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ILLINOIS POLLUTION CONTROL BOARD

COUNTY OF KANKAKEE AND EDWARD)	
D. SMITH, STATE'S ATTORNEY OF)	
KANKAKEE COUNTY,)	
)	
Petitioners,)	PCB 03-31
)	
vs)	
)	
CITY OF KANKAKEE, ILLINOIS, CITY)	
COUNCIL, TOWN & COUNTRY UTILITIES,)	
INC., AND KANKAKEE REGIONAL LANDFILL,)	
LLC.,)	
)	
Respondents,)	
_____)	
BYRON SANDBERG,)	
)	
Petitioner,)	PCB 03-33
)	
vs)	
)	
CITY OF KANKAKEE, ILLINOIS, CITY)	
COUNCIL, TOWN & COUNTRY UTILITIES,)	
INC., AND KANKAKEE REGIONAL LANDFILL,)	
LLC.,)	
)	
Respondents,)	
_____)	
WASTE MANAGEMENT OF ILLINOIS., INC.,)	
)	
Petitioner,)	PCB 03-35
)	
vs)	
)	
CITY OF KANKAKEE, ILLINOIS, CITY)	
COUNCIL, TOWN & COUNTRY UTILITIES,)	
INC., AND KANKAKEE REGIONAL LANDFILL,)	
LLC.,)	
)	
Respondents.)	

1 The following is a transcript held in
2 the above-entitled cause before HEARING OFFICER
3 BRADLEY P. HALLORAN, taken stenographically before
4 TERRY A. STRONER, CSR, a notary public within and
5 for the County of Cook and State of Illinois, at 800
6 North Kinzie Street, Bradley, Illinois, on the 4th
7 day of November, A.D., 2002, scheduled to commence
8 at 9:00 o'clock a.m., commencing at 9:20 o'clock
9 a.m.

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1 A P P E A R A N C E S:

2 ILLINOIS POLLUTION CONTROL BOARD,
3 100 West Randolph Street
4 Suite 11-500
5 Chicago, Illinois 60601
6 (312) 814-8917
7 BY: MR. BRADLEY P. HALLORAN, HEARING OFFICER

8 HINSHAW & CULBERTSON,
9 100 Park Avenue
10 Rockford, Illinois 61101
11 (815) 963-8488
12 BY: MR. RICHARD S. PORTER

13 Appeared on behalf of the People of
14 Kankakee,

15
16 STATE'S ATTORNEYS OFFICE OF THE KANKAKEE COUNTY,
17 450 East Court Street
18 Third Floor
19 Kankakee, Illinois 60901
20 (815) 937-2930
BY: MR. EDWARD D. SMITH

Appeared on behalf of the People of
Kankakee County,

LAW OFFICES OF GEORGE MUELLER, P.C.,
501 State Street
Ottawa, Illinois 61350
(815) 433-4705
BY: MR. GEORGE MUELLER

Appeared on behalf of Town & Country,

20

21 LAW OFFICES OF KENNETH A. LESHEN,
One Dearborn Square
Suite 550
22 Kankakee, Illinois 60901
(815) 933-3385
23 BY: MR. KENNETH A. LESHEN

24 Appeared on behalf of the city of Kankakee,

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1 PEDERSEN & HOUPPT,
161 North Clark Street
2 Suite 3100
Chicago, Illinois 60601
3 (312) 261-2149
BY: MR. DONALD J. MORAN

4 Appeared on behalf of Waste Management,
5 Inc.,

6 ALSO PRESENT: Mr. Byron Sandberg appeared on behalf
of himself.
7 Members of the public were also
8 present.

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1 HEARING OFFICER HALLORAN: Good
2 morning everyone. Can you all hear me in the back
3 of the room? My name is Bradley Halloran. I'm the
4 hearing officer with the Illinois Pollution Control
5 Board. I'm also assigned the hearing officer for
6 this matter and it's entitled a rather long caption,
7 it's a consolidated matter, County of Kankakee and
8 Edward D. Smith, State's Attorney of Kankakee
9 County, petitioners, versus City of Kankakee,
10 Illinois, City Council, Town & Country Utilities,
11 Inc., and Kankakee Regional Landfill, LLC.; Byron
12 Sandberg, petitioner, versus the City of Kankakee,
13 Illinois, City Council, Town & Country Utilities,
14 Inc., and Kankakee Regional Landfill, LLC.,
15 respondents; Waste Management of Illinois, Inc.,

16 petitioner, versus City of Kankakee, Illinois, City
17 Council, Town & Country Utilities, Inc., and
18 Kankakee Regional Landfill, LLC, respondents.
19 These are consolidated matters, PCB 3-31, 3-33 and
20 3-35, respectively.

21 This hearing was scheduled to take
22 place today at 9:00 a.m., however, the city of
23 Kankakee is not present, but we do have concerns
24 that some of the public wished to testify and they

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1 want to get in and out so they're not late for work.

2 With that said, we're going to
3 continue. It's November 4th, 2002, at approximately
4 9:20 a.m. We do have members of the public present.
5 We also have a member of the Pollution Control Board
6 present. She's not a member, but an employee.
7 She's a public relations specialist. Any questions
8 you may want to ask during the hearing, she is
9 standing in the back of the room with her hand
10 raised. She also has some information packets if
11 you'd like to peruse those as well.

12 This hearing has been scheduled in

13 accordance with the Illinois Environmental
14 Protection Act and the Pollution Control Board rules
15 and procedures. It will be conducted according to
16 the procedural rules found at Section 107.400 and
17 101 Subpart F.

18 As discussed during a prehearing,
19 I will allow members of the public to comment.
20 Citizens are allowed to make comments, statements at
21 various times during the hearing. At present it
22 looks like any members of the public that wish to
23 make comment will do so right before lunch.

24 I do want to state that any public

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1 comment will not be considered testimony if not
2 sworn to or subject to cross-examination. If that's
3 the case, if you don't wish to be sworn to or
4 subject to cross, it will be weighed accordingly.

5 Before I begin, I would like to
6 talk just a moment about the Board's hearing
7 process. First, I think the majority of the people
8 here are already familiar with the process.

9 I will not be making the ultimate decision in the
10 case, rather it's the Pollution Control Board who

11 will. They are going to view the transcript of the
12 proceedings and remainder of the record and decide
13 the case. My job is strictly to ensure that an
14 orderly hearing and a clear record is developed so
15 that the Board can have all the proper information
16 before deciding the case.

17 After the hearing, the parties
18 will have the opportunity to submit post-hearing
19 briefs. These, too, will be considered by the Board.

20 Finally, I want to caution
21 everyone that this hearing is much like a hearing
22 or trial in court and I expect everyone to act
23 appropriately and with proper decorum. That's
24 pretty much all I have.

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1 I'll give a few moments for the
2 parties to introduce themselves. Mr. Porter?

3 MR. PORTER: Good morning. My name is
4 Rick Porter and I'm here today with the State's
5 Attorney of Kankakee County, Edward Smith, and
6 we'll be joined by Charles Helsten later on in this
7 hearing representing the people of Kankakee County.

8 MR. SMITH: Good morning,
9 Mr. Hearing Officer Halloran. My name is Ed Smith,
10 State's Attorney of Kankakee County.

11 HEARING OFFICER HALLORAN:
12 Thank you, Mr. Smith. Mr. Sandberg?

13 MR. SANDBERG: Good morning. My name
14 is Byron Sandberg. I testified on this aquifer
15 three times before the legislature and, therefore, I
16 was prepared and knew something about it and knew I
17 could add something to this hearing so, therefore, I
18 filed a complaint about it.

19 HEARING OFFICER HALLORAN: Thank you,
20 Mr. Sandberg. Mr. Moran?

21 MR. MORAN: My name is Donald Moran.
22 I'm here on behalf of Waste Management of Illinois,
23 Inc.

24 HEARING OFFICER HALLORAN: Thank you.

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1 Mr. Mueller?

2 MR. MUELLER: I'm George Mueller, I'm
3 here on behalf of Town & Country Utilities and
4 Kankakee Regional Landfill, the successful applicant
5 for regional siting approval. Mr. Volini, the

6 principal, of those entities is to my right.

7 HEARING OFFICER HALLORAN: Thank you,
8 Mr. Mueller. I do want to state for the record that
9 these consolidated petitions cumulatively allege
10 that the decision of the city of Kankakee in
11 granting a local siting approval for a new pollution
12 control facility was against the manifest weight of
13 the evidence, the hearing process was fundamentally
14 unfair and that it lacked jurisdiction over the
15 siting application and the reason I mention that is
16 that any public comments, statements must be
17 relevant to the matter at hand.

18 With that said, I believe we'll
19 start off with Mr. Porter if you wish to make an
20 opening.

21 MR. PORTER: I do, Mr. Halloran. If
22 you don't mind, I'm going to do it from the seated
23 position since the microphone is on the table here.

24 I apologize to members of the

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1 public for dealing with my back, but that the way
2 it's set up.

3 Good morning Members of the
4 Illinois Pollution Control Board, Hearing Officer
5 Halloran, Counsel, and members of the public.
6 My name is Rick Porter and I'm an attorney who is
7 here with Kankakee County State's Attorney Edward
8 Smith and as I said earlier, my partner, Charles
9 Helsten will be joining us later in this hearing.
10 We are representing the people of the county of
11 Kankakee.

12 The evidence that will be reviewed
13 and presented throughout this proceeding will
14 undeniably establish that the hearings held in front
15 of the Kankakee City Council failed to follow the
16 most fundamental requirements of a fair proceeding
17 to all of the parties concerned. Furthermore, we
18 shall present evidence that the applicant failed to
19 vest jurisdiction within the Kankakee City Council
20 to hear the request to locate a landfill at a
21 specific location within the city of Kankakee and
22 the county of Kankakee by failing to present
23 evidence that every landowner surrounding the
24 landfill was provided notice of the intent to file

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1 the application. Finally, there will be evidence
2 that the decision of the city of Kankakee to grant
3 the request failed to follow and as a matter of fact
4 completely ignored the evidence that was presented
5 at the hearing. Indeed, the Pollution Control Board
6 shall now review the evidence that was submitted in
7 regard to Criterion 8, Criterion 2 and Criterion 5
8 and it will be clear that the decision as to
9 Criterion 8 was erroneous as a matter of law and
10 that the decision regarding all of these criterion
11 were against the manifest weight of the evidence.

12 As to fundamental fairness, the
13 county will present evidence that unfair procedures
14 were used by the city and the applicant,
15 Mr. Tom Volini, in an effort to avoid the clear
16 mandates of state and local law.

17 The evidence will be that about
18 two years ago the mayor of Kankakee, Mayor Donald
19 Green, determined that the city was spending
20 substantial amounts of money for waste services
21 and apparently learned that funds could even be
22 generated for the city by negotiating the lucrative
23 Host agreement with a landfill operator. However,
24 the city had a problem because there was in place a

1 Kankakee solid waste management plan, which
2 explicitly called for only one landfill within the
3 county borders and that facility was already being
4 operated by Waste Management as the Kankakee County
5 Landfill.

6 Shortly thereafter, Mayor Green
7 and his city attorney, Christopher Bohlen, began
8 discussions with Tom Volini of Town & Country about
9 building a landfill. Mr. Volini decided on a
10 proposed location, however, that proposed location
11 is on property that is not -- at that time was not
12 in the city of Kankakee municipal limits, rather it
13 was about two-and-a-half miles from the city streets
14 of Kankakee, but rather than simply filing the
15 application for site location approval with the
16 county of Kankakee or find a parcel that really was
17 within the city limits, the applicant, with the help
18 of city attorney Bohlen, sought to have this land
19 annexed into the city of Kankakee. We submit that
20 the evidence will be absolutely clear that the only
21 reason for doing so was to establish the city of
22 Kankakee as the siting authority rather than the
23 county. This is evidenced by the fact that the
24 applicant must admit that it does not own the

1 majority of the land where the proposed landfill is
2 to be sited and the applicant and the city must
3 admit that the only link to the city is a narrow
4 railroad easement that extends from the city limits
5 which was incorporated into the city and except for
6 that narrow strip all of the immediate neighbors to
7 the landfill are in the unincorporated lands of
8 Kankakee County. The evidence will be that the
9 city, the mayor and Mr. Bohlen actively assisted
10 Town & Country in preparing its petition for
11 annexation, which made it clear that its purpose was
12 for the development of a landfill. Furthermore, the
13 petition was presented to the City Council for
14 approval and was indeed approved, but before the
15 property was even annexed into the city, the city
16 was also in the process of conducting extensive
17 discussions and negotiations of a Host agreement
18 with Town & Country. That Host agreement is part
19 of the application and is already admitted into the
20 record at pages 2964 to --

21 MR. MUELLER: Mr. Halloran, I'm going
22 to object. A Host agreement is not fundamentally

23 unfair. This is completely irrelevant.

24 HEARING OFFICER HALLORAN: You may

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1 proceed. I'll overrule your objection, Mr. Mueller.

2 The record so notes it.

3 MR. PORTER: It's admitted in the
4 record at 2964 to 3031 and is referenced in the
5 table of contents for the certificate of record of
6 appeal as an agreement for siting. That agreement
7 establishes that if the landfill is erected at the
8 proposed location the city of Kankakee will receive
9 discounted waste services and substantial fees for
10 every ton of waste accepted. The evidence will be
11 that the city attorney, Bohlen, understood at the
12 time the agreement was being negotiated that the
13 estimated fees to the city of Kankakee would be
14 around \$4 million per year for the life of the
15 landfill, which is 25 to 30 years and the City
16 Council was also so aware.

17 Furthermore, the applicant
18 guaranteed a minimum of \$1 million to the city per
19 year regardless of the amount of waste accepted.

20 Page 3031 of the application indicates that
21 projected revenue for the city for just over a
22 10-year period will be in excess of \$42 million.

23 The Host agreement was negotiated
24 primarily by Mayor Donald Green and city attorney,

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1 Christopher Bohlen over the course of ten months
2 and both of these men had numerous conversations
3 with the applicant concerning this agreement. The
4 Host agreement is dated February 19th, 2002 and the
5 City Council was made aware of the negotiations and
6 proposed terms of the agreement.

7 At the same time the city and
8 applicant were negotiating a Host agreement and
9 seeking the annexation of the property where the
10 proposed facility would be located, the city also
11 decided to adopt its own solid waste management plan
12 despite the fact that the county had already had a
13 plan in place. The City Council adopted the city's
14 plan in January of this year. The applicant
15 assisted the city in drafting that plan by providing
16 examples of other solid waste management plans.

17 On the exact same day the Host

18 agreement was executed, February 19th, 2002, the
19 city and the applicant made a presentation to the
20 entire City Council. The minutes of that
21 presentation are contained at pages 3139 to 3178 of
22 the record.

23 At that meeting the applicant met
24 directly with the decision-makers; that is, the City

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1 Council and presented its case through Mr. Tom
2 Volini, Mr. Devin Moose, project engineer, and
3 several other of its expert witnesses on why it
4 believed that Section 39.2 criteria were met by the
5 application. However, no notice was given to the
6 surrounding landowners, the county, nor any objector
7 that the applicant would be presenting its case on
8 that night, despite the fact that the city was aware
9 that the county believed that the proposed site
10 would violate the plain language of the county's
11 solid management plan.

12 Not only did the applicant present
13 its case, but the evidence will clearly show that
14 the applicant told the City Council that it could

15 not trust the Section 39.2 hearing and that's
16 because that hearing would, and I'll quote, involve
17 quote, a bunch of lawyers fighting, close quote, and
18 that the objector witnesses would be untrustworthy
19 hired guns who though they would not appear to be
20 quote, fist waiving fanatics, close quote, their
21 passion was to oppose landfills and they would not
22 tell the truth. Thus, the evidence will show that
23 the applicant had an improper communication with the
24 decision-makers to seek a prejudgment on the facts

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1 that were to be adjudicated in the Section 39.2
2 hearing. The purpose of the communication was to
3 have, and I'll quote again, this is Mr. Volini
4 speaking on that night, quote, an unfettered
5 opportunity to talk to you without the filter of
6 lawyers, without the rancor and the back and forth
7 that unfortunately lawyers bring to the process. He
8 then went on to say that the purpose of the 2/19/02
9 meeting was to tell the City Council that quote --
10 to show the City Council, quote, concepts that we've
11 proved and environmental protection that we have
12 achieved, close quote.

13 Mr. Volini closed his presentation
14 by making the explicit admission that he was
15 presenting his case without following the 39.2
16 procedures and that the city would prejudge the case
17 because the hearing itself could not be trusted when
18 he said quote, you'll hear this without so much
19 emotion and with a bunch of lawyers fighting in
20 about 120 days, but we wanted you to hear it from us
21 first.

22 As further evidence that the
23 objectors did not receive a level playing field
24 in the process. The mayor originally appointed

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1 himself as the hearing officer despite the fact that
2 he was an ardent supporter of the project. When
3 that was objected to minutes before the hearing was
4 scheduled to start, the City Council appointed city
5 attorney, Chris Bohlen, as the hearing officer.
6 The problem is that Mr. Bohlen had numerous
7 conversations with the applicant about the proposed
8 landfill. He was primarily responsible for drafting
9 the city's terms in the Host agreement, he helped

10 the applicant get the land annexed into the city and
11 he had numerous communications with the applicant in
12 this very extensive, cooperative effort between the
13 city and the applicant.

14 The evidence will be that though
15 under the Host agreement the applicant would have
16 had to pay the cost of an independent unaffiliated
17 hearing officer, the mayor recommended and the City
18 Council voted to appoint its own attorney as the
19 hearing officer. That attorney would then preside
20 over the proceedings, hear motions, rule on motions,
21 make evidentiary rulings and propose findings for
22 the city.

23 There will be further evidence of
24 a pattern of unfair proceedings because it is

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1 anticipated that the city clerk, Anjanita Dumas, and
2 the city mayor, Donald Green and even the city
3 attorney and slash hearing officer, Christopher
4 Bohlen, will admit that the city of Kankakee failed
5 to follow its own siting ordinance. Specifically
6 Section 4(D)(1) of city of Kankakee Ordinance
7 No. 65, which is found at page 3215 of the record,

8 required that that upon receipt of the application
9 quote, the city clerk shall immediately deliver one
10 copy to the chairman of the county board and one
11 copy to the Kankakee County solid waste director.
12 The evidence will be that the application is
13 thousands of pages long, over five large volumes and
14 necessarily involves substantial time to review,
15 analyze, test and comment upon, which is undeniably
16 why even the city recognized that the county needed
17 to immediately deliver -- I'm sorry, which is
18 undeniably why the city recognized that it needed to
19 immediately deliver copies of the application to the
20 county.

21 The city clerk, Anjanita Dumas,
22 will admit that she never read the siting ordinance
23 until after the Illinois Pollution Control Board
24 action was commenced. She will testify she was

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1 never instructed by the mayor, nor city attorney,
2 Bohlen, nor the applicant to send the application to
3 the county board chairman and to the county solid
4 waste director.

5 Finally, she will further admit
6 that she never sent a copy of the application to
7 the chairman of the county board, Karl Kruse, nor
8 did she send a copy to the Kankakee County solid
9 director, Eraim Gill. Both of these gentlemen will
10 and have testified that they were not immediately
11 sent a copy of the application and to this very day
12 they have never been sent a copy from the city of
13 Kankakee. On the first night of the hearing and
14 before any testimony was taken, the county motioned
15 to quash the proceedings for the city's failure to
16 follow the ordinance, but that motion was denied by
17 the city attorney slash hearing officer, Christopher
18 Bohlen.

19 As further evidence of the unfair
20 procedures that were employed by the city and the
21 applicant, Section 5G of Ordinance 2-24 as adopted
22 which is also part of the record, I don't have the
23 cite right here, where the city of Kankakee rules
24 and procedures for pollution control facility siting

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1 and it was adopted on April 15, 2002. Confusion was
2 created when the notice published by the applicant

3 conflicted with that ordinance. That section
4 required that anyone who wished to participate in
5 the proceeding had to file an appearance at least
6 five days before the hearing started, but the
7 applicant published a notice on May 20th, 2002 and
8 May 28th, 2002, which is Applicant's Exhibit 6,
9 stating that written notice of intent to participate
10 had to be submitted to the city clerk before the
11 first day of the public hearing.

12 There will be testimony by members
13 of the public that they were confused and frustrated
14 by the procedure. As further evidence that the city
15 made it difficult for objectors and the interested
16 public to participate, the city refused to provide a
17 list to the county and other objectors of the
18 individuals who entered appearances and refused to
19 provide a list of the witnesses that had been
20 identified by the parties before the hearing unless
21 the county or other requester submitted a Freedom of
22 Information request to the city. In other words,
23 the evidence will be that the city put up barriers
24 to block the registered parties, including the

1 county, from receiving the most fundamental
2 information concerning the quasi-adjudicative
3 process, including the identity of the parties and
4 even the witnesses.

5 The pattern of conduct of the city
6 and the applicant to rush this application through
7 without providing a fair hearing perhaps culminated
8 in the failure or refusal to allow the public to
9 attend and participate in the hearing itself.
10 Specifically, there will be evidence that armed city
11 police barred at least 50 and perhaps as many as 100
12 members of the public from entering the hearing
13 room, compelled people to stand in the hallway and
14 stairwell where the proceeding could not be seen nor
15 heard and even refused to allow certain persons who
16 had filed appearances five days before the hearing
17 from entering the room to ask questions or hear
18 testimony. The evidence will be that the citizens
19 who were denied access were primarily from the
20 unincorporated county land, which surrounds the
21 landfill, rather than the city of Kankakee
22 residents. Finally, the evidence will be that the
23 hearing officer, Bohlen, was advised of the problem
24 before any witness testified and before any opening

1 statement was made and a motion was made to adjourn
2 and reconvene in an appropriate venue, but that
3 motion was denied without explanation apparently
4 because the city wanted to accommodate one witness
5 of the applicant rather than the multitude of people
6 who were barred access to the hearing.

7 Though the city officials may
8 attempt to assert that they were simply surprised
9 by the number of people that wanted to attend the
10 proceedings on the first night, there will be
11 evidence that the city was actually aware that there
12 would be a great turnout and that the room might not
13 be of sufficient size, specifically at that February
14 19, 2002, meeting one of the applicant's own
15 witnesses, Ms. Simmon, told City Council,
16 Mr. Bohlen, and Mayor Green that Section 39.2
17 hearing would be crowded. Furthermore, a witness
18 will testify that four days before the hearing began
19 she asked both the city clerk, Anjanita Dumas, and
20 the city attorney slash hearing officer, Mr. Bohlen,
21 whether the city had a back-up plan if the room was
22 too crowded. Finally, there will be evidence that
23 numerous appearances were filed and that the media
24 coverage for the hearings was substantial.

1 The evidence will be that the room
2 was completely full even before the hearing
3 commenced at 8:00 p.m. and that the hearing officer,
4 Bohlen, knew that the room was full and people were
5 standing in the hallway. The evidence will be
6 uncontroverted that the city police barred people
7 from entering the hearing room. Mr. Bohlen will
8 admit that it occurred, but will testify that he did
9 not realize it until the next night.

10 Numerous members of the public
11 will testify they could not hear nor see the
12 proceedings and there will be various people who
13 will testify that the elderly were forced to stand
14 in the hallway, which was hot and uncomfortable.
15 The hearing went until 12:30 in the morning and
16 ultimately a great number of people simply left and
17 never returned due to the lack of accommodations.

18 Perhaps the most blatant evidence
19 of the failure to provide a fundamentally fair
20 process will be the testimony of the members of the
21 public who filed appearances with the city clerk,

22 but were nonetheless barred from entering the
23 chamber room.

24 For example, Ms. O'Dell will

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1 testify that on June 12, 2002, she filed her
2 appearance and she fully expected and intended to
3 ask questions of the applicant's witnesses, however,
4 on the first night she was barred access to the
5 hearing room and though she even told Mr. Power, the
6 assistant city attorney, that she wanted to perhaps,
7 she was not allowed to until the fourth or fifth
8 night of the proceeding.

9 There will also be evidence that
10 establishes that the city of Kankakee never had
11 jurisdiction to issue siting approval because the
12 applicant failed to present sufficient evidence that
13 certain owners of real property near the landfill
14 were not served with the notice of intent required
15 under Section 39.2 of the application.
16 Specifically, Mr. Volini's own affidavit will
17 establish and establishes that there were five
18 owners of a specific parcel of property that were
19 never served with the required notice. Furthermore,

20 there will be evidence that in regard to numerous
21 properties, service was not effectuated because
22 there was no evidence that the individual who
23 accepted the notice was the authorized agent for the
24 purpose of service and process and in some instances

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1 there is no evidence that the signer had any
2 relationship to the landowner whatsoever.

3 Finally, there will be evidence
4 that clearly indicates that service was not obtained
5 on a specific landowner at least 14 days before the
6 hearing.

7 Now, as to the specific criterion.
8 As to Criterion 8, which requires an application to
9 be consistent with --

10 MR. MUELLER: I'm going to object.
11 This hearing is not about the manifest weight of the
12 evidence. This is about fundamental fairness and
13 jurisdiction. He can save his argument on the
14 substantive criteria for his brief to the Board.

15 MR. PORTER: I'm not making argument.
16 I'm merely referencing what the record shows in

17 regards to these specific criterion.

18 MR. MUELLER: It's not relevant.

19 MR. PORTER: It is relevant because
20 it's up to the Pollution Control Board to decide
21 whether the manifest weight of the evidence was
22 violated.

23 HEARING OFFICER HALLORAN: I'm going
24 to allow him to proceed, Mr. Mueller. You can

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1 object to the Board subsequent to this hearing.

2 That's what the evidence will show.

3 MR. PORTER: As to Criterion 8, which
4 requires an application to be consistent with the
5 county's solid waste management plan, the Pollution
6 Control Board will have the opportunity to review
7 the plain language of the Kankakee County solid
8 waste management plan and it will be undeniable that
9 it is the county's plan that only the presently
10 existing landfill be operated in the county.
11 The plan as amended on March 12th, 2002, explicitly
12 and undeniably provided that quote, Kankakee County
13 has a single landfill owned and operated by Waste
14 Management, Incorporated. This landfill has

15 provided sufficient capacity to dispose of waste
16 generated in Kankakee and its owner has advised the
17 county that it plans to apply for a local siting
18 approval to expand the facility to provide
19 additional disposal capacity for the county.
20 The plan further provides that quote, an expansion
21 of the existing landfill, if approved, would then
22 satisfy the county's waste disposal needs for at
23 least 20 years and in accord with the Kankakee solid
24 waste plan as amended as well as relevant provisions

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1 of the Local Solid Waste Disposal Act and the Solid
2 Waste Planning and Recycling Act, no new facility
3 would be needed, close quote.

4 Furthermore, Karl Kruse, county
5 board chairman, submitted a sworn affidavit that the
6 reasons the county's plan called for only the
7 operation and possible expansion of the current
8 facility was because quote, the county Board's
9 concern over the additional impacts that might occur
10 if a second or even third landfill were to be
11 located within the county.

12 Regretfully, the evidence in the
13 case is that the city attorney in drafting his
14 recommendations as the hearing officer ignored the
15 plain language of the county plan and ignored --

16 HEARING OFFICER HALLORAN: Excuse me,
17 Mr. Porter. Mr. --

18 MR. LESHEN: Leshen.

19 HEARING OFFICER HALLORAN: May the
20 record reflect that Mr. Leshen from the city of
21 Kankakee entered the room about 15 minutes ago.

22 MR. LESHEN: Thank you. I'm going to
23 object to the continuing reference here to when --
24 the hearing officer is the person who drafted the

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1 finding of the facts and when Mr. Bohlen acted as
2 city attorney he was identified as such, when
3 Mr. Bohlen acted as the hearing officer, he was
4 identified as such. So consequently it is
5 misleading to say that when findings of fact were
6 drafted, they were drafted by Mr. Bohlen in his
7 capacity as city attorney.

8 HEARING OFFICER HALLORAN: I think the
9 record will reflect that. I think the record shows

10 that Mr. Bohlen was the hearing officer when the
11 findings of fact were submitted.

12 MR. LESHEN: Correct.

13 HEARING OFFICER HALLORAN: Mr. Porter?

14 MR. PORTER: He was the hearing
15 officer. He's also the city attorney.

16 HEARING OFFICER HALLORAN: I think
17 that's established.

18 MR. PORTER: Okay. Regretfully, the
19 evidence in this case will be that when Mr. Bohlen
20 drafted his recommendations, he ignored the plain
21 language of the county plan and ignored the sworn
22 testimony of Mr. Kruse and somehow concluded that
23 the siting application for a whole new facility was
24 consistent with the plan. The City Council also

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1 ignored the fact that the county plan required that
2 a Property Value Guarantee Program be prepared by an
3 independent entity approved by the county and the
4 applicant failed to seek that approval. Finally,
5 the city ignored the fact that the plan required an
6 environmental damage fund to be submitted to the

7 county for approval, but the applicant failed to
8 present any evidence that such had been done.

9 Finally, in regard to Criterions
10 2 and 5. The Illinois Pollution Control Board --

11 THE REPORTER: I'm sorry. Can you
12 please slow down a little bit?

13 MR. PORTER: Certainly.

14 THE REPORTER: Thank you.

15 MR. PORTER: Finally, the Illinois
16 Pollution Control Board will be asked to review the
17 evidence in the underlying hearing as to Criterion 2
18 and Criterion 5. Upon conducting that review, we
19 believe the Board will come to the conclusion that
20 the city findings of compliance with these criteria
21 were against the manifest weight of the evidence.
22 Specifically, there was overwhelming evidence
23 presented that the applicant mischaracterized the
24 hydrogeology of the site and ignored the fact that

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1 the landfill was actually being built directly into
2 an aquifer that feeds thousands of wells.

3 Furthermore, the evidence at the
4 hearing established that the applicant failed to

5 make any inquiry to the entity it was relying upon
6 to respond to fires, spills or operational
7 accidents, the city of Kankakee fire department, as
8 to whether it was equipped, staffed and trained to
9 handle such incidents. Therefore, it is undeniable
10 that Criterion 5 was not met.

11 In conclusion, at the close of
12 this hearing we will request that the decision of
13 the City Council be reversed and the application
14 be denied for failing to meet the statutory criteria
15 or in the alternative, the decision be vacated and
16 the matter remanded with an order requiring the city
17 to hold a fundamentally fair proceeding. Thank you.

18 HEARING OFFICER HALLORAN: Thank you,
19 Mr. Porter. State's Attorney Smith, would you like
20 to make a --

21 MR. SMITH: No, Mr. Hearing Officer.

22 HEARING OFFICER HALLORAN: Thank you.
23 Mr. Sandberg, would you care to make an opening
24 statement?

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1 MR. SANDBERG: Yeah. After time my

2 mouth becomes rather dry and you may not be able to
3 understand what I say, I'll try to take a drink of
4 water every now and then. Mr. Mueller has construed
5 that to mean I did not write what I was reading
6 from. I assure you that I did. I had it reviewed
7 by an attorney, part of it at least, then I had it
8 reviewed by a couple of friends that were
9 knowledgeable -- Mr. Mueller's interruptions and
10 I just finished it this morning and I have notes
11 written here in handwriting and I have trouble
12 reading my handwriting, so these are my problems.

13 We appealed this landfill
14 application because it did not receive a fair
15 hearing. I also appealed because the City Council
16 did not make their decisions based on the manifest
17 or evident weight of the evidence presented.
18 We could go back to my appeal and find that.

19 In a deposition with Mr. Bohlen,
20 we found that the city expected to receive \$4.6
21 million a year from this landfill. This is what
22 weighed most in their decision. This did not allow
23 a fair hearing. A fair hearing according to Black's
24 Law Dictionary is one that is free from

1 Mr. Volini's engineer witness, Devin Moose, was also
2 allowed to interrupt, harass and beat down opposing
3 witnesses. If a defense witness interrupted and
4 harassed a prosecution witness in a regular trial,
5 would the judge have allowed that as was allowed in
6 this hearing? How would the Daily Journal report
7 that? What a furor there would be. This did not
8 make for a fair hearing and influenced the City
9 Council so they were unable to fairly weigh the
10 evidence.

11 In a proper hearing or court
12 trial, witnesses for one side are not allowed to
13 break in and interpret testimony of opposing
14 witnesses as Mr. Moose did. The transcript
15 repeatedly shows that Mr. Moose broke in to expert
16 Stuart Craven's testimony every time the evidence of
17 a well log was presented, every time he asked the
18 same question, where is the seal, where is the
19 screen. These questions showed that Mr. Moose did
20 not know the construction details of a water well.
21 He had it confused with a monitoring well that has a
22 different construction. Mr. Craven had already
23 testified that the Illinois Public Health Well Code

24 requires the well pipe to be sealed entirely from

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1 top to bottom. Accordingly, the length of the well
2 casing determines the depth and the location of the
3 seal. He also testified screens are not used in a
4 dolomite aquifer. If they were, they would be
5 encrusted and blocked by the lime and magnesium in
6 the water from the dolomite.

7 At this point, the transcript
8 indicates the City Council demonstrated that they
9 were not judging based on the manifest weight of the
10 evidence. Instead of asking the expert who
11 testified based on the well construction code to
12 tell them how a well was constructed, they asked
13 Mr. Moose who obviously didn't know. The transcript
14 shows Mr. Moose drawing a diagram with a line for
15 the well casing and a line for the well pipe with no
16 line at all to show the well seal. From this and
17 several episodes, it is obvious the City Council,
18 who served as the jury, were going to decide based
19 on the \$4.6 million per year that the landfill would
20 bring the city and disregard the weight of any
21 evidence to the contrary.

22 By unfairly harassing the expert
23 witness, Mr. Moose was too easily able to discredit
24 the scientific evidence from 89 well logs in the

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1 vicinity of the landfill.

2 MR. MUELLER: Mr. Hearing Officer?

3 HEARING OFFICER HALLORAN: Yes,
4 Mr. Mueller.

5 MR. MUELLER: I don't want to harass
6 Mr. Sandberg, but for the record I need to make an
7 objection to this entire line of statement since it
8 has to do with the manifest weight of the evidence
9 and not with the issues for which this hearing is to
10 be held.

11 HEARING OFFICER HALLORAN:
12 Mr. Sandberg, any response?

13 MR. SANDBERG: Can I continue or
14 should I respond?

15 HEARING OFFICER HALLORAN: Do you have
16 a response to Mr. Mueller?

17 MR. SANDBERG: I stated at the
18 beginning I appealed based on the manifest weight

19 of the evidence as well as this was not a fair
20 hearing.

21 HEARING OFFICER HALLORAN: All right.
22 I think you can give your opening statement on what
23 the evidence will show and the Board will decide
24 whether or not its against the manifest weight of

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1 the evidence, but it seems to me it's very
2 argumentative. You have to -- again, what the
3 evidence will show. You're very argumentative in
4 your opening statement, so I caution you not to be.

5 MR. SANDBERG: I'm speaking on what
6 the transcript shows, isn't that --

7 HEARING OFFICER HALLORAN: Well, it's
8 -- you're stating the witness was harassed, that's
9 argumentative.

10 MR. SANDBERG: It's shown by the
11 transcript.

12 HEARING OFFICER HALLORAN: Well, if
13 you can't show it, then I'm going to have to strike
14 it.

15 MR. SANDBERG: I repeated the
16 questions he asked and I'll show you later, I've got

17 the pages of the transcript it shows he asked those
18 questions.

19 HEARING OFFICER HALLORAN: How much
20 longer do you have to read, Mr. Sandberg? I'll
21 allow you a little latitude, but it's clearly not
22 the most proper opening argument I've heard.

23 MR. SANDBERG: Well, is this hearing --

24 HEARING OFFICER HALLORAN: We follow

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1 the rules pretty much of a court and the court
2 wouldn't feel at all comfortable with your opening
3 argument based on the argumentative nature.

4 MR. SANDBERG: What do you mean by
5 argumentative, my opinion?

6 HEARING OFFICER HALLORAN: Correct.

7 MR. SANDBERG: Just about every other
8 sentence I quote what I base it on and I've got the
9 transcript here and I can show you.

10 HEARING OFFICER HALLORAN: You may
11 continue reading. You have just a short while to
12 go?

13 MR. SANDBERG: Okay.

14 HEARING OFFICER HALLORAN: Objection
15 overruled.

16 MR. SANDBERG: I'll skip a paragraph
17 that you might consider argumentative.

18 HEARING OFFICER HALLORAN: Okay.
19 Thank you, sir.

20 MR. SANDBERG: The city attorney, who
21 was also the hearing officer gave the City Council
22 --

23 MR. LESHEN: For the record, I'm going
24 to object to that characterization. Mr. Bohlen was

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1 appointed as the hearing officer and he was, in
2 fact, at that point working as the hearing officer
3 duly appointed.

4 HEARING OFFICER HALLORAN: The Board
5 will take note of your objection and the Board is
6 quite aware of when Mr. Bohlen was the city employee
7 and when he was the hearing officer.

8 Mr. Sandberg, I do caution you
9 just to -- I guess for -- just call him Mr. Bohlen
10 or hearing officer. I don't think you have to use
11 the city employee slash hearing officer.

12 MR. SANDBERG: Okay. Mr. Bohlen's
13 proposed findings weighed most heavily -- that
14 weighed most heavily on the testimony of the
15 landfill engineer were adopted without change.
16 The language was critical of the scientific
17 testimony of two hydrogeologists and contained a
18 number of misstatements of fact. It supported the
19 testimony of the landfill engineer like he was the
20 final authority. The city attorney, Mr. Bohlen,
21 is not a scientist and as such could not give proper
22 weight to the evidence of the scientist who
23 testified against this landfill. An appeal by the
24 city stated he could not answer the technical

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1 questions I asked about the statements of fact in a
2 deposition. There were several errors, in fact, of
3 these findings of fact. He stated Mr. Craven's
4 study used recent well measurements for 16 wells
5 in an area comprising over 400 square miles. To the
6 contrary, Mr. Craven, according to his published
7 study, Illinois Water Survey Report 101, used water
8 level measurements from over 2,400 wells. The

9 statements of fact also said Mr. Moose had planned a
10 network of carefully placed monitoring wells. In
11 fact, the application indicates that there are only
12 19 wells downstream of the landfill. None of these
13 wells are in the critical downstate of the fractures
14 below the base of the landfill where pollutants will
15 move. In fact, the scientific evidence is that no
16 number of monitoring wells will detect pollutants
17 moving in a fractured rock aquifer. These
18 pollutants move out like a finger in the largest
19 fracture between the monitoring wells. Now the
20 better landfill application includes a second liner
21 that contains electronic monitoring devices that
22 would detect the exact locations of the pollutants
23 shortly after they break through the other liners
24 rather than monitoring wells. Mr. Moose's landfill

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1 did not include this because it is simply designed
2 to meet the minimum state standards.

3 These proposed findings are also
4 too heavily weighted on Mr. Moose's testimony that
5 any fractures found during excavation for the
6 landfill would be grouted to a depth of ten feet.

7 I asked Mr. Bohlen about this during his deposition.
8 He said engineers had told him the fractures as they
9 are seen in the limestone walls of Bird Park could
10 be grouted. It may be possible to grout these
11 fractures from the side in Bird Park where the sides
12 are exposed but, they cannot be grouted from the top
13 as Mr. Moose testified. Many of the vertical
14 fractures are only a quarter inch thick, too thin to
15 grout all the way, certainly not to ten feet.
16 The horizontal fractures that feed the water to the
17 vertical fractures are much thicker. These vertical
18 fractures occur at intervals of five to 20 feet in
19 the old quarries in Bird Park. I have a picture of
20 that. A hydrologist told me they would be swamped
21 with water before they could grout that many
22 fractures. That is the experience with digging to
23 that depth in the vicinity of the landfill.

24 The transcript shows Mr. Craven

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1 stated that the landfill engineers did not do due
2 diligence in his study that was too heavily weighed
3 in the decision of the City Council. Mr. Craven

4 said he did not follow the scientific method of
5 first studying the hydrogeology of the whole aquifer
6 and then look at individual locations within the
7 aquifer. We found a paper Mr. Boos did not give
8 proper weight to in the process of a deposition --
9 excuse me. Mr. Boos did not give proper weight to
10 in his deposition of Mr. Moose that his staff sent
11 to Mr. Moose's hydrologist. It described the
12 aquifer under and around the landfill. This aquifer
13 was properly called the Racine Formation of the
14 Silurian Dolomite.

15 MR. MUELLER: Mr. Halloran, let the
16 record show my continuing objection to this
17 irrelevant material. This is -- I think maybe it
18 would be helpful if you would explain to everyone in
19 the room once again what the scope of this hearing
20 is versus what the scope of the Board's entire
21 review is because apparently there's confusion both
22 on the part of Mr. Sandberg and Mr. Porter regarding
23 what's going to be covered at this hearing; namely,
24 fundamental fairness and jurisdiction. The issue of

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1 manifest weight of the evidence is based upon the

2 record previously made and no new argument or
3 evidence can be received on those -- on that issue
4 at this time.

5 HEARING OFFICER HALLORAN: I will
6 state this, Mr. Mueller, and I'm reading from the
7 October 3rd Board order accepting these petitions
8 and consolidating them as such. The record before
9 the city will be the exclusive basis for all
10 hearings except when considering issues of
11 fundamental fairness or jurisdiction. So,
12 therefore, the evidence -- the only evidence that
13 will be considered is the evidence already entered
14 in below regarding the nine criteria.

15 MR. SANDBERG: I'll skip the rest of
16 that paragraph.

17 HEARING OFFICER HALLORAN: It's
18 regarding the manifest weight of the evidence.

19 MR. SANDBERG: Yeah.

20 HEARING OFFICER HALLORAN: If perhaps
21 something comes up during a hearing, I'll do it on a
22 case-by-case, issue-by-issue basis. This opening is
23 going a bit far afield.

24 MR. SANDBERG: Mr. Moose claimed the

1 area below the landfill was an aquitard.
2 An aquitard is described in several scientific
3 dictionaries as a material that leaks slowly and
4 thus provides somewhat of a confining layer between
5 two aquifers. An aquitard does not meet the
6 criteria of the Illinois Geological Survey stated in
7 their Circular 532 and 560. I'll later introduce
8 those as exhibit. The criteria is that the material
9 between a landfill must contain at least 30 feet of
10 relatively impermeable material capable of
11 attenuation. A map prepared by the Illinois
12 Geologic Survey that Mr. Murray submitted as an
13 exhibit shows the location of this landfill lacks
14 the 30 feet relatively impermeable --

15 MR. MUELLER: I object again.
16 He hasn't listened to a word you've said,
17 Mr. Halloran, plus now he is misstating the law with
18 regard to acceptable geological settings.

19 HEARING OFFICER HALLORAN: I would
20 agree -- tend to agree with Mr. Mueller.
21 Mr. Sandberg, any response? No response?

22 MR. SANDBERG: No response I guess.

23 HEARING OFFICER HALLORAN: Well, I
24 can't allow you to go with the opening statement the

1 way you have been proceeding. I've cautioned you a
2 number of times. Now, if you want to bring that up
3 during the hearing, that's fine, but --

4 MR. SANDBERG: I guess I'll have to do
5 it that way then.

6 HEARING OFFICER HALLORAN: Okay. Are
7 you finished, Mr. Sandberg?

8 MR. SANDBERG: Yes.

9 HEARING OFFICER HALLORAN: Thank you.
10 Mr. Moran?

11 MR. MORAN: Thank you. One of most
12 well-established principles in siting law is that
13 the public hearing conducted before the local
14 decision-maker is the most critical stage of the
15 site approval process and that as part of this
16 hearing it is absolutely essential that any
17 individuals or persons wishing to participate
18 can participate, that the opportunity to be heard in
19 that instance is as fundamental and well-established
20 as any right within these proceedings.

