

DECEMBER 2, 2003 - TUESDAY
10:35 A.M.

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TRANSCRIPT OF PROCEEDINGS held in

3

the above-entitled cause before Hearing Officer

4

Bradley P. Halloran, called by the Illinois

5

Pollution Control Board, pursuant to notice,

6

taken before LORI ANN ASAUSKAS, CSR, RPR, a

7

notary public within and for the County of Cook

8

and State of Illinois, at Kankakee City Hall,

9

385 East Oak Street, City Hall Council Chambers,

10

Kankakee, Illinois, on the 2nd day of December,

11

A.D., 2003, scheduled to commence at 9:00 o'clock

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a.m., commencing at 10:25 a.m.

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

2

3 MR. BYRON SANDBERG,
 109 Raub Street
4 Donovan, Illinois 60931
 (815) 486-7282

5 BY: MR. BYRON SANDBERG,
6 Appeared on behalf of the Petitioner,
 Byron Sandberg of Case No. PCB 04-33,
7 Third-Party Pollution Control Facility
 Sitting Appeal;

8

9 PEDERSEN & HOUPPT,
 161 North Clark Street
10 Suite 3100
 Chicago, Illinois 60601-3224
11 (312) 261-2149

12 BY: MR. DONALD J. MORAN,

 Appeared on behalf of the Petitioner,
13 Waste Management of Illinois, Inc.,
 of Case No. PCB 04-34, Third-Party
14 Pollution Control Facility Sitting
 Appeal;

15

16 HINSHAW & CULBERTSON,
 100 Park Avenue
17 P.O. Box 1389
 Rockford, Illinois 61105-1389
18 (815) 963-8488

19 BY: MR. RICHARD S. PORTER,

20

21 Appeared on behalf of the Petitioner,
 County of Kankakee, Illinois, Edward
22 D. Smith and Kankakee County State's
 Attorney of Case No. PCB 04-35,
23 Third-Party Pollution Control Facility
 Sitting Appeal;

24

24

1 A P P E A R A N C E S: (Continued)

2

CITY OF KANKAKEE,
3 One Dearborn Square
Suite 550

4 Kankakee, Illinois 60901
(815) 933-3385

5 BY: MR. KENNETH A. LESHEN,
6 and

7 CITY OF KANKAKEE,
956 North Fifth Avenue
8 Kankakee, Illinois 60901
(815) 937-6937

9 BY: MR. L. PATRICK POWER,
10 Appeared on behalf of the Respondent,
The City of Kankakee;

11

12 GEORGE MUELLER, P.C.,
501 State Street
13 Ottawa, Illinois 61350-3578
(815) 433-4705

14 BY: MR. GEORGE MUELLER,
15 Appeared on behalf of the Respondents,
Town and Country Utilities, Inc., and
16 Kankakee Regional Landfill, L.L.C.

17

ALSO PRESENT:

18

Ms. Sheila Donahoe

19

Mr. Thomas Volini

Mr. Donald Green

20

Mr. Lee Provost

Ms. Laura McElroy

21

Mr. Charles Cooper

Mr. Lee Milk

22

Mr. Carol Milk

Mr. Mike Watson

23

Mr. Christopher W. Bohlen

Mr. Brenda Gorski

24

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1 HEARING OFFICER HALLORAN: We're
2 ready to begin.

3 Good morning, everybody. My name
4 is Bradley Halloran. I'm a hearing officer
5 with the Illinois Pollution Control Board and
6 I'm also assigned to this consolidated matter
7 captioned Byron Sandberg, Petitioner versus The
8 City of Kankakee, Illinois, City Council, Town and
9 Country Utilities, Inc. and Kankakee Regional
10 Landfill, L.L.C., PCB 04-33; Waste Management of
11 Illinois, Inc., Petitioner versus City of Kankakee,
12 et al., PCB 04-34 and County of Kankakee, Illinois
13 and Edward D. Smith, Kankakee County State's
14 Attorney, PCB 04-35.

15 It's December 2nd at approximately
16 10:35. I do apologize for the late start. There
17 was a miscommunication or noncommunication. I'll
18 leave it at that. In the interim, the good news
19 is the parties were allowed to discuss possible
20 stipulations and we'll get to that later.

21 This hearing has been scheduled
22 and noticed in accordance with the Illinois
23 Environmental Protection Act and the Pollution
24 Control Board rules and procedures. It will

1 be conducted according to the procedural rules found
2 at Sections 107.400 and 101(f).

3 I do want to note that we
4 welcome public statement and public comment and
5 I will discuss a little bit of that later, but
6 my intention is after opening statements by the
7 parties, members of the public can come up here
8 if they so choose. They can give a public
9 statement without being sworn in -- excuse me --
10 a public comment without being sworn in or a
11 public statement, which would entail getting
12 sworn in and cross-examined. Depending on what
13 you decide, it will be weighed accordingly by
14 the Board.

15 Before I begin, I would like
16 to talk just a moment about the Board's hearing
17 process. I think the majority of the people here
18 are already familiar with that process. I will
19 not be making the ultimate decision in the case.
20 Rather, it is up to the Pollution Control Board.
21 The Pollution Control Board is comprised of five
22 members. They are going to review the transcript
23 of the proceedings and the remainder of the record
24 and decide the case.

1 My job is to strictly ensure
2 that an orderly hearing is held and that a clear
3 record is developed so that the Board can have
4 all of the proper information before deciding
5 the case.

6 After the hearing, the parties
7 will have the opportunity to send post hearing
8 briefs. These, too, will be considered by the
9 Board as well as public comments if you so choose
10 to file.

11 I'll give a few moments right
12 now for the parties to introduce themselves and
13 my intention is to go right into opening statements
14 and then have the public come up here if they want
15 to.

16 Mr. Porter?

17 MR. PORTER: Good morning. My
18 name is Richard Porter. I am from the law firm
19 of Hinshaw & Culbertson. I, and attorney Charles
20 Helsten, are special assistant state's attorneys
21 representing the petitioners, County of Kankakee,
22 and State's Attorney from Kankakee County, Edward
23 D. Smith.

24 HEARING OFFICER HALLORAN: Mr. Moran?

1 MR. MORAN: I'm Donald Moran and
2 I'm appearing on behalf of Waste Management of
3 Illinois, Inc.

4 MR. SANDBERG: I am Byron Sandberg.
5 I was subjected to this hearing as an appellant
6 to the Pollution Control Board appearing for
7 myself.

8 HEARING OFFICER HALLORAN: Thank you,
9 Mr. Sandberg.

10 Mr. Mueller?

11 MR. MUELLER: Thank you. George
12 Mueller for the respondents, Town and Country
13 Utilities, Inc., and Kankakee Regional Landfill,
14 L.L.C.

15 To my right is Thomas Volini,
16 who is the principal of those entities.

17 MR. LESHEN: I am Kenneth Leshen,
18 L-E-S-H-E-N. I am the duly appointed assistant
19 city attorney for the city of Kankakee and I am
20 here in that capacity.

21 MR. POWER: Patrick Power, city of
22 Kankakee, assistant city attorney.

23 HEARING OFFICER HALLORAN: Thank you,
24 gentlemen.

1 Mr. Porter, would you like to give
2 an opening statement, please?

3 MR. PORTER: Yes, I would.

4 HEARING OFFICER HALLORAN: You can
5 remain seated.

6 MR. PORTER: Thank you. Can I do it
7 from here?

8 HEARING OFFICER HALLORAN: Pardon me?

9 MR. PORTER: Can I do it from here?

10 HEARING OFFICER HALLORAN: Oh, that's
11 fine. Sit right there.

12 O P E N I N G S T A T E M E N T

13 by Mr. Porter

14 The petition filed by Kankakee
15 County is grounded on four primary main grounds.

16 First, the city of Kankakee never
17 had jurisdiction to hear the application at issue.
18 Specifically, Section 39.2(b) of the Environmental
19 Protection Act requires that every land owner within
20 250 feet of the proposed landfill be served either
21 in person or by registered mail with return receipt
22 requested with said owners being determined by the
23 authentic tax records of the county.

24 PCB recently ruled in regard to

1 an application filed by Waste Management of Illinois
2 that each and every owner identified by the tax
3 record shall be sent his or her own notice even
4 when there is a spouse that is residing in the
5 same dwelling.

6 In this hearing, we will
7 provide the testimony of Sheila Donahoe, who is
8 the supervisor of assessments in Kankakee County,
9 and the affidavit of the treasurer and tax collector
10 of Kankakee County, Mark Frechette, to establish
11 that a property, commonly known as the Bradshaw
12 Farm, was owned by six different individuals.

13 We will also present affidavits
14 of each of those six owners to prove that five of
15 them, as public comment -- we will prove that five
16 of them were never sent their own notice.

17 Furthermore, the one notice
18 that was sent was never forwarded to any of those
19 other owners. These owners did not know that the
20 application was filed or that a hearing took place
21 until well after the close of the hearing and
22 public comment period.

23 Furthermore, all of the five
24 owners that were not since serviced would have

1 liked to have participated in the hearing or file
2 a public comment if they had been given a chance
3 to do so.

4 The applicant's only response
5 to this failure is that it notes it had the
6 address of one of the owners, Judith Skates,
7 and put all the owners' names on the envelope.
8 However, all of the owners will testify, by way
9 of affidavits, that Ms. Skates was never an
10 authorized agent for service of process.

11 Furthermore, the authentic tax
12 records contain the addresses of the five other
13 owners and the applicants did not send notice to
14 those addresses. Failure to notify all of the
15 owners of that one property should result in an
16 automatic reversal.

17 The second basis for the
18 appeal is that the city of Kankakee did not have
19 jurisdiction because the application at issue
20 was substantially the same as an application that
21 was filed by the very same applicant just one
22 year earlier on March 13, 2002.

23 That application was rejected
24 this year by the Illinois Pollution Control Board

1 for failing to meet the criterion that the proposal
2 be designed to protect the public health, safety
3 and welfare.

4 Section 39.2(m) of the Illinois
5 Environmental Protection Act provides that an
6 applicant may not file an application that is
7 substantially the same as one that is approved
8 under one of the criteria within the preceding
9 two years.

10 In support of our contention
11 that the city did not have jurisdiction or should
12 have rejected the application based upon it being
13 substantially similar to the previous application,
14 we rely upon the record admitted in the underlying
15 hearing and the parties have agreed that the entire
16 Illinois Pollution Control Board record concerning
17 the prior application, including all transcripts,
18 exhibits, pleadings, evidence, rulings, and orders
19 shall be admitted into this record as well. Those
20 previous cases were PCB 3-31, 33 and 35.

21 The third primary basis for
22 our petition is that the city of Kankakee and the
23 applicant conspired to create a completely unfair
24 process whereby the city of Kankakee judged the

1 merits of this case before the public hearing in
2 June of this year.

3 The combination of events that
4 occurred in this case make it undeniable that the
5 county of Kankakee and the public in general were
6 denied a fundamentally fair hearing. Much of the
7 evidence of the improper contacts between the city
8 and applicant are contained in the records
9 concerning the 2002 application.

10 Specifically, that record
11 contains ample evidence of prefiling contacts
12 between the applicant and the city that resulted
13 in a lucrative host fee agreement with the city
14 and culminated with the city allowing the
15 applicant's experts to present their case to the
16 city council for February 19, 2002, before any
17 notices were sent and even before the application
18 was formally filed.

19 At that hearing, the applicant
20 even suggested to the city council that the
21 witnesses who would testify on behalf of the
22 objectors at the 39.2 hearing could not be
23 trusted. At the 2002 citing hearing, the mayor
24 was going to act as the hearing officer despite

1 being a known proponent for the application
2 and stepped down only after a motion was filed
3 to disqualify him.

4 The city council then
5 appointed the chief attorney for the city,
6 Christopher Bohlen, who was also the primary
7 contact of the applicant with the city before
8 the application was filed.

9 At that prior hearing, the
10 city council was confronted with ample testimony
11 that the applicant had mischaracterized the
12 bedrock upon which the landfill would be built,
13 but the council unanimously approved it anyway.

14 The IPCB reversed that decision
15 and found that the application did not protect the
16 health, safety and welfare of the people and the
17 environment.

18 We will present evidence that
19 after the IPCB disapproved the application, the
20 collusion between the city and applicant continued.
21 There will be evidence that on February 3, 2003,
22 the president of the applicant, Thomas Volini,
23 was invited to a city council meeting. We will
24 present the minutes to that meeting, which clearly

1 shows that Mr. Volini spoke to the city council in
2 executive session without the public being allowed
3 to hear what was being said.

4 We will also present evidence
5 that the city prejudged the application and did
6 not provide fair treatment to the county by filing
7 two different civil actions against the county in
8 an effort to keep the county from participating in
9 citing hearings of the city.

10 Specifically, the city filed a
11 declaratory injunctive action against the county
12 seeking to enjoin the county from using its solid
13 waste funds to pay the expenses that the county
14 would incur in relation to appearing at the city
15 citing hearings.

16 After that action failed, and
17 just weeks before the citing hearing was scheduled
18 to commence, the city filed another case which
19 explicitly sought to enjoin the county from
20 defending it's solid waste management plan by
21 participating in the citing hearing. Within the
22 record, there are now pleadings filed by the city
23 in that case during which the city admits that its
24 goal was to keep the county from interfering with

1 the city citing the landfill.

2 It is difficult to even conceive
3 more blatant evidence that the city prejudged this
4 case and intended to cite the landfill regardless
5 of the evidence at the 39.2 hearing.

6 There will be evidence that the
7 unfairness continued during and after the hearing.
8 There will be evidence that the city's attorneys
9 represented both city council and city staff and
10 actively appeared and participated in the hearing
11 and were obviously in favor of the application.

12 After the hearing, the city
13 attorneys then had improper ex parte communications
14 with the hearing officer and actually collaborated
15 with the hearing officer in drafting his proposed
16 findings
17 of fact, which were required in the city ordinance.
18 These findings were presented to city counsel as
19 though they were the sole work product of the
20 hearing officer.

21 We will present evidence that
22 the city attorneys and the hearing officer revised
23 the hearing officer's proposed findings of fact on
24 numerous occasions, but the e-mails and telefaxes

1 between the city and the hearing officer and all
2 preliminary drafts have been conveniently lost or
3 destroyed.

4 Throughout these communications,
5 the city attorneys continued to represent city
6 council and city staff. We will admit the minutes
7 of August 18, 2003 city council meeting, which
8 clearly proves city council was only given the
9 opportunity to vote on proposed findings submitted
10 by the hearing officer, which were actually drafted
11 by the city attorneys and the hearing officer in
12 collaboration.

13 We will provide evidence that no
14 party other than the city was allowed to communicate
15 directly with the hearing officer outside the
16 presence of the other parties nor was any party
17 allowed to collaborate with him on drafting his
18 proposed findings.

19 We will also present evidence
20 that the hearing officer's proposed findings largely
21 upon reports drafted by a city consultant that the
22 hearing officer, Mr. Boyd, never actually saw and
23 was not part of the public record.

24 Specifically, there are numerous

1 references in the hearing officer's proposed
2 findings to reports made by Mr. Ronald Yarborough
3 or the findings of fact referencing
4 Mr. Ralph Yarborough. It's been determined that
5 his name is actually Ronald. However, none of
6 Mr. Yarborough's reports were ever made part of
7 the public record before it closed on July 28,
8 2003.

9 Furthermore, Mr. Boyd admits
10 he has no recollection of ever having seen those
11 reports before signing the proposed findings of fact
12 that he sent to the city council. Despite having
13 never seen the reports, he represented to city
14 council that they were admitted into the record
15 on July 28, 2003, when actually they were not.

16 Mr. Boyd also reported to city
17 council that Mr. Yarborough concluded that the
18 proposed landfill could be constructed and the
19 groundwater could be protected as projected by
20 the applicant. He made that statement despite
21 the fact that he actually never read
22 Mr. Yarborough's report.

23 Finally, Mr. Boyd relies
24 upon the reports of Mr. Yarborough, again which

1 he never saw, to suggest that the imposition of
2 a special condition requiring the grouting of
3 all open joints found in the exposed bedrock
4 should be put into place by city council.

5 The evidence will be that in
6 reality, Mr. Bohlen, representing the city staff
7 and city council itself, actually drafted all of
8 the references to the Yarborough reports that
9 are contained in the reported proposed findings
10 of fact of the hearing officers.

11 Furthermore, those reports were
12 never produced to the county or the public and no
13 objectors had the opportunity to cross-examine
14 Mr. Yarborough or test the veracity and
15 trustworthiness of his opinions. The egregious
16 conduct of the city continued even after the
17 vote.

