

1 ILLINOIS POLLUTION CONTROL BOARD

2

3

IN THE MATTER OF:)

4)

MICHAEL R. PAWLOWSKI and)

5 DIANE K. PAWLOWSKI,)

)

6 Complainants,)

)

7 -vs-) PCB 99-82

) VOLUME II

8 DAVID JOHANSEN and TROY QUINLEY,)

individually and d/b/a)

9 BENCHWARMERS PUB, INC.,)

)

10 Respondents.)

11

12

13

14 The following is the transcript of a hearing

15 held in the above-entitled matter, taken

16 stenographically by Jennifer E. Johnson, CSR-RMR,

17 License No. 084-003039, a Notary Public in and for

18 the County of Tazewell and the State of Illinois,

19 before Amy Muran Felton, Hearing Officer, at the

20 Fairbury Fire Department, 320 West Locust Street,

21 Community Room, Fairbury, Illinois, on the 9th day

22 of November, A.D. 1999, commencing at approximately

23 8:56 a.m.

24

1 PRESENT:

2 HEARING TAKEN BEFORE:
3 ILLINOIS POLLUTION CONTROL BOARD
4 100 West Randolph Street
5 James R. Thompson Center, Suite 11-500
6 Chicago, Illinois 60601
7 (312) 814-7011
8 BY: MS. AMY MURAN FELTON

9 APPEARANCES:

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16 On Behalf of the Complainants.

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22 - and -

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29 On Behalf of the Respondents.

30 ALSO PRESENT:

31 Michael and Diane Pawlowski
David Johansen
Troy Quinley

22

MEMBERS OF THE PUBLIC WERE ALSO PRESENT

23

24

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1 HEARING OFFICER FELTON: Good morning. My name
2 is Amy Muran Felton. Today is Tuesday, November
3 9th, 1999, day two in this hearing, Michael R.
4 Pawlowski and Diane K. Pawlowski versus David
5 Johansen and Troy Quinley, individually and doing
6 business as Benchwarmers Pub, Incorporated. This is
7 docketed by the board as PCB 99-82. It is
8 approximately nine o'clock in the morning on
9 November 9th.

10 When we left yesterday, the complainants
11 had completed their case in chief and have rested.
12 And I just want to note for the record that the
13 respondents did make a motion for directed finding;
14 their arguments have been made. This is something I
15 cannot decide; I just want to restate that. The
16 board may take it up when the transcript and the
17 record is complete.

18 So, we'll proceed now, if there are no
19 other matters to be discussed, with the respondents'
20 case in chief.

21 MR. HARDING: Okay.

22 HEARING OFFICER FELTON: Great.

23 MR. SHIELDS: Call Sharon Walter.

24 (Witness sworn.)

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1 SHARON WALTER,
2 having been duly sworn by the court reporter,
3 testified upon her oath as follows:

4 DIRECT EXAMINATION

5 BY MR. SHIELDS:

6 Q. Sharon, for the record, would you state

7 your full name, please?

8 A. Sharon Walter.

9 Q. And your place of residence?

10 A. Fairbury.

11 Q. Your address?

12 A. 208 West Maple.

13 Q. And how long have you been a resident of

14 the City of Fairbury?

15 A. '81.

16 Q. Since 1981?

17 A. Uh-huh.

18 Q. And what is your occupation?

19 A. Executive secretary of the Association of

20 Commerce of Fairbury.

21 Q. And how many years have you been the

22 executive secretary for the Association of Commerce?

23 A. Ten, I think.

24 Q. And what are your duties and

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1 responsibilities as secretary for the Association of

2 Commerce?

3 A. I record minutes for all meetings, I'm an

4 ex-officio of all committees, I handle certain

5 events during the year. The association is a
6 chamber, in respect. It's called an association,
7 but it's a chamber of commerce, so we're here for
8 the businesses.

9 Q. Are you at -- where is the chamber of
10 commerce building located?

11 A. Our location is old city hall, which is
12 101 East Locust.

13 Q. And are you a full-time employee of the --

14 A. Yes.

15 Q. -- chamber? And are you familiar with the
16 parties? Do you know Michael Pawlowski?

17 A. Yes.

18 Q. And Diane --

19 A. Uh-huh.

20 Q. -- Pawlowski? Do you know Dave Johansen?

21 A. Yes.

22 Q. And Troy Quinley?

23 A. Yes.

24 Q. And you're familiar with the Benchwarmers

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1 Pub restaurant?

2 A. Yes.

3 Q. And the tavern also?

4 A. Uh-huh.

5 Q. And can you inform us of what you believe

6 the social value of Benchwarmers Pub is to the

7 Fairbury community area?

8 A. Any business that comes into Fairbury is

9 good for Fairbury, as far as bringing in sales tax,

10 et cetera.

11 Q. What about the social aspects? Is it a

12 gathering place for people in the Fairbury community

13 area?

14 MR. HARDING: Objection, foundation as to

15 personal knowledge.

16 HEARING OFFICER FELTON: Sustained.

17 MR. SHIELDS: I believe she's already --

18 HEARING OFFICER FELTON: Can you give a little

19 more background, elicit a little more background

20 about this business?

21 BY MR. SHIELDS:

22 Q. You're familiar with Benchwarmers Pub at

23 its current location on Locust Street?

24 A. Yes.

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1 Q. And you are aware of activities that are
2 sponsored by Benchwarmers Pub?

3 A. Yes.

4 Q. Can you name any of those?

5 A. They participate like with events like the
6 Fun Fest where they help sponsor the shoot-out,
7 sponsor 3-on-3 basketball tournament. They have had
8 personal events that the association's not involved
9 in, but --

10 Q. Are you aware of the charitable aspects,
11 spaghetti suppers, that type of thing?

12 A. Yes.

13 Q. And are you aware of any economic value
14 that Benchwarmers Pub has insofar as the Fairbury
15 community area?

16 A. It -- it went into a building in our
17 downtown that had sat vacant for several years, so
18 obviously it was something that the community felt
19 was an asset coming in because it -- it created new
20 business downtown.

21 MR. HARDING: Objection to the statement of
22 community opinion.

23 HEARING OFFICER FELTON: Sustained. I think if
24 you can speak to your personal knowledge, then

1 that's enough. You've laid a foundation as to who
2 you are. I think that that's warranted.

3 BY MR. SHIELDS:

4 Q. You mentioned a prior business that was
5 located at the West Locust Street location. That
6 included both the Pawlowskis' building and
7 Benchwarmers; is that correct?

8 A. Right. The Pawlowskis own a building
9 adjacent to the corner building.

10 Q. And the business that had formerly been
11 there was the Fairbury Blade; is that correct?

12 A. Yes.

13 Q. And did they have employees at the
14 Fairbury Blade?

15 A. Yes.

16 Q. And what happened to the Fairbury Blade?

17 A. It was sold.

18 Q. And did those employees lose their jobs
19 then or move out of Fairbury, if you're aware?

20 A. Some did. Some reestablished within the
21 area.

22 Q. Do you have any idea how many employees
23 Benchwarmers Pub has?

24 A. No.

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1 Q. Are you aware of any taxes that
2 Benchwarmers Pub pays?

3 A. No.

4 Q. Do you know whether or not they have a
5 liquor license fee that's paid to the City of
6 Fairbury?

7 A. I do not know that.

8 Q. As a ten-year member of the Fairbury
9 Association of Commerce and as the secretary of the
10 Association of Commerce, do you believe that
11 Benchwarmers Pub's location is suitable to the area?

12 A. It's a commercial business in a commercial
13 building.

14 Q. Can you name and describe other businesses
15 on Locust Street?

16 A. As -- we have banks, we have shopping, we
17 have other bars, we have -- we had a restaurant that
18 was downtown. It's closed at this time.

19 Q. What was that restaurant?

20 A. The Golden Cup.

21 Q. Where was that located?

22 A. Across the street from Benchwarmers.
23 Q. And directly across the street from the
24 Pawlowskis also?

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1 A. Yes.
2 Q. Were you familiar with the operation of
3 the Golden Cup?
4 A. Not personally.
5 Q. You knew it was located across the street?
6 A. Yes.
7 Q. Was it a 24-hour restaurant?
8 A. No.
9 Q. Was it a 24-hour restaurant on the
10 weekends, to the best of your knowledge?
11 A. I'm not aware of that.
12 Q. With regard to the complainant, Michael
13 Pawlowski, have you had occasion to meet with
14 Mr. Pawlowski?
15 A. He requested a meeting with our board for
16 the Association of Commerce, our board of directors.
17 Q. And when was that?
18 A. April 11th, '98.

19 Q. And what was the purpose of the meeting
20 that he requested?

21 A. He -- he wanted to have the board listen
22 to his concern over a new liquor license being
23 established for the community.

24 Q. And did Mr. Pawlowski make a presentation

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1 at that meeting?

2 A. Yes.

3 Q. And who else was present?

4 A. Do you want me to name them?

5 Q. Yes.

6 A. Darren Bray, Dave Hammer, Dave Tredennick,
7 Rex Ackerman, Deb Oelschlager, Sharon Walter,
8 Dr. Henry Handler, Lori Maley, and Gary Hofmann.

9 MR. HARDING: I would object to reading from a
10 document without that document being shared.

11 HEARING OFFICER FELTON: Is that something that
12 you're going to enter into evidence, Mr. Shields?

13 MR. SHIELDS: Yes, we can do that.

14 BY MR. SHIELDS:

15 Q. Is that the only copy you have?

16 A. Uh-huh.

17 MR. SHIELDS: Well, I believe that you already
18 have a copy.

19 MR. HARDING: I'm looking for my copy. Do you
20 have at least one copy of it?

21 MR. SHIELDS: I thought I did.

22 MR. HARDING: Do you have a copy of it?

23 THE WITNESS: Underneath the notebook.

24 MR. SHIELDS: Oh, here they are.

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1 HEARING OFFICER FELTON: Thank you.

2 MR. SHIELDS: Are we at Number 3?

3 HEARING OFFICER FELTON: Yes, this would be
4 labeled Exhibit Number 3, Respondents' Exhibit 3.

5 MR. HARDING: Two-pager?

6 BY MR. SHIELDS:

7 Q. Now I will show you a document that has
8 been marked for identification as Respondents'
9 Exhibit 3, and is that the document that you were
10 reciting the --

11 A. Yes.

12 Q. -- names of the people who attended the
13 meeting?

14 A. Yes.

15 Q. And with regard to that meeting, could you
16 please state what was said by Michael Pawlowski?

17 A. He had a concern that this liquor license
18 had been granted, and he was requesting that it be
19 addressed by the Association of Commerce. No stand
20 was taken at that time. They offered to further
21 explore it.

22 Q. And was there anything else said by
23 Mr. Pawlowski at that time?

24 A. In regards to this?

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1 Q. Yes.

2 A. He was -- he was concerned that the
3 association was involved in letting this happen.
4 And we offered to explore that, but felt that we
5 were not any more involved with it than the fact
6 that it was a business coming to town.

7 Q. Was anything else said by Mr. Pawlowski at
8 that time?

9 A. As far as quotes or anything, I do not
10 recall.

11 Q. Was there any other meeting of any kind

12 held with Mr. Pawlowski?

13 A. Yes, he -- he wanted to meet with our
14 person who was handling economic development, which
15 was Mike White at that time.

16 Q. Was that a request that was made at this
17 April 11th meeting?

18 A. Yes. He wanted to -- to actually explore
19 what involvement the association had had in this
20 business coming to the community.

21 Q. And when was this next meeting held?

22 A. It was soon after that. I do not have any
23 records of that.

24 Q. It was not the same date?

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1 A. No, I don't -- I don't remember.

2 Q. Was it within a week or --

3 A. I think so.

4 Q. Within a week of --

5 A. Yeah.

6 Q. -- the April 11th meeting?

7 A. It was addressed fairly quickly.

8 Q. And who was present at that meeting?

9 A. Darren Bray, Mike White, and Mike
10 Pawlowski, I think.

11 Q. And were you also present for that
12 meeting?

13 A. I was in the building, but not always in
14 the room.

15 Q. And do you know what, if anything, was
16 said at that meeting --

17 A. No. I --

18 Q. -- by any of the participants?

19 A. No, not in essence. The association's
20 stand was to remain fairly neutral on anything
21 happening, feeling that it was the city as far as
22 who granted the liquor license, and it was their
23 decision and their need to address it.

24 Q. And was anything said to you by Michael

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1 Pawlowski either during or after that meeting?

2 A. No.

3 Q. Did you have any other conversations or
4 encounters with Mr. Pawlowski after that meeting?

5 A. He occasionally stopped in to my office
6 and would, you know, voice concerns about what was

7 happening with the noise.

8 Q. Can you identify any of those statements
9 as to date or time?

10 A. No.

11 Q. And did they happen prior to the time that
12 Benchwarmers opened or after?

13 A. After.

14 Q. And can you describe specifically what
15 Mr. Pawlowski said to you about Benchwarmers?

16 MR. HARDING: Objection, incomplete
17 foundation. I would -- I'm not going to make this a
18 hunting expedition. I would like to know who was
19 present for the conversations.

20 HEARING OFFICER FELTON: To the extent that you
21 can establish a little more foundation and who was
22 -- if anyone else was present.

23 BY MR. SHIELDS:

24 Q. With regard to the conversations, any

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1 conversations that took place after the April 11th
2 meeting and then after the meeting with Mike White
3 and other members of the board, can you identify any

4 specific conversation as to who was present at the
5 time?

6 A. If he came into my office, typically it
7 would have been Mr. Pawlowski and myself because
8 there's no one else working in my office.

9 Q. And can you identify what was said by
10 Mr. Pawlowski to you, let's say, on the first
11 occasion of one of those visits?

12 A. He, you know, would always request that,
13 you know, we address the issue. And the board had
14 chosen not to address the issue, so it would not --
15 it was not something that we were taking and
16 considering to that point.

17 Q. Can you tell me specifically what his
18 words were with regard to Benchwarmers?

19 A. He wanted Benchwarmers to not be there.

20 Q. How did he state that?

21 A. He wanted Benchwarmers removed from the
22 face of the earth.

23 Q. And on how many different occasions did he
24 stop by the chamber office to state that opinion?

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1 A. After that, he never really stopped. He

2 -- they removed their membership from the
3 association and became -- we were estranged from
4 them in regards to this because we chose not to take
5 any kind of decision on it.

6 Q. But his specific statement to you was that
7 he was going to put an end to Benchwarmers or he was
8 going to put Benchwarmers out of business?

9 A. He has an explosive personality, and in
10 certain cases --

11 MR. HARDING: Objection.

12 A. -- that would come out.

13 MR. HARDING: Objection.

14 HEARING OFFICER FELTON: What's your
15 objection?

16 MR. HARDING: "He has an explosive
17 personality," question mark?

18 HEARING OFFICER FELTON: Is that a --

19 MR. HARDING: That's a statement of opinion,
20 psychological analysis. No basis for any
21 qualification on her part to render such an opinion.

22 HEARING OFFICER FELTON: I'm going to overrule
23 that. I think this witness can testify as to her
24 impressions and her personal knowledge and

1 experience.

2 BY MR. SHIELDS:

3 Q. Go ahead.

4 A. I -- I really didn't think much about it
5 because it was, you know, something that, you know,
6 in the heat of an argument or whatever, tempers
7 flare.

8 Q. Were there any other occasions that
9 Mr. Pawlowski -- well, I guess the question is, on
10 how many occasions did Mr. Pawlowski just stop by to
11 tell you that he intended on putting Benchwarmers
12 out of business?

13 A. That was the only time he made that
14 particular statement.

15 Q. And that was -- okay.

16 A. He stopped by -- he made comments at other
17 times in regards to noise or whatever.

18 Q. And what were those comments?

19 A. I -- I don't really recall other than, you
20 know, concern about the noise.

21 Q. Have you been a customer of Benchwarmers
22 restaurant?

23 A. Yes.

24 Q. On many occasions since it opened?

1 A. Yes.

2 Q. And have you been there for breakfast in
3 the morning?

4 A. I don't know if I've been there for
5 breakfast. I don't recall.

6 Q. Have you been there for lunches?

7 A. Yes.

8 Q. And for supper?

9 A. Uh-huh.

10 Q. Evening meals?

11 A. Uh-huh.

12 Q. Have you been there late in the evenings?

13 A. On occasion.

14 Q. And to the best of your recollection, on
15 any of those occasions that you were in the
16 restaurant, did the noise coming from the pub side
17 ever have an effect with regard to a conversation
18 that you were holding with anyone in the restaurant?

19 A. No.

20 Q. Can you describe the interior of the
21 Benchwarmers Pub establishment? What's over on the
22 101 West Locust Street side?

23 A. The establishment is actually two

24 buildings that connect to each other, the corner

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1 building being the restaurant and adjacent building
2 being the pub.

3 Q. And when you're referring to the corner
4 building, you're speaking of the portion which is
5 furthest to the east?

6 A. Yes.

7 Q. And how is it connected between the pub
8 and the restaurant?

9 A. There's a wall there. Is that what you're
10 saying?

11 Q. Is there an opening?

12 A. There's swinging doors.

13 Q. And they are, in fact, open to the bar
14 area?

15 A. Well, they swing.

16 Q. There's air space?

17 A. Uh-huh.

18 Q. And on how many occasions would you say
19 you were over on the restaurant side in the evenings
20 since the opening of Benchwarmers?

21 A. Possibly weekly. I don't really know.

22 Q. Pardon me?

23 A. Possibly weekly. I don't really know.

24 Q. On a weekly basis? And during any of

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1 those times, did the music ever create a problem for
2 you with regard to any physical discomfort?

3 A. In the restaurant?

4 Q. Yes.

5 A. No.

6 Q. With regard to your hearing --

7 A. No.

8 Q. -- at any time?

9 And with regard to interference with any
10 conversations you would have been having with anyone
11 at your table or any other table in that location?

12 A. No. Typically you don't hear the music in
13 that room unless the doors swing open.

14 Q. And when the doors swing open, does that
15 create any disturbance for you or discomfort --

16 A. No.

17 Q. -- for you?

18 MR. SHIELDS: I have nothing further.

19 HEARING OFFICER FELTON: Just one second before
20 you proceed, Mr. Harding.

21 Mr. Shields, are you moving to admit
22 Respondents' Exhibit 3?

23 MR. SHIELDS: Yes, I would move to admit.

24 HEARING OFFICER FELTON: Do you have any

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1 objection?

2 MR. HARDING: I would reserve objection until
3 after cross-examination.

4 HEARING OFFICER FELTON: Okay. Why is that?

5 MR. HARDING: Because there may be a difficulty
6 with the document. I would like to examine on it.

7 HEARING OFFICER FELTON: All right. Well, I
8 think that I'm not sure what you -- what your
9 objections are. I prefer that you raise it right
10 now.

11 MR. HARDING: Well then I will ask that it not
12 be removed from admission. I would prefer not to
13 raise the objection then.

14 HEARING OFFICER FELTON: All right. We will
15 discuss and rule on Respondents' Exhibit Number 3

16 after cross-examination of this witness.

17 MR. HARDING: Thank you.

18 CROSS-EXAMINATION

19 BY MR. HARDING:

20 Q. Ms. Walters -- is it Ms., Mrs.?

21 A. Mrs.

22 Q. Mrs. Walters? Walter?

23 A. Yes.

24 Q. You're here pursuant to subpoena today?

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1 A. Yes.

2 Q. The original meeting, do you recall what
3 day of the week that was, the day of the week as the
4 minutes?

5 A. Normally our meetings are on Monday. I
6 would assume that would have been the day.

7 Q. Would you have had a meeting between Good
8 Friday and Sunday, Easter Sunday?

9 A. No.

10 Q. Okay. How long have you known the
11 Pawlowskis?

12 A. Probably three years.

13 Q. And what has been their involvement in the

14 community prior to all of this?

15 A. They were involved with the Association of
16 Commerce. That's the only thing I can quote on.

17 Q. Dues-paying members?

18 A. Yes.

19 Q. And your dues are based, for businesses,
20 on proprietors and the number of employees; is that
21 correct?

22 A. Yes.

23 Q. Did the Pawlowskis participate in the Fun
24 Fest activities?

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1 A. Yes.

2 Q. And in point of fact, prior to April of
3 1998, you never witnessed a confrontation involving
4 Mr. Pawlowski, did you?

5 A. No.

6 Q. Have you heard comments to the effect that
7 the Golden Cup restaurant was put out of business by
8 Benchwarmers?

9 A. No.

10 Q. What's the latest you've ever been at

11 Benchwarmers?

12 A. Midnight.

13 Q. Midnight? How many times?

14 A. I don't have any idea.

15 Q. And are you aware of the Pawlowskis' plans
16 for their building 105 West Locust?

17 A. The plans?

18 Q. Yes.

19 A. Yes.

20 Q. What are those plans as you understand
21 them?

22 A. Originally it was to be an antique mall.

23 Q. And now?

24 A. I don't know. I haven't talked to them.

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1 Q. But do you know of any changes to those
2 plans?

3 A. No.

4 Q. Now, Benchwarmers' establishment at
5 101-103 West Locust is a two-story building, is it
6 not?

7 A. Yes.

8 Q. Do you know what the second floor of those

9 buildings is currently used for?

10 A. No.

11 Q. Pardon my grammar. I'm not -- matching
12 numbers in a sentence like that is almost
13 impossible.

14 You don't know what they're used for?

15 A. I don't know that they're used for
16 anything.

17 Q. Okay. Are you aware that April 11th,
18 1998, was the Saturday between Good Friday and
19 Easter Sunday?

20 A. I wondered about the date. And I probably
21 can say that when I do my minutes I just go from --
22 I just take the current minutes and then rewrite
23 over the screen, and I probably didn't do the date
24 correct.

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1 Q. Age of the computer.

2 A. Yeah.

3 MR. HARDING: Okay. I have no further
4 questions. Thank you.

5 HEARING OFFICER FELTON: Any redirect?

6

REDIRECT EXAMINATION

7 BY MR. SHIELDS:

8 Q. I guess just to clarify, the April 11th,
9 1998, date is an error then? It should have been
10 April 13th --

11 A. Yes.

12 Q. -- for these minutes?

13 HEARING OFFICER FELTON: Mr. Shields, will you
14 be moving to admit this exhibit?

15 MR. HARDING: He already has, and I have no
16 objection to it.

17 HEARING OFFICER FELTON: Great. Exhibit --
18 Respondents' Exhibit Number 3, the association board
19 meeting notes, will be admitted.

20 MR. SHIELDS: Thank you, Sharon.

21 MR. HARDING: Before we go any further, do we
22 have copies for me yet of Respondents' Exhibits 1
23 and 2? Actually, I don't need 2, but I do need 1.

24 HEARING OFFICER FELTON: 1 is the --

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1 MR. HARDING: 1 is the map.

2 HEARING OFFICER FELTON: Is the map.

3 MR. SHIELDS: I had no copies of that.

4 MR. HARDING: Could you send it to me with the
5 subpoenas? Would that be a problem?

6 MR. SHIELDS: Pardon?

7 MR. HARDING: Could you send it to me with the
8 subpoenas?

9 MR. SHIELDS: Sure.

10 HEARING OFFICER FELTON: It's noted on the
11 record, and I will so note it in my hearing record
12 minutes.

13 MR. HARDING: Pardon the direct byplay.

14 MR. SHIELDS: Is it possible you could run
15 copies? That's the only map I have.

16 HEARING OFFICER FELTON: Of this one?

17 MR. SHIELDS: Yes.

18 MR. HARDING: I could drop by the office, the
19 11th floor of 100 West Randolph, and pick it up if
20 you leave it at the desk.

21 HEARING OFFICER FELTON: The only thing is
22 Respondents' Exhibit Number 1 is in -- the zoning
23 map is in color. I can't reproduce that, not in my
24 office. I can only copy it, you know, in the size.

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1 It would be black and white, and I don't know if
2 that's -- that won't distinguish the R1-R2,
3 commercial, industrial districts that I think --

4 MR. HARDING: That's true. It's not that
5 necessary that we distinguish them.

6 HEARING OFFICER FELTON: Okay.

7 MR. HARDING: I think we're all in agreement
8 here. You can have a stipulation that this is
9 commercially zoned.

10 MR. SHIELDS: I'm sorry?

11 MR. HARDING: Mr. Pawlowski testified that this
12 was commercially zoned.

13 HEARING OFFICER FELTON: Parties stipulate to
14 that, that this is a commercially zoned area?

15 MR. HARDING: 101 to 105.

16 MR. SHIELDS: Yes. Uh-huh.

17 HEARING OFFICER FELTON: Okay. I will -- I
18 will make copies, but I note for you that it will be
19 in black and white. And if the parties need to
20 obtain an original copy, as the one that they've
21 submitted today, I would direct the respondents to
22 do that for the complainants if it's requested.

23 MR. HARDING: Well, let me ask you this. I
24 could run it over to Mighty and get color copies, if

1 color copies are going to be considered necessary.

2 I don't need a color copy.

3 MR. SHIELDS: No, I don't either.

4 HEARING OFFICER FELTON: Okay.

5 MR. HARDING: Okay. Then black and white is
6 fine.

7 HEARING OFFICER FELTON: The issue is resolved.

8 MR. SHIELDS: What other exhibit do we have?

9 MR. HARDING: The sheet from the zoning.

10 HEARING OFFICER FELTON: Exhibit 2 of the
11 respondents is the Article 9, C, Commercial
12 District.

13 MR. HARDING: And that I have.

14 MR. SHIELDS: So there's no further need for
15 any copies.

16 MR. HARDING: Starting at page fifteen, I have
17 that.

18 MR. SHIELDS: So just to clarify, you have no
19 other exhibits at this point that you need.

20 HEARING OFFICER FELTON: Respondents ready to
21 proceed?

22 MR. SHIELDS: Call Mike White.

23 - - - - -

24 (Witness sworn.)

1 MICHAEL WHITE,
2 having been duly sworn by the court reporter,
3 testified upon his oath as follows:

4 DIRECT EXAMINATION

5 BY MR. SHIELDS:

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

7 A. Michael B. White.

8 Q. And your address?

9 A. 7330 North 2200 East Road, Fairbury.

10 Q. And how long have you been a resident of
11 Fairbury, Illinois?

12 A. For 38 years.

13 Q. Is that your entire lifetime?

14 A. I'm 41. Almost.

15 Q. And your occupation?

16 A. President of three different
17 corporations: White Distribution and Supply, White
18 Development Corporation, and Honegger Slats, Inc.

19 Q. And are you a member of the Fairbury
20 Association of Commerce?

21 A. My businesses are all members of the
22 Association of Commerce.

23 Q. And are you on the board of the
24 Association of Commerce?

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1 A. Not presently, no.

2 Q. Were you in the recent past?

3 A. Yes.

4 Q. And for how many years?

5 A. It's a three-year term.

6 Q. And can you tell me what dates that term
7 encompassed?

8 A. I went off in -- would have been -- go off
9 in the spring, so it would have been from '96
10 through '99.

11 Q. And what position did you hold with the
12 Fairbury Association of Commerce?

13 A. I was on different committees. One of my
14 committees was business development.

15 Q. And are you familiar with the parties,
16 Michael Pawlowski --

17 A. Yes.

18 Q. -- and Diane Pawlowski?

19 A. Yes.

20 Q. Dave Johansen?

21 A. Yes.

22 Q. Troy Quinley?

23 A. Yes.

24 Q. And Benchwarmers Pub?

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1 A. Yes.

2 Q. Do you have an opinion with regard to the
3 social value of Benchwarmers Pub at its Fairbury
4 location?

5 A. Yeah. Prior to Benchwarmers coming, there
6 really -- we didn't have much of a restaurant or a
7 family type restaurant and a pub that a lot of
8 people would take their wife and stuff to or their
9 families in there with them.

10 Q. And are you aware of any events or
11 activities that are sponsored by Benchwarmers Pub in
12 the Fairbury community?

13 A. I know they had some. They always worked
14 with the chamber when I was on there. But I was off
15 right after they opened, off chamber, so I really
16 wasn't involved in anything they did with the
17 chamber.

18 But I know they did some things with some
19 stock cars where they kind of had a -- with the Fun
20 Fest, and they were associated with that.

21 Q. Can you describe the Fun Fest?

22 A. Fun Fest was originated to try to bring
23 more events and -- not really to bring business into
24 the community, but more like to have a -- make

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1 Fairbury a more social, better place to live type
2 thing, and give people a chance, when they came to
3 Fairbury, to see Fairbury and what all it had to
4 offer.

5 And it's grown where they have several
6 different activities, bands out on the streets.
7 They close the streets off and have different 3-on-3
8 tournaments, different things like that.

9 Q. And when those streets are closed off,
10 where exactly are they closed off?

11 A. I think it's changed every year. I think
12 the first year they closed off, I think it was three
13 blocks the first year. I think the second year,
14 maybe it was only a couple blocks. Then last year I
15 think they did more on the side streets. They tried

16 to -- to try to keep Main Street more open.

17 Q. Is this in the Locust Street area?

18 A. Yes. Uh-huh.

19 Q. Around Benchwarmers area?

20 A. Yeah, uh-huh.

21 Q. And are you aware of any charitable
22 activities that Benchwarmers is involved with?

23 A. Not specifically, no.

24 Q. Are you aware of the spaghetti dinners?

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1 A. Yes. Yes.

2 Q. And you're aware that those are --

3 A. Yes.

4 Q. -- charitable activities?

5 A. Uh-huh.

6 Q. Those are specifically sponsored by
7 Benchwarmers?

8 A. Yeah.

9 Q. Can you give your opinion with regard to
10 the economic value of Benchwarmers Pub to the
11 Fairbury community area?

12 A. Well, I think that's big. We tried to --

13 that's one thing we felt that Fairbury was missing,
14 was a restaurant with a pub that would be more of a
15 family type atmosphere; and it would help the -- it
16 would go good with our community. And we needed a
17 place bad, and we'd been looking for somebody to
18 come into Fairbury for several years.

19 Q. Are you aware of what was located in the
20 former location at 103 to 105 West Locust?

21 A. Yeah, it was the Blade, the newspaper
22 office, printing office. Corn Belt Press, I think,
23 was the proper name.

24 MR. HARDING: I would object that this is

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1 extremely cumulative. We have not disputed this,
2 and this is now the fourth witness who is testifying
3 to the former use.

4 HEARING OFFICER FELTON: I'm going to overrule
5 it. I think that he can testify with his personal
6 knowledge.

7 I just ask, Mr. Shields, not to go into --

8 MR. SHIELDS: I'm looking for economic value,
9 not -- not really to the use so much.

10 BY MR. SHIELDS:

11 Q. With regard to the Corn Belt Press -- we
12 have been referring to it as the Fairbury Blade, but
13 it was, in fact -- I had forgotten that. That Corn
14 Belt Press, were you aware of that operation?

15 A. Yes.

16 Q. And do you have any idea how many
17 employees were employed, just approximately, by --

18 A. I know they had 70 employees at one time,
19 but I'm not sure what year that was. Then it
20 started dwindling off towards the end.

21 Q. And are you aware of how many employees
22 that Benchwarmers Pub has approximately?

23 A. Approximately, I guess, around 15 to 20,
24 but I don't know exact number.

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1 Q. And are you aware of any other economic
2 value that the Benchwarmers Pub would bring to the
3 City of Fairbury?

4 A. Sales tax, and they do a lot of catering
5 outside the community which brings that sales tax
6 dollars back to Fairbury.

7 Q. And do you know whether or not they also

8 pay a liquor license fee?

9 A. I'm sure they do, but I don't know how
10 much it is or anything.

11 Q. Have you been a customer of the
12 Benchwarmers Pub restaurant?

13 A. Yes.

14 Q. And can you cite approximately how many
15 times you've been a customer?

16 A. Well, I eat breakfast there probably four
17 times a week; lunch, average two times a week;
18 supper, probably one time a week.

19 Q. And during the times that you have been a
20 customer in the restaurant, has the music from the
21 pub side ever created any discomfort --

22 A. No.

23 Q. -- for you? Has it ever caused any type
24 of disruption with regard to conversations you may

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1 be having with someone at your table?

2 A. No.

3 Q. And does it interfere with your hearing at
4 all there in the restaurant?

5 A. No.

6 Q. And can you describe the makeup of the
7 restaurant and bar insofar as is there any opening
8 between the bar and restaurant?

9 A. Yeah, there's like a six-foot opening that
10 was made in between the two buildings. There's some
11 swinging, one-third high bar type doors in that
12 opening.

13 Q. Now, with regard to the respondent (sic),
14 Michael Pawlowski, have you had any conversations in
15 the past with Mr. Pawlowski about the 101-103 West
16 Locust location?

17 A. Once, yes.

18 Q. Pardon?

19 A. One time, yes.

20 Q. And when was that?

21 A. I'm not sure the exact date. It was in
22 April. It was after the meeting he went to the
23 chamber of commerce that --

24 Q. In April of what year?

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1 A. '98.

2 Q. And was this a meeting with other

3 individuals besides yourself and Mr. Pawlowski?

4 A. Yeah. Sharon Walter was there and Darren
5 Bray.

6 Q. And can you tell me what the purpose of
7 the meeting was?

8 A. Darren Bray, who was president of the
9 chamber of commerce at the time, called me and said
10 that the Pawlowskis have raised some concerns about
11 that the chamber went out and brought in a -- this
12 business into the town; and that I wasn't at that
13 meeting, and that I was the one that was involved in
14 that.

15 So he wanted to know if -- he said it
16 would probably be in everybody's best interests if
17 we could meet, get together, and I agreed. I think
18 he called that morning. I think we got together
19 right later that morning if I remember right.

20 Q. When you're saying "he," you're referring
21 to Michael Pawlowski?

22 A. Yes.

23 Q. And can you tell me what was said at that
24 meeting?

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1 A. I think his major concern was that -- was,
2 you know, was the chamber involved in bringing this
3 business into the town. And I told him that really
4 it wasn't the chamber that did anything specifically
5 to bring a business to town except we're always
6 promoting and, you know, looking for ways to expand
7 new businesses into the community.

8 And I'm on the downtown revitalization
9 committee and on the chamber. And as a businessman
10 in the community, I'm always looking to bring in new
11 business into the community, which we have brought
12 in two others into the community also. I shouldn't
13 say "we," I guess. I said I was involved in
14 bringing two other ones into the community.

15 So, I told him I don't know if you could
16 call it that the chamber actually went out to bring
17 this thing in because I never presented it at a
18 meeting or tried to get anybody's blessing or
19 anything like that on trying to bring them in.

20 Q. And was anything else said?

21 A. He raised concern that, you know, there
22 was no way he wanted that business there. And I
23 said, well, the -- you know, the city had -- we
24 don't have anything to do with that, that we just

1 brought them into the community and helped them find
2 a spot. And we felt that that was the best spot in
3 town, you know, for an establishment that they were
4 wanting to bring in, and that the city had reviewed
5 it and, you know, gave them a liquor license so
6 evidently the city thought everything was fine.

7 And he made the statements that --
8 numerous times in that meeting that there's no way
9 he was going to allow that to happen, and he'd do
10 anything in his power to make sure that didn't
11 happen.

12 And I said that Dave and Troy were --
13 seemed like good guys, and I've been down to their
14 place in Colfax and visited them before we assisted
15 them coming to Fairbury. They seemed like good
16 guys, guys who should be able to get together and
17 talk about something, work something out to
18 everybody's benefit, and that -- excuse the
19 expression, but don't get a bunch of lawyers
20 involved. It seemed like it was better off to sit
21 down and work that kind of stuff out.

22 And then I know he made the statement
23 that, you know -- that, you know, he's not going to
24 stop at anything to get this thing stopped. And

1 they mentioned, I think, something about hurting his
2 antique business that he was going to open up
3 there. And I told him that, you know, I felt that
4 that would enhance his business, bring more traffic
5 by his store and that the two should, you know,
6 really go pretty good together. A place for people
7 to go look at his antiques, and then they could go
8 to the restaurant; that, you know, it should work
9 out really good.

10 Q. Now, can you recite his exact words with
11 regard to --

12 A. They wouldn't be exact, no.

13 Q. Can you, with your best recollection,
14 state what Mr. Pawlowski said?

15 A. Well, he said he'd stop at nothing to -- I
16 know he said -- not to let them open. Not to get
17 them closed, because at that time they weren't open.

18 Q. And when he's referring to "them," it was
19 a --

20 A. Benchwarmers.

21 Q. -- definite reference to Benchwarmers?

22 A. Uh-huh.

23 Q. You have to answer.

24 A. Oh. Yes. Sorry.

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1 HEARING OFFICER FELTON: Make sure you answer
2 yes or no.

3 THE WITNESS: Okay.

4 MR. SHIELDS: I have nothing further of
5 Mr. White.

6 HEARING OFFICER FELTON: Mr. Harding?

7 MR. HARDING: Couple of questions. Well, don't
8 want to limit myself to a couple.

9 CROSS-EXAMINATION

10 BY MR. HARDING:

11 Q. You've never actually met Diane Pawlowski
12 till today, have you?

13 A. I don't believe so. I've seen her, but I
14 don't think I've ever been introduced to her, no.

15 Q. Mike, Diane. Diane, Mike. You can never
16 say that again.

17 A. Okay.

18 Q. When you were looking for a pub,
19 restaurant, what were you looking for? What

20 characteristics were you looking for?

21 A. Was looking for a -- we weren't out
22 looking for a pub or a bar. We was out looking for
23 more of a restaurant with a pub type combination,
24 and you want the -- because there really wasn't a

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1 good place in town that you could go have a beer and
2 a sandwich that you could -- that people's wives
3 felt comfortable going into or bringing your kids
4 into.

5 That's the kind of establishment we were
6 looking for.

7 Q. Now at that April 13th meeting -- it was
8 April 13th, right?

9 A. I don't know the date. I wasn't at the
10 chamber meeting, if that's the one you're referring
11 to. I was out of town that day, I guess, or missed
12 the meeting or whatever.

13 Q. Okay. I misunderstood your testimony
14 then. When was your meeting with Michael Pawlowski?

15 A. Mine was a meeting that was after. And I
16 believe it was the next day after, but might have
17 been two days after that chamber meeting.

18 Q. Okay.

19 A. And it was at the old city hall chamber
20 office.

21 Q. Okay. And Mr. Pawlowski mentioned to you
22 that he had had a conversation with Mr. Johansen,
23 did he not?

24 A. Yes.

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1 Q. And he mentioned to you at that time that
2 Mr. Johansen told him that there was going to be
3 noise, did he not?

4 A. Possibly. I couldn't tell you exactly
5 what he said, no. I think -- I remember him saying
6 he did try to talk to Troy, but -- I think it was
7 Troy. Either Troy or Dave. I guess I can't
8 remember which one, but --

9 Q. And did he say what happened?

10 A. No.

11 Q. Did he tell you that Mr. Johansen turned
12 around and walked away from him?

13 A. No.

14 Q. Now, this is your community; you've lived

15 here since you were a baby, right?

16 A. Uh-huh.

17 Q. Toddler, whatever. You're not looking for
18 unbridled growth here, are you?

19 A. There are several younger people in the
20 community, younger businessmen in the community that
21 would like to see Fairbury grow faster than it has
22 the last fifteen years. And the last four or five
23 years, we've accomplished that and brought several
24 businesses into town. But it was pretty stymied

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1 there for several years, yeah.

2 Q. But -- how long have you known Michael
3 Pawlowski?

4 A. Three to four years maybe. I met him -- I
5 believe the first time was, he was employed or
6 working with or something with the bowling ball
7 company that was here in town. And they had bought
8 some materials from us and -- when they were
9 remodeling the inside of that building, and I think
10 that's probably the first time I met him.

11 Q. Okay. And then the association with the
12 Association of Commerce?

13 A. I don't -- didn't have any dealings with
14 him with the Association of Commerce.
15 Q. Oh, okay.
16 A. I wasn't on any of the Fun Fest committees
17 or anything. I tried to get out of that stuff.
18 MR. HARDING: I have no further questions.
19 HEARING OFFICER FELTON: Mr. Shields, anything
20 on redirect?
21 MR. SHIELDS: No.
22 HEARING OFFICER FELTON: Thank you very much,
23 Mr. White.
24 MR. SHIELDS: Respondents would call Brenda

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1 DeFries.
2 (Witness sworn.)
3 BRENDA DeFRIES,
4 having been duly sworn by the court reporter,
5 testified upon her oath as follows:
6 DIRECT EXAMINATION
7 BY MR. SHIELDS:
8 Q. Would you state your full name, please?
9 A. Brenda DeFries.

10 Q. And your address?
11 A. 705 North First Street, Fairbury,
12 Illinois.
13 Q. And how long have you been a resident of
14 Fairbury?
15 A. Twenty years.
16 Q. And your occupation?
17 A. I'm city clerk.
18 Q. And how long have you been city clerk of
19 the City of Fairbury?
20 A. Ten years.
21 Q. Can you describe your duties and
22 responsibilities as city clerk?
23 A. I'm the keeper of the records.
24 Q. Anything else?

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1 A. I do many things. Take the minutes at the
2 council meetings, I prepare the liquor license, I
3 take care of all the billing for the city, the city
4 payroll.
5 Q. In your capacity as city clerk, have you
6 made the acquaintance of Michael Pawlowski?
7 A. Yes.

8 Q. And Diane Pawlowski?

9 A. Yes.

10 Q. And can you describe how you have made

11 their acquaintances?

12 A. I probably did meet them also with the Pin

13 Breaker, and then there -- he was in the City Hall

14 when we bought the Honecker Building, and several

15 other times that I met him before the past year.

16 HEARING OFFICER FELTON: Ms. DeFries, can you

17 speak just a little louder?

18 THE WITNESS: I'll try.

19 HEARING OFFICER FELTON: Thank you. I know --

20 THE WITNESS: I'm not very good at this

21 situation, so --

22 MR. HARDING: Well, I can hear, but I'm line of

23 sight.

24 BY MR. SHIELDS:

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1 Q. Are you aware of any complaints which the

2 Pawlowskis have made to the City of Fairbury with

3 regard to any business in Fairbury?

4 A. Yes.

5 Q. And what are the nature of those
6 complaints?

7 A. Pretty much he was not happy with the
8 liquor license being given to the Benchwarmers.

9 Q. And on how many occasions has
10 Mr. Pawlowski been in to the City of Fairbury to
11 make that complaint?

12 A. He has attended, I think, every council
13 meeting. He might have missed a couple, or Diane
14 has been at the meetings. They have spoke at
15 several of them.

16 I have them noted in the minutes, and they
17 have been in afterwards. And we've had several
18 phone calls; I don't have records of those, other
19 than the Freedom of Information requests. I do have
20 copies of those.

21 Q. They've also made Freedom of Information
22 requests with regard to the Benchwarmers records at
23 City Hall?

24 A. Yes.

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1 Q. And what documents have they requested?

2 A. Can I read from them? Is that okay?

3 Q. Sure.

4 MR. HARDING: Are these the actual Freedom of
5 Information Act requests?

6 THE WITNESS: Uh-huh.

7 MR. HARDING: Is that we're looking at? Are
8 there copies?

9 THE WITNESS: I didn't bring copies. I can
10 sure get you them.

11 HEARING OFFICER FELTON: Are you moving to
12 admit these, Mr. Shields?

13 MR. SHIELDS: I haven't seen them yet.

14 HEARING OFFICER FELTON: Okay. I'll allow at
15 least some line of questioning as this is a recorded
16 recollection. I think the witness is looking at
17 these for the purposes of refreshing her memory.

18 But if you're going to request to admit
19 these, I will need copies before that occurs. And I
20 would also ask that once you refresh her memory, you
21 at least give them to opposing counsel so he can
22 take a look at them.

23 MR. HARDING: If I could ask one other
24 question, might cut through a little bit of the

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1 mustard here.

2 Are these written requests as received
3 from one or more of the Pawlowskis?

4 THE WITNESS: Uh-huh.

5 MR. HARDING: So these are documents that they
6 wrote?

7 THE WITNESS: Uh-huh.

8 MR. HARDING: Okay. Casts them in a slightly
9 different character then.

10 HEARING OFFICER FELTON: Let's go to your line
11 of questioning and see how this develops.

12 BY MR. SHIELDS:

13 Q. Brenda, without making reference to those,
14 do you recollect what documents the Pawlowskis have
15 requested?

16 A. The liquor license, the actual
17 application, which I was not able to give because of
18 confidentiality reasons, probably the minutes from
19 the time before when we granted the license. It was
20 many things on this first one. At one point, they
21 wanted to know who held all the licenses. I
22 remember giving that. They asked for the copies of
23 the minutes for the past year, the agendas.

24 Q. The agendas and the minutes?

1 A. Uh-huh.

2 Q. Anything else?

3 HEARING OFFICER FELTON: Ms. DeFries, if you
4 can answer with a yes or no. It's hard for the
5 reporter to note a gesture. So make sure you answer
6 yes or no --

7 THE WITNESS: Okay.

8 HEARING OFFICER FELTON: -- as opposed to
9 nodding.

10 THE WITNESS: Okay.

11 HEARING OFFICER FELTON: Okay. Thanks.

12 BY MR. SHIELDS:

13 Q. Do you recollect any other documents that
14 they've requested?

15 A. No.

16 Q. And with regard to the meetings that they
17 have attended, do you recollect what the purpose was
18 for their attendance?

19 A. To complain about the noise from the
20 restaurant owned by the Benchwarmers. And at first
21 they wanted to know what was the list of steps they
22 had to go through to file a complaint once the
23 business was opened.

24 Q. So, their complaints began prior to the

1 time that Benchwarmers opened; is that correct?

2 A. Yes.

3 Q. And are you aware of a complaint made by
4 Michael Pawlowski with regard to Larry Quinley?

5 A. I don't know what you're -- in reference
6 to?

7 Q. In reference to Benchwarmers?

8 A. Offhand, no, I'm sorry.

9 Q. Did he make a noise complaint against
10 Larry Quinley to the City of Fairbury?

11 MR. HARDING: I'm going to object. Asked and
12 answered and leading.

13 HEARING OFFICER FELTON: I'm going to sustain
14 that objection. I think if she doesn't know -- if
15 you have actual knowledge of this, then you can
16 offer that testimony. But if you don't have actual
17 knowledge of this, then just say you don't know.

18 A. Okay. I don't -- I don't know.

19 Q. Are you familiar with a restaurant named
20 the Golden Cup?

21 A. Yes.

22 Q. And where was that located?
23 A. Across the street from Mike and Diane's.
24 Q. Also on Locust Street?

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1 A. Yes.
2 Q. And that business closed at some time in
3 the recent past?
4 A. Yes.
5 Q. Do you know the approximate date when it
6 closed?
7 A. I'd say sometime last summer.
8 Q. And the --
9 A. Summer of '98, I'm sorry. Summer of '98.
10 Q. Summer of '98. The Golden Cup was a
11 restaurant facility?
12 A. Yes.
13 Q. And do you know, was it open on a 24-hour
14 basis on the weekends?
15 A. Yes.
16 Q. And do you know for how many years,
17 approximately, the Golden Cup was in business?
18 A. I would say five.
19 Q. So it was in business for five years up

20 until the summer of 1998?

21 A. Uh-huh.

22 Q. The best of your recollection?

23 A. Yes.

24 Q. Can you inform us of the economic value of

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1 Benchwarmers Pub to the Fairbury community area?

2 A. All our businesses are very important to
3 us, and this is definitely one of them.

4 Q. Can you specifically inform us of any
5 taxes that are paid by Benchwarmers Pub?

6 A. We would receive property taxes and, of
7 course, sales tax.

8 Q. And Benchwarmers pays a liquor license to
9 the City of Fairbury?

10 A. Uh-huh. Yes.

11 Q. Do you know what that fee is?

12 A. I believe they're 700 a year.

13 Q. Okay. In your opinion as city clerk, is
14 Benchwarmers Pub location suitable to the area?

15 A. Yes.

16 Q. Do you have any knowledge with regard to

17 the date on which the Pawlowskis occupied the second
18 floor of 105 West Locust as a -- as a residence?

19 A. It would have to be in the spring of '98,
20 and it was probably after we issued the liquor
21 license, or approximately the same time.

22 Q. Do you have any knowledge as to when the
23 Pawlowskis first, say, paid a residential garbage
24 bill?

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1 A. I can look those records up. I did check
2 things out. I was not sure what I was going to be
3 reviewing, and I believe that they were probably in,
4 once again, the spring and May, April of '98.

5 Q. April, May of '98?

6 A. Uh-huh.

7 MR. SHIELDS: Can I have that marked as
8 Respondents' Exhibit Number 4?

9 BY MR. SHIELDS:

10 Q. Okay. I will show you what has been
11 marked for identification as Respondents' Exhibit
12 Number 4. And can you identify that document?

13 A. Yes.

14 Q. And what is it?

15 A. Our liquor license for Benchwarmers.

16 Q. And do you have any knowledge as to the
17 date that that liquor license was issued?

18 A. Well, this one was prepared on 1/13 of
19 '99.

20 Q. Okay. When was the original liquor
21 license issued to the Benchwarmers Pub?

22 A. This is their current one. They have one
23 before that.

24 Q. Okay.

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1 A. I can tell you the date it was passed, and
2 I -- that it was opened to be purchased, but I don't
3 have a copy of the one I issued --

4 Q. Okay.

5 A. -- at that time.

6 MR. HARDING: Well, objection to the teasing.
7 What are those dates?

8 HEARING OFFICER FELTON: Yes. Why don't you
9 offer those dates, Ms. DeFries?

10 THE WITNESS: That I prepared this one?

11 HEARING OFFICER FELTON: No, the date from the

12 original one, you said you could --

13 THE WITNESS: I can look that -- I don't have
14 that with me. I can tell you what day we passed it.

15 HEARING OFFICER FELTON: That's what I thought
16 you said you had, the date you passed it, I think,
17 is what you mentioned you knew.

18 THE WITNESS: April 1st, 1998.

19 MR. SHIELDS: I would move to have the liquor
20 license entered into evidence, exhibit number --
21 Respondents' Exhibit Number 4.

22 HEARING OFFICER FELTON: Mr. Harding, any
23 objection?

24 MR. HARDING: No.

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1 HEARING OFFICER FELTON: Respondents' Exhibit
2 Number 4, the liquor license, is admitted into
3 evidence.

4 BY MR. SHIELDS:

5 Q. With regard to the Golden Cup restaurant,
6 are you aware of any complaint that the Pawlowskis
7 made to the City of Fairbury with regard to the
8 Golden Cup restaurant?

9 A. We had complaints on the restaurant. I do

10 not remember who made them.

11 MR. SHIELDS: I have nothing further.

12 THE WITNESS: Okay.

13 HEARING OFFICER FELTON: Miss DeFries,
14 Mr. Harding has the opportunity to ask you some
15 questions now.

16 THE WITNESS: Okay.

17 HEARING OFFICER FELTON: Do you have anything,
18 Mr. Harding?

19 MR. HARDING: Please.

20 CROSS-EXAMINATION

21 BY MR. HARDING:

22 Q. How long have you been -- have you lived
23 in Fairbury?

24 A. 20 years.

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1 Q. 20 years?

2 A. Uh-huh.

3 Q. Where did you live previously?

4 A. Flanagan. Flanagan.

5 Q. That's near Pontiac?

6 A. Uh-huh.

7 Q. What is your relationship to the water
8 bills in Fairbury? How do you relate to them? Do
9 you have any function in relation to them?

10 A. I'm the keeper of all records, so any
11 record is my responsibility. I take care of the
12 water billing whenever the water clerk is not there.

13 Q. And if you bear with me for just a moment,
14 I would like to show you what has been marked as
15 Complainants' Exhibit Number 17. Do you recognize
16 that document?

17 A. Yes.

18 Q. That is, in fact, the final bill for
19 water, garbage, sewer that was incurred by the
20 Pawlowskis at 207 East Oak Street; is that correct?

21 A. Uh-huh. Yes, it is.

22 Q. That is for service from March 4th to
23 April 30th; is that correct?

24 A. Yes. Yes, it is.

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1 Q. And that was just the billing period,
2 correct?

3 A. Yes.

4 Q. Do you have any knowledge of when the

5 Pawlowskis actually left that premises?

6 A. No.

7 Q. Did they not call the city to tell you
8 that they were finished there?

9 A. When they contacted us for the final.

10 Q. I would like to show you what has been
11 marked Complainants' 18. Do you recognize that?

12 A. Yes.

13 Q. That is a bill for the Pawlowskis' water,
14 sewer, garbage at 105 West Locust?

15 A. Uh-huh. Yes.

16 Q. And that is for service March 10th through
17 May 2nd; is that correct?

18 A. For the water. The garbage is billed
19 current.

20 Q. The garbage is billed current?

21 A. Yeah. The dates you see, "Service From,
22 To," is the water billing dates. The garbage is
23 billed -- it is current. We are not that far behind
24 on it when we bill our garbage.

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1 Q. I see. So there's active water service,

2 there's active sewer service from March to April?

3 A. Correct.

4 Q. Or to May 2. And then at some point in
5 there garbage service has been initiated?

6 A. Yes.

7 Q. Okay. Thank you.

8 HEARING OFFICER FELTON: Are you moving to
9 admit these?

10 MR. HARDING: If counsel has no problem with me
11 doing it during his case in chief, yes.

12 HEARING OFFICER FELTON: Mr. Shields, do you
13 have any objection to Mr. Harding moving to admit
14 these Complainants' Exhibits 17 and 18 at this
15 time?

16 MR. SHIELDS: No objection.

17 HEARING OFFICER FELTON: So moved. The
18 Complainants' Exhibits 17 and 18 are admitted into
19 evidence.

20 BY MR. HARDING:

21 Q. Now as city clerk -- I want to be fair
22 with you, okay? Till about six months ago, my
23 mother was a city clerk in Macon, so I already know
24 the answer.

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1 By the way, do you have an association,
2 city clerks?

3 A. Yes.

4 Q. Ever happen to meet Betty Collins from
5 Macon?

6 A. No, I don't believe so.

7 Q. You pretty much handle or delegate the
8 handling of all of the documentation of what happens
9 at meetings; is that correct?

10 A. Yes.

11 Q. That would include statutory compliances
12 and so on, so forth?

13 A. You'll have to explain that.

14 Q. Well, say, for instance, when you do the
15 levy -- you do do the levy, right?

16 A. I do not prepare it.

17 Q. You don't prepare the levy itself?

18 A. No, but I --

19 Q. But, for instance, if the levy increases
20 by more than 5 percent, under state law you're
21 required to have a public meeting; is that correct?

22 A. Yes.

23 Q. You have to publish notice and so on, so
24 forth?

1 A. Yes.

2 Q. There is a similar requirement for
3 issuance of liquor licenses, correct?

4 A. No.

5 Q. There is not?

6 A. (Witness shakes head.)

7 Q. Okay. So what notice was given of the
8 fact that the liquor license was going to be on the
9 agenda for the -- I believe it's April 1st meeting?

10 A. It was on the agenda. And that was it.

11 Q. That was the notice?

12 A. Uh-huh.

13 Q. Then you are required by statute, if I
14 recall correctly, to post the agenda 24 hours or 48
15 hours in advance?

16 A. 48.

17 Q. 48. I don't know it by heart, but I -- so
18 essentially this agenda was posted at the village
19 hall and each public building and public facility in
20 Fairbury that the city owned; is that right?

21 A. It was -- we were at the new city hall.
22 It was just posted at the new city hall because that
23 was where the meetings were held.

24 Q. Just the place of meeting?

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1 A. Uh-huh.

2 Q. By the way, do you know Steve and Lori
3 Beyer, B-e-y-e-r?

4 A. Not that I know of.

5 Q. Okay. Are you familiar with the
6 Benchwarmers' acquisition of the property at 101-103
7 West Locust, or would that have gone through the
8 recorder's office?

9 A. It was not my office.

10 Q. Okay. That's a county function, right?

11 A. (Witness nods head.)

12 HEARING OFFICER FELTON: Is that yes,
13 Ms. DeFries?

14 THE WITNESS: Yes.

15 HEARING OFFICER FELTON: Thank you.

16 BY MR. HARDING:

17 Q. Did you ever receive a copy of the
18 contract?

19 A. There might be one attached to the liquor
20 license, but I'm not sure. Or the liquor license
21 application.

22 Q. Would that be required?
23 A. I'm not -- I just can't say offhand.
24 Q. Are there any portions of the liquor

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1 license application which are not subject to the
2 confidentiality requirements of the statute?

3 A. I am not expert at that, and when I have a
4 question, I contact our attorney.

5 MR. HARDING: Okay. I have no further
6 questions, ma'am.

7 HEARING OFFICER FELTON: Mr. Shields, do you
8 have anything further for Miss DeFries?

9 REDIRECT EXAMINATION

10 BY MR. SHIELDS:

11 Q. Just for clarification purposes, with
12 regard to the City of Fairbury billing which is
13 dated June 1, '98, with account number 8-97 --

14 HEARING OFFICER FELTON: Mr. Shields, can you
15 just identify which exhibit you're referring to
16 right now?

17 MR. HARDING: It's 18.

18 MR. SHIELDS: Okay.

19 HEARING OFFICER FELTON: I just want to make
20 sure it's clear for the record.

21 BY MR. HARDING:

22 Q. Complainants' Exhibit 18. It's showing a
23 service date from 3/10/98 to 05/02/98, correct?

24 A. Yes.

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1 Q. It shows a Dumpster fee; is that correct?

2 A. Yes.

3 Q. Is that the \$10 amount?

4 A. Yes.

5 Q. And what does the SC stand for?

6 A. Here?

7 Q. Column SC, yes.

8 A. Service codes.

9 Q. Okay. And what is number one?

10 A. Water.

11 Q. And number 21?

12 A. Sewer.

13 Q. And 40?

14 A. Garbage.

15 Q. And under the "Current" column, it shows a
16 number one. What does that indicate?

17 A. It's just an identifier in the software.
18 Q. Okay. Is the residential garbage bill, is
19 that billable on a monthly basis or bi-monthly? Is
20 it billable on a monthly basis?
21 A. If they only -- if they're only there one
22 month, it could possibly just be a four dollar
23 charge.
24 Q. Okay. And is the water bill that's

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1 indicated, is that a minimum water bill?
2 A. Just a little bit over minimum.
3 Q. Are you aware of --
4 A. Here it is. I'll have to change that. We
5 just have increases so I'm -- I don't know when this
6 -- the increase happened offhand. It looks like
7 it's about twice as much used as minimum. It's 6.75
8 was minimum on this one, it looks like. 25 --
9 MR. HARDING: I'm sorry. What are we looking
10 at at this point?
11 HEARING OFFICER FELTON: What are you comparing
12 here, Ms. DeFries?
13 THE WITNESS: Look under "Usage."

14 2500.

15 MR. HARDING: We're looking at 17 and 18
16 together? Is that it?

17 THE WITNESS: Yeah, I went to 17 to look at the
18 rates.

19 MR. HARDING: Okay. Line one?

20 A. It looks like at that time 2500 gallons
21 was minimum charge, and that was \$6.75.

22 MR. SHIELDS: I have nothing further.

23 MR. HARDING: If I could just ask a couple of
24 questions, clarify a couple?

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1 HEARING OFFICER FELTON: Do you have any
2 objection to that?

3 MR. SHIELDS: Yes, I object to that.

4 HEARING OFFICER FELTON: No. We're complete
5 with this questioning.

6 Thank you very much, Ms. DeFries, for your
7 time.

8 HEARING OFFICER FELTON: It's 10:25. Let's
9 take just a quick five-minute break?

10 (A recess was taken.)

11 HEARING OFFICER FELTON: Are you ready,

12 Mr. O'Day? We'll go back on the record.

13 MR. O'DAY: Yes.

14 HEARING OFFICER FELTON: We're back on the
15 record. I just note that there are several members
16 of the public who have joined us this morning, and
17 we'll just proceed with the respondents' case in
18 chief.

19 MR. O'DAY: Call Officer Ryan for the record.

20 (Witness sworn.)

21 KEVIN M. RYAN,
22 having been duly sworn by the court reporter,
23 testified upon his oath as follows:

24 DIRECT EXAMINATION

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1 BY MR. SHIELDS:

2 Q. Would you please state your full name for
3 the record?

4 A. Kevin Michael Ryan.

5 Q. Officer Ryan, which name do you go by?

6 A. Kevin Ryan.

7 Q. Kevin. Okay. And what is your
8 occupation?

9 A. Police officer, City of Fairbury.

10 Q. How long have you been a City of Fairbury

11 police officer?

12 A. Three years.

13 Q. Did you have work experience in law

14 enforcement before you became a City of Fairbury

15 police officer?

16 A. Yes.

17 Q. Where was that?

18 A. Two years, Livingston County Sheriff's

19 Department in the jail.

20 Q. What is your educational background with

21 respect to training in law enforcement?

22 A. One year of college, PTI, Police Training

23 Institute.

24 Q. Where is that located?

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1 A. When I went, it was at the University of

2 Illinois.

3 Q. Did you graduate from the Police Training

4 Institute?

5 A. Yes.

6 Q. And how long of a program was that?

7 A. Be three and a half months.

8 Q. Have you had additional training in

9 follow-up to your graduation from the Police

10 Training Institute?

11 A. Yes, things through the department.

12 Q. In connection with your -- what are the

13 duties of a patrolman in the City of Fairbury?

14 A. About everything.

15 Q. Do you go all over town?

16 A. Yes.

17 Q. And are you familiar with the layout of

18 the town?

19 A. Yes.

20 Q. Are you familiar with the areas that are

21 predominantly residential and those that aren't?

22 A. Yes.

23 Q. What is the main street called in

24 Fairbury?

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1 A. Locust.

2 Q. Are you familiar with a location on Locust

3 Street called Benchwarmers Pub?

4 A. Uh-huh.

5 Q. Are you familiar with a structure next
6 door where the Pawlowskis live?

7 A. Yes.

8 Q. And are you familiar with the whole city
9 block there?

10 A. Yes.

11 Q. How would you characterize that city
12 block? Is it commercial or residential?

13 A. I consider it commercial.

14 Q. Would you describe the buildings in that
15 city block?

16 A. Video store, clothing store -- used to be
17 a hardware store, it's a gift shop now, couple gift
18 shops, small church in one of the buildings,
19 dentist, lawyer's office, tire -- Steidinger Tire.

20 Q. Are there any grassy areas?

21 A. Not in the 100 block, no, sir.

22 Q. Is it all concrete and sidewalks and
23 streets and buildings and brick?

24 A. Yes.

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1 Q. Across the street from the residence of

2 the complaining parties in this case, was there ever
3 a restaurant called the Golden Cup?

4 A. Yes, there was.

5 Q. Can you tell us when, approximately, the
6 Golden Cup closed?

7 A. It was in the spring; spring of '99
8 possibly. I'm not for sure.

9 Q. And was the Golden Cup open last fall of
10 '98?

11 A. Yes, I believe it was.

12 Q. Will you tell us, for the record, what the
13 nature of the business of the Golden Cup was on
14 weekends, particularly Friday and Saturday nights?

15 A. It was to serve mostly bar patrons, would
16 be the ones that frequented it.

17 Q. And there's a -- are you familiar with the
18 second floor of the building adjoining
19 Benchwarmers? Are there windows in that second
20 floor?

21 A. Yeah, I believe there is all the way down
22 to the bottom from two stories.

23 Q. And in relation to the first two windows
24 after Benchwarmers on the second floor of that

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1 adjoining building, where would the Golden Cup have
2 been?

3 A. It would have been probably in about the
4 middle of that building roughly. I'm not for sure.
5 Or a little bit farther down.

6 Q. About right across the street?

7 MR. HARDING: Objection, asked and answered.
8 Now leading.

9 HEARING OFFICER FELTON: Yes. Sustained. If
10 he knows the answer, he can respond to it.

11 BY MR. SHIELDS:

12 Q. Would you -- when was the Golden Cup open
13 on Friday and Saturday nights last fall, '98?

14 A. Time-wise, you mean?

15 Q. Yes.

16 A. They opened up probably 10:00, they'd stay
17 open till, don't know, maybe four or five a.m., I
18 believe. I'm not for sure.

19 Q. When you say they would open up about
20 10:00, do you mean a.m. or p.m.?

21 A. P.M.

22 Q. Were they -- did they attract a particular
23 kind of clientele when they were open from 10:00
24 p.m. to about 4:00 a.m.?

1 A. Seemed like mostly bar patrons.

2 Q. Bar patrons from just Benchwarmers or bar
3 patrons from all over the area?

4 A. From all the bars uptown for sure.

5 Q. Would traffic come in the area because of
6 the Golden Cup?

7 A. Yes.

8 Q. What shifts did you work last fall?

9 A. Oh, probably seconds, thirds, and then a
10 power shift probably.

11 Q. What's a power shift?

12 A. Seven p.m. to three a.m.

13 Q. So, did you -- were you familiar with the
14 business that the Golden Cup did during these late
15 p.m. and early a.m. hours last fall of 1998?

16 A. Yes.

17 Q. Would -- besides car traffic in the area
18 because of the Golden Cup, were there -- were there
19 congregations of people outside?

20 A. Yes, on occasions.

21 Q. In your job as a patrolman, do you stop
22 vehicles from time to time for violations or
23 suspicion -- reasonable suspicions of activity

24 afoot?

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1 A. Yes.

2 Q. In this area, the area of Fairbury, are
3 there vehicles that play loud stereo music?

4 A. Yes, there is.

5 Q. Do you ever observe those kinds of
6 vehicles in the 100 block of Locust in Fairbury?

7 A. At least one person I know of.

8 Q. Would you characterize the crowds that
9 would go to the Golden Cup last fall as noisy or
10 quiet?

11 A. After a few altercations, I believe some
12 other officers handled, probably noisy, a few
13 fights.

14 Q. Were the fights outside the Golden Cup?

15 A. I believe they were inside, a couple of
16 them.

17 Q. So was it a pretty raucous place on Friday
18 and Saturday nights?

19 A. Sometimes. Not all the time.

20 Q. Are you familiar with a night on September

21 25, 1999, called either Fun Night or Fan Night in
22 downtown Fairbury?

23 A. Yes.

24 Q. Would you tell Her Honor what happens on

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1 Fan Night or Fun Night in downtown Fairbury?

2 A. Oh, they have attractions for the kids to
3 go to play on, band usually at least one night a
4 week down there.

5 Q. On September 25, 1999, was there a street
6 closed off because of Fan Night, Fun Night?

7 A. I believe so.

8 Q. And were there racing cars?

9 A. I don't recall.

10 Q. You don't recall whether they were
11 displayed?

12 A. No, I don't recall.

13 Q. Was there a disc jockey in the street?

14 A. There's a live band, I believe it was.

15 Q. Was there any kind of a radio station
16 broadcasting from there?

17 A. Not that I can recall.

18 Q. Did you get any complaints of noise from

19 the complainants in this case on September 25, 1999?

20 A. No, I did not.

21 Q. Do you know whether the complainants were
22 inside with an expert witness inside their domicile
23 that night taking readings of sound?

24 A. I have no idea.

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1 Q. Have you ever had occasion to be called
2 for any -- to respond to complaints by the
3 complaining witnesses in this case?

4 A. Yes.

5 Q. And when was that, approximately?

6 A. Believe the report was July 7th, '98.

7 Q. Did you go to the scene of Benchwarmers
8 Pub?

9 A. Yes.

10 Q. And would you tell us what happened?

11 A. Original complaint was for loud music.
12 Arrived at the location and didn't hear anything
13 until I got up to the front of Benchwarmers door. I
14 could hear some music. And entered the business and
15 asked the bartender to turn it down; we had a noise

16 complaint from people upstairs.

17 Q. What did the bartender do to respond to
18 you when you asked that the music be turned down?

19 A. She apologized, said she would, and said
20 she didn't know anybody was upstairs.

21 Q. When you handled this complaint, did you
22 stop your squad car within the public -- on the
23 public street or the public parking area?

24 A. Public street.

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1 Q. And when you got out of your car, could
2 you hear the music?

3 A. No, I could not.

4 Q. Where were you in relation to Benchwarmers
5 when you pulled your car up into this area where you
6 stopped?

7 A. Right in front of it.

8 Q. When was it that you heard the music?

9 A. Within foot or two of the door.

10 MR. HARDING: I'm sorry. I didn't catch that.

11 MR. SHIELDS: Within a foot or two of the
12 door.

13 MR. HARDING: Okay.

14 BY MR. SHIELDS:

15 Q. So when you were on the other side of the
16 curb, you couldn't hear the music?

17 A. No, I didn't hear it.

18 MR. SHIELDS: Those are my questions.

19 HEARING OFFICER FELTON: Mr. Harding, anything
20 on cross?

21 MR. HARDING: Yes.

22 CROSS-EXAMINATION

23 BY MR. HARDING:

24 Q. Have you ever been on the second floor of

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1 105 West Locust?

2 A. What is 105?

3 Q. Pawlowskis' residence.

4 A. No, I have not.

5 MR. HARDING: No further questions.

6 HEARING OFFICER FELTON: Thank you very much.

7 MR. O'DAY: I have an Officer Frickey coming,
8 but --

9 HEARING OFFICER FELTON: Go off the record for
10 a second.

11 MR. O'DAY: Call Pat Prather.

12 (Witness sworn.)

13 PATRICK PRATHER,

14 having been duly sworn by the court reporter,

15 testified upon his oath as follows:

16 DIRECT EXAMINATION

17 BY MR. O'DAY:

18 Q. Would you state your full name for the
19 record, please?

20 A. Pat Prather.

21 Q. And, Mr. Prather, what is your profession?

22 A. I own and operate Variety Specialties and
23 Amusement Company.

24 Q. What does Variety Specialties and

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1 Amusement Company do?

2 A. We supply liquor establishments and
3 restaurants in Central Illinois with pool tables,
4 jukeboxes, dart machines, vending machines.

5 Q. Typically, when you supply these kinds of
6 amusement devices to be located on the premises of
7 restaurants or liquor establishments, what is -- do
8 you sell these items to them, or do they still

9 belong to you?

10 A. They belong to the corporation. We put
11 them in on a 50/50 split.

12 Q. Who services these machines?

13 A. Company does. We do.

14 Q. And so for the business allowing you to
15 put the machines in there, they get 50 percent of
16 what?

17 A. Of the revenue that they take in.

18 Q. Not the profit, but the gross revenue?

19 A. Correct.

20 Q. So does your company keep an accounting of
21 how much revenue each machine generates?

22 A. Yes, we do.

23 Q. And then what happens with that revenue
24 that that machine in particular generates?

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1 A. We split that revenue down the middle. We
2 leave half of it at the location, the other half of
3 it goes back to the office.

4 Q. Can you tell from -- have you done a
5 search of the records of your company in an effort

6 to determine how much revenue the jukebox at
7 Benchwarmers Pub in Fairbury, Illinois, generated on
8 average every month?

9 A. Yes, I have.

10 Q. Approximately -- well, how much revenue on
11 average did it generate?

12 A. Around \$140 a month gross in a 30-day
13 period.

14 Q. When you say \$140 gross, does that mean
15 before the split, the 50/50 split?

16 A. Correct. Correct. Be \$70 for the
17 company, \$70 for the liquor establishment in this
18 case, which would be Benchwarmers.

19 Q. In the case of these jukeboxes, is the --
20 is it the practice of your business to accurately
21 account for these and to give the owner a fair
22 50 percent split?

23 A. Yes, it is.

24 Q. And do the owners of these businesses, are

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1 they careful to make sure that these counts are
2 honest and that they're really getting 50 percent of
3 the money?

4 A. Yes.

5 Q. How does the pricing -- in 1998 and 1999,
6 how did the price of the jukebox go for customers of
7 Benchwarmers?

8 A. If they put a quarter in, they get one
9 song. If they put a dollar in, they get four
10 songs. If they put two dollars in, they get nine
11 songs. If they put a five dollar bill in, they get
12 25 songs.

13 Q. Approximately how much per day would \$140
14 a month work out to?

15 A. If you averaged it out per day, I would
16 say that there's like maybe four dollars to five
17 dollars per day of play.

18 Q. What is the average length of a song on a
19 jukebox?

20 A. Two and a half to three minutes.

21 Q. What -- by the way, how long have you been
22 in this business of operating amusement devices?

23 A. 30 years.

24 Q. What age did you start?

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1 A. I started at age 14.

2 Q. And when did you first start putting
3 jukeboxes into locations?

4 A. At age 15.

5 Q. How old are you now?

6 A. 43.

7 Q. Approximately how much time per day of
8 jukebox usage would this four to five dollars a day
9 work out to?

10 A. It would be very minimal.

11 MR. HARDING: I'm sure that there's times that
12 the jukebox is shut off, like they are in every
13 location, where people are eating or they have other
14 functions going on. I would say 30 minutes a day,
15 hour a day. It varies.

16 Q. Can you tell from the money that comes in
17 on the jukeboxes when the usage is, whether it's
18 during the day or whether it's at night?

19 A. No, you cannot.

20 Q. Is it your testimony, though, that the
21 maximum average is about an hour a day?

22 A. Correct.

23 Q. Are you familiar with the layout of the
24 jukebox and associated devices at Benchwarmers Pub

1 in Fairbury, Illinois?

2 A. Very familiar.

3 Q. Who put those in?

4 A. I did.

5 Q. Did you do it personally, or did somebody
6 at your company do it?

7 A. I done it personally with another member
8 of the company.

9 Q. How many people work for your company?

10 A. 35.

11 Q. And you did this yourself with somebody
12 else?

13 A. Uh-huh.

14 Q. Why do you get involved yourself in
15 locating jukeboxes when you have all these other
16 employees?

17 A. Any time there's a new location, I go out
18 myself to lay it out and see what we can do. I want
19 to be sure that the layout of the sound system is
20 not going to create problems with other parts of the
21 building.

22 Some situations you have to lay out where
23 pool tables go, dart machines so you can organize
24 them in a room that's in a particular location that

1 they have set up.

2 Q. In the case of Benchwarmers Pub, are you
3 aware that there is a structure next door to
4 Benchwarmers Pub?

5 A. Uh-huh. I am.

6 Q. And is there a common wall between the bar
7 of Benchwarmers Pub --

8 A. Yes.

9 Q. -- and the location next door?

10 A. Yes.

11 Q. On what wall is the jukebox located at the
12 Benchwarmers Pub location?

13 A. It's on the -- wait here. It would be on
14 the west wall.

15 Q. Is that the wall that's shared with the
16 structure next door?

17 A. Uh-huh. Yes.

18 Q. Does -- are there speakers located in this
19 room?

20 A. Yes, there is.

21 Q. Are any of those speakers located on that
22 wall that's shared in common with the structure next

23 door?

24 A. There's no speakers in the jukebox itself

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1 because that's a wall-hung jukebox. The speakers
2 are positioned in the front of the building between
3 the two TVs and the back of the building and on the
4 opposite wall.

5 Q. Is there, is there any kind of device on
6 the wall itself that's shared with the structure
7 next door besides this jukebox without speakers that
8 you've installed or that you're aware of that would
9 cause vibration?

10 A. No.

11 Q. The wall-mounted jukebox, that, you say,
12 has no speakers?

13 A. Correct.

14 Q. What does it have inside it?

15 A. It has the actual computer, the mechanism
16 that holds the CDs, the amplifier. But there is no
17 speakers in the -- any wall-hung jukebox, there's no
18 speakers.

19 Q. How many jukeboxes does your company own?

20 A. 350.

21 Q. And do you use speakers in conjunction
22 with these jukeboxes?

23 A. Uh-huh.

24 Q. Have you done that since you were fourteen

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1 or fifteen years old?

2 A. Yes, I have.

3 Q. Are you familiar with how speakers
4 operate?

5 A. Very much so.

6 Q. Tell us how they operate.

7 A. Well, in this particular situation -- you
8 have an amplifier in any type of a sound system.
9 The wall-hung jukeboxes will allow you to have 200
10 watts. It's a 200-watt amplifier, 100 watts per
11 channel.

12 What that actually means is you can have
13 100 watts on the left side of this building, you can
14 have 100 watts on the right side of the building.
15 And that particular case up there, you can tap them
16 down from 100 watts all the way down to five.

17 Those speakers that are set up in this

18 particular situation in Benchwarmers are on 40 watts
19 per channel on the left-hand side as well as on the
20 right-hand side. If you have a bigger building or
21 you have a higher ceiling, naturally you'd want more
22 watts per channel. If you're trying to send sound
23 to two buildings, we have certain situations where
24 we have auxiliary amplifiers that are put in. We

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1 have 250 watts per channel.

2 But you can't do that with the type of
3 amplifier that is in this particular machine which
4 is manufactured by Rowe.

5 Q. And has it been that way since -- well,
6 how long has your jukebox been at Benchwarmers Pub
7 here in Fairbury, Illinois?

8 A. It's been in there since the location
9 opened. I don't know that exact date. I've heard
10 it, but --

11 Q. Are you sure that yours was the -- has
12 yours been the only equipment they have had in
13 Fairbury?

14 A. Yes.

15 Q. Has it -- has the equipment changed since

16 it was first installed?

17 A. The jukebox, no. It's got the same
18 original amplifier in there and everything.

19 Q. You have other equipment in the building?

20 A. Yes, we do.

21 Q. Like pinball machines or something?

22 A. Uh-huh.

23 Q. Some of that changed?

24 A. Yeah. We rotate some of the video games

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1 from time to time when they don't play them as much
2 as they do dart machines. But the jukebox has not
3 changed at all.

4 Q. Are you familiar with home stereo systems?

5 A. Yes.

6 Q. Is 40 watts per channel much of a home
7 stereo system?

8 A. Not at all.

9 Q. Tell us, for the record, about watts,
10 these 40 watts and 100 watts. What does that mean
11 in terms of the power of the system?

12 A. Well, it's not uncommon to have a car

13 stereo -- to tell you the difference between a home
14 stereo and a car stereo and a commercial jukebox, it
15 wouldn't be uncommon, you could have 100 watts per
16 channel in a car stereo. You could have some of
17 these sound systems that are bought at like Best
18 Buy, Wal-Mart, Circuit City are 250 watts per
19 channel.

20 Q. What controls the energy of the sound?

21 A. The amplifier.

22 Q. And how is the energy measured? Is it
23 measured by watts or what?

24 A. Yes. It's -- in the -- in our industry,

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1 in the jukebox industry, it's all measured by watts
2 per channel. And the reason for that is because
3 every particular location is different. You might
4 have a big lounge where they want, you know, the --
5 they don't want the loud music. You might have a
6 shot in a beer joint someplace that doesn't have an
7 eating facility where they want more volume.

8 Q. This particular facility in Fairbury that
9 we're talking about, Benchwarmers Pub, have you been
10 inside there?

11 A. Yes, I have.

12 Q. Would you describe, for the record, what
13 the layout of the facility is, restaurant versus
14 bar?

15 A. Well, in the -- would be the west side of
16 the building is the bar. On the opposite side of
17 the building is the restaurant area, which you can
18 dine in either area. Basically, it's divided in
19 half.

20 Q. Have you been there in the morning?

21 A. Yes.

22 Q. Have you been there in the noon hour?

23 A. Yes.

24 Q. Have you been there in the evening?

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1 A. Yes.

2 Q. Have you been there late at night?

3 A. Yes.

4 Q. Would you tell us, throughout the day,
5 what kind of clientele are attracted by this
6 establishment?

7 A. Any time I've ever been in there, there

8 was more people eating than there ever was at the
9 bar. I mean, I'm not in there every day, but I
10 would say that -- that the type of location that
11 that is, is geared more towards the dining and the
12 food and the lunch crowds than it is the drinking
13 people.

14 Q. Do they serve breakfast?

15 A. Yes.

16 Q. Do they serve lunch?

17 A. Yes.

18 Q. Do they serve dinner?

19 A. Yes.

20 Q. When you erected this system with the
21 speakers and the jukebox on the common wall, did you
22 take into account the fact that it was going to be
23 primarily an eating establishment?

24 A. Yes, I did.

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1 Q. And what -- how did you take that into
2 account?

3 A. Well, when I first went to the location
4 and talked to Dave, the owner, he -- and showed me
5 how they're going to lay it out and showed me a

6 floor plan, that's one of the whole reasons for me
7 going out to the locations before we start to lay it
8 out. I'll know what we need as far as speakers,
9 what type of jukebox. Some of the ones that sit on
10 the floor, floor jukeboxes instead of the wall-hung
11 jukebox.

12 Q. Have you come to an understanding or an
13 opinion in your industry with regard to how
14 jukeboxes should be loud or not loud where you've
15 got so much eating occurring within the
16 establishment?

17 A. Yes, I have.

18 Q. What's your opinion?

19 A. Well, rule of thumb, any time you have
20 dining involved, I mean, they don't want the loud
21 music. You get a shot in a beer place where the
22 guys get off of work, or late on a Friday or
23 Saturday night, they want to turn the volume up,
24 then you've got to be able to be in a position to

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1 give them more volume. It's all controllable.

2 Every -- every jukebox that we operate is

3 controllable with a volume control. There's no
4 jukebox that is set at one particular level
5 regardless of what the situation is. You can't turn
6 it up or you can't turn it down. They all have
7 limits on them, where there's a maximum volume that
8 will come out of them regardless of what you do.

9 The only way that you're going to get more
10 volume out of that particular unit is to get into
11 the machine itself, get into the preamplifier and
12 step up the leads on the preamplifier.

13 Q. Have you been in that jukebox lately?

14 A. Yes.

15 Q. Has anybody monkeyed around with the
16 settings on the preamp or the amp inside it?

17 A. Absolutely not.

18 Q. How many times would you say you've been
19 to this establishment in Fairbury, Illinois?

20 A. Probably 15, 20.

21 Q. When you go there, do you -- where do you
22 park?

23 A. I've parked in the front most of the time
24 or across the street. Normally, wherever I can find

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1 a parking place.

2 Q. Have you ever, in your visits there, heard
3 the jukebox music going when you were off the
4 property line in the public street?

5 A. I've never heard the jukebox. Most of the
6 time when I went in there, I haven't heard the
7 jukebox. When the jukebox has been on, I hear it
8 after I get inside the building after I open up the
9 door. I've never heard this wild sound that -- you
10 know, that I've heard people talking about here in
11 testimony.

12 Q. Are you -- in your experience and in your
13 expertise in your industry, do you believe that the
14 sound from that jukebox could go through a wall
15 that's four bricks thick?

16 A. No. I do not.

17 Q. When you've been in the streets in
18 downtown Fairbury, have there been sources of noise
19 in the streets themselves?

20 A. Yes.

21 Q. Would you tell us about that?

22 A. Well, I think the streets of Fairbury are
23 no different than any other streets, whether they be
24 in Chicago or Peoria or Chenoa or wherever you go.

1 There's trucks, there's vehicles, there's cars with
2 stereos, there's motorcycles, there's the normal
3 noise in Fairbury that you hear everywhere. I don't
4 think Fairbury is any different than anyplace else.

5 Q. Have you looked into the situation
6 involving the jukebox complaints and investigated
7 them to determine whether you should make any
8 changes to the jukebox or the speakers?

9 A. Yes.

10 MR. HARDING: Objection, assumes facts not in
11 record. There's nothing in the record of any
12 jukebox complaints.

13 HEARING OFFICER FELTON: Overruled. I'm going
14 to allow it, just as it goes to the complainants'
15 potential allegations of just noise.

16 BY MR. O'DAY:

17 Q. And what is your opinion with respect to
18 whether there's any need to make changes to the
19 jukebox and speaker system that you installed?

20 A. I don't see where there needs to be any
21 changes made whatsoever.

22 Q. Have you looked at the white overhang
23 structure in front of the building of the
24 complaining parties in this case?

1 A. Yes, I have.

2 Q. Do you have an opinion regarding whether
3 that structure could transmit sound?

4 MR. HARDING: Objection. No basis for
5 expertise.

6 HEARING OFFICER FELTON: Can you establish?

7 MR. O'DAY: I'll try to lay more of a
8 foundation, please.

9 HEARING OFFICER FELTON: See if we can't be
10 more --

11 BY MR. O'DAY:

12 Q. Can you tell me, how does a speaker work?
13 How does a speaker transmit sound?

14 A. Okay. The amplifier transmits, through a
15 cable, the sound into the speaker; and then the --
16 through the cone of the speaker, the sound comes
17 out. The sound, at that time, hits different
18 things, whether they be walls, objects, what have
19 you. The amplifier pushes the sound out through the
20 speaker or through a horn in the speaker.

21 Q. Are there -- is there a part that moves on
22 the speaker as the sound comes out?

23 A. Yes, there is.

24 Q. What part moves?

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1 A. The actual cone of the speaker itself.

2 The vibration.

3 Q. Does a material have to be in a speaker in
4 order to transmit sound like that?

5 A. Yes, it does.

6 Q. Can't be anywhere else?

7 A. The material?

8 Q. Yes.

9 A. You have to have the material in that
10 particular cone or the sound would not come out of
11 it.

12 Q. Do you have an opinion regarding whether
13 the overhang in front of the complaining parties'
14 building could transmit sound?

15 A. I would say it could very easily.

16 Q. Why is that?

17 A. Well, when the sound -- let's say you had
18 the jukebox right here on the wall, and you have a
19 speaker there, and you have a speaker here. The

20 sound comes here. The sound has to go somewhere.

21 When you've got sound coming out of a
22 unit, whether it's a car stereo, whether it's a home
23 entertainment center, jukebox, the sound has to go
24 somewhere. When it goes, it goes to items -- walls,

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1 things -- bounces back, bombards back, and it
2 transmits.

3 Q. Have you been to -- in your business, you
4 have 300-some jukeboxes?

5 A. That's right.

6 Q. About how many of those are at liquor
7 establishments?

8 A. Probably 95 percent of them.

9 Q. And are they all over Central Illinois?

10 A. Yes.

11 Q. And are they in big cities and little
12 cities?

13 A. All over. Definitely.

14 Q. Is there anything unusual about the
15 jukebox and the sound system associated with the
16 jukebox at Benchwarmers Pub in Fairbury as opposed
17 to any other liquor establishment in Central

18 Illinois that you know of?

19 A. Not at all. It's not configured any --
20 any other way that a neighborhood bar would be or
21 neighborhood restaurant.

22 MR. O'DAY: Those are my questions.

23 HEARING OFFICER FELTON: Mr. Harding, anything
24 on cross-examination?

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1 MR. HARDING: Yes.

2 CROSS-EXAMINATION

3 BY MR. HARDING:

4 Q. Have you ever been upstairs at 105 West
5 Locust, second floor?

6 A. 105 is --

7 Q. Right, the Pawlowskis' home?

8 A. No, I have not.

9 Q. Okay. What's your educational background?

10 A. I have as far as -- got four years of high
11 school I finished, and I've got one year at Bradley.

12 Q. Okay. General education courses?

13 A. Political science I started with.

14 Q. Okay. But if you did one year, first

15 year, how many major courses did you take?

16 A. I really couldn't even tell you. Be
17 honest with you, I couldn't tell you that, it's been
18 so many years ago.

19 Q. Okay. Any other education?

20 A. No. Street.

21 Q. Okay. Now, take a speaker, okay, and hook
22 it up directly to a record.

23 A. Okay.

24 Q. Let's be old-fashioned here for a moment.

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1 A. A vinyl you're talking about?

2 Q. Right.

3 A. Vinyl record. Okay.

4 Q. Good sound.

5 A. Okay.

6 Q. What do you hear? What do you hear when
7 you play the record with no amplifier between the
8 speaker and the record player?

9 A. If you hook a vinyl record up on a
10 turntable without an amplifier to a speaker, you're
11 not going to have any volume.

12 Q. At all?

13 A. At all.

14 Q. Okay. And a speaker of any kind, of any
15 configuration without an amplifier attached to it is
16 not going to magnify the sound that comes to it; is
17 that correct?

18 A. Correct.

19 MR. HARDING: Okay. Thank you, sir. I have no
20 further questions.

21 THE WITNESS: Okay.

22 HEARING OFFICER FELTON: Mr. O'Day, anything
23 else on redirect?

24 REDIRECT EXAMINATION

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1 BY MR. O'DAY:

2 Q. Does the amplifier send sound to the
3 speaker?

4 A. Uh-huh.

5 Q. Can you have other things that send sounds
6 to surfaces --

7 A. Uh-huh.

8 Q. -- besides speakers?

9 HEARING OFFICER FELTON: Is that yes or no?

10 A. Yes.

11 Q. Have you been outside when a car makes a
12 noise?

13 A. Yes.

14 Q. Is there an amplifier involved in hearing
15 that noise?

16 A. No.

17 Q. Have you been near construction sites?

18 A. Sure.

19 Q. Are there amplifiers between the noises
20 you hear and your ears?

21 A. No. We're talking about a different type
22 of sound here. When a record is turning around on
23 the player like this gentleman said, you're going to
24 hear -- you're not going to hear the lyrics of that

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1 particular song, but you're going to hear that
2 needle in that particular groove. But you're not
3 going to hear Achy Breaky Heart, whatever --
4 whatever the record is.

5 MR. O'DAY: Those are my questions.

6 HEARING OFFICER FELTON: All right. Thank you
7 very much, Mr. Prather.

8 MR. O'DAY: Call Officer Frickey.
9 (Witness sworn.)
10 MICHAEL P. FRICKEY,
11 having been duly sworn by the court reporter,
12 testified upon his oath as follows:
13 DIRECT EXAMINATION
14 BY MR. O'DAY:
15 Q. Would you state your name for the record,
16 please?
17 A. Michael Patrick Frickey.
18 Q. What is your position?
19 A. I'm a patrolman for the City of Fairbury.
20 Q. How long have you been a patrolman for the
21 City of Fairbury?
22 A. Two years.
23 Q. And where did you grow up, sir?
24 A. Dwight, Illinois.

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1 Q. Is that around here?
2 A. Yes.
3 Q. How far away?
4 A. 25, 30 minutes north.

5 Q. How long have you been familiar with the
6 City of Fairbury?
7 A. 20 years.
8 Q. And how old are you, sir?
9 A. 42.
10 Q. What was -- did you have experience in law
11 enforcement before you became a patrolman with the
12 City of Fairbury?
13 A. Yes.
14 Q. What was that?
15 A. Livingston County Sheriff's Department.
16 Q. How long were you there?
17 A. Fifteen years.
18 Q. And what did you do for the Livingston
19 County Sheriff's Department?
20 A. I was a patrolman, deputy sheriff.
21 Q. Is it fair to say then that you've got
22 seventeen years of patrol experience in law
23 enforcement?
24 A. Yes.

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1 Q. Did you undertake any kind of educational
2 pursuits in order to become a law enforcement

3 officer in the State of Illinois?

4 A. Yes. Police Training Institute. Prior to
5 that, I went to college after high school.

6 Q. And where is the Police Training Institute
7 located?

8 A. Champaign, Illinois.

9 Q. How long did you go to that?

10 A. Eight-week program.

11 Q. Did you graduate?

12 A. Yes.

13 Q. What college did you attend?

14 A. Eureka College.

15 Q. How long did you go there?

16 A. 58 hours of college credit.

17 Q. And did you have a specialty you were
18 pursuing when you did that?

19 A. Criminal law.

20 Q. Would you say that a good part of your
21 training has involved making observations with
22 respect to situations when you come on a scene?

23 A. Yes.

24 Q. How many -- do you know how many

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1 complaints you've answered in your time of seventeen
2 years as a police officer?

3 A. Several. More than several. A lot.

4 Q. In connection with your participation as a
5 patrolman in downtown -- or in Fairbury, Illinois,
6 and also your familiarity with the town before that,
7 are you familiar with Locust Street in Fairbury?

8 A. Yes.

9 Q. And would you tell us, what's Locust
10 Street? What, if anything, is special about that?

11 A. It's the main commercial area of the City
12 of Fairbury.

13 Q. How long has it been that -- has it
14 changed, or has it always been that way since you
15 became familiar with it?

16 A. Always been that way.

17 Q. Is there a night in September -- was there
18 a night on September 25th, 1999, when there was
19 something called Fan Fest or Fun Fest in downtown
20 Fairbury?

21 A. Yes.

22 Q. Were streets blocked off for that?

23 A. To my knowledge, yes. I didn't work that
24 night.

1 Q. All right. Did you go down there at all?

2 A. No.

3 Q. Are you familiar with an establishment
4 called Benchwarmers Pub?

5 A. Yes.

6 Q. Have you been in there?

7 A. Yes.

8 Q. Have you eaten in there?

9 A. Yes.

10 Q. How many times have you been in
11 Benchwarmers Pub as a citizen, not as an officer
12 responding to a complaint?

13 A. More than five. Five, six times.

14 Q. Do they serve breakfast?

15 A. Yes.

16 Q. Do they serve lunch?

17 A. Yes.

18 Q. They serve dinner?

19 A. Yes.

20 Q. Approximately what part of the facility is
21 devoted to restaurant versus bar?

22 MR. HARDING: We're willing at this point to
23 stipulate to the prior answers of the prior
24 witnesses as to the layout. We don't have a problem

1 with what the layout is as testified to.

2 HEARING OFFICER FELTON: Mr. O'Day, do you have
3 any response to that?

4 MR. O'DAY: Yes. I think I'm going to elicit
5 the fact that this is not some roadhouse or some
6 kind of like discotheque, but that I'm trying to lay
7 a foundation from trained law enforcement officers
8 who are capable of making observations probably
9 better than anybody else for the record, for the
10 Pollution Control Board, about what kind of a place
11 this is.

12 HEARING OFFICER FELTON: I'll allow the
13 questioning, allow the respondents to establish
14 their case.

15 A. Okay. Go ahead.

16 Q. About what percentage is restaurant versus
17 bar?

18 A. 70 percent.

19 Q. 70 percent what?

20 A. Restaurant.

21 Q. And what percent bar?

22 A. 30 percent.

23 Q. Have you had occasion to respond to
24 complaints with respect to Benchwarmers Pub?

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1 A. Yes.

2 Q. And when did you respond to a complaint
3 regarding Benchwarmers Pub?

4 A. July 1st.

5 Q. Of what year?

6 A. Last year.

7 Q. 1998?

8 A. Yes.

9 Q. Who had made the complaint?

10 A. The complainant here, Mr. Pawlowski.

11 Q. And what was the nature of the complaint
12 that was received that you responded to?

13 A. Loud music complaint.

14 Q. Did you respond to the complaint?

15 A. Yes.

16 Q. What did you do?

17 A. I was met by Mr. Pawlowski at the front of
18 his -- actually out in the middle of the street and
19 then went to the front of his establishment there,

20 his restaurant -- or his business, whatever he has
21 there.

22 Q. Did you drive a car to get there?

23 A. Yes.

24 Q. Where did you park your car?

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1 A. City hall, the old city hall which would
2 be about -- across the intersection.

3 Q. And then did you walk to the location?

4 A. Yes.

5 Q. Did you notice noise in the public right
6 of way coming from Benchwarmers Pub?

7 A. Not at that time, no.

8 Q. Did -- did the complaining witness in this
9 case seem to indicate that he somehow heard noise
10 there?

11 A. Yes.

12 Q. And you didn't?

13 A. Not at that time, no.

14 Q. Did you go up to the door of the
15 establishment?

16 A. Benchwarmers?

17 Q. Benchwarmers.
18 A. Walked right by it.
19 Q. And when did you -- did you eventually
20 hear sound there?
21 A. Yes.
22 Q. And where were you when you first heard
23 sound coming out of the establishment?
24 A. In the doorway of Mr. Pawlowski's

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1 business.
2 Q. You could hear it there, out on the
3 sidewalk?
4 A. Not on the sidewalk.
5 Q. Inside the door?
6 A. Just inside. They have a double door.
7 Q. Could you hear lyrics?
8 A. No, just a real loud bass sound.
9 Q. Okay. Was the door open when you heard
10 that?
11 A. The door into the business, yeah.
12 Q. Did you form an opinion at that time
13 regarding whether the sound -- the bass sound that
14 you could hear inside that doorway was unreasonable

15 for this location in Fairbury, Illinois?

16 A. Not for the -- where it was coming from.

17 It was a commercial business.

18 Q. What was your opinion?

19 A. At that time, I just wanted to take care
20 of the situation as quickly as I could, go and talk
21 to the owner of the establishment, see if he would
22 turn whatever it was down to appease both parties.

23 Q. When -- did you go talk to the
24 establishment?

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1 A. Yes, I did.

2 Q. What was the response?

3 A. They turned it down immediately.

4 Q. And so after the complaint, they took
5 efforts to correct it, whether the complaint was
6 right or wrong?

7 A. Yes.

8 Q. Are you familiar with a business called
9 the Golden Cup?

10 A. Yes, I am.

11 Q. And will you tell us about when the Golden

12 Cup last opened and last closed?

13 A. I have really no idea.

14 Q. Was it open last fall, fall of 1998?

15 A. Yes, it was. Yes, it was.

16 Q. What were its hours in the fall of 1998 on
17 weekends?

18 A. They would stay open late for the
19 breakfast crowd.

20 Q. By "late," what do you mean?

21 A. Till five, six o'clock in the morning.

22 Q. In relation -- are you familiar with the
23 first two windows on the second floor of the
24 complaining parties in this case, their building?

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1 A. Yes.

2 Q. Those would be the windows on the second
3 floor right next to Benchwarmers?

4 A. Uh-huh.

5 Q. Where in relation to those two windows was
6 this place called the Golden Cup?

7 A. Straight across the street.

8 Q. When the Golden Cup had people there at
9 the late p.m. and early a.m. hours, what kind of a

10 crowd was attracted?

11 A. Basically everybody else's drunks.

12 Q. When you say "everybody else's drunks,"
13 what are you talking about?

14 A. From the communities surrounding. They
15 advertised it; they had everybody else there. I
16 mean, you're talking people from all Forrest,
17 Chatsworth, within a fifteen-square-mile area.

18 Q. And would they occupy parking spaces in
19 front of the Golden Cup?

20 A. Yes.

21 Q. Would they occupy parking spaces across
22 the street near the complaining parties' building?

23 A. Yes.

24 Q. Would the parking places -- how many

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1 tables were at the Golden Cup?

2 A. Approximately eight to ten.

3 Q. Would the tables fill up during this time
4 period?

5 A. Yes.

6 Q. Would people congregate outside waiting

7 for tables?

8 A. Yes.

9 Q. Would it be the case that one person would
10 come in a car or multiple people in cars?

11 A. You'd have a carload.

12 Q. Carload of partyers?

13 A. Yeah, more than three usually.

14 Q. And did you work the second and third
15 shifts and the power shifts last fall?

16 A. Yes.

17 Q. Would you tell us what kind of -- were the
18 cars quiet, or were they playing music when they
19 came?

20 A. Most of the time they had -- you asked to
21 turn it down most of the time.

22 Q. Did you even have to ask some of them to
23 turn it down?

24 A. Yep.

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1 Q. Do you know whether last fall of 1998, did
2 you help the complaining parties in this case take
3 any of their readings on their Radio Shack
4 equipment?

5 A. No.

6 Q. Do you know whether they did any
7 calculations to exclude noise from the Golden Cup
8 across the street?

9 A. Not that I remember, no.

10 Q. Did you ever get any -- you yourself told
11 people to tell -- turn their stereos down inside
12 their cars that were patrons of the Golden Cup?

13 A. Yes.

14 Q. And did you ever get any complaints from
15 the complaining parties in this case about the
16 Golden Cup?

17 A. No.

18 Q. How would you characterize the crowds that
19 would congregate outside; were they quiet, or were
20 they noisy?

21 A. They were -- they were noisy.

22 Q. Have you ever had to respond to any other
23 problems at Benchwarmers besides this noise
24 complaint that you talked about from last -- was it

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2 A. July 1st.

3 Q. Yes?

4 A. No.

5 Q. Have you received complaints about fights
6 or problems of any kind?

7 A. No.

8 Q. Would you characterize Benchwarmers as a
9 pretty clean establishment?

10 A. Yes.

11 MR. O'DAY: Those are my questions.

12 HEARING OFFICER FELTON: Mr. Harding?

13 CROSS-EXAMINATION

14 BY MR. HARDING:

15 Q. Golden Cup, as you've described it, sir,
16 is a location, correct?

17 A. Yes.

18 Q. But in point of fact, the Golden Cup that
19 was open was not the same proprietorship that was
20 open all night? It was not same proprietorship as
21 the daytime Golden Cup, was it?

22 A. Yeah, I believe it was.

23 Q. It was leased out, wasn't it?

24 A. But the same person owned it.

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1 Q. Okay. Owned it, but didn't operate it for
2 the --
3 A. Yes, she did.
4 Q. -- nighttime activities?
5 A. I believe she was the still the same,
6 Mrs. Zandeli (phonetic).
7 Q. All right. Have you ever been to the
8 second floor of 105 West Locust?
9 A. No, I have not.
10 Q. Okay. 7/1 of '98, July 1, '98 --
11 A. Yes.
12 Q. -- when you received a complaint, what
13 time was that?
14 A. Well, it was like 11:06 I have in my log
15 here.
16 Q. Okay. And you have your log with you here
17 that you're consulting?
18 A. Yes (indicating).
19 Q. Could I possibly get a copy of that?
20 A. Yeah. I can get you a copy of that.
21 Q. Thank you.
22 A. Okay.
23 Q. I would like to enter it into evidence.
24 A. Okay.

1 HEARING OFFICER FELTON: Do the respondents
2 want to enter it into evidence?

3 THE WITNESS: I'll make a copy, but you have to
4 black out the other stuff.

5 MR. HARDING: The document from which the
6 witness has testified.

7 MR. O'DAY: I don't have any problem with
8 admitting it. Do you care if you lose it?

9 THE WITNESS: Yeah, I have to -- is that all
10 right? This is an original.

11 BY MR. HARDING:

12 Q. Can I take a look at it? Thank you.

13 Oh, this is your night log?

14 A. Yes.

15 Q. This isn't just the one incident?

16 A. No, this is a daily log.

17 Q. Oh, okay.

18 A. Yes.

19 Q. All right.

20 MR. HARDING: Yes. Don't want to take that
21 away from him, but, if possible, we would like to
22 enter it into evidence as Complainants' 19.

23 HEARING OFFICER FELTON: Actually, the

24 rerespondents will admit it -- or do you have an

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1 objection?

2 MR. O'DAY: I don't know what to do. I guess
3 he needs to furnish us with a copy of that.

4 HEARING OFFICER FELTON: Right.

5 MR. O'DAY: But he does not want to let that
6 out of his possession, so --

7 HEARING OFFICER FELTON: Is there any way we
8 can get a copy within the hour?

9 THE WITNESS: Yeah, I'll go up there and make
10 one.

11 MR. HARDING: Three copies, please.

12 THE WITNESS: I'll black out the other portions
13 that are not pertaining to this.

14 HEARING OFFICER FELTON: Right.

15 MR. HARDING: Three copies?

16 THE WITNESS: Yeah.

17 HEARING OFFICER FELTON: No objection to that.

18 So, only the portion that's relevant to this
19 situation will be included.

20 And the question now is, who's admitting
21 it? Do you prefer to admit it as a respondents'

22 exhibit?

23 MR. O'DAY: How about a court exhibit?

24 MR. HARDING: I don't know if there's a

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1 procedure for that.

2 MR. O'DAY: I'll offer it.

3 HEARING OFFICER FELTON: Yes, I would prefer
4 one of the parties offer it.

5 MR. HARDING: Is that Respondents' Number 5?
6 Complainants have no objection?

7 MR. HARDING: No.

8 HEARING OFFICER FELTON: Obviously not.

9 Respondents' Exhibit Number 5 will be admitted.

10 It's Officer Frickey's log from July 1st, 1998.

11 Just so long as, Officer Frickey, you can
12 get a copy -- three copies for us within the hour.

13 THE WITNESS: Okay.

14 HEARING OFFICER FELTON: It's 11:30 a.m., so if
15 we can get it by 12:30 p.m. that would be great.

16 BY MR. HARDING:

17 Q. Is your log considered a public record?

18 A. I believe so, yes.

19 Q. Well then I would ask that you not white
20 out any of the other material.

21 A. Okay. All right.

22 HEARING OFFICER FELTON: Do you have any
23 objection to that?

24 MR. O'DAY: I think that, again, we're getting

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1 into a situation where maybe the city attorney
2 should be consulted because I don't know the answer,
3 of whether under the Freedom -- it may be a public
4 record, but the issue, I think, is under the Freedom
5 of Information Act, can other people's incidents --
6 which looks like there's some other kind of a
7 complaint -- be obtained?

8 HEARING OFFICER FELTON: Yes, I'm going to
9 overrule that request. We will admit only the
10 portion that is relevant to this particular incident
11 and related to this case. If there is such a -- if
12 this is a public record, the complainants can always
13 FOIA the police department themselves.

14 MR. HARDING: I would ask you, sir, to exercise
15 your customary care in making sure that you don't
16 white out any part of it as relates to this.

17 THE WITNESS: That's fine, yes.

18 HEARING OFFICER FELTON: Thank you. Any
19 further questions, Mr. Harding?

20 MR. HARDING: Might be. Might be.

21 BY MR. HARDING:

22 Q. Oh. I'm sorry. Where did you grow up?

23 A. Blackstone, Dwight area.

24 Q. Blackstone, Dwight. Where did you go to

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1 high school?

2 A. Dwight High School.

3 Q. Okay. How long have you lived in
4 Fairbury?

5 A. Seven or eight years.

6 Q. Okay.

7 A. But prior to that, I was patrol -- I
8 was --

9 Q. Livingston County?

10 A. In Forrest, which is -- I was here an
11 awful lot.

12 Q. Toured around, you hit it?

13 A. Yes.

14 MR. HARDING: Okay. Thanks. I have no further
15 questions.

16 HEARING OFFICER FELTON: Mr. O'Day, do you have
17 anything else on redirect? Sorry, Officer Frickey.

18 REDIRECT EXAMINATION

19 BY MR. O'DAY:

20 Q. Was there a problem with some arson at
21 this Golden Cup?

22 A. Yes.

23 Q. What was the problem?

24 A. It was prior to my being an officer here.

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1 But apparently someone set it on fire, so on.

2 Q. Did the -- when you became an officer
3 here, was the person who had been accused of setting
4 the fire still the owner of the Golden Cup?

5 A. No.

6 Q. Where was that person?

7 A. In prison, I believe.

8 Q. And was there a woman then who ran the
9 Golden Cup --

10 A. Yes.

11 Q. -- when you're familiar with it?

12 A. Yes.

13 Q. And during this period when you testified
14 to, last fall, 1998, was she the one running it?

15 A. Yes.

16 MR. O'DAY: Those are my questions.

17 HEARING OFFICER FELTON: Thank you very much,
18 Officer Frickey.

19 (A recess was taken from 11:29 to 11:40 a.m.)

20 HEARING OFFICER FELTON: We'll go back on the
21 record. We're continuing with the respondents' case
22 in chief.

23 Mr. Shields, who's your next witness?

24 MR. SHIELDS: Yes. Prior to calling the next

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1 witness, I just wanted to let the hearing officer
2 and Mr. Harding know that we are also not going to
3 be calling Amy Hindgard and Dawn Mitchell.

4 MR. HARDING: I have a partial list somewhere
5 -- and I can't locate it today -- of the witnesses
6 that you're not calling.

7 HEARING OFFICER FELTON: Other two.

8 MR. HARDING: Jeffrey Underley isn't coming,

9 right?

10 MR. SHIELDS: Yes. He's the officer who was

11 injured, had surgery. And then Leroy McPherson.

12 MR. HARDING: I had him.

13 MR. SHIELDS: Who is city superintendent; his

14 testimony would have been similar to the mayor's.

15 HEARING OFFICER FELTON: So the way I see it,

16 there's three remaining witnesses.

17 MR. HARDING: We have three: Dave Johansen,

18 Troy Quinley, and Larry Quinley.

19 HEARING OFFICER FELTON: Okay. Great. Thank

20 you.

21 MR. SHIELDS: You're welcome. Call Larry

22 Quinley.

23 (Witness sworn.)

24 LARRY QUINLEY,

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1 having been duly sworn by the court reporter,

2 testified upon his oath as follows:

3 DIRECT EXAMINATION

4 BY MR. SHIELDS:

5 Q. Mr. Quinley, would you state your full

6 name?

7 A. Larry Ross Quinley.
8 Q. And your address?
9 A. 507 North Oak, Lexington, Illinois.
10 Q. And what is your occupation?
11 A. I'm a carpenter.
12 Q. Are you a general contractor?
13 A. Yes. We do new construction and remodel.
14 Q. And your relationship to Troy Quinley?
15 A. He's my son.
16 Q. Now, with regard to the location, 101-103
17 West Locust in Fairbury, you were involved in a
18 remodeling project?
19 A. Yes, I was.
20 Q. And can you state in some brevity exactly
21 what you did?
22 A. Well, the -- 101, we went in, and there
23 was a second floor between the first floor and the
24 roof where they had added for office space; and we

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1 tore it out all, completely gutted it. Rebuilt all
2 the walls.
3 The pub area, we knocked all the plaster

4 off the brick wall, sandblasted them, sandblasted
5 the ceiling, put new tile floors down, put a couple
6 bathrooms, cut a hole -- bigger hole between 101 and
7 103, which was a double thick brick wall. And this
8 wall, there was enough space between the two walls
9 that you can stick your hand in.

10 The building, the wall between the pub and
11 Mr. Pawlowski's building is four brick thick. And
12 in my experience over the years, when they put up
13 these buildings, they put two brick and two brick
14 with an air space between them. Now, the air space
15 may be very minimal because the mortar is touching
16 brick to brick. They did this because they didn't
17 start down the line and put one building after
18 another at the same time. They usually put one
19 building up, then they come in and put another
20 building up.

21 I have not knocked a hole in the walls to
22 see if there's an air space between the two
23 buildings. But in all my experience -- I've been in
24 this business for 35 years, and we've never found

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1 one yet with the roof lines the way they are that

2 didn't have a space between the bricks.

3 Q. The brick wall between Benchwarmers and
4 the Pawlowskis' building is four brick thick?

5 A. Right. Approximately 22 inches.

6 Q. And the brick wall that stands between the
7 Benchwarmers Pub side and Benchwarmers restaurant is
8 also four brick thick?

9 A. Four brick thick. But it's actually wider
10 than four brick because there's a space between the
11 two buildings that you can actually stick your hand
12 in.

13 The reason I know that is because we
14 knocked a hole -- a bigger hole, put the double
15 swinging doors between the two buildings.

16 Q. And you've heard the prior testimony about
17 the swinging door area. How much of the area is
18 covered by the swinging doors? How much of the area
19 of the opening is covered by the swinging doors?

20 A. Well, the swinging door itself was
21 approximately eight-foot wide, the opening that we
22 cut. So I would say probably a fourth of the wall.

23 Q. And you installed that swinging door?

24 A. Yes, I did.

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1 Q. And so there is quite a bit of air space
2 around that opening with nothing blocking the air
3 space between --

4 A. No.

5 Q. -- the pub and the restaurant?

6 A. No. There's swinging doors, then there's
7 a difference in floor height; so we had to leave it
8 up approximately two inches off the floor. And
9 there's a good inch on top, and then there's a crack
10 between it.

11 And in all the time that I've been there,
12 I've never seen both doors shut anyway. One is
13 always propped open.

14 Q. And approximately when did you commence
15 the remodeling project at 101-103 West Locust?

16 A. We started the actual physical work 28th
17 or 29th of March. It was on a Sunday. But prior to
18 that, we had been in and looked it over. We removed
19 some brick to find out -- removed some plaster to
20 find out what was behind it. We tore up some floor
21 to see what the floor was like. But as far as
22 complete restoration, we started the end of March.

23 Q. And early on in the process, did you have
24 an occasion to have a conversation with the

1 complainant, Michael Pawlowski?

2 A. Yes, I did.

3 Q. And can you tell me the date when that
4 conversation took place?

5 A. It was Sunday when I started the real
6 demolition of the project, on the 28th or 29th,
7 whatever Sunday is. It was in the morning.

8 Q. Of March?

9 A. Yes.

10 Q. 1998?

11 A. '98.

12 Q. And who else was present that time?

13 A. No one.

14 Q. And where did the conversation take place?

15 A. In the dining room of the restaurant part.

16 Q. Had you invited Mr. Pawlowski in?

17 A. No, I had not.

18 Q. How did he come into the 101-103 West
19 Locust?

20 A. There was approximately six-foot wide
21 sliding door that faces the alley that I had left
22 open because I was -- as I was tearing stuff out, I
23 was trying to save good stuff and take the junk and

24 pile it in the alley till our dumpsters arrived.

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1 And I was on the -- tearing out floor, and
2 Mr. Pawlowski was -- just showed up basically
3 standing between the -- the kitchen area and the
4 dining room area.

5 And he introduced himself, and I
6 introduced myself, and we talked a little bit. He
7 said that he was -- wanted to know what was going in
8 there. I said, well, it was a restaurant going to
9 be put in there. And he talked a little bit. He
10 said he was remodeling the building next door, and
11 they were planning on opening an antique shop, and
12 they were planning on moving upstairs.

13 Before he left, he offered the use of
14 tools if I needed any because he said he was going
15 -- in the process of remodeling. And I thanked
16 him. And basically that was our conversation.

17 Q. And he told you on March 28th that he was
18 in the process of remodeling his residence for
19 moving into?

20 MR. HARDING: Objection, leading. The question

21 has been answered without the leading.

22 HEARING OFFICER FELTON: Sustained.

23 BY MR. SHIELDS:

24 Q. Have you had any other conversations with

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1 either of the Pawlowskis?

2 A. No, I have not.

3 Q. And have you had occasion to have meals at
4 Benchwarmers Pub restaurant?

5 A. Yes. Yes, I've eaten several meals there.

6 Q. And during the time that you had those
7 meals, was the jukebox in operation over on the pub
8 side?

9 A. Yes, it was.

10 Q. And did the music coming from the jukebox
11 create any disturbance for you on the restaurant
12 side?

13 A. No, it did not.

14 Q. Did it interfere with any conversation you
15 were having with any family member or friend?

16 A. No, it did not.

17 Q. Did it have any effect with regard to you
18 physically at all?

19 A. No, none whatsoever. In fact, one night
20 we were there, it was my mother-in-law's birthday,
21 and -- my mother-in-law and her twin sister, and my
22 uncle and another aunt were there. And they're in
23 their late Seventies. We were all there, and we
24 were sitting at the table -- the swinging doors,

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1 then the restroom, then there's a table. We were
2 sitting at that table.

3 The bar doors were open, and the bar was
4 full. I don't know what the occasion was, but --
5 whether it was after a race or whatever, but the bar
6 was full. And we had no problem sitting there,
7 carrying on conversation.

8 MR. SHIELDS: I have nothing further.

9 HEARING OFFICER FELTON: Mr. Harding, do you
10 have any questions?

11 MR. HARDING: Yes.

12 CROSS-EXAMINATION

13 BY MR. HARDING:

14 Q. Mr. Quinley, have you ever been in the
15 Pawlowskis' home at 105 West Locust?

16 A. No, I have not.

17 MR. HARDING: Okay. No further questions.

18 MR. SHIELDS: Nothing.

19 HEARING OFFICER FELTON: Mr. Shields?

20 Nothing. Thank you very much, Mr. Quinley.

21 MR. SHIELDS: Now call Troy Quinley.

22 (Witness sworn.)

23 TROY QUINLEY,

24 having been duly sworn by the court reporter,

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1 testified upon his oath as follows:

2 DIRECT EXAMINATION

3 BY MR. SHIELDS:

4 Q. Would you state your full name, please?

5 A. Troy Alan Quinley.

6 Q. And your occupation?

7 A. Correctional captain for the Department of

8 Corrections.

9 Q. And where is that?

10 A. Pontiac Correctional Center.

11 Q. And how many years have you been in that

12 capacity?

13 A. Over sixteen.

14 Q. Do you have any other area of employment?

15 A. Yeah. I'm a part owner of or half owner
16 of Benchwarmers Pub, Inc.

17 Q. And Benchwarmers Pub, Inc., is an Illinois
18 corporation?

19 A. Yes, sir.

20 Q. And your equal co-owner is David Johansen?

21 A. Yes, sir.

22 Q. And with regard to the Fairbury -- strike
23 that.

24 How many branches of Benchwarmers Pub,

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1 Inc., do you have?

2 A. We have three.

3 Q. And the locations of those three?

4 A. Cooksville, Colfax, and Fairbury,
5 Illinois.

6 Q. And who runs the day-to-day operations at
7 the Fairbury branch of Benchwarmers Pub?

8 A. David does.

9 Q. And are you responsible for one of the
10 other branches?

11 A. Colfax.

12 Q. And approximately how many occasions have
13 you either worked at or been in the Fairbury
14 Benchwarmers Pub?

15 A. 25 to 30.

16 Q. And is that when you're working?

17 A. Yeah.

18 Q. And what type of work do you generally do
19 when you're there?

20 A. Jack-of-all-trades; bartend, bus tables,
21 dishes, cook, greet people, little bit of
22 everything.

23 MR. HARDING: We will stipulate that being the
24 boss in a restaurant and bar is pretty much all the

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1 work there is.

2 HEARING OFFICER FELTON: So stipulated.

3 MR. HARDING: And then some.

4 BY MR. SHIELDS:

5 Q. On any occasion of these 25 or more
6 occasions, have you had any customer, employer, or
7 passerby other than the complainants complain about
8 the music that is played on the jukebox at

9 Benchwarmers Pub in Fairbury?

10 A. No.

11 Q. And do you know the complainants?

12 A. This is the fourth occasion I've seen
13 them. I've never personally met them.

14 Q. Have you ever had any conversation with
15 either Diane or Mike Pawlowski?

16 A. No.

17 Q. Have you had the occasion to view either
18 Diane or Michael Pawlowski outside your
19 establishment?

20 A. Yes, sir.

21 Q. And can you tell me on what occasion or
22 occasions that would have been?

23 A. Oh, there was one occasion I was there
24 working -- and I'm not sure if it was Fan Fest or

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1 Fun Fest -- but Dave and I were out back. And

2 Mrs. Pawlowski was out back taking pictures.

3 Q. And what was she taking pictures of?

4 A. Patrons. Dave, myself, vehicles.

5 Q. And was this with a camera or --

6 A. Yes.

7 Q. -- video camera?

8 A. Camera.

9 Q. And did you have any conversation with her
10 at that time?

11 A. No.

12 Q. And do you know how long the
13 picture-taking went on?

14 A. Oh, I'd say we were out back -- Dave and I
15 were out back five, ten minutes. And she was out
16 there the whole time that was going on.

17 Q. Had there been any occasion when either of
18 the Pawlowskis used a video camera with regard to
19 your establishment?

20 A. That I have seen personally?

21 Q. That you're aware of.

22 A. The only one I know of is they have a
23 video camera mounted out back of their apartment, or
24 what appears to be a surveillance camera. But to

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1 see them personally, no.

2 Q. And that camera is -- are you aware of
3 what direction the camera is pointed in?

4 A. It appears to be pointed to the east.

5 Q. That would be toward the --

6 A. Towards the --

7 Q. -- Benchwarmers?

8 A. -- Benchwarmers.

9 MR. SHIELDS: Nothing else.

10 HEARING OFFICER FELTON: Mr. Harding, do you

11 have any questions?

12 CROSS-EXAMINATION

13 BY MR. HARDING:

14 Q. Have you ever been on the second floor of

15 105 West Locust?

16 A. No, sir.

17 Q. Have you ever been in 105 West Locust,

18 first floor or second floor?

19 A. No, sir.

20 Q. Okay. You're guard captain at Pontiac?

21 A. Yes, sir.

22 Q. Now, your employer is then the Illinois

23 Department of Corrections?

24 A. Yes, sir.

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1 Q. The restaurant portion of Benchwarmers
2 closes at 10:00 p.m., doesn't it?
3 A. Majority of the time. Sometimes it stays
4 open till eleven, the restaurant.
5 Q. What time do you stop serving?
6 A. Depending on what night it is, 10:00,
7 11:00.
8 Q. Have you ever analyzed by time where you
9 make your money at Benchwarmers?
10 A. No.
11 Q. Ever do like an hourly cash register run
12 or anything like that?
13 A. No. No.
14 Q. How did you meet David Johansen?
15 A. I worked with him at Pontiac Correctional
16 Center.
17 Q. Okay. And does he still work there?
18 A. No, sir.
19 Q. Where does he work other than
20 Benchwarmers?
21 A. Benchwarmers Pub.
22 Q. Just Benchwarmers?
23 A. Yes, sir.
24 Q. Now, you have never met the Pawlowskis?

1 A. No, sir.

2 Q. If I may take this opportunity, Mike,
3 Diane, Troy.

4 MS. PAWLOWSKI: Hi, Troy.

5 BY MR. HARDING:

6 Q. Would you characterize your relationship
7 with the Pawlowskis, even though you haven't met
8 them, as strained?

9 A. I don't know if I would --

10 Q. S-t-r-a-i-n-e-d.

11 A. I don't know if I would categorize it as
12 strained. Misunderstood maybe.

13 Q. Okay. Did you see any basis for
14 understanding?

15 A. I don't know why it ever got to this
16 stage, why we weren't approached right off the bat
17 is my big concern. We could have worked this out a
18 long time ago.

19 Q. Were you -- has anyone, prior to today,
20 told you that David Johansen and Mike Pawlowski met
21 on April 10th?

22 A. Yes.

23 Q. Okay.

24 A. I knew they had met. I don't know if

1 that's the date for sure, but --

2 Q. Were you aware prior to today that your
3 father had -- Larry Quinley is your father, right?

4 A. Yes, sir.

5 Q. Were you aware prior to today that Larry
6 Quinley had met your neighbors on the 28th, 29th of
7 March?

8 A. Yes, sir.

9 Q. I would like to show you --

10 And I believe we're going into 19.

11 HEARING OFFICER FELTON: Complainants' Exhibit
12 Number 19 you're marking?

13 MR. HARDING: Yes. It's the face page of the
14 contract for sale of real estate covering
15 Benchwarmers.

16 BY MR. HARDING:

17 Q. This is a document which you have produced
18 in toto in response to the request for production.
19 Is that the document?

20 A. I would assume so.

21 Q. Is it dated May 8th, 1998?

22 A. Uh-huh.

23 Q. Is there anything about it that looks
24 unfamiliar?

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1 MR. SHIELDS: Other than the marking as an
2 exhibit?

3 BY MR. HARDING:

4 Q. Other than the marking as an exhibit, sir.

5 A. Not that I recall.

6 Q. And you have signed that document, the
7 complete document?

8 A. I --

9 Q. Is that about fif--

10 A. I would assume so.

11 Q. About fifteen, sixteen pages with the
12 exhibits, I believe.

13 Okay. And has Mr. Johansen signed that
14 document?

15 A. I would assume so, yes.

16 MR. HARDING: I would move to admit
17 Complainants' Exhibit 19, if Counsel has no problem
18 with me doing that during their case in chief.

19 MR. SHIELDS: I would object to the entry of
20 the one page. The full document should be placed in

21 evidence.

22 MR. HARDING: I don't have the full document
23 with me.

24 HEARING OFFICER FELTON: Yes. I would sustain

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1 Mr. Shields' objection. It's also been included in
2 the respondents' discovery responses, I think,
3 that's in the record.

4 Anything that has been filed in this case
5 will be considered by the board. I don't see the
6 relevancy in admitting just one page at this time.
7 If you have the whole document and a copy for the
8 board --

9 MR. HARDING: Let me just double-check on the
10 -- do I have -- ah. Ah. Do we have another one?

11 MR. PAWLOWSKI: Yes.

12 MR. HARDING: Let me just double-check, see if
13 this is the one.

14 Counsel, would you like to take a look at
15 this because I don't have any copies. Make sure
16 that --

17 MR. SHIELDS: Well, here, I've got --

18 MR. HARDING: The whole thing?
19 MR. SHIELDS: Yes. I want to make sure I don't
20 get part of it in. That was the objection.
21 MR. SHIELDS: Well, you're offering the
22 contract.
23 MR. HARDING: With exhibits.
24 MR. SHIELDS: This is also the title

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1 commitment, warranty deed.
2 MR. HARDING: Were those exhibits to the
3 contract or not? I mean, we can excise them if you
4 want.
5 MR. SHIELDS: I see no purpose served. It's
6 fine. It's a document to be held in escrow.
7 MR. HARDING: Okay. Complainants' 19, the
8 entire contract for sale of real estate.
9 HEARING OFFICER FELTON: Okay. Can we just
10 confirm on the record with the witness that this is
11 laying the proper foundation for this document in
12 light of the fact that it is different than the last
13 one?
14 BY MR. HARDING:
15 Q. Is that, in fact, your contract for this

16 purchase of 101 to 103 West Locust in Fairbury?

17 A. Yes.

18 Q. Directing your attention to the legal
19 description, sir, on the face of that page, the
20 legal description appears, I believe, to say lot
21 something -- Lot 8, I believe it was, wasn't it? I
22 don't have mine.

23 A. Lot 1, in Block --

24 Q. Lot 1 in Block 18?

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1 A. Uh-huh.

2 Q. Okay. Is that a condominium?

3 A. A condominium?

4 Q. Yes. Is it a condominium unit or more
5 than one unit of a condominium that you know of?

6 A. Not that I'm aware of.

7 Q. Okay. Thank you.

8 MR. HARDING: Move to admit Complainants' 19.

9 HEARING OFFICER FELTON: Do you have any
10 objection, Mr. Shields?

11 MR. SHIELDS: May I just look at that one more
12 time? I would cite the fact that there is an

13 additional attachment which is not part and parcel
14 of the contract, as indicated by the acceptance of
15 the escrowee, and that is the owners' form Schedule
16 A, which is generally referred to as an A-4 policy
17 with regard to a contract, a long-term contract with
18 deed in escrow.

19 I would say that's not part and parcel of
20 the contract. But I would stipulate that it can
21 also be entered into evidence as part of Exhibit 19.

22 HEARING OFFICER FELTON: Complainants' Exhibit
23 19?

24 MR. SHIELDS: Complainants' Exhibit 19.

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1 MR. HARDING: It's the document as produced to
2 us.

3 HEARING OFFICER FELTON: All right. With that
4 notation, Complainants' Exhibit 19, a contract for
5 sale of real estate, is entered into evidence.

6 BY MR. HARDING:

7 Q. Who is David W. Hammer; do you know?

8 A. I don't.

9 Q. Is that the name of the escrow agent?

10 A. I don't know.

11 Q. Okay.

12 HEARING OFFICER FELTON: Would you prefer to
13 look at the exhibit?

14 MR. HARDING: No. It's just a signature.
15 Trying to do my best to make it out.

16 HEARING OFFICER FELTON: Any further questions,
17 Mr. Harding?

18 MR. HARDING: Not entirely sure.

19 No, I have no further questions of this
20 witness. Thank you, sir.

21 HEARING OFFICER FELTON: Mr. Shields, anything
22 on redirect?

23 MR. SHIELDS: Yes.

24 REDIRECT EXAMINATION

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1 BY MR. SHIELDS:

2 Q. With regard to Complainants' Exhibit
3 Number 19, this was a contract that was worked out
4 between the parties by their respective attorneys;
5 is that correct?

6 A. Yes, sir.

7 Q. And the owners of 101-103 are Robert

8 Nusbaum and Ann Nusbaum as identified in that
9 document?

10 A. Yes.

11 Q. And is it not correct -- in fact, entirely
12 in line with the contract -- that the Nusbaums
13 actually gave Benchwarmers, you and Dave Johansen,
14 possession and occupancy of the building prior to
15 May 8 --

16 A. Yes.

17 Q. -- 1998?

18 A. Yes.

19 Q. And that was part and parcel of your
20 agreement?

21 A. Yes.

22 MR. HARDING: I'm going to object to the
23 continuing leading nature of the questions.

24 HEARING OFFICER FELTON: Mr. Shields, do you

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1 have something that you're trying to elicit here?

2 MR. SHIELDS: Well, yes. The document, the
3 contract is dated May 8th; and while the contract
4 speaks for itself, possession is delivered on or
5 about before May 1st, 1998. Possession was, in

6 fact, delivered considerably earlier than May 1st,
7 1998.

8 HEARING OFFICER FELTON: I'm going to overrule
9 the objection to the extent that the complainants
10 offered this into evidence.

11 I think that respondents are in a unique
12 position for questioning, and a little leeway with
13 these kind of questions is okay.

14 BY MR. SHIELDS:

15 Q. And, in fact, the date that you --
16 Benchwarmers Pub, Inc., Dave Johansen, and you took
17 possession of the building was during inspection,
18 taking place approximately what date?

19 A. It would have been the last few days of
20 March because we wanted to be in by June 1st. And
21 in order to hit our proposed date, we couldn't wait
22 till the first week of May to get everything done in
23 a month.

24 Q. And you've heard your father's testimony

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1 with regard to going in and beginning demolition
2 work?

3 A. Yes.

4 Q. And that was also in accordance with the

5 agreement you had with the Nusbaums?

6 A. Yes.

7 MR. SHIELDS: Nothing further.

8 HEARING OFFICER FELTON: Thank you very much,

9 Mr. Quinley.

10 MR. O'DAY: That's our exhibit. This is the

11 old liquor license, the first one.

12 HEARING OFFICER FELTON: Okay. You'll have to

13 enter this into evidence with a --

14 MR. O'DAY: I want to get it marked.

15 HEARING OFFICER FELTON: You want it marked,

16 right?

17 MR. HARDING: Are we looking at Number 6 here?

18 HEARING OFFICER FELTON: Respondents' Exhibit

19 Number 6.

20 MR. HARDING: We'll stipulate to its admission.

21 HEARING OFFICER FELTON: I'll mark it right

22 now, then you can move.

23 MR. O'DAY: I'll have a witness identify it for

24 the record.

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1 MR. HARDING: I'll stipulate to the admission.

2 MR. O'DAY: Just for the record, I'll just ask
3 the witness. I'll call Dave Johansen.

4 HEARING OFFICER FELTON: Fine.

5 (Witness sworn.)

6 DAVID JOHANSEN,
7 having been duly sworn by the court reporter,
8 testified upon his oath as follows:

9 DIRECT EXAMINATION

10 BY MR. O'DAY:

11 Q. Would you state your name for the record,
12 please?

13 A. David Neil Johansen.

14 Q. And, Mr. Johansen, what is your
15 occupation?

16 A. Co-owner of Benchwarmers Pub.

17 Q. How long have you had only that
18 occupation?

19 A. My last day with Department of Corrections
20 was April 20th, '98.

21 Q. You -- at the time you had your last day
22 with the Department of Corrections, was there a new
23 establishment that your corporation was acquiring?

24 A. Yes.

1 Q. What was that?

2 A. The Fairbury location.

3 Q. And was it the addition of the Fairbury
4 location that caused you to leave your job at the
5 Department of Corrections?

6 A. Correct.

7 Q. Why did you decide to do that with the new
8 location coming?

9 A. Me and Troy had agreed that if we were to
10 open a third location, one of us would have to go
11 full time to be able to manage it. And I
12 volunteered.

13 Q. Did you give notice to State of Illinois
14 or the Department of Corrections as to when you were
15 going to be leaving?

16 A. Yes.

17 Q. How far ahead of time did you give them
18 notice?

19 A. I think it was a month.

20 Q. If you left at the end of April, April
21 28th, would it have been a month before that?

22 A. Yes.

23 Q. 1998?

24 A. Correct.

1 Q. I'm showing you what's been marked for
2 identification as Respondents' Exhibit Number 6.

3 A. Uh-huh.

4 Q. For the record, would you say what that
5 is?

6 A. That's our original liquor license.

7 Q. Is this the first liquor license --

8 A. Copy.

9 Q. -- that you had for the Fairbury location?

10 A. Correct.

11 MR. O'DAY: I offer it into evidence.

12 HEARING OFFICER FELTON: Mr. Harding, I
13 understand no objection?

14 MR. HARDING: Still no objection.

15 HEARING OFFICER FELTON: All right.

16 Respondents' Exhibit Number 6, the liquor license,
17 the original liquor license, is admitted.

18 BY MR. O'DAY:

19 Q. Do you see on this exhibit the signature
20 of the city clerk in the lower left corner?

21 A. Yes.

22 Q. Do you see the date prepared under that

23 signature?

24 A. Yes.

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1 Q. What is the date prepared of this
2 document, this liquor license, the first one your
3 firm held for the Fairbury location?

4 A. April 2nd, '98.

5 Q. Did you apply for this liquor license
6 before April 2nd, 1998?

7 A. Yes.

8 Q. The liquor license was due to expire --
9 that you have before you -- February 1, 1999. Do
10 you see that?

11 A. Uh-huh. Yes.

12 Q. Do you know why it was due to expire
13 February 1, 1999?

14 A. I think they prorate them. They're all
15 due a certain date, I believe. I'm not sure.

16 Q. Did you file public -- with the public
17 officials here your application for this liquor
18 license before April 2nd, 1998?

19 A. Yes.

20 Q. How many years have you been with
21 Benchwarmers?

22 A. November of '95, I believe, is when we
23 bought Colfax.

24 Q. Are you equal shareholders?

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1 A. Yes.

2 Q. 50/50?

3 A. Uh-huh.

4 Q. In these other -- did you start the Colfax
5 location?

6 A. Correct.

7 Q. What was it before you started it?

8 A. It was a tavern.

9 Q. Did you change the tavern?

10 A. Yeah. We gutted it, remodeled it, put in
11 a kitchen.

12 Q. Do you have --

13 A. Upgraded it.

14 Q. Do you have sort of a formula that you're
15 following in starting new restaurant locations?

16 A. Yes.

17 Q. What is your formula?

18 A. Well, number one, we want the dining area
19 a family -- family oriented place. And at
20 Benchwarmers, it's obviously a sports bar, where
21 we're creating a sports bar and restaurant theme.

22 Q. In the other locations that you have
23 restaurants, have you noticed that the restaurants
24 bring social value to the communities where they're

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1 located?

2 A. Sure.

3 Q. Take Colfax as an example. What's added
4 there?

5 A. Colfax -- the Benchwarmers in Colfax is
6 essentially the only meeting place in town.

7 Q. And your other location?

8 A. Cooksville.

9 Q. Cooksville.

10 A. Same thing.

11 Q. How about that?

12 A. Same thing.

13 Q. In Fairbury, is there certain social
14 value, in your opinion, based on what you've noticed

15 in your years in the restaurant business to the
16 Benchwarmers Pub here?

17 A. Yes.

18 Q. Would you describe, for the record, some
19 of the social value of this Benchwarmers Pub here in
20 Fairbury?

21 A. Well, I think one of the reasons we opened
22 in Fairbury, we -- you kind of do a demographic of
23 what's needed in an area, what's lacking. You know,
24 naturally we're not going to put a restaurant into

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1 an area that already has three or four, and the
2 population wouldn't maintain it.

3 So, we looked and seen that there was an
4 obvious void of a bar/restaurant, alcohol-serving
5 restaurant that would accommodate family, that a man
6 my age could bring my wife, feel comfortable that
7 there's not going to be a fight break out, you can
8 sit and enjoy a conversation. That's the kind of
9 establishment we run.

10 Q. What is your age, sir?

11 A. I'm 42.

12 Q. When you picked Fairbury as your third

13 location -- and you had talked before about that one
14 of you would quit the Department of Corrections if
15 you opened a third place?

16 A. Correct.

17 Q. Was that an important move in your life to
18 do that?

19 A. It was a very important move.

20 Q. You left a good job?

21 A. I had twelve years of seniority, and at
22 the age of 41 -- 40 then, that was a very important
23 decision me and my wife made.

24 Q. Did you conduct a thorough investigation

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1 into the demographics of Fairbury before you made
2 this important move?

3 A. Yes.

4 Q. And did you check out different locations
5 that might be available?

6 A. Correct.

7 Q. And did you -- what location did you
8 settle on as the location where you wanted to locate
9 within Fairbury?

10 A. 101-103 West Locust.

11 Q. When you settled on that location and
12 decided that you wanted it, approximately when was
13 that?

14 A. Early '98, January, February.

15 Q. In January or February of 1998 when you
16 conducted this investigation and looked, did you
17 determine what the zoning of the location was?

18 A. Yes.

19 Q. Did you determine what the zoning of the
20 surrounding buildings were?

21 A. Yes.

22 Q. Did you determine the character of the
23 neighborhood where it was located?

24 A. Yes.

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1 Q. And what did you determine when you did
2 those things?

3 A. Well, if you look at the map, the corner
4 of Third and Locust is essentially the Times Square,
5 whatever you want to call it, of Fairbury. That's
6 the corner.

7 Q. Did you notice anything where -- that

8 there were any residences when you conducted your
9 investigation in early 1998, any residences located
10 in proximity to this place?

11 A. We'd never noticed any, no.

12 Q. The building next door, what did it look
13 like?

14 A. It looked abandoned.

15 Q. And did it look like it was a residence,
16 or did it look like it was a commercial structure?

17 A. It looked commercial.

18 Q. Did you choose to move to an area when you
19 chose this location for Benchwarmers in Fairbury
20 that you knew or saw anything that led you to
21 believe was close to anybody's residence?

22 A. Are you asking is that why I, we chose
23 that?

24 Q. No. I'm asking, did you -- did you do

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1 that? Did you do it -- did you do it knowing that
2 there was a residence nearby or that --

3 A. No.

4 Q. -- or have any reason to believe there was

5 one?

6 A. No.

7 Q. Does Benchwarmers Pub, Inc., pay taxes?

8 A. Yes.

9 Q. Does it pay employment taxes?

10 A. Yes.

11 Q. Does it pay license fees?

12 A. Yes.

13 Q. Does it make charitable donations?

14 A. Yes.

15 Q. Focusing only on the Fairbury location,
16 does it pay taxes?

17 A. Yes.

18 Q. Pay employment taxes?

19 A. Yes.

20 Q. License fees?

21 A. Yes.

22 Q. Charitable donations?

23 A. Yes.

24 Q. Approximately what taxes are paid by the

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1 Fairbury location?

2 A. We pay approximately 12 to \$1500 in sales

3 tax a month; 14, 15,000 a year.

4 Q. 14, 15 hundred in --

5 A. Thousand a year.

6 Q. Okay. And in Fairbury, Illinois, how big

7 is Fairbury?

8 A. What was it, 4500 people, I believe.

9 4,000.

10 Q. Do you know how a business that does 14 to

11 15,000 in sales taxes a year stacks up in Fairbury,

12 Illinois?

13 A. No, I really don't. I haven't -- I would

14 hope it's pretty decent.

15 Q. Have you ever heard any complaints from

16 the city fathers about the amount of sales taxes

17 that you're generating?

18 A. No.

19 Q. How about license fees; what do you pay

20 for those?

21 A. For just Fairbury?

22 Q. Yes.

23 A. 700.

24 Q. And how many people do you employ in

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1 Fairbury?

2 A. 15 to 20.

3 Q. And do you know what your payroll is every
4 month at Fairbury?

5 A. The payroll every week is approximately
6 \$1500.

7 Q. Is that without regard to tips?

8 A. Correct.

9 Q. Do you pay the usual employment taxes on
10 those sums?

11 A. Yes.

12 Q. And what percentage do you think that is?

13 A. The employment tax is all lumped. We pay
14 approximately \$2,000 every three months, every --
15 quarterly.

16 Q. Do you -- does your corporation give
17 either 1099s or W-2s to you and your partner for
18 what you take out of the company?

19 A. Yeah. I get a -- I get a paycheck every
20 week. Troy does not. He wishes he did, but --

21 Q. Are the amusement devices in your -- on
22 your premises in Fairbury, are they licensed?

23 A. Correct.

24 Q. They have license stickers on them?

1 A. Yes.

2 Q. And are the fees paid for those?

3 A. Yeah, the Variety Amusement pays them
4 fees.

5 Q. Do you pay real estate taxes there?

6 A. Yes.

7 Q. What are the real estate taxes that you
8 pay?

9 A. 1,000.

10 Q. 1,000 a year?

11 A. Yeah. I'm --

12 Q. Do you know what the city claims your
13 building's worth?

14 A. No.

15 Q. I want to direct your attention to
16 September 25th, 1999. Was September 25th, 1999, a
17 special day, when Mr. Yerges was present on the
18 premises of the complaining parties in this case?

19 A. Yes.

20 Q. What was so special for Benchwarmers about
21 September 25, 1999?

22 A. Well, in '98 we started what we call Fan
23 Fest. And what we essentially do is we invite all
24 the stock car drivers that have attended the

1 Fairbury stock car races, which run every Saturday
2 night through the summertime, and we invite them to
3 bring their race cars, meet the fans. That's why we
4 call it a Fan Fest. It gives an opportunity for the
5 fans to meet all the drivers and intermingle.

6 We have a live radio broadcast with Jerry
7 Pick, and he announces all the races at the
8 racetrack during the summer and fall.

9 Q. Did you -- did you have a banner or
10 anything like that or a sign to advertise this Fan
11 Fest ahead of time?

12 A. Yeah. It hung on the side of the
13 building. In fact, it's still there.

14 Q. Okay. And what did the Fan Fest banner on
15 the side of your building say?

16 A. Live radio broadcast, deejay, and Fan
17 Fest, ninety -- September 25th, 1999.

18 Q. Did you put that up ahead of time?

19 A. Sure.

20 Q. How far ahead of time?

21 A. I'm guessing a couple weeks.

22 Q. Did you advertise otherwise the Fan Fest?
23 A. The radio. The radio station advertised
24 for us.

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1 Q. Is this the radio station that came there
2 that night?
3 A. Correct.
4 Q. And do you know how often they advertised
5 it?
6 A. I know how often we paid for it. We paid
7 for 30 spots.
8 Q. To advertise ahead of time --
9 A. Correct.
10 Q. -- that this Fan Fest would occur on
11 September 25th, 1999?
12 A. Correct.
13 Q. Did people turn out for this event in
14 1999?
15 A. Yes.
16 Q. Did you have to do anything special in
17 order to have these race cars there?
18 A. Well, we -- we applied -- I sent a letter
19 to the City to have Third Street shut down from

20 Locust to the side of the alley. It's a parking
21 alley.

22 Q. Is that on the side of your building
23 there?

24 A. Correct.

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1 Q. And there was then no parking for patrons
2 then on that side of your building, right?

3 A. Right.

4 Q. But the race cars were there?

5 A. Right. Well, yes.

6 Q. Did -- how many race cars showed up?

7 A. This year we only had one.

8 Q. Did it start at all while it was over
9 there?

10 A. Yes.

11 Q. Did people who were customers come then to
12 attend the Fan Fest?

13 A. Yes.

14 Q. Where did they park?

15 A. They -- I imagine they parked out in
16 front, on Locust.

17 Q. I think it's Complainants' Exhibit 7,
18 which is the picture?

19 HEARING OFFICER FELTON: There's 7 and 8.

20 BY MR. O'DAY:

21 Q. I'm going to show you what's been admitted
22 into evidence as Complainants' Exhibit Number 7. In
23 Complainants' Exhibit Number 7, there are a couple
24 of automobiles; is that correct?

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1 A. Correct.

2 Q. What color are those automobiles?

3 A. Blue and gray.

4 Q. All right. Would you say the one in front
5 is sort of a pickup truck, that's the blue one?

6 A. Correct.

7 Q. The one in back of it's a -- some kind of
8 a Taurus or something, gray one?

9 A. Correct.

10 Q. And they are parallel parked?

11 A. Yes.

12 Q. How would you describe the blue pickup
13 truck in that photograph in relation to the two
14 windows that are the master bedroom for the

15 complaining parties in this case?

16 A. I would say it's parked below it.

17 Q. Below those windows?

18 A. Below the windows.

19 Q. On Fan Fest night, where was the disc
20 jockey located from the radio station?

21 A. He did his live broadcast right outside
22 our front door of the pub.

23 Q. Where would that have been in relation to
24 that blue pickup truck?

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1 A. Parking place ahead of it, looks like.

2 Kind of hard to judge. Parking place or two ahead
3 of it.

4 Q. When he came to do his live broadcast for
5 the radio station there, what did he -- what did he
6 come in?

7 A. Well, he brought his car. He parked his
8 car right in front, and he kept the radio on in his
9 car, and plugged in inside and had the microphone
10 and all that outside for the live broadcast.

11 Q. And this radio station that he belongs to,

12 what kind of music do they play?

13 A. Wild Country is what it was broadcast
14 on.

15 Q. Were you familiar with an organization
16 called the Golden Cup that was in business last
17 year?

18 A. Yes.

19 Q. Where in relation to that blue car in
20 Complainants' Exhibit Number 7 would the Golden Cup
21 have been?

22 A. Across the street.

23 Q. Would it have been more across from the
24 blue car, the gray car, or what?

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1 A. Probably the gray car. I can't picture
2 it, but I'm guessing probably the gray car.

3 Q. Last year was the parking the same as
4 depicted in this photograph, where on your side of
5 the street there's parallel parking, and where on
6 the other opposite side of Locust Street there's
7 sort of pull-in, a diagonal slot type parking?

8 A. Yes.

9 Q. Has that been that way ever since

10 Benchwarmers opened?

11 A. Yes.

12 Q. This Fairbury location that you left your
13 job at the Department of Corrections for --

14 A. Uh-huh.

15 Q. -- did you spend a lot of time here
16 getting the restaurant opened?

17 A. Yes.

18 Q. Were you there at all different times of
19 the day?

20 A. Yes.

21 Q. Last fall, were you there late at night?

22 A. Yes.

23 Q. And in the early morning hours?

24 A. Yes.

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1 Q. Would you tell us -- last fall, 1998, tell
2 us about the operation of the Golden Cup across the
3 street.

4 A. She --

5 Q. When you say "she," who is that, for the
6 record?

7 A. I think her first name was Sue.

8 Q. Was she sort of an Albanian immigrant?

9 A. She's an immigrant. She was of Albanian
10 descent, I think.

11 Q. And tell us about the operation she had in
12 the late p.m. and early a.m. hours.

13 A. She would open Friday and Saturday nights
14 somewhere in the late evening, I'm guessing nine or
15 ten. I never knew her exact operating hours, but I
16 know she would continue late until after the bars
17 were closed.

18 Q. And when you say she would continue late
19 until after the bars would close, are you talking
20 about p.m. or a.m. hours?

21 A. A.M.

22 Q. What time in the a.m., approximately?

23 A. Well, the bars closed in Fairbury at 1:00,
24 1:30, and so it would be -- it would be after that.

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1 She'd run till three or four in the morning to serve
2 all them people.

3 Q. Did she have people waiting outside?

4 A. Yes.

5 Q. Did people congregate outside in the area
6 in front of her restaurant?

7 A. Yes.

8 Q. And how would people get there other than
9 people that might walk across the street from
10 Benchwarmers?

11 A. They would drive.

12 Q. And where would they park?

13 A. Up and down Locust.

14 Q. Would they come in carloads or one at a
15 time or what?

16 A. They have a tendency to come in carloads
17 that time of the morning.

18 Q. Would these carloads of people who had
19 been at bars that are coming to this location to
20 congregate have radios or stereos on or off,
21 typically?

22 A. Typically, on.

23 Q. Typically, soft or loud?

24 A. Loud.

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1 Q. Was it noisy in the streets in the late

2 p.m. and early a.m. hours at this particular point
3 on Locust Street last fall, Friday and Saturday
4 nights?

5 A. Yes.

6 Q. Would this noise out in the public streets
7 have been in the vicinity of those two windows by
8 that blue pickup truck in Complainants' Exhibit 7?

9 A. Correct.

10 Q. Now, there's a jukebox at Benchwarmers in
11 Fairbury, right?

12 A. Yes.

13 Q. Did you hear Mr. Prather's testimony about
14 the jukebox didn't have any speakers that was on
15 that common wall between your building site and the
16 one next door?

17 A. Yes.

18 Q. Was that accurate?

19 A. Yes.

20 Q. Do the employees at your establishment
21 have access to that jukebox so they can play music
22 without putting any money in?

23 A. No.

24 Q. Do your employees have keys to the jukebox

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1 where they can get money out and use it to spend on
2 the jukebox or whatever?

3 A. No.

4 Q. Do you?

5 A. No.

6 Q. Does anyone besides Variety Specialties,
7 to the best of your knowledge?

8 A. No, they do not.

9 Q. How long have you been doing business with
10 Variety Specialties?

11 A. Since November of '95.

12 Q. To the best of your knowledge, have the
13 counts been honest?

14 A. Very honest. That's why we continue.

15 Q. Do you have any reason to believe that the
16 \$140 a month that averages on the jukebox is
17 anything other than an accurate measurement of the
18 jukebox play?

19 A. No.

20 Q. Is there any way that employees have
21 played it for free or played it from the bar or
22 anything where money didn't go into the machine that
23 you know of?

24 A. Absolutely not.

1 Q. Are there any free credits on that jukebox
2 available, say, for matching a number or anything
3 like that?

4 A. No.

5 Q. Have you had disc jockeys there at the
6 location in Fairbury?

7 A. Yes.

8 Q. In 1999, how many times have you had a
9 disc jockey there inside the establishment as
10 opposed to out in the street?

11 A. Twice.

12 Q. What were the dates on that?

13 A. March 17th.

14 Q. What's significant about March 17th?

15 A. St. Patrick's Day.

16 Q. And what other day?

17 A. The Fan Fest.

18 Q. You had a disc jockey inside?

19 A. Yes. September 25th.

20 Q. Are those the only two nights in 1999 that
21 you had a disc jockey inside?

22 A. Yes.

23 Q. And on September 25th, 1999, besides the

24 disc jockey inside, you had these items occurring

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1 outside, right?

2 A. The race car and the live radio broadcast,
3 yes.

4 Q. How long was the street blocked off on the
5 side of your building for Fan Fest?

6 A. Well, it was blocked off till he moved the
7 lone car we had which, I think, was about 11 at
8 night, 11:00 or 11:30.

9 Q. So, almost until midnight the street was
10 blocked off?

11 A. Yes. Just Third Street.

12 Q. All right. And there were people looking
13 at that car?

14 A. Right.

15 Q. Is it fair to say that if Mr. Yerges left
16 around midnight that the lion's share of that time
17 the street would have been blocked off, there would
18 have been the disc jockey inside your establishment?

19 A. Correct.

20 Q. When did the -- when did the person who
21 was broadcasting stop broadcasting from the street?

22 A. Seven or eight. I don't remember. Seven
23 or eight p.m.

24 Q. So that person wasn't going until

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1 midnight?

2 A. No. I can't remember if he went five to
3 seven or six to eight. It was two hours.

4 Q. Did you have him and the disc jockey going
5 at the same time, or were they separate?

6 A. No, separate.

7 Q. So, from, say, nine o'clock p.m. until
8 midnight, would the disc jockey have been playing?

9 A. Yes.

10 Q. Did you do anything on September 25th,
11 1999, to try to cut back on the the sound that was
12 emanating from either the streets or your
13 establishment with regard to next door?

14 A. Did I try to do anything? No.

15 Q. Right. These advertisements that you have
16 ahead of time, were they generally available by
17 radio to anybody who cared to listen to the radio?

18 A. Sure.

19 Q. The sign on your building, anybody that
20 went down Locust Street could see that sign on your
21 building advertising September 25th?

22 A. Correct.

23 Q. Do you know why it was, did you ever talk
24 to the complaining parties in this case why they

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1 chose September 25th, 1999, to have their expert
2 come by?

3 A. Well, I, I --

4 Q. Did you ever talk to them about that?

5 A. No.

6 Q. Was it -- was it made abundantly clear
7 from all the publicity that that was going to be a
8 big night?

9 A. Correct.

10 Q. In 1998, did you have some deejay nights?

11 A. Yes.

12 Q. