

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on September 24, 2008, Leo P. Dombrowski, one of the attorneys for Respondent, United City of Yorkville, filed via electronic filing the attached **United City of Yorkville's Motion in Limine #1, Motion in Limine #2, Motion in Limine #3 and Motion in Limine #4** with the Clerk of the Illinois Pollution Control Board, a copy of which is herewith served upon you.

Respectfully submitted,

UNITED CITY OF YORKVILLE

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

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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)	(Pollution Control Facility Siting
)	Appeal)
UNITED CITY OF YORKVILLE, CITY)	
COUNCIL)	
)	
Respondent.)	

YORKVILLE MOTION IN LIMINE # 1

Pursuant to the Hearing Officer's Order of September 22, 2008 and 35 Ill. Admin. Code § 101.610, Respondent, the United City of Yorkville, City Council ("Yorkville"), by and through its attorneys, moves the Hearing Officer in limine to exclude from the hearing on this matter the following information: any and all arguments statements, questions, testimony, or evidence of any kind from Petitioner Fox Moraine and its counsel and from any other party, that refer to, directly or indirectly, the alleged bias, predisposition, or unfairness of any City Council Member other than Mayor Burd and Member Spears. In support of its motion, Yorkville states as follows:

1. In this appeal, Fox Moraine generally alleges that Yorkville conducted an unfair hearing and vote on Fox Moraine's landfill application and that "various members" of the Yorkville City Council were biased against Fox Moraine, prejudged its application, and were otherwise fundamentally unfair. (Petition for Review ¶ 5.A-N)

2. Because Fox Moraine chose to file its landfill application on December 1, 2006, the public hearing process fell in the middle of campaigns for the Yorkville City Council, which elections were held on April 17, 2007. A new Mayor and three new City Council members were

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elected. As the applicant, Fox Moraine both provided and received loads of information regarding the proposed landfill siting.

3. The public hearing process on Fox Moraine's application was held over 23 days, which resulted in over 125 hours of testimony and thousands of pages of related exhibits from a wide variety of witnesses, including witnesses for the applicant, opposition groups, and members of the public.

4. If sitting City Council Members or candidates running for office displayed any indication of bias, predisposition, or unfairness, Fox Moraine had ample opportunity to ascertain this and raise it during the local siting process. Fox Moraine could have moved to disqualify Council Members up to May 24, 2007 (the last day of the public hearings was on April 20, 2007 (C15629-C15705); the last day of the post-hearing public comment period was on May 21, 2007 (C15704); and the City Council voted on the application on May 24, 2007 (C18640-C18643) (citations are to the Record on Appeal).)

5. During the public hearing, Fox Moraine did move to disqualify two Council Members (but no others), alleging bias, predisposition and unfairness. (*See Motion to Disqualify* at pp. 2-3, attached as Exh. A.) Fox Moraine acknowledged that it would waive these issues if it did not raise them at the local siting stage:

We are going to file at this time a motion to disqualify Aldermen Burd and Spears from participating in the decision-making process. . . . As you are well aware Mr. Clark [Hearing Officer], the decisions of the Pollution Control Board indicate that in the absence of that type of motion, there is a – a danger of waiver should that issue be raised in the future. And so the purpose of that motion, really, at this point, is to protect the record in this matter. We want to bring of record our concerns regarding prejudice and bias.

(Transcript of 3/7/07 Hearing at 15:12-16:1, attached as Exh. B.) Fox Moraine made no other objections regarding bias, predisposition and unfairness of any other Council members at the

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public hearing, during the post-hearing period, or at any time else before Yorkville voted on Fox Moraine's application.

6. Yorkville raised the waiver issue early in this appeal through a Motion for a Protective Order, seeking to limit Fox Moraine's onerous and wide-ranging discovery. Fox Moraine responded that it could not have raised issues of bias, predisposition and unfairness (other than as to Burd and Spears) because it was not aware of them at the time of the landfill hearings. (Fox Moraine Response to Yorkville's Motion at pp. 7-8, attached as Exh. C.)

7. The Hearing Officer denied Yorkville's Motion for a Protective Order, noting that Fox Moraine "seeks discovery of information concerning fundamental unfairness that extends beyond issues of alleged bias and prejudice of Council Members [and] discovery may proceed under the circumstances of this case." (9/20/07 Order at p. 4, attached as Exh. D.)

8. Yorkville agrees with the Hearing Officer that questioning regarding alleged *ex parte* contacts are fair game at the hearing. However, through its various representatives, Fox Moraine attended every public meeting regarding the annexation of the landfill property and every landfill public hearing. Fox Moraine also hosted at least two landfill informational meetings at which the public and some Council Members attended. (Burnham Dep., 28:22-29:8, attached as Exh. E; Murphy Dep., 18:18-20:19, 108:18-23, 122:1-12, attached as Exh. F; Varsho Dep. 12:6-15:22, attached as Exh. G.) Fox Moraine also regularly monitored the press and collected newspaper articles regarding City Council Members, election campaigns, and the annexation and landfill hearings. (Exh. F, 25:8-28:4 (Q: Throughout the entire process, was Fox Moraine "monitoring the press to see what was being written about it? A: "Yes."); Exh. F, 20:7-21:2)

9. Now that discovery has been had, it appears that Fox Moraine believed that every Council Member except Member Besco was biased against it at the time the landfill hearings were being held:

Q: So everyone but Mr. Besco was biased?

A: I believe that is the case.

(Exh. F, 18:8-9; *see also* Exh. F, 18:18-21:21, 23:11-48:23, 59:6-63:11, 66:8-67:9, 67:14-70:16, 74:11-85:7, 92:18-96:21, 97:15-100:7, 105:9-106:11, 107:6-121:8, 124:1-125:7; Exh. E, 31:7-35:15, 39:22-40:7, 44:3-24, 46:17-55:21, 58:11-59:11; Exh. G, 27:13-32:21, 40:6-44:4, 46:16-20 (these additional citations show that Fox Moraine believed every Council Member who voted on the application, other than Member Besco, was biased against it and that Fox Moraine believed it had evidence of its claims of bias, predisposition, and unfairness well before Yorkville voted on its application).

10. The deposition testimony and documents provided by Fox Moraine in discovery refute its claim that it did not know of “additional bias . . . at the time of the hearing.” (Exh. C at p. 7.)¹

11. Fox Moraine concedes that it had several opportunities to raise issues of bias, predisposition, and unfairness before, during, and after the landfill hearings, and up until Yorkville voted on its application, but chose not to do so (other than as to Burd and Spears). (Exh. E, 66:5-24.)

12. The law regarding waiver of unfairness and bias allegations in landfill siting proceedings is well-settled. Failure to raise a claim of disqualifying bias, predisposition or unfairness in the original proceeding results in waiver of such claims. “To allow a party to first

¹ In response to Yorkville’s document requests asking for all documents Fox Moraine had to support of its claims of bias, predisposition, and unfairness, Fox Moraine produced numerous newspaper articles, which it had been collecting throughout the landfill hearing process. (Exh. E, 16:3-11.)

seek a ruling in a matter and, upon obtaining an unfavorable one, permit him to assert a claim of bias would be improper.” *E & E Hauling, Inc. v. Pollution Control Bd.*, 107 Ill. 2d 33, 38-39 (1985); *see also Waste Management of Illinois, Inc. v. Pollution Control Bd.*, 175 Ill. App. 3d 1023, 1039 (2nd Dist. 1988) (“claim of bias or prejudice on the part of a member of an administrative agency or the judiciary must be asserted promptly after knowledge of the alleged disqualification.”); *A.R.F. Landfill, Inc. v. Pollution Control Bd.*, 174 Ill. App. 3d 82, 88-89 (2nd Dist. 1988) (landfill applicant waived claims of bias or prejudice of county board members when it withheld claims of bias until its appeal of unfavorable decision to PCB); *Land and Lakes Co. v. Village of Romeoville*, PCB No. 92-25 at *16, 1992 Ill. ENV LEXIS 424 (Jun 4, 1992) (where applicant claimed trustees’ campaign literature showed bias against landfill siting, Board found that applicant failed “to explain why it was unable to ascertain information relating to the alleged bias which appears to have been available” prior to Village’s vote on application).

13. *Waste Management* is particularly applicable. There, the landfill applicant contended that eight members of the county board were biased and should have been disqualified from voting on its application. However, the applicant’s motion to disqualify at the local siting stage alleged only four members were biased. The court held that the applicant had waived any claims of bias or prejudice as to the remaining four members and those claims would not be considered. 175 Ill. App. 3d at 1039-40.

14. As noted above, Fox Moraine acknowledged it risked waiver if it did not raise allegations of bias, predisposition or unfairness at the local siting stage. Further, its claim that it did not know of “additional bias . . . at the time of the hearing” is incorrect.

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WHEREFORE, Respondent, UNITED CITY OF YORKVILLE, CITY COUNCIL requests that the Hearing Officer enter an order barring any and all arguments statements, questions, testimony, or evidence of any kind regarding the issues of bias, predisposition or unfairness other than as to Mayor Burd or Council Member Spears as discussed in this motion.

UNITED CITY OF YORKVILLE, CITY COUNCIL

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

Dated: September 24, 2008

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EXHIBIT A



THE CITY COUNCIL OF THE UNITED CITY OF YORKVILLE,
KENDALL COUNTY, ILLINOIS

IN THE MATTER OF:)	
)	
REQUEST OF FOX MORaine, LLC)	
FOR SITE APPROVAL FOR A NEW)	
LANDFILL SITING IN THE UNITED)	
CITY OF YORKVILLE, KENDALL)	
COUNTY, ILLINOIS)	
)	

MOTION TO DISQUALIFY

NOW COMES, FOX MORaine, LLC, by and through its attorneys, George Mueller and Charles F. Helsten, and moves to disqualify Valerie Burd and Rose Ann Spears from participation in the siting hearing to be held and the decision to be rendered in this matter, and in support thereof states as follows:

1. This proceeding is being conducted pursuant to 415 ILCS 5/39.2 and the Yorkville Pollution Control Facility Siting Ordinance No. 2006-117. This is an adjudicatory proceeding, in which the decision is to be made on the basis of the evidence, and not on the basis of bias, prejudice, the wishes of constituents, or other political or personal motivation.

2. The Courts have held that, "a claim of disqualifying bias or partiality on the part of a member of the judiciary or an administrative agency must be asserted promptly after knowledge of the alleged disqualification. The basis for this can readily be seen. To allow a party to first seek a ruling in a matter, and upon obtaining an unfavorable one, permit him to assert a claim of bias would be improper." Fairview Area Citizens

Task Force v. Pollution Control Board, 190 Ill.App.3d 541, 555 N.E.2d 1178 (3rd District 1990).

3. That Alderman Burd and Alderman Spears have, between September 26, 2006 and the current date, made statements and engaged in conduct which suggests a disqualifying bias on their part, and which prevents them from rendering a fundamentally fair decision. These items include, but are not limited to:

(a) Receipt of legal advice by Alderman Spears from and on the letterhead of Jeep & Blazer, LLC, attorneys retained by Kendall County to oppose this application, said advice pertaining to the siting application and other activities related thereto, including adoption of a host agreement and annexation agreement between the City of Yorkville and Fox Moraine, LLC;

(b) Statements that the decision should be based upon the wishes of the majority of constituents rather than on the evidence, the most recent such statement being from Alderman Burd at the Yorkville City Council meeting on February 13, 2007;

(c) Campaigning by Alderman Burd during the pendency of this application on a platform of unconditional landfill opposition;

(d) Multiple statements to the press and members of the public evidencing bias and prejudice.

4. Prejudgment of adjudicative facts, is an important elements in assessing fundamental fairness. *Hediger v. D & L Landfill, Inc.*, PCB 90-163, slip op. at 5(Dec.20, 1990). Courts have held that the local siting hearing is the most critical stage of the site approval process. *Land and Lakes Co. v. PCB*, 245 Ill.App.3d631, 616, N.E.2d 349,

356 (1993). Where a municipal government "operates in an adjudicatory capacity, bias or prejudice can be shown if a disinterested observer might conclude that the administrative body, or its members, had in some measure adjudged the facts as well as the law of the case in advance of hearing it." *Concerned Adjoining Owners*, 288 Ill. App. 3d 565, 573, 680 N.E.2d 810, 816. The appearance of impropriety as well as the ability to infer, even implicitly, that a decision was made because of public opinion would violate fundamental fairness. *Rochelle Waste Disposal v. City of Rochelle*, PCB 03-218 (slip opinion, April 15, 2004).

WHEREFORE, for the foregoing reasons, Fox Moraine, LLC respectfully prays that Aldermen Rose Ann Spears and Valerie Burd be disqualified from participating in the decision in this matter.

Respectfully submitted,

FOX MORAINE, LLC

By: _____


One of its Attorneys

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EXHIBIT B

030707

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UNITED CITY OF YORKVILLE, ILLINOIS

SPECIAL MEETING OF THE
CITY COUNCIL

REPORT OF PROCEEDINGS had and testimony
taken at the hearing before the Honorable Larry M.
Clark, taken on March 7, 2007, at the hour of 7:00
p.m., before Christine M. Vitosh, C.S.R., at the
Grande Reserve Elementary School, Yorkville,
Illinois.

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1 PRESENT:

2 MAYOR ARTHUR PROCHASKA, Chairman,

3 MR. JAMES BOCK, Alderman,

4 MS. ROSE ANN SPEARS, Alderman,

5 MS. VALERIE BURD, Alderman,

6 MR. MARTY MUNNS, Alderman,

7 MR. PAUL JAMES, Alderman,

8 MR. DEAN WOLFER, Alderman,

9 MR. JASON LESLIE, Alderman,

10 MR. JOSEPH BESCO, Alderman.

11 ALSO PRESENT:

12 MR. JOHN JUSTIN WYETH, City Attorney.

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1 HEARING OFFICER CLARK: Good evening.
2 If I could have your attention, please. If I
3 could have your attention, please:

4 I would like to call this Special
5 City Council meeting to order of Wednesday,
6 March 7th.

7 would you all please stand and
8 recite the pledge.

9 (Pledge of allegiance)

10 HEARING OFFICER CLARK: Thank you. My
11 name is Larry Clark. I have been appointed by the
12 United City of Yorkville as hearing officer for
13 the purposes of holding a public hearing for the
14 application of Fox Moraine, LLC, application for a
15 landfill located within the corporate limits of
16 Yorkville.

17 That application, as you know, is

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18 filed on December 1st. The City Council must hold
19 public hearings beginning no sooner than 90 days
20 after the end of filing and ending no longer than
21 120 days after the date of filing.

22 I would ask the clerk to do a roll
23 call to start with, please.

24 MS. PICKERING: James.

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1 MR. JAMES: Here.

2 MS. PICKERING: Leslie.

3 MR. LESLIE: Here.

4 MS. PICKERING: Burd.

5 MS. BURD: Here.

6 MS. PICKERING: Bock.

7 MR. BOCK: Here.

8 MS. PICKERING: Munns.

9 MR. MUNNS: Here.

10 MS. PICKERING: Besco.

11 MR. BESCO: Here.

12 MS. PICKERING: Spears.

13 MS. SPEARS: Here.

14 MS. PICKERING: Mayor.

15 MAYOR PROHASKA: Here.

16 HEARING OFFICER CLARK: I would like to
17 give you a little brief summary of how we're going
18 to run this public hearing so you all understand
19 how we are going to do it and understand your role
20 in this procedure.

21 We will obviously be having hearings

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14

1 (no response.)

2 Hearing none, I'm going to grant
3 that motion. You've been involved in the case
4 anyway, and I don't -- and I'm not seeing anything
5 that looks unusual or different other than you are
6 representing other parties, and I think in
7 fairness, you should be allowed to do that. So I
8 will allow you to do that.

9 MS. POHLENZ: And then one last
10 preliminary matter. I am also asking for leave to
11 name an additional witness. It was actually a
12 witness named in our original disclosure, but it
13 was an unidentified individual at that time,
14 unidentified land planner, I think is how it was
15 titled. We have retained the services of Joseph
16 Abel, and I would like leave to file his resume
17 and to formally name him as one of the witnesses
18 we intend to call.

19 HEARING OFFICER CLARK: I'll give you
20 leave to file his CV, and if -- and we'll address
21 his right to participate at a later time after
22 counsel for the applicant has an opportunity to
23 look at it. I don't anticipate a problem, but I
24 need to give them an opportunity to look at it

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1 anyway.

2 MR. MJELLER: Mr. Clark, we're not going

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3 to have any objection.

4 HEARING OFFICER CLARK: In that case,
5 leave will be granted.

6 MS. POHLENZ: Thank you.

7 HEARING OFFICER CLARK: Mr. Mueller, you
8 had some preliminary issues?

9 MR. MUELLER: First of all, as -- well,
10 let me do my motion first. I think that needs to
11 be done up front.

12 We are going to file at this time a
13 motion to disqualify Aldermen Burd and Spears from
14 participating in the decision-making process.
15 The motion itself is explanatory. We would waive
16 argument on the motion.

17 As you are well aware, Mr. Clark,
18 the decisions of the Pollution Control Board
19 indicate that in the absence of that type of
20 motion, there is a -- a danger of waiver should
21 that issue be raised in the future. And so the
22 purpose of that motion, really, at this point, is
23 to protect the record in this matter. We want to
24 bring of record our concerns regarding prejudgment

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1 and bias.

2 HEARING OFFICER CLARK: Thank you,
3 Mr. Mueller. If you would give us copies of that,
4 I'd appreciate it.

5 Mr. Mueller, your motion to
6 disqualify will be accepted and be taken under

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7 advisement with all other preliminary motions and
8 issues.

9 Do you have some further preliminary
10 matters?

11 MR. MUELLER: I've got some housekeeping
12 matters. I had handed out previously on behalf of
13 Fox Moraine several fairly routine handouts. I
14 want to talk about those.

15 First of all, we would move the
16 application into evidence as Exhibit 1,
17 Applicant's Exhibit 1.

18 We would then offer as Applicant's
19 Exhibit No. 2 the 10-page group handout which are
20 copies of certified mail receipts with respect to
21 the statutory pre-filing notices.

22 We would move into evidence as
23 Applicant's Exhibit 3 the affidavit of service
24 signed by me with exhibits regarding pre-hearing

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1 notices. That affidavit addresses both compliance
2 with the local ordinance and compliance with
3 Section 39.23.

4 And, lastly, the record should
5 reflect that we have hand filed this evening hard
6 copies of our response to the County's motion to
7 dismiss. We had previously electronically served
8 all counsel of record with that response.

9 HEARING OFFICER CLARK: Thank you,
10 Mr. Mueller.

EXHIBIT C

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Fox Moraine, L.L.C.,

Petitioner,

v.

United city of Yorkville, City Council,

Respondents.

PCB No. PCB No. 07-146

**PETITIONER'S RESPONSE TO THE MOTION FOR
PROTECTIVE ORDER LIMITING DISCOVERY**

NOW COMES the Petitioner, FOX MORAINE, L.L.C., by and through its attorneys, Charles F. Helsten and George Mueller, and in response to the Motion for a Protective Order Limiting Discovery, states as follows:

INTRODUCTION

The gist of the City's Motion for Protective Order Limiting Discovery is that the Petitioner did not preserve its right to challenge the fundamental fairness violations in the proceedings below, and is therefore barred from discovering evidence of those violations and revealing that evidence in this appeal before the Board. The City's assertion is not only patently false, it ignores this Board's Rules concerning discovery and is an affront to the very principles of fundamental fairness.

The Petitioner, Fox Moraine, raised fundamental fairness concerns from the onset of the public hearing for siting approval, on March 7, 2007. (Petition for Review, Exhibits B and C). At the commencement of the hearing, the Petitioner filed a Motion to Disqualify in which it delineated the bias demonstrated by two members of the Council based on their pre-hearing expressions of public opposition to the Application, their solicitation of legal advice for purposes of opposing the Application, and a variety of other disqualifying conflicts of interest. *Id.* After the close of the siting hearing, when the rules prevented Fox Moraine from making any further

comments or presentations, three newly elected Council members were seated; the timing of their arrival then leaving the Petitioner unable to take any action to disqualify them.

Despite the recommendation of its own independent review staff and the Hearing Officer, the City Council denied the siting Application, and, in the aftermath of that decision, the Petitioner appealed to this Board on the basis of multiple fundamental fairness violations and on the basis that the decision was against the manifest weight of the evidence at the hearing.

In conjunction with its appeal to this Board, the Petitioner propounded discovery consistent with 35 Ill. Adm. Code 101.616. That section provides that “[a]ll relevant information and information calculated to lead to relevant information is discoverable, excluding those materials that would be protected from disclosure in the courts of this State pursuant to statute, Supreme Court Rules or common law, and materials protected from disclosure under 35 Ill. Adm. Code 130.” 35 Ill. Adm. Code 101.616(a).

The Petitioner’s Interrogatories seek disclosure of evidence that establishes bias, *ex parte* contacts, prejudgment and a decision based on matters outside the public record, all legitimate areas of inquiry as established by the case law in this area. The City has been asked to disclose the *ex parte* communications; the gifts and/or transfers between Council members and the Participant/Objectors; the Council members’ affiliations with the Objector organizations; and the materials and information outside the record of proceedings which were considered by the Council in reaching its decision. The Petitioner’s Requests for Production simply seek production of the documentary evidence of these violations. The discovery propounded in this case is narrowly tailored to result in disclosure of the evidence establishing violations of fundamental fairness which lie at the heart of the instant Appeal.

Upon receiving the Petitioner’s requests for disclosures of evidence, the City responded with a Motion for Protective Order in which it asserted that it did not need to produce the

evidence because the Petitioner purportedly “waived the issues on which it seeks discovery.” In support of this assertion, the City pointed to the fact that Motions to Disqualify were only filed against two members of the siting authority. (Motion for Protective Order at p. 2). However, and again, the City’s motion completely ignores the fact that the Petitioner also seeks evidence of *ex parte* contacts, as well as evidence of the Council’s consideration of materials outside the record in reaching its decision, and similarly ignores the timing of the post-hearing seating of three members of the Council.

The City’s assertion that the Petitioner “waived its right” to discover evidence of the fundamental fairness violations is not only in contravention with the Board’s rules providing for discovery, it also seeks to deny the Board access to vital evidence. This attempt to withhold evidence suggests the City may be well aware of the fundamental fairness violations which occurred in the proceedings below, and is doing everything possible to prevent such conduct from seeing the light of objective scrutiny.

ARGUMENT

1. The Board’s Procedural Rules Concerning Discovery

Under the Board’s Procedural Rules, “[a]ll relevant information and information calculated to lead to relevant information is discoverable, excluding those materials that would be protected from disclosure in the courts of this State pursuant to statute, Supreme Court Rules or common law, and materials protected from disclosure under 35 Ill. Adm. Code 130.” Sec. 101.616(a).

The Rules provide that a protective order is available solely “to prevent unreasonable expense, or harassment, to expedite resolution of the proceeding, or to protect non-disclosable materials from disclosure consistent with Sections 7 and 7.1 of the Act and 35 Ill. Adm. Code 130.” Sec. 101.616(d). No such basis for a Protective Order has been raised by the City, and

indeed, the discovery requested by the Petitioner falls into none of the above-referenced categories. Rather, the discovery here seeks only production of evidence showing fundamental fairness violations, including a request for disclosure of *ex parte* contacts, any inappropriate relationships between the Council members and Objector Participants, and materials or information outside the record which were considered by the Council in reaching its decision.

For purposes of Discovery, “the Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance where the Board’s procedural rules are silent.” Sec. 101.616. In describing the scope of discovery, Supreme Court Rule 201(b)(1) states that “full disclosure regarding any matter relevant to the subject matter involved in the pending action” can be had.

Although the City points to *Joliet Sand and Gravel v. PCB*, 163 Ill.App.3d 830, 516 N.E.2d 955 (3rd Dist. 1987) as authority for the Board to deny discovery, in that case the petitioner sought to “depose, subpoena or both no less than 19 people. Many of these persons had no direct bearing on the denial of the operating permit.” *Id.* at 835. The Appellate Court accordingly upheld the hearing officer’s decision to limit the number of testifying witnesses to five, and declined to require production of memoranda which had been created by IEPA personnel and attorneys with respect to a decision on whether to bring an action against an alleged polluter. *Id.* The discovery limitations imposed in *Joliet Sand and Gravel* clearly have no relevance to the instant case, where the Petitioner has submitted narrowly tailored requests which go directly to the issues raised in this appeal.

The other case relied upon by the City in its argument for limiting discovery, *Snoddy v. Teepak*, 198 Ill.App.3d 966, 556 N.E.2d 682 (1st Dist. 1990), is a battery case far afield from the matters before this Board, in which a worker sued his employer and the manufacturer of chemicals used at his employer’s facility. The case is so dissimilar, and so utterly bereft of factual detail, that its applicability to the instant case is nearly impossible to discern. Its only

relevance derives from the fact that the Appellate Court held the trial court properly declined to compel discovery which was “not calculated to develop specific probative evidence regarding the issue of fraud, collusion, or tortious conduct.” *Id.* at 969. Unfortunately, the opinion offers no indication as to what kind of evidence the plaintiff did seek, or on what subjects. In any event, the Appellate Court found that the trial court correctly held that the requested discovery was unnecessary since the case could be decided without an evidentiary hearing. Moreover, the fact that there exists a case in which the Appellate Court once found that it was appropriate to limit discovery hardly supports the City’s motion here. Finally, in contrast with *Snoddy*, the discovery in this case is focused directly at the issues on appeal.

2. Discovery in the Context of Fundamental Fairness

In the instant appeal, the Petitioner clearly raised fundamental fairness as an issue during the proceedings below, and raised the issue again in its Petition for Review. Indeed, fundamental fairness is the very core of this appeal. Thus it is clear that discovery intended to reveal information and documents evidencing the fundamental fairness violations that occurred below is tailored to matters entirely relevant to the instant appeal.

Because a Section 39.2 hearing must be fundamentally fair to all participants, and must be heard by a siting authority which is objective and unbiased, the Board has a *statutory duty* to consider the fundamental fairness of the siting process. 415 ILCS 5/40.1 (2002); *E & E Hauling, Inc. v. Pollution Control Bd.*, 116 Ill.App.3d 586, 596, 451 N.E.2d 555, 564 (2d Dist. 1983); *aff’d*, 107 Ill.2d 33, 481 N.E.2d 664 (1985). “The Act provides that, in reviewing a section 39.2 decision on site approval, the Board *must* consider the fundamental fairness of the procedures used by the local governing body in reaching its decision.” *Land and Lakes v. PCB*, 245 Ill.App.3d 631, 616 N.E.2d 349 (3rd Dist. 1993) (emphasis added) (reversing the Pollution Control Board’s decision, based on a lack of fundamental fairness in proceedings below).

It is well-settled that although the Act requires that Board hearings on siting decisions be based exclusively on the record before the siting authority, the Board may consider new evidence relevant to the fundamental fairness of those proceedings "where such evidence necessarily lies outside of the record." *Land and Lakes Co. v. PCB*, 319 Ill.App. 3d 41, 743 N.E.2d 188, 194 (3rd Dist. 2000) (emphasis added). Such a situation is present in this case, and is often true when it comes to fundamental fairness violations.

Fundamental fairness involves considerations of bias, prejudice, decisions based on matters outside the record, and *ex parte* contacts. The discovery requests to which the City has so strenuously objected merely ask that the City provide any evidence in its possession which establishes such bias, prejudice, consideration of matters outside the record, and *ex parte* contacts (again, all well-established areas of fundamental fairness inquiry).

It is axiomatic that no person may play a decision-making role in a judicial or administrative proceeding in which he or she has any personal or pecuniary interest in the outcome which might influence his or her decision. *See e.g., Board of Educ. of Niles Tp. High School Dist. 219, Cook Co. v. Regional Bd. of School Trustees of Cook Co.*, 127 Ill.App.3d 210, 213 (1st Dist.1984). Participation by such interested parties in the decision making process is said to "infect the whole" and render the decision voidable. *Id.*

Here, multiple members of the Council had a personal interest in the outcome, and engaged in a variety of improper acts and conduct with respect to the Application, yet the City asserts it should be completely insulated from disclosing the evidence related to that conduct and establishing those conflicts because the Petitioner didn't discover much of it until the hearings were over. That assertion is at total odds with the law.

3. Waiver

The City asserts that the Petitioner “waived” its right to seek disclosure of the evidence of fundamental fairness violations because it only filed a motion to disqualify two of the siting authority members.¹ In support of its argument, the City cites to *E & E Hauling v. PCB* for the proposition that it is improper for a party to raise a claim of bias for the first time on appeal. (City’s Motion at p.3). In the instant case, of course, bias was, in fact, raised as an issue in the proceedings below, therefore bias is not being raised as an issue for the first time on appeal. Moreover, the City’s argument and citation to *E & E Hauling* fails to acknowledge that in that case the Illinois Supreme Court observed the exceptions to the waiver rule, and went on to address the petitioner’s claims of bias in great depth, despite the fact that they were apparently not raised in the proceedings below. *E & E Hauling v. PCB*, 107 Ill.2d 33, 38-9 (1985). It is also worth noting that in *E & E Hauling*, the Supreme Court affirmed the Appellate Court, which had explained that the waiver rule is “not inflexible and may encompass challenges to the composition of administrative bodies made for the first time on administrative review wherein injustice might otherwise result.” *E & E Hauling v. PCB*, 116 Ill.App.3d 586, 593, 451 NE2d 555 (2nd Dist. 1993), *aff’d* 107 Ill.2d 33, 481 N.E.2d 664 (1985). The City points to *Waste Management v. PCB*, 175 Ill.App.3d 1023, 530 N.E.2d 682 (2nd Dist. 1988) as allegedly providing additional support for its waiver theory, yet the petitioner in that case failed to seek disqualification of siting authority members despite the fact that it knew they had publicly voiced opposition to the landfill, and instead urged disqualification of them only on appeal. The instant case is easily distinguishable, since the Petitioner here promptly moved to disqualify those members who publicly opposed the Application, and now appeals concerning additional bias which was unknown at the time of the hearing.

¹ Notably, the City relies exclusively on cases that are in excess of fifteen years old to support its waiver theory, thereby ignoring the Board’s clear duty to consider fundamental fairness issues, as is clearly reflected in more recent cases addressing the subject.

The City's reliance on *A.R.F. Landfill v. PCB*, 174 Ill.App.3d 82, 528 N.E.2d. 390 (2nd Dist. 1988), is similarly misplaced. The City asserts that in *A.R.F.* the Appellate Court found a landfill waived claims of bias when it withheld those claims until its appeal of an unfavorable decision. (City's Memorandum of Law at p. 3). In *A.R.F.*, however, the petitioner had been allowed to submit written questions to the members of the siting authority prior to the hearing, in which the members were asked to – and did – disclose their public statements critical of the landfill. Nevertheless, the petitioner failed to seek disqualification based on the statements received from members until after the siting decision was announced, raising its claims of bias for the first time on appeal. The Appellate Court held in *A.R.F.* that the petitioner in that case had a duty to raise the claim promptly after it obtained knowledge of the alleged disqualification. *Id.* at 88. This is clearly distinguishable from the facts present in the instant appeal.

