

1 ILLINOIS POLLUTION CONTROL BOARD

2

3 COUNTY OF KANKAKEE and EDWARD
 4 D. SMITH, STATES ATTORNEY OF
 5 KANKAKEE COUNTY,)
 6)
 7 Petitioners,)
 8)
 9 vs.)PCB 03-31
 10)
 11 THE CITY OF KANKAKEE, ILLINOIS,)
 12 City Council, TOWN AND COUNTRY)
 13 UTILITIES, INC., and KANKAKEE)
 14 REGIONAL LANDFILL, L.L.C.,)
 15)
 16 Respondents.)
 17)
 18 BYRON SANDBERG,)
 19)
 20 Petitioner,)
 21)
 22 vs.)
 23)PCB 03-33
 24)
 THE CITY OF KANKAKEE, ILLINOIS,)
 City Council, TOWN AND COUNTRY)
 UTILITIES, INC., and KANKAKEE)
 REGIONAL LANDFILL, L.L.C.,)
 Respondents.)
)
 WASTE MANAGEMENT OF ILLINOIS,)
 INC.,)
 Petitioner,)
)
 vs.)
)PCB 03-35
)Consolidated
 THE CITY OF KANKAKEE, ILLINOIS,)
 City Council, TOWN AND COUNTRY)
 UTILITIES, INC., and KANKAKEE)
 REGIONAL LANDFILL, L.L.C.,)
 Respondents.

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24

1 The following is a transcript
2 held in the above-entitled cause before HEARING
3 OFFICER BRADLEY P. HALLORAN, taken
4 stenographically before FRANCINE BUONAVOLANTO,
5 CSR, a notary public within and for the County
6 of Cook and State of Illinois, at 800 North
7 Kinzie Street, Bradley, Illinois, on the 6th
8 day of November, A.D., 2002, scheduled to
9 commence at 9:00 o'clock a.m., commencing at
10 9:08 o'clock a.m.

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1 HEARING OFFICER HALLORAN: Good
2 morning, everyone. My name is Bradley
3 Halloran. I'm the hearing officer with the
4 Illinois Pollution Control Board. I'm assigned
5 to this matter. This case is continued on
6 record from November 4th. It's a consolidated
7 case entitled County of Kankakee and Edward D.
8 Smith, States Attorney of Kankakee County.
9 Petitioners versus city of Kankakee et al., PCB
10 3-31. Byron Sandberg, Petitioner versus city of
11 Kankakee et al., PCB 3-33. Waste Management of
12 Illinois Petitioner versus city of Kankakee et
13 al., PCB 3-35.

14 Today is November 5th approximately
15 9:05 a.m. Commissioner Byron Sandberg is not
16 present, but we have to get going. Again, I
17 don't make the ultimate decision in this

18 matter. It's the Board who reviews the
19 transcripts and the record that makes the
20 decision.

21 I'm merely here to grade a clear and
22 concise record and rule in any evidentiary
23 matters that may arise.

24 Again, this hearing was scheduled in

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1 accordance with the Illinois Environmental
2 Protection Act and the Pollution Control Board
3 Rules and Procedures. It will be conducted and
4 has been conducted according to the procedural
5 rules found in Section 107.400 and Section 100
6 sub par (f).

7 I do want to note again that there is
8 a public comment sign-up sheet in the back of
9 the room sitting on the chair back there.
10 There's also informational packets that you may
11 pick up and review, if you will.

12 Also, the public comment -- we've
13 made every opportunity for them to make public
14 comment. And, in fact, after the preliminary
15 issues, any members of the public that wish to

16 make public comment may raise their hand and I
17 will call them accordingly.

18 With that said, would the parties
19 like to introduce themselves starting with
20 Mr. Moran, please?

21 MR. MORAN: Donald Moran on behalf of
22 Waste Management of Illinois.

23 MR. PORTER: Good morning, Rick
24 Porter on behalf of the County.

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1 MR. SMITH: Edward Smith, States
2 Attorney.

3 MR. MUELLER: George Mueller for Town
4 and Country.

5 MR. VOLINI: Tom Volini with Town and
6 Country.

7 MR. LESHEN: Kenneth A. Leshen,
8 L-e-s-h-e-n, Assistant Corporation Counsel for
9 the city of Kankakee.

10 HEARING OFFICER HALLORAN: Thank you
11 very much. With that said, I believe the
12 petitioners of the county of Kankakee and
13 Kankakee County States Attorney presented me

14 with a motion this morning.

15 I believe Mr. Mueller and Mr. Leshen
16 had an opportunity to review that motion?

17 MR. LESHEN: Yes, your Honor, it was
18 provided this morning.

19 HEARING OFFICER HALLORAN: Terrific.
20 Mr. Porter, would you like to -- I have read
21 the motion. Mr. Porter, would you like to add
22 any additional comments?

23 MR. PORTER: Yes, briefly. Before we
24 would commence with the witnesses, we would

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1 like to present this motion to Hearing Officer
2 Halloran that he reconsider his prior ruling
3 regarding the admissibility of pre-filing
4 contacts and particularly regarding the
5 February 19, 2002 meeting.

6 We have tendered a brief on this
7 issue and I understand you have now read it.
8 And we'd like to reiterate, our assertion is
9 not solely ex parte communications occurring
10 before the application was filed, rather our
11 assertion is a literal prejudgment by the City

12 Council of adjudicated facts.

13 The minutes of the February 19, 2002
14 meeting are already in the record. They were
15 admitted by the city of Kankakee itself along
16 with five other sets of minutes for various
17 dates.

18 Therefore, as a preliminary matter,
19 we do not believe -- well, we believe that it's
20 obvious that being able to examine regarding
21 those minutes is perfectly appropriate much
22 like it would be perfectly appropriate to
23 examine regarding any part of the application
24 as long as that touches upon fundamental

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1 fairness. And that is indeed what we're doing
2 here. We're just examining regarding those
3 minutes as it touches upon fundamental
4 fairness. That's why we believe that testimony
5 should come in as a substantive basis rather
6 than being allowed as an offer of proof.

7 Second, this case is completely
8 different from the residents and Landcomp cases
9 that Mr. Mueller cited yesterday.

10 In the residents' case, the
11 pre-filing contacts was merely a review by the
12 applicant, the solid waste management plan of
13 the decision-maker. Here we literally have a
14 situation where the applicant presented
15 evidence to the City Council the day before
16 they sent out the notices to the public of an
17 intent to file the application.

18 They introduced themselves as
19 presenting proofs and environmental compliance
20 that they had achieved. They then went on to
21 present that evidence through their expert
22 witnesses, including Devon Moose.

23 They would mention the criteria and
24 explain how they met the various criterion.

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1 They then went on and even in the introduction
2 made comments that the 39.2 process was an
3 untrustworthy process because it involved
4 fighting in ranker between lawyers and that
5 they simply wanted and unfettered opportunity
6 to speak directly to the City Council face to
7 face without that ranker and back and forth

8 that lawyers unfortunately bring to the
9 process.

10 Mr. Volini at what point also
11 introduced a witness as someone that had
12 experience in dealing with the environmental
13 community and how that professional
14 environmental community or the organized
15 environmental community presents itself at 39.2
16 hearings.

17 This witness then went forward and
18 told the City Council that those people could
19 not be trusted though they didn't come in as
20 first-waiving fanatics. They would tell
21 half-truths and give partial quotes and
22 ultimately that the process itself was an
23 untrustworthy process.

24 So what we're left with is a

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1 prejudgment of the facts and then a statement
2 to the City Council that this is why you should
3 listen to us. Later on when the lawyers are
4 there and the objectors' witnesses are there,
5 you can't trust it.

6 That's why this is clearly evidence
7 that should be allowed and admitted as to the
8 issue of fundamental fairness. It goes to the
9 very heart of whether or not that 39.2
10 proceeding was nearly a sham. And that's why
11 we believe that we should be allowed to
12 question regarding those pre-filing contacts.
13 Thank you.

14 HEARING OFFICER HALLORAN: Thank you,
15 Mr. Porter.

16 Mr. Smith, anything to add?

17 MR. SMITH: No.

18 HEARING OFFICER HALLORAN:
19 Mr. Mueller, response? I'm sorry, Mr. Mueller,
20 before you, Mr. Moran, do you have anything to
21 add to this?

22 MR. MORAN: Just that I certainly
23 support the statement of the laws that applies
24 and the fact that the introduction of evidence

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1 relating to prejudgment of an application
2 certainly is proper under the case law cited by
3 the county.

4 HEARING OFFICER HALLORAN: Thank you,
5 Mr. Moran.

6 Mr. Mueller?

7 MR. MUELLER: Thank you,
8 Mr. Halloran. Let me hand out to the Chair and
9 counsel copies of the Pollution Control Board's
10 quarter in the Landcomp case dated July 18,
11 1996.

12 That particular order is not the
13 ultimate opinion, but, in fact, is the order
14 that most directly addressed the issue of
15 pre-filing contacts and was, in fact, adopted
16 and incorporated by the Board in its final
17 order and opinion and then readopted in
18 Landcomp two in its entirety.

19 So this is the direct statement as to
20 what the Board ruled and I'll come back to that
21 in a minute. Before I do, however, I'm
22 compelled to respond to, again, the
23 mischaracterizations and half-truths and out of
24 context statements made by Mr. Porter with

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1 respect to the contacts and what occurred at

2 the February 19, 2002 City Council meeting.

3 First of all, Mr. Porter said since
4 those minutes are part of the record and were
5 produced by the city, they should be deemed to
6 be substantive evidence and we should consider
7 them as such.

8 We've already indicated those minutes
9 are part of the record only because they were
10 required to be produced pursuant to a discovery
11 request albeit and untimely discovery request
12 made by the county. That's a request that we
13 moved to quash and that the city moved to quash
14 and the Chair, in this case, allowed the
15 request and directed us to comply with it, even
16 though it was untimely and irrelevant.

17 Secondly, Mr. Porter continues -- I
18 mean, these people don't take no for an answer.
19 It continues to characterize the events of
20 February 19th as being a presentation of
21 evidence, the testimony of witnesses and all
22 the like. These were statements made to the
23 City Council by people who were on the agenda.

24 Mr. Porter says those statements

1 constituted an attempt to undermine the 39.2
2 hearing process. In that, the City Council was
3 told not to trust the process, not to believe
4 witnesses they might hear in the process.
5 That's simply not what happened.

6 Now, the entire minutes were in the
7 record that the Board can judge for itself as
8 to the context. Just so we can point out where
9 in the record things are different than they
10 have alleged to have been, I would point out
11 that Mr. Volini at pages 8 and 21 of the
12 minutes, myself at page 28 of the minutes and
13 page 9 of the minutes, Devon Moose at pages 11
14 and 14 and Jamie Simmon at page 15, all make
15 statements emphasizing the need on the part of
16 the City Council to make their decision based
17 on the evidence and, in fact, the speakers
18 generally told the City Council, if we don't
19 prove our case at the siting hearing and prove
20 that we've met all of the 39.2 criteria, you
21 must vote no, you must reject our application,
22 you must base your decision on the manifest
23 weight of the evidence that you will hear.

24 I think Mr. Bohlen in his testimony

1 the other day properly characterized what
2 occurred on February 19th when he said that he
3 considered this a part of the political process
4 where simultaneously the city was being lobbied
5 by waste management. The city was being, at
6 that point, subjected to stick waiving by the
7 county with threats of litigation and this and
8 that, threats that the county continues to
9 attempt to make good on.

10 So they've got input from all sides,
11 positive and negative at this time. And
12 Mr. Bohlen said he had no concern about it
13 because he perceived it as part of the
14 political give-and-take that is inherent in
15 controversial issues and he knew the City
16 Council members understood it to be exactly
17 that and nothing more, and that they would
18 ultimately forget everything they heard from
19 all sides, our side, the county side, waste
20 management side, and they would listen to the
21 evidence when the hearings began and our
22 position is that's exactly what happened.

23 Now, let's talk for a second about
24 the law here that Mr. Porter has cited.

1 First of all, the argument that
2 Mr. Porter makes is that since what occurred on
3 February 19th is evidence of prejudgment by the
4 City Council, it must be considered and come
5 into evidence. And because I've made these
6 arguments unsuccessfully all throughout the
7 Landcomp cases where I represented the
8 Residents Against the Pollutant Environment,
9 I'm going to concede that intuitively what he's
10 telling you makes sense, but it's not what the
11 law is and it's not what the Pollution Control
12 Board has held.

13 The Pollution Control Board
14 specifically has said that you cannot infer
15 from pre-hearing context that prejudgment
16 exists. See, the evidence of the pre-hearing
17 context here is not evidence of prejudgment.
18 It's evidence from which you're going to be
19 asked to infer prejudgment.

20 If Mr. Porter had a pre-hearing
21 contact where one of the City Council members
22 was overheard to have said, I'm going to vote

23 for this application regardless of what the
24 evidence shows. I've made up my mind. That

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1 would be different. That's evidence of
2 prejudice. But evidence of contact,
3 according to the Board, cannot in and of itself
4 lead to the inference of prejudice.

5 Therefore, prejudice evidence must
6 be direct and not circumstantial and that's
7 been the mandate of the Board in all of these
8 cases.

9 And in the Landcomp cases, the
10 residents against the pollutant environment in
11 the Thornton foundation argued that there was a
12 conspiracy of longstanding between Landcomp,
13 the proposed landfill owner and the county to
14 put Landcomp and its proposal into place.

15 And the residents attempted to say
16 the evidence of that conspiracy is
17 circumstantial and the Board needs to go back
18 and review the fact that Landcomp dictated the
19 development of solid waste plan; that Landcomp
20 drew up the parameters for the RFP, which is

21 request for proposals by prospective vendors
22 that Landcomp participated in making the rules
23 for how the hearing was going to be conducted;
24 that county board members and Landcomp

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1 representatives regularly and customarily went
2 out for coffee with arms around each other's
3 shoulders and the Board says, that's not
4 evidence of prejudgment. Show us a county
5 board member who has said, I've got my mind
6 made up. Show us a county board member who
7 says I won't listen to the evidence. Don't
8 show us the fact that there were ordinary
9 pre-filing contacts.

10 The only window that the Board left
11 open and that the appellate court in affirming
12 the board left open after Landcomp cases is
13 that if you can show something that's as you
14 correctly, Mr. Halloran, have characterized a
15 smoking gun, then the issue may be revisited.

16 Well, we don't have any smoking guns
17 here because there is nothing in the minutes of
18 February 19 which are before you in their

19 entirety where a City Council member says
20 anything that's even argued improper and that's
21 important.

22 I would point out that my
23 understanding is that on none of the
24 petitioners here intend to call any of the

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1 decision-makers. And the only way you can
2 prove prejudgment is through the
3 decision-makers. Did a decision-maker make
4 statements indicating that he or she didn't
5 listen to the evidence, had his mind or her
6 mind made up or wasn't going to listen to the
7 evidence. We don't have anything here.

8 The petitioners here are trying to
9 build the same circumstantial case that
10 residents against the pollutant environment try
11 to build against Landcomp and the Board cut
12 them off.

13 And, in fact, the Board went so far
14 in the Landcomp decision, Mr. Halloran, that
15 they actually struck portions of the petition
16 for review alleging the conspiracy they denied

17 discovering on those issues, saying even though
18 discovery is intended to leave something
19 relevant, we can't see that this could ever be
20 relevant and so they prohibited discovery on
21 some of these issues. That decision is on all
22 four points and the mandate of the Pollution
23 Control Board is clear.

24 Now, if the county has evidence of a

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1 bribe, evidence of a statement of prejudice,
2 evidence of a statement that someone wasn't
3 going to listen to the evidence, anything that
4 is in the nature of a smoking gun, then let's
5 have their offer of proof on that and maybe it
6 can get in. But the customary political
7 give-and-take, the pre-filing contacts
8 conducted out in the open and on the record,
9 that's not evidence of prejudice and
10 therefore I think your ruling was correct
11 before.

12 In fact, I thought your ruling the
13 other day didn't go far enough, that you should
14 have simply cut off the examination and then

15 perhaps we could end these hearings in a more
16 timely fashion. Thank you.

17 HEARING OFFICER HALLORAN: Thank you
18 Mr. Mueller.

19 Mr. Leshen?

20 MR. LESHEN: Thank you, Mr. Halloran.
21 The city adopts the argument made by
22 Mr. Mueller and I would also like to point out
23 that you gave the county in its examination
24 wide latitude in its offers of proof to try to

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1 show you a smoking gun. Every --
2 fundamentally, all of the issues that they
3 tried to raise you allowed them to raise in a
4 context of an offer of proof and then you made
5 the finding that there was no smoking gun,
6 quote, unquote, that had been shown to you at
7 least to this point.

8 And, consequently, I think that your
9 interpretation has been a liberal one where you
10 would allow the county to try to make its case
11 that the law had been satisfied and they were
12 not able to make it and consequently, I also

13 agree that your decision was correct and should
14 continue to be your decision.

15 HEARING OFFICER HALLORAN: I don't
16 want to take the whole morning on this, but
17 Mr. Porter, do you have a response?

18 MR. PORTER: I do. First,
19 Mr. Mueller's comments regarding the minutes
20 being admitted into the record because of a
21 discovery request is just simply erroneous.
22 The table of contents that was submitted by the
23 City Council indicates that those minutes and
24 that entire record was filed on October 23rd.

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1 The response of the discovery was not due for a
2 week after that.

3 Beyond that, there was never any
4 order requiring all of the documents that were
5 produced in discovery to be part of the record
6 on appeal to the Pollution Control Board that
7 the city compiled and indeed I received a
8 banker's box full of materials. The vast
9 majority of which were not included in the
10 record and understandably why. I mean, they

11 were discovery request. They were not a demand
12 that they be part of the record.

13 So that argument is simply erroneous
14 and the minutes were included, because exactly
15 why Mr. Bohlen said they were included. He
16 believed he had a statutory duty to do so and
17 therefore, the minutes are part of the
18 underlying record, which the Illinois Pollution
19 Control Board will take administrative notice
20 to.

21 Second -- and obviously the fact that
22 that part of the record, I believe, opens the
23 door to discussions of whether or not those
24 minutes impact fundamental fairness.

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1 Second, the smoking gun we have here
2 is the meeting itself and the stated purposes
3 for the meeting. The prejudgment, the evidence
4 of the prejudgment is indeed the minutes and
5 the discussions and the purposes for that
6 meeting. That is the smoking gun.

7 We have evidence that indeed the
8 applicant showed up, presented its case to the

9 Board, who sat in judgment of that case and at
10 the same time, impugned the trust worthiness of
11 the Section 39.2 hearing. I can't imagine a
12 more blatant situation. And for those reasons,
13 we believe the evidence is clearly admissible.

14 One last thing, what counsel doesn't
15 mention to you is the most recent third
16 district case on the issue, which is the waste
17 management versus Illinois Pollution Control
18 Board case that ironically Mr. Moran and I were
19 personally involved in. That case did have
20 direct pre-filing contacts to determine if
21 there has been improper communications and the
22 decision by the third district made a point of
23 the fact that there was no evidence that those
24 contacts occurred directly with the

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1 decision-maker. And that is the difference in
2 this case. These contacts occurred directly
3 within the decision-maker and, therefore, the
4 evidence should be admitted at this proceeding.

5 HEARING OFFICER HALLORAN: Mr. Smith,
6 anything?

7 MR. SMITH: No, your Honor.

8 HEARING OFFICER HALLORAN: Mr. Moran,
9 anything to add?

10 MR. MORAN: Nothing at this time.

11 HEARING OFFICER HALLORAN:
12 Mr. Mueller?

13 MR. MUELLER: Very, very briefly.
14 Number one, I stand corrected as to the source
15 of the minutes of February 19th in the record.
16 They originally came a part of this record
17 because they were an addendum to the county or
18 waste management's motion to disqualify Mayor
19 Green filed on the first night of the hearing,
20 so they were introduced initially in that way.

21 Secondly, the land in lakes case
22 where Mr. Porter and Mr. Moran, waste
23 management and Will County in that case, were
24 again allies as the county and waste management

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1 are allies here, the reference he talks to is
2 indignant in that decision. That was not the
3 issue in case.

4 HEARING OFFICER HALLORAN:

5 Mr. Leshen?

6 MR. LESHEN: I have nothing further
7 to add.

8 HEARING OFFICER HALLORAN: Okay.
9 Thanks. It appears everyone has their comments
10 on the record. At this point, as everyone
11 knows and the record reflects I've only allowed
12 such evidence in as an offer of proof.

13 Perhaps the Board in its infinite
14 wisdom with the luxury of reviewing the
15 accumulative evidence and the transcript and
16 the record will see it differently.

17 However, at this point, I will deny
18 Mr. Porter and Mr. Smith's motion. However,
19 I'll take the motion with the case and I'll
20 mark it Hearing Officer Exhibit 1.

21 With that said, I still want to know,
22 for the record, that Mr. Sandberg is still not
23 present, but we'll proceed. I think we had a
24 prior agreement that Mr. Smith will be calling

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1 another member of the public as a witness?

2 MR. SMITH: That's correct.

3 HEARING OFFICER HALLORAN: Thank you.

4 Before we proceed, how many members of the
5 public out there wish to speak or testify this
6 morning?

7 Your name, sir?

8 MR. MURRAY: Richard Murray.

9 HEARING OFFICER HALLORAN: Could you
10 spell that, please?

11 MR. MURRAY: M-u-r-r-a-y.

12 HEARING OFFICER HALLORAN: Are you on
13 Mr. Smith's witness list or do you just wish to
14 make a public comment?

15 MR. MURRAY. I thought I was.

16 HEARING OFFICER HALLORAN: All right.
17 The procedure is you can come up and make a
18 public comment and you can choose to be sworn,
19 but and you would be subject to
20 cross-examination, otherwise, you can just get
21 up and submit your public comment and it will
22 be weighed accordingly.

23 Mr. Murray, did you happen to sign in
24 on the sheet in the back of the room?

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1 MR. MURRAY: No.

2 HEARING OFFICER HALLORAN: When you
3 get finished you can do that.

4 MR. PORTER: May I speak to
5 Mr. Murray before you call him?

6 HEARING OFFICER HALLORAN: Sure. We
7 can proceed with your witness.

8 MR. SMITH: Oh, all right. Fine. We
9 would call Patricia O'Dell.

10 HEARING OFFICER HALLORAN: You may
11 have a seat and please, raise your right hand
12 and be sworn.

13 (Whereupon, the witness was duly sworn.)

14 PATRICIA O'DELL,
15 called as a witness herein, having been first
16 duly sworn, was examined and testified as
17 follows:

18 DIRECT EXAMINATION

19 BY MR. SMITH:

20 Q. Good morning, would you tell the
21 hearing officer your name and spell your last
22 name for HEARING OFFICER HALLORAN reporter,
23 please.

24 A. My name is Patricia O'Dell, O

1 apostrophe, capital D, e-l-l.

2 Q. And may I ask you your age?

3 A. I'm 59.

4 Q. Where do you live, ma'am?

5 A. I live at 1242 Arrowhead Drive in
6 Bourbonnais, Illinois.

7 Q. Is that located within Kankakee
8 County, Illinois?

9 A. Yes.

10 Q. How long have you been a resident of
11 Kankakee County?

12 A. Twenty-one years.

13 Q. Now, did you have occasion somehow to
14 learn about a landfill siting hearing that was
15 to take place June 17, 2002 at the Kankakee
16 City Hall chambers?

17 A. Yes.

18 Q. How did you come about that
19 information?

20 A. A variety of ways. I heard about it.
21 I read some information and eventually I read
22 an announcement in the newspaper and in a
23 meeting I attended.

24 Q. Did you form any mental intent

1 regarding your attendance at that hearing?

2 A. Yes.

3 Q. What was your intent?

4 A. I wanted to be able to ask questions
5 of the people who gave information.

6 Q. Did you want to attend then?

7 A. Definitely.

8 Q. Was it your intent to participate or
9 not participate?

10 MR. MUELLER: I'm going to object,
11 it's leading.

12 HEARING OFFICER HALLORAN: Overruled.

13 BY MR. SMITH:

14 Q. Was it your intent to participate or
15 not participate?

16 A. I understood that you could ask
17 questions and make comments at a public time.
18 I wanted to ask questions as I heard testimony
19 being given.

20 Q. Did you wish to make comments?

21 HEARING OFFICER HALLORAN: I'm sorry.
22 Mr. Leshen?

23 MR. LESHEN: Pardon the interruption,

24 Mr. Smith, I just couldn't hear the end of the

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1 last answer.

2 BY MR. MUELLER:

3 Q. So you wished to ask questions?

4 A. Yes, I did.

5 Q. And did you wish to make also a
6 comment?

7 A. Yes.

8 Q. Did you wish to spectate to see and
9 hear the witnesses?

10 A. Yes, I did.

11 Q. Did you then read notices concerning
12 the protocol for the hearing?

13 A. Yes.

14 Q. Did you find any -- were they clear
15 to you?

16 A. No, because I heard two different
17 conflicting reports.

18 Q. Can you tell the hearing officer of
19 those conflicts?

20 A. I was aware of the legal notice that
21 said that one could participate by signing up

22 until the day of the hearing, which would be
23 Monday the 17th. And I read and heard that
24 another statement was produced that said

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1 anybody who wanted to participate had to sign
2 up five days before the hearing. And I didn't
3 know if that was five real days or five
4 business days.

5 Q. What was your understanding about the
6 requirements of signing up prior to the hearing
7 in order to be allowed to participate?

8 A. It wasn't clear.

9 Q. What did you do in trying to clarify
10 your confusion?

11 A. I called the city clerk's office and
12 said that I wanted to know how to sign up. I
13 understood we could do it up until the day of
14 the hearing and that I had also heard other
15 information that also said five days ahead.

16 Q. After speaking to the clerk, was your
17 confusion clarified?

18 A. Eventually.

19 Q. Now, did you have occasion to

20 actually physically go to the clerk's office
21 prior to the June 17th hearing?

22 A. Yes, I did.

23 Q. When did you do that?

24 A. I went to the office on Wednesday,

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1 June 12.

2 MR. SMITH: May I approach?

3 HEARING OFFICER HALLORAN: Yes, you
4 may, sir.

5 BY MR. SMITH:

6 Q. I would like to show what's been
7 marked as Petitioner's Exhibit 5 for
8 identification. Take a look at that document
9 and tell the hearing officer whether you can
10 identify it?

11 A. Yes, this is a copy of what I turned
12 in.

13 Q. Whose handwriting does that exhibit
14 bear?

15 A. Mine.

16 Q. Did you actually write that?

17 A. Yes.

18 Q. And when did you write it?
19 A. I believe it was the day -- it was
20 the day before, Tuesday, the day before I
21 turned it in.
22 Q. Would that be on or about June the
23 11th?
24 A. Correct.

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1 Q. And what did you do with that
2 document on June 12?
3 A. Shortly before noon, I took it to the
4 city clerk's office and gave it to the clerk
5 and asked if this was what I was supposed to do
6 to be able to talk.
7 Q. Did you file the original of that
8 document with the city clerk on June 12th,
9 2002?
10 A. Yes, I did and I asked for a copy.
11 Q. Other than for the exhibit marking,
12 is this a true and correct copy of the original
13 document in which you testified you filed on
14 June 12th?
15 A. Yes.

16 MR. SMITH: I would move to admit.

17 MR. MUELLER: No objection.

18 MR. LESHEN: No objection.

19 HEARING OFFICER HALLORAN:

20 Petitioner's Exhibit No. 5 is admitted.

21 MR. MUELLER: For the record, we
22 would note this is actually already a part of
23 the record before the Board at page C 2230.

24 HEARING OFFICER HALLORAN: Thank you,

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1 Mr. Mueller.

2 BY MR. SMITH:

3 Q. In that document, did you express
4 what you wanted to do?

5 MR. MUELLER: I'm going to object.
6 The document is her written expression. It
7 speaks for itself.

8 MR. SMITH: Preliminary.

9 HEARING OFFICER HALLORAN: Overruled.

10 BY MR. SMITH:

11 Q. Did you tell the clerk of record that
12 you wanted to speak at the hearing?

13 MR. MUELLER: Asked and answered.

14 MR. SMITH: Preliminary.

15 HEARING OFFICER HALLORAN: Overruled.

16 BY MR. SMITH:

17 Q. Essentially, did you tell the clerk
18 and the public record you wanted to speak, you
19 wanted to participate?

20 MR. MUELLER: I'm going to object,
21 compound question, leading and asked and
22 answered.

23 MR. LESHEN: And it's a
24 mischaracterization. She's now said twice or

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1 three times that she wanted to speak at the
2 hearing. And that's what she has now testified
3 that she said to the representative of the
4 clerk's office and that's what she wrote and
5 now Mr. Smith is trying to put other words in
6 her mouth despite the fact that she's responded
7 to the same question several times and also put
8 it in writing.

9 HEARING OFFICER HALLORAN: I'll
10 overrule, but only to the extent if Mr. Smith
11 would rephrase the question and not dwell on

12 it. Thank you.

13 MR. SMITH: Rephrase it?

14 HEARING OFFICER HALLORAN: Rephrase

15 it. That would be great.

16 BY MR. SMITH:

17 Q. Did you indicate that you wanted to
18 speak on specific days, the 17th, the 18th,
19 19th, the 20th, the 21st?

20 A. Yes, because I wanted to cover every
21 potential day that the hearing would take
22 place.

23 Q. As things ultimately turned out, did
24 you get to speak on June 17th?

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1 A. No, I did not.

2 Q. Did you get to speak on June 18th?

3 A. No.

4 Q. 19th?

5 A. No.

6 Q. 20th?

7 A. No.

8 Q. 21st?

9 A. No.

10 Q. Now, I'd like to ask you whether you
11 received any meaningful guidance from the
12 clerk's office about your rights?

13 MR. MUELLER: I'm going to object.
14 It calls for her to determine what's meaningful
15 and render a conclusion. Why doesn't he ask
16 her what did the clerk tell her, not whether
17 she received meaningful guidance.

18 HEARING OFFICER HALLORAN: I will
19 sustain Mr. Mueller's objection.

20 Mr. Smith?

21 BY MR. SMITH:

22 Q. What did the clerk tell you?

23 A. I asked if there was a form or a
24 document that I needed to sign in order to be

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1 able to ask questions and make comments at the
2 public hearing.

3 Q. What were you told?

4 A. I was told there was no document and
5 no form and I was to write a letter saying I
6 wished to speak.

7 Q. Were you given any other assistance?

8 A. No.

9 Q. Did you have further questions?

10 A. I had questions about the deadlines
11 which was accurate, whether it was the day of
12 or the five days ahead.

13 Q. What were you told?

14 A. I was told that if I wanted to go by
15 the legal notice, I was welcome to.

16 Q. Did you have further questions,
17 Mrs. O'Dell?

18 A. Yes. I said who has the final
19 authority on making the deadline decision?

20 Q. What were you told?

21 A. We do.

22 Q. Did you have any other questions?

23 A. I asked if they did, then what did
24 they say was the final day that I could file a

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1 document to participate.

2 Q. What were you told?

3 A. That it was five days ahead and I
4 asked specifically what day is this, business
5 or calendar. It was Wednesday June 12th.

6 Q. When you left the city clerk's
7 office, what was your state of mind?
8 A. I was frustrated about some things.
9 Q. Did you have occasion to, in fact,
10 attend the meeting which was characterized as a
11 public meeting on June 17th?
12 A. Yes, I did.
13 Q. Did anyone accompany you?
14 A. Yes.
15 Q. Who?
16 A. A friend.
17 Q. And could you identify that person?
18 A. David McAloon, M-c, capital A,
19 l-o-o-n.
20 Q. What was his purpose in attending?
21 A. First of all, he was the driver. I
22 needed a ride. And second of all, he was going
23 to videotape the proceedings.
24 Q. Did he have any special equipment to

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1 assist him in that goal?
2 A. Yes. He had a video camera and I had
3 a small TV/VCR unit.

4 Q. Was there a tripod?
5 A. There was supposed to be.
6 Q. Can you tell the hearing officer what
7 time you arrived?
8 A. About 7:30.
9 Q. Did you approach the building?
10 A. Yes.
11 Q. Was your friend with you?
12 A. Yes.
13 Q. What did you observe?
14 A. Quite a few people.
15 Q. Were those people inside or outside
16 at that point?
17 A. Outside.
18 Q. Did you enter the building?
19 A. Yes, I did.
20 Q. What did you notice?
21 A. More people.
22 Q. Do you recall a first staircase
23 joining the ground floor with a landing?
24 A. Yes, sir.

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1 Q. Did you pass through that staircase?

2 A. Yes, sir.

3 Q. What did you observe?

4 A. It was quite crowded.

5 Q. Did you reach a landing between

6 staircases?

7 A. Yes, sir.

8 Q. Do you recall if you saw anything

9 unusual at that landing?

10 A. More people than I expected to be

11 there.

12 Q. Did you go up the second landing?

13 A. Yes, I did.

14 Q. How were you able to do that?

15 A. By excusing myself and being patient

16 and letting people shift so I could get

17 through.

18 Q. Did your cameraman, so to speak,

19 accompany you?

20 A. Yes.

21 Q. With his equipment?

22 A. He carried the TV because it was

23 heavier. I carried his camera.

24 Q. Did you reach a foyer at the top of

1 the second staircase, which was actually a
2 hallway outside the meeting room itself?

3 A. Yes, sir.

4 Q. Can you describe to the hearing
5 officer so he has a picture in his mind's eye
6 what you observed in that foyer?

7 A. It was packed with people. They were
8 pretty much shoulder to shoulder. It was quite
9 filled.

10 Q. In your own opinion, how many people
11 do you estimate you saw as you've described
12 from the outside of the building up to the
13 meeting room itself?

14 A. I believe there were at least 125
15 people.

16 Q. What happened when you reached the
17 foyer outside the meeting hall?

18 A. I entered the room and all the seats
19 were taken.

20 Q. Do you recall, Mrs. O'Dell, whether
21 you saw any police officers?

22 A. Yes, sir.

23 Q. How many do you recall seeing that
24 day?

1 A. Two.

2 Q. Were those individuals male or
3 female?

4 A. Both male.

5 Q. Were they uniformed or in plain
6 clothes?

7 A. They had on dark uniforms.

8 Q. What type of uniforms?

9 A. Police uniforms.

10 Q. Do you recall whether they had
11 insignia, such as badges or identifying marks
12 in whether they had firearms?

13 A. Yes, sir.

14 Q. What is your recollection?

15 A. That they did, they had both.

16 Q. Do you recall what you did after you
17 entered the room and discovered it was full?

18 A. First of all my friend realized that
19 he had forgotten his tripod and he said he was
20 going to have to go home and get it and would I
21 find an outlet and guard our equipment.

22 Q. So, so to speak, take position by an
23 outlet plug?

24 A. Yes.

1 Q. Did he leave?

2 A. Yes.

3 Q. For the purpose of getting his
4 tripod?

5 A. Yes.

6 Q. And did you indeed take a position
7 trying to secure an outlet for your equipment?

8 A. Yes.

9 Q. What happened next?

10 A. I looked around the room and realized
11 that all the seats were taken and at some point
12 during the few minutes there, I heard a
13 statement that there would be no standing
14 allowed after the meeting commenced.

15 Q. Roughly what time did that statement
16 occur?

17 A. Somewhere around 7:40, give-or-take a
18 couple of minutes.

19 Q. Were you sitting or standing at that
20 point?

21 A. I was standing. There were no seats
22 available.

23 Q. How many people do you reckon were
24 standing inside the waiting room unable to be

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1 seated?

2 A. Ten or twelve.

3 Q. What happened next?

4 A. I was kind of concerned about my
5 friend getting back in time and the fact that
6 we -- I had heard that we could not stand in
7 the room. So I knew that we were not going to
8 be allowed into the room after the meeting
9 started. I saw a couple of friends and
10 acquaintances and asked if they would guard our
11 equipment while I went and checked for my
12 friend.

13 And in the process of realizing that
14 I would not be allowed to stand, two people
15 said, don't worry about getting a seat. We
16 will take turns so that your friend can
17 videotape the proceedings.

18 Q. What did you do then?

19 A. I thanked them and asked them to
20 continue to watch the equipment and I left the

21 room to go down and see if could see if my
22 friend was back yet.

23 Q. Roughly what time was it then?

24 A. Probably about 7:45.

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1 Q. And did you leave the meeting room
2 itself?

3 A. Yes, I did.

4 Q. Did you enter the foyer?

5 A. Yes, I did.

6 Q. What did you discover?

7 A. It was packed with people.

8 Q. Do you recall if there were any
9 speakers or sound amplification equipment or
10 monitors of any kind?

11 A. There were none.

12 Q. What happened next?

13 A. I went down the hall, down the stairs
14 outside and was looking down the street to see
15 if my friend was coming in.

16 Q. Had the condition in any manner
17 changed from the time you had first entered the
18 building?

19 A. There were more people than before
20 and there seemed to be more coming. There were
21 more outside.

22 Q. What did you do then?

23 A. I waited a couple of minutes looking
24 down towards the parking lot and the street and

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1 didn't see him, thought I should go back to the
2 room, which I did.

3 Q. And would your description be
4 substantially the same, waiting your way
5 through the people?

6 A. It was very crowded.

7 Q. Were you successful or unsuccessful
8 in reentering the meeting room?

9 A. I was successful.

10 Q. About what time was it then?

11 A. Probably about 7:50.

12 Q. What happened next?

13 A. Someone told me that there was a
14 special place where people that were
15 videotaping or recording where they needed to
16 stand and that I should check with the police

17 officer.

18 Q. Did you do that?

19 A. Yes, I did.

20 Q. What happened next?

21 A. He pointed out the area under a coat
22 rack where a person was allowed to be.

23 Q. How do you mean under a coat rack?

24 A. Against the side wall right by a side

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1 door, there's a coat rack and apparently
2 underneath that coat rack, which was high on
3 the wall, there was an outlet which could be
4 used and a person can stay right there. It was
5 right behind the banister.

6 Q. Did you go to that place?

7 A. No. I just observed it.

8 Q. What happened then?

9 A. I had growing concern because it was
10 late, close to the meeting starting time. I
11 went back to the hallway down the stairs and
12 outside, concerned and anxious that my friend
13 would get back in time.

14 Q. What happened then?

15 A. It was a few minutes later. It was
16 about starting time. There were a lot of
17 people, more coming and eventually he arrived.

18 Q. What time roughly, ma'am?

19 A. Between 8:00 and 8:05.

20 Q. What did you do then?

21 A. I told David that there was no
22 standing allowed in the room and so now that
23 the meeting probably had started, I could not
24 get back into the room, but that I did know

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1 where he could set up his equipment and I would
2 point that out to him and that there were a
3 couple of people who would be willing to take
4 turns giving up their seat so that he could
5 legally remain in the room.

6 Q. What did you and David do then?

7 A. Well, it was kind of hard because
8 there was so many people. We excused ourselves
9 all the way up and got to the doorway of the
10 room.

11 Q. He had his tripod then?

12 A. Yes.

13 Q. Were you successful in reentering the
14 room?

15 A. No, sir.

16 Q. Could you tell the hearing officer
17 what happened?

18 A. David communicated with the policeman
19 about the video equipment, which he observed
20 and David was allowed into the room. And at
21 the doorway, I pointed out the coat rack area
22 that David could go to to do his videotaping,
23 but I did not set foot in the room.

24 Q. Why was that, ma'am?

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1 A. Because there was a policeman on
2 either side of the door seemingly with
3 authority that was not going to allow me in.

4 Q. Why did you reach the conclusion that
5 they would not allow you in the room?

6 A. I had heard on one of my earlier
7 times before 8:00 o'clock, I had heard at least
8 one announcement that there would be -- no one
9 would be allowed to stand in the room. If the
10 seats were taken, that was it.

11 Q. Do you recall whether that was or was
12 not a police officer that made that
13 announcement?

14 A. I'm not certain. It was a male voice
15 behind me.

16 Q. What happened after you separated
17 from your friend David?

18 A. He started getting the equipment
19 collected and he turned around and kind of
20 mouthed to me that he needed the tape, the
21 videotape. And so I started rummaging in my
22 bag and got the tape and the remote for him.

23 Q. Were you allowed to go in the room to
24 give him the tape?

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1 A. No, sir.

2 Q. Did the tape ultimately reach him?

3 A. Yes.

4 Q. Can you tell the hearing officer how
5 that transpired?

6 A. I kind of sign language and tapped
7 the police officer on the shoulder and showed
8 him what I had and pointed to David and the

9 equipment and by sign language, would you
10 deliver this please? And he nodded and took
11 them and took them over to David.

12 Q. So the police officer cooperated in
13 getting your tape over to your cameraman?

14 A. Yes.

15 Q. How long were you in the foyer?

16 A. Until about 10:30 at night.

17 Q. How many other people were in that
18 foyer about 10:30?

19 A. Maybe 30.

20 Q. Did you witness any people leave the
21 foyer or the stairway and leave the building?

22 A. Yes, sir.

23 Q. Over what period of time?

24 A. Between about 8:05 and close to 10:00

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1 o'clock.

2 Q. How many people in your estimation
3 who could not get into the assembly hall itself
4 left the building?

5 MR. MUELLER: I'm going to object
6 unless there's a foundation for the fact that

7 he counted them.

8 HEARING OFFICER HALLORAN: I think

9 she may answer if she's able. Overruled.

10 BY MR. SMITH:

11 Q. In your own estimation, Mrs. O'Dell,
12 how many folks do you reckon just gave up and
13 left?

14 MR. MUELLER: I'm going to object to
15 the characterization of gave up. How does he
16 know whether they gave up.

17 MR. SMITH: I feel it's a clear
18 characterization under the facts that you've
19 received.

20 HEARING OFFICER HALLORAN: Strike the
21 word gave up. You may ask the question.

22 BY MR. SMITH:

23 Q. How many folks do you reckon in your
24 estimation left the building of those who did

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1 not get into the meeting hall itself?

2 A. I think 60 to 70 or more.

3 Q. That's your best estimate?

4 A. At least that many.

5 Q. Now, at 10:30, were you successful
6 getting into the meeting hall?

7 A. Yes, sir.

8 Q. Prior to that time, do you remember
9 anybody coming down from the podium and
10 conveying information to the folks that
11 assembled outside telling them what was going
12 on, what the rules were, whether they could
13 sign up and so forth?

14 A. At two different points, I heard
15 someone in the hall give that information.

16 Q. Can you tell the hearing officer
17 whether that was a male or female person?

18 A. Male.

19 Q. Was it an adult?

20 A. Yes, sir.

21 Q. Could you identify the person?

22 A. It was one of the two police officers
23 that I remember were there that night.

24 Q. What did the officer do on these

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1 occasions?

2 MR. MUELLER: Object. The testimony

3 hasn't been that it was the officer both times.
4 She said she heard people talking twice and on
5 one occasion it was an officer.

6 HEARING OFFICER HALLORAN: Mr. Smith?

7 MR. SMITH: I'll be happy to go back
8 over this.

9 HEARING OFFICER HALLORAN: Sustained.

10 BY MR. SMITH:

11 Q. You indicated that you heard someone
12 make announcements in the hallways on two
13 occasions?

14 A. Yes, sir.

15 Q. On the first occasion, do you recall
16 whether the person that made the announcement
17 was or was not a police officer?