18 On August 18, 2003, city
19 council considered only the hearing officer's
20 proposed findings of fact and voted to approve
21 those findings. At no time did city council
22 consider proposed findings of fact offered by
23 the county of Kankakee or any other objectors,
24 at least as disclosed in the August 18, 2003,

1 minutes.

2 You will see in the August 18,
3 2003 minutes that city council did suggest some
4 minor changes to the proposed findings. However,
5 we will submit evidence that after the vote, the
6 findings were amended on several occasions by city
7 council and Mr. David Schaffer of the city planning
8 department. Many of those amendments were never
9 discussed at the city council meeting.

10 After the unauthorized amendments
11 took place, the mayor signed the findings of fact
12 on some undisclosed later date. At no time was
13 another vote held by the city council on the
14 ultimate document that was signed by the mayor.
15 That document has not been published by the city
16 as the final findings of fact.

17 Fourth, and finally, the record
18 contained ample evidence that all of the criteria
19 were not met by the application. The purpose of
20 this specific hearing is to accept evidence of
21 jurisdictional and fundamental fairness issues,
22 therefore, I will not discuss the evidence on the
23 criteria at this time except to say it's undeniable
24 that the county plan, as amended, allows for only

1 the expansion of the existing landfill and no
2 new landfill is allowed under the plan.

3 You should review the decision
4 of the city and review the completely incredible
5 testimony that the applicant offered that contiguous
6 does not mean touching and can mean as much as a
7 mile away. Ultimately, we believe you will conclude
8 that no reasonable person could find that the
9 application is consistent with the county plan.

10 Furthermore, another addressed
11 concern raised by the Illinois Pollution Control
12 Board as to criterion two and again mischaracterized
13 the bedrock. Finally, you will see that the
14 applicant ignored the expansion of the existing
15 landfill in its needs, analysis and under criteria
16 one.

17 Accordingly, the IPCB should
18 conclude that the city did not have jurisdiction
19 to hear the application. It was the same
20 application filed just one year previous. The
21 proceedings were fundamentally unfair and the
22 criteria were not met. Thank you.

23 HEARING OFFICER HALLORAN: Thank you.
24 Mr. Moran?

1 MR. MORAN: Waste Management of
2 Illinois waives opening statements.

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

5 Mr. Sandberg?

6 MR. SANDBERG: I am making an
7 opening statement because I am not going to be
8 able to attend the entire hearing because I have
9 to see a specialist due to a sharp rise in my
10 prostate cancer tests. He has prescribed some
11 medicine that I have to take on schedule every
12 seven hours and I have to be home for that. I
13 have a summary statement.

14 Therefore, I would like to
15 talk about the fundamental fairness issues I am
16 concerned about in context with the application,
17 the site, and the association of Mr. Volini with
18 the city council. I think I can do a better job
19 that way anyway. Others can ask questions better.

20 HEARING OFFICER HALLORAN: Excuse me.
21 Mr. Sandberg, could you please speak up? Thank you.

22 MR. SANDBERG: Okay. The hearing
23 of this second application by the Kankakee city
24 council was fundamentally unfair because it is

1 not based on any improvements in the specifications
2 of the landfill. I have been told that there is
3 a Pollution Control Board rule again rehearing an
4 application of a landfill of the same specifications
5 within a two-year period.

6 The city council has shown an
7 unfair bias in favor of Mr. Volini in even hearing
8 this application a second time without change in
9 the specifications. This second application and
10 hearing is based only on additional hydrological
11 tests that do not meet the requirements of the
12 Phases I, II and III research procedures of the
13 Pollution Control Board just like the tests of
14 the first hearing did not meet the same
15 specifications.

16 The Pollution Control Board
17 research procedures require that the borings and
18 tests be first done in the center and the four
19 sides. Then based on those tests, additional
20 tests and borings are to be located so as to find
21 any fractures that can carry water and pollutants
22 away from the landfill.

23 Mr. Volini's experts did the
24 exact opposite of what the research rules of the

1 Pollution Control Board rules require. They
2 dishonestly and unfairly selected the depths in
3 the six wells where their well driller could tell
4 them where they would not find these water and
5 pollutant carrying fractures.

6 In the other 18 test wells, there
7 were so many fractures distributed along the entire
8 depth of the well that their tests would show water
9 and potential pollution carrying fractures no matter
10 where they took the tests. To hide the results of
11 those tests, they placed them in a table that they
12 falsely and deceptively claimed was the slug test
13 summary table for the weathered Nigerian dolomite.
14 This deceptive and unfair method of research was
15 identified by Mr. Moran questioning Mr. Volini's
16 hydrologist on each one of these wells.

17 The test wells and the
18 application, pages 2-7.3, show this weathered
19 dolomite averages only 3.5 feet, ranging from
20 zero to 9.5 feet, but Mr. Volini's hydrologist
21 had deceptively included all tests less than
22 ten feet in this table. When he was asked why
23 he had selected this arbitrary ten-foot depth
24 when the fractured dolomite only averaged 3.5 feet,

1 all he could say was that he wanted to make sure
2 they were deep enough in case there were any
3 questions.

4 It is fundamentally dishonest
5 research to first decide what you want to prove
6 and then collect and arrange the information or
7 tests so it supports only what you want to prove
8 while deliberately ignoring all other information
9 and the Pollution Control Board rules. It should
10 also be fundamentally unfair under hearing rules
11 to allow this.

12 My cousin is now being charged
13 with perjury for merely not telling all he knows
14 about his association with Governor Ryan. It
15 appears to me that Mr. Volini's experts, who
16 knowingly used this false and illegitimately
17 collected and presented information in their
18 testimony under oath, have more of a reason to
19 be charged with perjury than my cousin. This is
20 not fair.

21 These false tests showed the
22 landfill to be set down in an aquitard when it
23 is actually set down in an aquifer. An aquitard
24 is a very poor place for a landfill, but an

1 aquifer is an absolute -- not a place for
2 a landfill. Dr. Daniels based his testimony
3 on these false tests so the fact that they are
4 false totally discounts his testimony.

5 This fundamentally unfair
6 procedure of holding two hearings was a deliberate
7 strategy by Mr. Volini that was allowed by the
8 city council to run the objectors out of money,
9 time and patience. That way, he could prevent
10 them from hiring an expert witness and lawyers
11 from appearing against him in the second hearing.
12 The objectors represented by CRIME were given an
13 estimate of \$8,000 for his testimony by their
14 expert witness, Mr. Stuart Cravens. Mr. Volini's
15 lawyer and experts stretched that cost to over
16 \$13,000 by repeatedly asking a large number of
17 dumb, unnecessary questions.

18 It should not have been
19 necessary for a competent environmental lawyer
20 to ask questions such as where is the seal or
21 where is the screen over a dozen times when
22 those locations were shown on the well logs
23 being questioned. The location of the seal
24 is always located at the top of the aquifer

1 because it's required for sanitary reasons by
2 the rules of the Illinois Public Health Service.

3 Mr. Volini's expert witness,
4 as well as his lawyer, asked these questions
5 and that is fundamentally unfair because it
6 is not proper procedure to allow one expert
7 witness to cross-examine another expert witness.
8 Minnie Creek Drainage District paid their lawyer
9 \$5,000 to represent them at the first hearing
10 and several individuals also hired lawyers.

11 The success of Mr. Volini's
12 unfair strategy was shown by the poor attendance
13 of objectors at the second hearing. Where the
14 courtroom was filled to overflowing in the first
15 hearings, there were only half a dozen objectors
16 present in the second hearing. These objectors
17 have lost faith in the fundamental fairness of
18 the procedure of landfill hearings.

19 Mr. Volini has shown them
20 that a firm like his backed by more money than
21 the objectors can raise is able to override the
22 fundamentally fair justice to which they are
23 entitled. Mr. Volini is continuing to play this
24 money game by further appeals to the appellate

1 court. The Pollution Control Board needs to make
2 a definitive decision clear enough that it will
3 not be appealed.

4 The reason that the city
5 council and Mr. Volini worked so closely together
6 and ignored the rules is that the \$4 million a
7 year is not for the usual expenses of a city.
8 Instead, it is actually a bribe to the city
9 council members so that their campaign workers,
10 friends and supporters that worked to elect them
11 to office can remain on the city payroll.

12 Kankakee has 132 more employees
13 on the payroll than Park Forest, Illinois, a city
14 of virtually the same population. Mr. Keith Runyan,
15 who furnished me these figures, said the Kankakee
16 employment numbers should be adjusted to more than
17 132 more employees because the Kankakee number does
18 not include park district employees and a pro ratio
19 share of county health department employees and 911
20 employees like the Park Forest figure does.

21 It is not fundamentally fair to
22 have city council members make a decision that they
23 will personally profit by. Mr. Volini also promised
24 an ethanol plant and other plants, which he said

1 needed to be near a landfill. The city council
2 members, no doubt, had dreams that their supporters
3 would have priority access to the jobs at these
4 plants.

5 This hearing was fundamentally
6 unfair because the required application to build in
7 a flood plain or a floodway required by the rule of
8 the Illinois Department of Natural Resources has not
9 been submitted and therefore, not approved. These
10 rules do not allow any structure that will raise the
11 water level more than one-tenth of a foot to build
12 in a flood plain or floodway.

13 It is in the deepest part of it
14 that will stand in three or four feet of water
15 depending on the depth of the flood. It takes only
16 a simple arithmetic calculation to determine that a
17 250-acre landfill displacing three feet of water
18 will raise the height of the water in any 800-acre
19 flood plain more than one-tenth of a foot.

20 Mr. Milk estimated that it
21 would raise the water level at least half a foot.
22 Mr. Milk is experienced in similar survey-based
23 calculations from his long experience as an earth
24 moving contractor doing calculations for bids to be

1 submitted to the state.

2 Mr. Volini's experts have made
3 false statements that the landfill site is not in a
4 flood plain based on the FEMA flood plain map. The
5 FEMA flood plain map only pertains to flood plains
6 along rivers. This is a flood plain formed by the
7 restriction of the flow of water from Minnie Creek
8 by the railroad embankment and railroad trestle that
9 crosses Minnie Creek.

10 The Illinois Department of Natural
11 Resources' rules apply to all flood plains and
12 floodways in the state, not just those on the FEMA
13 map.

14 Mr. Volini's experts claimed that
15 Minnie Creek drainage district has made improvements
16 so that it will not flood again. I attached a
17 statement to my hearing summary signed by the board
18 members stating that they had done nothing to
19 decrease the flooding. Instead, they said that they
20 have cleaned Minnie Creek to improve drainage in the
21 1,300-acre Minnie Creek drainage basin.

22 I asked Mr. Volini's engineer,
23 Mr. Moose, at the hearing if he had planned anything
24 to protect the landfill from Minnie Creek flooding.

1 He said the banks of Minnie Creek would protect it.
2 The banks are only the dirt spoil banks thrown up
3 when Minnie Creek was dug and deepened. Even a
4 casual observation shows the banks vary greatly in
5 height. These ditch banks are in no way designed in
6 a way to keep Minnie Creek from flooding.

7 I appealed to the Pollution
8 Control Board under the flood plain criteria in the
9 first hearing. Yet the PCB ruling contained no
10 remarks on the flood plain criteria. This may be
11 because the city of Kankakee did not submit the
12 movie and pictures entered as exhibits of the
13 previous floods. If so, this would have been
14 fundamentally unfair.

15 Flooding is a very serious
16 situation for the landfill because it adds so much
17 water that it will be impossible to treat it. Much
18 of it will simply run back into Minnie Creek and go
19 up Minnie Creek to the river and into the water
20 intakes of Kankakee and it's three adjoining cities.
21 The soaking of the trash with water will greatly
22 increase the production of pollutants.

23 Pollutants in this kind of
24 landfill are supposed to decompose slowly in a

1 relatively dry environment. The small amounts of
2 pollutants produced in a dry situation self destruct
3 as they trickle down through the landfill. When a
4 landfill is flooded, the production of pollutants is
5 dramatically increased because the water acts as a
6 catalyst to speed up the chemical reactions.

7 These pollutants reach the
8 leachate untreated because they no longer self
9 destruct as they trickle down in a water soaked
10 landfill. This scenario was not considered in
11 Dr. Daniels' or Mr. Moose's plan.

12 In a few years, this heavy
13 concentration of pollutants will penetrate the
14 plastic and clay liner. They will not be detected
15 by the monitoring wells because they will move in
16 the aquifer in the crevices like fingers between
17 the monitoring wells. Monitoring wells only work
18 in sand or gravel where the pollutants move like
19 a front.

20 The well known consultant,
21 Dr. G. Fred Lee, states that the only way to
22 detect pollutants in this situation is to have
23 an electric monitoring system over a second
24 liner. This is not present in this landfill.

1 The only monitoring wells I see are in the sand
2 far above where the pollutants will travel in
3 the aquifer.

4 MR. LESHEN: Your Honor, I don't
5 want to be rude here, but I think we have gone far
6 afield on the issues that need to be addressed by
7 you in this context. This is a re-argument of
8 safety issues and other issues are not applicable
9 or relevant to these circumstances.

10 HEARING OFFICER HALLORAN: At the
11 very least, during opening statement, Mr. Sandberg,
12 I think about a year ago, we addressed this same
13 situation. We are getting into issues regarding
14 criteria and other evidence that was not in the
15 record below.

16 So I would ask you to confine,
17 as we did last year and as you did last year,
18 confine your opening statements to what the
19 evidence will show regarding the criteria or
20 only the evidence that was submitted for now.

21 MR. SANDBERG: I will stop here.
22 I will submit the rest in my file.

23 HEARING OFFICER HALLORAN: Okay.
24 Thank you. Thank you very much. I think that

1 is what you did last year. Thank you.

2 Mr. Mueller, please?

3 O P E N I N G S T A T E M E N T

4 by Mr. Mueller

5 Thank you. I will attempt to
6 be brief. With respect to the issues raised by
7 Mr. Porter as being the items that he believes
8 are submitted in this appeal, first of all, he
9 indicates that he believes that there was no
10 service on the owners of parcel 13-16-23-400-001,
11 which has also come to be known as the Bradshaw
12 Farm or, as the Pollution Control Board called
13 it in its decision Case 03-31, the Skates parcel.

14 What the evidence will show is
15 that there is a property index card maintained by
16 the treasurer's and the assessor's department common
17 computer database, which identifies the address of
18 all of the owners of that parcel as being in Rock
19 Falls, Illinois.

20 In 2002, as part of service on
21 the first application, we had a private process
22 server go to that address where she learned that
23 none of the owners of that parcel resided in Rock
24 Falls and advised the process server that all

1 matters relative to that parcel were to be referred
2 to Judith Skates, who resided in Onarga, Illinois.

3 We subsequently then served
4 Judith Skates by certified mail in Onarga, Illinois,
5 on behalf of all of the owners of that parcel. In
6 addition, there was a later record from the county
7 assessor and treasurer's office which shows that
8 Judith Skates had filed a change of address on
9 behalf of herself and the other owners indicating
10 that all services were to go to her in Onarga,
11 Illinois.

12 Based upon that evidence, the
13 Pollution Control Board, in Case 03-31, found
14 that service on the owners of that parcel was
15 proper. Now, the evidence is going to be that
16 in connection with this application, Mr. Volini
17 personally checked to make sure that there had
18 been no changes or an addition to the tax
19 records of the county and in doing so, he found
20 that the change of address filed by Ms. Skates
21 was still current and he also found a real estate
22 tax bill for the 2001 tax year, which would have
23 been sent out in the spring or summer of 2002
24 thereby making it the most recent real estate tax

1 bill which showed that that bill for that parcel was
2 directed to Judith Skates in Onarga, Illinois.

3 Accordingly, we sent certified
4 mail and notice to Judith Skates in Onarga,
5 Illinois, and that was claimed, and we sent
6 certified mail and notice to all of the other
7 property owners in Onarga, Illinois and that
8 was also signed for by Judith Skates.

9 Accordingly, we have used
10 authentic and, in fact, the most up-to-date
11 tax records of the county and properly provided
12 service and we have also used the direction of
13 this Board in Case No. 03-31.

14 Now, Mr. Porter makes reference
15 to some affidavits. Which I first saw yesterday
16 from Mrs. Skates and some of the Bradshaws and all
17 I can say with regard to them is number one, they
18 are not substantive evidence and I understand those
19 people are not going to testify.

20 Number two, I found it more than
21 curious that -- in fact, I found it troubling that
22 none of the affiants chose to provide their address
23 as part of that affidavit.

24 Number three, whatever arrangement

1 the Bradshaws had between themselves with respect
2 to how notices received might be forwarded among
3 themselves are irrelevant because our responsibility
4 for service stops at compliance with the statutory
5 language that we serve the owners as disclosed and
6 that the addresses as indicated on the authentic tax
7 records of the county and, therefore, the affidavits
8 become irrelevant.

9 We will be filing a motion.
10 If those affidavits are, in fact, submitted by the
11 county as part of the public comment, we'll be
12 filing a motion to strike them for the reasons that
13 I have outlined here.

14 Secondly, Mr. Porter indicates
15 that the Pollution Control Board will find that the
16 applications are -- or that this application is
17 not -- were substantially the same as the
18 application previously filed.

19 This Board, through you, has
20 already ruled that that is an issue of fact for
21 the city council to have made a determination of
22 and accordingly, it becomes an issue that the PCB
23 will have to decide based on the entire record
24 of the proceedings and no evidence with regard

1 to the same will be received at this hearing.

2 So briefly, I will just say that
3 the record is going to disclose that the finding
4 of the city council that the two applications were
5 not substantially the same is supported by competent
6 evidence and it is not against the manifest weight
7 of the evidence.

8 Mr. Porter then indicates, with
9 regard to fundamental fairness, that the parties --
10 and I think his word was conspired to deny the
11 objectors in the public a fundamentally fair hearing
12 and this hearing will provide evidence of this.

13 In support of their argument, he
14 cites two contacts between the parties prior to the
15 hearing on the 2002 application. Mr. Halloran,
16 those contacts have already been fully explored
17 and adjudicated as appropriate by the Board in
18 Case No. PCB 03-31.

19 The evidence with regard to
20 contacts between the parties related to this
21 application is that -- will be that there were
22 no improper ex parte contacts. There were minimal
23 prefiling contacts between the parties that were
24 essentially administrative nature in terms of

1 Mr. Volini advising city council that he was going
2 to refile the application.

3 There were some minimal contacts
4 while the application was pending consisting of
5 two phone calls between Mr. Volini and Mr. Bohlen
6 where Mr. Bohlen advised Mr. Volini of changes
7 in the hearing dates. So the contacts that
8 occurred are minimal. They're innocuous. They are
9 all nonsubstantive and certainly do not support
10 the concept of some conspiracy that occurred between
11 the parties. There will be no evidence of
12 conspiracy. There will be no evidence of collusion
13 between Town and Country Utilities and the city
14 council of Kankakee.

15 Mr. Porter then says that
16 the evidence will be that the city prejudged
17 the application as evidenced by his filing of
18 two lawsuits against the county. He characterizes
19 those lawsuits as an attempt to stop the county
20 from interfering with its citing of the proposed
21 facility. That mischaracterizes the lawsuits.

22 The evidence is going to be
23 that those lawsuits were an attempt to stop the
24 county from interfering not with the citing, but

1 with the citing process because if one adopts
2 the position that the county takes regarding
3 its solid waste management plan, then the very
4 hearing process authorized by Section 39.2 of
5 the Environmental Protection Act is a nullity.

6 In that, the county's position
7 is the city asks no citing jurisdiction or
8 meaningful citing jurisdiction given the fact
9 that the county can preclude all landfills other
10 than Waste Management's landfill in its own
11 solid waste management plan.

12 (Mr. Christopher Bohlen
13 entered the proceedings.)

14 MR. MUELLER: That issue will be,
15 I'm sure, decided by the Board, but for purposes
16 of this opening statement, we believe that there
17 will be no evidence that the city prejudged the
18 application.

19 Then Mr. Porter indicates that
20 the city attorney somehow acted improperly in
21 this case in that he provided input to the hearing
22 officer with regard to certain aspects of the
23 hearing officer's report to city council. There
24 is no evidence that the city attorney, Mr. Bohlen,

1 ever provided advice to the city council with regard
2 to this application.

3 In fact, the evidence is that his
4 role was restricted to the well established role of
5 representing the city staff. Accordingly, he
6 coordinated matters very properly between Mr. Boyd,
7 the hearing officer, and Mr. Yarborough, the city's
8 retained private consultant, regarding their reports
9 and findings. As such, he represented the city
10 staff and then brought it all together for the city
11 council.

12 The minutes of the deliberations
13 of the city council will be introduced and will be
14 part of this record and it's our belief that they
15 will show that the city council acted appropriately
16 and that all of the city staff acted appropriately.

17 By the way, the record is based
18 upon Mr. Bohlen's testimony in the previous hearing,
19 and that record is all going to be introduced and
20 incorporated herein. The record is that even though
21 he is the city attorney, he is presently opposed to
22 this project and that continues to be. For all of
23 those reasons, we feel that none of the issues
24 raised on this appeal are well taken.

1 Now, Mr. Hearing Officer, I have
2 a brief motion to make. We would ask that the
3 hearing officer consider an adjournment for several
4 hours of this hearing in order to allow the parties
5 to continue some settlement discussions that have
6 been ongoing for a period of time in which may, in
7 fact, render the continuation of this hearing moot.

8 Some time ago, Town and
9 Country initiated settlement discussions with
10 Waste Management and those discussions have been
11 productive and fruitful and the parties are very
12 close to an understanding with regard to resolution
13 of all of their difficulties.

14 As the hearing officer knows,
15 both Town and Country and Waste Management have
16 cases pending in the Appellate Court right now
17 regarding previous citings of the acreage that's
18 the subject of this hearing and Waste Management's
19 proposed expansion some miles down the road.

20 While we finally have the county
21 here as well, we think it's a very good time for
22 the parties to take a step back and continue those
23 discussions in the hopes that they can provide some
24 clarification with regard to what needs to be done

1 today and what the timing of things is going to be
2 hereafter.

3 The representative of Waste
4 has, in fact, already conferred with us this
5 morning and we all, I think, want to include
6 the county and the city in those discussions
7 as well in the hopes of obviating further appeals
8 and acrimony in Kankakee county.

9 So we would ask at the
10 conclusion of opening statements and your
11 receiving any public comment, which, I think,
12 you should, you know, receive whenever people
13 are here to make it, that we take an extended
14 recess in order to pursue those discussions.

15 HEARING OFFICER HALLORAN: Thank
16 you, Mr. Mueller.

17 Who is going to take the
18 lead for the city? I'll entertain that motion
19 in a moment.

20 MR. LESHEN: The city would waive
21 opening argument. We have no objection whatsoever
22 to the motion of Mr. Mueller.

23 HEARING OFFICER HALLORAN: Before
24 I get to the petitioner's side, I think at this

1 time we will go ahead and take public comment
2 or public statements. There are a handful of
3 people out there. If any of you wish to step
4 up and say your peace, you can do so at this
5 time.

6 (Brief Pause.)

7 HEARING OFFICER HALLORAN: Okay. I
8 see no takers at this point. We will be here for
9 a little while longer.

10 With that said, Mr. Porter,
11 regarding Mr. Mueller's motion, what is your stand
12 on that?

13 MR. PORTER: Well, the first we had
14 heard of any potential adjournment for settlement
15 conference was this morning. I, of course, cannot
16 take any action without it being voted upon by the
17 entire city council. It would be utterly fruitless
18 to -- for me to profess to be involved in some
19 type of settlement conference without any authority
20 to do so. Now, I did call --

21 MR. LESHEN: I would just request --

22 MR. PORTER: Please, I'm not finished.

23 MR. LESHEN: Just for clarification,
24 it's not city council. It's the county board.

1 MR. PORTER: I'm sorry. The county
2 board.

3 HEARING OFFICER HALLORAN: Thank you.

4 MR. PORTER: Now, I did call
5 Attorney Helsten to contact Attorney Edward Smith
6 and Carl Cruise to see if there was any way we
7 could participate in such a conference. I have
8 not received a return phone call. While I was
9 doing my opening statement, my telephone did ring.
10 I can obviously call that back.

11 I'm also a little -- I believe
12 it's not likely and it's always been and, in my
13 opinion, it'll always be the position of the
14 county board that their county plan calls for
15 one solid waste management facility within the
16 county borders.

17 Therefore, I don't see how
18 there could ever be fruitful settlement discussions
19 and it would be a waste of time. I would
20 conjecture that you probably attack it on behalf
21 of the applicant to be able to indicate to the
22 press somehow that the county is not willing to
23 talk. What the reality is is I haven't even
24 had a chance to speak with the county about the

1 issue so I simply cannot agree.

2 HEARING OFFICER HALLORAN: Thank you,
3 Mr. Porter.

4 Mr. Moran?

5 MR. MORAN: We have no objection to
6 the motion.

7 HEARING OFFICER HALLORAN: All right.
8 Mr. Sandberg?

9 MR. SANDBERG: I have an objection
10 only if it means that this landfill application --
11 this landfill will be continued. I take it if
12 there is a settlement, this application will be
13 dropped and there will be no landfill, is that
14 it?

15 HEARING OFFICER HALLORAN: I don't
16 know. I don't know the extent of the settlement.

17 MR. SANDBERG: If there is still going
18 to be a landfill, I object.

19 MR. MUELLER: Mr. Halloran, we would
20 be happy to include Mr. Sandberg in any discussions.

21 I might also add that I was
22 surprised at Mr. Porter's comments because as
23 recently as Wednesday of last week, his boss
24 Mr. Helsten, was --

1 MR. PORTER: I'm going to object
2 to Mr. Mueller --

3 MR. MUELLER: -- was having
4 discussions on this very subject.

5 MR. PORTER: -- disclosing any such
6 discussions because if there were any, I don't
7 even know about them. If there were any, it would
8 be inappropriate for me to be participating in any
9 discussions about settlement due to the reasons I
10 previously indicated.

11 HEARING OFFICER HALLORAN: I think
12 you know where I'm going to go with this ruling.
13 I'm going to deny Mr. Mueller's motion to continue
14 and we are going to proceed with this hearing.
15 You're more than able or allowed to talk settlement
16 prior to February 19th, I think. I encourage you
17 to do so, but at this point in time, since we are
18 all here, I think we should proceed.

19 With that said, and before I
20 forget, I want to state for the record that the
21 county gave me a motion to disqualify Clara Manning
22 to be filed with the Board. I assume, Mr. Porter,
23 you will follow-up with initial copies?

24 MR. PORTER: Do you mean will I have

1 additional copies for everyone in the room if they
2 would like one? I believe I have at least five
3 to six left. I will be sure to get them to the
4 Board.

5 HEARING OFFICER HALLORAN: Okay.

6 MR. PORTER: I can take care of that,
7 no problem.

8 HEARING OFFICER HALLORAN: Understood,
9 understood.

10 With that said, you obviously
11 have the 14-day time to file response. Anyway,
12 I just wanted to let everybody know the county
13 did file a motion and that will go to the Board.

14 MR. MUELLER: Mr. Halloran, if I
15 may, just to complete the record, the record should
16 reflect that Clara Manning is not present today.
17 She has not participated in any of the discovery
18 in this proceeding pending a Board determination
19 of the status of her appearance.

20 HEARING OFFICER HALLORAN: Thank you.
21 That's a good point.

22 I also want to -- while we're
23 talking about appearances and so forth -- let
24 the record reflect that the Kankakee assistant

1 state's attorney, ^ Ron Daworski, entered the
2 hearing room a little while ago. I just wanted
3 the record to reflect that.

4 Mr. Porter, do you want to
5 call your first witness? I think we're at that
6 point where -- do you want to talk or -- do you
7 want to go off the record or talk on the record
8 regarding stipulations?

9 MR. PORTER: I would like to call
10 my first witness and perhaps after that witness,
11 go off the record and talk about stipulations if
12 that's okay.

13 HEARING OFFICER HALLORAN: Okay.

14 MR. PORTER: I would call Sheila
15 Donahoe.

16 HEARING OFFICER HALLORAN: Step up
17 and raise your right hand. I think the mic is
18 working.

19 THE COURT REPORTER: Raise your right
20 hand, please. Do you swear that the testimony that
21 you are about to give is the truth, the whole truth
22 and nothing but the truth?

23 THE WITNESS: I do.

24 (Witness sworn.)

1 WHEREUPON:

2 S H E I L A D O N A H O E

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

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

6 by Mr. Porter

7 Q. Would you state your name for the
8 record, please?

9 A. Sheila Donahoe.

10 Q. And how are you employed?

11 A. I am the chief county assessment
12 officer for Kankakee County.

13 Q. How long have you been so employed?

14 A. Approximately 11 years.

15 Q. And you're the chief county assessment
16 officer. What do you assess?

17 A. We actually are not -- I am not the
18 person that assesses the property. We have township
19 assessors that do that. I issue multipliers and I
20 am responsible for parcel records.

21 Q. For the purpose of what?

22 A. For purposes of notification and
23 ownership of property and also assessments that are
24 received from the township assessors.

1 Q. Are you then familiar with the
2 authentic tax records of Kankakee County?

3 A. Yes.

4 Q. At my request, did you search the
5 authentic tax records for certain parcel number
6 13-16-23-400-001, which we will call the Bradshaw
7 Farm?

8 A. Yes.

9 Q. And did you search the authentic tax
10 records for the purpose of determining who owned
11 that property?

12 A. Yes.

13 Q. And did you conduct your search from
14 the time period of February 7, 2003, until today's
15 date?

16 A. Yes.

17 Q. And how did you go about conducting
18 that search?

19 A. We use our property record card that
20 is identified in the computer and the history and
21 accuracy of entries are also in that computer.

22 Q. And who are the owners of parcel
23 13-16-23-400 as identified by authentic tax records
24 from February 7, 2003, until today's date?

1 MR. MUELLER: I'm going to object
2 unless we know which authentic tax records
3 he is referencing.

4 HEARING OFFICER HALLORAN: Mr. Porter?

5 MR. PORTER: Well, she has just
6 indicated how she performs her search of the
7 tax records.

8 MR. MUELLER: Well, then, the question
9 would be as shown by the property record index
10 card, which may or may not be the only authentic
11 tax record.

12 MR. PORTER: Mr. Mueller, you may
13 wish that that was my question. My question
14 was plain and unambiguous and it's not a proper
15 objection.

16 HEARING OFFICER HALLORAN: I agree.
17 The objection is overruled.

18 Mr. Porter, she may answer if she
19 is able.

20 BY THE WITNESS:

21 A. The question was of owner of records?

22 BY MR. PORTER:

23 Q. Right. Who owned the parcel we just
24 referenced as you determined them to be by the tax

1 records?

2 A. Gary Bradshaw, James A. Bradshaw,
3 Jay B. Bradshaw, Ted A. Bradshaw, Denise Fogle and
4 Judith A. Skates.

5 Q. What is the address of Gary Bradshaw
6 as identified by the tax records?

7 A. 2802 Prophet Road, Rock Falls,
8 Illinois 61071.

9 Q. What is the address of James Bradshaw
10 as identified by the county's authentic tax records?

11 A. 22802 Prophet Road, Rock Falls,
12 Illinois.

13 Q. What is the address of Jay B. Bradshaw
14 as identified by the county's authentic tax records?

15 A. 22802 Prophet Road, Rock Falls,
16 Illinois 61071.

17 Q. What was the address of Ted Bradshaw
18 as identified by the county's authentic tax records?

19 A. 22802 Prophet Road, Rock Falls,
20 Illinois 61071.

21 Q. And what is the address of Denise
22 Fogle as identified by the county's authentic tax
23 records?

24 A. 22802 Prophet Road, Rock Falls

1 Illinois 61071.

2 Q. As to those five owners, has the
3 address been the same through February 7, 2003,
4 until today's date?

5 A. Yes.

6 Q. Now, what was the address of Judith
7 Skates as identified by the authentic tax returns?

8 A. 203 South Locust Street, Onarga,
9 Illinois 60955-1224.

10 Q. And from February 7, 2007, through
11 today's date, has her address always been the
12 Onarga, Illinois address?

13 A. Yes.

14 (Document marked as
15 Petitioner's Exhibit 1
16 for identification, 12/2/03.)

17 BY MR. PORTER:

18 Q. Let me show you a document I have had
19 marked as Respondent's Exhibit No. 9. The reason I
20 am starting with nine will become evident later.

21 What is that document?

22 (Document tendered
23 to the witness.)

24

1 BY THE WITNESS:

2 A. This is an affidavit that I signed
3 relating to the search of the records.

4 BY MR. PORTER:

5 Q. And is that, indeed, your original
6 signature on the affidavit?

7 A. Yes, it is.

8 Q. And is the affidavit true and correct?

9 A. Yes, it is.

10 Q. What is attached to the affidavit?

11 A. Attached to the affidavit is the main
12 property record card identifying all of the property
13 owners and an individual property card for each
14 property owner identifying their address.