Here, waiver is inapplicable because the information was unknown at the time of the hearing. A waiver is the voluntary relinquishment of a known right, and the Petitioner cannot be deemed to have waived its objection to individuals who were not even seated as members of the Council until after the hearing, when it was too late for the Petitioner to move for their disqualification to disqualify them. Even the City acknowledges that a “claim of bias or prejudice on the part of a member of an administrative agency...must be asserted promptly after knowledge of the alleged disqualification.” (City's Memorandum of Law at p. 3, citing *Waste Management v. PCB*, 175 Ill.App.3d 1023 (2nd Dist. 1988)(emphasis added). Here, knowledge of the additional disqualifications did not occur until after the hearing had concluded.

Similarly, the Petitioner could not possibly “waive” its right to discover materials outside the record which were considered by the Council in reaching its decision by failing to raise an objection during the hearing to something which had not yet occurred or which was not yet known.

Fox Moraine had reason to believe at the outset of the hearings that two Council members were tainted, and properly moved to disqualify them. Fox Moraine did not and could not know at the time that the entire process was tainted, however, a decision which shockingly ignored the strong recommendations for approval by both the Hearing Officer and the City's own independent review staff makes no other conclusion possible. It is the very nature of *ex parte* contracts that they are furtive, and it is the essence of bias that it is hidden from those against whom it will be directed. That is why the Board has a statutory obligation to examine the fundamental fairness of a proceeding. No action on the part of Fox Moraine was required during the hearing to preserve this issue beyond what was done.

The fact that Council members participated in heretofore undisclosed *ex parte* contacts, based their final decision on previously undisclosed materials, communications, and other information outside the record, and in other ways prejudged the Application and disregarded the evidence at the hearing, does not justify a determination that the hearing was fundamentally fair, and the Board has a statutory responsibility to determine whether, in fact, the hearing process in this case met the standards of fundamental fairness.

If the City has no information or materials that would substantiate the violations, it has nothing to fear in answering the Petitioner's discovery requests. It is the alternative to that proposition which should raise concern for this Board, and most likely explains why the City has so strenuously objected to an otherwise routine discovery request in fundamental fairness cases.

CONCLUSION

It has been said that the very essence of constitutional due process is based on the concept of fundamental fairness, and Illinois courts have consistently held that at a minimum, fundamental fairness requires a fair hearing before a fair tribunal. *See e.g. Van Harken v. City of Chicago*, 305 Ill.App.3d 972 (1st Dist. 1999).

As the Appellate court has observed, shielding off-record considerations from judicial review not only frustrates the purpose of review by preventing consideration of fundamental fairness issues, it also visits unjust results on parties who have been "actually victimized by unfair or improper procedures not of record." *E & E Hauling, Inc. v. PCB*, 116 Ill.App.3d 586, 593, 451 N.E.2d 555, 562 (2nd Dist. 1983), *aff'd.*, 107 Ill.2d 33, 481 N.E.2d 664 (1985). That type of victimization occurred in this case, and the Petitioner should be afforded access to the evidence which reveals the extent of the violations that occurred in the proceedings below.

The City's Motion for Protective Order seeks to obfuscate this Board's inquiry into the fundamental fairness of the proceedings below, and to prevent consideration of relevant evidence. The Petitioner accordingly requests that it be denied.

Dated: August 30, 2007

Respectfully submitted,

On behalf of Fox Moraine, LLC

/s/
Charles F. Helsten

and

/s/
George Mueller

Charles F. Helsten
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EXHIBIT D

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SEP 20 2007

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD
September 20, 2007

FOX MORAINE, LLC,)	
)	
Petitioner,)	
)	
v.)	
)	PCB 07-146
UNITED CITY OF YORKVILLE, CITY)	(Pollution Control Facility
COUNCIL,)	Siting Appeal)
)	
Respondent.)	
)	
KENDALL COUNTY,)	
)	
Intervenor.)	

HEARING OFFICER ORDER

On August 2, 2007, petitioner Fox Moraine, LLC, (Fox Moraine) served respondent United City of Yorkville, City Council (Yorkville) with a first set of interrogatories and first set of requests to admit. On August 23, 2007, Yorkville filed a motion for a protective order limiting discovery (Mot.), accompanied by a memorandum of law (Memo.) in support, attaching among other things the discovery requests that are the subject of this motion. (Memo, Ex. C & D). In its argument for the protective order, Yorkville argues that petitioner has waived its discovery requests regarding possible bias or prejudice against petitioner by seven of the nine members of the City Council because it did not object to these members' participation as decision makers at the local siting hearing. Yorkville also filed a motion for stay of discovery pending the hearing officer's ruling on the motion for protective order, noting that otherwise Yorkville's responses would be due today, September 20, 2007. To date, Fox Moraine has not filed a response.

On August 30, 2007, Fox Moraine filed its response, asserting that discovery was necessary and that it had not waived issues of bias or prejudice (Resp.). On September 13, 2007, Yorkville filed a motion for leave to file a reply and its reply in favor of issuance of a protective order. (Reply).

Yorkville's motion for leave to file a reply is granted. For the reasons set forth below, Yorkville's motion for a protective order is denied. As a practical matter, Yorkville's motion for a discovery stay has in essence been granted. Yorkville's responses are now due to be filed on or before September 28, 2007.

Procedural Status of the Case

On June 27, 2007, Fox Moraine filed a petition for review asking the Board to review the May 24, 2007, decision of Yorkville's decision on petitioner's proposed siting of a pollution control facility in Yorkville, Kendall County. Petitioner appealed to the Board on the grounds that 1) Yorkville's decision was fundamentally unfair, alleging bias and prejudice on the part of various and unnamed council members, and 2) Yorkville's findings regarding certain criteria were against the manifest weight of the evidence.

Kendall County was granted intervenor's status by the Board on August 23, 2007. The County has not participated in the briefing of this discovery issue.

Pursuant to Fox Moraine's waiver, the statutory decision deadline in this case is now due January 24, 2008. Hearing has yet to be scheduled. In the hearing officer order entered August 20, 2007 after the telephonic status conference entered that day, Yorkville's time to respond to outstanding discovery requests was extended to September 20, 2007.

Yorkville's Motion For A Protective Order

In its memorandum supporting its motion for a protective order, Yorkville relates that it held 23 days of public hearings concerning Fox Moraine's application for siting. Yorkville also noted that the hearing process fell in the middle of the campaign process for the City Council, with a new mayor and three new council members being elected on April 17, 2007. Yorkville acknowledges Fox Moraine objected to two of the nine council members at the local siting hearing alleging bias, predisposition and unfairness in its motion to disqualify at the March 7, 2007 hearing. Memo. at 2. Yorkville argues that because Fox Moraine failed to object at the local siting hearing concerning the other seven members of the City Council on those grounds, Fox Moraine waived its right to raise these issues in the proceedings before the Board. Yorkville accordingly objects to providing discovery concerning the remaining seven council members Memo. at 2. In support of its waiver argument, Yorkville cites various siting cases, finding especially relevant Waste Management of Illinois v. Pollution Control Board, 175 Ill. App. 3d 1023 (2d Dist. 1988). See Memo. at 3-4, and cases cited therein. Yorkville argues that Fox Moraine's "discovery requests to the unchallenged seven Council members are unreasonably burdensome and unduly onerous attempt to uncover some evidence perhaps relevant to its unsupported claims of unfairness, bias and prejudice". Memo. at 4.

Petitioner's Response

On August 30, 2007, Fox Moraine filed a response in opposition (Resp.) to Yorkville's motion for a protective order. Fox Moraine argues, in summary, that Yorkville's motion "ignores the fact that the Petitioner also seeks evidence of *ex parte* contacts, as well as evidence of the Council's consideration of materials outside the record in reaching its decision, and similarly ignores the time of the post-hearing seating of three members of the Council." (Resp. at 3). The petitioner agrees that at the local siting hearing, it only moved to disqualify two of the

council members alleged to be biased, but argues that it has not waived its right to discovery requests concerning the other council members, including the three newly elected Council members.. Resp. at 1-2. Fox Moraine states that it asked the City to disclose “ the *ex parte* communications; the gifts and/or transfers between Council members and the Participant/Objectors; the Council members’ affiliations with the Objector organizations; and the materials and information outside the record of proceedings which were considered by the Council in reaching its decision”. Resp. at 2. Fox Moraine characterizes its discovery requests as “narrowly tailored to result in disclosure of the evidence establishing violations of fundamental fairness which lie at the heart of the instant appeal. *Id.* Petitioner argues that case law and the Board’s procedural rules require disclosure, and that the Waste Management case cited by respondent is distinguishable on its facts. Resp. at 3-6.

Finally, Fox Moraine argues that the respondent does not allege that the issuance of a protective order motion would prevent unreasonable expense, or harassment, or to expedite resolution of the proceeding pursuant to Section 101.616 (d) of the Board’s procedural rules.

Respondent’s Reply

On September 13, 2007, Yorkville filed a motion for leave to file a reply and its reply. Yorkville takes issue with Fox Moraine’s allegation that due to the timing of the newly elected Council members, it could not timely object or move to disqualify the new members. Yorkville argues that Fox Moraine could have objected below because the three new Council members were elected on April 17, 2007; and the public hearing did not close until April 20, 2007. Additionally, Yorkville argues that petitioner could have moved for disqualification at any time during the post-hearing comment period. Reply at 2.

Finally, Yorkville argues that it “should not be put to the time and expense in responding to pointless discovery”. Reply at 1.

Discussion

On appeal of a municipality’s decision to grant or deny a siting application, the Board generally confines itself to the record developed by the municipality. 415 ILCS 5/40.1 (b) (2006). However, the Board will hear new evidence relevant to the fundamental fairness of the proceedings where such evidence lies outside the record. Land and Lakes Co. v. PCB, 319 Ill. App. 3d 41, 48, 743 N.E. 2d 188, 194 (3d Dist. 2000). Public hearing before a local governing body is the most critical stage of the site approval process. Land and Lakes Co. v. PCB, 245 Ill. App. 3d 631, 616 N.E.2d 349, 356 (1993). The manner in which the hearing is conducted, the opportunity to be heard, whether *ex parte* contacts existed, prejudgment of adjudicative facts, and the introduction of evidence are important, but not rigid, elements in assessing fundamental fairness. American Bottom Conservancy v. Village of Fairmont City, PCB 00-200 (Oct. 19, 2000). The Board must consider the fundamental fairness of the procedures used by the respondent in reaching its decision. 415 ILCS 5/40.1 (a) (2006). Additional evidence outside the record that may be considered include pre-filing contacts. See County of Kankakee v. City of Kankakee, Town and County Utilities, Inc., and Kankakee Regional Landfill, LLC., PCB 03-31,

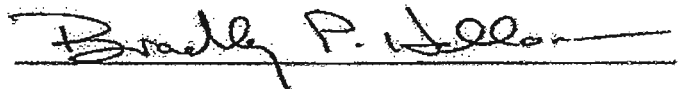
03-33, 03-35 (cons.) (Jan. 23, 2003).

The purpose of discovery is to uncover all relevant information and information calculated to lead to relevant information. 35 Ill. Adm. Code 101.616(a). The Board's rules also allow issuance of a protective order that deny, limit, condition or regulate discovery to prevent unreasonable expense, or harassment, or to expedite resolution of the proceeding. 35 Ill. Adm. Code 101.616(d).

Yorkville's motion for a protective order is denied. When a fundamental fairness issue is raised before the Board, the whole purpose of discovery is to attempt to uncover relevant evidence or evidence calculated to lead to relevant evidence that is outside the record, evidence that is presumably unknown to the party propounding the discovery. Fox Moraine has persuasively argued that it seeks discovery of information concerning fundamental unfairness that extends beyond issues of alleged bias and prejudice of Council Members. Fox Moraine has cited case law and distinguished that cited by Yorkville sufficient for the hearing officer to conclude that discovery may proceed under the circumstances of this case. This is particularly so since, as Fox Moraine alleges, Yorkville does not allege that the requested discovery creates an unreasonable expense or engenders harassment as set forth in 35 Ill. Adm. Code 616(d). Yorkville states only that it "should not be put to the time and expense in responding to pointless discovery. Reply at 1. For all of these reasons, Yorkville's motion for a protective order is denied. Yorkville must file its responses to the requested discovery on or before September 28, 2007.

Finally, the procedural rules provide that parties may seek Board review of discovery rulings pursuant to 35 Ill. Adm. Code 101.616(e). The hearing officer reminds the parties that the filing of any such appeal of a hearing officer ruling does not stay the proceeding. In a deadline date case, the hearing officer must manage the case to insure that discovery, hearing, and briefing schedules allow for timely Board deliberation and decision of the case as a whole.

IT IS SO ORDERED



Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601
312.814.8917

¹ The ultimate determination as to whether the petitioner has waived any issues as to one or more Council Members is a decision for the Board, and not the hearing officer, to make.

EXHIBIT E

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

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

The discovery deposition of JAMES D. BURNHAM,
taken in the above-entitled cause, before JENNIFER
CAMPBELL, a notary public of Kendall County,
Illinois, on the 12th day of September, 2008 at
2:10 p.m., at 800 Game Farm Road, Yorkville,
Illinois, pursuant to Notice.

Reported by: Jennifer Campbell, CSR, RPR
License No.: 084-003282

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13 Yorkville Deposition Exhibit
14 No. 5 P. 5
15 (Retained by Mr. Dombrowski.)
16
17
18
19
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21
22
23
24

1

3

1 APPEARANCES:
2 MUELLER ANDERSON, P.C., by
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9 WILDMAN HARROLD ALLEN & DIXON, LLP, by
10 MR. LEO P. DOMBROWSKI
11 225 West Wacker Drive
12 Chicago, Illinois 60606
13 (312) 201-2562
14 Representing the Respondent.
15
16
17
18
19
20
21
22
23
24

1 (Witness duly sworn.)
2 MR. DOMBROWSKI: Let the record reflect that
3 this is the deposition of Jim Burnham taken
4 pursuant to notice and agreement.
5 JAMES D. BURNHAM,
6 called as a witness herein, having been first duly
7 sworn, was examined and testified as follows:
8 EXAMINATION
9 BY MR. DOMBROWSKI:
10 Q. Would you state your full name for the
11 record, please, sir.
12 A. James D. Burnham.
13 MR. DOMBROWSKI: Mr. Burnham, I introduced
14 myself earlier to you. My name is Leo Dombrowski.
15 I'm an attorney for the City of Yorkville in this
16 appeal. I'll be asking you some questions today.
17 You understand that there's a court
18 reporter here to record everything, and that we
19 shouldn't talk over each other; is that all right?
20 THE WITNESS: I do. Yes.
21 MR. DOMBROWSKI: And what will you do if you
22 don't understand a question or are confused by it?
23 THE WITNESS: Say as such.
24

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Electronic Filing - Received, Clerk's Office, September 24, 2008

1 MR. DOMBROWSKI: And if you go ahead and answer
2 one of my questions, I will assume that you have
3 understood it; fair enough?
4 THE WITNESS: Fair enough.
5 BY MR. DOMBROWSKI:
6 Q. Are you on any drugs or medication or
7 anything today that would impair your ability to
8 give full, complete, and honest testimony today?
9 A. I'm not.
10 Q. Let me show you what we have marked as
11 Yorkville Deposition Exhibit No. 5.
12 Have you seen that before?
13 A. I have. Yes.
14 Q. And have you taken a look at the document
15 rider that's attached to it?
16 A. I have. (Phone interruption.) Sorry.
17 Pardon me.
18 Q. Sorry. What was your answer to that
19 question?
20 A. Repeat the question, please.
21 Q. Have you before today taken a look at the
22 document rider, the Exhibit A that is attached?
23 A. You said Exhibit A. Yes.
24 Q. And have you brought any documents with

5

1 you today?
2 A. No.
3 Q. And is it fair for me to assume that you
4 have no new exhibits or documents to give us other
5 than what Fox Moraine has already produced in this
6 appeal?
7 A. That is correct.
8 Q. What have you done to prepare or help
9 yourself remember what you're going to be
10 testifying about today?
11 A. I reviewed the interrogatory responses
12 that was supplied to me by Mr. Mueller. And
13 basically read the -- read the document that had,
14 you know, principally newspaper articles and a few
15 other -- a few other documents in that regard.
16 Q. So you read the newspaper articles that
17 Fox Moraine has produced to us?
18 A. Correct.
19 Q. And what else did you read?
20 A. Within the document was a letter from Dean
21 Wolfer to his constituents. There was an invoice
22 from Wildman Harold, I believe. And there was --
23 that's all I can recall.
24 Q. Any other documents besides those?

6

1 A. I believe there was some transcripts to
2 some of the various hearings that I also reviewed
3 or looked at.
4 Q. And what hearings were those?
5 A. The document in regard to one of the
6 meetings hosted by Yorkville on November -- or, you
7 know, it was an informational meeting, and there
8 was a transcript attached to that that I reviewed.
9 I looked at some of the transcripts from
10 the decision process, the deliberation that the
11 Yorkville people at the -- the night that the vote
12 was rendered on the Fox Moraine matter. And I
13 think that there was another transcript from one of
14 the hearings in review of the -- the meeting
15 that -- a city council meeting at Yorkville looking
16 at or it was a meeting that they were reviewing
17 either the host agreement or maybe when they re
18 visited the -- revisited the annexation, annexation
19 vote.
20 Q. Any other documents?
21 A. No. Not that I recall.
22 Q. So as far as transcripts that you reviewed
23 to prepare for today's deposition, we have first
24 the transcript of the meeting hosted by Yorkville

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1 in November 2006; is that correct?
2 A. I think it was November 30th.
3 Q. 2006?
4 A. Correct.
5 Q. And the second was the transcript from the
6 evening the city council voted on the landfill
7 application; is that right?
8 A. I believe so, yes.
9 Q. And third and final was a transcript of a
10 city council meeting where they were either
11 discussing the host agreement or revisiting the
12 annexation issue; is that right?
13 A. Correct.
14 Q. Why did you review those three transcripts
15 in preparation for your deposition?
16 MR. MUELLER: I think that's been asked and
17 answered. He said he did it to refresh his
18 recollection.
19 MR. DOMBROWSKI: I haven't asked him that. Go
20 ahead.
21 THE WITNESS: I reviewed them because I thought
22 that some of those -- those transcripts were
23 available, and I thought it would be helpful to
24 remember, try to remember and recall some of the

8

1 comments that were made during those meetings by
2 some of the people that were in the public-comment
3 portion of those meetings.
4 BY MR. DOMBROWSKI:
5 Q. Did you ask someone for copies of these
6 transcripts or were they given to you?
7 A. I asked George for the transcript for
8 the -- the final vote by Yorkville. And the other
9 two, one I found in some invoices for the project,
10 one of them I found in the invoices for the
11 project, and the other one I think it was forwarded
12 to me by George, although I didn't request it.
13 Q. Have you talked to anyone in preparation
14 for your deposition today?
15 A. I spoke with George, and that's it.
16 Q. No one else other than Mr. Mueller?
17 A. Not in preparation for this. I know that
18 Charlie Murphy was deposed, but that's all that --
19 Q. Have you talked to him since his
20 deposition?
21 A. I have.
22 Q. And what did you two talk about?
23 A. A variety of things, but nothing in regard
24 to this.

1 Q. Nothing in regard to the landfill appeal?
2 A. Correct.
3 Q. Nothing in regard to his deposition?
4 A. No.
5 Q. He didn't mention anything about his
6 deposition?
7 A. I asked how it went, but that was just
8 general conversation.
9 Q. And what did he say?
10 A. He said it went -- it went fine. It was
11 what it was.
12 Q. Where do you work?
13 A. I don't understand. Physically where do I
14 work?
15 Q. Yeah. Who do you work for?
16 A. Myself.
17 Q. What do you do?
18 A. I'm a consultant for a variety of clients
19 that I have.
20 Q. What kind of consultant are you?
21 A. I don't really know how to describe it.
22 I do work for acquisitions, so companies
23 that are looking to buy other companies need people
24 to do due diligence, I do some of that. I do

1 business modeling. I do some project development
2 work similar to the role that I functioned with the
3 Fox Moraine Landfill. I do some valuation reports
4 for companies, and I participate in brokering of
5 companies for sale to other interested buyers.
6 Q. What is the name of your business?
7 A. JDB Consulting Services, Inc.
8 Q. And where is your business located?
9 A. 4532 Seeley Avenue, S-e-e-l-e-y, Downers
10 Grove, Illinois.
11 Q. How long have you had the business?
12 A. Five years in October.
13 Q. And what's your relationship and the
14 relationship of your business to Fox Moraine, LLC?
15 A. They're a client of mine.
16 Q. When were they first a client?
17 A. September of 2004. Maybe around that time
18 frame.
19 Q. And what did you start doing for them in
20 September of 2004?
21 A. Pardon me. I misspoke.
22 Could you repeat the question on Fox
23 Moraine?
24 Q. Yes. When did you first start doing work

1 for Fox Moraine?
2 A. I guess Fox Moraine was -- became an
3 entity in 2006, maybe around March, so that's when
4 I started doing work for Fox Moraine.
5 Q. In March of 2006?
6 A. Yes.
7 Q. And what did you start doing for Fox
8 Moraine in March of 2006?
9 A. I was working on the Fox Moraine Landfill
10 project for them.
11 Q. And tell me everything you've done for Fox
12 Moraine on this landfill project.
13 A. Could you be more specific?
14 MR. MUELLER: Kind of a broad question.
15 BY MR. DOMBROWSKI:
16 Q. Well, just tell me generally for starters
17 what you've done for Fox Moraine on this landfill
18 project?
19 A. Participated in negotiations and the
20 relationship with Fox Moraine and Groot.
21 Participated in negotiations for the operation --
22 the proposed operator of the landfill, Peoria
23 Disposal. I participated in engaging the various
24 consultants that were expert witnesses. And, as we

1 proceeded to file an application, I participated
2 in, you know, attending various county meetings,
3 attending the various meetings in regard to 2000
4 or, you know, Fox Moraine's application of, you
5 know, petition for annexation, the -- the
6 application for -- the formal application for --
7 for the landfill.
8 Q. So you helped put together the formal
9 application for the landfill?
10 A. I participated in -- I didn't put the
11 thing physically together, but, yes, I under -- I
12 was involved in preparing that application for
13 submittal.
14 Q. And that application was submitted to the
15 City of Yorkville on December 1, 2006; correct?
16 A. Yes.
17 Q. Did you have anything to do with the
18 landfill project after the application had been
19 submitted?
20 A. Yes.
21 Q. And what was that?
22 A. I was involved in the hearing process. I
23 sat through all, if not most of the hearing itself.
24 Met with the expert witnesses, the attorneys, was

13

1 involved in the -- you know, the project management
2 of that project in conjunction with Charlie Murphy.
3 Q. So you went to all the landfill hearings;
4 correct?
5 A. I believe so.
6 Q. And those were 23 or 24 in number?
7 A. Something in that regard, yes.
8 Q. Why did you go to all or most of all of
9 the landfill hearings?
10 A. Because I was involved in the project and
11 that was part of my scope of participation.
12 Q. Did you testify at any of those hearings?
13 A. I did not.
14 Q. So was it fair to say that you showed up
15 to basically see what was going on and who was
16 testifying as to what?
17 A. Yes.
18 Q. Did you have any involvement with the
19 landfill project once the landfill hearings had
20 ended?
21 A. Yes.
22 Q. And what was that?
23 A. Dealing with various issues. I processed
24 the invoices to have people paid. From time to

14

1 time I interfaced with the attorneys that represent
2 Fox Moraine and represent or participate in various
3 discussions with the management and owners of Fox
4 Moraine.
5 Q. If the landfill is eventually approved,
6 will you have any role in the landfill after that
7 point?
8 A. Can you be more specific?
9 Q. Well, we're going through an appeal
10 process. Should the landfill be approved and cited
11 and become an operating landfill, will you have any
12 role in the landfill?
13 A. Not that --
14 MR. MUELLER: Go ahead.
15 THE WITNESS: Not that -- not that I've been
16 told that I would.
17 BY MR. DOMBROWSKI:
18 Q. So as far as you know, you wouldn't have
19 any role?
20 A. I don't think that determination has been
21 made by the owners of Fox Moraine, that once the
22 landfill would be started, what my participation
23 would be, if any, or not. I don't know.
24 Q. Do you have any financial interest in the

15

1 landfill project?
2 A. Beyond consulting fees and a success fee,
3 no.
4 Q. So if it does get approved, you get some
5 type of bonus or contingency?
6 A. That's correct.
7 Q. How long have you known Don Hamman?
8 A. Probably -- I've met him from time to time
9 starting in, you know, probably around 1995 range.
10 Q. Do you have anything to do with his
11 composting facility?
12 A. I do not.
13 Q. Now, I have seen you identified in
14 newspaper articles as the spokesman for Fox
15 Moraine, LLC; is that a fair characterization?
16 A. There was a time when -- when I was
17 interfacing with the reporters, and that was, I
18 guess, known that if they wanted to ask questions,
19 that I would be available, so, yes, I was a
20 spokesman for the Fox Moraine Landfill, but not for
21 everything.
22 Q. Well, what then were you a spokesman for?
23 A. Like I said, the Fox Moraine Landfill, but
24 there was other issues that people reached out that

16

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1 didn't involve me, so I wasn't the spokesman for
2 issues that I wasn't a spokesman for.
3 Q. And what other issues are you talking
4 about?
5 A. Well, I guess if -- if you're -- if you
6 look at a company spokesman, a company spokesman,
7 largely, you know, they deal with -- with all
8 external and sometimes internal discussions in
9 regard to the company.
10 I didn't -- I dealt with some of the
11 reporters specifically in regard to the application
12 or the hearing process from time to time, but not
13 always. So there could be other issues that people
14 needed to speak with Fox Moraine, the entity,
15 about, but it didn't go through me.
16 Q. Okay. How many times do you think you
17 spoke with reporters beginning in March of '06
18 through, let's say, the filing of this appeal,
19 which was in July of '07?
20 A. 25 times.
21 Q. Let's go back to the three transcripts
22 that you mentioned earlier. You said that you
23 looked at those to see what members of the public
24 had said at those public meetings; is that right?

17

1 A. Not all, all the transcripts, no.
2 Q. But the three or so transcripts you
3 mentioned earlier is what I'm talking about.
4 A. Yeah. But all those didn't have public
5 comments in it.
6 Q. But some of them did?
7 A. One of them did.
8 Q. Which one did?
9 A. The re-annexation hearing or meeting
10 transcript.
11 Q. And did you find any comments in there by
12 anyone from the public to be significant or
13 relevant to this appeal?
14 A. I thought that Todd Milliron's comments
15 were a good example of how the public was
16 interfacing with the -- with the council, and, you
17 know, how they were presenting their side of the
18 story and their -- their belief, I guess. And I
19 thought that that -- a couple of the people that
20 spoke in that regard was reflective of, you know,
21 the level of just how nasty the process at the time
22 had been going.
23 Q. Well, what did Mr. Milliron say?
24 A. Well, he -- at that particular -- at this

18

1 particular exchange basically said that Don Hamman
2 and, in conjunction, Fox Moraine had his hand in
3 the back pocket of Mayor Prochaska, which, in my
4 opinion was, you know, just an example of just the
5 tactics that some of the people that were against
6 the -- against the project, you know, presented
7 their arguments and intimidated in some regards the
8 various city council people.
9 Q. How do you think Mr. Milliron intimidated
10 the city council members?
11 A. Well, I think it was an example of
12 somebody would take a photograph out of the
13 newspaper, which could have been anybody, and that
14 photograph was taken out of context and basically
15 defamed in some regard, at least in the way I look
16 at things, not only Mr. Hamman, but also the mayor.
17 Q. And as a matter of fact, Mr. Hamman sued
18 Mr. Milliron for defamation; right?
19 A. I believe so, yes.
20 Q. And that case was dismissed; correct?
21 A. I'm not -- I don't exactly recall the
22 outcome.
23 Q. Do you know anything about the outcome?
24 A. I can't recall.

19

1 Q. Do you have any idea if the suit is still
2 ongoing?
3 A. I do not know.
4 Q. Any other comments from that transcript
5 that you find relevant?
6 A. I think George Gilson was another person
7 that was outspoken in his opposition to the
8 landfill project. And I thought that his comments
9 were also caustic. I thought that that was the --
10 the reason that I was looking at that particular
11 transcript is I thought that that was the one where
12 he basically stood up and said to the city council
13 people that if you move forward on this landfill
14 project that you're -- nobody is going to want to
15 sit by you in church, and, you know, the
16 neighborhood is watching. And I also thought it
17 was one of the times when he said that, you know,
18 voters are going to vote you out of office if you,
19 you know, go forward with this. So I thought
20 that -- I thought that is where he made some of
21 those comments. And the one about the people
22 sitting next to them in church wasn't in that
23 transcript. I can't recall which one it is in, but
24 it's in one of the transcripts. So I thought,

20

1 again, that that was, you know, reflective of how
2 the opposition group, or FOGY, if you'll call it
3 that, the Friends of Greater Yorkville, were really
4 going after the city council people during the time
5 leading up to the formal application of the
6 landfill.
7 Q. Are you saying, though, that the citizens
8 didn't have a right to say these things?
9 A. I'm saying that I've been involved in
10 various projects like this and I hadn't seen, one,
11 people draw into, you know, public comments, and I
12 even think that those comments were taken at an
13 awkward time, at least in my view, of how they ran
14 a city council meeting, but that those comments
15 were -- were just basically out of order when you
16 bring into, you know, people's religion and, you
17 know, defaming people about hands in back pockets
18 and that kind of thing, so I thought that it
19 reflected that those -- that the opposition people
20 were really going after the city council people.
21 And I also thought it was also unusual that the
22 city council people were allowing them to just go
23 on and on, time after time, similar type of
24 comments.

21

1 Q. So Fox Moraine through you, for example,
2 had a presence at these meetings; right?
3 A. I was -- I was -- I par -- I was in those
4 meetings, yes.
5 Q. Was anyone else from Fox Moraine at these
6 meetings?
7 A. Charlie Murphy was there. And I believe
8 George Mueller was at these meetings as well.
9 Q. Anyone else from Fox Moraine?
10 A. Not that I recall that specific one.
11 Q. Did anyone for Fox Moraine speak up at any
12 of these meetings and say that the process was
13 unfair or biased or anything like that?
14 A. Our position was it was going to be -- you
15 know, the burden of proof was on Fox Moraine, and
16 that was going to be coming at the time that we
17 filed a formal application.
18 So our -- our belief was that, once we
19 filed the application, that we would be able to
20 demonstrate the merits of the project in context of
21 the criterion as set forth in SP172, and that, you
22 know, the basis of that process is to be
23 fundamentally fair, so we did not -- we did not
24 make public comments in that regard during those

22

1 meetings.
2 Q. But you did have the opportunity to do so
3 just as members -- other members of the public did;
4 correct?
5 A. We did, but if I may add.
6 Q. Go ahead.
7 A. John Phillipchuck, an attorney
8 representing Fox Moraine, was also in attendance, I
9 believe, at that meeting.
10 Q. Let me show you what has previously been
11 marked as Yorkville Deposition Exhibit No. 3.
12 MR. MUELLER: Are those the interrogatory
13 answers?
14 MR. DOMBROWSKI: Yes.
15 BY MR. DOMBROWSKI:
16 Q. And have you seen these before?
17 A. Yes.
18 Q. How did you come to see them?
19 A. They were provided to me by George
20 Mueller.
21 Q. When was that?
22 A. Couple days ago on one occasion, and then
23 maybe three or four weeks ago on another occasion,
24 by Chuck Helsten.