18 A. Yes, I recall it was.

19 Q. And on the second occasion, do you
20 recall whether the person that made the
21 announcement was or was not a police officer?

22 A. Yes. It was the same officer.

23 Q. So we've established on both
24 occasions, it was the same police officer that

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1 made this announcement?

2 MR. LESHEN: Objection. She answers
3 the question, he poses another question, she
4 answers the question and then he sums up her
5 answer in the form of another question.

6 MR. SMITH: I was asked to go over
7 this.

8 MR. LESHEN: Excuse me. The answer
9 is -- I believe Mr. Smith went over it. She's
10 answered the question and this summing up for
11 whatever effort it makes an emphasis or
12 repeating it is not proper.

13 HEARING OFFICER HALLORAN: I will
14 sustain the objection as to the summing up of
15 what was just testified to. If you could just
16 keep it clean.

17 MR. SMITH: All right.

18 HEARING OFFICER HALLORAN: Thank you,
19 sir.

20 BY MR. SMITH:

21 Q. On the first occasion that you
22 described, do you recall what the police
23 officer said to the group that could not get
24 into the room?

1 A. All I heard was about three names
2 called.

3 Q. Were there any instructions as to
4 rules of procedure?

5 A. I couldn't hear any.

6 Q. Were there any admonitions or advice
7 as to rights?

8 MR. MUELLER: Objection, she's
9 testified to what she heard. Now it's leading
10 for the point of emphasis.

11 HEARING OFFICER HALLORAN: Mr. Smith?

12 MR. SMITH: I would be happy to
13 rephrase.

14 HEARING OFFICER HALLORAN: Thank you
15 very much.

16 BY MR. SMITH:

17 Q. Were these three names called?

18 A. Yes.

19 Q. Did you recognize any of them?

20 A. Yes.

21 Q. What names do you recall?

22 A. Max Reams, who I know.

23 Q. Did you recognize the other two
24 names?

1 A. They were female names.

2 Q. Was there any explanation coupled
3 with the calling of these three names called?

4 MR. MUELLER: Here we go again. Was
5 there this, was there that? Ask her what she
6 heard. The state's attorney is supposed to
7 know how to try cases.

8 MR. SMITH: I'd ask for an admonition
9 on that one.

10 HEARING OFFICER HALLORAN:
11 Mr. Mueller, I would advise you please don't
12 make your off the cuff comments --

13 MR. MUELLER: Mr. Halloran --

14 HEARING OFFICER HALLORAN:
15 Mr. Mueller, I'm not finished yet. Thank you.
16 Yesterday you made a few and I cautioned you
17 and I would please ask you to refrain from
18 making the off the cuff comments.

19 MR. MUELLER: Mr. Halloran, I've
20 asked you to caution the state's attorney about
21 the fact that he continues to ask questions in
22 the same objectionable way, even though you
23 sustained the objections. This process would

24 move forward a lot more if he simply doesn't

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1 lead and summarize.

2 HEARING OFFICER HALLORAN: Your
3 statement is so noted, Mr. Mueller, for the
4 record.

5 Mr. Smith, would you care to
6 rephrase, please?

7 MR. SMITH: I'd be happy to, your
8 Honor.

9 BY MR. SMITH:

10 Q. Was there any instructions coupled
11 with the calling of these names?

12 A. I did not hear any.

13 Q. Now, you indicated that on a second
14 occasion you remembered the same police officer
15 again stepping into the hallway and making some
16 sort of an announcement?

17 A. Yes, sir.

18 Q. Can you tell the hearing officer your
19 best recollection of what happened on that
20 second occasion?

21 A. The officer was saying that we were

22 too noisy, that the level of noise in the hall
23 was disrupting the proceedings inside and that
24 if we did not be quiet, he would clear the

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1 hallway.

2 Q. Do you recall anything disruptive
3 about what was going on in the hallway?

4 A. People were murmuring, frustrated
5 because they couldn't get in, couldn't see,
6 couldn't hear.

7 Q. Was there anything recalcitrant about
8 the assembly outside?

9 A. No. I think people were frustrated,
10 but nobody was misbehaving.

11 Q. Would you characterize the people
12 outside as -- what did you say, 150 people?

13 A. That would be from outside the
14 hearing room doors clear down to outside the
15 building, yes.

16 Q. Would you characterize the group
17 generally as orderly or disorderly that could
18 not get into that room?

19 MR. MUELLER: Object, that's leading

20 and again proper form as how you characterized
21 the group in not giving her choices that make
22 the preferred answer obvious.

23 MR. SMITH: Orderly or disorderly,
24 that's' not leading.

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1 HEARING OFFICER HALLORAN: Overruled.
2 She may answer.

3 MR. SMITH: Thank you, sir.

4 BY MR. SMITH:

5 Q. Would you characterize these folks
6 that could not get into that room as orderly or
7 disorderly?

8 A. Orderly.

9 Q. How would you characterize the group
10 that could not get in, this assemblage of
11 people as to their age?

12 A. Quite a few were 50ish, plus.

13 Q. What was your own mental reaction
14 about not being able to get into the room?

15 A. I was quite upset because I was --

16 HEARING OFFICER HALLORAN:
17 Mr. Leshen?

18 MR. LESHEN: Just a point of
19 clarification. At what point now are we where
20 she is now not able to get into the room? I'm
21 not following here. Is this the post 8:00
22 o'clock, pre-10:30 time?

23 HEARING OFFICER HALLORAN: Mr. Smith?

24 MR. SMITH: I would be happy to

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1 rephrase.

2 HEARING OFFICER HALLORAN: Thank you
3 very much.

4 BY MR. SMITH:

5 Q. When did you really start getting
6 upset?

7 A. In one side of my mind, I started
8 getting upset at 7:30 when I was inside the
9 room and realized after a few minutes that all
10 the seats were taken and nobody was going to be
11 allowed to stand in the room, which I took to
12 mean I wasn't going to get in.

13 Q. Did that feeling dissipate or become
14 exacerbated during the course of the evening?

15 A. It got worse.

16 Q. Was there a break in the proceedings
17 at some point on June 17th, if you recall?

18 A. Yes, there was.

19 Q. What transpired during the break?

20 A. I went into the room to talk to
21 somebody about the situation in the hallway.

22 Q. By somebody, do you mean another
23 spectator or someone in authority?

24 A. Someone in authority.

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1 Q. Were you successful or unsuccessful
2 at least interfacing with someone?

3 A. Yes, I was successful.

4 Q. Do you know who you spoke to?

5 A. I didn't personally know, but the
6 people that had pointed him out said his name
7 was Patrick Power.

8 Q. What did you say to Mr. Power?

9 A. As he moved away from a conversation,
10 I used his name to make sure I had the right
11 person. And I said Mr. Power, I am really
12 frustrated. This is supposed to be a public
13 hearing and the public cannot get into this

14 room and we cannot see and we certainly cannot
15 hear. What can you do to get a bigger room to
16 accommodate the crowd?

17 Q. Did the gentleman respond?

18 A. Yes, he did.

19 Q. Could you tell the hearing officer
20 his response?

21 A. He indicated that that need had been
22 recognized and had been addressed.

23 Q. Was there any further conversation?

24 A. Yes, there was.

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1 Q. Can you tell the hearing officer what
2 you said next?

3 A. I guess I was kind of stubborn and I
4 said if you're not the appropriate person who
5 can get a bigger room and get something soon,
6 could you tell me who I could talk to because
7 how can we ask questions or make comments if we
8 can't see or hear what's going on in there.

9 Q. Do you recall if the gentleman
10 responded?

11 A. Yes.

12 Q. What was his response?

13 A. In the middle of my sentence, a
14 second or two after I said how can a person ask
15 questions, his response was, questions?

16 Q. Could you describe his demeanor when
17 he delivered his retort?

18 A. It made me feel -- it was strong and
19 it made me wonder --

20 MR. LESHEN: Objection. The question
21 was how was his demeanor when he quote,
22 unquote, delivered the retort and she said he
23 had a strong demeanor.

24 MR. SMITH: I would respectfully

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1 suggest that's only the question or his
2 objection?

3 HEARING OFFICER HALLORAN: I beg your
4 pardon?

5 MR. SMITH: I believe that objection
6 is only one that can be raised by the
7 questioner --

8 MR. LESHEN: Nonetheless --

9 MR. SMITH: -- about beyond the scope

10 of what was asked.

11 MR. LESHEN: My objection is that
12 this is a narrative. When she answers the
13 question, then there's a narrative.

14 HEARING OFFICER HALLORAN: I'll allow
15 her to respond in a narrative, a limited
16 narrative. Overruled.

17 MR. SMITH: Thank you.

18 BY MR. SMITH:

19 Q. Can you tell the hearing officer then
20 in your own words, in your own narrative your
21 reaction to this one word retort?

22 A. I believe I stopped talking and being
23 rather a quiet person, I stepped back and tried
24 to think in my own mind did I say something

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1 wrong? Am I out of order here? What did I do?

2 Q. What happened next?

3 A. I think we just sort of drifted away
4 from each other and got out of the room.

5 Q. You indicated you got out of the
6 room, was that because the recess had
7 terminated?

8 A. It was about to and I believe that
9 Mr. Power kind of stepped aside a bit.

10 Q. What time do you believe it was when
11 the recess concluded?

12 A. I'm not certain. I was concerned
13 about making a statement.

14 Q. Do you have any idea of the time?

15 A. It would probably be 9:00-ish.

16 Q. Were you able to get a seat in the
17 room after the recess?

18 A. No, sir.

19 Q. What time were the announced hours of
20 the meeting and the publications?

21 A. The first night it was from
22 8:00 o'clock to 10:00 o'clock.

23 Q. Did you stay throughout the evening
24 until the meeting was terminated the first

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1 night?

2 A. Yes, I did.

3 Q. Could you tell the hearing officer
4 what time that meeting actually closed down?

5 A. Sometime after midnight.

6 Q. Did you stay the duration?
7 A. Yes. I left about 12:30.
8 Q. Did you ever get to speak as you had
9 requested?
10 A. No, sir.
11 Q. Was there a hearing the next evening?
12 A. Yes, there was.
13 Q. Did you attend?
14 A. Yes, I did.
15 Q. What time did you arrive?
16 A. Somewhere between 5:30, 5:45. The
17 meeting was to start at 6:00.
18 Q. So the second night it was a
19 6:00 o'clock start date?
20 A. 6:00 to 10:00.
21 Q. And what, if anything, unusual did
22 you notice about the meeting hall?
23 A. There were not the masses of people
24 that there had been there the night before.

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1 Q. Did you enter the building?
2 A. Yes.
3 Q. Did you notice anything unusual about

4 the stairways or the foyer different from the
5 first night?

6 A. They were only lightly people rather
7 than very crowded.

8 Q. Do you recall if you saw any chairs
9 in the hallway that second night?

10 A. Yes, there were chairs on two sides.

11 Q. What kind of chairs?

12 A. Metal folding chairs.

13 Q. Were they occupied or unoccupied when
14 you arrived?

15 A. Both.

16 Q. Did you go to the door of the meeting
17 room itself?

18 A. Yes, I did.

19 Q. What did you observe?

20 A. The room was not as full as it had
21 been the night before.

22 Q. Were there any empty seats?

23 A. Yes. I found an empty seat.

24 Q. At any time did you see the meeting

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1 room fill up that second night?

2 A. It was awhile later, maybe half hour,
3 45 minutes. I 'm not sure.

4 Q. What was the condition of the room at
5 that time?

6 A. I think it was pretty well filled.

7 Q. Were there any people seated outside
8 on those folding metal chairs?

9 A. Yes, there were.

10 Q. Roughly how many people were outside
11 of the meeting room itself?

12 A. Sitting and standing, 25.

13 Q. By that time, had there been any
14 speakers set up?

15 A. Yes.

16 Q. So what was being said inside was
17 being piped into the hallway?

18 A. Yes.

19 Q. Were there any video monitors?

20 A. No, sir.

21 Q. Where did you sit?

22 A. I was able to get inside the room
23 where I wanted to be so I can hear and see.

24 Q. Did you get a seat?

1 A. Yes.

2 Q. Were you given an opportunity to
3 speak on June 18th?

4 A. No, sir.

5 Q. Were you given an opportunity to
6 question the witnesses?

7 A. No, sir.

8 Q. Were you given an opportunity to
9 participate on the 18th?

10 A. Just as a spectator.

11 MR. SMITH: If I may, Mr. Hearing
12 Officer?

13 HEARING OFFICER HALLORAN: Take your
14 time, Mr. Smith.

15 BY MR. SMITH:

16 Q. Did you learn that first night that a
17 Professor Sandberg had appeared and testified?

18 A. I heard his name called sometime
19 after 10:30.

20 Q. Were you given the opportunity to
21 question that gentleman?

22 A. No, sir.

23 Q. Did you even hear what he said?

24 A. I heard the give-and-take in his

1 testimony after 10:30.

2 Q. Did you hear anything that transpired
3 before 10:30?

4 A. No, sir.

5 Q. When is the first time you were
6 afforded an opportunity to exercise any of the
7 rights you requested back on June 12 when you
8 filed your paper seeking to participate?

9 A. After Thursday, the fourth night.

10 MR. SMITH: Thank you, Mrs. O'Dell.

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

13 Mr. Moran?

14 MR. MORAN: No questions.

15 HEARING OFFICER HALLORAN:
16 Mr. Mueller, cross?

17 MR. MUELLER: I would like to defer
18 to Mr. Leshen first and then cross after he
19 gets done.

20 HEARING OFFICER HALLORAN: Thank you.
21 Mr. Leshen?

22 MR. LESHEN: Thank you.

23 CROSS-EXAMINATION

24 BY MR. LESHEN:

1 Q. Mrs. O'Dell, before you came into the
2 meeting, you had made up your mind that you
3 were in opponent to this landfill; is that
4 correct?

5 A. In my mind, I didn't use that word.
6 I saw it listed somewhere, objector with a
7 capital "O".

8 Q. That's not my question. Were you
9 in --

10 MR. SMITH: Objection. She was
11 interrupted. She was --

12 HEARING OFFICER HALLORAN: I agree.
13 Mr. Leshen, will you please let her respond?

14 MR. LESHEN: Yes, sir.

15 HEARING OFFICER HALLORAN: Thank you.

16 Mrs. O'Dell, you may proceed.

17 BY THE WITNESS:

18 A. I forgot where we were.

19 (Whereupon, the record was
20 read as requested.)

21 BY THE WITNESS:

22 A. I had seen the word objector with a

23 capital "O" and I didn't identify myself in my
24 own mind that way. I had concerns about the

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1 landfill and I wanted to hear what was going to
2 be said and be able to interact.

3 BY MR. LESHEN:

4 Q. So you in your effort to record the
5 feelings of the folks who were out in the
6 outside waiting room -- outside the hearing
7 room rather, in fact, were distributed a piece
8 of paper; is that correct?

9 A. Yes.

10 Q. And one said that people who were
11 opposed to the landfill?

12 A. That was the title on one, yes.

13 Q. And one for people who were not
14 opposed to the landfill?

15 A. Who were for it, yes.

16 MR. LESHEN: May I approach the
17 witness?

18 HEARING OFFICER HALLORAN: Yes, you
19 may.

20 BY MR. LESHEN:

21 Q. I would like to show you a document
22 that was attached to your statement and ask you
23 first whether this document that starts with
24 capital letters "opposed to the landfill" is

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1 the document that you prepared?

2 A. Yes.

3 Q. And is that, in fact, in your
4 handwriting?

5 A. Yes.

6 Q. And that's the document you've
7 described in response to my answer; is that
8 correct?

9 A. Yes.

10 Q. I'd like you, if you would, to read
11 out loud the first name, the very first name of
12 the document that you prepared that is entitled
13 opposed to landfill.

14 A. It's mine, Patricia O'Dell.

15 Q. I'm sorry? Patricia O'Dell?

16 A. Yes.

17 Q. And that's your handwriting; is that
18 correct?

19 A. Yes, it is.

20 Q. And that's your -- and you're from
21 Bourbonnais; is that correct?

22 A. Correct.

23 Q. And that's your phone number; is that
24 correct, the very first name?

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1 A. Yes.

2 Q. Mrs. O'Dell, the first time that you
3 came to the building, you entered the hearing
4 room; is that correct?

5 A. Yes.

6 Q. And no one prevented you from
7 entering the hearing room; is that correct?

8 A. That's correct.

9 Q. You were allowed to freely enter;
10 isn't that correct?

11 A. Correct.

12 Q. And you then determined that you
13 would leave because of a missing piece of
14 equipment; is that correct?

15 A. That's correct.

16 Q. And when you came back, the officer,

17 in fact, directed you to a place where you
18 could plug in your equipment; is that correct?

19 A. After I asked, yes.

20 Q. Okay. You asked the officer the
21 second time you entered the room whether there
22 was a special place for folks who wanted to
23 videotape; is that correct?

24 A. Yes.

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1 Q. And he, in fact, pointed you to a
2 place where you could be with the videotape
3 equipment, correct?

4 MR. PORTER: Object to the extent of
5 the fact it's already been covered. It's all
6 been asked and answered.

7 MR. LESHEN: This is
8 cross-examination.

9 HEARING OFFICER HALLORAN: I agree.
10 Proceed. Mr. Leshen?

11 BY MR. LESHEN:

12 Q. Ma'am, he directed you to a place
13 where you could be with the video equipment
14 where it would be operational, correct?

15 A. Not totally, no.
16 Q. Did he direct you to a place by the
17 coat rack?
18 A. Where a videographer could put their
19 equipment.
20 Q. And did you put your equipment there?
21 A. No, sir. I only provided the TV.
22 Q. Did you --
23 A. I was not the videographer.
24 Q. Okay. There was a place when you

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1 were present where as a videographer you could
2 have been, is that your testimony?
3 A. It was a place where equipment could
4 go.
5 Q. And did you -- was it your
6 understanding that somebody could as well have
7 stayed there with the equipment to operate it?
8 A. I assume they had to be seated.
9 Q. You located an outlet; is that
10 correct?
11 A. Yes.
12 Q. You plugged in the equipment; is that

13 correct?

14 A. I did not.

15 Q. You located the outlet, you placed
16 the equipment by the outlet?

17 A. No, I didn't.

18 Q. Where did you leave your equipment
19 when you exited?

20 MR. SMITH: Your Honor, I've been
21 patient that I would raise beating the dead
22 horse objection. Where are we going here?

23 HEARING OFFICER HALLORAN:

24 Mr. Leshen?

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1 MR. LESHEN: I'm unfamiliar with the
2 term beating the dead horse objection. I would
3 say that I am entitled to query this person
4 about her ability to be in and out of this
5 hearing room. And I believe that her ability
6 to stow her equipment based on her statement is
7 fair game today.

8 HEARING OFFICER HALLORAN: You know,
9 I agree with Mr. Leshen. Objection overruled.

10 BY MR. LESHEN:

11 Q. There came a point the second time
12 when you left the room again; is that correct?

13 A. Yes.

14 Q. And you left your equipment in the
15 room; is that correct?

16 A. My TV, my friend's camera.

17 Q. You left both of those in the place
18 where you were directed to do so by the police
19 officer; is that correct?

20 A. No, I left them where we had put them
21 on the floor.

22 Q. The police officer had told you about
23 a place; is that correct?

24 A. He indicated a place that could be

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1 used.

2 Q. And, in fact, in your statement you
3 don't talk in any way about the cooperation of
4 the police officer, is that correct, the
5 initial statement that you gave, the written
6 statement?

7 A. Except that he delivered the
8 material.

9 Q. In fact, what you say in there is
10 that locating an outlet, I told an
11 acquaintance; is that correct?

12 A. Yes.

13 Q. And you omit the helpful portion of
14 the police, correct?

15 A. I would have to see it.

16 MR. LESHEN: May I approach the
17 witness?

18 HEARING OFFICER HALLORAN: Yes, you
19 may.

20 BY THE WITNESS:

21 A. Yes, that's true. That was the first
22 outlet we're talking about.

23 BY MR. LESHEN:

24 Q. So when you were concerned about the

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1 police activity, you made sure to write it in
2 this statement; is that correct?

3 A. When I was concerned?

4 Q. Yes, when you were concerned, when
5 you felt that there was a strong demeanor or
6 that you were being told to be quiet, you put

7 that in your statement; is that correct?

8 A. I stated what the officer said.

9 Q. But you did not state what the

10 officer said when the officer was being helpful

11 to you; is that correct?

12 A. Not that time. I did another time.

13 Q. So at least one time when the officer

14 was being helpful to you, you decided that that

15 wasn't going to go into your statement; that is

16 a fair statement?

17 A. Absolutely not.

18 Q. Even though you had omitted it?

19 A. I didn't realize I had omitted. When

20 I told the story to anyone, I always included

21 that.

22 Q. So two times you went into the room

23 and two times you left the room; is that

24 correct?

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1 A. At least.

2 Q. At least two times you entered?

3 A. I may have stepped outside at least

4 one more time.

5 Q. And each time until 8:00 o'clock you
6 were allowed to remain in the room; is that
7 correct?

8 A. Yes.

9 Q. You decided to leave on your own to
10 walk out to see your friend?

11 A. Correct.

12 Q. No police officer moved you out of
13 the room, correct?

14 A. No.

15 Q. Am I correct?

16 A. That's correct.

17 Q. In your request to the city, the
18 written request, you said you would like to
19 speak at the landfill public hearing; is that
20 correct?

21 A. Correct.

22 MR. SMITH: Objection, Judge,
23 mischaracterizes. She included a number of
24 dates specifically.

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1 HEARING OFFICER HALLORAN: I think
2 she answered the question of Mr. Leshen. Can

3 you clarify that question, Mr. Leshen?

4 BY MR. LESHEN:

5 Q. Specifically, you said that on June
6 17, 18, 19, 20th and 21st, you would like to
7 speak at the landfill public hearing; is that
8 correct?

9 A. That's the instructions I was given
10 by the city clerk.

11 Q. Ma'am, listen, to my question. It's
12 not a trick question. Your written request to
13 the city is that you would like to speak; is
14 that correct?

15 A. Yes.

16 Q. And you wanted the same rules to
17 apply to you as applied to everybody else who
18 wanted to speak at the hearing; is that
19 correct?

20 A. I don't know about everyone else.

21 Q. You weren't asking for special
22 treatment?

23 A. I was asking to be able to ask
24 questions.

1 Q. And when you spoke to Mr. Power, you
2 did not inform him that you wanted, on that
3 night, you did not inform him that you wanted
4 to ask questions; is that correct?

5 A. I implied that I did.

6 Q. Did you directly ask Mr. Power or did
7 you directly inform him that you wanted to ask
8 questions at the June 17, 2002 meeting?

9 A. No, sir.

10 Q. Did you inform Mr. Power at any time
11 during the course of these proceedings that you
12 wanted to ask questions and be an objector?

13 A. Not Mr. Power, no.

14 Q. Did there come a time when you asked
15 Mr. Bohlen, when you informed Mr. Bohlen, that
16 you wanted to be an objector?

17 A. I spoke with him about --

18 Q. You had spoken to him about what?

19 A. Should I tell why I spoke with him?

20 Q. Listen to my question, please.

21 MR. SMITH: I'm going to object.

22 Where are we going?

23 HEARING OFFICER HALLORAN:

24 Mr. Leshen, where are we going? I'm having a

1 hard time following.

2 MR. LESHEN: I think at this point
3 we've addressed the issue of her ability to be
4 in and out for whatever weight you give it.
5 She's now said that and Mr. Smith asked many
6 questions about her inability to participate on
7 the 17th, 18th, 19th, 20th and I believe that
8 where this line of questioning will go is that
9 the first time she ever informed anybody that
10 she wanted to ask questions, she was allowed to
11 participate even though the published or noted
12 deadlines had been passed, she was given that
13 opportunity. And I think that's critical in
14 this case.

15 HEARING OFFICER HALLORAN: Mr. Smith?

16 MR. SMITH: Respectfully we have
17 established to the cross-examination to this
18 point that the city thinks she was treated
19 swell by providing that plug-in outlet. I
20 don't grasp where we were going with this
21 member of the public on this type of tactic,
22 this cross-examination, who went to a public
23 hearing to try to see what was going on. I
24 think there's some point, respectfully

1 Mr. Hearing Officer, where you have the power
2 to cut it off and say let's get to it.

3 HEARING OFFICER HALLORAN: I agree
4 with you. I think at some point, I'm not sure
5 if Mr. Leshen has reached that point, if you
6 could wrap it up, that would be terrific.

7 MR. LESHEN: I'll do my best.

8 HEARING OFFICER HALLORAN: That would
9 be terrific. Thank you.

10 BY MR. LESHEN:

11 Q. There came a point when you spoke to
12 Mr. Bohlen and asked him to be an objector,
13 correct?

14 A. That's part of it, yes.

15 Q. Is the part of my question that you
16 believe is correct is the fact you asked
17 Mr. Bohlen in a conversation sometime after
18 June 17th to be an objector; is that a correct
19 statement?

20 A. I did not directly ask him that, he
21 asked me.

22 Q. Mr. Bohlen asked you in a
23 conversation whether you wanted to be an

24 objector; is that correct?

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1 A. Yes.

2 Q. He asked you whether you wanted to
3 participate by questioning witnesses; is that
4 correct?

5 A. Yes, after.

6 Q. When?

7 A. During the second break on Wednesday
8 night. May I explain?

9 Q. Absolutely.

10 A. I had heard some motions given which
11 I can't enumerate and denied about people not
12 being able to get in. And during the first
13 break, I was talking with someone and saying I
14 had signed up in time to be able to ask
15 questions. That's the way I put it.

16 And I couldn't get in the first
17 night. I couldn't stay in the room once the
18 meeting started the first night because the
19 room was full. There was no way I would be
20 allowed to stand and I couldn't get a seat, so
21 I was outside in the hallway. I had understood

22 that if I filed my document as per the clerk's
23 instructions, I had done it in time and I was
24 unhappy because I now realized I could not get

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1 in.

2 Q. I know that you want to tell us again
3 but that's not my question. My question is did
4 you at some point -- you started to say at the
5 second break on Wednesday, you had a discussion
6 with Mr. Bohlen; is that correct?

7 A. Because the first break somebody
8 overheard my comments, asked me questions and
9 said see me at the next break. And that person
10 took me to speak to Mr. Bohlen.

11 Q. Do you know who that person was?

12 A. Yes. I found out that her name was
13 Nancy Richardson.

14 Q. So Ms. Richardson took you to the
15 hearing officer, correct?

16 A. Yes.

17 Q. And you told the hearing officer that
18 you wanted to participate?

19 A. We exchanged information and he asked

20 if that was true and I said yes it was.

21 Q. Did Mr. Bohlen then immediately allow
22 you to participate?

23 A. He didn't give any instruction. He
24 just said do you want your name on the list to

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1 be able to participate? And I said yes, that's
2 what I had intended.

3 Q. And he put your name on that list; is
4 that correct?

5 A. I guess so.

6 Q. He said he would put your name on the
7 list; is that correct?

8 A. His question was do you desire to
9 participate at this time. I said that was my
10 intention when I signed up and yes, please put
11 my name down.

12 Q. And he told you he would?

13 A. Yes.

14 Q. And from that point forward from that
15 Wednesday once you clarified your intentions to
16 Mr. Bohlen, you were able to, in fact,
17 participate?

18 A. I was a little bit late the next
19 night, Thursday night. I wasn't given any
20 instructions. So I was late and I heard from
21 someone in the audience that my name had been
22 called as being on the participant's list and
23 that if I needed to, I could sit up in front or
24 sit in the back in the audience part, but that

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1 I could listen.

2 Q. From that point forward once
3 Mr. Bohlen understood that you had the intent
4 to participate based on your discussion with
5 him, you were afforded every opportunity to
6 participate; is that a fair statement?

7 A. Yes.

8 MR. LESHEN: That's all I have.

9 HEARING OFFICER HALLORAN: Thank you,
10 Mr. Leshen. Mr. Mueller?

11 MR. MUELLER: Thank you.

12 CROSS-EXAMINATION

13 BY MR. MUELLER:

14 Q. Ma'am, I want to ask you about the
15 policeman. Mr. Smith went into great detail

16 about their uniforms.

17 Was there anything unusual about the
18 police uniforms that night or were they just
19 ordinary police uniforms?

20 A. I don't have occasion to see police
21 persons up close very often. They looked to me
22 like they were policemen doing their duty.

23 Q. Okay. You were asked whether the
24 policemen were armed and you said you believed

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1 they were?

2 A. Later I had noticed that there was a
3 gun.

4 Q. Now, has it been your understanding
5 through your common experience in the community
6 that a policeman carries a side arm as part of
7 his standard uniform and equipment?

8 A. Yes.

9 Q. So there's nothing unusual about the
10 fact that they were armed?

11 A. I assumed they were on duty, yes.

12 Q. You didn't see any guns drawn, did
13 you?

14 A. No.

15 Q. You weren't afraid that you were
16 going to be shot, were you?

17 A. No.

18 Q. You weren't intimidated by the fact
19 that the policeman wore his uniform and that
20 the uniform included their standard equipment;
21 isn't that right?

22 A. I forgot how the question started.

23 Q. You weren't intimidated by the fact
24 that the policemen were in uniforms?

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1 A. No.

2 Q. Thank you. You testified that on
3 June 12th, which would be the Wednesday before
4 the hearing started, you went to the clerk's
5 office?

6 A. Yes, sir.

7 Q. Who did you speak with there?

8 A. I'm not sure of the name.

9 Q. Could you physically describe the
10 person you spoke with?

11 A. There were at least two people that I

12 spoke with. One was a taller, dark-skinned
13 young woman and the other was a short
14 light-skinned, perhaps slightly a few years
15 older.

16 Q. Excuse me. What did the first one
17 look like?

18 A. She was tall and dark-skinned, like
19 African-American.

20 Q. Like African-American or was she
21 African-American?

22 A. I don't know what people like to be
23 called. She had very dark skin and I was
24 admiring her outfit, that's how I remember her.

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1 Q. Could you stand up for --

2 MR. MUELLER: Leave to have the
3 witness to look at the audience because we
4 might be able to identify the person she spoke
5 to.

6 HEARING OFFICER HALLORAN: Leave
7 granted.

8 BY MR. LESHEN:

9 Q. Could you stand up for a second? Do

10 you know who Mayor Green is?

11 A. I do now.

12 Q. Do you see the lady you talked to
13 sitting over in that direction?

14 A. I don't know for certain if she is
15 the one. She was tall and had on flat heals.

16 Q. And you asked what you needed to do
17 to be able to ask questions?

18 A. I was delivering my statement that
19 day.

20 Q. I thought you said the clerk's office
21 told you that day that you had to write out a
22 letter asking to speak?

23 A. Not that day, no.

24 Q. When did they tell you that?

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1 A. When I called on Monday the 10th.

2 Q. Do you know who you spoke to on
3 Monday?

4 A. No, sir. I didn't write a name that
5 time.

6 Q. You just talked to someone on the
7 telephone?

8 A. Whoever answered.

9 Q. Did you ask to talk to the city
10 clerk?

11 A. I said I wanted information about
12 signing up for the public hearing.

13 Q. So the answer is you didn't ask to
14 talk to the city clerk?

15 A. No, whoever could give me the
16 information.

17 Q. You spoke to the person that answered
18 the phone, right?

19 A. Yes, sir.

20 Q. And when you arrived at the hearing,
21 you arrived with a friend of yours?

22 A. Yes, sir.

23 Q. He was going to videotape the
24 proceeding?

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1 A. Yes, sir.

2 Q. And, in fact, specific accommodations
3 were made for him to be able to do that?

4 A. I wouldn't put it that way.

5 Q. Well, there was actually a place set

6 aside for the videotaping process?

7 A. Apparently. I was informed there
8 was.

9 Q. Your cameraman was ultimately placed
10 into that spot, right?

11 A. I didn't actually see him arrive
12 there, but I assume so.

13 Q. Well, did you see him videotaping
14 later on?

15 A. Yes.

16 Q. And was he in the place that had been
17 designated for the videotaping?

18 A. Yes.

19 Q. And in a place where it was a good
20 view?

21 A. Yes.

22 Q. Was he allowed to stand up and
23 videotape or did he have to sit down so he
24 could operate his camera?

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1 A. I wasn't in the room. I never saw.
2 I did see a Chair later nearby.

3 Q. Did he actually get a videotape to

4 the first night's proceedings?

5 A. Yes.

6 Q. Did you watch it?

7 A. No, sir.

8 Q. You had the opportunity to watch it,

9 didn't you?

10 A. I gave it to someone else.

11 Q. Who did you give it to?

12 A. I'm not sure. One of a couple of

13 people.

14 Q. How many nights did this individual

15 videotape?

16 A. Monday night is the only night he

17 videotaped.

18 Q. Were you involved in the videotaping

19 of any other night?

20 A. Yes.

21 Q. Were you, in fact -- was it your

22 designated responsibility to make sure the

23 hearings were taped on behalf of the objectors?

24 A. No, sir.

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1 Q. Then how were you involved in the

2 videotape process?

3 A. I just thought it sounded like a good
4 idea and I asked my friend if he could do it.

5 Q. Did you cause a videotape to be
6 created of the entire proceedings?

7 A. No, sir.

8 Q. But you did have a tape made of night
9 one?

10 A. Yes, sir.

11 Q. You chose not to watch it?

12 MR. SMITH: Asked and answered.

13 HEARING OFFICER HALLORAN: Sustained.

14 BY MR. MUELLER:

15 Q. The tape was, after it was made,
16 placed in your possession?

17 A. Briefly.

18 Q. After the tape of night one was made,
19 was it placed in your possession?

20 MR. SMITH: Asked and answered. She
21 just said briefly.

22 MR. MUELLER: I didn't hear that.

23 HEARING OFFICER HALLORAN: I didn't
24 hear that either. Proceed.

1 BY MR. MUELLER:

2 Q. And you were in and out of the
3 hearing room between 7:30 and 8:05 or later at
4 least three times, correct?

5 A. Between 7:30 and 7:50, yes.

6 Q. And your friend who was creating the
7 videotape at your request was in the hearing
8 room for the entire duration once he got his
9 equipment; isn't that true?

10 A. I believe so, yes.

11 Q. Didn't you testify that -- didn't
12 you, in your written statement, say that your
13 friend arrived with his equipment about 8:05
14 and then you and he then went and set it up in
15 the hearing room?

16 A. No. I said that he arrived at about
17 8:05 and we proceeded into the building up the
18 stairs and to the hearing room. He went in.

19 Q. And, in fact, the item that he needed
20 was delivered by a policeman to him from you?

21 A. Correct.

22 Q. The policeman didn't keep you out,
23 you just chose to stay out at that point,
24 right?

1 A. No. I could not enter.

2 Q. Did someone tell you you could not
3 enter?

4 A. At that point, no.

5 Q. Now then in terms of what you heard
6 announced in the hallway, you were moving back
7 and forth busying yourself with other tasks
8 while things were being called out in the
9 hallway, correct?

10 A. Would you say that again?

11 Q. You were moving back and forth
12 busying yourself with other tasks in the
13 hallway, weren't you?

14 A. After the meeting started?

15 Q. Yes.

16 A. Yes.

17 Q. In fact, didn't you write in your
18 written statement as I moved back and forth, I
19 heard names called in the room and later in the
20 hallway?

21 A. (No response).

22 Q. Did you write that?

23 A. If you're reading it directly, yes.

24 Q. Now, you said that there were

1 probably 150 people that couldn't get into the
2 hearing?

3 A. That's my good estimate, yes.

4 Q. Do you recall writing in your
5 statement, I personally know that at least
6 another 60 people were somewhere between the
7 room and the outside entry area?

8 A. Yes, sir.

9 Q. So was it 60 or 150 that couldn't get
10 in?

11 A. I believe my statement said another
12 60, implying at least 120 left.

13 Q. Well, let's see what your statement
14 says.

15 MR. MUELLER: Leave to approach the
16 witness?

17 HEARING OFFICER HALLORAN: You may.

18 BY MR. MUELLER:

19 Q. If you would read from your
20 statement, ma'am, starting with the last
21 paragraph on that page.

22 A. The public could not hear what

23 transpired at a so-called public hearing, only
24 about three or four people at each side of the

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1 double doors could hear and/or see into the
2 room. I personally know that at least another
3 60 people were somewhere between the room and
4 the outside entry area around 8:00 p.m.

5 Q. Thank you, ma'am.

6 MR. SMITH: She hadn't finished. I
7 ask for a notice that Mr. Mueller attempted to
8 pull that document from the witness's hand.
9 Could you notice that?

10 HEARING OFFICER HALLORAN: The record
11 will so reflect. Mr. Mueller, allow her to
12 finish.

13 MR. SMITH: He's standing over the
14 witness, your Honor.

15 HEARING OFFICER HALLORAN: I have no
16 problem with that. He's standing next to her
17 and not over her.

18 BY MR. MUELLER:

19 Q. Go ahead and finish your paragraph,
20 ma'am.

21 A. By the time I went down the hall with
22 my legal pads, the crowd had doubled half or
23 more.

24 Q. And when you were going down the hall

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1 with your legal pads that was because during
2 the hearing you busied yourself with
3 circulating the petition, right?

4 A. I wouldn't say that, no.

5 Q. Well, did you circulate that petition
6 while you were outside on the first night?

7 MR. SMITH: Objection,
8 mischaracterization.

9 HEARING OFFICER HALLORAN:
10 Mr. Mueller?

11 MR. MUELLER: It's cross-examination.
12 I am entitle to lead and try to put words in
13 her mouth.

14 MR. SMITH: Well, he's certainly
15 putting words in her mouth, I would stipulate
16 to that. By the term petition, this contained
17 names of people and we would offer that this
18 lady, in trying to be as fair as possible,

19 circulated two yellow pads giving people the
20 opportunity whether they were objecting or not
21 objecting.

22 MR. LESHEN: I would like for the
23 record to note that these are, in fact,
24 documents where folks are registering their

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1 views one with large bold capital letters that
2 says opposed and one with much smaller letters
3 that say for.

4 So I think that whether we quibble
5 over the use of the word petition or not, it's
6 certainly the position of Mrs. O'Dell that she
7 was opposed and she had signed her name before
8 circulating. So I don't think it's in any way
9 misleading to the record to say that somebody
10 is circulating the --

11 HEARING OFFICER HALLORAN: I don't
12 think it's misleading anymore in the record.
13 If she can answer, she may.

14 MR. MUELLER: Let me rephrase it.

15 BY MR. MUELLER:

16 Q. Did you circulate the petitions while

17 you were outside of the hearing room on the
18 first night?

19 A. I circulated two legal pads, one was
20 for and one was against landfills.

21 Q. And your name is the first one on the
22 legal pad that starts out with the word
23 opposed, even though you had not made up your
24 mind to be an objector; is that right?

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1 A. That's not totally accurate.

2 Q. Is your name the first one on the
3 legal pad that says opposed?

4 A. Yes.

5 Q. Now, you indicated you did not get to
6 speak on June 18th, the second night?

7 A. Correct.

8 Q. And that's because there was no
9 cross-examination the second night due to the
10 nature of the rules, which said that those
11 witnesses would all be completed and
12 cross-examined in a panel format, right?

13 A. I don't know anything about that.

14 Q. Do you remember if anybody

15 cross-examined on June 18th?
16 A. I don't believe so.
17 Q. Did anybody cross-examine on June
18 19th?
19 A. I don't think so.
20 Q. Did anyone cross-examine on June
21 20th?
22 A. I don't remember. I would have to
23 look at my notes.
24 Q. And, in fact, were you present when

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1 the applicants completed its witnesses and
2 cross-examination was opened to all registered
3 participants?
4 A. I don't know.
5 Q. Were you given an opportunity at that
6 time to cross-examine?
7 A. Can you give me some indication as to
8 when that was?
9 Q. I'm asking whether you remember,
10 ma'am.
11 MR. SMITH: The witness is a lay
12 witness and a member of the public. She's

13 looking for help here.

14 HEARING OFFICER HALLORAN: I agree.

15 Mr. Mueller, would you give her a little help?

16 BY MR. MUELLER:

17 Q. Do you remember ever asking any
18 witnesses any questions?

19 A. Yes.

20 Q. So you were given an opportunity to
21 ask questions?

22 A. Yes.

23 Q. Now, Mr. Smith said that you felt you
24 were not afforded any of the rights that you

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1 wanted to have until Thursday of that week?

2 MR. SMITH: Objection, I didn't
3 testify here. Form of the question.

4 HEARING OFFICER HALLORAN: Objection
5 sustained.

6 MR. SMITH: Thank you.

7 BY MR. MUELLER:

8 Q. In response to one of Mr. Smith's
9 questions, am I correct in understanding you to
10 have said you didn't get any of the rights that

11 you wanted to have until Thursday of that week?

12 MR. SMITH: Objection, the witness is
13 not competent to testify as to what
14 Mr. Mueller's understanding might be.

15 MR. LESHEN: I would like to respond
16 to that. The witness be she civilian or
17 military or official or unofficial has come
18 forward here with a position and has given
19 direct examination. As we all know the great
20 truth -- the great engine that allows people to
21 get at the truth as much as we were able is
22 cross-examination and this witness does not
23 need to be quote, unquote, protected any more
24 than any other witness, so I think the same

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1 rules need to apply despite the fact that
2 Mr. Smith wants to protect the quote, unquote,
3 civilian witnesses.

4 HEARING OFFICER HALLORAN: Francine,
5 could you read back the question, please?

6 (Whereupon, the record was
7 read as requested.)

8 HEARING OFFICER HALLORAN: I think

9 she can answer if she is able. Objection
10 overruled. Mrs. O'Dell?

11 BY THE WITNESS:

12 A. I think it's correct.

13 BY MR. MUELLER:

14 Q. What rights were you deprived of on
15 Tuesday, June 18th?

16 A. I was not aware that I could ask
17 questions because my name had not been called.

18 Q. But, in fact, there was no
19 questioning by objectors on June 18th; isn't
20 that true?

21 A. Correct.

22 Q. So you really weren't deprived of any
23 rights on that night?

24 A. Not on Tuesday, no.

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1 Q. What rights were you deprived of on
2 Wednesday June 19th?

3 A. None on Wednesday.

4 Q. And, in fact, that was the night when
5 Mr. Bohlen -- when someone took you to
6 Mr. Bohlen that clarified your status and he

7 immediately indicated that he would consider
8 you registered, right?

9 A. Yes.

10 MR. MUELLER: I have nothing further.

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

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

14 REDIRECT EXAMINATION

15 BY MR. SMITH:

16 Q. Mr. Mueller asked you this question,
17 I believe. Specific accommodations were made
18 for your cameraman, right? And I believe your
19 answer was, I wouldn't put it that way. Do you
20 remember that?

21 A. Yes.

22 Q. How would you put it?

23 A. Someone in the audience or in the
24 room in the public area indicated that there

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1 was a place that needed to be -- there was a
2 place where the camera person should be and
3 that I could find that information from the
4 policeman, the one that was in the room then.

5 Q. So eventually you and Dave
6 successfully were extended the use of the city
7 plug-in?

8 A. David was.

9 Q. All things considered, do you feel
10 that as a citizen invited to a public meeting
11 you were treated well on June 17th?

