose. It might be legal; however,
21 it's offensive.

22 First of all, I believe the County
23 made a poor decision to allow landfills.
24 Then the City made an illegal, secret

1 annexation in a land grab to get revenue -- a
2 small amount of revenue.

3 Kendall County is the smallest
4 county in Illinois. It is one of the fastest
5 growing counties in the United States.

6 Three mega landfills are in the
7 works. Our highways will become more crowded
8 with hundreds of semi loads of garbage and
9 whatever chemicals are intuned in it. We
10 will be overflowing with garbage. Instead of
11 a beautiful area to live, we will become a
12 county of bottom feeders where no one wants
13 to live.

14 An LLC means having no
15 responsibility in the future. The owners
16 should be proud to live on the premises of
17 their future landfill property.

18 My nephew has life threatening
19 asthma. The prevailing winds would blow from
20 this landfill over Yorkville. Every load
21 dumped would bring unhealthy particles in the
22 air for him to breathe and bring him closer
23 to another asthma attack.

24 Ever since the County Board voted

1 to allow landfills, mega landfill LLCs have
2 been circling the county like turkey
3 vultures. Turkey vultures are scavengers who
4 feed on carrion. I feel like we, the
5 citizens of Kendall County, are the carrion.
6 Thank you.

7 THE HEARING OFFICER: Thank you, very
8 much. I ask the Board to take note.

9 Okay. Mr. Hopp. Or excuse me.

10 MR. MUELLER: We'll call Brendan
11 McLaughlin.

12 MR. HOPP: Mr. Hearing Officer, before
13 this testimony begins, we'd like to insert an
14 objection as to relevance. Mr. McLaughlin
15 was not an employee of the City, and he was
16 in no way associated with the City at the
17 time of the landfill siting hearings or the
18 decision on the landfill siting application;
19 therefore, we have no -- his testimony could
20 in no way be relevant to these proceedings.

21 THE HEARING OFFICER: Mr. Mueller?

22 MR. MUELLER: We won't know until we
23 hear the testimony.

24 THE HEARING OFFICER: Could you give

1 me a summary?

2 MR. MUELLER: Of what his testimony is
3 going to be?

4 THE HEARING OFFICER: Well, of who he
5 is and --

6 MR. MUELLER: He's the City
7 Administrator right now.

8 THE HEARING OFFICER: Okay.

9 MR. MUELLER: And he has opinions
10 about the importance of this landfill case
11 politically that I think support the
12 applicant's case. My argument, though, is
13 that a relevance objection ought to be
14 reserved until we have heard the evidence.

15 THE HEARING OFFICER: I agree.

16 Objection overruled.

17 You may proceed, Mr. Mueller.

18 (WHEREUPON, the witness was duly
19 sworn.)

20 BRENDAN McLAUGHLIN,
21 called as a witness herein, having been first duly
22 sworn, was examined and testified as follows:

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DIRECT EXAMINATION

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BY MR. MUELLER:

Q. State your name, please.

A. Brendan McLaughlin.

Q. What is your position?

A. I'm the City Administrator.

Q. How long have you been in that position?

A. Since September 10th, 2007.

Q. And prior to that, what was your position?

A. I worked for an engineering firm in California.

Q. You have become familiar with the city council as part of your duties as City Administrator?

A. To some degree.

Q. Have you become familiar with the mayor?

A. Yes.

Q. Have you become familiar with the dynamics of city government?

A. I don't know if you ever become fully familiar, but to a degree.

1 Q. And, sir, have you provided
2 information to the City's attorneys, Gardner, Koch &
3 Weisberg, in another lawsuit, United City of
4 Yorkville versus Illinois Environmental Protection
5 Agency and Hamman Farms, PCB 08-95?

6 MR. HOPP: Objection. Relevance.

7 MR. MUELLER: I'll tie it up in a
8 second, Mr. Halloran.

9 THE HEARING OFFICER: Overruled.

10 MR. HOPP: Also privileged,
11 Your Honor. If he's provided information to
12 the City attorneys.

13 MR. MUELLER: According to the
14 information that's of record.

15 THE HEARING OFFICER: Okay.

16 Overruled.

17 BY MR. MUELLER:

18 Q. You've got to answer the question,
19 Mr. McLaughlin?

20 THE HEARING OFFICER: You can answer
21 the question, if you remember.

22 BY THE WITNESS:

23 A. I believe I forwarded billing
24 information from the City to them.

1 BY MR. MUELLER:

2 Q. Did you provide any other information
3 to them that has been used by them?

4 A. I don't recall any.

5 Q. Did you tell -- well, let me do it
6 this way.

7 (WHEREUPON, certain documents
8 were marked Fox Moraine Exhibit
9 Nos. 29-30, for identification, as
10 of 4/22/09.)

11 BY MR. MUELLER:

12 Q. Let me show you what's been marked as
13 Fox Moraine Exhibit No. 29 and Fox Moraine Exhibit
14 No. 30.

15 MR. MUELLER: This is 29,
16 Mr. Halloran. I'm sorry I didn't mark an
17 extra copy. And this is a copy of 30.

18 THE HEARING OFFICER: Thank you.

19 (WHEREUPON, the document was
20 tendered to counsel.)

21 BY MR. MUELLER:

22 Q. Mr. McLaughlin, Exhibit No. 29 would
23 appear to be the first page of a pleading entitled
24 Petitioner's Response to Motion For Attorney Fees

1 Filed By the City of Yorkville. Does that appear to
2 you to be correct?

3 A. That's the first time I've seen it.

4 Q. That's the first time you've seen it?

5 A. I think so.

6 Q. All right. Let's look at --

7 MR. HOPP: Objection. Nonrelevance,
8 Your Honor.

9 THE HEARING OFFICER: Yeah, you know
10 what, I ruled yesterday, the -- I take
11 administrative notice or official notice of
12 the orders and rulings of the Board and also
13 the Circuit Court. I would accept the
14 pleadings -- I would not accept the
15 pleadings. Maybe I said offer of proof, but
16 I am revisiting that, and the pleadings have
17 no relevance.

18 MR. MUELLER: Mr. Halloran, if I could
19 ask you to indulge me for just one moment and
20 several more questions, I think I can
21 convince you that I'm not offering this for
22 the pleading, but rather for the content of a
23 statement made by Mr. McLaughlin.

24 MR. HOPP: And, Mr. Halloran, if I

1 may, I do object to what may be coming, and
2 this may be premature, but it sounds like
3 we're taking discovery in another case right
4 now.

5 MR. MUELLER: No, we're not.

6 MR. HOPP: And I object to that.

7 THE HEARING OFFICER: You know, this
8 is a totally different case, Mr. Mueller.
9 I'm ruling that the pleadings have no
10 business here, no relevancy in this case.

11 If it was an order, a ruling,
12 maybe so. But no.

13 MR. MUELLER: It's an admission
14 against interest here that we're talking
15 about. And Exhibit 30, Mr. Halloran, is a
16 certification signed by Mr. McLaughlin to the
17 truthfulness of the pleading that's
18 represented in Exhibit 29.

19 Where he says under penalties
20 provided by law, he certifies that the
21 contents of the pleading are true and correct
22 and the relevant portion of pleading is that
23 the actions of Hamman related to
24 environmental concerns and its application

1 for landfill permitting are the biggest issue
2 in Yorkville in the past 20 years. Hamman
3 has been the subject of numerous public
4 meetings and was the primary issue in the
5 last City election and change in
6 administration.

7 That's clearly an admission
8 against interest when all of these city
9 council members have attempted to testify
10 that the election -- that the landfill had
11 nothing to do with the election or their
12 position in it. When you have the City
13 Administrator certifying under oath that this
14 was the biggest issue in 20 years and caused
15 a change in administration in the City, I
16 believe, that's an admission against
17 interest.

18 THE HEARING OFFICER: Mr. Hopp?

19 MR. HOPP: Disagree, Mr. Halloran.

20 This is completely irrelevant.

21 Mr. McLaughlin wasn't even here at the time
22 he signed a verification to the pleading. He
23 didn't write the pleading, he's obviously
24 verified certain facts within it. This is no

1 more than trickery.

2 The pleading stands for itself,
3 you've already indicated that you're not
4 going to accept pleadings as evidence. So
5 it's completely irrelevant, and it's unfound.

6 MR. MUELLER: Mr. Halloran, just one
7 more time briefly.

8 I don't care about the pleading or
9 anything else that it says. All I care about
10 it getting into evidence the fact that the
11 City Administrator signs a verification that
12 the statement that the landfill issue caused
13 a change in administration and was the
14 biggest issue in 20 years in Yorkville is
15 true.

16 THE HEARING OFFICER: Okay. I will
17 allow that questioning, and very briefly a
18 small window. And I will deal with this as
19 you request, and then I'll decide then.

20 But you may answer the question,
21 sir.

22 Is there a question posed?

23 MR. MUELLER: Well, let me restart.

24 The witness has obviously heard this dialog,

1 so it might go a lot faster now.

2 BY MR. MUELLER:

3 Q. Mr. McLaughlin, going to Exhibit 30.

4 The second page of that. There appears to be
5 something entitled Verification by Certification
6 with your name on it and your signature.

7 Did you sign that document?

8 A. Is there a question?

9 Yes, I signed it.

10 Q. And is it, therefore, your belief that
11 the landfill and the Hamman environmental matters
12 have been the biggest issue in Yorkville in
13 20 years?

14 MR. HOPP: Objection. Relevance to
15 this witness' belief.

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

18 (WHEREUPON, the record was
19 read by the reporter.)

20 THE HEARING OFFICER: Objection
21 sustained.

22 BY MR. MUELLER:

23 Q. Did you certify, Mr. McLaughlin, the
24 statement that the actions of Hamman relating to

1 environmental concerns and its application for
2 landfill permitting are the biggest issue in
3 Yorkville in the past 20 years?

4 MR. HOPP: Objection, Your Honor.

5 What he's asking him now is whether he
6 certified a legal argument, as opposed to the
7 factual statements contained in --

8 MR. MUELLER: It's a factual statement
9 and I'm asking whether he certified it.

10 MR. HOPP: And we can argue all day
11 whether it's fact or argument, but the fact
12 of the matter is this witness is not
13 competent to testify about what some lawyer
14 wrote in a pleading and then ask him to
15 verify the facts contained therein.

16 MR. MUELLER: You know, Mr. Halloran,
17 if the witness is not competent to testify,
18 he shouldn't have certified it. When I, as a
19 lawyer, ask clients to verify and certify
20 pleadings, I make them read the pleadings and
21 say, "Is that true," before they sign it.

22 MR. HOPP: We all know what he's doing
23 here, Mr. Halloran, this is irrelevant, it's
24 unfair to the witness, and it's highly

1 improper. It's got nothing to do with the
2 motion.

3 THE HEARING OFFICER: It has nothing
4 to do with the motion?

5 MR. HOPP: Petition for fees.

6 THE HEARING OFFICER: Oh.

7 MR. HOPP: He probably -- when he most
8 likely certified it -- we only have half --
9 we have one page of the pleading. What he
10 most likely certified was the fact that the
11 bills the City received were in fact --

12 THE HEARING OFFICER: You know what,
13 Mr. Mueller, I don't feel comfortable with
14 this, and I'm going to grant Mr. Hopp's
15 objection. I think we're going off on
16 another tangent here. So I sustain
17 Mr. Hopp's objection.

18 MR. MUELLER: Then I'd like that last
19 question to be answered as an offer of proof,
20 whether he certified the statement.

21 THE HEARING OFFICER: One question,
22 and then we're out.

23 MR. MUELLER: Well, then let me reask
24 it to cover the entire paragraph.

1 BY MR. MUELLER:

2 Q. Mr. McLaughlin, did you certify the
3 statement, quote, "The actions of Hamman relating to
4 environmental concerns and its application for
5 landfill permitting are the biggest issue in
6 Yorkville in the past 20 years. Hamman has been the
7 subject of numerous public meetings and was the
8 primary issue in the last City election and change
9 in administration," unquote?

10 A. Yeah. As I said already, I reviewed
11 the entire document. And as to -- you know, when
12 you read that verification and the information and
13 beliefs to such matters, they are -- my -- it is
14 what I understand to be the case here in Yorkville.

15 Q. Thank you.

16 MR. MUELLER: I have no further
17 questions.

18 THE HEARING OFFICER: I will -- that
19 was an offer of proof, I will take these
20 exhibits as an offer of proof to assist the
21 Board in the witness' testimony, if need be.

22 MR. HOPP: Can I ask a few follow-up?

23 THE HEARING OFFICER: Yes, you may,
24 Mr. Hopp.

CROSS-EXAMINATION

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BY MR. HOPP:

Q. Mr. McLaughlin, do you actually remember this petition for -- in response to this petition for attorneys' fees?

A. I remember the petition, and as I looked at the front of the document, hadn't seen it for months up until today, it was a document the attorney -- our attorney asked me to review as it relates to the facts that were included in there. I really didn't review what his arguments were. He said -- I think it was 4:50 on the day before filing and said, "Will you just make sure I captured this correctly, and then sign it so we can get it turned in?"

Q. And part of what he was after was actually the bills that were received by the City, and you had to verify as City Administrator, that the City received a bill.

MR. MUELLER: I'm going to object to part of what the attorney as after, how would he know? He said he verified the payments.

MR. HOPP: We just spent 20 minutes on how he knows what the attorney was after.

1 The attorney wrote the pleading.

2 THE HEARING OFFICER: Well, it was
3 about five minutes, Mr. Hopp, but...

4 MR. HOPP: I'll rephrase.

5 THE HEARING OFFICER: Thank you. And
6 this is under an offer of proof --

7 MR. HOPP: Yes.

8 THE HEARING OFFICER: -- combined with
9 Mr. Mueller's.

10 MR. HOPP: This in reference to the
11 offer of proof.

12 BY MR. HOPP:

13 Q. Did the motion include some
14 information about attorneys fees that the City had
15 been asked to pay or had paid?

16 A. Oh, absolutely.

17 Q. And you, as a City Administrator, are
18 responsible for collecting the bills; is that right?

19 A. Part of the duties, yeah.

20 Q. Now, did you live in Yorkville at the
21 time of the election in 2007?

22 A. No.

23 Q. Did you live in Yorkville at the time
24 of the vote on the siting application?

1 A. No, I lived in California.

2 MR. HOPP: That's all I have.

3 THE HEARING OFFICER: Why did you move
4 here?

5 Okay, we're out of the offer of
6 proof.

7 THE WITNESS: Am I done?

8 THE HEARING OFFICER: Is...

9 MR. MUELLER: I have no redirect.

10 THE HEARING OFFICER: All right.

11 Thank you.

12 Yeah, you may step down. Thank
13 you, sir.

14 THE WITNESS: Thank you.

15 (WHEREUPON, the witness was
16 excused.)

17 MR. DOMBROWSKI: Alderman Munns is
18 outside.

19 MR. PORTER: Yes, we are ready for
20 Mr. Munns.

21 (WHEREUPON, the witness was duly
22 sworn.)

23

24

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

4 DIRECT EXAMINATION

5 BY MR. PORTER:

6 Q. Good morning, Mr. Munns, I'm Rick
7 Porter representing Fox Moraine. State your name
8 for the record, please.

9 A. Marty Munns.

10 Q. And what's your occupation?

11 A. Business development for Rush-Copely
12 Heart Institute.

13 Q. And you were also on the city council
14 for Yorkville; is that correct?

15 A. Yes.

16 Q. And when were you elected?

17 A. I was elected in April of 2001.

18 Q. And you attended the city council
19 meeting on May 23rd of 2007, where the application
20 of Fox Moraine was first discussed by the county as
21 a whole; is that correct?

22 A. Yes.

23 Q. Isn't it true that at that May 23rd
24 meeting you immediately questioned why the hearing

1 officer, who attended every meeting, wasn't here to
2 protect -- to present this?

3 MR. HOPP: Objection. Deliberative
4 process.

5 THE HEARING OFFICER: Would you please
6 read the question back, please.

7 (WHEREUPON, the record was
8 read by the reporter.)

9 THE HEARING OFFICER: I don't think
10 that invades a deliberative process. He was
11 just asking why the hearing officer wasn't
12 there. The objection is overruled.

13 You may answer.

14 BY THE WITNESS:

15 A. I remember that, and I don't know if
16 it was immediate, but I do remember questioning
17 that, yes.

18 BY MR. PORTER:

19 Q. You also pointed out that, quote, "We
20 hired him and we paid him 40 to \$50,000, and he
21 didn't show up, and submits, you know, 50 pages at
22 4:30 on the day of the hearing. You know, it's kind
23 of hard to read through everything he's put in
24 there."

1 You said that; correct?

2 MR. HOPP: Same objection.

3 THE HEARING OFFICER: Overruled.

4 BY THE WITNESS:

5 A. Yes.

6 MR. PORTER: Mr. Halloran, I am going
7 to have a variety areas where I am going to
8 be asking this witness if, indeed, he said
9 certain statements at that open meeting.
10 Perhaps we can have a continuing objection?

11 THE HEARING OFFICER: Sure. And it is
12 in the minutes; correct?

13 MR. PORTER: Correct.

14 THE HEARING OFFICER: Just confirming
15 what he had stated at the minutes without
16 more.

17 MR. PORTER: Correct.

18 THE HEARING OFFICER: Mr. Hopp, do you
19 feel comfortable with that?

20 MR. HOPP: I feel comfortable with the
21 standing objection. But I'd also like to say
22 that this is cumulative.

23 This document that he's reading
24 from is already in the record for this

1 proceeding. It's already been offered and
2 accepted as an exhibit at this hearing.

3 So now he's just asking him to
4 read things that are already in the record.
5 I think it's cumulative and unnecessary.

6 THE HEARING OFFICER: Well, I think it
7 may assist the Board so they have everything
8 in one spot when they look over the
9 transcript. So objection overruled for now.
10 And feel free to object, I don't want you to
11 feel slighted.

12 BY MR. PORTER:

13 Q. That hearing officer was Mr. Larry
14 Clark; is that right?

15 A. Yes.

16 Q. Isn't it true that evening you were
17 told by Mr. Roth that it was the hearing officer's
18 decision not to come?

19 A. I don't remember saying -- if it's in
20 the record, yes, but I can't really recall exactly.

21 Q. Well, it isn't really a memory test,
22 and I've given you a copy of Exhibit 18.

23 MR. HOPP: Page, Counsel?

24 MR. PORTER: I'm looking.

1 BY MR. PORTER:

2 Q. I would direct you to Page 11.

3 A. The answer to the last question, or
4 have you got another one coming?

5 Q. I'm sorry, my citation is incorrect.
6 Let me back up here.

7 Actually, Page 9. If you'll take
8 a look at the statement referenced by Mr. Roth at
9 Line 11.

10 Does that refresh your
11 recollection?

12 A. Yes.

13 Q. And isn't it true that Mr. Roth told
14 you that he believed it was the hearing officer's
15 decision not to come?

16 A. Yes.

17 Q. You then pointed out that you thought
18 you were supposed to deliberate that night and that
19 could not happen, because, quote, "How am I supposed
20 to really read you through his stuff?"

21 Do you recall that?

22 A. Yes.

23 Q. And isn't it true, then, that what you
24 were saying was that Mr. Clark's material, Derke

1 Price's material, and the other material that was
2 provided to you that day could not be considered by
3 you at that moment; right?

4 MR. HOPP: Objection. Deliberative
5 process.

6 THE HEARING OFFICER: Could you read
7 the question back, please?

8 (WHEREUPON, the record was
9 read by the reporter.)

10 THE HEARING OFFICER: Mr. Porter, a
11 response?

12 MR. PORTER: Well, it's not a
13 deliberative process. I am asking him to
14 characterize what it was he was saying that
15 evening.

16 MR. HOPP: That is deliberative
17 process.

18 MR. PORTER: I'm not asking what he's
19 deliberating about.

20 THE HEARING OFFICER: You're on the
21 fence. I agree with Mr. Hopp. The objection
22 is sustained.

23 MR. PORTER: Okay.

24

1 BY MR. PORTER:

2 Q. Isn't it true that you then said, at
3 Page 10, Line 12, "So, basically, you're saying that
4 Derke Price's and your stuff and Clark's in this
5 book here is not going to be considered in my
6 thought process, because I just got them. Is that
7 what you're saying?"

8 Did you make that statement?

9 A. Yes.

10 Q. And exactly when you referenced your
11 stuff, when you were talking to Mr. Roth, what stuff
12 were you describing?

13 A. I can't recall exactly, but I would
14 imagine all the information we got that night, I was
15 just trying to figure out when --

16 Q. Well, isn't it true you were provided
17 a book of about 1,400 pages of material from the
18 applicant, you were provided Derke Price's report,
19 and you were provided Mr. Clark's recommendation.
20 And then you were also provided something from
21 Mr. Roth, which you reference as your stuff. Is
22 that right?

23 A. Correct.

24 MR. PORTER: Mr. Hearing Officer,

1 you've already made the ruling on this, and
2 so this would fall under an offer of proof.
3 I guess I'm just warning counsel on that.

4 MR. HOPP: If I can respond,
5 Your Honor?

6 If the questioning goes into what
7 was in the materials that Mr. -- that
8 Alderman Munns received from Mr. Roth, it's
9 already been held in attorney-client
10 privilege. Even an offer of proof, I think
11 it's inappropriate to ask anything about the
12 substance of that attorney-client
13 communication.

14 THE HEARING OFFICER: Is that what you
15 were going to ask about, the Roth report?

16 MR. PORTER: It is indeed. And I
17 would like to pose the question.

18 I understand what your ruling is
19 probably going to be. I do not believe it
20 invades attorney-client privilege, because
21 this city council has already produced Derke
22 Price's material.

23 And it's my understanding that the
24 attorney that provided a similar report was

1 doing a substantive analysis of the criterion
2 that is conjecture and surmised, because it's
3 never been produced to us. However, added,
4 indeed, what was involved, that is
5 nonattorney-client privileged material, that
6 is substantive staff material, and,
7 therefore, is not subject to attorney-client
8 privilege.

9 So I'm going to pose the question,
10 I believe there's no impropriety in posing
11 it. I understand what your ruling is likely
12 to be. I just wanted to warn everybody.

13 THE HEARING OFFICER: Well, you may
14 pose it, but I'm not going to allow the
15 witness to answer it.

16 MR. PORTER: I understand. But I
17 don't want to waive the issue.

18 BY MR. PORTER:

19 Q. What was --

20 MR. DOMBROWSKI: One other objection
21 I'd like to mention that we went through
22 yesterday, as well. The case law says that
23 it's required that material be provided to
24 the decisionmaker. Not necessarily that the

1 decisionmaker have gone through all the
2 material. They were provided with that
3 material, that's all that's required.

4 THE HEARING OFFICER: That's correct.
5 I totally agree with you, Mr. Dombrowski.

6 MR. DOMBROWSKI: So anything beyond
7 that is irrelevant.

8 THE HEARING OFFICER: I totally agree.
9 But I will allow Mr. Porter to ask the
10 question, but I direct the witness not to
11 answer.

12 BY MR. PORTER:

13 Q. What was in the material given to you
14 from Mr. Roth?

15 MR. HOPP: Objection. Privileged.

16 THE HEARING OFFICER: Sustained.

17 BY MR. PORTER:

18 Q. Now, when you voiced these concerns
19 that you did not have the opportunity to review this
20 material on the very night that you were there to
21 deliberate, Mr. Roth had no explanation for you;
22 isn't that correct?

23 A. If you say so. Based on my
24 recollection, I'd say yes.

1 Q. As a matter of fact, Mr. Roth told you
2 it's been very difficult -- I'm sorry, at Line 21 of
3 Page 10. "It's been very difficult for us to
4 assimilate the information, as it is for you."

5 Is that correct?

6 A. Correct.

7 Q. Ultimately, you asked at Page 11,
8 Line 5, "Why did we pay Derke Price and Larry Clark
9 \$50,000 apiece to throw in comments at the last
10 moment that aren't going to be considered."

11 Is that correct?

12 A. Yes.

13 Q. And you never received an answer to
14 that question; did you?

15 A. It doesn't look like it, yes.

16 Q. Were you ever told who made the
17 decision not to have the hearing officer, Mr. Clark
18 or the consultant Derke Price at the meeting?

19 A. Not that I recall.

20 Q. I'm sorry, I didn't hear you.

21 A. No, not that I recall.

22 Q. You also were concerned or confused as
23 to whether there was going to be one consensus
24 resolution vote or not. Is that correct?

1 MR. HOPP: Objection. Deliberative
2 process.

3 THE HEARING OFFICER: Read the
4 question back, please.

5 (WHEREUPON, the record was
6 read by the reporter.)

7 THE HEARING OFFICER: Mr. Porter?

8 MR. PORTER: That goes only to the
9 heart of the procedure of the matter, not the
10 deliberative process on the substantive
11 criteria.

12 THE HEARING OFFICER: You know, I
13 agree with Mr. Hopp. Sustained.

14 BY MR. PORTER:

15 Q. Isn't it true at Page 18 of that same
16 transcript you stated, "I mean, are we just going to
17 come up to one consensus? And what if we don't have
18 a consensus? Are you just going to make an
19 ordinance to vote on yes or no?"

20 Did you say that?

21 THE HEARING OFFICER: You may answer.

22 BY THE WITNESS:

23 A. It's right there. I said it, yes.

24

1 BY MR. PORTER:

2 Q. And when you left that meeting, what
3 was your understanding as to what it was that you
4 were going to receive?

5 MR. HOPP: Objection. Deliberative
6 process.

7 THE HEARING OFFICER: Sustained.

8 MR. PORTER: I'd ask that that one be
9 allowed as an offer of proof.

10 THE HEARING OFFICER: Mr. Hopp?

11 MR. HOPP: I object, Your Honor. You
12 know, I think this is clearly based on
13 deliberative process, and I think we've been
14 over this.

15 THE HEARING OFFICER: You know, I
16 agree. Sustained.

17 BY MR. PORTER:

18 Q. You actually seconded a motion that
19 you made to continue or postpone the hearing so that
20 you had a chance to actually review the material
21 that had landed in your lab that very day; is that
22 correct?

23 A. Are you referencing something here?

24 Q. Actually, no. Do you remember that

1 you seconded the motion to postpone the hearing on
2 May 23rd, like the material that was given to you?

3 A. I've seconded a lot of motions, so I
4 can't really recall. But if it's in there, I did.

5 Q. I direct your attention then to
6 Page 23 of that transcript, wherein Alderman Besco
7 made a motion to postpone to give ample time to read
8 what had been presented to you. And the record
9 indicates Mayor Burd asked if there was a second,
10 and you said second.

11 Does that refresh your
12 recollection?

13 A. The answer is yes.

14 Q. And were you allowed the -- strike
15 that.

16 Was the motion continued to give
17 an ample opportunity to review that material?

18 A. I don't know, whatever this adds up to
19 in here, I don't recall.

20 Q. Well, the motion was actually
21 defeated, and you went forward with your discussions
22 that night, despite the motions; is that correct?

23 A. Correct.

24 Q. Isn't it also true that, at one point,

1 Mr. Besco also indicated that he would like to hear
2 from Clark and Derke Price, and you indicated at
3 that time, "I'm sure if we held their checks until
4 tonight, that they would have shown up"?

5 A. I don't recall saying it. But if it's
6 in the record, yes.

7 Q. You were angry that Mr. Clark and
8 Mr. Price were not there to stand behind their
9 recommendations in favor of this application;
10 correct?

11 MR. HOPP: Objection. Deliberative
12 process.

13 THE HEARING OFFICER: You know,
14 sustained. I think the board can infer from
15 the witness' testimony whether or not he was
16 angry, and from the minutes.

17 BY MR. PORTER:

18 Q. Were you concerned that they were not
19 there to stand behind the recommendation?

20 MR. HOPP: Objection. Deliberative
21 process.

22 THE HEARING OFFICER: Sustained. Same
23 ruling.

24

1 BY MR. PORTER:

2 Q. On the 23rd, you also entered into a
3 discussion with Mayor Burd about what it meant to
4 deliberate; isn't that correct?

5 A. Are you referencing a line in this
6 or...

7 Q. First, do you remember that?

8 A. I don't recall.

9 Q. All right.

10 If you take a look at Page 96, you
11 indicated to Ms. Burd, "I'm not sure it's rebuttal,
12 but deliberation means to discuss; right? So like
13 Alderman Kalinski said, so let's say on Traffic
14 Criteria No. 6 -- so we can't deliberate on what we
15 all kind of -- because, as you know, it's been the
16 same ballpark, I think, we're here, there's a lot of
17 traffic in Yorkville and there's a lot of, you know,
18 traffic going through downtown. What does all that
19 mean? Could we discuss it?"

20 And then you asked -- and she did
21 say yes. You then asked, "Should we go each
22 criteria one by one?"

23 Do you recall that discussion?

24 A. Yes.

1 Q. And, ultimately, Mayor Burd informed
2 you that no, you weren't going to go through each
3 criterion and have a deliberation over each
4 criterion. Rather, every city council member was
5 just free to discuss whatever they wanted to
6 discuss; is that correct?

7 A. Yes.

8 Q. You also explicitly told Mayor Burd
9 that you wanted to read the expert's reports that
10 had been given to you at Page 98, Line 13, and she
11 responded, "The only thing I can say to you is that
12 you need to have a little confidence in your own
13 opinions."

14 Isn't that correct?

15 A. Yes.

16 Q. Ultimately, you indicated at Page 97,
17 Line 4, "It's like a circus. This is not a
18 deliberation."

19 Isn't that right?

20 A. Yes.

21 Q. Isn't it then true that, ultimately,
22 Mayor Burd told you to just thumb through the
23 material provided by the applicant, Mr. Clark,
24 Mr. Price, and Mr. Roth?

1 MR. PORTER: Let me finish.

2 BY MR. PORTER:

3 Q. You would agree that it's highly
4 unlikely that all of the city council members had an
5 opportunity to view the thousands of pages of
6 material that were provided to them just one day
7 before the vote was taken; correct?

8 MR. HOPP: Objection. Calls for
9 speculation.

10 THE HEARING OFFICER: Sustained. And
11 I think the minutes speak for themselves and
12 the testimony Mr. Munns has provided.

13 MR. DOMBROWSKI: Also misstates the
14 record. They were not provided thousands of
15 pages.

16 BY MR. PORTER:

17 Q. Are you aware that the binder that was
18 provided from the applicant was approximately 1,400
19 pages?

20 A. It was what it is. It was a thick
21 binder. I couldn't tell how many pages exactly.

22 Q. Now, you're aware that before the
23 siting hearing, there were several ancillary public
24 hearings involving annexation, road vacation, host

1 agreement, and re-annexation; is that right?

2 A. Yes.

3 Q. You would agree that those meetings
4 were generally -- there was generally a loud and
5 vocal opposition present; is that correct?

6 A. Yeah, reasonably loud.

7 Q. As a matter of fact, you were even
8 sworn at by an objector at one point; isn't that
9 correct?

10 A. At the end of the meeting, a comment
11 was made, yes.

12 Q. What was the comment?

13 A. Is this PG here, can I...

14 Q. Everybody is an adult in the room.

15 A. No kids here?

16 Q. No kids here.

17 A. A gentleman just kind of -- not that I
18 took it as a big threat -- called me a jagoff.

19 Q. And you understood that person to be a
20 member of the opposition group FOGY; is that
21 correct?

22 A. I knew he was in the crowd. I don't
23 know who is a member of FOGY, who's not. I don't
24 know who carries -- who had their membership card or

1 whatever. So, now, he was just a member of the
2 crowd.

3 Q. Who was on Valerie Burd's campaign
4 committee?

5 A. I was not part of it, so -- I was not
6 running for re-election, so, to tell you the truth,
7 it was really none of my business.

8 Q. Well, who do you believe was on that
9 committee?

10 A. I have no idea.

11 Q. Isn't it true that it was your
12 understanding that Todd Milliron was a member of
13 Valerie Burd's campaign committee?

14 A. I guess I probably thought that. I
15 had real -- no, you know, definite knowledge. I
16 didn't sit in on any campaign meetings, so I didn't
17 see who was doing what there. But I guess you could
18 presume that he had some -- you know, some interest
19 in it.

20 Q. You would agree that it was public
21 knowledge that -- strike that.

22 Did you also understand that Wally
23 Werderich was somehow involved in Ms. Burd's
24 campaign committee?

1 A. I wasn't sure. You know, you hear
2 rumors about who was doing what. But, as I said, I
3 was not involved in any of the meetings, so I had no
4 direct knowledge.

5 Q. You did understand that -- well,
6 strike that.

7 It was public knowledge that
8 Valerie Burd was associated with anti-landfill
9 groups; is that correct?

10 MR. HOPP: Objection. Calls for
11 speculation as to what is public knowledge.

12 THE HEARING OFFICER: Mr. Porter?

13 MR. PORTER: I'm asking what he
14 understands the public knowledge was.

15 THE HEARING OFFICER: Yeah, I'm going
16 to sustain the objection.

17 BY MR. PORTER:

18 Q. Isn't it true that you believe that
19 Valerie Burd was associated with anti-landfill
20 groups?

21 A. No.

22 Q. I'm sorry?

23 A. No.

24 Q. Isn't it true that -- your deposition

1 has been taken in this case; correct?

2 A. Correct.

3 Q. And at that time you told the truth to
4 the questions that were posed to you; is that right?

5 A. Yes.

6 Q. And isn't it true that at Page 23,
7 Line 2 Mr. Mueller asked you, "Isn't it pretty" --
8 you don't have that in front of you, I'm just going
9 to read it to you, and if you need to see it I'll
10 hand it to you.

11 A. Okay.

12 Q. Isn't it true that Mr. Mueller asked
13 you at Page 23, Line 2, "Isn't it pretty fair that
14 she" -- being Ms. Burd -- "was associated with the
15 landfill citizens and citizens groups?" To which
16 you responded, "I mean, it was public knowledge of
17 that."

18 Did you make that statement?

19 A. If it's in the record, I did, yes.

20 Q. Likewise, you understood that Wally
21 Werderich was obviously associated with
22 anti-landfill groups; is that right?

23 A. If it's in the record, yes.

24 Q. Well, I'm not asking you to memorize

1 if it was in your dep.

2 A. Well, what do you mean associated
3 with? I mean...

4 Q. I just wanted your understanding.

5 It was your understanding he was
6 associated with anti-landfill groups; is that
7 correct?

8 A. Yes.

9 Q. And that was based on comments he had
10 made at public meetings; is that right?

11 A. It was based on things I heard in town
12 that he was the campaign manager, you know, finance
13 manager of the campaign. It wasn't anything I heard
14 at the -- necessarily at the hearings.

15 MR. PORTER: I'm sorry, Mr. Halloran,
16 can I have that answer read back?

17 THE HEARING OFFICER: Sure.

18 (WHEREUPON, the record was
19 read by the reporter.)

20 MR. PORTER: Okay.

21 BY MR. PORTER:

22 Q. You did see Ms. Burd's campaign signs
23 and other candidates' for the 2007 election placed
24 in close proximity to anti-landfill signs; is that

1 correct?

2 A. Yes.

3 MR. PORTER: I have a group of
4 questions that would come under the offer of
5 proof, which I would like to present now.
6 I'm going to then bounce back to some that
7 are not. This relates to what you,
8 Mr. Halloran, believe to be deliberative
9 process issues. So in the nature of an offer
10 of proof:

11 BY MR. PORTER:

12 Q. Did you consider Larry Clark and Derke
13 Price qualified and competent to render the reports
14 and recommendations that they did?

15 MR. HOPP: Objection. Deliberative
16 process.

17 THE HEARING OFFICER: Mr. Porter?

18 MR. PORTER: You allowed -- yesterday
19 you made a ruling that we were going to be
20 allowed to ask these questions in the nature
21 of an offer of proof, which is why --

22 THE HEARING OFFICER: Yeah. Well, not
23 these particular questions. I've never been
24 given these particular questions.

1 MR. PORTER: You are correct. Similar
2 questions to other witnesses, however.

3 THE HEARING OFFICER: His belief
4 whether they were qualified?

5 MR. PORTER: Yep.

6 THE HEARING OFFICER: How would he
7 know?

8 MR. PORTER: He has answered the
9 question before that he believed him to be
10 qualified and competent.

11 MR. HOPP: He answered in his
12 deposition, Your Honor, before you made your
13 ruling on deliberative process. This
14 testimony has since been ruled inadmissible.

15 THE HEARING OFFICER: Okay. I'll
16 allow it under an offer of proof.

17 THE WITNESS: Repeat the question?

18 BY MR. PORTER:

19 Q. Certainly.

20 You considered Larry Clark and
21 Derke Price qualified and competent to render
22 reports of recommendations that they did; is that
23 correct?

24 A. In my, you know, layman's summing up

1 of their qualifications and presuming that the City
2 hired qualified people, yes.

3 Q. Both Clark and Price concluded that
4 Fox Moraine established each of the required
5 criteria and recommended approval with conditions;
6 is that right?

7 A. Yes.

8 Q. And both of those reports generally
9 confirmed what you had heard in the terms of
10 evidence during landfill citings hearings; isn't
11 that true?

12 MR. HOPP: Objection. Deliberative
13 process.

14 MR. PORTER: Still in the offer.

15 THE HEARING OFFICER: Objection so
16 noted. Still in the offer of proof.

17 MR. PORTER: I will make it clear when
18 I am no longer in the offer of proof.

19 BY THE WITNESS:

20 A. Yes.

21 BY MR. PORTER:

22 Q. There was nothing in those reports
23 that you really disagreed with; isn't that correct?

24 A. No.

1 Q. Yet you voted the exact opposite as to
2 what those recommendations were; isn't that right?

3 A. Yes.

4 Q. You believe that Criterion 1, that
5 facility was necessary to accommodate the waste
6 needs of the area it was intended to serve, was met;
7 isn't that correct?

8 A. I believe my comments in there were if
9 I believe there was a need that we needed another
10 facility for waste, you know, for Kendall County,
11 and if there was -- you know, if we had that much
12 garbage being generated, it obviously needs to go
13 somewhere, I believe, it was, somewhat, my comments
14 then, yes.

15 Q. Yet you -- strike that.

16 So you intended to vote yes as to
17 Criterion 1; isn't that right?

18 MR. HOPP: I'm going to have to
19 object. I know we're still in the offer of
20 proof, but I object on deliberative process.

21 THE HEARING OFFICER: I agree with
22 you, Mr. Hopp. Again, I'm under some time
23 constraint here.

24 I totally agree with your

1 objection. And it's sustained, but we are in
2 an offer of proof.

3 So you may answer the question, if
4 able.

5 THE WITNESS: Well, it's kind of hard
6 to answer, because we weren't just judging on
7 one criteria. So, basically, what I hear him
8 asking me is if it was just Criterion 1 only,
9 would I have voted for the landfill.

10 MR. PORTER: That's a much better
11 question. So I'm going to ask that question.

12 MR. HOPP: I'm going to object to the
13 reformulated question. That is not what
14 happened.

15 So now it's hypothetical and
16 speculative. If they were asked to vote
17 criterion by criterion, which they were not,
18 how would he voted.

19 Now you're asking him to speculate
20 two years later.

21 THE HEARING OFFICER: Yeah.

22 Mr. Porter?

23 MR. PORTER: It's within the offer of
24 proof.

1 THE HEARING OFFICER: Yeah, rephrase
2 it, please.

3 BY MR. PORTER:

4 Q. If you had just voted as to
5 Criterion 1, you would have voted yes; correct?

6 MR. HOPP: Objection. Speculative.

7 THE HEARING OFFICER: He can answer if
8 he's able.

9 BY THE WITNESS:

10 A. I can't -- you know if it was just
11 that one criterion based for a landfill, I'm not
12 sure how I would answer it, because that's really
13 not really what happened. So I have no way of
14 knowing two years ago if that was the only thing
15 there if I would have voted yes.

16 BY MR. PORTER:

17 Q. You stated in the record that you
18 believe there was a need; correct?

19 A. I believe there was a need for garbage
20 to go somewhere, yes, I believe those were my
21 comments.

22 Q. And isn't it true that you don't
23 believe that this facility was located in a
24 regulated recharge area?

1 A. I don't understand what that means.

2 Q. Well, do you recall there being
3 testimony regarding a certain criterion, I believe
4 it's Criterion 9, that there was only one regulated
5 recharge area in Illinois, it's in Peoria, and that
6 doesn't apply to Yorkville?

7 A. I had some vague recollection about
8 Peoria and that issue, but --

9 Q. So if the record indicates that the
10 city council found that that criterion had not been
11 met, you certainly never intended to vote that
12 Criterion 9 wasn't met; correct?

13 MR. HOPP: Objection. Calls for
14 speculation.

15 THE HEARING OFFICER: Yeah, you know,
16 I agree. Sustained. It was too speculative,
17 Mr. Porter. And I believe he's answered as
18 best as he is able.

19 MR. PORTER: We haven't broached No. 9
20 yet, we broached --

21 THE HEARING OFFICER: Well, we did 1,
22 and it's the same -- so sustained.

23 MR. PORTER: And so the record is
24 clear, you're not allowing him to answer the

1 question in an offer of proof?

2 THE HEARING OFFICER: That's correct.

3 MR. PORTER: No longer an offer of
4 proof.

5 BY MR. PORTER:

6 Q. You would agree that the city council
7 did not address each criterion separately and vote
8 on each criterion separately; correct?

9 A. Yes. My understanding was we vote as
10 a whole -- the whole package.

11 Q. So you believed that at least one of
12 those criterion was not met, and that's why you
13 voted the up or down way that you did; correct?

14 MR. HOPP: Objection. Deliberative
15 process.

16 THE HEARING OFFICER: Sustained.

17 MR. PORTER: I would ask that one as
18 an offer of proof.

19 THE HEARING OFFICER: And I believe I
20 said yesterday, Mr. Porter, that I'm allowing
21 this in a very limited manner, and we've been
22 going through this for quite some time. You
23 know, so it's starting to become a fishing
24 expedition, which we don't approve of. So if

1 you could wrap it up.

2 Objection overruled.

3 MR. PORTER: We are at the almost dead
4 end of my offer of proof.

5 THE HEARING OFFICER: You may proceed.

6 MR. PORTER: Do you need that read
7 back?

8 THE WITNESS: Yes, please.

9 THE HEARING OFFICER: Could you read
10 that back, please?

11 (WHEREUPON, the record was
12 read by the reporter.)

13 BY THE WITNESS:

14 A. Yes, my understanding was they needed
15 to meet all nine criterion, and there was at least
16 one criterion that wasn't met, yes.

17 BY MR. PORTER:

18 Q. Did you receive an e-mail from a
19 George Gilson on January 4, 2007?

20 A. I don't recall. I may have. I get
21 hundreds of e-mails a day from work, aldermen, side
22 stuff, so it's hard to say for sure.

23 Q. Did you receive e-mail from Mr. Gilson
24 referencing -- talking about the annexation of land

1 and the vacation of Sleepy Hollow Road?

2 A. I don't recall. If you're reading it,
3 obviously, it was an e-mail, but...

4 Q. Did you receive an e-mail from an Art
5 Williams on January 29, 2007?

6 A. I don't recall.

7 Q. Do you recall receiving an e-mail from
8 him wherein he asks you your position on a landfill?

9 A. There were some e-mails coming in
10 during that time period, I don't know if it was
11 before or after. We were instructed to not discuss
12 it outside the hearing process. And so, he may
13 have, I can't say for sure.

14 Q. Now, in addition to the night that you
15 received -- strike that.

16 In addition to the materials
17 received on May 23rd, you had also received a box of
18 substantial materials before that date; isn't that
19 correct?

20 A. Yes.

21 Q. And did you discard that box without
22 reading it?

23 MR. HOPP: Objection. I'm not sure
24 what -- what he's talking about.

1 THE HEARING OFFICER: Neither do I.

2 BY MR. PORTER:

3 Q. Did you receive a box of materials
4 that contained the record and exhibits from the
5 application hearing?

6 A. I received what everybody else
7 received the City, as far as the application and the
8 presentation from the petitioner.

9 Q. And did you discard that box without
10 reading it? Or any of the material contained
11 therein?

12 A. If it was what I got -- what I think
13 you're saying from the City that we all got, no, I
14 actually still have some of it in my garage,
15 probably.

16 MR. PORTER: I have nothing further.

17 THE HEARING OFFICER: Thank you,

18 Mr. Porter.

19 Mr. Hopp?

20 MR. HOPP: Just a few questions.

21 CROSS-EXAMINATION

22 BY MR. HOPP:

23 Q. Mr. Munns, how long have you been an
24 alderman?

1 A. Eight years.

2 Q. Do contentious issues ever come before
3 the city council?

4 A. Pretty much every -- I wouldn't say
5 every meeting, but at least several times a month.

6 Q. Do people get loud and boisterous
7 sometimes?

8 A. Yes, they do.

9 Q. What's your reaction when people get
10 loud, boisterous, or even out of control at the city
11 council meetings?

12 A. Well, being an alderman, it's really,
13 you know --

14 MR. PORTER: Objection, deliberative
15 process.

16 (WHEREUPON, the record was
17 read by the reporter.)

18 THE HEARING OFFICER: I don't think --
19 you got to think if it involves whether
20 calling a police officer or --

21 MR. PORTER: Well, if he's asking if a
22 deliberative process -- an exception exists,
23 which I do not believe it does in the Berkett
24 case --

1 THE HEARING OFFICER: We've already
2 ruled on the Berkett case, and we brought
3 that up a few times, Mr. Porter.

4 THE COURT REPORTER: Please don't talk
5 on top of each other.

6 MR. PORTER: I'm aware of that, which
7 is why I beg the --

8 THE HEARING OFFICER: My understanding
9 of the question is what do you do with a
10 boisterous crowd. Do you reject them, tell
11 them to settle down, or what?

12 MR. HOPP: That's the question.

13 MR. PORTER: No objection to that
14 question.

15 THE HEARING OFFICER: You may answer.

16 BY THE WITNESS:

17 A. As has happened many times before,
18 you know, we have police officers stationed
19 throughout the room. And if somebody gets out of
20 control, I think a couple of times it happened, the
21 person is removed from the room. It's very calm and
22 there's been no concerns over that by myself or any
23 other aldermen I talked to. So we have a process
24 for it, and it doesn't really affect me one way or

1 the other.

2 BY MR. HOPP:

3 Q. Does it affect your ability to do your
4 job as an alderman?

5 A. No.

6 Q. Well, do you have a -- I know you said
7 you're an alderman and you work for the hospital, do
8 you have another part-time job that you do?

9 A. Yeah, I'm a licensed sports official
10 for the state of Illinois for football, basketball,
11 and baseball.

12 Q. So do you referee, say, for example,
13 high school basketball games?

14 A. Yes.

15 Q. Does the crowd ever get out of control
16 at high school basketball?

17 MR. PORTER: Objection. Relevance.

18 THE HEARING OFFICER: He can answer if
19 he's able.

20 BY THE WITNESS:

21 A. Probably 20 times louder than any city
22 council meeting you've ever been.

23 BY MR. HOPP:

24 Q. Does it every affect your ability to

1 do your job as a referee?

2 A. No, and I've been called much worse
3 than what was referenced today.

4 Q. I'm going to take you back to the
5 events of May 23rd, 2007.

6 There was a meeting that we just
7 discussed at length, where some information was
8 provided to you. Information had been provided
9 before or after the meeting. Do you remember that
10 meeting?

11 A. Yes.

12 Q. Is it true that a large bulk of the
13 information that you were provided at the last
14 minute came from the applicant, Fox Moraine?

15 A. Yes.

16 Q. What did you do over the evening of
17 the 23rd before the meeting on the 24th?

18 MR. PORTER: Objection. I've been
19 forbade from asking that very question, of
20 whether or not he reviewed certain material.

21 THE HEARING OFFICER: Mr. Hopp?

22 MR. HOPP: He's not been forbade to --
23 whether he reviewed certain material. He's
24 been asked -- in fact, he's asked that

1 question quite a bit, whether he's reviewed
2 certain things.

3 THE HEARING OFFICER: Well, that was
4 within the offer of proof.

5 MR. HOPP: Inside and outside an offer
6 of proof, what he read and what he saw. I
7 mean, those questions have been asked. The
8 question is whether he read the stuff --

9 THE HEARING OFFICER: Well, okay.
10 What he saw is different from whether he read
11 it or not.

12 MR. HOPP: Okay.

13 THE HEARING OFFICER: And I believe
14 Mr. Porter's questions that were in the offer
15 of proof, whether he read it -- you know. So
16 his was in the offer of proof.

17 So objection sustained.

18 BY MR. HOPP:

19 Q. All right. Mr. Munns, prior to the
20 meeting on the 23rd, did you sit through
21 approximately 120 hours of testimony on the landfill
22 siting application?

23 A. Yes.

24 MR. PORTER: Same objection. He's now

1 delving into what this individual reviewed in
2 order to come to his decisions, exactly what
3 I have been forbidden to do.

4 THE HEARING OFFICER: Could you read
5 the question back, please, of Mr. Hopps?

6 (WHEREUPON, the record was
7 read by the reporter.)

8 THE HEARING OFFICER: That's in the
9 record.

10 MR. PORTER: I don't know that it is,
11 but --

12 THE HEARING OFFICER: Well, I think,
13 yeah.

14 MR. PORTER: Whether or not he was
15 there, I don't know that that is in the
16 record.

17 MR. DOMBROWSKI: Well, the record will
18 reflect which aldermen were at which landfill
19 meeting.

20 MR. HOPP: That's correct.

21 THE HEARING OFFICER: That's correct.
22 I think he can answer without more.

23 Overruled.

24

1 BY THE WITNESS:

2 A. Yes.

3 BY MR. HOPP:

4 Q. Let's talk about Mayor Burd's signs.
5 You said that you'd saw some of Mayor Burd's signs
6 placed in close proximity to anti-landfill signs; do
7 you remember that?

8 A. I don't know if it was her signs to
9 theirs or theirs to hers. But yes, they were in
10 close proximity.

11 Q. Did you see her signs in other places
12 that were not in close proximity to anti-landfill
13 signs?

14 A. Yes.

15 Q. Do you know who put Mayor Burd's signs
16 around town?

17 A. No.

18 Q. Do you know what they were instructed
19 with respect to where to put them?

20 A. No.

21 MR. HOPP: That's all I have.

22 THE HEARING OFFICER: Mr. Porter?

23 MR. PORTER: No redirect, thank you.

24 THE HEARING OFFICER: Alderman, you

1 may step down.

2 (WHEREUPON, the witness was
3 excused.)

4 THE HEARING OFFICER: And while we're
5 still on the record, I made a comment with
6 the city administrator, why did he move from
7 California to here, and I meant the climate.
8 I didn't want any disrespect for Yorkville or
9 the State of Illinois. I strictly meant the
10 climate, before it's taken out of context.

11 MR. PORTER: I have no objection if
12 you want to strike it.

13 THE HEARING OFFICER: Okay.

14 MR. HOPP: Can we take five minutes?

15 THE HEARING OFFICER: Sure. Ten.

16 Off the record.

17 (WHEREUPON, a recess was had.)

18 THE HEARING OFFICER: All right.
19 We're back on the record. It's approximately
20 five minutes to 11:00.

21 Fox Moraine, you're still up.

22 MR. PORTER: Thank you, Mr. Hearing
23 Officer.

24 THE HEARING OFFICER: Thank you,

1 Mr. Porter.

2 MR. PORTER: We will call Devin Moose.

3

4 (WHEREUPON, the witness was duly
5 sworn.)

6

7 DEVIN MOOSE,
8 called as a witness herein, having been first duly
9 sworn, was examined and testified as follows:

10

DIRECT EXAMINATION

11 BY MR. PORTER:

12 Q. Please state your name for the record.

13 A. Devin Moose.

14 Q. And what is your work address?

15 A. 1607 East Main Street, St. Charles,
16 Illinois 60174.

17 Q. And how are you employed?

18 A. I'm the director of Shaw
19 Environmental's St. Charles' office.

20 Q. Do you hold any professional
21 certifications or licenses?

22 A. I am a registered professional
23 engineer in the State of Illinois, as well as ten
24 other states. I'm a diplomat by the American
Academy of Environmental Engineers.

1 Q. What did it entail to become a
2 diplomat?

3 A. Diplomat is a higher level of
4 accreditation for professional engineers in their
5 particular area of expertise. It requires to be a
6 licensed professional engineer in good standing, it
7 requires eight years of service as a registered
8 professional engineer, it requires a written
9 examination in your area of expertise, and also
10 requires an oral examination by a panel of your
11 peers before becoming licensed as a diplomat.

12 It also then has additional
13 continuing education requirements.

14 Q. Have you acted as a teacher or
15 instructor in relation to any of your professional
16 organizations?

17 A. Yes, I'm a member of numerous
18 professional organizations, and one of those
19 professional organizations I'm a member of is called
20 the Solid Waste Association of North America. The
21 acronym for that is SWANA. SWANA is the
22 organization that represents government officials in
23 solid waste industry throughout North America.

24 As part of that, SWANA has asked

1 me to redo or rewrite their training course for
2 transfer stations and teach the trainings course for
3 government officials for recertification throughout
4 the United States and Canada.

5 Q. Do you have any experience regarding
6 the siting of regional pollution control facilities?

7 A. Yes, I do.

8 Q. What is that experience?

9 A. I have significant experience. I have
10 participated in siting -- working for units of
11 government siting their own facilities, I've worked
12 for units of government as a consultant in reviewing
13 siting applications that have been filed by others.
14 I work for private sector reviewing -- assembling
15 siting applications, probably on the order of 60 or
16 70 now through different states, and I have also
17 attended many siting applications, siting hearings,
18 that I have not necessarily been directly involved
19 in.

20 Q. You mentioned that you've handled
21 siting hearings in other states. What percentage is
22 Illinois versus outside of Illinois?

23 A. Probably 80 percent Illinois.

24 Q. Of the Subtitle D landfills presently

1 sited in Illinois, is there any other engineer that
2 has been more involved than you?

3 A. I don't think so. I have been
4 involved in one way or another, by far the majority
5 of siting cases in Illinois since Subtitle D came
6 into effect or since passage of 39.2 of the Act.
7 I've been involved in, I think, 40 sitings under
8 39.2 in Illinois, transfer stations and landfills.
9 From the southern tip of Illinois, in Metropolis
10 under Mayor Bill Comer, to Stephenson County, which
11 borders Wisconsin up on the northwest corner, from
12 Vermilion County in Danville, Illinois, Peoria
13 County and really all spots in between. Southern
14 Cook County, City of Chicago, suburbs, rural, urban,
15 rich, poor, industrial, farm.

16 Q. And you mentioned earlier that you had
17 attended siting hearings other than those you're
18 personally involved in. Why?

19 A. You know, this is one of my core
20 businesses. I constantly try to evaluate and
21 improve my siting, my work.

22 I -- you can learn -- there's
23 always something to learn at a siting hearing, and
24 looking at somebody else's siting application, we

1 either learn good examples, but you can also learn
2 bad examples. Either way, it's an opportunity to
3 learn.

4 Q. In total, do you have an estimate on
5 how many different siting hearings you have attended
6 as either a participant or a spectator?

7 A. Probably on the order of a hundred.

8 Q. Of all these siting hearings, what was
9 the shortest and longest in terms of duration?

10 A. The shortest was one day, it was
11 accomplished in a matter of, I think, about three
12 hours. And I think Yorkville is the longest.

13 Q. Coincidentally, was Mr. Helston
14 involved in both of those?

15 A. He was.

16 Q. Do you have an opinion as to why it is
17 that Yorkville was the longest?

18 MR. HOPP: Objection, Your Honor.

19 Opinion testimony.

20 This is -- first of all, the
21 witness has not been tendered as an expert,
22 there is no expert testimony at this hearing.
23 We have no expert disclosures.

24 He is apparently attempting to

1 qualify as an expert without tendering him,
2 and we object to the use of this witness as
3 an expert. We object to opinion testimony as
4 to why this is the longest hearing he's ever
5 attended, if in fact it was.

6 THE HEARING OFFICER: Mr. Porter?

7 MR. PORTER: This witness is clearly
8 qualified to testify as an expert. I don't
9 recall receiving any expert disclosure
10 request.

11 He does have significant
12 experience with attending numerous siting
13 hearings. And more importantly, beyond his
14 expertise, he -- and I can lay some
15 foundation if we need to. But he attended
16 this hearing, and does indeed have both lay
17 and expert opinions as to why it took so
18 long.

19 MR. HOPP: Your Honor, we would not
20 object to his testifying as to his personal
21 observations, but not his opinion testimony.

22 THE HEARING OFFICER: Well, we'll see
23 where that -- I agree with you, Mr. Hopp,
24 personal objections are fine, and that's what

1 I ruled on yesterday, I believe, in the
2 motion in limine 5. You know, demeanor,
3 whether the board members were sleeping,
4 whether they were looking out the window, but
5 we'll see where this goes.

6 MR. PORTER: Understood. May I
7 rephrase the question?

8 THE HEARING OFFICER: Sure.

9 BY MR. PORTER:

10 Q. Why is it this hearing took so long?

11 MR. HOPP: Objection. It's the same
12 question. It's just opinion testimony,
13 Your Honor.

14 THE HEARING OFFICER: Overruled for
15 now.

16 BY THE WITNESS:

17 A. It took so long because it was
18 conducted in a manner to extend the length of the
19 hearings. I believe that it was a purposeful
20 attempt to draw --

21 THE HEARING OFFICER: Then I sustain
22 your objection, Mr. Hopp. No. What he
23 believes is one thing.

24 I believe a lot of times my wife

1 thinks something, and it's always the wrong
2 belief. So he's got no accreditation as far
3 as a mind reader, any kind of extra sensory
4 perception qualifications. I agree.

5 Sustained.

6 BY MR. PORTER:

7 Q. What did you see that resulted in a
8 delay at the hearings?

9 MR. DOMBROWSKI: Same objections.

10 THE HEARING OFFICER: Read the
11 question back, please.

12 (WHEREUPON, the record was
13 read by the reporter.)

14 THE HEARING OFFICER: Overruled.

15 BY THE WITNESS:

16 A. During the discussions between the
17 various attorney parties a reluctance to have longer
18 hearings, a reluctance to have hearings start
19 earlier, a reluctance -- or not a reluctance, a
20 refusal to have hearings start earlier. A refusal
21 to have hearings go later. A refusal to have more
22 hearings, longer hearings.

23 MR. DOMBROWSKI: We renew our
24 objection, Your Honor. The question was what

1 did you see.

2 Now, he's getting into the mindset
3 of people who he says were reluctant to hold
4 hearings longer or shorter or start at
5 different times. It's not anything he saw.

6 THE HEARING OFFICER: Agree.

7 Mr. Porter?

8 BY MR. PORTER:

9 Q. Did you see -- well, strike that?

10 THE HEARING OFFICER: Sustained.

11 BY MR. PORTER:

12 Q. Who was it that was objecting to the
13 hearings going for longer times during the day?

14 A. It was Jennifer Pohlenz-Sckett.

15 Q. Who is that?

16 A. It was a member of the -- the lead
17 attorney for the FOGY party. And, as I testified,
18 it wasn't my belief, it was something that I
19 observed during the hearing recesses, as we were
20 working, trying to schedule more hearings.

21 Q. Did you also see the lead attorney for
22 FOGY being tardy on numerous occasions?

23 MR. DOMBROWSKI: Also objection.

24 Foundation.

1 As to what -- how can he testify
2 to any of this?

3 THE HEARING OFFICER: If he can
4 answer, is able.

5 Overruled.

6 BY THE WITNESS:

7 A. Sure she was tardy.

8 BY MR. PORTER:

9 Q. Let me ask a foundational question.
10 Did you attend the 39.2 hearing?

11 A. I attended 17 out of the 23.

12 Q. And what was your role in relation to
13 that application in that hearing?

14 A. My role was senior engineer for the
15 development of the siting application.

16 Q. What effect did the tardiness and
17 refusal to allow for longer days have?

18 MR. DOMBROWSKI: Same objections.

19 THE HEARING OFFICER: Well, I guess
20 depending on what he answers, you know, the
21 effect that he missed lunch, did he have a
22 late supper. But I'll see where he goes with
23 this.

24 You may answer.

1 BY THE WITNESS:

2 A. It required more hearings.

3 MR. DOMBROWSKI: We object. That's
4 his opinion.

5 If there's anything in the record
6 that the hearing officer, Mr. Clark, talked
7 about, that would be relevant. Not his
8 subjective belief that someone showing up
9 five minutes late for a hearing caused
10 additional hearings.

11 THE HEARING OFFICER: Well, he
12 testified that they were tardy frequently.
13 And I guess if you're tardy frequently over a
14 course of time, it's just a fact that there
15 would be more days of hearing.

16 So objection overruled.

17 BY MR. PORTER:

18 Q. And if you would, describe in greater
19 detail, the tardiness. Was it just a one-time
20 five-minute occasion?

21 A. You know, I know it was more than
22 once. I don't recall precisely how many times.

23 The -- you know, it's coupled with
24 the inability or the refusal to start earlier, to go

1 later --

2 Q. And that --

3 A. -- that -- the number of days.

4 Q. That refusal, again, was from
5 Ms. Pohlenz?

6 A. Ms. Pohlenz and others.

7 Q. Was it ever on the part of the
8 applicants?

9 A. No.

10 Q. Did you view any -- well, strike that.

11 You also attended some of the
12 ancillary hearings, including hearings during the
13 host agreement, road vacation, annexation, and
14 re-annexation; is that correct?

15 A. I attended pre-SB -- or pre-39.2
16 hearings, which I'll call meetings. I'm not sure
17 they were all hearings in the direct sense that were
18 predominantly hosted by the Village of Yorkville.

19 Q. Now, as far as decorum, the 39.2
20 hearing and these three pre-meetings, how did that
21 compare to other meetings that you've attended?

22 MR. HOPP: Objection.

23 MR. DOMBROWSKI: Objection. Vague.

24 THE HEARING OFFICER: Mr. Porter?

1 MR. PORTER: I don't agree that it's
2 vague.

3 THE HEARING OFFICER: Yeah, you can
4 answer it.

5 Objection overruled.

6 You can answer it.

7 BY THE WITNESS:

8 A. As compared to other meetings on
9 landfill issues, it's the worse, most unruly crowd
10 I've ever seen.

11 MR. DOMBROWSKI: Objection,
12 Your Honor. He's offering opinions now as to
13 what he thinks was unruly.

14 It's totally subjective, it's
15 totally self-serving. And I believe when you
16 granted our motion in limine 5 yesterday, you
17 said you would not allow speculation or
18 conjecture.

19 THE HEARING OFFICER: That's correct.

20 Mr. Porter?

21 MR. PORTER: I'm going to now ask
22 follow-ups of specific examples of that
23 conduct.

24 THE HEARING OFFICER: That's what I'm

1 looking for.

2 Objection sustained.

3 BY MR. PORTER:

4 Q. Did you see specific examples of
5 unruly conduct in this hearing?

6 A. It was throughout the entire hearing.
7 Beginning on day one, going right to the last minute
8 of the last day.

9 Q. Do you have specific examples?

10 A. Sure.

11 Q. What are they?

12 For the record, do you need to
13 review something to refresh your recollection as
14 to --

15 A. Looking at the transcripts from the
16 Fox Moraine hearings.

17 Q. And have you taken time to tab some of
18 those specific examples of those transcript?

19 A. I have.

20 The first example occurred on
21 March 7th, 2007, the first day of the hearing,
22 Page 30.

23 Q. What happened?

24 A. I've got to find my spot here.

1 It begins with, paren, laughter,
2 close paren. And this is Hearing Officer Clark
3 speaking. "Mr. Mueller, if I can interject. These
4 hearings aren't easy for anyone. But I think it's
5 incumbent upon all of you to give courtesy to
6 everyone."

7 Again, the audience here has
8 disrupted the hearing. The hearing officer has
9 interrupted Mr. Mueller, and is trying to maintain
10 order. On the first day -- actually, it's the first
11 beginning of the first day of the hearings.

12 MR. DOMBROWSKI: Your Honor, same
13 objections. He taking one sentence from what
14 the hearing officer is saying and giving his
15 spin and opinion on it.

16 Again, it's totally subjective,
17 totally self-serving. All the hearing
18 officer -- Hearing Officer Clark said was, be
19 courteous to one another.

20 THE HEARING OFFICER: I agree,
21 Mr. Porter. There's got to be some more of a
22 foundation. He can't just read a portion out
23 of the minutes of the transcript and then
24 figure out what his opinion is.

1 BY MR. PORTER:

2 Q. Well, at the present time, I'm merely
3 asking you, Mr. Moose, to tell me what are the
4 specific examples of unruly conduct.

5 THE HEARING OFFICER: And Mr. Moose
6 seems to keep going off on another --

7 BY MR. PORTER:

8 Q. Why don't we just do that at the
9 present time. If you give us some of those
10 specifics examples, rather than giving comments as
11 to what you believe the effect of those examples
12 was.

13 THE HEARING OFFICER: Thank you,
14 Mr. Porter.

15 Objection is sustained.

16 BY THE WITNESS:

17 A. Okay. On March 9th, Page 4, Mr. Price
18 is speaking here.

19 "Yes, Mr. Hearing Officer, in the
20 interest of full disclosure I need to disclose to
21 the applicants and everybody that particular members
22 of the city council received threatening phone calls
23 over the evening at their personal residences.

24 MR. DOMBROWSKI: Same objection. What

1 is this all about? Fox Moraine had
2 opportunity, which they took, to ask certain
3 counsel members whether or not they received
4 threatening phone calls. What does the fact
5 that Attorney Price is commenting on that
6 have to do with an unruly nature of the
7 hearing? We're going to be here next week --
8 until next week.

9 THE HEARING OFFICER: That's fine.

10 Mr. Porter?

11 MR. PORTER: He's interrupting an
12 argument in weight of the evidence that the
13 witness is testifying to as unruly conduct.
14 He can do that in his briefs all he wants.

15 MR. DOMBROWSKI: It's not unruly
16 conduct.

17 MR. PORTER: Then that's what you
18 argue in your brief.

19 THE HEARING OFFICER: Well, the Board
20 will be able to decide. Right now Mr. Moose
21 is just reading from the transcript of the
22 hearings.

23 And I've sustained your objections
24 regarding his personal opinion as to why they

1 did this or refusing to do that. So
2 objection overruled for now.

3 But I would ask Mr. Devin to
4 please follow my rulings.

5 BY THE WITNESS:

6 A. March 10th, 2007, Page 270,
7 Mr. Mueller is speaking here.

8 "Mr. Clark, I have a housekeeping
9 matter before that motion. We would ask the hearing
10 officer direct, whoever placed the inflammatory sign
11 in the back of the hearing room not to bring them
12 back to the next meeting. We think the applicant is
13 also entitled to fundamental fairness, that means
14 that inflammatory signs, which purported to make
15 representations of fact that have nothing to do with
16 this application, shouldn't be part of the hearing
17 room."

18 BY MR. PORTER:

19 Q. Anything else?

20 A. Oh, yeah. This is March 19th, this is
21 Mr. Milliron speaking.

22 MR. DOMBROWSKI: What page, Mr. Moose?

23 THE WITNESS: Page 19.

24

1 BY THE WITNESS:

2 A. "This is poor planning and a fire
3 hazard, I object.

4 Hearing Officer Clark: "I'm
5 sorry, if you have any more outbreaks in the crowd,
6 we're all trying to cooperate here. If you don't
7 want to cooperate, that's fine, you can leave. Or
8 I'll have somebody escort you out. I won't stand
9 for any more outbreaks like that."

10 MR. DOMBROWSKI: Again, Mr. Hearing
11 Officer, he's reading what Hearing Officer
12 Clark said. I don't see how that's in the
13 nature of admissible testimony here.

14 THE HEARING OFFICER: Well, I've ruled
15 Mr. Dombrowski, your objection is so noted.

16 Overruled.

17 BY THE WITNESS:

18 A. Page 26 of the same date. This is
19 the -- I'm sorry, I was trying to start on Page 25,
20 Ms. Pohlenz, "And you will allow me" -- and then
21 she's -- and then another audience member jumps in.

22 "The City takes responsibility for
23 are dates."

24 Then Mr. Gilson from the audience

1 chimes in, "If you want to raise your hands, here
2 they are."

3 Hearing Officer Clark, "Would you
4 please ask another question, Ms. Polenz?"

5 Mr. Milliron on Page 27, "That's
6 free speech."

7 Hearing Officer Clark, "Would you
8 please remove the child from the room."

9 Mr. Milliron, "That's free
10 speech."

11 Audience member, "He has a right
12 to be here."

13 Hearing Officer Clark, "Would you
14 please remove the child from the room, it's
15 difficult enough for everyone to hear."

16 THE HEARING OFFICER: Mr. Devin, I
17 could ask you not to read the inflexion into
18 your testimony.

19 BY THE WITNESS:

20 A. Just trying to do it as I recalled it.

21 Page -- or March 26th, this is
22 Mr. Milliron speaking on Page 63. "Am I supposed to
23 believe you're objective and unbiased? Please, tell
24 me it's about the money."

1 Art Prochaska, "Quit lying to us."
2 Page 66 of the same day. "Art,
3 you are lying to us again. This is not the first
4 time I've caught you in a lie. Now I want to
5 see" -- and then applause breaks out.

6 MR. DOMBROWSKI: We renew our -- I'd
7 just like to object again, Mr. Hearing
8 Officer.

9 MR. PORTER: We're willing to show --

10 MR. DOMBROWSKI: A member of the
11 audience was taking issue with something the
12 mayor said. Mr. Moose is -- in his opinion,
13 that was unruly or disruptive.

14 Again, all he's doing is reading a
15 sentence or two out of the hearing
16 transcript.

17 THE HEARING OFFICER: Okay. Again,
18 your objection is noted on the record. All
19 Mr. Moose is doing is reading from the
20 transcript.

21 The Board will infer, I'm sure,
22 properly from what he's doing presently.

23 MR. DOMBROWSKI: Well, Fox Moraine
24 will be citing to whatever it will be citing

1 to, it was brief. Why is it in the nature of
2 admissible testimony in a hearing regarding
3 fundamental fairness for someone to read what
4 they're going to be citing in a brief?

5 THE HEARING OFFICER: Well, he's
6 trying to support his personal objections,
7 which is allowed. And I've ruled.

8 So I know you disagree, but I
9 respectfully ruled and will proceed, for a
10 while anyway.

11 MR. PORTER: To avoid continued
12 interruption, I'm more than willing to agree
13 to an ongoing objection to this reading from
14 the transcript.

15 MR. DOMBROWSKI: Well, for example,
16 the comment about the sign in the back of the
17 hearing room, that's fair game. So we didn't
18 object to that. But I'll object where I see
19 fit.

20 MR. PORTER: Okay.

21 THE HEARING OFFICER: Yeah, you know,
22 Mr. Porter, I don't think -- in some respect
23 Mr. Dombrowski is correct. I don't think we
24 have to go through a whole litany of this

1 stuff. I think the Board has it in front of
2 them, and they can, you know, read just as
3 well as Mr. Moose. I don't know how long
4 this is going to go on.

5 MR. PORTER: Two or three more minutes
6 is what Mr. Moose is indicating.

7 THE WITNESS: Without objections.

8 MR. PORTER: If we could just move
9 along --

10 THE WITNESS: We've spent more time on
11 the objections than the testimony.

12 BY THE WITNESS:

13 A. Page 85 of the same date begins with
14 applause. Mr. Miliron then goes on to say. "What I
15 have to read to you are some very incriminating City
16 documents that show collusion, bias, and probably
17 already made up their decision well beyond that.
18 Alderman, your mayor has lied. I don't know who is
19 greedier, our mayor, the City, or Mr. Hamman."

20 Page 89 of that same day. "Why
21 are we doing five hours testimony a day and being
22 rushed by the moderator chosen by Art Prochaska.
23 There was an illegal vote at the COW meeting in late
24 summer 2006, which the Kendall County record had to

1 call you out on."

2 Page 90 of the same day, "I feel
3 like a Jew being told Auschwitz is a summer camp. I
4 had a garbage storm trooper visit my house and take
5 pictures. I made a police report of that encounter.
6 And it was on file with the County. These were no
7 little guys, these were 300 pound paparazzi storm
8 troopers sent to intimidate me."

9 Page 90 and 91 of that same day,
10 "I feel like I've been lead to slaughter by a lying
11 Nazi mayor."

12 THE HEARING OFFICER: I think you made
13 your point, Mr. Porter. I've heard enough.

14 BY MR. PORTER:

15 Q. Well, what day was the last statement,
16 Mr. Moose?

17 A. The last day was the last day --

18 Q. The last statement about the Auschwitz
19 and the Nazis?

20 MR. DOMBROWSKI: March 26th.

21 BY MR. PORTER:

22 Q. Would you agree that there are
23 numerous more of those types of statements contained
24 in the record that you could continue to discuss?

1 MR. HOPP: I'll object.

2 THE HEARING OFFICER: Overruled.

3 MR. PORTER: I'm trying --

4 BY THE WITNESS:

5 A. Yes.

6 BY MR. PORTER:

7 Q. And would you also agree that not
8 every outburst from the public is contained in that
9 transcript?

10 A. That's true.

11 Q. What was the affect on -- strike that.

12 Did you see an affect on the city
13 council as to these outbursts and statements from
14 the public?

15 MR. DOMBROWSKI: I'll object. He's
16 offering here opinion testimony. It goes
17 into speculation and conjecture.

18 THE HEARING OFFICER: Mr. Porter, I
19 think I've already ruled on that.

20 MR. PORTER: I'm asking for his
21 observation, Mr. Halloran.

22 THE HEARING OFFICER: Well, you asked
23 for the affect. Were they put to sleep or
24 were they nervous?

1 MR. PORTER: Did you observe -- I
2 asked what he saw.

3 BY MR. PORTER:

4 Q. Did you see an affect on the city
5 council?

6 MR. DOMBROWSKI: Same objections.

7 THE HEARING OFFICER: Let's see where
8 this question goes, please.

9 BY THE WITNESS:

10 A. Yes.

11 BY MR. PORTER:

12 Q. I think there was an intimidation, a
13 chilling affect?

14 MR. DOMBROWSKI: How can he testify to
15 that?

16 THE HEARING OFFICER: Sustained.

17 Mr. Porter, this is exactly what I
18 ruled that we cannot get into.

19 MR. PORTER: Mr. Halloran --

20 THE HEARING OFFICER: He has no, you
21 know, mind-reading abilities. His testimony,
22 if I am to lay opinion, is supposed to assist
23 the Board. And I don't think this helps at
24 all to come to an intelligent decision,

1 Mr. Moose testifying what he thought, whether
2 they intimidated or not. I will not allow
3 it.

4 MR. HOPP: I move to strike the
5 answer.

6 THE HEARING OFFICER: I would ask the
7 Board to disregard.

8 MR. PORTER: I would ask that it
9 remain in the record as an offer of proof and
10 that I be allowed one follow-up question --

11 THE HEARING OFFICER: I deny your
12 offer of proof.

13 BY MR. PORTER:

14 Q. What do you base that opinion?

15 MR. DOMBROWSKI: Same objection.
16 Where are we going here?

17 THE HEARING OFFICER: He may answer if
18 he's able. We'll stay tuned.

19 BY THE WITNESS:

20 A. Body language.

21 MR. DOMBROWSKI: Now he's an expert on
22 body language.

23 THE HEARING OFFICER: Yes. Yes. A
24 lot of people are.

1 Objection overruled.

2 MR. PORTER: Do you mean objection
3 sustained?

4 THE HEARING OFFICER: Well, I think he
5 made an objection, and I said overruled. He
6 was objecting to body language, I believe.

7 MR. DOMBROWSKI: Yes.

8 MR. PORTER: Did you mean sustained?

9 THE HEARING OFFICER: I don't think
10 so. He may continue with his testimony.

11 MR. PORTER: Okay.

12 BY MR. PORTER:

13 Q. Anything else, other than body
14 language?

15 A. Just their demeanor, their body
16 language, how they reacted when crowd broke out, and
17 especially how some of the more intimidating
18 individuals in the crowd when they yelled at them I
19 could see the reaction of the individuals on the
20 Board.

21 MR. DOMBROWSKI: Same objections.

22 THE HEARING OFFICER: Overruled.

23 BY MR. PORTER:

24 Q. We have heard some testimony from a

1 Mr. Parrish. Did Mr. Parrish -- strike that.

2 Specifically, over my objection,
3 he was allowed to testify that you somehow
4 threatened him. Did you ever threaten Mr. Parrish?

5 A. Never.

6 Q. Were his statement untrue?

7 A. They were a lie.

8 Q. Compared to the other numerous
9 hearings that you've attended, how does this one
10 compare as to demeanor and unruly conduct?

11 MR. DOMBROWSKI: Same objections.
12 Speculation, conjecture, and opinion
13 testimony.

14 THE HEARING OFFICER: He's testified
15 he's been to a multitude of hearings, and I
16 think he can answer whether this was a little
17 more contentious than his others, without
18 getting into specifics.

19 So objection overruled.

20 BY THE WITNESS:

21 A. It was the worst I've ever been to.

22

23

24

1 (WHEREUPON, a certain document
2 was marked Fox Moraine Exhibit
3 No. 31 for identification, as
4 of 4/22/09.)

5 BY MR. PORTER:

6 Q. Let me show you what I have had marked
7 as FM31.

8 MR. PORTER: I apologize, no copies.
9 It's just the ordinance from Fox Moraine. I
10 will provide copies later this afternoon.

11 MR. HOPP: The siting ordinance?

12 MR. PORTER: Correct.

13 BY MR. PORTER:

14 Q. Let me show you what I have had marked
15 at FM31. What is that document?

16 A. This appears to be the siting
17 ordinance.

18 MR. PORTER: I move admission of the
19 Fox Moraine -- I'm sorry the City of
20 Yorkville siting ordinance.

21 MR. DOMBROWSKI: Well, we don't know
22 if this is a true and correct copy. The
23 siting ordinance is already in the record on
24 appeal.

1 But go ahead.

2 MR. PORTER: Does that mean there's no
3 objection?

4 MR. DOMBROWSKI: Assuming this is a
5 true and correct copy.

6 THE HEARING OFFICER: Okay. I didn't
7 hear your moving. Are you moving this into
8 evidence?

9 MR. PORTER: Yes.

10 THE HEARING OFFICER: Accepted.

11 (WHEREUPON, said document,
12 previously marked FM31, for
13 identification, was offered
14 and received in evidence.)

15 BY MR. PORTER:

16 Q. Is there -- strike that.

17 You reviewed this ordinance?

18 A. I have.

19 Q. And was this ordinance followed in
20 relation to the underlying hearing?

21 MR. DOMBROWSKI: Objection. This is a
22 legal document. This is asking now for a
23 legal opinion on whether the procedures at
24 the hearing were followed according to this

1 document.

2 THE HEARING OFFICER: Could you read
3 that back, please, Mr. Porter's question?

4 (WHEREUPON, the record was
5 read by the reporter.)

6 THE HEARING OFFICER: You know, I'm
7 going to allow him to answer, if he's able,
8 he's been around the block.

9 BY THE WITNESS:

10 A. No.

11 BY MR. PORTER:

12 Q. How so?

13 A. The provision in the ordinance -- I
14 could refer to my copy?

15 Q. Absolutely.

16 MR. PORTER: Well, may the witness
17 refer to his?

18 THE HEARING OFFICER: Yes.

19 BY THE WITNESS:

20 A. This is under Hearing Procedures C1D.
21 And in portion D it reads, "No recess may extend
22 past five days, except due to the availability of a
23 suitable forum for the hearing." And between April
24 5th and April 19th no hearings were conducted, which

1 means they didn't meet that provision of the
2 ordinance.

3 BY MR. PORTER:

4 Q. Anything else?

5 A. There was also a recess between 4/20
6 and 5/23 before any meetings or hearings were
7 conducted. So there's another gap of greater than
8 five days.

9 I've checked my recollection, but
10 I also checked the transcripts, it did not appear in
11 any one of the transcripts that there was a lack of
12 availability of a suitable forum, which means a
13 venue or a location.

14 Q. Was there any other respects that the
15 ordinance wasn't followed?

16 A. Yes.

17 Q. All right.

18 A. In Section 8A, the ordinance required
19 the -- at the conclusion of the hearings, the City
20 do one of three things. And this was reiterated by
21 Mr. Ross on May 23rd. Either grant the petition,
22 grant the petition with conditions, or deny the
23 petition. Neither one of those three were done by
24 the city council.

1 MR. DOMBROWSKI: I'll renew our
2 objection, Your Honor. He's offering a legal
3 opinion. They can argue whatever they want
4 in their brief, but he's offering here a
5 legal opinion.

6 THE HEARING OFFICER: I don't think
7 there's a legal opinion. He's reading --
8 he's read what the ordinance requires and
9 he's just saying what they didn't do. I
10 don't think he's testifying to any kind of
11 ramifications of doing or not doing, so...

12 BY MR. PORTER:

13 Q. What exactly --

14 THE HEARING OFFICER: Overruled.

15 BY MR. PORTER:

16 Q. -- was done, rather than those three
17 required tasks?

18 A. The City denied with conditions.
19 Which was not allowed either by Mr. Ross'
20 instructions on the 23rd, nor was it allowed within
21 the ordinance.

22 Q. Anything else in the ordinance,
23 Mr. Moose?

24 A. Yes.

1 Q. What?

2 A. This is Hearing Procedures C, No. 3D.
3 And part D reads, "The city council shall consider
4 any such timely written comments in making its final
5 determination concerning the petition."

6 Q. And why do you state that that
7 ordinance wasn't followed?

8 MR. DOMBROWSKI: Objection.
9 Deliberative process.

10 THE HEARING OFFICER: I agree. Do you
11 want to rephrase the question, Mr. Porter?

12 Sustained.

13 BY MR. PORTER:

14 Q. Why wasn't that section followed?

15 MR. DOMBROWSKI: Same objection.

16 BY MR. PORTER:

17 Q. Strike that. How do you believe that
18 section wasn't followed?

19 MR. DOMBROWSKI: Same objections.

20 THE HEARING OFFICER: Yeah, sustained.
21 I think you're going to have to rephrase the
22 question, Mr. Porter, if you want.

23 BY MR. PORTER:

24 Q. In what respect was that not followed?

1 MR. DOMBROWSKI: That's the same
2 question. Same objections.

3 MR. PORTER: Well, if I understand the
4 objection, it's deliberative process. And
5 he's not a decisionmaker, so I don't
6 understand how we have a deliberative
7 process.

8 MR. DOMBROWSKI: No, he's asking
9 Mr. Moose to testify regarding what the city
10 council considered. It goes into
11 deliberative process. It's also irrelevant,
12 because this material is provided to the city
13 council. And that's all that's required.

14 MR. PORTER: That's weight. If you
15 don't believe -- if counsel doesn't believe
16 that his testimony, indeed, proves that the
17 ordinance wasn't following in some respect,
18 he can conduct direct examination concerning
19 it. But that's not an objection as to
20 admissibility.

21 MR. DOMBROWSKI: Sure it is. It
22 invades the privilege and it's irrelevant.

23 THE HEARING OFFICER: I disagree for
24 now. The objection is overruled.

1 Mr. Moose, you may answer.

2 BY THE WITNESS:

3 A. Based on the transcripts of the 23rd,
4 May 23rd, I'm sorry.

5 BY MR. PORTER:

6 Q. In what respect? Perhaps I can
7 rephrase the question.

8 Are you referring to the fact that
9 substantial material, including 1,400 pages of the
10 text was submitted to the city council and
11 objections were raised by members of city council to
12 their opportunity to review it?

13 MR. DOMBROWSKI: Same objection. Now
14 we weren't allowed to get into this.

15 THE HEARING OFFICER: Yeah, I agree.

16 Sustained.

17 MR. PORTER: Nothing further.

18 THE HEARING OFFICER: Thank you,
19 Mr. Porter.

20 Mr. Dombrowski?

21 CROSS-EXAMINATION

22 BY MR. DOMBROWSKI:

23 Q. Mr. Moose, you were in charge of
24 assembling the landfill application for Fox Moraine;

1 correct?

2 A. Correct.

3 Q. And that was filed on December 1st,
4 2006?

5 A. I believe so, yes.

6 Q. And when Fox Moraine filed the
7 application on that day, you knew that Yorkville
8 would be holding elections in April of 2007; right?

9 A. Yes.

10 Q. And, you know, pursuant to
11 Section 39.2 of the Act, that a municipality that
12 receives a landfill application has 180 days to act
13 on that application; correct?

14 A. Has to act within 180 days.

15 Q. So you knew that the landfill hearings
16 would be taking place at the same time as the
17 election campaigns; correct?

18 A. No.

19 Q. Now, you were deposed in this case;
20 Mr. Moose?

21 A. I was.

22 Q. You took an oath to tell the truth?

23 A. Yes.

24 MR. PORTER: Sorry, Mr. Halloran. Can

1 I have the question read back, as counsel's,
2 obviously, trying to impeach, and I did not
3 catch it.

4 THE HEARING OFFICER: Sure.

5 (WHEREUPON, the record was
6 read by the reporter.)

7 MR. DOMBROWSKI: Let me ask a
8 different question.

9 BY MR. DOMBROWSKI:

10 Q. You've been through 100 or so of these
11 siting proceedings?

12 A. No.

13 Q. How many?

14 A. Something on the order of 60. I have
15 attended nearly 100.

16 Q. You know that landfill applications
17 can be a controversial issue at times for cities or
18 counties?

19 A. Yes.

20 Q. And you knew that the proposed Fox
21 Moraine Landfill could be a controversial issue in
22 the Yorkville election campaigns?

23 A. You know, I really wasn't involved in
24 the election campaigns. I don't know who was

1 running for what.

2 I didn't know when people -- I
3 don't know when people campaign for office, when
4 they start, they stop. And so I know it's a --
5 could be a big issue within a municipality, but I
6 don't follow politics like that. Especially local
7 politics.

8 Q. But you knew the elections would be
9 taking place well before the 180-day deadline;
10 right?

11 A. What do you mean "well before"?

12 Q. Well, you filed on December 1st, 2006;
13 correct?

14 A. I don't think so. When did we file?
15 December 1st, did you say?

16 Q. Yes.

17 A. Or was it December 6th? I don't
18 recall if it was the first or the 6th, but the
19 beginning of December.

20 Q. You knew that Yorkville would be
21 holding elections approximately four and a half
22 months after you filed the application; right?

23 A. Correct.

24 Q. Now, Fox Moraine could have filed its

1 application earlier than December 1st, 2006;
2 correct?

3 A. I don't know. I mean, I think there
4 were obstacles to do that.

5 Q. Fox Moraine could also have filed its
6 landfill application later than December 1st, 2006;
7 correct?

8 A. I can only speak for the portion of
9 the project that I was responsible for. If it was
10 preparing the application, we could have filed
11 later.

12 But I don't -- you know, that's --
13 you know, that's speaking for the totality of the
14 components of the project.

15 Q. Do you remember me asking you this
16 question and you giving this answer?

17 MR. PORTER: Counsel, this is at the
18 top of Page 31 of his deposition.

19 BY MR. PORTER:

20 Q. "So the landfill application could
21 have been filed earlier, it also could have been
22 filed later; correct?"

23 That was the question. Your
24 answer, "Yes." Do you recall being asked that

1 question and giving that answer?

2 A. Yes.

3 Q. Nothing forced Fox Moraine to file
4 this application when it did; correct?

5 A. Just so we're clear, I can only speak
6 to those portions that I'm responsible for as chief
7 engineer. So my answers have to do with preparing
8 the application, which doesn't take into account
9 total of all decisions that need to be made when
10 things are filed and when they aren't.

11 For example, I know that
12 annexation was an issue. I really wasn't tracking
13 annexation issues. My job was to put the
14 application together.

15 And to answer your questions, I'm
16 making the assumption that you're asking of those
17 portions, that you asked me what I was responsible
18 for. So --

19 Q. Sure. Let's stick with that.

20 A. Okay.

21 Q. As you know, or as you understand,
22 there was no obligation for Fox Moraine to file this
23 application by December 1st, 2006; correct?

24 A. An obligation for them?

1 Q. Any legal requirement?

2 A. Well, once we noticed, we had a
3 particular obligation to file it within the notice
4 period.

5 Q. Right. But you had no legal
6 obligation to file that notice when you did;
7 correct?

8 A. Are you asking me for a legal opinion?

9 MR. PORTER: I'm going to object at
10 this point. I mean, this is exactly what
11 Mr. Dombrowski took issue with previously,
12 he's asking for legal opinion.

13 MR. DOMBROWSKI: And he was allowed to
14 answer those questions.

15 THE HEARING OFFICER: Not as directly.
16 You're asking about 39.2, you're asking about
17 his legal ability.

18 MR. DOMBROWSKI: I'm asking --

19 THE HEARING OFFICER: I will allow it,
20 Mr. Dombrowski, but -- yes. Yes. Mr. Porter
21 didn't nearly touch on the legal
22 ramifications as you are at present, but I
23 will allow it.
24

1 BY MR. DOMBROWSKI:

2 Q. Did you know of any legal obligation
3 that forced Fox Moraine to file its application by
4 December 1st, 2006?

5 A. Yes.

6 Q. And that's the notice you just
7 referred to?

8 A. Yes.

9 Q. Beyond that --

10 A. You're asking me a legal opinion for
11 some --

12 Q. I'm asking you --

13 A. I'm trying to understand the question.

14 Q. -- if you know of any legal obligation
15 is the question.

16 A. Anywhere?

17 Q. Yes.

18 A. No, I'm not tracking legal issues for
19 the client.

20 Q. So your answer is no?

21 A. No. My answer is I'm not tracking --
22 I'm not aware of any.

23 Q. You're not aware of any; correct?

24 A. I'm not aware of any.

1 Q. Now, Fox Moraine hosted some
2 informational meetings in November 2006 to present
3 information to the public regarding the proposed
4 landfill; correct?

5 A. Do you recall the dates of those?

6 Q. I'm asking you.

7 A. I only recall one. I don't recall
8 meetings. I think you said meetings plural.

9 Q. You recall one meeting?

10 A. I recall one.

11 Q. And when did that take place?

12 A. In November. I don't remember the
13 dates.

14 Q. And that was put on by Fox Moraine to
15 inform the public of its proposed -- or of its
16 forthcoming landfill application; correct?

17 A. I wouldn't phrase it that way.

18 Q. What was the purpose of the meeting?

19 A. The purpose of the meeting was to
20 educate the public on when the application was going
21 to be filed, how they are -- and how they can
22 participate in the hearing and what they can expect
23 to see.

24 Q. And you were present at that meeting?

1 A. Yes.

2 Q. And Mr. Jessie Varsho was present?

3 A. Yes.

4 Q. Anyone else from Shaw Environmental?

5 A. I'm sure there were. I don't recall
6 who.

7 Q. And Mr. Mueller was present?

8 A. I don't recall.

9 Q. Mr. Helston was present?

10 A. I don't recall.

11 Q. Were any attorneys present?

12 A. Yes, there were. It was most probable
13 that they were there.

14 Q. And these were attorneys appearing at
15 this meeting on behalf of Fox Moraine; correct?

16 A. Correct.

17 Q. And the City of Yorkville provided
18 meeting space to Fox Moraine for this meeting?

19 A. I don't know if it was leased,
20 provided, I don't know the arrangements to how we
21 got the space.

22 Q. But it was held at the high school;
23 right?

24 A. Yeah.

1 MR. MUELLER: I want to object. I
2 think Mr. Dombrowski is misstating the facts.
3 The meeting at the high school was a City
4 meeting, it wasn't our meeting.

5 MR. DOMBROWSKI: I'm not misstating
6 facts, I'm asking for a --

7 MR. MUELLER: We have the transcript.
8 You're trying to confuse the witness.

9 THE HEARING OFFICER: You can
10 rehabilitate on redirect or when it's your
11 time. Thank you, Mr. Mueller.

12 BY MR. DOMBROWSKI:

13 Q. Well, if it wasn't at the high school,
14 was it at the Beecher Center?

15 A. I don't remember where it was at. All
16 the meetings that were held within two blocks of
17 where we're sitting, and I don't remember one night
18 what particular venue I was in versus the next
19 night.

20 Q. But you do remember that it was held
21 at a City of Yorkville building?

22 A. It was some government building. I
23 don't know if it's owned by the City of Yorkville,
24 the library district, the park district, the -- and

1 I don't know who owned it.

2 Q. Do you remember Mr. Parrish speaking
3 at this meeting?

4 A. I remember him interrupting at the
5 meeting, yes.

6 Q. Do you remember Mr. Miliron speaking
7 at the meeting?

8 A. Vaguely.

9 Q. And, Mr. Miliron, Mr. Parrish, you've
10 referred to these two gentlemen as part of the small
11 number of ignorant people who took over the town.
12 Is that correct?

13 A. Can you show me that transcript that
14 you just read from?

15 Q. Sure.

16 Let me show you, Mr. Moose,
17 discovery deposition. I will refer you to the
18 bottom of -- well, the bottom of Page 16 and onto
19 Page 17.

20 A. I don't -- I think you're
21 misinterpreting my testimony.

22 Q. Well, I'm not misinterpreting, I'm
23 asking you a question.

24 A. Okay. Then reask the question.

1 Q. You see at the top of Page 17 where
2 you refer to a small number of ignorant people who
3 took over the town. Do you see that?

4 A. Yes.

5 Q. That was your testimony; correct?

6 A. Yes, I do.

7 Q. Who was included in your opinion in
8 that small number of ignorant people?

9 A. It's shown on the bottom of Page 16,
10 the paragraph above that, where I'm referring to.
11 Your question above that, preceding my answer, was,
12 "Other than Miliron and Mr. Parrish, who you felt
13 were ill behaved." Then I answered. There were
14 yelling, applause. And then I go on to answer. So,
15 clearly, by the first sentence of the answer -- and
16 your question, it excludes them. It's talking about
17 the people that were disruptive at public hearings.

18 Q. So you would not include, then,
19 Mr. Parrish in the small number of ignorant people
20 who took over the town?

21 A. I would say that Mr. Parrish didn't
22 even -- I don't even remember if Mr. Parrish
23 attended any public hearings. From my recollection,
24 I don't think he did. I don't remember him

1 attending any public hearings on the landfill
2 itself.

3 Q. Is that a yes to the question or no --
4 or a no?

5 A. Well, it certainly doesn't -- you
6 know, are we talking about the meetings before or
7 the meetings -- or the hearings?

8 MR. PORTER: I'm going to object to
9 the relevancy. What does it matter if this
10 witness thinks Mr. Parrish is ignorant or
11 isn't ignorant?

12 THE HEARING OFFICER: You know, I'll
13 allow it, but I would ask Mr. Moose to answer
14 the question. If he wants --

15 BY THE WITNESS:

16 A. Can you reask the question?

17 BY MR. DOMBROWSKI:

18 Q. Sure. I will ask it again.

19 Do you include Mr. Parrish in your
20 small number of ignorant people who took over the
21 town?

22 A. No.

23 Q. Do you include Mr. Miliron?

24 A. I think Mr. Miliron was excluded in my

1 answer.

2 Q. So those two you would not include
3 within what you referred to as the small number of
4 ignorant people?

5 A. Not as it was posed in that particular
6 question.

7 Q. Let's talk about the landfill
8 hearings.

9 How many of those did you say you
10 attended?

11 A. Seventeen.

12 Q. Out of the, what, 23 or 24?

13 A. There were 23.

14 Q. And how many witnesses did Fox Moraine
15 put on?

16 A. I don't recall.

17 Q. You had a traffic expert; correct?

18 A. Yep.

19 Q. You had a land use expert?

20 A. Yes.

21 Q. And you had mete experts?

22 A. Yes.

23 Q. You had a geologist?

24 A. Yes.

1 Q. You had a landfill design expert?

2 A. Yes.

3 Q. And that was you?

4 A. Yes.

5 Q. And the proposed operator testified?

6 A. Yes.

7 Q. And the proposed operator was the
8 Peoria Disposal Company?

9 A. It was -- yes.

10 Q. I believe that's six. Any other
11 witnesses testify on behalf of Fox Moraine?

12 A. I don't recall.

13 Q. Would you agree with me, Mr. Moose,
14 that Fox Moraine had a full and complete opportunity
15 to offer evidence in support of its landfill
16 application?

17 A. Yeah, as it refers -- we had a full
18 opportunity to present our case at the hearings, but
19 not at the -- not in total.

20 Q. Well, I'm talking about the landfill
21 hearings.

22 A. Just the hearings, yes.

23 Q. Earlier you also talked about -- you
24 thought people were showing up late for hearings and

1 that it caused additional hearings to have to be
2 held. Do you remember that?

3 A. In part, yes.

4 Q. Did the hearing rooms or buildings
5 have any time limits on them because they were
6 school buildings?

7 A. I don't know.

8 MR. DOMBROWSKI: Nothing further.

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

11 Mr. Porter?

12 MR. PORTER: No questions.

13 THE HEARING OFFICER: Thank you
14 Mr. Porter.

15 Mr. Moose, you may step down.

16 (WHEREUPON, the witness was
17 excused.)

18 THE HEARING OFFICER: Before we go off
19 record, does anybody from the public want to
20 make a comment, statement? Now is your
21 opportunity to do so.

22 We are going to probably take --
23 after I talk to counsel, probably an hour
24 lunch shortly. See any hands?

1 And for the record, I think we
2 lost about five of the members of the public.
3 Hopefully they're at their jobs.

4 All right. We're off the record.

5 (WHEREUPON, a recess was had.)

6 THE HEARING OFFICER: Good afternoon.
7 We're back on the record.

8 It's approximately 12:55, thanks
9 for your promptness. And I had forgotten to
10 mention, I just was reminded again via the
11 radio, it's Earth Day. So Happy Earth Day to
12 everyone.

13 In any event, Fox Moraine is still
14 in their case and chief, and they have the
15 floor.

16 MR. MUELLER: We will call Alderman
17 Besco.

18 THE HEARING OFFICER: Hi. Good
19 afternoon. You can just sit down.

20 Have a seat, raise your right
21 hand, and Sharon will swear you in.

22 (WHEREUPON, the witness was duly
23 sworn.)

24

1 JOSEPH BESCO, JR.,
2 called as a witness herein, having been first duly
3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. MUELLER:

6 Q. Would you state your full name,
7 please.

8 A. Joseph Richard Besco, Jr.

9 Q. Mr. Besco, you are an alderman in the
10 City of Yorkville?

11 A. Yes, I am.

12 Q. You're actually ending your term now;
13 correct?

14 A. Yes, I am.

15 Q. You were an alderman in 2006 and 2007?

16 A. Yes, sir.

17 Q. You were not up for election in 2007;
18 were you?

19 A. No.

20 Q. When you did first get on city
21 council?

22 A. It will be eight years. So it would
23 be 2001.

24 Q. And just so that the record is clear,

1 because I'm sure it's going to come out, you were
2 the only alderman that voted in favor of approval of
3 the siting application; correct?

4 A. Yes, sir.

5 Q. Going back to the period before the
6 application was filed, when did you first become
7 aware of Fox Moraine's interest in annexing real
8 estate into the City for the purpose of applying for
9 landfill?

10 A. When I became aware of the annexation
11 intentions or?

12 Q. The intention, yeah.

13 A. Actually, I didn't believe I was aware
14 of the intentions until maybe a few months before.

15 Q. And you how did you become aware?

16 A. Alderman Burd had called me and
17 informed me that there was a potential for the
18 landfill being sited in Kendall County, and that we
19 needed to take direct action to try to get that into
20 the City.

21 Q. And did she express a negative opinion
22 or positive opinion -- well, let me rephrase it.
23 What did she express regarding the possibility of
24 Fox Moraine annexing into the City?

1 A. The potential for tipping fees was
2 enormous and that the City could use those funds.

3 Q. Were you present at a meeting on
4 September 26th, 2006, at the Beecher Center to
5 consider the Fox Moraine annexations, the annexation
6 agreement, and the Fox Moraine host agreement?

7 A. Yes, I was.

8 Q. Now, between the time that Alderman
9 Burd first made you aware of the possibility of this
10 landfill and that meeting, how many conversations
11 had you had with her about the matter?

12 A. Numerous.

13 Q. And who initiated those?

14 A. She did.

15 Q. What was the position that she
16 expressed to you in all those conversations?

17 MR. HOPP: Objection. Hearsay.

18 MR. MUELLER: It's an admission
19 against interest by the mayor. And someone
20 who has been a witness -- and it also
21 impeaches her testimony that she was
22 consistently opposed to the annexation
23 process.

24 THE HEARING OFFICER: Mr. Hopp?

1 MR. HOPP: I stand by my objection,
2 it's a hearsay statement.

3 THE HEARING OFFICER: Objection
4 overruled.

5 He may answer, if you're able,
6 Alderman.

7 BY THE WITNESS:

8 A. Absolutely. Could you rephrase the
9 question, please?

10 BY MR. MUELLER:

11 Q. At these many conversations that she
12 initiated with you, what was her expressed position
13 with regard to the annexation?

14 A. I believe that her position was
15 favorable. Like I said, the regards to the large
16 amount of tipping fees that the City could generate
17 from a facility of this sort.

18 Q. At the meeting of -- was there
19 anything unusual about the meeting of
20 September 26th, 2006, the annexation meeting?

21 A. At the Beecher Center?

22 Q. Yes.

23 A. There was a large public turnout, due
24 to the public's perception that it was rushed

1 through annexation.

2 Q. And who were you sitting next to at
3 that meeting up at the counsel table?

4 A. I believe Alderman Burd was to my
5 right, and I'm pretty sure Rose Spears was to my
6 left.

7 Q. When the audience was in there -- you
8 indicated there was a large crowd?

9 A. Yes, sir.

10 Q. Did Valerie Burd say anything to you
11 at that time that you specifically made a note of?

12 MR. HOPP: Objection. Hearsay.

13 THE HEARING OFFICER: Mr. Mueller?

14 MR. MUELLER: It goes right to that
15 meeting and her position with regard to the
16 annexation. And also to her motives and
17 intent. And again, it's an admission against
18 interest, and she is a party opponent.

19 THE HEARING OFFICER: I don't know
20 about her motive or interest, but she is a
21 party opponent and goes against interest. I
22 will allow.

23 Objection overruled.

24

1 BY THE WITNESS:

2 A. She stated that -- "Look at the
3 large -- look at the crowd. What should I do?"

4 BY MR. MUELLER:

5 Q. And I believe that night she expressed
6 an opinion against the process by which the
7 annexations were occurring voted against them;
8 right?

9 MR. HOPP: I object to that. He's
10 just leading and suggested an answer to
11 the --

12 MR. MUELLER: Let me rephrase that.

13 THE HEARING OFFICER: Could you
14 rephrase that? Thank you, Mr. Mueller.

15 BY MR. MUELLER:

16 Q. Did you hear what Alderman Burd had to
17 say about the annexation at that meeting?

18 A. Yes, I did. I don't recall everything
19 that she said publicly, but...

20 Q. Generally, did you interpret her
21 statements as positive or negative in terms of the
22 annexation and host agreement?

23 A. At that time I interpreted that it was
24 negative.

1 Q. Was that the -- did you consider that
2 to be a switch from the positions she had expressed
3 to you before?

4 A. A hundred percent.

5 Q. Now, there's been talk about the
6 Harvard Law School attorney, Derke Price, who
7 represented the City staff. Do you remember how he
8 got into the picture?

9 A. Yeah. He was brought to the City by
10 Alderman Burd and recommended that he be interviewed
11 and potentially hired for that position.

12 Q. Now, during the public hearing
13 process, did you ever receive any threatening calls?

14 A. I received a call that was on the
15 answering machine that my daughter deleted.

16 Q. And what time of the morning or night
17 was that?

18 A. That -- I'm sorry, that escapes me.

19 Q. Did you file a police report in that
20 matter?

21 A. Yes, I did.

22 Q. Would reviewing that police report
23 refresh your recollection as to when you received
24 the call?

1 A. Yes.

2 MR. MUELLER: I only have a single
3 copy of this, and I'm only presenting this to
4 the witness to refresh his recollection.

5 Do I need to mark it,
6 Mr. Halloran?

7 THE HEARING OFFICER: Yeah, why don't
8 you mark it, just to be formal about it.
9 Thanks.

10 MR. MUELLER: All right.

11 THE HEARING OFFICER: I have a sticker
12 over here, Mr. Mueller.

13 MR. MUELLER: We found it. Thank you,
14 sir.

15 And I believe this is going to be
16 Fox Moraine No. 32.

17 (WHEREUPON, a certain document was
18 marked Fox Moraine Exhibit
19 No. 32 for identification, as of
20 4/22/09.)

21 MR. MUELLER: And I'll show this to
22 counsel.

23 BY MR. MUELLER:

24 Q. Alderman Besco, I'm going to show you

1 what's been marked as Fox Moraine Exhibit No. 32,
2 which purports to be a police report on a call that
3 you made, and ask you to review it to refresh your
4 recollection as to when you received that call and
5 why you thought it was significant. Just read it to
6 yourself.

7 A. Yes, sir. It was 4:00 in the morning.

8 Q. And what -- why did you think that
9 that call was threatening if you didn't take it?

10 A. Because I had spoken to Alderman
11 Munns, and he had received the same phone call. And
12 he was -- I believe he did answer it, he was alarmed
13 at the call that early in the morning, and it was
14 somebody making that type of...

15 Q. From the same phone number?

16 A. Yes, sir. That's what alarmed me.

17 Q. All right. Thank you, Alderman.

18 Let's go back for a second to the
19 series of meetings that took place between the
20 annexation on September 26th, 2006 and the beginning
21 of the public hearings on the landfill the following
22 March.

23 Were there a number of city
24 council meetings that addressed the issues of

1 annexation, and reannexation, and Sleepy Hollow
2 Road, and the host agreement?

3 A. Yes.

4 Q. And did you attend those --

5 A. Yes.

6 Q. -- as counsel member?

7 A. Yes, I did.

8 Q. Were Todd Miliron and Ron Parrish
9 frequent attendees and speakers at these meetings?

10 A. Yes, they were.

11 Q. Did they regularly and forcefully at
12 those meetings speak out against any landfill?

13 A. Yes, they did.

14 Q. And you understood that they were
15 landfill opponents?

16 A. Yes, sir.

17 Q. Was there any doubt of that in your
18 mind at all?

19 A. No, sir.

20 Q. How did Mr. Miliron conduct him selves
21 in terms of his behavior?

22 A. He was forceful, aggressive, and very
23 vocal.

24 Q. Did he engage in name calling?

1 A. Yes, he did.

2 Q. Any incidents involving you that you
3 specifically remember?

4 A. Yeah, he referred to me as a eunuch.

5 Q. And what was your reaction to that?

6 A. I asked for order from the mayor and
7 Alderman Leslie made a motion to have him removed.
8 And I seconded the motion.

9 Q. And was Mr. Miliron, in fact, removed
10 from that meeting?

11 A. Yes, he was.

12 Q. Did any other landfill opponents say
13 anything directly to you that you specifically
14 remember during that series of meetings?

15 A. I had -- there were a lot of snickers,
16 and sneers, and little snide remarks. But one
17 woman, basically, when I was making a statement
18 during one of the annexation processes, told me to
19 shut up.

20 Q. Do you remember who that was?

21 A. I believe that was Mrs. Gilson.

22 Q. Howard Gilson was the head of the
23 Friends of Greater Yorkville group?

24 A. Mrs. Gilson. I believe his mother.

1 THE HEARING OFFICER: Could you spell
2 that, please?

3 THE WITNESS: I believe it's
4 G-I-L-S-O-N.

5 THE HEARING OFFICER: Thank you.

6 BY MR. MUELLER:

7 Q. Did the behavior of the opponents,
8 once the landfill hearings started, improve or
9 pretty much stay at that same level?

10 A. Once the landfill hearings started, I
11 believe that Larry Clark had done a very good job as
12 far as expressing how the meetings were to be run.
13 And I don't believe he accepted a lot of that
14 outspoken nature compared to what was going on in
15 the council meetings.

16 Q. So the council meetings were actually
17 worse than the hearings?

18 A. Oh, yeah.

19 MR. MUELLER: That's all I have,
20 Alderman, thank you very much.

21 THE HEARING OFFICER: Thank you,
22 Mr. Mueller.

23 Mr. Hopp?

24 MR. HOPP: Just a few questions.

CROSS-EXAMINATION

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BY MR. HOPP:

Q. Alderman Besco, let's talk about Mr. Price. Do you know whether Mr. Price was the legislative counsel or counsel for the staff for the landfill siting hearings?

A. I believe he was brought for the staff.

Q. Do you know for a fact what his initial appointment was?

A. I believe it was attorney for the staff.

Q. Do you know if, prior to being staff attorney, he had any position at all with the City?

A. No.

Q. Do you know who called who, whether Mr. Price called the mayor, or whether the mayor called Mr. Price to talk about that initial engagement?

A. I don't know who initiated the engagement.

Q. Do you know whether Mr. Price had a prior relationship with City Attorney John Wyatt before he was engaged by the City?

1 A. I have no knowledge, no.

2 Q. Alderman Besco, you are here at the
3 request of Fox Moraine; is that right?

4 A. Uh-huh.

5 Q. Did you say yes?

6 A. Yes, I'm sorry.

7 Q. You are not under subpoena?

8 A. No.

9 Q. Would you say that Alderman -- I'm
10 sorry, would you say that Mr. Clark ran a fairly
11 controlled hearing?

12 A. I believe so. In my opinion, yes.

13 MR. HOPP: That's all I have.

14 THE HEARING OFFICER: Mr. Mueller?

15 REDIRECT EXAMINATION

16 BY MR. MUELLER:

17 Q. Did Alderman Burd actually introduce
18 you to Mr. Price?

19 A. Yeah, about -- yes, I'm sorry. About
20 a year prior to that there was a function in Geneva
21 that Alderman Burd and Alderman Spears and myself
22 attended, and she introduced me to Derke Price at
23 that time.

24 Q. And do you remember what she had to

1 say about him at that time?

2 A. That he was wonderful.

3 MR. MUELLER: That's all.

4 THE HEARING OFFICER: Thank you,
5 Alderman.

6 MR. HOPP: Just recross on Mr. Price.

7 RECROSS-EXAMINATION

8 BY MR. HOPP:

9 Q. Do you ever remember Mr. Price being
10 recommended as a legislative attorney for the City
11 and that being voted down by the City?

12 A. It's possible, but I don't remember
13 that. I don't recall that.

14 MR. HOPP: That's all I have.

15 THE HEARING OFFICER: Thanks. Any
16 redirect?

17 MR. MUELLER: No.

18 THE HEARING OFFICER: Thank you,
19 Alderman, you may step down.

20 THE WITNESS: Thank you.

21 (WHEREUPON, the witness was
22 excused.)

23 THE HEARING OFFICER: Mr. Mueller?

24 MR. MUELLER: We'll call Mr. Murphy.

1 THE HEARING OFFICER: Mr. Murphy?

2 MR. MUELLER: This will be our final
3 witness.

4 THE HEARING OFFICER: Okay. Thank
5 you, Mr. Mueller.

6 You know the drill, raise your
7 right hand and Sharon will swear you in.

8 (WHEREUPON, the witness was duly
9 sworn.)

10 CHARLES J. MURPHY,
11 called as a witness herein, having been first duly
12 sworn, was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. MUELLER:

15 Q. State your full name, please.

16 A. Charles J. Murphy.

17 Q. And, Mr. Murphy, what is your business
18 address?

19 A. 805 Manley Road, St. Charles,
20 Illinois.

21 Q. What is your current position with
22 Fox Moraine?

23 A. I am the project manager responsible
24 for basically all aspects of the project.

1 Q. And how long have you been in that
2 position?

3 A. I began -- I came onboard mid-2005.

4 Q. What is your profession, sir?

5 A. My current profession, I'm a
6 consultant and I own -- I own several businesses, I
7 guess, but I'm currently acting as a consultant.

8 Q. Consultant in what area, generally?

9 A. Permitting and developing, developing
10 of transfer landfill-type facilities, and
11 acquisition purchases and brokering deals.

12 Q. What the Pollution Control Board
13 refers to as pollution control facilities?

14 A. On the development side, yes.

15 Q. Okay.

16 Can you detail your professional
17 experience for the Board?

18 A. Prior to, roughly, 2000, I had
19 18 years of experience with Browning-Ferris
20 Industries, which was one of the second largest
21 solid waste companies, acted in my last capacity
22 prior to their merger with Allied Waste as an area
23 vice president in charge of their business
24 development efforts, which was, basically, landfill

1 sitings, transfer station development, acquisitions
2 municipal contract work. And subsequent to that, at
3 the time of the merger with Allied and BFI, I was
4 hired as a consultant by Onyx Waste Systems, which
5 is currently Veolia, which I believe is the City's
6 waste hauler currently. But to help facilitate the
7 purchase of some of the assets that the justice
8 department had forced a sale of as part of the
9 merger.

10 And subsequent to that I was hired
11 on by them for about a year and a half to work in
12 their development as a developer for them in
13 permitting, and again doing the same municipal-type
14 development for them. I left -- we parted ways in
15 2002.

16 At the same point I was working
17 for them, I had owned and was operating president of
18 a company called Midwest Compost, which I own and
19 operate. And I left to take a -- to maintain my
20 full-time role with that, along with my consulting
21 position, which also facilitated permitting efforts,
22 and have been a continued consultant for Allied
23 Waste Industry on transfer station development
24 within the Chicago marketplace, as well.

1 Q. How many landfill projects have you
2 been associated with?

3 A. I believe it was five or six in the
4 Illinois market.

5 Q. And how many total sitings, facility
6 sitings, under Section 39.2 have you been associated
7 with?

8 A. Twelve.

9 Q. And in those sitings, have you
10 attended all of those citing hearings?

11 A. The more -- majority of them, yes.

12 Q. So you're familiar with the process
13 and with the hearings themselves?

14 A. Yes.

15 Q. How many other land use public
16 hearings of any kind have you been involved in
17 besides the 12 citings?

18 A. In other land use, probably somewhere
19 around a dozen.

20 Q. And have you been involved in the past
21 in negotiating and developing and attending meetings
22 regarding the execution of host agreements?

23 A. I have.

24 Q. On how many occasions have you done

1 that?

2 A. Well, certainly involved in the 12 in
3 this -- that I was involved with and oversaw within
4 Illinois.

5 Q. And can you, just briefly, tell us
6 what a host agreement is, because we have used that
7 term repeatedly throughout these hearings?

8 A. Well, I think to simply put it, it's
9 really a -- kind of the terms of engagement between
10 a host community and a developer. It outlines
11 various aspects of a project and kind of the
12 relationship of the parties going forward.

13 Q. And it's a negotiated contract;
14 correct?

15 A. That's correct.

16 Q. And they're not all the same; are
17 they?

18 A. No.

19 Q. When did you first become -- well, I
20 think you said you became involved in this project
21 in 2005; correct?

22 A. In mid of 2005, I was approached by
23 one -- by, at that time, I guess it was the sole
24 owner of the property, who was -- had thoughts of

1 developing it.

2 Q. And that was Mr. Hamman?

3 A. That's correct.

4 Q. And what were your responsibilities
5 once you came onboard?

6 A. Once I came onboard, it was to,
7 basically, facilitate and work towards a site
8 review, kind of fatal flaw analysis to which I've
9 utilized and began -- hired Shaw Engineering to get
10 involved with that. As well, was to hire and work
11 through the elements of -- with hiring the attorneys
12 to be onboard, including yourself, and Mr. Helston,
13 and Mr. Porter, as well, of the Hinshaw firm. As
14 well as other attorneys relative to issues that were
15 more legislatively responsible than they were in the
16 judicial -- quasi-judicial process of siting, and
17 negotiating a host agreement and so on.

18 Q. So would your title have been project
19 manager?

20 A. Project manager, general manager,
21 whatever.

22 Q. You oversaw all aspects?

23 A. That's correct.

24 Q. Did your duties include interfacing

1 with units of local government?

2 A. Yes.

3 Q. And in that regard, did you interface
4 with the City of Yorkville and any of its officials?

5 A. I did.

6 Q. And can you describe what you did in
7 that regard?

8 A. Well, I -- I guess I interfaced with
9 the City and their designated officials, as far as
10 for the aspects of annexation and host agreement
11 and, basically, the issues relative to getting to a
12 siting hearing.

13 Q. Well, was there ever any doubt or
14 secrecy when you interfaced with City officials
15 about the fact that the pot of gold at the end of
16 the rainbow was a landfill?

17 A. Not -- not on my part, no.

18 Q. And did you have occasion with
19 Mr. Burnham to meet with the City aldermen in August
20 of 2006?

21 A. I did.

22 Q. And at that time, how far advanced was
23 the project in terms of host agreement negotiations
24 and preparations for annexation?

1 A. Considering the timing of the
2 annexation, it kind of skews it. But, you know, I
3 would say that we were certainly well into it.
4 Maybe it was -- you know, maybe we were 50 percent
5 into it, 40, 50 percent into it at that point.

6 Q. What was the purpose of your meeting
7 with the aldermen?

8 A. I guess the history of what I've done
9 in developing projects like this, which some
10 attorneys, some people call loo-loo, or at least
11 undesirable land uses, be it landfills, quarries,
12 Menard's, Home Depots, things like that are -- one,
13 they're issues that are bigger in scope than normal
14 and quite capital intensive. And I guess,
15 historically, I have worked to try to make sure that
16 I have some foundation to work with as a host
17 community and a pollution control facility-type
18 operation where I have some understanding and they
19 have some understanding of what we're going to do --
20 or what the intent of the project is going forward.

21 Q. So when did you meet with city council
22 members?

23 A. We met -- meetings -- we met with the
24 council members on August 29 -- 28, 29, 30 -- 29,

1 30, 31, something like that.

2 Q. Of 2000 --

3 A. I'm sorry, 2006, yes.

4 Q. Did these meetings take place in some
5 smoky backroom?

6 A. Contrary to reporting, over the terms
7 of, I guess, the last 24 plus -- 27 months, no, they
8 didn't. They were in the building next door, or
9 right there (indicating), I guess, City Hall. The
10 conference room next to the council chambers.

11 Q. And it's been testified that you met
12 with the aldermen two at a time?

13 A. That's, for the most part, correct.
14 But there were eight council people, five meetings.
15 Do the math, to confuse you, that's three meetings
16 at two and two meetings of one.

17 Q. And what was the purpose for making it
18 multiple meetings like that?

19 A. Well, again, as we started the
20 project, as I got involved in '05, and we actually
21 began conversations with the County, with Kendall
22 County with this project. And we moved away from
23 the County and some difference in some desire, by
24 the ownership, to work with the City of Yorkville, a

1 given location and other interests that the owner
2 had with the community.

3 But we had determined that at that
4 point we wanted to move forward from '05 to start to
5 work with the City and work on the annexation and
6 come to Yorkville after, basically, understanding
7 that that the County and the City couldn't come to
8 some sort of terms.

9 Q. What was the substance of your
10 presentation, if any, to the aldermen during these
11 meetings at the end of August?

12 A. Well, it was intended to be
13 informational and interactive, I guess, should they
14 have questions based on -- it was limited scope. We
15 had presented them with, basically, the nine siting
16 criteria.

17 We had given them a conceptual
18 drawing of a landfill and what it could look like in
19 a stage of development. We, as well, talked about
20 the fact that we would have -- given where we were
21 and where the site was at the time, it was in
22 unincorporated, that we would approach them with
23 annexation, and we talked about some timing to do
24 that.

1 Q. How did the meetings end?

2 A. Basically, we went through the
3 information that we had at hand, we asked for
4 questions, and parted ways.

5 Q. So, basically, you wanted to make sure
6 that the city council understood your intentions?

7 A. Correct.

8 Q. And did you then attend the annexation
9 public hearing on September 25th, 2006 and the City
10 counsel meeting to consider annexation and the host
11 agreement the following night, September 26th, 2006?

12 A. I did.

13 Q. And were there a number of meetings
14 that the City held thereafter to consider other
15 related subjects?

16 A. There were.

17 Q. And what were those subjects?

18 A. In addition, the host agreement and
19 annexation issues, road vacation.

20 Q. Now, is there anything unusual about
21 any of those subjects based upon your experience?

22 A. Well, I think that the unusual nature
23 of it was that the majority -- I guess what we were
24 there for was not the majority of the activity that

1 seemed to be going on with the public, we were there
2 to be annexed, to do a host agreement, road
3 vacation, to move to the next level. But it was the
4 interruptions, interactioned by interested parties,
5 I think, was more intended to make it about a
6 landfill project versus just dealing with what
7 should have been in the legislative effort of it
8 being an annexation or road vacation or issues
9 relative to what the city council handles.

10 Q. Well, if your host agreement was
11 approved on September 26th, 2006, why did you keep
12 coming back to talk about it in meetings in October
13 and November?

14 A. Well, it was continued to be brought
15 up by, I guess, some of the aldermen as -- brought
16 it up as another chip to possibly renegotiate.
17 There was some issues on the annexation that were to
18 be cured and taken care of, and it was brought up to
19 possibly renegotiate.

20 But at the same time -- and some
21 of the questioning of that agreement was brought up
22 due to the fact that the County was in the process
23 of negotiating a host agreement with Waste
24 Management. And like all of these host agreements,

1 as you said, we've said earlier, they're negotiated
2 documents. Everyone of them is different.

3 It's -- you know, it's like buying
4 a car, we both walk in and we both come out with a
5 different deal probably. And that's kind of
6 historically as to how these things are negotiated.

7 Q. You indicated that there were a lot of
8 interested observers at this series of meetings in
9 October and November.

10 A. There were.

11 Q. What was the sentiment of -- the
12 primary sentiment of these observers as you heard
13 and saw it?

14 MR. DOMBROWSKI: Object to the
15 question, Your Honor. I think we're verging
16 into speculation and conjecture the way we
17 were with Mr. Moose. Also asking for his
18 opinion on what the public sentiment may have
19 been.

20 MR. MUELLER: I'm just asking what he
21 observed --

22 THE HEARING OFFICER: Well, I think
23 you asked what he felt the sentiment was.
24 But if you limit the question to what he

1 observed and heard, that's fine. If you
2 could rephrase, Mr. Mueller.

3 BY MR. MUELLER:

4 Q. What expressions, both physical and
5 verbal, did you observe and hear from the interested
6 public at these meetings in October and November of
7 2006?

8 A. Well, I observed, you know, the
9 various members of the public who were stating their
10 opinions and concerns and questions to the process
11 and to the issues, what I felt were very aggressive.
12 And I think that seemed to be taunting and cackling
13 to the elected officials and how they were trying to
14 handle the legislative process which is in front of
15 them and making it -- and questioning whether this
16 was about the annexation, this was about the road
17 vacation, or this was about a host agreement. This
18 is about a landfill was the point, and we weren't --
19 we weren't anywhere near that part of the procedure,
20 we were there for elements outside of a discussion
21 to be heard on the landfill.

22 Q. You --

23 MR. DOMBROWSKI: Your Honor, I'll
24 renew my objections and ask that that answer

1 be stricken. It's opinion and conjecture and
2 inadmissible testimony.

3 THE HEARING OFFICER: Yeah, half of it
4 was and half of it wasn't, by my
5 calculations. So, you know...

6 MR. MUELLER: I think it goes to
7 weight. It's his ordinary observations. I'm
8 not offering it as an expert in interpreting
9 human behavior. But people know what
10 cackling is and taunting is.

11 THE HEARING OFFICER: Well, cackling
12 and taunting are differently than I think
13 Mr. Murphy testified that he felt the Board
14 members were intimidated, or the counsel
15 members. And I think that's a whole other
16 area that I will not allow to be gotten into.

17 MR. MUELLER: And I don't intend to,
18 sir.

19 THE HEARING OFFICER: And I would ask
20 the Board to review my comments and review
21 Mr. Dombrowski's and I'll let it stand.

22 You may proceed.

23 BY MR. MUELLER:

24 Q. Mr. Murphy, did you observe the crowd

1 at these series of meetings react audibly to things
2 that were said by various people, including things
3 that were said by city council members?

4 A. I did.

5 Q. And what was the typical reaction
6 to -- of the crowd to things said by Alderman Burd
7 and Alderman Spears?

8 MR. DOMBROWSKI: I would object on the
9 typical reaction. I think, again, it's
10 conjecture on opinion.

11 MR. MUELLER: Well, typical reaction
12 means the average thing that you saw.

13 THE HEARING OFFICER: Overruled.

14 You may answer, if you're able,
15 Mr. Murphy.

16 BY THE WITNESS:

17 A. Well, what I noted -- or noticed, I'm
18 sorry, was as it went on and as these hearings went
19 on, and as the objectors began to gather some steam
20 or felt that they had some position with members of
21 the council, I think that those that they were
22 comfortable with or seemed to be acquiescing to, the
23 objectors ways of opposing what was going on, there
24 were cheers of support and encouragement for them to

1 continue their line of questioning to the process of
2 the annexation or objections to the host agreement
3 or the competitive comparisons of those documents.

4 MR. DOMBROWSKI: Mr. Hearing Officer,
5 I renew the objections and again ask that
6 that answer be stricken. Mr. Murphy's
7 testimony, he mentioned that city council
8 members seemed to acquiescing to the
9 objectors' comments, and that there seemed to
10 be support for the objectors' position --

11 THE HEARING OFFICER: Yeah, those two
12 I agree with you, Mr. Dombrowski, and I ask
13 the Board to disregard those comments.

14 BY MR. MUELLER:

15 Q. Mr. Murphy, what I got out of that is
16 there was frequent applause and cheering, for things
17 being said by Aldermen Spears and Burd?

18 MR. DOMBROWSKI: Objection as leading.
19 He's putting words in his mouth.

20 MR. MUELLER: I'm trying to get him to
21 summarize and move along.

22 THE HEARING OFFICER: Overruled. You
23 may answer, if you're able.

24

1 BY THE WITNESS:

2 A. Yes, there were.

3 BY MR. MUELLER:

4 Q. Now, on the few occasions that
5 representatives of Fox Moraine spoke in any of these
6 meetings, was there ever cheers or applause for
7 them?

8 A. No. Unfortunately, we were never
9 supported, given that fair listen to.

10 Q. Now, did the mayor frequently admonish
11 the public to not get into the substance of whether
12 landfills are good or bad at these hearings --
13 meetings?

14 A. Yes, on numerous occasions there
15 was -- the mayor objected to comments being made
16 when we were discussing various issues, be it the
17 host agreement, annexation, road vacation, that came
18 up and surrounded comments about it be -- about
19 landfill. And at some point to threaten to close
20 the meeting down -- the open meetings down, and put
21 the public out if they couldn't cooperate with the
22 procedures that he had asked them to follow or that
23 were --

24 Q. This is -- by the way, we're talking

1 Mayor, who was defeated by Alderman Burd in the
2 subsequent April election; right?

3 A. That's correct.

4 Q. And after the mayor's admonitions, did
5 the public observe those and confine their comments
6 to the issues at hand, other did they go back to
7 landfill comments?

8 A. It stopped momentarily, but it
9 continued on. And actually the mayor took a lot of
10 abuse as he tried to gain control of the meetings.
11 He was -- I had heard him being called a liar, you
12 know, told that this is about the landfill, "Art,
13 the fix is in." I mean, there was all kinds of
14 accusations against the Mayor Prochaska.

15 Q. Now, you've been to hundreds of
16 government public meetings to discuss land use
17 issues; right?

18 A. I've been to many, yes.

19 Q. In your experience, the behavior that
20 you observed here, where does it rank in all of
21 those meetings?

22 MR. DOMBROWSKI: Objection. Opinion,
23 conjecture, speculation. I'm sure he's going
24 to answer that it's the worst he's ever seen.

1 MR. MUELLER: Well, if they want to
2 stipulate to that, we can move on.

3 THE HEARING OFFICER: As I ruled in
4 Mr. Moose's case, I think he's been around
5 the block, I think he's fully qualified to
6 give an opinion. So I would overrule your
7 objection.

8 BY THE WITNESS:

9 A. I would certainly say that it's
10 probably an eight out of ten.

11 BY MR. MUELLER:

12 Q. Ten being the worse that you've seen?

13 A. Yes.

14 THE HEARING OFFICER: Good thing you
15 didn't stipulate to anything.

16 BY MR. MUELLER:

17 Q. The siting application was filed on
18 December 1st, 2000 -- well, let me back up for a
19 second.

20 Before the siting application was
21 filed, did Fox Moraine conduct two informational
22 meetings of its own in Yorkville?

23 A. We did.

24 Q. Were those done with any sponsorship

1 or support or subsidy by the City?

2 A. They were not.

3 Q. Where were the meetings held?

4 A. Other than the subsidy of the rental
5 of the Beecher Center, which, I guess, is a
6 City-owned facility, which I paid for, they were
7 held at the Beecher Center.

8 Q. You rented a facility; is that
9 correct?

10 A. That's correct.

11 Q. Who set it up?

12 A. I did.

13 Q. And who took all the tables and chairs
14 down at the end of the night?

15 A. I think the Fox Moraine team did.

16 Q. And who was invited to that meeting or
17 those informational meetings?

18 A. The public.

19 Q. What was the general purpose of that?

20 A. The general purpose was to -- again,
21 similar to with the alderman was to give a
22 presentation on our application with some of the
23 issues that were hot buttons and some of it we
24 thought were worth presenting to the public. And I

1 guess it wasn't limited, it was really an open end
2 of what a landfill siting was about, some of the key
3 issues.

4 Q. Were those informational meetings well
5 attended?

6 A. They weren't that well attend, no.

7 Q. The meeting that happened at the
8 auditorium at Yorkville High School, who sponsored
9 that meeting? That was asked about in Mr. Moose's
10 testimony and you heard that; correct?

11 A. I did. I believe that that was a
12 meeting that was held by the City's review team or
13 the City's -- sponsored by the City, Derke Price.

14 Q. That was his opportunity to introduce
15 his experts?

16 A. That's correct.

17 Q. And did Fox Moraine participate in any
18 way in that meeting?

19 A. No. Other than just in attendance.

20 Q. After the siting application was filed
21 on December 1st, and before the actual hearings on
22 the application began in March, were there any
23 further city meetings regarding issues such as
24 annexation?

1 A. There was. There was open issues yet
2 on the annexation or the vacation in the January,
3 February meetings, I believe.

4 Q. Did anything change from what you've
5 described as to the general course of those meetings
6 previously?

7 A. No. I mean, there may have been a
8 heightened response a little bit by the opposition
9 group. Some question of, you know, protests in
10 front of City Hall, no landfill signs, more
11 references being made to communications and things
12 directed toward aldermen on the record at those
13 meetings by the public. Which kind of took me by
14 surprise, because I wasn't aware of that
15 communications were allowed with the public
16 officials regarding the landfill, while we were in
17 a -- after we had filed, you know, our siting
18 application in December.

19 Q. Well, let me you ask you about that.
20 By the time January rolled around, I take it that
21 you had gotten to know by face the primary
22 spokespeople for the opposition groups?

23 A. I did.

24 Q. You knew who Mr. Gilson was,

1 Mr. Parrish, Mr. Miliron and lot of others; right?

2 A. Sure.

3 Q. And did you observe those and other
4 individuals known to you to be affiliated with the
5 opposition frequently interacting in a casual
6 fashion with any of the aldermen after and before
7 these meetings?

8 MR. DOMBROWSKI: Objection. Vague,
9 casual fashion, also goes into conjecture and
10 speculation.

11 MR. MUELLER: Well, he can see who is
12 milling around and speaking with whom.

13 THE HEARING OFFICER: That question is
14 a little better, rather than casual. But I
15 think it's a fine line.

16 Objection overruled. He may
17 answer if he's able.

18 BY THE WITNESS:

19 A. If I could ask you to clarify what
20 meetings.

21 BY MR. MUELLER:

22 Q. The city council meetings prior to
23 hearings. You know, before they -- did you see
24 people -- people known to you to be opponents

1 associating and then milling around with council
2 members before or after meetings?

3 A. I did.

4 Q. And did that include Aldermen Burd and
5 Spears?

6 A. Yes.

7 Q. And my question is a very simple one.

8 During the testimony of Alderman
9 Spears, she showed us this card, this laminated card
10 that they were given to show to people whenever they
11 were approached. Do you remember that testimony?

12 A. I do.

13 Q. Did you ever see that card being
14 flashed or shown before or after any meetings or
15 hearings that you attended?

16 A. Well, I think when the card was pulled
17 out I was a little surprised, one, but I'd never
18 seen it before. And as I attended all the meetings
19 for good, bad, or indifferent, and with the comment
20 and the responses or the way the opposition
21 communicated in the public environment, things that
22 I believe were statements that could have led
23 themselves to biasing a council member or not, I
24 never saw that card ever flagged, held up, handed to

1 somebody in any public meeting, in any public
2 setting, I'd never seen that card once before,
3 which, you know, surprises me.

4 I was at -- you know, I've lived
5 this thing. I've been through this thing since the
6 beginning, and I guess I'll be there to the end. So
7 yesterday was the first time I'd seen that card.

8 MR. DOMBROWSKI: Mr. Hearing Officer,
9 I renew our objections. I ask that the
10 second half of his answer be stricken.

11 He's speculating about what these
12 conversations were when these people were
13 supposedly milling around talking. He's
14 talking about bias -- possible bias of the
15 council members because they were, as he puts
16 it , milling around with citizen objectors.
17 It's speculation.

18 THE HEARING OFFICER: He testified
19 that they were biased? That he thought they
20 were biased?

21 MR. DOMBROWSKI: I'm sure he
22 mentioned...

23 MR. MUELLER: He didn't say that.

24 MR. DOMBROWSKI: Yes, he did.

1 THE HEARING OFFICER: I didn't hear
2 it.

3 Sharon, sorry, could you read back
4 Mr. Murphy's last answer.

5 (WHEREUPON, the record was
6 read by the reporter.)

7 THE HEARING OFFICER: Yeah, I only
8 read statements that could have led to bias,
9 I think that's a little different.

10 So objection overruled. Thank
11 you.

12 BY MR. MUELLER:

13 Q. Mr. Murphy, just to backtrack just a
14 little bit.

15 Do you recall whether police
16 intervention was ever needed during any of this
17 series of meetings between September and January?

18 A. I do.

19 Q. When did that occur?

20 A. I don't remember the direct meeting, I
21 know that on occasion it was -- the mayor had asked
22 the police to intervene. And some of the objectors
23 or interested parties who were opposing the process
24 and landfill -- the perceived landfill and their

1 activities, there was multiple occasions that they
2 were threatened with and actually removed from the
3 meeting.

4 Q. During the siting hearing process, did
5 any members of the city council resign their
6 position?

7 A. Alderman Wolfer did.

8 Q. And do you know why Alderman Wolfer
9 resigned?

10 MR. DOMBROWSKI: Objection. Calls for
11 speculation.

12 MR. MUELLER: I'm asking if he knows.

13 THE HEARING OFFICER: If he knows, he
14 can answer.

15 BY THE WITNESS:

16 A. Actually, I had a conversation with
17 Alderman Wolfer --

18 MR. DOMBROWSKI: I will object to
19 hearsay.

20 BY THE WITNESS:

21 A. -- after his --

22 THE HEARING OFFICER: Hold on.

23 Mr. Mueller, we've got an
24 objection on the floor to hearsay.

1 MR. MUELLER: Well, I think,
2 Mr. Halloran, that you're not held to strict
3 rules of evidence, and you've made that clear
4 in previous hearsay objections. It's more
5 the general liability of evidence that you
6 look at.

7 So to the extent that it's
8 hearsay, it would still be subject to
9 cross-examination by Mr. Murphy and it would
10 go to the weight, I think, rather than
11 admissibility in this context.

12 THE HEARING OFFICER: Well, you know,
13 I think in this case -- I think -- you're
14 talking about the relaxed evidentiary rules
15 that sometimes we follow, I think it -- or
16 whether or not a prudent person would rely
17 upon. And I don't know, maybe the Board is a
18 little more prudent than I am, I don't know.

19 But I think in this case I'm going
20 to sustain Mr. Dombrowski's hearsay
21 objection.

22 BY MR. MUELLER:

23 Q. Were you aware, Mr. Murphy, of any
24 other kinds of communications received by city

1 council members during the public hearings on the
2 application?

3 MR. DOMBROWSKI: Objection.

4 Speculation. Also if it calls for a hearsay
5 answer. Object -- we object based on
6 hearsay, as well.

7 THE HEARING OFFICER: Could you read
8 back Mr. Mueller's question, please?

9 (WHEREUPON, the record was
10 read by the reporter.)

11 THE HEARING OFFICER: Objection.

12 Overruled.

13 You may answer if you're able.

14 BY THE WITNESS:

15 A. I am, and I had stated, I believe,
16 earlier in my testimony that I was aware of e-mails
17 and communications. And in fact sitting through
18 these hearings, it's been acknowledged by a few of
19 the council people that they received e-mails and
20 communications from the public February 13th, I
21 think January 4th, records, video, and transcripts,
22 I think Glen Pool -- I apologize, I'm not sure,
23 there were members who admittedly on those -- in
24 those transcripts or on those videos that had spoken

1 to, as they were in public comment, speaking about
2 the landfill issue, in a nonlandfill meeting, but
3 had, as well, referred to information that they had
4 forwarded on to the members of the council. So I
5 was aware of that.

6 I guess, additionally, whether the
7 correspondence of -- whether the correspondence or
8 the communication, these phone calls in the night,
9 I'm certainly aware there was four police reports
10 filed. In addition to what we had heard earlier in
11 testimony from Alderman Besco, I know that Alderman
12 Bach at the time had filed a police report, Alderman
13 Munns and Alderman Leslie.

14 And two of the four of those are
15 two who voted down the application ultimately. So
16 I'm aware of that level of communication.

17 BY MR. MUELLER:

18 Q. At the siting hearing, did you attend
19 every of session?

20 A. Unfortunately I didn't. I had a
21 funeral for a family member that, I believe, I
22 missed two of those meetings.

23 Q. All the rest, though, you were there?

24 A. I was there.

1 Q. And what was the range of attendance
2 at the siting hearings themselves?

3 A. At the siting hearings, I believe,
4 that it was probably 50 to 250, and maybe some more,
5 you had 25 to 30 people that were paid to be there
6 on all sides.

7 Q. Were the hearings also attended at
8 times by people known to you to be itinerant
9 landfill opponents, who travel from jurisdiction to
10 jurisdiction?

11 A. There is a group who out of -- travel
12 and basically take on landfill opposition whenever
13 they can.

14 Q. You saw those individuals, as well?

15 A. I saw them, yeah, both at the public
16 hearings and at -- they were all very active in a
17 FOGY pig roast event that I attended.

18 Q. Did you see any city council members
19 at the FOGY pig roast?

20 A. I don't believe I did.

21 Q. Did you see any candidates that
22 ultimately got elected?

23 A. You know, I don't recall. I wasn't
24 there for the whole thing. I was put in a position

1 to be made clear that I was kind of unwelcome to sit
2 there and view and hear what they were doing.
3 Mr. Gilson made a point to make -- you know, I guess
4 just make it -- make it known that I was probably
5 better off to leave than to stay.

6 Q. And you indicated that you left
7 earlier that you might have otherwise have left
8 because of what was said to you by Mr. Gilson?

9 A. Yeah. It was just -- you know, it was
10 a matter of, you know, why I was there, and I just
11 wanted to observe and be able to respond to as we
12 prepared for our informational meetings. That, but
13 he continued to, you know, portray that there was an
14 agenda or something, other than just basically
15 gathering information to help respond to concerned
16 citizens in our hearings or throughout our process
17 going forward.

18 Q. You heard the testimony of Devin Moose
19 regarding the conduct of the opponents at the public
20 hearing on the landfill application; right?

21 A. I did.

22 Q. Do you take issue with any of his
23 observations?

24 A. No.

1 MR. DOMBROWSKI: Same objections as
2 before, as with Mr. Moose.

3 THE HEARING OFFICER: Objection
4 overruled.

5 And I just want to state for the
6 record, too, I'm stating, just so we know
7 where we're standing on many of my rulings,
8 because these objections keep popping up.
9 "Section 101.626 Evidence. The hearing
10 officer may admit evidence that is material,
11 relevant, and will be relied upon by prudent
12 persons in a conduct of serious affairs,
13 unless that information is privileged."

14 And I just want to get that on the
15 record, and we can move on.

16 BY MR. MUELLER:

17 Q. During the first day of public
18 hearing, March 7th, 2007, Mr. Moose referred to a
19 portion of the transcript where the hearing officer
20 interrupted me and cautioned the audience to
21 maintain their composure. Do you remember -- you
22 were there; right?

23 A. I was.

24 Q. Do you remember the context of what

1 was actually happening at that time?

2 A. I do.

3 Q. What was that?

4 A. You were in your opening statement.

5 Q. And what was happening?

6 A. You were being heckled.

7 Q. On March 10th, Mr. Moose had
8 testified -- again, referred to the transcript with
9 regard to some signs that were in the room. Do you
10 recall that?

11 A. I do.

12 Q. And can you provide the context for
13 that, as well?

14 A. They were no landfill signs.

15 Q. In the actual hearing room?

16 A. Correct.

17 Q. Did you ever observe the reaction of
18 city council members to the various verbal
19 manifestations by the opposition groups during the
20 public hearings?

21 MR. DOMBROWSKI: Objection. Calls
22 clearly for a conjecture and speculation.

23 MR. MUELLER: I'm just asking --

24 THE HEARING OFFICER: No, the counsel

1 members could have rolled their eyes or
2 something, and he can testify to that. We'll
3 see what Mr. Murphy has to say.

4 Objection overruled.

5 BY MR. MUELLER:

6 Q. Did you have a chance to observe their
7 reactions?

8 A. I did.

9 Q. And what specific observations did you
10 make? Not what conclusions you drew.

11 A. Well, I noticed one alderman who did
12 roll his eyes, another alderman who was reading a
13 magazine, another alderman that was paying attention
14 to their computer. And I guess at a time that I
15 think critical information was being presented, it
16 seemed to just -- not being aware of what was going
17 on.

18 MR. MUELLER: I don't have any further
19 questions.

20 THE HEARING OFFICER: Thank you,
21 Mr. Mueller.

22 CROSS-EXAMINATION

23 BY MR. DOMBROWSKI:

24 Q. Mr. Murphy, this FOGY pig roast you

1 mentioned, you say you attended it to prepare for
2 your informational meetings; is that correct?

3 A. No. I said I was there as an
4 interested manager of this landfill process, that
5 had heard a lot of raised -- a lot of questions
6 raised about the landfill project. And in an effort
7 to try to help -- be to able dispel, I guess,
8 concerns, whether it was in any conversations one on
9 one with the public, as I was approached in many of
10 these, or as I approached people, it was to help to
11 give them an understanding or help clear up what
12 might be misunderstood information between what was
13 a -- really truly part of our application or part of
14 our project versus some conjecture that might be out
15 there publicly.

16 Q. Well, you weren't invited to the pig
17 roast; right?

18 A. It was open to the public.

19 Q. You weren't a supporter of FOGY?

20 A. I was not.

21 Q. Your testimony regarding certain
22 citizen objectors milling around with council
23 members at the landfill hearings, you had no idea
24 what was discussed; correct?

1 A. I didn't have -- no, I wasn't a party
2 to the observation I made.

3 Q. In your testimony about one counsel
4 member paying attention to his computer, there was
5 no Wi-Fi access in the hearing room; was there?

6 A. I'm not aware if there was or wasn't,
7 but I --

8 Q. Let me ask you about these two on two
9 meetings. As you said, these were held in August of
10 2006?

11 A. I did say that.

12 Q. And it was you and Mr. Jim Burnham at
13 these meetings on behalf of Fox Moraine; is that
14 correct?

15 A. That's correct.

16 Q. And you say you met -- you had three
17 meetings with two aldermen and two meetings with one
18 alderman?

19 A. Yes.

20 Q. A total of five meetings?

21 A. That's correct.

22 Q. And you limited these meetings to a
23 maximum of two elected officials at a time to get
24 around the Open Meetings Act; correct?

1 A. No. No, I didn't limit the meetings
2 at all. The -- it was suggested by the City that we
3 approach the aldermen to give them an overview.

4 We had chose to do it by ward, do
5 it two on two, knowing that Jim and I were two
6 people, have more of a reception of being able to
7 facilitate a meeting with two people and be more of
8 a constructive conversation.

9 Q. Well, you knew at the time that you
10 held meetings, didn't you, that had more than two
11 Yorkville aldermen been present at a meeting, then
12 you would have violated the Open Meetings Act;
13 correct?

14 A. I think, as I testified in my
15 deposition, that I was aware of the Open Meeting
16 Act, but it wasn't the basis for the meetings. The
17 meeting guidelines we were given by others was
18 suggested to go by ward.

19 Q. But you say -- you're testifying you
20 were aware of the Open Meetings Act; correct?

21 A. I was.

22 Q. And you certainly were aware that had
23 you met with more than two aldermen at a time, you
24 would have violated the Open Meetings Act; correct?

1 A. Correct.

2 Q. And at these meetings you discussed
3 Fox Moraine's plans to site a landfill at the
4 proposed landfill site; correct?

5 A. That's correct.

6 Q. And you showed the aldermen drawings
7 of the proposed landfill?

8 A. I don't recall if it was a conceptual
9 drawing of the actual -- this site or if it was a
10 conceptual drawing of another landfill. I don't
11 recall.

12 Q. And you showed them also some diagrams
13 or sketches of the landscaping that would be used at
14 the landfill?

15 A. The conceptual drawings had
16 landscaping associated with them.

17 Q. And some of the documents that you
18 showed the aldermen eventually became part of the
19 landfill application; correct?

20 A. I don't -- other than the outlining of
21 nine criteria, I think, Leo, I don't -- I don't
22 believe that. The drawings that were shown to them
23 were certainly final, if they were related to this
24 site; and if they weren't, they obviously weren't

1 filed with this application.

2 Q. But you're saying, then, if they had
3 been final drawings, then they would have made their
4 way into the application; correct?

5 A. They were not final drawings by any
6 means. We were nowhere done with final drawings. I
7 mean, we were not anywhere near. This is -- you
8 know, talking about having to be done in July to
9 have been anywhere near that even to present. So
10 they weren't even final.

11 Q. And after you met with the different
12 aldermen, you also requested second meetings with at
13 least some the aldermen; correct?

14 A. Some had expressed -- had some
15 question as to issues, and I guess as Rose testified
16 the other day, which I guess I should take as a
17 compliment, because one of the only things she
18 remembered was the fact that I called her three
19 times. So I was, you know, pretty happy with that.

20 But the intent of that was to
21 follow up from a meeting, I would have done that.
22 And I think I did that with all of the aldermen to
23 see if they had any additional questions, and if
24 they had any interest to -- that we could help

1 resolve any questions they might have the meeting.

2 Q. So, as Alderman Spears testified, you
3 called the aldermen that you had met with, asked if
4 they had any additional questions; correct?

5 A. Or to reply to questions that he had
6 that were open-ended at the time of departure.

7 Q. And so you called all eight aldermen?

8 A. To the best of my recollection, I did.
9 I would think I did. I don't know why I would have
10 excluded anybody. I just don't recall that.

11 Q. And did you have second meetings with
12 any of the aldermen?

13 A. You know, I -- I don't honestly
14 recall. I think there was subsequent conversation.
15 If I had additional meetings, I don't recall being
16 in a setting outside of presentations at the City
17 Hall. Informal meetings.

18 Q. And before the landfill application
19 was filed in December of 2006, you also met with
20 Mayor Prochaska regarding the proposed landfill;
21 correct?

22 A. Could you state that again?

23 Q. Before the landfill application was
24 filed in December of '06, you also met with Mayor

1 Art Prochaska several times regarding the proposed
2 landfill; correct?

3 A. I have.

4 Q. And how many times did you meet with
5 him?

6 A. I don't remember the number. We had
7 initiated conversation with the mayor, and I think
8 there was members of staff, as directed, or a city
9 attorney, prior to meeting with the alderman.

10 Q. Did you meet with the mayor at least
11 three times before the application was filed?

12 A. I don't -- I'm not sure. At least
13 three, it might have been two or three.

14 Q. Who was all at those meetings?

15 A. I believe the mayor, a city attorney,
16 and/or Travis maybe.

17 Q. Who was Travis?

18 A. Travis Miller.

19 Q. Who is he?

20 A. He works for the City.

21 Q. And Mr. Burnham was with you at these
22 meetings?

23 A. I believe he was.

24 Q. And again, the purpose was to present

1 Fox Moraine's case regarding a proposed landfill;
2 correct?

3 A. And, basically, I guess, to determine
4 a level of interest. I guess it would be similar,
5 you know, a project development.

6 You know, some of the transactions
7 I've been involved with is working with the
8 ownership or the leadership of those companies and
9 starting there and getting direction as to how to go
10 forward from there.

11 Q. So is that a long way of saying yes?

12 MR. MUELLER: I'm going to object to
13 that question as argumentative.

14 BY MR. DOMBROWSKI:

15 Q. Well, let me ask the question again
16 then.

17 Was the purpose of your meetings
18 with the mayor to present Fox Moraine's case
19 regarding the landfill?

20 A. They were informational meetings.

21 Q. Regarding the proposed landfill;
22 correct?

23 A. Regarding our desire to annex and the
24 potential of a project on that site.

1 Q. And the project on that site that you
2 refer to was the proposed landfill; correct?

3 A. The initial meetings hadn't been
4 determined. We were looking for annexation into the
5 city.

6 Q. What initial meetings are you talking
7 about?

8 A. The initial meetings that I met with
9 the mayor, that came prior to meeting with the
10 aldermen.

11 Q. So at least in your later meetings
12 with the mayor, the landfill was clearly on the
13 table, and it's one of the things that you were
14 talking about; right?

15 A. Yes, at some point. We certainly had
16 conversation.

17 Q. And to set up the meetings with the
18 aldermen, you went through the mayor's office to set
19 those up?

20 A. Well, no. Actually Jim Burnham had
21 contacted the aldermen directly.

22 Q. He didn't contact the city attorney or
23 the mayor to set those up?

24 A. No. We facilitated those calls

1 directly.

2 And as -- my recollection was Jim
3 set up all eight of those meetings. Rose thought I
4 set hers up. I don't recall it that way, but if it
5 was, we had set the meetings up directly with the
6 aldermen.

7 Q. Now, these meetings are with the
8 aldermen and with the mayor, the city attorney
9 regarding the proposed landfill. These were all
10 secret meetings; correct?

11 A. I don't know that they were secret. I
12 mean, this is -- I don't set the rules, I don't
13 drive the bus for the City. If I was doing a gas
14 station or I was doing a big box building, whatever,
15 as I said, my history -- my feeling is that I need
16 to get a sense, take the pulse of some of the
17 decisionmakers to determine if I'm going to spend
18 millions of dollars going forward on a project.

19 So I don't take it that -- I
20 wasn't under any -- I wasn't being secretive about
21 it. I had approached those that were in a position
22 of power, and how they handled it from there, that
23 was their position.

24 Q. Well, there's no public notice in

1 these meetings; correct?

2 A. I'm not aware of a need for public
3 notice for the meeting.

4 Q. Right. But that's not my question.
5 You're not aware of any public
6 notice for these meetings; correct?

7 A. I'm not aware of any public notice,
8 no.

9 Q. And meetings weren't -- were certainly
10 not public meetings; correct?

11 A. They were meetings -- I guess they
12 weren't -- I just didn't call the world and say,
13 "Hey, I'm going to have a meeting."

14 Q. You didn't invite anyone else from
15 Yorkville; right?

16 A. No, I didn't think that there was any
17 interest -- we didn't have anything that we were
18 doing to go forward to be a public reason to.

19 Q. And at the time you held these
20 meetings, they certainly were not reported in the
21 newspapers; correct?

22 A. No. Some of the only things -- well,
23 they were reported after the fact, I guess, but --
24 at great length.

1 Q. Well after the fact; correct?

2 A. Yeah, I believe -- I don't know what
3 timing, but after the fact.

4 Q. So it's fair to say you had access on
5 behalf of Fox Moraine, to the city aldermen and the
6 mayor that the citizens of Yorkville didn't have;
7 correct?

8 A. I would have to disagree with that.
9 I'm not aware that citizens couldn't call the
10 aldermen and go have lunch with them, go have a
11 meeting with them, come in and present a project to
12 them. So I would disagree that I had access that
13 others didn't have.

14 Q. Well, you're not aware of any similar
15 two on two meetings that were set up between the
16 aldermen and citizens of Yorkville to discuss the
17 proposed landfill; correct?

18 A. I'm not aware of any.

19 Q. I'm going to ask you a couple
20 questions about the landfill hearings.

21 You testified earlier that you
22 were responsible for hiring the experts on behalf of
23 Fox Moraine; correct?

24 A. That's correct.

1 Q. Also you were responsible for
2 retaining the attorneys?

3 A. I was.

4 Q. And you attended all but two of the
5 public hearings on the landfill; right?

6 A. I believe that's what I said.

7 Q. And how many witnesses did Fox Moraine
8 put on?

9 A. I don't know that. You had said
10 earlier. I should have looked, but I don't recall.
11 It was --

12 Q. Well, you hired them all; didn't you?

13 A. And, you know, I've got multiple
14 projects going on, Leo. I run three companies of my
15 own, I do consulting work for three public companies
16 right now. I've got -- brokering a transaction out
17 of state. I've got a lot on my plate.

18 Q. I understand.

19 A. So to specifically recall that two
20 years ago, I could certainly dig that up and
21 retrieve it. But that's not -- I don't recall it.

22 It was maybe ten or less, I don't
23 recall.

24 Q. So you wouldn't dispute Mr. Moose's

1 testimony it was at least six; correct?

2 A. No, I wouldn't dispute that.

3 Q. Would you agree with me that Fox
4 Moraine had a full and complete opportunity to offer
5 evidence in support of its landfill application?

6 A. We had a -- could you repeat that?

7 Q. Sure.

8 Would you agree with me that Fox
9 Moraine had a full and complete opportunity to offer
10 evidence in support of its landfill application?

11 A. I believe we had a full opportunity.

12 Q. Part of your job as the project
13 manager for the Fox Moraine landfill was monitoring
14 the press to see what was being written about the
15 landfill; correct?

16 A. It probably wasn't a primary scope. I
17 had others that were helping pay attention to some
18 of that. Some clerical that were monitoring some of
19 that. A clipping service that I was sending
20 articles.

21 Unfortunately, some of that is
22 after the fact. But certainly I've seen articles
23 along the way.

24 Q. So you mentioned a clipping service.

1 So someone on your team was -- or subscribed to a, a
2 clipping service -- or a clipping service is to
3 monitor the press and collect articles about the
4 proposed landfill; correct?

5 A. Correct.

6 Q. You've heard testimony yesterday and
7 today about the Beacon News article that appeared on
8 April 15th, 2007?

9 A. I did.

10 Q. And when did you first see that
11 article?

12 A. The first time I saw that article was
13 probably the 16th or 17th.

14 Q. And you had discussions with
15 Mr. Hamman about it; correct?

16 A. I did.

17 Q. And that -- those discussions would
18 have been on April 16th or 17th, 2007; correct?

19 A. That's fair to speculate.

20 Q. And your conversations with Mr. Hamman
21 dealt with the bias that you and he thought people
22 running for office had against the landfill;
23 correct?

24 A. Specifically my conversations with

1 Mr. Hamman in that regard?

2 Q. Yes.

3 A. We definitely -- definitely it was
4 questioned at that point that there was multiple
5 cases of bias represented in those reflections.

6 Q. So as -- let's say the date of the
7 election is April 17th, 2007, both you and he
8 thought that Joe Plocher who was running for office
9 had a bias against the landfill; correct?

10 A. I did.

11 Q. And the same as to Robyn Sutcliffe;
12 correct?

13 A. I think that those -- yeah, those
14 comments were certainly some affirmations of things
15 suspected up to that -- up to the election.

16 Q. So you thought they she was biased as
17 to the date of the election; correct?

18 A. That's correct.

19 Q. And you also thought that Wally
20 Werderich was biased as to the date of the election;
21 correct?

22 A. That's correct.

23 Q. And you know that Fox Moraine had
24 filed a motion to disqualify then Alderman Burd and

1 Alderman Spears at the beginning of the landfill
2 hearings; correct?

3 A. Correct.

4 Q. But Fox Moraine never filed a motion
5 seeking to disqualify anyone else; correct?

6 A. Well, as you stated, the motions filed
7 for Spears and Burd were filed at the beginning of
8 the hearing, which, I believe, is March 7th, if my
9 memory serves me right. And those that you've
10 reflected and counted on your finger had not been
11 elected to office yet, that was a month and a half
12 later. And the merits of the requests to Burd and
13 Spears I think was denied.

14 And at that point we -- I would
15 say that it was probably at risk for us to -- not
16 only did we see what we felt to be true was the bias
17 and the ultimate outcome of the election was those
18 that we felt we had concern with to become the
19 decisionmakers. We didn't think at that point that
20 we were going to garner much success with that same
21 request going forward.

22 Q. Well, that request to disqualify Burd
23 and Spears, that wasn't acted on until May 23rd,
24 2007; correct?

1 A. Correct.

2 Q. So I have a simple question for you.

3 At no time up until the day of the
4 vote, May 24th, 2007, did Fox Moraine seek to
5 disqualify anyone other than those two; correct?

6 A. We did not.

7 MR. DOMBROWSKI: Nothing further.

8 Thank you.

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

11 Mr. Mueller?

12 REDIRECT EXAMINATION

13 BY MR. MUELLER:

14 Q. Charlie, the host agreement, as you
15 said, is a contract; right?

16 A. That's correct.

17 Q. That's negotiated back and forth
18 between the two parties?

19 A. That's correct.

20 Q. Does that process of negotiating terms
21 of the host agreement require the parties to meet
22 and talk?

23 A. It does.

24 Q. There was also an annexation agreement

1 approved here; correct?

2 A. There was.

3 Q. Was that a negotiated document?

4 A. That's a negotiated document.

5 Q. And does it contain obligations of the
6 City and obligations of Fox Moraine?

7 A. It does.

8 Q. And were those negotiated?

9 A. Yes.

10 Q. Did that require the parties to get
11 together and talk to negotiate?

12 A. Certainly.

13 Q. And were some of these meetings that
14 you had with the mayor and with the city attorney
15 for the purpose of negotiating terms of these
16 agreements that are prerequisites to going forward
17 with a siting application?

18 A. They are.

19 Q. Let's talk then about the
20 disqualification of board members.

21 You recall that we filed a motion
22 on the first day of the public hearing to disqualify
23 Alderman Spears and Alderman Burd?

24 A. I do.

1 Q. For what we believe is bias?

2 A. I do.

3 Q. And that was because we had heard
4 multiple statements of theirs in open city council
5 meetings that we were in?

6 A. That's correct.

7 Q. What was the reaction in the demeanor
8 of Aldermen Burd and Spears toward the applicants
9 throughout that hearing?

10 MR. DOMBROWSKI: Objection.
11 Conjecture and speculation.

12 THE HEARING OFFICER: Could you read
13 the question back please?

14 (WHEREUPON, the record was
15 read by the reporter.)

16 THE HEARING OFFICER: Mr. Mueller?
17 Your response to Mr. Dombrowski's objection?

18 MR. MUELLER: Number one, I'm asking
19 him what he observed about their demeanor
20 toward him and toward the applicant and the
21 witnesses. And number two, I think that door
22 has been opened by Mr. Dombrowski, and
23 Mr. Murphy ought to have an opportunity to
24 explain.

1 As he said, it was a -- it's a
2 double-edged sword when you move to
3 disqualify someone.

4 MR. DOMBROWSKI: Well, demeanor is
5 very -- it calls for conjecture, speculation,
6 and also some very self-serving testimony.

7 MR. MUELLER: If I can just add one
8 thing, Mr. Halloran. You don't need to be a
9 psychiatrist to observe demeanor. That's
10 something that a lot of five year old
11 children can tell. They can tell from their
12 mother's demeanor whether she's angry or not.
13 That's part of the ordinary knowledge that
14 people have in life.

15 THE HEARING OFFICER: I've never
16 excluded it based on demeanor, Mr. Mueller.
17 I don't know if you're talking about me and
18 my psychologist remark earlier, but...

19 MR. MUELLER: No, sir. I wasn't
20 talking about that.

21 THE HEARING OFFICER: Oh, okay. I
22 agree with you.

23 Mr. Dombrowski?

24 MR. DOMBROWSKI: Nothing further on

1 the objection.

2 THE HEARING OFFICER: Objection
3 overruled. He may answer if he's able.

4 But, you know, keep a close ear
5 and object when you feel you need to.

6 BY THE WITNESS:

7 A. Well, I think that I would go back to
8 Rose -- particular -- Rose and Valerie, I guess.
9 One, the demeanor, I didn't take that hopefully
10 there was a personal position with myself.

11 I'm in a job that catches a lot of
12 tomatoes along the way, and I try to be as painless
13 as I can along that route. But -- so I don't want
14 it to be about a personal issue.

15 As Rose had speculated -- or not
16 even speculated -- testified within this body,
17 basically, from the time we had met and she walked
18 out of the room, she was against the annexation, she
19 was against the conversation to the process to maybe
20 even where we ended up today. So I think there's
21 more than demeanor that was a concern to me in that
22 regard.

23 I think, as far as mayor elect --
24 Mayor Burd today, I think that what I saw or

1 observed was that the momentum that got her into
2 that position was more to be of the nature against
3 us than it was supporting us or supporting the
4 project. So the demeanor was maybe to be put more
5 negative than it was to be a positive towards Fox
6 Moraine.

7 MR. DOMBROWSKI: I'll renew my
8 objection and ask that that answer be
9 stricken. There are no facts in that
10 statement.

11 THE HEARING OFFICER: Mr. Murphy did
12 get into his feelings, as opposed to
13 demeanor. I know there's a fine line. But
14 if you could just confine the witness to your
15 question and type questions, Mr. Mueller, it
16 would be much appreciated.

17 MR. MUELLER: I wish I could confine
18 the witness.

19 THE HEARING OFFICER: Yeah, objection
20 sustained, because of some parts in there
21 that I find objectionable. So I would ask
22 the Board to disregard, and we'll try again.

23 BY MR. MUELLER:

24 Q. Let me actually move on.

1 In the case of Burd and Spears,
2 you had heard them actually say things that you
3 perceived to be negative about us prior to the start
4 of the hearings?

5 A. That's correct.

6 Q. And other members of our team had been
7 at those meetings, including sometimes Mr. Moose,
8 sometimes me, Mr. Burnham, and others; right?

9 A. That's correct.

10 Q. In the case of Werderich, Plocher, and
11 Sutcliffe, had you ever heard them actually say
12 anything that was overtly negative to us that would
13 lead you to conclude, without any doubt, that there
14 were biased before the election? Or did you just
15 have suspicions?

16 A. I had suspicions.

17 Q. And the newspaper article that you
18 read was quotes attributed to them by an author;
19 right?

20 A. Correct.

21 Q. So you weren't sure about them?

22 MR. DOMBROWSKI: Objection. I'll
23 withdraw it.

24 THE HEARING OFFICER: Thank you.

1 BY THE WITNESS:

2 A. I guess that you always question what
3 you read and have to make your own decision.

4 BY MR. MUELLER:

5 Q. Also, by the time that Alderman
6 Werderich, Sutcliffe, and Plocher were actually
7 seated on May 8th, was the public hearing over?

8 A. It was.

9 Q. Was there any further opportunity for
10 Fox Moraine to speak procedurally after May 8th?

11 MR. DOMBROWSKI: Objection. Calls for
12 a legal conclusion.

13 I believe the Pollution Control
14 Board dealt with this in the Peoria disposal
15 case.

16 MR. MUELLER: If he knows. Every fact
17 pattern is different.

18 THE HEARING OFFICER: Objection
19 overruled. He may answer, if he's able.

20 BY THE WITNESS:

21 A. I guess to the note that I've been
22 through many of these efforts, I do -- I am aware
23 that we had no opportunity to voice a position.

24

1 BY MR. MUELLER:

2 Q. The next time the city council met
3 after the new aldermen were seated on May 8, was May
4 23rd; correct?

5 A. I believe that's correct.

6 Q. And what happened that day speaks for
7 itself as reflected in the transcript; right?

8 A. That's correct.

9 MR. MUELLER: That all I have.

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

12 Mr. Dombrowski, anything further?

13 MR. DOMBROWSKI: Nothing further.

14 THE HEARING OFFICER: Nothing further.

15 You may step down, Mr. Murphy.

16 Thank you.

17 THE WITNESS: Thank you.

18 (WHEREUPON, the witness was
19 excused.)

20 THE HEARING OFFICER: Let's go off the
21 record for a second.

22 (WHEREUPON, discussion was had
23 off the record.)

24 THE HEARING OFFICER: Back on the

1 record.

2 Would you like to make an oral
3 statement where you get sworn to and subject
4 to --

5 MS. GILMOUR: No.

6 THE HEARING OFFICER: Just a public
7 comment? Okay.

8 Just state your name and spell it
9 for court reporter.

10 MR. GILMOUR: Judy Gilmour,
11 G-I-L-M-O-U-R, 23 Fox Lawn Drive, Yorkville.

12 I am a secretary of Friends of
13 Greater Yorkville. I've been with the
14 organization from the beginning.

15 And I wanted to make a couple of
16 comments to clear up a couple of inaccurate
17 things that I've heard. First of all, I
18 heard yesterday Todd Miliron and Joe Plocher
19 were members of Friends of Greater Yorkville,
20 they were never members of Friends of Greater
21 Yorkville.

22 The other comment I wanted to make
23 is in regards to Mr. Murphy's testimony about
24 the FOGY picnic. At that picnic, which I was

1 at for the entire time, Mr. Murphy and Jesse
2 Varsho, another associate, were in the
3 audience.

4 And Mr. Gilson -- George Gilson,
5 invited them both to come up to the podium.
6 And he used the microphone, the entire
7 audience heard that. They refused to come
8 up.

9 And so I believe it was, you know,
10 not accurate the way Mr. Murphy portrayed it.

11 THE HEARING OFFICER: Okay. Is that
12 it?

13 MS. GILMOUR: Thank you.

14 THE HEARING OFFICER: Thank you so
15 much.

16 All right. I think we have --
17 what we are going to do right now, a couple
18 of brief housekeeping matters regarding
19 exhibits. And I asked at least one counsel,
20 if not two, tomorrow morning, I hope before
21 the hearing, we can talk. And I expect the
22 attorneys to talk today or earlier tomorrow
23 morning regarding these other housekeeping
24 matters, the exhibits. For instance, I think

1 Mr. Mueller owes me quite a bit -- a number
2 of exhibits that I don't have. And I think
3 he was going to copy them or so forth and
4 talk with opposing counsel. With that --
5 but we can do that once we get started. I
6 think what we're going to do right after the
7 housekeeping is -- I think Mr. Dombrowski,
8 Yorkville is going to call one witness.
9 We'll see how long that goes, I suspect not
10 long. And then we'll take a break until
11 tomorrow morning.

12 So Mr. Porter?

13 MR. PORTER: Thank you, Mr. Halloran.

14 You already have FM31, which you
15 admitted previously. It is on your desk.

16 And so the record is clear, there
17 was a slightly different copy Mr. Moose was
18 using, and counsel has reviewed it. The
19 objection to that coming in is FM31.

20 THE HEARING OFFICER: I'm sorry, he
21 has no --

22 MR. DOMBROWSKI: No objection, that's
23 correct.

24 THE HEARING OFFICER: Thanks.

1 (WHEREUPON, certain documents were
2 marked Fox Moraine Exhibit
3 Nos. 33-36, for identification, as
4 of 4/22/09.)

5 MR. PORTER: Also, we have had marked
6 now four different resolutions or documents
7 referenced as resolutions as FM33, FM34,
8 FM35, and FM36. And so the record is clear,
9 FM33 is Bates stamped YOR76 through 79, FM34
10 is Bates stamped YOR80 and 81, FM35 is YOR82
11 through 85, and FM36 is YOR86 and 87.

12 And my understanding is counsel
13 has no objection to these being admitted into
14 the record.

15 MR. HOPP: No objection.

16 THE HEARING OFFICER: Thank you.

17 (WHEREUPON, said documents,
18 previously marked Exhibit
19 Nos. 33-36, for
20 identification, was offered
21 and received in evidence.)

22 MR. PORTER: That was all I had.

23 THE HEARING OFFICER: Oh, terrific.

24 Thanks.

1 You know, this isn't -- I don't
2 know who -- usually what you guys give the
3 witnesses.

4 All right. I think that concludes
5 housekeeping until tomorrow morning regarding
6 exhibits.

7 Mr. Dombrowski? Mr. Hopp?

8 MR. DOMBROWSKI: We would call Mr. Jim
9 Burnham.

10 THE HEARING OFFICER: Good afternoon.
11 Have a seat and raise your right hand.

12 (WHEREUPON, the witness was duly
13 sworn.)

14 JAMES BURNHAM,
15 called as a witness herein, having been first duly
16 sworn, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. DOMBROWSKI:

19 Q. Would you state your name, please,
20 sir?

21 A. James D. Burnham.

22 Q. And what profession are you in,
23 Mr. Burnham?

24 A. I'm a consultant.

1 Q. What kind of consultant?

2 A. I do a variety of different
3 disciplines from financial consulting, acquisition,
4 divestiture, representation, and project management
5 or project development of projects, such as Fox
6 Moraine.

7 Q. And so you've been involved with the
8 proposed Fox Moraine landfill; correct?

9 A. Correct.

10 Q. And what has your role been?

11 A. I've participated in a general, you
12 know, project management role, such that -- in
13 conjunction with Mr. Murphy. We, basically, managed
14 the project.

15 Q. And when did you first become involved
16 with the Fox Moraine project?

17 A. Summer of 2 -- fall of 2005.

18 Q. You participated in the meetings --
19 let me back up for a second. You were also the
20 press spokesman or press liaison for Fox Moraine
21 regarding the landfill project?

22 A. From time to time, yes.

23 Q. And say, from March 2006 through July
24 2007, you spoke, what, maybe 25, 35 times with the

1 press regarding the project?

2 A. That's correct.

3 Q. Let me ask you some questions about
4 the meetings that you and Mr. Murphy held with the
5 Yorkville aldermen.

6 You recall these so-called two on
7 two meetings?

8 A. In the August of 2006?

9 Q. Yes?

10 A. Yes.

11 Q. How many meetings did you hold with
12 the Yorkville aldermen?

13 A. I believe the meetings were -- I set
14 up the meetings, I called the individual aldermen,
15 based on their cards that they have at the front
16 desk of City Hall. And I either spoke with them
17 individually or left them a message. And our desire
18 was to just conceptually bring them up to speed on
19 where the -- where the Fox Moraine project was at.

20 And I believe that there was five
21 meetings, three of which were two by two, such that
22 it was Charlie Murphy and myself and two aldermen,
23 based on the wards that they represented. And then
24 I think one of the meetings -- I think Jim Bach

1 didn't show, such that we scheduled another meeting.
2 And that we held a meeting with him, and Charlie,
3 and myself.

4 Q. Now, in addition to calling the
5 aldermen directly, did you also go through the
6 mayor's office to help you set up these meetings?

7 A. I think that the only aspect of going
8 through the mayor's office was using the meeting
9 room in the City Hall.

10 Q. So the City agreed to provide that
11 meeting space for these two on two meetings;
12 correct?

13 A. Correct.

14 Q. And as you say, the -- at least one of
15 the purposes of these meetings was to talk to the
16 elected officials about the proposed landfill;
17 correct?

18 A. The -- Kendall County had had a lot of
19 articles in the newspaper in regards to the
20 County -- not Yorkville's desire -- the County's,
21 you know, opening the doors for potentially having a
22 landfill in the County. As a result of that, we
23 had -- we were in the process of preparing an
24 application that potentially was going to be filed.

1 And we thought it was an
2 appropriate time to just introduce ourselves to the
3 aldermen. And my recollection is we had, basically,
4 principally two things that we were trying to
5 accomplish during those meetings. One was just
6 SB172.

7 In other words, it's a process
8 that is outlined by state statute. And I think that
9 there had been some misunderstanding in the
10 newspapers and abroad about what that actually
11 meant.

12 So we -- I believe we gave them
13 the environmental protection rules or 39.2. So that
14 was the, basically, the SB172 documents.

15 And then the -- and that was just
16 something that was taken off the website, the
17 State's. And the other aspect of the meeting was
18 conceptually, you know, what does a landfill look
19 like, here's the general location that we're talking
20 about, here is a picture of what it could
21 potentially look like.

22 And we, basically, had gone
23 through that relatively quickly. And then opened it
24 up for discussion or, you know, questions, concerns,

1 thoughts, on their behalf.

2 Q. So what documents did you show them?

3 A. I believe that one of the documents
4 that helped give an understanding of what a landfill
5 would look like was a preliminary drawing that was
6 done by Lannert, which was one of the consultants to
7 Fox Moraine. And that was, basically, a plan view,
8 in other words, looking down from the sky, a view of
9 what the landfill could potentially look like. And
10 it was kind of like an artist's rendering, artist's
11 interpretation of what it would look like.

12 Q. And you told these aldermen that Fox
13 Moraine probably would be filing a landfill
14 application; correct?

15 A. We were in the process of considering
16 that. We didn't definitively say that this is
17 exactly what we were going to do.

18 Q. But did you let them know there was a
19 possibility that you would be filing an application;
20 correct?

21 A. We did let them know that there was a
22 potential that we were going to file an application
23 for siting of a landfill within Yorkville.

24 Q. And in addition to these meetings with

1 the elected aldermen, you also met with Mayor
2 Prochaska on separate occasions to talk about the
3 same thing; correct?

4 A. Yes. We met with the mayor on -- I
5 believe, three times.

6 I don't exactly remember the time
7 frame at this -- right now. But yes, it was in the
8 general concept of, you know, the landfill.

9 Q. Did you attend the landfill hearings
10 in March and April of 2007?

11 A. Yes.

12 Q. How many of those did you attend?

13 A. Probably all but two or three.

14 Q. And what was your role in attending
15 those?

16 A. My role was just to, you know, listen
17 to the expert witnesses, and, you know, just as --
18 represent Fox Moraine.

19 Q. And Fox Moraine had its own experts
20 and witnesses testifying in these hearings; correct?

21 A. Correct. We -- I did not testify.

22 We had consultants that, you know,
23 were engaged to, you know, address the requirements
24 of a siting application.

1 Q. So how many people did Fox Moraine
2 have testify, six, eight, ten?

3 A. Eight to ten.

4 Q. Would you agree with me that Fox
5 Moraine had a full and complete opportunity to
6 present evidence in support of its landfill
7 application?

8 A. Yes.

9 Q. Let me ask you a couple questions
10 about Fox Moraine, LLC.

11 Are you familiar with the
12 ownership structure of the LLC?

13 A. I am.

14 Q. And what is it?

15 A. It's a limited liability corporation
16 that has two principal members. One of the
17 principal members is, I believe -- well, Don Hamman,
18 and the other is Kodiak Environmental, which is,
19 effectively, the representatives of Groot
20 Industries.

21 Q. And Groot Industries is a waste
22 hauler?

23 A. Correct.

24 Q. And Mr. Hamman owns a majority

1 percentage of the LLC; does he not?

2 A. That's correct.

3 Q. And he is the sole managing member of
4 the LLC?

5 A. I believe so.

6 MR. PORTER: At this point I'm going
7 to object how this relates to fairness. This
8 sounds like the topic of a siting hearing.

9 MR. DOMBROWSKI: I'm done with those
10 questions.

11 THE HEARING OFFICER: Overruled.

12 MR. DOMBROWSKI: No further questions.
13 Thank you.

14 THE HEARING OFFICER: Thank you.

15 Mr. Porter?

16 MR. PORTER: Briefly.

17 CROSS-EXAMINATION

18 BY MR. PORTER:

19 Q. Those two by two meetings you
20 referenced took place before the application was
21 filed; correct?

22 A. Correct. At the time that we had
23 those meetings, we were still -- we weren't ready to
24 file the application, there was still quite a bit of

1 work left to be done. And there was also a variety
2 of -- a variety of documents and contracts that
3 needed to be incorporated into that application.

4 So we weren't ready to file.

5 MR. PORTER: Nothing further.

6 THE HEARING OFFICER: Thank you.

7 Mr. Dombrowski?

8 MR. DOMBROWSKI: Nothing more.

9 THE HEARING OFFICER: You may step
10 down, sir. Thank you so much.

11 Also, does anybody else want to
12 make public comment before we adjourn for
13 today and meet back tomorrow morning?
14 Tomorrow morning -- or tomorrow whenever
15 Yorkville's case in chief is over, and
16 perhaps Fox Moraine may have a rebuttal. But
17 in any event I will discuss the posthearing
18 briefing schedule, which will involve the
19 parties briefs, obviously, and the public
20 comment time and the amicus filings.

21 So I guess we are adjourned until
22 tomorrow morning at 9:00 a.m. I would ask
23 counsels to try to get the exhibits together.
24 I'm going to hand Mr. Mueller an exhibit list

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that I do have from him.

So, in any event, safe drive.

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF COOK)

4 I, SHARON BERKERY, a Notary Public within
5 and for the County of Cook, State of Illinois, and a
6 Certified Shorthand Reporter of said state, do
7 hereby certify:

8 That previous to the commencement of the
9 examination of the witness herein, the witness was
10 duly sworn to testify the whole truth concerning the
11 matters herein;

12 That the foregoing deposition transcript
13 was reported stenographically by me, was thereafter
14 reduced to typewriting under my personal direction
15 and constitutes a true record of the testimony given
16 and the proceedings had;

17 That the said deposition was taken before
18 me at the time and place specified;

19 That I am not a relative or employee of
20 attorney or counsel, nor a relative or employee of
21 such attorney or counsel for any of the parties
22 hereto, nor interested directly or indirectly in the
23 outcome of this action.

24 IN WITNESS WHEREOF, I do hereunto set

1 my hand and affix my seal of office at Chicago,
2 Illinois, this 1st day of May, 2009.

3

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Sharon Buhett
7 Notary Public, Cook County,

8

Illinois.

9

My commission expires 7/22/2010.

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11 C.S.R. Certificate No. 84-4327

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