23

1 Q. Have you seen the petition for review in
2 this matter?
3 A. I can't recall at this moment.
4 Q. All right. Let me show you what has
5 previously been marked as Yorkville Deposition
6 Exhibit No. 2, which is the petition for review
7 that Fox Moraine has filed. And I'd like to ask
8 you some questions about these two documents.
9 Have you seen the petition for review
10 before?
11 A. I believe so, yes.
12 Q. And how did you come to see it?
13 A. I believe it was supplied by George
14 Mueller or Chuck Helsten.
15 Q. And this would have been in the last week
16 or two?
17 A. I don't recall when I actually got this.
18 Q. Let me refer you to Exhibit No. 3, which
19 is the interrogatories, and specifically
20 Interrogatory No. 1 and the answer.
21 Interrogatory 1 says identify each person
22 who supplied information or documents used in
23 preparing your response thereto, and you see that
24 you are one of the people listed; correct?

24

1 A. Yes.
2 Q. What was your role in putting together
3 these interrogatory answers?
4 A. I believe I may have supplied some of the
5 newspaper articles, and I may have had some
6 discussions with George or Chuck Helsten in regard
7 to their preparation of documents like this.
8 Q. You say you supplied some of the newspaper
9 articles that Fox Moraine has given us?
10 A. I said I may have.
11 Q. You don't know whether you did or not?
12 A. I don't know if they used those -- mine or
13 not, or they used duplicate copies of somebody
14 else, because there was -- I would surmise that
15 there was a variety of people giving the same
16 information to the attorneys.
17 Q. Am I right, though, that throughout the
18 process, beginning with your involvement through
19 the city council's vote, that you were collecting
20 newspaper articles all along the way; is that
21 right?
22 A. That was times that I would collect
23 newspaper articles and some that I did not collect,
24 because it either wasn't circulated to me or I just

25

1 didn't get it.
2 Q. What reporters did you speak to throughout
3 the process? What papers were they writing for?
4 A. Heather Gillers was a reporter, and I
5 think she was with the Beacon News, if I'm correct,
6 out of -- she was office'd in Aurora. And Tony
7 Scott was another reporter that I talked with, and
8 he, I believe, is with the Kendall County Reporter.
9 Q. Did you speak with any other reporters
10 other than these two?
11 A. I may have, but I don't recall their
12 names.
13 Q. Do you or does your business subscribe to
14 the Beacon?
15 A. No.
16 Q. How about the Kendall County Reporter?
17 A. No.
18 MR. MUELLER: Just so that the record is clear,
19 it's actually the Kendall County Record.
20 BY MR. DOMBROWSKI:
21 Q. Thank you.
22 How did you come then to have some
23 newspaper articles?
24 A. Shaw Environmental, Jesse Varsho, from

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1 time to time would e-mail out articles in regard to
2 the project.
3 From time to time, Charlie would give me,
4 Charlie Murphy would give me hard copies of various
5 articles that he saw in the paper.
6 I believe I had received some of the
7 articles that I have from -- from Don Hamman.
8 Q. And why were these three people giving you
9 the articles?
10 A. It was just on informational type of
11 project information.
12 Q. And Jesse Varsho, he is with Shaw
13 Environmental, and he was the project manager for
14 the landfill at least at Shaw Environmental?
15 A. I believe so.
16 Q. And Charlie Murphy, he was also a
17 consultant for Fox Moraine; correct?
18 A. Correct.
19 Q. And Mr. Don Hamman, he is officer or
20 owner, I believe, of Fox Moraine, LLC?
21 A. He's one of the owners of the Fox Moraine,
22 LLC.
23 Q. And am I right that throughout this whole
24 process, which began with your involvement through

27

1 the city council vote, Fox Moraine was monitoring
2 the press to see what was being written about the
3 landfill?
4 A. Yes.
5 Q. Did you do anything else other than --
6 other than you say you may have supplied some
7 newspaper articles and you spoke to Fox Moraine's
8 attorneys, did you do anything else to help Fox
9 Moraine prepare these interrogatory answers?
10 A. Not that I recall.
11 Q. All right. What do you understand the
12 basis of Fox Moraine's appeal to be, by that I mean
13 the landfill appeal?
14 A. In -- in like a very general terms?
15 Q. Yes.
16 A. That the -- the hearing process was -- the
17 decision makers were bias against the landfill, and
18 that the -- wasn't fundamentally fair in context of
19 SB 172, which is the siting process.
20 Q. I'd like to ask you some questions about
21 that.
22 Were there any landfill hearings,
23 annexation hearings, any other hearings that
24 related to the landfill site or the landfill

28

1 application that you did not attend?
2 A. There may have been one or two, but I
3 don't recall which ones those were. There may have
4 been a meeting that I missed because I was out of
5 town on a different project.
6 Q. So it's fair to say that if you weren't at
7 all of them, you were at 95 or 98 percent of them?
8 A. I was -- yes.
9 Q. Let me refer you to Page 2 in the
10 interrogatories. And there are 12 items numbered 1
11 through 12 on that page. What I'd like to do is
12 ask you what information or evidence or documents
13 or anything that Fox Moraine may have in support of
14 each of these items. All right. Are you with me?
15 A. I believe so.
16 Q. By the way, have you been asked to testify
17 at the hearing on this matter scheduled for
18 October?
19 A. I'm not aware -- I -- I do not know.
20 Q. You have not been asked; correct?
21 A. I don't believe so.
22 Q. If asked to testify at that hearing, would
23 your schedule or anything else prevent you from
24 doing so?

29

1 A. When is it set for?
2 Q. It is scheduled for October 6th, 7th, and
3 the 8th.
4 A. I'm not -- I'm not sure. But I think I
5 have a business trip in New York maybe the 6th and
6 the 7th that's been scheduled, but I'm not -- I'm
7 not positive that that couldn't be moved should I
8 need to, if I'm called as a witness on this.
9 Other than business, no.
10 Q. All right. Let's look at the first item
11 on this Page 2. And here Fox Moraine is saying
12 that the hearing on the application was not
13 conducted in accordance with Section 39.2 of the
14 Illinois Environmental Protection Act, and that is
15 the section that deals with landfill hearings;
16 correct?
17 A. I believe so.
18 Q. So for each of these items I'm going to
19 ask you what information, evidence, documents or
20 anything that you or Fox Moraine have in support of
21 each of these allegations. Okay?
22 A. Okay.
23 Q. All right. What can you tell me about
24 this item No. 1?

30

1 A. Well, I believe that the responsibility
2 that the host municipality or authority is --
3 they're required to, per the act, do a
4 fundamentally fair hearing, and I think that's
5 the -- that's my interpretation of number one that
6 you mentioned.
7 Q. So how was the hearing not fair?
8 A. I believe that some of -- a majority of
9 the people that rendered the decision were -- were
10 bias against the landfill application in general.
11 Q. Okay. Since this is a deposition, what
12 I'd like to ask you about is any facts that you
13 have to support this charge of bias, and I think
14 you'll agree with me that saying someone is bias is
15 a conclusion; would you agree with that?
16 A. I guess so.
17 Q. So what I'd like to ask you is what facts
18 do you have to support that conclusion, and if you
19 would identify the council members that you think
20 were biased and, as I say, any facts in support of
21 the charge that they were biased?
22 A. I think that during the hearing process,
23 Council Person Burd put on a -- a mayoral campaign
24 to be elected as the mayor, and I believe that some

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1 of her comments in the newspaper included in the
2 attachment to these interrogatories suggest that
3 she was not -- and specifically she -- she states
4 that in the newspaper article that landfills aren't
5 safe is the way I read the comment, and that was in
6 the middle of the hearings. That's one specific
7 item.
8 I believe that other council people that
9 ultimately rendered the decision, Wally Wederich
10 was a pro Burd supporter. I think he was even
11 involved in her campaign. And then I think he
12 ultimately ran for one of the council member's
13 seats. And I believe in the same article that
14 mentions the -- in general, the candidates that are
15 running for reelection, how they feel about the
16 landfill and whether it's safe, that he believed
17 that they weren't safe, either.
18 And I believe Joe Plocher, who Mayor Burd
19 supported in his reelection campaign, also made a
20 statement similar, too, that, you know, landfills
21 aren't safe.
22 And Robin Sutcliff, who ran in the
23 election and was also a decisionmaker at the end,
24 was quoted as, you know, she felt that landfills

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1 weren't safe as well. So I believe that those
2 council people who were ultimately elected in the
3 middle of the hearings ultimately rendered a
4 decision at the end and that they were elected on
5 an anti-landfill platform. And I believe that
6 Mayor Burd, you know, knowingly had, you know, "no
7 landfill" signs below her mayoral signs as you went
8 through town. It was, the perception was that she
9 was against the landfill, and, you know, her -- her
10 responsibility as being one of the participants in
11 the SP 172 process, you know, she -- she didn't do
12 anything to not take away from -- from that
13 perception as she would put out a mayoral sign and
14 a No Landfill sign goes below it, she didn't -- she
15 didn't seem to mind that that was the case.
16 So I think that those particular people --
17 as well as -- more so not Rose Spears -- during the
18 actual hearing process, but before the hearing
19 process, was -- was clearly bias and perhaps
20 intimidated by some of the public ongoing in
21 the -- in the, you know, 14 or 15 or 16 hearings
22 relating to the annexation or informational
23 meetings and such where -- where, you know, she was
24 -- she was against the landfill as well.

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1 Q. All right. Let me ask you about your
2 statement that Burd had landfill signs,
3 anti-landfill signs below or next to her campaign
4 signs.
5 Are you saying Mayor Burd herself put
6 these signs next to each other?
7 A. I'm saying that I believe that I didn't
8 see them put the signs in the ground, whether whose
9 was there first, but on several or, you know, quite
10 a number of locations, they were together, so . . .
11 Q. You're not saying Mayor Burd herself had
12 anything to do with that; correct?
13 A. I'm saying that I'm not knowledgeable that
14 she had anything to do with putting them in
15 conjunction with each other, but I believe that her
16 responsibility in regard to this process, she --
17 she wasn't concerned about the perception that that
18 had.
19 Q. And you say that helped render the process
20 fundamentally unfair?
21 A. I think it -- I think that she had an
22 anti-landfill platform in her mayoral campaign that
23 was supported by, in one instance, you know, the
24 proximity of these signs together that I think that

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1 she had a -- a bias that appeared in the middle
2 of -- that's one instance, that was in the middle
3 of the proceedings.
4 Q. Are you saying Mayor Burd had a
5 responsibility to drive around town and see what
6 signs, if any, had been placed next to her campaign
7 signs?
8 MR. MUELLER: I'm going to object to that.
9 That calls for a legal conclusion. And it is an
10 issue that the PCB has to address. That having
11 been said, Jim, you could answer it, if you can.
12 THE WITNESS: Can you repeat the question?
13 MR. DOMBROWSKI: Read it back, please.
14 (Record read as requested.)
15 THE WITNESS: I think she did.
16 BY MR. DOMBROWSKI:
17 Q. And why do you say that?
18 A. It's a small community, Yorkville. There
19 is a lot of -- there was a lot of hearings prior to
20 the application, there was a lot of acrimony.
21 There was a lot of public citizens, people, you
22 know, saying all kinds of, you know, things in
23 public, in public hearings, and that they -- they
24 were aware of their responsibilities in -- in this

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1 process in my opinion and she didn't have a -- she
2 seemingly didn't have a concern that she was
3 related to a No-Landfill type of sign.
4 Q. How often should she have driven around
5 town --
6 A. I don't know.
7 Q. -- to check the placement of the signs?
8 A. I don't know.
9 Q. Well, you say she had a responsibility,
10 but you're saying you don't know how often she
11 should have exercised that responsibility?
12 A. Correct.
13 Q. And let's say she had driven around town
14 and saw an anti-landfill sign next to one of her
15 signs, what should she have done?
16 A. The landfill sign that I saw that had the
17 No Landfill underneath it, she could have easily
18 moved it a couple feet, and the perception would
19 have been different than it was as placed.
20 Q. What if she were trespassing on someone's
21 property, should she still have done it?
22 A. I don't know.
23 Q. Well, let's say the signs were on private
24 property, what's your position, should she have

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

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

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

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

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

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

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

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

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1 Q. Had the city council voted in favor of the
2 application, would that have meant that the hearing
3 process was fundamentally fair?
4 MR. MUELLER: That calls for him to speculate
5 on a fact not in evidence.
6 MR. DOMBROWSKI: That's okay. You can answer.
7 THE WITNESS: Well, I'm not going to speculate
8 on that.
9 BY MR. DOMBROWSKI:
10 Q. Well, in your last answer, I thought you
11 were saying that the fact that they voted against
12 the recommendations of the hearing officer rendered
13 the process unfair; is that correct?
14 A. I don't think I said that.
15 Q. Did the -- did the fact that the council
16 voted against the hearing officer's recommendations
17 make the process unfair?
18 MR. MUELLER: That calls for a legal
19 conclusion.
20 MR. DOMBROWSKI: I don't think so.
21 MR. MUELLER: Well, we're certainly going to
22 argue that it did, legally.
23 MR. DOMBROWSKI: You can go ahead and answer.
24 THE WITNESS: I stated, I believe, that they

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1 did not incorporate their recommendations into
2 their decision process. Not that they voted
3 against it, the recommendation.
4 BY MR. DOMBROWSKI:
5 Q. And you're saying they should have
6 incorporated those recommendations into the
7 process; correct?
8 A. I believe they should have reviewed them,
9 yes.
10 Q. And if they reviewed them, would you say
11 that their vote was taken then in accordance with
12 39.2 and with their siting ordinance?
13 A. I'm not going to speculate as to what they
14 would have done if they would have reviewed them.
15 Q. Anything else in support of this No. 3?
16 A. No. Not at this time.
17 Q. Let's move on to No. 4. That the hearing
18 procedures and overall site location procedures
19 used by the city council were not fundamentally
20 fair. What has Fox Moraine got in support of that
21 allegation?
22 A. Outside of what we've offered, I don't
23 have anything else outside of that.
24 Q. No. 5 talks about the post-hearing

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1 procedures used by the city council and that
2 those -- excuse me -- the proceedings, the
3 post-hearing proceedings employed by the city
4 council in their deliberations were not
5 fundamentally fair.
6 What does Fox Moraine have in support of
7 that allegation?
8 A. I stated earlier that I don't think
9 that -- that they -- some of the council people
10 reviewed the hearing officer's recommendation for
11 the staff recommendation, and I thought that those
12 were valuable to the process.
13 Q. Anything other than that?
14 A. No.
15 Q. No. 6 says that the decision-making
16 procedures used by the city council were not
17 fundamentally fair.
18 What does Fox Moraine have in support of
19 that allegation?
20 MR. MUELLER: That's unique to that allegation
21 as opposed to that would be the same as the answers
22 to the previous allegations?
23 MR. DOMBROWSKI: Well, these are your
24 interrogatory answers.

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1 MR. MUELLER: I understand, Leo, but, you know,
2 there's still some overlap here, and then some of
3 them you're rephrasing stuff.
4 MR. DOMBROWSKI: I understand. If he's got
5 nothing new, he's got nothing new.
6 MR. MUELLER: Okay. That makes it simple for
7 you, Jim.
8 THE WITNESS: I don't have anything new to talk
9 about.
10 BY MR. DOMBROWSKI:
11 Q. No. 7 charges that various members of the
12 city council were biased against Fox Moraine.
13 What have you got in support -- or what
14 does Fox Moraine have in support of that
15 allegation?
16 A. In addition to what we've already offered?
17 Q. Yes.
18 A. I don't have anything.
19 Q. How about No. 8, various members of the
20 city council prejudged the merits of the
21 application.
22 What does Fox Moraine have to support that
23 allegation?
24 A. I think it's -- it's relatively the same

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1 as what I previously said, so nothing.
2 Q. Nothing new to offer on that one; correct?
3 A. Correct.
4 Q. 9 says that various members of the city
5 council tainted the collective decision-making
6 process of the council as a whole.
7 What does Fox Moraine have to support that
8 allegation?
9 A. Nothing more than we've already offered,
10 that I've already offered.
11 Q. And 10 says that various members of the
12 city council had disqualifying conflicts of
13 interest.
14 First off, can you explain to me what that
15 means?
16 A. In what context? Can you --
17 Q. Well, in the context of this landfill
18 appeal.
19 A. I don't know at this moment.
20 Q. Okay. What does Fox Moraine have to
21 support the allegation here, No. 10.
22 A. Nothing beyond what we've said.
23 Q. No. 11 says that the ultimate action,
24 meaning the vote, taken by the city council on the

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1 application was not based upon the evidence and was
2 based, in material part, upon matters outside the
3 record. What does Fox Moraine have to support
4 that?
5 A. In some cases, some of the city council
6 people, specifically Rose Spears, I believe, was
7 doing research on their own, which is evidence that
8 is outside of the record.
9 I remember the -- Marty Munns having a
10 newspaper, or not a newspaper but a magazine
11 article in regard to gasification, and I think it
12 was on the same day or near to the day that
13 somebody gave a presentation on gasification as an
14 alternative disposal methodology such that, in
15 general, you know, I felt that somebody may have
16 given it to him, you know, and there was, during
17 the process, during the hearings, there was
18 various, I think specifically Jason Leslie was on
19 his computer a lot, and, you know, it was -- it
20 was -- I didn't understand exactly what he was
21 doing on his computer, and if that was something
22 that was adding information to him that was
23 material outside of the -- outside of the evidence
24 in the process.

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1 You know, in general, as I sat through
2 these, these hearings, it just seemed to me that
3 there was a lot more discussion amongst people. I
4 think Fox Moraine we pretty much kept to ourselves
5 in regard to communicating with the city council
6 people, but there was times when presentations were
7 made, and then right after the presentation, the
8 opposition group or something would be interfacing
9 with the city council.
10 So, specifically, do I recall those exact
11 instances, no, but, in general, I felt that there
12 was a lot of -- there was interaction amongst
13 people that didn't make sense to me.
14 Q. Anything else in support of this No. 11?
15 A. No.
16 Q. All right. Let me ask you a couple things
17 about the various things you've mentioned here.
18 You say, for example, that Jason Leslie
19 was on his computer a lot; correct?
20 A. Correct.
21 Q. Though you have no idea what he was doing
22 on his computer?
23 A. I didn't know why he wouldn't have
24 otherwise been listening and paying attention to

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1 the proceedings instead of working on his computer.
2 Q. Might he have been doing both?
3 A. I could speculate, yes.
4 Q. But, again, you have no idea what he was
5 doing on his computer; correct?
6 A. I did not ask him, no.
7 Q. And not only did you not ask him, you have
8 no other means of knowing what he was doing on his
9 computer; right?
10 A. Correct.
11 Q. You say Mr. Munns read or at least had in
12 front of him an article on gasification; correct?
13 A. Correct.
14 Q. And you said someone may have given to
15 him. Any idea who may have given to him?
16 A. I can't remember the gal's name, but she
17 was a supporter of gasification as an alternative
18 disposal methodology.
19 I thought, as I mentioned before, that I
20 don't know where he got the article or where he got
21 the magazine, but it seemed odd that it was at the
22 same time that or in close proximity to the time
23 that she gave a presentation.
24 Q. How do you know he had this article?

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1 A. I believe it was a Popular Mechanics
2 article or the magazine, and that was on his pile
3 of stuff at his place where he sat during the
4 hearing.
5 Q. Was it the entire magazine?
6 A. It was.
7 Q. Was it open to a certain page or was it
8 closed?
9 A. It was just the entire magazine when I --
10 when I saw it.
11 Q. How did you know that that issue contained
12 an article on gasification?
13 A. Because somebody had given it to me
14 that -- somebody had given me a Popular Mechanics
15 magazine that had that article in it.
16 Q. Who gave you that issue?
17 A. I believe it was a friend. It was
18 completely outside of these proceedings.
19 Q. So by chance you happened to have the same
20 issue that Mr. Munns had?
21 A. Correct.
22 Q. Do you know whether he read the article on
23 gasification?
24 A. I did not ask him.

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1 Q. All right. That's the only thing as to
2 Mr. Munns; correct?
3 A. I'm sorry?
4 Q. That's the only thing as to Mr. Munns
5 that's relevant to Issue 11; correct?
6 A. That I recall, yes.
7 Q. And you mentioned Alderman Spears, but you
8 didn't say anything about her -- well, you did say
9 you thought that she had done some of her own
10 research and accessed or read things outside of the
11 records; correct?
12 A. Yes.
13 Q. And what did she do?
14 A. My general impression is that during the
15 hearings and city council meetings that I sat in,
16 prior to the application being filed, she was, you
17 know, touted herself as looking at all the detail
18 and doing her own research and being very diligent
19 about understanding the entire issue at hand. And
20 I believe that she was -- acted in a similar
21 fashion during the application in the hearing
22 process, and I thought that some of the questions
23 that she asked some of the expert witnesses were --
24 were -- wasn't even remotely common knowledge and

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1 wasn't -- didn't seem to make sense that she would
2 have learned that outside of the hearing process.
3 Q. For example?
4 A. She spoke to types of grasses that are
5 used on existing landfills. I specifically recall
6 that, because I thought that that was unusual that
7 she would even know it, and that those grasses were
8 apparently being used at the Settler's Hill
9 Landfill. I just thought that that was just
10 outside of common knowledge in her day-to-day job
11 or -- and it wasn't anything that we had introduced
12 into the application, I don't believe.
13 Q. All right. So as far as specific things
14 go, you think or you believe that she may have done
15 independent research on a certain type cover, is
16 that it, that's used at landfills?
17 A. Vegetative cover.
18 Q. But you don't know this for a fact, you
19 are surmising this based on questions she asked at
20 the landfill hearing; correct?
21 A. Correct.
22 Q. And as far as anything she may have done
23 before the application was filed, you have no facts
24 as to research she did at that point; correct?

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1 A. I do not have facts.
2 Q. It is all conjecture on your part;
3 correct?
4 A. I believe in one instance that she was
5 given some information from Michael Blazer in
6 regard to Glenn Sechen and Charlie Murphy's work
7 experience, and I believe she said that she came
8 across that on the Internet, and I found that hard
9 to believe. And it made more sense to me that
10 somebody gave her that information. So if that's
11 conjecture, then, so be it.
12 Q. And so the record is clear, Mr. Sechen had
13 been proposed to be the landfill hearing officer;
14 right?
15 A. Correct.
16 Q. And then it came out that he, Mr. Sechen,
17 had had business dealings with Charlie Murphy;
18 correct?
19 A. Correct.
20 Q. And the city council found that to be a
21 disqualifying conflict of interests; correct?
22 A. I believe so.
23 Q. Now, how do you know she was given
24 information about Mr. Sechen by Michael Blazer?

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1 A. Because Michael Blazer and Valerie -- or
2 Rose Spears, you know, they openly admit that they
3 were talking to him, and he was involved in the
4 same case with Charlie, Glen Sechen, such that I
5 thought that that was a logical conduit of that
6 information as opposed to a search on the Internet.
7 Q. Well, if Mr. Sechen had a conflict of
8 interest, wasn't it fair for the city counsel to
9 say he shouldn't be the hearing officer?
10 A. But I think that that conflict of interest
11 was determined before he even was interviewed for
12 it such that he wasn't even asked.
13 Q. Well, let me ask my question again.
14 If the city council thought that there was
15 a conflict of interests between Mr. Sechen and Mr.
16 Murphy, wasn't it fair for them to vote that
17 Mr. Sechen shouldn't be the hearing officer?
18 A. Well, I guess the question was in relation
19 to Rose Spears doing research on her own.
20 Q. Right. Now I've asked another question.
21 A. And so what's your question again.
22 MR. DOMBROWSKI: Read it back if you would,
23 please.
24 (Record read as requested.)

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1 THE WITNESS: Well, if there was a conflict of
2 interest, I guess so, but was that a conflict of
3 interest? I don't know.
4 BY MR. DOMBROWSKI:
5 Q. Anything else regarding Alderman Spears
6 doing or allegedly doing independent research other
7 than the vegetative cover and the hearing
8 officer -- or the proposed hearing officer? Excuse
9 me.
10 A. No.
11 Q. Now, regarding this Item 11, you also
12 mention that members of opposition groups
13 interfaced with the city council at the landfill
14 hearings. What do you mean by that?
15 A. I mean that at various times throughout
16 the hearing, the opposition groups during breaks or
17 afterwards would be in extended conversations with
18 various people of the city council, specifically
19 Valerie Burd or Rose Spears, and I thought that
20 those -- those conversations were unusual.
21 Q. How were they unusual?
22 A. Typically, the opposition group people
23 don't get an audience with people that are making a
24 decision in the process.

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1 Q. Have you any idea what they spoke about?
2 A. No. But, in general, when, you know, you
3 see the same people talking time after time, my --
4 my common sense tells me that it's not about the
5 weather.
6 Q. And you're saying they were -- there were
7 nefarious conversations about the landfill
8 application?
9 A. I'm not speculating exactly what those
10 conversations were, but I found that the extended
11 conversations were unusual.
12 Q. Anything else about those conversations?
13 A. No.
14 Q. Let's move on to Item 12, which is that
15 members of the city council engaged in prejudicial
16 ex parte contacts with other participants in the
17 hearing process.
18 What does Fox Moraine have in support of
19 that allegation?
20 A. Nothing beyond what I've just previously
21 said.
22 Q. Did Fox Moraine at any time -- and by that
23 I mean before the landfill application was filed or
24 after the landfill application was filed -- express

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1 its opinion or displeasure or whatever to the city
2 council that the hearing process was unfair or that
3 certain members were biased or that someone had
4 pre-judged the application or that something should
5 be done to change the process to make it fair to
6 Fox Moraine?
7 A. Preceding, the time before the application
8 was filed, Fox Moraine did not attempt to cause
9 more of a -- of an uproar than was already going
10 on. So as far as that time frame, Fox Moraine did
11 not.
12 Q. All right. Well, let's -- let me stop you
13 there, and then we'll move on to after the
14 application was filed.
15 But you say that Fox Moraine didn't want
16 to do anything to cause more of an uproar; is that
17 what you said?
18 A. Correct.
19 Q. What do you mean by that?
20 A. I mean that in theory we had as much -- we
21 could have made public comments during the public
22 comment period as well. And we felt that -- that
23 the whole process that City of -- or that Yorkville
24 had let go on, we would not be adding to that by

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1 being confrontational during those -- during those
2 hearings.
3 Q. Well, you could have gotten up at those
4 hearings and said something nonconfrontational;
5 correct?
6 A. Such as?
7 Q. Well, couldn't you have gotten up and said
8 to the city council, "I'm Jim Burnham, I'm here on
9 behalf of Fox Moraine, this is what I perceive to
10 have taken place at these hearings, I ask that the
11 city council do X to remedy that"?"
12 A. I believe in some circumstances or some of
13 the hearings, some brief statements were made, but
14 I don't recall exactly the context of those brief
15 statements.
16 Q. Who made those statements?
17 A. I believe I made -- made one of them
18 during an informational hearing in regard to the
19 property protection plan as well as the groundwater
20 protection plan.
21 Q. Who else made statements?
22 A. I believe George Mueller at times made
23 statements and Phillipchuck made some statements as
24 well, who is an attorney for Fox Moraine.

1 offered regarding the property protection plan if
2 the application had not yet been filed by the time
3 this meeting was held?
4 A. Because it was contained within the host
5 agreement.
6 Q. And did you say something to the effect
7 that this should allay people's concerns about
8 property values?
9 A. Yes.
10 Q. What did you say about the groundwater
11 issue?
12 A. That it should also be a -- encompass more
13 of the people that felt that they were going to be
14 affected by -- potentially affected by the
15 landfill.
16 Q. And one purpose of these statements that
17 you made was to show the people of the City of
18 Yorkville that Fox Moraine was presenting what it
19 thought to be an application that had merit;
20 correct?
21 A. I don't think it was -- that's a -- I
22 guess I don't understand your statement.
23 Q. Well, when I asked you about Fox Moraine
24 making or not making public comment on the fairness

1 Q. All right. The informational meeting that
2 you just referenced, that was a meeting before the
3 application was filed; right?
4 A. Correct.
5 Q. And that meeting was where? Here at
6 Yorkville City Hall?
7 A. No. It was at the high school.
8 Q. And that was a meeting to inform the
9 public regarding the upcoming landfill hearings?
10 A. Yes.
11 Q. And what's -- you say you made a statement
12 about the property protection plan and something
13 about the groundwater; right?
14 A. Correct.
15 Q. What did you say?
16 A. I believe we made a decision that we were
17 going to propose an adjustment to the existing
18 property protection plan and a groundwater
19 protection plan. That would be an expansion of
20 what was previously offered.
21 Q. And this property protection plan was part
22 of the application; correct?
23 A. It was contained within the application.
24 Q. How did people know what had already been

1 or unfairness of the process, I believe you first
2 said that Fox Moraine could have made public
3 comment, but it didn't; correct?
4 A. We chose not to in some -- in -- correct.
5 Q. But now you're saying Fox Moraine did make
6 some comments; correct?
7 A. Yes.
8 Q. And the point of the comments was to -- am
9 I correct, to tone down what you perceived as the
10 hostility of the process?
11 MR. MUELLER: I don't think he ever testified
12 to that.
13 BY MR. DOMBROWSKI:
14 Q. You can answer. Go ahead.
15 A. I think there was some criticism that Fox
16 Moraine was receiving, and we felt that we would
17 present a broader coverage for some of the
18 environmental issues in regard to protection for
19 ground water and as far as the property protection
20 plan.
21 Q. And these statements by you on behalf of
22 Fox Moraine at the meeting, that was to counter the
23 criticism that you thought the public had been
24 leveling at Fox Moraine; correct?