12 MR. MUELLER: I'm going to object.
13 That calls for her making a conclusion. It's
14 beyond the scope of cross and is cumulative of
15 direct.

16 MR. SMITH: Your Honor, if I may?

17 HEARING OFFICER HALLORAN: You may.

18 MR. SMITH: I feel the entire
19 cross-examination has been designed to try to
20 persuade the record somehow that she was
21 treated well and this now summarizes her
22 impression of how she was treated. That's why
23 we're here on the issue of fundamental
24 fairness.

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1 HEARING OFFICER HALLORAN: I'm going
2 to overrule the objection. She may answer if

3 she is able.

4 BY MR. SMITH:

5 Q. How do you feel you were treated?

6 A. I could not get into a public hearing
7 and I could not hear. I didn't like it.
8 Unfair.

9 MR. SMITH: Nothing further.

10 HEARING OFFICER HALLORAN: Mr. Moran?

11 MR. MORAN: No questions.

12 HEARING OFFICER HALLORAN:

13 Mr. Leshen?

14 BY MR. LESHEN:

15 Q. Just a point of clarification. At
16 the first break when you entered the room, you
17 asked somebody who was in charge that you could
18 speak with and, in fact, they pointed you out
19 to Pat Power, correct?

20 A. Correct.

21 MR. LESHEN: Thank you.

22 HEARING OFFICER HALLORAN: Thank you.

23 You may step down, Mrs. O'Dell. Thank you,
24 very much.

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1 I'm going to take a five-minute
2 break. I didn't realize Mrs. O'Dell's
3 testimony would take three-quarters of the
4 morning. Before we all go, is there any
5 members of the public that wish to testify this
6 morning or before lunch?

7 Mr. Murray, are you going to be
8 around today? What's more convenient for you,
9 sir?

10 MR. MURRAY: Either now or later.

11 HEARING OFFICER HALLORAN: What do
12 you think, Mr. Porter? Are you going to
13 call --

14 MR. SMITH: I have a Mrs. Blume that
15 I intended to call next, but whatever your
16 pleasure.

17 HEARING OFFICER HALLORAN: Let's go
18 with Mrs. Blume after the five-minute break.

19 MR. LESHEN: Mr. Halloran, could I
20 ask that since all the civilian witnesses are
21 here or who appear that they want to
22 participate, let's just finish all of them and
23 we'll be done with that aspect.

24 HEARING OFFICER HALLORAN: So we'll

1 probably take two more before lunch. Any way,
2 see you all back in five minutes. Thank you.

3 (A short break was had.)

4 HEARING OFFICER HALLORAN: Back on
5 the record. It's approximately 11:15. We
6 have -- before I begin, are there any members
7 of the public that would like to speak that are
8 not on the witness list?

9 MR. SMITH: Cheryl Blume would like
10 to speak and we're willing to call her.

11 HEARING OFFICER HALLORAN: Okay.
12 With that being said, Mrs. Blume?

13 (Whereupon, the witness was duly sworn.)

14 CHERYL BLUME,
15 called as a witness herein, having been first
16 duly sworn, was examined and testified as
17 follows:

18 DIRECT EXAMINATION

19 BY MR. PORTER:

20 Q. Mrs. Blume, state your name for the
21 record, please.

22 A. Cheryl, Blume, B-l-u-m-e.

23 Q. I apologize for the
24 mispronunciation.

1 A. That's all right.

2 Q. What is your address?

3 A. 7326 South 4000 West Road in
4 Chebanse, C-h-e-b-a-n-s-e.

5 Q. Did you attend the annexation
6 hearings put on by the city of Kankakee?

7 A. Yes, I did.

8 Q. Were those hearings crowded?

9 A. Yes.

10 Q. When did those hearings occur?

11 A. I don't know the exact date. They
12 were probably six to eight months prior to the
13 hearings.

14 Q. How many people attended those
15 hearings?

16 A. Oh, I estimate probably between 75 to
17 100 people.

18 Q. Were people allowed to stand in the
19 back of the room at the annexation hearings
20 hosted by the city of Kankakee?

21 A. Yes.

22 Q. Were all the seats taken during those
23 annexation hearings?

24 A. Yes.

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1 Q. Were people forced to stand in the
2 hallway?

3 A. Not in the hallway.

4 Q. Were there armed police at the
5 annexation hearing?

6 A. I don't recollect that.

7 Q. How many people were standing is your
8 best estimate?

9 A. We were standing shoulder to shoulder
10 pretty much and we lined all the way around the
11 chairs that were in the room there.

12 Q. What is your best estimate of the
13 amount of people that were standing in the back
14 of the room at the annexation hearings?

15 A. Oh, there had to be 30 plus I would
16 think.

17 Q. The hearings were held in what
18 room -- strike that.

19 The annexation hearings were held in
20 what room?

21 A. In the same building that the city

22 hall hearings were held.

23 Q. They were held in the same room as
24 the landfill siting hearings; is that correct?

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1 A. That's correct.

2 Q. Were you one of the people that
3 attempted to go to the landfill siting hearing
4 on June 17, 2002?

5 A. Yes.

6 Q. Were you able to get in?

7 A. No.

8 Q. Were people allowed to stand in the
9 back of the room at that time?

10 A. No.

11 Q. Were there armed police there?

12 A. Yes.

13 MR. PORTER: I have nothing further.

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

16 MR. MORAN: No questions.

17 HEARING OFFICER HALLORAN:
18 Mr. Mueller?

19 MR. MUELLER: Nothing.

20 HEARING OFFICER HALLORAN: Mr. Leshen
21 is not present. And for the record,
22 Mr. Sandberg is still not here. He hasn't been
23 present for the entire morning. I hope he's
24 okay.

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1 With that being said, Mrs. Blume, you
2 may step down. Thank you very much.

3 MR. PORTER: Thank you.

4 HEARING OFFICER HALLORAN: Again, any
5 members of the public that would wish to
6 justify or make public comment, you can step up
7 right now.

8 Mr. Murray sign in in the back of the
9 room afterwards. Do you want to get sworn in?

10 MR. MURRAY: Yes.

11 HEARING OFFICER HALLORAN: Raise your
12 right hand.

13 (Whereupon, the witness was duly sworn.)

14 HEARING OFFICER HALLORAN: Go ahead,
15 Mr. Porter.

16 CHARLES MURRAY,
17 called as a witness herein, having been first

18 duly sworn, was examined and testified as
19 follows:

20 DIRECT EXAMINATION

21 BY MR. PORTER:

22 Q. Mr. Murray, I understand that you
23 want to give a statement and I just ask you to
24 do so. Please use the microphone.

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1 A. The point that I wanted to make in my
2 statement is with regard to a comment that
3 Mr. Mueller made on Monday that there were no
4 other participants that filed an appeal on this
5 hearing. I had looked into doing that myself,
6 but I was concerned about what cost may be
7 incurred to me with regard to reproducing the
8 record.

9 Mr. Mueller indicated that the
10 statute evidently indicates that citizen groups
11 are protected from adsorbing that cost. I was
12 acting as a private individual.

13 The way I understood the statute is
14 that private individuals do not have that same
15 protection, that combined with the appearance

16 to me that this was very much a legal
17 proceeding in that I would probably have to
18 have legal counsel to really represent my
19 interest for those two reasons I chose not to
20 file an appeal, even though I think there are
21 reasons for an appeal to the siting decision to
22 be found. That's the only statement that I
23 could make.

24 HEARING OFFICER HALLORAN: Thank you.

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1 Mr. Moran?

2 MR. MORAN: No questions.

3 HEARING OFFICER HALLORAN:

4 Mr. Mueller?

5 MR. MUELLER: Yes.

6 CROSS-EXAMINATION

7 BY MR. MUELLER:

8 Q. Mr. Murray, you are affiliated with
9 Mr. Munion in the outrade (phonetic) group?

10 A. That's correct.

11 Q. And you personally cross-examined
12 every applicant witness at the 39.2 hearing,
13 didn't you?

14 A. I believe so, yes.
15 MR. MUELLER: Thank you.
16 HEARING OFFICER HALLORAN:
17 Mr. Leshen?
18 MR. LESHEN: No questions.
19 HEARING OFFICER HALLORAN: Thank you.
20 Anyone else?
21 Thank you very much. You may step
22 down. Let's go off the record for a minute.
23 (Discussion held off the record.)
24 HEARING OFFICER HALLORAN: Let's go

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1 on the record. In any event, Mr. Mueller, you
2 were stating before we were on the record?
3 MR. MUELLER: By this point, it's
4 pretty clear and the record has been made that
5 not everybody got in that night and the people
6 who didn't get in were unhappy about it.
7 The applicant at least, Town and
8 Country, would stipulate that they could call
9 more people who could testify to pretty much do
10 the same thing. Many of these people want to
11 get up and make statements about their

12 unhappiness. I have no problem with it, but to
13 the extent that the state's attorney's office
14 calls them as witnesses, I'm compelled to make
15 a legal objection that I think the testimony
16 now is repetitive and accumulative and no
17 longer a fact finding process.

18 HEARING OFFICER HALLORAN: Mr. Smith,
19 do you care to address that?

20 MR. SMITH: Could I have just one
21 moment?

22 HEARING OFFICER HALLORAN: Yes, you
23 may.

24 MR. SMITH: Mr. Hearing Officer, we

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1 have identified a Robert Skeen who has
2 expressed a willingness to testify on this
3 subject. A Mr. Mark Warpet, W-i-r-p-e-t, who
4 is also expected to testify on this subject. I
5 believe he's filed a sworn affidavit that's
6 attached to a motion for summary judgment
7 that's part of the record.

8 We've identified a Darwin Peerbolt,
9 P-e-e-r-b-o-l-t, who I've indicated expressed

10 an interest in coming here today. He told me
11 that he wished to testify and he also wished to
12 make a public statement. He specifically
13 showed key interest and actually showed up at
14 my office, I believe it was yesterday. The day
15 before yesterday I believe it was.

16 We've identified that Jeremy Beck,
17 who works for the United States Department of
18 Agriculture has given an affidavit in
19 connection with the motion for summary judgment
20 which is part of the record in this case. I
21 believe that they would also testify that
22 people could not despite their attempts to get
23 into that meeting hall.

24 HEARING OFFICER HALLORAN: So we have

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1 potentially four more witnesses the state's
2 attorney is going to call?

3 MR. SMITH: We have the potential for
4 calling these people. Some of them have work
5 problems. We did expect Mr. Peerbolt to show
6 at 4:00 because he specifically told me
7 directly that he could not come any earlier.

8 HEARING OFFICER HALLORAN: Now this
9 is all inclusive. You don't -- I vaguely
10 remember the petitioner stating, not all of
11 them, but that the hearing would be over by
12 7:00 o'clock tonight. That doesn't look like
13 it's going to be a possibility. This pretty
14 much encompasses all the witnesses. You're not
15 going to direct any public comment tomorrow.
16 This is it? The reason I'm asking you is it is
17 starting to boarder on accumulative evidence.
18 That's my concern.

19 MR. SMITH: I would represent that
20 the four people that I've identified would
21 testify in substantial conformity to what
22 you've heard in regard to the excess of the
23 public hearing.

24 HEARING OFFICER HALLORAN: But you're

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1 not going to take Mr. Mueller up on his
2 stipulation, I take it?

3 MR. SMITH: Could I have one moment?
4 And is it clear here, Mr. Hearing Officer, that
5 we do have other witnesses on other subjects?

6 HEARING OFFICER HALLORAN: It is
7 clear in my mind.

8 MR. MUELLER: Mr. Halloran, if we're
9 confining ourselves at this point to the
10 limited issue of what do we do with the balance
11 of the morning, I understand that the city is
12 prepared to put Mr. Power on so we can use the
13 time productively.

14 I mean, I think everybody is trying
15 to make an effort to accommodate the schedules
16 of witnesses and if they don't have anyone now
17 that they want to call, the city says they
18 could put Mr. Power on.

19 HEARING OFFICER HALLORAN: You know,
20 I think what we'll do is take a lunch break
21 right now and be back here at 12:30, if that's
22 okay with everybody. And I appreciate your
23 offer Mr. Mueller. As to your legal objection,
24 I agreed somewhat that it is starting to

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1 boarder on accumulative evidence, however, I
2 think I will allow it. Mr. Smith represents
3 that he has only four more witnesses from the

4 public.

5 MR. SMITH: We believe, Mr. Hearing
6 Officer, that two of these witnesses would
7 testify that they could not get into the
8 hearing hall also the second night, but we're
9 informed that Mr. Kruse is here and he could be
10 called as a short witness right now.

11 MR. PORTER: He's not a member of the
12 public, he's county employed.

13 HEARING OFFICER HALLORAN: Okay.

14 MR. PORTER: And it would take a very
15 short time.

16 HEARING OFFICER HALLORAN: Let's do
17 that. In a nutshell, Mr. Mueller, I won't take
18 you up on your legal objection. If it does
19 happen to be accumulative, I'll let the Board
20 decide, but right now I think we're okay.

21 With that said, Mr. Porter, do you
22 want to call the city employee?

23 MR. PORTER: We call MAYOR GREEN.

24 HEARING OFFICER HALLORAN: Thank you.

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2 HALLORAN reporter will swear you in.

3 (Whereupon, the witness was duly sworn.)

4 KARL KRUSE,

5 called as a witness herein, having been first

6 duly sworn, was examined and testified as

7 follows:

8 DIRECT EXAMINATION

9 BY MR. PORTER:

10 Q. State your name for the record,
11 please.

12 A. Karl Kruse, K-r-u-s-e.

13 Q. Are you also a member of the Kankakee
14 County Board?

15 A. Yes, I am. I'm also the chairman of
16 the Kankakee County Board.

17 Q. Were you the chairman at the Kankakee
18 County Board at the time the application was
19 filed on March 13 of 2002?

20 A. Yes, I was.

21 Q. At or around that date, were you ever
22 provided a copy of the application filed by
23 Town and Country by the city of Kankakee?

24 A. No, I was not.

1 Q. To this date, has the city of
2 Kankakee ever provided you a copy?

3 A. No.

4 Q. To your knowledge, has the city of
5 Kankakee ever provided a copy to the solid
6 waste director for Kankakee County?

7 A. Not to my knowledge, no.

8 MR. PORTER: I have nothing further.

9 HEARING OFFICER HALLORAN: Mr. Moran?

10 MR. MORAN: No questions.

11 HEARING OFFICER HALLORAN:

12 Mr. Mueller, cross?

13 CROSS-EXAMINATION

14 BY MR. MUELLER:

15 Q. Mr. Kruse, were you at the city of
16 Kankakee hearings?

17 MR. PORTER: Objection, beyond the
18 scope.

19 HEARING OFFICER HALLORAN: I'll allow
20 a little latitude. I have up until this date,
21 so why stop now. Mr. Mueller?

22 MR. MUELLER: I take it you overruled
23 the objection?

24 HEARING OFFICER HALLORAN: I

1 overruled the objection, Mr. Mueller.

2 BY MR. MUELLER:

3 Q. Go ahead and answer the question,
4 Mr. Kruse, were you at the hearings?

5 A. I attended about half of a hearing on
6 one evening and went to the public comment.

7 Q. Where you given a public comment
8 scripted for you by Mr. Porter or Mr. Elston?

9 A. I gave a public comment that was
10 worked on, yes, by counsel from the county and
11 our outside council.

12 Q. And prior to the application for
13 siting approval being filed, the county had
14 passed a resolution to oppose the same,
15 correct?

16 MR. PORTER: Again, I'm going to
17 object. This witness --

18 MR. MUELLER: This is something I'm
19 going to follow up on --

20 MR. PORTER: Let me finish my
21 objection.

22 HEARING OFFICER HALLORAN: Can I hear
23 Mr. Porter's objection, Mr. Mueller?

24 MR. PORTER: I'm going to object,

1 again, as to beyond the scope. I called this
2 witness for the very limited purpose to testify
3 that he has never received a copy of the
4 application and we seem to be going far afield
5 with that.

6 HEARING OFFICER HALLORAN: I agree.
7 Mr. Mueller, is this going to be very, very,
8 very limited outside the scope of direct?

9 MR. MUELLER: Very limited. I have
10 just about two questions.

11 HEARING OFFICER HALLORAN: You may
12 proceed. All right. Objection overruled.

13 BY MR. MUELLER:

14 Q. Prior to the application by Town and
15 Country being filed, the county had passed a
16 resolution indicating it was going to oppose
17 the application, correct?

18 A. Could you restate that again, please,
19 I want to make sure I understand the question?

20 Q. Prior to the application being filed,
21 had the county passed a resolution indicating
22 their opposition to the city of Kankakee siting

23 a landfill?

24 MR. PORTER: I'll object to the

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1 extent it calls for a legal conclusion as to
2 what the imports or resolution was. It is part
3 of the record.

4 HEARING OFFICER HALLORAN: For the
5 record, he may answer if he is able. The
6 objection is overruled.

7 BY THE WITNESS:

8 A. I'm trying to remember if we had
9 actually passed a resolution objecting. To the
10 best of my knowledge, no, we did not pass a
11 resolution objecting to the city's landfill
12 prior to their siting.

13 BY MR. MUELLER:

14 Q. Well, prior to the siting application
15 being filed hasn't the county passed a
16 resolution now authorizing the retention of
17 Patrick Engineering to review the application
18 and the retention of Hinshaw and Culbertson as
19 legal entities to oppose the application?

20 MR. PORTER: Again, it's beyond the

21 scope, and it invades the attorney/client
22 privilege.

23 HEARING OFFICER HALLORAN: How so the
24 attorney/client privilege?

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1 MR. PORTER: Well, where does he --
2 you're asking him to testify as to if he hired
3 Hinshaw and Culbertson to help in this process
4 and it invades the privilege.

5 MR. MUELLER: Mr. Halloran, these
6 aren't trick questions, this is preliminary.
7 I'm asking if a resolution was passed and if
8 you want to, I tell you where I'm going with
9 this.

10 HEARING OFFICER HALLORAN: Well, you
11 have one more question. You indicated you had
12 two so --

13 MR. MUELLER: Right. And I have one
14 more question after that.

15 HEARING OFFICER HALLORAN: I'm sorry?

16 MR. MUELLER: I have one more
17 question after he answers this one.

18 HEARING OFFICER HALLORAN: Well, I've

19 given you a little leeway, but it seems your
20 taking advantage of it.

21 MR. MUELLER: I wouldn't want to take
22 advantage of you, Mr. Halloran.

23 HEARING OFFICER HALLORAN: Thank you,
24 Mr. Mueller. I'm just curious as to this

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1 attorney/client privilege with respect to the
2 fact that they hired Hinshaw, is that what
3 would invade the attorney/client privilege?

4 MR. PORTER: As far as I know that's
5 the only question that's been asked so far.

6 HEARING OFFICER HALLORAN: And that
7 would invade the attorney/client privilege?

8 MR. PORTER: I believe that the
9 hiring of the specific lawyer may invade the
10 attorney/client privilege.

11 HEARING OFFICER HALLORAN: I'm going
12 to have to overrule that.

13 Mr. Mueller, you have one more
14 question.

15 MR. MUELLER: Did he answer the
16 question by the way?

17 HEARING OFFICER HALLORAN: I'm not
18 sure he did. I think he was a bit confused.
19 Maybe you can state it again.

20 MR. MUELLER: I would think he would
21 know what resolutions they passed.

22 HEARING OFFICER HALLORAN: Mr.
23 Mueller, I've warned and cautioned you before
24 to not make the off the cuff comments.

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1 MR. MUELLER: I was responding to the
2 Chair when you indicated that he thought he was
3 a bit confused.

4 HEARING OFFICER HALLORAN: You were
5 not responding to me, so would you please ask
6 your question?

7 BY MR. MUELLER:

8 Q. Mr. Kruse, before this application
9 was filed, did the county hire Patrick
10 Engineering to do a review of it and did the
11 county hire Hinshaw and Culbertson to be their
12 legal entity to work in opposition to it?

13 A. We hired Patrick Engineering and the
14 outside law firm to do the review to make sure

15 that we were as the --

16 MR. PORTER: Well, this gets to my --

17 MR. MUELLER: How can he interrupt
18 his own witness?

19 MR. PORTER: I think he's possibly
20 testifying as to what he's told counsel to do.

21 HEARING OFFICER HALLORAN: I agree.

22 MR. PORTER: And invading the
23 attorney/client privilege was my fear when the
24 question was asked.

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1 HEARING OFFICER HALLORAN: I sustain
2 Mr. Porter's objection. I understood the
3 question whether the county hired Hinshaw and
4 Culbertson.

5 MR. MUELLER: He's indicated that he
6 hired Patrick. Let me move on to my final
7 question.

8 HEARING OFFICER HALLORAN: Please.

9 BY MR. MUELLER:

10 Q. Mr. Kruse, didn't Chris Berger on
11 behalf of Patrick Engineering, with which he is
12 employed at the direction of or on behest of

13 the county, acquire a copy of the siting
14 application within a matter of a few weeks
15 after it was filed?

16 A. I cannot answer who purchased it or
17 who got it for Patrick Engineering.

18 Q. Patrick Engineering, to your
19 knowledge, did acquire a copy of the
20 application in plenty of time to complete their
21 review prior to the hearings commencing; isn't
22 that true?

23 MR. PORTER: Objection. Calls for
24 conjecture. It's still beyond the scope of

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1 direct examination.

2 HEARING OFFICER HALLORAN: I sustain
3 your objection. He answered he had no
4 knowledge, so that would be a conjecture.

5 BY MR. MUELLER:

6 Q. You indicated to your knowledge that
7 Patrick Engineering got a copy of the
8 application?

9 MR. PORTER: Objection. For one
10 we're way beyond the two questions.

11 MR. MUELLER: We're beyond --

12 MR. PORTER: And asked and answered.

13 MR. MUELLER: But in terms of cross
14 examination, the witness gets up there and
15 testifies nobody gave us a copy of the
16 application, the inference to be drawn being
17 that the county was somehow prejudiced.

18 MR. PORTER: He did not testify that
19 nobody gave him a copy of the application. He
20 testified that he did not receive a copy from
21 the city of Kankakee, that was the scope of the
22 examination.

23 MR. MUELLER: Well, I think the
24 inference to be drawn from not receiving a copy

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1 from the city of Kankakee is that the county is
2 somehow prejudiced. It's a fact in evidence
3 previously that the city did not give them a
4 copy. Accordingly, this testimony ought to be
5 stricken as cumulative or in the alternative,
6 we ought to be entitled to cross-examine to
7 determine whether or not any harm came from the
8 failure of the city to tender a pre-copy of the

9 application.

10 MR. PORTER: Let me respond to that.

11 First, you have the absolute right to subpoena
12 witnesses, Mr. Mueller. You are aware of that.
13 You can do that on your own direct examination.

14 Second --

15 MR. MUELLER: Your Honor, he
16 directed --

17 HEARING OFFICER HALLORAN: Mr.
18 Mueller --

19 MR. MUELLER: The record
20 should reflect -- I want to talk to him.

21 HEARING OFFICER HALLORAN: I'm going
22 to have to ask the Board after he reads the
23 transcript to -- I would pass this along to the
24 Board for appropriate sanctions on behalf of --

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1 for Mueller with his repetitious outburst and
2 I've cautioned him four or five times and with
3 that said the Board will take it under
4 advisement. Thank you.

5 Mr. Porter?

6 MR. PORTER: If I may make a second

7 point, if I can remember it. Mr. Mueller has
8 mischaracterized the record on numerous
9 occasions that the county received the
10 application within a few weeks. He's very
11 non-specific as to when that occurred. The
12 reality is there was nothing in the record as
13 to exactly when the county -- its experts down
14 in Southern Illinois were finally able to
15 acquire that document. And if Mr. Mueller
16 wants to present evidence on that issue, he's
17 entitled to do so in his case in chief.

18 HEARING OFFICER HALLORAN: I agree.
19 The objection is sustained. Mr. Mueller, if
20 you don't have any other questions or another
21 line of questions -- but this line of
22 questioning will stop. Thank you.

23 BY MR. MUELLER:

24 Q. Mr. Kruse, are you claiming that the

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1 county had inadequate access to the
2 application?

3 MR. PORTER: Again, beyond the scope.

4 HEARING OFFICER HALLORAN: I agree.

5 That's it. Sustained.

6 MR. LESHEN: If I may for a moment?

7 HEARING OFFICER HALLORAN: You may,

8 Mr. Leshen.

9 MR. PORTER: For the record,

10 Mr. Leshen is again conferring with

11 Mr. Mueller.

12 HEARING OFFICER HALLORAN: Mr.

13 Porter, that was unnecessary.

14 MR. PORTER: I guess I made it and I

15 haven't made that statement before on the

16 record because it's obvious that Mr. Mueller's

17 statements and questions were being objected to

18 and I just wanted the record established that

19 if they are trying to back door it through

20 Mr. Leshen, I want a record on it. So I

21 apologize if that was out of order.

22 MR. LESHEN: I think I've been

23 reasonable in my approach here and for a

24 colleague to say -- use words like back door --

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1 MR. PORTER: I meant no personal -- I

2 agree Mr. Leshen has been professional

3 throughout this proceeding.

4 MR. LESHEN: I'm flabbergasted here.
5 I am, of course, able to talk to any counsel in
6 this room at any time without it being any
7 violation of any candor of ethics that I'm
8 aware of.

9 HEARING OFFICER HALLORAN: I agree.
10 I think Mr. Porter's comment was out of line.
11 He's apologized.

12 MR. LESHEN: And I accept that
13 apology.

14 HEARING OFFICER HALLORAN: Thank you,
15 you may proceed.

16 MR. MORAN: If I may?

17 HEARING OFFICER HALLORAN: Yes, Mr.
18 Moran.

19 MR. MORAN: If I make one observation
20 upon the colloquy that just occurred. We've
21 heard through the course of these two days
22 numerous, what I would consider to be rather
23 gratuitous references made by Mr. Mueller. The
24 fact that waste management of Illinois and the

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1 county have somehow partnered and somehow to
2 become collaborators and whatever I suppose
3 scheme or conspiracy he has imagined, and as a
4 result the fact that the city and the fact that
5 the applicant here have been conferring
6 repeatedly while I agree with not necessarily
7 appropriate to point out is not intort either.
8 And we have not spoken and made any objections
9 to these gratuitous references and we'd
10 certainly appreciate that they not be repeated
11 as we go forward.

12 MR. LESHEN: I would like to say all
13 kinds of things and tell all kinds of stories,
14 but the bottom line here is I think Mr. Moran
15 and everybody will agree that attorneys can
16 confer on both sides.

17 HEARING OFFICER HALLORAN: I think
18 we're beyond that. I appreciate it. I do
19 agree that there's been numerous gratuitous
20 remarks and I already have referred any kind of
21 appropriate sanctions to the Board, if they
22 feel they have to oppose any. With that said,
23 Mr. Leshen?

24 MR. LESHEN: I ceased my moment here.

1 MR. MUELLER: Mr. Halloran, I need to
2 ask you a question about that. Are you
3 indicating that you are recommending to the
4 Board that they sanction me for something I've
5 done here?

6 HEARING OFFICER HALLORAN: Let me --

7 MR. MUELLER: Because that would have
8 a chilling effect on me.

9 HEARING OFFICER HALLORAN: Excuse me,
10 sir, I'm talking. After the Board reads the
11 transcript based on my observations of
12 incivility here, gratuitous comments, off the
13 cuff comments, numerous cautions towards you,
14 Mr. Mueller, they'll decide whether or not
15 we'll impose appropriate sanctions. I'm not
16 recommending appropriate sanctions, I'm just
17 saying I'm alerting them to the fact that to
18 take a look at the transcript with the numerous
19 remarks you have made thus far.

20 MR. MUELLER: With all due respect,
21 Mr. Halloran, I disagree with your
22 characterization of anything that's been said
23 as incivility and would direct you during the
24 break -- requesting during the break to review

1 or have HEARING OFFICER HALLORAN reporter
2 review the transcript for you of what Mr.
3 Porter did immediately prior to the remark that
4 apparently caused you to indicate you were
5 going to refer this to the Board because Mr.
6 Porter was speaking directly to me and telling
7 me what needs to be done. And as an
8 experienced attorney, Mr. Halloran, since you
9 and I have been adversaries on previous cases
10 when you were in the Attorney General's office,
11 you are well aware of the fact that attorneys
12 are to direct their comments to the Chair or
13 the bench and not to each other and it was
14 that, which I was objecting to and I ask you
15 please to review the transcript before you make
16 a finding for the record that there have been
17 gratuitous remarks and incivility and I also
18 ask you to keep in mind that comments you make
19 in the nature of what you're making are going
20 to have a chilling effect on the applicant's
21 ability to zealously defend its position and
22 the very nature of these things is such that
23 they are contentious and that just goes with

24 the territory. People are zealously

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1 representing their clients and I think we
2 should just move on with it, but I would like
3 you to confirm that Mr. Porter was, in fact,
4 improperly directing remarks at me when he
5 should have been speaking to you.

6 HEARING OFFICER HALLORAN: Mr.
7 Mueller, I think the record will speak for
8 itself as the term was used quite frequently
9 yesterday, the Board will review the record.
10 Mr. Porter and the county have not made as many
11 gratuitous comments as the Town and Country
12 has.

13 And, again, I'm not recommending
14 sanctions. I'm just asking the Board to take a
15 look at the transcript. I don't think it's
16 going to have a chilling effect. But I'm
17 sitting here for the last two days and there's
18 been, again, off the cuff comments by you,
19 Mr. Mueller, time and time again. And the
20 Board will take a look at that and you can see
21 what if any sanctions they'll impose.

22 And with that said, Mr. Leshen?

23 MR. LESHEN: I would like the record
24 to reflect that I'm now referring with my

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1 co-counsel.

2 I have no questions.

3 HEARING OFFICER HALLORAN: Any
4 further questions by anyone?

5 I do want to warn everybody,
6 including the petitioners, that I will not
7 tolerate, again, gratuitous comments,
8 outbursts, inappropriate actions or procedures
9 as the record will reflect and the Board will
10 take a look at it. We'll all go to lunch and
11 we'll see you back here approximately 1:00
12 o'clock. Thank you.

13 (A lunch break was had.)

14 HEARING OFFICER HALLORAN: We're back
15 on the record from a lunch break. It's 1:00
16 and I do want to state for the record that in
17 the event that anyone takes issue or feels so
18 inclined to make an issue of Mr. Mueller's
19 statement before the lunch break regarding me

20 being employed as an Assistant Attorney General
21 and that our paths have crossed before.

22 For the record, I did leave the
23 employ as the assistant for the Attorney
24 General's office at the end of May 2000. And I

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1 think my last case -- my only case in which
2 Mr. Mueller represented the defendant was, I
3 believe, in 1998, that was a routine Section 43
4 matter. With that said, I have no
5 predisposition towards Mr. Mueller one way or
6 another in this matter.

7 MR. MUELLER: Nor I towards you, Mr.
8 Halloran.

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

11 MR. PORTER: If I may add something.
12 We also have crossed paths and you've been a
13 hearing officer in other matters that I've been
14 associated with and nothing whatsoever to do
15 with landfill siting. And some of those
16 rulings have been contrary to what my desires
17 have been. I just thought I'd add that.

18 HEARING OFFICER HALLORAN: I
19 appreciate both comments. With that said, I
20 hope everybody had a great lunch and we'll
21 start out with Mayor Green as a witness.

22 MR. LESHEN: That's correct. And
23 this is a housekeeping matter. I did fax to
24 you what you probably didn't get as well as all

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1 of the parties in this case yesterday a
2 supplemental compliance with a document writer
3 that had been attached to a deposition notice.
4 That was all sent out I sent the copies to your
5 clerk.

6 HEARING OFFICER HALLORAN: Is that
7 the minutes of June 19?

8 MR. LESHEN: The minutes of, I think,
9 the June 3rd meeting and as well a document
10 that I quote, dos and don'ts.

11 HEARING OFFICER HALLORAN: Mr.
12 Porter, are you aware of that?

13 MR. PORTER: I'm aware that they
14 submitted a supplemental production response.
15 I guess the only concern I have is I don't know

16 why that would go to the hearing officer. It
17 has not been offered into evidence and I'm
18 assuming we're all clear on that.

19 MR. LESHEN: Those were not offered
20 into evidence, that's correct. So if I sent
21 that to you in error, I apologize. It was not
22 intended through that act to be made part of
23 the record.

24 HEARING OFFICER HALLORAN: Do you

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1 wish it to be made part of the record?

2 MR. LESHEN: I'll get it through
3 testimony.

4 HEARING OFFICER HALLORAN: Very well.
5 Thank you.

6 MR. PORTER: May I proceed?

7 HEARING OFFICER HALLORAN: You may.
8 Raise your right hand for HEARING OFFICER
9 HALLORAN reporter.

10 (Whereupon, the witness was duly sworn.)

11 MAYOR GREEN,
12 called as a witness herein, having been first
13 duly sworn, was examined and testified as

14 follows:

15 DIRECT EXAMINATION

16 BY MR. PORTER:

17 Q. Please, state your name for the
18 record.

19 A. Donald Green.

20 Q. And your occupation?

21 A. Mayor of the city of Kankakee.

22 Q. When were you elected?

23 A. 1993.

24 Q. At the time you were elected, you

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1 appointed Mr. Bohlen as an assistant city
2 attorney; is that correct?

3 A. That's correct.

4 Q. Since that time he's become your
5 chief corporate counsel for the city of
6 Kankakee; is that correct?

7 A. That's correct.

8 Q. At what point during your
9 administration did you consider erecting a
10 landfill?

11 HEARING OFFICER HALLORAN: Mr.

12 Leshen?

13 MR. LESHEN: I assume these are
14 preliminary questions and consequently I will
15 not object, but I think that their meeting
16 through any of pre-hearing context that again
17 that needs to be the context with an offer of
18 proof.

19 HEARING OFFICER HALLORAN: The record
20 will so note. Mr. Porter, do you have any
21 comment?

22 MR. PORTER: Counsel is correct.
23 Ultimately I'm going to be asking questions
24 regarding pre-filing contacts. This particular

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1 question does not involve at all the
2 communications. I'm just asking at what point
3 in his administration he began considering
4 erecting a landfill.

5 HEARING OFFICER HALLORAN: I'll allow
6 it and Mr. Leshen object when you need
7 appropriate. Thank you. Go ahead, Mr. Porter.

8 MR. PORTER: I was just going to
9 state when we do get to that point, I certainly

10 have no problem with continuing objections. We
11 don't have to keep going through that.

12 HEARING OFFICER HALLORAN: Thank you
13 very much.

14 BY MR. PORTER:

15 Q. Do you recall the question?

16 A. Yes, I do. In 1999, beginning of
17 that period of time, we had began discussions
18 with our city auditors and because we were
19 having discussions on the cost of our solid
20 waste removal in the city. And it was
21 beginning to escalate at a rather rapid rate.
22 And beginning at that time, we knew that the
23 current landfill in Kankakee County had a
24 limited life and would be running out somewhere

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1 in the period of 2005, 2006.

2 Q. At some point, you also learned that
3 a landfill being sited within the city of
4 Kankakee could generate revenues for the city
5 of Kankakee, correct?

6 A. That's correct.

7 Q. You -- to cut to the chase, you

8 personally had numerous pre-filing contacts
9 with the applicant about annexation of certain
10 property into the city of Kankakee at Host
11 agreement, the city's ordinances, the city's
12 solid waste management plan and other aspects
13 of the proposed project; is that correct?

14 MR. LESHEN: I have now a twofold
15 objection. The first is on the issue of
16 relevance and I assume at this point, we will
17 be entering into the province of an offer of
18 proof; the second is the multiple compound
19 nature of the question.

20 MR. PORTER: On the first issue, I
21 agree and understand that there's an objection
22 and that is going to be sustained by Mr.
23 Halloran and it would be an offer of proof. On
24 the second issue, I don't believe it's

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1 compound. I'm merely asking if he had numerous
2 pre-filing contacts in relation to each of
3 those instances.

4 HEARING OFFICER HALLORAN: As to the
5 first objection, yes, I think it goes into the

6 realm of the offer of proof and I will sustain
7 the objection. It won't come in as an offer of
8 proof because it is a pre-filing contact. As
9 to the second, if the mayor can answer that,
10 I'll allow that.

11 BY THE WITNESS:

12 A. I was part of the discussion process
13 on the annexation of the land of the city of
14 Kankakee.

15 BY MR. PORTER:

16 Q. And isn't it true that you were
17 actually speaking with the applicant one to
18 five times per week before the filing occurred?

19 A. To the best of my recollection, that
20 would be correct.

21 Q. Let me show you a document that we
22 previously had marked as Petitioner's Exhibit
23 1. You would agree that that document is a
24 Kankakee zoning map for the year 2002?

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1 A. That's correct.

2 Q. And you'll see there's been a circle
3 drawn on that document by city attorney,

4 Bohlen. Do you see that circle?

5 A. Yes, I do.

6 Q. Do you agree that that circle fairly
7 and accurately depicts the location of the
8 proposed city of Kankakee Landfill project?

9 A. To the best of my understanding.

10 Q. Do you also agree that the circle
11 fairly and accurately depicts the proximity of
12 the proposed project to the city streets of
13 Kankakee, Illinois?

14 A. Yes.

15 MR. PORTER: I move for admission for
16 Petitioner's Exhibit 1.

17 HEARING OFFICER HALLORAN: Any
18 objection?

19 MR. MUELLER: I don't know what the
20 relevance of it is for fundamental fairness
21 purposes.

22 HEARING OFFICER HALLORAN: Mr.
23 Leshen?

24 MR. LESHEN: Same objection.

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1 HEARING OFFICER HALLORAN: I think I

2 will allow it over your objection. I think it
3 may assist the Board in evaluating the
4 decision. Thank you. Petitioner's Exhibit 1
5 is admitted over objection.

6 BY MR. PORTER:

7 Q. At any time before annexation, did
8 you ever suggest to Mr. Volini or anyone at
9 Town and Country not to go through the
10 annexation procedure and simply file its
11 application with the county instead?

12 A. No, I did not. That question was
13 never asked of me.

14 HEARING OFFICER HALLORAN: Mr.
15 Leshen?

16 MR. LESHEN: I guess so as not to
17 continue to interrupt, if Mr. Porter can just
18 tell me when his offer of proof is concluded,
19 so I will then continue -- if you can show that
20 this is continuing so I don't have to interrupt
21 him.

22 HEARING OFFICER HALLORAN: I agree.
23 I think there is a continuing objection by both
24 Mr. Mueller and Mr. Leshen regarding any

1 matters that come into the realm of pre-filing
2 contact or communication. I'm not allowing it,
3 however, Mr. Porter is proceeding under the
4 offer of proof. Mr. Porter, if you could give
5 a heads up if it's possible. I don't know if
6 you are going to keep flip-flopping.

7 MR. PORTER: I would prefer because
8 many of the pre-filing communications touch
9 upon occurrences that happened pre-filing,
10 which, in my opinion, would not be barred. Is
11 it possible that we can simply acknowledge that
12 the objection has been sustained as to
13 pre-filing communications and deal with it at
14 the Pollution Control Board level? You know,
15 it's literally going to be having to look at
16 each and every question and deciding was that a
17 question going to communication or do we want
18 to deal with it here at this hearing, I guess
19 is what I'm asking?

20 MR. LESHEN: I mean, from my
21 perspective, if it's going to move in and out,
22 then I have to be vigilant and object each time
23 because I don't want to leave it up to
24 somebody's -- where the Board surmise. I think

1 it would be more fair to the Board, I guess, is
2 what I'm saying not to have them guess when
3 this is an offer of proof and when it's not, so
4 I'll just make my objections with my
5 preliminary apologies to Mr. Porter for having
6 to interrupt.

7 HEARING OFFICER HALLORAN: Okay. And
8 I think if we do it that way, it might make the
9 record clearer and easy to read. It would be
10 faster Mr. Porter's way, but I think if you
11 would just note your objection and I'll sustain
12 it and we'll go under an offer of proof.

13 MR. PORTER: I don't mind if we
14 assume that they are sustained.

15 HEARING OFFICER HALLORAN: Mr. Leshen
16 feels more comfortable doing it the other way.

17 MR. PORTER: Okay.

18 BY MR. PORTER:

19 Q. Let me ask the question and I
20 understand that it's a pre-filing contact
21 communication question.

22 At any time, did you ever suggest to
23 Mr. Volini or anyone at Town and Country to
24 simply file their petition for siting with the

1 county as opposed to going through an
2 annexation process?

3 MR. LESHEN: I'll note my objection.

4 HEARING OFFICER HALLORAN: Your
5 objection is noted. Offer of proof?

6 MR. PORTER: Yes, and I'd ask for
7 responses, my offer of proof.

8 BY THE WITNESS:

9 A. No.

10 BY MR. PORTER:

11 Q. Isn't it true that no land outside
12 the proposed facility was annexed into the
13 city?

14 MR. LESHEN: Objection to foundation
15 on that one. What time frame are we talking
16 about? My objection is lack of foundation.

17 HEARING OFFICER HALLORAN: Mr.
18 Porter?

19 MR. PORTER: Let me rephrase.

20 HEARING OFFICER HALLORAN: Thank you.

21 BY MR. PORTER:

22 Q. During the annexations procedures

23 that took place in 2001 and possibly into 2002,
24 you would agree that the only area that was

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1 annexed in Section 25 of that map was the
2 facility at issue and that no other areas
3 around that were annexed; is that correct?

4 MR. LESHEN: Is this excluding the
5 industrial park or including it?

6 HEARING OFFICER HALLORAN: Mr. Porter
7 you may answer.

8 MR. PORTER: I would ask whether or
9 not the witness understood the question.

10 HEARING OFFICER HALLORAN: Mayor, do
11 you understand the question?

12 BY THE WITNESS:

13 A. I'll try and answer it to the best of
14 my ability. The land that was annexed -- when
15 that land was annexed, it was annexed to the
16 city as heavy industrial. It was the
17 portion -- the land that was denoted on the map
18 that I looked at just a few moments ago and
19 part of that -- all of that land was a zone
20 heavy industrial and a landfill as a permitted

21 use in our heavy industrial classification.

22 BY MR. PORTER:

23 Q. Isn't it true all the land that was
24 annexed in that area, Section 25 of that map is

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1 the land that will ultimately be under the
2 control of Town and Country?

3 MR. LESHEN: Object -- It's
4 ultimately under -- will be under the control
5 of the city of Kankakee so I object to the form
6 of the question.

7 HEARING OFFICER HALLORAN: Mr.
8 Porter?

9 MR. PORTER: Well, the city of
10 Kankakee to my understanding doesn't own the
11 property. Town and Country has options to
12 purchase the property, so I think the question
13 is proper.

14 HEARING OFFICER HALLORAN: I'm going
15 to overrule the objection. If the witness can
16 answer it you may do so

17 BY THE WITNESS:

18 A. The land that is being annexed is all

19 within the city limits of Kankakee.

20 BY MR. PORTER:

21 Q. In all of the land that was annexed
22 it's ultimately going to be under the control
23 of Town and Country, correct?

24 A. I can't answer that question. I'm

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1 not sure how it will be titled.

2 Q. Other than the landfill and the
3 industrial park, no other land was annexed,
4 right?

5 A. That's correct.

6 Q. So all the neighbors to this area
7 that was annexed are county residents as
8 opposed to city residents; is that correct?