21 The city of Kankakee conducted a
22 hearing at which during the first evening there were
23 a number of people who could not participate in the

24 hearing. People were told to leave the hearing room

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1 who were excluded from the hearing room simply
2 because of the physical limitations of that hearing
3 room. This becomes critical because the opportunity
4 to register and participate was made available
5 through that evening and for those who were unable
6 to get access to the hearing, they were obviously
7 precluded from participating in a manner that was
8 consistent with the statute and also consistent with
9 their rights to be heard. The evidence that will be
10 presented at this hearing is that there were many
11 individuals who were precluded that right and as
12 such, the hearings conducted by the city of Kankakee
13 were fundamentally unfair. Thank you.

14 HEARING OFFICER HALLORAN: Thank you,
15 Mr. Moran. Mr. Mueller?

16 MR. MUELLER: Thank you, Mr. Halloran.

17 Fortunately, opening statements
18 are not evidence. They are a preview of what the
19 evidence is expected to show and I have not intended
20 to give any opening statement at all other than to

21 introduce Town & Country, but the opening statements
22 I've heard are so full of half truths,
23 mischaracterizations and statements that clearly
24 contrary to law that I am compelled to respond.

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1 MR. PORTER: Obviously that's argument
2 and I object.

3 HEARING OFFICER HALLORAN: Sustained.

4 MR. MUELLER: The applicant, Town &
5 Country, disputes pretty much 100 percent of what
6 Mr. Porter has said he's going to prove and
7 we believe the evidence is going to show that he
8 cannot prove those items. Let me talk about a
9 couple of things specifically.

10 First of all, you will notice
11 from the evidence that there are no citizens who
12 have appealed this decision on the basis that they
13 were excluded or that the hearings were
14 fundamentally unfair, instead that argument comes
15 from Waste Management of Illinois and from Kankakee
16 County and its hired outside attorneys who were
17 sitting in the first and second row of the hearing
18 room and certainly had a full opportunity to

19 participate.

20 In addition, the applicant
21 complied with all legal requirements in connection
22 with the bringing of this application and the city
23 complied with all legal requirements in connection
24 with the conduct of the hearing and the rendering of

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1 the ultimate decision and the evidence is going to
2 show that.

3 Specifically, let me talk about a
4 couple of things mentioned by Mr. Porter. He said
5 you're going to hear that there were lengthy
6 negotiations between the city of Kankakee and Town &
7 Country regarding a Host agreement. That's correct.
8 The law is that Host agreements are contemplated and
9 customary --

10 MR. PORTER: Objection.

11 HEARING OFFICER HALLORAN: Mr. Porter?

12 MR. PORTER: Obviously, counsel has a
13 right to say what the evidence is going to show,
14 that's what I tried to limit my statements to,
15 however, he's now talking what the law is and

16 that's clearly argument.

17 MR. MUELLER: I objected to Mr. Porter
18 mentioning this material because I said it's not
19 contrary to law and you let him introduce it. I
20 think the standard ought to be bilateral.

21 HEARING OFFICER HALLORAN: Well, I
22 agree with that, Mr. Mueller, but he did not argue
23 what the law was and you are. Objection, sustained.
24 You may proceed.

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1 MR. MUELLER: The evidence is going to
2 be that there was an annexation of certain property
3 that comprised the site of this proposed landfill.
4 That's true and the evidence is going to be that
5 that's not improper. The evidence is going to be
6 that there were pre-filing discussions between the
7 application and the city, again, that's true and the
8 evidence is going to be, the conclusion is going to
9 be, that those are not improper, that those are
10 customary. The evidence Mr. Porter said is that
11 the city is going to reap some economic benefits
12 from this landfill, again, that's true, if the
13 landfill operates and the evidence is that that's

14 not improper and that's customary. The evidence is
15 going to be that the city adopted a solid waste
16 management plan and again, that's true and the
17 statute authorizes the city to conduct solid waste
18 management planning.

19 In other words, all of the items
20 that Mr. Porter referenced as somehow biasing the
21 city in this manner and somehow precluding the
22 possibility of a fair hearing are, in fact, matters
23 which fundamentally occur routinely in these cases
24 and which are not items from which bias can be

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1 inferred or concluded.

2 In addition, the evidence is going
3 to be that some people received service who were the
4 wives or other household members of property owners
5 to whom certified mail or registered mail had been
6 sent and Mr. Porter argues that that somehow
7 deprived the city of jurisdiction. In fact, that's
8 routine and customary and does not deprive the city
9 of jurisdiction.

10 So the question then becomes why

11 are we here? The evidence you're going to hear as
12 to why we are here and Mr. Porter talked about
13 Criterion 8, which plays into this; namely,
14 consistency with the county's solid waste management
15 plan. The reason we're here today on this appeal is
16 because the county, in consort with Waste
17 Management, is attempting to block the city of
18 Kankakee from its own appropriate solid waste
19 management plan and toward that end you're going to
20 hear that the county has spent in excess of \$150,000
21 of taxpayer money in order to oppose the city in
22 what is a legitimate process and prerogative of the
23 city. The evidence is further going to be --

24 HEARING OFFICER HALLORAN: Mr. Porter?

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1 MR. PORTER: I have to object.
2 Mr. Mueller must know that there is no legitimate
3 way that that evidence could ever be admitted into
4 this hearing, as the only issue is whether or not
5 the underlying city proceedings were fundamentally
6 fair.

7 HEARING OFFICER HALLORAN: I'll allow
8 him to continue. Overruled. Thank you.

9 MR. MUELLER: The evidence in this
10 case is that the solid waste -- the solid waste
11 management plan was amended two times shortly prior
12 to the filing of this application both in an effort
13 to preclude the city from exercising its legitimate
14 planning options with respect to solid waste and
15 despite those two hastily drawn amendments, the
16 application as filed was consistent with that plan.
17 Ultimately, the Board in this case may have to
18 consider an issue that it hasn't considered in any
19 other prior landfill case and that is whether a
20 county can, through its solid waste management plan,
21 preclude another jurisdiction authorized under
22 Section 39.2 of the Environmental Protection Act
23 from exercising its legitimate siting hearing
24 authority and solid waste planning prerogatives.

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1 That's really what the county's objection here is
2 all about. The county argues that the hearing
3 wasn't fair because individuals weren't allowed into
4 the hearing room on the first night. In fact, the
5 evidence will be clear that all who wished to

6 participate were given an opportunity to
7 participate. That those who didn't wish to
8 participate, but only wished to be spectators, some
9 of them were because of an unforeseen and
10 unforeseeable crowding, excluded on the first night
11 unfortunately, but that a transcript of those
12 proceedings was made available to everyone by the
13 third night of the hearing. In addition, there were
14 numerous calls for people in the hallway and who
15 didn't get in the room who wanted to register and to
16 participate to let the authorities know and space
17 would be made available for them. Accordingly, no
18 one was precluded from cross-examining that wanted
19 to. No one was precluded from presenting evidence
20 that wanted to. No one was precluded from knowing
21 what happened on the first night. No one was
22 precluded from being fully informed and no one was,
23 therefore, precluded from meaningful participation
24 in the hearing.

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1 All those who wanted to give
2 public statements, even unsworn statements, were
3 allowed to do so and all of those people had access

4 to the transcript of the first night, so that they
5 had access to all parts of the evidence that they
6 wished to review and consider before making their
7 public statement. Yes, what happened on the first
8 night in terms of the room being too small and it's
9 a substantial room as the evidence will show, one
10 that seats 125 people is unfortunate, but what the
11 evidence is going to show that you cannot let
12 objectors disrupt a legitimate government purpose by
13 simply overrunning a physical facility and to allow
14 that would be to unnecessarily disrupt government.

15 Now, Mr. Sandberg and Mr. Porter
16 both chose to talk about what the evidence is going
17 to be on the substantive criteria and I believe
18 Mr. Porter said there was overwhelming evidence at
19 the hearing that the applicant had mischaracterized
20 the nature of the silurian dolomite. That
21 overwhelming evidence consisted of testimony by a
22 so-called geologist named Mr. Cravens who lied on
23 about three different occasions about his
24 credentials and the evidence consisted of testimony

1 by a Mr. Van Book (phonetic) who ultimately admitted
2 that he based his conclusions on incomplete well
3 records where we didn't know where they were sealed
4 and who also ultimately admitted that because he
5 wasn't an engineer he was not capable of discerning
6 whether or not the design proposed by the applicant
7 sufficiently addressed the geologic conditions and
8 took all of them into account.

9 Mr. Sandberg states in his
10 statement that the applicant proposed liners that
11 are minimal in terms of Subtitle D requirements.
12 The evidence in the record is clear that that's
13 simply not true. The applicant in this case
14 proposed a 12-foot side wall of recompacted clay
15 whereas the minimum standard would be a
16 three-foot side wall. The applicant proposed an
17 average of seven feet of structural fill recompacted
18 to ten foot minus seven underneath the base of the
19 landfill whereas the minimum standard is that that's
20 not required at all. So the Board needs to be aware
21 and everyone in this room needs to be aware that
22 this engineering design far exceeded minimum
23 specifications and it did so in order to take into
24 account, utilize, maximize and fully consider the

1 geologic situations and conditions encountered at
2 the site.

3 All in all, Mr. Hearing Officer,
4 we believe the evidence is going to be that nothing
5 unusual or improper or fundamentally unfair occurred
6 between the city and the applicant.

7 In fact, the meeting that
8 Mr. Porter complains of was one that was
9 transcribed. It wasn't a secret meeting. It was a
10 prefiling appearance at the City Council by the
11 applicant and the minutes and transcript of that
12 meeting are available for all the world to see and
13 it occurred prior to this application being filed
14 and, in fact, each of the applicant's
15 representatives who spoke at that meeting cautioned
16 the City Council that they had to make their
17 decision based upon the evidence and the statutory
18 siting criteria.

19 Accordingly, you can take from the
20 26-page, single spaced transcript a few statements
21 out of context, but when that transcript is read as
22 a whole, it's clear that the applicant and its
23 representatives accurately described to the city
24 the burden of proof, the standard of evidence, how

1 the process works and how the decision is going to
2 be made.

3 While that meeting occurred,
4 that's one thing, but to say that that somehow
5 poisoned the mind of the City Council is another.
6 In fact, the evidence is completely devoid of any
7 indication from any person that voted on this
8 application that they did not base their -- or that
9 they based their decision on anything other than the
10 hearing evidence and the statutory criteria. The
11 opponents here would have you infer bias because
12 there is no evidence of bias. There is no evidence
13 of improper ex parte contacts. There is no evidence
14 of prejudgment. The evidence is that everything
15 that occurred between the applicant and the city,
16 including the February 19th meeting was proper, was
17 above board and was out in the open for all to see
18 because none of the parties had anything to hide
19 and for those reasons we believe the proceeding was,
20 in fact, fundamentally fair and the Pollution
21 Control Board should affirm the unanimous decision
22 of the City Council in this matter.

23 HEARING OFFICER HALLORAN: Thank you,
24 Mr. Mueller. Mr. Leshen?

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1 MR. LESHEN: Thank you, Mr. Halloran.
2 The city adopts and ratifies Mr. Mueller's argument
3 as the opening argument of the city.

4 HEARING OFFICER HALLORAN: Thank you.
5 I'm going to beg your patience. I'm going to go off
6 the record and take a break for three minutes and be
7 right back. Thank you.

8 (Whereupon, after a short
9 break was had, the
10 following proceedings
11 were held accordingly.)

12 HEARING OFFICER HALLORAN: We're back
13 on the record. It's approximately 10:30, after a
14 short break. The petitioners will start with their
15 case in chief and I believe we agreed at the
16 prehearing conference that petitioner's State's
17 Attorney Smith will be calling, I believe, ten or
18 so --

19 MR. SMITH: As many as we can get
20 through, Mr. Hearing Officer.

21 HEARING OFFICER HALLORAN: Terrific.

22 So with that said, Mr. Smith, call your first
23 witness.

24 MR. SMITH: Thank you, your Honor.

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1 Your Honor, we would call Leonard Martin.
2 Mr. Martin, would you come up and either have a seat
3 or take a stand at the podium, whichever is more
4 comfortable.

5 HEARING OFFICER HALLORAN: If you
6 raise your right hand the court reporter will swear
7 you in.

8 (Witness sworn.)

9 HEARING OFFICER HALLORAN: Mr. Smith,
10 please proceed.

11 MR. SMITH: Thank you, your Honor.
12 I'm going to keep my voice up, so that you can hear
13 me.

14 WHEREUPON:

15 L E O N A R D M A R T I N,
16 called as a witness herein, having been first duly
17 sworn, deposeth and saith as follows:

18

D I R E C T E X A M I N A T I O N

19

by Mr. Smith

20

Q. Would you please state your name and

21

spell your last name for the court reporter?

22

A. My name is Leonard Martin. I spell my

23

last name M-a-r-t-i-n.

24

Q. And, sir, do you go by any nickname

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1

that you're commonly known by?

2

A. Shaky. I'm commonly known in the town

3

by the name Shaky and I don't own a pizza company.

4

Q. Where do you reside, sir?

5

A. At 411 Hilltop Bradley, Illinois.

6

Q. And how long have you been in -- and

7

is Bradley, Illinois within Kankakee County?

8

A. Yes, it is.

9

Q. How long have you been a resident of

10

Kankakee County?

11

A. Seventy-nine years.

12

Q. Do you enjoy any public position?

13

A. Yes, I do. I am a member of the

14

Kankakee County Board.

15

Q. Are you a current member?

16 A. Yes, I am.
17 Q. Were you a member on June 17th, 2002?
18 A. Yes, I was.
19 Q. And how long have you been a county
20 Board member?
21 A. I'm completing -- this month I'm
22 completing 30 years.
23 Q. And that's to the present?
24 A. Right, up to the present.

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1 Q. Has that public service been
2 continuous for the last 30 years?
3 A. Yes, it has.
4 Q. Have you enjoyed any particular
5 position from time to time on the county board?
6 A. I was chairman of the county board for
7 two years previous to this term.
8 Q. Do you also serve on committees and so
9 forth?
10 A. Many.
11 Q. Over your public career, would it be
12 fair to say that you've attended several or dozens

13 or hundreds or maybe even a thousand public
14 hearings?

15 A. Probably -- if you count county board
16 meetings and committee meetings, probably more than
17 1,000.

18 Q. Inviting your attention back to the
19 evening of June 17th, 2002, do you recall, sir,
20 where you were the first night of the public
21 hearings regarding the siting process?

22 A. I came to the meeting about a quarter
23 to 7:00 or between a quarter to 7:00 and 7:00
24 o'clock. I was -- went into the City Hall and

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1 came up the stairs and when I got up there were
2 people in the stairway, in the hallway outside the
3 city counsel chambers and I thought not very much
4 about that and I went to enter the county board --
5 the City Hall chambers and I couldn't get in.

6 Q. All right. I want to back up a little
7 bit if I could.

8 Did anyone accompany you to that
9 meeting?

10 A. I went alone.

11 Q. Why did you go to the meeting?

12 A. Because I was really very interested
13 in the whole waste management, the City Hall, the
14 Volini hearings, the whole works because I was very,
15 very interested in the waste situation that was
16 being proposed for Kankakee County.

17 Q. As an official and as a citizen?

18 A. Both.

19 MR. MUELLER: Object, leading.

20 HEARING OFFICER HALLORAN: Overruled.

21 You may answer.

22 BY THE WITNESS:

23 A. Yes.

24 BY MR. SMITH:

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1 Q. Now, prior to attending the meeting,
2 had you made any determination whether you wished to
3 participate in that meeting?

4 A. No. I was just going as a spectator.

5 Q. Prior to attending the meeting,
6 had you made any discount of your potential for
7 participating?

8 A. I had not -- I had not intentions of
9 participating in any way except as a witness.

10 Q. You were going to testify?

11 A. No. I was not going to testify. I
12 was going as a spectator.

13 Q. To see what the procedure was?

14 A. See what the procedure was and see
15 what was determined by the hearings.

16 Q. And, again, you arrived at about a
17 quarter until 7:00?

18 A. About quarter to 7:00 -- between a
19 quarter to 7:00 and 7:00 o'clock.

20 Q. And what was occurring when you
21 arrived?

22 A. The city meeting -- the City Council
23 meeting was just beginning.

24 Q. And what time was that expected to

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1 terminate?

2 A. I heard it was going to be about 8:00
3 o'clock.

4 Q. And what was to commence at 8:00
5 o'clock?

6 A. The hearing for the solid waste --
7 Kankakee solid waste plant.

8 Q. What did you observe when you first
9 entered the City Hall building?

10 A. The first that I entered the building
11 I noticed that there were people lined up going down
12 the stairs and also then when I got to the top of
13 the stairs, which I worked my way through those
14 people, then there were many people standing out in
15 the hall.

16 Q. Could you tell the hearing officer
17 whether there's a first stairway joining the first
18 and second floors?

19 A. Yes, there is.

20 Q. And then is there a landing?

21 A. There is a landing.

22 Q. And is there a second stairway to the
23 second floor?

24 A. The second floor -- I think that

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1 there's a landing and then it changes direction and
2 goes up to the second floor.

3 Q. And then is there a foyer outside the
4 actual assembly hall on the second floor?

5 A. Yes, there is.

6 Q. And by assembly hall, do you
7 understand me to mean the City Council chambers?

8 A. I don't understand you to mean -- what
9 I'm talking about is the outside of the City Council
10 chambers there is a landing there and people were in
11 that landing.

12 Q. How many people would you reckon to
13 your recollection were on that first stairway?

14 A. With the stairway and the landing, I
15 would say there were probably somewhere between 50
16 and 60, but it was hard to determine because people
17 were coming, staying a little while because they
18 could not get in, they were leaving so they were
19 coming and going.

20 Q. Could you ascertain the demeanor of
21 the crowd?

22 A. Very, very unhappy.

23 Q. And are you referring to the crowd
24 that could not get into the chambers?

1 A. Exactly.

2 Q. And did you eventually make your way
3 to the foyer outside the chambers themselves?

4 A. Yes.

5 Q. How many people do you reckon or
6 estimate were in that foyer?

7 A. I'd say all together -- are you
8 talking -- when you say the foyer, are you talking
9 about the upstairs landing?

10 Q. Yes, immediately outside --

11 A. I'd say about 40 or 50. They were
12 packed in there.

13 Q. Were you able to enter the City
14 Council chambers?

15 A. No, I wasn't because there were two
16 police officers standing right at the doorway and
17 they would let no more enter because they said the
18 place was full.

19 Q. Could you tell whether it was full?

20 A. It looked that way to me from where --
21 for as close as I got. I worked my way up to the
22 door at one time and I looked in the chambers
23 looking to see if I could possibly find a seat and
24 there were none and so then I moved back from the

1 door because the police, the two policemen, that
2 were there cleared an aisleway through there and
3 they made everybody get back from the door except
4 the people standing right along the wall.

5 Q. So considering the upper foyer, the
6 two stairways and the landing, how many people, to
7 your mind, could not get into the City Council
8 chambers that you observed?

9 A. I'd say 70 to 75, but that's hard to
10 determine because of the fact that people were
11 coming, staying there a little while, getting
12 disgusted and leaving.

13 Q. Did you hear people express their
14 disgust?

15 A. Oh, very much so. They were very --
16 extremely unhappy.

17 Q. Now, you mentioned two policemen.
18 Were these individuals uniformed?

19 A. Yes, they were.

20 Q. Do you recall whether they were male
21 or female?

22 A. Male.

23 Q. Do you recall whether they were armed?

24 A. It seems to me -- I wouldn't want to

1 swear to that, but it seems to me they were.

2 MR. MUELLER: I'm going to object, if
3 he wouldn't swear to it then it's got to be stricken
4 because this is sworn testimony.

5 MR. SMITH: May I be heard?

6 HEARING OFFICER HALLORAN: Yes, you
7 may.

8 MR. SMITH: The witness are here to
9 express their best recollection. They'll be subject
10 to cross-examination.

11 HEARING OFFICER HALLORAN: I agree,
12 objection overruled.

13 MR. SMITH: Thank you, sir.

14 BY MR. SMITH:

15 Q. Did you hear the police officers at
16 any time that evening address the assembly in the
17 hallway?

18 A. Yes.

19 Q. And what did you hear, sir?

20 A. They said that you're going to have to
21 make an aisleway through here, you're going to have
22 to get back, you're going to have to make an

23 aisleway through here because of the fact that if
24 we have any kind of a fire or any kind of a problem

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1 of that kind the people have got to get out of here
2 and in addition to that, that people would be
3 wanting to leave in some cases and come back.

4 Q. Did you hear the police officers at
5 any time admonish the hallway crowd to quiet down?

6 MR. MUELLER: I'm going to object,
7 leading.

8 MR. SMITH: I'll rephrase.

9 BY MR. SMITH:

10 Q. Did you hear the policemen at any time
11 make any further declarations to that crowd in the
12 hallway?

13 A. They said you're going to have to be
14 quiet out here, you're making so much noise they
15 can't hear what's going on inside.

16 Q. Was there any ultimatum such as or
17 we'll clear the hallway?

18 MR. MUELLER: Object.

19 MR. SMITH: I'll rephrase it.

20 BY MR. SMITH:

21 Q. Was there any ultimatum coupled with
22 that admonition to quiet down?

23 MR. MUELLER: Object, still leading.

24 HEARING OFFICER HALLORAN: Mr. Smith?

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1 MR. SMITH: I don't believe so. Was
2 there any other admonition in addition to the
3 declaration to quiet down.

4 HEARING OFFICER HALLORAN: Mr.
5 Mueller?

6 MR. MUELLER: He's rephrased his
7 question.

8 HEARING OFFICER HALLORAN: You may
9 proceed. Thank you.

10 BY THE WITNESS:

11 A. They said that unless you straighten
12 it out out here and make this aisleway and quiet
13 down we're going to have get you -- clear you all
14 out of here because they've got to be able to hear
15 what's going on inside.

16 BY MR. SMITH:

17 Q. What was your own emotional reaction

18 to these police statements?

19 MR. MUELLER: Object, relevance.

20 HEARING OFFICER HALLORAN: Mr. Smith?

21 MR. SMITH: It goes to fundamental
22 fairness. We have alleged that the public was shot
23 out of this hearing and that goes to their own
24 interpretation of what was happening, the

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1 intimidation and the disgust and the powerlessness
2 with ability to see their government in action.
3 So their mental impression we believe is highly
4 relevant, your Honor.

5 HEARING OFFICER HALLORAN:

6 Mr. Mueller?

7 MR. MUELLER: Fundamental fairness is
8 to be the ultimate issue to be determined by the
9 Board based upon the totality of the fact.
10 It's manifestly obvious that the people that didn't
11 get in were unhappy, but the evidence as to their
12 own internal feelings is not probative and would, in
13 fact, be prejudicial.

14 HEARING OFFICER HALLORAN: I would

15 disagree. I'm going to overrule your objection.
16 I think it impinges on the heart of the fundamental
17 fairness issue. You may proceed, Mr. Smith.

18 MR. SMITH: All right. Thank you.

19 BY MR. SMITH:

20 Q. May I repeat it for you, sir?

21 A. Yes.

22 Q. Could you describe to the hearing
23 officer your own emotional reactions to the police
24 admonitions?

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1 A. I didn't like it and I was disgusted
2 because I couldn't hear what was going on, nor could
3 I see what was going on and I spent the evening
4 there.

5 Q. Now, during one of the opening
6 statements that we've heard this morning one of the
7 lawyers suggested that the crowd was disruptive and
8 perhaps even attempting to overrun government. Were
9 you here and did you hear that statement?

10 A. Absolutely not. The people were just
11 trying to be able to hear and see what was going on.

12 Q. Did you see any member of the crowd,

13 these 75, 80, whatever people at any time do or
14 suggest anything at all that would be disruptive?

15 MR. MUELLER: Object, there's been no
16 testimony that there were 80 people there.

17 Mr. Martin has said anywhere from 40, 50, 60, 40 to
18 75. He never said 80.

19 MR. SMITH: I think that's right.

20 I think Mr. Mueller is correct on this point.

21 Could I rephrase?

22 HEARING OFFICER HALLORAN: Yes, you
23 may. Objection sustained.

24 BY MR. SMITH:

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1 Q. That evening, sir, did you see anybody
2 at any time in that crowd of citizens do or suggest
3 or infer anything disruptive?

4 A. Not at all. When the policeman came
5 and told them what they wanted them to do, they did
6 it, but as new people came in at times they would
7 push forward trying to be able to hear and then,
8 of course, that made a crush at the door, the
9 policemen would come back out and they probably

10 came out three or four times at least to try and
11 clear it and they did threaten more than once to
12 clear the crowd from the hall totally that were
13 outside the door.

14 Q. At any time, explicitly or by
15 inference, did you see or hear any member of the
16 public suggest that they were there to overthrow
17 government?

18 A. Not at all.

19 Q. In your 30 years of public service,
20 have you ever witnessed anything at all similar to
21 what you've testified to occurred on June 17th,
22 2002, at the Kankakee City Council chambers?

23 MR. MUELLER: I'm going to object.
24 That almost purports to have him be an expert on the

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1 way the meetings ought to be conducted.

2 HEARING OFFICER HALLORAN: Mr. Smith?

3 MR. SMITH: Well, we've heard opening
4 statements, your Honor, that activities were
5 routine, those were the words from Mr. Mueller's own
6 mouth, nothing out of the ordinary.

7 HEARING OFFICER HALLORAN: I agree.

8 Objection overruled. The witness may answer if he's
9 able.

10 BY MR. SMITH:

11 Q. In your 30 years of public service as
12 a county board member, as the chairman of the county
13 board, have you ever witnessed anything even similar
14 to what you've testified to about this crowd not
15 being able to get into their public body?

16 A. No, I haven't.

17 Q. Were you present when the original
18 waste management facility was sited some 25 years
19 ago?

20 A. Yes, I was. I was on the board at
21 that time.

22 Q. Did the leaders anticipate intense --
23 the potential for intense public involvement,
24 curiosity and perhaps participation?

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1 MR. MUELLER: I'm going to object as
2 to what occurred at a different hearing. That's
3 clearly prejudicial and so far afield it has nothing
4 to do with this proceeding.

5 MR. SMITH: Well, I would agree that
6 this testimony is clearly prejudicial, but to whom?

7 HEARING OFFICER HALLORAN: I'm going
8 to sustain Mr. Mueller's objection.

9 MR. SMITH: Thank you, your Honor.

10 BY MR. SMITH:

11 Q. How long did you stand in the hallway?

12 A. I got there about, as I said, between
13 a quarter to 7:00 and 7:00 o'clock and I became so
14 disgusted to the fact that I was not able to find
15 out what was going on inside, although I stayed for
16 almost two hours hoping that somebody would leave
17 and there would be room inside.

18 Q. Over those two hours at any time were
19 you successful in getting into the hall?

20 A. Never once.

21 Q. From your position in the hallway
22 outside the chambers, could you see or hear
23 anything?

24 A. Very, very little, hardly anything.

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1 I did see from my vantage point at one time one of
2 the aldermen stand and ask a question. I couldn't

3 hear what he said, but I knew who he was and I saw
4 him ask a question, but as to what he said or what
5 it pertained to, I could not tell you, but then I
6 got pushed back from the door again and that was it.

7 Q. Were you from time to time standing on
8 your tip toes?

9 A. I was trying my best.

10 Q. Why were you doing that?

11 A. Why? Because I was interested in
12 finding out what was going on.

13 Q. Were you looking over the heads of the
14 other people?

15 A. At some times I could and other times
16 I couldn't.

17 Q. Were there any provisions for speakers
18 or sound amplification system provided in those
19 hallways or on those stairs or on that landing?

20 A. No.

21 Q. Were there any provisions at all for
22 monitors being placed in that outside hallway,
23 either stairs or that landing?

24 A. No.

1 Q. How many people do you reckon just
2 left the hallway over the two-hour period that you
3 were there?

4 A. I would say that half the crowd left,
5 but they were coming and going. Some of the people
6 got there at about I'd say 7:30 to 8:00, by that
7 time many of the people that were there before 7:00
8 had got disgusted and left and then others as time
9 went by, as I did, at about -- between a quarter to
10 9:00 and 9:00 o'clock, I finally became disgusted, I
11 couldn't hear what was going on, I couldn't see what
12 was going on, so I left.

13 Q. Did you come back the following night?

14 A. No, I did not.

15 Q. Could you tell the hearing officer why
16 you didn't come back the next evening?

17 A. Because I thought it was a waste of
18 time.

19 Q. Did you come back the evening after
20 that?

21 A. No, I did not.

22 Q. Did you return at all?

23 A. Yes.

24 Q. How long?

1 A. It was probably about ten days after
2 that and the reason that I came back because the
3 county board personnel was to testify at that time
4 and so as a result, I did come back to hear that.

5 Q. And were you able ten days later to
6 get into the hall?

7 A. Yes.

8 Q. And what was the size of the crowd
9 then?

10 A. It was adaptable to the hall itself,
11 in other words, everybody was -- that I saw was able
12 to get in.

13 Q. Mr. Martin, again returning your
14 attention to the evening of June 17th, 2002, while
15 you were in the outer hallway or foyer at any time
16 did you see anyone come down or sent down from the
17 podium to convey information to the people who could
18 not get in?

19 A. No.

20 Q. At any time that evening did you see
21 anyone from the city conveying information to this
22 crowd in the hallway about their rights?

23 A. I did not.

24 Q. Did anybody ever come to you or the

1 other members of the crowd with explanatory
2 pamphlets?

3 A. No. I never did see anything like
4 that.

5 Q. Did you hear anyone convey a message
6 in any form that you or these other people have the
7 right to speak, to participate, to question
8 witnesses?

9 A. No.

10 Q. In your opinion, was this a public
11 hearing?

12 A. It was a partial public hearing.
13 Many, many, many of us were excluded because we
14 could not get into the hall.

15 Q. Could you tell the hearing officer,
16 if you can remember, the temperature that evening?

17 A. It was hot. It was -- probably in
18 that hallway I would guess it was 90 or maybe more
19 because of the crowd and the heat of the day.

20 Q. Could you characterize the people that
21 you saw around you?

22 A. Many of them were people from the area
23 of the proposed landfill site, many of them were
24 quite a bit older, maybe not as old as me, but quite

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1 old.

2 Q. Elderly?

3 A. Elderly.

4 Q. What time did you leave, sir?

5 A. About a quarter until 9:00 -- between
6 a quarter until 9:00 and 9:00 o'clock.

7 Q. And at that point as you left, what
8 was your emotional reaction?

9 A. Disgust.

10 Q. Do you recall whether the hearing
11 officer while you were in attendance called a break
12 in the proceedings?

13 A. It seemed to me that he did once, yes.

14 Q. Do you recall if anyone during the
15 break was sent out to this crowd to tell them their
16 rights?

17 A. No.

18 Q. Would it be fair or unfair for me to
19 characterize the people in that foyer as squeezed

20 together?

21 A. Yes, it was -- at times. What would
22 happen is they'd all get squeezed together, the
23 officers would react, they would clear an aisleway
24 down the middle, which meant that some of the people

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1 had to back off or back down the stairs again so as
2 they did this then they wouldn't be as squeezed, but
3 then eventually the people in the back would want to
4 try and hear what was going on and they would push
5 forward and then we'd be squeezed again.

6 Q. So you're not criticizing the police
7 officers?

8 A. Not at all. They were doing -- and I
9 told several of the people around me, they were very
10 disgusted with the police officers and as I told
11 them, they're only doing their job. They are trying
12 to do what they're supposed to do.

13 Q. Would it be fair or unfair for me or
14 anyone to describe the situation as chaotic at
15 times?

16 A. At times.

17 Q. Do you know a person by the name of
18 Pat Power?

19 A. Yes, I do.

20 Q. And who is Pat Power?

21 A. Pat Power is a local attorney and
22 as I understand it he is the assistant to the
23 Kankakee city attorney.

24 Q. At any time over the two hours that

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1 you were squeezed into this chaotic hallway, do you
2 recall seeing Pat Power come out and address these
3 people outside the assembly room?

4 A. No, I don't.

5 MR. SMITH: I have nothing further.
6 Thank you, Mr. Martin.

7 HEARING OFFICER HALLORAN: Thank you,
8 Mr. Martin. Mr. Mueller?

9 MR. SMITH: Are we following the same
10 sequence if I could ask, Mr. Hearing Officer?

11 HEARING OFFICER HALLORAN: I guess we
12 could.

13 MR. SMITH: Thank you, sir.

14 HEARING OFFICER HALLORAN:

15 Mr. Sandberg, any questions directed of this
16 witness?

17 MR. SANDBERG: No.

18 HEARING OFFICER HALLORAN: Mr. Moran?

19 MR. MORAN: No questions.

20 HEARING OFFICER HALLORAN:

21 Mr. Mueller?

22 MR. MUELLER: Thank you.

23

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1 C R O S S - E X A M I N A T I O N

2 by Mr. Mueller

3 Q. Mr. Martin, you're on the county
4 board?

5 A. Yes, sir, I am.

6 Q. Had you previously voted as a member
7 of the county board to oppose this application?

8 MR. SMITH: I would object, beyond the
9 scope.

10 MR. MUELLER: It goes to the bias.

11 HEARING OFFICER HALLORAN: He may

12 answer if he's able.

13 BY THE WITNESS:

14 A. Would you repeat the question?

15 BY MR. MUELLER:

16 Q. Had you previously voted as a member
17 of the county board to oppose this application?

18 A. Yes, sir.

19 Q. Had you voted authorizing the state's
20 attorney to hire the firm of Hinshaw & Culbertson
21 and expert engineers to work on opposing this
22 application?

23 MR. SMITH: I renew the objection.

24 HEARING OFFICER HALLORAN:

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1 Mr. Mueller?

2 MR. MUELLER: Again, it goes to bias
3 and interest in the proceedings. He as a member of
4 the county board had endorsed a \$150,000 commitment
5 on behalf of the taxpayers and, of course, he's
6 going to get here and have convenient amnesia about
7 what actually happened.

8 MR. SMITH: I object to the
9 argumentative nature of the objection and the speech

10 making by Mr. Mueller.

11 HEARING OFFICER HALLORAN: I will
12 overrule your objection, Mr. Smith. I'm looking at
13 the Board's rules, Section 101.626, our rules of
14 evidence are a bit more relaxed and I may admit
15 evidence that's material, relevant and would be
16 relied upon by prudent persons in the conduct of
17 serious affairs, of course, unless it's privileged.
18 You may continue, Mr. Mueller.

19 BY MR. MUELLER:

20 Q. I think my question was, Mr. Martin,
21 had you previously voted to approve the county
22 retaining expert, legal and engineering services
23 to help them oppose Town & County's application?

24 A. Yes, I did.

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1 Q. And in fact, your interests as someone
2 opposed to the application were represented on the
3 first night of the hearings by Mr. Porter,
4 Mr. Helsten, State's Attorney Smith and his
5 assistant, Brenda Gorski, all of who were present in
6 the room, isn't that room?

7 A. Although I couldn't hear exactly what
8 was being said by them or what they were doing, they
9 were hired by the county to do that job.

10 Q. And they were all there, weren't they?

11 A. I believe they were all there.

12 Q. So you had four attorneys representing
13 your vote and your interest inside the hearing room,
14 correct?

15 A. Yes.

16 Q. And your mind as to the opposition to
17 this proposal had already been made up based upon
18 the fact that you had voted to oppose, correct?

19 A. Yes, sir.

20 Q. You don't recall any police officers
21 calling names of registered people?

22 A. No, I don't.

23 Q. You don't recall Mr. Power asking if
24 anybody wanted to participate or was registered?

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1 A. No, I don't.

2 Q. Are you aware that there was a
3 transcript of these proceedings made available by
4 the third day of the hearings?

5 A. No, I didn't.

6 Q. Did you ever review that transcript?

7 A. I did not.

8 Q. Did you make a public statement on
9 the night that the county board chairman made a
10 public statement?

11 A. No, I did not.

12 Q. Were you present for those public
13 statements?

14 A. Yes.

15 Q. And you heard Mr. Kruse's statement,
16 he being the chairman of the county board?

17 A. Yes, I did.

18 Q. And as far as you were concerned you
19 endorsed and adopted that statement?

20 A. It agreed with what -- my thinking.

21 Q. After the first night, did you go
22 complain to somebody about what occurred?

23 A. I complained to some of the people at
24 the county, but that was -- I did not go to the City

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1 Council and complain.

2 Q. You complained to some people at the
3 county the next day?

4 A. We talked about it.

5 Q. Who did you complain to?

6 A. Just many of my fellow board members.

7 Q. Did you complain to Mr. Smith?

8 A. No, I did not.

9 Q. Did you complain to Brenda Gorski?

10 A. No, I did not.

11 Q. Did you complain to Mr. Helsten?

12 A. I didn't see Mr. Helsten. He was not
13 around.

14 Q. Did you complain to Mr. Porter?

15 A. No.

16 Q. So you didn't complain to any of your
17 attorneys?

18 A. Later on I did, but not at that time,
19 within the first three days.

20 Q. When did you complain to your
21 attorneys?

22 MR. SMITH: I'm going to object,
23 it seems we're getting into some kind of a privilege
24 here. This is a county board member and I'm their

1 lawyer.

2 HEARING OFFICER HALLORAN:

3 Mr. Mueller?

4 MR. MUELLER: His complaints would be
5 relevant evidence in terms of what he did to try to
6 improve his ability to participate.

7 MR. SMITH: If I may?

8 HEARING OFFICER HALLORAN: You may.

9 MR. SMITH: That's like me asking
10 Mr. Volini what did you tell Mr. Mueller.

11 HEARING OFFICER HALLORAN: I'm going
12 to sustain Mr. Smith's objection. Move on.

13 BY MR. MUELLER:

14 Q. You have no complaint about how the
15 police acted that night, do you?

16 A. I have no complaint about the way the
17 police acted. I thought they were doing the job as
18 they had been instructed.

19 Q. And they did that job courteously and
20 professionally?

21 A. I thought so.

22 Q. By the way, that was a hot day, wasn't
23 it?

24 A. Yes, it was.

1 Q. And it was probably 90 in the hearing
2 room too as far as you could tell, wasn't it?

3 A. I couldn't tell. I was not in there.

4 MR. MUELLER: Nothing further. Thank
5 you.

6 HEARING OFFICER HALLORAN: Thank you,
7 Mr. Mueller. Mr. Leshen?

8 C R O S S - E X A M I N A T I O N

9 by Mr. Leshen

10 Q. Mr. Martin, when does the county
11 conduct its hearing, its meetings?

12 A. When do they conduct their meetings?

13 Q. Are they daytime meetings or nighttime
14 meetings?

15 A. They're daytime meetings.

16 Q. And how long have they been daytime
17 meetings?

18 A. Except for a period of about one year,
19 they have been daytime meetings all the time that
20 I'm on the county board.

21 Q. And you would agree that it would be
22 easier for people to attend these meetings at night
23 rather than the daytime, is that correct, the

24 public?

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1 A. With some people it would and some
2 people it wouldn't.

3 Q. But in any event, working people
4 cannot attend the county meetings because they occur
5 during the daytime, is that correct, unless they
6 miss work?

7 A. Or on their night shifts, yeah.
8 I think you're -- basically you are correct.

9 Q. So in terms of the fairness and
10 due process as you've described in over your 30
11 years in the county that is routinely, for want of a
12 better way, violated during the daytime meetings?

13 MR. SMITH: I'll have to object. I
14 don't think this is fair cross-examination. I don't
15 see the relevance.

16 HEARING OFFICER HALLORAN: He did
17 mention something about his 30 years experience and
18 his impression about the hearing.

19 MR. SMITH: Can we ask that the
20 question be repeated by counsel?

21 HEARING OFFICER HALLORAN: Mr. Leshen?

22 MR. LESHEN: I would ask that the
23 question be repeated by the court reporter.

24 (Whereupon, the requested

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1 portion of the record
2 was read accordingly.)

3 HEARING OFFICER HALLORAN: Could you
4 rephrase that question, please?

5 BY MR. LESHEN:

6 Q. Your testimony was that you've never
7 seen anything like this in 30 years, is that
8 correct?

9 A. That's right.

10 Q. And in 30 years, of course, you
11 haven't had those crowds at the county meetings
12 because those have been routinely held during the
13 day, is that correct?

14 A. They have been held repeatedly during
15 the day except for a short period of time.

16 Q. Okay. So for what, 28 or 29 of the 30
17 years the hearings have -- your meetings have been
18 held during the day despite the fact that working

19 folks then can't attend unless they miss work, is
20 that a fair statement?

21 A. I think you're right, except some
22 people can and some people can't.

23 Q. But my statement would be fair?

24 A. I would say basically yes.

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1 MR. LESHEN: Thank you. That's all I
2 have.

3 HEARING OFFICER HALLORAN: Thank you,
4 Mr. Leshen. Mr. Smith, any redirect?

5 MR. SMITH: I'll try to be brief.

6 R E D I R E C T E X A M I N A T I O N

7 by Mr. Smith

8 Q. Are the committee meetings heard all
9 times?

10 A. Are they what?

11 Q. All different times?

12 A. They're held at all different times.

13 Q. Are there evening meetings, daytime
14 meetings, morning meetings?

15 A. Yes, occasionally. Most are at
16 morning, but they have been at all various times.

17 Q. Have you ever seen anything in 30
18 years of the hundreds or thousands of meetings that
19 exhibit this type of chaos?

20 A. No.

21 Q. You and I do not agree on all issues?

22 A. You're right.

23 Q. You and I do not share the same party
24 affiliation?

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1 MR. MUELLER: Objection, relevance.

2 MR. SMITH: Mr. Mueller brought up
3 bias in this matter.

4 HEARING OFFICER HALLORAN: I agree.
5 Objection overruled.

6 BY MR. SMITH:

7 Q. Would it be fair to say you and I do
8 not share the same political affiliation?

9 A. Absolutely.

10 Q. And is it fair to say that you have
11 consistently in many public statements taken
12 positions against out of county garbage coming in?

13 A. Yes.

14 Q. Regardless of the author?

15 A. Regardless of who brings it in.

16 Q. Before this meeting did I call you
17 yesterday on the telephone at your home?

18 A. Yes.

19 Q. And did I tell you over and over,
20 you tell the truth?

21 MR. MUELLER: I'm going to object,
22 it's leading, it's also beyond the scope.

23 MR. SMITH: Rehabilitation. Mr.
24 Mueller challenged the credibility of this witness.

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1 Mr. Mueller in his statement said that a witness
2 that we called -- that was called, a Mr. Van Book,
3 he said he lied. These are powerful words from a
4 wordsmith.

5 HEARING OFFICER HALLORAN: Before you
6 respond, please, could you read the question back,
7 Terry, please? Thanks.

8 (Whereupon, the requested
9 portion of the record
10 was read accordingly.)

11 HEARING OFFICER HALLORAN:

12 Mr. Mueller?

13 MR. MUELLER: First of all, it's
14 leading; secondly, it's beyond the scope of cross;
15 thirdly is that going to be a complete waiver of the
16 attorney/client privilege between Mr. Smith and this
17 member of the county board?

18 HEARING OFFICER HALLORAN: Mr. Smith?

19 MR. SMITH: This is a routine question
20 when a witness' credibility is challenged, what did
21 I tell this witness? I'd make an offer of proof
22 that he'll answer you told me over and over you tell
23 the truth. That's my offer. I'd ask for a ruling,
24 sir.

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1 HEARING OFFICER HALLORAN: Well, I
2 will overrule Mr. Mueller's objection and you may
3 answer the question, Mr. Martin, if you're able.

4 BY THE WITNESS:

5 A. Mr. Smith told me exactly that, please
6 make sure you tell the truth, whatever it might be.

7 MR. SMITH: I have no further
8 questions of this gentleman.

9 HEARING OFFICER HALLORAN: Thank you,
10 Mr. Smith. I know Mr. Sandberg and Mr. Moran did
11 not give -- or partake in direct, do you have any
12 redirect?

13 MR. SANDBERG: No.

14 MR. MORAN: No, I do not.

15 HEARING OFFICER HALLORAN:

16 Mr. Mueller, any recross?

17 MR. MUELLER: Yes, thank you.

18 R E - C R O S S E X A M I N A T I O N

19 by Mr. Mueller

20 Q. Mr. Martin, did I just hear you
21 testify that you've been consistently opposed to
22 Kankakee County accepting waste from outside the
23 county?

24 A. Yes, that is correct.

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1 Q. And how many presentations has Waste
2 Management made to the county board or committees of
3 the county board that you're aware of within the
4 last year regarding the proposed landfill expansion
5 that's going to start hearings in two weeks?

6 HEARING OFFICER HALLORAN: Mr. Smith?

7 MR. SMITH: Relevancy and it goes to
8 collateral matters.

9 MR. MUELLER: Mr. Halloran, he opened
10 the door by asking -- by eliciting testimony about
11 this witness' opposition of out of county waste.

12 MR. SMITH: If I may, Mr. Hearing
13 Officer? That does not make all things relevant
14 until the end of time. What is really the relevancy
15 of a question like that?

16 HEARING OFFICER HALLORAN: I'll
17 overrule your objection, Mr. Smith. I'll allow a
18 little latitude since I believe you did open the
19 door. Mr. Mueller, proceed.

20 BY MR. MUELLER:

21 Q. My question is how many presentations
22 has Waste Management made to the county board or
23 committees of the county board regarding their
24 proposed expansion in the last year?

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1 A. It would be difficult for me to say
2 exactly, but I would say somewhere, and I'm not on
3 all of the committees, so I would only be able to

4 tell you the ones that I have participated in,
5 it would be somewhere between I'd say six and eight.

6 Q. And you were here for the opening
7 statement of your counsel?

8 A. Yes.

9 Q. And you heard him complain that one
10 presentation which the city of Kankakee heard from
11 Town & Country is fundamentally unfair?

12 A. I have no opinion on that.

13 Q. In fact, doesn't the county or wasn't
14 the county receiving presentations from Waste
15 Management on a regular basis before Waste filed its
16 application?

17 A. I don't know, not to my knowledge.

18 Q. By the way, have they turned you
19 around on the opposition of out of county waste?

20 MR. SMITH: Again, your Honor, I think
21 we're going far --

22 HEARING OFFICER HALLORAN: Sustained.

23 MR. MUELLER: Nothing further.

24 MR. LESHEN: No re-cross, your Honor.

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1 HEARING OFFICER HALLORAN: Thank you.

2 Mr. Smith?

3 MR. SMITH: Final redirect?

4 R E D I R E C T E X A M I N A T I O N

5 by Mr. Smith

6 Q. Did Waste Management or its
7 representatives at any of the appearances you
8 attended ever discuss their evidence or what their
9 experts would testify to?

10 A. Not that I can remember.

11 MR. SMITH: Thank you, sir.

12 HEARING OFFICER HALLORAN: Thank you.
13 Anything else? You may step down.

14 I do want to note for the record
15 that this room still has about 50 seats empty so
16 this room is definitely large enough, no one is
17 being barred, the temperature is approximately 75
18 degrees and there's a sign out front that says
19 Pollution Control Board and they direct it to this
20 room so...

21 MR. MUELLER: Mr. Halloran, if you're
22 going to point that out I need to point out that
23 this room is smaller than the Kankakee City Council
24 chambers.

1 MR. SMITH: I object to that.

2 HEARING OFFICER HALLORAN: I agree.

3 Strike that from the record.

4 MR. SMITH: Thank you.

5 HEARING OFFICER HALLORAN: That was a
6 bit out of line. Thank you.

7 Your next witness, Mr. Smith?

8 MR. SMITH: Thank you, Mr. Hearing
9 Officer. We would call Darrell Bruck, Junior.

10 (Witness sworn.)

11 WHEREUPON:

12 D A R R E L L B R U C K,

13 called as a witness herein, having been first duly
14 sworn, deposeth and saith as follows:

15 D I R E C T E X A M I N A T I O N

16 by Mr. Smith

17 Q. Good morning. Would you state your
18 name for the record and spell your last name for the
19 court reporter?

20 A. It's Darrell William Bruck, Junior and
21 the last name is B-r-u-c-k.

22 Q. And where do you live, sir?

23 A. 2943 Chippewa Drive, Bourbonnais.

24 Q. Is Bourbonnais located within Kankakee

1 County, Illinois?

2 A. Yes, it is.

3 Q. How long, sir, have you been a
4 resident of Kankakee County?

5 A. Fifty years.

6 Q. Are you employed?

7 A. Yes.

8 Q. What do you do for a living, sir?

9 A. Construction.

10 Q. Now, inviting your attention back
11 to the evening of June the 17th of 2002, did you
12 have occasion to attend a public hearing at the
13 Kankakee City Hall building located at 385 East Oak
14 Street in Kankakee, Illinois?

15 A. Yes.

16 Q. Can you tell the hearing officer how
17 you learned about that hearing?

18 A. Through news -- through the local
19 newspaper's articles.

20 Q. Why did you attend?

21 A. Because I was interested in the
22 proceedings and wanted to be there.

23 Q. Did you make any determination as to

24 whether you wished to participate perhaps in the

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1 proceedings?

2 A. Yes, I did. I had given it a great
3 deal of consideration, I even made a call because I
4 was confused. I saw a legal notice that stated one
5 set of rules and a newspaper article that stated a
6 different set of rules.

7 Q. Could you tell the hearing officer
8 what you recall about the notice in the newspaper?

9 A. The legal notice in the newspaper said
10 that people wishing to sign up to object had up
11 until the day of the hearing.

12 Q. And you saw a contrary rule or a
13 confusing rule somewhere else?

14 A. I also had seen an article in the same
15 paper that stated that the Kankakee City Council had
16 set the rules for the proceeding and that they were
17 -- that you had to sign up five days before the
18 proceedings, which I don't know if that meant
19 business days or if it meant calendar days.

20 Q. So you made a determination to attend

21 the Town & Country landfill siting hearing?

22 A. Yes, I did.

23 Q. And did you go with anyone?

24 A. No, I did not.

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1 Q. What time did you arrive?

2 A. I arrived there at about five or ten
3 minute after 8:00 o'clock.

4 Q. Can you tell the hearing officer as
5 you approached the building itself what you saw?

6 A. I saw people coming and going as I
7 approached the building.

8 Q. Did you enter the building?

9 A. Yes, I did.

10 Q. When you entered the ground floor, did
11 you have occasion to see the stairway leading to the
12 first landing?

13 A. Yes, I did.

14 Q. Did you notice anything unusual about
15 that landing?

16 A. The building was full.

17 Q. And could you tell us what you mean by
18 that?

19 A. I mean that as soon I opened -- went
20 through the front door, I saw people lined up all
21 the way up the stairs and the landing all the way up
22 to the front door as I moved forward through the
23 crowd.

24 Q. The area outside the actual assembly

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1 room was the foyer or hallway?

2 A. Yes.

3 Q. How many people do you estimate were
4 in the hallway, the outside foyer, to your
5 recollection?

6 A. The actual hallway by the meeting
7 room, it probably had 60 to 70 people.

8 Q. How many people on the stairways do
9 you believe there were?

10 A. There was at least another 20, 30.

11 Q. How would you characterize generally
12 the people? Were they children? Were they adults?

13 A. They was many senior citizens in the
14 crowd and there was a few families, including
15 teenagers or early 20s.

16 Q. Were you able to get into the meeting
17 room itself?

18 A. No, I was not.

19 Q. Why not, sir?

20 A. Because as I worked my way through
21 the crowd I got to a point on the main -- on the
22 foyer outside the meeting room where the police
23 officers stopped me from going any further and said
24 the meeting room was full and you can't push any

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1 further.

2 Q. Did these police officers have a
3 uniform?

4 A. Yes, they did.

5 Q. Do you recall whether they were armed?

6 A. Yes, they were.

7 Q. Was the crowd at any time disruptive?

8 A. They were not disruptive, no.

9 Q. Did you see anything at any time to
10 indicate the crowd was there to overthrow its local
11 government?

12 A. No.

13 Q. The senior citizens were not

14 clamoring?

15 A. People were vocal. The murmuring or
16 the volume of the crowd was loud because people were
17 unhappy and they couldn't hear or see anything.

18 Q. So how would you describe the demeanor
19 of the crowd when you arrived?

20 A. Disgruntled, unhappy.

21 Q. Were you at any time successful that
22 evening in getting into the hall itself?

23 A. Somewhere around 10:00 o'clock or
24 thereafter.

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1 Q. So you arrived again at what time?

2 A. Five or ten minutes after 8:00.

3 Q. And so you waited roughly two hours?

4 A. Yes.

5 Q. In that two-hour wait, where were you?

6 A. I was on the main hallway or foyer
7 outside of the meeting room, in that area.

8 Q. Could you hear or see anything as to
9 what was going on in the meeting itself?

10 A. No, I could not.

11 Q. Were any sounds coming out?
12 A. No.
13 Q. Had any arrangements been made to
14 place speakers in the foyer or the stairwells?
15 A. No.
16 Q. Was there any sound amplification
17 equipment of any kind or nature to your
18 recollection?
19 A. No.
20 Q. Were there any monitors where people
21 could at least see what was happening?
22 A. No.
23 Q. Could you see into the hall?
24 A. I could only see the hearing officer

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1 because he was in the -- the doorway's in the center
2 room and you look down through the doorway and you
3 can see the hearing officer.

4 Q. Was he on a dais that was elevated?
5 A. Yes.
6 Q. Could you hear any of the witnesses?
7 A. No.
8 Q. Could you hear any of the lawyers or

9 their arguments?

10 A. No.

11 Q. Could you hear any announcements
12 regarding the rules of the game?

13 A. No.

14 Q. Could you hear any declarations of the
15 rights of the citizens?

16 A. No.

17 Q. What was the temperature to your mind?

18 A. It was warm, it was a hot summer day
19 and the air conditioning system in the building
20 didn't seem to be adequate for the crowd.

21 Q. Did you hear the police officers at
22 any time address the crowd in the hallways?

23 A. Yes.

24 Q. And what did they say?

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1 A. They said if people didn't quiet down
2 that they would be escorted out of the building
3 because they were -- their voices were disrupting
4 the meeting -- the hearing.

5 Q. What was your own emotional reaction

6 to those police statements?

7 A. I was not happy.

8 Q. Was there seating to accommodate the
9 people in the hallway or the foyer or the landing?

10 A. No.

11 Q. How many people do you feel that you
12 saw leave the premises during the first two hours?

13 A. I would say from 50 to 60 people did
14 leave.

15 Q. What was the demeanor of these people
16 as they were leaving?

17 A. They were not happy.

18 Q. Did you recall seeing anyone come down
19 from the podium and address the people in the
20 hallway concerning any subject?

21 A. No.

22 Q. Do you remember the city officials or
23 the chairman sending an emissary down to explain
24 rights or what was happening?

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1 A. No.

2 Q. Did you hear at any time your rights?

3 A. No.

4 Q. Did anyone come down or distribute
5 literature such as the rules of procedure?

6 A. No.

7 Q. How were you successful in actually
8 entering the hall then at 10:00 o'clock?

9 A. Well, as people left, I moved up
10 closer and closer until eventually I was outside
11 the doorway and then as people left out of the room
12 their seats became available and then I went and sat
13 down.

14 Q. Prior to going that evening, had you
15 precluded or foreclosed in your own mind your
16 opportunity to perhaps participate, question
17 witnesses, cross-examine witnesses, make a
18 statement?

19 A. Well, I felt that time had past
20 because of what the city clerk told me on the phone,
21 that they made the rules and it was their rules not
22 the legal notice.

23 Q. Do you recall anyone at any time
24 making a request for a recess?

1 A. I believe that the -- I believe --
2 yes.

3 Q. Do you remember who did that?

4 A. Chuck Ruch.

5 Q. And for the Hearing Officer's benefit,
6 that was an attorney that was participating on
7 behalf of certain objectors?

8 A. Yes.

9 Q. What time was the recess?

10 A. After 10:00 o'clock.

11 Q. During the recess, do you recall
12 anybody informing the crowd in the hallway what was
13 going on?

14 A. No.

15 Q. Do you know a person by the name of
16 Pat Power?

17 A. No.

18 Q. Do you recall anybody from the city
19 going out and making explanations about sign-in?

20 A. No.

21 Q. Sometime later, maybe about six, seven
22 days later, did you have occasion to attend a public
23 information session that was extended by the hearing
24 officer at the Kankakee High School auditorium?

1 A. The only thing I attended was when we
2 -- for public comment, yes.

3 Q. Was that at the high school
4 auditorium, a different location?

5 A. That was at a different location.
6 It was the junior high.

7 Q. And did you go there and make a
8 complaint about how you were treated on June 17th?

9 A. Yes, I made a public statement.

10 Q. On June 17th, did you ever hear an
11 announcement that you could sign-in and register
12 that evening?

13 A. No.

14 MR. SMITH: Nothing further of this
15 witness.

16 HEARING OFFICER HALLORAN: Thank you,
17 Mr. Smith. Mr. Sandberg, any questions?

18 MR. SANDBERG: Nothing.

19 HEARING OFFICER HALLORAN: Mr. Moran?

20 MR. MORAN: No questions.

21 HEARING OFFICER HALLORAN:

22 Mr. Mueller, cross, please.

23

24

1 C R O S S - E X A M I N A T I O N

2 by Mr. Mueller

3 Q. Mr. Bruck, had you registered as an
4 objector?

5 A. No.

6 Q. Did you ever register as an objector?

7 A. No.

8 Q. Did you ever register to cross-examine
9 or call witnesses?

10 A. No.

11 Q. You got in the hearing room at 10:00
12 o'clock on the first night, correct?

13 A. Or thereafter, yes.

14 Q. And actually that's despite the fact
15 that you had arrived a little bit late, correct?

16 A. Yes.

17 Q. And after you were in the hearing
18 room, do you recall the hearing officer indicating
19 that he was going to continue to leave registration
20 open for those who wished to participate by asking
21 questions and putting on evidence?

22 A. No.

23 Q. Once you were in the hearing room you
24 were able to hear, weren't you?

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1 A. Yes.

2 Q. And did you hear other people
3 cross-examine Dr. Schoenberger?

4 A. Yes.

5 Q. How late did you stay that night?

6 A. I stayed until the end, after
7 midnight, I believe.

8 Q. Okay. So you were there from
9 approximately 10:00 o'clock until the hearing was
10 recessed, correct?

11 MR. SMITH: Objection,
12 mischaracterizes the evidence. He said he got there
13 shortly after 8:00.

14 HEARING OFFICER HALLORAN: That's what
15 I recall, Mr. Mueller.

16 BY MR. MUELLER:

17 Q. You were in the room from
18 approximately 10:00 o'clock until the hearing
19 adjourned that night?

20 A. Yes.

21 Q. And you never during that time heard
22 the hearing officer indicate that anyone could
23 register either that night or even the next day?

24 A. No, I did not.

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1 Q. Did you come back the next day?

2 A. Yes, I did.

3 Q. Did you hear the hearing officer on
4 the second day again indicate that those who wished
5 to register still could?

6 MR. SMITH: Objection again,
7 mischaracterizes the evidence.

8 HEARING OFFICER HALLORAN:
9 Mr. Mueller?

10 MR. MUELLER: We'll tie it up. The
11 record of the proceeding speaks for itself.

12 HEARING OFFICER HALLORAN: Mr. Smith?

13 MR. SMITH: I agree if you can tie it
14 up.

15 HEARING OFFICER HALLORAN: Go ahead
16 and proceed, Mr. Mueller, please.

17 BY MR. MUELLER:

18 Q. Did you hear the hearing officer the
19 second night offer registration to those who wanted
20 to participate?

21 A. No.

22 Q. Did you come on the third night?

23 A. Yes, I did.

24 Q. Did you hear the hearing officer on

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1 that night offer registration to those who wanted to
2 participate?

3 A. No.

4 Q. Did you want to register?

5 A. Yes, I did.

6 Q. Did you ever inquire of anyone how
7 that could be done?

8 A. Yes. I called the city clerk --
9 Kankakee city clerk.

10 Q. When did you call the city clerk?

11 A. The week prior to the hearing.

12 Q. Did you ever talk to anyone at the
13 hearing about registering or participating?

14 A. No.

15 Q. Now, you gave a public comment on the

16 public comment night, which would be I believe June
17 27th?

18 A. Yes.

19 Q. In your public comment you never
20 mentioned being unable to register, did you?

21 A. Yes, I did.

22 Q. And did you ever hear the hearing
23 officer indicate that a transcript of the first
24 night's proceeding was available for the public that

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1 didn't hear all of the first night?

2 A. I did hear that, yes.

3 Q. Did you ever go read that transcript?

4 A. No, I did not.

5 Q. And with regard to the number of
6 people that didn't get in and that were in the
7 hallway, you never counted them, did you?

8 A. No.

9 Q. Those are just estimates on your part,
10 correct?

11 A. That's correct.

12 Q. I want to see if I get this right.

13 You were present all of the second night and all of
14 the third night?

15 A. Yes.

16 Q. And by the way, there was no problem
17 accommodating everybody after about 10:00 o'clock on
18 the first night, isn't that true?

19 A. That's correct.

20 MR. MUELLER: Nothing further. Thank
21 you.

22 HEARING OFFICER HALLORAN: Thank you,
23 Mr. Mueller. Mr. Leshen?

24 MR. LESHEN: No cross-examination.

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1 HEARING OFFICER HALLORAN: Thank you.
2 Mr. Smith, any redirect?

3 MR. SMITH: I have. I'll try to be
4 brief, your Honor.

5 HEARING OFFICER HALLORAN: Thank you.

6 R E D I R E C T E X A M I N A T I O N

7 by Mr. Smith

8 Q. Now, Mr. Bruck, Mr. Mueller asked you
9 if you called the city clerk the week prior to the
10 hearing and you indicated yes, do you remember?

11 A. Yes, I did.

12 Q. And what was your inquiry?

13 MR. MUELLER: Excuse me, this is
14 beyond the scope. I asked him what he did to try to
15 register and he said he called the city clerk. I
16 didn't ask him if he called nor did I follow-up on
17 the answer so the witness' answer does not open the
18 door to a new area of inquiry.

19 MR. SMITH: Judge, I wish to be
20 respectful to a colleague, but my notes indicate,
21 and I would defer to your recollection, that
22 Mr. Mueller asked Mr. Bruck so you called the city
23 clerk about a week prior to the hearing.

24 HEARING OFFICER HALLORAN:

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1 Mr. Mueller?

2 MR. MUELLER: My recollection is I
3 said what did you do to try to register and he said
4 I called the clerk.

5 MR. SMITH: Well, it doesn't matter,
6 Judge, he's opened the door.

7 MR. MUELLER: No. The witness' answer

8 doesn't open the door.

9 MR. SMITH: I'd ask for a ruling.

10 HEARING OFFICER HALLORAN: I think I'm
11 going to overrule your objection, Mr. Mueller. He
12 did say he called the city clerk so I believe he has
13 opened the door somewhat. Thank you. You may
14 proceed, Mr. Smith.

15 BY MR. SMITH:

16 Q. What did you ask the clerk, sir?

17 A. I asked the city clerk why the
18 newspaper article which stated what the rules were
19 that the City Council had passed for the hearing why
20 it was, you know, different than the legal notice
21 that was also in the paper and which rules applied
22 to me in my attempt to sign up as an objector.

23 Q. So you were trying to clear up your
24 own confusion about the notice?

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1 A. That's correct.

2 Q. What kind of answer did you get?

3 A. She told me that if I had a problem
4 with Mr. Volini's legal add in the journal that that
5 was a problem with him and that she would get me his

6 number, but that the City Council is in charge of
7 this proceeding and that they make the rules and
8 it's their rules to be followed.

9 Q. Now, Mr. Mueller asked you or
10 indicated -- question you did not count the people
11 that could not get into the hearing hall, it was
12 purely an estimate. What is your best estimate of
13 the folks that could not get into that meeting?

14 A. Up to 80 people at least and it could
15 be more because there was people coming and going.

16 Q. This is just an estimate, it could
17 have been 100?

18 A. That's correct.

19 Q. Do you recall what the notice said
20 about the hours of that first hearing?

21 A. The legal notice?

22 Q. Uh-huh.

23 A. No, I do not.

24 Q. Do you recall what time the meeting

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1 was supposed to adjourn?

2 A. No, I do not.

3 Q. You say you left after midnight.
4 How long did that first meeting go?
5 A. Well, the meeting went for over four
6 hours.
7 Q. And it got out at what time?
8 A. After midnight.
9 MR. SMITH: Thank you, sir.
10 HEARING OFFICER HALLORAN:
11 Thank you, Mr. Smith. Mr. Mueller, any recross?
12 MR. MUELLER: No.
13 HEARING OFFICER HALLORAN: Mr. Leshen?
14 MR. LESHEN: No, sir.
15 HEARING OFFICER HALLORAN: Thank you.
16 You may step down, sir. Thank you. Mr. Smith?
17 MR. SMITH: We would call Pam Grosso.
18 Ms. Grosso, would you step up, please?
19 (Witness sworn.)
20
21
22
23
24

1 WHEREUPON:

2 P A M E L A G R O S S O,

3 called as a witness herein, having been first duly
4 sworn, deposeth and saith as follows:

5 D I R E C T E X A M I N A T I O N

6 by Mr. Smith

7 Q. Good morning. Would you tell Hearing
8 Officer Halloran your name and spell your last name
9 for the court reporter, please?

10 A. Good morning. I'm Pamela Grosso,
11 G-r-o-s-s-o.

12 Q. And where do you live, ma'am?

13 A. I live at 1971 West 2000 South Road,
14 Kankakee.

15 Q. And what township is that located in?

16 A. Kankakee Township.

17 Q. And are you employed?

18 A. I have two temporary part-time jobs
19 right now.

20 Q. And could you tell us a little about
21 your educational background?

22 A. I have completed high school and
23 do have some college.

24 Q. All right. Do you recall whether you

1 attended a meeting that was held out as a public
2 meeting concerning a landfill issue on June 17th in
3 the year 2002?

4 A. Yes.

5 Q. And did you attend?

6 A. Yes.

7 Q. How had you learned about this
8 meeting?

9 A. I had been reading articles in the
10 Kankakee Daily Journal.

11 Q. And did it provoke your interest?

12 A. Yes.

13 Q. And why did you make the decision to
14 attend?

15 A. The proposed site is only about a mile
16 and a half from my home and so I felt it directly
17 affected me and I wanted more information.

18 Q. Did you foreclose the idea that you
19 may wish to hear witnesses or question witnesses,
20 perhaps make a statement?

21 MR. MUELLER: Object, leading.

22 HEARING OFFICER HALLORAN: Mr. Smith?

23 MR. SMITH: I'll rephrase, your Honor.

24 BY MR. SMITH:

1 Q. What were the options you considered
2 you might have in attending that meeting.

3 A. I wasn't exactly sure what would
4 happen at the proceedings and so I was -- I didn't
5 know what my options might be and I didn't know
6 where I would want to go further as far as talking
7 to anyone.

8 Q. When you went to the meeting, did you
9 go by car?

10 A. I did.

11 Q. Were you accompanied?

12 A. Yes.

13 Q. Who went with you?

14 A. My 20-year-old daughter went with me.

15 Q. Okay. And did she have similar
16 interests?

17 A. Yes. She wanted more information
18 and she was particularly curious about the
19 proceedings because of the legalness of it. She's
20 hoping to be an attorney. She wanted to find out
21 more of the legal aspects.

22 Q. So you wanted to show her what it was

23 like to have attendance at a public meeting?

24 A. Yes.

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1 MR. MUELLER: Object, leading.

2 HEARING OFFICER HALLORAN: Mr. Smith?

3 MR. SMITH: She just said that, Judge.

4 HEARING OFFICER HALLORAN: I agree.

5 Overruled.

6 MR. SMITH: Thank you.

7 BY MR. SMITH:

8 Q. So you wanted to show your daughter,
9 who might be a lawyer, what it meant to attend a
10 public meeting in the city of Kankakee?

11 A. Yes.

12 Q. What time did you arrive?

13 A. We arrived approximately 55 minutes
14 before the meeting was to start, so it a little
15 after 7:00 when we got there.

16 Q. How can you be so sure of the time?

17 A. I guess I just was -- I was watching
18 my watch and I was thinking about, you know, if we
19 got there about an hour I thought we could still get

20 in and we were meeting my father-in-law there so we
21 wanted to make sure we got there about the same time
22 he did.

23 Q. And did he express an interest in
24 seeing the meeting?

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1 A. Yes. He's an official out in
2 Limestone Township so he also had an interest in the
3 meeting.

4 Q. When you arrived, what did you see?

5 A. People were outside talking in small
6 groups.

7 Q. Did you enter the building, you and
8 your daughter?

9 A. Not at that time. My father-in-law
10 was outside speaking with other friends and so we
11 just kind of milled around outside. He told us that
12 it was already full upstairs and since there was a
13 breeze outside we thought rather than being in a
14 stuffy building it would be just as beneficial to
15 be outside since the room was already filled.

16 Q. Now, you mentioned the breeze, do you
17 recall the temperature that evening?

18 A. It was warm, you certainly didn't need
19 a jacket. I believe I had a no sleeve sweater top
20 on.

21 Q. Even after dark?

22 A. Yes.

23 Q. Did you at some point enter the
24 building?

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1 A. Yes, we did.

2 Q. What time would you reckon it was?

3 A. I think probably about ten until 8:00,
4 I think.

5 Q. When you entered the building, what
6 did you see on the stairway?

7 A. People lined up all over.

8 Q. On the stairway?

9 A. On the stairway. There's the stairs
10 and then the landing and the stairs and then the
11 foyer area and there might have been some on the
12 first stairs, but I do remember a lot of people on
13 the second set of stairs and then the foyer area was
14 packed.

15 Q. How would you characterize the people
16 as to age?

17 A. I would say you would see all age
18 groups, there were younger people, middle age and
19 older people.

20 Q. Would it be fair or unfair to say that
21 people on the upper stairway and the foyer were
22 packed in, squeezed?

23 A. I felt that way. It was warm and,
24 of course, you don't want to be shoulder to

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1 shoulder, but it was very close.

2 Q. Were people's bodies touching one
3 another from time to time?

4 A. I would say so not -- you know, not
5 consistently, but from time to time, yeah,
6 especially when the proceedings started and everyone
7 wanted to get as close as they could.

8 Q. So they would touch?

9 A. I think there were probably some that
10 were like that.

11 Q. Do you recall any speakers set up in
12 the hallway or the foyer or stairwell so people

13 could hear what was going on?

14 A. There were no speakers out there.

15 Q. Any type of electronic equipment of
16 any nature?

17 A. No.

18 Q. Could you hear what was going on?

19 A. No. We were to the far side of the
20 foyer and so we didn't hear anything.

21 Q. Could you see over the heads into the
22 room?

23 A. I'm a very tall person so I could see
24 a little bit, but not enough to, you know, I didn't

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1 want to keep stretching to see and you couldn't hear
2 anything anyway so...

3 Q. Would you from time to time stand on
4 your tip toes trying to see over the heads?

5 A. I don't recall doing that.

6 Q. Do you recall stretching to try to
7 see?

8 A. Yes.

9 Q. Were you successful, could you see?

10 A. In seeing over people?

11 Q. Yeah.

12 A. Yes.

13 Q. What could you see?

14 A. I could see into the room a little
15 bit, not really much of anything at all.

16 Q. Could you see the hearing officer?

17 A. If I did I think I probably didn't
18 know who he was. I didn't really know any of the
19 people that were the officials so I don't know if
20 I would have seen him particularly.

21 Q. How many people altogether do you
22 think you saw in that hallway all the way down to
23 the first floor?

24 A. Once we got in we didn't leave the

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1 foyer area and so I don't know that I could say how
2 many were all the way down the stairs, probably just
3 that first set of stairs in the foyer area and there
4 were a lot of people. If I had to guess, I don't
5 know that I could make a real accurate guess, but
6 there certainly was more than 20 people. There were
7 probably -- there could be 60, 80. There could have

8 been more. I don't know.

9 Q. Would it be fair or unfair to describe
10 that situation as chaotic?

11 MR. MUELLER: I'm going to object,
12 that's putting words into the witness' mouth, asking
13 her to draw a conclusion. She can testify to what
14 she saw.

15 MR. SMITH: If I may?

16 HEARING OFFICER HALLORAN: You may.

17 MR. SMITH: She could easily testify
18 that it would be an unfair characterization, so she
19 has wide options.

20 HEARING OFFICER HALLORAN: I would ask
21 you to rephrase it, please.

22 BY MR. SMITH:

23 Q. How would you describe the situation
24 in your own words? How would you summarize it?

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1 A. People were disgruntled, they were
2 talking in small groups, they were angry and upset
3 that they couldn't see, that provisions hadn't been
4 made, that someone didn't have the foresight to have

5 another location just in case they had a big crowd.
6 At times, they were speaking loudly of their -- that
7 they were upset about the situation.

8 Q. How would you describe your own mental
9 or emotional attitude towards this?

10 A. I tend to try to -- when other people
11 are upset I try to be the calmer person and my
12 daughter can at times at her age still be a little
13 riled so I try to keep a more calm persona so to
14 speak. I was irritated and frustrated, but I tried
15 not to let that show. I tried to keep her calm.

16 Q. Do you recall seeing any police
17 officers that evening, Ms. Grosso?

18 A. Yes.

19 Q. How many?

20 A. At one time there were two that came
21 out together and another time there was one that
22 walked through. I don't know if they were all the
23 same person. I didn't pay that much attention, but
24 we saw them on several occasions.

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1 Q. Do you recall whether the officers
2 were male or female that you saw?

3 A. I remember -- I believe I saw one
4 female officer and the two that came out together
5 were the male officers.

6 Q. So you recall seeing at least three?

7 A. Yes.

8 Q. Were all three of them uniformed?

9 A. Yes.

10 Q. Do you remember if they had side arms?

11 A. I do not recall.

12 Q. Would you describe the crowd in the
13 hallway at any time as disruptive?

14 A. The officers came out and told us that
15 we were being too loud. It was kind of hard for us
16 to tell. I didn't think that we were that loud,
17 that we were disrupting what was going on in the
18 other room, but someone must have complained about
19 it because they came out and said we were being too
20 loud and we would have to quiet down or we would
21 have to leave.

22 Q. Now, one of the lawyers in an opening
23 statement said that the officers had to act because
24 of the threat of the crowd overrunning government?

1 MR. MUELLER: I'm going to object.
2 You know, that's a lie and Mr. Smith knows it.
3 What I said was you can't let the overflow crowd
4 disrupt a planned governmental activity and
5 Mr. Smith is not within fair leeway to misconstrue
6 that in his questions.

7 MR. SMITH: I wrote it down, sir,
8 I wrote down the word disruptive when that came out
9 of Mr. Mueller's mouth and I wrote down the phrase,
10 overrun government when that came out of that man's
11 mouth.

12 HEARING OFFICER HALLORAN: I do
13 vaguely recall that.

14 MR. MUELLER: And there was an
15 overrunning, there were more people than fit into
16 the run.

17 HEARING OFFICER HALLORAN: Objection
18 overruled. You may proceed.

19 BY MR. SMITH:

20 Q. Did you see anything that evening that
21 suggested to you that this crowd of elderly people
22 squeezed in this hallway were about to overrun
23 government?

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

1 She testify they were squeezed.

2 MR. SMITH: She testified their bodies
3 were touching from time to time.

4 HEARING OFFICER HALLORAN: If you can
5 rephrase the question, Mr. Smith, please.

6 MR. SMITH: I'll be happy to.

7 BY MR. SMITH:

8 Q. Did you see anything that evening in
9 this crowd of elderly people who from time to time
10 had their bodies touching trying to peer into the
11 room that suggested to you that they might overrun
12 government?

13 MR. MUELLER: I'm going to object,
14 your Honor. She didn't describe the group of people
15 as being all elderly either. Maybe you can remind
16 Mr. Smith there's no jury here. We don't need all
17 of these histrionics and dramatics, let's just ask
18 the factual questions.

19 MR. SMITH: I'd ask for a ruling.

20 HEARING OFFICER HALLORAN: Objection
21 overruled.

22 MR. SMITH: That means you can answer
23 the question.

24 BY THE WITNESS:

1 A. I did not see anyone trying to
2 overthrow the proceeding.

3 BY MR. SMITH:

4 Q. Thank you.

5 How long did you stay?

6 A. We stayed until about five 'til 10:00.

7 Q. By we, do you mean your daughter and
8 your father-in-law?

9 A. No. My daughter and myself. My
10 father-in-law had already left earlier than that.

11 Q. And at any time were you successful in
12 actually getting into the hearing room?

13 A. No. We got within about three people
14 of the door.

15 Q. At any time could you hear or see what
16 was going on in a meaningful way?

17 A. No.

18 Q. Did you see anybody leave before you
19 did?

20 A. Oh, many, many people.

21 Q. Did you hear any expressions or

22 exclamations concerning their attitudes when they
23 left?

24 A. They seemed perturbed and disgusted

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1 about not being able to hear or see.

2 Q. When you left, what was your attitude?

3 A. At that point we thought that the
4 meeting was going to end at 10:00, that is what had
5 been advertized in the newspaper and at five to
6 10:00 we thought it was pointless to try to hear
7 the last five minute and by leaving then we figured
8 we could beat all the cars leaving at one time.

9 Q. Did you at any time in your experience
10 in the foyer see anyone come down from that podium
11 and carry a message to the people outside what their
12 rights were, what the rules were, what was going on?

13 A. The only thing that I can recall, and
14 I don't know who said it, I think that I recall
15 someone saying, because people were disgruntled and
16 upset that they couldn't hear or see and couldn't
17 get in, and someone said well, you'll have to voice
18 your objections to Mr. Power. I don't know who he
19 was. I don't recall him ever coming out to talk to

20 us and we wouldn't have been able to get in there
21 and tell him because they wouldn't let anyone else
22 in the room once it was filled.

23 Q. What did the police say that evening
24 that you recall?

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1 A. I recall that they said to us -- they
2 would come out and they would say you're being too
3 loud, you're disrupting what's going on inside,
4 you'll have to quiet down, you'll have to make room
5 here in the -- there's a short little hall that gets
6 to the open foyer and we had to make room for people
7 to get in and out so there was, like, one person
8 deep on either side of that little short hall and
9 they said we had to clear that, leave that space
10 open and we would have to quiet down or they would
11 have to take us out.

12 Q. How many times did you hear that
13 admonition?

14 A. At least two, I'm not sure if there
15 were three times, but I know at least twice for
16 sure.

17 Q. Do you feel the police officers were
18 acting appropriately with the situation they were
19 handed?

20 A. I think they were doing their job as
21 they were instructed to do.

22 Q. And what time did you and your
23 daughter actually leave?

24 A. About five 'til 10:00.

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1 Q. Did you come back the next night,
2 Ms. Grosso?

3 A. I didn't come back again until the
4 evening that they had the hearings at the junior
5 high school.

6 Q. And that was one night at a different
7 location so people could go up on a podium and
8 talk?

9 A. Right.

10 Q. Do you know if the City Council was
11 even at that meeting?

12 MR. MUELLER: I'll object, it's
13 irrelevant.

14 HEARING OFFICER HALLORAN: These are

15 the triers.

16 MR. MUELLER: He knows what the law
17 is.

18 HEARING OFFICER HALLORAN: Excuse me.
19 Could you read the question back, Terry?

20 (Whereupon, the requested
21 portion of the record
22 was read accordingly.)

23 HEARING OFFICER HALLORAN: And your
24 objection was relevance?

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1 MR. MUELLER: Well, the Pollution
2 Control Board has held that city councils can read
3 the transcript, they don't need to be personally
4 present for every session.

5 HEARING OFFICER HALLORAN: I'll
6 overrule the objection. If you can answer, you can.

7 BY MR. SMITH:

8 Q. Do you know if the City Council was
9 even there or was it just everybody that wanted to
10 at least have some day to say their peace?

11 A. It's my understanding that the City

12 Council is the alderman. I only know one alderman
13 and I know that he was there that evening. As far
14 as the rest of them, I don't know if they were or
15 not.

16 Q. Why did you not go back the very next
17 evening following June 17th?

18 A. I thought that if they weren't
19 prepared again it was pointless to waste my time at
20 a place where I couldn't hear anything going on.

21 Q. And did you feel it was pointless?

22 A. I did.

23 Q. Was that based upon your experience on
24 June 17th?

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1 A. Yes.

2 Q. Do you recall anyone making an
3 announcement that you could register to participate
4 on the 17th?

5 A. I do not recall that being said at
6 all.

7 MR. SMITH: Okay. Thank you very
8 much, ma'am.

9 HEARING OFFICER HALLORAN: Thank you,

10 Mr. Smith. Mr. Sandberg? Mr. Moran?

11 MR. SANDBERG: No questions.

12 MR. MORAN: No questions.

13 HEARING OFFICER HALLORAN:

14 Mr. Mueller, cross?

15 C R O S S - E X A M I N A T I O N

16 by Mr. Mueller

17 Q. Ms. Grosso, how did you find out about
18 the time and location of the session of the hearings
19 where public comment was received?

20 A. The night that it was at the junior
21 high school?

22 Q. Yes.

23 A. I believe that it was in the paper
24 where I read it and I believe my husband also told

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1 me he had heard that on the radio, I think.

2 Q. And you went to that night of public
3 comments?

4 A. Yes, I did.

5 Q. Did you give a comment?

6 A. I did not.

7 Q. You understood you had the ability to
8 give one if you wanted to?

9 A. Yes. At that time I was still
10 collecting information and I wrote a letter to the
11 alderman after that meeting.

12 Q. So you made a written public comment?

13 A. I made a written comment, yes, after
14 that day.

15 Q. And that's part of this record?

16 A. I'm not sure if I understand what you
17 mean.

18 Q. Well, you did submit something in
19 writing to the City Council after the hearings?

20 A. Yes. I took it to the office I was
21 instructed to go to in the City Hall building, she
22 stamped it that she received it and put it in a
23 folder with many, many other letters that apparently
24 she received.

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1 Q. And you never registered as an
2 objector or to present evidence, did you?

3 A. No, I did not.

4 Q. Were you at the time a member of any

5 citizen's group that was opposed to this
6 application?

7 A. No.

8 Q. Did you know any of the people that
9 were in the hearing room on the first night?

10 A. That were in the hearing room?

11 Q. Yes, that got in.

12 A. No, I don't know that I knew of anyone
13 that got in. I mean, I wasn't there to see who was
14 there, so I don't know and no one spoke to me that
15 they were there, so I would have to say no. If I
16 knew people in there, I didn't know that they were
17 in there.

18 MR. MUELLER: Nothing further.

19 HEARING OFFICER HALLORAN: Thank you,
20 Mr. Mueller. Mr. Leshen?

21 MR. LESHEN: No cross, your Honor.

22 HEARING OFFICER HALLORAN: Thank you.
23 Mr. Smith?

24 MR. SMITH: None, your Honor.

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1 HEARING OFFICER HALLORAN: You may

2 step down. Thank you very much.

3 MR. SMITH: I've got a quick one,
4 Judge.

5 HEARING OFFICER HALLORAN: Okay. One
6 more before we break.

7 MR. SMITH: I'll try to very fast on
8 this one, Judge.

9 HEARING OFFICER HALLORAN: Mr. Smith,
10 before you call your witness if any members of the
11 public came in, I don't know if you signed up in the
12 back with our personnel public relations specialist,
13 but if you do choose to make public comment, we can
14 possibly squeeze you in right before lunch so if you
15 want to stick around if that's the case.

16 MR. SMITH: I would call Barbara
17 Miller, your Honor, if I may.

18 HEARING OFFICER HALLORAN: Thank you,
19 Mr. Smith.

20 MR. SMITH: I'll try to be brief in
21 light of the hour, Judge.

22 HEARING OFFICER HALLORAN: Thank you.

23 (Witness sworn.)

24

1 WHEREUPON:

2 B A R B A R A M I L L E R,

3 called as a witness herein, having been first duly

4 sworn, deposeth and saith as follows:

5 D I R E C T E X A M I N A T I O N

6 by Mr. Smith

7 Q. Good morning. Would you tell the
8 hearing officer your name and spell your last name
9 for our court reporter, please?

10 A. Barbara Miller, M-i-l-l-e-r.

11 Q. And where do you reside, Ms. Miller?

12 A. 2726 West 3000 South Road.

13 Q. And that's in Kankakee County,
14 Illinois?

15 A. Yes.

16 Q. Pardon me?

17 A. Yes.

18 Q. Were you familiar with the proposed
19 site of the Town & Country landfill?

20 A. Yes.

21 Q. And how far is that from your place?

22 A. Less than two miles.

23 Q. Did you on the evening of June 17th of
24 this year intend to attend a public meeting in

1 downtown Kankakee at the City Hall building?

2 A. Yes.

3 Q. And how did you learn about that
4 meeting?

5 A. I think it was the newspaper.

6 Q. Did you attend with anyone?

7 A. Yes, three other people.

8 Q. And who are they?

9 A. Do you want their names.

10 Q. Yes.

11 A. Shirley O'Connor, Noreen Satoph
12 (phonetic) and Kay Baker.

13 Q. Are they also folks that live in Otto
14 Township close to the site?

15 A. Only Shirley O'Connor. Noreen lives
16 not too far away.

17 Q. And Ms. O'Connor, for example, is also
18 here with you today, is she not?

19 A. Yes.

20 Q. All right. And did you, in fact,
21 attend?

22 A. Yes.

23 Q. Why?

24 A. Well, because I was interested, you

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1 know, we live close by and I wanted to do whatever
2 I could to stop it.

3 Q. Would it offend you if I asked your
4 age, ma'am?

5 A. No. I'm 71.

6 Q. And how old roughly are the other
7 ladies that you mentioned?

8 A. Around the same age. One is 80.

9 Q. What time did you arrive, Ms. Miller?

10 A. We were there early. I think before
11 7:00.

12 Q. What did you see?

13 A. Well, we went in and the chamber room
14 was full so there was standing room only. We stood
15 in the back of the meeting hall.

16 Q. The four of you?

17 A. Yes.

18 Q. How long did you stand?

19 A. I don't really recall. I know the
20 police came and told us we would have to leave.

21 Q. And did you obey?

22 A. No.
23 Q. How come?
24 A. Because I thought I had a right to be

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1 there and I was appalled that we go to a meeting and
2 go early and we're told we would have to leave.

3 Q. Did your friends leave?

4 A. No, they couldn't. We were driving.

5 Q. So they all disobeyed the policemen?

6 A. Well, I think one of them was sitting
7 in the hallway.

8 Q. Sitting on the floor?

9 A. No, no. There were some seats in the
10 hallway.

11 Q. How many seats?

12 A. Not many.

13 Q. Could you give an estimate for the
14 hearing officer?

15 A. I don't know, six.

16 Q. And how many people were in the
17 hallway?

18 A. At that time the hallway wasn't

19 crowded.

20 Q. What time was that?

21 A. Before 7:00.

22 Q. How many people were in the hallway?

23 A. I can't even estimate.

24 Q. Were there any standing?

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1 A. Not that early.

2 Q. All right.

3 A. Only in the back of the chambers.

4 Q. What time did the policeman tell you
5 you would have to leave?

6 A. I don't recall what time.

7 Q. Was it before the meeting started?

8 A. Yes.

9 Q. But you did not leave?

10 A. No.

11 Q. What happened next?

12 A. Well, he was telling other people they
13 had to leave and then he came back and told me
14 again.

15 Q. Did the other people leave when the
16 police officer told them they must leave?

17 A. I think some of them did.
18 Q. And then how long transpired between
19 the first time the policeman told you you would have
20 to leave until the second time?
21 A. Five, ten minutes. I don't recall.
22 Q. And was it the same policeman?
23 A. I think so.
24 Q. And did you obey him the second time?

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1 A. No.
2 Q. Why not?
3 A. Well, again, I was angry.
4 Q. Why were you angry?
5 A. Because they called this meeting and
6 they know -- they have to know there's going to be a
7 huge crowd there and there's no room for people,
8 they tell them they have to go home. It wasn't
9 fair.
10 Q. But you didn't obey the policeman, you
11 stayed as a citizen?
12 A. Yes, I did.
13 Q. What happened next?

14 A. Well, some people got up and I got a
15 seat and then --

16 Q. What about your friends?

17 A. One got a seat at the back and
18 one was sitting in the hall. I'm not sure where the
19 other one was.

20 Q. What happened over time as the hour
21 approached 8:00 p.m., the start of the meeting?

22 A. Well, that -- I already had my seat,
23 it was up to the front, so I couldn't tell you much
24 about what went on.

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1 Q. Did you look back behind you?

2 A. Yeah. I saw there were crowds.

3 Q. Could you tell the hearing officer
4 what you saw when you peered back to the entrance?

5 A. People standing around just crowding
6 in.

7 Q. Could they get into the meeting hall?

8 A. No.

9 Q. How many policemen did you recall
10 seeing that evening?

11 A. At least two, maybe three.

12 Q. Were you able to see and hear from
13 your final position?
14 A. Yes.
15 Q. Did you sign up to participate?
16 A. No.
17 Q. Why not?
18 A. I just didn't feel qualified to speak.
19 I didn't know what I would say, so I just went as
20 a spectator.
21 Q. And was that your intention when you
22 first entered that --
23 A. Yes.
24 Q. Did the policeman telling you to leave

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1 have any affect on influencing your position?
2 A. Repeat that, please.
3 Q. Were you at any time intimidated?
4 A. No.
5 Q. Okay. But you made the decision you
6 were not going to participate?
7 A. Right.
8 Q. Did you return -- how long did you

9 stay?

10 A. We stayed until maybe 11:00.

11 Q. And of the four of you, how many

12 eventually got into the hall?

13 A. Two or three.

14 Q. Did you or the others or jointly make

15 the decision to leave?

16 A. I think it was jointly because the one

17 in the hallway was very unhappy and two of them

18 never came back to another meeting.

19 Q. Why?

20 A. Because of the hassle.

21 Q. Did you return?

22 A. Yes. Shirley and I returned. She

23 came to almost every meeting.

24 Q. Did you come to almost every meeting?

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1 A. When I wasn't sick.

2 Q. Okay. That's because you felt your

3 property rights would be affected by the outcome of

4 the meeting?

5 A. Yes, and also I'm just against a dump.

6 We don't need it.

7 Q. Did you ever get a chance to express
8 that view before today?

9 A. I had plenty of chances to talk to
10 people.

11 Q. No. To the City Council.

12 A. No, I didn't.

13 Q. Did you sign up to participate at any
14 of the meetings?

15 A. At the one at the junior high school
16 I did.

17 Q. And how many days later was that after
18 June 17th?

19 A. I don't recall.

20 Q. And did I tell you to tell the truth
21 and don't be afraid as you stepped over here?

22 A. Yes. You told me to tell the truth.

23 Q. And have you done that?

24 A. Yes, I have.

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1 MR. SMITH: I have no further
2 questions.

3 HEARING OFFICER HALLORAN: Thank you,

4 Mr. Smith. Mr. Moran, Mr. Sandberg, any questions?

5 MR. SANDBERG: No questions.

6 MR. MORAN: No questions.

7 HEARING OFFICER HALLORAN:

8 Mr. Mueller?

9 C R O S S - E X A M I N A T I O N

10 by Mr. Mueller

11 Q. Ms. Miller, you said that you never
12 got a chance to express your views to the City
13 Council?

14 A. Well, I had a chance. I didn't do it.

15 Q. You chose not to express your views?

16 A. I expressed my views by coming to the
17 meetings and speaking at the one.

18 Q. You did, in fact, then express your
19 views in public comment to the City Council,
20 correct?

21 A. Yes -- well, at the meeting, yes.

22 Q. So you got to say everything you
23 wanted to say, right?

24 A. Well, I don't know about everything,

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1 but -- I could go on for quite a while.

2 Q. No one ever cut you off on June 27th
3 when you made public comment, did they?

4 A. No, no one cut me off.

5 MR. MUELLER: Thank you.

6 HEARING OFFICER HALLORAN: Thank you,
7 Mr. Mueller. Mr. Leshen?

8 C R O S S - E X A M I N A T I O N

9 by Mr. Leshen

10 Q. Ma'am, you said you were seated up
11 front?

12 A. Yes.

13 Q. Can you tell me what row you were
14 seated in when you were seated up front?

15 A. Possibly the first row.

16 Q. Okay. Right up there next to the
17 witnesses and next to the hearing officer?

18 A. Yes.

19 MR. LESHEN: Thank you.

20 HEARING OFFICER HALLORAN: Mr. Smith,
21 any redirect?

22 MR. SMITH: No, your Honor.

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

1 HEARING OFFICER HALLORAN: You know,
2 before we start, there's been several people with
3 cell phones going off, beepers or whatever and some
4 have even talked on the cell phone while the hearing
5 is in process. I would ask that everyone turn off
6 their cell phones. This is kind of like a court of
7 law, but if you do want to talk on the cell phone
8 you can go out in the hallway. Thank you very much.
9 You may proceed, Mr. Smith.

10 MR. SMITH: Thank you, Mr. Hearing
11 Officer.

12 WHEREUPON:

13 B E T T Y E L L I O T T,
14 called as a witness herein, having been first duly
15 sworn, deposeth and saith as follows:

16 D I R E C T E X A M I N A T I O N

17 by Mr. Smith

18 Q. Good afternoon. Would you tell the
19 hearing officer your name and spell your last name
20 for the court reporter?

21 A. All right. My name is Betty Lou
22 Elliott and you spell my name E-l-l-i-o-t-t.

23 Q. Where do you live, Ms. Elliott?

24 A. We live right past the airport south

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1 and we've lived there going on 40 some years. We
2 built our home there and we were there when they put
3 the other garbage dump south of us.

4 Q. Could I be so bold as to ask your age,
5 ma'am?

6 A. Certainly, 74.

7 Q. And when you say that we live there,
8 could you tell the hearing officer what township you
9 reside in?

10 A. Otto.

11 Q. Otto Township.

12 And how far is your place from
13 the proposed Town & Country landfill?

14 A. Well, it's about a mile and a little
15 over.

16 Q. And are you married?

17 A. Fifty-six years.

18 Q. And by we, you meant you and your
19 husband?

20 A. Right.

21 Q. Okay. Now, do you recall attending a
22 hearing that was scheduled to occur on June 17th at
23 the Kankakee County -- or Kankakee city City Hall
24 building?

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1 A. Yes.

2 Q. How did you learn about that hearing?

3 A. It was in the paper.

4 Q. And did you make a determination you
5 were going to go?

6 A. You bet I did.

7 Q. Why did you want to go?

8 A. Well, I'll tell you. We're having
9 trouble right now with the water out there where we
10 live and we all have wells and our water is turning
11 rusty and the water is high below the ground, but
12 it's very high and we have children that live out
13 there and grandchildren and I'm very concerned about
14 these things.

15 Q. So you saw the public notice, you
16 recognized your own concern and you made a
17 determination you were going to attend?

18 MR. MUELLER: Object, leading.

19 HEARING OFFICER HALLORAN: I agree,
20 Mr. Smith.

21 MR. SMITH: Your Honor, if I could
22 with elderly people, I think there's some latitude
23 here.

24 MR. MUELLER: I think she's pretty

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1 sharp.

2 HEARING OFFICER HALLORAN: I think you
3 can rephrase it.

4 MR. SMITH: I do too, Judge, I think
5 she's very sharp.

6 BY MR. SMITH:

7 Q. Who went with you?

8 A. That night one of my friends who is
9 sitting back here, Ruthy Sparenberg (phonetic) and
10 my husband.

11 Q. How old is your husband?

12 A. My husband is 80.

13 Q. And Ms. Sparenberg?

14 A. She's in her 70s, close to me.

15 Q. What time did you arrive?

16 A. We arrived just around or a little bit
17 before 8:00 o'clock. Do you want me to go ahead
18 and tell you?

19 Q. I think so in light of the noon hour.

20 A. Well, we went in there and there was a
21 young cop sitting back this way in a chair behind
22 something, I don't remember what it was behind, and
23 then here came the other cop from upstairs and
24 we were asking about some seats to sit in because

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1 we're the ones that live out there by this mess
2 that's going on and the thing is that we were told
3 we couldn't go upstairs.

4 Q. Who told you that?

5 A. The cop, the one that came downstairs.
6 I think -- he came down just before we went up and
7 we asked if there would be room for us, no, you'll
8 have to wait until their meeting is over, so that's
9 what we tried to do.

10 Q. The police officer told you you would
11 have to wait until the meeting was over?

12 A. Because there weren't any seats.

13 Q. What time was that?

14 A. That was a little bit after 8:00, I
15 would say.

16 Q. Were there other people in the
17 hallway?

18 A. Yes.

19 Q. How many would you reckon?

20 A. Over eight to ten, something like
21 that.

22 Q. In the outside hallway?

23 A. Downstairs.

24 Q. Downstairs. Did you ever get

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1 upstairs?

2 A. Finally.

3 Q. What time?

4 A. I would say maybe about -- I'm not
5 sure, I want to tell the truth, I think it's
6 probably about a half hour later.

7 Q. Did you ever get inside the City
8 Council chambers that evening?

9 A. No.

10 Q. Did you ever get seated?

11 A. I got seated four times, but I was
12 told I couldn't stay there.

13 Q. Where were you seated?

14 A. As you go up and turn this way and
15 go in I was seated by -- let's see -- as you curve
16 and go this way you sit in a chair there and you
17 couldn't hear very well.

18 Q. So was this seat inside or outside the
19 chambers?

20 A. Inside.

21 Q. So you did get inside?

22 A. I got a seat.

23 Q. How did you get that seat?

24 A. Well, there was over by the wall, it

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1 wasn't very good because it was really crowded, and
2 I thought for sure since we had heard this and read
3 this in the paper that we would be the ones they
4 were most concerned about and would like to seat us
5 around and talk to us.

6 Q. So you got a seat?

7 A. I got a seat for a little while.

8 Q. What happened?

9 A. Well, then this same cop came over and
10 told me I'd have to move out so I said why, so I
11 said okay.

12 Q. And where did you go move to?

13 A. Well, I moved up to the part where
14 you're standing behind -- the people that were
15 having the meeting and one young gentleman was
16 standing there and I stood there, my husband and
17 my friend and he turned around and he said well you
18 don't have to stand there, I'll give you my seat.

19 Q. Did you take it?

20 A. I took it and it wasn't ten minutes
21 until the cop was up there telling me I had to move.

22 Q. So this is the second time a police
23 officer asked you to move out of your seat?

24 A. And he said --

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1 Q. Yes or no?

2 A. Yes. I'm sorry.

3 Q. That's all right. And what happened
4 then, Ms. Elliott?

5 A. Well, I looked over the heads of them

6 and they -- he had said something about they have to
7 take pictures he said and this is a good place to
8 stand and take pictures and I looked and in that
9 door was a man there taking pictures, so I don't
10 know who he was.

11 Q. Well, did you get a third seat?

12 A. I was told to get a third seat, that I
13 couldn't stay there anymore and so the -- if you
14 were there, and I know you were, you could see
15 across and there was a table there that would
16 probably seat about, I'd say, one, two, three, four,
17 five, maybe six people, but before we got across
18 there to sit in it, some of the people that came
19 with them over there had taken the table.

20 Q. Did you ever get a third seat?

21 A. I think that was my third seat and I
22 thought I was going to get another seat, but I got
23 discouraged and I thought it's not worth it, I'll
24 take care of it other ways, I'll talk to my

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1 neighbors and we'll get going on this and so what we
2 did --

3 Q. Let me finish with -- is this still at

4 the meeting hall?

5 A. Yes.

6 Q. I'm sorry.

7 A. And so I went out the door and came
8 around this way and was standing there and we were
9 trying to listen and the younger cop came out and
10 kept saying be quiet, you're making too much noise.
11 We couldn't hear anything in there, so I don't know
12 why they thought we were making the noise because we
13 were talking to each other.

14 Q. Did you hear any -- in a meaningful
15 sense, did you hear anything that was really going
16 on at that meeting?

17 A. Did I hear anything that was really
18 going on? Well, I had a hard time trying to
19 understand some of the things that they were talking
20 about and I noticed they had more time in there than
21 we had time and we didn't get any way to be able to
22 stand up and tell them how we felt about things and
23 some of the attorneys and what have you on our side
24 didn't get near the time to talk as they did.

1 Q. By they, who do you mean?

2 A. I mean those gentlemen sitting over
3 there.

4 HEARING OFFICER HALLORAN: May the
5 record reflect the witness is pointing I believe to
6 the applicant's table, is that correct?

7 THE WITNESS: I'm sorry. What did he
8 say?

9 HEARING OFFICER HALLORAN: Mr. Smith?

10 BY MR. SMITH:

11 Q. These fellows over here?

12 A. Yes.

13 Q. Did you and your husband and friend
14 eventually leave that first meeting?

15 A. We didn't leave until later and it
16 wasn't all over, but it was getting near that.

17 Q. What was your own emotional reaction
18 to how you were treated at that meeting?

19 A. I felt real sad about that and I'll
20 tell you why, with all we're hearing about in the
21 world today and we hear about the commies and all
22 these kind of people and I felt like I was almost
23 living in that type of world because we have freedom
24 of speech.

1 Q. Did you exercise your freedom of
2 speech on June 17th?

3 A. Did I exercise it? I talked to some
4 of my friends because I had quite a few friends
5 there.

6 Q. Did you talk to the hearing officer
7 or the City Council that evening?

8 A. No, not really talk to them. I didn't
9 have an opportunity.

10 Q. What time do you believe it was when
11 you actually left?

12 A. Well, I think it would probably be
13 near maybe between 10:30 and 11:00, something like
14 that.

15 Q. So you started out in the hall, but
16 then you worked your way out of the hall because
17 there were no seats?

18 A. That's correct.

19 Q. Is that what you're telling me?

20 A. That's right.

21 Q. Or out of the chambers is what I mean
22 by hall, the meeting hall?

23 A. Okay.

24 Q. Is that what you understood it to

1 mean?

2 A. Yeah.

3 MR. SMITH: All right. I have nothing
4 further. Thank you.

5 HEARING OFFICER HALLORAN: Thank you.

6 Mr. Sandberg, Mr. Moran?

7 MR. SANDBERG: No.

8 MR. MORAN: No questions.

9 HEARING OFFICER HALLORAN:

10 Mr. Mueller?

11 MR. MUELLER: Thank you.

12 C R O S S - E X A M I N A T I O N

13 by Mr. Mueller

14 Q. Ms. Elliott, you were in the hearing
15 room at one time and then you left the hearing room,
16 right?

17 A. Yes.

18 Q. Did you ever get back in the hearing
19 room that night?

20 A. Yes. I walked back in and looked, but
21 I just got disgusted and left because somebody was
22 telling the cop to tell me to move and I couldn't

23 figure it out.

24 Q. So you got disgusted and left the

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1 hearing the second time on your own, right?

2 A. Right.

3 Q. And the testimony that you heard, you
4 just didn't understand all of it, isn't that right?

5 A. Well, with you talking like you did,
6 I wouldn't naturally understand all you were saying,
7 no, that's -- you're right.

8 Q. But you did hear?

9 A. Yes and no.

10 Q. And you never did register as an
11 objector to give testimony, did you?

12 A. I did not because I thought that's
13 what we were having that evening is we were being
14 invited up there to talk because we are involved in
15 all this and I know that we wanted to tell it like
16 it was or like we thought it was, but I don't think
17 you gave us a chance.

18 Q. Now, in fact, you later found out that
19 you and other citizens who just wanted to talk were
20 being invited up on June 27th, right?

21 A. Say that again, please.

22 Q. Well, about ten days later you got
23 your chance to talk?

24 A. We did when they had the meeting over

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1 at the east side of town, we did get to stand up and
2 talk.

3 Q. And did you, in fact, get to stand up
4 and talk and say your peace?

5 A. Well, I hadn't signed up for anything,
6 but they invited me to come up and say something, so
7 I went up and I said what I thought.

8 Q. Great.

9 Now, by the way, ma'am, you say
10 that you live by that mess that's going on now?

11 A. No. I didn't say we live by it, but
12 we aren't far from it, about a -- a little over a
13 mile.

14 Q. And that mess, that would be the Waste
15 Management landfill that's trying to be expanded?

16 MR. MORAN: Objection. Where in the
17 world are we coming up with these characterizations?

18 MR. MUELLER: I just need to know
19 where she lives.

20 HEARING OFFICER HALLORAN: I would
21 kind of rephrase that question, Mr. Mueller, but I
22 do remember her saying that she did live next to
23 another landfill.

24 BY MR. MUELLER:

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1 Q. Is that what you were referring to as
2 the mess that's going on now, ma'am?

3 MR. MORAN: Objection.

4 HEARING OFFICER HALLORAN: Mr. Moran,
5 what's your objection?

6 MR. MORAN: He's characterizing
7 whatever this is as a mess and she hasn't said that,
8 there's been no testimony to that effect and it's
9 clearly beyond any relevant scope for this inquiry
10 in any event.

11 HEARING OFFICER HALLORAN: I vaguely
12 remember her saying something. Mr. Mueller, if you
13 could rephrase the question and leave out mess.

14 MR. SMITH: I would object to the
15 histrionics. This is not a courtroom.

16 MR. MUELLER: Mr. Smith's point is
17 well taken. I'll withdraw the question and nothing
18 further.

19 MR. SMITH: Thank you.

20 HEARING OFFICER HALLORAN: Mr. Leshen?

21 MR. LESHEN: No thing.

22 HEARING OFFICER HALLORAN: Mr. Smith?

23 MR. SMITH: Noting, your Honor.

24 HEARING OFFICER HALLORAN: You may

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1 step down. Thank you very much.

2 Before we break for lunch, do any
3 members of the public wish to speak or make a
4 statement either under sworn testimony? Could you
5 step up. Do you wish to make a public comment and
6 not be sworn in?

7 MR. SMITH: May I have one moment?

8 (Brief pause.)

9 MR. SMITH: This is Mr. Elliott, the
10 husband of Ms. Elliott and he does wish to testify.

11 HEARING OFFICER HALLORAN: And we have
12 a Mr. Runyon in the room who would also like to --

13 okay. Do you want to do that before lunch as well?

14 MR. RUNYON: It doesn't matter.

15 HEARING OFFICER HALLORAN: I'm sorry.

16 Sir, would you like to be -- give your public
17 comment under sworn testimony?

18 MR. SMITH: Judge, the gentleman has a
19 hearing problem.

20 HEARING OFFICER HALLORAN: Okay.

21 Thank you.

22 (Witness sworn.)

23

24

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1 WHEREUPON:

2 K E N N E T H E L L I O T T,

3 called as a witness herein, having been first duly
4 sworn, deposeth and saith as follows:

5 D I R E C T E X A M I N A T I O N

6 by Mr. Smith

7 Q. Good afternoon. Would you tell the
8 Hearing Officer your name?

9 A. I'm Kenneth Elliott.

10 Q. Are you the husband of the lady that

11 just testified?

12 A. Yes, I am.

13 Q. Would you tell the hearing officer
14 your age, please?

15 A. I'm 80 years old.

16 Q. And were you present on the first
17 night of the landfill siting hearings at the City
18 Council chambers on June 17th?

19 A. I was.

20 Q. And can you tell us what you recall
21 that you feel impressed you that was important?

22 A. What impressed me was the fact that
23 all the people that voted on having future meetings
24 and considering this matter, none of them were

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1 elected officials. It was employees of the city
2 that decided they were going to go ahead with this
3 and I thought that that was a little bit unusual in
4 a procedure where the City Council should have been
5 considering that.

6 Q. Mr. Elliott, if I could focus your
7 attention on that first night at the meeting.

8 Did you go?

9 A. I did.

10 Q. And can you tell us what you observed

11 about the hallways?

12 A. Well, there was quite a bit of

13 confusion in the hallways. Naturally people

14 couldn't get into the meeting so there was quite a

15 discussion and I think that really there was more

16 people there than my wife realized.

17 Q. How many people do you believe would

18 you estimate could not get into that meeting room?

19 A. Well, anybody that came in after the

20 meeting had started, they couldn't go into the

21 hearing room.

22 Q. Did you ever see the hallways where

23 those people had assembled?

24 A. Yes, I did.

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1 Q. How many people do you estimate could

2 not get into the meeting hall because it was too

3 filled?

4 A. I'd say upstairs there was 15 or 20

5 people in the hallway.

6 Q. In the hallway. What time did you see
7 them in the hallway there?

8 A. Just as soon as they let us go up the
9 stairs when the officer opened the stairway that we
10 could go up.

11 Q. So for a time the stairway was closed
12 even?

13 A. It was closed when we got there and
14 nobody could go up.

15 Q. Because of the crowd?

16 A. Well, it was supposed to be full
17 upstairs.

18 Q. Now at some point were you successful
19 in getting into the meeting room?

20 A. Yes, we got in.

21 Q. But then you were pushed out of the
22 meeting room?

23 A. Well, that's the way it worked out,
24 yes.

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1 Q. And because -- were you asked to give
2 up your seat?

3 A. I don't think I had a seat until after
4 all that took place.

5 Q. So at one point were you in the room
6 and then out of the room?

7 A. I was in the room as long as Betty was
8 there and I watched the officer have her move and,
9 of course, I moved with her.

10 Q. So you did not have a seat, your wife
11 had the seat, the officer told her you have to give
12 up your seat?

13 A. Right.

14 Q. How many times did that happen?

15 A. I think it was four times when the
16 officer moved her.

17 Q. So she went from one seat to another
18 and the officer came saying or some officer kept
19 saying you've got to move?

20 A. Yes.

21 Q. What was your mental impression when
22 you left that meeting?

23 A. Well, I thought the people that were
24 involved in the dump business had three-quarters of

1 the room in that meeting place. They occupied all
2 of the area beyond the railing and about half of the
3 area behind the railing.

4 Q. Okay. Is there anything else you want
5 to tell the Hearing Officer about the meeting?

6 A. The main thing that concerned me was
7 the fact that the City Council didn't vote on
8 whether to continue with considering the dump or
9 not. It was just people that were bureaucrats that
10 worked for the city.

11 Q. You felt that meeting should have been
12 continued to accommodate the crowd?

13 A. I think it should have been continued
14 and had elected officials on that committee.

15 Q. All right. Anything further, sir?

16 A. That's what I wanted to say.

17 MR. SMITH: Thank you, Mr. Elliott.

18 HEARING OFFICER HALLORAN: Thank you,
19 Mr. Smith. Mr. Sandberg, Mr. Moran?

20 MR. SANDBERG: No questions.

21 MR. MORAN: No questions.

22 HEARING OFFICER HALLORAN:

23 Mr. Mueller?

24 MR. MUELLER: Nothing.

1 HEARING OFFICER HALLORAN: You're
2 done. You may step down.

3 Mr. Runyon, would it be convenient
4 for you to wait until after lunch? You probably
5 wouldn't get on -- Mr. Porter, we would squeeze
6 Mr. Runyon in before Mr. Bohlen? Okay. Terrific.

7 MR. PORTER: Mr. Runyon is not on our
8 witness list. Oh, he is.

9 HEARING OFFICER HALLORAN: Okay.
10 We'll meet back here at 1:30. Thank you very much.

11 (Whereupon, after a short
12 break was had, the
13 following proceedings
14 were held accordingly.)

15 HEARING OFFICER HALLORAN: This is
16 continued on record. This is a hearing in
17 PCB 3-31, 3-33 and 3-35. It's November 4th,
18 approximately 1:35 p.m.

19 Mr. Smith, you were going to,
20 I believe, call another witness or two.

21 MR. SMITH: Yes.

22 HEARING OFFICER HALLORAN: You may
23 proceed.

24 MR. SMITH: Your Honor, we would call

1 Keith Runyon. Mr. Runyon, would you step up,
2 please?

3 MR. LESHEN: Mr. Halloran, before you
4 begin --

5 HEARING OFFICER HALLORAN: I'm sorry?

6 MR. LESHEN: Patrick Power, assistant
7 corporation counsel is also present for the city.

8 HEARING OFFICER HALLORAN: The record
9 should so note that Mr. Patrick Powers,
10 P-o-w-e-r-s --

11 MR. POWER: No S.

12 HEARING OFFICER HALLORAN: No S. I'm
13 sorry, Mr. Patrick Power. My apologies. And I
14 remind everybody, including myself, to speak clearly
15 and into the microphone so the court reporter can
16 pick up every word we speak. Thank you.

17 Mr. Smith, you may proceed.

18 MR. SMITH: Thank you, your Honor.

19 (Witness sworn.)

20

21

22

23

24

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1 WHEREUPON:

2 K E I T H R U N Y O N ,

3 called as a witness herein, having been first duly

4 sworn, deposeth and saith as follows:

5 D I R E C T E X A M I N A T I O N

6 by Mr. Smith

7 Q. Good afternoon. Would you state your
8 name please and spell your last name for the court
9 reporter?

10 A. Yes. My name is Keith Runyon,
11 R-u-n-y-o-n.

12 Q. And would you state your address,
13 please?

14 A. My address is 1165 Plum Creek Drive,
15 Bourbonnais.

16 Q. Is that located within the county of
17 Kankakee?

18 A. Yes, sir, it is.

19 Q. Mr. Runyon, how long have you been a

20 resident of Kankakee County?

21 A. Since 1994.

22 Q. Are you an officer or director in any
23 particular citizen's group that's taken an interest
24 in the landfill processes?

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1 A. Yes. I'm an officer of a citizen's
2 government accountability group called OUTRAGE and
3 I'm the executive director.

4 Q. And could you tell the court reporter
5 and the hearing officer what that acronym stands
6 for?

7 A. It means organization united to
8 reverse all government's excesses.

9 Q. And this organization sponsors
10 candidates, forums, educational seminars and things
11 of that nature?

12 A. That's correct.

13 Q. About a number of issues affecting the
14 community?

15 A. Yes. We look at various issues as
16 they relate to the citizen's welfare, primarily
17 issues that governments within the county deal with

18 and sponsor and try to bring to law. We analyze
19 those and determine whether or not they're the best
20 thing for the community overall.

21 Q. Now, I'd like to invite your attention
22 to on or about June 17th, 2002.

23 Did you become aware of a landfill
24 siting hearing that was to take place that evening?

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1 A. Yes, I did.

2 Q. How did you become aware of that?

3 A. Well, I read a number of news articles
4 regarding it -- regarding the city's actions to
5 possibly site a landfill and followed all of those
6 and also read the legal notices in the paper and
7 the articles in the papers about when the landfill
8 siting would be held and where.

9 Q. And did you read one such notice that
10 advised you of the June 17th hearing at the City
11 Council chambers?

12 A. Yes, I did.

13 Q. Did you read a notice regarding the
14 time of registration?

15 A. I read a couple of different notices
16 actually. One was placed in the paper, a legal
17 notice saying that you had to register I believe it
18 was within five days prior to the hearings and
19 then a later news article that was in the paper
20 saying you could register virtually up until the
21 date of the hearings.

22 Q. And did you attend those hearings?

23 A. Yes, I did.

24 Q. And why did you do that?

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1 A. I attended those hearings as an
2 objector to the potential landfill.

3 Q. Did you register prior to attendance?

4 A. Yes, I did. I registered with the
5 Kankakee city clerk's office.

6 Q. And when in relation to June 17th, if
7 you recall?

8 A. I believe it was the Wednesday or
9 Thursday prior to that meeting.

10 Q. Now, did you actually attend?

11 A. Yes, I did.

12 Q. Did anyone accompany you?

13 A. I came by myself.

14 Q. What time did you arrive?

15 A. I arrived about 7:40 to 7:45.

16 Q. What, if anything, unusual did you
17 notice about the outside of the City Hall premises
18 at 385 East Oak Street in Kankakee?

19 A. As I arrived at the City Hall and came
20 up to the doors leading to the hall there were
21 probably 20, 25 people around those doors.

22 Q. Outside of the building?

23 A. That's correct.

24 Q. What did you do then?

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1 A. Well, I was told by the people that we
2 couldn't get in, that the hall was filled, and I
3 said well, I'm an objector, I'm going to try to get
4 in anyways so I pushed my way through those people,
5 opened the door and went inside.

6 Q. Was that on the ground floor?

7 A. Yes, sir, it was.

8 Q. Was the actual meeting site on the
9 second floor in the City Council chambers?

10 A. Yes, it was.

11 Q. Immediately going through the doors
12 did you find anything unusual?

13 A. There were people up the stairwell and
14 the landing and then the second stairways up there
15 that I could see. There was also a police guard
16 there along the back wall of that entryway.

17 Q. Go ahead.

18 A. And as I approached he told me that I
19 couldn't go up and I told him that I was an objector
20 and that I was scheduled to appear in that meeting
21 and had to get up there.

22 Q. So the first police officer you
23 encountered was immediately inside of the ground
24 floor doors?

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1 A. That's -- not immediate, but within
2 about six, seven yards of the doorway.

3 Q. So did you wait?

4 A. Yes. I said I'm an objector and he
5 said well, you'll have to wait here. So he left
6 that post for a few minutes, probably four or five
7 minutes, and he came back and he said, okay, you're

8 clear to go up.

9 Q. And did you ascend the first set of
10 staircases?

11 A. Yes, I did.

12 Q. What, if anything, unusual did you
13 notice about that staircase?

14 A. The staircase was totally lined with
15 people clear across the stairs and I had to really
16 work my way through the crowd to get up there.

17 Q. Did you reach the first landing
18 between the stairs?

19 A. Yes, I did.

20 Q. What did you notice about that first
21 landing?

22 A. Very much the same condition as on the
23 stairwell, people were crowded pretty much together
24 there and once again, I had to keep kind of pushing

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1 my way through the crowd to get up to the next
2 level.

3 Q. Did you make your way up the second
4 stairway then?

5 A. Yes, I did.

6 Q. And what did you notice?

7 A. The same condition there, it was
8 absolutely crowded with people and I once again had
9 to work my way through. I mean, everybody was
10 polite, but I told everyone that I was an objector
11 and that I had to get into the hearing room.

12 Q. Then did that place you on the foyer
13 in the hallway outside the chambers?

14 A. That's correct.

15 Q. What did you notice about the hallway?

16 A. The hallway was also crowded, very
17 densely crowded.

18 Q. How many people do you reckon were
19 just on that outside foyer?

20 A. I would say -- you know, it's hard for
21 me to say exactly because there was so many people
22 from outside the building on their way in so it
23 began to be a little blurry, but I would say
24 anywhere from 30 to 40 people just inside that foyer

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1 alone. I would say from the time I reached the
2 outside of the building and got up to the foyer

3 there were probably 75 or 80 people in total.

4 Q. On the stairways, in the foyer and on
5 the landing?

6 A. And outside the door.

7 Q. How would you characterize these
8 people, if you could?

9 A. I would say that the people were
10 confused, somewhat antagonized, disgruntled because
11 they began to understand that they were not going to
12 be able to get into the hearing and they were all
13 vitally interested obviously, that's why they were
14 there and they were very irritated that it appeared
15 they wouldn't be allowed in.

16 Q. Were you successful in actually
17 entering the hearing room itself?

18 A. Yes, I was when I finally let everyone
19 know I was an objector and that I was supposed to be
20 in the room.

21 Q. What time was it do you figure when
22 you placed your first foot into that hearing room?

23 A. I think it was probably about ten or
24 12 minutes to 8:00.

1 Q. Was the hearing room full?

2 A. Yes, it was.

3 Q. How many people do you figure were in
4 that hearing room behind the spectator's gallery?

5 A. Are you talking about seating?

6 Q. Altogether, yeah.

7 A. Well, I don't know what the seating
8 capacity was, I never took a count, but all of the
9 sitting area was full and there were people standing
10 behind the people seated.

11 Q. Standing along the walls?

12 A. Yes.

13 Q. Did you successfully take a seat that
14 had been reserved for you?

15 A. Yes, I did.

16 Q. Do you recall seeing or hearing any
17 speakers in the foyer or the hallway, any type of
18 audio or video equipment at all?

19 A. No. The only speaker I heard was the
20 policeman that I encountered on my way in the
21 building and he was simply there to object to my
22 going up the stairs.

23 MR. LESHEN: I'm going to object, that
24 calls for a conclusion as to why he was there, he

1 was simply there to object.

2 HEARING OFFICER HALLORAN: Mr. Smith.

3 MR. SMITH: If he knows.

4 HEARING OFFICER HALLORAN: I'm sorry?

5 MR. SMITH: If he knows.

6 HEARING OFFICER HALLORAN: If you

7 know, sir.

8 BY THE WITNESS:

9 A. The apparent action of the officer
10 was to keep people -- any more people from going up
11 the stairs.

12 MR. LESHEN: Same objection, Judge.

13 HEARING OFFICER HALLORAN: Mr. Smith.

14 MR. SMITH: No argument.

15 HEARING OFFICER HALLORAN: I'm sorry?

16 MR. SMITH: No argument.

17 HEARING OFFICER HALLORAN: Meaning?

18 MR. SMITH: I have nothing to add. I
19 think he can testify to this.

20 HEARING OFFICER HALLORAN: Not in the
21 manner you asked him. I sustain the objection.

22 MR. SMITH: Let me back up then.

23 BY MR. SMITH:

24 Q. How many officers did you see after

1 you had encountered the first officer downstairs?

2 A. Just one more.

3 Q. And where was that officer?

4 A. That officer was up at the entrance to
5 the room -- the City Council room.

6 Q. Was he in full uniform?

7 A. Yes, he was.

8 Q. Was the officer downstairs in full
9 uniform?

10 A. Yes, he was.

11 Q. The upstairs officer, what did you
12 observe him actually doing?

13 A. He was keeping people from going into
14 the room.

15 Q. How was he doing that?

16 A. He was standing in front of the
17 doorway and simply acting as a deterrent in keeping
18 people out of the door.

19 Q. Did you hear him speak?

20 A. The only thing I heard him say was
21 that you're not allowed in the room, the room is

22 full and I told him that I was one of the objectors
23 and allowed to come up the stairs from the officer
24 downstairs.

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1 Q. By the time you actually placed your
2 foot into the meeting hall itself, were you able to
3 ascertain the general demeanor or attitude of the
4 crowd outside?

5 A. Well, as I mentioned before, I think
6 the crowd was very disappointed because I think they
7 felt it was an issue that was about to -- or a
8 meeting that was about to take place and it had a
9 great deal of impact on them and they were very
10 irritated that they weren't allowed to get in to
11 hear the hearings, to see the proceedings.

12 Q. Once you had seen the inability of the
13 -- or inadequacy of the hall to accommodate the
14 multitude, at some point did you submit your own
15 motion to change the venue to go to some other
16 place?

17 A. Yes. It was either -- I think it was
18 the second night, maybe even repeated on the third
19 night, submitted a motion to do two things; number

20 one, because the room was so limited in terms of the
21 number of people that were actually there the
22 testimony that occurred that first night was lost on
23 all of the other people who might have gotten into
24 the room had it been large enough and knowing that

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1 there were other people who wanted to participate in
2 the proceedings, knowing one for certain, submitted
3 a motion to the hearing officer asking that
4 Dr. Schoenberger's testimony be expunged from the
5 record because other people could not hear that
6 testimony and further made the motion that the
7 hearing be suspended and that the venue be changed
8 to accommodate all of the people who would like to
9 attend the meeting.

10 Q. And how many times did you raise that
11 motion?

12 A. I believe that was twice, I believe on
13 the second and third evening.

14 Q. Were you successful in either
15 occasion?

16 A. No, I was not.

17 Q. Did you participate as a party in this
18 appeal?

19 A. I was prepared to participate as a
20 party in this appeal, however, I chose not to do so
21 for financial reasons --

22 MR. LESHEN: I would ask that be
23 stricken. Either he chose to participate or he
24 didn't. His reasons at this point are irrelevant.

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1 MR. SMITH: I don't believe
2 Mr. Leshen was here at the time that Mr. Mueller in
3 his opening statement made a specific point that
4 objectors didn't even file as parties and I have an
5 offer of proof that if the witness were allowed to
6 testify he will testify that they could not afford
7 the cost of the record. That's what I am trying to
8 prove.

9 MR. MUELLER: I going to object to
10 that because Mr. Smith knows that citizen objectors
11 are not obligated for the cost of the record in
12 these proceedings, so that's completely misleading.
13 The point is Mr. Runyon who was a sophisticated
14 active objector did not choose to appeal the

15 decision to the Pollution Control Board and the
16 inference is fair that he must have agreed with it.

17 HEARING OFFICER HALLORAN: If

18 Mr. Runyon can answer the question he may.

19 Objection overruled.

20 BY MR. SMITH:

21 Q. What was your belief as to the expense
22 of the record?

23 A. Recalling in mind and I started
24 reading the laws pertaining to the appeals process

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1 and it specifically stated that the appellants would
2 be liable for the cost of the record of the hearings
3 and it was our feeling that we did not have the
4 financial resources if, in fact, that burden were
5 placed upon us to pay for that and we felt that
6 there was -- we could not do it on that basis and we
7 also had another reason for not doing it and that
8 was, we're taxpayers in the county, we're paying the
9 county, they represent us and they are also
10 representing our particular interest in this thing.

11 BY MR. SMITH:

12 Q. Now, back to the 17th. Mr. Runyon, do
13 you recall seeing or hearing anyone moving down from
14 the podium and going outside the chambers themselves
15 to give announcements or explanations to the people
16 that had assembled outside?

17 A. No, I don't.

18 Q. Were you there the whole evening?

19 A. Yes, I was.

20 Q. Did you stay the duration?

21 A. Yes, I did.

22 Q. What did the public notice say about
23 the original time of the hearing, commencement and
24 termination?

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1 A. The commencement was to be at 8:00
2 p.m. I think and I may be wrong about this, but I
3 think it was supposed to run until 10:00, but I may
4 be incorrect about that.

5 Q. And how long did the hearing actually
6 run? Did it run past midnight?

7 A. Yes, it did. It ran until about
8 12:30.

9 Q. And did you stay that whole time?

10 A. Yes, I did.

11 Q. Do you recall if there were any breaks
12 in the proceeding?

13 A. There were several breaks, yes.
14 I think probably two or three.

15 Q. Did you ever go outside for a drink of
16 water or to use the restroom?

17 A. I went into the restroom area to use
18 the restrooms, never left the chambers per se other
19 than to go to the adjacent restroom area.

20 Q. When you went outside, what was the
21 condition of the hallway?

22 A. It was pretty well -- at that point
23 everyone had gone home that had been in the hallway
24 before.

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1 Q. The people that couldn't get in?

2 A. Yes, that's correct.

3 MR. LESHEN: I'm going to object.

4 He cannot testify of his own personal knowledge
5 whether they found seats, whether they went home or
6 maybe he can, but certainly that conclusory

7 statement is not admissible.

8 HEARING OFFICER HALLORAN: Excuse me.

9 Terry, could you read back the question, please?

10 (Whereupon, the requested
11 portion of the record
12 was read accordingly.)

13 MR. LESHEN: He can testify as to what
14 he observed about the condition of the hallway, but
15 he cannot testify of his own knowledge whether
16 people had come into the room while he was doing his
17 work as an objector, whether they went home, whether
18 they went around the corner. He doesn't know and
19 consequently he can't testify as to that because
20 it's conclusion not based on his knowledge.

21 HEARING OFFICER HALLORAN: Mr. Smith?

22 MR. SMITH: I'll stand on the
23 question, your Honor, and as for a ruling?

24 HEARING OFFICER HALLORAN: Sustained.

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1 Objection sustained.

2 BY MR. SMITH:

3 Q. When you went out into the hallway,
4 were there people still there -- how many times did

5 you go out, let me rephrase it?

6 A. I only went out at the finality of the
7 meeting, at the conclusion of the meeting and at
8 that point there were no persons in the hallway
9 other than those who had emptied out from the
10 chamber room itself.

11 Q. This is 12:30 after --

12 A. Yes, that's correct.

13 MR. LESHEN: Again, same objection.
14 How can he -- is he testifying of his own knowledge
15 that he knows those people and they walked out
16 because otherwise he's speculating and concluding
17 based upon what can only be unacceptable --
18 inadmissible conjecture.

19 HEARING OFFICER HALLORAN: Mr. Smith?

20 MR. SMITH: He's testifying to what he
21 saw and we've heard other testimony the crowd kept
22 thinning out because they couldn't get in.

23 MR. LESHEN: He's not testifying as to
24 what he saw, he's testifying as to his conclusions

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1 based on the fact that when he walked out there it

2 was empty according to his testimony.

3 HEARING OFFICER HALLORAN: To
4 my recollection, he was testifying to his
5 observations.

6 MR. LESHEN: He testified as to his
7 observations that it was empty, but then he goes on
8 to quote, unquote testify that the only people he
9 saw out there were people who had been in the
10 waiting -- in the hearing and what I'm saying is
11 that there's no foundation for that conclusion based
12 on his testimony to this point.

13 HEARING OFFICER HALLORAN: Mr. Smith?

14 MR. SMITH: We say that's an
15 observation.

16 HEARING OFFICER HALLORAN: I agree
17 with Mr. Smith and again we are operating under a
18 little more relaxed rules of evidence under the
19 Board's procedural rules so I will overrule your
20 objection, Mr. Leshen.

21 MR. SMITH: The answer will stand
22 then, your Honor?

23 HEARING OFFICER HALLORAN: The answer
24 will stand.

1 MR. SMITH: Thank you.

2 BY MR. SMITH:

3 Q. Do you remember after or during the
4 breaks anybody going out so to speak as an emissary
5 or message from the chair explaining rights,
6 distributing informational packets or rules?

7 A. No, I do not.

8 Q. What was your own emotional reaction
9 to finding the room filled and 70 people outside?

10 A. I thought it was very disturbing
11 because it's a very important issue and it was
12 a very important issue to those people obviously
13 that were there. They wouldn't have been motivated
14 to be there had it not have been a very important
15 issue to them and they were consequently very
16 frustrated by not being able to get in to the
17 hearing room.

18 MR. SMITH: Thank you, Mr. Runyon.

19 HEARING OFFICER HALLORAN: Thank you,
20 Mr. Smith. Mr. Sandberg is out of the room.
21 Mr. Moran?

22 MR. MORAN: No questions.

23 HEARING OFFICER HALLORAN: Thank you.

24 Mr. Mueller, cross?

1 C R O S S - E X A M I N A T I O N

2 by Mr. Mueller

3 Q. Mr. Runyon, you are the executive
4 director of a group called OUTRAGE?

5 A. That's correct.

6 Q. That's a citizen's group?

7 A. That's correct.

8 Q. You indicated that you studied the
9 statute with regard to the appeal of the city
10 council's decision?

11 A. That's correct.

12 Q. Do you recall reading the statute that
13 if the appellant was a citizen's group which
14 participated in the proceeding they would not have
15 to bear the cost of preparing the record?

16 A. No, I don't recall that part. I think
17 we read the first part of it that said the
18 appellants would be liable for the cost of preparing
19 the record.

20 Q. So you quit reading the statute after
21 you got to the first part?

22 A. Yes.

23 Q. Is it normally your position as a

24 thorough person to only read a part of the statute?

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1 A. No, but even thorough people once in a
2 while overlook certain things.

3 Q. You indicated that people that night
4 were disoriented in the hall?

5 A. I think I said they were probably
6 dissatisfied, discontented. Disoriented, I'm not
7 certain I said that and if I did, that was a
8 misstatement, but they were certainly discontented
9 and frustrated because they couldn't get in to the
10 hall.

11 Q. Were people confused about their
12 rights?

13 A. I didn't ask them. I believe that's
14 probably not within my province to determine whether
15 each and every one of those was confused about their
16 rights.

17 Q. You weren't confused about your
18 rights, though, were you?

19 A. No, I wasn't.

20 Q. You knew you were registered as an
21 objector and that got you in to the hearing even

22 though you arrived when the room was already full,
23 correct?

24 A. That's correct.

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1 Q. And you fully participated?

2 A. Yes, I did.

3 Q. And so you would have been present
4 when the hearing officer announced on June 18th
5 that for all those who hadn't gotten in the first
6 two hours on June 17th a transcript would be made
7 available, isn't that right?

8 A. That's correct.

9 Q. And isn't it also correct that after
10 the first night of the hearings we never had
11 problems with adequate seating capacity again in
12 that room?

13 A. That's true because the people who
14 couldn't get in the first night obviously didn't
15 come back the second night.

16 Q. Did you talk to anybody -- strike
17 that.

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

19 Thanks, Mr. Runyon.

20 HEARING OFFICER HALLORAN: Thank you.

21 Mr. Mueller. Mr. Leshen?

22 MR. LESHEN: Thank you. No questions.

23 HEARING OFFICER HALLORAN: Before I

24 proceed, Mr. Power, what is your position?

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1 MR. POWER: Assistant corporation

2 counsel for the city of Kankakee.

3 HEARING OFFICER HALLORAN: Thank you

4 very much.

5 MR. LESHEN: Mr. Halloran, if I could

6 have one more quick moment?

7 HEARING OFFICER HALLORAN: Yes.

8 MR. LESHEN: Thank you.

9 HEARING OFFICER HALLORAN: Mr. Smith,

10 any redirect?

11 MR. SMITH: No, your Honor.

12 HEARING OFFICER HALLORAN: Any more

13 questions? You may step down or aside whatever the

14 case. Thank you very much, Mr. Runyon.

15 You may call your eighth witness,

16 Mr. Smith.

17 MR. PORTER: We would call

18 Mr. Bohlen your Honor.

19 HEARING OFFICER HALLORAN: Before we

20 call Mr. Bohlen I think Mr. Thompsen -- would you

21 like to make a public comment while we're hot?

22 Mr. Thompsen, do you choose to be sworn in and

23 subject to cross-examination or do you just want to

24 make a public comment?

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1 MR. THOMPSEN: Public comment, but

2 I'll tell the truth anyhow so it doesn't make a

3 difference if I'm sworn in or not.

4 HEARING OFFICER HALLORAN: Thank you.

5 The court reporter will swear you in.

6 (Witness sworn.)

7 MR. THOMPSEN: I guess -- oh, my name

8 is Ronald W. Thompsen, T-h-o-m-p-s-e-n and I live at

9 803 East Roxanna Circle, Kankakee, Illinois. I'm

10 also the auto township supervisor.

11 During these landfill hearings I

12 probably was one of the more fortunate ones that got

13 to be at most of them, I don't know if that's

14 fortunate or not, but I was there. During the
15 hearings, I heard some of the things that just -- it
16 puzzled me so I started checking into them and one
17 of the basic statements was that the traffic person,
18 Mr. Werthman, had contacted all road districts
19 involved. Being involved with the township, I went
20 to our road commissioner and asked him if he had
21 been contacted. Then, I also went to the Kankakee
22 Township Road District commissioner and asked him
23 and he said no --

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

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1 this point, this is, first of all, irrelevant it
2 goes to the weight of the evidence and secondly it's
3 hearsay on hearsay.

4 MR. THOMPSEN: No, it's not. I've got
5 letters here stating --

6 HEARING OFFICER HALLORAN: Excuse me.

7 MR. THOMPSEN: Signed letters to their
8 statements.

9 HEARING OFFICER HALLORAN: Mr. Porter?

10 MR. PORTER: If I may respond. If
11 indeed there is evidence that one of the applicant's

12 witnesses withheld information or told a falsehood
13 that does indeed relate to fundamental fairness, it
14 is appropriate for this hearing. There is case law
15 on that issue, I don't have it at my fingertips, but
16 we can provide it by tomorrow. I believe he should
17 be allowed to testify. If it turns out it's
18 inappropriate, we can strike it later.

19 HEARING OFFICER HALLORAN: We can
20 strike it or accept it as an offer of proof.
21 Mr. Mueller, anything further?

22 MR. MUELLER: It still goes to the
23 manifest weight of the evidence. This issue came up
24 in discovery regarding whether or not a witness can

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1 be impeached after the hearing and Mr. Porter had
2 law on that issue, I think he'd like to bring it up
3 right now or he should have been prepared to do so.
4 I don't -- the impeachment of a witness after the
5 record is closed is improper. The fundamental
6 fairness of the hearing deals with the way the
7 hearings were conducted, not with whether the
8 credibility of a witness can be impeached on a

9 collateral matter or an equivocal matter or any
10 other matter for that reason. In addition, if there
11 are people that -- if you rule that we can use these
12 proceedings to impeach witnesses, in which case
13 we'll be here until December because I'm sure
14 everybody's going to want to say this and that and
15 the other about what the witnesses have to say,
16 let's not do it through hearsay.

17 MR. THOMPSEN: This is not hearsay.
18 I have letters written by these folks to their
19 statements and I have the statement of Mr. Werthman.

20 HEARING OFFICER HALLORAN: Do you
21 agree, Mr. Thompsen, that this does touch on the
22 criteria -- one of the nine criteria that was
23 discussed already at the City Council? In other
24 words, there's already been a record made, however,

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1 this is outside the record?

2 MR. THOMPSEN: Yes. This has also
3 been filed as a public comment from the landfill
4 hearing with the city, these two letters have.

5 HEARING OFFICER HALLORAN: So it is in
6 the record?

7 MR. THOMPSEN: It is in the record.

8 I just wanted to bring it up --

9 MR. MUELLER: Then the impeachment is
10 complete if it is, in fact, impeachment.

11 HEARING OFFICER HALLORAN: I'll let
12 you go forth and based on the questionable reference
13 I will let you go forward with an offer of proof and
14 I'll take it back to the Board for their
15 consideration and if they find that I'm in error,
16 they'll correct me.

17 MR. THOMPSEN: The letters are filed
18 with the city in the proper time. I can make copies
19 of these. These have a stamp on it also to show
20 they were there if you wish or I can read them just
21 to get it into the record.

22 HEARING OFFICER HALLORAN: As an offer
23 of proof. You may proceed.

24 THE WITNESS: Yes. During the

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1 landfill hearings for the city, the landfill in June
2 2002 and during Mr. Werthman's testimony, the
3 question was, volume two, page 125, did you notice

4 any or become aware of any potential safety impact
5 in connection with the proposed facility and
6 Mr. Werthman's answer was in volume two, page 126,
7 as part of my diligence for the study and part of my
8 initial phase, I contacted the various road service
9 jurisdictions who patrol the roadways. This
10 includes IDOT, Illinois Department of
11 Transportation, Kankakee County Highway Department,
12 Kankakee Township, Roadship, whatever that means and
13 Otto Township -- Kankakee Township, city of
14 Kankakee. Okay. That's word for word.

15 I've got actual data from them and
16 the state and I asked each of them whether there
17 were any problems or safety issues along these
18 routes and what I heard from various representatives
19 that the roadways were operating safely and there is
20 no significant or safety issues along any of the
21 roadways servicing the landfill. Okay.

22 This is confusing me. Kankakee
23 Township Road District maintains South Tech Drive on
24 the preferred route and I was never contacted either

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1 by phone or in writing by anyone who was doing work

2 for the Town & Country, Inc., regarding safety or
3 other problems then from the Otto Township Road
4 District, during the landfill hearings during
5 Mr. Werthman's testimony the question was volume
6 two, page 125, basically the same and his answer was
7 I've got actual data from the state but down further
8 he says during the cross-examination by
9 Ms. O'Connor, volume five, page 117, Mr. Werthman
10 referring to the alternative route, Otto Road,
11 stated in addition, I talked to all the road
12 commissioners, engineers and asked them if there
13 were any concerns, any problems, any accident issues
14 that we should look at and none were identified.
15 Okay. During the week prior to -- this is the
16 statement of the road commissioner. During the week
17 prior to the start of the landfill hearings on June
18 17th, 2002, Mr. Werthman called and asked if I had
19 any concerns about the traffic using Otto Road 5000
20 South Road between Route 45 and the entrance to the
21 proposed landfill. This surprised me because I did
22 express concerns about the safety of Otto Road.
23 There is considerable pedestrian traffic on the Otto
24 Road overpass as well as numerous driveways entering

1 the Otto Road. Also, during the call there were no
2 questions or dialogue about the preferred route
3 using the 1000 West Road or 3500 South Road. This
4 is part of the Otto Township Road District.

5 So that's basically what I want on
6 the record.

7 HEARING OFFICER HALLORAN: Thank you.
8 Mr. Thompsen, everything you've read there today is
9 already in the record before the City Council, is
10 that my understanding?

11 MR. THOMPSEN: It was submitted prior
12 to the end of the public hearing -- public comment
13 to the landfill hearing so it should be in the
14 record.

15 HEARING OFFICER HALLORAN:
16 Mr. Mueller, do you know whether or not it is in the
17 record?

18 MR. MUELLER: I would think that
19 question is more appropriate for the city, but our
20 understanding is anything submitted within a 30-day
21 period after the close of the evidence is part of
22 the record.

23 HEARING OFFICER HALLORAN: Mr. Leshen,
24 do you have any recollection?

1 MR. LESHEN: It is my understanding
2 that anything that was submitted in a timely fashion
3 is, in fact, part of the record and I would --
4 in fact, I could say with certainty that it is.

5 HEARING OFFICER HALLORAN: The only
6 thing that I -- basically he's just being
7 repetitive. The evidence he's just read into the
8 record is already in the City Council record up on
9 appeal before the Board. I don't see any problem
10 with that at all. Again, at the most it's
11 repetitive. It's already in the record. The Board
12 can take a look at it if so chooses.

13 With that said, I'm going to
14 withdraw my decision to take it as an offer of proof
15 and take it with the case over objection.

16 THE WITNESS: Thank you.

17 HEARING OFFICER HALLORAN: Thank you
18 very much. Mr. Thompsen, you're subject to
19 cross-examination. Thank you very much. Any cross
20 for Mr. Thompsen?

21 MR. MUELLER: No.

22 MR. LESHEN: No.

23 HEARING OFFICER HALLORAN: Thank you.

24 Mr. Thompsen, you may step down. Mr. Porter?

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1 (Witness sworn.)

2 WHEREUPON:

3 C H R I S T O P H E R B O H L E N,
4 called as a witness herein, having been first duly
5 sworn, deposeth and saith as follows:

6 D I R E C T E X A M I N A T I O N

7 by Mr. Porter

8 Q. Can you state your name for the
9 record, please?

10 A. Christopher W. Bohlen.

11 Q. And your occupation?

12 A. I'm an attorney.

13 Q. And as a matter of fact, you are the
14 city attorney for the city of Kankakee, is that
15 correct?

16 A. I am the corporation counsel for the
17 city of Kankakee, which is a part-time position.

18 Q. And how long have you been corporation
19 counsel?

20 A. Since 1997.

21 Q. You've also worked for the city legal
22 department since 1993, is that correct?

23 A. Prior to 1997, I was an assistant city
24 attorney.

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1 Q. As a matter of fact, you've been in
2 the city attorney's department since Mayor Don Green
3 was elected, is that correct?

4 A. That's correct.

5 Q. It was the mayor that appointed you to
6 your present position, is that right?

7 A. The mayor appointed with the advice
8 and consent of the City Council.

9 Q. And the mayor as your chief executive
10 officer of the city is indeed your boss, is that
11 correct?

12 A. The difficult position of being legal
13 counsel for a municipality is you have a number of
14 bosses, the City Council, the aldermen, some of the
15 department heads I believe they're my boss as well
16 as the mayor.

17 Q. He's one of them, though, is that
18 right?

19 A. Yes, sir.

20 Q. Now, you communicated on numerous
21 occasions with the agents of Town & Country before
22 the formal application was filed on March 13th, is
23 that correct?

24 A. I did communicate with agents of

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1 Town & Country before the application was filed,
2 that's correct.

3 Q. If my understanding is right, you
4 primarily communicated with Mr. Tom Volini and
5 his attorneys, is that right?

6 A. That's a difficult question to answer
7 as it's framed. I communicated on occasion with
8 Mr. Volini. I communicated more often with
9 Ken Carlson and on occasion with Mr. George Mueller.

10 Q. Ken Carlson and George Mueller were
11 the attorneys for Mr. Volini, is that correct?

12 A. Yes.

13 Q. It's your understanding -- well,
14 strike that.

15 You first spoke to Mr. Volini or

16 his agents in the summer or fall of the year 2001,
17 is that right?

18 A. That's my best recollection. Again,
19 as I indicated previously, chronologically I'm
20 better than picking a date and saying that's when it
21 occurred, but in 2001 -- mid 2001 is when I remember
22 first having contact with the agents of what I
23 learned to be Town & Country.

24 Q. And it was your understanding that

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1 those agents of Town & Country actually had spoken
2 to the mayor before they spoke to you, is that
3 correct?

4 A. I was aware that there had been a
5 meeting with Mr. Volini and the mayor before I met
6 with Mr. Carlson.

7 Q. And you learned of that meeting within
8 a week of it occurring, is that right?

9 A. That's correct.

10 Q. And within a month you had met
11 yourself with the agents of Town & Country, is that
12 correct?

13 A. Ultimately that's what I learned. I

14 was meeting with Ken Carlson and I didn't -- at that
15 point I wasn't aware of the existence of Town &
16 Country.

17 Q. You were just aware that he was a
18 representative of Mr. Volini who was proposing a
19 potential landfill, is that correct?

20 A. That wasn't what I understood at the
21 outset of our discussions. What I understood at the
22 outset of our discussions was there was questions
23 regarding the annexation of certain property.

24 Q. You understood that Mr. Volini's

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1 attorney had questions regarding the possibility of
2 annexing some property into the city of Kankakee, is
3 that right?

4 A. That's correct.

5 Q. And in those first communications you
6 also understood that the purpose of that annexation
7 was for the development of a landfill, is that
8 correct?

9 A. I learned that during the process of
10 the annexation discussions.

11 Q. You advised Mr. Volini's counsel that
12 the city was in a position to annex property and
13 about the process for annexation and a possible
14 annexation agreement, is that correct?

15 A. I advised him that the city was always
16 interested in annexing property. The annexation
17 agreement became a point of discussion during our
18 discussions and the procedure as I informed him as
19 to who would be working with him from the city on
20 that part.

21 Q. So you assisted Mr. Volini's counsel
22 in understanding what the procedures would be to
23 annex a property into the city, is that right?

24 A. I don't think I assisted Mr. Carlson

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1 at all. I think Mr. Carlson had a very good
2 understanding of the process and procedure. It was
3 simply -- I was telling him how we did it and that
4 was the extent of it. I don't believe I qualify it
5 as assistance.

6 Q. The meeting with Mr. Volini's counsel
7 was followed by a long series of meetings between
8 yourself, the mayor, Mr. Volini and his counsel with

9 the purpose of getting a proposed landfill site
10 annexed into the city, is that correct?

11 MR. MUELLER: I'm going to object at
12 this point. I understand these questions may be
13 preliminary, but the Board has held in the Landcomp
14 cases that prefiling contacts between a prospective
15 applicant and a county or a city are not improper
16 contacts and may, in fact, not even be gone into as
17 part of a fundamental fairness hearing because they
18 are per se deemed to be approved and not unfair and
19 the only exception to that rule is if the contacts
20 are of such a nature that they directly deal with
21 prejudice on the part of the city or county and
22 clearly negotiating a Host agreement, working out
23 the details of annexation and other routine and
24 customary prefiling activities don't fall within the

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1 scope of that.

2 HEARING OFFICER HALLORAN: Mr. Porter,
3 response?

4 MR. PORTER: Obviously we disagree and
5 therein lies the crux of the issue. We believe that

6 the evidence will be clear in this case that the
7 prefiling contacts were of such an extensive nature
8 that indeed there was an effort to prejudge the
9 merits of this case.

10 Furthermore, ultimately those
11 contacts occurred with a direct decision maker and
12 are therefore inappropriate. Obviously, this is
13 relevant testimony to the fundamental fairness and
14 the ultimate proceedings and particularly in light
15 of the fact that Mr. Bohlen was indeed the hearing
16 officer appointed by the City Council.

17 HEARING OFFICER HALLORAN: What time
18 frame are we looking at here, Mr. Porter, as far as
19 prefiling contacts?

20 MR. PORTER: The ones I'm talking
21 about right now?

22 HEARING OFFICER HALLORAN: Correct.

23 MR. PORTER: These all occurred in the
24 year 2001 and I believe the annexation concluded in

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1 2001, possibly 2002, I haven't quite gotten a
2 complete answer on when the last annexation
3 occurred.

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HEARING OFFICER HALLORAN:

Mr. Mueller, my recollection, it's been a while, regarding the case you stated and I think there was a remoteness to time issue as well. I'm not sure when they mentioned prefiling contacts was it in the last six years, seven years or in the last two years?

MR. MUELLER: Let me perhaps refresh your recollection by quoting from a portion of the Board's decision in Residents Against a Polluted Environment versus County of LaSalle and Landcomp Corporation, PCB No. 97-139, where the Board stated we held that because evidence of these contacts is not relevant to the siting criteria and is not indicative of impermissible predecisional bias of the siting authority, we find that the county hearing officer's failure to allow testimony concerning the allegations did not render the proceedings fundamentally unfair and that context was where the siting hearing officer refused to allow cross-examination of the applicant's

1 prehearing contacts or prefiling contacts of any
2 kind with the county and its officials. The
3 Landcomp rule is clear. It was endorsed by the
4 Appellant Court in the Third District. We're in the
5 third district here. I think there is a bright line
6 test that the Pollution Control Board has
7 established which says that prefiling contacts are
8 not ex parte, they are not impermissible, they are
9 not relevant evidence of prejudgment on the part of
10 the ultimate decision makers. I would also
11 reference you to the fact that in both the
12 Beardstown and Havana cases argued before the Board
13 the Board specifically found that prefiling lunches
14 of a private nature between the applicant and the
15 governing body one -- on the day before the
16 application was filed are not impermissible ex parte
17 contacts and are not evidence of prejudgment on the
18 part of the decision makers. So to answer your
19 question with regard to proximity in time of the
20 contacts to the filing, it's clear that contacts one
21 day before the filing do not meet the proximity test
22 and are, therefore, not relevant. We can short
23 circuit these hearings by just applying the law that
24 is well settled at the Pollution Board Control for

1 which you are employed, law which you presumably are
2 aware of.

3 HEARING OFFICER HALLORAN: Sir, but it
4 is a case-by-case basis, don't you agree?

5 MR. MUELLER: Well, in Landcomp it is
6 a bright line test.

7 HEARING OFFICER HALLORAN: Well, it's
8 a case-by-case, you know, defendants are different
9 in every case. You're an experienced attorney.

10 MR. MUELLER: And, you know,
11 Mr. Halloran, I was the one that argued Landcomp on
12 behalf of the residents and argued that this is a
13 case-by-case endeavor and in response to that
14 argument the Board finally developed the bright line
15 test which said prefiling contacts are not
16 impermissible and are not relevant or material
17 evidence of prejudgment on the part of the decision
18 maker.

19 HEARING OFFICER HALLORAN: What would
20 you say, and I'm just throwing out a hypothetical,
21 if one of the applicants bought one of the Board
22 members a brand-new Cadillac the day before the
23 application was filed, do you think that would be a
24 smoking gun or do you think that would be relevant

1 to any kind of fundamental fairness issue?

2 MR. MUELLER: That's exactly the point
3 I argued and what I was told was if I made an offer
4 of proof as to bribery or other patently illegal
5 activity the Board might rethink its position, but
6 there is no allegation here or offer of proof as to
7 something that is actively illegal or improper and
8 just asking questions about did you negotiate a Host
9 agreement, did you talk about annexations, that
10 doesn't get us anywhere and those are precisely the
11 kind of prefiling contacts that the Board had in
12 mind when it said that they're not relevant.

13 HEARING OFFICER HALLORAN: Mr. Porter?

14 MR. PORTER: All of the cases cited by
15 Mr. Mueller do not address whether or not the
16 evidence is admissable at this hearing. He's
17 talking about whether or not in those cases they
18 found that there was indeed prejudgment of the facts
19 and in this case we'll find that there is. The
20 Landcomp case that he cited and is relying upon, it
21 was actually addressing whether or not a hearing
22 officer's ruling in a 39.2 hearing was correct.

23 It has nothing whatsoever to do with whether or not
24 the evidence should be admitted at this hearing.

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1 What Mr. Mueller's attempting to do is merely, like
2 he said, short circuit the hearing process. We want
3 to point out to the Pollution Control Board the
4 nature of the contacts that occurred, the biases
5 that were established and ultimately the prejudgment
6 and actually hearing that occurred without any
7 notice to any of the parties that a hearing took
8 place in front of the decision makers themselves,
9 the City Council and the evidence was presented and
10 at this same hearing the applicant told the City
11 Council they couldn't trust the 39.2 process.
12 Obviously, these are egregious abuses of what
13 Mr. Mueller has apparently counseled his client
14 as the bright line test that we do not agree exists.

15 HEARING OFFICER HALLORAN: Here's what
16 I'm going to do and based on the case law it's kind
17 of dicey and an in between situation. I'm going to,
18 for now anyway, sustain Mr. Mueller's objection.
19 Mr. Porter, you may proceed with an offer of proof
20 and you can cross-examine as well Mr. Mueller.

21 MR. LESHEN: Mr. Halloran, if I just
22 can also add a thought here, which is that these
23 quote, unquote contacts are at this point not with
24 members of the decision-making body. They are with

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1 -- alleged to be with Mr. Bohlen who whether at this
2 point -- at that point --

3 HEARING OFFICER HALLORAN: I don't
4 think that makes any difference, but thank you, your
5 argument is so noted. I didn't mean to cut you off,
6 Mr. Leshen. Mr. Porter, you may proceed with your
7 offer of proof.

8 BY MR. PORTER:

9 Q. During these numerous meetings you had
10 regarding the annexation process you also provided
11 assistance to the applicant in correcting a notice
12 problem that occurred during the petition, is that
13 correct?

14 A. No.

15 Q. What was wrong with my statement?

16 A. Well, two things; one, you refer to
17 numerous meetings and I think that's a matter of

18 judgment. I didn't consider the meetings to be
19 numerous. Secondly, I did not assist the applicant
20 with an issue of notice, that fell in the hands or
21 at the feet of the city planner whose job it was to
22 obtain a list of those governmental bodies who had
23 to be notified.

24 In my review of the affidavits

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1 that were to be recorded, I learned or discovered
2 that one governmental body had been notified. I
3 required -- actually, I did require that there had
4 to be an additional hearing with notice to the
5 governmental body that had been -- not been
6 notified.

7 MR. MUELLER: Mr. Halloran, a point of
8 clarification. It wasn't clear to me from the
9 question whether we were talking about
10 preannexation notices or pre 39.2 hearing notices.

11 MR. PORTER: Right now I am talking
12 about the annexations petitions.

13 BY THE WITNESS:

14 A. And I understood it to be the
15 annexation process.

16 HEARING OFFICER HALLORAN: Thank you.

17 BY MR. PORTER:

18 Q. You were aware that the reason the
19 applicant was seeking annexation was to avoid the
20 landfill being located solely in the county of
21 Kankakee, is that correct?

22 A. I wouldn't put it that way. I thought
23 they wanted -- they were trying to annex it so it
24 would be located in the city, a positive spin as

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1 opposed to a negative spin.

2 Q. It would no longer be located solely
3 in the county, rather it would be located in the
4 city as well, is that correct?

5 A. It would be located in the city for
6 purpose of the 39.2 hearing, that's correct.

7 Q. Prior to the annexation process taking
8 place, you reviewed Section 39.2, isn't that right?

9 A. Yes, I had.

10 Q. And you knew that if a property was
11 annexed into the city that the city would be the
12 siting authority, is that correct?

13 A. I had learned that in connection with
14 a prior discussion with the different developer.

15 Q. At the time of the annexation
16 proceedings you also reviewed the county's solid
17 waste management plan that called for only one
18 landfill, isn't that correct?

19 A. I reviewed the county's solid waste
20 plan and I believe by then it did call for only one
21 landfill.

22 Q. You also knew that there was a
23 landfill already operating within the county, isn't
24 that right?

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1 A. Yes.

2 Q. Let me show you a map that I'm going
3 to have marked as Petitioner's Exhibit No. 1.
4 You'll notice that this is a Kankakee County zoning
5 map for the year 2002, is that right?

6 A. That's what it's identified as, yes.

7 Q. And if you can, can you point out to
8 me where the proposed landfill would be located?

9 A. Referring to the gray area.

10 Q. If you can just circle that area for

11 me.

12 A. This is a general -- obviously a
13 general designation.

14 Q. For the record, have you now circled
15 a gray area on the Kankakee County zoning map, 2002,
16 within Section 25?

17 A. Yes.

18 Q. Would you agree that that map is a
19 fair depiction of the incorporated areas of the city
20 of Kankakee?

21 A. I don't know. I didn't look at it for
22 that purpose. I don't know.

23 Q. You can go ahead and look at it for
24 that purpose.

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1 HEARING OFFICER HALLORAN: What
2 purpose is that for, Mr. Porter?

3 MR. SMITH: He's looking at it to
4 determine whether or not it accurately depicts the
5 incorporated areas of the city of Kankakee.

6 HEARING OFFICER HALLORAN: Thank you.

7 BY THE WITNESS:

8 A. I'm going by memory and I think it's
9 not precisely correct, but I could be wrong. I see
10 an area that I thought -- I believe is annexed
11 that's not shown on the map.

12 BY MR. PORTER:

13 Q. Is that area anywhere near the
14 landfill -- proposed landfill at issue?

15 A. All things being relative, it's about
16 two miles away, so it's somewhat near.

17 Q. Other -- strike that.

18 You would agree that the proposed
19 landfill is actually two-and-a-half miles from the
20 city streets of Kankakee, Illinois, would you not?

21 A. I do not agree with that.

22 Q. How far is it from the city streets of
23 the annexed Kankakee of Illinois?

24 A. One mile in two different directions.

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1 Q. You would also agree that except for a
2 narrow strip of railroad easement --

3 A. Actually, that's not true either -- I
4 guess technically it is, one mile is my best answer.

5 Q. You would also agree that except for

6 a narrow strip of railroad easement from the north,
7 all of the immediate neighbors of the proposed
8 facility are not within the city of Kankakee
9 municipal limits, correct?

10 A. There is continuity with the railroad
11 easement on the east, there is no annexed property
12 on the north, west or south of the property.

13 Q. Okay. So other than that narrow strip
14 of railroad easement, all of the other neighbors to
15 the landfill are county residents rather than city
16 residents, is that right?

17 MR. MUELLER: I'm going to object,
18 there's no testimony that the railroad is an
19 easement, it may very well be a fee, plus we don't
20 know the relevance of any of this testimony.
21 Clearly, the proposed site is within the city and
22 the city annexed it.

23 MR. PORTER: The relevance, your
24 Honor, is that the members that were barred from the

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1 hearing room were all county residents -- for the
2 most part county residents rather than city

3 residents. Individuals that are most interested in
4 the outcome of these proceedings are the county
5 residents rather than the city residents. It also
6 goes toward the ultimate biases of the hearing
7 officer and the City Council in establishing a
8 landfill out in the county lands rather than within
9 the city and is relevant to fundamental fairness.

10 MR. MUELLER: He's testifying there
11 because so far we have not heard from anyone on his
12 behalf that was actually entitled to statutory
13 notice of the proceedings. We've heard from some
14 people from Bourbonnais, we've heard from the county
15 board member, a couple citizens, plus I might point
16 out that everyone who lives in the city of Kankakee
17 is also a resident of the county.

18 HEARING OFFICER HALLORAN: Mr. Porter?

19 MR. PORTER: I believe my comments
20 were appropriate.

21 HEARING OFFICER HALLORAN: I'm going
22 to allow the witness to answer if he's able. I'll
23 overrule Mr. Mueller's objection.

24 BY THE WITNESS:

1 A. I apologize. Could you restate it? I
2 forgot.

3 BY MR. PORTER:

4 Q. Except for the narrow strip of land
5 where the railroad is located, all of the neighbors
6 to the proposed landfill are county residents rather
7 than city residents, is that correct?

8 A. I've indicated that there is -- that
9 nobody to the north, west or south of that parcel
10 is annexed into the city.

11 Q. The property at issue was annexed in
12 stages during late 2001 and early 2002, is that
13 right?

14 A. By the property at issue, what do you
15 mean?

16 Q. The proposed landfill property was
17 annexed during late 2001 and early 2002, is that
18 correct?

19 A. I believe it was all finished in 2001,
20 but I could be in error of that.

21 Q. Are you now recalling that it was late
22 2001 that it was annexed?

23 A. I believe it was. I have not
24 researched that, but in the context of the rest

1 of the events, I think that chronology is right.

2 HEARING OFFICER HALLORAN: Mr. Porter,
3 before I forget, I kind of want to interject here.
4 The offer of proof is finished for now? You're
5 questions regarding the prefiling contacts is
6 finished at this point in time?

7 MR. PORTER: Well, actually,
8 Mr. Hearing Officer, I believe that the questions
9 regarding the annexation, where the neighbors were,
10 had very little to do with prefiling contacts.
11 There are questions forthcoming regarding other
12 prefiling contacts.

13 HEARING OFFICER HALLORAN: So when we
14 get to the prefiling contacts, again, Mr. Mueller,
15 you can make an objection and I'll rule accordingly.

16 MR. MUELLER: We ask that the last
17 offer of proof be rejected as evidence for the
18 reason that the nature of the prefiling contacts
19 described was completely mundane and is not evidence
20 of prejudice.

21 HEARING OFFICER HALLORAN: That's
22 denied. I'll let the Board take that up.

23 BY MR. PORTER:

24 Q. At the time the annexation was

1 proceeding, you were also actively communicating
2 on behalf of the city with the applicant about an
3 agreement for siting, is that correct?

4 A. At or near that time. I think the
5 initial annexation hearing had already occurred
6 before we got into serious negotiations regarding
7 the Host agreement.

8 Q. I'm done with that map if you want to
9 take a seat.

10 Well, the Host agreement, which is
11 in the city record entitled agreement for siting,
12 was executed on February 19th, 2002, is that
13 correct?

14 A. I'm not sure. That sounds correct.

15 Q. It would have been the same day as the
16 meeting that Mr. Volini and Mr. Devin Moose spoke to
17 the City Council before the application was filed
18 based on your recollection?

19 A. They spoke to the counsel on February
20 19th, I do know that.

21 Q. And you would recall that that was
22 indeed the day the Host agreement was also executed,

23 is that right?

24 MR. MUELLER: We're going to interpose

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1 an objection here. Mr. Porter keeps referring to
2 something called an agreement for siting. We're
3 aware of a Host agreement. We're not aware of any
4 agreement for siting.

5 HEARING OFFICER HALLORAN: Mr. Porter?

6 MR. PORTER: The reference to
7 agreement for siting is contained within the city's
8 certificate of record on appeal and it references,
9 quote, agreement for siting and it appears at
10 pages 2964 and 3031. We can see the agreement
11 itself is entitled something differently, an
12 operating agreement I believe is what it's called.
13 I'm just using the term that the city employed in
14 its certificate of record on appeal.

15 HEARING OFFICER HALLORAN:

16 Mr. Mueller?

17 MR. MUELLER: What they're doing then
18 is misleading the Board and everyone here by
19 improperly referencing a document from a table of

20 contents rather than the actual name affixed to the
21 document. I'd ask the chair to direct him when he
22 refers to documents to refer to those documents
23 according to the way in which they are titled on
24 their face, otherwise we'll all be misled even

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1 further.

2 HEARING OFFICER HALLORAN: Doesn't it
3 say that on the certificate of record on appeal?
4 Where are we, Mr. Porter?

5 MR. PORTER: It's page two of the
6 actual document, page three of the entire document
7 and pages 2964 to 3031 right before the minutes of
8 the meetings.

9 MR. MUELLER: Let's get the document
10 because the Host agreement is not a 70-page document
11 so there's clearly something wrong with this line of
12 questioning.

13 MR. PORTER: The objection is he
14 doesn't like my term. He's certainly able to
15 cross-examine.

16 HEARING OFFICER HALLORAN: I agree.
17 You can go ahead, Mr. Porter. You can cross on this

18 matter. Thank you

19 BY MR. PORTER:

20 Q. That Host agreement or agreement for
21 siting, whatever we want to call it, provides that
22 if the landfill is --

23 THE REPORTER: I'm sorry. Excuse me.
24 I'm trying to make a record here, can you please

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1 help me out?

2 HEARING OFFICER HALLORAN: I concur
3 with that. Thank you.

4 BY MR. PORTER:

5 Q. That Host agreement provides that if
6 the landfill is sited at the proposed location that
7 the city will receive certain compensation,
8 including discounted waste services and fees paid
9 directly to the city for each ton of waste accepted,
10 is that correct?

11 A. The agreement speaks for itself, but
12 that does include some of the -- those are a portion
13 of the contents in a generalized statement, that is
14 correct.

15 Q. The compensation was estimated to be
16 about four to five million dollars per year for the
17 life of the facility, is that right?

18 A. Based upon maximum tonnage, that's
19 correct.

20 Q. The life of the facility was estimated
21 to be 25 to 30 years, is that correct?

22 MR. LESHEN: Mr. Halloran, I'm going
23 to object to this line of questioning. In fact,
24 the document is as of record. It does speak for

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1 itself. It does not aid the fact finding process
2 here to go through it now and test Mr. Bohlen on his
3 memory. It only -- the document is available as a
4 matter of record and does indeed speak for itself.

5 HEARING OFFICER HALLORAN: Is this, in
6 fact, duplicative, Mr. Porter?

7 MR. PORTER: I do not agree that it's
8 duplicative and someone recently mentioned to me
9 that when a document can actually speak for itself,
10 we'll let it do that.

11 Part of the process of a hearing
12 is to point out the pieces of evidence that a

13 litigant believes the trier of fact or in this case
14 the Pollution Control Board should be reviewing and
15 obviously it's appropriate cross-examination, it's
16 also foundation to my entire argument regarding
17 prefiling contacts that occurred.

18 MR. LESHEN: I think we would all
19 agree that speaking for itself is metaphorical and
20 metaphorically speaking I believe the document does
21 speak for itself.

22 HEARING OFFICER HALLORAN: I'm going
23 to overrule your objection, Mr. Leshen. I'll let
24 Mr. Porter continue.

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1 MR. MUELLER: Mr. Halloran, in
2 addition, the record should reflect that in
3 Fairview Area Task Force versus Illinois Pollution
4 Control Board, the Third District Appellate Court
5 ruled that the existence of a Host agreement by
6 which the Host community receives economic benefits
7 is not evidence of fundamental fairness. So this is
8 irrelevant.

9 HEARING OFFICER HALLORAN: Your

10 objection is so noted, but overruled. Thank you.

11 BY MR. PORTER:

12 Q. The life of the facility was estimated
13 to be 25 to 30 years, is that correct?

14 A. Base upon my memory, I believe that's
15 correct.

16 Q. As a matter of fact, isn't it true
17 that the Host agreement indicates that in just the
18 first ten years the facility is expected to generate
19 approximately \$42 million for the city?

20 A. I don't recall that being stated in
21 the Host agreement, but I can't testify that it does
22 or does not.

23 Q. If it indicates that on page 3031 in
24 the record, you would have no reason to dispute it,

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1 is that right?

2 MR. MUELLER: Then it would be
3 speaking for itself, wouldn't it?

4 HEARING OFFICER HALLORAN: Is that an
5 objection, Mr. Mueller?

6 MR. MUELLER: Yes. The document is in
7 the record and now we're asking him whether he

8 agrees that the document is in the record.

9 MR. PORTER: No. I asked him if he
10 had any reason to dispute that indeed the Host
11 agreement indicates that in the first ten years
12 the landfill would generate \$42 million for the
13 city.

14 HEARING OFFICER HALLORAN: If the
15 witness is able to answer, he may answer it.
16 Objection overruled.

17 BY THE WITNESS:

18 A. Without the document in front of me I
19 can't agree or disagree as to -- based upon my
20 memory as to what it says specifically. Generally,
21 I don't have any dispute with what you're saying,
22 but I can't tell you that it says that.

23 BY MR. PORTER:

24 Q. I'll just show it to you real quick to

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1 refresh your recollection. Would that help?

2 A. Sure.

3 Q. Let me show you page 3031 of the
4 Pollution Control Board record.

5 HEARING OFFICER HALLORAN: Mr. Porter,
6 what page was that?

7 MR. PORTER: 3031, Mr. Hearing
8 Officer.

9 HEARING OFFICER HALLORAN: Thank you.

10 BY MR. PORTER:

11 Q. Would you agree that there was an
12 estimated projection of \$42.4 million in revenue to
13 the city of Kankakee in the first ten years of the
14 proposed landfill?

15 A. That was one estimate that's in the
16 schedule that's attached to the operating agreement
17 and there's at least one other one.

18 Q. Therefore, over the 25 to 30 years
19 we're talking about 100 to possibly \$120 million
20 generated for the city of Kankakee, is that correct?

21 MR. LESHEN: Objection. Mr. Bohlen
22 has already testified that that was one of a number
23 or one of their estimates and now -- I'm sorry,
24 and now Mr. Porter is taking that as a -- I guess

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1 I'm saying in his question he's misstating the
2 testimony.

3 MR. PORTER: Again, he's subject to
4 cross-examination.

5 MR. LESHEN: Whether he's subject to
6 cross or not doesn't mean that a question can embody
7 in itself something that was not testified to and I
8 guess another objection would be that it's assuming
9 facts not in evidence based on the fact that that
10 was not Mr. Bohlen's testimony after he had an
11 opportunity to review the document.

12 HEARING OFFICER HALLORAN: I'm going
13 to sustain Mr. Leshen's objection. Please proceed.

14 BY MR. PORTER:

15 Q. You personally were involved in
16 negotiating and drafting and communicating with
17 Town & Country about the Host agreement, is that
18 correct?

19 A. Yes.

20 Q. The City Council was aware that you
21 and the city were negotiating a Host agreement, is
22 that right?

23 A. I knew individual aldermen were made
24 aware of that fact. I can't say that all 14

1 aldermen were aware of that fact.

2 Q. And so our record is clear, the City
3 Council is made up of the alderman, is that right?

4 A. The City Council of Kankakee is made
5 up of 14 aldermen, two each of seven wards.

6 Q. The Host agreement was executed on
7 February 19th, 2002, which indeed was the same day
8 the applicant met with the City Council, is that
9 correct?

10 A. February 19th is the date that the
11 applicant met with the City Council as I previously
12 stated.

13 Q. And if you could in the record that
14 you have in front of you at page 2964 you'll see the
15 front page of the Host agreement and you would agree
16 that it was executed on the very day that the
17 applicant met with the City Council, is that right?

18 A. I agree that that's the date that's
19 put in there. I would need to look at the execution
20 page to know when -- if there's a different date
21 mentioned in the -- my recollection is all the
22 parties didn't sign it the same day to be candid
23 with you.

24 Q. I would look at page 2996, that might

1 refresh your recollection.

2 A. Thank you. None of the signatures are
3 dated. I don't recall everybody signing it on the
4 same day to be candid, but it may have been. I
5 can't say yes or no.

6 Q. Who were the individuals that signed
7 it?

8 A. It was signed on behalf of the city by
9 the Mayor Donald E. Green and attested by the clerk,
10 Anjanita Dumas, it was signed by Town & Country
11 Utilities by -- I can't read his signature but I'm
12 assuming that's Tom Volini's signature, Anthony
13 somebody has attested his signature and it was
14 signed on behalf of Kankakee Regional Landfill, LLC,
15 I'm assuming that's Tom Volini's signature and
16 again attested by Anthony M. and I can't read the
17 last name.

18 Q. Mr. Volini and the mayor were both
19 present at that 2/19/2002 meeting, is that correct?

20 A. Yes. At the City Council meeting?

21 Q. Correct.

22 A. Yes. They were both present at the
23 City Council meeting.

24 Q. Did you have any communications with

1 the applicant about the Host agreement after
2 February 19th, 2002?

3 MR. LESHEN: For a point of
4 clarification, is this -- are we back on an offer of
5 proof here in terms of prefiling contacts?

6 HEARING OFFICER HALLORAN: Are we,
7 Mr. Porter?

8 MR. PORTER: I have heard no present
9 objection.

10 MR. MUELLER: Object.

11 HEARING OFFICER HALLORAN: I guess
12 we're back on the offer of proof if it involves a
13 prefiling ex parte contact. So it's under an offer
14 of proof, you may proceed.

15 MR. LESHEN: And for purposes of
16 moving forward here, at any time there's questions
17 regarding prefiling contacts, I would make -- I
18 would have a standing objection and ask it be
19 considered as an offer of proof so we can move
20 forward. I thought that was the chair's ruling
21 early on.

22 HEARING OFFICER HALLORAN: I thought
23 that was as well, but I need an objection every time
24 prefiling contacts did come up and you've so done.

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1 I would suggest you object every time.

2 BY MR. PORTER:

3 Q. Along the lines of an offer of proof,
4 you spoke with an agent of the applicant on numerous
5 occasions negotiating this Host agreement, is that
6 right?

7 A. Yes.

8 Q. You --

9 A. I spoke with -- yes.

10 Q. You personally were involved in
11 drafting the Host agreement, is that correct?

12 A. We did rewrites of certain provisions
13 of the Host agreement. The original document was
14 proposed by Town & Country. We responded with
15 specific rewrites of various provisions.

16 Q. You rewrote or did rewrites of the
17 Host agreement on at least seven occasions, is that
18 correct?

19 A. I think that's about right.

20 Q. Did you speak with the applicant at
21 any time after February 19th, 2002, about the
22 content of the Host agreement?

23 A. No.

24 Q. Did you ever have any communications

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1 of any nature from the applicant about the content
2 of the Host agreement after February 19th, 2002?

3 A. None that I recall.

4 Q. Did you have any communications with
5 the applicant after March 13th, 2002, regarding the
6 Host agreement?

7 A. None that I recall.

8 Q. Let me show you a document I'm going
9 to have marked as Petitioner's Exhibit No. 2.

10 MR. LESHEN: Mr. Porter, if you would
11 share it with us first so we can examine it.

12 MR. PORTER: I will do that.

13 BY MR. PORTER:

14 Q. What is Petitioner's Exhibit No. 2?

15 A. It is a letter to me -- faxed to me
16 from George Mueller.

17 Q. What is the date of that letter?
18 A. March 12th, 2002.
19 Q. Did you indeed receive that letter?
20 A. Yes.
21 Q. Isn't it true that that letter from
22 Mr. Mueller to you dated March 12th provides on page
23 two, therefore, I don't see a problem in --
24 A. Show me where you are.

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1 Q. (Indicating).
2 A. Okay.
3 Q. Therefore, I don't see a problem in
4 the city and the applicant continuing to communicate
5 regarding some language in a Host agreement
6 particularly if the discussions are unrelated to
7 financial obligations of the applicant, is that
8 correct?
9 A. That's what that letters says, but we
10 had no further discussions regarding the Host
11 agreement either with this letter or after that
12 letter to the best of my recollection.
13 Q. So you have no explanation why
14 Mr. Mueller was still talking about negotiating a

15 Host agreement even after it was executed on
16 February 19th, 2002?

17 HEARING OFFICER HALLORAN: Excuse me,
18 Mr. Porter. Mr. Leshen?

19 MR. LESHEN: That calls for Mr. Bohlen
20 to speculate to what may have been in Mr. Mueller's
21 mind or his intention. The question in the offer of
22 proof is whether or not there were any contacts, not
23 what Mr. Mueller may have intended in a letter,
24 which I think we all would agree based on the

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1 reading of it is not a contact regarding the Host
2 agreement and Mr. Bohlen has now answered I don't
3 recall there being any such contacts afterwards.
4 How is he now expected to testify as to what was in
5 Mr. Mueller's mind when he wrote that letter?

6 HEARING OFFICER HALLORAN: Mr. Porter?

7 MR. PORTER: I believe the question is
8 whether or not he had an explanation as to why there
9 was still a communication going on regarding the
10 Host agreement on March 12th. I wasn't asking him
11 to conjecture anything about Mr. Mueller.

12 MR. LESHEN: Of course he's asking him
13 to conjecture and that's exactly what he's asking
14 him to do by saying why would he have written you
15 this letter if there were no contacts and Bohlen
16 said to the best of my recollection there were no
17 contacts and now based on that answer, a very direct
18 simple answer, Mr. Porter is now saying gee, would
19 you just think about it a little while and
20 conjecture as to what might have been the reason
21 that somebody else wrote you a letter.

22 HEARING OFFICER HALLORAN: I agree
23 with Mr. Leshen. I think the witness was asked and
24 answered the question so if can you move on,

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1 Mr. Porter.

2 BY MR. PORTER:

3 Q. On the back of that agreement there's
4 a document attached, is that correct?

5 A. That's correct.

6 MR. PORTER: Mr. Halloran, I'd like to
7 make an offer of proof on that last question if I
8 may.

9 HEARING OFFICER HALLORAN: Certainly.

10 MR. PORTER: Along those lines, I had
11 a question pending that did not -- was not responded
12 to and the question was whether or not he had an
13 explanation as to whether -- as to why Mr. Mueller
14 was indicating that they could continue discussing
15 the Host agreement and if he can answer that as an
16 offer of proof it would be appreciated.

17 MR. LESHEN: I thought you already
18 made a ruling on it.

19 HEARING OFFICER HALLORAN: Well,
20 Mr. Porter has come back and wanted to do an offer
21 of proof. I did make a ruling, but if he's willing
22 to do an offer of proof, I'll let the Board decide.
23 With that said -- and I did sustain Mr. Leshen's
24 objection, but Mr. Porter can proceed with an offer

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1 of proof.

2 MR. LESHEN: I thought this was all
3 within the context of an offer of proof?

4 HEARING OFFICER HALLORAN: Well, some
5 of it was and some of it wasn't. It could be an
6 offer of proof within an offer of proof if that's

7 what you want to call it.

8 MR. PORTER: All I can do is ask the
9 witness the question and if he has a response,
10 that's my offer of proof and I have posed the
11 question, would you like me to rephrase it?

12 HEARING OFFICER HALLORAN: Yes, could
13 you, please?

14 BY MR. PORTER:

15 Q. Do you have an explanation as to why
16 Mr. Mueller was indicating that discussions could
17 continue taking place on the Host agreement as of
18 March 12th of 2002?

19 A. If you read that sentence in the
20 context of the entire paragraph I think the
21 explanation is self-evident. He wasn't suggesting
22 we continue to have discussions regarding the Host
23 agreement. He was using that as an example of some
24 kind of communication that could occur and would not

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1 be considered prejudicial, but he doesn't propose
2 that we're going to continue having or that we have
3 had. So if you read it in the context of the
4 paragraph, I am supposing that Mr. Mueller was

5 saying this is an example of what we could do if we
6 were so inclined. Neither party was so inclined.

7 BY MR. PORTER:

8 Q. At the same -- excuse me. We then
9 move your attention to a document that's attached to
10 that correspondence.

11 What is that document?

12 MR. LESHEN: Mr. Halloran, I take it
13 this is now in the nature of a continuing offer of
14 proof now that the offer of proof that was enclosed
15 in the offer of proof has been concluded?

16 HEARING OFFICER HALLORAN: I'm sorry.
17 Could you read back the question, Terry? Which one?

18 HEARING OFFICER HALLORAN: The last
19 one by Mr. Porter?

20 MR. PORTER: The question was simply
21 there's a document attached to that correspondence,
22 what is that document.

23 MR. LESHEN: And my question of
24 clarification was --

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1 HEARING OFFICER HALLORAN: We don't

2 even know what the document is. Mr. Bohlen, if you
3 can answer.

4 BY THE WITNESS:

5 A. There is a document attached which is
6 entitled rules and procedures, Pollution Control
7 facility siting, city of Kankakee, Illinois.

8 BY MR. PORTER:

9 Q. So if I'm understanding correctly, the
10 applicant provided you with a copy of rules and
11 procedures for the siting hearing, is that correct?

12 A. No, that's not correct.

13 Q. Well, that was attached to the
14 correspondence that he sent to you and within the
15 correspondence it does indicate that he has attached
16 some proposed language, isn't that right?

17 MR. LESHEN: Mr. Halloran, now that we
18 know what the document is and I did have an
19 opportunity to --

20 HEARING OFFICER HALLORAN: I agree. I
21 sustain your objection and we'll go into the offer
22 of proof because it is prefiling contact.

23 BY THE WITNESS:

24 A. This letter is dated March 12th, 2002,

1 facility siting ordinance for the city of Kankakee
2 had adopted these rules and procedures and the
3 October 2001 ordinance were a portion of that
4 ordinance. So he was not providing them to me.
5 This was a copy that he had received apparently from
6 us at some point in time and was returning to us for
7 some reason.

8 BY MR. PORTER:

9 Q. You would agree that the applicant
10 assisted you and the legal department in drafting
11 the proposed procedures, isn't that correct?

12 A. No. Well -- the answer to the -- the
13 specific answer to that question is no.

14 Q. May I see the correspondence?

15 Isn't it true that the
16 correspondence itself provides quote, I had
17 previously drafted for Tom Volini a proposed
18 facility siting ordinance and accompanying rules and
19 regulations which I believe have been adopted. If
20 you want to defer cross-examination until after the
21 close of that applicant's case and then have
22 cross-examination in a roundtable format where all
23 the witnesses are available at once, the City
24 Council will need to amend Section 6(e)14 of the

1 existing ordinance found on page ten of my draft
2 copy.

3 Does that refresh your
4 recollection that indeed Mr. Mueller drafted the
5 facility siting ordinance?

6 A. It does not refresh my recollection
7 because Mr. Mueller did not draft the facility
8 siting ordinance.

9 Q. So that indication in the
10 correspondence is simply erroneous?

11 MR. LESHEN: Objection. There is no
12 indication that he drafted these rules for the city
13 of Kankakee and with the -- with hesitancy, I am
14 going to say that the document does, in fact,
15 metaphorically speak for itself. That's not what
16 the document says and he's trying to put a spin on
17 it as the skilled attorney that he is, but that's
18 not what it says.

19 HEARING OFFICER HALLORAN: Mr. Porter?

20 MR. PORTER: I just read what it says
21 and it says I had previously drafted for Tom Volini
22 a proposed facility siting ordinance and
23 accompanying rules and regulations, which I believe

24 have been adopted. If you want to defer

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1 cross-examination, he then talks about making a
2 change to those rules and he attaches a copy of
3 them. I don't see what the problem is.

4 HEARING OFFICER HALLORAN: Well, the
5 Board's going to be able to figure out what exactly
6 the letter states so I'm going to overrule your
7 objection, Mr. Leshen. Mr. Porter was there a
8 question pending?

9 MR. PORTER: I don't believe so. I
10 think we had an answer.

11 BY MR. PORTER:

12 Q. Isn't it true that Mr. Mueller was
13 advising you as to how you could go about doing a
14 roundtable cross-examination as opposed to the usual
15 examination that attorneys are accustomed to?

16 A. The letter as it's set out if that's
17 his advice to me, that may be. I had suggested
18 early on in the process that it was my impression
19 that the most efficient way to get through a hearing
20 where there were going to be -- or as I anticipated,
21 and I was right, a large number of citizens who were

22 appearing pro se, the most efficient way to get
23 through the process of allowing everybody to
24 question every witness was to establish a roundtable

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1 type process, that's Mueller's term, not mine, a
2 process at which all of the witnesses would sit at
3 the front of the room and be cross-examined on their
4 area of expertise as opposed to my experience in
5 these types of hearings where the first witness gets
6 asked every possible question that can come up
7 regarding whether it's his area of expertise or not.
8 So my thought had been early on in the process, and
9 I obviously had shared that with either Volini or
10 Mueller, it was my thought that if the city was
11 going to proceed with the process that we needed to
12 adopt a process that allowed all of the witnesses to
13 be questioned within their area of expertise, but
14 not expecting all of the witnesses to be questioned
15 on areas that weren't within their expertise and I
16 was aware that the mayor was going to be the hearing
17 officer at that time and I thought that would be an
18 easier way to control the process of the hearing.

19 Q. You would agree that Petitioner's
20 Exhibit No. 2 is a fair, accurate, complete copy of
21 the correspondence you received from George Mueller
22 at some point after the date of its publication on
23 March 12th, 2002, isn't that right?

24 A. I did receive that correspondence in

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1 my opinion, yes.

2 Q. And as a matter of fact, you received
3 the correspondence by facsimile and by regular mail,
4 is that correct?

5 A. I remember receiving it by facsimile
6 and I'm sure if it says it was sent by regular mail,
7 it probably was also. I do remember receiving it
8 approximately the day before the petition for siting
9 was filed.

10 Q. And you also received a copy of it
11 after the petition was filed, isn't that correct?

12 A. I assume it came by regular mail after
13 the petition was filed or on the day the petition
14 was filed. Mail comes from Ottawa within one day.
15 The Appellate Court is in Ottawa and we receive
16 24-hour service from the Appellate Court.

17 MR. PORTER: I would move for
18 admission of Petitioner's Exhibit No. 2.

19 HEARING OFFICER HALLORAN:
20 Mr. Mueller?

21 MR. MUELLER: I'm going to object
22 because it's a prefiling contact on a routine matter
23 where I gave him some of my thoughts on an
24 ordinance. Obviously, Mr. Bohlen's testified that

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1 the city was going to do what it was going to do.

2 MR. LESHEN: We're still within the
3 context of the offer of proof here just to clarify
4 things procedurally so he's seeking the admission of
5 this contact in the context of the offer of proof.

6 MR. PORTER: If I may respond to that?
7 Actually, he just testified that he received a copy
8 of the document on March 13, which was the day of
9 the filing or some time thereafter, he's not certain
10 when so I don't believe it even falls under the
11 prefiling contacts offer of proof.

12 MR. LESHEN: Well, we are still within
13 the context procedurally of the offer of proof. If

14 he's now saying that his offer of proof is closed
15 and is now seeking admission of all of these -- of
16 all of that evidence, then you need to address it,
17 but at this point procedurally we're within the
18 context of the offer of proof.

19 HEARING OFFICER HALLORAN: You know,
20 I'm going to sustain the respondents' objections.
21 I do still see that they're the prefiling type of
22 contact. There was one -- I guess the letter came
23 beforehand after the petition was filed, but in any
24 event, I will take Exhibit 2 with the case as an

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1 offer of proof.

2 BY MR. PORTER:

3 Q. Now, at the same time that the city
4 was annexing the property and at the same time it
5 was negotiating the Host agreement, isn't it also
6 true you attended a meeting between the mayor,
7 Mr. Sims (phonetic), yourself and Mr. Volini and his
8 lawyer regarding the city possibly drafting its own
9 solid waste management plan?

10 MR. MUELLER: Further objection as to
11 prefiling contacts.

12 MR. PORTER: Mr. Hearing Officer, I
13 think I can help. It is indeed the same time the
14 city was annexing the property, which was 2001.

15 HEARING OFFICER HALLORAN: Okay. Your
16 objection is so noted. We're going in the offer of
17 proof because it was in the prefiled contact.

18 BY THE WITNESS:

19 A. The answer is yes.

20 BY MR. PORTER:

21 Q. And before that meeting, you reviewed
22 the county's plan, is that correct?

23 A. Yes.

24 Q. You were aware that the county's plan

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1 called for only one landfill in the county and that
2 landfill would be present -- strike that.

3 MR. PORTER: Mr. Halloran, my
4 last question and the present question are not in
5 the nature of an offer of proof, but rather
6 substantive evidence. I want to make that clear on
7 the record.

8 HEARING OFFICER HALLORAN: Okay.

9 Proceed.

10 MR. LESHEN: I'm sorry. The last
11 question? I don't think we can go back and say oh,
12 by the way, I didn't really mean that as part of my
13 offer of proof.

14 HEARING OFFICER HALLORAN: Yes, we
15 can. We're kind of all over the place as it is,
16 sir.

17 MR. PORTER: The last question did not
18 involve a communication, it was simply whether he
19 had reviewed the county's plan yet.

20 HEARING OFFICER HALLORAN: That was my
21 understanding, so that's outside the offer of proof.

22 MR. LESHEN: Then I would object on
23 the basis of relevance.

24 HEARING OFFICER HALLORAN: Overruled.

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1 You may proceed, Mr. Porter.

2 BY MR. PORTER:

3 Q. At that time you were aware that the
4 county plan called for only one landfill in the
5 county and that landfill would be the present
6 Kankakee County Landfill being operated by Waste

7 Management, correct?

8 MR. MUELLER: I'm going to object
9 unless we know what at that time was. The county
10 was amending its plan so frequently he needs to be
11 more specific as to which amendment he wants
12 Mr. Bohlen to be aware of.

13 HEARING OFFICER HALLORAN: I agree,
14 Mr. Porter.

15 BY MR. PORTER:

16 Q. At the time that you were having
17 discussions with Mr. Mueller about amending the
18 city's solid waste management plan, you were aware
19 that the county had a plan in place and that plan
20 only called for one landfill and that landfill was
21 to be the Kankakee County Landfill being operated by
22 Waste Management, is that correct?

23 MR. MUELLER: That still doesn't give
24 us a time, Mr. Halloran. This would be a lot more

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1 useful if we had days or months included in the
2 questioning since there was a plan amendment in
3 October of 2001 which becomes a critical time in

4 terms of his question.

5 HEARING OFFICER HALLORAN: I'm
6 guessing, Mr. Porter, it's around March 2002 you're
7 shooting for, but if you could --

8 BY MR. PORTER:

9 Q. At what time were you contemplating
10 adopting the city's solid waste management plan?

11 A. We produced the city's solid waste
12 plan and the ordinance that adopted it and I can't
13 recall the specific date. If you could refresh my
14 recollection, I can give you a chronology -- I'm
15 sorry. I can give you an approximate time before it
16 was adopted that it was first discussed. I
17 apologize. I just can't give you any dates.

18 Q. For the record, the city of Kankakee's
19 solid waste management plan appears in the Pollution
20 Control Board record at page 2949 and is dated
21 January 22nd, 2002.

22 Does that refresh your
23 recollection?

24 A. It does. I would estimate that the

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1 first discussions about adopting our own solid waste

2 plan occurred some time in late October, early
3 November of 2001 and that's when the meeting that
4 you previously referenced probably occurred.

5 Q. And at that time you understood that
6 the county had a plan which called for only one
7 landfill and that that landfill was to be the
8 present Kankakee County Landfill being operated by
9 Waste Management, is that correct?

10 A. Well, that's not an accurate statement
11 of the county's plan, no. In general -- as a
12 generalized statement, we were aware that the county
13 wanted one landfill, that it was going to be
14 operated by Waste Management and it would be in
15 addition to the current landfill site because that
16 site had been -- had run its course and it was going
17 to be at capacity shortly. We were also aware that
18 they said in that plan at that time that they were
19 going to go after any municipality that attempted to
20 site its own landfill. So there was some pretty
21 adversarial language adopted in the plan in October
22 and that's when I think our discussions occurred
23 regarding does this plan address any needs of the
24 city, which it did not, was the city included in the

1 plan, which it was not, and, therefore, the city
2 would consider adopting its own plan because the
3 city was actually collecting solid waste and the
4 county collected none and it was the city that was
5 facing out -- the landfill that was going to be
6 filled in approximately a year to year and a half.

7 So the answer to your question is
8 we knew that the county didn't want the city to
9 pursue a landfill. They made that very clear in
10 that October, I believe, resolution that said we
11 want one landfill, it's to be run by Waste
12 Management, it's to be in addition to the current
13 landfill and by the way, anybody that tries to adopt
14 their own, we're going to attack and go after. So
15 at that point the city said we need to see how we
16 can accommodate our own needs for a landfill.

17 Q. So at the time you had your meeting
18 with the mayor and Mr. Mueller regarding drafting
19 a new city solid waste management plan in October or
20 November of 2001, you knew that the county plan
21 called for one county landfill and that that
22 landfill would be the present Kankakee County
23 Landfill being operated by Waste Management, is that
24 correct?

1 MR. LESHEN: Objection --

2 THE REPORTER: I'm sorry. Can you
3 please use the microphone?

4 MR. LESHEN: Number one, it's been
5 asked and answered; number two, it's now referencing
6 a meeting in October of 2001 and consequently it is
7 referencing, although it is not specifically yet
8 asking for what was discussed at that meeting, it is
9 referencing a prefiling contact and consequently is
10 objectionable unless it is made in the context of an
11 offer of proof.

12 HEARING OFFICER HALLORAN: Mr. Porter?

13 MR. PORTER: The meeting was in order
14 to assist the witness in understanding the time
15 frame which he needed earlier. As for the
16 remainder, it obviously was not answered; one,
17 because you just said I changed the question and
18 two, he started out by saying that no, he did not
19 agree with the characterization of the county plan,
20 but then appeared to conclude that he did agree and
21 that's why the question required clarification.

22 HEARING OFFICER HALLORAN: You know,
23 I'm going to overrule your objection to both counts.

24 You may answer.

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1 BY THE WITNESS:

2 A. And the answer to your question is
3 again the same, I do not agree with your
4 characterization. It was not -- the county's
5 landfill was not to be located on the current site
6 because the current site was going to be at
7 capacity. They had to contemplate either a new site
8 or an addition. So the answer to your question is
9 that was not my understanding of what the county was
10 contemplating.

11 Q. Okay. I've taken your deposition in
12 this case, have I not?

13 A. Yes, you have.

14 Q. And that deposition took place on
15 October 25, 2002, is that correct?

16 A. It certainly did.

17 Q. And at that time you swore to tell the
18 truth, is that right?

19 A. Absolutely.

20 Q. And you indeed told the truth, is that

21 correct?

22 A. I have on both days I hope.

23 Q. I would direct counsels' attention to
24 page 36 wherein I asked you two questions and the

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1 first is I take it before that meeting you had
2 already had the opportunity to review the county's
3 solid waste management plan, is that correct? Your
4 response was yes. I then asked, you were aware that
5 the plan called for one county landfill and that
6 that landfill would be the present Kankakee County
7 Landfill being operated by Waste Management, is that
8 correct, to which you responded and that they would
9 sue anybody that tried to do something differently.
10 I was aware of all of that.

11 So isn't it true you were indeed
12 aware that the county plan called for one landfill
13 and that that landfill was to be operated by Waste
14 Management at the present Kankakee County Landfill?

15 MR. MUELLER: Mr. Halloran, I have an
16 additional objection here which is that the line of
17 questioning now really goes toward whether or not
18 the city council's factual finding that the Town &

19 Country application was consistent with the county's
20 solid waste management plan as amended is against
21 the manifest weight of the evidence and does not go
22 to a fundamental fairness or jurisdictional issue.

23 MR. LESHEN: I would join in the
24 objection and also say that based on the questioning

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1 and answering here there's no impeachment that what
2 Mr. Bohlen responded to in the first questioning in
3 his deposition was entirely congruent with what he's
4 testified to here today and if the question had been
5 more precise or followed up perhaps in the first
6 place, there may or may not have been, but based on
7 what's before you there is no impeachment and this
8 line of inquiry is irrelevant.

9 HEARING OFFICER HALLORAN: I guess,
10 number one, it's my recollection, and I could be
11 wrong, that Mr. Porter asked the same question that
12 he did in the deposition and Mr. Bohlen, the
13 witness, stated on the stand here today it was a
14 mischaracterization and in the deposition he didn't
15 say any such thing. So I think given that, the

16 record speaks for itself. Second, Mr. Mueller's
17 objection regarding -- I'm sorry. Your objection
18 again was the ex parte or getting into the manifest
19 weight of the criterion?

20 MR. MUELLER: Mr. Halloran, my
21 objection is that this entire line of questioning
22 seems to go to the issue of whether or not the city
23 council's finding on Criterion 8, consistency with
24 the solid waste plan, is against the manifest weight

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1 of the evidence. The record is complete and
2 Mr. Bohlen's own beliefs as a non decision-maker
3 regarding the meaning of the county's solid waste
4 plan as amended in October of 2001 are irrelevant
5 and ought not to be part of this record, not only
6 because of the reason that it goes to substantive
7 criterion, but also because the plan was
8 subsequently amended again on March 12th of 2002
9 in the county's last-ditch effort to try to throw
10 another roadblock ahead of the city exercising its
11 proper statutory jurisdiction.

12 HEARING OFFICER HALLORAN: Mr. Porter?

13 MR. PORTER: Obviously, this witness'

14 beliefs regarding whether or not there was a plan in
15 place that restricted one landfill in the county and
16 named who the operator of that landfill was to be is
17 relevant because this witness made a proposed
18 finding of fact as the hearing officer in the
19 underlying proceeding. It all goes toward the
20 obvious bias that occurred here and that the
21 proposed finding of fact was impacted by those
22 biases, that's why it relates to fundamental
23 fairness. Regardless, it is not an addition of new
24 evidence under the underlying record, it is a

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1 reference to the evidence that existed.

2 HEARING OFFICER HALLORAN: The
3 testimony Mr. Bohlen's given here today, is that --
4 was that in the record before the city or is it in
5 the record now before the Board?

6 MR. PORTER: Well, Mr. Bohlen wasn't
7 able to be examined at the underlying proceeding
8 because he was the hearing officer.

9 HEARING OFFICER HALLORAN:
10 Mr. Mueller, Mr. Leshen, anything further?

11 MR. MUELLER: As I said, he's being
12 asked about a different amendment of the plan.
13 What relevance does that have?

14 HEARING OFFICER HALLORAN: Mr. Porter,
15 as you know, this goes to one of the -- Criterion 8
16 and the Board can't look at any more evidence than
17 is already in the record. They don't reweigh the
18 evidence. They just find the fact the evidence is
19 against the manifest weight of the evidence. With
20 that said, I will sustain respondents' objections,
21 however, I will take it as an offer of proof,
22 perhaps the Board can find some fundamental
23 unfairness in this line of questioning.

24 BY MR. PORTER:

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1 Q. Let me withdraw the last question and
2 simply ask did indeed you give those responses on
3 October 25, 2002?

4 MR. LESHEN: Mr. Halloran, just for
5 purposes of clarification, I take it now we're
6 within the context of an offer of proof?

7 HEARING OFFICER HALLORAN: I don't
8 think so. I think he is in the process of trying to

9 complete impeachment if that's what it is.

10 MR. PORTER: That is correct. I've
11 had a witness that has told me one thing in a
12 deposition and another thing at trial and obviously
13 in this hearing I have the right to point out that
14 his testimony is different and that goes to the
15 credibility of the witness as we sit here today, not
16 an issue regarding Criterion 8, et cetera.

17 MR. LESHEN: And what I'm saying is
18 that if this is -- this is impeachment -- this is
19 attempting impeachment on a collateral matter; to
20 wit, pretrial contact.

21 HEARING OFFICER HALLORAN: But it's
22 not really an ex parte contact per se. I think the
23 question was asked in his mind --

24 MR. LESHEN: What was his

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1 understanding as he -- as he went into a meeting
2 that addressed -- which is within the context of a
3 pretrial contact otherwise it's so far afield that
4 none of it matters. The context that it arose in is
5 whether or not -- what was in Mr. Bohlen's mind at

6 the time he participated in a meeting that was a
7 prefiling contact, that's where all this came from
8 and consequently under the rules that we have
9 established here regarding prefiling contacts, this
10 is a -- it rises within that context and, therefore
11 in my view needs to be within the context of an
12 offer of proof.

13 HEARING OFFICER HALLORAN: I don't
14 agree with you on this matter, Mr. Leshen. You may
15 proceed, Mr. Porter.

16 MR. PORTER: I believe we have a
17 question pending we have not received an answer to.
18 For the sake of a record that is easy to follow, I'd
19 like to reask or reattempt the impeachment if you
20 don't mind.

21 HEARING OFFICER HALLORAN: Proceed.

22 BY MR. PORTER:

23 Q. Isn't it true that on October 25 I
24 asked you, I take it before that meeting you had

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1 already had the opportunity to review the county's
2 solid waste management, is that correct, and your
3 response was yes. I then asked you you were aware

4 that that plan called for one county landfill and
5 that that landfill would be the present Kankakee
6 County Landfill being operated by Waste Management,
7 is that correct, to which you responded and that
8 they would sue anybody that tried to do something
9 differently. I was aware of all of that.

10 Did I ask those questions and did
11 you give those responses?

12 A. Yes, you did.

13 Q. And you gave those responses, correct?

14 A. Yes, I did.

15 Q. So isn't it true that you knew that
16 the city's plan was inconsistent with the county's
17 plan?

18 A. When?

19 Q. October and November of 2001.

20 A. No.

21 Q. Nonetheless, you would agree that even
22 if the application is consistent with the city plan
23 it must still be consistent with the county's solid
24 waste management plan, isn't that right?

1 A. Yes.

2 Q. Isn't it true that even before the
3 2/19/02 meeting the City Council members had met
4 with the applicant?

5 MR. LESHEN: Are we again now on the
6 offer of proof?

7 HEARING OFFICER HALLORAN: Mr. Porter,
8 is this a prefiling contact?

9 MR. PORTER: It is indeed a prefiling
10 contact?

11 HEARING OFFICER HALLORAN: Then we're
12 in the offer of proof arena. You may proceed.
13 Thanks.

14 BY THE WITNESS:

15 A. I'm informed that they had, yes.

16 BY MR. PORTER:

17 Q. As a matter of fact, Mr. Volini and
18 his people had taken the City Council members on a
19 bus drive to other landfills, is that correct?

20 A. I was so informed of that. I was not
21 a participant.

22 Q. Furthermore, some of the aldermen were
23 present at annexation hearings that were attended by
24 the applicant, isn't that right?

1 A. I believe so, perhaps one or two.

2 Q. At those annexation hearings there
3 were questions and answers concerning the effect or
4 impact of the landfill, isn't that correct?

5 A. There were questions, no answers
6 because the chairman of the planning board ruled
7 that since there would be a siting hearing following
8 or some time in the future if, in fact, a siting
9 application was filed that those questions would be
10 more appropriately put at that time. So there were
11 questions from the public when they cross-examined
12 or questioned the applicants, in this case, the
13 landowners and their attorney who were seeking
14 annexation.

15 Q. So those people that had questions
16 about the impact of the landfill did not receive
17 any answers during the annexation proceedings, is
18 that right?

19 A. That's correct, because they were
20 ruled to be inappropriate at that time. The only
21 issue was annexation, propriety of the annexation
22 agreement and the propriety of the zoning that was
23 to be proposed.

24 Q. Were you the one that found that it

1 would be inappropriate to allow answers at that
2 time?

3 A. The hearing officer ruled -- or the
4 planning board chairman made that ruling at those
5 meetings.

6 Q. Who was that?

7 A. Loretto Cowhig, C-o-w-h-i-g, first
8 name Loretto, L-o-r-e-t-t-o.

9 Q. Isn't it true that at the February 19,
10 2002, meeting the City Council was allowed to ask
11 the applicant questions and receive responses?

12 A. I think so. The transcript will
13 reflect whether any questions were asked and
14 answered.

15 Q. Now, prior to February 19th, 2002, you
16 were at a meeting with the mayor and Mr. Volini and
17 possibly his lawyer where it was decided the
18 applicant would come and talk to the City Council
19 before the notices to landowners were sent on
20 February 20th, 2002, isn't that right?

21 A. Yes.

22 Q. You were aware that it was the

23 intention of the applicant to make a substantive
24 presentation to the City Council about the Section

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1 39.2 criteria, isn't that correct?

2 MR. MUELLER: I'm going to object to
3 the use of the term substantive.

4 HEARING OFFICER HALLORAN: Mr. Porter?

5 MR. PORTER: Mr. Bohlen is an
6 attorney, I'm pretty sure he understands what the
7 word substantive means.

8 MR. LESHEN: Then I'm going to object
9 because I really find that assuming what words mean
10 in the context of a hearing like this would be a bad
11 idea, so I'd ask for a definition.

12 HEARING OFFICER HALLORAN: I would
13 sustain both attorneys objections. Mr. Porter, if
14 you can rephrase if possible.

15 BY MR. PORTER:

16 Q. You understood that Mr. Volini and
17 his people were going to be giving a presentation
18 where they were discussing the Section 39.2 criteria
19 and how they believed they met those criteria, isn't
20 that correct?

21 A. I'm not sure whether I knew that
22 before the meeting. I certainly heard it during the
23 meeting.

24 Q. So you would agree that the applicant

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1 presented testimony at the 2/19/02 meeting that went
2 to the content and substance of the application,
3 isn't that right?

4 MR. MUELLER: Object to the term
5 testimony.

6 BY THE WITNESS:

7 A. There was no testimony presented.

8 MR. MUELLER: I'll withdraw my
9 objection.

10 HEARING OFFICER HALLORAN: Thank you,
11 Mr. Mueller.

12 BY MR. PORTER:

13 Q. You would agree that the applicant
14 presented statements via his expert witnesses that
15 went to the content and substance of the
16 application, would you not?

17 A. The applicant was, as I recall it,

18 indicating what they hoped to put on as evidence in
19 the hearings --

20 MR. LESHEN: Mr. --

21 BY THE WITNESS:

22 A. -- that dealt with the criteria that
23 were involved in the --

24 HEARING OFFICER HALLORAN: I'm sorry.

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1 Mr. Bohlen, you may proceed.

2 BY THE WITNESS:

3 A. -- that dealt with the criteria under
4 the 39.2 hearing. I don't think -- the transcript
5 speaks for itself. We kept a verbatim record as we
6 do of all City Council meetings.

7 MR. LESHEN: Mr. Halloran, would this
8 be an appropriate time --

9 THE REPORTER: I'm sorry. Could you
10 please speak up into the microphone?

11 MR. LESHEN: I would like to ask for a
12 short recess at this moment, it seems like a moment
13 to break, we're shifting into that hearing and if I
14 could just have a short break.

15 HEARING OFFICER HALLORAN: Let's take

16 a short break, 15 minutes.

17 (Whereupon, after a short
18 break was had, the
19 following proceedings
20 were held accordingly.)

21 HEARING OFFICER HALLORAN: It's
22 approximately 3:50 p.m. on November 4th. I do want
23 to state for the record that all through these
24 proceedings -- in the morning there was probably 30

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1 members of the public present, after lunch there was
2 probably 20 and now there looks like maybe ten or 15
3 and also want to note that there was a member of the
4 press here as well. Secondly, I want to stress that
5 if there's any member of the public today or
6 whenever, let me know or let Ms. Newmann know in the
7 back of the room and we'll try to get you on as soon
8 as possible. We don't want you waiting around for
9 two or three days or two or three hours. We'll try
10 to squeeze you in. I guess with that said that
11 pretty much wraps it up and Mr. Bohlen is still
12 under oath and he's still on the stand and

13 Mr. Porter is still proceeding with his direct.

14 BY MR. PORTER:

15 Q. In the meeting that you had discussing
16 what was going to take place on February 19, 2002,
17 you never told the applicant not to attempt to
18 present its case outside the hearing process, did
19 you?

20 MR. LESHEN: For the purposes of
21 clarification, we're still now in the context of an
22 offer of proof?

23 HEARING OFFICER HALLORAN: We are now
24 in the context of an offer of proof, it's a

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1 prefiling contact.

2 MR. LESHEN: Thank you.

3 BY THE WITNESS:

4 A. I never -- it is true that I never
5 told them what they should say at that meeting.

6 BY MR. PORTER:

7 Q. Did it cause you concern when
8 Mr. Volini told the City Council that night that he
9 wanted an unfettered opportunity to talk to you, the
10 City Council, without the filter of lawyers, without

11 the rancor and back and forth that unfortunately the
12 lawyers bring to the process?

13 MR. MUELLER: I'm going to object for
14 the reason that Mr. Bohlen's state of mind, what he
15 heard of certain things at a prefiling meeting
16 between the City Council and the applicant, his
17 statement of mind, is irrelevant. Moreover, the
18 transcript of that meeting exists and is part of
19 this record in its entirety. For Mr. Porter to
20 pick out individual statements with a question, did
21 this statement cause you concern, did that statement
22 cause you concern is unfair and misleading because
23 it misses the entire context. We could then go on
24 for hours on cross-examination saying and did it

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1 give you comfort when one of the applicant's
2 representatives said that the City Council needed to
3 listen only to the evidence and to base its decision
4 exclusively on the statutory criteria because those
5 kinds of statements were made too. I think,
6 therefore, this is misleading, unproductive and
7 unnecessary given the fact that the entire

8 transcript of the proceeding is part of the record.
9 Maybe a more fair question, but even still subject
10 to the same objection about Mr. Bohlen's state of
11 mind would be did you have any concerns based upon
12 the totality of what was said because then at least
13 we have the entire context.

14 HEARING OFFICER HALLORAN: Mr. Porter?

15 MR. PORTER: Mr. Bohlen previously
16 testified he reviewed Section 39.2 at the time that
17 they were going through the annexation process,
18 negotiating a Host agreement, trying to amend their
19 -- city's solid waste management plan and he was the
20 city attorney at that time. Obviously, whether or
21 not the city attorney who had researched Section
22 39.2 was concerned about statements that were made
23 at that meeting we believe is highly relevant.

24 Also, Mr. Mueller has allowed a

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1 light to go off in my head as far as the prefiling
2 contact objection. All of these minutes starting on
3 October 15, 2001, are part of the underlying record
4 and I believe that should open the door then to
5 discussing those minutes and what occurred at those

6 meetings and that it should come in as substantive
7 evidence rather than merely as an offer of proof.

8 MR. MUELLER: By way of limited
9 response, Mr. Halloran, those meeting minutes are
10 part of the record only to the extent that they were
11 introduced by Waste Management and the county in
12 support of a motion to disqualify Mayor Green and
13 were not considered as substantive evidence at the
14 siting hearing, rather they were introduced as an
15 exhibit accompanying a procedural motion.

16 MR. PORTER: If I may respond to that?
17 That is simply untrue. They were introduced and
18 attached to a motion that we made, that is correct,
19 and they do appear in the record at that motion to
20 quash, however, they also appear starting at page
21 3032 through page 3209. The City Council meeting
22 minutes for numerous meetings were attached by the
23 city themselves in regard to the underlying landfill
24 application and those minutes are starting on

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1 October 15, 2001, November 19, December 17, December
2 27, January 22nd, February 19th, April 15th and

3 August 19th, therefore, they are part of the record
4 and they are perfectly appropriate to be discussed
5 at this hearing.

6 HEARING OFFICER HALLORAN: First of
7 all, Mr. Mueller's objection about Mr. Porter taking
8 parts of the record here and there and taking it out
9 of context, I think the Board is fully capable of
10 reviewing the record and deciding for itself whether
11 it's taken out of context. You will have
12 cross-examination. Secondly, the state of mind, I
13 do find it's relevant, however, that is still in the
14 context of an offer of proof because it is a
15 prefiling -- in the prefiling context. With that
16 said, Mr. Porter, you may proceed. I'm not sure
17 where you are at this point.

18 MR. PORTER: I realize we seem to be
19 spending a lot of time talking and not much time
20 answering questions, but I would like, if you can,
21 Mr. Halloran, to address my assertion that the City
22 Council meetings are fair game and not being
23 discussed under an offer of proof because those
24 minutes appear within the record and were admitted

1 by the city themselves along with numerous other
2 minutes of meetings that started on October 15,
3 2001, concluded on August 19th, 2002.

4 MR. BOHLEN: Mr. Halloran, I hesitate
5 as the witness to offer information. The reason
6 those minutes -- I was charged with the
7 responsibility of preparing the record. The reason
8 those minutes are in there is because a specific
9 ruling from the -- from yourself and the Board
10 requires in addition to all things admitted in a
11 hearing that all ordinances and all minutes in a
12 meeting in which anything like this came up be
13 included in the filing of the record. They were not
14 part of the hearing record itself.

15 HEARING OFFICER HALLORAN: I'm going
16 to stand on my ruling, my position, and again, you
17 can take it up with the Board and appeal my ruling,
18 but as of right now, I'm allowing it in as an offer
19 of proof.

20 MR. PORTER: Thank you.

21 BY MR. PORTER:

22 Q. I believe the objection was overruled,
23 would you like me to reask the question?

24 A. I think I know the question which was

1 did I have any concern about what Mr. -- about a
2 specific quotation from Mr. Volini and the answer
3 was no, I had no concern about what Mr. Volini said.

4 HEARING OFFICER HALLORAN: Thank you,
5 Mr. Bohlen.

6 BY MR. PORTER:

7 Q. At any time that evening or since that
8 evening did you object to Mr. Volini's statement
9 that he wanted a chance to talk to the City Council
10 without the filter of lawyers who brought rancor and
11 back and forth unfortunately to the process?

12 A. No. At that particular time the City
13 Council was being heavily lobbied by county board
14 members, I believe even Waste Management and
15 Mr. Volini so I considered that part of the give and
16 take political process.

17 Q. You understood that the purpose of the
18 meeting, to use Mr. Volini's words, was quote, to be
19 able to speak with you person to person about things
20 we believe in, concepts that we've proved and
21 environmental protection that we've achieved, is
22 that correct?

23 A. If that's what's stated in the record
24 -- I was present for that and I certainly heard

1 everything that was transcribed.

2 Q. And so you understood that the purpose
3 of the meeting was indeed to present to the City
4 Council what Mr. Volini believed were proved and the
5 environmental protection that they achieved,
6 correct?

7 MR. MUELLER: Now, I've got to object
8 he's asking whether a statement out of context is
9 the purpose of the meeting. Mr. Volini also
10 explained to the City Council that they were the
11 judge and jury and that when they heard the evidence
12 if they found that we had not persuaded them of the
13 safety and desirability of this project, their
14 obligation was to vote no.

15 HEARING OFFICER HALLORAN:
16 Mr. Mueller, if you do find it taken out of context,
17 you can address that on cross. Overruled.

18 MR. LESHEN: If I understood
19 Mr. Porter's question, the question was whether a
20 statement -- that individual statement singled out
21 by Mr. Volini would -- at the hearing was what
22 Mr. Bohlen understood the purpose of the meeting to

23 be and it doesn't -- in that context, there's a lack
24 of foundation as to what Mr. Bohlen's understanding

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1 was beforehand assuming that you find that relevant
2 within the context of the offer of proof and what he
3 understood it to be afterwards assuming that his
4 understanding means anything anyway.

5 HEARING OFFICER HALLORAN: Mr. Porter?

6 MR. PORTER: I believe the question
7 was clear and succinct.

8 MR. LESHEN: It was clear and succinct
9 -- I understood it to mean based on -- it assumes a
10 fact not in evidence. It assumes that Mr. Volini
11 had, in fact, informed Mr. Bohlen he was going to
12 say that beforehand and that Mr. Bohlen then
13 understood that to be the meaning -- to be the
14 purpose of the meeting. What Mr. Volini may have
15 said at all in that meeting doesn't at all speak to
16 the issue of what Mr. Bohlen understood the purpose
17 of that meeting to be other than he's already said
18 the give and take of the political process.

19 MR. PORTER: Again, it appears they're

20 attempting to conduct cross-examination via
21 objections. The question was understandable, clear,
22 succinct and it called for a simple answer. I must
23 admit, I just can't really follow the objection let
24 alone --

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1 HEARING OFFICER HALLORAN: I agree.
2 You can address this on cross, rehabilitate or
3 whatever, but your objection is overruled, but thank
4 you, Mr. Leshen. You may proceed, Mr. Porter.
5 BY MR. PORTER:

6 Q. I'm sorry. I don't recall if I got an
7 answer.

8 A. You didn't, and the answer is no, that
9 was not the purpose of the meeting. The purpose of
10 the meeting as I believed it to be was one, it was a
11 normal, routine City Council meeting, Volini had
12 been put on the agenda as many developers are put on
13 the agenda of City Council meetings to allow the
14 City Council one last shot to make sure they wanted
15 to go down this road and that was the real purpose.
16 Now, Volini took advantage and indicated what he
17 hoped his evidence would be. Again, as I've

18 indicated, I knew during that period of time the
19 City Council was being lobbied strongly by county
20 board members and a number of things came out during
21 that lobbying process that the county board
22 contended Mr. Volini would not be able to show
23 certain things and, in fact, Mr. Volini should not
24 be considered to be a reliable person to present

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1 evidence. That was part of the -- what was
2 happening in the context of that meeting.

3 Q. You did hear Mr. Volini explain that
4 his purpose for the meeting was indeed to tell the
5 City Council what it is they've proved and the
6 environmental protection they've achieved. When you
7 heard that statement, did you stop the meeting?

8 A. No.

9 Q. Did you at that time tell the City
10 Council that this was not an opportunity to present
11 statements as to what the applicant had proved and
12 environmental protection it had achieved?

13 A. At that time I did not. I did at a
14 later time.

15 Q. Were you at all concerned -- well,
16 strike that.

17 When did you tell the City Council
18 that what just occurred was not a discussion about
19 what had been proved and environmental protection
20 that they achieved?

21 A. At the June 3rd, 2002 City Council
22 meeting I had an extensive discussion with the
23 aldermen of the City Council and indicated to them
24 that now was the time for them to ignore everything

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1 they had heard up to that point in time because they
2 were now about to embark on a hearing process.

3 Q. Now, you did prepare the record at
4 issue in this case, did I hear that correctly
5 earlier?

6 A. That's correct.

7 Q. I assume you did that with the
8 individual whose responsibility it was, the city
9 clerk, Anjanita Dumas, is that right?

10 A. Anjanita Dumas, yes.

11 Q. And you included numerous minutes of
12 City Council meetings, correct?

13 A. Yes.

14 Q. I do not see any June 3rd minutes
15 reflected in the certificate of record on appeal.
16 Is there an explanation?

17 A. Perhaps an oversight and I would have
18 to go back to the record and the order to make sure
19 they were required to be submitted and if they're
20 not submitted, we will certainly supplement the
21 record. We were in the process of preparing -- it
22 took literally 28 banker's boxes of documents that
23 had to be delivered in a three-week period of time
24 and in that process one document may have not been

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1 included in the record. If that wasn't, I'll
2 certainly -- it's my fault, I'll take responsibility
3 and I'll make sure that the record is supplemented.

4 Q. All right. Moving back to the
5 February 19th, 2002 meeting. You did hear one of
6 the applicant's witnesses state that -- strike that.

7 On February 19th, 2002, you heard
8 Mr. Volini introduce one of his witnesses, a
9 Ms. Simmon, as having something to say about quote,

10 how the organized environmental community involves
11 itself in the process, correct?

12 A. She was not a witness. She was his
13 public relations consultant.

14 Q. Okay. She was --

15 A. She never testified in this hearing.

16 Q. All right. She was a person that
17 provided statements at the February 19th, 2002,
18 meeting, correct?

19 A. She did make a statement at the
20 February 19th meeting.

21 Q. And she was introduced as an expert as
22 someone that knew how the environmental community
23 involved itself in a 39.2 process, correct?

24 A. If that's what the trans -- I don't

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1 recall that being her specific introduction. I know
2 Jamie so I knew who she was, but I don't recall what
3 the introduction was and I think she's fairly
4 familiar with most of the members of the City
5 Council.

6 Q. If indeed the minutes indicate that
7 that was exactly how Mr. Volini introduced her,

8 you'd have no reason to disputes that occurred?

9 A. I do not dispute what the minutes
10 said.

11 Q. And at any time that evening did you
12 have any problem with allowing Ms. Simmon to testify
13 regarding her past experiences as to how the
14 environmental community involved itself in the 39.2
15 process?

16 MR. MUELLER: Object to the phrase
17 testified, also object to the characterization of
18 Mr. Bohlen allowing -- I don't believe he was the
19 person running the meeting or presiding over it and
20 would ask you, Mr. Halloran, to admonish Mr. Porter
21 who obviously is skillful and ought to know better
22 to quit using pejorative terms which are not
23 supported by the record such as testify and witness
24 when, in fact, the minutes reflect that these were

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1 unsworn, informal statements made by individuals at
2 a City Council meeting on which they were at the
3 agenda -- or on the agenda.

4 HEARING OFFICER HALLORAN: Mr. Leshen,

5 anything to add?

6 MR. LESHEN: No, sir.

7 HEARING OFFICER HALLORAN: Thank you.

8 Mr. Porter?

9 MR. PORTER: I believe the witness is
10 perfectly capable to answer these questions and does
11 not need Mr. Mueller's obvious speaking objections.

12 HEARING OFFICER HALLORAN: I think I'm
13 going to sustain Mr. Mueller's objection. You can
14 move on to another line of questioning.

15 MR. PORTER: If I may rephrase.

16 BY MR. PORTER:

17 Q. Isn't it true that Ms. Simmon gave a
18 presentation that evening wherein she told the City
19 Council there will be those from outside the
20 community who don't live here who are simply
21 landfill opponents, that's their passion, that's
22 their job, to go around and oppose landfills for
23 wherever they are proposed and these people are
24 likely to come in, not as fist waiving fanatics, but

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1 as people who are very calm, appear to be very
2 professional and appear to be well educated and very

3 well informed on the issues and then she proceeded
4 to tell the City Council that these people will make
5 this an emotional issue and they won't tell the
6 whole truth and they'll use out of context quotes
7 and partial quotes.

8 You recall those statements being
9 made, correct?

10 A. Mr. Porter, I have agreed that
11 everything that's in that transcript was said that
12 night, you can read the entire thing to me and I
13 will still agree that everything that was said in
14 that transcript was said that night.

15 Q. At no time did you provide a
16 cautionary statement that Ms. Simmon's statements
17 were merely her opinion, did you?

18 A. Again, that's correct. It was my
19 assumption based upon my knowledge of the aldermen
20 that they knew exactly what was going on at that
21 particular point.

22 Q. It did not concern you that
23 Ms. Simmon was attempting to impeach the credibility
24 of witnesses who hadn't even been named yet?

1 MR. MUELLER: I'm going to object, how
2 would he know what Ms. Simmon was attempting to do?

3 MR. LESHEN: The continuing objection
4 as to the relevance of whether or not something
5 concerned Mr. Bohlen.

6 MR. PORTER: Again, Mr. Bohlen --
7 Mr. Hearing Officer, it's obvious that one of our
8 theories here is that there was an extreme pattern
9 of conduct that ramrodded this process through the
10 city of Kankakee proceedings and that Mr. Bohlen
11 was obviously involved in that occurrence. He was
12 the city attorney. He was the hearing officer.
13 It all relates to fundamental fairness.

14 HEARING OFFICER HALLORAN: Based on my
15 previous ruling as far as the prefiling
16 communications, I still have yet to see a smoking
17 gun to qualify as possibly coming under the
18 fundamental fairness. That's my concern. With that
19 said, I'm a little leery to allow you to go forward
20 with this line of questioning, but --

21 MR. PORTER: I'm merely asking if he
22 had any concerns about that testimony.

23 MR. MUELLER: See, there he goes again
24 calling it testimony. Mr. Porter is doing it on

1 purpose.

2 MR. PORTER: I am not doing it on
3 purpose. I'm merely asking whether or not he had
4 any concerns about those statements.

5 HEARING OFFICER HALLORAN: I'm going
6 to sustain Mr. Mueller's objection.

7 BY MR. PORTER:

8 Q. Let me ask this: You didn't object to
9 what she had to say that evening, did you?

10 MR. LESHEN: It's the same question,
11 you can cloak it any which way.

12 HEARING OFFICER HALLORAN: I'll allow
13 the witness to answer that question.

14 BY THE WITNESS:

15 A. Again, as I indicated, this was part
16 of the give and take process. I didn't -- it made
17 no difference to me what they said as long as there
18 was something not patently illegal or even latently
19 illegal at what they said and I heard nothing other
20 than what I consider the normal give and take. They
21 were trying to say what they were going to prove.
22 I had heard a number of times what Waste Management
23 was going to do to them in the process of this
24 hearing and what the county was going to do to them

1 and so did the aldermen. I was not concerned by the
2 statements that any of the people who talked that
3 night said -- made. Those did not give me rise to
4 believe there was anything improper going on.

5 BY MR. PORTER:

6 Q. It was your understanding that
7 anything could be said because the application had
8 yet to be filed, correct?

9 A. It was my understanding that nothing
10 that was said there that night was improper.

11 Q. And you heard the chief engineer for
12 Mr. Volini stand up and describe the Section 39.2
13 criteria and how he believed the application met
14 each of those criteria, correct?

15 A. Generally, yes.

16 Q. And it didn't bother you that you knew
17 that was going to be the very substantive issue that
18 was going to be put forth after notice had been
19 given to the landowners and the objectors and the
20 public, is that correct?

21 A. It is correct, it didn't bother me for

22 the same reasons I have said before, that this is
23 part of the -- was part of the fairly intense
24 lobbying that was happening prefiling.

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1 Q. Well, certainly it must have concerned
2 you when Mr. Volini concluded the presentation by
3 saying quote, you'll hear this without so much
4 emotion and with a bunch of lawyers fighting with
5 each other in about 120 days, but we wanted you to
6 hear it from us first?

7 HEARING OFFICER HALLORAN: Mr. Leshen?

8 MR. LESHEN: Asked and answered I do
9 not know how many times now and Mr. Bohlen has given
10 the same answer fundamentally each time and to now
11 select another statement where Mr. Bohlen has
12 explained his view in the context of the offer of
13 proof at this point is redundant.

14 HEARING OFFICER HALLORAN: You know, I
15 agree, I've heard it about two or three times,
16 Mr. Porter, so I would sustain Mr. Leshen's
17 objection.

18 BY MR. PORTER:

19 Q. Did you object when Mr. Volini made

20 the statement you'll hear this without so much
21 emotion and with a bunch of lawyers fighting with
22 each other in about 120 days, but we wanted you to
23 hear it from us first?

24 MR. LESHEN: Same objection.

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1 HEARING OFFICER HALLORAN: Sustained.

2 BY MR. PORTER:

3 Q. Did you understand that what
4 Mr. Volini was doing was simply telling the City
5 Council what he intended to tell them 120 days
6 later?

7 MR. LESHEN: Same objection.

8 HEARING OFFICER HALLORAN: Mr. Porter?

9 MR. PORTER: I don't understand how
10 it's the same objection, it's a completely different
11 question.

12 MR. LESHEN: It's a repeat in slightly
13 different language of the question that I think
14 Mr. Porter has asked ten times at least.

15 HEARING OFFICER HALLORAN: You know,
16 I'll allow the question and the witness may answer

17 it if he's able, but, Mr. Porter, let's kind of wrap
18 it up in a hurry regarding that line of questioning
19 because it is touching on asked and answered,
20 semantics.

21 BY THE WITNESS:

22 A. I understood that Mr. Volini was
23 attempting to let the City Council know what he
24 hoped to prove when and if these hearings occurred.

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1 BY MR. PORTER:

2 Q. Mr. Volini also gave the City Council
3 various documents that night, is that correct?

4 A. He did.

5 Q. Let me show you what's been marked
6 Petitioner's Exhibit No 3.

7 MR. MUELLER: May we look at it?

8 BY MR. PORTER:

9 Q. Isn't it true the documents I've
10 handed you as Petitioner's Exhibit 3 were given to
11 the City Council members that evening?

12 HEARING OFFICER HALLORAN: Is that
13 February 19th, Mr. Porter?

14 MR. PORTER: Correct.

15 BY THE WITNESS:

16 A. I'm going to do a dangerous thing.
17 I presume so. I honestly don't have any independent
18 recollection of what documents were given to the
19 City Council nor am I sure that I received -- I take
20 that back. I have seen some of these. I don't
21 recall the two documents attached -- between the
22 frequently asked questions document and the
23 orientation meeting, but I do remember the
24 frequently asked questions and it appears that the

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1 orientation meeting would have something that was
2 handed to them.

3 MR. PORTER: Is there any objection to
4 the admission of this document?

5 HEARING OFFICER HALLORAN:
6 Mr. Mueller, Mr. Leshen?

7 MR. MUELLER: It represents prefiling
8 information, it's no different than whatever anybody
9 else passes out prefiling. I would note that the
10 packet includes documents so prejudicial as a copy
11 of the statute, Section 39.2. There is certainly

12 nothing in here, to use your term or the Board's
13 term, Mr. Halloran, even remotely resembles a
14 smoking gun.

15 MR. LESHEN: Mr. Halloran, even within
16 the context of this offer of proof, Mr. Bohlen could
17 not testify as to whether each and every word of
18 these documents based on his own independent
19 recollection had been passed out at that meeting, so
20 even with the context of an offer of proof, there's
21 insufficient foundation. They'd have to get it in
22 some other way.

23 MR. PORTER: The reason I'm asking
24 whether or not there's an objection is I believe

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1 their witnesses in deposition have already admitted
2 that these documents were handed out that night and
3 I thought we could short circuit the process.

4 MR. LESHEN: Which deposition? Can we
5 go off the record?

6 HEARING OFFICER HALLORAN: Sure. We
7 can go off the record.

8 (Whereupon, a discussion
9 was had off the record.)

10 HEARING OFFICER HALLORAN: We're back
11 on the record. Go ahead, Mr. Mueller.

12 MR. MUELLER: I don't think the
13 documents are in the correct order because I believe
14 the page which is called orientation meeting with
15 Kankakee Regional Landfill may have been the front
16 page of this packet of documents, but regardless,
17 the applicant will stipulate that these were all
18 handed out to anyone that wanted a copy at the City
19 Council meeting of February 19th, 2002, and we'd
20 renew our objection to their admission for the
21 reason that they are not a prohibited prehearing
22 contact.

23 MR. LESHEN: Within the context of
24 this offer of proof we will acknowledge and

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1 stipulate that these documents were handed out --
2 were available for hand out at that meeting.

3 HEARING OFFICER HALLORAN: I think at
4 this point I am going to sustain the respondents'
5 objection and I will take it with the case as an
6 offer of proof so I will deny admission, but take it

7 again as an offer of proof, Mr. Porter.

8 BY MR. PORTER:

9 Q. Isn't it true that that exhibit
10 includes a Kankakee city and county landfill's
11 economic benefit projection?

12 A. Mr. Porter, it includes each of the
13 documents you just handed me.

14 Q. Is one of those documents a Kankakee
15 city and county landfill economic projection?

16 A. I handed it back to you, but I believe
17 that that's the title of one of them. I'm not here
18 to argue. Whatever it is, it is.

19 Q. Isn't it also true that one of the
20 documents was an estimate on Waste Management
21 Landfill volumes in Chicago metro area?

22 A. It appears you're reading from one of
23 those documents, so I presume that it is and I'll
24 agree that it is.

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1 Q. At any time did it bother you that the
2 applicant was submitting evidence regarding alleged
3 need at the hearing on February 19, 2002?

4 MR. LESHEN: Same location as made

5 previously as to Mr. Bohlen's state of mind and
6 relevance.

7 HEARING OFFICER HALLORAN: Terry,
8 could you please read the question back? Thank you.

9 (Whereupon, the requested
10 portion of the record
11 was read accordingly.)

12 MR. LESHEN: I would also add to that,
13 asked and answered over and over, just change a
14 verb, change a noun and it's the same question
15 that's been asked over and over.

16 HEARING OFFICER HALLORAN: Well, I
17 deny your objection based on asked and answered.
18 Secondly, I believe in the context of the offer of
19 proof I overruled your objection regarding state of
20 mind, so if the witness can answer.

21 BY THE WITNESS:

22 A. The answer is no, it did not bother me
23 that Tom Volini was attempting to present what he
24 hoped to prove at the hearing.

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1 BY MR. PORTER:

2 Q. All right. Let me direct your
3 attention to page 3210 of the record.

4 What is that document?

5 A. That's the adopted ordinance of the
6 city of Kankakee pollution control -- excuse me.
7 That's the ordinance adopted by the city of Kankakee
8 regarding Pollution Control facility siting.

9 Q. And it's ordinance No. 65, is that
10 correct?

11 A. Actually, it should be 01-65, but it
12 is -- it's shown here as ordinance 65.

13 Q. The 01 is the year that it was passed,
14 correct?

15 A. Right. All of the ordinances of the
16 city are categorized for the year that they're
17 passed.

18 Q. That ordinance was in effect at the
19 time the siting application was filed, correct?

20 A. That's correct.

21 Q. The copy you're reviewing is complete
22 and accurate, is that correct?

23 A. Yes, I believe so.

24 Q. You actually drafted that ordinance,

1 isn't that right?

2 A. That's correct -- most of it. As I
3 indicated in the deposition, one of the joys of
4 being a city attorney is you're able to plagiarize
5 on occasion and a lot of this was -- I have to
6 confess, was plagiarized from other siting
7 ordinances that I had been provided both -- or from
8 a number of sources.

9 Q. And one of those sources that provided
10 you the other siting ordinances was the applicant,
11 Town & Country, is that correct?

12 A. That was one of the sources of draft
13 ordinances, yes.

14 Q. Let me direct your attention to page
15 3215 and specifically Section 4(d)1.

16 A. Yes, sir.

17 Q. If you could just please read the
18 first four lines of that section in the record?

19 A. Do you want me to read it out loud?

20 Q. Yes.

21 A. Upon receipt of a proper application
22 and payment of the applicable filing fee deposit,
23 the city clerk shall date stamp all the copies and
24 immediately deliver one copy to the chairman of the

1 county board, one copy to the Kankakee County solid
2 waste director, one copy to each member of the
3 Kankakee City Council, one copy to each municipality
4 located within one-and-one-half miles of the
5 proposed facility and one copy to the city manager
6 and three copies to the hearing officer selected by
7 the City Council, if any.

8 Q. Did you ever direct the city clerk to
9 send a copy of the application to the county board
10 chairman?

11 A. I did not.

12 Q. Did you ever direct the city clerk to
13 send a copy of the application to the Kankakee solid
14 waste director?

15 A. I did not.

16 Q. The county of Kankakee solid waste
17 director. Let me reask the question.

18 Did you ever direct the city clerk
19 to send a copy to the county of Kankakee solid waste
20 director?

21 A. I did not.

22 Q. As far as you know, did the city clerk
23 ever deliver a copy to either of these gentlemen?

24

A. I was informed for the first time on

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1 the first or second day of the hearing that she had
2 not.

3 Q. You understood that the paragraph that
4 you just read required immediate delivery of such
5 copies, isn't that correct?

6 A. I did.

7 Q. And the immediacy was to provide the
8 county with every opportunity to review, analyze,
9 and test and comment on the application before the
10 39.2 proceeding began, isn't that right?

11 A. Yeah, I think that was -- the idea was
12 to assure that the county, which had involvement in
13 the 39.2 process, would have that information.

14 Q. You would agree that the failure to
15 immediately provide a copy was a violation of the
16 ordinance, correct?

17 A. I believe I acknowledged that at the
18 hearing and indicated that I thought it was a
19 harmless error at that point, but I did -- it was a
20 violation of the ordinance, yes.

21 Q. I'd like you to direct your attention

22 to page 3232 of the record.

23 A. Yes, sir.

24 Q. What is that?

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1 A. That's an ordinance that was adopted
2 on April 15th, 2002, which amended the rules of
3 procedure for the siting hearings.

4 Q. And that is the city of Kankakee's
5 siting rules and procedures, correct?

6 A. That's correct.

7 Q. And if you can look at page 3237.

8 A. Yes, sir.

9 Q. At Article II, Section 5G.

10 A. Yes, sir.

11 Q. Isn't it true that that section
12 required anyone wanting to participate to file an
13 appearance with the city clerk at least five days
14 before the hearing?

15 A. That's correct.

16 Q. That section was not followed,
17 correct?

18 A. No. I learned during the course of

19 the -- prior to the hearings that the applicant had
20 published a notice based upon the ordinance prior to
21 it being amended which provided that the objectors
22 could register the day of the hearing. Based upon
23 my concern that everybody be allowed to participate
24 that wanted to, I suspended the application of that

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1 portion of the ordinance and I allowed people to
2 register the day of the hearing and, in fact, even
3 allowed persons to appear on the third or fourth day
4 of the hearing as objectors.

5 Q. You would agree that the notice that
6 was published and can be found in the record at
7 Applicant's Exhibit No. 6 contained different
8 information than the siting ordinance, correct?

9 A. As I just indicated, the notice that
10 was published indicated that objectors could
11 register the day at the immediate beginning of the
12 hearing, so it was different than what the ordinance
13 provided.

14 Q. Now, on the evening of the hearing you
15 actually made an announcement that people could
16 register that evening as well, is that right?

17 A. Yes, I did.

18 Q. So there had been three different
19 directions as to when people could register, is that
20 correct?

21 A. Yes. I was attempting to assure that
22 anybody that wanted to participate by asking
23 questions, cross-examination or presenting witnesses
24 could, in fact, do that and with the circumstances

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1 of that first evening, I thought it was important to
2 allow that.

3 Q. Okay. We'll come back to that in a
4 moment.

5 Before you acted as the hearing
6 officer, isn't it true that Mayor Donald Green was
7 actually scheduled to be the hearing officer on June
8 17th starting at 8:00 p.m.?

9 A. He was the presiding officer of the
10 City Council and therefore would have been the
11 hearing officer.

12 Q. Prior to the commencement of the
13 hearings on June 17th, you had discussions with the

14 mayor and others at the city as well as the
15 applicant that a hearing officer unaffiliated with
16 the city could be appointed, isn't that right?

17 MR. LESHEN: Objection, infringes on
18 privilege. Any discussions that Mr. Bohlen had
19 prior to the hearing with the mayor or other
20 officials of the city of Kankakee are privileged the
21 same way that Mr. Smith's discussions were
22 privileged as well.

23 HEARING OFFICER HALLORAN: Mr. Porter?

24 MR. PORTER: If it was privileged,

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1 it's been waived in his deposition.

2 HEARING OFFICER HALLORAN: How so?

3 MR. BOHLEN: Can I short circuit it to
4 help you out?

5 HEARING OFFICER HALLORAN: Sure.

6 MR. BOHLEN: The only discussion that
7 we had about that was with Mr. Volini present, so
8 the privilege probably is not applicable.

9 MR. LESHEN: I'm sorry. Objection
10 withdrawn.

11 HEARING OFFICER HALLORAN: Mr. Bohlen?

12 BY THE WITNESS:

13 A. We did have a discussion about the
14 fact that in other -- that another hearing
15 that Mr. Volini had been involved in, an independent
16 hearing officer had been appointed.

17 BY MR. PORTER:

18 Q. But in this hearing it was decided
19 that Mr. Green -- I'm sorry, Mayor Green would be
20 the hearing officer, is that correct?

21 A. Right.

22 Q. Now, the applicant would have paid for
23 an unaffiliated hearing officer, isn't that right?

24 A. I presume so, but that wasn't -- the

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1 issue of pay was not our consideration.

2 Q. The consideration was that the city
3 wanted to maintain control of the proceeding, is
4 that correct?

5 A. No. The issue was that the mayor has
6 presided over the City Council for a period of nine
7 years and they felt it was appropriate that he
8 continue to do that in a public hearing such as

9 this.

10 Q. Had the mayor ever sat over a public
11 hearing where testimony would be taken, evidence
12 accepted, evidentiary rulings made?

13 A. Yes, a large number of them.

14 Q. Now, isn't it true that an objection
15 was made to the mayor acting as hearing officer on
16 the grounds that he had displayed an obvious bias
17 toward the applicant?

18 A. A motion to disqualify the mayor was
19 made, as I recall, because he had presided over the
20 February 19th meeting.

21 Q. You don't recall what the gist of the
22 motion -- well, strike that.

23 Did you read the motion?

24 A. Sure.

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1 Q. And you do recall that the gist of the
2 motion was that there were biased statements and
3 statements of support made at that February 19th
4 meeting, is that correct?

5 A. Yes.

6 Q. And the mayor elected to step down

7 from acting as hearing officer, is that right?

8 A. He did, but not for the reasons stated
9 in the motion.

10 Q. When he elected to step down -- strike
11 that.

12 He elected to step down on Monday
13 that the hearing was scheduled to start, is that
14 correct?

15 A. That's correct. He actually informed
16 me that he would be stepping down before that.

17 Q. Okay. He informed you on Sunday that
18 he would step down, is that right?

19 A. That's correct.

20 Q. And again, the motion was received by
21 the city on Friday, is that correct?

22 A. I think that's right, late -- it was
23 very late in the day Friday because I didn't
24 actually get it until Saturday and that's when I

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1 began the research on it.

2 Q. Now, the mayor indicated to you that
3 he anticipated you would be the hearing officer

4 then, is that correct?

5 A. Ultimately I was appointed as the
6 hearing officer, that is correct.

7 Q. But on Sunday you became aware that
8 that was going to happen, is that right?

9 A. I knew that the mayor was going to
10 request the City Council to appoint me as hearing
11 officer, that's correct.

12 Q. You never acted as a hearing officer
13 before, have you?

14 A. Yes.

15 Q. Had you ever acted as a hearing
16 officer in a 39.2 hearing?

17 A. No.

18 Q. Had the mayor ever acted as a hearing
19 officer in a 39.2 hearing?

20 A. No.

21 Q. As a matter of fact, this was the
22 first time that either of you had been involved in a
23 siting hearing, isn't that correct?

24 A. In a 39.2 hearing, that's correct.

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1 Q. Isn't it true -- well, strike that.

2 When the mayor called you and
3 told you that he was going to seek to have you
4 appointed as the hearing officer, did you discuss
5 with him at that time appointing an unaffiliated
6 hearing officer?

7 A. No.

8 Q. It didn't bother you that you'd been
9 intimately involved in the process of annexing the
10 land at issue, negotiating the Host agreement,
11 amending the solid waste management plan with the
12 applicant?

13 MR. LESHEN: Same objection. The
14 issue isn't what bothered or didn't bother him, the
15 issue is whether the hearing was conducted fairly
16 and the criteria of substantial justice.

17 HEARING OFFICER HALLORAN: Mr. Porter?

18 MR. PORTER: Again, he is the hearing
19 officer, if he had concerns about conducting that
20 activity, I think that's highly relevant to
21 fundamental fairness.

22 MR. LESHEN: Actually, it's not. The
23 issue is did this hearing comport with fundamental
24 fairness? Were the rulings made by Mr. Bohlen and

1 the decisions that he made during this hearing
2 process, were they -- did they -- were they -- did
3 they ensure that this hearing comported with the
4 fundamental fairness doctrine or did they not.

5 The issue is not -- the issue is
6 not whether a judge or a hearing officer feels one
7 way or another when he or she walks into a case.
8 The issue is whether when they assume that
9 responsibility, don the robe so to speak, whether
10 they put those aside, if any, and move forward to
11 conduct the hearing in a fundamentally fair way and
12 to say well, there are concerns misses the point
13 entirely. The issue is was this fundamentally fair
14 and there's nothing in this line of inquiry that
15 would lead to evidence that would be relevant to
16 that.

17 HEARING OFFICER HALLORAN: Mr. Leshen,
18 your objection is so noted for the record, but I'm
19 afraid I'm going to have to overrule it and the
20 witness may answer if he's able.

21 BY THE WITNESS:

22 A. You've asked me about five different
23 processes if they bothered me, I believe, one was
24 the -- did it concern me that I had been involved in

1 the annexation and then would be the hearing officer
2 in the siting hearing and the answer is no, it did
3 not. The annexation was a matter of ministerial
4 issues. I've been involved in literally -- maybe --
5 I shouldn't say that many, but I've been involved in
6 a number of annexation proceedings and what
7 ultimately happened with the land was not a matter
8 of my great concern. The issue of whether I was
9 concerned or bothered by the fact that I had
10 negotiated the Host agreement with the applicant did
11 that bother me, no, because that had been somewhat
12 of an adversarial position. We had not agreed on a
13 number of things, although ultimately we worked out,
14 perhaps to both sides, a mutually disagreeable
15 agreement so to the extent that I've been involved
16 in that process the answer is no, it did not bother
17 me. Insofar as the involvement during the February
18 19th meeting, I did not -- I consider that to be --
19 I observed a political process in motion. The other
20 meetings I've been involved in did not, in my
21 opinion, affect what I was about to have to do as
22 the hearing officer. Was I bothered about the
23 prospect of being a hearing officer? Of course,

24 I knew it was going to be a long and difficult

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1 process because it was a very highly emotional
2 issue, but I also knew that -- I felt that I had the
3 confidence of the City Council and that they would
4 listen to me during that process and I believe the
5 fact that when I -- when it was raised the
6 expectation that they would participate and almost
7 every night at least 12 or usually 13 of the 14 were
8 present, I think that gave the indication that they
9 were involved in the process much more so than what
10 I was going to do.

11 Q. Isn't it true that when you accepted
12 the appointment to act as the hearing officer you
13 had already had the opinion that the proposed
14 project was financially beneficial to the city of
15 Kankakee?

16 MR. LESHEN: Same objection as
17 previously made and that is -- that is that his
18 concerns, I know you ruled on this, I just want to
19 make it clear for the record, his concerns are not
20 the issue, whether or not he was concerned is not

21 the issue, whether or not he did this fairly is the
22 issue.

23 HEARING OFFICER HALLORAN: I'm not
24 sure what the question was.

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1 MR. PORTER: I don't recall asking
2 anything about concerns that time.

3 MR. LESHEN: Could you ask the court
4 reporter to repeat that question?

5 HEARING OFFICER HALLORAN: Thank you,
6 Terry.

7 (Whereupon, the requested
8 portion of the record
9 was read accordingly.)

10 MR. MUELLER: I'm going to object to
11 that also for the basis that the receipt of economic
12 benefit by the Host community is inherent in a Host
13 agreement and in a landfill siting proceeding as
14 Mr. Porter knows because he and his counter part --

15 MR. PORTER: Objection. What is the --

16 HEARING OFFICER HALLORAN: I'm sorry.
17 Counsel, Mr. Porter, you'll have your turn.
18 Mr. Mueller?

19 MR. MUELLER: In addition, the case
20 law is abundantly clear that the receipt of economic
21 benefit and the knowledge that one is going to
22 receive economic benefit is not a disqualifying
23 factor and is not evidence that is probative on the
24 issue of bias because if it was then every City

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1 Council and every county board everywhere that has a
2 Host agreement would be biased in favor of the
3 applicant.

4 HEARING OFFICER HALLORAN: Well, I
5 disagree with you, Mr. Mueller. I'm going to
6 overrule both of your objections. Based on Section
7 101.626 I think it's information that a prudent
8 person would rely on. So Mr. Bohlen you may answer,
9 if able.

10 BY THE WITNESS:

11 A. I was aware if this landfill was
12 ultimately sited and approved by the Pollution
13 Control Board and the Third District Appellate Court
14 and whoever might review it that ultimately there
15 would be financial benefit to the city, to the park

16 district, to the public library and to the Kankakee
17 County Economic Development Council.

18 BY MR. PORTER:

19 Q. So on the night of the hearing the
20 mayor stepped up, made his presentation and recused
21 himself, made a suggestion that the City Council
22 appoint you, that was voted on and approved and
23 you stepped up, is that a correct synopsis of what
24 occurred?

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1 A. Yes, it is.

2 Q. You were then immediately confronted
3 with the county's motion to quash the proceedings in
4 light of the 2/19/02 meeting and the failure to
5 follow the ordinance requiring delivery of the two
6 copies of the application to the county people and
7 improper and confusing notice and appearance
8 requirements and you denied those motions, is that
9 correct?

10 A. Those motions were filed the night of
11 the hearing, that's correct.

12 Q. You ruled on those motions, correct?

13 A. I ruled on those motions that were

14 filed.

15 Q. And those motions were denied,
16 correct?

17 A. That's correct.

18 Q. Now, even before the hearing
19 commenced, did you know that there was likely to be
20 a large turn out of people for the hearing?

21 A. Yes.

22 Q. How did you know that?

23 A. I live in this community and I knew
24 that it was an emotional issue both pro and con and

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1 I assumed that there would be a substantial -- based
2 upon the number of objectors alone, I assumed there
3 would be substantial public interest.

4 Q. Isn't it true that someone came to
5 the city offices and spoke to you asking if you had
6 a back-up plan if the room was too crowded prior to
7 the hearing commencing?

8 A. No. Actually she -- you're speaking
9 of Doris Jean O'Connor who did not come to the city
10 office to inquire about the process, she approached

11 me at my private law firm office and she asked, as I
12 recall, about the acoustics and concerned about the
13 age of people and knew -- felt she had been present
14 when it was hard to hear in that room. I've seen an
15 affidavit where she indicated she raised the issue
16 about a back-up plan and I certainly believe that
17 Ms. O'Connor is an honest person, I just don't
18 recall that specific request or statement being
19 made. I don't dispute that she may have made it.

20 Q. At any time before the hearing
21 commenced, did you establish a back-up plan?

22 A. Well, as I recall, there were 105
23 chairs in the spectator section of the City Council,
24 there was room for the 14 aldermen, the mayor, the

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1 consultant of the city, there was room for the
2 press, there was room for the objectors and based
3 upon that it was my hope that that was sufficient
4 space to accommodate this hearing and to -- there
5 was no other back-up plan because I knew of no
6 other facility in the city of Kankakee with air
7 conditioning -- and it was warm during this period,
8 with air conditioning that could accommodate this

9 hearing.

10 Q. My understanding is it was the mayor
11 who decided to have the hearing at that particular
12 room, is that correct?

13 A. Well, that's the City Council
14 chambers, that's where the City Council conducts its
15 business. I don't think anybody decided, I think we
16 all expected that that's where it would be
17 conducted.

18 Q. Were you involved in the decision to
19 conduct it in that room?

20 A. I may have been, but, again, I don't
21 think there was any real discussion about having it
22 anywhere else to be fair.

23 Q. In the discussions that may have
24 occurred, did it come up that there was going to be

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1 a large turn out and it was possible, if not likely,
2 that there wouldn't be enough seats?

3 A. I don't recall that. I do recall
4 bringing in additional chairs, a substantial number
5 of additional chairs, into the City Council chambers

6 to accommodate as many people as we could in the
7 chambers. I don't know that any of us knew how many
8 people were going to be there or thought there were
9 going to be a substantially more larger number than
10 there -- than the council chambers would
11 accommodate. The City Council chambers had
12 accommodated the annexation hearings, which were
13 just as -- I mean, we thought were just as charged
14 as these were.

15 Q. Isn't it true that even before the
16 hearing started at 8:00 p.m. all of the seats were
17 full?

18 A. Yes, it is.

19 Q. You personally saw at least 50 to 60
20 people standing in the hallway even before the
21 hearing began, isn't that right?

22 A. That's a gross estimate and I'd say
23 yes.

24 Q. There were no audio speakers in the

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1 hall or the stairwell, is that correct?

2 A. On June 17th there weren't, on June
3 18th there were audio speakers and for every day

4 thereafter in both the hallway and also we set up
5 chairs and an audio speaker in a conference room.

6 Q. And on the 18th were people forced to
7 sit in the hall again?

8 A. On the 18th people chose to sit in the
9 hall because it was -- in terms of -- I guess the
10 question is were they forced to sit in the hall?
11 There were chairs available, a speaker -- audio
12 speakers were available and that was a clear sight
13 line into the room, so that's where they sat.
14 There were also chairs available in the conference
15 room with a speaker available and nobody chose to
16 sit there.

17 Q. Now, on June 17th there was no
18 television monitor or video equipment broadcasting
19 into the hall, is that correct?

20 A. That's correct.

21 Q. You would agree with the testimony --
22 strike that.

23 It was a warm evening, wasn't it?

24 A. Yes.

1 Q. And you would agree that there were
2 city police at the hearing, is that correct?

3 A. I have talked with two police officers
4 who I believe were at the hearing, yes.

5 Q. Well, you saw police officers at the
6 hearing?

7 A. I did see -- I recall seeing a police
8 officer at the doorway.

9 Q. Isn't it true that those police
10 officers barred people from entering the room?

11 A. Once the room was full I believe that
12 they indicated nobody else could come in except for
13 those who are participating.

14 Q. You did not know that police officers
15 were barring people from entering the room that
16 night, did you?

17 A. No. Again, that discussion occurred
18 later when I think Mr. Runyon presented a motion.

19 Q. But as you sit here today, you don't
20 recall being aware that the police were barring
21 people?

22 A. No.

23 Q. Isn't it true that Mr. Ruch made a
24 motion wherein he explicitly indicated to you that

1 the police were barring people from entering the
2 room?

3 A. Mr. Ruch did make that motion.

4 Q. Did you just not believe Mr. Ruch when
5 he told you that people were being barred from
6 entering the room?

7 A. There were several things said by
8 Mr. Ruch in that motion which I knew weren't true.
9 I'm going to have to go back and look at the motion,
10 but when he made the motion there were several
11 things that I knew were -- I believe were not true
12 so it was difficult for me to deal with everything
13 that was said as to whether it was credible or not.

14 Q. Mr. Ruch's motion was actually joined
15 by the county, isn't that correct?

16 A. Yes.

17 Q. That motion was made even before the
18 first witness was called, isn't that right? Well,
19 strike that.

20 Isn't it true that a motion was
21 made to adjourn the proceedings and reconvene in a
22 venue that could accommodate all of the people that
23 wanted to attend?

24 A. There was such a motion made, yes.

1 THE REPORTER: Excuse me, can I change
2 my paper?

3 HEARING OFFICER HALLORAN: Yes.

4 (Brief pause.)

5 HEARING OFFICER HALLORAN: We're back
6 on the record. Mr. Porter is going to continue with
7 his direct.

8 MR. PORTER: What was the last
9 question?

10 (Whereupon, the requested
11 portion of the record
12 was read accordingly.)

13 BY MR. PORTER:

14 Q. I don't remember the answer, can you
15 answer it?

16 A. I didn't and I don't -- I know it was
17 early in the proceedings. I don't recall whether it
18 was in the middle of a break of Mr. Schoenberger's
19 testimony or after we heard the motions. It was
20 early on.

21 Q. Isn't it true that you made an
22 announcement from the bench that people could

23 sign-in throughout the night to appear?

24 A. Yes.

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1 Q. And isn't it true that that
2 announcement could not be heard from the hallway?

3 A. That announcement was repeated by
4 Mr. Power in the hallway.

5 Q. How do you know that that announcement
6 was repeated by Mr. Power in the hallway?

7 A. I asked him to go out to make that
8 announcement. I was also informed by the police
9 officers that that announcement was made by
10 Mr. Power so that's how I believed it was made.

11 Q. When did you ask Mr. Power to go make
12 that announcement?

13 A. It was pretty early on because I note
14 in the -- I believe there's an indication in the
15 transcript that I said to sign-up with Mr. Power or
16 that somebody indicated that that's what they were
17 told is to sign-up with Mr. Power.

18 Q. Was your direction to Mr. Power made
19 before or after my motions to quash?

20 A. I believe it was before because I

21 believe Officer Kato was asked to read off the names
22 of those persons who had already signed up out in
23 the hallway and I believe it was at that same time
24 that I asked Mr. Power to go out and check in the

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1 hallway because I didn't want to rely on just the
2 police officer reading the names.

3 Q. You do not know whether the people in
4 the hallway heard Mr. Power make such announcement,
5 do you?

6 A. I don't know whether they did or
7 didn't.

8 Q. You do not know how many people had
9 simply turned around and left after being denied
10 access by the police before Mr. Power ever made it
11 out to the hallway assuming that he actually did?

12 A. Nobody ever indicated to me that they
13 did that.

14 Q. You don't know if that occurred, is
15 that correct?

16 A. I don't one way or the other except
17 nobody ever said to me that they did that.

18 Q. So you don't know whether or not your
19 announcement was ever made to all of the people in
20 the hallway that they could sign-in and participate,
21 correct?

22 A. I know it was made to everybody in the
23 hallway because Mr. Power indicated later that it
24 was and the police officer also verified that it

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1 was, so I know it was made to everybody in the
2 hallway.

3 Q. Do you have an explanation to the
4 people that say they never heard such announcement?

5 A. No.

6 Q. The request you made of Mr. Power was
7 not on the record, correct?

8 A. That's correct.

9 Q. You don't know exactly what was said
10 to each person in the hallway regarding whether or
11 not they could come in and register to participate,
12 is that right?

13 A. No. But I do know that people came
14 and requested to participate after we started the
15 proceedings.

16 Q. We know that Mr. Runyon did, is that
17 correct?

18 A. Mr. Runyon actually requested -- had
19 indicated he wanted to be an objector prior to the
20 proceeding.

21 Q. Who exactly came in after the
22 proceedings started and requested to be an objector?

23 A. It's my recollection that Elizabeth
24 Fleming-Weber was originally not going to be an

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1 objector and then came in in the midst of the
2 proceedings that night and indicated that she was.
3 Her name got added to the list, I do recall, because
4 there was a question as to whether she was or was
5 not. She did come in and indicate -- I do know that
6 she was late in arriving and she did come in in the
7 midst of the proceedings and indicate that she
8 wanted to be a participant. I know also that
9 Ms. O'Dell was brought to me by Doris O'Connor and
10 indicated, and that happened on the Wednesday of the
11 proceeding, indicating that Ms. O'Dell wanted then
12 to participate and she commenced her participation

13 on Thursday.

14 Q. Do you know whether Ms. O'Dell had
15 actually previously indicated a desire to
16 participate that fell on deaf ears?

17 A. I know that she had sent me a letter
18 saying she wanted to speak at the proceedings.
19 Those who indicated to me that they wanted to speak
20 at the proceedings were listed as those who were
21 going to make public statements and based upon that,
22 there were a number of people that had sent me
23 letters saying they wanted to speak and because the
24 rules differentiated between those that wanted to

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1 speak and those who wanted to present evidence and
2 cross-examine witnesses. I took her and understood
3 her to be a request to speak at the public comment
4 session on the Thursday of the second week.

5 Q. What rules are you referring to that
6 drew some type of distinction between those who
7 wanted to speak and those who wanted to participate?

8 A. The rules of the siting -- the rules
9 and procedures of the siting -- part of the siting
10 ordinance.

11 Q. That was the rule that wasn't
12 followed, is that correct?

13 A. No. All of those rules were followed.
14 There was an allowance made in the one instance.
15 All of the rules and procedures, to my knowledge,
16 were followed. There was an allowance made that we
17 would not bar those who wanted to participate by
18 cross-examining and presenting evidence even though
19 they hadn't signed up by the -- on the fifth day
20 prior to the hearing, but, to my knowledge, those
21 rules were followed.

22 Q. So there were a variety of people that
23 had filled out a document with the city clerk's
24 office five days before the hearing but because the

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1 document said they wanted to speak rather than
2 participate their names were never called out as
3 being participants, is that right?

4 A. Correct. There were a number who said
5 they wanted to participate who then changed their
6 minds and said they really only wanted to speak.

7 Q. Are the names of the individuals that

8 actually filled out a document with the city clerk
9 five days ahead of time contained at pages 2223
10 through 2234 of the record?

11 A. Yes. And I believe each of those
12 people did, in fact, speak at the public comment
13 session on that Thursday evening.

14 Q. So if I'm understanding correctly,
15 unless someone used the magic word participate in
16 that document they filed five days ahead of time
17 they weren't considered to be an objector, a
18 supporter or a participant, is that correct?

19 A. I don't consider -- I guess I'm a
20 little hesitant -- the magic word comment is
21 offensive to me. I don't consider it a magic word.
22 I think you're in a legal process and a legal
23 proceeding and those rules were followed and if you
24 indicated you wanted to be an objector, present

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1 evidence or cross-examine, we certainly allowed
2 anybody to do that that indicated that was their
3 desire. If you said you wanted to speak, we put you
4 in the public comment session and everybody who
5 wanted to speak did, in fact, speak and none of

6 those people, except for Pat O'Dell, ever indicated
7 and almost all of them -- we heard Mr. Thompsen here
8 today, almost all of them who indicated they wanted
9 to speak, not one of them other than
10 Pat O'Dell, ever indicated they changed their mind
11 and most of them were present during many days of
12 the hearing.

13 Q. While Mr. Power was apparently making
14 some announcement in the hallway, the proceedings
15 were continuing in council chambers, is that
16 correct?

17 A. I think if you look in the transcript
18 there's a point where I ask Officer Kato to read the
19 names and I think it was at that point that I also
20 asked Pat Power to go out in the hallway.

21 Q. Okay. And the proceedings were
22 continuing while these names were being read in the
23 hallway and Mr. Power was allegedly making an
24 announcement, is that right?

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1 A. No, that's not right. We stopped
2 until that portion -- until they read the names and

3 Mr. Power returned.

4 Q. You do not know how many people had
5 been refused access to the hearing room before
6 Mr. Power went into the hall to make his
7 announcement, is that correct?

8 A. That's correct.

9 Q. You don't know how many people
10 actually heard this announcement, is that correct?

11 A. I think I've already answered, I don't
12 know how many people heard the announcement. I
13 presumed everybody did.

14 Q. At any time did you make an
15 investigation as to what other venues were available
16 for the hearing?

17 A. I was aware as to what the other
18 potential venues in the city of Kankakee were and I
19 knew that primarily that would -- that had a larger
20 hall or a larger meeting space that primarily dealt
21 -- my primary thought was other -- was school
22 buildings, none of which are air conditioned, so I
23 rejected those. There were outdoor venues that I
24 didn't think were appropriate and I couldn't --

1 can't now and didn't think of any others.

2 Q. Well, you're not indicating that
3 there's no venue in the city of Kankakee that could
4 have accommodated that hearing, are you?

5 A. I think the City Council chambers
6 accommodated that hearing except for the first night
7 so I would guess that as a general statement, the
8 City Council chambers could accommodate it. Insofar
9 as other venues to accommodate it, I can't think of
10 any as I'm sitting here now and I didn't think of
11 any then. There may very well be some others,
12 I just can't think of them.

13 Q. Did you try any investigation as to
14 what other venue was available?

15 A. That night I didn't and subsequent --
16 when the crowd the next night was clearly
17 accommodated, I felt that there was no need to make
18 any further investigation.

19 Q. The hearing the first night went to
20 12:30 in the morning, isn't that correct?

21 A. That's correct.

22 Q. And isn't the reason that the hearing
23 continued so long past its time and that the hearing
24 was not adjourned to a more appropriate venue was to

1 accommodate one witness of the applicant who had
2 flown in from Italy?

3 MR. LESHEN: Objection to the compound
4 nature of the question.

5 HEARING OFFICER HALLORAN: Mr. Porter,
6 could you please rephrase?

7 BY MR. PORTER:

8 Q. Isn't it true that the reason that you
9 ran the hearing until 12:30 and refused and denied
10 the motion to adjourn was to accommodate a single
11 witness?

12 MR. LESHEN: I don't understand it
13 because I think my objection was clear and I know he
14 understood it's compound. It's compound then and
15 it's compound now.

16 HEARING OFFICER HALLORAN: I don't
17 think it was a serious mistake, but, Mr. Porter, if
18 you could try to --

19 MR. MUELLER: I would further object
20 to the fact that the record will reflect that the
21 vast majority of the evening was consumed in
22 cross-examination by Mr. Porter and Mr. Moran, so it
23 was to accommodate the cross-examination.

24 HEARING OFFICER HALLORAN: I'm sure

1 the record will reflect that. Mr. Porter -- I
2 overrule your objections. Mr. Porter, could you
3 rephrase that question? That would be terrific and
4 we can move on.

5 BY MR. PORTER:

6 Q. Isn't it true that you were attempting
7 to accommodate the applicant's witness who was there
8 for one night and had flown in from Italy?

9 A. I think the record is clear, I
10 attempted to accommodate all the witnesses. We bent
11 over backwards to accommodate Mr. Craven in terms of
12 his schedule. I did attempt to accommodate
13 witnesses, there's no question about it, and I did
14 it for objector's witnesses, I believe, I did it for
15 applicant's witnesses. It's difficult -- I'm a
16 trial lawyer and I know how difficult scheduling
17 witnesses is. So, yes, I accommodated Mr. Craven
18 the first night, a week later I accommodate --
19 excuse me. I accommodated Mr. Schoenberger the
20 first night, a week later I accommodated Mr. Craven.

21 Q. But you did not accommodate the
22 multitude of people that couldn't get into the room,

23 isn't that correct?

24 MR. MUELLER: That's argumentative.

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1 HEARING OFFICER HALLORAN: Sustained.

2 MR. PORTER: Withdrawn.

3 BY MR. PORTER:

4 Q. At any time after March 12th, 2002,
5 did anyone from your office advise the City Council
6 members that they could listen to members of the
7 public who would call and have comments to make
8 about the landfill?

9 A. Yes.

10 Q. And isn't it true that they were
11 advised they could accept those communications?

12 A. Yes.

13 Q. Isn't it also true that your office
14 advised the City Council after March 12th, 2002,
15 that it would be appropriate for them to tell the
16 constituents that the landfill seemed like a good
17 idea?

18 A. I believe what we told -- what our
19 office told them is because it was a practical

20 reality they were going to be contacted by their
21 constituents and others, that they could say gee,
22 thanks for the call, that's seems like good
23 information, but I can't make this decision upon
24 anything except what occurs during that hearing

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1 so if you want to have that information be part of
2 the decision process, you have to come and testify
3 at the hearing. That's what we said to them several
4 different times. Basically, we were trying to give
5 the aldermen a means to accommodate their
6 constituent without brushing them off because that's
7 -- politically that's an issue and still make sure
8 that the constituent understood it was only what
9 happened at the hearing that was going to be
10 relevant to the decision.

11 Q. Let me show you what I've had marked
12 as Petitioner's Exhibit No. 4. It appears to be a
13 memo to the members of the City Council from
14 assistant city attorney, Ken Leshen, dated March 22,
15 2002. Would you agree that that's what that
16 document is?

17 MR. MUELLER: We're going to object

18 to the question being we believe that the document
19 is a draft that may never have been distributed.

20 BY THE WITNESS:

21 A. That is the document, but that's not
22 what was distributed to the City Council.

23 MR. PORTER: Obviously, Mr. Halloran,
24 I would again caution that Mr. Mueller's objections

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1 are often speaking objections and as a matter of
2 fact, he just fed his witness again testimony.

3 MR. LESHEN: I would object to that
4 characterization because I believe in this case the
5 truth will speak for itself and it just did.

6 HEARING OFFICER HALLORAN: I'll let
7 the witness' answer stand and you can move on.

8 BY MR. PORTER:

9 Q. That document was produced to us in
10 response to an interrogatory and production request
11 wherein we requested any and all communications
12 between the City Council and your office, isn't that
13 correct?

14 A. No. It was produced as part of a

15 document rider to the deposition. We produced
16 literally every document we could find that dealt
17 with the City Council, that dealt with the law
18 department or dealt with the mayor's office
19 regarding this landfill and this may quite frankly
20 -- I remember what document was given to the City
21 Council and it was not a memo, it was just a list
22 of dos and don'ts and this isn't the one that was
23 given to them.

24 Q. That document was drafted by your

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1 office, isn't that true?

2 A. It sure was.

3 Q. And that is a fair and accurate copy
4 of the March 22nd, 2002, memo, is that correct?

5 A. It's a fair and accurate copy of a
6 draft of that memo, that's correct.

7 MR. PORTER: I move for addition of
8 Exhibit 4.

9 HEARING OFFICER HALLORAN:
10 Mr. Mueller, Mr. Leshen?

11 MR. MUELLER: We're going to object to
12 a document that there's no evidence that the City

13 Council ever received it, it has no probative value
14 on the issue of fundamental fairness. It's
15 obviously an earlier draft according to the witness
16 of something that was ultimately distributed in a
17 completely different form.

18 HEARING OFFICER HALLORAN: First of
19 all, I don't even know what the content of the
20 letter is. I don't have a copy in front of me
21 as far as being relevant or not to the fundamental
22 fairness issue.

23 MR. LESHEN: I would join in the
24 objection --

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1 THE REPORTER: I'm sorry. Could you
2 please use the microphone?

3 MR. LESHEN: The testimony regarding
4 the memo bearing, in fact, my signature is that that
5 was a draft, never distributed and I can't speak as
6 a witness here so I won't, but the only evidence
7 that is before you is that -- regarding that
8 document is that it was never distributed, that it
9 was internal to the city's law department.

10 Consequently, it has no relevance or probative
11 value. If there were evidence that that was, in
12 fact, distributed by anybody, that would be a
13 different story, but I would suggest to you that
14 that evidence will never appear because it's not, in
15 fact, a reality.

16 HEARING OFFICER HALLORAN: You know
17 what, I'm going to overrule your objection. I'm
18 going to take it -- Petitioner's Exhibit No. 4 and
19 the Board may or may not choose to disregard it.
20 That's my ruling.

21 BY MR. PORTER:

22 Q. Isn't it true that Petitioner's
23 Exhibit 4 explicitly provides, if questioned by a
24 constituent regarding your views on the application,

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1 it would be appropriate that you tell your
2 constituent that it seems or looks like a good idea,
3 but that you will only make a decision based on the
4 evidence presented at the hearing and only after
5 consideration of that evidence?

6 A. You read it wonderfully, that's what
7 that document says.

8 Q. And it's signed by Kenneth A. Leshen.

9 Correct?

10 A. Yes. It's got a signature of Kenneth
11 A. Leshen, but that document was not the document
12 given to the City Council.

13 Q. And nowhere does it indicate that it
14 is a draft, is that correct?

15 A. It doesn't, but that's not an atypical
16 item done in our -- between the attorneys.

17 Q. Were you representing the City Council
18 as of March 22nd, 2002?

19 A. I was still the corporation counsel
20 wearing that hat at that particular time.

21 MR. PORTER: I don't believe I have
22 anything further.

23 HEARING OFFICER HALLORAN: Thank you.

24 I think we agreed right after the

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1 break that Mr. Bohlen would step aside for a moment
2 and we want to accommodate one of Mr. Smith's
3 witnesses who's a member of the public and depending
4 on how long that lasts, we'll see if we want to

5 finish with up direct of Mr. Bohlen, but I'm
6 inclined to stop it at that point, Mr. Mueller,
7 because I don't want to go into the 6:00, 6:30 hour.
8 We're going to be here -- I've got a feeling we're
9 going to be here until Thursday at noon anyway.
10 I've been to these things and I don't like to try
11 to pack everything into two days when we have four
12 days scheduled.

13 MR. MUELLER: You're the hearing
14 officer, Mr. Halloran, I'll do you're bidding.

15 HEARING OFFICER HALLORAN: I
16 appreciate it, Mr. Mueller.

17 Mr. Smith, you may call your
18 witness, please.

19 MR. SMITH: Thank you. I'll try to be
20 brief. Doris O'Connor, please step up and raise
21 your right hand before the court reporter to be
22 sworn.

23
24

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1 (Witness sworn.)

2 WHEREUPON:

3 D O R I S O ' C O N N O R ,
4 called as a witness herein, having been first duly
5 sworn, deposeth and saith as follows:

6 D I R E C T E X A M I N A T I O N
7 by Mr. Smith

8 Q. Good afternoon. Would you state your
9 name and spell your last name for the record?

10 A. Yes. Doris Jean O'Connor,
11 O-'C-o-n-n-o-r.

12 Q. And are you a resident of Kankakee
13 County?

14 A. Yes, I am.

15 Q. Are you employed as a school teacher?

16 A. Yes. I work at St. George school
17 district.

18 Q. Do you and your family own interest
19 in a parcel of real estate located in Otto Township
20 roughly five miles west of the proposed Town &
21 Country land site?

22 A. Yes, we do.

23 Q. And had you learned about a public
24 hearing that was going to take place on June 17th,

1 2002, beginning at 8:00 o'clock in the evening at
2 the Kankakee City Council chambers?

3 A. Yes, I had.

4 Q. How did you learn about that?

5 A. I read it in the paper, but I became
6 aware of the project because of the involvement of
7 my brother and the CRIME group and I also read an
8 editorial written by my nephew who's on the soil and
9 water conservation board.

10 Q. And are these kin all from Otto
11 Township?

12 A. Yes, they are.

13 Q. And does your brother farm in Otto
14 Township?

15 A. Yes, he does.

16 Q. And could you tell the hearing officer
17 what the group CRIME stands for? Is that an
18 acronym?

19 A. Yes, it is. It stands for county
20 residents interested in maintaining the environment.

21 Q. And are you a member or an officer of
22 that group?

23 A. Yes, I am a member. I'm the
24 spokesperson.

1 Q. And where is that group centered?

2 Are they Otto Township folks mostly?

3 A. Primarily, yes.

4 Q. All right. How many members, do you
5 know?

6 A. I would say approximately 40 to 50.

7 Q. Now, do you know a fellow by the name
8 of John Mosier, M-o-s-i-e-r?

9 A. Yes. He's one of our members.

10 Q. And what is his age would you think?

11 A. John is 79.

12 Q. Now, had you made arrangements prior
13 to the meeting night to meet Mr. Mosier there?

14 A. Yes, I did.

15 Q. And why did you do that?

16 A. Mr. Mosier walks with a limp and
17 he was very interested in the proceedings and
18 I told him that I would save a chair for him because
19 I anticipated a lot of people being there.

20 Q. What was his interest in the
21 proceedings?

22 A. Well, he had been the Otto Township
23 road supervisor.

24 Q. Road commissioner?

1 A. Road commissioner, yes.

2 Q. For how long?

3 A. For about 20 years before he retired.

4 Q. And was he also a resident of Otto
5 Township?

6 A. Yes, he was. He lives approximately
7 a half a mile directly south of the site.

8 Q. And what was your interest in going to
9 the siting hearing?

10 A. Well, the family farm is in Otto
11 Township and my concern -- the more I read about it
12 the more concern I had about the environmental
13 impact.

14 Q. Had you registered prior to that
15 meeting to be an objector to participate in those
16 proceedings?

17 A. Yes, I had once I got clarification on
18 how that was done.

19 Q. Could you tell the hearing officer
20 whether you experienced any difficulty getting
21 clarification of the rules?

22 A. I did experience significant
23 difficulty.

24 Q. You use the term significant, did you

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1 have occasion prior to the 17th to attend a City
2 Council meeting?

3 A. Yes, I did.

4 Q. Why did you do that?

5 A. I attended that City Council meeting
6 anticipating that they would discuss the hearing and
7 also I wanted to see how the room was laid out
8 because our group was going to have some witnesses.

9 Q. And did you get an explanation of the
10 rules that would apply to the hearing at the prior
11 City Council meeting?

12 A. No, I did not.

13 Q. Now, did you have occasion prior to
14 the hearing to go to the Kankakee city clerk's
15 office to get a copy of the rules that would apply
16 to this hearing?

17 A. I did attempt to do that, yes.

18 Q. And how many days or weeks before the
19 June 17th hearing did you do that?

20 A. Approximately two weeks.

21 Q. Did you meet with a woman by the name
22 of Anjanita Dumas?

23 A. Yes.

24 Q. That would be D-u-m-a-s?

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1 A. Yes.

2 Q. Was she then and is she now the duly
3 elected Kankakee city clerk?

4 A. Yes.

5 Q. And on that first meeting, what did
6 you ask her for?

7 A. I asked her for the rules or
8 guidelines governing the hearing.

9 Q. The rules of procedure, who would go
10 first, who would go second, how you question
11 witnesses, how do you present evidence and so forth?

12 A. Correct, and when they had to
13 register.

14 Q. Now, what did she respond to you?

15 A. She said that those were published in
16 the paper and she had in her hand a copy and she

17 said they look like this and she showed me a copy of
18 the guidelines and indicated that was her only copy,
19 but I could go get them down at the public library.

20 Q. Let me get this straight. She said
21 these are the rules?

22 A. Yes.

23 Q. This is my only copy?

24 A. Yes.

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1 Q. You can go on down to the public
2 library and find yourself a copy?

3 A. Yes.

4 MR. MUELLER: I'm going to object,
5 it's leading and repetitive.

6 HEARING OFFICER HALLORAN: I agree.

7 MR. SMITH: All right. I'll try to
8 move along, Judge.

9 BY MR. SMITH:

10 Q. Was that the essence then?

11 A. Yes.

12 Q. All right. And did you follow her
13 advice? Did you go down to the public library?

14 A. I did.

15 Q. And were you successful in getting a
16 copy of the rules?

17 A. I did get a copy of the rules that
18 were published, paper.

19 Q. Okay. So you got a copy of the
20 newspaper, is that what you're saying?

21 A. Yes.

22 Q. All right. Did you have occasion
23 to again meet with the city clerk prior to the
24 meeting?

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1 A. Yes, I did. I went there to find out
2 about how they were going to schedule the witnesses
3 because our group wanted to bring in a geologist and
4 I needed to know approximately what days they were
5 going to schedule.

6 Q. So these 40 people, this CRIME group,
7 hired their own hydrogeologist?

8 A. Yes.

9 Q. And you went to the clerk's office
10 about how many days to find out any rules that might
11 apply to the scheduling?

12 A. I would say approximately two weeks.

13 Q. Did you again meet with Anjanita
14 Dumas, the duly elected city clerk?

15 A. I did.

16 Q. And did you make it known to her why
17 you were there, you wanted to find out about the
18 scheduling?

19 A. Yes. I explained that my
20 hydrogeologist had some commitments and he needed
21 to know when to schedule -- you know, clear his
22 schedule so he could testify.

23 Q. And did she provide you with a
24 schedule or instructions?

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1 A. No. She said she didn't have any
2 information about that, that she thought the mayor's
3 secretary was handling the scheduling.

4 Q. Did you then go to the mayor's
5 secretary?

6 A. I did.

7 Q. And did she provide that information?

8 A. She told me that she wasn't handling
9 that, that the city clerk was.

10 Q. So you should go back to the same
11 place you came from?

12 MR. MUELLER: I'm going to object,
13 it's leading again.

14 MR. SMITH: I apologize. I withdraw
15 it. I think he's right.

16 HEARING OFFICER HALLORAN: Thank you,
17 Mr. Smith.

18 BY MR. SMITH:

19 Q. So once the mayor's secretary told you
20 that the city clerk was doing that, what did you do
21 then?

22 A. Well, I told her that the city clerk
23 just told me to come to see her and she said well,
24 I'll walk you over there, maybe she has more

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1 information.

2 Q. So did she walk you back?

3 A. She did.

4 Q. And were you successful in getting
5 more information?

6 A. At that point she referred me to Chris

7 Bohlen.

8 Q. And that would be the city attorney?

9 A. Yes.

10 Q. Did you telephone Mr. Bohlen?

11 A. Yes. I telephoned him three times.

12 Q. Were you successful in contacting him?

13 A. I believe on the fourth time -- well,
14 no, I gave a message, but my phone calls weren't
15 returned.

16 Q. How many calls were not returned?

17 A. Three.

18 Q. Did you go to the office of
19 Mr. Bohlen?

20 A. He did return on the fourth time that
21 I called him that the -- I explained -- in the
22 meantime, I got in rules from another person that
23 was in our group and that conflicted with the
24 printed rules in the paper.

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1 Q. So eventually did you insist on a
2 face-to-face meeting with the city attorney?

3 MR. MUELLER: I'm going to object,
4 leading.

5 MR. SMITH: I'm going to withdraw it
6 if I could and I'll rephrase it.

7 HEARING OFFICER HALLORAN: Thank you,
8 Mr. Smith.

9 BY MR. PORTER:

10 Q. Did you request a meeting face-to-face
11 with Mr. Bohlen?

12 A. I asked him about the conflict -- the
13 misprint in the paper.

14 Q. Was this on the telephone?

15 A. Yes.

16 Q. Go ahead.

17 A. And he said at that point he was going
18 to -- he realized there was a misprint, that they
19 did not run the ad or the notice in front of him
20 before they printed it and that he was going to let
21 people register that first night because I wanted to
22 make sure I had everything I needed to have in in
23 the appropriate form by the deadline.

24 Q. So Mr. Bohlen did explain to you --

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1 MR. MUELLER: I'm going to object,

2 leading.

3 HEARING OFFICER HALLORAN: Mr. Smith,
4 if you could rephrase that. You seem to be
5 summarizing everything she says.

6 MR. SMITH: I'll try not to do that.

7 BY MR. PORTER:

8 Q. Did you eventually request a
9 face-to-face meeting?

10 MR. MUELLER: Asked and answered.

11 MR. SMITH: I think I was -- there was
12 an objection and I withdraw it, so at this point we
13 don't know whether she ever asked for a face-to-face
14 meeting with Mr. Bohlen.

15 HEARING OFFICER HALLORAN: I don't
16 recall that I heard you ask that question, but
17 proceed. Objection overruled.

18 BY MR. PORTER:

19 Q. At any point did you ask to meet with
20 Mr. Bohlen at his office?

21 A. I did not ask at that point, but I did
22 go and see him on a later question.

23 Q. Was it announced or unannounced?

24 A. It was unannounced.

1 Q. Pardon me?

2 A. It was unannounced.

3 Q. And did you meet with Mr. Bohlen?

4 A. Yes.

5 Q. What was the reason for your -- for
6 wanting to meet with him?

7 A. Because I had so much trouble getting
8 in touch with him and was confused with what was
9 happening and after the incident where the clerk
10 told me to go see the mayor's secretary and the
11 mayor's secretary told me to go see the clerk, I
12 figured I better get the information, as they say,
13 straight from the horse's mouth because when I'd ask
14 the clerk she'd always say you have to ask Chris.

15 Q. How many days before June 17th was
16 this face-to-face meeting?

17 A. It was the Friday before.

18 Q. During the course of that meeting
19 was there any discussion by you of concern for the
20 adequacy of the size of the assembly room?

21 MR. MUELLER: I'm going to object,
22 it's leading. Mr. Smith knows the right form to ask
23 about a conversation.

24 HEARING OFFICER HALLORAN: Mr. Smith?

1 MR. SMITH: I'd ask for a ruling.

2 HEARING OFFICER HALLORAN: Could you
3 rephrase, please?

4 MR. SMITH: I'll be happy to.

5 BY MR. SMITH:

6 Q. Did you and Mr. Bohlen have a
7 conversation?

8 A. Yes, we did.

9 Q. Who was present?

10 A. Mr. Bohlen and myself. We were just
11 outside the door of his office at 3:30.

12 Q. And who said what?

13 A. I approached Mr. Bohlen and said I'm
14 having a hard time getting exact information from
15 the city clerk.

16 Q. And what was the response?

17 A. He said, oh, are you getting the run
18 around.

19 Q. And what did you say?

20 A. I said well, I just -- I just need to
21 know if there's going to be acoustics suitable for
22 the elderly and sufficient seating because we have
23 many elderly that are part of our group.

24

Q. And what did he say?

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1 A. He said well, we're going to have
2 chairs in the City Council chambers.

3 Q. And what did you say?

4 A. I said what if there's more observers
5 than what the chairs are in the chambers because I
6 seen the chambers and the evening I went to the City
7 Council meeting there was about 70 observer chairs
8 and I knew our group alone plus tagalongs would be
9 about, you know, probably 70 people in and of itself
10 assuming no one else is interested that would easily
11 overflow the room.

12 Q. Did you express your concerns to
13 Mr. Bohlen?

14 A. I did. I asked him if there was a
15 back-up plan if the crowd overflowed the room.

16 Q. And what was his response?

17 A. They hadn't gotten to that yet, that
18 they were going to meet on Sunday.

19 Q. Bringing us back to Sunday.

20 Did you have occasion to meet
21 Mr. Mosier?

22 A. Not on Sunday.

23 Q. Monday, I beg your pardon, at the
24 meeting?

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1 A. I did. I arrived there about 6:30,
2 put my things on the chair so they would be saved.
3 I sat through the meeting and then as soon as the
4 meeting was over, I left and went downstairs to the
5 front door.

6 Q. By the meeting, do you mean the first
7 meeting?

8 A. Yes, the City Council meeting.

9 Q. And then what did you do?

10 A. I went down the stairs to wait for
11 Mr. Mosier.

12 Q. What did you see downstairs?

13 A. There were quite a few people coming
14 in.

15 Q. What do you mean by quite a few
16 people?

17 A. Well, some of the people I recognized
18 -- there was a fairly steady stream the closer it

19 got to 8:00 o'clock.

20 Q. Were you successful in finding
21 Mr. Mosier?

22 A. Yes, I was eventually. He came about
23 7:50.

24 Q. And did you meet him outside or

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1 inside?

2 A. I met him outside, but just prior
3 to that I noticed these two elderly women, one of
4 them was on a cane leaving the -- through the front
5 door and I had spoken to them and I said what's
6 wrong, aren't you going to stay and they said well,
7 the policemen are turning --

8 MR. MUELLER: Hearsay.

9 MR. SMITH: Judge, it's not offered
10 for the truth of the matter, it's offered for the
11 state of mind of the people why they're leaving.

12 MR. MUELLER: It's offered for the
13 truth of the matter.

14 MR. SMITH: Not at all, Judge.

15 HEARING OFFICER HALLORAN: I'm going
16 to let her answer if she's able.

17

18 BY MR. SMITH:

19 Q. What did they say?

20 A. The women said that the police were
21 turning people away and her friend couldn't possibly
22 stand because she had a cane.

23 Q. How would you characterize generally
24 the age of the people that assembled there?

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1 A. The two women that were leaving?

2 Q. All of the people, generally how would
3 you characterize or summarize them?

4 A. I would say probably three-fifths to
5 two-thirds were at least 60 and over.

6 Q. How many people do you believe as an
7 estimate were inside the building but unable to get
8 into the hall -- the hearing hall itself?

9 A. Approximately 50.

10 Q. Did you see people leave before the
11 proceedings were terminated?

12 A. Yes.

13 Q. How many people did you see leave

14 before the proceedings terminated?

15 A. Specifically, I saw the two women
16 leave that had come in prior. I was attempting to
17 be in my seat with Mr. Mosier by 8:00 o'clock.

18 Q. Did you successfully get a seat?

19 A. Yes, after some negotiation.

20 Q. How do you mean?

21 A. Well, at the first floor landing when
22 I found Mr. Mosier and we started up there were
23 about ten people on that first floor landing with
24 policemen there, armed policemen. As we went up the

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1 stairway there were more people gathered on the
2 stairway and we literally had to squeeze our way
3 through the crowd on the stairway and I was asking
4 people to excuse us because of Mr. Mosier's limp and
5 advanced age and as we managed to squeeze our way
6 through the crowd and approach the doors to the
7 chambers, I was stopped by a policeman.

8 Q. Were they uniformed?

9 A. Yes, they were.

10 Q. Do you recall whether they were armed?

11 A. Yes, they were.

12 Q. Did they speak to you?

13 A. Yes. He said I'm sorry, ma'am, the
14 room is full, we're not letting anyone else in.

15 Q. What was your mental or emotional
16 reaction to that statement?

17 A. Well, I was kind of shocked at the
18 fact that all these people were outside and there
19 was -- I saw at least four armed officers there
20 among the crowd.

21 Q. Did you eventually get inside?

22 A. I explained to the officer that I had
23 reserved seats inside and I had duly registered as
24 an objector and had Mr. Mosier.

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1 Q. And was your entreaty successful or
2 unsuccessful?

3 A. It was successful, they let us pass
4 inside.

5 Q. Was this your first view of the inside
6 of the hall since the time you had left it, the City
7 Hall?

8 A. Yes.

9 Q. Can you tell the hearing officer what
10 was the condition of the inside of the hall insofar
11 as how it was peopled?

12 A. Okay. There were -- every chair was
13 taken inside the hall.

14 Q. Did you hear anybody talking in the
15 hallway before you entered?

16 A. No, I did not.

17 Q. Could you ascertain in any way the
18 demeanor of the crowd that could not get into that
19 hall?

20 A. They seemed agitated.

21 Q. Do you recall if there were any
22 speakers or sound amplification systems or video
23 monitors set up in the foyer or on the stairwells?

24 A. No, there were not.

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1 Q. Could you hear or see anything of what
2 was going on when you were in that hallway?

3 A. No. And the reason I know that is
4 because on the first break I stepped into that
5 hallway and tried to kind of look in because some
6 of our members were out there. I was attempting to

7 ascertain exactly what view they would have had of
8 the proceedings.

9 Q. And what view did you get from out
10 there?

11 A. Well, with the one door open, they
12 could barely see the desk where witnesses sat, but
13 they could not see any charts up front.

14 Q. Can you tell the hearing officer
15 roughly how many of your group, CRIME, were present
16 that evening?

17 A. Of the ones I recognized, probably
18 about 15 to 20.

19 Q. Could you tell the hearing officer of
20 those 15 or 20 how many of your group could not get
21 into that assembly hall?

22 A. About -- I think -- well, two less
23 because someone told me after that evening that they
24 let -- two of them did get in. Many people just

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1 turned around and left, but it seemed -- the problem
2 was people hadn't cleared out from the City Council
3 meeting and when people did leave and the applicant

4 and his professionals took their places where the
5 mayor had sat, then that freed up a few chairs in
6 the audience. So two of our people were able to
7 take those five or so chairs.

8 Q. Were you successfully seated through
9 the hearing?

10 A. Yes, I was.

11 Q. What was the notice for the
12 termination of the hearing on June 17th? What time
13 of day?

14 A. When did it end?

15 Q. When was it supposed to end according
16 to the notice?

17 A. Okay. According to the notice, it was
18 supposed to run from 8:00 until 10:00.

19 Q. What time did it actually terminate?

20 A. I believe it was after 11:00 o'clock.

21 Q. Did you see the whole proceedings?

22 A. Yes. I stayed for the entire thing.

23 Q. Do you remember seeing anyone on the
24 dais send anyone out like an emissary, a police

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1 officer or a lawyer to give instructions to the

2 people who could not get in of what was happening?

3 A. No, I did not.

4 Q. Did you hear any announcements of any
5 kind like that?

6 A. No.

7 MR. SMITH: I have nothing further.

8 Thank you.

9 HEARING OFFICER HALLORAN: Thank you,
10 Mr. Smith. Mr. Sandberg?

11 MR. SANDBERG: No questions.

12 HEARING OFFICER HALLORAN: Was that a
13 no?

14 MR. SANDBERG: Yeah.

15 HEARING OFFICER HALLORAN: Mr. Moran?

16 MR. MORAN: No questions.

17 HEARING OFFICER HALLORAN:

18 Mr. Mueller?

19 C R O S S - E X A M I N A T I O N

20 by Mr. Mueller

21 Q. Ms. O'Connor, when you were first
22 seated in the room, you and Mr. Mosier were seated
23 in the back, correct?

24 A. That's correct.

1 Q. And you got in before the hearing
2 actually started?

3 A. That's correct.

4 Q. And you recall when Mr. Bohlen called
5 your name and you identified yourself as a
6 registered objector he had you move to the front?

7 A. That's correct.

8 Q. And you were, in fact, then seated in
9 front of the rail rather than in the 70 or more
10 spectator chairs behind the rail, correct?

11 A. That's correct.

12 Q. And that room is about the same size
13 or a little bigger than that room, isn't it?

14 A. I would say it's a little smaller.

15 Q. Well, we'll have someone measure them.

16 MR. SMITH: I'll object to the comment
17 and the arguing with a citizen witness, what he's
18 going to do, what's he's not going to do. We
19 construe that as a threat to we will contradict you
20 later. We would ask for an admonition.

21 HEARING OFFICER HALLORAN: I don't
22 construe it as a threat, but, Mr. Mueller, will you
23 please refrain from any such comments? Thank you,
24 Mr. Smith. Thank you, Mr. Mueller.

1 MR. MUELLER: Thank you.

2 BY MR. MUELLER:

3 Q. Now, Ms. O'Connor, when you came to
4 the front, do you remember Mr. Bohlen calling out
5 the names of other registered objectors?

6 A. Yes, I do.

7 Q. Do you recall him then asking Officer
8 Kato to take the list of objectors and go outside
9 and call for them in the hall?

10 A. I'm sorry. Could you repeat the
11 question?

12 Q. While Mr. Bohlen was calling out the
13 names of objectors, do you recall him asking Officer
14 Kato on the record to take the list out into the
15 hall and call those names out there to make sure
16 that those people got inside?

17 A. Yes.

18 Q. I thought you just testified in
19 response to Mr. Smith's question that you don't
20 recall anyone being sent outside to check for
21 objectors. Was that testimony mistaken?

22 A. It was -- could I have Mr. Smith's
23 question read back to me?

24 Q. Well, let's just do it this way.

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1 Now you remember that a police officer was, in fact,
2 sent into the hall by Mr. Bohlen, don't you?

3 A. Yes. To call out the names of
4 objectors.

5 Q. And you had previously satisfied your
6 confusion about when to register as an objector by
7 confirming with Mr. Bohlen that he would adopt the
8 most liberal standard and let people register up
9 until the first day, right?

10 A. That's correct.

11 Q. So his position was that if there were
12 two times tables that were conflicting, he would
13 adopt the one that was most liberal to potential
14 objectors, correct?

15 A. That's correct.

16 Q. By the way, you are the spokesperson
17 of a citizen's group called CRIME?

18 A. That's correct.

19 Q. And throughout that hearing you acted
20 as their representative?

21 A. Their spokesperson, yes.

22 Q. And even though you are not an
23 attorney you, in fact, cross-examined witnesses and
24 actually presented evidence, didn't you?

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1 A. I'm not sure of all the legal
2 constraints with the definitions, but, yes.

3 Q. Every person that testified, you got
4 to ask them questions, right?

5 A. Yes.

6 Q. And I think in most cases you took
7 advantage of that opportunity, didn't you?

8 A. Yes.

9 Q. And then you actually put up a witness
10 of your own regarding the flooding issue, didn't
11 you?

12 A. Yes.

13 Q. And your group had a hydrogeologist
14 hired, right?

15 A. Yes.

16 Q. That was Mr. Cravens?

17 A. Yes.

18 Q. And was it Chuck Ruch, who is an

19 attorney, who agreed to handle the examination of
20 Mr. Cravens on behalf of the CRIME group?

21 A. Our group is made up of various
22 people, mostly landowners, from around that area.
23 Two members of our group decided that it was
24 important enough to have Mr. Cravens testify that

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1 they hired Mr. Ruch to question him.

2 Q. And, in fact, Mr. Ruch was in the room
3 and participated fully throughout the proceedings,
4 right?

5 A. That's correct.

6 Q. And you recall that Mr. Cravens was
7 allowed to testify at a time that was convenient to
8 him?

9 A. That's correct.

10 Q. So Mr. Bohlen in accommodating the
11 schedules and needs of various witnesses was pretty
12 much even handed in trying to do that for all sides,
13 right?

14 A. I feel like you're asking me to make
15 -- I can't talk for other groups, but as far as my

16 witness, yes, I had no concern.

17 Q. You indicated the CRIME group consists
18 of 40 to 50 people?

19 A. Approximately.

20 Q. And it was your plan to have 70 of
21 them, meaning the entire group, and their handlers on
22 present on the first night?

23 A. No. Our total membership was about
24 50 and assuming that all of our membership showed up

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1 and other interested parties showed up that it would
2 overflow the room.

3 Q. And did you explain to people that
4 weren't there the first night that there was plenty
5 of room by the start of the second night and
6 throughout the hearings?

7 A. There was plenty of room in the
8 hallway which by the second night had chairs, but
9 all the chairs were taken inside the chambers. I'm
10 not sure what your question is.

11 Q. By the second night there were
12 speakers in the hallway and there were chairs set
13 up where all of them had a line of sight to the

14 witness, correct?

15 MR. SMITH: Objection, compound,
16 chairs set up and a line of sight.

17 MR. MUELLER: If they're both true,
18 she will say yes.

19 MR. SMITH: I'd ask for a ruling.

20 HEARING OFFICER HALLORAN: Objection
21 sustained, Mr. Mueller.

22 BY MR. MUELLER:

23 Q. Let me ask it this way: Ms. O'Connor,
24 how many nights of the hearing were you there for?

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1 A. I was there every session that the
2 hearing was in session. I believe it was ten
3 sessions.

4 Q. Actually it was 11.

5 A. Eleven, I stand corrected.

6 Q. And only on the first night was there
7 a problem with people hearing and getting in, isn't
8 that true?

9 A. On the second night people had to sit
10 in the hallway to see the proceedings and as I had

11 done the first night when there was a break, I went
12 out to the foyer immediately beyond the doors and
13 sat in one of those chairs to see what people could
14 see.

15 Q. And, in fact, they could see, correct?

16 A. Well, they could see the witness
17 testifying, but only one of the approximately five
18 placard boards that were set up on the stage.

19 Q. And there were speakers set up in the
20 hall the second night, right?

21 A. That is correct.

22 Q. And after the second night there was
23 no one even seated in the hall anymore, isn't that
24 true?

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1 A. I can't be sure, but my impression
2 was it was at least the third or fourth night before
3 no one was seated in the hall. I definitely recall
4 the second night people were out there because I did
5 ask one of our members specifically can you hear and
6 they said yes, we can hear, but we can't see the
7 rest of the placards when they point to them.

8 Q. Transcripts of the hearing were made

9 available, weren't they?

10 A. Yes.

11 Q. And you knew they were made available
12 because you were in the room for the announcement,
13 right?

14 A. Yes.

15 Q. Did you tell other members of CRIME
16 about the availability of transcripts?

17 A. Yes.

18 Q. Was anyone denied access to the
19 transcripts?

20 A. No one has reported to me that they
21 were denied access to the transcripts.

22 Q. And was anyone denied an opportunity
23 to make a statement on the public comment night?

24 A. No.

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1 Q. And, in fact, didn't you approach
2 Mr. Bohlen on the third night of the hearings and
3 indicate that someone who had originally signed up
4 just to speak now wanted to actually be a
5 participant?

6 A. A participant meaning an objector?

7 Q. Yes, a registered person who could ask
8 questions.

9 A. No. The only conversation I remember
10 was on the first night with Mr. Bohlen, one of our
11 members wanted -- I think you have it reversed.
12 One of our members had signed up to be an objector,
13 but merely wanted to speak on the open speak-out
14 night.

15 Q. Do you know who Patricia O'Dell is?

16 A. Yes.

17 Q. Is she a member of your group?

18 A. She had attended some general
19 meetings, but I did not know her that evening.

20 Q. Were you involved in her registering
21 as an objector?

22 A. No. I merely registered the people
23 that were in our committee, our witnesses.

24 Q. And, in fact, a number of

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1 representatives of CRIME registered as objectors

2 so that you had multiple opportunities to

3 cross-examine, correct?

4 A. Yes.

5 Q. How many different members of CRIME
6 were registered objectors?

7 A. I believe we ended up with six.

8 Q. And were all six of you allowed to
9 fully participate, cross-examine, present evidence
10 and do all those things throughout the hearing?

11 A. Yes.

12 MR. MUELLER: That's all I have.
13 Thank you.

14 HEARING OFFICER HALLORAN: Thank you,
15 Mr. Mueller. Mr. Leshen?

16 MR. LESHEN: One moment.

17 (Brief pause.)

18 MR. LESHEN: No cross. Thank you.

19 HEARING OFFICER SMITH: Thank you.

20 Mr. Smith, redirect?

21 MR. SMITH: I'll be very brief.

22 R E D I R E C T E X A M I N A T I O N

23 by Mr. Smith

24 Q. When you mentioned the term placards,

1 did you mean the exhibits, the maps, the diagrams?

2 A. Yes.

3 Q. So you took a position out there and
4 you could see one of five?

5 MR. LESHEN: Same objection as
6 earlier, which is summary and it's leading.

7 MR. SMITH: We didn't know what she
8 meant by placards and now the record does, Judge.

9 MR. LESHEN: I'm not objecting to the
10 first question. I am objecting to the sum up of the
11 second question.

12 HEARING OFFICER HALLORAN: I agree,
13 Mr. Smith. If you can rephrase.

14 MR. SMITH: The first question will
15 stand, your Honor?

16 HEARING OFFICER HALLORAN: Yes, it
17 will.

18 MR. SMITH: All right. I'll move to
19 something else then.

20 HEARING OFFICER HALLORAN: Thank you,
21 sir.

22 BY MR. SMITH:

23 Q. Now, of these -- you said how many
24 people couldn't get in to the hall the first night?

1 A. Do you mean a number like standing on
2 the stairway?

3 Q. All of them that could not get in the
4 room.

5 MR. LESHEN: I'm going to object to
6 this. This is simply a restatement of her direct.

7 MR. SMITH: Well, Judge --

8 MR. LESHEN: If I can just finish.
9 It's a restatement of her direct rather than
10 redirecting on issues that were newly raised.

11 HEARING OFFICER HALLORAN: Your
12 objection is so noted, however, it's overruled.
13 You may continue, Mr. Smith.

14 BY MR. SMITH:

15 Q. Do you know if all those people were
16 literate that could go and read the record?

17 A. I have no idea if they were or not.

18 MR. SMITH: Thank you, ma'am.

19 HEARING OFFICER HALLORAN: Thank you.
20 Mr. Moran? Mr. Sandberg? Mr. Mueller?

21 MR. MUELLER: No thank you.

22 HEARING OFFICER HALLORAN: Mr. Leshen?

23 MR. LESHEN: No.

24 HEARING OFFICER HALLORAN: Before

1 I go off the record for one minute, are there any
2 members of the public that wish to testify tonight
3 before the hearing is over, otherwise we can go back
4 -- we'll go back on the record on Wednesday at 9:00
5 a.m. and you can have the opportunity then? Do I
6 see any hands of any members of the public that wish
7 to make comment now?

8 MEMBER OF THE PUBLIC: Not tonight,
9 Wednesday will be open, is that correct?

10 HEARING OFFICER HALLORAN: Wednesday
11 will be open, correct. We'll be here at 9:00 and we
12 can accommodate you then either at that time or
13 perhaps take a short break before lunch or any time
14 that we can fit you in and is convenient for you.
15 Seeing no hands, we'll go off the record for one
16 minute.

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1 (Whereupon, a discussion
2 was had off the record.)

3 HEARING OFFICER HALLORAN: We're back
4 on the record. Before I forget, I'm supposed to
5 make a credibility determination on the witnesses
6 who testified here today and based on my legal
7 experience and judgment, I find that there are no
8 issues of credibility with the witnesses here that
9 testified here today.

10 With that said, we're going to
11 adjourn at this time. We're going to continue this
12 matter on record and we'll see you back here on
13 Wednesday at 9:00 a.m.

14 Thank you very much and exercise
15 your right to vote tomorrow. Thanks.

16 (Whereupon, no further
17 proceedings were had on
18 November 4th, 2002.)

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1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF C O O K)

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I, TERRY A. STRONER, CSR, do
hereby state that I am a court reporter doing
business in the City of Chicago, County of Cook, and
State of Illinois; that I reported by means of
machine shorthand the proceedings held in the
foregoing cause, and that the foregoing is a true
and correct transcript of my shorthand notes so
taken as aforesaid.

Terry A. Stroner, CSR

Illinois

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Notary Public, Cook County,

19

20 SUBSCRIBED AND SWORN TO
before me this ___ day
21 of _____, A.D., 2002.

22

23 _____
Notary Public

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