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1 A. Correct.
2 Q. Okay. Anything else regarding the
3 statements you made pre-application?
4 A. No.
5 Q. What statements did Mr. Mueller make
6 pre-application?
7 A. There was various circumstances where we
8 made some statements, but they -- it was really --
9 I don't know how to describe it. It wasn't a
10 statement, a public statement as in regard to the
11 fundamental fairness, but I was just saying that
12 from time to time during 15 odd hearings before the
13 application, we did make some statements. I don't
14 recall the specific context of those statements.
15 Q. Well, did they have to do with the
16 fairness or unfairness of the proceedings?
17 A. I don't recall. I don't believe so.
18 Q. How about Mr. Phillipchuck, what did he
19 say?
20 A. He made various comments, but, you know, I
21 don't recall the specific -- I know that he made
22 some comments, but I don't recall the specific
23 context of those comments.
24 Q. But, in sum, is it fair to say that,

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1 pre-application, members of the public had
2 opportunity to make comment as well as Fox Moraine;
3 correct?
4 A. Yes.
5 Q. All right. Let's go to the period
6 following the filing of the application. You've
7 talked about different things that you and Fox
8 Moraine believe rendered the process unfair. So
9 during the period from December 1, 2006 when the
10 application is filed up through the end of May 2007
11 when the city council takes its vote, did Fox
12 Moraine do anything to complain about or register
13 its displeasure as to what it perceived to be an
14 unfair process?
15 A. I think we took -- I think we filed a
16 motion with the hearing officer to have Valerie
17 Burd and Rose Spears not in the process.
18 Q. Did Fox Moraine do anything other than
19 filing this motion to disqualify Burd and Spears?
20 A. Not that I recall.
21 Q. And had Fox Moraine wanted to, it could
22 have moved to disqualify aldermen other than these
23 two; correct?
24 A. I would guess so.

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1 MR. DOMBROWSKI: Why don't we take a short
2 break. Let's go off the record.
3 (Discussion off the record.)
4 MR. DOMBROWSKI: All right. Let's go back on.
5 Couple things to finish up, Mr. Burnham.
6 BY MR. DOMBROWSKI:
7 Q. Have you ever talked to any city council
8 members regarding the landfill application?
9 A. Yes.
10 Q. Who?
11 A. Let me rephrase that. The landfill
12 application that was filed or about a landfill
13 application?
14 Q. About a landfill application.
15 A. All of them. I've talked with all of them
16 about the landfill application.
17 Q. When did you speak to them about the
18 landfill application?
19 A. Initially in August of 2006.
20 Q. And you spoke to all eight sitting council
21 members plus the mayor?
22 A. Yes.
23 Q. And where did these meetings take place?
24 A. At Yorkville City Hall.

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1 Q. Was Mr. Charlie Murphy with you?
2 A. Yes.
3 Q. Anyone else with you on behalf of Fox
4 Moraine?
5 A. Not that -- no.
6 Q. Was this one meeting?
7 A. In regard to the council people, men and
8 women, yes.
9 Q. So you spoke to all eight council people
10 at one meeting?
11 A. No.
12 Q. All right.
13 A. You asked if I -- if it was just once.
14 Q. No. I said was it one meeting.
15 A. One meeting, for -- we met with Charlie
16 Murphy, and I met with I think it was Joe Besco and
17 Rose Spears together. We met with each council
18 person with -- by ward; so, in other words, I can't
19 remember who is in which ward, except for I think
20 Marty Munns we met individually, and Jim Bock we
21 met individually. Meaning that we met with Rose
22 Spears and Joe Besco together and Dean Wolfer and
23 Valerie Burd, I believe, together and Jason Leslie
24 and Paul James together, I believe.

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1 Q. And you also met with the mayor?
2 A. I have met with the mayor.
3 Q. When did you meet with him?
4 A. I don't recall a specific time that I met
5 with him.
6 Q. How many times did you meet with him
7 regarding the application or the application that
8 was going to be filed for the proposed landfill?
9 A. Probably three times.
10 Q. And when did these meetings take place,
11 approximately?
12 A. I believe there was a meeting in maybe
13 March of 2006, I believe there was a meeting in
14 maybe June or July of 2006, and then a meeting
15 probably in earlier August 2006.
16 Q. Why did you meet with these elected
17 officials in groups of two or individually?
18 A. There was a lot of misinformation being in
19 the press or we thought it would be wise to give
20 the council people by ward, you know, an overview
21 of what Fox Moraine was proposing.
22 Q. You say there was a lot of misinformation
23 in the press. What do you mean?
24 A. Kendall County had been going through a,

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1 you know, a process by which they basically changed
2 their solid waste management plans so as to allow
3 landfills, and there was information in regard to
4 companies that were interested in coming to Kendall
5 County to propose a landfill, and Fox Moraine was
6 one of them. And there was various articles in the
7 newspaper about landfills, Kendall County, you
8 know, informational type of -- informational type
9 of articles.
10 Q. So am I right you met with these people to
11 counter this misinformation in the press; correct?
12 A. We met with these people to just tell
13 them, you know, explain to them what our landfill
14 project was looking like at the time and that we
15 were going to go forward with filing an application
16 at some point and we wanted to make sure that they
17 heard it from us.
18 Q. So you saw this as your opportunity to
19 inform the city council members and the mayor as to
20 what you would be proposing; right?
21 A. Basically.
22 Q. Why didn't you meet with them in groups of
23 three or four or all of them together?
24 A. We felt that just that meeting them

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1 individually by ward was a prudent thing to do. We
2 didn't -- we didn't -- we thought it would be
3 better on an individual or by-ward basis as opposed
4 to everybody at all once.
5 Q. Well, had you met with them in more than
6 groups of two, you would have violated the Open
7 Meetings Act; correct?
8 A. I -- I guess so, yes. Is the Open
9 Meetings Act -- what is the Open Meetings Act,
10 exactly?
11 Q. Well, I'm asking you.
12 MR. MUELLER: Apparently, he doesn't know.
13 MR. DOMBROWSKI: He answered yes. That's good
14 enough.
15 BY MR. DOMBROWSKI:
16 Q. What did you tell the members of the city
17 council?
18 A. We described the -- the SB 172 process in
19 general. And that the burden of proof that the
20 application, the burden of proof that the
21 application or the site was suitable in accordance
22 with the criteria was that of the proposer, being
23 Fox Moraine, and that a -- an application would be
24 most likely forthcoming.

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1 Q. And you told them how to vote; right?
2 A. No.
3 Q. After these meetings, did you call up any
4 of these people on the phone?
5 A. I did not.
6 Q. Once the application had been filed, did
7 you talk to any city council members or the mayor?
8 A. Other than "hello," and just being --
9 being a normal person saying hello, no.
10 Q. Anyone else associated with Fox Moraine
11 talk to the city council members or the mayor after
12 the application had been filed?
13 A. I'm not aware of what everybody did or
14 didn't do.
15 Q. Did you have any involvement in putting
16 together Fox Moraine's post-hearing comments?
17 A. As submitted by Shaw?
18 Q. Correct.
19 A. I reviewed them, but I didn't assemble the
20 documents or add documents to be put into it.
21 Q. Why were those submitted on the last day
22 of the post-hearing comment period?
23 A. I believe that's when they were ready.
24 Q. Could Fox Moraine have submitted them

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1 before that?
2 A. I -- I do not know.
3 Q. Couple questions regarding the landfill
4 hearings.
5 Fox Moraine isn't claiming that it was
6 shortchanged on time at the hearings; is it?
7 A. In what regard?
8 Q. Well, Fox Moraine had opportunity to put
9 on all its witnesses; correct?
10 A. Yes.
11 Q. And Fox Moraine had opportunity to submit
12 all the exhibits and materials in support of its
13 application; correct?
14 A. Yes.
15 Q. And Fox Moraine is not claiming that it
16 was somehow prevented or didn't have enough time at
17 the hearing to do what it wanted; correct?
18 A. Not to my knowledge.
19 Q. Do you know whether the City of Yorkville
20 had a Web page that it maintained throughout the
21 landfill hearing process?
22 A. I believe it did.
23 Q. Were things such as landfill hearing
24 transcripts and the application and other exhibits

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1 posted to that Web page?
2 A. I believe so.
3 Q. Did you, yourself, at any time access that
4 Web page during the hearing process?
5 A. I may have once or twice.
6 Q. And why did you do that?
7 A. I believe I checked one of the transcripts
8 of the real estate appraiser, Harrison.
9 Q. And is it your recollection that the City
10 of Yorkville would post, for example, hearing
11 transcripts to its Web page within a couple days
12 after that hearing had concluded?
13 A. I don't recall what the schedule of having
14 information posted was, but I thought it was, in
15 general, relatively quickly.
16 Q. Mr. Burnham, if you are called as a
17 witness at the hearing on this matter, can you
18 think of any reason why your testimony at that
19 hearing would be different from your testimony
20 today?
21 A. In what regard?
22 Q. Well, I have tried to ask you questions to
23 elicit all the information you have or Fox Moraine
24 has in support of its petition for review; do you

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1 understand that?
2 A. Yes.
3 Q. So my question is -- I don't want to be
4 blind-sided at the hearing, so is there any reason
5 why you would be offering something additional at
6 the hearing that you didn't say today?
7 A. I couldn't think of anything. The only
8 thing that I would is that if I'm required to read
9 this transcript, it might refresh my memory on
10 something, but I can't imagine it's substantive to
11 the point that you feel you're blind-sided.
12 MR. DOMBROWSKI: Okay. Fair enough. I have no
13 further questions.
14 MR. MUELLER: We'll reserve signature.
15 FURTHER DEPONENT SAITH NAUGHT.
16
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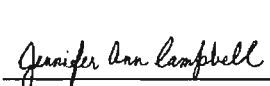
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1 BEFORE THE
2 ILLINOIS POLLUTION CONTROL BOARD
3
4 FOX MORaine, LLC,)
5 Petitioner,)
6 vs.) No. PCB 07 146
7 UNITED CITY OF YORKVILLE, CITY)
8 COUNCIL,)
9 Respondent.)
10 This is to certify that I have read the
11 transcript of my deposition taken in the
12 above-entitled cause by Jennifer Campbell,
13 Certified Shorthand Reporter, on the 12th day of
14 September, 2008, and that the foregoing transcript
15 accurately states the questions asked and the
16 answers given by me as they now appear.
17
18 JAMES D. BURNHAM
19 SUBSCRIBED AND SWORN TO
20 before me this ____ day
21 of _____ 2008.
22
23 Notary Public
24

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1 STATE OF ILLINOIS)
 2) SS:
 3 COUNTY OF KENDALL)
 4 I, JENNIFER CAMPBELL, a notary public within
 5 and for the County of Kendall and State of
 6 Illinois, do hereby certify that heretofore,
 7 to-wit, on the 12th day of September, 2008,
 8 personally appeared before me, at 800 Game Farm
 9 Road, Yorkville, Illinois, JAMES D. BURNHAM, in a
 10 cause now pending and undetermined before the
 11 Pollution Control Board wherein FOX MORaine, LLC is
 12 the Petitioner, and UNITED CITY OF YORKVILLE, CITY
 13 COUNCIL is the Respondent.
 14 I further certify that the said witness was
 15 first duly sworn to testify the truth, the whole
 16 truth and nothing but the truth in the cause
 17 aforesaid; that the testimony then given by said
 18 witness was reported stenographically by me in the
 19 presence of the said witness, and afterwards
 20 reduced to typewriting by Computer-Aided
 21 Transcription, and the foregoing is a true and
 22 correct transcript of the testimony so given by
 23 said witness as aforesaid.
 24 I further certify that the signature to the

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1 foregoing deposition was reserved by counsel for
 2 the respective parties.
 3 I further certify that the taking of this
 4 deposition was pursuant to Notice, and that there
 5 were present at the deposition the attorneys
 6 hereinbefore mentioned.
 7 I further certify that I am not counsel for nor
 8 in any way related to the parties to this suit, nor
 9 am I in any way interested in the outcome thereof.
 10 IN TESTIMONY WHEREOF: I have hereunto set my
 11 hand and affixed my notarial seal this 17th day of
 12 September, 2008.
 13
 14
 15
 16
 17

 18 NOTARY PUBLIC, KENDALL COUNTY, ILLINOIS
 19
 20
 21
 22
 23
 24

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1 MC CORKLE COURT REPORTERS, INC.
 2 200 North LaSalle Street
 3 Suite 300
 4 Chicago, Illinois 60601
 5
 6 September 17, 2008
 7
 8 Mueller Anderson PC
 9 Mr. George Mueller
 10 609 Etna Road
 11 Ottawa, Illinois 61350
 12 IN RE: Fox Moraine vs. United City of Yorkville
 13 Dear Mr. Mueller:
 14 Enclosed is your copy of the deposition of JAMES D.
 15 BURNHAM taken on 9-12-08, in the above-entitled
 16 action. Also enclosed are additional signature
 17 pages and errata sheets. Please note that
 18 signature was not waived.
 19 Please submit the transcript to the deponent for
 20 review and signature. The errata sheets have been
 21 provided for any changes or corrections the
 22 deponent wishes to make. All changes or
 23 corrections must be made on the errata sheets, not
 24 on the transcript itself. Then have the deponent
 sign all signature pages and have the signature
 notarized. All errata sheets should also be
 signed.
 After the deponent has completed the above, please
 return all signature pages and errata sheets to me
 at the above address, and I will provide copies to
 the respective parties.
 If you have any questions regarding the above
 procedure, please feel free to contact me at
 (312) 263-0052.
 Sincerely,
 McCorkle Court Reporters, Inc.
 BY: _____

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EXHIBIT F

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
2 FOX MORaine, LLC,)
3 Petitioner,)
4 vs.) No. PCB-07-146
5 UNITED CITY OF YORKVILLE,)
6 CITY COUNCIL,)
7 Respondent.)
8 The discovery deposition of CHARLES MURPHY,
9 taken in the above-entitled cause, before
10 Elizabeth L. Vela, a notary public of Cook County,
11 Illinois, on the 29th day of August, 2008 at the
12 time of 9:35 a.m. at 24 North Hillside, Hillside,
13 Illinois, pursuant to Notice.
14
15
16
17
18
19
20
21
22 Reported by: Elizabeth L. Vela, CSR
23 License No.: 084-003650
24

1

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3

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21 (708) 236-0830
22 Representing Kendall County.
23
24

2

1 (Witness sworn.)
2 CHARLES MURPHY,
3 called as a witness herein, having been first duly
4 sworn, was examined and testified as follows:
5 EXAMINATION
6 BY MR. DOMBROWSKI:
7 Q. Good morning, Mr. Murphy.
8 A. Good morning.
9 Q. My name is Leo Dombrowski. I represent
10 the United City of Yorkville. I'll be asking you
11 some questions today.
12 What do you understand this deposition to
13 be about?
14 MR. PORTER: Objection. Vague.
15 THE WITNESS: Could you clarify that?
16 BY MR. DOMBROWSKI:
17 Q. Pardon?
18 A. Could you clarify that?
19 Q. Well, I think it's a simple question. Do
20 you have any understanding of what this deposition
21 is about?
22 MR. PORTER: Objection. Vague. Argumentative.
23 Counsel, if you want to ask him a question, feel
24 free. It's your deposition. You tell us what it's

4

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1 about.
2 THE WITNESS: I've asked if you could restate
3 the question.
4 BY MR. DOMBROWSKI:
5 Q. You can't answer that question?
6 A. I've asked you to restate the question.
7 Q. Well, answer my question. Can you answer
8 that question?
9 MR. PORTER: Counsel, it's been asked and
10 answered. Please move on.
11 MR. DOMBROWSKI: It hasn't been answered.
12 MR. PORTER: It has.
13 BY MR. DOMBROWSKI:
14 Q. You have no idea what the deposition is
15 about?
16 MR. PORTER: Objection. Asked and answered.
17 Don't answer that.
18 MR. DOMBROWSKI: What's the objection?
19 MR. PORTER: The objection is, it's
20 argumentative, counsel. If you want to ask the
21 witness a question, feel free. You tell us what
22 the deposition is about. It's pretty simple.
23 BY MR. DOMBROWSKI:
24 Q. So you got up this morning and you thought

5

1 I'll come over to Mike Blazer's office and see if I
2 can get a free cup of coffee?
3 MR. PORTER: Objection. Argumentative. Don't
4 answer.
5 BY MR. DOMBROWSKI:
6 Q. Do you understand we have a court reporter
7 here?
8 A. I do.
9 Q. And that she's here to record everything
10 you, I, and your lawyer say?
11 A. I do.
12 Q. And you are represented by counsel,
13 correct?
14 A. I am.
15 Q. What will you do if you don't understand
16 one of my questions?
17 A. I will ask you to clarify it.
18 Q. Fair enough.
19 A. Restate it.
20 Q. And if you go ahead and answer a question,
21 I'll assume that you've understood the question.
22 Is that fair enough?
23 A. That's fair.
24 Q. Are you on any medications or anything

6

1 that would prevent you from giving complete and
2 honest testimony today?
3 A. I'm not.
4 Q. Anything else that would keep you from
5 giving full and complete answers to my questions
6 today?
7 A. Could you clarify that? It seems pretty
8 broad-based.
9 Q. Well, you say you're not on any
10 medications that would prevent you from doing so,
11 correct?
12 A. Correct.
13 Q. Just a general question. Anything else
14 that would prevent you from giving full and
15 complete answers to my questions?
16 A. From a medication, from a handicap,
17 from --
18 Q. Anything.
19 A. Not that I'm aware of.
20 Q. Let me hand you what we have marked as
21 Yorkville Deposition Exhibit No. 1. Have you seen
22 that before?
23 A. I have not.
24 Q. It wasn't given to you by anyone?

7

1 A. No.
2 Q. Did you bring any documents with you
3 today?
4 A. I did not.
5 Q. And no one informed you that we were
6 asking for documents as part of the deposition?
7 MR. PORTER: Counsel, I'll speak to that.
8 There are no documents responsive to your
9 production re -- your rider today other than what's
10 already been produced in Fox Moraine's Answers to
11 United City of Yorkville's First Set of Document
12 Requests.
13 I do have a copy of that. If you need the
14 documents, I have extras and you're welcome to
15 them.
16 BY MR. DOMBROWSKI:
17 Q. Well, that was my next question. So as
18 your counsel has said, as far as you know, you have
19 brought no documents because there's nothing new to
20 produce, correct?
21 A. That's correct.
22 Q. Can you think of any reason why your --
23 let me back up a second.
24 You understand that there's a hearing

8

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1 scheduled on this matter for October 6th through
2 the 8th?
3 A. I do.
4 Q. And have you been asked to be a witness at
5 that hearing?
6 A. I have not.
7 Q. If you are a witness at that hearing, can
8 you think of any reason why your testimony at that
9 hearing would be different from your testimony
10 today?
11 MR. PORTER: Objection. Vague. He hasn't
12 finished testifying today. It calls for
13 conjecture.
14 THE WITNESS: Considering that I haven't
15 testified, I don't know that there would be any
16 difference in the opinion.
17 BY MR. DOMBROWSKI:
18 Q. What did you do, if anything, to prepare
19 for today's deposition?
20 A. I had met with counsel to review generally
21 the documents that we had submitted upon request.
22 Q. Did you review anything else?
23 A. No, not that I can recall.
24 Q. Did you review the interrogatory answers

9

1 that Fox Moraine has submitted in this case?
2 A. That would have been part of the
3 interrogatories and our responses.
4 Q. Did you speak to anyone to prepare for the
5 deposition?
6 A. I met with my counsel.
7 Q. Okay. And when did you meet with him?
8 And your counsel, you're referring to Mr. Porter
9 here?
10 A. Mr. Porter and Mr. Helston and
11 Mr. Mueller.
12 Q. When did you meet with them?
13 A. This week.
14 Q. How long did you meet with them for?
15 A. We met for -- Rick and I had a little time
16 this morning prior to your arrival and I met with
17 George and Chuck for -- it might have been three
18 hours or so this week.
19 Q. And as far as you know, Fox Moraine will
20 not be using any documents other than the ones you
21 have already produced in this appeal at the October
22 hearing, is that correct?
23 A. I believe that's correct.
24 Q. Where are you currently employed,

10

1 Mr. Murphy?
2 A. Self-employed.
3 Q. What do you do?
4 A. A host of things, I guess. A consulting
5 business.
6 Q. What type of consulting do you do?
7 A. Environmental consulting, transactional
8 consulting in the solid waste field.
9 Q. What's your relationship to Fox Moraine,
10 LLC?
11 A. I was asked to be the project manager for
12 the permitting of a landfill.
13 Q. And what was the scope of your duties as
14 the project manager?
15 A. Prepare -- or excuse me. Put together a
16 team of people to prepare for a landfill
17 application and potential siting on a piece of
18 property from developing -- working through, I
19 guess, any -- some of the political positions, host
20 agreement, preparing -- working with counsel on
21 host agreements or siting ordinances, review with
22 the municipalities.
23 Just basically working through --
24 permitting through a hearing process coordination.

11

1 Q. What's the name of your consulting
2 business?
3 A. Fox Valley Consulting Services, Inc.
4 Q. And where is that located?
5 A. In St. Charles, Illinois.
6 Q. Who is Mr. Don Hammon?
7 A. Don Hammon is one of the principals of Fox
8 Moraine, LLC.
9 Q. Do you hold any position in Fox Moraine?
10 A. I do not.
11 Q. Do you have any financial interest in Fox
12 Moraine?
13 A. I do not.
14 Q. You're strictly paid for your time that
15 you put into this matter by Fox Moraine?
16 A. That's correct.
17 Q. Have you any other business dealings with
18 Mr. Hammon?
19 A. I do.
20 Q. And what are those?
21 A. I'm a customer to his yard waste land
22 application business.
23 Q. And what do you mean by being a customer
24 to his yard waste business?

12

1 A. I own a business called Midwest Compost,
2 LLC, which owns and operates two landscape waste
3 transfer stations.
4 Q. Let me show you what has been marked as
5 Yorkville Deposition Exhibit No. 2. Have you seen
6 this document before?
7 A. Excuse me. I have.
8 Q. And did you have any input in putting this
9 document together?
10 A. I had reviewed it prior to its submittal
11 and filing.
12 Q. And why did you review it before it was
13 filed?
14 A. That would have been part of my
15 responsibilities, I guess, as what's called project
16 manager.
17 Q. And did you provide comments on it?
18 A. I believe I did.
19 Q. What were those comments?
20 MR. PORTER: Objection. It invades the
21 attorney-client privilege.
22 BY MR. DOMBROWSKI:
23 Q. Did you provide comments to attorneys for
24 Fox Moraine?

13

1 A. For -- yes.
2 Q. Did you provide comments to anyone else
3 regarding the petition?
4 A. No, not that I'm aware of.
5 Q. And as far as you know, the things -- the
6 allegations in the petition -- by that, I mean in
7 Paragraphs 4, 5, 6, and 7 were true at the time the
8 petition was filed, correct?
9 A. To the best of my knowledge, yes.
10 Q. Let me show you what has been marked as
11 Deposition Exhibit No. 3. And you've seen this
12 document before, correct?
13 A. I have.
14 Q. And what is this document?
15 A. This is our response to the City of
16 Yorkville's request for interrogatories.
17 Q. And you were the person who certified
18 these answers on behalf of Fox Moraine, right?
19 A. I was.
20 Q. I'd like to ask you some questions about
21 the petition for review, which is Exhibit No. 2,
22 and the interrogatory answers, which are Exhibit
23 No. 3.
24 And if you need to refer to any of the

14

1 documents that Fox Moraine produced in this case,
2 please feel free to do so, okay?
3 A. Sure.
4 Q. Let me refer you to Paragraph No. 4 in the
5 petition for review.
6 And you see in there that Fox Moraine is
7 alleging that the hearing that was conducted on the
8 application was not conducted in accordance with
9 requirements of Section 39.2 of the Environmental
10 Protection Act. Do you see that?
11 A. I see that.
12 Q. What evidence or facts or information does
13 Fox Moraine have to support this allegation?
14 MR. PORTER: Objection, compound, but go ahead
15 and answer.
16 THE WITNESS: I believe the submittals that --
17 written -- or documents that we've produced and --
18 on information regarding the fundamental fairness
19 issue of -- that they weren't compliant with the
20 act or didn't follow the law in this.
21 BY MR. DOMBROWSKI:
22 Q. Okay. What did the City of Yorkville not
23 follow?
24 A. Again, fundamental fairness, that there

15

1 was bias, possibly outside -- information outside
2 of the record was considered.
3 Q. Now, the documents that you have produced,
4 those consist almost entirely of newspaper
5 articles, correct?
6 A. To a large part, I believe.
7 Q. And the only other things in there are a
8 one-page letter or e-mail from Alderman Wolfer and
9 then an invoice of my law firm, Wildman Harrold,
10 correct?
11 A. Correct.
12 Q. So what in there or anywhere else shows
13 that the hearing conducted on the application was
14 biased or that the -- I guess better put the
15 Council Members were biased in conducting the
16 hearing?
17 A. I -- in reviewing, one, the distribution
18 by Alderman Wolfer discussing the landfill and
19 process for such.
20 And many of the subsequent articles in
21 there also reflecting throughout the time from the
22 date of conversation of annexation to a hearing,
23 there is a substantial mention and comments of --
24 on behalf of outside opposition members and others,

16

1 counsel for the County and comments that were made
2 that were preadjudication of the merits of our
3 application prior to basically filing where it was
4 made to be of issue that the -- whether it was an
5 annexation or host agreement or such, there were
6 many comments and rancorous activity amongst
7 members of the opposition group that led to a
8 prejudgment, I believe, on the Council's part in
9 their ability to make a fundamentally fair decision
10 on the merits of the hearing and process that
11 subsequently followed all of those activities.
12 Q. So which members of the Council do you say
13 were biased?
14 A. Well, I believe Alderman Spears.
15 Alderman Burd at the time prior to being elected, I
16 believe as well.
17 And subsequent to filing, I guess Plocher,
18 Sutcliff, Werderich, were biased in their decision
19 ultimately in the ultimate vote. I'm forgetting
20 what --
21 Q. Well, if you look at Exhibit 2, there's
22 a -- the last page of Exhibit 2 lists the mayor and
23 the eight alderman.
24 A. Spears, Sutcliff, Plocher --

1 Q. You've given me five names of people you
2 are claiming were biased.
3 A. Munns.
4 Q. Pardon?
5 A. Munns.
6 Q. Munns was biased?
7 A. Actually, Leslie, Golinski.
8 Q. So everyone but Mr. Besco was biased?
9 A. I believe that is the case.
10 Q. Okay. I'm going to ask you some follow-up
11 questions. I want you to be as specific as you can
12 for me, because you can say someone was biased.
13 It's, I think, a very general statement,
14 but I want you to give me any facts that you
15 have -- any facts that Fox Moraine has to support
16 these allegations. Fair enough?
17 A. Fair enough.
18 Q. Okay. Tell me how you think
19 Alderman Spears was biased.
20 A. Well, I believe she was party to the
21 process which was the initiation of this ultimate
22 landfill application by annexation, host agreement,
23 siting ordinance preparation, reannexation and so
24 forth.

1 And the behavior of -- during those
2 times -- or meetings was made to be an open forum
3 by the opposition group, the public, other members
4 of the public.
5 The County had weighed in on their
6 position regarding consistency with the plan and
7 the threat of suit.
8 And I think that the behavior of -- the
9 aggressive nature of the behavior of the public and
10 the opposition people, I think lends itself to be
11 intimidating, and as well, showing that at the time
12 of consideration of these prior issues to a
13 landfill application that it was more about a
14 landfill than it was about the issues at hand.
15 And I think that her legislative position
16 was compromised -- or compromised her ability to be
17 a quasi-judicial judge for a subsequent landfill
18 application.
19 Rose Spears had also had during the --
20 during -- had also had outside contact regarding
21 issues relative to the process.
22 I believe she's had communications and
23 open communications with the County's attorneys
24 regarding process and host agreement -- other

1 comparisons, potential hearing officers.
2 And as well, she had out -- information
3 gained outside of the process through
4 communications that she had with Kane County
5 Environmental Group regarding issues that weren't
6 the subject of the -- the subject of the
7 application.
8 Q. Okay. Let's go through those. So you say
9 her legislative position was compromised because of
10 the -- are we talking about Friends of Greater
11 Yorkville, that group?
12 A. That -- yes, that would be the most
13 boisterous group, along with, I guess,
14 Todd Milliron, who was or wasn't a member but the
15 most aggressive behavior at these meetings.
16 Q. But these were public meetings, correct?
17 A. They were public meetings.
18 Q. And were you present at these meetings?
19 A. I was.
20 Q. What behavior did you see that you claim
21 to be hostile or intimidating?
22 A. Aggressive, in your face accusations.
23 Q. Well, can you give me any example --
24 A. If you approve the landfill -- or approve

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

21

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

22

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

23

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

24

1 of that.
2 Q. Well, tell me other people you had such
3 conversations with.
4 A. These were public comments or
5 conversations expressed by Munns and Besco.
6 I think the Mayor expressed it at
7 meetings, as well, that he had had calls to his
8 home. And I probably heard that in those settings.
9 Q. So it was limited to those three?
10 A. That I can recall.
11 Q. Did any of these three go to the police
12 and report this?
13 A. I don't recall.
14 Q. You don't recall that happening, do you?
15 A. I don't recall that.
16 Q. So as to Alderman Spears, you're saying
17 because she was present at these public meetings
18 where people voiced their opinions, she
19 subsequently became biased and couldn't vote fairly
20 on the application, is that a fair summary?
21 A. I don't know if that's a fair summary. I
22 think that it's more than -- it's the way the
23 behavior was.
24 And it's again that the issue of a

25

1 landfill had not even been presented and these
2 people were allowed to make statements,
3 allegations, tainting, I think, the quasi-judicial
4 ability to be a fair judge. So --
5 Q. Why do you think the people who voted on
6 the application couldn't have listened to those
7 statements and all the statements throughout the
8 hearing and rendered a fair decision on the
9 application?
10 A. Because I don't think -- I don't think
11 that was the process that was followed.
12 Q. I don't get your answer. What do you mean
13 you don't think that was the process that was
14 followed?
15 A. I think there were other circumstances
16 that kept them from making a fair decision based on
17 the manifested weight of the evidence.
18 Q. So simply because some people spoke out
19 against the annexation or spoke out against the
20 landfill, you feel that tainted the whole process?
21 MR. PORTER: Objection. It mischaracterizes
22 the previous testimony. Go ahead and answer if you
23 can.
24 THE WITNESS: I don't think that's what I was

26

1 saying. I think there are other issues relative to
2 that -- relative to the process that haven't been
3 disclosed.
4 I think -- or discussed, I guess, at this
5 point and elements of deliberations with the
6 information upon decision from their experts and
7 just the gathering of that throughout the -- or the
8 information and review and how they held the vote,
9 I think were against the manifested weight of the
10 evidence.
11 BY MR. DOMBROWSKI:
12 Q. You mean how they voted was against the
13 evidence, is that right?
14 Not how they held the vote but how they
15 voted, is that what you mean?
16 A. No, I believe it's how they held the vote,
17 how they -- and how they voted.
18 I mean, you're -- the information --
19 there's a fundamental fairness issue in the bias or
20 in the outside -- the information from outside
21 sources potentially, I believe, were elements that
22 are concerning their ability to make a fair
23 decision.
24 Q. All right. You mentioned this now a

27

1 couple times, that at least Alderman Spears, you
2 say, consulted information outside the record, is
3 that right?
4 A. That's correct.
5 Q. Anyone else besides Alderman Spears?
6 A. I believe again information that's outside
7 the record given public comment testimonies at the
8 meetings prior being at annexation up through
9 reannexation, public comment and e-mails that were
10 sent and represented on record by members of the
11 public to the Council, along with Council Members
12 who had -- were considering other information
13 during the hearings, reading on alternative energy.
14 Alderman Munns reviewing a Popular Science
15 magazine on Plasmark Technology during the hearings
16 openly, I think that's a consideration outside of
17 the record.
18 And the basis of information that people
19 had again considered what was being told or sent to
20 them via e-mail.
21 An example, the February 13th Council
22 Meeting, if you review the minutes and tapes of
23 that, there are people who are again standing up,
24 very rancorous, intimidating.