9 MR. LESHEN: I object on the basis of
10 relevance here and the issue of fundamental
11 fairness, which is why we're here.

12 HEARING OFFICER HALLORAN: Mr.
13 Porter?

14 MR. LESHEN: Even within the context
15 of the offer of proof.

16 HEARING OFFICER HALLORAN: Mr.

17 Porter?

18 MR. PORTER: Again, the issue is
19 prejudgment of the application as evidenced by
20 the biases that were obvious in this case.

21 MR. LESHEN: Well, whether the biases
22 were obvious or not, that's the decision for
23 the Board. Even assuming that's the theory
24 where they reside is irrelevant to any issue to

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1 be considered by the Board.

2 MR. PORTER: It shows that the sole
3 reason for the annexation was to establish
4 siting authority within the city of Kankakee as
5 opposed to an organized plan annexation of a
6 specific area within Kankakee County into the
7 city. Only the areas that were under the
8 control of Town and Country were annexed. All
9 the neighbors are county citizens, not city
10 citizens.

11 HEARING OFFICER HALLORAN: I'm going
12 to overrule your objection. The Board will
13 decide whether it's relevant or not. Mayor, do
14 you need Mr. Porter to --

15 THE WITNESS: Will you, please?

16 BY MR. PORTER:

17 Q. Isn't it true that all the neighbors
18 surrounding the landfill are indeed county
19 residents as opposed to city residents?

20 A. The individuals who surround the area
21 that was annexed into the city of Kankakee are
22 not city of Kankakee residents.

23 Q. You personally were involved in the
24 discussions concerning the Host agreement; is

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1 that correct?

2 MR. LESHEN: Same objection.

3 HEARING OFFICER HALLORAN: Sustained.
4 Offer of proof?

5 MR. PORTER: Yes. Do I need to
6 respond when you say offer of proof?

7 HEARING OFFICER HALLORAN: No, unless
8 you don't like my response.

9 MR. PORTER: We understand when you
10 say offer of proof that means the witness can
11 answer as offer of proof, correct?

12 HEARING OFFICER HALLORAN: Right.

13 BY THE WITNESS:

14 A. Yes, I was a part of that negotiating
15 process.

16 BY MR. PORTER:

17 Q. And, again, that negotiating process
18 involved numerous communications between
19 yourself and agents of Town and Country,
20 correct?

21 MR. LESHEN: Same objection.

22 HEARING OFFICER HALLORAN: I think
23 the Board can glean from the record that it is
24 a pre-filing in a pre-filing contacts of

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1 communication, so I think they understand. At
2 least up until now, I've not allowed it to be
3 admissible and only allow it as an offer of
4 proof. So, I guess, I misunderstood you to
5 object at every question, we'd be here through
6 next month.

7 MR. LESHEN: I understand. I don't
8 want to be here until next month. I just want
9 to make sure that --

10 MR. PORTER: I will alert the

11 Pollution Control Board and you Mr. Hearing
12 Officer when I'm done with the pre-filing
13 contact and I'll alert you right before I start
14 talking about the 2-19-02 meeting.

15 HEARING OFFICER HALLORAN: Is that
16 fine, Mr. Leshen?

17 MR. LESHEN: Yes.

18 MR. PORTER: And so all of this, as I
19 understand, is an offer of proof until I say
20 otherwise.

21 HEARING OFFICER HALLORAN: Or I say
22 otherwise.

23 MR. PORTER: That's what I meant.

24 HEARING OFFICER HALLORAN: Thanks.

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1 BY MR. PORTER:

2 Q. You had numerous communications
3 regarding that Host agreement with Tom Volini
4 and/or agents of Town and Country; is that
5 correct?

6 A. Yes.

7 Q. Isn't it true that at one point Town
8 and Country actually wanted the city to be a

9 co-applicant?

10 A. I'm trying to recall if that was a
11 part of the discussions. It very well may have
12 been.

13 Q. You would agree that there was
14 definitely a high degree of cooperation between
15 yourself and the city and Town and Country in
16 negotiating the Host agreement having the land
17 annexed into the city drafting the solid waste
18 management plan and the procedures for this
19 hearing, the 32.9 hearing, correct?

20 HEARING OFFICER HALLORAN: Same
21 objection. That was four questions as far as
22 I --

23 HEARING OFFICER HALLORAN: I agree.
24 I was a little confused.

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1 BY MR. PORTER:

2 Q. You would agree that there was a high
3 level of cooperation between the city and Town
4 and Country in negotiating the Host agreement;
5 is that correct?

6 A. I'm not sure I would use the term

7 high level of cooperation. There were
8 discussions between the city of Kankakee and
9 Town and Country Utilities about a Host
10 agreement.

11 Q. You would agree that the applicant
12 assisted the city in drafting its solid waste
13 management plan, correct?

14 A. Again, I was not part of the drafting
15 process, so I truly cannot answer that
16 question. I think that would go to corporation
17 counsel for his discussion of that issue.

18 Q. If corporation counsel indicated that
19 he indeed received several examples of solid
20 waste management plans from AFCA, you have no
21 reason to dispute that?

22 MR. LESHEN: Objection, that calls
23 for -- he's already said. Mr. Bohlen has
24 already testified in detail regarding the

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1 drafting of that agreement and how he drafted
2 it.

3 HEARING OFFICER HALLORAN: Sustained.

4 BY MR. PORTER:

5 Q. Before the application was filed on
6 March 13, 2002, you spoke individually to City
7 Council members about the proposed project;
8 isn't that right?

9 A. On and off during all those periods
10 of time we talked about all the projects that
11 go on within the city. This was one of them
12 and, yes, I would have talked to City Council
13 members.

14 Q. Those discussions included a
15 description of the discussions that you and
16 City Council were having regarding Host
17 agreement; is that right?

18 A. Yes, because ultimately the City
19 Council is the one that will either gratify it
20 or not.

21 Q. I believe earlier you testified that
22 you spoke with Mr. Volini and members of Town
23 and Country at least one to five times per week
24 and every time you spoke to them it was about

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1 this proposed project; is that correct?

2 A. Yes. I think I testified to the best

3 of my knowledge that would be correct.

4 Q. You would certainly agree that there
5 was a cooperative effort between the city and
6 Town and Country to seek siting of this
7 landfill, would you not?

8 A. That was a part of the discussion,
9 yes.

10 Q. When you had your discussions with
11 the City Council members --

12 MR. PORTER: Mr. Halloran, I
13 apologize for pausing, but this particular
14 question I do not believe is covered by the
15 present objection. I just want to make that
16 clear.

17 HEARING OFFICER HALLORAN: So
18 proceed.

19 BY MR. PORTER:

20 Q. When you spoke to the City Council
21 members before the application was filed, you
22 discussed their positions about proposed
23 landfill, did you not?

24 A. I believe those discussions probably

1 went even back to the annexation process of
2 bringing this land into the city because not
3 only were the questions raised by the City
4 Council, they were raised by the Planning
5 Commission also in that process of which the
6 City Council ultimately voted on the annexation
7 of the land.

8 Q. When you had these individual
9 discussions with the City Council members, you
10 would find out whether or not they were in
11 favor of or opposed to the possibility of a
12 landfill in the city of Kankakee; is that
13 correct?

14 MR. LESHEN: Objection, relevance.
15 It doesn't go to the fairness or perceived the
16 lack thereof of the hearing process of this
17 siting hearing. It goes to what may or may not
18 have been political discussions and
19 communications between elected officials which
20 in no way then -- from which in no way an
21 inference can be drawn regarding whether or not
22 the hearing itself was fair, which is what
23 we're here about.

24 MR. MUELLER: Mr. Halloran, I would

1 add to that objection the fact that the law is
2 well settled that decision-makers in these
3 cases since they are simultaneously elected
4 officials are entitled to have preliminary
5 opinions before the evidence is heard.

6 HEARING OFFICER HALLORAN: Mr.
7 Porter?

8 MR. PORTER: Mr. Mueller's comments
9 do go toward the admissibility of the question.
10 It's clearly relevant to prejudgment.

11 HEARING OFFICER HALLORAN: I'm going
12 to allow it in. And, again, I want to note to
13 all the parties that, especially this ruling,
14 Section 101.626, the hearing officer may admit
15 evidence that is material, relevant that would
16 be relied upon by prudent persons in the --
17 conduct of serious affairs and I think that's
18 one of those matters, so the objection is
19 overruled.

20 Mr. Porter?

21 MR. PORTER: Madame Court Reporter,
22 would you mind rereading it, please?

23 MR. PORTER: I'll reask the question.

24 BY MR. PORTER:

1 Q. When you had these individual
2 discussions with the Alderman you would inquire
3 of them whether or not they were in favor or
4 opposed to the prospect of a landfill within
5 the city of Kankakee; is that correct?

6 A. Again, I think I'm going to try to
7 answer this question in two parts back to you.
8 Part number one, the City Council, I would
9 assume, was in favor of it when they agreed to
10 the annexation of the land because one of the
11 issues was that this was zoned heavy industrial
12 and all during those annexation hearings, the
13 planning commission had asked the questions
14 regarding the siting of a landfill. So the
15 council was very much aware of that. The
16 second part of the question is in my
17 discussions with them did I talk about the
18 siting of the landfill that truly was not what
19 transpired between myself and the alderman.
20 They were very interested if a landfill was
21 sited there to what processes we were going
22 through and setting the Host agreement.

23 Q. At some point a seat opened up on the

24 City Council; is that correct?

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1 A. That's correct, due to the death of
2 one of the alderman.

3 Q. And that occurred pre or post-filing?
4 When did that occur?

5 A. Pre-filing. I'm not sure of the
6 exact date.

7 MR. LESHEN: Are we talking about the
8 filing of the --

9 BY THE WITNESS:

10 A. I'm not sure which filing you mean.

11 BY MR. PORTER:

12 Q. Did that happen before March 13,
13 2002, that that seat opened up?

14 A. Yes.

15 Q. Was it filled prior to March 13,
16 2002?

17 A. I believe it was.

18 Q. Okay. When that seat opened up you
19 held interviews to the various perspective City
20 Council members that you were considering
21 appointing, correct?

22 A. That's correct.

23 Q. And at that time five questions were
24 posed of the prospect; is that correct?

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1 A. That's correct.

2 Q. Let me show you what I've had marked
3 as Petitioner's Exhibit 6. Is that the five
4 questions that was posed to perspective
5 alderman?

6 A. Yes.

7 Q. Isn't it true that question 2 is
8 since the city of Kankakee is in need of
9 finding additional sources of revenue, where do
10 you think we should find those additional
11 funds?

12 MR. LESHEN: Mr. Halloran, I would
13 like you for the record and for your
14 considering make the continuing objection here
15 as to relevance whether the City Council, the
16 fact finding body in this case was prejudged,
17 this decision as not at all implicated by these
18 questions. In other words, what I'm saying is
19 lack of relevance here.

20 HEARING OFFICER HALLORAN: Mr.

21 Porter?

22 MR. PORTER: Two out of five of the
23 questions directly impact around whether or not
24 proposed alderman wanted a landfill in the city

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1 of Kankakee. Obviously, I think that's
2 directly relevant to the issue of bias and it's
3 a matter of the Pollution Control Board to
4 decide weight.

5 MR. LESHEN: That's one question that
6 asks whether or not you're opposed to the
7 concept of siting a landfill in the city of
8 Kankakee and there's another question. The
9 first question that was read since the city of
10 Kankakee is in need of finding additional
11 sources of revenue, where do you think we
12 should find these additional funds. I don't
13 see that at all -- that doesn't reference the
14 landfill, doesn't address the issue of whether
15 there's prejudgment and whether or not this was
16 a fair hearing, so that's my objection.

17 HEARING OFFICER HALLORAN: Mr.

18 Porter, anything?

19 MR. PORTER: No.

20 HEARING OFFICER HALLORAN: I overrule
21 your objection and the Board will waive through
22 whether it's relevant or not, but for right now
23 I find it relevant.

24 BY MR. PORTER:

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1 Q. Mayor, do you remember the question?

2 A. Yes, I do.

3 Q. And does it indeed say that?

4 A. Question number 2, since the city of
5 Kankakee is in need of finding additional
6 sources or revenue, where do you think we
7 should find these additional funds. The
8 purpose of that question is not new to anyone
9 who lives in the city of Kankakee. I have been
10 in this office since 1993. When I came into
11 the city of Kankakee as the mayor in 1993 we
12 were running a deficit position of \$1.6
13 million.

14 We began looking at all sources of
15 revenue in the city and we've done this over a

16 period of time. We did some things that is
17 politically unpopular. We put a wheel tax on
18 our citizens of Kankakee. We added additional
19 sources of revenue through various funds and
20 funds increases. We combined departments
21 because we were always continuing to look at
22 those funds. Our municipality is probably no
23 different than any others.

24 We needed to be -- put ourselves into

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1 a position where we were able to build up a
2 surplus fund at least one a month of what our
3 annual expenditures are and right at close to
4 this time, they are running about a million
5 dollars a month and we had not reached that
6 surplus point.

7 So the idea of that question was do
8 you have any ideas. Can you tell us where
9 there might be other sources of revenue.

10 Q. The last question that was posed to
11 prospective alderman was, quote, are you
12 opposed to the concept of siting a landfill in
13 the city of Kankakee, is that correct?

14 A. That is correct.

15 Q. And who was it that was ultimately
16 appointed?

17 A. Ultimately appointed was Joseph
18 Nugent.

19 Q. And Joseph Nugent did not indicate
20 that he was opposed in any way to siting a
21 landfill, did he?

22 A. He said he was not for or against
23 that he would have to see whatever evidence was
24 presented.

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1 Q. The aldermen that attended the
2 meeting were Alderman Hank Williams, Alderman
3 Dennis Baron and ultimately Steve Hunter; is
4 that correct?

5 A. Correct, and myself.

6 Q. Mr. Williams, Mr. Baron and
7 Mr. Hunter all voted in favor of finding
8 consistency with the 10 criterion; is that
9 right?

10 MR. LESHEN: Objection that's a
11 misstatement of fact.

12 MR. PORTER: It was meant to be a
13 question. I think you told him the answer. I
14 can rephrase it.

15 BY THE WITNESS:

16 A. No, we did not all vote in favor of
17 the landfill.

18 BY MR. PORTER:

19 Q. That was because Mr. Baron recused
20 himself; is that right?

21 A. That is correct.

22 Q. And Mr. Williams and Mr. Hunter voted
23 in favor; is that right?

24 A. After hearing all the evidence they

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1 did.

2 Q. Before these questions were drafted,
3 you had discussions with these aldermen about
4 what would be appropriate questions to ask the
5 candidates; is that right?

6 A. That's correct.

7 Q. And isn't it true that those
8 discussions included that a proposed candidate
9 would be in favor of a landfill?

10 A. No.

11 Q. Well then why was the fifth question
12 asked?

13 A. Because that is a question that the
14 City Council probably would be entertaining and
15 so we're saying, are you in favor of the
16 concept. We're not saying are you against or
17 for the concept.

18 Q. And I assume these questions were
19 used to determine what would be a desirable
20 candidate. So what would have been an
21 undesirable response to number five?

22 A. These questions were -- the five
23 questions were asked of the candidates for
24 alderman, period. Then at the end of that

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1 time, a decision was made by Alderman Williams
2 because this would be his seat made on the
3 fifth floor. Alderman Baron who was from the
4 Republican side of the aisle and the senior
5 alderman and Alderman Hunter who was from the
6 Democratic side of the aisle and he was the
7 senior alderman there and myself.

8 And I'll repeat again these questions
9 were asked of all the candidates. There was, I
10 believe, five or six candidates.

11 Q. Okay. When the questions were
12 originally drafted, you and the alderman met
13 and discussed what would be appropriate
14 questions and what would be a desirable
15 response from the candidate. Isn't it true
16 that it was discussed that a desirable response
17 to number five would be that the candidate was
18 not opposed of the concept of siting a
19 landfill?

20 A. No, I didn't ask that question of the
21 alderman or on the committee.

22 MR. PORTER: I would move for
23 admission of Petitioner's 6.

24 MR. LESHEN: The same objection,

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1 which I know you overruled already.

2 HEARING OFFICER HALLORAN: Mr.
3 Mueller?

4 MR. MUELLER: I'll join in the city's
5 objection.

6 HEARING OFFICER HALLORAN: I'm going
7 to allow Petitioner's Exhibit No. 6 to come
8 into evidence.

9 BY MR. PORTER:

10 Q. Even before the application was
11 filed, you spoke publically in favor of the
12 project; isn't that true?

13 MR. LESHEN: This is not part of the
14 offer of proof I take it? Again I object on
15 the basis of relevance whether the mayor spoke
16 in favor or against or about is not the issue
17 here, whether the hearing was fair. And, in
18 fact, the mayor as we all know did not have a
19 vote here.

20 HEARING OFFICER HALLORAN: Mr.
21 Porter?

22 MR. PORTER: I believe that the
23 mayor's comments were made directly to the
24 council, which is why, again, I believe it goes

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1 to prejudgment.

2 MR. LESHEN: Then I would object on
3 the basis of foundation. Let's put it to the

4 time and place it was spoken and I'll make my
5 objection when I figure out what he's talking
6 about.

7 HEARING OFFICER HALLORAN: Mr.
8 Porter, are you able to do that?

9 MR. PORTER: Right now the question
10 is whether or not he made any statements
11 publically in favor of it.

12 MR. LESHEN: And to that broad
13 question I'm objecting because any number of
14 statements may or may not have been made. I'm
15 not sure where he's going, but the vast
16 majority that goes into his theory would then
17 be irrelevant and what I believe to be the
18 state of the loss, so I think he should lay
19 down his foundations to when he's talking about
20 and go from there.

21 HEARING OFFICER HALLORAN: I'm going
22 to overrule your objection. Mayor, if you can
23 answer it

24 BY THE WITNESS:

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1 A. I would assume that he's referring to

2 the February 19, 2002, City Council meeting and
3 if so, the answer would be yes.

4 BY MR. PORTER:

5 Q. Well, you made other statements in
6 the media in favor of the application prior to
7 February 19, did you not?

8 A. I would assume I did.

9 Q. I'm moving on now to the February
10 19th meeting which in my opinion should not be
11 subject to the ongoing objections.

12 HEARING OFFICER HALLORAN: I note
13 Mr. Leshen as well as Mr. Mueller's.

14 MR. PORTER: Let me get the first
15 question out and then I'll make a little
16 record, if you don't mind.

17 HEARING OFFICER HALLORAN: Fine.

18 BY MR. PORTER:

19 Q. Isn't it true that on February 19,
20 2002, the application was allowed to make a
21 presentation of the City Council?

22 A. Yes.

23 MR. LESHEN: You know my objection.

24 HEARING OFFICER HALLORAN: Mr. Leshen

1 objects and I sustain his objection. Offer of
2 proof I assume is proceeding?

3 MR. PORTER: Right. And the reason
4 I've delineated this spot is I think that the
5 February 19th, 2002, meeting may indeed be even
6 different than the other pre-filing contacts as
7 it had a rippled effect past March 12 of 2002.
8 I acknowledge that that was discussed quite
9 lengthy this morning so I don't need to bring
10 it up again, but that's why I delineated this
11 spot.

12 MR. LESHEN: I have nothing further
13 to add to my continuing objection.

14 BY MR. PORTER:

15 Q. I believe you answered yes; is that
16 correct?

17 A. That is correct.

18 Q. Normally the public was not allowed
19 to speak at the second meeting of the month; is
20 that correct?

21 A. That is correct.

22 Q. But you were giving the applicant
23 special indulgence; is that right?

24 A. The applicant was already on the

1 agenda.

2 Q. Within the minutes that are already
3 part of the underlying record, it's indicated
4 that you were allowing a special indulgence to
5 the applicant, do you recall making that
6 statement?

7 MR. LESHEN: I would suggest that the
8 minutes, metaphorically speaking, speak for
9 themselves and whatever it says in there it
10 says in there. We will stipulate that the
11 minutes are accurate and whatever was said
12 indeed -- whatever is reflected as having been
13 said at that meeting was indeed said.

14 HEARING OFFICER HALLORAN: Mr.
15 Porter, is that true? Do we have to go over
16 this?

17 MR. PORTER: In my opinion it is in
18 the record and I think the record is a
19 little -- the Illinois Pollution Control Board
20 record was admitted by City Council. We
21 mentioned that this morning, however, there's
22 been a ruling that pre-filing contacts were
23 inadmissible including the February 19, 2002.
24 So I'm quite honestly in a quandary as to

1 whether or not I have a record or I don't on
2 February 19, 2002.

3 HEARING OFFICER HALLORAN: I'm going
4 to overrule your objection. Mr. Porter, you
5 can make your record.

6 MR. MUELLER: Mr. Halloran, may I
7 make a suggestion and I hate to be the voice of
8 reason. We object to any testimony regarding
9 the February 19th meeting because number one
10 it's a pre-filing contact and because number
11 two, the minutes of that meeting are really a
12 transcript of everything that was said by
13 everyone that said anything during the meeting.

14 Now, having made those objections
15 numerous times, the minutes themselves are part
16 of the record. They were introduced at the
17 original siting hearing. They have been
18 produced additional in discovery. The
19 Pollution Control Board, therefore, has the
20 benefit of those minutes.

21 We're prepared to stipulate that
22 everyone says or said what they are purported

23 to have said and that for what it's worth, the
24 minutes ought to be considered by the Board

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1 subject to the objections that we made and
2 therefore questioning about, did you really say
3 it doesn't advance us any further. Yeah, we
4 all said what we're alleged to have said.
5 We're stipulating to the transcript and
6 accuracy of the minutes. And with that said,
7 isn't really the record complete on the issue?

8 HEARING OFFICER HALLORAN: Mr.
9 Porter, what quandary are you in?

10 MR. PORTER: Right now I'm just --
11 the mayor has apparently drawn some distinction
12 about whether or not he provided a special
13 indulgence to Town and Country; and indeed,
14 that is contained within the minutes and if the
15 city is stipulating that indeed he made a
16 special indulgence I can move on.

17 MR. LESHEN: The city will stipulate
18 that whatever the mayor said, whatever the
19 minutes reflect that the mayor said, he did
20 indeed say. Whatever is contained in that

21 transcript, we're not going to argue whether
22 it's correct or incorrect. Whatever was said
23 in that transcript, we agreed is what was said.

24 HEARING OFFICER HALLORAN: Mr.

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1 Porter?

2 MR. PORTER: I'm willing to move on
3 particularly if Mr. Mueller is going to make
4 the same stipulation regarding Mr. Volini and
5 we can cross that bridge when we come to it.

6 MR. MUELLER: Absolutely.

7 HEARING OFFICER HALLORAN:

8 Stipulation so accepted. Move on.

9 BY MR. PORTER:

10 Q. The reason you gave Town and Country
11 this special indulgence was because you
12 believed that the landfill could correct what
13 you perceived as a financial dilemma to the
14 city of Kankakee; is that right?

15 A. I believe that's what I said in the
16 minutes.

17 Q. You also allowed City Council to ask
18 questions of the applicant, correct?

19 A. I believe so. That again is stated
20 in the minutes that they were allowed to ask
21 questions.

22 Q. And it was not the usual course for
23 the counsel to be allowed to ask questions of
24 speakers; is that right?

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1 A. If someone was on the agenda of the
2 City Council in which this particular entity
3 was, the council always has the right to ask
4 questions.

5 Q. Do you recall giving your deposition
6 in this case previously, Mayor?

7 A. Yes.

8 Q. And do you recall me asking you at
9 page 71, line 21 --

10 A. If you refresh your memory it would
11 help.

12 Q. I need a moment. Page 71, line 11,
13 isn't it true that I asked you -- and when was
14 it that the decision was made that the City
15 Council was going to be allowed to ask
16 questions of the applicant, to which he

17 responded, I would assume when I asked
18 permission to put this on the agenda and have
19 Town and Country Utilities speak. I then asked
20 at page 71, line 23 would that be the usual
21 course of City Council business to which you
22 responded, no, it wouldn't. Did you give those
23 responses when I asked those questions
24 previously.

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1 A. Yes, I did. And after reflection --
2 because at my deposition I did not have a copy
3 of the City Council agenda in front of me, I
4 was going on the assumption that it was not on
5 the agenda and I was answering it in that
6 fashion because that's what we would do at a
7 City Council meeting if someone wanted to make
8 a presentation that would ask permission of the
9 counsel. I truly -- because I didn't have the
10 agenda in front of me that day, I was not
11 aware. But in reviewing that particular case,
12 we had done that and it was an agenda item for
13 the counsel meeting that night.

14 Q. Regardless it is absolutely clear

15 that the City Council did indeed ask questions
16 of the applicant; is that correct?

17 A. Yes, that's reflected in the minutes.

18 Q. Before the presentation began you had
19 a meeting with Mr. Volini, his attorney, the
20 city's attorney, Mr. Bohlen, and yourself
21 regarding the content of the proposed February
22 19, 2002, meeting; is that correct?

23 MR. LESHEN: I simply ask for
24 foundation as to when and where this meeting

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1 was alleged to have occurred?

2 HEARING OFFICER HALLORAN: Mr.
3 Porter, are you able to --

4 MR. PORTER: No, I'm not right now.
5 The question is whether or not they had a
6 meeting before it and if counsel wants to ask
7 him the specific date and time, I'm sure he
8 can.

9 HEARING OFFICER HALLORAN: I'm going
10 to overrule your objection. Mayor, you can
11 answer now.

12 BY THE WITNESS:

13 A. I can answer the question. I'm not
14 sure of the date, but I was approached by
15 Mr. Volini asking if they could make a
16 presentation to the City Council. I'm not sure
17 exactly who was all in the room at that time,
18 but it occurred in my office.

19 I think city corporation counsel
20 Bohlen was there, Mr. Sims may have been there
21 and Mr. Volini and maybe his attorney. But I
22 said, yes, you could make a presentation to the
23 council. But, again, I don't recall the exact
24 date.

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1 BY MR. PORTER:

2 Q. At that meeting, did you not place in
3 your restrictions on Mr. Volini as to who could
4 speak at the February 19th City Council
5 meeting; is that correct?

6 A. That would be correct but that again
7 would not be unusual because there would be
8 others. There have been other times when we've
9 had businesses or industrial prospects that
10 have asked to make presentation to the City

11 Council and I really don't delineate with them
12 as to who they are going to use in their
13 presentation. We try and restrict a time so it
14 doesn't run on for hours.

15 Q. Mayor, I don't know how -- I'm going
16 to address this to Mr. Halloran. In all
17 respect, I appreciate the additional comments,
18 but the question is simply whether or not you
19 had any restrictions on who could speak and we
20 had a rather lengthy explanation of that?

21 A. No.

22 MR. LESHEN: For the record, I have
23 probably, as much as I hate to say it, have
24 been appropriately criticized for not letting

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1 witnesses finish. The mayor is sitting here in
2 no different a position as a witness than
3 Mrs. O'Dell was earlier this morning. I would
4 just ask that he be extended the same courtesy.

5 MR. PORTER: I agree. We'll extend
6 the mayor the same courtesy.

7 MR. PORTER: I didn't mean any
8 offense. I was trying to indicate that this

9 might go faster if we just answer questions
10 that were asked.

11 BY MR. PORTER:

12 Q. Let me move on. No one at the city
13 ever told Mr. Volini that he could not present
14 expert opinion statements as to the criteria to
15 the City Council that night; is that correct?

16 MR. LESHEN: This has been asked and
17 answered. The mayor said he did not put
18 restrictions on the presentation of Town and
19 Country. Restrictions were not placed on other
20 businesses that sought to make presentations.

21 HEARING OFFICER HALLORAN: Your
22 objection is so noted, however, it's overruled.
23 Mayor, if you can answer that question, please.
24 BY THE WITNESS:

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1 A. I really can't answer if they had
2 conversations with anyone else. My only
3 conversation with them I said, yes, you can
4 make your presentation. And I'll go back to
5 what I had said earlier, I asked for a time
6 limit on it and I think maybe either 20 to 30

7 minutes.

8 Q. As far as you're aware no one at the
9 city ever told Mr. Volini that they could not
10 present expert opinion statements at that
11 2-19-02 meeting, correct?

12 A. Yes, to the best of my knowledge.

13 Q. Before the meeting on February 19th
14 of 2002, you knew that the county of Kankakee
15 was opposed to any new landfill being erected
16 in the city of Kankakee; isn't that correct?

17 A. Yes.

18 MR. LESHEN: Are we still doing the
19 offer of proof now?

20 HEARING OFFICER HALLORAN: Mr.
21 Porter?

22 MR. LESHEN: I'm just trying to stay
23 with it so I don't miss it.

24 HEARING OFFICER HALLORAN: It seems

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1 to me to be a pre-filing.

2 MR. PORTER: That last question was
3 not a pre-filing communication.

4 MR. LESHEN: If it's not a pre-filing

5 communication, this is kind of like hearsay.
6 If it's not being sought in that context than
7 it's irrelevant. If it's being sought in that
8 context than it's the context of pre-filing
9 contacts and should remain within the offer of
10 proof.

11 MR. PORTER: The issue now that I'm
12 addressing -- I do not believe it is within the
13 offer of proof and I apologize for not having
14 mentioned it. It's a difficult procedure to
15 have to go through. The issue that I'm now
16 addressing is whether or not notice should have
17 been sent to the objectors and the public
18 regarding the presentation that was made and
19 that notice was not sent to the land owners
20 surrounding the landfill or the county even
21 though the city was well aware that the county
22 was opposed to the landfill and aware that the
23 applicant was going to be making a presentation
24 about the criterion how they believed they

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1 named the criterion.

2 HEARING OFFICER HALLORAN: Does this

3 go to a jurisdiction issue?

4 MR. PORTER: It definitely does go to
5 jurisdiction as well as the adjudicative
6 process. We are asserting that the actual
7 hearing began on February 19th of 2002, yet
8 there was no notice sent out regarding that.

9 MR. MUELLER: Mr. Halloran, Town and
10 Country would stipulate that we did not serve
11 Section 32.9 notices with respect to the
12 February 19th City Council meeting.

13 HEARING OFFICER HALLORAN: Thank you,
14 Mr. Mueller. Mr. Porter? Do you accept that
15 stip?

16 MR. PORTER: I certainly do accept
17 that stipulation as long as there's an
18 additional stipulation that the city was aware
19 that the county was opposed to the landfill at
20 that time.

21 MR. LESHEN: I guess the city -- I
22 think when Mayor Green has been answering as
23 the city -- the city is different entities.
24 There's 14 aldermen and who is in favor of what

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1 and what point are matters of interpretation.
2 But nonetheless whether or not Mayor Green knew
3 or didn't know of the county's opposition is
4 irrelevant to whether or not that notice should
5 have been said.

6 I don't see the argument, but that's
7 for the Board to decide whether or not that
8 siting hearing actually began a month early,
9 but that's the argument they are making, but
10 there's nothing here that leads to relevant
11 information.

12 HEARING OFFICER HALLORAN: Based on
13 the parties' representation, I'm going to
14 sustain Mr. Leshen and Mr. Mueller's objection
15 and I think it would fall out of the offer of
16 proof. We'll proceed from there.

17 MR. PORTER: And part of your ruling
18 was accepting the stipulation, correct,
19 Mr. Halloran?

20 HEARING OFFICER HALLORAN: Right. If
21 the stipulation that the parties received no
22 notice or the land owners received no notice to
23 the February 19th meeting which you allege
24 where they prejudged or the application or

1 where they actually substantively presented
2 their case.

3 MR. LESHEN: With that stipulation
4 should I take it then it's within the context
5 of that offer of proof? Otherwise it has no
6 bearing other than in the context of that
7 offer.

8 HEARING OFFICER HALLORAN: Mr.
9 Mueller made the offer. Mr. Mueller?

10 MR. MUELLER: Mr. Halloran, when I
11 talked about notices I talked about Section
12 39.2 notices, which we stipulate that we did
13 not serve in connection with the February 19th
14 City Council meeting.

15 Whether or not the City Council gave
16 the usual notice of their meeting such as
17 publishing their agenda, I don't know. I
18 presume they did. But 39.2 notices were not
19 given and I think everybody would agree with
20 that.

21 HEARING OFFICER HALLORAN: So that's
22 to the stipulation, but it does fall within the
23 offer of proof.

24 MR. PORTER: Again, I don't

1 understand how the objection is being sustained
2 as this is not an issue regarding ex parte
3 context, but rather an issue regarding notice.
4 I respect that I have a ruling. I'm just -- I
5 think we have a difference of opinion. We
6 agree to disagree.

7 BY MR. PORTER:

8 Q. The question is pending in the offer
9 of proof and it is whether or not you knew that
10 county was opposing landfill?

11 HEARING OFFICER HALLORAN: That was
12 the question pending?

13 MR. PORTER: Right.

14 A. I thought I answered that. I said
15 yes.

16 Q. I'm sorry. I forgotten at this
17 point. At no time did you tell the City
18 Council to disregard the statements that were
19 made on February 19, 2002, correct?

20 A. Again, I would have to look at the
21 minutes because the minutes are a duplication
22 of what was said that night and again I'll
23 stand by what they say. I don't believe I did.

24 Q. I wasn't limiting my question to

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1 February 19, 2002. I'm asking if at any time
2 you told the City Council to disregard the
3 statements of February 19, 2002?

4 A. After the meeting?

5 Q. At any time.

6 A. No, I did not say that.

7 Q. At no time that night did you object
8 to any statements that were made?

9 MR. LESHEN: We will, again, for the
10 record say that whatever is in the transcript
11 is stipulated to as what was said in the
12 meeting. I don't think we want the mayor to go
13 through it.

14 MR. PORTER: I'm not asking --

15 MR. LESHEN: Excuse me.

16 MR. PORTER: I'm sorry.

17 MR. LESHEN: And his memory is not as
18 good a record of what the words were in regard
19 to that meeting. That's why we stipulated to
20 the transcript.

21 MR. PORTER: I didn't ask him to

22 repeat what was said. I merely asked him if at
23 any time that night he objected.

24 MR. LESHEN: And I'm saying

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1 whatever --

2 BY THE WITNESS:

3 A. My answer is no.

4 HEARING OFFICER HALLORAN: Thank you,
5 Mayor.

6 BY MR. PORTER:

7 Q. You did advocate in favor of the
8 landfill that night, correct?

9 A. I believe I did. I believe that was
10 my statement at the City Council meeting.

11 Q. After the formal presentation on
12 2-12-02, the applicant's witnesses spoke
13 directly with various City Council members; is
14 that correct?

15 MR. MUELLER: I'm going to object to
16 the characterization of witnesses.

17 HEARING OFFICER HALLORAN: Francine,
18 could you read the question back, please?

19 (Whereupon, the record was

20 read as requested.)

21 MR. PORTER: I'll reask the question
22 and let Mr. Mueller make his objection.

23 BY MR. PORTER:

24 Q. After the presentation, the

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1 applicant's witnesses spoke directly with the
2 City Council members, correct?

3 MR. MUELLER: Same objection.
4 There's no evidence that there was witnesses
5 and that's an unfair characterization, which I
6 think you sustained objections to previously,
7 Mr. Halloran, and he continues to make --

8 MR. PORTER: The individuals that
9 spoke were indeed witnesses at the 39.2
10 hearing, at least Mr. Moose was the primary
11 speaker.

12 HEARING OFFICER HALLORAN: Mr.
13 Mueller?

14 MR. MUELLER: No one was a witness
15 that night. It turned out that one of the
16 speakers at the February 9th meeting, one of
17 them out of four, ultimately became a witness

18 at a 39.2 hearing. That does not make it fair
19 to characterize him as a witness that night.

20 HEARING OFFICER HALLORAN: Would you
21 rephrase based on Mr. Mueller's
22 representations.

23 MR. PORTER: Sure. I think we made a
24 record there

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1 BY MR. PORTER:

2 Q. Isn't it true that the speakers for
3 the applicant spoke with the City Council
4 members after the presentation?

5 A. Again, some of the individuals who
6 were on Mr. Volini's team from Town and Country
7 were there at the end of the meeting. Some of
8 the City Council members may have spoken with
9 them at the end of that meeting. We were
10 hosting an event because we were honoring one
11 of the policemen who was retiring from one of
12 the KMEG units, our former assistant
13 corporation counsel. This was the last night
14 of his meeting for the City Council before he
15 went into foreign service, so there were people

16 talking to a lot of different individuals that
17 night.

18 Q. Isn't it true that a Ms. Simmon spoke
19 that evening?

20 A. I believe so. I have to look at the
21 minutes but I think she was one of the
22 individuals.

23 Q. Isn't it true that she made
24 statements that the objectors' witnesses that

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1 would testify at the 39.2 hearing would be
2 untrustworthy?

3 MR. LESHEN: Again, at this point I
4 do not understand. Are we not -- have we not
5 stipulated that the minutes are an accurate
6 recitation of what was said.

7 HEARING OFFICER HALLORAN: Is that
8 reflected in the minutes, Mr. Porter?

9 MR. PORTER: In my opinion, it's
10 obviously a conclusion, but it's also a
11 prefatory statement to the next question.

12 MR. MUELLER: And my objection then
13 is that not only are we now going beyond the

14 four corners of the transcript, but we're
15 allowing Mr. Porter to paraphrase or interpret
16 the statements, which serves no purpose at all.
17 She said what she said and I don't believe that
18 the word untrustworthy is contained within the
19 transcript of her statements.

20 HEARING OFFICER HALLORAN: Mr.
21 Porter?

22 MR. PORTER: I don't think I need to
23 respond.

24 HEARING OFFICER HALLORAN: I'm not

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1 sure where the stipulation is going. It
2 doesn't look like it's working.

3 MR. LESHEN: If we're going to go
4 through that, that Mr. Porter simply read
5 directly from the transcript rather than
6 paraphrasing or show it to the mayor so
7 everybody could be looking at the same document
8 because otherwise we'll have to be wondering
9 whether Mr. Porter is paraphrasing or not,
10 which is certainly unfair to the witness.

11 MR. PORTER: That can certainly be

12 done on re-cross. The question is plain and
13 unambiguous and I believe can be answered by
14 his honor, the mayor.

15 MR. LESHEN: I've made my objection.
16 We've gone from -- wasn't it said to
17 paraphrases of what was said and how will he
18 know unless each time he has to look at the
19 transcript, which we can do. We just have to
20 take the time.

21 HEARING OFFICER HALLORAN: It appears
22 everybody wants to stay here for a while. I
23 guess we'll have to do it that way. On cross
24 you can rehabilitate or whatever, proceed from

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1 there. Mr. Porter?

2 MR. LESHEN: Mr. Halloran, I need
3 about a one-minute recess due to my consumption
4 of coffee.

5 HEARING OFFICER HALLORAN: I'll give
6 you five. We're off the record.

7 (A short break was had.)

8 HEARING OFFICER HALLORAN:
9 We took about a short five, six minute break

10 and I want to note for the record that
11 Mr. Sandberg came in shortly after the lunch
12 break.

13 MR. SANDBERG: I'm sorry I was late.
14 I was held up by garbage trucks on the highway.

15 HEARING OFFICER HALLORAN: Thank you,
16 Mr. Sandberg. In any event, Mr. Porter, your
17 question with all due respect if you are and
18 I'm not saying you aren't, mischaracterizing or
19 rephrasing what's in the minutes, I think that
20 Mr. Leshen and Mr. Mueller do have a right to
21 object and they can clean it up on cross.

22 BY MR. PORTER:

23 Q. I'm just asking the mayor if he
24 agrees that Ms. Simmon made a statement that

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1 the objectors' witnesses will tell half-truths
2 and not tell whole truths?

3 A. To the best of my knowledge, yes.

4 MR. LESHEN: I'm going to object to
5 the use of the word witnesses at this point.

6 HEARING OFFICER HALLORAN: Were they
7 speakers, Mr. Porter?

8 MR. PORTER: I meant speakers rather
9 than objector.

10 HEARING OFFICER HALLORAN: Objection
11 sustained

12 BY MR. PORTER:

13 Q. Let me ask the question one more
14 time. Isn't it true --

15 MR. MUELLER: Mr. Halloran, I'm going
16 to try it one more time, in an effort to move
17 this along, Town and Country would stipulate to
18 the admission of the minutes of that meeting as
19 substantive evidence subject to our being able
20 to argue to the Board that's irrelevant and
21 should not be considered for any purpose
22 because it's a pre-filing contact.

23 MR. PORTER: Again, this was a
24 prefatory question to the next question, if I

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1 can ever get to it.

2 HEARING OFFICER HALLORAN: It looks
3 like your stipulation is not going to go. I do
4 accept this stipulation, but I need to lay this
5 one foundational question so that I can ask the

6 next question so the witness knows what it is
7 I'm talking about.

8 HEARING OFFICER HALLORAN: You may
9 proceed.

10 BY MR. PORTER:

11 Q. Isn't it true that Ms. Simmon made
12 those statements?

13 A. I just answered yes a moment ago.

14 Q. I know and the objection was
15 sustained.

16 A. I'm sorry.

17 Q. Ms. Simmon did not testify at the
18 39.2 hearing; is that correct?

19 A. I do not believe so.

20 Q. So those statements were not repeated
21 once notice was sent out and the objectors were
22 in presence, is that right?

23 A. Can you define what you mean by
24 repeated?

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1 Q. Ms. Simmon's statements that the
2 objectors' witnesses would tell half-truths
3 were not repeated at the 39.2 hearing, correct?

4 A. Correct, she didn't testify.

5 Q. And nobody attempted to offer that
6 type of testimony at the 39.2 hearing; is that
7 right?

8 A. I don't think so.

9 MR. LESHEN: By that type of
10 testimony the statements that were made by Ms.
11 Simmons?

12 MR. PORTER: I think the record is
13 clear.

14 HEARING OFFICER HALLORAN: That's the
15 way I understood it.

16 BY MR. PORTER:

17 Q. Now, prior to the 39.2 hearing it was
18 your intention to be the hearing officer,
19 correct?

20 A. That's correct.

21 Q. You did step down and recommend that
22 Mr. Bohlen be appointed, correct?

23 A. Correct.

24 Q. And prior to that hearing commencing,

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1 did you ever have any communications with

2 anyone about -- strike that.

3 Prior to the 39.2 hearing, did you
4 ever consider hiring an unaffiliated hearing
5 officer?

6 MR. LESHEN: Your Honor, I object
7 again to relevance. What he considered, what
8 were his thoughts, what were his feelings, what
9 his spirit told him, none of that is relevant.
10 The actions of the decision-making body in
11 terms of whether or not fundamental fairness
12 was in fact adhered to, that's the issue before
13 you.

14 HEARING OFFICER HALLORAN: I'll
15 overrule the objection. If the Board feels
16 that it is irrelevant it will so note and you
17 can all take my rulings through the Board with
18 your post hearing briefs.

19 MR. MUELLER: I have a different
20 objection, which is I think the question is
21 unfair unless we have some definition of
22 unaffiliated.

23 MR. PORTER: Understood.
24 Unaffiliated with the city of Kankakee and the

1 City Council.

2

3 BY MR. PORTER:

4 Q. Would you like me to reask the
5 question, Mayor?

6 A. I believe I understood the question.
7 You're asking me at any time did I consider or
8 did the City Council consider hiring someone
9 from the outside and the answer is no, we did
10 not.

11 Q. Isn't it true that if an unaffiliated
12 hearing officer had been hired, the cost of
13 that would have been picked up by the
14 applicant?

15 MR. LESHEN: Same objection,
16 relevance.

17 HEARING OFFICER HALLORAN: Overruled.

18 BY THE WITNESS:

19 A. Yes, the cost would have been picked
20 up.

21 Q. Now, you would agree that it's
22 incumbent upon the city to file its own city
23 siting ordinance, correct?

24 A. Yes.

1 Q. You are aware, are you not, that
2 section 4D1 of the siting ordinance requires
3 the city clerk to immediately deliver a copy of
4 the application to the county board chairman
5 and the county solid waste director upon the
6 applications filed; is that right?

7 A. Yes.

8 Q. And at no time did you direct the
9 city clerk, Ms. Anjanita Dumas, to deliver
10 those copies; is that correct?

11 A. That's correct.

12 Q. You have never had a discussion with
13 her about her failure to do so; is that
14 correct?

15 A. That's correct.

16 Q. As far as you know no city official
17 ever directed her not to send those copies; is
18 that correct?

19 A. I can't answer for other city
20 officials. I'm not sure what their thoughts
21 would be.

22 Q. I was asking as far as you know.

23 A. That's correct.

24 Q. You would agree that the failure to

1 immediately send a copy of the application to
2 the county board chairman and another copy to
3 the solid waste director and the county was a
4 violation of that ordinance, correct?

5 MR. LESHEN: I'm going to object
6 again to use the words the ordinance speaks for
7 itself. We have agreed that the mayor has
8 testified as to what the facts were.

9 HEARING OFFICER HALLORAN: I'm going
10 to overrule your objection. And by the way, if
11 I don't look at you each time I make an
12 objection, my neck is starting to go out of
13 whack, but in any event the objection is
14 overruled. If you are able to answer, you may.

15 THE WITNESS: I'm sort of confused as
16 to what the last question was. If you can
17 repeat it, please?

18 BY MR. PORTER:

19 Q. You would agree, would you not, that
20 the failure to immediately deliver a copy of
21 the application to the county board chairman
22 and another copy to the solid waste director

23 was a violation of the siting ordinance,
24 correct?

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1 A. That is correct.

2 Q. At any time, did you direct the city
3 clerk to require an FOIA, a Freedom of
4 Information Act request to be filed by the
5 parties to the siting proceedings to acquire
6 documents that were filed in regard to those
7 Section 39.2 proceedings?

8 A. No, I did not.

9 Q. Are you aware of anyone else
10 directing her to do so?

11 A. Not to my knowledge.

12 Q. At any time, did you direct the city
13 clerk to refuse to provide the names of the
14 parties to the proceeding to the other parties
15 of the proceeding absent of FOIA request?

16 A. No.

17 MR. PORTER: And that's F-O-I-A.

18 BY MR. PORTER:

19 Q. You selected the venue for the
20 Section 39.2 proceedings; is that right?

21 A. It was held in the City Council
22 Chambers.

23 Q. And you were the one that decided to
24 hold it at the City Council Chambers; is that

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1 correct?

2 A. That's correct. That's where we hold
3 all of our meetings.

4 Q. You were aware that the annexation
5 proceedings were very crowded, were you not?

6 A. There were people there, yes.

7 Q. And you would agree with the
8 testimony of Mrs. Blume wherein she indicated
9 that members of the public were required to
10 stand in the back of the room at the annexation
11 proceedings, correct?

12 MR. LESHEN: I don't think it's fair
13 to ask him to comment on another -- or to
14 agree --

15 MR. PORTER: I'll withdraw and
16 rephrase.

17 BY MR. PORTER:

18 Q. Isn't it true that members of the

19 public stood in the back of the room at the
20 annexation proceedings?

21 A. I was not in attendance at the
22 annexation meeting.

23 Q. Did you attend any of the annexation
24 proceedings?

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1 A. I think there was one, maybe.

2 Q. And at that one, isn't it true that
3 people were standing in the back of the room?

4 A. I truly don't recall.

5 Q. Do you have any reason to dispute
6 that testimony?

7 A. Again, I don't recall so I have no
8 reason to dispute the testimony.

9 Q. Isn't it true that there are various
10 venues within the city of Kankakee that could
11 have accommodated a larger crowd than was
12 accommodated on June 17th of 2002?

13 MR. LESHEN: I'm going to object
14 without showing that any of those were
15 available and suitable.

16 MR. PORTER: Again, I think the

17 question is plain and unambiguous and he can
18 re-cross.

19 HEARING OFFICER HALLORAN: If you can
20 answer -- your objection is overruled. Mayor,
21 if you can answer

22 BY THE WITNESS:

23 A. Well, there would be other venues,
24 but this meeting was held in our regularly

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1 scheduled meeting place. We scheduled the City
2 Council meetings. That is established. In
3 December of the prior year, they're held at
4 City Hall in the City Council of Chambers.
5 That's our regular meeting hall. Are there
6 other venues available, yes, there might be.
7 And more than likely, it would have to be one
8 of the schools, and, again, that would have to
9 be on an available basis.

10 Q. In addition to the schools, isn't it
11 true that there's also a facility called the
12 Franco room that had sufficient space?

13 A. I'm not sure what definition of
14 sufficient space is.

15 Q. Well, the Franco room could
16 accommodate more people than the Council of
17 Chambers, correct?

18 A. I don't know without knowing how many
19 people the Franco room could accommodate.

20 Q. What about Provena St. Mary's
21 Hospital, do they have a room that could have
22 accommodated more people?

23 A. Yes. It's called the Franco room.

24 Q. What about the YMCA, is there room

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1 there that could have accommodated more people?

2 A. I don't know.

3 Q. What about the Kankakee Cultural
4 Center; is there a room there that could have
5 accommodated more people?

6 A. I don't know where the Kankakee
7 Cultural Center is.

8 Q. You were present on the first night
9 of the 39.2 hearings, correct?

10 A. Yes.

11 Q. And you indeed saw people lining the
12 hallway and stairwell; is that right?

13 A. No. I was in the City Council
14 Chamber. It's very difficult for me to see
15 outside.

16 Q. You know that that occurred though;
17 is that correct?

18 MR. LESHEN: Objection. He testified
19 that he didn't see. If he wants him to base it
20 on what he's heard, then he's asking him to
21 base an opinion based on hearsay, which I think
22 is inappropriate.

23 HEARING OFFICER HALLORAN: Mr.
24 Porter?

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1 MR. PORTER: No response.

2 HEARING OFFICER HALLORAN: Objection
3 sustained.

4 BY MR. PORTER:

5 Q. You never went out into the hall or
6 stairwell that night to determine if the
7 proceedings could be heard by the people
8 standing out there, did you?

9 A. No.

10 Q. You did look back and see that there

11 were people crowding into the doorway trying to
12 see the proceedings, didn't you?

13 A. That's not unusual. We've had people
14 crowding the doorway when we had proceedings at
15 a regular City Council meeting.

16 Q. And isn't it true that at those
17 meetings where people have had to crowd, they
18 were allowed to stand in the back of the room,
19 right?

20 A. In some cases, yes.

21 Q. At this particular venue -- strike
22 that.

23 On June 17th of 2002, they were not
24 allowed to stand in the back of the room; is

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1 that correct?

2 A. That wouldn't be correct. You have
3 to remember first we started out with the City
4 Council meeting and I made no ruling that no
5 one could stand at that City Council meeting.

6 Q. You are aware that the police
7 ultimately did not allow people to stand in the
8 back of the room, are you not?

9 A. I had heard that, yes.

10 Q. Did you ever direct the police to

11 tell people that they could not stand in the

12 back of the room?

13 A. No.

14 Q. Do you know who did?

15 A. I believe the hearing officer did.

16 Q. Was that the first time to your

17 knowledge that there had ever been a ruling by

18 a city official that people could not stand in

19 the back of the room to attend a public

20 meeting?

21 A. I'm going to have to have a

22 determination of what a city official does.

23 Q. To your knowledge, has any city

24 employee ever told people they could not stand

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1 in the back of a room to attend a public

2 meeting?

3 A. In all honesty, to the best of my

4 knowledge.

5 Q. So this is the first time it had ever

6 happened, correct?

7 A. I've only been mayor for nine years,
8 I don't know what happened prior to that.

9 Q. In the nine years you've been mayor
10 it is the first time it ever happened, correct?

11 A. That's correct.

12 Q. You did not join in the motion to
13 adjourn the meeting and reconvene in another
14 venue did you?

15 A. I, as the CEO, or the head of the
16 City Council, I do not make a motion.

17 Q. If I understand correctly, you
18 recused yourself so that you would have the
19 opportunity to participate in the proceeding by
20 asking questions; isn't that right?

21 A. Correct, asking questions.

22 Q. And did you believe there was some
23 restriction that wouldn't allow you to make a
24 motion if you were going to participate in

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1 proceedings?

2 A. I'm not a part of the body politic.
3 That's the 14 aldermen. They are the only ones
4 that could make a motion.

5 Q. At any time did you suggest to anyone
6 that the meeting be adjourned and reconvened in
7 an appropriate venue?

8 MR. LESHEN: Objection. It doesn't
9 matter because the issue is fundamental
10 fairness and whether the mayor once he decided
11 for his reasons that he would not be the
12 hearing officer and stepped down that it would
13 no longer be within his purview.

14 HEARING OFFICER HALLORAN: Mr.
15 Porter?

16 MR. PORTER: Again, the mayor has
17 testified that he made a record -- strike that.

18 The mayor has made a record the night
19 of June 17, 2002, that one of the reasons he
20 was stepping down was so that he could
21 participate in the proceedings. I think that
22 that made him able to make a motion like any
23 participant.

24 Regardless, the question is clearly

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1 direct. I think he understands it and it can
2 be subject to cross.

3 MR. LESHEN: Whether the questions
4 are clear or direct does not always make the
5 information they seek admissible.

6 HEARING OFFICER HALLORAN: We do have
7 a bit of a relaxed rules of evidence for this
8 administrative proceeding and again I point you
9 to Section 101.626. I think I'm going to
10 overrule your objection and the witness may
11 answer, if he is able.

12 BY THE WITNESS:

13 A. Would you mind rephrasing your
14 question?

15 BY MR. PORTER:

16 Q. Sure. At any time that night did you
17 suggest to anyone that the proceedings be
18 adjourned and reconvened in an appropriate
19 venue?

20 A. No.

21 Q. Do you have an opinion as to whether
22 the people that were forced to stand in the
23 hallway and the stairwell received a fair
24 hearing?

1 A. No.

2 MR. PORTER: Nothing further.

3 HEARING OFFICER HALLORAN: Thank you,

4 Mr. Porter. Mr. Sandberg, any questions of the

5 mayor?

6 MR. SANDBERG: No.

7 HEARING OFFICER HALLORAN: Mr. Moran?

8 MR. MORAN: None.

9 HEARING OFFICER HALLORAN: The floor

10 is to you, Mr. Mueller.

11 CROSS-EXAMINATION

12 BY MR. MUELLER:

13 Q. Were there extra chairs put into the

14 council chambers on -- or for the night of the

15 hearing?

16 A. Yes.

17 Q. So was there even any room to stand

18 in the back given the fact that extra chairs

19 had been placed in there?

20 A. No.

21 Q. Mayor, did you ever tell any of the

22 City Council members how to vote on this

23 application?

24 A. No.

1 Q. Did you ever convey any information
2 about the proposal after the application was
3 filed to any city counsel members that wasn't
4 part of the evidence?

5 A. No.

6 Q. In other words, you didn't tell them
7 any secret stuff that you might have known?

8 A. No.

9 Q. Did you, in fact, know any secret
10 stuff?

11 A. No.

12 Q. Did any of the aldermen ever tell you
13 that they had based their decision on anything
14 other than the evidence?

15 MR. PORTER: Objection, calls for
16 hearsay. It's also extremely leading and I
17 don't believe this witness is adverse.

18 MR. MUELLER: It's cross-examination.

19 HEARING OFFICER HALLORAN: I'm going
20 to overrule your objection. He may answer if
21 he is able.

22 BY MR. MUELLER:

23 Q. Did any of the alderman ever tell you
24 that they had voted on any basis other than the

1 evidence they had heard?

2 A. No.

3 Q. Why wasn't the application given to
4 the county?

5 A. You would have to ask the city clerk.
6 I'm not sure why it was not.

7 Q. Is it your understanding that that
8 was an oversight?

9 A. As far as I'm concerned it was.

10 Q. Was there any intent on your part to
11 deprive the county of an opportunity to fully
12 prepare?

13 A. Absolutely not.

14 Q. Did anyone ever who works for you
15 tell you that they had such intent?

16 A. No.

17 Q. Did you ever tell Mr. Bohlen what to
18 put in his proposed findings of fact?

19 A. No.

20 Q. Did you have any input at all into
21 the proposed findings of fact prepared by
22 Mr. Bohlen?

23 A. No.

24 Q. Was the vote of the City Council and

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1 its Board of this application after the hearing
2 and the record was closed unanimous?

3 A. Yes, with the exception of one, rule
4 abstain.

5 Q. So there were no negative votes?

6 A. That's correct.

7 HEARING OFFICER HALLORAN: Mr.
8 Leshen?

9 MR. LESHEN: May I approach the
10 Chair?

11 HEARING OFFICER HALLORAN: Yes, you
12 may.

13 MR. PORTER: Mr. Leshen, respectfully
14 before you ask any questions about this
15 document, I would object it's beyond scope.

16 HEARING OFFICER HALLORAN: Mr.
17 Leshen, any response?

18 MR. LESHEN: This is within the
19 context again of the offer of proof and the
20 reason that I am seeking its admission within
21 that context is directly based -- is directly

22 in response to Mr. Porter's own questioning
23 regarding whether or not Mr. -- rather Mayor
24 Green actually ever gave instructions to the

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1 alderman regarding things that were said
2 outside of the context with the siting hearing
3 and I would represent to HEARING OFFICER
4 HALLORAN that those in fact as opposed -- that
5 the document that you have before you marked as
6 City's Exhibit 3 as opposed to the document
7 which had been admitted that was drafted
8 bearing the signature of Kenneth A. Leshen that
9 had been discussed in the context of Mr.
10 Bohlen's testimony was in fact the document
11 that was disseminated to the City Council and,
12 consequently, I think it's in direct response
13 to the offer -- to the content of the offer of
14 proof regarding something in context.

15 HEARING OFFICER HALLORAN: Mr.
16 Porter, anything further?

17 MR. PORTER: Nothing.

18 HEARING OFFICER HALLORAN: So Mr.
19 Leshen, you want this admitted as an offer of

20 proof in the context?

21 MR. LESHEN: Yes, because I don't
22 think that -- I think that my ongoing objection
23 is that all of that is irrelevant, but within
24 the context of that offer of proof, I think

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1 it's incumbent upon me to say this is what is
2 going to happen if in fact members of the Board
3 deem it appropriate to consider that issue.

4 HEARING OFFICER HALLORAN: We'll take
5 it as an offer of proof. I'll take it with the
6 case Respondent's City's Exhibit No. 3.

7 MR. LESHEN: Mayor Green --

8 MR. PORTER: I don't recall 1 and 2.

9 MR. LESHEN: There is not a 1 and 2.

10 HEARING OFFICER HALLORAN: Will there
11 be a 1 and 2?

12 MR. LESHEN: I have other documents
13 as 1 and 2. They'll come in later.

14 HEARING OFFICER HALLORAN: Okay.

15 MR. LESHEN: There will come a point
16 when I yield again to Mr. Mueller on one
17 particular set of questions just because I

18 think it will go faster.

19 HEARING OFFICER HALLORAN:

20 Understood.

21 CROSS-EXAMINATION

22 BY MR. LESHEN:

23 Q. Mayor Green, can you identify for the
24 record the document that I placed in front of

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1 you and tendered to your counsel?

2 A. Yes. I believe this is a document to
3 the best of my recollection, this was passed
4 out to the City Council and I believe it
5 probably was the first meeting in June.

6 Q. If my memory serves, the June 3rd
7 meeting?

8 A. That possibly is correct.

9 Q. And that was the document that was
10 passed out to the City Council regarding issues
11 that may arise concerning contacts outside of
12 that siting; is that correct?

13 A. That's correct.

14 Q. Is that, in fact, a true and exact
15 copy with the exception of my exhibit sticker?

16 A. Yes.

17 MR. LESHEN: Your Honor, with that
18 offer -- I'm sorry, I'm getting tired as we all
19 are -- that offer of proof I would move for
20 admission of that document.

21 HEARING OFFICER HALLORAN: Mr.
22 Porter?

23 MR. PORTER: No comments other than
24 it's beyond the scope.

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1 HEARING OFFICER HALLORAN: I'll admit
2 it, but I guess I'm a little confused. You
3 wanted to actually admit it into evidence. You
4 didn't want me to admit it as an offer of
5 proof?

6 MR. PORTER: Can we go off the record.
7 (Whereupon, a discussion was
8 had off the record.)

9 HEARING OFFICER HALLORAN: Back on
10 the record. I'm admitting Respondent's City's
11 Exhibit No. 3 into evidence.

12 MR. LESHEN: Can I have a moment,
13 your Honor?

14 HEARING OFFICER HALLORAN: You may.

15 MR. LESHEN: I have one other area of
16 the hearing that I would like you to examine.
17 I would yield again to you, Mr. Mueller.

18 And, again, this is within the
19 context of the offer of proof because it
20 addressed the February 19th meeting.

21 HEARING OFFICER HALLORAN: Thank you.

22 BY MR. LESHEN:

23 Q. Mr. Mayor, as I recall the February
24 19th meeting had a -- there was a KAMEG

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1 officer, metropolitan enforcement officer who
2 was retiring; is that correct?

3 A. That's correct.

4 Q. And in addition to that William
5 Hursolic, a long time assistant corporation
6 chemist and my predecessor was leaving for the
7 foreign service, is that correct?

8 A. That's correct.

9 Q. And so there was a party or a
10 gathering after the meeting; is that correct?

11 A. That's correct.

12 Q. Would it be fair to say that any
13 contact that you are aware of regarding any --
14 between any adversaries or representative at
15 Town and Country, any aldermen or you were
16 strictly within the context of that social
17 gathering and was perfunctorily in nature?

18 MR. PORTER: I need that read back or
19 rephrased. I lost the question.

20 HEARING OFFICER HALLORAN: I lost it
21 as well.

22 BY MR. LESHEN:

23 Q. How would you characterize any
24 contact that you had or that the alderman had

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1 with any adversaries or members of Town and
2 Country meeting after you withdrew?

3 A. I believe Mr. Porter had asked me
4 that question too. What we held that evening
5 was a gathering afterwards to honor the KAMEG
6 officer. There were discussions. I was not a
7 part of any discussion with individuals from
8 Town and Country. Usually at the end of city
9 meetings, my time is spent talking about what

10 went on that evening. By the time I got ready
11 to have coffee and cake a lot of individuals
12 had left, so I was not a part of anything that
13 went on that evening so it's very difficult for
14 me to give you an exact response.

15 MR. LESHEN: Thank you, Mayor. I
16 would yield again to Mr. Mueller.

17 CROSS-EXAMINATION

18 BY MR. MUELLER:

19 Q. Mayor Green, you testified that you
20 were aware that those people who wanted access
21 to the Town and Country application and copies
22 of it or things from it had to fill out a
23 Freedom of Information Act request, correct?

24 A. That is the procedure that the City

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1 Clerk's Office follows so they would just have
2 to follow that procedure.

3 Q. Well, that's my question. What is
4 the city clerk's procedure with regard to
5 disseminating public information?

6 A. Again, that office is the one that
7 sets the rules. I do not. You would be better

8 off asking that question directly of the clerk,
9 but it's always been my understanding that
10 someone who wants public documents, they must
11 fill out a Freedom of Information Act request.

12 MR. MUELLER: Thank you.

13 HEARING OFFICER HALLORAN: Thank you,
14 Mr. Mueller. Any redirect, Mr. Porter?

15 REDIRECT EXAMINATION

16 BY MR. PORTER:

17 Q. You don't know whether or not that
18 Freedom of Information Act request applies to
19 finding out the date and time of a hearing, do
20 you?

21 A. No, I do not. I can't answer that
22 question.

23 MR. PORTER: Nothing further.

24 HEARING OFFICER HALLORAN: No other

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1 questions? Mr. Mayor, thank you and step down.

2 MR. PORTER: At this point, we are
3 prepared to call Ms. Dumas.

4 HEARING OFFICER HALLORAN: Let's take
5 a seven-minute break. How's that?

6 (A short break was had.)

7 HEARING OFFICER HALLORAN: We're back
8 on the record after a short break. I do want
9 to say for the record again if any of the
10 public wishes to make a comment -- are there
11 any hands in the audience yet? I see no hands.
12 There's approximately -- I see one hand.
13 Ma'am, could you stand up and state your name.
14 Did you sign in in the back of the room?

15 MS. MILLER: Yes.

16 HEARING OFFICER HALLORAN: Do you
17 wish to make a public comment under oath or do
18 you wish to stand up and make a public comment?

19 MS. MILLER: Just stand up and make a
20 public comment.

21 HEARING OFFICER HALLORAN: Come on
22 up. State your name address and so on and so
23 forth.

24 MS. MILLER: Barbara Miller, 2726

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1 West 3000 South Road, Kankakee. And Mr. Green
2 stated under oath that he did not leave the
3 City Hall chamber on the night of June 17.

4 I saw him leave more than once and so
5 did at least one other person. And it wasn't
6 during breaks. And then I want to go on the
7 record and say we do not need another dump and
8 all we need is recycling that's mandatory if
9 necessary. That's all.

10 HEARING OFFICER HALLORAN: Thank you
11 Mrs. Miller. I think we are ready to call
12 Dumas.

13 Will you raise your hand and be sworn
14 in.

15 (Whereupon, the witness was duly sworn.)

16 ANJANITA DUMAS,
17 called as a witness herein, having been first
18 duly sworn, was examined and testified as
19 follows:

20 DIRECT EXAMINATION

21 BY MR. PORTER:

22 Q. Can you please state your name for
23 the record.

24 A. Anjanita Dumas.

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1 Q. Will you state your occupation?

2 A. City clerk.

3 Q. How long have you been the city

4 clerk?

5 A. Since 2001.

6 Q. And prior to that, did you work for

7 the city of Kankakee?

8 A. Yes.

9 Q. And when did you first begin working

10 for the city of Kankakee?

11 A. Started there doing summer work of

12 '93, '94 and got hired in '95.

13 Q. And you've always been at the City

14 Clerk's Office, correct?

15 A. Correct.

16 Q. Before you were elected in 2001, what

17 were your duties at the City Clerk's Office?

18 A. Workmen's comp and just dealing with

19 the public.

20 HEARING OFFICER HALLORAN: Ms. Dumas,

21 can you hold the mic up?

22 THE WITNESS: Okay.

23 BY MR. PORTER:

24 Q. My understanding is that prior to

1 your deposition -- strike that.

2 At any time, did anyone give you any
3 instruction regarding the procedures that were
4 going to be followed concerning the landfill
5 siting process?

6 A. What do you mean procedures?

7 Q. At any time did you attend a meeting
8 wherein someone told you how the process was
9 going to occur prior to the Section 39.2
10 hearing?

11 MR. LESHEN: I'm going to object to
12 the ambiguous nature of the question. She
13 didn't know what he meant by procedures. Now
14 he changed the word procedures to process. Is
15 he talking about the actual 39.2 process, is he
16 talking about things that occurred before?

17 MR. PORTER: I'll reask the question.
18 I didn't think it was that ambiguous.

19 BY MR. PORTER:

20 Q. Ms. Dumas, assume the word procedure
21 means the way that something will occur, does
22 that definition work for you?

23 A. I don't recall that.

24 Q. Let me ask the question one more

1 time. At any time before the 39.2 hearing
2 commenced on June 17th of 2002, did you receive
3 any instruction as to procedures that were
4 going to be followed regarding a hearing?

5 A. I don't recall.

6 Q. So I understand, you don't recall
7 anyone ever sitting down with you and
8 explaining that they were experienced in siting
9 matters and what process you would expect
10 during a hearing; is that right?

11 A. I don't recall. I just did roll call
12 that was my purpose at the hearing.

13 Q. From what I understand, no one from
14 the city ever sat down with you and discussed
15 the siting ordinance and how it related to you
16 in your office; is that right?

17 A. Correct.

18 Q. You're aware that the application of
19 this matter was filed on March 13, 2002,
20 correct?

21 A. I don't remember the date. If you
22 could show me the date.

23 Q. Any time prior to March 13, 2002, had
24 you reviewed the city of Kankakee siting

1 ordinance?

2 A. I don't recall. Is that the
3 ordinance that you're talking about that you
4 showed me at the deposition?

5 Q. Yes.

6 A. No. I never reviewed it until you
7 showed it to me.

8 Q. You jumped ahead. That's fine. The
9 first time you ever saw that ordinance was at
10 the deposition I took of you about a week ago;
11 is that right?

12 A. Correct.

13 Q. The first time you actually had an
14 opportunity to read that ordinance was on
15 October 25, 2002, at your deposition, right?

16 A. The section that you gave me to read,
17 correct.

18 Q. Do you recall reading any other
19 section?

20 A. No, just the section that you had
21 given me.

22 Q. Before that date you never read any

23 other section either, correct?

24 A. Correct.

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1 Q. Now, my understanding -- strike that.
2 When Town and Country filed its
3 application, did they provide you with a
4 number of copies that were called for under the
5 ordinance, if you know?

6 A. I don't recall as I previously
7 stated. I only read the section that you
8 pointed out for me to read.

9 Q. And for the record, you have now read
10 the Section 4D1 of ordinance 0165, which called
11 for the city clerk to immediately deliver a
12 copy of the application to the county board
13 chairman and a copy to the county solid waste
14 director, correct?

15 A. Correct. The section that you showed
16 me.

17 Q. At no time did you provide a copy to
18 the county board chairman, correct?

19 A. Correct.

20 Q. And at no time did you provide a copy

21 of the Kankakee County solid waste director,
22 correct?

23 A. Correct.

24 Q. And at no time did you ever provide a

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1 copy to anyone at Kankakee County, correct?

2 A. Correct.

3 Q. You did immediately provide a copy to
4 the mayor; is that right?

5 MR. LESHEN: Objection as to the
6 relevance whether the mayor immediately
7 received a copy or did not immediately receive
8 a copy.

9 HEARING OFFICER HALLORAN: Sustained.
10 Mr. Porter, proceed.

11 BY MR. PORTER:

12 Q. Who did you provide copies to?

13 MR. LESHEN: Same objection.

14 HEARING OFFICER HALLORAN: I'll
15 overrule it and let the witness answer if she
16 is able

17 BY THE WITNESS:

18 A. I don't recall the number of people

19 that received them, but there is a list, I
20 believe, that we had just wrote down the names
21 of the ones that came.

22 BY MR. PORTER:

23 Q. You don't recall anyone from the City
24 Council or Hearing Officer Bohlen's office

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1 asking you whether or not you provided a copy
2 to the chairman of the county board or the
3 Kankakee solid waste director, right?

4 A. Correct.

5 Q. You're aware that the ordinance
6 required you to immediately deliver copies; is
7 that right?

8 MR. LESHEN: What she is aware of --
9 she's already testified that she became aware
10 of that requirement when she was shown that
11 portion of the ordinance a week ago. These are
12 not disputed facts.

13 HEARING OFFICER HALLORAN: Mr.
14 Porter?

15 MR. PORTER: I agree it's not
16 disputed facts, but I need it on the record.

17 MR. LESHEN: It's already on the
18 record.

19 HEARING OFFICER HALLORAN: I think
20 it's been asked and answered. You can answer
21 one more time.

22 BY MR. PORTER:

23 Q. You would agree that the term
24 immediately means the time is of the essence,

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1 is it not?

2 MR. LESHEN: Objection to what she
3 would agree with regarding that word. The
4 ordinance speaks for itself, it's up to the
5 Board to determine the meaning of that word in
6 the context of this ordinance and she already
7 testified -- well, regarding this and I don't
8 know why we need to continue.

9 HEARING OFFICER HALLORAN: I'll
10 sustain your objection, Mr. Leshen.

11 BY MR. PORTER:

12 Q. You would agree that you have not
13 complied with the ordinance, correct?

14 MR. LESHEN: Objection she has

15 already testified to all of that and that she
16 did not send copies as the ordinance directed.
17 It's not a disputed fact here.

18 MR. PORTER: I'm sorry, is the city
19 stipulating that the ordinance was violated?

20 MR. LESHEN: I'm saying that the
21 questions have been asked and answered and it
22 is not within the purview of the city clerk to
23 make the legal determination of whether or not
24 the ordinance has been violated.

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1 HEARING OFFICER HALLORAN: If she can
2 answer, please do so. I'm going to overrule
3 your objection. I don't think it's been asked
4 in that way. The city clerk should be able to
5 tell us something.

6 BY MR. PORTER:

7 Q. You would agree that the ordinance
8 has been violated, correct?

9 A. I didn't write the ordinance, so I
10 wasn't aware of the clauses that were in it.

11 Q. You are now aware of the clauses that
12 are in it?

13 A. As of the date that we met for the
14 deposition.

15 Q. You would agree that the ordinance
16 was not filed?

17 MR. LESHEN: Her current perspective
18 as to what happened before the siting hearing
19 couldn't be less relevant in my view.

20 HEARING OFFICER HALLORAN: Overruled.
21 The witness may answer.

22 BY MR. PORTER:

23 Q. You would agree that the City Clerk's
24 Office has not complied with the ordinance,

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1 correct?

2 A. Correct.

3 Q. Isn't it true that nowhere within the
4 city of Kankakee siting ordinance does it
5 require that an FOIA request be made to receive
6 a list of the participants, witnesses and a
7 summary of their expected testimony?

8 MR. LESHEN: I'm going to object to
9 that. She's already testified that the only
10 portion of the ordinance that she's aware of is

11 the one that he showed her -- the only portion
12 of the ordinance is the one she's read is the
13 one that he showed her at her deposition.

14 HEARING OFFICER HALLORAN: Mr.
15 Porter, hasn't that already been established?

16 MR. PORTER: Let me rephrase.

17 BY MR. PORTER:

18 Q. Are you aware of any section of the
19 city of Kankakee ordinance requiring a FOIA
20 request to be filed to receive a list of the
21 names of the people that were going to
22 participate in the hearing?

23 A. Are you asking me if there's an
24 ordinance on file?

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1 Q. Let me reask.

2 Are you aware of any city of Kankakee
3 ordinance requiring a Freedom of Information
4 request for a list of the names of the parties
5 and witnesses that were going to appear at the
6 landfill siting hearing?

7 A. The policy of the office of anyone
8 that's requesting any documents out of the City

9 Clerk's Office fills out an FOI request.

10 Q. Is there an ordinance that requires
11 an FOI request to be filled out for a list of
12 the names of the people that are going to be
13 participating at a 39.2 hearing?

14 A. The policy is anyone requesting any
15 documents out of the City Clerk's Office have
16 to fill out a Freedom of Information request
17 form.

18 Q. Well, you're aware that your office
19 was the repository for the appearance forms for
20 the 39.2 hearing, correct?

21 MR. LESHEN: I didn't catch the
22 question, Mr. Porter. I apologize.

23 BY MR. PORTER:

24 Q. You are aware that your office was

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1 the repository for the appearances that were
2 filed in the 39.2 hearing, correct?

3 A. I'm not reading the letters of people
4 that would drop off letters for either comments
5 or just recommendation. I never read all the
6 letters thoroughly.

7 Q. So if I understand, you did not know
8 that people were required to indicate to you
9 whether or not they wanted to participate in
10 the hearing; is that right?

11 A. They were to drop off letters and
12 there was a deadline and they were supposed to
13 file that in the clerk's office.

14 Q. You didn't know the import of those
15 letters; is that correct?

16 A. No.

17 Q. Isn't it true that people came to
18 your office at or around June 12th and told you
19 that they wanted to participate in a siting
20 hearing?

21 A. I don't know. Did they talk directly
22 to me? There's three people in my office. I'm
23 not sure who you're referring to.

24 Q. Isn't it true that members of the

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1 public came to your office and told you or your
2 personnel on or about June 12, 2002, that they
3 wanted to participate in the landfill siting
4 hearing?

5 A. I don't know.

6 MR. LESHEN: I'm sorry. I didn't
7 mean to -- go ahead.

8 BY MR. PORTER:

9 Q. That could have occurred, right?

10 MR. LESHEN: Objection, that calls
11 for speculation.

12 HEARING OFFICER HALLORAN: Sustained.

13 BY MR. PORTER:

14 Q. Do you have a recollection of --
15 isn't it true that you told at least one member
16 of the public that they could not enter an
17 appearance because it was sooner -- strike
18 that.

19 Isn't it true that you told at least
20 one member of the public that they could not
21 enter an appearance because they came to do so
22 at a time that was after the five days of the
23 hearing?

24 A. Is there any document showing that I

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1 said they couldn't? Do you have date, time,
2 location?

3 Q. I'm asking for your recollection.

4 A. I need documents to help me with the
5 recollection.

6 Q. Is your answer I don't know?

7 A. Do you have any documents?

8 Q. Do you need the question reasked?

9 A. I don't recall. I don't know.

10 I don't understand his question and
11 he won't rephrase it.

12 Q. I would be happy to rephrase it if
13 you don't understand the question.

14 A. Okay. Do you have documents to
15 support your question?

16 MR. PORTER: Mr. Hearing Officer, if
17 you could explain that I have to ask the
18 questions.

19 HEARING OFFICER HALLORAN: If you can
20 let Mr. Porter ask the questions and if you
21 don't know you don't know and we'll take it
22 from there.

23 BY MR. PORTER:

24 Q. Isn't it true that at least one

1 person came to your office after June 12th
2 asking to enter an appearance to participate in
3 a hearing, but was told that they could not
4 because the date had come and gone for doing
5 so?

6 A. I don't know. I don't recall.

7 Q. Isn't it true that you told people
8 that it didn't matter what the applicant's
9 notice said that was published in the paper
10 that the city's rules apply, which require an
11 appearance at least five days before the
12 hearing?

13 A. I'm not sure who you talked to. I
14 don't know how to help you answer that
15 question.

16 Q. Is your answer that you don't know?

17 A. Am I suppose to just answer on
18 hearsay and seriously I'm just inquiring?

19 HEARING OFFICER HALLORAN: If you
20 don't recall or don't know you can answer it
21 that way.

22 MR. LESHEN: Perhaps -- was that
23 question directed to her own personal -- what
24 she said or what was said at the office.

1 MR. PORTER: It was directed to her.
2 Madam Court Reporter, would you read back that
3 question?

4 (Whereupon, the record was
5 read as requested.)

6 MR. PORTER: I'm going to reask the
7 question.

8 BY MR. PORTER:

9 Q. Isn't it true that you personally
10 told at least one member of the public that it
11 did not matter that the notice published in the
12 paper indicated that they can appear up until
13 the first night of the hearing rather the
14 city's rules applied?

15 A. I don't know. I don't recall.

16 Q. Okay. Isn't it true that you refused
17 to accept any appearances after June 12th of
18 2002?

19 A. I don't work at the front counter. I
20 have two assistants that work up front so I'm
21 sure. I don't know. I don't recall.

22 Q. It's possible that your assistants
23 refused to accept any appearances from
24 participants after June 12th of 2002; is that

1 correct?

2 MR. LESHEN: Objection, calls for
3 speculation.

4 HEARING OFFICER HALLORAN: Sustained.

5 BY MR. PORTER:

6 Q. Do you know whether or not your
7 assistants or yourself refused to accept an
8 appearance after June 12th, 2002?

9 MR. LESHEN: Asked and answered. She
10 said she did not know.

11 HEARING OFFICER HALLORAN: That's not
12 what I heard. Overruled.

13 BY THE WITNESS:

14 A. I don't know. I don't recall.

15 BY MR. PORTER:

16 Q. Isn't it true that when someone would
17 come to your office before June 12th of 2002
18 and tell you that they wanted to enter an
19 appearance, you would tell them that they had
20 to write something down?

21 A. I don't recall the dates or when they
22 started accepting them because it wasn't
23 required for me to stay at the hearing. I

24 don't know. I don't recall.

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1 Q. Maybe I can help. The hearing
2 started on June 17th of 2002. I'm talking
3 about now at least five days before then. And
4 on or before June 12th of 2002, isn't it true
5 that when a member of the public would come to
6 your office and tell you that they wanted to
7 enter an appearance in the landfill siting
8 hearing, you would tell them that they had to
9 write something down to do that?

10 A. I was not at the hearing for the
11 procedures. I'm not sure when that procedure
12 began. I was just told that anyone that wants
13 to enter it, that wants to appear, just submit
14 it in a letter.

15 Q. So you would just tell people put it
16 in a letter and you would take those, right?

17 A. Correct.

18 Q. You did not give them any direction
19 as to exactly what that letter needed to say?

20 A. We didn't have a guideline to give
21 them.

22 Q. So you didn't tell them that they had
23 to use the magic word participate in order to
24 enter an appearance as an objector; is that

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1 correct?

2 MR. LESHEN: She already said she
3 didn't have any specific guidelines, so
4 consequently the -- there were not to her
5 knowledge quote, unquote, magic words.

6 HEARING OFFICER HALLORAN: I'm going
7 to let the question stand. You're overruled,
8 Mr. Leshen. Ms. Dumas, if you can answer that
9 question.

10 BY MR. PORTER:

11 Q. So if I understand correctly, no one
12 at your office would tell members of the public
13 that they had to use the magic word participate
14 in their letter before they would be recognized
15 as an objector; is that correct?

16 MR. LESHEN: Again, I'm objecting now
17 on the issue of the word magic word. There's
18 been no showing that you have to use quote,
19 unquote, magic word or have.

20 HEARING OFFICER HALLORAN: Mr.

21 Porter?

22 MR. PORTER: I believe there has been
23 such testimony. Mr. Bohlen indicated that
24 unless the appearances said that the individual

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1 wanted to participate, they were stuck in
2 another pile. Those were identified in the
3 record. And we know that that happened to Mrs.
4 O'Dell and we know that that happened to one
5 other witness that's already testified here
6 today.

7 HEARING OFFICER HALLORAN: To make
8 everybody happy, if you could strike the word
9 magic.

10 MR. PORTER: I will do so.

11 BY MR. PORTER:

12 Q. Isn't it true that no one in your
13 office informed members of the public that they
14 had to use the word participate in order to
15 effectuate an appearance as an objector?

16 A. I don't know.

17 Q. So you never had any conversations

18 with anyone at the office telling them what
19 needed to be in the letters that people
20 required to file in order to show that they
21 wanted to participate in the hearings; is that
22 right?

23 A. We don't give legal advice in the
24 office and I can't write a letter for someone.

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1 Q. So my statement was correct you never
2 had any conversations with your staff about
3 what needed to be in the letter; is that right?

4 A. Correct.

5 Q. All you do is tell the public they
6 had to write a letter, correct?

7 A. Correct.

8 Q. Isn't it true that when people would
9 call and ask when the hearing was scheduled to
10 commence that you informed them that they would
11 have to file a Freedom of Information request
12 for that information?

13 A. The hearing dates are public
14 knowledge.

15 Q. Was my statement correct or

16 incorrect?

17 A. Repeat your question?

18 Q. Isn't it true that when people would
19 call you would tell them -- strike that.

20 Isn't it true that when people would
21 call and ask when the hearing was scheduled to
22 commence, you would tell them that they would
23 have to issue a Freedom of Information request
24 with that information?

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1 A. If a person called and just over the
2 telephone said -- if they just wanted to ask a
3 question, you can answer a question over the
4 telephone. If they wanted something in writing
5 or public documents, then they would have to
6 put it in an FOI request form.

7 Q. Do you recall telling someone from
8 the County of Kankakee that in order to get the
9 information as to when the hearing would
10 commence they would have to issue a Freedom of
11 Information request?

12 A. If they want it in writing. If they
13 want it in paper form you have to make a copy

14 of something and give it to them.

15 Q. Isn't it also true that you informed
16 someone from the county that they could find
17 out when the hearing would start by looking in
18 the newspaper?

19 A. I don't recall that.

20 Q. Isn't it true that the county asked
21 that its fees -- strike that.

22 Isn't it true that the county asked
23 that the cost be waived for the information
24 that was requested from your office?

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1 A. What particular documents are those?

2 Q. Do you recall if the county ever
3 asked that the cost be waived for any documents
4 that you produced concerning the Section 39.2
5 proceedings?

6 A. Do you have that with you so I can
7 look at it?

8 Q. Right now I'm just asking you if you
9 recall.

10 A. I don't know. I don't recall.

11 MR. PORTER: I need a couple of

12 minutes.

13 HEARING OFFICER HALLORAN: Let's go
14 off.

15 (A short break was had.)

16 HEARING OFFICER HALLORAN: Back on the
17 record. Please be seated. Mr. Porter, you may
18 proceed.

19 BY MR. PORTER:

20 Q. Ms. Dumas, you asked if I can show
21 you a document and I have managed to find a
22 copy of what appears to be a city of Kankakee,
23 state of Illinois form from your office. If
24 you could take a look at Petitioner's Exhibit

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1 7, I would appreciate it.

2 That is indeed one of the forms
3 that's handed out in your office for a Freedom
4 of Information request?

5 A. Right.

6 Q. And I'm sorry, may I see it again?

7 A. Sure.

8 Q. It has a photocopy of the stamp from
9 your office; is that right?

10 A. Correct.

11 Q. And it is a Freedom of Information
12 request submitted by Edward D. Smith, State's
13 Attorney of Kankakee County and specifically by
14 Bernie Gorsky at his office; is that right?

15 A. Correct.

16 Q. And it requests a list of the
17 witnesses including the applicant and testimony
18 from landfill siting hearings, Town and Country
19 and Volini; is that right?

20 A. Correct.

21 Q. And it makes a request that all fees
22 be waived or reduced in the public interest
23 because the front sheet of the information
24 request can be considered as primarily

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1 benefitting the general public; is that right?

2 A. Correct.

3 Q. And isn't it true that that request
4 was denied?

5 A. I'm not sure where it shows or says
6 denied.

7 Q. I'm not asking if it's shown on your

8 form. I'm asking whether or not you recall if
9 indeed that request was denied?

10 A. What's the date on that form?

11 Q. June 14, 2002.

12 A. I don't remember that far back in
13 June.

14 MR. PORTER: I would move for
15 admission for Exhibit 7, Mr. Halloran?

16 HEARING OFFICER HALLORAN: Any
17 objection?

18 MR. LESHEN: None from the city.

19 HEARING OFFICER HALLORAN: I'll allow
20 Petitioner's No. 7 admitted into evidence.

21 BY MR. PORTER:

22 Q. Ms. Dumas, Petitioners' Exhibit 8 is
23 another city of Kankakee, state of Illinois
24 form for Freedom of Information request?

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1 A. Correct.

2 Q. And specifically it is a request --
3 strike that.

4 What date is that request?

5 A. April 22, 2002.

6 Q. And it is from a Mr. Chris Berger
7 from Edwardsville, Illinois; is that right?

8 A. From Springfield.

9 Q. I stand corrected. It's from
10 Mr. Chris Berger of Springfield, Illinois; is
11 that correct?

12 A. Correct.

13 Q. And what does the request ask for?

14 MR. LESHEN: Again, we'd stipulate
15 that whatever is asked for in that document is
16 what was asked for. If we can move forward.
17 We will agree to its admissibility.

18 MR. MUELLER: So will I.

19 MR. PORTER: It's a simple question.

20 HEARING OFFICER HALLORAN: It doesn't
21 sound like Mr. Porter is willing to accept your
22 stip so if Ms. Dumas could answer the question.
23 BY THE WITNESS:

24 A. City of Kankakee solid waste

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1 management plan included in any public notice
2 regarding solid waste management plan.

3 BY MR. PORTER:

4 Q. And assuming that that document -- do
5 you have any idea how long it took you to
6 respond to this request?

7 A. This was completed by one of my
8 assistants in my office. I'm not sure. The
9 initials at the bottom are LSJ.

10 Q. You would acknowledge that the
11 request was made approximately six weeks after
12 the application was filed on March 13, 2002?

13 A. According to the date of April 22,
14 correct.

15 Q. And it took some time after that to
16 be responded to by your office; is that
17 correct?

18 MR. LESHEN: We will acknowledge that
19 there was not an instantaneous response.

20 MR. PORTER: That's great, but the
21 witness may well answer.

22 HEARING OFFICER HALLORAN: I think
23 she did answer. She wasn't sure, but
24 Ms. Dumas?

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2 A. I don't know when she completed that.

3 MR. PORTER: Okay. I move for
4 admission of Petitioner's Exhibit 8.

5 HEARING OFFICER HALLORAN: Mr.
6 Leshen, Mr. Mueller?

7 MR. MUELLER: No objection.

8 MR. LESHEN: No objection.

9 HEARING OFFICER HALLORAN: Exhibit
10 No. 8 is admitted.

11 BY MR. PORTER:

12 Q. Isn't it true that an individual
13 citizen filed a petition with your office with
14 over a thousand signatures of people opposing
15 the annexation?

16 MR. LESHEN: Objection, relevance to
17 these proceedings. Again, the only issue here
18 is whether the issues of fundamental -- the
19 tenets of fundamental fairness will follow
20 whether or not the petition was filed with one
21 or a thousand signatures is irrelevant to that
22 issue.

23 HEARING OFFICER HALLORAN: Mr.
24 Porter?

1 MR. PORTER: No response.

2 HEARING OFFICER HALLORAN: I'll allow
3 it over your objection.

4 MR. LESHEN: That is an annexation
5 issue, correct?

6 HEARING OFFICER HALLORAN: Opposing
7 the annexation with the thousand signatures,
8 correct.

9 MR. PORTER: I thought the objection
10 was overruled?

11 HEARING OFFICER HALLORAN: It was.

12 BY MR. PORTER:

13 Q. Do you remember the question?

14 A. Can I just make a comment? I believe
15 there were some additional attachments to that
16 Chris Berger because he had a couple FOI
17 reports and I just wanted to double check with
18 my records that I brought because you made
19 copies off that. But I thought there was a fax
20 copy showing that she did reply to that, but I
21 don't see it attached to that, but I could be
22 getting confused.

23 MR. LESHEN: We'll take care of that
24 on cross.

1 HEARING OFFICER HALLORAN: All right.

2 BY MR. PORTER:

3 Q. Do you recall receiving that petition
4 with a thousand signatures on it?

5 A. I'm not sure who received it in the
6 office, but it was filed in the clerk's office.

7 Q. Do you know where it's on file now?
8 Where is that document now?

9 MR. LESHEN: Objection. What does it
10 matter where that document is presently
11 located? How does that have any relevance to
12 any issue that is remotely connected to this
13 hearing?

14 HEARING OFFICER HALLORAN: Mr.
15 Porter.

16 MR. PORTER: No response.

17 HEARING OFFICER HALLORAN: I'm going
18 to sustain his objection.

19 BY MR. PORTER:

20 Q. You don't know whether or not --
21 strike that.

22 At any time did the mayor, City
23 Attorney Bohlen or anyone else in the city tell
24 you it was necessary for a party to submit an

1 FOI request in order to get information
2 concerning the Town and Country landfill siting
3 application or its hearing?

4 MR. LESHEN: Objection. I think
5 that's been asked and answered a number of
6 times and then you said I'll give you one more
7 because it's not precisely the same.

8 HEARING OFFICER HALLORAN: Francine,
9 can you read the question back?

10 (Whereupon, the record was
11 read as requested.)

12 MR. PORTER: I'll rephrase.

13 BY MR. PORTER:

14 Q. At any time during the siting
15 process, did Mayor Green or City Attorney
16 Bohlen or anyone else from the city tell you
17 that it was necessary for a party to submit an
18 FOIA request in order to get information from
19 the Town and Country landfill siting file?

20 MR. LESHEN: I'm sorry, were you
21 finished?

22 MR. PORTER: I just added the word

23 file.

24 MR. LESHEN: And with that added word

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1 I now make the same objection. This has been
2 asked and answered so many times I've lost
3 track.

4 HEARING OFFICER HALLORAN: Mr.
5 Porter, is that your recollection?

6 MR. PORTER: I don't recall it being
7 asked and answered or I wouldn't have asked it
8 again.

9 HEARING OFFICER HALLORAN: I'll
10 overrule your objection, Mr. Leshen. If Ms.
11 Dumas can answer it one more time, so be it.

12 THE WITNESS: Can you repeat it?

13 BY MR. PORTER:

14 Q. Isn't it true -- strike that.

15 Did Mayor Green or Attorney Bohlen or
16 anyone else in the city tell you that an FOIA
17 request would have to be filed to acquire
18 information concerning the Landfill siting
19 hearing?

20 A. No.

21 MR. PORTER: Nothing further.

22 HEARING OFFICER HALLORAN: Thank you,

23 Mr. Porter. Mr. Moran, Mr. Sandberg?

24 MR. MORAN: No questions.

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1 MR. SANDBERG: No questions.

2 HEARING OFFICER HALLORAN: Thank you.

3 Mr. Leshen?

4 MR. MUELLER: Let me go first.

5 MR. LESHEN: Okay.

6 CROSS-EXAMINATION

7 BY MR. MUELLER:

8 Q. Mrs. Dumas, I have one question.

9 When people from Town and Country wanted
10 information now before the hearings about who
11 had registered and who had filed witness lists,
12 did you make them fill out FOIA requests also?

13 A. Anyone who is requesting any
14 documents from the City Clerk's Office fill out
15 an FOI request form.

16 Q. So that included everybody?

17 A. Everyone.

18 MR. MUELLER: Thank you.

19 HEARING OFFICER HALLORAN: Mr.
20 Leshen?

21 CROSS-EXAMINATION

22 BY MR. LESHEN:

23 Q. Did anybody ever tell you from the
24 mayor's office or anyplace else that you should

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1 not provide a copy of documents to the county?

2 A. No.

3 Q. Did anybody in any way discourage you
4 or tell you from providing those documents to
5 tell you to hide or conceal those documents?

6 A. No.

7 MR. LESHEN: May I approach?

8 HEARING OFFICER HALLORAN: You may.

9 MR. LESHEN: I tender to you what I
10 marked as City's Exhibit 1, a 3-page document.
11 May the record reflect that I tendered to
12 counsel as well as the witness.

13 HEARING OFFICER HALLORAN: The record
14 reflects.

15 BY MR. LESHEN:

16 Q. I show you what I've marked as City's

17 Exhibit 1 for identification purposes. Those
18 are three documents -- three pages rather.

19 MR. PORTER: No objection to the
20 admission of this document.

21 HEARING OFFICER HALLORAN: You may
22 proceed if you so choose.

23 MR. LESHEN: I do, but I appreciate
24 that and let me then move it into evidence

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1 since there's no objection and I'll inquire of
2 the witness as to some of the meetings on those
3 documents .

4 HEARING OFFICER HALLORAN:
5 Respondent's City Exhibit No. 1 is admitted.
6 BY MR. LESHEN:

7 Q. On the first page there is a -- tell
8 me what the first page of those three pages
9 are?

10 A. The first page is a request for
11 public records, which is a Freedom of
12 Information form that's provided by the City
13 Clerk's Office.

14 Q. And by whom was that document

15 tendered?

16 A. To a Chris Berger.

17 Q. And is that from Patrick Engineering?

18 A. Correct.

19 Q. And can you tell me when that

20 document was filed with you?

21 A. April 18, 2002.

22 Q. Can you tell me what that document

23 requested?

24 A. Town and Country Utilities siting

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1 application.

2 Q. I direct you to the document that is
3 the second document in that series of documents
4 that says on the top of it, Patrick Engineering
5 and can you tell me what that document is?

6 A. It's Patrick Engineering's facsimile
7 cover sheet.

8 Q. And the third document, is that a
9 document from you a fax from your office?

10 A. It's a fax cover sheet.

11 Q. And what -- to whom was that fax
12 cover sheet sent?

13 A. To Angela O'Neil.
14 Q. Is she with Patrick Engineering?
15 A. Correct.
16 Q. Can you tell me what that series of
17 three documents, what transaction that
18 references?
19 A. Angela O'Neil would have contact with
20 the City Clerk's Office requesting information
21 and we would have told her that she needs to
22 complete her Freedom of Information form in
23 order to get the documents that she needs. And
24 so she completed the form and that shows that

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1 it was faxed to her, faxed to Angela and she
2 completed her request.
3 MR. LESHEN: May I approach?
4 HEARING OFFICER HALLORAN: You may.
5 MR. LESHEN: City's number 2?
6 BY MR. LESHEN:
7 Q. I've tendered to you what I've marked
8 as City's Exhibit No. 2 for identification
9 purposes. Can you tell me what that document
10 is?

11 A. A request for public records of the
12 Freedom of Information Act form.

13 Q. And can you tell me who filed that
14 document with you?

15 A. Waste Management Lee Adelmann.

16 Q. What is the date on that document?

17 A. March 28, 2002.

18 Q. And is that a document asking you for
19 a copy of the sanitary landfill application?

20 A. Correct.

21 Q. Is that document a true and exact
22 document of -- a true and exact copy other than
23 the exhibit marker of the document that you
24 have in your files showing that, in fact, it

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1 was received?

2 A. Correct.

3 MR. LESHEN: I move for admission
4 City's No. 2.

5 HEARING OFFICER HALLORAN: Any
6 objection?

7 MR. PORTER: No.

8 HEARING OFFICER HALLORAN:

9 Respondent's City Exhibit No. 2 is admitted.

10 MR. LESHEN: May I approach?

11 HEARING OFFICER HALLORAN: You may.

12 You may approach as well.

13 MR. LESHEN: Thank you.

14 BY MR. LESHEN:

15 Q. I have now tendered to you what I

16 have now marked as City Respondent's Exhibit 4.

17 Did I give you a copy?

18 A. No.

19 Q. A copy has now been tendered to you

20 by Mr. Porter. Can you identify what that

21 document purports to be?

22 A. A request for public records, Freedom

23 of Information Act form.

24 Q. Is that, in fact, a true and accurate

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1 copy of the FOIA, Freedom of Information Act

2 request form that is available during all

3 working hours at the clerk's office?

4 A. Correct.

5 Q. In order to complete that, is it

6 necessary simply to fill out the name of the

7 document that you're requesting?

8 A. Correct.

9 Q. Is that document made available to
10 each and every person who seeks public
11 documents through the Freedom of Information
12 Act request process?

13 A. Correct.

14 Q. Now, you have worked for the city of
15 Kankakee Clerk's Office since 1993; is that
16 correct?

17 A. Correct.

18 Q. From 1993 until the present, has this
19 same policy and practice, as you've described
20 it, regarding the use of this form to get
21 public documents, has that been the practice
22 and policy of the city for every day since
23 you've been working there?

24 A. Yes.

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

3 HEARING OFFICER HALLORAN: Okay.

4 MR. LESHEN: I'm sorry, I move for

5 admission for City Respondent's No. 4.

6 MR. PORTER: No objection.

7 HEARING OFFICER HALLORAN: City
8 Respondent's Exhibit No. 4 is admitted. Any
9 redirect, Mr. Porter?

10 MR. PORTER: No.

11 HEARING OFFICER HALLORAN: Ms. Dumas
12 you're free to leave. Thank you.

13 MR. MUELLER: Off the record for a
14 moment.

15 HEARING OFFICER HALLORAN: Off the
16 record.

17 (Whereupon, a discussion was
18 had off the record.)

19 HEARING OFFICER HALLORAN: We're back
20 on.

21 MR. PORTER: For the record, we have
22 now been informed that a Ms. Vonperbondt is
23 going to testify. Prior to today, we were
24 supplied in response to some production

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1 requests a copy of an affidavit of Ms.
2 Vonperbondt, and what she proposes, at least in

3 the affidavit to do, is to supplement the
4 applicant's evidence that it's submitted at the
5 39.2 hearing, that notice was provided to
6 certain land owners. We believe that that was
7 only -- it should only be the subject of the
8 39.2 hearing and not done at this time.

9 If they failed to present their
10 evidence at hearing, that's what they're left
11 with. I have a brief on that issue, which I'd
12 like to tender, if I may.

13 HEARING OFFICER HALLORAN: You may.
14 Mr. Mueller, you may also respond.

15 MR. MUELLER: Without even looking at
16 the brief, I'm prepared to respond as follows:
17 Number one, the applicant provided the
18 affidavit of Tom Volini with regard to proof of
19 service at the siting hearing and that is part
20 of the record. That affidavit says that he
21 consulted the authentic tax records of the
22 county. It talks about how he ascertained
23 those authentic records. It talks about how he
24 identified people that are required to receive

1 notice and then it says when we gave all of
2 them in the notice. Either personally or
3 certified mail or in some cases in both ways.
4 The objectors after the close of the
5 evidentiary portion of the 39.2 siting hearing,
6 specifically the county, in their written
7 closing argument suggested that we had not
8 properly served all the people that needed to
9 be served and also suggested that in some cases
10 we had not served at all some of the people
11 that needed to be served.

12 The Pollution Control Board in its
13 order in this matter specifically said that
14 this hearing was to receive evidence on the
15 issue of jurisdiction and fundamental fairness.
16 So we're prepared to provide additional
17 evidence proving what was uncontested at the
18 39.2 hearing, namely, that there was proper
19 service and that the City Council had
20 jurisdiction and to not allow additional
21 evidence now with regard to a challenge that
22 has been made after the evidentiary portion of
23 the hearing and I might add completely
24 unsubstantiated by evidence and to not allow

1 that undermines the very purpose of the PCB's
2 order that we consider jurisdiction now.

3 HEARING OFFICER HALLORAN: Mr.
4 Porter?

5 MR. PORTER: The law is relatively
6 clear. 415 ILCS5 slash 40.1V establishes --

7 HEARING OFFICER HALLORAN: I'm sorry
8 could you slow up a little for me and the court
9 reporter?

10 MR. PORTER: Section 40.1 of the act
11 establishes that the grant of siting approval
12 is to be based exclusively on the record before
13 the county board. And no new evidence may be
14 adduced at the Illinois Pollution Control Board
15 except as it relates to the issue of
16 fundamental fairness.

17 There have been exceptions to that
18 when an applicant submits evidence at the
19 underlying hearing that notice was proper when
20 it was determined at the Pollution Control
21 Board level that indeed it was not proper and
22 therefore the local siting authority actually
23 never had jurisdiction.

24 We are unaware of the reverse ever

1 being allowed and indeed it would create a
2 procedure that is absolutely ridiculous. The
3 applicant would be allowed then to not present
4 its evidence at the 39.2 hearing regarding
5 notice, hold it in their back pocket, avoid the
6 opportunity for us to do examination on it and
7 then when an objection is made or actual final
8 argument is made stating that they did not have
9 jurisdiction, low and behold when the Illinois
10 Pollution Control Board says now we're going to
11 start submitting our evidence regarding whether
12 or not we had jurisdiction in the underlying
13 proceeding.

14 Therefore, the one exception, which
15 I believe is the Oval County Board case 272
16 IllAP 3d 184 does not apply here. This is not
17 a situation where the evidence that is
18 attempted to be admitted is going to show that
19 notice was improper, that would be okay for us
20 to do. It's the reverse.

21 Mr. Mueller is trying to bolster his
22 record and the time has come and gone for that.

23 HEARING OFFICER HALLORAN: A brief

24 one, Mr. Mueller.

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1 MR. MUELLER: Let me do it again.
2 First of all, the Board's order in this case is
3 that this hearing is to consider jurisdiction
4 and fundamental fairness.

5 Secondly, at the siting hearing an
6 affidavit of service was provided by Mr.
7 Volini, which was received into evidence and
8 therefore the applicant presented evidence of
9 proper service. That evidence was
10 uncontradicted and, in fact, unchallenged at
11 the local siting hearing.

12 In the briefs submitted to the City
13 Council for the first time the county raises
14 the issue of improper service. In their
15 petition to the Board, they again raise the
16 issue of improper service. I would think that
17 given that scenario and the fact that the Board
18 has ordered this hearing to include
19 jurisdiction, we are entitled to, at this
20 point, present evidence regarding service.

21 MR. PORTER: I only need to respond

22 to one point. The first and only opportunity
23 to make oral argument was by the written briefs
24 at the end of the hearing. There was no

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1 opportunity to do oral closing arguments and
2 that's why by necessity the issue was first
3 brought up in the closing briefs.

4 It's the applicant's burden they
5 failed to meet.

6 MR. LESHEN: Speaking on behalf of
7 the city, the city endorses the argument of
8 Mr. Mueller and it seems plain on the face of
9 the Board's order that it sought this
10 information. And I cannot quote to you the
11 rule that you have quoted to us several times
12 during this hearing, but it seems probative to
13 meet every single prong of the rule that you
14 have used to allow into evidence in this case.

15 HEARING OFFICER HALLORAN: Mr.
16 Porter, anything further?

17 MR. PORTER: Nothing further.

18 HEARING OFFICER HALLORAN: I'm
19 looking again at Section 101.626(b) when the

20 admissibility of evidence depends upon a good
21 faith argument as to the interpretation of
22 substantive law, the hearing officer will admit
23 the evidence. In my mind, there's been two
24 good faith arguments regarding the substantive

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1 law so, with that, I will allow Mr. Mueller's
2 witness to testify and, of course, Mr. Porter,
3 feel free to bring your objections to the
4 Board. Thank you very much.

5 With that said, Mr. Mueller, you
6 stated that your witness has to leave today?

7 MR. MUELLER: She will be here the
8 remainder of the day.

9 HEARING OFFICER HALLORAN: Mr.
10 Porter?

11 MR. PORTER: This is where I cut off
12 Mr. Smith earlier. We also have a short
13 citizen witness and we had promised Mr. Bohlen
14 that we would try and get him done today and he
15 has shown up.

16 MR. MUELLER: I have no problem with
17 taking the short citizen first, but I think

18 Mr. Bohlen is probably a very patient person.

19 HEARING OFFICER HALLORAN: In any
20 event, let's take Mr. Porter's witness first
21 and then Mr. Mueller.

22 HEARING OFFICER HALLORAN: Off the
23 record for 15 minutes.

24 (A short break was had.)

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1 HEARING OFFICER HALLORAN: We're back
2 on the record after a break. I believe at this
3 juncture Mr. Smith is going to call one of his
4 witnesses for a public statement.

5 MR. SMITH: Yes, Mr. Peerbolte has
6 approached me and indicated that he wishes to
7 make a public statement and believes that it's
8 going to take about four minutes.

9 HEARING OFFICER HALLORAN: Sir, have
10 you signed in at the box?

11 MR. PEERBOLTE: No.

12 HEARING OFFICER HALLORAN: Do you
13 wish not to be sworn?

14 MR. PEERBOLTE: No.

15 HEARING OFFICER HALLORAN: State your

16 name and address.

17 MR. PEERBOLTE: Darwin J. Peerbolte,
18 P-e-e-r-b-o-l-t-e. I live at 4621 West 5000
19 South Road, Kankakee Illinois. Myself and my
20 wife attended or attempted to attend all the
21 sessions. We were not admitted the first night
22 because of the extensive crowd that was there.

23 We were present out in the stairway
24 there and I would estimate that probably 70 of

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1 us were not able to attend the first night's
2 session when it began. Most of the people
3 within probably after a half an hour left.

4 My wife and I stuck around that night
5 and at about 10 o'clock, we were able to get
6 into the hearing at that time. There was one
7 other session that we -- a couple hour session
8 that we missed, but otherwise we were present
9 for the remaining part of the hearing.

10 It was very obvious at that time
11 during the hearing that Chris Bohlen had a
12 strong personal opinion in favor of the
13 proposed landfill. As hearing officer, he

14 determined which testimony was admissible or
15 inadmissible and his bias was occasionally
16 evident in his ruling and/or comments.

17 On several occasions he ruled that
18 objectors' exhibits were inadmissible because
19 they were cited from internet references or
20 portions of books or magazines not properly
21 documented.

22 However during the testimony of
23 objector witness, Stuart Cravens, Town and
24 Country's attorney, Mueller asked Mr. Cravens

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1 to read a quote from a photocopy from a text
2 from a book. At that time attorney Rousch
3 raised an objection asking for the source
4 document. Mr. Mueller stated at that time that
5 book was in his car but did not produce it.
6 Yet Hearing Officer Bohlen denied the objection
7 and allowed the question to Cravens to stand.
8 Yet on numerous previous occasions, Mr. Bohlen
9 did not allow objectors to use photocopies or
10 segments of documents without submitting the
11 entire document.

12 The above example demonstrates how
13 Hearing Officer Bohlen showed favoritism for
14 Town and Country and some of his rulings.
15 Since attorney Bohlen was present at
16 pre-hearing meetings and negotiations with
17 Mr. Volini and entered the actual public siting
18 hearing with a great deal of foreknowledge and
19 strong opinions concerning the anticipated
20 opposition and a generous financial benefit the
21 city hoped to gain. Numerous times his rulings
22 displayed his bias in favor of the proposed
23 landfill.

24 After the public hearing, Hearing

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1 Officer Bohlen now wearing the hat of city
2 attorney recommended that the City Council
3 approve the siting. As an attorney, Mr. Bohlen
4 knows that he should not have been involved in
5 the pre-hearing negotiations and then sit as
6 siting hearing officer where he had the power
7 to decide what testimony and exhibits would be
8 submitted to the Illinois Environmental
9 Protection Agency. And even after the public

10 hearing, he continued to influence the outcome
11 of the City Council's vote by submitting a
12 recommendation dated August 14, 2002,
13 indicating that the nine criteria had been
14 satisfied.

15 Mr. Bohlen's serious conflict of
16 interest jeopardized his impartiality and
17 tainted the entire siting hearing process.
18 That's all I have to say.

19 HEARING OFFICER HALLORAN: Thank you,
20 sir. Your comment is in the record and I
21 neglected to ask the last comment person do you
22 want to submit this hard copy or do you want to
23 mail it in to the clerk and the Board?

24 MR. PEERBOLTE: I can submit it.

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1 HEARING OFFICER HALLORAN: Let the
2 record reflect that the witness is tendering to
3 the hearing officer the document that was just
4 read into the record. Without
5 cross-examination, again, I want to caution
6 that it will be weighed accordingly.

7 MR. SMITH: Mr. Hearing Officer, at

8 your pleasure may I call three names to see if
9 any of these people are here?

10 HEARING OFFICER HALLORAN: Go ahead.

11 MR. SMITH: Could we reflect that the
12 time is about 4:30 p.m.

13 HEARING OFFICER HALLORAN: Reflected.

14 MR. SMITH: Is Robert Skeen here
15 today? Mark Warpet? Jeremy Beck in
16 attendance? Thank you, Mr. Halloran.

17 HEARING OFFICER HALLORAN: Thank you,
18 Mr. Smith. I do want to remind any members of
19 the public that just came into the proceeding
20 if they did want to make a public comment raise
21 your hand and I'll take care of you as soon as
22 possible. Seeing no hands, hearing no answer
23 as agreed to prior to the break and over
24 objection, Mr. Mueller, you may call your

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1 witness.

2 MR. MUELLER: Thank you. We'll call
3 Patricia Vonperbondt, please.

4 HEARING OFFICER HALLORAN: Mr.
5 Porter, while I'm at it for housekeeping, the

6 brief that you submitted to me regarding the
7 attempted exclusion of this witness is not
8 signed. Are you going to file it with the
9 Board or is this just for my personal
10 knowledge?

11 MR. PORTER: I will file it with the
12 Board as well.

13 HEARING OFFICER HALLORAN: You don't
14 want me to take it as a hearing officer exhibit
15 now?

16 MR. MUELLER: We have no objection as
17 to your taking it as a hearing officer exhibit
18 and it probably makes sense that way since it
19 goes with this particular witness.

20 MR. PORTER: I guess I'd like to take
21 it as an exhibit as well.

22 HEARING OFFICER HALLORAN: Unsigned?

23 MR. PORTER: I'll sign it.

24 HEARING OFFICER HALLORAN: I believe

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1 we're at No. 2.

2 MR. PORTER: I assume then we will do
3 the same thing with my earlier brief. That was

4 number one?

5 HEARING OFFICER HALLORAN: Yes. You
6 may proceed, Mr. Mueller.

7 (Whereupon, the witness was duly sworn.)

8 PATRICIA VONPERBANDT,
9 called as a witness herein, having been first
10 duly sworn, was examined and testified as
11 follows:

12 DIRECT EXAMINATION

13 BY MR. MUELLER:

14 Q. State your full name and spell your
15 last name.

16 A. Patricia Vonperbandt,
17 V-o-n-p-e-r-b-a-n-d-t.

18 Q. And, Pat, where are you employed?

19 A. I'm employed for George Mueller, P.C.

20 Q. And what are your general duties?

21 A. Secretarial.

22 Q. Do you also have a side business of
23 your own?

24 A. Yes.

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1 Q. What is that?

2 A. Process serving.

3 Q. And do you do that for lots of
4 different clients?

5 A. Yes, I do.

6 Q. Were you involved in the preparation
7 of the notices and envelopes in which they were
8 sent out in connection with this application?

9 A. Yes.

10 Q. What was your involvement in the
11 preparation of the notices?

12 MR. PORTER: I assume, Mr. Hearing
13 Officer, I don't need to reiterate my
14 objection. I have an ongoing objection to this
15 testimony.

16 HEARING OFFICER HALLORAN: The entire
17 line of questioning?

18 MR. PORTER: Correct.

19 HEARING OFFICER HALLORAN: Objection
20 noted. Proceed.

21 BY MR. MUELLER:

22 Q. Let me withdraw the question.

23 Did you physically type the notices?

24 A. Yes.

1 Q. Who -- did you also physically type
2 the envelopes?

3 A. Yes.

4 Q. Who placed the notices in the
5 envelopes?

6 A. I did.

7 Q. And did you place anything else in
8 the envelopes with the notices?

9 A. No.

10 Q. What happened to the envelopes after
11 the notices were placed in them?

12 A. They were sealed and the register
13 card was attached.

14 Q. What happened to them after that?

15 A. They were given to Mr. Volini.

16 Q. Who gave them to Mr. Volini?

17 A. I did.

18 Q. Where did that take place?

19 A. In our office in Ottawa.

20 Q. Was that on February 18th?

21 A. Yes.

22 Q. There were no other documents placed
23 in the envelopes?

24 A. No.

1 Q. Now, did you also serve some of the
2 land owners personally in this matter?

3 A. Yes.

4 Q. When did you start those personal
5 services generally?

6 A. The week of February 18th.

7 Q. And did anyone direct you
8 specifically to serve the owners of a parcel on
9 which we had conflicting ownership information?

10 A. Yes.

11 Q. Would that be parcel No.
12 13-16-23-400-001?

13 A. Yes.

14 Q. And just so it's clear, you did not
15 provide the ownership information or identify
16 any of the parcels yourself, did you?

17 A. No, I did not.

18 Q. This parcel I just referenced and for
19 shorthand purposes, let's call it the Skates
20 parcel, what did you do with regard to personal
21 service on the Skates parcel?

22 A. We traveled to an address in Rock
23 Falls, Illinois, which was the address that we
24 were given. When we arrived there, we learned

1 that the people that lived there was the
2 daughter of Judith Skates --

3 MR. PORTER: Objection, calls for
4 hearsay.

5 MR. MUELLER: This goes to her state
6 of mind and the applicant's state of mind and
7 the reasonableness of the applicant's efforts
8 to obtain service and also I would point out
9 that the rules of evidence are to be somewhat
10 relaxed in these proceedings based -- and that
11 the rules are based upon the reliability of the
12 information rather than strict hearsay and
13 non-hearsay.

14 HEARING OFFICER HALLORAN: Anything
15 else, Mr. Porter?

16 MR. PORTER: No.

17 HEARING OFFICER HALLORAN: Overruled.

18 BY THE WITNESS:

19 A. When we got to the Rock Falls
20 address, the daughter of Judith Skates resided
21 there with her husband and children. She told
22 us that her mother was handling that property,

23 that it was placed in some type of a family
24 trust, that the other members of the family

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1 that were listed on our list as owners lived in
2 various areas. One was deceased, a few lived
3 out of state and that her mother was handling
4 it. And she gave us her mother's address in
5 Arnaga, I believe it was.

6 Q. Did you find James Bradshaw at that
7 address?

8 A. No.

9 Q. Did you find J. Bradshaw at that
10 address?

11 A. No.

12 Q. Did you find Ted Bradshaw at that
13 address?

14 A. No.

15 Q. Did you find Denise Harrow at that
16 address?

17 A. No.

18 Q. Did you find Judith Skates at that
19 address?

20 A. No.

21 Q. And did you learn, in fact, that none
22 of those people lived at that address?

23 A. Yes.

24 Q. Did you find Gary Bradshaw at that

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1 address?

2 A. No.

3 Q. Did you also learn that he did not
4 live at that address?

5 A. That's correct.

6 Q. Were you given by the individual that
7 identified herself as the daughter of Judith
8 Skates any information as to the specific
9 whereabouts of any of the individuals I just
10 asked you about other than the address on
11 Judith Skates?

12 A. No.

13 Q. Now, at my request, did you travel to
14 Kankakee County in September of this year and
15 do some further research with respect to the
16 ownership of the Skates' property?

17 A. Yes, I did.

18 Q. And can you tell the hearing officer

19 what you did?

20 A. I went to the Kankakee County
21 building where I went to the assessors's
22 office and I obtained a copy of the property
23 owner card. I went to the treasurer's office
24 where I obtained a copy of the tax bill.

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1 MR. PORTER: I'm sorry. What time
2 frame are we talking about?

3 MR. MUELLER: September 2002. She
4 already answered that.

5 MR. PORTER: Then I object to
6 relevancy.

7 HEARING OFFICER HALLORAN: Mr.
8 Mueller?

9 MR. MUELLER: To the extent that the
10 Board wants to receive evidence of ownership
11 and wants to determine whether or not there's
12 jurisdiction, once we received a brief post
13 hearing from Kankakee County identifying this
14 as one that they believed to be a problem
15 parcel, we researched it to affirm in our own
16 minds that we had, in fact, served the owners

17 and I think the results of that research
18 whether they were done in March or whether they
19 were done September are probative on the issue.

20 HEARING OFFICER HALLORAN: Anything
21 further, Mr. Porter?

22 MR. PORTER: No. It's still a
23 relevancy objection particularly in light of
24 the fact that this witness has already

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1 testified that they did not acquire personal
2 service on any of the individuals.

3 HEARING OFFICER HALLORAN: Objection
4 overruled.

5 BY MR. MUELLER:

6 Q. Tell us again what you did once you
7 got to Kankakee.

8 A. I went to the assessor's office where
9 I obtained a property owner's card for that
10 parcel, went to the treasurer's office and got
11 the tax bill and then got a change of address
12 form from the assessor's office for that
13 parcel.

14 Q. And let me show you what I marked as

15 Town and Country Exhibits 1, 2, 3 and I would
16 advise waste management and the county that
17 these are the three documents tendered as
18 attachments to Ms. Vonperbondt's affidavit,
19 which was produced in discovery.

20 HEARING OFFICER HALLORAN: Okay.

21 BY MR. MUELLER:

22 Q. Pat, would you look at Town and
23 Country No. 1 and tell us what it is?

24 A. It's a property owner card listing

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1 Gary Bradshaw for the parcel number that you
2 gave me.

3 Q. Who else is listed as owners on that
4 card?

5 MR. PORTER: Objection, hearsay.

6 HEARING OFFICER HALLORAN: Overruled.

7 BY THE WITNESS:

8 A. Gary Bradshaw, James Bradshaw, J.
9 Bradshaw, Ted Bradshaw, Denise Vogel, Judith
10 Skates.

11 BY MR. MUELLER:

12 Q. And where did you obtain that card?

13 A. From the assessor's office, Kankakee
14 County.

15 Q. Would you look at Town and Country
16 Exhibit No. 2 and tell me what that is?

17 A. This is a copy of a tax bill for that
18 parcel that I obtained from the Kankakee County
19 Treasure's office.

20 Q. Where is the treasure's office?

21 A. Around the corner from the county
22 building.

23 Q. Is that from the same parcel?

24 A. Yes.

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1 Q. Who is the tax bill mailed to?

2 A. Judith Skates.

3 Q. And what is the third document that
4 you obtained?

5 A. That's a name and address change
6 card.

7 Q. For the subject parcel?

8 A. Yes.

9 Q. And who does it show as the name and
10 address?

11 A. Judith Skates, 203 South Locust
12 Street.

13 Q. Where did that document come from?

14 A. From the assessor's office.

15 Q. Did you consult a computer database
16 maintained in the assessor's office and the
17 treasurer's office?

18 A. Yes.

19 Q. Did you make inquiry as to how that
20 database was maintained.

21 A. Yes.

22 MR. PORTER: I object to vagueness.
23 What time frame are we talking about?

24 MR. MUELLER: The same time in

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1 September.

2 MR. PORTER: Then I have the same
3 ongoing relevancy objection, which I would like
4 the record to reflect.

5 HEARING OFFICER HALLORAN: The record
6 shall reflect.

7 BY MR. MUELLER:

8 Q. What did you learn about how that

9 database is maintained?

10 A. The treasurer's office and the
11 assessor's office are basically on the same
12 database from what I understand.

13 Q. How do you understand that?

14 A. That's what I was told. When we got
15 the real estate bill, it had a different name
16 than the first card that we got so I went back
17 to the assessor's office and they had a name
18 change card for that.

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

20 HEARING OFFICER HALLORAN: Thank you,
21 Mr. Mueller. Mr. Porter?

22 CROSS-EXAMINATION

23 BY MR. PORTER:

24 Q. How long have you worked for

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1 Mr. Mueller?

2 A. Three and a half years.

3 Q. And I take it then you've assisted
4 him in other siting hearings and Pollution
5 Control Board appeals and appeals relating to
6 landfill sitings, right?

7 A. Not appeals, no.

8 Q. Have you assisted him in regard to
9 the siting hearings?

10 A. The instant one, the Kankakee one.

11 Q. Any others?

12 A. I believe when I first came to work
13 for him, he was involved in one in Roschel.

14 Q. You understand that the failure to
15 acquire service upon the owners in the property
16 results in the local municipality not having
17 jurisdiction to hear the appeal, correct?

18 MR. MUELLER: Calls for her to call
19 for a legal conclusion.

20 HEARING OFFICER HALLORAN: If she can
21 answer, I'll allow the question to stand.

22 BY THE WITNESS:

23 A. I don't really have the legal
24 expertise to make that understanding.

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1 BY MR. PORTER:

2 Q. You understand that getting notice
3 served on the land owners is extremely
4 important to a landfill siting hearing,

5 correct?

6 A. Yes.

7 Q. And you know that the failure to
8 acquire that notice may be a fatal flaw; is
9 that correct?

10 A. I don't have that knowledge, no.

11 Q. You do know that it could be
12 extremely detrimental to Mr. Mueller's case if
13 indeed notice was not achieved, correct?

14 A. I do know that it could cause some
15 problems. Extremely detrimental, again, I
16 don't have that expertise to make that
17 determination.

18 Q. My understanding is that you have
19 reviewed an affidavit filed by Mr. Volini,
20 correct?

21 A. Yes.

22 Q. And you have seen the receipts
23 attached to that affidavit, which was entered
24 at the 39.2 hearing as Applicant's Exhibit No.

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1 2; is that right?

2 A. I'm not sure what you're referring

3 to.

4 Q. Let me show you, if I may, what's
5 been marked as Applicant's Exhibit 2 in the
6 Section 39.2 hearing.

7 That's the affidavit of Mr. Volini
8 with the receipts attached, correct?

9 A. Yes.

10 Q. Now, all of the receipts attached to
11 that affidavit reflect the notices that were
12 sent out; is that right?

13 A. It appears to.

14 Q. Now, you did not send out any notices
15 that aren't reflected by those receipts; is
16 that correct?

17 A. I sent out notices that were
18 reflected on the list that was given to me.

19 Q. And for each of those notices we have
20 a receipt -- strike that.

21 For every notice that you sent out,
22 there is a receipt attached; is that right?

23 A. I'm not sure if there is a receipt
24 for every notice. I'm not sure. If it matches

1 my list, then there is.

2 Q. Isn't it true that there is
3 absolutely no receipt for parcel No.
4 13-16-23-400-001 at 22802 Crawford Road for
5 owners Gary Bradshaw, James Bradshaw, J.
6 Bradshaw, Ted A. Bradshaw, Denise Vogel and
7 Judith Skates?

8 A. There's one here for Judith Skates.

9 Q. What is the address for Judith
10 Skates?

11 A. 203 South Locust.

12 Q. There is not one for any person at
13 the Crawford Road, Rock Falls address?

14 A. No.

15 Q. There's no receipts whatsoever for
16 Gary Bradshaw?

17 A. I did not see one.

18 Q. There is no receipt whatsoever for
19 James R. Bradshaw; is that right?

20 A. I did not see one.

21 Q. There is no receipt whatsoever for
22 J.D. Bradshaw; is that right?

23 A. Yes.

24 Q. There is no receipt whatsoever for

1 Ted A. Bradshaw, correct?

2 A. That's correct.

3 Q. If I understood your earlier
4 testimony, at one point you attempted personal
5 service on Gary Bradshaw but it was not
6 achieved; is that right?

7 A. That's correct.

8 Q. You attempted personal service on
9 James D. Bradshaw, but it was not achieved,
10 right?

11 A. Yes.

12 Q. You attempted personal service on
13 J.D. Bradshaw, but it was not achieved, right?

14 A. Yes.

15 Q. And you attempted personal service on
16 Ted A. Bradshaw, but it was not achieved,
17 right?

18 A. Yes.

19 Q. Likewise you attempted personal
20 service on Denise Vogel, but it was never
21 achieved, right?

22 A. Yes.

23 Q. Did you ever acquire -- strike that.
24 You said that at some point you

1 figured out that the property was owned in
2 trust and that was when?

3 A. I was told that by Judith Skates'
4 daughter.

5 Q. And this was when?

6 A. It was the week of February 18th.

7 Q. At any time did you acquire service
8 on the trust?

9 MR. MUELLER: Objection, she says
10 what she was told and then she served it to Ms.
11 Skates.

12 HEARING OFFICER HALLORAN: Any
13 response?

14 MR. PORTER: No.

15 HEARING OFFICER HALLORAN: I'll allow
16 the question to stand.

17 BY THE WITNESS:

18 A. Could you repeat it?

19 BY MR. PORTER:

20 Q. Did you ever attain service on a
21 trust?

22 A. Not a formal trust.

23 Q. Did you ever go to a clerk's office

24 and acquire a copy of the trustee's deed?

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1 A. No.

2 Q. Did you ever attempt to serve trust
3 No. 380?

4 A. No.

5 Q. Which relative did Ms. Skates tell
6 you was deceased?

7 A. She didn't give a name.

8 Q. You didn't inquire of -- you said you
9 spoke to Ms. Skates' daughter. Do you know her
10 name?

11 A. I don't remember it.

12 Q. And I take it you have no notes?

13 A. No, I don't.

14 Q. Isn't it true you never asked her for
15 the address of Gary Bradshaw?

16 A. I didn't feel it was necessary
17 because she told me that her mother had been
18 nominated by the family to handle the matters.

19 Q. My statement was correct?

20 A. Correct.

21 Q. Likewise, you never asked for the

22 address of James Bradshaw?

23 A. Correct.

24 Q. You never asked for the address of

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1 J.D. Bradshaw?

2 A. That's correct.

3 Q. Now, did you ever inquire as to
4 whether Mrs. Skates' daughter had legal
5 authority to appoint an agent for the purpose
6 of service of process on behalf of those
7 individuals.

8 A. Mrs. Skates' daughter?

9 Q. Well, we don't know her name. This
10 individual you talked to was Ms. Skates'
11 daughter, right?

12 A. Correct.

13 Q. Did you ever ask her if she had legal
14 authority to appoint anyone as service of
15 process for Gary Bradshaw, James Bradshaw,
16 J. Bradshaw, Ted Bradshaw, Denise Vogel or
17 Judith Skates?

18 A. No, I didn't believe her daughter
19 would have that authority.

20 MR. PORTER: Nothing further.

21 HEARING OFFICER HALLORAN: Thank you,

22 Mr. Porter. Mr. Sandberg, Mr. Moran?

23 MR. SANDBERG: No questions.

24 MR. MORAN: No questions.

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1 HEARING OFFICER HALLORAN:

2 Mr. Mueller, redirect?

3 REDIRECT EXAMINATION

4 BY MR. MUELLER:

5 Q. Pat, the receipts attached to
6 Mr. Volini's affidavit reflect only those
7 certified mails were claimed; is that correct?

8 A. That's correct.

9 MR. MUELLER: That's all.

10 HEARING OFFICER HALLORAN: Anything
11 else?

12 MR. LESHEN: Nothing for the city.

13 MR. PORTER: One follow up.

14 RE-CROSS EXAMINATION

15 BY MR. PORTER:

16 Q. Did we have copies of the envelopes
17 that were sent out?

18 A. No.

19 MR. PORTER: Nothing further.

20 HEARING OFFICER HALLORAN: These
21 exhibits, Mr. Mueller, were you going to offer
22 them into evidence?

23 MR. MUELLER: We'll offer Town and
24 Country Exhibits 1, 2, 3.

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1 MR. PORTER: And I have objected
2 already.

3 HEARING OFFICER HALLORAN: I will
4 admit them over the county's objection. Before
5 I forget, Mr. Darwin, could you please write
6 your name on this public comment so we don't
7 get it confused and also sign it on the back as
8 well.

9 Where does that leave us? Mr.
10 Bohlen? We'll have the reporter swear you in
11 again.

12 (Whereupon, the witness was duly sworn.)

13 HEARING OFFICER HALLORAN: I can't
14 remember where we left off. I think Mr. Porter
15 finished his direct at that time.

16 MR. PORTER: Well, we had not, but I
17 am now. We have nothing further.

18 HEARING OFFICER HALLORAN: Mr.
19 Sandberg, do you have any questions of
20 Mr. Bohlen?

21 MR. SANDBERG: Yes.

22 CHRIS BOHLEN,
23 called as a witness herein, having been first
24 duly sworn, was examined and testified as

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1 follows:

2 DIRECT EXAMINATION

3 BY MR. SANDBERG:

4 Q. Mr. Bohlen, are you a hydrologist?

5 A. No, sir.

6 Q. Are you a geologist?

7 A. No, sir.

8 Q. Is Mr. Moose either a hydrologist or
9 a geologist?

10 MR. LESHEN: Objection, this is -- I
11 don't mean to sound like a broken record, this
12 hearing is dealing with the issues of
13 fundamental fairness and jurisdiction. These

14 questions would not be, in my view, permissible
15 in a discovery deposition.

16 HEARING OFFICER HALLORAN: Where are
17 you going with this?

18 MR. SANDBERG: And I'm coming to a
19 question for bias.

20 HEARING OFFICER HALLORAN: I'll let
21 you go on for a limited time to see where we're
22 going on this.

23 BY MR. SANDBERG:

24 Q. Was Mr. Moose either a hydrologist or

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1 geologist?

2 A. My understanding was he was a
3 licensed professional engineer.

4 Q. But not a hydrologist?

5 A. I don't know whether he was or was
6 not. He was qualified as a licensed
7 professional engineer.

8 Q. Then how can it be that you're
9 qualified to make a judgment saying the weight
10 of the evidence did not prove the site to be
11 unsuitable for a landfill?

12 MR. LESHEN: Objection.

13 HEARING OFFICER HALLORAN: I'm not
14 sure I'm here to judge Mr. Bohlen's evidentiary
15 rulings or findings at this juncture. And I
16 think they are inappropriate, at the very least
17 irrelevant questions. I can't allow you to
18 continue this line of questioning. If you have
19 others questions, that's okay.

20 BY MR. SANDBERG:

21 Q. I counted seven times you referred to
22 Mr. Moose in the statements of fact, did you
23 ever make a negative reference to Mr. Moose?

24 MR. LESHEN: I would have the same

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1 objection, Judge.

2 HEARING OFFICER HALLORAN: I think
3 that the finding of facts are in the record and
4 will speak for themselves

5 BY MR. SANDBERG:

6 Q. Mr. Bohlen, are you an expert in
7 flood planes?

8 MR. LESHEN: Relevancy, I suppose,
9 would be the objection.

10 HEARING OFFICER HALLORAN: Mr.
11 Sandberg, any response? I'm going to ask him
12 questions about regarding flood planes. Has
13 there been a change in the flood planes. He
14 said that there had been a change that it was
15 no longer a flood planes, some change. He
16 didn't say what change. I'm going to try and
17 find out what change.
18 HEARING OFFICER HALLORAN: I'll allow
19 a limited follow-up. With that, you may
20 proceed.
21 BY MR. SANDBERG:
22 Q. I take it then you're not an expert
23 on flood planes?
24 A. In the course of my duties as

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1 corporation counsel for the city of Kankakee,
2 there are occasions I'm called upon to make an
3 interpretation as to whether a piece of
4 property lies within the flood planes for
5 purposes of determining whether a building can
6 be built that is proposed to be built there.
7 That's part of my job. So to that extent, I'm

8 familiar with the flood plane. I'm familiar
9 with the flood plane maps and I've been
10 required to pass judgment on a proposed
11 building within a flood plane. With all
12 modesty aside, I don't think I'm probably an
13 expert on anything.

14 Q. You made a statement that change had
15 been made there that was no longer a flood
16 plane; is that fair?

17 MR. LESHEN: I think if I understand
18 the intent of these questions, I would
19 fundamentally ask the Board to re-weigh the
20 findings of fact. I don't see how this line of
21 questioning relates to the purposes of this
22 hearing. And, consequently, I object on the
23 basis of relevance. I know this is a lay
24 question and you're giving him leeway, but I

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1 think that he's at the extent.

2 HEARING OFFICER HALLORAN: Mr.
3 Sandberg, Mr. Leshen is correct. The Board
4 does not re-weigh the evidence. They look to
5 see what's in the record to see if the decision

6 was against the manifest weight of the
7 evidence, so I would sustain Mr. Leshen's
8 objection.

9 BY MR. SANDBERG:

10 Q. Mr. Bohlen, at any time during Mr.
11 Cravens' testimony, did you allow Mr. Moose to
12 interrupt Mr. Cravens' testimony?

13 A. There was at one point that I recall
14 during the testimony that chaos occurred in
15 which Mr. Craven exploded, Mr. Moose exploded,
16 Mr. Mueller exploded and Mr. Rausch exploded
17 all simultaneously. I think I gaveled pretty
18 hard at that particular point in the testimony
19 and said we weren't going to have that kind of
20 response from anybody in the room, including
21 Mr. Craven, Mr. Moose, Mr. Volini, Mr. Mueller
22 or Mr. Rausch.

23 Q. The question that Mr. Moose was
24 interrupted was where is the seal? Where is

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1 the screen? Was that the point? I don't
2 remember seeing any interruption by anybody
3 else or any explosions at that time in the

4 transcript.

5 HEARING OFFICER HALLORAN: Mr.

6 Leshen?

7 MR. LESHEN: I'm trying to pick and
8 choose here in order to let it get done. If
9 these are questions -- if there was a question
10 that was designed to show fundamental fairness,
11 I think I'd let it go by. Again, we are at the
12 point of asking the Board to do something
13 that's not mandated to do -- relevance is my
14 objection.

15 BY MR. SANDBERG:

16 Q. Is it fair to allow a witness from
17 one side to interrupt another witness and
18 question his testimony, where is the seal when
19 he had already testified where the seal was?
20 He interrupted him, I think, not less than
21 three times asking the same question and this
22 was allowed. Is this a proper procedure for a
23 hearing or a trial or anything else?

24 HEARING OFFICER HALLORAN: Sir, I

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1 can't go to that, but I do know, as I stated

2 earlier, the Board does not weigh the evidence
3 or re-weigh the evidence or as far as I know
4 rule the evidentiary rulings of the hearing
5 officer. I think that's beyond the scope of --

6 MR. SANDBERG: And I'm trying to show
7 bias that the hearing officer allowed this. He
8 would not allow Mr. Craven an opportunity to
9 clarify one of his statements.

10 HEARING OFFICER HALLORAN: How many
11 more questions do you have left?

12 MR. SANDBERG: Two or three.

13 HEARING OFFICER HALLORAN: If Mr.
14 Bohlen can answer that question and I'm not
15 sure the question is out there -- we can't
16 continue this line of questioning. I'll allow
17 one more question. Again, we're not here to
18 look at Mr. Bohlen's evidentiary rulings as far
19 as I know.

20 BY THE WITNESS:

21 A. The answer to your question is I have
22 no recollection of Mr. Moose ever asking a
23 question other than the one occasion when the
24 chaotic explosion occurred as I'm calling it.

1 And I'm wondering -- and I think I know the
2 reference in the transcript and when I read
3 that, I believe in my opinion that the court
4 reporter had misstated who was asking the
5 question. I have no recollection of ever
6 allowing Mr. Moose to ask any questions during
7 the course of that hearing.

8 Q. She made the mistake three times
9 then?

10 A. She may very well have.

11 HEARING OFFICER HALLORAN: That's
12 reflected in the transcript as well?

13 MR. SANDBERG: Right. That's all I
14 have.

15 HEARING OFFICER HALLORAN: Thank you,
16 Mr. Sandberg. Mr. Moran?

17 DIRECT EXAMINATION

18 BY MR. MORAN:

19 Q. Mr. Bohlen, I believe we established
20 earlier that during the first evening at a
21 hearing on June 17, 2002 there were persons who
22 were unable to come into the council chambers,
23 correct?

24 A. I believe that's been established,

1 yes.

2 Q. And I believe you indicated that your
3 best estimate as to the number of individuals
4 who were unable to get access to the council
5 chambers that day was about 30 to 35; is that
6 correct?

7 A. I don't remember making an estimate
8 because I don't think I ever walked out there.
9 I think I was told by people that there was 30,
10 35 in that range of people that were out there.
11 I know Mr. Rausch indicated in his motion there
12 were more.

13 Q. Who was it that told you there were
14 30 to 35 people that were unable to get into
15 the council chambers that evening?

16 A. I believe Mr. Power at one point told
17 me. I believe one of the police officers gave
18 me that estimate and maybe others but, those
19 are the two that I think I recall.

20 Q. Did you make any specific attempt to
21 determine the number of persons who were unable
22 to get into the council chambers that evening?

23 A. No.

24 Q. Did you make any attempt to determine

1 the identity of those individuals who were
2 unable to get into council chambers that
3 evening?

4 A. Other than generically I wanted to
5 make sure that no one who wanted to participate
6 as an objector was out there. I did not
7 otherwise attempt to identify them. But we did
8 attempt to identify whether any person who
9 wanted to participate as an objector was out
10 there. I didn't do that personally, I directed
11 that that be done.

12 Q. And you said you directed Mr. Power
13 to do that?

14 A. Mr. Power did it as well as Officer
15 Kato or Officer Clock, one of those two read a
16 list of names also. I think that's reflected
17 in the transcript at some point.

18 Q. Was that a written list?

19 A. Yes.

20 Q. And that was submitted to you?

21 A. No. I created that list from those
22 who had already registered as objectors. I

23 wanted to make sure that none of those persons
24 were standing out in the hallway.

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1 Q. Did you make any attempt to determine
2 the number of individuals who left the city
3 building without being able to get into the
4 City Council chambers that evening?

5 A. No.

6 Q. Did you make any attempt to determine
7 the identity of any individuals who were unable
8 to get into the City Council chambers and left
9 the building that evening?

10 A. Other than as I stated before
11 generically trying to determine whether there
12 were objectors who wanted to participate, I
13 made no other specific attempt to identify
14 those persons.

15 Q. Did you have any opportunity to
16 observe the behavior of the individuals who
17 were unable to get access to the City Council
18 chambers that evening?

19 A. I did, but I don't recall any
20 specifics. I did because they were within my

21 line of sight outside the doors of the City
22 Council chamber.

23 Q. Based on your observation of your
24 knowledge of those individuals, would you

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1 characterize their behavior that evening as
2 being unruly in any sense?

3 A. Noisy at times, but not unruly.

4 Q. Would you characterize the behavior
5 of those persons as being in any way
6 disorderly?

7 A. Noisy. Sometimes affecting in my
8 opinion what was going on, but not -- nothing
9 other than making noise.

10 Q. And was them making noise in any way
11 an impediment to your conducting the siting
12 hearing that evening?

13 A. Not to me. I thought it would be an
14 impediment to those sitting inside the room at
15 the back of the room. I was concerned about
16 that but nothing other than that.

17 Q. Do you have any information to
18 conclude that, in fact, this noise coming from

19 these individuals disrupted the hearing in any
20 fashion?

21 A. It did not disrupt the hearing, but
22 the ability of those that were seated in the
23 room to hear the hearing.

24 Q. And which individuals who were in the

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1 City Council chambers were unable to hear what
2 was going on in there as a result of this noise
3 coming from outside?

4 A. Officer Kato or Officer Clock
5 indicated he was sometimes unable to hear. He
6 was standing at the doorway because of the
7 noise that was occurring in the hall and that
8 was why he requested the people to be quiet.

9 Q. Other than the police officer, were
10 there any other individuals that you were aware
11 of who were unable to hear the proceedings
12 during the siting hearing as a result of the
13 noise coming from outside the council chambers?

14 A. No one commented one way or the other
15 other than Officer Kato or Officer Clock.

16 Q. Other than this noise coming from

17 outside the council chambers, do you have any
18 information to indicate that the behavior of
19 persons unable to get into the City Council
20 chambers obstructed the siting hearing in any
21 way?

22 A. No.

23 Q. Other than the noise that you've just
24 told us about, do you have any information to

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1 indicate that the behavior of persons unable to
2 access or get into the City Council chambers
3 that evening undermined the siting process?

4 A. No.

5 MR. MORAN: Nothing further.

6 HEARING OFFICER HALLORAN: Thank you
7 Mr. Moran.

8 HEARING OFFICER HALLORAN: Who wants
9 to go first?

10 CROSS-EXAMINATION

11 BY MR. MUELLER:

12 Q. Mr. Bohlen, returning to the subject
13 of how the city's siting hearing ordinance was
14 developed, did you receive input meaning sample

15 ordinances from the number of different
16 sources?

17 A. Yes.

18 Q. And was it your process then to kind
19 of cut and paste to put one together that you
20 were happy recommending?

21 A. Yes. And sometimes inartfully as I
22 review it now.

23 Q. Was a sample received from Town and
24 Country only one of a number that you received?

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1 A. Yes.

2 Q. That ordinance that was adopted was,
3 in fact, amended, correct?

4 A. That's correct.

5 Q. The amendment was in April of this
6 year after the application was filed?

7 A. That's correct.

8 Q. Did Town and Country have any input
9 into that amendment?

10 MR. PORTER: Object to the leading
11 nature. I don't believe this is an adverse
12 witness.

13 MR. MUELLER: I don't believe that
14 was a leading question at all.

15 HEARING OFFICER HALLORAN: I'll let
16 it stand.

17 MR. PORTER: There have been numerous
18 leading questions. I'm asking that that
19 objection remain and we have a ruling on it as
20 far as this witness is concerned.

21 MR. MUELLER: This is not my witness
22 and it's cross-examination.

23 MR. PORTER: I don't believe it's an
24 adverse witness. I don't believe leading

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1 questions are appropriate.

2 MR. MUELLER: He's an independent
3 witness as far as I'm concerned and leading
4 questions are always appropriate on
5 cross-examination whether the witness is
6 independent or the witness is a party.

7 MR. PORTER: Nothing further.

8 HEARING OFFICER HALLORAN: I'll allow
9 Mr. Mueller's question to stand in the leading
10 nature of it.

11 MR. PORTER: And an ongoing
12 objection.

13 HEARING OFFICER HALLORAN: And an
14 ongoing objection for Mr. Porter.

15 MR. PORTER: Thank you.

16 BY MR. MUELLER:

17 Q. Mr. Bohlen, was the April amendment
18 to the siting hearing ordinance communicated to
19 Town and Country?

20 A. Not specifically. It was
21 communicated in the sense that it was published
22 as all ordinances are published.

23 Q. You're aware that Town and Country
24 published a pre-hearing notice that was at a

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1 variance with your siting ordinance as amended
2 in April?

3 A. I became aware of that, yes.

4 Q. How do you account for that variance?

5 A. I don't know. I remember I was quite
6 upset when I discovered the variance and I
7 think I called you and I asked why you had
8 published something that was contrary to the

9 ordinance.

10 Q. Do you recall what you were told?

11 A. That you didn't know that the
12 ordinance had been amended.

13 Q. You, on direct examination, indicated
14 that you understood that the County Solid Waste
15 Management plan last fall as calling for only
16 one landfill and that that landfill would be
17 owned and operated by Waste Management, do you
18 recall that testimony?

19 A. Yes.

20 Q. How do you reconcile that testimony
21 with your recommended finding of fact that the
22 application was consistent with the County's
23 Solid Waste Management plan?

24 A. If you look at the language of the

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1 last amendment of the County Solid Waste plan,
2 the last amendment indicated that that one
3 landfill being operated by Waste Management as
4 an addition to the current site would be the
5 only landfill if it had been approved, and I'm
6 paraphrasing, the language at that point there

7 had been no such addition approved at the time
8 of our hearing. So by reading the specific
9 language of the plan as drafted by the county,
10 there was no prohibition at the second landfill
11 at this point.

12 HEARING OFFICER HALLORAN: Mr.
13 Sandberg? You're taking off for today?

14 MR. SANDBERG: Yeah.

15 HEARING OFFICER HALLORAN: This may
16 be done tonight. So are you going to stick
17 around for the briefing schedule or anything?

18 MR. SANDBERG: I'm going to send in a
19 written brief. I don't have any desire to make
20 a final statement.

21 HEARING OFFICER HALLORAN: I'll try
22 to get an order out by next Monday and send it
23 to you. Thank you, Mr. Sandberg. I'm sorry to
24 interrupt.

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1 BY MR. MUELLER:

2 Q. You testified that you were aware
3 that Town and Country had taken some
4 individuals, including possibly some aldermen

5 to view the Environtech Landfill by Morris?

6 A. Yes, I was aware of that.

7 Q. Now that happened before the
8 application was filed, correct?

9 A. Yes.

10 Q. Do you know whether the Environtech
11 Landfill is owned or operated by Town and
12 Country Kankakee Regional Landfill or any of
13 its principals?

14 A. I have no knowledge about that at
15 all. I didn't attend that.

16 Q. To your knowledge, do you know
17 whether any opponents or known opponents of
18 this application were invited on that bus trip
19 as well?

20 A. I don't know. Like I said, I did not
21 participate. I was aware that it was happening
22 because some aldermen and I think the mayor had
23 mentioned it was happening, but I knew I was
24 not going to participate.

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1 Q. At the same time that you were
2 negotiating the Host agreement with Town and

3 Country, which you described as adversarial at
4 times, were you aware that county legal
5 representatives were similarly negotiating a
6 Host agreement with Waste Management?

7 A. Yes.

8 Q. I believe you testified yesterday
9 that the property to the north and east and
10 south of the site is not in the city?

11 A. Actually it's the northwest and south
12 of the site.

13 Q. I knew I got it wrong the minute it
14 came out of my mouth. In any event,
15 Mr. Bohlen, in fact isn't there a proposed
16 industrial park that is in the city, which is
17 south of the site?

18 A. That's correct. When I said the
19 site, I was referring to the entire site that's
20 been annexed and the actual facility site is
21 approximately half of the entire site that was
22 annexed. So there is an industrial park that
23 is proposed south of the facility site.

24 Q. Mr. Leshen is an assistant

1 corporation counsel?

2 A. He's an assistant city attorney as
3 described in the ordinances.

4 Q. In terms of the rank of the legal
5 advisers to the city, do you consider yourself
6 to be his boss or consider that he's got to get
7 your final approval on things?

8 A. Actually, no. I consider we are very
9 fortunate we have two people and have had two
10 people who have as much or more experience than
11 I do. Ultimately we communicate what we do to
12 one another, but I respect their ability both
13 in a courtroom and to make decisions and they
14 don't have to get my approval for anything they
15 do.

16 On this particular issue, there was a
17 lot of communication going on between the three
18 of us. I think actually Ken Leshen just became
19 assistant city attorney at the beginning of
20 this year, so he was sort of feeling his way
21 for the first time in this process.

22 So there was a lot of discussion
23 about what he was doing and what I was doing
24 and I think he would hand me things and say is

1 this okay. I certainly trusted his ability and
2 did not expect that he would get my approval.

3 Q. You testified that a document or a
4 draft memo signed by Mr. Leshen regarding the
5 role of City Council vis-a-vis their
6 constituents in this application was never
7 distributed?

8 A. That's correct.

9 Q. How is it that that never got
10 distributed?

11 A. Ken showed me what he had drafted.
12 And as I looked at it, I made a decision that
13 it was perfectly a fine memorandum, but it
14 really wasn't in the format that I thought was
15 going to be most helpful in order to contain
16 all the prohibitions and permissions that I
17 thought would be most helpful. We have a
18 sophisticated counsel, but they are not lawyers
19 and nor are they landfill sites by profession.

20 Q. Was there a subsequent incarnation of
21 that document that was distributed?

22 A. Yes. It's entitled do and don't and
23 then there is a list of several items in each
24 column.

1 Q. Let me show you what I believe has
2 been previously marked as City Exhibit No. 3.

3 A. Yes, sir.

4 Q. Is that the do and don't document
5 that was ultimately distributed with your
6 approval to the City Council?

7 A. That's my drafting to the mayor's
8 secretary and distributed by her to the
9 alderman.

10 Q. Thank you. Mr. Bohlen, were you in
11 the room about 45 minutes ago when a member of
12 the public made a statement regarding your bias
13 in favor of the applicant and the application?

14 A. Are you referring to Mr. Peerbolte?

15 Q. Yes.

16 A. Yes.

17 Q. At the time that this application was
18 filed and even at the time of the hearing, did
19 you, in fact, have a personal opinion about
20 this project?

21 A. Yes, I had a personal opinion.

22 Q. What was that opinion?

23 A. I was opposed to the siting of a

24 landfill in the city of Kankakee at the time

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1 the siting hearings began and at the time that
2 we were even in negotiation that was personally
3 imposed. I was in a different position
4 professionally obviously.

5 Q. Let me ask you this. The things that
6 you did in terms of your contact with Town and
7 Country and in terms of your actions as a
8 hearing officer, were those based upon your
9 personal beliefs or upon your professional
10 responsibilities as you perceived them?

11 A. My dealings were based on my
12 professional responsibilities and corporation
13 counsel to fill the requests and the legal
14 needs of the city of Kankakee. Many times I
15 don't necessarily agree with what a client is
16 proposing to do or has suggested but that's not
17 my issue. My issue is how do I best facilitate
18 that in terms of the legal issue. When I was a
19 hearing officer, I had an entirely different
20 role because at that point I no longer was
21 representing the city of Kankakee. I was in

22 the position of trying to be -- hoping to be
23 and working very hard to be fair to the
24 applicant, fair to the objectors, fair to the

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1 public and allowing the City Council to have
2 all the possible evidence it could have before
3 it made its decision because they had a very
4 tough decision to make.

5 Q. In your role as the hearing officer,
6 did you attempt to set aside your personal
7 opposition to this proposal?

8 A. I attempted to set aside any feelings
9 I had one way or another about the proposal.

10 Q. With respect to your proposed
11 findings of fact you did receive as part of the
12 record briefs and/or proposed findings from a
13 number of the participants, including Town and
14 Country, the county and Waste Management,
15 correct?

16 A. Among others. Many of the private
17 citizens who had participated also submitted
18 statements.

19 Q. Did you receive any input with regard

20 to the proposed findings other than items of
21 record?

22 A. Well, the only thing I looked at was
23 what was submitted, the transcripts and the
24 exhibits. And the public statements I did look

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1 at. I didn't give those a lot of weight
2 because I considered professionally that sworn
3 testimony has significantly more value in
4 looking at the issues than unsworn statements.
5 But all of those things were what I considered
6 in coming up with my proposed findings of fact
7 that I was required to submit to the City
8 Council.

9 Q. Did you tell any City Council member
10 how to vote?

11 A. No.

12 Q. Were you ever present when anyone
13 told a City Council member how to vote?

14 A. I don't believe anybody is in a
15 position to tell any of those 14 people how to
16 vote and I don't think they would have accepted
17 anybody telling them how to vote. They had a

18 lot of people suggesting to them what they
19 ought to do, but nobody was in a position to
20 tell them how to vote.

21 Q. Did any City Council member say or do
22 anything that you are aware of that would
23 indicate to you that they did not base their
24 decision exclusively on the evidence?

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1 A. They were repeatedly warned to base
2 it on the evidence. And I'm quite proud as a
3 member of the city that I believe at least 10
4 at every hearing -- 12 or 13 at all, but one of
5 those hearings, of the 12 or 13 of the aldermen
6 which are 14 in total and one alderman
7 abstained because of the conflict, I think they
8 took this issue very seriously. They attended
9 the hearings. They heard the evidence. It
10 wasn't a matter of me being a hearing officer
11 and saying this is what you heard. This is
12 what you should do. They heard it and they
13 knew what the evidence was and that's what I
14 believe they based their decision on.

15 Q. And, in fact, did you distribute to

16 the City Council members before they voted the
17 proposed fact findings developed by all the
18 parties in this proceedings?

19 A. We had 14 three-ring binders that had
20 everybody -- every party's proposed findings of
21 fact, final statements or final comment, those
22 were included in the front of the three-ring
23 binder in the order of the applicants first,
24 then objectors in the order they were received

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1 and then finally at the back was the proposed
2 findings that I had made. So they had every --
3 they had available to them every piece of
4 information that had been submitted to me.

5 Q. Let me back up for something I forgot
6 here. You testified that when you became aware
7 early on in the hearings that the city had not
8 provided a copy of the application to the
9 county that you concluded it was a harmless
10 error?

11 A. I believe I stated that in the
12 record, yes.

13 Q. Why did you draw that conclusion?

14 A. Because I could observe the fact that
15 the county had copies of the application and
16 was examining them based upon the first night
17 they examined, based upon the copies of the
18 application. And I later in the hearing knew
19 that Patrick Engineering had attained copies of
20 the application.

21 MR. MUELLER: Nothing further.

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

24 REDIRECT EXAMINATION

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1 BY MR. PORTER:

2 Q. On the last issue, isn't it true that
3 there was no evidence admitted regarding the
4 fact that the county's expert eventually
5 acquired a copy of the application?

6 A. I didn't review this. My
7 recollection when you asked this question in
8 the deposition was Mr. Vanhook, who testified,
9 indicated that he had reviewed the application.
10 So to that extent, my recollection is that that
11 evidence was there.

12 Q. On cross-examination there was
13 testimony regarding the Kankakee Solid Waste
14 Management plan and you referenced some
15 language contained in that plan?

16 MR. LESHEN: I'm sorry. I needed to
17 step out of the room. Just in terms of the
18 protocol that we've been following, should I go
19 next?

20 HEARING OFFICER HALLORAN: You were
21 gone, so I assumed you had no problem.

22 MR. LESHEN: No, I do.

23 MR. PORTER: I would actually prefer
24 that he go next.

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1 CROSS-EXAMINATION

2 BY MR. LESHEN:

3 Q. Mr. Bohlen, did anybody move during
4 the course of the hearing to disqualify you as
5 the hearing officer?

6 A. Mr. Rausch made such a motion when I
7 indicated to him that I felt that he needed to
8 have read his own expert's statement, but other
9 than that nobody else did.

10 Q. I'd like to question you a little bit
11 about your legal background. Where did you go
12 to law school?

13 A. Northwestern University School of
14 Law.

15 Q. After you graduated, what did you do
16 next?

17 A. I was employed by the Cleveland Legal
18 Aid Defender's office for five years as a
19 senior fellow and trial attorney.

20 Q. I know this is going to be silly, can
21 you tell me approximately how many felony jury
22 trials you tried during the five years that you
23 were so employed?

24 A. 100.

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1 Q. After you concluded your stint as
2 senior felony trial attorney for that public
3 defender's office, did you then become involved
4 in a private practice?

5 A. Yes, sir.

6 Q. And what was the name of that firm?

7 A. I joined the firm that was then known

8 as Blanke and Blanke and worked for them for a
9 year and it became known as the firm of Blanke,
10 Norton, Barbman and Bolden in 1978 and it's
11 been that same firm although with a different
12 name at this point since then.

13 Q. From 1978 to the present then, you
14 were employed as a principal in that law firm?

15 A. Yes, sir.

16 Q. Can you describe the nature and stint
17 of your practice?

18 A. For the first four years, I believe,
19 I was an assistant public defender in Kankakee
20 County but almost principally and exclusively
21 civil practice emphasizing on some family law
22 and some commercial law and personal injury.
23 And in the last -- since 1993, I've been
24 involved with the city.

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1 Q. Have you attended seminars during
2 that time?

3 A. Yes, sir. I'm required by the Ohio
4 Bar to have 24 hours of continuing education.

5 Q. And have you, in fact, satisfied that

6 requirement?

7 A. So far.

8 Q. Now, have you been involved -- have
9 you served on boards that have been
10 decision-making bodies in administrative type
11 hearings?

12 A. Yes, sir. The prior administration
13 I was on, the planning -- then called the
14 Planning Commission of the city of Kankakee.
15 I've also been appointed City Board that have
16 heard the annexation and deannexation of school
17 districts.

18 Q. Have you also served as an arbitrator
19 in personal injury cases?

20 A. Yes, sir.

21 Q. I would like to direct your attention
22 to the testimony that was taken regarding
23 the -- specifically by Martin regarding the
24 issues of overcrowding at this hearing and his

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1 comparison with other hearings that he had
2 attended.

3 Have you attended hearings either at

4 the county or elsewhere that have had similar
5 types of crowding issues?

6 A. Yes.

7 Q. Can you describe for the Hearing
8 Officer and the Board some of those types of
9 hearings?

10 A. I've attended county board meetings,
11 but I've been excluded because the spectator
12 gallery was not sufficient. I have
13 participated in zoning hearings when members of
14 the public and specific land owners who were
15 affected by the zoning had been excluded
16 because the spectator gallery was not
17 sufficient. I've attended trials in which the
18 spectator gallery was insufficient for even
19 members of the family of the client I was
20 representing in a capital murder case could not
21 attend because there was not enough room in the
22 courtroom.

23 I have attended a number of
24 administrative type hearings, some involving

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1 school districts where land owners whose land

2 was being annexed or deannexed and the school
3 districts could not attend because of the
4 substantial public interest.

5 I have attended a number of civil
6 trials which the public was not allowed to
7 participate or attend because the courtroom was
8 not sufficient to allow them into.

9 Q. I would now like to direct your
10 attention to the assertions of a Mrs. O'Dell
11 regarding her ability or inability to
12 participate in the hearing.

13 When did it first come to your
14 attention that Mrs. O'Dell had decided to
15 participate in the hearing in anything other
16 than a speaking capacity?

17 A. I made a note of that. I discussed
18 that in the record and I did review that. It
19 was Wednesday evening. Ms. O'Connor actually
20 brought Mrs. O'Dell to me and said to me this
21 is Pat O'Dell and she's decided that she wants
22 to change her mind. She wants to now
23 participate in the hearing and I said as an
24 objector and she said yes. And I said fine.

1 From now on you're an objector. And I
2 announced that in the hearing from now on, Pat
3 O'Dell was going to be an objector. Mr. Moran
4 had asked to be the last person involved in the
5 questioning and I inadvertently put Ms. O'Dell
6 after Mr. Moran in questioning so that she
7 became the last person.

8 MR. LESHEN: Can I have a minute to
9 confer with counsel?

10 HEARING OFFICER HALLORAN: Go ahead.
11 While counsel is conferring, is there any
12 members that wish to make a public comment?
13 For the record, by my count it looks like about
14 five members of the public are still in their
15 seats and about six or seven people are
16 affiliated or I assume affiliated with the
17 interested parties, so that's just for the
18 record.

19 MR. LESHEN: Can we take a break?

20 HEARING OFFICER HALLORAN: Off the
21 record.

22 (A short break was had.)

23 HEARING OFFICER HALLORAN:

24 All right. We're back on the record. It's

1 approximately ten til 6:00. I'm not sure where
2 we are at this point. Mr. Leshen?

3 MR. LESHEN: This is what I proposed
4 to have happen. Finish up with Mr. Bohlen. If
5 everybody else agrees, I would just assume
6 we're done tonight.

7 HEARING OFFICER HALLORAN: As I
8 stated to someone earlier, I'm willing to stay
9 until 7:00, but that's kind of a once bitten
10 twice shy type thing and it turns into 7:30,
11 quarter to 8:00. And I'm not sure about
12 closing arguments whether the parties are going
13 to waive them. I still have to go through the
14 exhibit list briefly and set a post-hearing
15 briefing schedule. So just that alone is going
16 to take 15 minutes.

17 MR. LESHEN: I guess there is a
18 stipulation which I would ask Mr. Porter and
19 Mr. Mueller to speak to regarding the minutes
20 of the February 19th meeting and minutes of a
21 June 3rd, 2002, meeting.

22 HEARING OFFICER HALLORAN: I'm all
23 for that. Who wants to begin?

24 MR. PORTER: The parties are

1 stipulating the February 19, 2002, minutes are
2 part of the record admitted into evidence,
3 however, Mr. Mueller is not waiving his
4 client's objection to the relevancy. I will
5 then stipulate and do stipulate that the June
6 3rd, 2002, minutes are also in the record much
7 like all of the other minutes.

8 HEARING OFFICER HALLORAN: I'm sorry,
9 June what?

10 MR. PORTER: June 3rd, 2002, are
11 being supplemented into the record as
12 Mr. Bohlen had indicated he wished to do
13 yesterday.

14 MR. MUELLER: I think, Mr. Halloran,
15 unspoken but understood as part of that
16 stipulation is that the parties stipulate that
17 the minutes which are transcripts are accurate
18 transcriptions of what the parties that were
19 purported to speak at those times accurately
20 said. And with regard to this issue of the
21 February 19th minutes, that's that whole
22 business of the offer of proof and a pre-filing

23 contact, and as a practical matter, the Board
24 is undoubtedly going to look at those minutes

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1 before deciding whether or not they are going
2 to disregard them, and so I think part of an
3 offer of proof or just admitted as an exhibit
4 is a different or a distinction without a
5 difference and that's why, you know, let's let
6 them in as an exhibit subject to reservation of
7 our right to argue that they shouldn't even be
8 considered in our briefs to the Board.

9 HEARING OFFICER HALLORAN: The record
10 will so reflect that and the stipulation is
11 accepted.

12 MR. LESHEN: With the document that I
13 have marked as Respondent's Exhibit No. 5, I'd
14 ask to approach Mr. Bohlen and show him a copy.

15 HEARING OFFICER HALLORAN: You may.

16 BY MR. LESHEN:

17 Q. Mr. Bohlen, do the minutes of the
18 June 3rd -- rather the transcription of the
19 June 3rd, 2002, City Council meeting contained
20 their admissions to the Board -- to the City

21 Council in regard to what was going to happen
22 through the siting process?

23 A. On June 3rd, we did a presentation,
24 we, being Richard Sim and myself, to the City

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1 Council because we wanted to give them the
2 information specifically the EPA ranks, the
3 statute and generally give them information
4 about what their expectation was going to be of
5 them when they participated as jurors in this
6 process.

7 Q. And are those contained in your
8 instructions to the City Council?

9 A. It is. I think it starts on page 9
10 of the minutes and other than what is showed as
11 being inaudible, it represents what I said.

12 MR. LESHEN: That's all I have.

13 HEARING OFFICER HALLORAN: Thank you.

14 MR. LESHEN: Move for admission
15 pursuant to the stipulation of Respondent's
16 City Exhibit No. 5 into evidence.

17 HEARING OFFICER HALLORAN: There is
18 no objection as far as to the stipulation

19 that's admitted. Go ahead, Mr. Porter.

20 REDIRECT EXAMINATION

21 BY MR. PORTER:

22 Q. Your counsel brought up the
23 annexation hearing. You attended those
24 hearings?

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1 MR. LESHEN: I don't recall bringing
2 up the annexation hearing.

3 MR. PORTER: I think the record will
4 bear me out. We can ask the reporter to go
5 back and find it, but I won't recommend we sit
6 here while that happens.

7 Indeed there was questioning
8 regarding an annexation hearing.

9 BY MR. PORTER:

10 Q. Perhaps Mr. Bohlen recalls?

11 A. Actually I don't recall.

12 HEARING OFFICER HALLORAN: I don't
13 recall either.

14 MR. PORTER: I do recall because I
15 leaned over to Mr. Smith and said they just
16 opened the door to the annexation hearing.

17 MR. LESHEN: The only thing I asked
18 Mr. Bohlen about the hearings dealt with issues
19 of whether he had been to crowded hearings so I
20 don't know where that door, if opened, would
21 lead.

22 MR. PORTER: Well, I think that
23 concession opens the door right there. One,
24 I've made objections throughout this process

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1 about beyond the scope that we're at times
2 denied and I think I would ask for some
3 leniency too. He just mentioned that he asked
4 some questions about hearings that were crowded
5 that's where my questions are directly going to
6 now.

7 HEARING OFFICER HALLORAN: I'll allow
8 Mr. Porter some leeway. Objection overruled.

9 BY MR. PORTER:

10 Q. Isn't it true that you attended the
11 annexation hearings regarding this landfill?

12 A. Yes. Regarding the parcel of land
13 that includes the landfill.

14 MR. LESHEN: Now, in terms of -- I

15 think we're now back to the issue of pre-filing
16 contacts so insofar as anything goes to what
17 was crowded and what was not, I suppose that
18 that comes in to test him. But in terms of
19 anything that was relevant to the issue of
20 pre-filing contacts, I think we would be back
21 in the position of an offer of proof.

22 HEARING OFFICER HALLORAN: Restate
23 the question to me.

24 MR. PORTER: The question was simply

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1 did you attend the annexation hearings and I
2 think the objection was that somehow that calls
3 for pre-filing contacts, that's not what the
4 question goes to. It goes directly to the
5 crowding at the annexation hearings and the
6 issue relating to the crowding that occurred on
7 the first night of the hearing.

8 MR. LESHEN: If it's only intended to
9 go to the issue of the number of people --

10 HEARING OFFICER HALLORAN: I think
11 that's what the question was.

12 MR. LESHEN: Okay. With that, I've

13 no objection to that aspect of questions.

14 BY MR. PORTER:

15 Q. One more time. Did you attend the
16 annexation hearings?

17 A. Yes.

18 Q. And they were crowded, correct?

19 A. Everybody had a seat and there were
20 still empty seats available in the room.

21 Q. Did you attend the annexation hearing
22 where people were standing in the back of the
23 room?

24 A. Regarding this parcel?

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1 Q. Regarding any parcel.

2 A. In my lifetime, I have attended --
3 I'm not sure about annexation hearings where
4 people have stood in the back of the room.

5 Q. And other than the hearing that you
6 presided over, are you aware of ever there
7 being occasion where people were told they
8 could not stand in the back of the room when
9 seats were full?

10 A. Absolutely every county board meeting

11 I have been to where it's been full I have been
12 told I have to walk out and can't stand in the
13 back of the room, so I think the county board
14 has well set the precedent for that.

15 Q. So did you consider this to be a
16 county board hearing?

17 A. Absolutely not. This was a City
18 Council meeting.

19 Q. You were also asked questions by
20 Mr. Mueller regarding the Solid Waste
21 Management plan. And you mentioned that the
22 plan has the words, if approved.

23 Isn't it true that the plan actually
24 contains quite a bit more language concerning

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1 the preference of the county that only one
2 landfill be sited within the county borders?

3 A. The solid waste plan contains a lot
4 of language about a lot of issues. It is clear
5 from the solid waste plan that the county hoped
6 to site their own landfill and hoped that it
7 would be the waste management landfill or in
8 addition to the waste management landfill

9 siting, but in their language they added the
10 modifier if it has been approved. I didn't add
11 that, they did.

12 Q. There is nowhere within the County
13 Solid Waste Management plan that indicates that
14 another landfill will be consistent as long as
15 they received siting before Waste Management's
16 application for expansion is heard, does it?

17 A. Sure. The language was that it
18 preferred that site and that siting if it had
19 been approved. Other than that, this was the
20 only landfill siting that was pending that had
21 occurred or would have occurred based upon the
22 process that was in place and to this date it's
23 the only landfill siting that has occurred.

24 Q. Isn't it true that the plan actually

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1 provides the Kankakee County as a single
2 landfill owned and operated by Waste
3 Management, Inc. This landfill has provided
4 sufficient capacity to dispose of waste
5 generated in Kankakee County and its owner has
6 advised the county that it plans to apply for

7 local siting approval to expand the facility to
8 provide additional capacity for the county.

9 Operation for the landfill has been
10 conducted pursuant to a landfill agreement
11 signed by the County and Waste Management in
12 1974 and subsequently amended from time to
13 time.

14 In the event siting approval for
15 expansion is obtained, the landfill will
16 provide a minimum of 20 years of long-term
17 disposal capacity through expansion of the
18 existing landfill. An expansion of the
19 existing landfill, if approved, would then
20 satisfy the county's waste disposal needs for
21 at least an additional 20 years and in accord
22 with the Kankakee Solid Waste Management plan
23 as amended as well as provisions of the local
24 Solid Waste Disposal Act and the Solid Waste

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1 Planning and Recycling Act, no new facility
2 would be necessary?

3 A. That is precisely the language that's
4 in there and it references what I previously

5 stated in the event the siting is obtained
6 which might have been at the time of our
7 hearing and in the event siting if approved at
8 the time of our hearing it had not been
9 approved.

10 Q. So you would agree that the county
11 Solid Waste Management plan contemplated that
12 the Waste Management facility was the preferred
13 facility and that they were aware that an
14 application for expansion had not yet even been
15 filed?

16 MR. MUELLER: I'm going to object to
17 that. What the plan says and what it has
18 contemplated are really different things. He
19 testified as to what it said, he's testified to
20 his understanding about what the county's
21 intension was, but the questioning as to what
22 the plan contemplated isn't relevant on any
23 issue. I might add also that the questioning
24 now really goes toward criterion 8 and the

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1 manifest weight of the evidence there and is an
2 argument best made to the Board on the existing

3 hearing record. He was asked about his
4 understanding of the plan in his direct. I
5 believe over objection and on cross, I wanted
6 him to reconcile that understanding with his
7 proposed finding of facts simply to remove the
8 inference that he made those findings based
9 upon some bias because bias would be the only
10 portion of Mr. Bohlen's conduct that is
11 relevant right now.

12 MR. PORTER: I don't believe I need
13 to make a lengthy speech to say he opened the
14 door.

15 HEARING OFFICER HALLORAN: Anything
16 further, Mr. Mueller?

17 MR. MUELLER: No.

18 HEARING OFFICER HALLORAN: I will
19 overrule Mr. Mueller's objection but Mr.
20 Porter, I caution you not to go too far and
21 limit this line of questioning.

22 BY MR. PORTER:

23 Q. Let me reask it.

24 Isn't it true that the plain language

1 of the county plan makes it clear that Waste
2 Management had not even yet filed its
3 application, but the county still preferred
4 that if they filed an application, and if it
5 was approved that that single facility would be
6 the only facility operating the county
7 boarders?

8 A. That question contains about five
9 questions in it, but let me get to the answer.
10 There is no question in my mind that county
11 board had made it clear in a previous draft of
12 this plan, in its previous amendment; that the
13 county board was not only -- that they wanted
14 Waste Management to be the only person -- the
15 only entity that could be considered as an
16 operator of a landfill in the county of
17 Kankakee. And they even went so far in their
18 October amendment to say how they would block
19 anybody else that tried to site a landfill.
20 That got removed in the March 12 amendment.
21 The new language that's in there is the
22 language that you read.

23 Now, whether the county preferred or
24 didn't prefer didn't seem to me to be

1 particularly relevant. What was relevant was
2 the language that was in the plan that said if
3 it's been approved and if siting had been
4 obtained, then that's what we want. The answer
5 to your question is the county may have
6 preferred a lot of things including that we
7 wouldn't be here tonight. But the reality is
8 we are here tonight. They have not approved a
9 site and they still have not approved a site
10 and we don't know if they ever will.

11 Q. You knew that the concept was more
12 than one landfill in the county. The concept
13 was the existing fill in the county in order to
14 reduce the amount of impacts from multiple
15 landfills from the county; isn't that correct?

16 MR. MUELLER: I'm going to object
17 that that's argumentative, but I'm reluctant to
18 do so because I think Mr. Bohlen can handle
19 himself in the argument.

20 HEARING OFFICER HALLORAN: I would
21 sustain the objection. It is rather
22 argumentative. Do you want to rephrase that?

23 MR. PORTER: Sure.

24 BY MR. PORTER:

1 Q. You knew that the plan contemplated
2 more than simply a single landfill, it
3 contemplated a specific landfill; isn't that
4 correct?

5 A. I knew that its primary issue as I
6 read it was a single landfill. In addition if
7 it could get approval, it wanted it to be as an
8 addition to the current landfill and operated
9 by a specific entity. That was their proposed
10 plan, but that last part had not occurred, so
11 from my standpoint in reviewing this plan and
12 what was before me in terms of the evidence, it
13 is entirely consistent. If you want one
14 landfill, okay, now we've got one landfill.
15 That's where I was coming from in my proposed
16 finding of fact.

17 MR. PORTER: Nothing further.

18 HEARING OFFICER HALLORAN: Thank you,
19 Mr. Porter. Mr. Moran?

20 MR. MORAN: Yes.

21 REDIRECT EXAMINATION

22 BY MR. MORAN:

23 Q. Why did you personally oppose the

24 Town and Country landfill?

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1 MR. LESHEN: Objection, relevance.
2 His reasons for his opposition doesn't matter.

3 HEARING OFFICER HALLORAN: I think
4 he's already answered that.

5 MR. LESHEN: What he said was that he
6 was personally opposed, but put aside his
7 feelings to do his job each and every time.
8 Now, the reasons for that opposition don't
9 matter for that personal opposition.

10 MR. MORAN: May I respond?

11 HEARING OFFICER HALLORAN: Yes, you
12 may.

13 MR. MORAN: The question was asked by
14 city's counsel as to whether Mr. Bohlen
15 personally opposed the facility. He said he
16 did. He didn't give any reasons as to why he
17 did. Then he went on to say that he
18 nonetheless exercised his professional judgment
19 to carry out the wishes desired of his clients.
20 I think I'm entitled to find out why he
21 personally opposed this landfill as related to

22 his earlier testimony. It was elicited at this
23 time.

24 MR. LESHEN: It was not elicited by

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1 the city of Kankakee. We are different. And
2 secondly the fact that he made that statement
3 as okay, I put aside my feelings on the basis
4 for its relevance. I made my objection.

5 HEARING OFFICER HALLORAN: So noted.
6 For the record, overruled.

7 BY THE WITNESS:

8 A. It wasn't Town and Country landfill
9 that I was personally opposed to, any landfill
10 because I didn't think that was in the best
11 interest for the development of our area. I
12 happen to have grown up on a farm. I don't like
13 farm land being taken for any purpose other
14 than farming.

15 Q. Is it your testimony that you
16 functioned as both city council and hearing
17 officer during the period of June 17th of 2002
18 through the end of August 2002?

19 A. Actually, no, I did not, during that

20 period of time. So during this period of time,
21 I would have to tell you that I was acting only
22 in my capacity as a hearing officer and trying
23 to maintain a private practice of law.

24 Q. Would it be accurate to say that from

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1 June 17 to the 28th you performed no work in
2 your role as City Council for the city of
3 Kankakee?

4 A. No. From June 17 of 2002 through, I
5 think, June 28 of 2002 would be accurate to say
6 that. Thereafter I was on vacation for two
7 weeks so I was gone for the first two weeks of
8 July.

9 Q. Mr. Bohlen, what functions did you
10 perform as City Council from the period of June
11 29, 2002, until the end of August 2002?

12 A. From June 28th through July the 12th
13 or 13th, I performed no functions as
14 corporation counsel because I was out of the
15 state. Thereafter, I performed a normal
16 routine function of corporation counsel either
17 with correspondence and attending City Council

18 meetings.

19 Q. And during that period from mid July
20 2002 until the end of August 2002, did you
21 receive compensation from the city for the
22 functions you performed as City Council?

23 A. I was on a salary throughout that
24 period of time.

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1 Q. And for that same period of time did
2 you receive any compensation from the city from
3 performing your functions as the hearing
4 officer for the siting application?

5 A. No.

6 Q. Did you at any point receive any
7 compensation for the work you performed as
8 hearing officer in the siting application?

9 A. No.

10 Q. Was there an agreement or
11 understanding that you had with the city that
12 there was to be no compensation paid to you for
13 the functions you performed as hearing officer?

14 A. That was my position, yes.

15 Q. Focusing again on this period from

16 when you came back from your vacation in July
17 until the end of August 2002, what percentage
18 of time had you spent in performing legal
19 functions, including both your hearing officer
20 functions and functions for the city, working
21 as City Council?

22 A. During that period of time, the bulk
23 of my time was spent at least -- well,
24 almost -- I would say 80 to 90 percent of my

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1 time I spent dealing with reviewing the
2 records, abstracting the records, abstracting
3 the evidence, and summarizing for my own
4 purposes the positions when they came in in the
5 end of July to each of the parties. That took
6 a considerable amount of time because of the
7 bulk of the documents that were in the record.

8 I would say that my city duties
9 during that period of time were limited to
10 maybe three or four hours a week.

11 Q. And in August of 2002, how would
12 you --

13 A. It would be the same up until August

14 17th -- excuse me, August 14th I think was when
15 I filed that proposed finding. After August
16 14th, I started resuming my normal duties with
17 the city which usually take anywhere from 20 to
18 25 hours a week.

19 Q. Would it be accurate to say then from
20 the middle of July 2002 until August 14, 2002,
21 approximately 90 percent of the time you spent
22 performing work either as a city council or as
23 a hearing officer was spent performing
24 functions as a hearing officer?

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1 A. Yes.

2 Q. And during that time you were
3 receiving your regular salary from the city,
4 correct?

5 A. That's correct.

6 Q. And after the middle of August of
7 2002, that percentage of time spent performing
8 hearing officer functions became less; is that
9 correct?

10 A. As of August 17 -- as of August 14th,
11 I considered my duties as a hearing officer to

12 be completed except for the presentation of my
13 proposed findings of City Council. That
14 occurred I think on August 17th and after that
15 I performed no further duties as a hearing
16 officer.

17 Q. So as of August 18 of 2002 any
18 further function as hearing officer ceased,
19 would that be correct?

20 A. Until this appeal was filed, that's
21 correct.

22 Q. Well, until the appeal was filed, at
23 what point after the appeal was filed did you
24 begin performing functions as a hearing

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1 officer?

2 A. When I received the order from
3 Mr. Halloran from the Control Board that the
4 city was to prepare and present a record to the
5 Pollution Control Board. And at that point all
6 of these documents I had maintained outside of
7 city -- outside the normal city files. They
8 were maintained independently. And at that
9 point, I attempted to create a record that was

10 in compliance with the Pollution Control
11 Board's rules.

12 Q. And how much time did you spend
13 assembling the record?

14 A. Approximately 40 hours.

15 Q. Did you receive any compensation for
16 the work in assembling the record?

17 A. No, sir. I received no extra
18 compensation for those duties.

19 Q. You simply received your normal
20 salary from the city during that period; is
21 that correct?

22 A. And my private law practice income,
23 that's correct.

24 Q. Now, you mentioned earlier that this

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1 is the first SB172 or Section 39.2 process you
2 had been involved in, correct?

3 A. Yes.

4 Q. You became aware, did you not, during
5 the course of preparing for your duties as
6 hearing officer the law that applied in this
7 area as it relates to notice and the conduct of

8 hearings; would that be correct?

9 A. Yes.

10 Q. And did you come to conclude the law
11 in this area was different or distinct in some
12 way from the law as it applied to other types
13 of hearings?

14 A. Yes.

15 Q. So that this hearing, the siting
16 hearing, was not governed by the same rules as
17 a zoning hearing; is that correct?

18 A. Yeah, I think that would be correct.

19 Q. And the rules affecting siting
20 hearings are different than the rules that
21 apply to City Council meetings; isn't that
22 correct?

23 A. Could you be more specific?

24 Q. The procedural rules entitling

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1 individuals to participate in a siting hearing
2 are different from the same rules that would
3 apply to persons wishing to participate or
4 attend the City Council meeting, correct?

5 A. Certainly for City Council, but let

6 me back up. I think there are some very
7 similar concepts in zoning meetings to these
8 types of proceedings. There are differences
9 also, but there are some very similar concepts
10 in terms of notice, for example, to affected
11 parties.

12 Q. Are there any requirements in a
13 zoning hearing that individuals be granted
14 rights of participation, rights to allow an
15 opportunity to be heard in cross-examining
16 witnesses?

17 A. Yes.

18 Q. And which provisions or which rules
19 govern those rights of individuals to
20 participate in a zoning hearing?

21 A. Most recently there's an Illinois
22 Supreme Court decision exactly on that issue
23 that requires cross-examination to be allowed.

24 Q. What decision or law grants

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1 individuals the right to participate and the
2 right to be heard in a zoning hearing?

3 A. That's what I'm talking about. The

4 Illinois Supreme Court decision interpreting
5 zoning ordinances provides that right.

6 Q. And that's the Clarence case, isn't
7 it?

8 MR. MUELLER: Mr. Halloran, aren't we
9 getting a little far afield?

10 HEARING OFFICER HALLORAN: Mr. Moran?

11 MR. MORAN: What we're addressing Mr.
12 Hearing Officer is the statement by Mr. Bohlen
13 that in his experience in attending or being
14 aware of various types of hearings that at
15 these hearings there have been overflow of
16 crowds, individuals who have been excluded from
17 these hearings and for some reason there's
18 nothing inappropriate or nothing untoward about
19 that result. My whole point here is to point
20 out that the rules that apply in siting
21 hearings are much more specific. They are much
22 more detailed in terms of the rights of persons
23 to appear and to be heard in these hearings
24 that don't exist in the types of hearings that

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1 Mr. Bohlen was previously talking about.

2 MR. MUELLER: And isn't that a matter
3 of argument rather than evidence?

4 HEARING OFFICER HALLORAN: Mr. Moran?

5 MR. MORAN: I don't believe it is. I
6 believe it relates to Mr. Bohlen's
7 understanding as to these other hearings he's
8 identified as being excluding participants or
9 individuals who wish to participate as a basis
10 for his conclusion. There's nothing unusual
11 about people being excluded from a siting
12 hearing.

13 HEARING OFFICER HALLORAN: It looks
14 like you have already made your record as far
15 as your examination of Mr. Bohlen. Do we have
16 much more to go on this issue?

17 MR. MORAN: A few more questions.

18 HEARING OFFICER HALLORAN: I'll
19 overrule your objection, Mr. Mueller. You may
20 proceed.

21 BY THE WITNESS:

22 A. You asked if it was the Clarence case
23 and that's right.

24 BY MR. MORAN:

1 Q. Does the Clarence case create or
2 establish any right of individuals to appear
3 and be heard in a zoning hearing?

4 A. Now, you're asking me specifically
5 about the Clarence case. The case I'm
6 referring to, the most recent case that I have
7 read on this issue, indicates that there's a
8 right of public to participate in
9 cross-examination at zoning hearings.

10 Q. That was the Clarence case. It came
11 out on October 18th of this year by the
12 Illinois Supreme Court and it did in fact grant
13 a right to cross-examine?

14 A. That's my understanding if that's the
15 Clarence case.

16 Q. But the case did not establish any
17 right of persons to participate and be heard at
18 a zoning hearing?

19 A. Our zoning ordinance specifically
20 provides the right to participate and be heard.

21 HEARING OFFICER HALLORAN: Mr.
22 Leshen?

23 MR. LESHEN: It seems like we are
24 getting into a real interesting legal

1 discussion about zoning law and as a lawyer I
2 was very interested, but as a lawyer for the
3 city of Kankakee, I think we're now up off into
4 legal argument discussing Illinois Supreme
5 Court cases and what rights they confer in
6 zoning cases.

7 HEARING OFFICER HALLORAN: Mr.
8 Moran, response?

9 MR. MORAN: I think the point has
10 been made. I can move on.

11 HEARING OFFICER HALLORAN: I would
12 appreciate it. Objection sustained.

13 BY MR. MORAN:

14 Q. Mr. Bohlen, you've indicated that you
15 had an opportunity to review the Kankakee
16 County Solid Waste plan in the amendments to
17 that plan, correct?

18 A. Yes.

19 Q. And you were asked about the language
20 in that plan and how you reconciled that
21 language with the proposal made by Town and
22 Country to develop a new pollution control
23 facility; is that correct?

24 A. Yes.

1 Q. Would it be fair to say that in your
2 reading of the amendments to the County Solid
3 Waste plan that until the county approves an
4 expansion of the existing Kankakee County
5 Landfill that any proposed landfill which might
6 receive siting approval would be consistent
7 with the county plan?

8 A. As long as it was the only additional
9 one. As long as it was the first one I guess
10 is the best way to answer that.

11 Q. Would it be accurate to say that in
12 your reading of the plan, the key consideration
13 is a race to obtain siting approval?

14 A. I would not put it that way. My key
15 consideration was the language of the plan
16 consistent with this proposal. And the fact is
17 that this is the only proposed site that has
18 been -- that was under consideration at the
19 time that no other site had been approved and
20 therefore I concluded it was consistent.

21 Q. So that any facility that was able to
22 obtain siting approval before the county had

23 had an opportunity to approve the expansion of
24 the existing landfill, in your view, would be

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1 consistent with the county plan; is that
2 correct?

3 A. No. As I've indicated, the county
4 plan fairly clearly establishes they only want
5 one facility.

6 Q. So would it be accurate to say that
7 the first landfill that obtains siting approval
8 prior to the county of approving the expansion
9 of the existing landfill would in your view be
10 consistent with the county plan?

11 MR. MUELLER: Object, it's been asked
12 and answered to the point of becoming
13 argumentative and is also misleading in terms
14 of what one believes now would be consistent.
15 It's also part of the substantive criteria.

16 HEARING OFFICER HALLORAN: Mr. Moran?

17 MR. MORAN: As we indicated before,
18 this issue was clearly opened by the questions
19 asked of Mr. Bohlen albeit on the basis of
20 establishing whether he was biased in any way,

21 but the fact is that the question asked
22 Mr. Bohlen to explain his rationale in
23 evaluating consistency with the solid waste
24 plan. I'm now inquiring as to his

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1 interpretation because clearly that
2 interpretation would go to bias as easily as it
3 would go to one of the substantive criteria.

4 HEARING OFFICER HALLORAN: But hasn't
5 it been asked and answered already?

6 MR. MORAN: Not the specific question
7 I just posed to him which is now one landfill
8 that gets in the door before an approval by the
9 county to expand the existing landfill. The
10 previous question was any landfills. He's
11 clarified it now to say one landfill gets in
12 first, it's okay.

13 HEARING OFFICER HALLORAN: Anything
14 further, Mr. Mueller?

15 MR. MUELLER: In addition to my other
16 objection, I would add that this is really
17 cumulative of Mr. Porter's questioning because
18 he covered this same ground.

19 Secondly, if you change a word in a
20 question that doesn't moot the asked and
21 answered portion if it's still basically the
22 same question.

23 Thirdly, this is all out of context
24 because planned consistency requires

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1 consistency with not just this one portion but
2 the other requirement plan in terms of whatever
3 else that plan may require. And so if we're
4 going to revisit criterion 8 in violation of
5 the Board's directive that this be a
6 fundamental fairness hearing, let's talk about
7 the entire plan.

8 MR. LESHEN: As the attorney for
9 respondent's City of Kankakee, I join in that.
10 I think at this point not only does it -- has
11 it become argumentative, but it has ranged far
12 afield from the purpose of this hearing. It
13 started with Mr. Porter's examination and now
14 we have gone beyond a full circle.

15 HEARING OFFICER HALLORAN: To
16 paraphrase somebody's statement as beating a

17 dead dog --

18 MR. SMITH: It was a horse.

19 HEARING OFFICER HALLORAN: I think
20 we've established that. I will allow
21 Mr. Bohlen to answer your last question on the
22 subject and please move on, Mr. Moran.

23 BY THE WITNESS:

24 A. My answer is I didn't consider any

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1 other landfill siting other than the one we had
2 before us.

3 BY MR. MORAN.

4 Q. Would it be accurate to say that the
5 approval of the Kankakee Regional Landfill, the
6 Town and Country Landfill by the city obviates
7 or defeats the language in the county plan for
8 approval of any other landfill?

9 MR. LESHEN: Objection. Now --

10 HEARING OFFICER HALLORAN: Would you
11 read the question back?

12 (Whereupon, the record was
13 read as requested.)

14 MR. LESHEN: My objection is that

15 now Mr. Bohlen is being asked to give an
16 advisory opinion as to what might happen in the
17 future and what the effect is what the proposed
18 siting of this landfill on future landfills and
19 that is certainly far afield from any
20 conceivable -- from any conceivable purpose of
21 this hearing. It's going far afield and the
22 dead horse has now been all kicked around.

23 HEARING OFFICER HALLORAN: Mr. Moran,
24 any response?

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1 MR. MORAN: Once the issue is raised
2 as to Mr. Bohlen's justification for
3 reconciling the proposal with the County Solid
4 Waste plan opens up any issues as it relates to
5 bias as to how he interprets that plan and how
6 he views the proposed Town and Country Landfill
7 in comparison with that plan and that's what
8 this question is designed to elicit.

9 MR. LESHEN: And my response to that
10 is not with respect to applications upon which
11 evidence is not yet even been taken. This is
12 calling on Mr. Bohlen after he has made his

13 proposed -- after he made his proposed findings
14 to now look at the whole arena of possible
15 filings and say okay this might fit and this
16 might not fit.

17 HEARING OFFICER HALLORAN: I'm going
18 to sustain your objection, Mr. Leshen. You may
19 proceed as an offer of proof, Mr. Moran, if you
20 so choose to

21 BY THE WITNESS:

22 A. The answer is I don't know. I
23 haven't thought about that. Your question is
24 does that mean there could never be another

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1 landfill siting other than the county plan; am
2 I right?

3 Q. Yes.

4 A. And I don't know. I think it would
5 have an impact on that, but I can't answer you
6 because I general did not consider that issue.

7 MR. MORAN: No further questions.

8 HEARING OFFICER HALLORAN: Thank you,
9 Mr. Moran. Mr. Mueller?

10 MR. MUELLER: No thank you.

11 HEARING OFFICER HALLORAN: Mr.
12 Leshen?
13 MR. LESHEN: No thank you.
14 MR. PORTER: One follow-up.
15 HEARING OFFICER HALLORAN: Proceed.
16 BY MR. PORTER:
17 Q. Isn't true that the current Kankakee
18 county landfill is open and accepting waste?
19 A. As far as I know it is. As far as I
20 know it's scheduled to close next year.
21 MR. PORTER: Nothing further.
22 HEARING OFFICER HALLORAN: You may
23 step down. We may go off the record.
24 (Discussion held off the record.)

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1 MR. PORTER: I need to make something
2 on the record. Mr. Smith just pointed out, I
3 said that he was the one that directed me not
4 to question Mr. Volini. I just want Mr. Volini
5 to be aware of that, it's not against counsel's
6 advice in any way. I agree with that decision.
7 HEARING OFFICER HALLORAN: Was that
8 on the record?

9 THE COURT REPORTER: I put it on.

10 HEARING OFFICER HALLORAN: Okay.

11 We'll take a 10-minute break.

12 (A short break was had.)

13 HEARING OFFICER HALLORAN: Back on
14 the record. Petitioner County of Kankakee and
15 Petitioner State's Attorney of Kankakee have
16 informed me that they have rested their case in
17 chief. Mr. Moran has informed me that he has
18 rested in his case in chief. I believe I don't
19 know who will go first.

20 MR. MUELLER: We will go first.

21 We'll call Mr. Volini.

22 (Whereupon, the witness was duly sworn.)

23 TOM VOLINI,
24 called as a witness herein, having been first

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1 duly sworn, was examined and testified as
2 follows:

3 DIRECT EXAMINATION

4 BY MR. MUELLER:

5 Q. You are Tom Volini president of Town
6 and Country Utilities and Kankakee Regional

7 Landfill, L.L.C?

8 A. That's correct.

9 Q. Have you filed an affidavit in the
10 siting hearing relating to what you did to
11 affect service in compliance with Section 39.2
12 of the pre-filing notices?

13 A. Correct.

14 Q. In that affidavit you indicate that
15 registered mail was sent to all listed property
16 owners in the affidavit?

17 A. That's correct.

18 Q. And in paragraph 7 of your affidavit
19 you list the owners that did not accept
20 certified mail notice?

21 A. That's correct.

22 MR. PORTER: I'd like to voice an
23 objection to the -- along the same grounds as
24 the previous objection. We're adding new

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1 evidence regarding the notice issue that would
2 be improper as the only issue should be
3 fundamental fairness and I would be remissed if
4 I didn't make the objection that I heard all

5 along, the document speaks for itself.

6 HEARING OFFICER HALLORAN: Mr.

7 Mueller?

8 MR. MUELLER: Same response as before
9 and since this particular parcel hasn't been
10 identified, there's something in the affidavit
11 that needs to be cleared up in order to avoid
12 the possibility of the Board being misled.

13 HEARING OFFICER HALLORAN: Do these
14 notice questions go to the issue of
15 jurisdiction.

16 MR. MUELLER: Absolutely.

17 HEARING OFFICER HALLORAN: I'm going
18 to stand on my ruling that I made previously, I
19 will allow the questioning to go forward.
20 Overruled.

21 BY MR. MUELLER:

22 Q. Mr. Volini, were Gary Bradshaw, David
23 Bradshaw, J. Bradshaw, Ted Bradshaw, Denise
24 Vogel and Judith Skates sent registered mail

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1 notice?

2 A. Yes.

3 Q. Did they accept registered mail
4 notice?

5 A. No, sir.

6 Q. Why aren't the four Bradshaws and
7 Denise Vogel listed in paragraph 7 as people
8 who didn't accept notice?

9 A. Really for three reasons. Number
10 one, I interpreted the records of the county
11 and the duplicate record listing only Judith
12 Skates as sufficient to notify all the parties
13 since it was reflected on a second duplicate
14 property record card for that same permanent
15 index number.

16 Secondly, because of the fact that
17 your processor server who's testified this
18 evening indicated the same things to me that
19 she indicated in her testimony; and third,
20 because service was affected on her at the
21 Onarga address.

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

23 HEARING OFFICER HALLORAN: Mr.
24 Porter?

1 CROSS-EXAMINATION

2 BY MR. PORTER:

3 Q. Isn't it true that you did not make
4 any attempt to determine if the individuals
5 that signed the green card receipts were the
6 actual individuals appointed by the land owners
7 as the agent for service of process?

8 A. I read the statute and I didn't see
9 that in the statute.

10 Q. You agree with your process servers'
11 prior testimony that Gary Bradshaw, James
12 Bradshaw, J. Bradshaw, Ted A. Bradshaw and
13 Denise Vogel were never personally served,
14 correct?

15 A. I can't contest her testimony. I
16 have no basis to contest her testimony.

17 Q. You have no documentary evidence that
18 a notice was ever sent to 22802 Crawford Road,
19 correct?

20 A. The documentary evidence is in the
21 form of my affidavit, which is in evidence. I
22 took great care to ascertain the property
23 owners according to the official records of the
24 county to personally see that they were handed

1 to the clerk at the post office to personally
2 open a PO box so that the green cards would get
3 back promptly to the Kankakee post office and I
4 know I sent a notice to each person in that
5 affidavit.

6 Q. There's no photocopy of an envelope
7 address to that affidavit is that -- no photo
8 copy of an envelope addressed to that address;
9 is that right?

10 A. That's correct. I didn't keep
11 photocopies of any of the envelopes addressed
12 to any of the parties I felt were required to
13 received notice under the statutes.

14 Q. The only documentary evidence you
15 have regarding who was sent notice are the
16 green card receipts apart from your affidavit?

17 A. As to the receipt of notice the only
18 thing we have to evidence the notice in the way
19 of a document is the receipt from Judith Skates
20 if that's the pin number that we're referring
21 to. Secondly, the record from the Kankakee
22 County treasurer that that's where the tax bill
23 went to Judith Skates at the Onarga address and
24 the testimony of the process server as to what

1 she was told when she attempted service
2 personally at the address in Rock Falls,
3 Illinois.

4 Q. Regardless, you have no information
5 as to whether or not Judith Skates, one, ever
6 actually received the notice that was sent to
7 her Locust Street address in Onarga, Illinois;
8 correct?

9 A. I actually believe that since a
10 person by the name of Skates signed the receipt
11 at that location after the inquiry that the
12 process server had made at her daughter's house
13 in Rock Falls and what I believe must have been
14 some conversation that took place and the fact
15 that a certain Skates, I believe it was Richard
16 in the receipt although if you show it to me I
17 would tell you what the first name is and the
18 fact that that person bears the same last name
19 as the addressee of the registered mail and the
20 fact that registered mail is somewhat more
21 restrictive in my opinion anyway than certified
22 mail that that is sufficient service under the
23 statute.

24 Q. That wasn't my question. You don't

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1 is any evidence that whoever signed that green
2 card actually gave it to Judith Skates,
3 correct?

4 A. No. It's possible that the Mr.
5 Skates who signed at the same address that
6 Judith Skates had in the county's records
7 actually withheld that envelope from her and
8 didn't give it to her after signing for it.

9 Q. And you certainly have no evidence
10 that Judith Skates ever communicated to the
11 other five owners of the property that your
12 company had filed a notice of intent to file an
13 application?

14 MR. MUELLER: I'm going to object.
15 It's not clear that the other five are owners
16 of the property anymore given the exhibit that
17 was secured from the assessor's office showing
18 a change of name and address on the property to
19 Judith Skates.

20 HEARING OFFICER HALLORAN: Mr.
21 Porter?

22 MR. PORTER: It's Mr. Volini's
23 affidavit as to who the owners were at the
24 property that establishes who the owners were.

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1 They're indicating that he acquired a record
2 from the supervisor assessments indicating that
3 the owners would be six individuals. We're
4 assuming his affidavit is true and correct. If
5 it is not and they are willing to stipulate to
6 that I would be interested in that.

7 MR. MUELLER: By way of explanation
8 for your benefit in ruling on this, the first
9 two parcels shown on Mr. Volini's affidavit
10 have exactly the same parcel identification
11 number and so if there was an error made, it
12 was in including people who may, in fact, not
13 have been owners anymore and that we over
14 included to be safe.

15 HEARING OFFICER HALLORAN:
16 Overruled. I'm sure the board will be able to
17 flush out any confusion that may have arisen.
18 You may ask question, Mr. Porter.

19 BY MR. PORTER:

20 Q. Isn't it true that you do not know
21 whether Judith Skates ever informed Gary
22 Bradshaw, James Bradshaw, J. Bradshaw, Ted
23 Bradshaw and Denise Vogel that she had received
24 a notice of intent to file application?

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1 A. That's not really correct. What is
2 correct is that the county has two duplicate
3 sets of records each of which track this pin
4 number that you've questioned.

5 Q. The response is obviously
6 nonresponsive. Do we need to reask the
7 question?

8 MR. MUELLER: I think he's answering
9 it..

10 BY MR. PORTER:

11 Q. Do you know whether or not Judith
12 Skates ever told the four Bradshaws and Denise
13 Vogel that she received a notice of intent to
14 file an application assuming she ever received
15 it?

16 A. I can't say what Judith Skates did
17 with the notice that I know was sent to her

18 address, that I know was received at that
19 address. It was signed for by a party by the
20 name of Skates, but I don't know what she did
21 thereafter.

22 HEARING OFFICER HALLORAN: Thank you.

23 MR. PORTER: I have nothing further.

24 HEARING OFFICER HALLORAN: MR.

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1 Mueller?

2 MR. MUELLER: Nothing.

3 MR. LESHEN: Nothing.

4 HEARING OFFICER HALLORAN: Thank you
5 very much.

6 MR. MUELLER: Town and Country rests.

7 MR. LESHEN: I would call Mr. Power.

8 (Whereupon, the witness was duly sworn.)

9 AL PATRICK POWER,

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

13 DIRECT EXAMINATION

14 BY MR. LESHEN:

15 Q. Could you please state your name?

16 A. Al Patrick Power.

17 Q. And is it an accurate statement to
18 say that you are employed currently as an
19 assistant city attorney for the city of
20 Kankakee and that you've been so employed for
21 the past seven years?

22 A. Correct.

23 Q. And is it also an accurate statement
24 to say you are also an attorney in private

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1 practice?

2 A. Correct.

3 Q. I would like to direct your attention
4 to June 17th, 2002, were you present at the
5 meeting that was held that day at the City
6 Council of chambers?

7 A. Yes.

8 Q. Are you aware of the posted capacity
9 limits for the City Council of chambers of the
10 city of Kankakee?

11 A. There's a posting fire department
12 placard that sets the capacity of chambers at
13 125 seats.

14 Q. Based on your observation, was that
15 capacity reached that night?

16 A. Yes, the counsel chambers were full.

17 Q. Did there come a time when Mr. Bohlen
18 asked you to perform certain tasks?

19 A. Yes. Just before the meeting was to
20 start, Mr. Bohlen asked me to go into the
21 hallway outside the front door of the chamber
22 and to determine who out there had either filed
23 as an objector or wished to file as an objector
24 and participate in the hearing.

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1 Q. Did you, in fact, do that?

2 A. I did that. He handed to me a sheet
3 which contained a list of people who, I'm not
4 sure where it came from, but people who
5 supposedly had to file as objectors. I took
6 that list and went into the hall and then I did
7 what he had requested.

8 Q. I would like to show you a document
9 entitled objector's appearances, which appears
10 at pages 2023 and 2024 of the record and ask
11 you whether that is, in fact, the list that was

12 provided to you that you took out to the
13 hallway as you described?

14 A. It is in main part. I don't think
15 that it had -- there's a couple of objectors
16 written in it. I don't think there was anyone
17 written in at the bottom. So it shows 16 filed
18 objectors having filed appearances.

19 Q. Did you call out the names of the 16
20 people who were listed as typed on that?

21 A. Actually the way I proceeded was I
22 went out the front door. I started on the
23 right-hand side and what I observed was there
24 was two columns of people going down each side

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1 of the hallway and down the stairway and then
2 down on to the landing. There was an aisle
3 down the middle.

4 Q. Can you tell me whether during the
5 time that you were out in that hallway whether
6 or not you were able to hear what was going on?

7 A. As I was out there, I could hear the
8 proceedings going on. That's where they were
9 going through the process of Mr. Bohlen

10 actually taking the Chair.

11 Q. Had you been present at the
12 annexation hearing held at the City Council of
13 chambers addressing the issue of the annexation
14 of the party of the parcel of real estate that
15 was involved in these proceedings?

16 A. Yes.

17 Q. Can you tell me whether the crowd
18 generated by those hearings filled or did not
19 fill the City Council chambers?

20 A. It didn't fill it to capacity.

21 Q. While you were in the hallway, did
22 you observe any police officers?

23 A. Yes.

24 Q. How would you characterize his

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1 actions in reference to the folks who were out
2 there in that hallway?

3 A. When I was out there, he was
4 courteous and respectful to everybody.

5 Q. On the following hearing date, were
6 speakers provided to folks who may have chosen
7 to be in the hallway?

8 A. The following hearing date there were
9 speakers provided in the hallway and one of the
10 side rooms.

11 Q. Can you tell me -- do you know
12 whether or not a transcript of that first
13 night's hearing was made available for the
14 public?

15 A. It was.

16 Q. Were you present on the second night
17 of the hearings?

18 A. Yes.

19 Q. Can you tell me whether or not at
20 that time the crowd exceeded the capacity of
21 the City Council chambers?

22 A. My recollection is it did not.

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

24 HEARING OFFICER HALLORAN: Mr.

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1 Porter?

2 MR. PORTER: Thank you.

3 CROSS-EXAMINATION

4 BY MR. PORTER:

5 Q. If I understand correctly, you took

6 pages number 2023 to 2024 of the record out
7 into the hallway and at that time read off all
8 the objectors' names?

9 A. No. I didn't say that. I had that
10 in my hand and I talked to each person who was
11 out there. None of them proved to be
12 objectors.

13 Q. This communication -- while you were
14 making these communications to these people in
15 the hallway, you heard Mr. Bohlen addressing
16 some motions; is that right?

17 A. Yes.

18 Q. At some point earlier in the
19 proceedings, I filed two motions to quash.
20 Were those motions being addressed while you
21 were in the hallway making these statements to
22 the members in the hall?

23 A. I don't recall those.

24 Q. Have you spoken to any member of the

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1 public that recalls you coming out there and
2 asking them if they wanted to be an objector?

3 MR. LESHEN: I object to that

4 question. Whether at a subsequent time he
5 spoke to members of the public regarding what
6 happened that night is in no way probative of
7 the occurrence of that night. You've heard
8 testimony from various members of the public,
9 some of whom heard some things of the police
10 officers and some whom said they spoke to
11 Ms. Power and now the issue is not whether at a
12 later time somebody came over to him. The
13 issue is what happened that night.

14 HEARING OFFICER HALLORAN: Mr.
15 Porter, response?

16 MR. PORTER: No.

17 HEARING OFFICER HALLORAN: I'm going
18 to allow that question to stand and if you can
19 answer it, so be it.

20 BY THE WITNESS:

21 A. I haven't talked to anyone that said
22 they saw me out there.

23 BY MR. PORTER:

24 Q. Isn't it true that Mrs. O'Dell asked

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1 you how does the public ask questions if they

2 can't get into the room?

3 A. I don't recollect her asking me that
4 question that night.

5 Q. Do you recollect responding in a
6 strong voice, "questions"?

7 A. No.

8 Q. So if I understand correctly, you
9 never spoke to Mrs. O'Dell outside the chamber
10 room, correct?

11 A. That's right. Not that I'm aware of.
12 If she was out there I wasn't aware that it was
13 her. I don't remember.

14 Q. Isn't it true that you were in the
15 room when I presented my objections to -- isn't
16 it true you were in the room when I presented
17 my motions to quash to Mr. Bohlen?

18 A. I don't remember if I was or not at
19 that time.

20 Q. Now, you said that Mr. Bohlen gave
21 you this list of appearances. Did you return
22 it to him?

23 A. I don't remember.

24 Q. Isn't it true that Mr. Bohlen

1 actually kept the list of objectors and read
2 their names off from the bench?

3 A. He may have also had a list, the same
4 list.

5 Q. Are you indicating that there was
6 another copy of the list somewhere?

7 A. I think there probably was because I
8 had one copy with me and it didn't have the
9 notations that are located at the bottom of
10 that one.

11 Q. Did you ever report to Mr. Bohlen
12 that no one -- strike that.

13 Soon after the hearing commenced, did
14 you go up and tell Mr. Bohlen that no one else
15 wanted to be an objector?

16 A. Yes.

17 Q. And he was on the bench at the time
18 when you made the statement to him?

19 A. When I told him that, there was a
20 break or something.

21 Q. Isn't it true that the first break
22 took place hours after the hearing commenced?

23 A. I don't think so. I think they were
24 small breaks.

1 Q. If a videotape were to indicate the
2 first break did not take place until
3 10:00 o'clock, would it refresh your
4 recollection?

5 A. Not really.

6 HEARING OFFICER HALLORAN: Off the
7 record.

8 (Whereupon, a discussion was
9 had off the record.)

10 MR. PORTER: Nothing further.

11 HEARING OFFICER HALLORAN: Mr. Moran?

12 MR. MORAN: No question.

13 HEARING OFFICER HALLORAN: Mr.

14 Leshen?

15 MR. LESHEN: No redirect.

16 HEARING OFFICER HALLORAN: I want
17 the record to reflect since after lunch and
18 after the admonishments, all parties have acted
19 with proper decorum and with the utmost
20 professionalism. So I will note to the Board
21 that they need not peruse the record for any
22 evidence for any appropriate sanctions that
23 they may or may not impose.

24 MR. LESHEN: The Respondent's city of

1 Kankakee rests.

2 HEARING OFFICER HALLORAN: I assume
3 the petitioners have nothing to rebuttal?

4 MR. PORTER: No rebuttal.

5 HEARING OFFICER HALLORAN: Thank you.
6 Based upon my legal experience, observation and
7 judgment, I find that there are no credibility
8 issues with any witnesses that testified at
9 this hearing.

10 Simultaneous briefs are due by
11 November 27th, 2002, simultaneous replies, if
12 any, are due by December 5th, 2002, public
13 comment due by November 19, 2002. The mailbox
14 rule will not apply. With that, your closing
15 argument.

16 MR. SMITH: If it please the
17 chairman. Hearing Officer Halloran, I want to
18 thank you for the patience you've extended to
19 me. I want to apologize publically if I've
20 rattled any feathers or offended any lawyers.
21 That was not my intent. I do not want to
22 forget that we are about serious business here.

23 I appreciate the opportunity to make
24 a final statement to indulge me in that

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1 blessing of liberty. Before we close, I know
2 we're all fatigued. I for one am certainly not
3 an expert in the environmental law and before
4 these proceeding I knew fairly absolutely
5 nothing about landfill siting proceedings.

6 I'm a small town lawyer and I've
7 always been very proud of that. But I am the
8 voice of the people and I speak as their states
9 attorney. And I have read as a novice the
10 provisions of 4015 ICLS5 slash 39.2
11 particularly subsections (b), (c) and (d). I
12 feel that the legislature did not pass these
13 casually. They were not adversary, but they
14 were designed after much legislative debate as
15 mandatory expressions because they wanted to do
16 something to set up a scheme that would protect
17 the public.

18 So I feel that when we look at these
19 procedural protocols we are not going through
20 the motions. They were required. In looking

21 at subsection (d), the law requires in these
22 proceedings that there be held, quote, at least
23 one public hearing, closed quote. And that is
24 one of the issues that has arisen in this case

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1 on the question of fundamental fairness.

2 Indulge me if you will. I think most
3 Americans are familiar with certain paintings
4 that we all love, like Washington crossing the
5 Delaware. But over and over again as I listen
6 to the testimony, a famous painting by Norman
7 Rockwell comes to my mind. It was a series of
8 one of four. You're probably familiar with
9 them. One is called Freedom from Want and it
10 shows a grandmother putting a wonderful turkey
11 down before her family at a Thanksgiving meal
12 and we can all relate to it.

13 The one that really touches me and it
14 comes to mind over and over is the painting by
15 Norman Rockwell that is one of the four that's
16 called Freedom of Speech. And if you're
17 familiar with it, as I believe most Americans
18 are, it depicts a man, a gaunt man, a working

19 man standing among his fellows who are seated
20 in an assembly hall and he is 35 years of age.
21 He's somewhat Lincon-esque. He has a blue and
22 black plaid working shirt and he has a leather
23 Bombardier jacket and the jacket is frayed at
24 its cuffs and his hands are rough and gnarled.

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1 And you can tell immediately this fellow must
2 have come to the public meeting after working
3 all day. And stuffed in his pocket hardly
4 visible is the agenda. The person seated
5 behind him is holding one and it depicts budget
6 meeting, annual town meeting or something like
7 that. And the people's eyes are fixed on him.
8 He is a citizen exercising one of the basic
9 rights that men and women have died for, have
10 spilled blood for. He is standing erect and he
11 is saying his peace to an assembly of some sort
12 and it's touching at least to me when I look at
13 it.

14 But that man on June 17th wouldn't
15 have had a chance in a Kankakee City Hall
16 because the hearing we believe actually started

17 back in February. Substantive issues were
18 discussed and it wasn't just an introductory
19 matter, gee, we're going to be coming to town
20 and proposing this facility. It is all on the
21 record. The objectors were disparaging and
22 mocked and belittled. The trier of fact was
23 told that the applicant, through his attorney,
24 doesn't beat up on people that doesn't deserve

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1 to be beat up on. And that trier of fact like
2 talking to a judge ex parte was conditioned and
3 given the answer. And then we come to the
4 public hearing. This is all on the record.
5 And we're supposed to turn our heads and ignore
6 the fact a technicality that has as many as 130
7 people who could not hear their government or
8 see it in action. This is as one of the
9 witnesses said, an elderly lady, appalling,
10 embarrassing. I did not suggest that this was
11 by design or malicious conspiracy, but I do
12 suggest that if you look at this event at its
13 charitable best things went bad and they became
14 uncontrollable and incurable and the public did

15 not get its mandated right to a public hearing.

16 We cannot say too bad, so sad, go
17 away. I believe this is the very reason the
18 public feels disenfranchised and disenchanted
19 with their government, why attendance at
20 meetings is low because they feel I don't have
21 a chance. This is a done deal. We feel that
22 there was a fundamental violation of a fair
23 hearing, the right to confront, to see, to hear
24 to participate and speak your peace, just like

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1 Norman Rockwell's men.

2 We feel there was some violations
3 that were not technical. They were mandated by
4 the statute. The solid waste coordinator and
5 the county board chairman were supposed to
6 immediately be given copies of the application
7 and there's no evidence in the case even at
8 this point all sides have rested that they got
9 that mandated right much less a courtesy. We
10 have very serious problems with the issue of
11 proper notice because we believe it is a
12 jurisdictional question. This parcel

13 13-16-23-400-001 is not a perfunctory
14 requirement. The principal for the applicant
15 has said, quote, I interpreted this service on
16 Judith Skates at the Onarga address to be
17 sufficient, closed quote. It's not to his
18 interpretation of what the law demands when you
19 file an application. The evidence is
20 uncontradicted that no receipts were given to
21 Gary Bradshaw or James R. Bradshaw or J.D.
22 Bradshaw or Ted Bradshaw or this person called
23 Denise Vogel. It's uncontroverted. We cannot
24 have a principal from the applicant simply

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1 saying, you know, I felt it was sufficient.
2 There's no evidence and this has been pointed
3 out that there was any type of proof of agency.
4 This is not a technicality. The legislature
5 has given us the rules. We can only imagine
6 the heat of the legislative process in
7 fashioning these rules for us. And we have to
8 follow them. You do and I do and the applicant
9 does and the applicant didn't. I would love to
10 reach the merits of this case in my argument

11 that as I understand the order of the Pollution
12 Control Board we restricted to fundamental
13 fairness and we are restricted to jurisdiction,
14 so I cannot do that as much as I want. I feel
15 that this challenge is well founded it is not
16 brought with ranker. I have tried to be
17 courteous to all the participants. I
18 understand that large sums are involved and
19 people are entitled to respect. It is not a
20 sin to seek a profit, but there are fundamental
21 fairness questions that have not been answered
22 and have left a bitter taste in this community.
23 Thank you.

24 HEARING OFFICER HALLORAN: If you

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1 bear with me for a minute. I want to go over
2 the exhibits. Exhibit 1 was admitted, Exhibit
3 2, 3 were denied, admitted as an offer of
4 proof. Exhibit 4 was admitted. Exhibit 5 was
5 admitted, Exhibit 6 was admitted, 7, 8 was
6 admitted. And I have Respondent's Town and
7 Country's 1, 2, 3 were admitted and the
8 Respondent's City's Exhibit 1 was admitted, 2

9 was admitted, 3, City's Exhibit 4, 5 and I
10 believe that's all we have. Thank you,
11 everyone. It's approximately 7:48.
12 (Whereupon, these were all
13 the proceedings had at this time.)
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1 STATE OF ILLINOIS)
2) SS:
COUNTY OF C O O K)
3 FRANCINE BUONAVOLANTO being first
4 duly sworn, on oath says that she is a court
5 reporter doing business in the City of Chicago;
6 and that she reported in shorthand the

7 proceedings of said hearing, and that the
8 foregoing is a true and correct transcript of
9 her shorthand notes so taken as aforesaid, and
10 contains the proceedings given at said hearing.

11

12

Certified Shorthand Reporter

13

14 SUBSCRIBED AND SWORN TO
before me this _____ day
15 of _____, 2002.

16

Notary Public

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18

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22

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