15 Q. There is one final document in the
16 back. What is that document?

17 A. It's a change of address document
18 that was submitted with reference to Judith Bradshaw
19 Skates.

20 Q. May I have that document back, please?

21 A. Yes.

22 Q. Do you have a copy of that in your
23 folder?

24 A. Yes.

1 MR. PORTER: I would move admission
2 of Respondent's (sic.) Exhibit No. 9.

3 HEARING OFFICER HALLORAN: Do you
4 mean Respondent's Exhibit No. 9 or Petitioner's
5 Exhibit No. 9?

6 MR. PORTER: Petitioner's Exhibit
7 No. 9.

8 HEARING OFFICER HALLORAN: Counsel for
9 county and city?

10 MR. MUELLER: Subject to
11 cross-examination.

12 HEARING OFFICER HALLORAN: Okay. I'll
13 withhold my ruling.

14 MR. PORTER: Well, I'm sorry.
15 Mr. Hearing Officer, I believe what Mr. Mueller
16 indicated was that he had no objection subject
17 to his cross-examination.

18 HEARING OFFICER HALLORAN: Okay. Is
19 that correct, Mr. Mueller?

20 MR. MUELLER: I don't know until I
21 cross-examine her.

22 HEARING OFFICER HALLORAN: That's what
23 I understand.

24 City?

1 MR. LESHEN: Same.

2 MR. PORTER: I guess I'm looking
3 for a ruling because if I need to lay further
4 foundation, I have to do it on my direct
5 examination. I can't wait until Mr. Mueller
6 does his cross-examination and then have
7 a ruling on my motion to admit the exhibits.
8 That's why I did it now.

9 Foundationally, all of the
10 foundational elements necessary for admission
11 of the exhibit have been met, in my opinion,
12 and that's why I have tendered it.

13 HEARING OFFICER HALLORAN: Okay.
14 Mr. Mueller, anything further?

15 MR. MUELLER: Judge, can I see the
16 exhibit?

17 HEARING OFFICER HALLORAN: Sure.

18 MR. MUELLER: I do object because
19 these things are being tendered as authentic
20 tax records and we don't know that there aren't
21 more authentic tax records. In fact, we are
22 prepared to show some others. As such, I will
23 object on that basis.

24 In addition, the affidavit of

1 the witness is nothing but prior consistent
2 testimony. She can testify to everything.
3 We don't need her affidavit to supplement
4 the testimony.

5 HEARING OFFICER HALLORAN: City,
6 the same?

7 MR. LESHEN: We would join in that
8 objection.

9 HEARING OFFICER HALLORAN: I disagree
10 with you and it doesn't really matter regarding
11 the affidavit. You know, again, it would be
12 helpful if the hearing officer does -- would
13 have copies of these proposed exhibits or --

14 MR. PORTER: I have it.

15 HEARING OFFICER HALLORAN: -- offered
16 exhibits.

17 You do?

18 MR. PORTER: I do have it.

19 HEARING OFFICER HALLORAN: Do you
20 need another copy, Mr. Mueller?

21 (Document tendered
22 to the hearing officer.)

23 HEARING OFFICER HALLORAN: I'm going
24 to go ahead and allow Petitioner's Exhibit

1 No. 9 to come into evidence over the objection
2 of Town and Country and the city. I do find
3 that there was enough testimony and foundation
4 regarding the authenticity of the documents.

5 With that said, Petitioner's
6 Exhibit No. 9 is admitted into evidence over
7 objection.

8 (Whereupon, Petitioner's
9 Exhibit No. 9 was
10 admitted into evidence.)

11 HEARING OFFICER HALLORAN: You may
12 proceed, Mr. Porter.

13 MR. PORTER: Thank you, Mr. Halloran.

14 BY MR. PORTER:

15 Q. On the first page of the exhibit,
16 attached to Petitioner's Exhibit No. 9, there is a
17 parcel owner list, is that correct?

18 A. Yes.

19 Q. And it is from that card, which is
20 from the computer generated screen, is that correct?

21 A. Yes.

22 Q. It's from that computer generated
23 screen that you determine who the owners are of a
24 specific property, is that right?

1 A. Yes.

2 Q. And that database is the shared
3 database of both the assessor's office and the
4 treasurer and tax collector's office, is that
5 correct?

6 A. Yes.

7 Q. Now, as to the address change cards,
8 when was that scanned?

9 A. The scanning date appears March 7,
10 2002.

11 Q. So we know that Ms. Skates brought the
12 address change card to the county at some time
13 before or on March 7, 2002, is that correct?

14 A. Yes.

15 Q. And once that address change card is
16 scanned in, is the address to that specific owner
17 then changed on the computer?

18 A. Yes.

19 Q. Could Ms. Skates have changed the
20 addresses of the other owners?

21 MR. MUELLER: I'm going to object.
22 That calls for knowledge beyond this
23 witness's -- testimony beyond this witness's
24 knowledge.

1 HEARING OFFICER HALLORAN: I will
2 overrule your objection. You can answer.

3 BY THE WITNESS:

4 A. We would not have adjusted any of
5 the others unless Ms. Skates would have had a power
6 of attorney or actual authority to do so on their
7 behalf.

8 BY MR. PORTER:

9 Q. Now, on that owner list, if one
10 scrolls down the owner list, it changes the owner's
11 detail, is that correct?

12 A. Yes.

13 Q. When one highlights, for example,
14 Gary Bradshaw, the owner detail shows a Rock Falls
15 address, is that correct?

16 A. Yes.

17 Q. And that was true on February 7, 2003,
18 until today's date, is that correct?

19 A. Yes.

20 Q. That's the same for James Bradshaw,
21 Jay Bradshaw, Ted Bradshaw and Denise Fogle, is that
22 right?

23 A. Yes.

24 Q. If one were to scroll down to Judith

1 Skates on February 7, 2003, they would have found
2 the Onarga address, correct?

3 A. Yes.

4 Q. And would have found the Onarga
5 address ever since the change for Ms. Skates on
6 March 7, 2002, correct?

7 A. Yes.

8 Q. What is Ms. Skates' entire name as
9 reflected on her address change card?

10 A. Judith Bradshaw Skates.

11 Q. Let me show you what I'm going to have
12 marked as Petitioner's Exhibit No. 10.

13 (Document marked as
14 Petitioner's Exhibit
15 No. 10 for identification, 12/2/03.)

16 BY MR. PORTER:

17 Q. All right. Now, are you familiar with
18 Mr. Mark Frechette?

19 (Document tendered
20 to the witness.)

21 BY THE WITNESS:

22 A. Yes.

23 BY MR. PORTER:

24 Q. What is his job?

1 A. It's county treasurer and county tax
2 collector for Kankakee County.

3 Q. Have you had an opportunity to see his
4 signature in the past?

5 A. Many times. He actually signs my
6 payroll check. I see it frequently.

7 Q. I would like for you to turn to the
8 third page of Exhibit 10, which I suppose I should
9 hand you, and tell me if that's his signature.

10 A. I recognize that as his signature.

11 Q. And the documents attached to Mark
12 Frechette's affidavit are again documents from that
13 shared database, is that correct?

14 A. On his tax inquiry side, yes.

15 Q. And those are business records of the
16 county, is that correct?

17 A. Correct.

18 MR. PORTER: I move for the admission
19 of Exhibit 10.

20 HEARING OFFICER HALLORAN: Okay.
21 Mr. Mueller?

22 MR. MUELLER: Well, that's a hearsay
23 document. We can't get Mr. Frechette's
24 testimony in by identifying the signature on

1 unsworn statement. I mean, that's the ultimate
2 hearsay.

3 HEARING OFFICER HALLORAN: City?

4 MR. LESHEN: She is -- we join in
5 the objection. I will make it quick.

6 HEARING OFFICER HALLORAN: Okay.
7 Mr. Porter?

8 MR. PORTER: I believe she just
9 testified it was a business record and that
10 she can identify the signature and accordingly,
11 the foundation that has been laid to admit it
12 into evidence.

13 MR. MUELLER: His affidavit is not
14 a business record. Maybe the attachments are.

15 HEARING OFFICER HALLORAN: You know,
16 I agree with Mr. Mueller. The attachments, I
17 find, are business records. This affidavit
18 is -- he is not here to testify. What I will
19 do is admit the attachments regarding the --

20 MR. PORTER: As Petitioner's No. 10?

21 HEARING OFFICER HALLORAN: This is
22 Petitioner's Exhibit No. 10.

23 MR. PORTER: That will be the -- the
24 exhibit will be admitted as Petitioner's Exhibit

1 No. 10 and I will offer Mr. Frechette's
2 affidavit as public comment.

3 Would you like for me to hand
4 to you the public comment now or save it for
5 later?

6 HEARING OFFICER HALLORAN: It would
7 probably be good to do it now before it gets
8 lost in the confusion.

9 MR. PORTER: Mr. Halloran, how would
10 you like for me to mark public comments?

11 HEARING OFFICER HALLORAN: I will
12 just mark it as Hearing Officer Exhibit No. 1
13 or H.O. or something like that.

14 MR. PORTER: I'll just leave a blank
15 sticker on it.

16 HEARING OFFICER HALLORAN: Okay.

17 MR. MUELLER: Mr. Halloran, my way
18 of showing the proceeding -- just let the
19 record show that my silence with regard to
20 these items is not indicating acquiesce to
21 them. I understand the public comments can
22 be received regardless of their content or
23 accuracy, but we intend to file a motion
24 with regard to these specific affidavits

1 going into the file.

2 HEARING OFFICER HALLORAN: The
3 record so notes. Thank you, Mr. Mueller.
4 However, I will accept this affidavit
5 marked as Hearing Officer Exhibit No. 1
6 and it will be taken as public comment.

7 (Document marked as
8 Hearing Officer Exhibit No. 1
9 for identification, 12/2/03.)

10 MR. PORTER: So I don't forget, I
11 will hand you Petitioner's Exhibit 9 right
12 now.

13 HEARING OFFICER HALLORAN: Mr. Porter,
14 can you take this back?

15 MR. PORTER: Thank you. You also
16 have a copy of nine if you want to get that
17 out of your hair.

18 HEARING OFFICER HALLORAN: I have a
19 copy of nine?

20 MR. PORTER: Right. You've got a
21 copy and the original up there if you want
22 to get rid of one.

23 HEARING OFFICER HALLORAN: Oh, okay.

24 MR. PORTER: I have nothing further.

1 Thank you.

2 HEARING OFFICER HALLORAN: Thank you,
3 Mr. Porter. How do you want to do this?

4 Mr. Moran, do you have any
5 direct of this witness?

6 MR. MORAN: I have no questions.

7 HEARING OFFICER HALLORAN: Okay.
8 Mr. Sandberg, do you have any direct of this
9 witness?

10 MR. SANDBERG: No.

11 HEARING OFFICER HALLORAN: Okay.
12 Mr. Mueller?

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

14 by Mr. Mueller

15 Q. You are the assessor of Kankakee
16 County?

17 A. Assessment officer, yes.

18 Q. Are you an elected official?

19 A. No. I'm appointed.

20 Q. And who are you appointed by?

21 A. The Kankakee County Board.

22 Q. You indicate that the treasurer signs
23 your paychecks?

24 A. Yes.

1 Q. Is he your boss?

2 A. No, he is not, but the checks are
3 signed by the county clerk and treasurer.

4 Q. You report directly to the county?

5 A. That's correct.

6 Q. Directing your attention to the
7 index property parcel owner list cards, which were
8 attached to your affidavit, now, you indicate that
9 there was a main property card and then you can
10 access a card for each listed owner?

11 A. That's right.

12 Q. So when a person would input the
13 parcel number, which is 13-16-23-400-001 into the
14 computer, the first thing that comes up is a card
15 that has Gary Bradshaw's name highlighted, is that
16 right?

17 A. The first one that should come up
18 would be, in fact, all six that are listed --

19 Q. Okay.

20 A. -- as the total owners.

21 Q. All right. So the first one --

22 A. And then Gary Bradshaw, but it would
23 be all the owners are on the parcel owner list.

24 Q. And that first card, which you call

1 the main card that comes up, has an address of 22802
2 Prophet Road, Rock Falls, Illinois, is that correct?

3 A. That's right.

4 Q. And it shows that address, then, for
5 all of the owners without differentiation between
6 any of them, correct?

7 A. Other than Judith --

8 Q. Well, the first one --

9 MR. PORTER: Wait, wait, wait.

10 Mr. Hearing Officer, please, allow her to
11 finish her answer.

12 MR. MUELLER: Okay. I'm talking
13 about the first card and I just wanted to
14 clarify that.

15 BY THE WITNESS:

16 A. Okay. The first card refers -- if
17 you see this, you see it not only refers to a
18 highlight of Gary Bradshaw, but it relates to
19 anything that is dealing with Gary Bradshaw.

20 BY MR. MUELLER:

21 Q. But I think you called that the main
22 card, didn't you?

23 A. Well, for lack of -- it is the
24 one that would show all of the ownership. Maybe

1 I intended it to -- maybe it was an incorrect
2 statement when I said main card.

3 Q. So if the card that shows all of
4 the ownership -- the first one that comes up shows
5 only the Rock Falls address, right?

6 A. Under the name of Gary Bradshaw, yes.

7 Q. Do you know whether Gary Bradshaw
8 actually resides at that Rock Falls address?

9 A. No, I do not.

10 Q. Do you know whether James Bradshaw
11 actually resides at that Rock Falls address?

12 A. No, I do not.

13 Q. Do you know whether Jay Bradshaw
14 actually resides at that Rock Falls address?

15 A. No, I do not.

16 Q. Do you know whether Ted Bradshaw
17 actually resides at that Rock Falls address?

18 A. No, I do not.

19 Q. Do you know whether Denise Fogle
20 actually resides at that Rock Falls address?

21 A. No, I do not.

22 Q. Now, let's then move to the change
23 of address card, which is the last page of your
24 exhibit.

1 Do you have that, ma'am?

2 A. Yes.

3 Q. Now, at the top, there is a
4 handwritten card.

5 First of all, do you see that?

6 A. Are you talking about the address
7 change, the address?

8 Q. Yes.

9 A. Yes.

10 Q. It's entitled name and address change
11 only?

12 A. Uh-huh.

13 Q. That's an authentic tax record
14 maintained by the county, isn't it?

15 A. We have this imaged in this particular
16 parcel number, yes.

17 Q. And, in fact, the paper copy, the
18 original of that change of address form, exists
19 somewhere in the county archives, doesn't it?

20 A. I would say, yes. I would say it
21 does.

22 Q. And that would be an authentic tax
23 record of Kankakee County?

24 A. Well, it would be an authentic tax

1 record for a request for a change of address.

2 Q. And the parcel that is requested here
3 is 13-16-23-400-001, right?

4 A. Yes.

5 Q. And then underneath, in handwriting,
6 does it say there Skates, Judith Ann Bradshaw?

7 A. Yes.

8 Q. Now, apparently Judith Skates filed a
9 name and address change for another parcel on the
10 same date, didn't she?

11 A. Yes, she did.

12 Q. Let's go down to that for a second.
13 Is that 17-08-02-300-001?

14 A. Yes, it is.

15 Q. And underneath, she has written what?

16 A. It looked like Bradshaw. I'm not sure
17 what the middle one is and then Skates, Judith. Can
18 you make out that print?

19 Q. How about Bradshaw, Sara Jane, and
20 Skates, Judith?

21 A. Yes.

22 Q. So she has a couple of names listed
23 there?

24 A. Uh-huh.

1 Q. Right?

2 A. Yes.

3 Q. And she is not also known as Sara Jane
4 Bradshaw, is she?

5 MR. PORTER: Objection, foundation.

6 MR. MUELLER: Only if she knows.

7 HEARING OFFICER HALLORAN: She may
8 answer if she is able.

9 BY THE WITNESS:

10 A. I -- I would -- I don't believe.

11 BY MR. MUELLER:

12 Q. And then it is signed by her as Judith
13 Bradshaw Skates?

14 A. Correct.

15 Q. The top part is signed as Judith
16 Bradshaw Skates?

17 A. Yes.

18 Q. Doesn't it appear, then, that
19 Ms. Skates used both of these name and address
20 change cards to change the address for all of
21 the owners of the referenced parcels?

22 A. I would not have interpreted it
23 that way because she is only listing Bradshaw.
24 There are many other Bradshaws there for us to

1 know -- that that would automatically absorb all
2 of the ownerships. We wouldn't have-- we wouldn't
3 have made that choice.

4 Q. And then if you go to the portion
5 on the right here of the address changes, you will
6 see that the change of address is reflected for
7 the entire parcel, isn't it?

8 A. I guess I'm not following you. Do you
9 mean the parcel number?

10 Q. Yes.

11 A. Well, it's reflected because she is
12 part of that ownership. That's the owner we have in
13 the system.

14 Q. So the change of address that she
15 filed was filed as to the entire parcel, wasn't
16 it?

17 MR. PORTER: Objection. That
18 misstates the evidence already in the record.

19 HEARING OFFICER HALLORAN: Okay.
20 Mr. Mueller?

21 MR. MUELLER: Based upon this
22 document that we are looking at right now,
23 the last page of the exhibit.

24 HEARING OFFICER HALLORAN: I'll

1 allow her to answer. You may proceed.

2

3 BY THE WITNESS:

4 A. I wouldn't say that because it's
5 only one name that's being adjusted here within
6 the parcel. It's only one owner out of the six.

7 BY MR. MUELLER:

8 Q. Now, the record that is shown on the
9 last page of your exhibit doesn't indicate that the
10 change of address is limited to only one owner,
11 does it?

12 A. Well, that's the scanning document.
13 We only have one number in the system.

14 Q. Now, is that a yes or a no?

15 Does that document reflect that
16 the change of address is limited only to one owner?

17 MR. PORTER: Objection, asked
18 and answered.

19 HEARING OFFICER HALLORAN: I agree.
20 Sustained.

21 BY MR. MUELLER:

22 Q. Now, does the county collect real
23 estate taxes?

24 A. Does the county collect? Yes.

1 Q. And is the vehicle for the collection
2 of real estate taxes the sending of real estate tax
3 bills?

4 A. Yes.

5 Q. And are real estate tax bills
6 authentic tax records of the county?

7 MR. POWER: Objection, calls
8 for a legal conclusion.

9 MR. MUELLER: She has showed or
10 demonstrated a great ability in identifying
11 authentic tax records.

12 HEARING OFFICER HALLORAN: Overruled.
13 She may answer if she is able.

14 BY THE WITNESS:

15 A. Well, it would be as it reflects -- I
16 mean, I could answer for authentic tax records as it
17 relates to my office.

18 BY MR. MUELLER:

19 Q. Who prepares real estate tax bills?

20 A. The county collector and treasurer.

21 Q. And do you rely on those tax bills as
22 being authentic?

23 A. I rely on my records as we enter
24 them. My records are what I consider authentic for

1 my purpose.

2 Q. And for the purpose of collecting
3 taxes, what are the authentic tax records?

4 A. Well, he feeds into our system.

5 Q. The treasurer is the one that sends
6 out the tax bills, correct?

7 A. That's right.

8 Q. That is Mr. Frechette?

9 A. Yes.

10 Q. And where does he get his information
11 from as to where to send the tax bills?

12 MR. PORTER: Objection, calls for
13 conjecture.

14 HEARING OFFICER HALLORAN: She may
15 answer if she is able. Overruled.

16 BY THE WITNESS:

17 A. It's through our system and if you
18 will look at the record, it indicates mailing flags
19 and wherever there is a mailing flag, if we
20 establish that as it relates to the four notices
21 that are listed on the parcel card.

22 BY MR. MUELLER:

23 Q. What do you mean by mailing flags?

24 A. If you look at the records within

1 the -- the property records in the right-hand
2 corner, you will see a box that says mailing
3 flags.

4 MR. PORTER: Just for the record,
5 we're looking at the attachments for Exhibit
6 No. 9?

7 THE WITNESS: Yes.

8 HEARING OFFICER HALLORAN: Thank you,
9 Mr. Porter.

10 BY MR. MUELLER:

11 Q. Well, that was very helpful and I
12 notice that on the mailing flag, the tax bill and
13 notices are not to be sent to Gary Bradshaw, is
14 that correct?

15 A. That's correct.

16 Q. Tax bills and notices are not to be
17 sent to James Bradshaw, correct?

18 A. That's correct.

19 Q. Tax bills and notices are not to be
20 sent to Jay Bradshaw, correct?

21 A. That's correct.

22 HEARING OFFICER HALLORAN: You know,
23 before we go too far afield, are we looking
24 at, as Mr. Porter suggested, Petitioner's

1 Exhibit No. 9 or 10?

2 MR. MUELLER: Nine. At the bottom
3 right of those index cards is a section entitled
4 mailing flags, Mr. Halloran.

5 HEARING OFFICER HALLORAN: Okay. I
6 see. I'm sorry. Proceed.

7 BY MR. MUELLER:

8 Q. I think we're on Jay Bradshaw. Tax
9 bills and notices are not to be sent to him,
10 correct?

11 A. Correct.

12 Q. And if we go to Ted Bradshaw, tax
13 bills and notices are not to be sent to him,
14 correct?

15 A. Correct.

16 Q. And then we'll go to Judith Skates --
17 excuse me -- Denise Fogle. Tax bills and notices
18 are not to be sent to her?

19 A. Correct.

20 Q. And then when we go to Judith Skates,
21 tax bills and notices are to be sent to her at the
22 Locust Street address in Onarga, right?

23 A. Correct.

24 Q. Now, how would you know to send tax

1 bills and notices for all of these individuals, to
2 Judith Skates in Onarga rather than to the various
3 Bradshaws in Rock Falls?

4 A. Because that was their request to
5 send them to her and we indicated that we would
6 send notices relating to the taxes, namely, the tax
7 bill, change notice, delinquent notice, extension
8 notice, et cetera, to her.

9 Q. I thought you had testified that
10 unless she had a power of attorney, you would
11 not change the address of any other individual
12 for purposes of receiving notices?

13 MR. PORTER: Objection. That
14 completely mischaracterizes her prior
15 testimony. What she testified was that
16 the county keeps records as to the addresses
17 of the owners and that one cannot change
18 the address of an owner unless they are
19 that specific owner. She never indicated
20 one could not indicate where a tax bill
21 was going to be sent.

22 HEARING OFFICER HALLORAN: That's
23 what I remember.

24 Mr. Mueller?

1 MR. MUELLER: It's cross-examination
2 and I'm entitled to query and I would object
3 to Mr. Porter's speaking objections, which
4 were intended to coach the witness.

5 HEARING OFFICER HALLORAN: Okay.
6 Well, I agree with Mr. Porter. You have
7 mischaracterized her testimony.

8 MR. MUELLER: Let me rephrase it.

9 HEARING OFFICER HALLORAN: Thank
10 you.

11 BY MR. MUELLER:

12 Q. Ms. Donahoe, based upon Judith
13 Skates' requests or request, as indicated in the
14 name and address change, which she filed, notices
15 and bills are no longer sent to any of the Bradshaws
16 at the Rock Falls addresses, is that correct?

17 A. That's correct.

18 Q. And if you were to send anything
19 to any of the Bradshaws, it will be sent here,
20 to Judith Skates in Onarga, Illinois?

21 A. If I were sending anything on this
22 parcel as it relates to these four notices, it
23 would be sent to Judith Skates.

24 Q. And with that, let me then show you

1 what we will mark as --

2 MR. MUELLER: Mr. Halloran, I presume
3 we're respondent, correct?

4 HEARING OFFICER HALLORAN: That's
5 right, this time. We need a score card to
6 keep track.

7 (Document marked as
8 Respondent's Exhibit
9 No. 1 for identification, 12/2/03.)

10 BY MR. MUELLER:

11 Q. Let me show you what has been marked
12 has Respondent's Exhibit No. 1 and ask you if you
13 recognize that document.

14 (Document tendered
15 to the witness.)

16 BY THE WITNESS:

17 A. I recognize it as being a tax bill.

18 BY MR. MUELLER:

19 Q. And is it a tax bill for the 2001 tax
20 year?

21 A. It will be payable in 2002. 2001 is
22 payable in 2002.

23 Q. It's your understanding that a real
24 estate tax bill is always in arrears for a year?

1 A. Yes.

2 Q. So that's the tax bill that would have
3 been sent in the spring or summer of 2002?

4 A. Correct.

5 Q. Tax bills are sent out annually?

6 A. Yes.

7 Q. So that would be a copy of the
8 most recent tax bill for that parcel; namely,
9 13-16-23-400-001, available prior to March 7,
10 2003, correct?

11 A. Correct.

12 Q. And the tax bill is sent to Judith
13 Skates in Onarga, Illinois, isn't it?

14 A. Yes.

15 MR. MUELLER: No further questions.

16 HEARING OFFICER HALLORAN: Thank you,
17 Mr. Mueller.

18 City?

19 MR. MUELLER: Mr. Halloran, if I
20 may, I would like to reopen for one question.

21 HEARING OFFICER HALLORAN: Sure.

22 BY MR. MUELLER:

23 Q. Showing you Respondent's Exhibit No. 1
24 again, Ms. Donahoe, that is an authentic tax record

1 for Kankakee County, isn't it?

2 A. It would appear to be.

3 MR. MUELLER: Thank you. That's
4 all.

5 HEARING OFFICER HALLORAN: Thank
6 you, Mr. Mueller.

7 MR. LESHEN: We have no questions.
8 Thank you.

9 HEARING OFFICER HALLORAN: Thank
10 you.

11 Mr. Porter, redirect?

12 MR. PORTER: Sure.

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

14 by Mr. Porter

15 Q. First, on Exhibit 9, the mailing flag
16 box, what exact documents are referenced in the
17 mailing flag box?

18 A. Tax bill, change notice.

19 Q. What is a change notice?

20 A. Change of assessment notice. Also,
21 delinquent notice.

22 Q. What is that?

23 A. If taxes are delinquent and the
24 treasurer has to send out a notice.

1 Q. What is that?

2 A. If they have an exemption to the
3 property and by law, they filled out a notice,
4 it would be flagged to send it to the appropriate
5 person.

6 Q. Now, if someone came to your office
7 and requested the names of the owners of a
8 particular parcel of property and their addresses,
9 would the fact that certain documents were mailed
10 to one address in any way affect -- strike that.

11 What impact does the mailing
12 flag have on the address of a specific owner?

13 A. Only for the purpose of naming the
14 individual who wants to receive any one of these
15 four notices.

16 Q. At any time did anyone in your office
17 ever inform the applicant that Judith Skates was
18 the agent for service of process of all of the other
19 owners of that property?

20 MR. MUELLER: Beyond scope of direct.

21 HEARING OFFICER HALLORAN: Okay.

22 Mr. Porter?

23 MR. PORTER: I don't believe it's
24 beyond the scope.

1 HEARING OFFICER HALLORAN: She may
2 answer if she is able.

3 BY THE WITNESS:

4 A. In talking with my staff and
5 questioning them about this, the only information
6 they would have that would be on these cards, it
7 would indicate that every owner is listed and
8 every owner has an address.

9 BY MR. PORTER:

10 Q. Nowhere on this card does it say that
11 Section 32.2(b) notices shall be sent to Judith
12 Skates under the Illinois Environmental Protection
13 Act, correct?

14 A. No, it does not.

15 MR. PORTER: Nothing further.

16 HEARING OFFICER HALLORAN: Thank you,
17 Mr. Mueller, recross?

18 MR. MUELLER: Yes. Thank you.

19 R E C R O S S - E X A M I N A T I O N
20 by Mr. Mueller

21 Q. Ms. Donahoe, going back to the mailing
22 flags --

23 A. Uh-huh.

24 Q. -- you show tax bills, change notices,

1 delinquent notices and exemption notices, is that
2 correct?

3 A. Correct.

4 Q. Does the county send any other types
5 of documents to property owners besides documents in
6 those four categories?

7 A. I would say no.

8 MR. MUELLER: Thank you. That's all.

9 HEARING OFFICER HALLORAN: Any
10 re-redirect, Mr. Porter?

11 MR. PORTER: No.

12 HEARING OFFICER HALLORAN: Does the
13 city have any questions?

14 MR. LESHEN: No.

15 HEARING OFFICER HALLORAN: You may
16 step down, Ms. Donahoe. Thank you very much.

17 (Witness excused.)

18 HEARING OFFICER HALLORAN: Let's take
19 a break.

20 (Whereupon, after a short
21 break was had, the
22 following proceedings
23 were held accordingly.)

24 HEARING OFFICER HALLORAN: All right.

1 We're going back on the record.

2 We took approximately a
3 15-minute break or thereabouts. In any event,
4 we are going to have discussions off the record
5 to stipulate as to documents that will be
6 admitted into evidence.

7 Mr. Porter?

8 MR. PORTER: I believe we have a
9 number of them. We will just go through the
10 exhibits as they come.

11 HEARING OFFICER HALLORAN: I guess
12 we are missing Mr. Sandberg. Have you seen
13 him walking the halls or anything?

14 MR. MUELLER: Didn't he leave for
15 medical reasons?

16 MR. PORTER: I thought he was still
17 here.

18 HEARING OFFICER HALLORAN: Oh, okay.
19 Mr. Sandberg. Great.

20 All right. In any event,
21 we are going to take a few moments to stipulate
22 to a few documents to be admitted into evidence.

23 MR. PORTER: The first document
24 is the findings of fact, conclusion of law,

1 which was identified as Deposition Exhibit
2 No. 1. It's important that it be admitted
3 even though it's probably already in the
4 record because it has a deposition exhibit
5 sticker on it and it would make the
6 depositions that we're stipulating to
7 understandable.

8 I believe the other parties
9 have no objection and I would mark it as
10 Petitioner's Exhibit No. 1.

11 (Document marked as
12 Petitioner's Exhibit No. 1
13 for identification, 12/2/03.)

14 HEARING OFFICER HALLORAN: Okay. No
15 objection, Mr. Mueller?

16 MR. MUELLER: No.

17 HEARING OFFICER HALLORAN: And
18 Mr. Sandberg, any objection?

19 MR. SANDBERG: No.

20 HEARING OFFICER HALLORAN: Okay.
21 Petitioner's Exhibit No. 1 will be admitted
22 into the evidence.

23

24

1 (Whereupon, Petitioner's
2 Exhibit No. 1 was
3 admitted into evidence.)

4 HEARING OFFICER HALLORAN: You may
5 continue.

6 (Document marked as
7 Petitioner's Exhibit No. 2
8 for identification, 12/2/03.)

9 MR. PORTER: Petitioner's Exhibit
10 No. 2 is the -- is a draft of the findings
11 of fact that was done of the vote of the
12 city council and it's also referenced as
13 Deposition Exhibit No. 2 in some of the
14 various depositions.

15 HEARING OFFICER HALLORAN: Okay.
16 Mr. Mueller?

17 MR. MUELLER: He needs to tell me
18 with a little more specificity which one he
19 is talking about now. Is it the one with
20 the handwriting on it?

21 MR. PORTER: No, Deposition Exhibit
22 No. 2 is the copy that was actually handed
23 to the city council or at least that is my
24 understanding and it is not the one with

1 the handwritten marks on it.

2 MR. MUELLER: It's the draft that
3 was given to them that day?

4 MR. PORTER: Well, the deposition
5 testimony is going to speak to what it is
6 and I think Mr. Bohlen and another witness
7 had slightly different testimony as to what
8 it was, but it is not the one that
9 Mr. Schaeffer marked up. It is not his
10 marked up copy.

11 MR. MUELLER: I understand. No
12 objection.

13 HEARING OFFICER HALLORAN: That's
14 marked as Petitioner's Exhibit No. 2.

15 Mr. Sandberg?

16 MR. SANDBERG: No objection.

17 HEARING OFFICER HALLORAN: Okay.
18 Petitioner's Exhibit No. 2 is admitted into
19 evidence.

20 (Whereupon, Petitioner's
21 Exhibit No. 2 was
22 admitted into evidence.)

23 MR. LESHEN: No objection.

24 HEARING OFFICER HALLORAN: The city

1 has no objection.

2 Mr. Porter?

3 (Document marked as
4 Petitioner's Exhibit No. 3
5 for identification, 12/2/03.)

6 MR. PORTER: Petitioner's Exhibit
7 No. 3 is a report of -- actually, a letter
8 by a Mr. Yarborough dated April 14, 2003,
9 to Mr. Simms and is referenced in the
10 depositions as Deposition Exhibit No. 3.

11 MR. MUELLER: No objection.

12 MR. LESHEN: No objection.

13 HEARING OFFICER HALLORAN: Okay.

14 Mr. Sandberg?

15 MR. SANDBERG: No objection.

16 HEARING OFFICER HALLORAN: So
17 admitted, Petitioner's Exhibit No. 3 into
18 evidence.

19 (Whereupon, Petitioner's
20 Exhibit No. 3 was
21 admitted into evidence.)

22 MR. PORTER: Thank you.

23

24

1 (Document marked as
2 Petitioner's Exhibit No. 4
3 for identification, 12/2/03.)

4 MR. PORTER: Petitioner's Exhibit
5 No. 4 is a letter dated May 1, 2003, again
6 from Mr. Yarborough to Mr. Simms and it is
7 referenced in the deposition as Deposition
8 Exhibit No. 4.

9 MR. MUELLER: No objection.

10 MR. LESHEN: No objection.

11 MR. SANDBERG: No objection.

12 HEARING OFFICER HALLORAN: Counsel for
13 Waste Management, do you have any objections to
14 Exhibits 1, 2, 3 and 4?

15 MR. MORAN: I have no objection.

16 HEARING OFFICER HALLORAN: Thank you,
17 Mr. Moran.

18 Petitioner's Exhibit No. 4 is
19 admitted.

20 (Whereupon, Petitioner's
21 Exhibit No. 4 was
22 admitted into evidence.)

23 HEARING OFFICER HALLORAN: Continue.

24

1 (Document marked as
2 Petitioner's Exhibit No. 5
3 for identification, 12/2/03.)

4 MR. PORTER: Petitioner Exhibit
5 No. 5 is a letter from Mr. Yarborough to
6 Mr. Simms dated July 24, 2003, and Bates
7 stamped in the mayor's office as July 28th
8 and Bates stamped by the clerk's office
9 as July 31st.

10 MR. MUELLER: No objection.

11 MR. LESHEN: No objection.

12 HEARING OFFICER HALLORAN: Okay.

13 Mr. Moran?

14 MR. MORAN: No objection.

15 HEARING OFFICER HALLORAN: That
16 exhibit will be admitted as Petitioner's
17 Exhibit No. 5.

18 (Whereupon, Petitioner's
19 Exhibit No. 5 was
20 admitted into evidence.)

21 MR. PORTER: This will be Exhibit 6.

22 (Document marked as
23 Petitioner's Exhibit No. 6
24 for identification, 12/2/03.)

1 MR. PORTER: Petitioner's Exhibit
2 No. 6 is a memo from Nancy Smithberg, the
3 administrative assistant to Mr. Bohlen,
4 to Robert Boyd which reads in toto
5 for your reading pleasure. It is dated
6 August 4, 2003, and it is referenced in
7 the depositions as Deposition Exhibit
8 No. 6.

9 MR. MUELLER: No objection.

10 MR. SANDBERG: No objection.

11 HEARING OFFICER HALLORAN: Mr. Moran?

12 MR. MORAN: No.

13 MR. LESHEN: No objection.

14 HEARING OFFICER HALLORAN: Okay.
15 Petitioner's Exhibit No. 6 is admitted into
16 evidence.

17 (Whereupon, Petitioner's
18 Exhibit No. 6 was
19 admitted into evidence.)

20 MR. PORTER: I just need to take
21 a minute to find my exhibit stickers.

22 HEARING OFFICER HALLORAN: I have
23 some white ones.

24 MR. PORTER: I have an entire bag.

1 I'll just use yours. That should cover it.

2 Thanks.

3 We're on Exhibit 7, is that
4 correct?

5 HEARING OFFICER HALLORAN: Correct.

6 (Document marked as
7 Petitioner's Exhibit No. 7
8 for identification, 12/2/03.)

9 MR. PORTER: Petitioner's Exhibit
10 No. 7 is a letter from Robert Boyd to Mayor
11 Green dated August 18, 2003. It is referenced
12 in the depositions as Exhibit No. 7 in the
13 depositions.

14 MR. MUELLER: No objection.

15 HEARING OFFICER HALLORAN: Mr. Leshen?

16 MR. LESHEN: No objection.

17 MR. MORAN: No objection.

18 MR. SANDBERG: No objection.

19 HEARING OFFICER HALLORAN: So
20 admitted.

21 (Whereupon, Petitioner's
22 Exhibit No. 7 was
23 admitted into evidence.)

24 HEARING OFFICER HALLORAN: We're on

1 Exhibit 8 now.

2 (Document marked as
3 Petitioner's Exhibit No. 8
4 for identification, 12/2/03.)

5 MR. PORTER: Petitioner's Exhibit
6 No. 8 is another version of the findings of
7 fact and conclusions of law from the city
8 of Kankakee and it's the version marked up
9 by Mr. Schaffer and it's also referenced in
10 the depositions as Deposition Exhibit No. 8.

11 HEARING OFFICER HALLORAN: Any
12 objections, Mr. Mueller?

13 MR. MUELLER: No objection.

14 HEARING OFFICER HALLORAN: And
15 Mr. Leshen?

16 MR. LESHEN: No objection.

17 HEARING OFFICER HALLORAN: Mr. Moran?

18 MR. MORAN: No objection.

19 (Whereupon, Petitioner's
20 Exhibit No. 8 was
21 admitted into evidence.)

22 MR. PORTER: Nine and ten are
23 admitted already.

24 HEARING OFFICER HALLORAN: Correct.

1 (Document marked as
2 Petitioner's Exhibit No. 11
3 for identification, 12/2/03.)

4 MR. PORTER: Petitioner's Exhibit
5 No. 11 is a memo dated May 2nd of 2003
6 from Mr. Yarborough to Mr. Simms, which
7 was referenced in his deposition, but was
8 not marked at that time because it was not
9 available.

10 MR. MUELLER: What was the date
11 again?

12 MR. PORTER: May 2, 2003.

13 MR. MUELLER: No objection.

14 HEARING OFFICER HALLORAN: Mr. Leshen?

15 MR. LESHEN: No objection.

16 HEARING OFFICER HALLORAN: All right.
17 Petitioner's Exhibit No. 11 is admitted into
18 evidence and when I say petitioner, it's
19 the county.

20 (Whereupon, Petitioner's
21 Exhibit No. 11 was
22 admitted into evidence.)

23 MR. PORTER: Thank you.

24

1 (Document marked as
2 Petitioner's Exhibit No. 12
3 for identification, 12/2/03.)

4 MR. PORTER: Petitioner's Exhibit
5 No. 12 is a copy of the complaint for injunctive
6 relief, Kankakee County Case No. 3 CH 166. This
7 is the injunctive case filed on July 11, 2003.

8 MR. LESHEN: Is that a filed stamped
9 copy?

10 MR. PORTER: Yes. It is a filed
11 stamped copy.

12 MR. MUELLER: No objection.

13 MR. LESHEN: No objection.

14 MR. MORAN: No objection.

15 MR. SANDBERG: No objection.

16 MR. PORTER: I need to make my
17 disclosure a little bit fuller. Here, let
18 me take a look at what's on there. It's
19 actually all the pleadings related to that
20 case.

21 By the way, these particular
22 things are actually already part of the
23 record. They are attached to a motion to
24 quash that I filed that I'm refiling just

1 for safety's sake.

2 MR. MUELLER: Mr. Halloran, let
3 me interpose an objection to relevance, but
4 we have no objection to foundation and I
5 will waive arguments on the relevance
6 objection.

7 HEARING OFFICER HALLORAN: On
8 Petitioner's Exhibit No. 12?

9 MR. MUELLER: Yes.

10 HEARING OFFICER HALLORAN: Okay.
11 I would like to take a look at it for a
12 moment.

13 MR. PORTER: If the hearing officer
14 is going to attend to the relevance, the
15 objection to relevance is that this is the
16 very pleading that the city filed and it
17 associates pleadings and motions in regard
18 to that case against the county attempting
19 to bar the county from defending its solid
20 waste management plan. That's the violation
21 of the city's own rule and authority.

22 HEARING OFFICER HALLORAN: Was this
23 in the record, did you say?

24 MR. PORTER: That particular one

1 is already in the record attached to my motion
2 to quash. I'm about to -- I'd prefer that it
3 be admitted again as an exhibit because I'm
4 going to seek to admit another complaint that
5 is not part of the record yet.

6 HEARING OFFICER HALLORAN: I'm going
7 to overrule your objection as to relevancy.
8 I find that it could be relevant. For
9 clarification, Petitioner's Exhibit No. 12,
10 Mr. Mueller has an objection as to relevancy.
11 I have overruled that.

12 Mr. Leshen?

13 MR. LESHEN: We have no position.
14 I mean, if it's going to come in, let it come
15 in.

16 HEARING OFFICER HALLORAN: Mr. Moran?

17 MR. MORAN: No objection.

18 HEARING OFFICER HALLORAN: And
19 Mr. Sandberg?

20 MR. SANDBERG: No objection.

21 HEARING OFFICER HALLORAN: Petition's
22 Exhibit No. 12 is admitted.

23

24

1 (Whereupon, Petitioner's
2 Exhibit No. 12 was
3 admitted into evidence.)

4 MR. PORTER. This is next.

5 (Document marked as
6 Petitioner's Exhibit No. 13
7 for identification, 12/2/03.)

8 MR. PORTER: Petitioner's Exhibit 13
9 is also a complaint filed by the city against
10 the county. This one is No. 2 CH 400 and this
11 was the complaint for declaratory injunctive
12 relief filed by the city seeking to bar the
13 county from using its solid waste funds to
14 participate in the citing process.

15 HEARING OFFICER HALLORAN: Okay.
16 Mr. Mueller?

17 MR. MUELLER: Object on relevance,
18 no objection on foundation. I'll waive
19 argument.

20 HEARING OFFICER HALLORAN: Thank
21 you. I'm going to overrule your objection
22 on relevance.

23 Mr. Leshen?

24 MR. LESHEN: I have no objection

1 to the admission, but I do object to the
2 characterization and if the Court looks at --
3 when the Board looks at a pleading, I
4 believe it will determine under where it
5 says relief requested that we are -- that
6 the city in that lawsuit seeks and sought
7 an injunctive relief against the county
8 in joining the county from the improper
9 expenditure of funds and that is a different --
10 that's just nothing to do with the citing
11 issue.

12 What this has to do is can
13 the county use these funds in a particular
14 way. It's the city's position that it
15 could not and cannot and that's an illegal
16 expenditure of funds and --

17 MR. PORTER: Okay. But --

18 MR. LESHEN: If I could finish,
19 just like you asked me.

20 MR. PORTER: Sorry.

21 MR. LESHEN: That's not the --
22 the issue is not should or could the
23 county participate as it determined
24 and was allowed to participate in the

1 citing hearings. The issue is could
2 they spend money that the city believed
3 it would spend illegally for certain
4 purposes and that is the reason for
5 the filing of this lawsuit.

6 HEARING OFFICER HALLORAN: Okay.
7 The record will so reflect your issue with
8 Mr. Porter's characterization.

9 Mr. Porter?

10 MR. PORTER: Do you have No. 12?

11 HEARING OFFICER HALLORAN: Yes.

12 MR. PORTER: I'll keep them all
13 in order.

14 HEARING OFFICER HALLORAN: Okay.

15 MR. PORTER: Was that admitted?

16 HEARING OFFICER HALLORAN: I'm
17 waiting on you to follow-up on Mr. Leshen's
18 argument.

19 MR. PORTER: Well, Mr. Leshen did
20 not object to the admittance. He just
21 objected to the characterization. I allowed
22 him to finish and I was going to withdraw
23 the characterization, if that would help.

24 HEARING OFFICER HALLORAN: If

1 there is no objection, and I see no hands,
2 Petitioner's Exhibit No. 13 is admitted.

3 (Whereupon, Petitioner's
4 Exhibit No. 13 was
5 admitted into evidence.)

6 HEARING OFFICER HALLORAN: Do you
7 have anything further?

8 MR. PORTER: Yes.

9 (Document marked as
10 Petitioner's Exhibit No. 14
11 for identification, 12/2/03.)

12 MR. PORTER: All right. Petitioner's
13 Exhibit No. 14 is the deposition of City
14 Attorney Christopher Bohlen, which was taken
15 yesterday and my understanding is all the
16 parties are stipulating as to the admission
17 of this document.

18 Actually, some of the exhibits
19 are already admitted with the proviso that
20 Mr. Mueller would like to ask Mr. Bohlen a
21 few additional questions and I'm not waiving
22 my right to cross-examine him on those
23 questions.

24 MR. MUELLER: That's correct.

1 MR. LESHEN: That's correct.

2 HEARING OFFICER HALLORAN: Mr. Moran?

3 MR. MORAN: No objection.

4 HEARING OFFICER HALLORAN: Okay.

5 Mr. Sandberg?

6 MR. SANDBERG: No objection.

7 HEARING OFFICER HALLORAN: Okay.

8 Petitioner's Exhibit 14 will be admitted
9 subject to Mr. Mueller's questions of
10 Mr. Bohlen.

11 (Whereupon, Petitioner's
12 Exhibit No. 14 was
13 admitted into evidence.)
14 (Document marked as
15 Petitioner's Exhibit No. 15
16 for identification, 12/2/03.)

17 MR. POWER: Petitioner's Exhibit
18 No. 15 is the deposition of Robert W. Boyd
19 taken on the 14th day of November. My
20 understanding is all the parties are
21 stipulating to its admission.

22 MR. MUELLER: Correct.

23 MR. LESHEN: Correct.

24 MR. MORAN: No objection.

1 MR. SANDBERG: No objection.

2 HEARING OFFICER HALLORAN: I'm sorry.
3 What was No. 15 again?

4 MR. PORTER: Exhibit No. 15 is the
5 deposition testimony of Hearing Officer Robert
6 W. Boyd.

7 HEARING OFFICER HALLORAN: Exhibit
8 No. 15 is admitted.

9 (Whereupon, Petitioner's
10 Exhibit No. 15 was
11 admitted into evidence.)

12 HEARING OFFICER HALLORAN: I need
13 to back up. I see that Petitioner's Exhibit
14 No. 14 is subject to the direct of Mr. Bohlen.

15 Petitioner's Exhibit 15 was
16 admitted.

17 (Document marked as
18 Petitioner's Exhibit No. 16
19 for identification, 12/2/03.)

20 MR. PORTER: Petitioner's Exhibit
21 No. 16 is the deposition of Ronald E. Yarborough
22 taken also on November 14 and again, the parties
23 are going to stipulate to its admission as
24 evidence.

1 HEARING OFFICER HALLORAN: Okay.

2 Mr. Mueller?

3 MR. MUELLER: No objection.

4 MR. LESHEN: No objection.

5 MR. MORAN: No objection.

6 MR. SANDBERG: No objection.

7 HEARING OFFICER HALLORAN: Exhibit

8 No. 16 is admitted.

9 (Whereupon, Petitioner's
10 Exhibit No. 16 was
11 admitted into evidence.)

12 MR. PORTER: I believe the record
13 is clear, but the admission of all three of
14 those depositions are as evidence.

15 HEARING OFFICER HALLORAN: That's
16 correct.

17 MR. PORTER: Thank you. I believe --
18 oh, I'm sorry. I also have several affidavits
19 of the owners of the parcel of property that
20 was at issue in regard to Mrs. Donahoe's
21 testimony and I'm offering those as public
22 comment.

23 Specifically, they are the
24 affidavits of Denise Fogle, which is a signed

1 original affidavit, the affidavit of Judith
2 Skates, which again is a signed original
3 affidavit, and photocopies of the affidavits
4 of Gary Bradshaw, Ted Bradshaw, Jay, J-A-Y,
5 D. Bradshaw, and James Bradshaw.

6 Mr. Hearing Officer, would
7 you like to make the record as to how you
8 are going to mark those?

9 HEARING OFFICER HALLORAN: Yes.
10 Mr. Mueller, do you have any comments
11 regarding the county's submission or
12 offering of those public comments?

13 MR. MUELLER: I don't think
14 the procedure calls for their admission
15 or my objection to their admission, but
16 I want the record to reflect that we
17 will file a motion to strike at some
18 point in the future.

19 HEARING OFFICER HALLORAN: I
20 agree. I'm not admitting them. I stand
21 corrected.

22 Mr. Leshen?

23 MR. LESHEN: Same here.

24 HEARING OFFICER HALLORAN: Mr. Moran

1 and Mr. Sandberg?

2 MR. SANDBERG: No objection.

3 MR. MORAN: No objection.

4 HEARING OFFICER HALLORAN: In any
5 event, I'm going to take these with, in any
6 case. I'll mark Mark Frechette's affidavit --
7 I don't remember having that down. I heard
8 you say Denise Fogle. Mark Frechette was
9 missed.

10 MR. PORTER: Oh, Mark Frechette
11 was admitted as a public comment attachment.
12 That's why you don't have the affidavit,
13 which is actually going to be somewhat
14 strange. I don't need that admitted as
15 well.

16 HEARING OFFICER HALLORAN: We
17 don't need that for now? I do have the
18 Mark Frechette affidavit as Hearing Officer
19 Exhibit No. 1.

20 MR. PORTER: Right. For the record,
21 Petitioner's Exhibit No. 10 were the documents
22 attached to Hearing Officer Exhibit No. 1 as
23 Exhibit A.

24 HEARING OFFICER HALLORAN: Okay.

1 The record will reflect that.

2 The affidavit of Denise Fogle
3 will be Hearing Officer Exhibit No. 2
4 (Document marked as
5 Hearing Officer Exhibit No. 2
6 for identification, 12/2/03.)

7 HEARING OFFICER HALLORAN: The
8 affidavit of Judith Skates is going to be
9 Hearing Officer Exhibit 3.

10 (Document marked as
11 Hearing Officer Exhibit No. 3
12 for identification, 12/2/03.)

13 HEARING OFFICER HALLORAN: The
14 affidavit of Gary Bradshaw is Hearing Officer
15 Exhibit 4.

16 (Document marked as
17 Hearing Officer Exhibit
18 No. 4 for identification, 12/2/03.)

19 HEARING OFFICER HALLORAN: The
20 affidavit of Ted Bradshaw is Hearing Officer
21 Exhibit 5.

22 (Document marked as
23 Hearing officer Exhibit No. 5
24 for identification, 12/2/03.)

1 HEARING OFFICER HALLORAN: The
2 affidavit of Jay B. Bradshaw is Hearing
3 Officer Exhibit 6.

4 (Document marked as
5 Hearing Officer Exhibit No. 6
6 for identification, 12/2/03.)

7 HEARING OFFICER HALLORAN: The
8 affidavit of James Bradshaw is Hearing Officer
9 Exhibit 7.

10 (Document marked as
11 Hearing Officer Exhibit No. 7
12 for identification, 12/2/03.)

13 HEARING OFFICER HALLORAN: Thank you.
14 Anything further, Mr. Porter?

15 MR. PORTER: This morning, the parties
16 agreed to stipulate to certain testimony of
17 Ms. Dumas that I was going to elicit on direct
18 examination of her and we have not discussed
19 the specific language of that stipulation, but
20 what I propose is that Ms. Dumas would
21 acknowledge that -- strike that.

22 The city and Mr. Mueller have
23 agreed and stipulated that the reports of
24 Mr. Ronald Yarborough were not put into

1 the public record by July 28, 2003, which
2 was the date the record closed. Let's
3 start there.

4 MR. LESHEN: What I would prefer
5 to do here is to just get these stipulations
6 as to testimony in writing that we all
7 agreed to rather than just winging it on
8 the fly here. So over the lunch hour, I
9 can get together -- this is different from
10 documentary evidence. This is -- I think
11 it would make a cleaner record.

12 If we all have a chance to
13 sit down at a computer and say this is
14 it, this is it, we'll all sign off on it.
15 So that's my recommendation here rather
16 than trying to work out the language. I
17 think we all know what we're trying to say,
18 but as we all know, everybody is going to
19 have different words or describe a different
20 meaning and I would rather not try to do
21 it on the fly while on the record.

22 MR. PORTER: I have no objection
23 to the document being drafted to show a
24 stipulation.

1 HEARING OFFICER HALLORAN: And
2 then it would be a hearing officer exhibit.

3 Do you think -- how long a
4 lunch hour do you need since it's a working
5 lunch hour?

6 MR. LESHEN: Time sufficient to
7 do that.

8 HEARING OFFICER HALLORAN: Okay.
9 Mr. Porter, anything further?

10 MR. PORTER: I believe -- maybe
11 I'll come up with more over the lunch hour
12 here, but right now, I believe that covers
13 all of the exhibits and we will address the
14 stipulations. As long as the stipulations
15 are accomplished, we will be in a position --
16 oh, I'm sorry. I just found a whole bunch
17 more exhibits. Bear with me.

18 What number am I on?

19 HEARING OFFICER HALLORAN: You are on
20 Petitioner's Exhibit No. 17.

21 (Document marked as
22 Petitioner's Exhibit No. 17
23 for identification, 12/2/03.)

24 MR. PORTER: Petitioner's Exhibit

1 No. 17 is the city's answers to the
2 interrogatories propounded by the County
3 of Kankakee and attached thereto are the
4 actual interrogatories because the city
5 doesn't write out the interrogatories.

6 HEARING OFFICER HALLORAN: Okay.

7 Mr. Mueller?

8 MR. MUELLER: No objection.

9 MR. LESHEN: No objection.

10 MR. MORAN: No objection.

11 MR. SANDBERG: No objection.

12 HEARING OFFICER HALLORAN: Okay.

13 Petitioner's Exhibit No. 17 is admitted
14 into evidence.

15 (Whereupon, Petitioner's
16 Exhibit No. 17 was
17 admitted into evidence.)

18 MR. PORTER: Exhibit 18 is next.

19 (Document marked as
20 Petitioner's Exhibit No. 18
21 for identification, 12/2/03.)

22 MR. PORTER: Petitioner's 18 are the
23 city of Kankakee's answers to Waste Management's
24 interrogatories.

1 HEARING OFFICER HALLORAN: All right.

2 Mr. Mueller?

3 MR. MUELLER: No objection.

4 MR. LESHEN: No objection.

5 MR. MORAN: No objection.

6 MR. SANDBERG: No objection.

7 HEARING OFFICER HALLORAN: Then

8 Petitioner's Exhibit 18 is admitted.

9 (Whereupon, Petitioner's
10 Exhibit No. 18 was
11 admitted into evidence.)

12 MR. PORTER: This will be 19.

13 (Document marked as
14 Petitioner's Exhibit No. 19
15 for identification, 12/2/03.)

16 MR. PORTER: Petitioner's Exhibit
17 No. 19 is city of Kankakee's response to the
18 county of Kankakee's document request.

19 MR. MUELLER: No objection.

20 MR. POWER: No objection.

21 MR. MORAN: No objection.

22 MR. SANDBERG: No objection.

23 HEARING OFFICER HALLORAN: Thank you.

24 Petitioner's 19 is admitted.

1 (Whereupon, Petitioner's
2 Exhibit No. 19 was
3 admitted into evidence.)

4 MR. PORTER: I'm sorry. In the way
5 of complete disclosure, attached to Exhibit 19
6 is the actual request because again, the city
7 did not write out what the questions were in
8 the response.

9 HEARING OFFICER HALLORAN: Any
10 objections?

11 MR. MUELLER: No.

12 MR. POWER: No.

13 MR. SANDBERG: No objection.

14 MR. MORAN: No objection.

15 (Document marked as
16 Petitioner's Exhibit No. 20
17 for identification, 12/2/03.)

18 MR. PORTER: Petitioner's No. 20 is
19 respondent, Town and Country's, response to
20 the county of Kankakee's document request and
21 all the documents attached thereto.

22 MR. MUELLER: No objection.

23 MR. POWER: No objection.

24 MR. MORAN: No objection.

1 MR. SANDBERG: No objection.

2 HEARING OFFICER HALLORAN: Thank you.

3 Petitioner's Exhibit No. 20 is admitted.

4 (Whereupon, Petitioner's
5 Exhibit No. 20 was
6 admitted into evidence.)

7 MR. PORTER: Thank you.

8 (Document marked as
9 Petitioner's Exhibit No. 21
10 for identification, 12/2/03.)

11 MR. PORTER: Don't told me to it, but
12 I think this is last.

13 Petitioner's Exhibit 21 is
14 respondent, Town and Country's, answers to
15 interrogatories by Waste Management.

16 MR. MUELLER: No objection.

17 MR. POWER: No objection.

18 MR. MORAN: No objection.

19 MR. SANDBERG: No objection.

20 HEARING OFFICER HALLORAN: Okay.
21 Petitioner's Exhibit No. 21 is admitted into
22 evidence.

23

24

1 (Whereupon, Petitioner's
2 Exhibit No. 21 was
3 admitted into evidence.)

4 MR. PORTER: That is the extent
5 of those documents. However, I have with me
6 the entire record of the Illinois Pollution
7 Control Board concerning the prior application
8 of Town and Country and it's referenced in
9 PCB 03-31, 33 around 35.

10 We have had some discussions
11 outside of the record today that I would much
12 prefer that we come to some solution where
13 I don't have to give up my one and only copy
14 of that entire record.

15 I think we can address that now,
16 but I need that admitted into the record and
17 I believe that the different parties have
18 stipulated that this can be admitted into this
19 record. I would ask that the hearing officer
20 take judicial notice of that record with the
21 understanding it's not in possession of the
22 Illinois Pollution Control Board hearing
23 officer.

24 HEARING OFFICER HALLORAN: We can go

1 off the record for a minute to discuss this.

2 (Whereupon, a discussion
3 was had off the record.)

4 HEARING OFFICER HALLORAN: We talked
5 before about copies being provided by, say,
6 December 12 or something thereabouts.

7 MR. MUELLER: Is Mr. Porter's
8 proposition to copy it and submit it in
9 due course? I don't have a problem with
10 that.

11 MR. PORTER: I just don't want
12 to give up my one and only copy.

13 MR. MUELLER: I don't have a
14 problem with him copying it and submitting
15 it on some date other than today because
16 I'm aware that the PCB's copy of the record
17 is up at the third district appellate court.

18 HEARING OFFICER HALLORAN: Or at
19 the attorney general's office.

20 MR. MUELLER: It's moving around.

21 HEARING OFFICER HALLORAN: Any
22 thoughts, Mr. Porter?

23 MR. PORTER: I will have a copy at
24 a later date within the next two weeks.

1 HEARING OFFICER HALLORAN: Two weeks?
2 I was thinking more by the time it was eight
3 business days or by the time the transcript was
4 ready.

5 MR. PORTER: That's fine.

6 HEARING OFFICER HALLORAN: The
7 transcript is due December 15 so can you
8 have it by then?

9 MR. PORTER: Yes. Thank you
10 very much.

11 HEARING OFFICER HALLORAN: Okay.
12 Mr. Sandberg, do you have a problem or objection
13 with that?

14 MR. PORTER: That would be Group
15 Exhibit 21?

16 MR. MUELLER: It would be 22.

17 (Document marked as
18 Petitioner's Exhibit No. 22
19 for identification, 12/2/03.)

20 HEARING OFFICER HALLORAN: Group
21 Exhibit 22 will be admitted into evidence
22 when it is copied. We're talking about
23 the entire record in 3-31, 33 and 35. The
24 due date for that record will be December

1 15th. Okay. So admitted.

2 (Whereupon, Petitioner's
3 Exhibit No. 22 was
4 admitted into evidence.)

5 MR. PORTER: That's all I have other
6 than panning out the stipulation.

7 HEARING OFFICER HALLORAN: How long
8 do you want to take, 60 minutes or 70 minutes?
9 I don't know.

10 MR. LESHEN: Sixty is good.

11 HEARING OFFICER HALLORAN: Before we
12 adjourn, do any members of the audience want
13 to state their peace before lunch?

14 Okay. I see a bunch of nos. You
15 have a great lunch. See you at 2:00 o'clock.

16 By the way, Mr. Sandberg
17 is going to leave us now. He is a little sick.
18 He is going to take off for the rest of the
19 hearing. The hearing will be concluded today.
20 Thank you.

21 (Whereupon, after a short
22 break was had, the
23 following proceedings
24 were held accordingly.)

1 HEARING OFFICER HALLORAN: We're back
2 on the record after an about an hour and a half
3 lunch.

4 Now, Respondent's Exhibit No. 1
5 is a 2001 tax statement for parcel number
6 13-16-23-400-001. Is there any objection?

7 MR. PORTER: None whatsoever.

8 HEARING OFFICER HALLORAN: Okay.
9 Respondent's Exhibit No. 1 will be admitted
10 into evidence.

11 (Whereupon, Respondent's
12 Exhibit No. 1 was
13 admitted into evidence.)

14 HEARING OFFICER HALLORAN: Also,
15 Mr. Sandberg, before he left, and I don't
16 think he will return to the hearing, has
17 offered an exhibit that says opening statement
18 by Byron Sandberg, which he recited pretty
19 much in its entirety.

20 This will be marked as Hearing
21 Officer Exhibit No. 8 as a public comment.

22 (Document marked as
23 Hearing Officer Exhibit No. 8
24 for identification, 12/2/03.)

1 HEARING OFFICER HALLORAN: With
2 that said, Mr. Porter?

3 (Document marked as
4 Petitioner's Exhibit No. 23
5 for identification, 12/2/03.)

6 MR. PORTER: Thank you, Mr. Halloran.
7 I believe we are up to admitting -- during the
8 lunch break, we had a discussion of whether or
9 not we could stipulate to the deposition of
10 Mr. Volini. That has now been approved by all
11 parties is my understanding and I would offer
12 the deposition of Mr. Volini as Petitioner's
13 Exhibit No. 23.

14 MR. MUELLER: No objection.

15 MR. LESHEN: No objection.

16 HEARING OFFICER HALLORAN: Mr. Moran?

17 MR. MORAN: No objection.

18 HEARING OFFICER HALLORAN: Okay.

19 Petitioner's Exhibit 23 will be admitted.

20 (Whereupon, Petitioner's
21 Exhibit No. 23 was
22 admitted into evidence.)

23 HEARING OFFICER HALLORAN: Okay.

24

1 (Document marked as
2 Petitioner's Exhibit No. 24
3 for identification, 12/2/03.)

4 MR. PORTER: We have also discussed --
5 in addition to Mr. Volini, I intended to call
6 Ms. Dumas, but apparently we have --

7 HEARING OFFICER HALLORAN: Dumas,
8 is that correct?

9 MR. PORTER: Correct.

10 MR. LESHEN: That is correct.

11 MR. POWER: That's correct.

12 MR. PORTER: Ms. Dumas was going
13 to be one of the witnesses I had subpoenaed
14 to testify today and the city and the other
15 parties have agreed to a stipulation as to
16 what her testimony would have been and
17 specifically, I will mark that as Petitioner's
18 Exhibit 24, which is a document entitled
19 stipulation, and it provides "the parties
20 hereto stipulate that Anjanita Dumas, city
21 clerk of the city of Kankakee, would testify
22 as follows: Public comments filed by the
23 county of Kankakee were timely filed. The
24 report Ronald Yarborough, Ph.D. admitted

1 as Petitioner's Exhibits 3, 4 and 5 were
2 received in the office of the city clerk
3 on July 31 of 2003, which was after the
4 public record closed."

5 HEARING OFFICER HALLORAN: All
6 parties stipulated?

7 MR. MUELLER: So stipulated.

8 MR. LESHEN: Yes.

9 HEARING OFFICER HALLORAN: Then
10 Petitioner's Exhibit 24 is admitted into
11 evidence.

12 (Whereupon, Petitioner's
13 Exhibit No. 24 was
14 admitted into evidence.)

15 MR. PORTER: I rest.

16 (Petitioner County of
17 Kankakee rests.)

18 HEARING OFFICER HALLORAN: Mr. Moran,
19 your case in chief?

20 MR. MORAN: We have no witnesses
21 to present, Mr. Hearing Officer. We rest.

22 (Petitioner Waste
23 Management rests.)

24 HEARING OFFICER HALLORAN: Thank

1 you, Mr. Moran.

2 Mr. Sandberg obviously has
3 rested. He has left the hearing room before
4 lunch and he has indicated to me he will not
5 be back.

6 (Petitioner Byron Sandberg
7 rests.)

8 HEARING OFFICER HALLORAN: Okay.
9 Mr. Mueller?

10 MR. MUELLER: Respondent's Exhibit 1
11 has been admitted, correct?

12 HEARING OFFICER HALLORAN: Correct.

13 MR. MUELLER: We will call Chris
14 Bohlen.

15 HEARING OFFICER HALLORAN: Raise your
16 right hand to be sworn.

17 THE COURT REPORTER: Raise your right
18 hand, please. Do you swear that the testimony
19 that you are about to give is the truth, the
20 whole truth and nothing but the truth?

21 THE WITNESS: I do.

22 (Witness sworn.)

23 WHEREUPON:

24 C H R I S T O P H E R B O H L E N

1 called as a witness herein, having been first duly
2 sworn, depose and saith as follows:

3 DIRECT EXAMINATION

4 by Mr. Mueller

5 Q. Would you state your full name,
6 please?

7 A. Christopher Wayne Bohlen.

8 Q. And Mr. Bohlen, how are you employed?

9 A. I'm a licensed attorney in the state
10 of Illinois.

11 Q. And do you work for the City of
12 Kankakee?

13 A. I'm also the appointed corporation
14 counsel for city of Kankakee.

15 Q. How long have you had that position?

16 A. Since 1978 as corporation counsel.

17 Q. What are your general duties as
18 corporation counsel?

19 A. To provide representation and advice
20 to the office holders in the city of Kankakee
21 including those appointed such as the police chief,
22 department of public works, director of municipal
23 utility, also drafting ordinances, drafting
24 contracts, drafting documents and negotiating

1 agreements. On occasion, I provide advice to the
2 city council.

3 Q. Who is Richard Simms?

4 A. Richard Simms is the superintendent
5 of the city of Kankakee municipal utilities.

6 Q. He is an employee of the city?

7 A. Yes, it is.

8 Q. You provide advice to him on occasion?

9 A. I have in the past and still do, yes.

10 Q. And who was Ronald Yarborough in the
11 context of this proceeding?

12 A. Ronald Yarborough was a consultant
13 who was hired at the request of Richard Simms. The
14 city council agreed to hire Dr. Yarborough at the
15 request of Richard Simms to provide consulting
16 services regarding geology and -- which was an area
17 that Mr. Simms felt, especially in light of the last
18 Board opinion, that he needed additional support and
19 input from somebody qualified in that field.

20 Q. And you participated in assisting
21 Mr. Boyd, the hearing officer, in the preparation
22 of his proposed findings of fact as set forth with
23 more particularity in your deposition, isn't that
24 true?

1 MR. PORTER: I have to pose an
2 objection, George. We stipulated to the
3 deposition of Mr. Bohlen with the understanding
4 that you were going to cross-examine him solely
5 on a specific issue regarding his representation
6 of both the city council and the city staff.
7 It's obvious that we're going well beyond that
8 purpose.

9 MR. MUELLER: Actually, this is
10 preliminary still. I'm going to get right
11 to the heart of it.

12 HEARING OFFICER HALLORAN: Objection
13 overruled.

14 BY THE WITNESS:

15 A. As described in the deposition, I'm
16 not entirely comfortable with your characterization
17 in your question, but as described in the
18 deposition, that was my involvement, in the drafting
19 of -- the drafting and preparation of the proposed
20 findings by Hearing Officer Boyd.

21 BY MR. MUELLER:

22 Q. Now, in the course of your being
23 involved with this process, meaning the citing
24 hearing process, were you called upon to provide

1 any legal advice or direction to the city council?

2 A. I was not requested nor did I, during
3 the course of this process, provide any specific
4 legal advice to any individual alderman nor did
5 the city council as a whole. The only involvement
6 there was it was disclosed in the minutes of the
7 August 18th meeting when we went through the
8 findings of fact.

9 Q. So the extent of your participation
10 with the city council in connection with their
11 deliberations is contained in its entirety in the
12 minutes of the August 18th meeting?

13 A. Correct.

14 Q. And did you provide any direction
15 to any city council member or advice to any city
16 council member ever with regard to any aspect of
17 this request for citing approval?

18 A. No, not in either this hearing or the
19 prior hearing.

20 Q. And Mr. Bohlen, did you participate
21 in the deliberations of the city council?

22 A. Only to the extent disclosed. I
23 guess I was facilitating the deliberations as we
24 went through the various findings of fact relating

1 to the criteria that was what was disclosed in the
2 meeting.

3 Q. Was your facilitation limited to
4 presenting the specific technical terms prepared
5 by other staff members such as Mr. Boyd and
6 Dr. Yarborough?

7 MR. PORTER: Objection, leading.
8 He is allowed to the certain degree, but
9 he is going beyond the scope.

10 HEARING OFFICER HALLORAN: Okay.

11 Mr. Mueller, would you please rephrase.

12 BY MR. MUELLER:

13 Q. When you say you facilitated to some
14 degree the deliberations as set forth on the
15 minutes, can you elaborate a little bit?

16 A. What I did was take the various
17 findings of facts -- proposed findings of facts that
18 had been -- that I had assured were delivered to the
19 aldermen, which included the proposed findings from
20 each of the parties and the proposed findings that
21 were prepared by Hearing Officer Boyd.

22 At the city council meeting, all
23 of those proposed findings, as well as the
24 transcripts, were available to the city council

1 members as well as to myself as disclosed in the
2 minutes. We went through the various proposed
3 findings of fact that were in the recommendations
4 of Hearing Officer Boyd and they were -- the city
5 council was asked to consider those as we went
6 through them literally in some cases page by page.

7 Q. You were asked at your deposition
8 now whether you represented the city council or the
9 city staff in connection with this citing proceeding
10 and I believe your answer was to the effect of --
11 that you represented the city without
12 differentiating between those two?

13 A. That's correct.

14 Q. If I asked you the same question again
15 and asked you to differentiate in terms of what you
16 actually did, could you answer in terms of whether
17 you represented city council or city staff?

18 A. I provided -- in terms of my
19 representation of the city of Kankakee during the
20 course of this hearing, I was not asked to, nor did
21 I, provide any specific legal advice to the city
22 council regarding anything contained in the citing
23 application.

24 I was asked by various staff

1 members to provide some legal advice regarding how
2 to approach an issue and so forth and I did provide
3 legal advice and consultation to them.

4 Q. Lastly, Mr. Bohlen, the record in
5 PCB 03-31 reflects in your testimony in that
6 proceeding that you indicated you were personally
7 opposed to the development of this facility. Has
8 that --

9 MR. PORTER: I'm again going to
10 object. It's beyond the scope of the direct
11 if we assume the direct is the deposition.

12 HEARING OFFICER HALLORAN: Okay.
13 Mr. Mueller?

14 MR. MUELLER: Mr. Porter, in his
15 opening statement here, testified that part
16 of the process was a city attorney who was
17 in favor of seeing this application granted
18 and I was going to ask him just whether his --
19 the record also contains Mr. Bohlen's testimony
20 in the previous proceeding that he was opposed
21 to this application and to this proposed
22 landfill.

23 I think it's only fair, in light
24 of Mr. Porter's opening statement, to ask him

1 whether that opinion has changed.

2 HEARING OFFICER HALLORAN: I will
3 allow Mr. Mueller a little latitude. Objection
4 overruled.

5 BY THE WITNESS:

6 A. My personal opinion has not changed.

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

8 HEARING OFFICER HALLORAN: Mr. Leshen
9 do you have anything?

10 MR. LESHEN: Yes, I do.

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

12 by Mr. Leshen

13 Q. Mr. Bohlen I want to direct your
14 attention to Petitioner's Exhibits 3, 4 and 5, which
15 I will tell you are reports by Dr. Yarborough that
16 were the subject, at least partially, of the
17 stipulation, that was read into the record earlier
18 this afternoon.

19 Can you tell me how those reports
20 that were admitted as Exhibits 3, 4 and 5 came into
21 the -- into the mayor's office in the city of
22 Kankakee?

23 A. The reports were -- actually, the July
24 28th report, the letter dated July 24th, excuse me,

1 along with the two other reports were delivered to
2 the mayor's office by Richard Simms at my request.
3 They were then taken from the mayor's office a
4 couple of days after their delivery from the mayor's
5 office to the clerk's office. I then retrieved
6 those -- I was responsible for preparing the
7 public -- preparing the report of proceedings that
8 was going to be transmitted to the Illinois
9 Pollution Control Board.

10 Basically, what I did was I went
11 to the clerk's office and retrieved all of the
12 documents that were on file there. I thought that
13 it was important that those reports be included in
14 that record because they were reports that had been
15 distributed to the city council in writing and that
16 I felt that the city council had relied upon them
17 based upon the findings of fact and proposed
18 findings of fact that had been created.

19 So in order to ensure disclosure
20 to everybody as to everything that the city council
21 relied upon and for the Pollution Control Board to
22 have opportunity to see the same thing that the city
23 council saw in arriving at their decision, I
24 included that.

1 MR. LESHEN: Thank you.

2 HEARING OFFICER HALLORAN: Okay.

3 Mr. Porter?

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

5 by Mr. Porter

6 Q. On that latter point, you acknowledged
7 that the Yarborough reports were not part of the
8 record which closed on July 28, 2003.

9 MR. LESHEN: Objection. That is
10 the subject of the stipulation. That very
11 fact, after much wrangling back and forth
12 to the exact verbiage, was read into the
13 record and submitted to you in writing.

14 HEARING OFFICER HALLORAN: Okay.
15 Mr. Porter?

16 MR. PORTER: Actually, the
17 stipulation provides that Mrs. Dumas would
18 testify to that effect. I'm merely asking
19 this witness if he concurs.

20 MR. LESHEN: The stipulation is
21 clear as to what the dates were of the closing
22 of the public record and when the dates were
23 of these -- when the office of the city clerk --

24 MR. PORTER: I can make this short.

1 If the city is willing to stipulate outright
2 that the Yarborough reports were not included
3 in the public record on July 31, 2003, just
4 say so and I will withdraw the question.

5 MR. LESHEN: I stipulated exactly
6 as is in the written stipulation.

7 HEARING OFFICER HALLORAN: It says
8 in the stipulation that is already in the
9 written record that "the parties hereto
10 stipulate that Anjanita Dumas, city clerk
11 of the city of Kankakee, would testify as
12 follows: Public comments filed by the county
13 of Kankakee were timely filed. The report
14 Ronald Yarborough, Ph.D. admitted as
15 Petitioner's Exhibits 3, 4 and 5 were received
16 in the office of the city clerk on July 31 of
17 2003, which was after the public record closed."

18 MR. PORTER: I don't have any problem
19 with that with the prefatory paragraph that
20 Mrs. Dumas would testify as follows.

21 MR. LESHEN: Ms. Dumas is the city
22 clerk of --

23 MR. PORTER: If they're willing to
24 stipulate to it, just say so and I'll withdraw

1 it.

2 MR. LESHEN: I have stipulated exactly
3 as is in the written stipulation.

4 HEARING OFFICER HALLORAN: You know
5 what, I'm going to overrule your objection,
6 Mr. Leshen.

7 Mr. Bohlen, if you can answer,
8 do so.

9 THE WITNESS: Can you ask the question
10 again? I'm sorry.

11 BY MR. PORTER:

12 Q. You would acknowledge that the
13 Yarborough reports were not part of the public
14 record which closed on July 28, 2003, correct?

15 A. I would acknowledge that the
16 Yarborough reports were not filed in the city
17 clerk's office by July 28, 2003.

18 Q. And you would know that that is the
19 date the public record closed, correct?

20 A. Yes.

21 MR. PORTER: I have nothing further.

22 HEARING OFFICER HALLORAN: Mr. Moran?

23 MR. MORAN: Nothing, sir.

24 HEARING OFFICER HALLORAN: Okay.

1 Mr. Mueller redirect?

2 MR. MUELLER: No redirect.

3 HEARING OFFICER HALLORAN: Okay.

4 Mr. Leshen?

5 MR. LESHEN: No redirect.

6 HEARING OFFICER HALLORAN: You may
7 step down, Mr. Bohlen. Thank you very much.

8 (Witness excused.)

9 MR. MUELLER: Mr. Halloran,
10 respondent, Town and Country, rests.

11 (Respondent, Town and
12 Country, rests.)

13 HEARING OFFICER HALLORAN: Thank you,
14 Mr. Mueller.

15 HEARING OFFICER HALLORAN: Mr. Leshen,
16 the city?

17 MR. LESHEN: City of Kankakee rests.

18 (Respondent, city of
19 Kankakee rests.)

20 HEARING OFFICER HALLORAN: Rebuttal?

21 MR. MORAN: No.

22 HEARING OFFICER HALLORAN: We have
23 one member of the media. Would that member
24 like to make a statement or comment? He

1 says no.

2 Briefly, I would like to thank
3 the city for accommodating us in these city
4 council chambers and I also want to thank
5 Mr. Mueller for setting up the telephone
6 status conferences through AT&T. He really
7 streamlined it and it was great. Thank you
8 very much.

9 With that said, I think we will
10 go off the record for one minute to confirm
11 this briefing schedule that we have laid out
12 and the order dated February 8, 2003.

13 Off the record.

14 (Whereupon, a discussion
15 was had off the record.)

16 HEARING OFFICER HALLORAN: We're back
17 on the record.

18 We have been discussing the
19 post-hearing briefing schedule and I think
20 we have come up with a schedule subject to
21 the applicant maybe filing a waiver of
22 extension on the statutory decision deadline,
23 but we won't know that until probably Friday
24 of this week or at the latest, Monday.

1 If that happens, there will be
2 a telephonic status conference and we will
3 visit this briefing schedule.

4 As of now, the briefing schedule
5 goes as follows: The petitioners' opening
6 briefs are due to be filed on or before December
7 24th, and that's with the understanding that
8 the transcript will be ready no later than
9 December 15 on line.

10 As far as respondents' brief,
11 they are due on or before January 9th.

12 Public comment is due to be
13 filed on or about December 29th and
14 the petitioners' replies, if any, are due
15 to be filed by January 19th. As far as the
16 party briefs, the mailbox rule does not apply.
17 As far as the public comment period, the
18 mailbox rule does apply to them.

19 Without further ado, if
20 there are no other issues or questions,
21 I will be waiting by my phone to see if,
22 in fact, the applicant does file.

23 MR. MUELLER: Mr. Halloran, the
24 record should reflect that Town and Country

1 has already once extended the decision
2 deadline. What we are talking about is
3 a possible further extension and the only
4 other thing I would ask is if Mr. Porter
5 be kind enough to e-mail me the opening
6 brief rather than fax it as I don't expect
7 that I will be in my office on December 24th.

8 MR. PORTER: Absolutely.

9 MR. MUELLER: Okay. Thank you.

10 HEARING OFFICER HALLORAN: Before
11 I forget, I am supposed to make a credibility
12 determination of the witnesses who have
13 testified here today. Based upon my experience,
14 judgment and legal experience, I find that
15 there were no issues of credibility with
16 any of the witness that testified here today.

17 With that being said, I'm going
18 to adjourn. I will keep the hearing open, so
19 to speak, until 6:00 P.M. If you so choose,
20 you can leave. If anybody does come in, we will
21 be here obviously.

22 Thank you very much. Have a safe
23 trip home.

24 MR. PORTER: Thank you, Mr. Halloran.

1 (Whereupon, after a short
2 break was had, the following
3 proceedings were held
4 accordingly.)

5 HEARING OFFICER HALLORAN: We're back
6 on the record. It is now 6:00 p.m. on December
7 2, 2003. After holding the record open for any
8 further public comment, no participants arrived.
9 Therefore, this will conclude the hearing.
10 There will be no hearing held on December 3rd
11 or 4th. Thank you very much.

12
13 (Whereupon, no further
14 proceedings were held in the
15 above-entitled cause.)
16
17
18
19
20
21
22
23
24

1 STATE OF ILLINOIS)
) SS.

2 COUNTY OF C O O K)

3

4 I, LORI ANN ASAUSKAS, a notary public
5 within and for the County of Cook and State of
6 Illinois, do hereby certify that heretofore, to-wit,
7 on the 2nd day of December, A.D., 2003, personally
8 appeared before me at 385 East Oak Street, in the
9 City of Kankakee, County of Kankakee and State of
10 Illinois, the transcript of proceedings were called
11 by the Illinois Pollution Control Board in a certain
12 cause now pending and undetermined before the
13 Illinois Pollution Control Board, wherein Byron
14 Sandberg, et al., are the petitioners and The City
15 of Kankakee, et al., are the respondents.

16 I further certify that the said
17 witnesses were by me first duly sworn to testify the
18 truth, the whole truth and nothing but the truth in
19 the cause aforesaid; that the testimony then given
20 by them was by me reduced to writing by means of
21 shorthand in the presence of said witness and
22 afterwards transcribed upon a computer, and the
23 foregoing is a true and correct transcript of the
24 testimony so given by them as aforesaid.

1 I further certify that the reading
2 and signing of said proceedings will be presented
3 to the Illinois Pollution Control Board for review
4 and deliberations.

5 I further certify that the taking of
6 the proceedings were pursuant to notice to the
7 public, and that there were present at the taking
8 of the proceedings were the aforementioned parties.

9 I further certify that I am not
10 counsel for nor in any way related to any of the
11 parties to this suit, nor am I in any way interested
12 in the outcome thereof.

13 In testimony whereof I have hereunto
14 set my hand and affixed my notarial seal this 15th
15 of December, A.D., 2003.

16

17

LORI ANN ASAUSKAS, CSR, RPR.

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Notary Public, Cook County, IL

Illinois License No. 084-002890

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