28

1 I believe representing, as well, they sent
2 information regarding the merits of a landfill --
3 siting of a landfill. And it was represented that
4 they sent it to the Council Members and the Mayor
5 and outside issues, information such as that that
6 was received.
7 Q. All right. What was sent to the Council
8 and the Mayor?
9 A. Information regarding the landfill or the
10 concern from the residents to deny approval of a
11 landfill.
12 Q. Well, as part of the process, the
13 residents were allowed to weigh in and express
14 their views, correct?
15 A. Not in the ex parte -- this was ex parte.
16 This was -- the application had been filed.
17 The City's holding public hearings and
18 comment that was open and aggressive against the
19 landfill when it was supposed to be an ex parte.
20 And there was no intent -- or effort, I guess, on
21 the City's part to stop that.
22 Q. To stop what?
23 A. The public from commenting and prejudging
24 the landfill prior to the manifested weight of the

29

1 evidence to be put on. There hadn't been a hearing
2 yet.
3 Q. Well, comments made at a public hearing
4 would not be ex parte communications, would they?
5 MR. PORTER: Objection. It calls for a legal
6 conclusion. We'll stipulate to that, counsel.
7 BY MR. DOMBROWSKI:
8 Q. So you're saying you claim that the City
9 Council did nothing to prevent ex parte
10 communications?
11 A. I believe that's correct.
12 Q. What is your definition of an ex parte
13 communication?
14 MR. PORTER: Again, counsel, you're asking this
15 witness, who's not an attorney to give you a
16 definition of a very specific legal term. And it's
17 the crux of the litigation we're here to discuss.
18 I mean, I can --
19 MR. DOMBROWSKI: Fair enough.
20 MR. PORTER: I can give you a definition if
21 you'd like.
22 MR. DOMBROWSKI: He was the first one to use
23 the term. He's got some understanding of it.
24

30

1 BY MR. DOMBROWSKI:
2 Q. So what's your understanding of an ex
3 parte communication?
4 A. My understanding would be contacts with
5 people outside of the process for which we're --
6 the landfill application or hearings or the process
7 who are not part of the process and have
8 judgmental -- or information shared to those
9 decision-makers who are going to hear it.
10 Q. So you're saying, for example, any e-mails
11 sent by a Yorkville resident to someone on the City
12 Council would have irretrievably tainted the
13 process, is that right?
14 A. I believe that's a possibility, yes.
15 Q. Is it also possible that people on the
16 City Council who received e-mails or who received
17 phone calls could have disregarded those and made
18 their decision based on the evidence?
19 MR. PORTER: Objection. It calls for
20 conjecture. He can't possibly read their minds.
21 THE WITNESS: Yeah.
22 MR. PORTER: Take their depositions to find
23 that out, counsel.
24

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1 BY MR. DOMBROWSKI:
2 Q. You can go ahead and answer.
3 A. I can't determine what their answer is
4 going to be or how they handled that.
5 Q. Now, you've used the phrase manifested
6 weight of the evidence a couple of times today.
7 What do you mean by that?
8 A. That would be the combination of the
9 record, basically the application, the findings of
10 fact, the hearing officer's finding, the attorney's
11 special counsel, Fox Moraine's. And those were the
12 filings from the County to the hearing process.
13 Q. All right. I want to get back to the
14 issue of information outside the record.
15 You've talked about e-mails and phone
16 calls, correct?
17 A. Correct; and I guess public -- public
18 comment.
19 Q. Wouldn't public comment, though, be part
20 of the record?
21 A. Could you clarify record for me, I guess?
22 Q. The record is all the documents that the
23 City of Yorkville put together and filed with the
24 Illinois Pollution Control Board. Have you taken a

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1 look at that, by chance?
2 A. I believe I have. I don't recall offhand.
3 Q. Okay. Well, in there, we have the siting
4 application, we have transcripts of the landfill
5 hearing, we have things like that.
6 A. Okay.
7 Q. So that is what I consider to be the
8 landfill record. Now, e-mails to an alderman, that
9 would be something outside the record.
10 So we have -- when I've asked you about
11 any alderman consulting information outside the
12 record, we have talked about e-mails, we have
13 talked about phone calls. Is there anything else
14 that you're claiming --
15 A. The statement --
16 Q. Wait. Let me finish my question. Is
17 there anything else you're claiming any of the
18 Aldermen or the Mayor was influenced by that was
19 outside the record?
20 A. Statements that would be outside of the
21 record would be as the April something article -- I
22 guess I can refer to this or --
23 Q. Sure.
24 A. The pre-election information and positions

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1 of the Alder -- or the folks running for office as
2 to their statements, as Valerie Burd, who is an
3 alderman running for mayor at the time had made
4 statements that a safe landfill, I believe, is an
5 oxymoron prior to a vote.
6 Q. Right, but that's her statement. I'm
7 asking about things that they -- you're saying they
8 consulted that were outside the record.
9 A. Let's see. Well, I think that
10 communications with -- I believe communications
11 with the -- again, representatives for the County
12 and County Board Members as referenced in some of
13 the articles here who had made comment to the City
14 Council Members regarding process.
15 Q. Anything else that was consulted outside
16 the record?
17 A. I don't recall at this time.
18 Q. All right. Let me ask you --
19 A. I know I'm forgetting something.
20 Q. -- about things you have mentioned about
21 the County.
22 You say there were communications with the
23 County that you're claiming tainted the process, is
24 that right?

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1 A. Yes.
2 Q. And what were those communications?
3 A. The County -- the State's Attorney and
4 Mr. Blazer had participated in -- early on in
5 September, October annexation hearings and
6 informing the City that they were going to sue for
7 consistency with the plan should this effort go
8 forward and ultimately take on a landfill on this
9 property if it's annexed.
10 I believe that that is -- as given that
11 it's a -- it created a lot of rancor and -- given
12 that the County is another governmental body.
13 And I think that it helped the groundswell
14 of the public and the people to participate more
15 actively as a landfill issue than an annexation
16 issue because of the credibility that potentially
17 another governmental body offers and the
18 representation from the State's Attorney's Office
19 that that becomes more of a factual consideration
20 on behalf of the City Council Members or in the
21 opposition group to get very excited about.
22 Q. When you refer to the State's Attorney,
23 you're referring to Mr. Eric Weiss?
24 A. Melissa Barnhart was the State's Attorney

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1 at the time.
2 Q. She was his predecessor?
3 A. That's correct.
4 Q. And the statements that they made were
5 made at a public hearing, is that right?
6 A. Yes, they were.
7 Q. Just in one public hearing?
8 A. I believe it was repeated more than once.
9 Q. So it was made at say two or three
10 different public hearings?
11 A. More than one.
12 Q. Any other communications that you're
13 referring to on behalf of Kendall County?
14 A. There's a reference in something I read in
15 some of the information we supplied regarding
16 County Board communication with -- I believe it was
17 Valerie Burd regarding possible ex parte
18 communications or what is and what isn't ex parte,
19 but I don't recall without reviewing through all
20 the documents, I guess.
21 Q. Well, weren't those statements made at one
22 of those public hearings?
23 A. I don't recall the tone of that, if it was
24 at a public meeting or if it was a representation

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1 that she had spoke to somebody prior to one of
2 those meetings and --
3 Q. So is --
4 A. She commented on it.
5 Q. So is it Fox Moraine's position that
6 Kendall County should not have made any statements
7 throughout the process?
8 A. I believe that it preadjudicated the
9 ultimate position of a filing for a landfill.
10 Q. How did -- when you say preadjudicated, do
11 you mean prejudiced or --
12 A. Yes.
13 Q. Well, how did it do that? Wasn't that the
14 official position of the County and why shouldn't
15 they be allowed to do that?
16 A. Well, I think as I've stated prior, it
17 was -- because of the potential of a credible
18 source and that prior to it being an issue that
19 there was a landfill application in process or in
20 play, it was -- created in a sense -- as they were
21 competing with their own landfill potential
22 hearings with another site, it created a lot of
23 concern, I think, amongst the public.
24 I think it questioned in the mind of those

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1 sitting decision-makers at the time as to that
2 weighing on their mind as to being able to make a
3 fair decision ultimately on the landfill.
4 Q. Well, answer me this. Is it Fox Moraine's
5 position that the County -- that Kendall County
6 should not have said anything throughout the
7 annexation and landfill process?
8 A. I believe that the position outside of the
9 landfill hearing process was improper.
10 Q. Their position outside the landfill
11 hearing process was improper, did I get that right?
12 A. Or their saying what they have said or
13 taking the position they did prior to a landfill
14 application being filed, I believe was incorrect.
15 Q. So they should not have said anything
16 before December 1, 2006, is that what you're
17 saying?
18 A. I believe that would be correct.
19 Q. And anything they said after December 1,
20 2006 would be fair game, is that right?
21 A. Actually, I think I would correct that and
22 say that after -- it should have been part of the
23 hearing process, that something said even upon
24 filing still had the potential or the opportunity

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1 to weigh on the minds of those decision-makers who
2 were ultimately going to be voting on the
3 application.
4 Q. Well, you understand this whole landfill
5 hearing and vote was obviously a very contested
6 issue in the City of Yorkville, right?
7 A. Very contested.
8 Q. And Kendall County weighed in with its
9 position, correct?
10 MR. PORTER: Objection. It's vague, counsel.
11 When are you talking? Are we talking in the
12 hearing? Are we talking outside the hearing?
13 BY MR. DOMBROWSKI:
14 Q. Let me talk about prior to the filing of
15 the application, which was December 1, 2006.
16 It's Fox Moraine's position that Kendall
17 County should not have said anything prior to that
18 date --
19 A. Yes.
20 Q. -- am I right?
21 A. Correct.
22 Q. So the State's Attorney, for example, an
23 elected official of Kendall County, you're saying
24 should not have said anything regarding the

39

1 landfill really up until the hearing started in
2 March of '07?
3 A. Prior to there really being a landfill
4 issue, which could be looked at as a December
5 filing or the process of the hearings, but there
6 was certainly notice and filing of an application.
7 Q. All right. So anything that the County
8 did other than speak at the couple public hearings
9 and possibly some communication with Mayor Burd
10 that may have been at a public hearing or not,
11 anything that you're claiming the County did was
12 improper? Anything else?
13 A. Offering, I guess, for residents or
14 objectors to communicate with them regarding
15 concerns.
16 Again, it creates some concern for their
17 ability to be a fair participant in the hearing
18 regardless given that they have a competing
19 landfill project coming, as well, and tainting the
20 water, I guess, for the decision-makers, as well as
21 creating more rancor amongst the public.
22 Q. Well, give me all the specifics that you
23 have on this.
24 What did they do to -- I don't know. What

40

1 are you claiming? They stirred up the pop --
2 A. Well --
3 Q. Let me finish my question.
4 MR. PORTER: Let him get done and then --
5 BY MR. DOMBROWSKI:
6 Q. They stirred up the populus, is that
7 right?
8 A. That would be a part of it, yes.
9 Q. All right. But how did they do that?
10 Give me specifics.
11 A. Well, hosting a public meeting to compare
12 conceptual host agreements between one -- between a
13 landfill to be in the County and one to be proposed
14 potentially in Yorkville.
15 And that created a lot of angst and
16 anxiety and rancor amongst the public that one was
17 better than the other, and yet, we didn't have the
18 merits of the case in front of us.
19 Q. Well, these host agreements are public
20 documents, correct?
21 A. They are at the time that they're
22 executed.
23 Q. When did Kendall County host this public
24 meeting to compare the host agreements?

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1 A. I believe it was in October.
2 Q. And by that time, both host agreements
3 were public documents, correct?
4 A. I don't recall the date of the Yorkville
5 approval.
6 Q. Well, even when it's a draft host
7 agreement, it's still a public document, is it not?
8 A. Potentially, yeah. I don't know if it was
9 a public document in draft. And I think that was
10 part of contention amongst -- the residents were
11 concerned that they didn't have some involvement
12 or -- in preparing the document.
13 Q. Well, I'm a little puzzled. I don't
14 understand how Kendall County hosting a public
15 meeting to compare host agreements would have
16 somehow tainted the process.
17 A. Well, I think that the comparison of the
18 documents and the issues related to specific
19 elements of it boasting one's better than the other
20 draws question or -- to everybody involved prior to
21 the decision-makers being involved or adds to the
22 rancor of the rank and file objectors and public as
23 to being able to be heard fairly.
24 The ultimate position of an application

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1 for a landfill -- it became a much bigger issue
2 than just the landfill application.
3 There was a competitive issue between who
4 had a better host agreement and what the terms of
5 those were.
6 I didn't see the merits of that, other
7 than bolstering their position for their process
8 and their landfill project that was to follow ours.
9 Q. Well, are you saying the public shouldn't
10 be informed about differing host agreements?
11 A. I'm not saying that. I'm saying that I'm
12 concerned that it was done in a fashion to sway a
13 decision that was -- I believe it was misleading to
14 the public or --
15 Q. How was it misleading?
16 A. I believe the comparisons weren't all
17 correct and factual as to why it was better.
18 Q. What was not correct and factual?
19 A. I mean, elements of a guaranteed host fee
20 but -- if one was a guarantee or not but elements
21 to that type of situation but -- there were other
22 elements.
23 And I don't recall the specifics at this
24 time, but I'd have to review the documents again,

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1 which I didn't do prior to this.
2 Q. Well, people could read the host
3 agreements and come to their own conclusion as to
4 which one might be better or how they differed,
5 right?
6 A. They potentially could come to their own
7 conclusion if potential misleading information was
8 not out there.
9 Q. Have we exhausted everything you think
10 that Kendall County did improper -- improperly?
11 A. At this time, my recollection, yes.
12 Q. Have we exhausted everything regarding
13 Alderman Spears and how you claim she acted
14 improperly?
15 A. Did we discuss her contact with the Kane
16 County group? Have we stated that?
17 Q. I don't believe so. What do you mean by
18 that?
19 A. With the Kane County Environmental
20 Department, she had conversations regarding
21 landfill and plantings and the Kane County landfill
22 and closings with the Environmental Department, the
23 director or employees at Kane County.
24 Q. And how do you know she had conversations

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1 with Kane County officials?
2 A. I was told by the Kane County officials.
3 Q. And who did you speak with at Kane County?
4 A. Tim Harbaugh and Steve Garrison.
5 Q. And what did Alderman Spears talk about
6 with these people or so you heard?
7 A. She talked about -- she asked questions
8 about landfill closure plans and plantings to be
9 used on the landfill and subsequently was -- asked
10 questions in the hearing process about plantings
11 and things that weren't -- specific plantings that
12 weren't part of our application.
13 Q. And you're saying that questioning was
14 improper by Alderman Spears?
15 A. I'm saying that the communication, the
16 contact to gather that information was an outside
17 source of the process.
18 Q. How is it improper for an alderman who's
19 going to sit and vote on your application -- why is
20 it improper for her to consult with Kane County as
21 to what proper plantings or closure materials might
22 be for a landfill?
23 A. Because that would have been information
24 outside of the record, garnered from outside of the

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1 record and it's ex parte communication.
2 Q. Why can't she consider that when she's
3 judging your application -- comparing your
4 application with what she found out about Kane
5 County?
6 MR. PORTER: Objection, counsel. That isn't
7 her job. You're asking --
8 MR. DOMBROWSKI: Well, he can answer --
9 MR. PORTER: You are asking the witness to
10 assume facts that are not in the record and stating
11 an improper hypothetical. Go ahead.
12 BY MR. DOMBROWSKI:
13 Q. Go ahead.
14 A. I don't know how -- I don't know what her
15 decision process was or her ability to make -- to
16 separate that, but I don't think that it was proper
17 contact.
18 Q. All right. Anything else about
19 Alderman Spears that you find -- you and Fox
20 Moraine find objectionable?
21 A. I believe, as well, that she based her
22 decision on -- if I can go back, to a comment in
23 the April newspaper election statement.
24 It was more about Alderman Spears about

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1 the process than it was about the information
2 presented or the facts as to her position on --
3 MR. PORTER: Take the time to find it if you
4 need to. We've got some time here.
5 THE WITNESS: I know it's in there. There it
6 is.
7 MR. PORTER: It's the April article?
8 THE WITNESS: Yeah.
9 BY MR. DOMBROWSKI:
10 Q. So you're saying her statement she made a
11 few days before the election was improper?
12 A. I'll hold until I get to it here.
13 MR. PORTER: Is it this one?
14 THE WITNESS: Yeah. Yeah, it wasn't -- I guess
15 it wasn't in her statement here that I'm thinking
16 of.
17 There's a -- somewhere in the decision or
18 in the process, she had stated her frustration over
19 the process here.
20 It was more about the process of
21 annexation and host agreement approvals and timing
22 and variables than it was about the substantive
23 information or weight of the evidence that she had
24 voted against -- excuse me. Against the landfill.

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1 And again, her statement if it had nothing
2 surrounding it for acres and if it was proven to be
3 safe as far as leakage and it would have no impact
4 on traffic, that would be a perfect scenario.
5 She's looking for the perfect scenario.
6 And again, the criteria isn't a perfect scenario,
7 because traffic for one is not a perfect scenario.
8 It's based on a minimalization of traffic or
9 minimal impact to traffic, not a perfect scenario.
10 So I think that statement prior to her
11 vote and subsequent is a prejudgment of her
12 decision --
13 BY MR. DOMBROWSKI:
14 Q. So you're saying --
15 A. Stated publicly.
16 Q. She disregarded the evidence at the
17 hearing and was -- prejudged and was going to vote
18 against the application no matter what?
19 A. I believe that is potentially true, yes.
20 Q. Anything else about Alderman Spears?
21 A. I think we --
22 Q. Covered her?
23 A. I think so.
24 MR. DOMBROWSKI: All right. We've been going

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1 about an hour. Why don't we take a five-minute
2 break?
3 (A short break was taken.)
4 BY MR. DOMBROWSKI:
5 Q. Mr. Murphy, are you still project manager
6 for the Fox Moraine landfill?
7 A. I am.
8 Q. And are you doing anything other than
9 testifying today regarding the landfill? Have you
10 done anything lately on it?
11 A. Well, it would be terrible if I said no.
12 My client might read this. Well, certainly, we're
13 monitoring the activities of this process, I guess,
14 and as well --
15 MR. PORTER: Let me -- right now, he's just
16 asking you a yes or no question, are you doing
17 anything. I think -- go ahead.
18 THE WITNESS: Yes.
19 BY MR. DOMBROWSKI:
20 Q. All right. What are you doing?
21 MR. PORTER: Now, counsel, I'm going to object,
22 because that's beyond the scope of this proceeding.
23 The question is whether or not the underlying
24 proceedings were fundamentally fair.

1 If you can tie it in for me, I'll let him
2 get into it, but I don't see how it's relevant or
3 admissible or likely to lead to admissible
4 evidence.
5 MR. DOMBROWSKI: Well, I'd like to find out if
6 he has an interest in the outcome of the process.
7 That's certainly relevant.
8 MR. PORTER: That question, I wouldn't object
9 to. I mean, that would go toward bias arguably.
10 BY MR. DOMBROWSKI:
11 Q. If the landfill gets approved, will you
12 have a role in running the landfill or doing
13 anything with the landfill?
14 A. No.
15 Q. Then, why are you continuing to monitor
16 the process?
17 A. I'm in it for the win.
18 Q. What do you mean by that?
19 A. I take my responsibilities in a process
20 like this -- I've been challenged to get a siting
21 and that's my objective. And the win is getting
22 your local siting or putting another dot on the
23 map.
24 Q. But you won't have anything to do with

1 that dot on the map if it comes to be?
2 MR. PORTER: And you mean him personally when
3 you say you?
4 MR. DOMBROWSKI: Him and his company.
5 THE WITNESS: I am not aware of any future
6 opportunities.
7 BY MR. DOMBROWSKI:
8 Q. Take a look at Exhibit No. 3, if you
9 would, and the answer to Interrogatory No. 1 on the
10 first page.
11 The interrogatory asks to identify each
12 person who supplied information or documents. And
13 you are one of the people listed, correct?
14 A. I am.
15 Q. What information or documents did you
16 supply?
17 Let me break that up. Did you supply any
18 documents?
19 A. I didn't supply any documents outside of
20 what would have been an attorney-client memo
21 regarding concerns.
22 Q. It's a memo you wrote and gave to your
23 counsel?
24 A. Yes.

1 Q. Any other documents?
2 A. Not that I recall.
3 Q. And the memo you wrote generally touched
4 on -- let me finish the question.
5 Touched on things that are alleged in the
6 petition for review?
7 A. I think that's fair to state.
8 Q. Did you supply any documents other than
9 this one memo?
10 A. For? Could you clarify that?
11 Q. Well, the question here in Interrogatory
12 No. 1 is identify each person who supplied
13 documents, correct? And you are one of the people
14 listed, right?
15 A. I am.
16 Q. So other than this one memo, did you
17 supply any other documents to Fox Moraine regarding
18 these interrogatory answers?
19 A. To Fox Moraine? Could you clarify? Is
20 that my counsel?
21 Q. It includes your counsel.
22 A. I don't believe so.
23 Q. What --
24 A. As it's related to Interrogatory 1, I

1 guess, or these documents, yes.
2 Q. As it relates to all of the
3 interrogatories and all of the document requests.
4 A. I -- there may have been some of these,
5 but I don't recall if -- I wasn't the sole source
6 for those.
7 I mean, there were -- there may have been
8 duplications, but I don't recall -- I have some of
9 those, but I don't recall frankly giving those. I
10 think they came from another source.
11 MR. PORTER: And the record can't see this.
12 Those being the documents attached to the
13 production request, is that correct?
14 THE WITNESS: Yes.
15 BY MR. DOMBROWSKI:
16 Q. So the memo was the only document you
17 provided, correct?
18 A. That's my recollection.
19 Q. How about as to information? What
20 information did you supply that was used in
21 preparing these interrogatory answers and document
22 requests?
23 MR. PORTER: Counsel, I'm going to object to
24 the extent that invades the attorney-client

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1 to some of this. It would have been part of the
2 memo to my attorney.
3 Q. Basically based on things you observed at
4 the different public meetings and the landfill
5 hearing process?
6 A. That would be correct.
7 Q. Let me ask you a couple of things that are
8 listed here in this answer to No. 3. First off, at
9 the bottom of the page --
10 A. Which page?
11 Q. Page No. 3. There's a statement that says
12 there was a request by certain decision-makers for
13 ex parte input from the public outside the hearing
14 process. Do you see that?
15 A. I see that.
16 Q. What information does Fox Moraine have to
17 support that statement?
18 MR. PORTER: I'll object to the extent you're
19 asking him to speak for the entire organization of
20 Fox Moraine. I would certainly agree that he could
21 answer for himself personally.
22 BY MR. DOMBROWSKI:
23 Q. Go ahead.
24 A. Yeah. My recollection to this would be

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1 privilege.
2 MR. DOMBROWSKI: Well, if there's information
3 listed in the interrogatory answers, I don't see
4 how that invades the attorney-client privilege.
5 MR. PORTER: The question is just phrased in a
6 manner that I'm not used to, quite honestly.
7 If there's a specific interrogatory of
8 which this witness had input, I think that would be
9 proper.
10 BY MR. DOMBROWSKI:
11 Q. Well, let's look at Interrogatory No. 3
12 and the answer to Interrogatory No. 3.
13 And by the way, the answer to
14 Interrogatories 3 through 17 is the same, correct?
15 A. I believe that's right.
16 Q. Did you supply any of the information that
17 we see listed here in the answer to Interrogatory
18 No. 3?
19 A. If I can take a minute to refresh my
20 memory --
21 Q. Sure.
22 A. -- and read through that, I would
23 appreciate it.
24 I believe there is some input that I had

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1 the document that was ultimately circulated by one
2 of the aldermen regarding the landfill and the
3 process, which was one of the submittals, I
4 believe, we had.
5 Q. That's the --
6 A. Attached to --
7 Q. The letter from Alderman Wolfer?
8 A. Alderman Wolfer, yes, who subsequently
9 resigned.
10 Q. So he did not vote on the landfill
11 application, correct?
12 A. He did not.
13 Q. Any other member besides Alderman Wolfer
14 who asked for ex parte input from the public?
15 A. I believe that's all I'm aware of.
16 Q. So as you sit here today, that's the only
17 one you know of?
18 A. Well, the -- as it's stated, a request by
19 certain decision-makers, I guess, and -- I guess
20 again going -- if I could go back to Rose Spears or
21 Valerie Burd or communications possibly with either
22 the County's attorneys or representatives from the
23 County for information that would be considered
24 ex parte that I stated earlier, I guess that would

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1 be needed to be clarified and that that would be in
2 addition to what I'm aware of here as far as
3 requests for information.
4 Q. And those requests to the County, those
5 were the requests made at the public hearing,
6 right?
7 A. Or public meetings. Not particularly
8 public meetings to which no vote or no action was
9 taken.
10 Q. Okay. But in a public forum, right?
11 A. Correct.
12 Q. Okay. Let's move up five or six lines and
13 let me direct you to the statement that says that
14 there were communications from decision-makers to
15 constituents within their respected wards, which
16 evidence a predisposition to deny the application.
17 Do you see that?
18 A. Yes.
19 Q. What information do you have to support
20 that statement?
21 A. Again, my -- I believe that this document,
22 Exhibit A of our submittal would be what's
23 reference to that.
24 Q. And by that, you mean just the letter from

1 deny the application, correct?
2 A. That I'm aware of. We've got other
3 potential people to answer as we've noted here.
4 Q. I understand.
5 A. Responsive.
6 Q. There's a phrase used after the phrase
7 we've been talking about that says the use of
8 hidden agendas.
9 What, if anything, is meant by that
10 statement?
11 A. I think the reference to the hidden
12 agendas from my perspective is in regards to the
13 bolstering of the landfill as a campaign issue.
14 Q. What do you mean by that?
15 A. I believe that the issue of a landfill
16 siting became an opportunity for those to run for
17 elected office on the single issue of opposition to
18 a landfill.
19 Q. And who are you referring to?
20 A. I'm referring to Burd, Robyn Sutcliff.
21 Certainly Burd being -- running from alderman to
22 mayor. And it would probably be more of the
23 primary one to that.
24 The others had an anti-landfill position,

1 Alderman Wolfer?
2 A. Alderman Wolfer to his constituents.
3 Q. Anything else besides that?
4 A. I don't believe so. I don't --
5 Q. And by the way, what in Alderman Wolfer's
6 letter or e-mail here evidences a predisposition to
7 deny the application?
8 A. Can I take a minute and reread it?
9 Q. Sure. And doesn't he say in there, by the
10 way, that he has not yet voted on the landfill?
11 A. He does reference that he's not voted at
12 this point on the landfill.
13 Q. Anything you --
14 A. He also notes that they have hired the
15 legal expert whose job it is to guide them through
16 the process. And I think, ultimately, they didn't
17 utilize the legal expert.
18 Q. Is there anything in there to evidence a
19 predisposition to deny the application?
20 A. On the face, I don't believe there is.
21 Q. And again, this is the only document or
22 information you're claiming that would support this
23 statement that there were communications from
24 decision-makers which evidenced a predisposition to

1 but they weren't -- it wasn't probably much of a
2 hidden agenda for them. It was pretty well known.
3 But the mayor as she processed --
4 beginning meetings from the infamous two on twos to
5 where it was a nonissue and she was looking forward
6 to seeing more and so forth to I think seeing the
7 opportunity and having it on her agenda to run for
8 mayor.
9 Q. What are the infamous two on twos you're
10 referring to?
11 A. The concern and displeasure of the public
12 that was expressed regarding the Council Members
13 meeting with Fox Moraine in meetings that were two
14 on two that they felt were meant to circumvent open
15 meetings or these smoke-filled rooms and so forth.
16 Q. Those were the meetings you set up, right?
17 A. They were meetings that I was involved in,
18 yes.
19 One of my other partners actually set the
20 meetings up and I was certainly one of the
21 attending. Fox Moraine set them up but --
22 Q. Well, what does that have to do with
23 people running on an anti-landfill agenda, as you
24 claim?

1 A. I believe the hidden agenda was -- in
2 Valerie Burd's example was that she had an interest
3 for this, hear more -- let's hear more, let's go
4 along.
5 And the opportunity was, she saw where
6 her -- the sitting mayor was and saw the
7 opportunity with -- as the groundswell came about
8 to run for mayor and use this as a campaign issue.
9 Q. Well, the documents that you have
10 produced, many of those newspaper articles say that
11 during the campaign, for example, all of the people
12 running for office said they couldn't talk about
13 the landfill, am I right?
14 A. I guess you'd have to show me that
15 specifically. I don't recall that it says that --
16 I don't recall it says that specifically.
17 Q. You don't recall any document in there
18 touching on that issue?
19 A. Not say to -- not in -- in a generalized
20 comment, it's certainly out there, but in the
21 specifics, I guess I would want you to pin that
22 down more to a specific person or --
23 Q. Well, the documents say what they say. We
24 don't have to go through all of them, but can you

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1 point me to anyone who was running for office or
2 who was a sitting Council Member who either ran on
3 an anti-landfill campaign or said I am against the
4 landfill?
5 A. Well, yeah. I think that when you look at
6 those -- again -- I should have marked it.
7 Those pages that reflect the comments
8 prior to election in the April newspaper article.
9 There are the Valerie Burds and the
10 Wally Werderichs and -- who all had comments that
11 said -- made specific comments, is there such a
12 thing as a safe State-compliant landfill. I don't
13 know. I think it's an oxymoron.
14 Well, that's a pretty aggressive statement
15 on her behalf, prejudgual -- prejudging what was to
16 come about as a final vote and inciting the public
17 to basically help -- creating a rancor amongst the
18 public and the support she needs to be elected
19 mayor in the community.
20 Q. And that article appeared two days before
21 the election, is that right?
22 A. I believe yes, it was, the 15th.
23 Q. Can you point me to any other statements
24 other than ones in that article?

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1 A. Additionally, Councilman Wally
2 Werderich -- Councilman-elect Wally Werderich -- as
3 you said, they say what they say and they're
4 inclusive in these articles that Wally Werderich
5 prior to announcing his position as an alderman for
6 the aldermanic race was the secretary/treasurer of
7 the FOGY group, had made open statements about
8 landfill and the development of a landfill in
9 Yorkville, which became part of his transition into
10 running for elected office.
11 Q. And you say those statements were
12 improper?
13 A. I believe it ultimately created bias for
14 him to then ultimately be able to vote impartially
15 as a newly elected -- one of the issues for him to
16 be as a newly elected Council person.
17 Q. How did that create bias on his part?
18 A. Well, serving as the secretary of the FOGY
19 group, which clearly their agenda is we don't want
20 a land fill in Yorkville.
21 And he was aggressively and actively
22 participating in that, attended and was part of
23 their hosting of meetings, had made statements in
24 the newspaper regarding negatives to a landfill and

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1 the negative potential development, along with his
2 statement here two days before election that I
3 don't think that a landfill is a good thing for
4 Yorkville.
5 It's a pretty prejudicial statement, I
6 think, considering a vote and the fact he hadn't
7 been the participant throughout the process as a
8 sitting Council person to hear all of the facts and
9 have to certainly anticipate that he was able to
10 catch up upon taking seat and being able to base
11 his vote on the facts and --
12 Q. Now, he resigned from the Friends of
13 Greater Yorkville organization before he announced
14 his candidacy, right?
15 A. He did.
16 Q. Any other statements you can point me to
17 other than this one newspaper article and the
18 statements you say that Mr. Werderich made before
19 he announced his candidacy?
20 MR. PORTER: I'm sorry, counsel. Vague. Any
21 statements as to what?
22 MR. DOMBROWSKI: Well, the theme we're on here
23 is people running on an anti-landfill campaign or
24 sitting members or members that were elected that

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1 made anti-landfill statements before the vote was
2 taken.
3 THE WITNESS: Well, the -- additionally, I
4 guess the statement that wasn't made, I guess, to
5 inter -- with Wally Werderich disclosing that he
6 was the secretary of -- to us or in the
7 interrogatories that he was a secretary of FOGY.
8 I guess that would be the lack of a
9 statement that's concerning as to why he wouldn't
10 have disclosed that.
11 BY MR. DOMBROWSKI:
12 Q. Well, that was public information, though,
13 wasn't it?
14 A. But if it's public, he shouldn't have been
15 bashful about releasing it either, I guess, but
16 going down, in addition, you have Arden Plocher --
17 Q. No, no, no.
18 A. You're just sticking with Wally or --
19 Q. I know the article you're referring to.
20 I'm saying, is there anything else you can point me
21 to other than this article and the precandidacy
22 days of Mr. Werderich?
23 Any other statements that you can point me
24 to regarding people taking anti-landfill positions

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1 before the vote was taken on the application?
2 MR. PORTER: Well, counsel, so we're clear, he
3 was going to go through some of the other Council
4 Members.
5 MR. DOMBROWSKI: I said other than that.
6 MR. PORTER: But you don't want him to, because
7 they're reflected in this article, correct?
8 MR. DOMBROWSKI: Right.
9 MR. PORTER: Okay.
10 THE WITNESS: Can you just repeat the question?
11 BY MR. DOMBROWSKI:
12 Q. Sure. We have the one article here that
13 appeared in the Beacon, I believe April the 15th --
14 A. Correct.
15 Q. -- as is written there. And we have the
16 statements you claim Mr. Werderich made before he
17 announced his candidacy to run for alderman.
18 My question is, is there anything else you
19 can point me to that shows that people ran on an
20 anti-landfill campaign or were somehow biased
21 against the landfill before the vote was taken on
22 the landfill application?
23 A. Additionally to statements or other
24 elements relative to --

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1 MR. PORTER: Any.
2 THE WITNESS: Well, in addition to
3 Valerie Burd, her disclosure that her campaign
4 committee was made up of not only a witness for the
5 opposition but was made up of other members of the
6 Council who were running on an anti-landfill
7 campaign, which I believe creates somewhat of
8 additional inclusive effort to run as one as they
9 called it.
10 BY MR. DOMBROWSKI:
11 Q. She's testified that she never discussed
12 the landfill with her campaign people, right?
13 A. I don't recall.
14 Q. Okay. I'm talking about public
15 statements.
16 Your perceptions may be whatever
17 perceptions you have, but I want you to point me to
18 any public statements that you are aware of that
19 supports Fox Moraine's allegation that people ran
20 on an anti-landfill campaign.
21 MR. PORTER: Counsel, you interrupted the
22 witness. He was doing that very thing.
23 And clearly, a deposition, if that's where
24 she gave that statement is a public statement. So

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1 I'd ask you to let him finish his answer.
2 BY MR. DOMBROWSKI:
3 Q. Go ahead.
4 A. Statements that were made on her part
5 regarding the members of her campaign committee, I
6 believe were incorrect and misrepresent her
7 position as to her predetermined position as a --
8 being against the landfill development.
9 It was clear by not only the members of
10 her committee and the agenda of running as one, as
11 they all had, and the statements they all made,
12 which are in this April 15th Beacon News article,
13 be it Arden Plocher, Wally Werderich, Valerie,
14 Robyn Sutcliff all had aggressive and strong
15 statements that were -- that a landfill is not a
16 good thing prior to being --
17 Q. I understand what the article says. I'm
18 asking you for any other information.
19 A. Well, all of those people were parties to
20 all of the var -- to various comments within these
21 articles.
22 And they are what they are on whatever
23 page they are in the package to which we submitted
24 for Fox Moraine answers that I believe are

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1 statements in their position -- running for their
2 position or prior to running statements against a
3 landfill being developed in Yorkville and --
4 Q. So other than what you have given us in
5 your document production, you've got no other facts
6 or information or evidence to say that these people
7 were anti-landfill, am I right?
8 MR. PORTER: Other than what's already been
9 testified to?
10 MR. DOMBROWSKI: Yes.
11 THE WITNESS: I believe that's correct.
12 BY MR. DOMBROWSKI:
13 Q. Turn to the next page.
14 A. 4?
15 Q. Yes, please. The top of Page 4, there's a
16 statement that says members of the landfill
17 opposition group FOGY, F-O-G-Y, publicly stated
18 that they believed a decision to deny the
19 application had, in fact, been made by members of
20 the City Council even before the public hearing
21 process had been completed.
22 What statements are you referring to
23 there?
24 A. With -- included in the documents that

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1 we've supplied, there are comments within the
2 public domain of newspaper or responses by the
3 members of FOGY that they felt that the position
4 and relationship, I believe, in their comments to
5 some of these -- to the members of the Yorkville
6 City Council and I think inside -- or felt
7 information -- the pulse of the way they were read,
8 I believe led us to feel or believe that they had
9 inside information as to members of their specific
10 Council and of their support team or the support
11 team to those running, they knew what their vote
12 was going to be before the process had ended.
13 Q. And you say that those statements are
14 contained in the documents you've given us?
15 A. I believe there is comments that would
16 support that.
17 Q. Any other information, facts, evidence to
18 support this statement here at the top of Page 4
19 other than what you've given us in those documents?
20 A. I don't recall other --
21 Q. Do you recall what members of FOGY
22 publicly stated this?
23 A. I do not recall.
24 Q. Do you recall which members of the City

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1 Council they said had already made their decisions?
2 A. I do not without rereading every one of
3 those.
4 Q. So there's nothing in these documents that
5 lend support to this statement? You've got no
6 other information on this, right?
7 MR. PORTER: Whoa, whoa, whoa. Read that back,
8 please.
9 MR. DOMBROWSKI: That should be an if.
10 MR. PORTER: Well, could you reask the
11 question? The question as stated doesn't make
12 sense, counsel.
13 BY MR. DOMBROWSKI:
14 Q. All right. You've mentioned that you
15 think in these documents you've given us, there are
16 articles that support this statement here at the
17 top of Page 4, correct?
18 A. Yes.
19 Q. And you've got no other information that
20 touches on this issue other than the documents
21 you've given us is what I'm getting at.
22 A. To the best of my recollection, that's
23 correct.
24 Q. If you go down a couple more lines --

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1 strike that.
2 If you go to the second to last sentence
3 of the --
4 A. On what page and what paragraph?
5 Q. Same page of the Answer to Interrogatory
6 No. 3.
7 A. Beginning with meld?
8 Q. Well, the second to the last sentence that
9 begins with moreover.
10 A. Oh, the complete -- okay.
11 Q. Where Fox Moraine's answer talks about
12 Council Members' desire and/or perceived need to
13 improperly merge and meld their legislative duties
14 with their quasi-judicial duties. Do you see that?
15 A. I see it and can I take a minute to read
16 it?
17 Q. Go ahead.
18 A. Or do you have a specific question and --
19 Q. Well, my question is, I don't understand
20 that. So can you help me out and explain what's
21 meant by this answer?
22 A. Well, I believe that the legislative
23 duties would be those which are representing their
24 constituents in the various elements of their

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1 day-to-day activities as an elected official or to
2 be a seated elected official.
3 And the quasi-judicial would be their
4 ability to separate that and be a fair, unbiased
5 quasi-judicial judge to this period.
6 I don't think they were able to separate
7 themselves from their constituents' interaction and
8 rancor and objection and obsession with the fact
9 that it's all about a landfill and it's not about
10 what they should be doing in their legislative role
11 to represent their constituents in their day-to-day
12 city activities versus their ability to be a fair
13 judge. By allowing those things to come together,
14 it tainted the process.
15 Q. Okay. Turn to the second to the last page
16 of the exhibit, if you would, please. That's your
17 signature, correct?
18 A. That looks like it.
19 Q. And you certified on behalf of Fox Moraine
20 that the interrogatory answers were true to the
21 best of your knowledge?
22 A. I did.
23 Q. What did you do to ensure that all of the
24 interrogatory answers were true?

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1 A. I would have reviewed them, I guess,
2 with -- or reviewed them myself, and if I had
3 questions, discussed with my counsel.
4 Q. And what counsel is that? Who are you
5 referring to?
6 A. That would have been Chuck Helston and/or
7 George Mueller.
8 Q. Did you do anything else?
9 A. I believe that would have -- not that I
10 recall, I guess.
11 Q. Let me refer you to Exhibit 2, which is
12 the petition for review.
13 And these pages are unnumbered, but in
14 Paragraph 5 (h), there's the allegation that the
15 action of the City Council was based on matters
16 outside the record, including ex parte contacts by
17 siting opponents and so-called independent research
18 by several Council members. What independent
19 research is meant there?
20 MR. PORTER: Objection. It calls for
21 conjecture of this witness as to what is meant by
22 the pleading.
23 You can certainly ask him if he knows of
24 any independent research of the City Council

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1 Members, but it clearly calls for conjecture.
2 MR. DOMBROWSKI: Same thing.
3 MR. PORTER: It's not the same thing, counsel.
4 I object.
5 BY MR. DOMBROWSKI:
6 Q. Do you know of any independent research
7 done by any Council Member?
8 A. As I stated prior, I discussed
9 Rose Spears --
10 Q. Okay. Other than --
11 A. -- and the contacts with Kane County.
12 MR. PORTER: Counsel, please, let him finish
13 his answer.
14 BY MR. DOMBROWSKI:
15 Q. Sorry. I'm just asking for new
16 information, not what you've already testified to
17 regarding Spears.
18 MR. PORTER: That's not what your question was,
19 counsel. Do you want to reask your question?
20 THE WITNESS: Yeah. I mean, if you could.
21 BY MR. DOMBROWSKI:
22 Q. Other than what you have already mentioned
23 about Alderman Spears, do you know of any
24 independent research by any Council Member?

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1 A. I had also discussed Mr. Munns and his
2 research with Popular Mechanics regarding
3 alternative disposal.
4 Q. Anything else?
5 A. The -- let's see. The -- I'm going to
6 respond that the combination of the ex parte
7 contacts by the siting opponents led to
8 information-sharing with Council Members in the
9 form of e-mails that were sent.
10 As I noted, Glen Poole and others as noted
11 or stated in the various minutes or recordings of
12 some of the public comment or public meetings that
13 referred to them forwarding on information to them
14 regarding landfills and sitings or specifics of the
15 landfill.
16 They'll speak for themselves as to the
17 transcripts of those meetings. I don't recall the
18 specific of that, but that would have led to it
19 being an independent research as to reviewing and
20 assessing those documents from the public.
21 And not only that, I believe there's other
22 members of the public that forwarded on information
23 regarding alternative energy.
24 Kristie Vineyard spoke and had a DVD that

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1 was out for distribution on alternative energy
2 sources, which would have led to independent
3 research and review by members of the
4 decision-making body. So those would be additional
5 examples that I have.
6 Q. Any other examples?
7 A. To the best of my recollection at the
8 moment, that's what I have.
9 Q. Who's Glen Poole?
10 A. A member of the public. An opposition
11 member. Well, let me just clarify. I'm not sure
12 if he's a FOGY member or he's just standing alone
13 as --
14 Q. This information that you say was passed
15 on to Council Members, that all was included in the
16 public record, am I correct?
17 A. Again -- or if I can -- I'm sorry, if you
18 could just clarify public record.
19 I mean, it's in a public domain. It was
20 at a Council Meeting with public comment, but the
21 public record of the landfill hearings, no.
22 Q. You're saying they were not made part of
23 the landfill record, but they were given to Council
24 Members in some other public meeting?

1 A. In an ex parte period, from the time we
2 filed to the time the hearings started, there was
3 public comment -- open comment that was allowed by
4 the city that became inciteful.
5 I mean, it -- the people were up in arms
6 about annex -- all of the issues that have come to
7 this point and what are you doing to stop this
8 landfill and I've sent you information for your
9 review and so forth where the public becomes
10 inciteful into their concern for the landfill in
11 meetings prior to a hearing to hear the merits of
12 the facts of the case that was presented in
13 December.
14 And in an ex parte period, there's public
15 record of those meetings and comments made by the
16 public and representations that they forwarded
17 information to members of the Council.
18 Q. So this wasn't secret information, this
19 was information that you say out in the public
20 domain?
21 A. It was --
22 MR. PORTER: Objection, counsel. You keep
23 mischaracterizing his testimony. He's telling you
24 that at a public hearing that was not the siting

1 hearing, there was reference to communications that
2 were sent directly to the decision-makers of the
3 siting hearing outside of the hearing process.
4 He's now answered several times. I'm
5 not -- and you keep reasking it, apparently looking
6 for a new answer. It is what it is.
7 BY MR. DOMBROWSKI:
8 Q. No. My question is, this was publicly
9 available information?
10 By that, I mean, it was identified, and if
11 someone wanted to look at it or wanted a copy, they
12 knew what to ask for, correct?
13 MR. PORTER: No, counsel.
14 MR. DOMBROWSKI: No, no, no. Let him answer
15 the question.
16 MR. PORTER: Let me make my objection.
17 MR. DOMBROWSKI: If you've got an objection,
18 make the objection.
19 MR. PORTER: I have an objection. You're
20 mischaracterizing his previous testimony. He's
21 already told you there was reference to nonpublic
22 information at those public meetings.
23 He's already said that several times and
24 you keep asking the same question trying to get him

1 to answer a different way.
2 MR. DOMBROWSKI: No. I want a clarification,
3 because I'm not clear on his answer.
4 MR. PORTER: I'll allow it one more time.
5 BY MR. DOMBROWSKI:
6 Q. Was this information that you're referring
7 to and is it fairly summarized as information that
8 you say was on alternative energy or alternative
9 waste disposal methods? Is that a fair
10 characterization?
11 A. That's some of the information. There
12 were other factors that -- I mean, the --
13 Glen Poole, as I stated, I don't recall his
14 position.
15 That might have been on ground water or
16 issues relative to why somebody should deny a
17 landfill, but it's in the public domain, his
18 comments, his reference to the document he's
19 forwarded, along with other people through those
20 processes in the public domain that said I sent to
21 or I've distributed in nonlandfill hearing
22 scenarios.
23 Kristie Vineyard as an example had made
24 reference and public comment that -- she handed out

1 DVDs for alternative energy sources or information.
2 So it's -- there's a difference, I guess,
3 between the public forum that you're asking, I
4 guess.
5 Q. Who's Kristie Vineyard?
6 A. She is one of the objectors.
7 Q. And do you know if any Council Member
8 relied on this information passed on to them by
9 these objectors in reaching their final decision?
10 A. I do not know.
11 Q. And do you know if any of that information
12 became part of the landfill record?
13 A. I believe her testimony was part of the
14 landfill record.
15 Q. We have talked to some length about
16 Alderman Spears. Let's go through the other
17 aldermen who you say were biased.
18 And other than what you've already
19 testified about, I want to ask you if you have any
20 other information to support these allegations of
21 bias and prejudice, et cetera.
22 As to Mayor Burd, you talked about her
23 leaking of the memos, correct?
24 A. Correct.

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1 Q. You say she ran on an anti-landfill
2 campaign, correct?
3 A. Correct.
4 Q. Any other information regarding Mayor Burd
5 that she was biased, prejudiced, or otherwise acted
6 improperly?
7 A. We spoke of, as well, her statements and
8 her campaign committee that was made up of -- and
9 admittedly on her part of the landfill objectors,
10 but as she failed to disclose, that one of them
11 upon questioning of who was on that was one of the
12 lead witnesses for the opposition at the landfill
13 hearings.
14 Q. What questioning was this?
15 A. In her -- she had stated these members and
16 so forth in her deposition.
17 Q. So you've reviewed her deposition?
18 A. Yes.
19 Q. And you say she made a wrong statement?
20 MR. PORTER: I'm sorry. Counsel, off the
21 record.
22 (Discussion off the record.)
23 BY MR. DOMBROWSKI:
24 Q. Are you saying she made a false statement

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1 at her deposition?
2 A. I think it was a misleading dep -- or
3 question. She didn't answer it thoroughly.
4 Q. What was the question?
5 A. She was asked who the members were of her
6 campaign committee.
7 Q. And you say she failed to identify someone
8 in her answer?
9 A. Yes.
10 Q. Who did she fail to identify?
11 A. Ed Sleezer.
12 Q. How do you spell that?
13 A. E-d, L -- or E-d, S-l-e-e-z-e-r, I
14 believe.
15 Q. And who was he?
16 A. He was a member of her campaign committee
17 and he was also one of the opposition's witnesses
18 against the landfill siting.
19 Q. Any other information regarding
20 Mayor Burd?
21 A. Regarding? Go back and refresh me what --
22 Q. Well --
23 A. -- you're chasing at.
24 Q. I want to go through the other aldermen

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1 that you've mentioned who you claim were biased
2 prejudiced, et cetera.
3 You mentioned several things about
4 Mayor Burd. My question is, can we move on to the
5 next person or have you anything additional to
6 offer about her?
7 A. As far as information or her ability to
8 impartially and fundamentally be fair with the
9 process or the decision?
10 Q. Right. That's what we're all talking
11 about.
12 A. Okay. Again, beginning with Day 1
13 annex -- or Day 1 two-on-two meetings to the
14 subsequent final vote of this, I believe she
15 actively participated as opposing the process and
16 opposing the position of Fox Moraine, whether it be
17 annexation or host agreement or siting ordinance
18 participation and her voicing local opposition to
19 how that was handled and the process for that,
20 because that wasn't correct.
21 And as you go down to the vote, which she
22 didn't participate in but yet was -- she was an
23 active member of the hearing body up until a point
24 of election, to which then, she made statements

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1 that I think impeded others' decision because of
2 her representation that there isn't such a thing as
3 a safe landfill and she's one who's been actively
4 sitting on that -- sitting in that position.
5 Q. Any other information on her?
6 A. At this point, I'd say we could move to
7 the next one.
8 Q. All right. Let me -- before we do that,
9 let me ask you about these two-on-two meetings that
10 you say were set up by Fox Moraine. When did these
11 happen?
12 A. I believe they were in August of '06.
13 Q. And who did you meet with?
14 A. We met with all eight of the Council
15 Members in meetings that were by ward. So four
16 wards, two Council Members a piece.
17 Q. So you would meet with the two aldermen in
18 Ward 1?
19 A. Correct.
20 Q. And then, the two aldermen in Ward 2?
21 A. And so on, yes.
22 Q. And then, 3 and 4?
23 A. Correct.
24 Q. And what was the purpose of the meetings?

1 A. No, that wouldn't be a fair
2 characterization that I wanted them to know my
3 position.
4 It was to -- we discussed with them the
5 process of -- first about what a landfill is but --
6 and then, the process.
7 And then, we showed them -- didn't leave
8 them with anything other than the nine criteria, I
9 believe, 439.2, but we reflected some conceptual
10 artist's renderings of -- as they requested of what
11 would it look like, what do you think here.
12 But we discussed the potential of what it
13 takes to go through a process like this to aid --
14 stem to stern and get -- and took their pulse on
15 it.
16 It didn't -- we didn't ask for any
17 decision or determination on their part to approve.
18 We just asked if they would be open-minded and if
19 that would be a consideration that they think would
20 warrant further merits to bring forward.
21 Q. And what did people say to you generally?
22 A. To all four wards and all eight people,
23 all said they were interested to see more.
24 Q. Why did you meet with them in groups of

1 A. As I had been involved in not only
2 development for a lot of years and outside the
3 environmental side, but when I've developed
4 landfill transfer stations, just operations to park
5 garbage trucks, it can be a controversial issue.
6 And the purpose was to take a pulse of the
7 Council to see if they had an interest -- given
8 some indications that we had that the County and
9 the City were not going to play nice together as
10 far as Fox Moraine maintaining a siting in the
11 County, if they would have an interest in Fox
12 Moraine proposing the project in Yorkville.
13 Q. Who was there at these meetings besides
14 yourself on behalf of Fox Moraine?
15 A. Jim Burnham.
16 Q. Anyone else?
17 A. No.
18 Q. So is it a fair characterization of
19 these -- so there were four meetings then?
20 A. That's correct.
21 Q. A fair characterization was you,
22 Fox Moraine, you said were interested in siting a
23 landfill in the city of Yorkville and we want you
24 to know what our position is?

1 two?
2 A. It was suggested that we meet with the
3 people.
4 We had determined our best way to manage
5 it and most effectively on a smaller scale and to
6 be able to have open discussion and -- with them
7 was to do it by ward.
8 And by ward, it just happened to be it was
9 two on two. And two on two is the fact that
10 Jim Burnham and I were the two representing Fox
11 Moraine.
12 So it could have been two on ten or
13 whatever, but the cities were two on two because of
14 the ward size.
15 Q. So had there been three aldermen per ward,
16 you would have met with three of them?
17 MR. PORTER: Objection. It calls for
18 conjecture.
19 THE WITNESS: It didn't matter. I guess, yeah,
20 we could have met with three.
21 BY MR. DOMBROWSKI:
22 Q. Or did you meet with them in groups of two
23 to avoid any problems with the Open Meetings Act?
24 A. I don't think that that was a primary

1 consideration. It became, I think, an issue at a
2 later point, but it wasn't our primary
3 consideration.
4 Q. But it was a consideration of yours,
5 correct?
6 A. It was at a later point but more after the
7 fact, I believe, than it was at the time we were
8 scheduling meetings.
9 Q. Well, how about before the meetings were
10 set up?
11 Was there any discussion amongst Fox
12 Moraine people that you couldn't meet with more
13 than two at a time?
14 A. I don't recall if it was prior or -- if we
15 had that discussion prior and that's how they were
16 set up or -- it seems to me it was an after the
17 fact but --
18 Q. But you knew before these meetings were
19 held that you couldn't meet with more than two at a
20 time, right?
21 A. I knew that -- I'm aware of open meetings,
22 sure, of the Meetings Act.
23 Q. Which means you cannot meet with more than
24 two at a time, right?

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1 A. That's correct.
2 Q. So -- and then, did you follow up the
3 meetings with phone calls to the individual
4 aldermen?
5 A. We had left the door -- we had some
6 conversations with some, who had additional
7 questions, some who had asked -- had called with
8 additional questions or we left it open that they
9 could call us if they had additional questions.
10 Q. But you called all eight after the
11 meetings?
12 A. I don't recall calling all eight, no.
13 Q. How about anyone else at Fox Moraine?
14 A. I can't speak for -- it would have been
15 Jim, if anybody, and I can't speak for him.
16 Q. So generally, you made your presentation
17 and people said we're of an open mind and we're
18 interested in the process and we may ask you for
19 additional information?
20 A. That's correct.
21 Q. Before we move on to the other aldermen
22 and before I forget, let me show you what's been
23 marked as Deposition Exhibit No. 4. And can you
24 tell me what this is?

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1 A. It looks to be our Answers to Yorkville's
2 Document Request, First Set.
3 Q. Take a look at the last page. That is
4 your signature, correct?
5 A. That is.
6 Q. And in this certification, you're saying
7 that the production is full and complete, correct?
8 A. I am.
9 Q. And what did you do to ensure that the
10 production was, indeed, full and complete?
11 A. I reviewed again with attorneys and I
12 guess participants for the applicant, information
13 that they had at the time to submit to the
14 attorneys for submittal of this document.
15 Q. All right. Responses 4 through 14 and
16 then -- or I guess the remainder of the responses,
17 they all basically say the same thing, right, see
18 Answers 1 and 3?
19 A. Basically.
20 Q. And then, they say as all such documents
21 show that -- or that all such documents are
22 relevant to whatever the issue is? Do you see what
23 I'm referring to?
24 A. In the response portion, are you saying,

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1 or --
2 Q. Right. For example, the response to No. 4
3 is see petitioner's response to Nos. 1 and 3, as
4 all such documents demonstrate the hearing process
5 where procedures were not fair.
6 A. I'm sorry?
7 Q. My question is, does every single document
8 in your production go to prove -- or does every
9 single document in your production touch on each of
10 these issues or is that just a sloppy
11 characterization?
12 A. I don't -- I think the characterization of
13 it being sloppy, I guess, is -- wouldn't be my
14 representation.
15 I think that it is intended to say that
16 what has been -- the documents that we've supplied
17 intended to demonstrate the fundamental fairness
18 issue.
19 Q. All right. Let's talk about the remaining
20 aldermen. We're done with Burd, right?
21 A. I believe so.
22 Q. The next one is Joe Plocher.
23 A. Okay.
24 Q. And give me all of the facts, evidence,

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1 and information you have to show that he was biased
2 or unfair, prejudiced, anything that would support
3 Fox Moraine's petition for review.
4 MR. PORTER: Objection to the extent it's
5 compound, but go ahead and answer.
6 MR. DOMBROWSKI: He knows what we're talking
7 about.
8 THE WITNESS: Joe Plocher announced his
9 candidacy -- well, he first ran for a County Board
10 position and failed at that.
11 And then, he was a participant in the
12 opposition of the landfill process and the
13 landfill.
14 And he ran for the landfill -- or ran for
15 the Council seat on an anti-landfill position, as
16 it's reflected again in the famous April 15th --
17 his comments that are made there, as well as, he
18 participated in other open meetings, to which he's
19 got statements out there, which I believe are
20 reflective in some of these documents that he was a
21 participant and supporting a FOGY stance against a
22 landfill activity in Yorkville.
23 Joe was also an active member of
24 Mayor Burd's campaign committee. And actually, he

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1 was the one that disclosed that Ed Sleezer was
2 additionally a member of Mayor Burd's campaign
3 committee, believing that his -- he, along with all
4 of the Council people at the time the vote was made
5 had a bias and had the lack of -- or couldn't make
6 a decision on the manifested weight of the evidence
7 because there was complaints certainly in their
8 position that they didn't have time to read or
9 evaluate their expert's recommendations and that
10 they weren't capable of making the decision or
11 reviewing those in time to make a decision, but
12 yet, they voted for a denial and voted for that in
13 bulk versus on an item-by-item basis or a
14 criteria-by-criteria basis.
15 So I would pool that as a bigger issue for
16 all of -- for every one of the Council Members, but
17 starting at that back, I guess, to -- if we talked
18 about Spears, Valerie didn't vote, but she was --
19 didn't have the same basis of information in front
20 of her, but Arden, that would have been a part of
21 being biased or impartial or not fundamentally fair
22 in his ability to vote, because he didn't consider
23 all the facts that were presented to him.
24 Q. You're saying he didn't consider what

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1 facts?
2 A. The hearing officer's recommendation and
3 the recommendation of the attorney representing the
4 City.
5 Q. Are you saying that's a statement he made
6 on the public record?
7 A. Yes.
8 Q. Anything else about Alderman Plocher?
9 A. No. I think he was fundamentally in
10 opposition to the landfill and took up a candidacy
11 based on that and was elected, as they called it,
12 as well referenced in articles that there was the
13 group -- there was a group of -- running on an
14 anti-landfill campaign in support of Mayor Burd.
15 Q. All right. We have the one statement that
16 appears in the April 15th newspaper article.
17 Are you aware of any other statements that
18 he's made?
19 MR. PORTER: Objection, counsel. You just
20 asked him and he already said there were other
21 statements contained in here. He also testified --
22 BY MR. DOMBROWSKI:
23 Q. Okay. In the documents you've given us --
24 fair enough.

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1 Any other statements other than those that
2 appear in the documents you've produced to us?
3 A. He had made other --
4 MR. PORTER: Again, let me voice an objection.
5 He's already referenced these public statements he
6 made in the transcript the night of the hearing
7 regarding the inability to review the record, the
8 expert's comments, and the public comment followed
9 by Fox Moraine. So --
10 MR. DOMBROWSKI: Beyond that.
11 MR. PORTER: Okay.
12 THE WITNESS: In other open public forum,
13 public comments were allowed and he spoke up
14 against that.
15 BY MR. DOMBROWSKI:
16 Q. Were those statements recorded?
17 A. I'm guessing they're either part of a
18 Council Meeting or an annexation meeting or
19 whatever. Yes, I'm guessing that they were.
20 Q. And tell me all the statements that you
21 recall that Mr. Plocher made.
22 MR. PORTER: Counsel, before you do that, I do
23 have to make a record here.
24 We have requested those documents from the

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1 City of Yorkville for the transcripts of the
2 various meetings. As a matter of fact, I saw the
3 e-mail reiterating that request by Mr. Mueller
4 recently.
5 So though we don't have those transcripts,
6 eventually, we hope to, and they will, of course,
7 be part of the record that we intend to use at
8 hearing.
9 Now, I'm sorry for interrupting. If you
10 could rephrase your question.
11 MR. DOMBROWSKI: Well, I don't know why you
12 mentioned that. That had nothing to do with the
13 question I asked him.
14 BY MR. DOMBROWSKI:
15 Q. Tell me all the statements you heard from
16 Mr. Plocher at these public forums you mentioned.
17 A. The specific recollection is -- I don't
18 have the specific recollection.
19 My -- what's emblazoned in my mind and in
20 my -- is going to be part of or is the record that
21 will show that.
22 And as I've stated with -- whether it's
23 the Glen Poole or specific meetings, there are
24 elements that we will be supporting these comments

1 made in specific, but knowing that those people
2 actively made comments in public in opposition to a
3 landfill is part of what I'm telling you at this
4 point.
5 Q. Any other information on Mr. Plocher?
6 A. I don't believe so.
7 Q. Let's move on to Robyn Sutcliff. Tell me
8 everything you have that would show she was biased,
9 prejudiced, et cetera.
10 A. Robyn again was -- actively had said that
11 she wasn't for a landfill.
12 I believe her story on the 15th said that
13 it would be a negative addition to the city and I
14 have no question about that. So her strong
15 statement prior to election and based on running on
16 an anti-landfill campaign.
17 Again, the process to which it came down
18 to a final vote, which she was a participant in,
19 the ability to be biased as a member of the group
20 running against -- campaigning against the landfill
21 or running against -- on a single issue for the
22 landfill. She had that determination in her mind
23 that she wasn't open to a landfill.
24 Q. How do you know she had that in her mind?

1 A. Well, according to her statement, she
2 doesn't think that a landfill would be a good thing
3 for Yorkville.
4 So that's -- that gives me a good
5 indication that her -- what she's telling you
6 there. I don't want a landfill.
7 Q. Any statements that she made that do not
8 appear in the documents you've given us?
9 A. I'm not aware of any statements on her. I
10 know she was -- participated with the anti-landfill
11 group, but I'm not aware of any statements that she
12 made at this point.
13 Q. Was she a member of FOGY?
14 A. I don't know that.
15 Q. How did she participate with them?
16 A. Well, I didn't say she participated with
17 FOGY. I said as an anti-landfill person.
18 She can make statements on her own or
19 oppose a landfill just as an individual. And
20 that's my belief.
21 And again, coming down to the decision and
22 the vote, her ability to render a fair vote with
23 the night of the decision even.
24 And she did not have the ability to make a

1 decision -- an informed decision based on the
2 facts. There were complaints, whether by her or at
3 that night that the Council had just received their
4 information and couldn't assess that prior to
5 voting.
6 Q. Anything else on Ms. Sutcliff?
7 A. I don't believe so.
8 MR. DOMBROWSKI: Why don't we take our last
9 break, and then, we'll finish up?
10 (A short break was taken.)
11 BY MR. DOMBROWSKI:
12 Q. Okay. Let's go back on. Before we finish
13 off with the individual aldermen, let me refer you
14 again to Exhibit 2, which is the petition for
15 review.
16 In Paragraph 5 (c), there is the
17 allegation that the post-hearing proceedings
18 employed by the City Council were not fundamentally
19 fair. What is your understanding of that charge?
20 A. I'm sorry. You said 5 (c)?
21 Q. 5 (c).
22 A. I touched a little bit with the various
23 aldermen.
24 The post-hearing and predecision position

1 of Yorkville that weren't fundamentally fair
2 related to the various findings on behalf of their
3 experts, the hearing officer, and their attorney
4 and I guess even subsequently you could say Fox
5 Moraine and our findings, statements post-hearing
6 to be reviewed prior to a vote.
7 There was in the discussion -- at the
8 decision time, there was multiple complaints about
9 the fact that it was voluminous and it wasn't fair
10 and it was arduous for them to consider that and
11 why did we pay for this expert information if we
12 aren't going to be able to consider it in our
13 decision. So I think it's fundamentally unfair and
14 part of the process that that be considered.
15 And again, they are their experts.
16 They're people they hired, trusted to put on in the
17 hearing to help them through the hearing and their
18 decisions, which actually were in conflict of their
19 final decision, manifested weight of the evidence.
20 Their position was much different than those of the
21 Council.
22 Q. But you're not saying the proceedings were
23 unfair, are you?
24 You're just saying they didn't consider

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1 what was submitted in the post-hearing proceedings?
2 MR. PORTER: Objection, counsel. Again, are we
3 getting into semantics? He just said the
4 proceedings were unfair because they didn't have
5 the opportunity to review the record and you're
6 asking the question again.
7 BY MR. DOMBROWSKI:
8 Q. All right. Now, Fox Moraine -- did Fox
9 Moraine submit something in the post-hearing
10 comment period?
11 A. We did.
12 Q. And did you spearhead putting that
13 submittal together?
14 A. No. It would have been spearheaded by the
15 attorneys and some of the engineers in putting that
16 together.
17 Q. So that would have been Mr. Varsho and
18 Mr. Moose?
19 A. Moose and counsel.
20 Q. Did you have any input or participation in
21 putting that together?
22 A. I don't believe, other than summarily
23 reviewing it, the timing, getting it filed.
24 Q. When did Fox Moraine submit that?

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1 A. I don't recall.
2 Q. Could that -- could Fox Moraine have
3 submitted that earlier?
4 A. I don't believe so. It was -- as I
5 recall, it was very voluminous. The window was
6 closing.
7 The public -- the public throughout the
8 process of this hearing put them -- put the City at
9 risk, I believe, in that they got up and
10 filibustered this thing and it almost backfired on
11 them that it got to the point where they're going
12 to run out on a decision date, they're going to
13 miss the decision date.
14 So I don't believe that by the time the
15 City voted -- or when the City voted that Fox
16 Moraine could have done anything to close out our
17 record any sooner.
18 Q. But there was a full 30-day post-hearing
19 comment period, correct?
20 A. There was but -- go ahead.
21 Q. And what was in Fox Moraine's submittal,
22 if you recall?
23 A. I don't recall.
24 Q. Was it any new information that Fox

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1 Moraine had to generate or was it just a
2 compilation of articles and already existing
3 information?
4 MR. PORTER: Objection, counsel. He just told
5 you he doesn't recall, and now, you're asking him
6 what the specifics were. It clearly calls for
7 conjecture.
8 BY MR. DOMBROWSKI:
9 Q. If you know.
10 A. I don't recall.
11 Q. Let me refer you to the next page, 5 (f).
12 It's the allegation that multiple members of the
13 City Council had disqualifying conflicts of
14 interest.
15 What's your understanding of that phrase,
16 disqualifying conflicts of interest?
17 A. Again, I believe the agendas or conflicts
18 of interest in their decision were tainted by ex
19 parte and people with other agendas who were trying
20 to influence them to vote against or to deny this
21 application.
22 Q. What's your understanding of the
23 definition here of conflicts of interest?
24 A. That you would have some sort of outside

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1 or other influence or other involvement that would
2 otherwise conflict you in this process.
3 Q. So is it another way of saying or
4 synonymous with improper ex parte contacts?
5 A. I don't know if that's the intent
6 specifically. I guess I've expressed what I
7 thought the disqualifying conflicts of interest
8 was. I guess I stand with that.
9 Q. All right. Let's move on to
10 Alderman Werderich.
11 A. Werderich?
12 Q. Yes. And tell me everything that you have
13 that supports the charge by Fox Moraine that he was
14 biased or prejudiced or prejudged the application
15 or had improper ex parte contacts, all the stuff
16 we've been talking about.
17 MR. PORTER: Same objection, compound, but go
18 ahead.
19 THE WITNESS: First of all, we talked about him
20 but --
21 BY MR. DOMBROWSKI:
22 Q. We talked about him to some extent.
23 A. I wanted to make sure I'm not losing my
24 mind.

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1 Q. Yeah.
2 A. We talked about his being the secretary
3 for the FOGY group.
4 Q. Right.
5 A. I want to make sure that --
6 Q. He's got a statement in the April 15th
7 article?
8 A. He's got a statement in the April 15th
9 article. He actively has -- or he has other
10 statements within the articles that are
11 submitted --
12 Q. Fine.
13 A. -- by Fox Moraine. I don't know if you
14 want to clarify it for the court reporter but other
15 documents as our submittal, comments of
16 Mr. Werderich, as well as failure to disclose, I
17 think, that which I said for his interrogatory, his
18 participation as secretary.
19 Q. Well, it was disclosed in the
20 interrogatories.
21 A. Well, I don't -- I either missed it then,
22 because that was something I took note of.
23 Q. Well --
24 A. As it specifically said Wally Werderich

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1 was --
2 Q. Right. And he produced his letter of
3 resignation, I believe, from December of '06.
4 A. Okay. Maybe I've missed that. I --
5 Q. Okay.
6 A. Additionally, his par -- active
7 participation in the opposition and his -- what I
8 would say again that he was exposed to.
9 And he attended meetings prior to being
10 elected where all this aggressive, rancorous
11 behavior went on by the opposition group at public
12 forums without the City ever saying sit down, shut
13 up, get out.
14 Actually, they have had the police come
15 and escort Todd Milliron out. You know, it was
16 threatened to, as well, escort others out, but they
17 never stopped the conversation prior to our public
18 record or prior to the hearing process.
19 And Werderich and those people sat in the
20 crowd. Actually, Plocher was a participant to
21 that, as well. They sat and listened to this going
22 on.
23 They were aware that they shouldn't be
24 talking about this. They were aware they were

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1 potentially looking to be elected to possibly vote
2 on this but maintain their position in the chambers
3 or at the time of these meetings.
4 Q. Let me stop you there for a second. You
5 say Werderich and Plocher attended some of these
6 nonlandfill hearing public meetings and listened to
7 Milliron and others talk against the landfill?
8 A. That's correct.
9 Q. Okay.
10 A. In addition, as stated with the others,
11 they came down to a point where this filibustering
12 went on and dragged on and on.
13 And they got to a point where they didn't
14 allow the remaining witnesses even for FOGY to
15 testify, because they -- it was going to conflict
16 with the closing of the hearing in order to get a
17 decision in time for the 180-day review.
18 Q. But there were still 23, 24 days of
19 hearing, were there not?
20 A. Certainly. Certainly. There was a long
21 hearing process to which --
22 Q. Were you there for all of them?
23 A. I was. I was. That's where the gray hair
24 is from. One of the longest I've ever been through

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1 but -- and probably most painful from the
2 standpoint of that filibustering and participation
3 and more perception than reality presentations on
4 behalf of the opposition group and so forth, but
5 Wally came down with a decision that I believe
6 couldn't have been made with the weighted evidence
7 presented, because again, they didn't have the
8 benefit of reviewing of Fox Moraine to their own
9 hired experts and hearing officer review prior to
10 making their vote.
11 And I think that that is a big part in the
12 reason that there's a difference in their hired
13 guns and experts and hearing officer's summary of
14 the proceedings versus the ultimate vote.
15 Q. All right. I think you just said that
16 some of the FOGY witnesses were not able to testify
17 because there wasn't enough time left in the
18 hearing procedure. Did I get that?
19 A. You did.
20 Q. Now, you Fox Moraine folks, you folks had
21 enough time to put on your whole case, right?
22 A. We did put on our whole case.
23 Q. Anything else about Mr. Werderich?
24 A. Again, he had a participating role with

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1 Valerie Burd in her election and was part of the
2 group running as one and it was basically on an
3 anti-landfill campaign.
4 Q. You say that it was improper that he had a
5 role in her campaign?
6 A. I believe that the message of it being an
7 anti-landfill campaign and that it was more of a
8 single-item agenda and a participation, if that
9 network of people get elected, we can defeat this
10 application.
11 And that was the support from the
12 opposition group rolled. And the opposition group,
13 remember, were people that -- a big part of those
14 people were county residents and not voting members
15 of the public, but they influenced and participated
16 to the groundswell to Yorkville residents in the
17 election to elect those that were on this that they
18 felt or knew were going to vote no on this
19 application.
20 Q. So are you saying county members should
21 not have participated in the process if they were
22 not Yorkville city residents?
23 A. I did not say that.
24 Q. That is not your position?

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1 A. That is not my position.
2 Q. Do you take issue with how they
3 participated?
4 A. I do.
5 Q. And again, you see no problem with
6 Mr. Werderich participating in now Mayor Burd's
7 campaign, you just take issue with how it was done?
8 A. I take issue with the participation of how
9 it was done and the issue that it was clustered
10 together or as a group on, I believe, a knowing
11 anti-landfill campaign.
12 Q. Other than the statements that we have of
13 record that appear in the documents you've given us
14 or in any transcripts that we have, are you aware
15 of any other statements by Mr. Werderich that he
16 was anti-landfill --
17 A. And --
18 Q. -- as you claim?
19 A. And I will go back to just the
20 clarification counsel made on those transcripts and
21 things that we don't have in front of us --
22 Q. Right.
23 A. -- but I was aware of where statements
24 were made where we will show that in further

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1 record. I believe that -- I believe I've accounted
2 for --
3 Q. Everything?
4 A. For what I can recall, yes.
5 Q. Okay. So are we done with Mr. Werderich?
6 A. I believe so.
7 Q. Just three left. How about Mr. Munns?
8 A. Marty Munns, again, subject to like the
9 rest sitting through all the rancor and proceedings
10 prior to the landfill leading up to the behavior,
11 the comments by all who participated in that that
12 potentially influences his ability to make a
13 decision based on the fundamental weight of the --
14 manifested weight of the proceedings to come.
15 Marty, as well, I believe, had ex parte
16 contacts with a gentleman named Greg Ingemunson.
17 Greg is an attorney. His father is Dallas, a
18 political -- at one point a political engine in the
19 Kendall County area tied to the waste management
20 application.
21 Greg Ingemunson also represented one of
22 the annexed properties along the way, but there was
23 expression of concern regarding Mr. Ingemun -- from
24 Mr. Ingemunson regarding Marty's approval of the

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

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

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

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

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

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

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

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

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1 hearing where all of the public took that chance
2 and the Council never objected to that, never that
3 behavior. They allowed it. He was part of that.
4 So I believe that his position would have
5 been biased in accepting that information when we
6 weren't supposed to be dealing with Fox Moraine.
7 Whatever our meeting tonight is, it is about that
8 and nothing else.
9 So then, he comes down to sit through the
10 hearings, he listens to the information, and he
11 votes on what's available to him or what he could
12 digest. And that was stated that he couldn't
13 digest his own hearing officer's information and
14 his own experts and Fox Moraine.
15 Q. So whatever he said is on the record,
16 correct?
17 A. That's correct.
18 Q. Now, you say Fox Moraine didn't have an
19 opportunity to make any presentation before the
20 landfill hearings started, which I believe were in
21 March '07 --
22 A. That's correct.
23 Q. -- is that right?
24 A. That's correct.

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1 Q. But didn't Fox Moraine's attorneys show up
2 at these public meetings before March '07 and speak
3 to the public and make presentations?
4 A. Not in the period from filing the -- not
5 on the issue of the landfill.
6 We had attorneys that attended meetings
7 that were after -- post the filing of the
8 application that were there and nonlandfill
9 attorneys, be it John Philipchuck or Vince Rosanova
10 who represented Fox Moraine on annexation or
11 legislative issues versus those of a quasi-judicial
12 issue.
13 But we didn't take on and embrace or
14 acknowledge the rancor and the filibustering about
15 a landfill because we were waiting for our day to
16 start come March.
17 Q. Now, you were a participant, obviously,
18 and the public was not, correct?
19 A. A participant in?
20 Q. In the landfill hearing?
21 A. I was not a participant.
22 Q. Fox Moraine was, though?
23 A. Fox Moraine was, yes.
24 Q. Anything else on Mr. Golinski?

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1 A. No.
2 Q. Let's move on to Mr. Leslie. Wait. One
3 thing. You said we shouldn't take Mr. Wolfer off
4 the list. What did you mean by that?
5 A. Well, my -- I believe that Mr. Wolfer --
6 his decision to resign, I believe, was because of
7 all of the rancor and craziness that was created by
8 the public.
9 I think it was a little more than he could
10 digest. And I personally believe that as he tried
11 to reach out to the public, he understood that no
12 matter how he tried to reach out and tried to
13 explain that this -- I've not made a decision, it's
14 not fundamentally fair, he didn't like all the
15 attention and phone calls and all of the craziness
16 of that process. That's not what he signed up for
17 when he ran for Council.
18 So when he resigned, there was -- that was
19 part of the story in conversation. He was
20 concerned that --
21 Q. That's speculation on your part, I assume?
22 A. No. I've had concerned conversations with
23 Mr. Wolfer that it was a lot more than he
24 anticipated.

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1 Q. Okay. All right. Let's move on to
2 Leslie.
3 A. Jason Leslie was someone that I would say
4 participated throughout the process, actually voted
5 for the annexations and the road vacation and
6 publicly has stated did that to avoid the potential
7 of a lawsuit.
8 Whether that's a fair position --
9 ultimately, it ended up with a vote for us, but
10 whether that was his fair representation, I'm not
11 sure or if he was concerned because of the City
12 being sued, but Jason Leslie, as well, went through
13 the hearing process, went through all of these
14 meetings, participated in the debates of the
15 opposition group presented at the City Council
16 meetings and open forums.
17 Q. So the same for him as to the other
18 people?
19 A. Very similar -- very same. And he came
20 down to the end of the day with a vote that he
21 voted against, again without the manifested weight
22 evidence, because he didn't have his hearing
23 officer, his experts, and Fox Moraine's information
24 to review to make his -- a fundamentally fair

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1 decision.

2 Q. All right. Other than what is in the

3 documents you've given us and the transcripts that

4 we all have or will have, anything else regarding

5 Mr. Leslie, any statements that you know of he made

6 that showed bias, prejudice, et cetera?

7 A. Not that I'm aware of.

8 Q. One other thing. Are you aware that Fox

9 Moraine has been inquiring about the City of

10 Yorkville's retention of the law firm that I work

11 for, Wildman Harrold?

12 A. I am.

13 Q. Okay. What do you know about that?

14 MR. PORTER: Objection. Vague. Go ahead and

15 answer if you can.

16 THE WITNESS: I am aware of the request for

17 review of the legal bill.

18 BY MR. DOMBROWSKI:

19 Q. Anything else?

20 A. I'm aware of a request for the timing and

21 the authority of the hiring and the scope of work.

22 Q. And is it Fox Moraine's position that

23 these issues are relevant to the appeal?

24 A. It is.

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1 Q. And why is that?

2 A. Because again, I believe that it shows

3 Valerie Burd's bias as an alderman, because at the

4 time of the activity and the meetings that she was

5 having, she was an alderman participating in the

6 hearings prior to the election.

7 And as the legal bills reflect, it's for

8 scope of services for work opposing a landfill.

9 And there's no record that the law firm was hired

10 to participate on behalf of the City for the

11 landfill and the dollars -- or the request for Fox

12 Moraine to pay that with the acknowledgment that

13 there was no authority to hire issue and no request

14 on Fox Moraine -- to Fox Moraine that they be hired

15 as an additional consideration for our

16 reimbursement and the subsequent bias that it

17 reflects and shows clearly for Mayor Burd -- well,

18 Alderman Burd at the time is the concern expressed

19 by Fox Moraine as far as I know.

20 Q. Okay. Anything else on that issue?

21 A. There may be other concerns from the

22 attorneys or from a legal perspective. That's my

23 general understanding.

24 MR. DOMBROWSKI: Okay. All right. I am done.

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1 MR. PORTER: I have a couple quick follow-ups.

2 EXAMINATION

3 BY MR. PORTER:

4 Q. There was a mention of the meeting hosted

5 by Kendall County. Was that attended by City

6 Council Members?

7 A. It was.

8 Q. There was a question regarding the

9 allegation concerning disqualifying conflict of

10 interest.

11 Could that conflict of interest include

12 running and campaigning on an anti-landfill

13 platform?

14 A. I suppose it could.

15 MR. PORTER: Nothing further.

16 MR. DOMBROWSKI: Done.

17 MR. PORTER: Are you familiar with your

18 signature rights? Do I need to explain that to

19 you? I personally recommend that you read it.

20 THE WITNESS: Read it. Yeah, I think I want to

21 read it.

22 MR. PORTER: Okay. We'll reserve.

23 (FURTHER DEPONENT SAITH NOT)

24

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1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2 FOX MORaine, LLC,)

3 Petitioner,)

4 vs.)No. PCB-07-146

5 UNITED CITY OF YORKVILLE,)

6 CITY COUNCIL,)

7 Respondent.)

8 This is to certify that I have read the

9 transcript of my deposition taken in the

10 above-entitled cause by Elizabeth L. Vela,

11 Certified Shorthand Reporter, on August 29, 2008,

12 and that the foregoing transcript accurately states

13 the questions asked and the answers given by me as

14 they now appear.

15 _____

16 CHARLES MURPHY

17 SUBSCRIBED AND SWORN TO

18 before me this ____ day

19 of _____ 2008.

20 _____

21 Notary Public

22

23

24

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1 STATE OF ILLINOIS)
 2) SS:
 3 COUNTY OF C O O K)
 4 I, Elizabeth L. Vela, a notary public within
 5 and for the County of Cook County and State of
 6 Illinois, do hereby certify that heretofore,
 7 to-wit, on the 29th day of August, 2008, personally
 8 appeared before me, at 24 North Hillside, Hillside,
 9 Illinois, CHARLES MURPHY, in a cause now pending
 10 and undetermined before the Illinois Pollution
 11 Control Board, wherein FOX MORaine, LLC is the
 12 Petitioner, and UNITED CITY OF YORKVILLE, CITY
 13 COUNCIL is the Respondent.
 14 I further certify that the said witness was
 15 first duly sworn to testify the truth, the whole
 16 truth and nothing but the truth in the cause
 17 aforesaid; that the testimony then given by said
 18 witness was reported stenographically by me in the
 19 presence of the said witness, and afterwards
 20 reduced to typewriting by Computer-Aided
 21 Transcription, and the foregoing is a true and
 22 correct transcript of the testimony so given by
 23 said witness as aforesaid.
 24 I further certify that the signature to the

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1 McCorkle Court Reporters, Inc.
 2 200 N. LaSalle Street Suite 300
 3 Chicago, Illinois 60601-1014
 4 DATE: September 17, 2008
 5 MR. GEORGE MUELLER
 6 MUELLER ANDERSON
 7 628 Columbus Street, Suite 204
 8 Ottawa, IL 61350
 9 IN RE: FOX MORaine vs. UNITED CITY OF YORKVILLE
 10 COURT NUMBER: PCB-07-146
 11 DATE TAKEN: August 29, 2008
 12 DEPONENT: CHARLES MURPHY
 13
 14 Dear Mr. Mueller,
 15
 16 Enclosed is the deposition transcript for the
 17 aforementioned deponent in the above-entitled
 18 cause. Also enclosed are additional signature
 19 pages, if applicable, and errata sheets.
 20 Per your agreement to secure signature, please
 21 submit the transcript to the deponent for review
 22 and signature. All changes or corrections must be
 23 made on the errata sheets, not on the transcript
 24 itself. All errata sheets should be signed and all
 signature pages need to be signed and notarized.
 After the deponent has completed the above, please
 return all signature pages and errata sheets to me
 at the above address, and I will handle
 distribution to the respective parties.
 If you have any questions, please call me at the
 phone number below.
 Sincerely,
 Margaret Setina Court Reporter
 Signature Department Elizabeth L. Vela
 cc: Mr. Dombrowski

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1 foregoing deposition was reserved by the witness.
 2 I further certify that the taking of this
 3 deposition was pursuant to Notice, and that there
 4 were present at the deposition the attorneys
 5 hereinbefore mentioned.
 6 I further certify that I am not counsel for nor
 7 in any way related to the parties to this suit, nor
 8 am I in any way interested in the outcome thereof.
 9 IN TESTIMONY WHEREOF: I have hereunto set my
 10 hand and affixed my notarial seal this _____ day
 11 of _____, 2008.
 12
 13
 14
 15
 16


 NOTARY PUBLIC, COOK COUNTY, ILLINOIS



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EXHIBIT G

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
FOX MORaine, LLC,)
Petitioner,)
vs.) No. PCB-07-146
UNITED CITY OF YORKVILLE,)
CITY COUNCIL,)
Respondent.)
The discovery deposition of JESSE VARSHO, taken
in the above-entitled cause, before Elizabeth L.
Vela, a notary public of Cook County, Illinois, on
the 29th day of August, 2008 at the time of
1:30 p.m. at 24 North Hillside, Hillside, Illinois,
pursuant to Notice.

Reported by: Elizabeth L. Vela, CSR
License No.: 084-003650

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11 EXHIBITS
12 NUMBER MARKED FOR ID
13
14 (NO EXHIBITS MARKED)
15
16
17
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21
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23
24

1

3

1 APPEARANCES:
2 MUELLER ANDERSON, by
3 MR. GEORGE MUELLER,,
4 628 Columbus Street, Suite 204
5 Ottawa, IL 61350
6 (815) 431-1500
7 Representing Fox Moraine, LLC,
8
9 WILDMAN, HARROLD, ALLEN & DIXON, by
10 MR. LEO P. DOMBROWSKI,
11 225 West Wacker Drive
12 Chicago, IL 60606
13 (312) 201-2562
14 Representing United City of
15 Yorkville.
16
17
18
19
20
21
22
23
24

1 (Witness sworn.)
2 MR. DOMBROWSKI: Would you state your name,
3 please, sir?
4 THE WITNESS: Jesse Varsho.
5 MR. DOMBROWSKI: Mr. Varsho, my name is
6 Leo Dombrowski. I represent the United City of
7 Yorkville in this landfill appeal. We're going to
8 be asking you some questions.
9 Do you understand we have a court reporter
10 here and she'll be taking down everything you, I,
11 and your lawyer say?
12 THE WITNESS: Yes, I understand that.
13 MR. DOMBROWSKI: Please answer audibly so that
14 she can get that down.
15 Also, let me finish my question before you
16 start answering. Is that all right?
17 THE WITNESS: That is understandable.
18 MR. DOMBROWSKI: And I will let you finish your
19 answer before I proceed on to my next question.
20 Now, if you don't understand a question,
21 would you let me know?
22 THE WITNESS: Okay.
23 MR. DOMBROWSKI: So if you don't understand it,
24 I'll rephrase it.

2

4

1 If you do answer a question, I'll assume
2 that you've understood it. Fair enough?
3 THE WITNESS: Fair enough.
4 MR. DOMBROWSKI: Are you on any type of
5 medication or anything that would prevent you from
6 giving full, complete, honest testimony today?
7 THE WITNESS: No, I'm not.
8 MR. DOMBROWSKI: Anything else that you're
9 aware of that would keep you from testifying
10 truthfully and honestly?
11 THE WITNESS: No.
12 JESSE VARSHO,
13 called as a witness herein, having been first duly
14 sworn, was examined and testified as follows:
15 EXAMINATION
16 BY MR. DOMBROWSKI:
17 Q. Let me show you what we have marked as
18 Yorkville Deposition Exhibit No. 1. Have you seen
19 that before?
20 A. Yes.
21 Q. And did you have an opportunity to go
22 through the document rider that's part of that
23 deposition notice?
24 A. I don't believe I've seen this

5

1 Attachment A.
2 Q. All right. Well, Attachment A asks for
3 documents that are relevant to this landfill
4 appeal.
5 You may know that Fox Moraine has already
6 produced documents in this appeal. I assume you
7 have nothing new to give us --
8 A. Correct.
9 Q. -- is that correct?
10 A. Yes.
11 Q. Now, what have you done to help yourself
12 remember what you're going to be testifying about
13 today?
14 A. I reviewed the articles that were part of
15 the -- excuse me. The newspaper articles that were
16 part of the submittal for Fox Moraine.
17 I also just reviewed old project file
18 notes I had on -- related to this project.
19 Q. Anything else?
20 A. No.
21 Q. Are your project notes part of the
22 landfill record, do you know?
23 A. No.
24 Q. And what's generally contained in your

6

1 project notes?
2 A. Just my old calendar.
3 Q. What was your first involvement -- or let
4 me back up. Who are you currently employed by?
5 A. I'm currently employed by Shaw
6 Environmental.
7 Q. And how long have you been with Shaw?
8 A. Over seven years now.
9 Q. And what is your current position with
10 them?
11 A. I am head of the landfill engineering
12 department.
13 Q. And what do you do as head of the landfill
14 engineering department?
15 A. Mainly, our department focuses on our
16 engineering -- excuse me. Our landfill projects.
17 Those consist of greenfill landfills,
18 landfill expansions, and closure of existing
19 landfill units.
20 My role is to oversee the work product,
21 make sure that we have appropriate quality control
22 and quality with the product, along with scheduling
23 to make sure that we have the appropriate resources
24 to finish a project in a timely basis, along with,

7

1 I do have a couple projects myself that I do
2 manage.
3 Q. Have you ever been deposed before, by the
4 way?
5 A. This will be my second deposition.
6 Q. What was the first one?
7 A. The first one was related to the Morris
8 Community Landfill in Grundy County, Illinois.
9 Q. Were you deposed as part of a landfill
10 appeal?
11 A. That was part of a pending violation case.
12 As part -- it was at the Pollution Control Board
13 level.
14 Q. There was a violation brought by the
15 Illinois EPA?
16 A. Correct.
17 Q. And what generally was the substance of
18 your testimony?
19 A. I was mainly focused on closure,
20 post-closure care funds and the landfill gas
21 collection system.
22 Q. What was your first involvement with the
23 attempt by Fox Moraine to get a landfill sited in
24 Yorkville?

8

1 A. I was first involved in the summer of 2005
2 when my boss mentioned the project and said that
3 the client was thinking about siting a landfill
4 there.
5 So I went out and took a look at the
6 property that was -- the client was interested in.
7 Q. And then, generally, tell me your
8 involvement and what you did between the summer of
9 2005 and December 1, 2006 when the application was
10 filed.
11 A. I'll try not to get into too much detail
12 here, but essentially, at that time, I was assigned
13 as the project manager on behalf of Shaw to this
14 project.
15 And that consisted of developing the team
16 or group of people that are going to be working on
17 this.
18 So really, the first step was doing a fail
19 flaw analysis to see if the landfill -- or excuse
20 me. The property was feasible to be developed as a
21 landfill.
22 And then, the next stage was to delineate
23 and start performing hydrogeologic investigation to
24 characterize the property.

9

1 And then, the next step, and these were
2 kind of sometimes done concurrently, was develop a
3 project team, select appropriate experts for the
4 other criteria besides Criteria 2, which I was
5 focussing on, and then, develop the actual siting
6 application, make sure that met with all of the
7 appropriate ordinance requirements, and then, file
8 the application, assist in preparation during
9 hearings and whatever other assistance that needed
10 to be done during the siting hearings.
11 Q. Were you the main guy at Shaw in charge of
12 the project?
13 A. Can you rephrase that question?
14 Q. Well, maybe it's easier to ask it this
15 way. What was Mr. Moose's role?
16 A. Mr. Moose was the design engineer. I
17 worked under his direction. So he signed off on
18 all of the application, but I was the project
19 manager.
20 So I was responsible for the invoicing,
21 and you know, putting together the application and
22 really the -- kind of archiving all of the
23 information for the project.
24 Q. So is it fair to say that you spearheaded

10

1 the project for Shaw?
2 A. That's probably an accurate assessment.
3 Q. You were aware that the property that was
4 to have the landfill on it that that was the
5 subject of an annexation procedure, I believe in
6 the fall of 2006?
7 A. I'm aware of that.
8 Q. Did you have any role in the annexation
9 proceedings?
10 A. No.
11 Q. What -- so once the application gets filed
12 on December 1, 2006 up until the first landfill
13 hearing, which I think is in March of '07 --
14 A. Correct.
15 Q. -- what do you do in that three or
16 four-month period?
17 A. During that 90-day period, we start
18 preparing for the hearing. So that consists of a
19 series of different tasks.
20 The first task is getting the witnesses
21 prepared, getting their PowerPoints ready, going
22 through mock hearings to make sure that they were
23 all clear on consistency.
24 One of the things we do do is make sure

11

1 that all of the other witnesses listen to the other
2 witnesses' testimony so people kind of see the full
3 picture, and then, preparing exhibits and assisting
4 the lawyers with any technical information that
5 they may need for the hearings.
6 Q. How many landfill hearings were you
7 present for?
8 A. For Fox Moraine or in -- can you rephrase
9 the question? Sorry.
10 Q. Well, I'm referring just to this.
11 A. Okay.
12 Q. Just to this appeal, just to this one
13 landfill --
14 A. All right.
15 Q. -- not your past. So how many of the
16 Yorkville landfill hearings did you attend?
17 A. It was probably over 25 or 30. You're
18 talking the individual days of hearings, correct?
19 Q. Yes.
20 A. It was over 25 hearing days, I believe.
21 Q. I think there were 24 total.
22 A. Okay. So probably 24 then.
23 Q. So you would have attended all of them?
24 A. I believe so.

12

1 Q. Now, Mr. Murphy earlier today talked about
2 public hearings that I guess were in the nature of
3 informational public meetings -- I guess hearings
4 is probably not the right word but public meetings
5 that took place prior to the beginning of the
6 landfill hearings. Did you attend any of those?
7 A. Yes.
8 Q. How many of those did you attend?
9 A. Two.
10 Q. And --
11 A. Well --
12 Q. Go ahead.
13 A. I apologize. I probably misunderstood.
14 Are you talking about public information meetings
15 that Shaw put on or public information meetings
16 that other parties put on?
17 Q. Well, let's first talk about public
18 information meetings that Shaw put on.
19 A. Okay. I attended two public informational
20 meetings that Shaw hosted.
21 Q. And where were those?
22 A. I believe those were in the Beecher Center
23 in Yorkville, Illinois.
24 Q. And when did those two meetings take

13

1 place?
2 A. The middle of November, I believe.
3 Q. So that was November 2006?
4 A. Yes, sir.
5 Q. That was before the application was filed
6 or after?
7 A. Before.
8 Q. Did Fox Moraine schedule those meetings?
9 A. Yes.
10 Q. And who attended those meetings?
11 A. On behalf of Fox Moraine or just --
12 Q. First on behalf of Fox Moraine.
13 A. There was a series of Shaw personnel, such
14 as Devin Moose, Dan Drommerhausen, along with some
15 legal counsel for Fox Moraine.
16 In addition, there was also some of the
17 project managers that were representing Fox
18 Moraine, such as Charlie Murphy and Jim Burnham.
19 Q. As far as legal counsel for Fox Moraine,
20 who was there as legal counsel?
21 A. I believe at the first meeting,
22 George Mueller and Chuck Helston. And then, I
23 believe at the second meeting, it was only
24 George Mueller.

14

1 Q. What was the purpose of those meetings?
2 A. The purpose of the meetings were to
3 provide both general information on landfills, and
4 then, also provide more site-specific information
5 on the project in itself.
6 It's something that Shaw recommends to do
7 to most of our clients. And we find that it's a
8 way that the public can get some of their questions
9 answered about the project, because they're used to
10 going to the City Council or the County Board and
11 saying, well, what's this project about.
12 And because of the unique nature of
13 landfills and the SB 172 process, the City and
14 County Board can't really answer those questions.
15 So we found that this is a way to just be
16 able to get out some information and try to address
17 some of the comments from the public.
18 Q. How long did the two meetings last?
19 A. They were approximately, I believe, three
20 hours in nature.
21 Q. Three hours each?
22 A. Yes.
23 Q. They were held in the evening?
24 A. Yes.

15

1 Q. How many people attended those meetings
2 from the public?
3 A. Based on my recollection, I believe
4 between 20 and 30 people.
5 Q. Did any City Council members attend?
6 A. I think there might have been one or two,
7 but I'm not positive on that.
8 Q. Was there any court reporter?
9 A. No.
10 Q. Any minutes or summary of the meeting
11 transcribed?
12 A. Nope.
13 Q. Did you take notes at these meetings?
14 A. No.
15 Q. Anyone at Shaw or Fox Moraine take notes?
16 A. I don't know.
17 Q. Anyone prepare a summary, do you know?
18 A. Not to my knowledge.
19 Q. And did you get questions from the public?
20 A. Yes.
21 Q. What kind of questions?
22 A. They're a wide range of questions related
23 to -- one of the common issues was storm water,
24 where you're going to discharge storm water, how

16

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1 you're going to discharge it.
2 There were questions on the liner system,
3 the geology, how we were going to fill it, property
4 values, property value protection plan, traffic.
5 Q. Now, once the application gets filed on
6 December 1, 2006, did Shaw put on any of this type
7 of public information meeting before the landfill
8 hearings got started?
9 A. No.
10 Q. Did Shaw make any type of public
11 presentation --
12 A. No.
13 Q. -- during that time period?
14 A. Sorry about that. No.
15 Q. How about Fox Moraine? Did Fox Moraine
16 make any type of public information presentation
17 during that time period?
18 A. No.
19 Q. And so once the landfill hearings get
20 started, you say you're there every night on behalf
21 of Fox Moraine, correct?
22 A. Correct.
23 Q. And once the landfill hearings are
24 finished, which was sometime in April of 2007, what

17

1 is your role at that point?
2 A. My main role was to prepare the additional
3 filings that go with the 30-day public comment
4 period.
5 Q. Anything else?
6 A. No.
7 Q. What did Fox Moraine submit in that
8 post-hearing period?
9 A. We submitted, I believe, two five-inch
10 three-ring binders. The contents were trying to
11 address some of the questions or comments that were
12 raised during the hearing process.
13 For example, we had submitted an
14 additional or supplemental storm water analysis to
15 demonstrate that the landfill could handle a
16 16.91 inch rainfall event, which was a question
17 that was raised during the hearings.
18 Q. So there were two separate Fox Moraine
19 submittals in the post-hearing comment period?
20 A. I believe they were submitted at the same
21 time and were considered one submittal.
22 Q. And at what point during that 30-day
23 period was that submitted?
24 A. Towards the end.

18

1 Q. Why did it take you so long to get that on
2 file?
3 A. Well, the sheer volume of analysis that
4 went into it.
5 Again, it was two four-inch three-ring
6 binders to rerun the analysis, whether it was the
7 storm water -- I also recollect there was also
8 slope stability. It just took that length of time
9 to perform.
10 Q. What was the other one besides the storm
11 water?
12 A. Slope stability.
13 Q. Am I right that most of the submittal,
14 though, was simply copies of articles that were
15 available in the public domain?
16 A. I can't recall.
17 Q. Who did the storm water analysis?
18 A. That was done under my direction.
19 Q. That was done in-house at Shaw?
20 A. Correct.
21 Q. How about the slope analysis?
22 A. It was also done in-house under my
23 direction.
24 Q. Any other work done by Shaw as part of

19

1 that post-hearing submittal?
2 A. I can't recall at this time.
3 Q. Once the 30-day post-hearing comment
4 period ends, which is sometime in May, do you still
5 have any role at that point?
6 A. From a practical standpoint, no.
7 Q. So since May of '07 to today, you haven't
8 done anything regarding the landfill or the
9 proposed landfill?
10 A. The only thing I really have done was
11 Chuck Helston, which is counsel for Fox Moraine
12 requested any information related to -- you know,
13 for the appeal.
14 And I provided him my newspaper archived
15 files for the project.
16 Q. And how did you keep that archived?
17 A. Through a couple different mechanisms.
18 One thing is, we get the local -- or at least I get
19 the local paper. So I, you know, just clip the
20 files.
21 We also have a newspaper clipping service
22 that Shaw uses that clips out landfill-related
23 articles.
24 So between those two different mechanisms,

20

1 I just keep them in a file in chronological order
2 per project.
3 Q. When did Mr. Helston ask you for this?
4 A. I can't recall.
5 Q. But at some point, you recall he called
6 you up and said give me your file or what does he
7 ask for?
8 A. I believe he asked for the newspaper
9 article archive.
10 I work with him on several landfill
11 projects. So I sometimes get mixed up which -- the
12 time frame for which project. I apologize.
13 Q. I got it. All right. Let me show you
14 what we have marked as Exhibits 3 and 4.
15 These are -- well, first off, let me ask
16 you, have you seen these before?
17 A. Yes, I have.
18 Q. And how did you come to see these?
19 A. They were forwarded on to me by legal
20 counsel for Fox Moraine.
21 Q. Did you get draft versions, as well?
22 A. No.
23 Q. Did you provide any input into preparing
24 answers to these?

1 A. No.
2 Q. Let me show you on Exhibit No. 3,
3 Interrogatory No. 1, which reads with regard to
4 each interrogatory and document request, identify
5 each person who supplied information or documents.
6 And you are one of the people listed,
7 correct?
8 A. Yes.
9 Q. And we have just talked about you -- you
10 supplied documents, which was your newspaper
11 archive?
12 A. Yes.
13 Q. Did you supply any other documents?
14 A. No.
15 Q. Did you supply any information?
16 A. Does --
17 MR. MUELLER: In addition to the newspaper
18 archive?
19 THE WITNESS: Just verbal communication.
20 BY MR. DOMBROWSKI:
21 Q. Take a look, if you would, at this
22 Exhibit 3 and specifically -- well, if you look at
23 the bottom of Page 2, the last sentence there,
24 which is part of the answer to Interrogatory No. 2,

1 it says petitioner may call four people to testify
2 as to the subject matter listed in this
3 Interrogatory No. 2.
4 And you're one of the people listed there,
5 right?
6 A. That is correct, sir.
7 Q. Have you been asked to -- strike that.
8 Let me ask you this first.
9 Do you know that there's been a hearing
10 scheduled in this matter?
11 A. Yes.
12 Q. And do you know when that's scheduled for?
13 A. I think it got rescheduled. So I'm not
14 exactly sure of the exact date.
15 Q. Have you been asked to keep your calendar
16 clear so that you'll be able to testify as a
17 witness at that hearing?
18 A. Not at this time.
19 Q. You haven't been approached at all or
20 requested at all to appear as a witness?
21 A. Not at this time.
22 Q. Do you expect to be called as a witness?
23 A. I don't know.
24 Q. Well, if you would take a minute to look

1 at the list of items on Page 2 and also Pages 3 and
2 4.
3 And I'd like to ask you some questions
4 regarding whether you have any information on these
5 issues.
6 And generally, the issues listed on this
7 Page 2 are allegations made by Fox Moraine in this
8 landfill appeal.
9 A. Starting with one up here?
10 Q. Right. And the general nature of my
11 questions is going to be do you have any
12 information or facts or evidence that would lend
13 support to the allegations made here by Fox
14 Moraine.
15 A. Okay.
16 Q. Have you gone through them?
17 A. Yes, I have.
18 Q. All right. Beginning with the first one
19 on Page 2, have you any information, facts, or
20 evidence that would support the allegation that the
21 landfill hearing was not conducted in accordance
22 with Section 39.2 of the Environmental Protection
23 Act?
24 A. No.

1 Q. And you're familiar with the criteria,
2 correct, in Section 39.2?
3 A. The nine criteria, and then, the unspoken
4 tenth one?
5 Q. Yes.
6 A. Yes, I'm aware of those.
7 Q. And also, the other things in
8 Section 39.2?
9 A. I believe so.
10 Q. How about No. 2, anything that would
11 support that the vote taken by the Yorkville City
12 Council was not taken in accordance with
13 Section 39.2?
14 A. Yes.
15 Q. And what have you to say about that issue?
16 A. I think there's several statements that
17 were provided by the City Council that suggest that
18 the requirements of Section 39.2 were not observed.
19 The first one is, at the deliberation
20 meetings, hearings, whatever you want to call those
21 that were done at the end of May right before the
22 vote on the landfill application, several aldermen,
23 mainly Besco and I believe Munns made statements
24 that they had not had enough time to review

25

1 everything that was in the public record, mainly
2 the information that was filed during the 30-day
3 post-hearing public comment period, along with some
4 of the memorandums and -- I don't know if they're
5 memorandums or findings of fact or how you want to
6 characterize them that were submitted by both the
7 hearing officer and the consultants hired by the
8 city of Yorkville to review the application.
9 In addition, statements were made mainly
10 by Alderman Burd during those deliberations that
11 stated that she based her opinions on facts that
12 were not in the record.
13 Mainly, she stated that the application
14 did not meet Criteria 2 because the underground
15 storage tank was not out of a certain type of
16 material.
17 The issue with that is, the application
18 did not propose an underground storage tank at all
19 in any part of the landfill or adjacent ancillary
20 facilities.
21 Q. Could Fox Moraine have submitted its
22 post-hearing materials any earlier?
23 A. Not without doing the required quality
24 control/quality assurance that you need on

26

1 engineering documentation. So no.
2 Q. Not even a day or two earlier?
3 A. I don't believe so, no.
4 Q. Because as I recall, Fox Moraine submitted
5 its post-hearing materials on the last day of the
6 comment period. Do you recall that or no?
7 A. I can't recall that.
8 Q. Anything else to offer on this issue here?
9 A. No.
10 Q. How about Issue 3, that the City Council
11 failed to comply with its local siting ordinance?
12 A. No.
13 Q. No. 4, that the hearing procedures and
14 the -- I believe that's supposed to read siting
15 procedures employed by the City Council were not
16 fundamentally fair?
17 A. Yes.
18 Q. And what fact -- facts, evidence, or
19 information do you have regarding that?
20 A. Well, I think you have to look at the
21 procedures that happened prior to the filing of the
22 application, meetings that occurred between the
23 90-day filing of the application and the public
24 hearings and even during the public hearings

27

1 themselves, starting with -- the first item was,
2 during the annexation process, the City Council,
3 specifically the Mayor allowed petitioners to come
4 up and voice their concerns related to the
5 landfill.
6 And it was fundamentally unfair, because
7 Fox Moraine did not have the same opportunity to
8 come up and say whether that information was fair
9 or not.
10 Essentially, the opposition group got a
11 first shot, no holds barred opportunity to voice
12 their displeasures and even submit disinformation
13 about landfills in this process prior to even going
14 to filing the application. And then, even -- go
15 ahead.
16 Q. Let me stop you there. Well, why didn't
17 Fox Moraine take an opportunity to rebut what these
18 people were saying?
19 A. I don't believe we had the opportunity
20 during the -- during the meetings for the
21 annexation to even discuss that.
22 Q. Were you present at any of these meetings?
23 A. Yes.
24 Q. I thought you said you weren't.

28

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

29

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

30

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

31

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

32

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

33

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

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

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

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1 Q. And as it turned out, he withdrew, I
2 believe, his name for consideration?
3 A. I believe so.
4 Q. Was there anything improper about pointing
5 out these conflicts of interest?
6 A. I think the manner that he went about it
7 was improper.
8 Q. How should he have done it in your
9 opinion?
10 MR. MUELLER: You know, I'm going to interpose
11 an objection at this point of relevance, which is
12 that the witness' knowledge is obviously based upon
13 his attendance at some public meetings.
14 And you're asking him about his personal
15 impressions of what was right and wrong at those
16 meetings.
17 His impressions are pretty much
18 irrelevant. He's not the one that's going to write
19 the brief.
20 And I think unless you ask him about
21 knowledge that he has that's unique to him or not
22 based upon observations of things that are part of
23 the record, it doesn't matter.
24 I mean, I'm just saying, you know, to

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1 shorten it up, just ask him is there anything that
2 he knows other than just his subjective impressions
3 of, you know, what occurred at meetings, because
4 his impressions are not going to control the
5 arguments that Fox Moraine makes, or for that
6 matter, the response that the City is going to make
7 at the hearings.
8 Those meetings were what they were. We're
9 both going to be free to argue the implications of
10 them. And Jesse Varsho's impression frankly
11 doesn't matter a whit.
12 MR. DOMBROWSKI: Well, I see your point, but I
13 think the facts and anything he perceived also kind
14 of spills over into what he thought of them, but
15 I'll try to shorten this up.
16 MR. MUELLER: No, I'm not telling him not to
17 answer, Leo.
18 MR. DOMBROWSKI: No, I understand.
19 MR. MUELLER: Because I don't think it's
20 harmful. I just think that we're going into an
21 area that's not likely to lead to anything.
22 MR. DOMBROWSKI: No, I understand your point
23 but --
24 MR. MUELLER: Okay.

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1 MR. DOMBROWSKI: What I wanted to do here is
2 discover any information that Mr. Varsho has that
3 he thinks supports the allegations of the petition
4 for review.
5 BY MR. DOMBROWSKI:
6 Q. So we were talking about the claims that
7 Mr. Blazer made about the proposed hearing officer.
8 And who is Mr. Burnham, by the way?
9 A. He was someone that was hired by Fox
10 Moraine to help work on the project. I don't know
11 what his official title was.
12 Q. Is he an employee of Fox Moraine?
13 A. He's a consultant to Fox Moraine.
14 Q. All right. We've exhausted the issue of
15 the backroom deals as you put it?
16 A. Correct.
17 Q. And you also said Mr. Blazer gave legal
18 advice to the City Council?
19 A. He offered to provide a list of hearing
20 officers he believed would be unbiased in this
21 case.
22 Q. Anything wrong with doing that?
23 A. I think it was poor judgment but not
24 illegal.

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1 Q. All right. Does that take us through the
2 90-day period?
3 A. I believe so.
4 Q. All right. So now, we're into the
5 landfill hearings.
6 And was there anything at the landfill
7 hearings that rendered the proceedings
8 fundamentally unfair?
9 A. I think the biggest issue was that you had
10 several members who were on the City Council that
11 listened to the case that did not vote on the
12 application where -- yet several members that at
13 the time the hearings went through, you know, were
14 in the public -- you know, appeared to be part of
15 the FOGY group and they ended up voting on the
16 application.
17 Q. Well, what's wrong with that?
18 A. They were biased towards the process and
19 the evidence during the process.
20 Q. Well, Fox Moraine filed its application
21 four, five months before the election, right?
22 A. Yes.
23 Q. So it was certainly possible that some
24 people who were City Council members on the day the

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1 application was filed wouldn't be voting on the
2 application because they might be voted out of
3 office, right?
4 A. Correct.
5 Q. So why did that change after the election
6 render the proceedings unfair?
7 A. Well, here's why it's fundamentally
8 unfair.
9 The people that were part of the FOGY
10 group and had already, you know, made their
11 decision prior to the hearing did not excuse
12 themselves from the vote. They voted no on the
13 application.
14 Q. How do you know they made their decisions
15 on the application before the hearing had been
16 completed?
17 A. You know, just, you know, the fact that
18 they showed up to the hearing to fight the
19 landfill, I think shows bias.
20 Q. All right. What members are you referring
21 to and what actions did these members take?
22 A. The first one is Wally Werderich. You
23 know, he attended several -- let me step back.
24 I know of at least one instance where he

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1 attended a FOGY meeting prior to the public hearing
2 where he spoke and tried to elicit advice on how to
3 fight the landfill.
4 Q. How do you know that?
5 A. I attended the meeting.
6 Q. Where was the meeting?
7 A. I believe the meeting was in the old
8 Kendall County Courthouse.
9 Q. And what was the date of that meeting?
10 A. It was in the fall of 2006.
11 Q. So this was before the application was
12 filed?
13 A. Correct.
14 Q. And at this point, I believe Mr. Werderich
15 was a FOGY member, right?
16 A. I believe so.
17 Q. And what did he say at this meeting?
18 A. He was trying to organize and figure out
19 ways to attack and defeat the landfill.
20 Q. When you say he was looking for ways to
21 defeat the landfill, what do you mean?
22 A. He talked about legal strategies,
23 fundraising, because they would need funds to hire
24 expert witnesses.

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1 Q. And who was at this meeting?
2 A. Besides myself?
3 Q. Yes.
4 A. There were -- I would probably say, you
5 know, probably over 20 other, you know, public
6 members.
7 Q. Who called the meeting or who scheduled
8 it?
9 A. FOGY.
10 Q. Why were you there?
11 A. Because I wanted to see what they were
12 saying. It was an open meeting to the public.
13 Q. Anything else on Mr. Werderich?
14 A. No.
15 Q. Anyone else who you claim prejudged the
16 application?
17 A. I believe the gentleman's name was
18 Joe Plocher.
19 Q. What's up with him?
20 A. He made numerous statements at the
21 annexation meetings before we filed, during the
22 reannexation meeting, after we filed, you know,
23 against the landfill.
24 Q. And he just said generally I'm against the

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1 landfill?
2 A. You know, the landfill is going to leak
3 and contaminate the groundwork supply. It's going
4 to affect property values.
5 Q. Anyone else other than those two?
6 A. Those are the most that I can recall at
7 this time.
8 Q. So no one else?
9 A. Correct.
10 Q. Anything else that you claim rendered the
11 landfill hearings fundamentally unfair?
12 A. No.
13 Q. All right. Let's move on to No. 5, which
14 is that the post-hearing proceedings were also
15 fundamentally unfair.
16 A. I think I mentioned this previously but
17 just the statements by some of the City Council
18 members that I had mentioned before that they had
19 not had the -- enough time to review the memos from
20 the hearing officer, the City Council expert or
21 consultants or some of the material that was filed
22 during the 30-day public comment period.
23 Q. Anything else other than they didn't have
24 enough time?

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1 A. No.
2 Q. How about the next one, No. 6, which
3 alleges that decision-making procedures employed by
4 the City Council during the course of its
5 deliberations were fundamentally unfair?
6 A. No.
7 Q. All right. 7 says that various members of
8 the City Council were biased against Fox Moraine.
9 Anything to add other than what you've
10 already testified to?
11 A. No.
12 Q. 8 talks about prejudging the application.
13 And you've talked about that. Anything new to add?
14 A. No.
15 Q. 9 talks about various members of the City
16 Council tainting the collective decision-making
17 process as a whole.
18 Anything to add there other than what
19 you've already talked about?
20 A. No.
21 Q. How about 10, which alleges that various
22 members of the City Council had disqualifying
23 conflicts of interest?
24 A. I think as I discussed before about the,

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1 you know, members that were elected on after the
2 hearing process that, you know, ran an election
3 campaign on -- you know, an anti-landfill campaign.
4 Q. Well, how do you define the term conflicts
5 of interest?
6 A. I term --
7 MR. MUELLER: I'm just going to object based on
8 relevance here. If you can -- and also, I think
9 you're asking for a legal conclusion. Jesse, if
10 you can answer it, go ahead.
11 THE WITNESS: I would define it as there's two
12 different interests that you are a part of that,
13 you know, would conflict each other so that you
14 can't attain both interests.
15 BY MR. DOMBROWSKI:
16 Q. Okay. Fair enough. So you think that for
17 example, Mr. Werderich being a former member of
18 FOGY irretrievably tainted his decision-making
19 process?
20 A. Correct.
21 Q. Anything else on 10?
22 A. No.
23 Q. How about 11, that the vote by the Council
24 on the application was not based upon the evidence?

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1 A. Yes, I think I had discussed about some of
2 the statements that were made by the City Council
3 during the deliberations prior to the vote.
4 In addition, during the hearing process,
5 there was a City Council member -- I believe it was
6 Marty Munns, who stated that he was reviewing a
7 Popular Science magazine on alternate waste
8 technologies, again outside the record.
9 Q. Okay. And the -- when you referred to
10 statements during the deliberations, you meant the
11 one statement by Mayor Burd about the underground
12 storage tank?
13 A. That was one of them. An additional one
14 was -- I believe it was Mr. Plocher stated that he
15 couldn't vote on this application because his
16 brother had asthma and he couldn't come to heart
17 with that.
18 Q. Any other statements?
19 A. No.
20 Q. All right. As far as the second part of
21 No. 11, it talks about the Council basing its
22 decision on matters outside the record.
23 Do you have any facts, evidence, or
24 information other than Mr. Munns reading this

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1 article in Popular Science.
2 A. Well, the statement made by Ms. Spears
3 about there's the material -- the underground
4 storage material wasn't compatible with landfill
5 leachate.
6 Q. Was that the statement you had mentioned
7 earlier?
8 A. Yes.
9 Q. I thought you said Mayor Burd made that.
10 A. Oh, I apologize. I misspoke then. Sorry
11 about that.
12 Q. It was --
13 A. It was Ms. Spears.
14 Q. All right. How about the last one, that
15 members of the City Council had prejudicial
16 ex parte contacts with other participants in the
17 hearing process?
18 A. Nothing that -- besides what I've already
19 discussed today.
20 Q. Let me refer you to just a couple other
21 things also here in Exhibit 3 on Page 3.
22 And we've already talked about many things
23 that are touched on here. I want to refer you to
24 the sentence about two-thirds of the way down that

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1 begins with in addition, petitioner's response
2 includes.
3 And that's referring to the documents, the
4 newspaper articles, communications from
5 decision-makers to constituents within their
6 respective wards, which evidence a predisposition
7 to deny the application.
8 I didn't see anything in there that
9 touches on this issue. Can you recall anything?
10 A. Not at this time.
11 Q. Look at the last two lines. It talks
12 about the request by certain decision-makers,
13 meaning the City Council for ex parte input from
14 the public outside the hearing process.
15 Do you have any information on which of
16 the City Council members might have asked for
17 ex parte input?
18 A. I can't recall anything at this time.
19 Q. At the top of the next page -- and I've
20 been through the documents that Fox Moraine has
21 produced.
22 This talks about FOGY members who may have
23 publicly stated a reason to believe that a decision
24 to deny the application had already been made by

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1 some members of the City Council before the hearing
2 process had been completed.
3 Do you have any facts, information,
4 anything that touches on this issue?
5 A. Nothing that I re -- nothing that I can
6 recall at this time.
7 Q. And again, you were not provided with a
8 draft of these interrogatory answers before they
9 were final, is that right?
10 A. That is correct.
11 Q. Did you ever contact any City Council
12 members regarding the application?
13 A. No.
14 Q. Do you know of anyone at Fox Moraine or on
15 behalf of Fox Moraine contacting a City Council
16 member?
17 A. During what time period?
18 Q. During any time period regarding the
19 application or proposed landfill.
20 A. No.
21 Q. Have you got anything else to add
22 regarding anything you perceived that touches on
23 these issues of bias or prejudgment or prejudice or
24 these different things we've been talking about?

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1 A. No.
2 MR. DOMBROWSKI: All right. Let's take a
3 break, I'll look at my notes, and we may be done.
4 (A short break was taken.)
5 BY MR. DOMBROWSKI:
6 Q. All right. Mr. Varsho, you said you don't
7 know whether or not you'll be asked to testify as a
8 witness at the October hearing, correct?
9 A. Correct.
10 Q. If you are asked to testify as a witness
11 at that hearing, can you think of any reason why
12 your testimony at that hearing would be different
13 than what you've testified to today?
14 A. I don't know. I've never been part of a
15 PCB hearing so --
16 Q. Well, I imagine the issues would be -- at
17 least some of the issues would be regarding what
18 we've talked about today.
19 The reason for my question is, I just want
20 to be sure you're not keeping anything back,
21 withholding any information regarding the issues
22 we've talked about today. And I assume you
23 haven't, correct?
24 A. Correct.


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1 MR. DOMBROWSKI: Okay. I'm done.
2 MR. MUELLER: We'll reserve signature.
3 (FURTHER DEPONENT SAITH NOT)
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1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
 2 FOX MORaine, LLC,)
 3 Petitioner,)
 4 vs.)No. PCB-07-146
 5 UNITED CITY OF YORKVILLE,)
 6 CITY COUNCIL,)
 7 Respondent.)
 8 This is to certify that I have read the
 9 transcript of my deposition taken in the
 10 above-entitled cause by Elizabeth L. Vela,
 11 Certified Shorthand Reporter, on August 29, 2008,
 12 and that the foregoing transcript accurately states
 13 the questions asked and the answers given by me as
 14 they now appear.
 15 _____
 16 JESSE VARSHO
 17 SUBSCRIBED AND SWORN TO
 18 before me this _____ day
 19 of _____ 2008.
 20 _____
 21 Notary Public
 22
 23
 24

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1 foregoing deposition was reserved by the witness.
 2 I further certify that the taking of this
 3 deposition was pursuant to Notice, and that there
 4 were present at the deposition the attorneys
 5 hereinbefore mentioned.
 6 I further certify that I am not counsel for nor
 7 in any way related to the parties to this suit, nor
 8 am I in any way interested in the outcome thereof.
 9 IN TESTIMONY WHEREOF: I have hereunto set my
 10 hand and affixed my notarial seal this _____ day
 11 of _____, 2008.
 12
 13
 14
 15
 16

 17 _____
 18 NOTARY PUBLIC, COOK COUNTY, ILLINOIS
 19
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1 STATE OF ILLINOIS)
 2) SS:
 3 COUNTY OF C O O K)
 4 I, Elizabeth L. Vela, a notary public within
 5 and for the County of Cook County and State of
 6 Illinois, do hereby certify that heretofore,
 7 to-wit, on the 29th day of August, 2008, personally
 8 appeared before me, at 24 North Hillside, Hillside,
 9 Illinois, JESSE VARSHO, in a cause now pending and
 10 undetermined before the Illinois Pollution Control
 11 Board, wherein FOX MORaine, LLC is the Petitioner,
 12 and UNITED CITY OF YORKVILLE, CITY COUNCIL is the
 13 Respondent.
 14 I further certify that the said witness was
 15 first duly sworn to testify the truth, the whole
 16 truth and nothing but the truth in the cause
 17 aforesaid; that the testimony then given by said
 18 witness was reported stenographically by me in the
 19 presence of the said witness, and afterwards
 20 reduced to typewriting by Computer-Aided
 21 Transcription, and the foregoing is a true and
 22 correct transcript of the testimony so given by
 23 said witness as aforesaid.
 24 I further certify that the signature to the

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1 McCorkle Court Reporters, Inc.
 2 200 N. LaSalle Street Suite 300
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 4
 5 DATE: September 17, 2008
 6 MR. GEORGE MUELLER
 7 MUELLER ANDERSON
 8 628 Columbus Street, Suite 204
 9 Ottawa, IL 61350
 10 IN RE: FOX MORaine vs. UNITED CITY OF YORKVILLE
 11 COURT NUMBER: PCB-07-146
 12 DATE TAKEN: August 29, 2008
 13 DEPONENT: JESSE VARSHO
 14
 15 Dear Mr. Mueller,
 16
 17 Enclosed is the deposition transcript for the
 18 aforementioned deponent in the above-entitled
 19 cause. Also enclosed are additional signature
 20 pages, if applicable, and errata sheets.
 21 Per your agreement to secure signature, please
 22 submit the transcript to the deponent for review
 23 and signature. All changes or corrections must be
 24 made on the errata sheets, not on the transcript
 itself. All errata sheets should be signed and all
 signature pages need to be signed and notarized.
 After the deponent has completed the above, please
 return all signature pages and errata sheets to me
 at the above address, and I will handle
 distribution to the respective parties.
 If you have any questions, please call me at the
 phone number below.
 Sincerely,
 Margaret Setina Court Reporter
 Signature Department Elizabeth L. Vela
 cc: Mr. Dombrowski

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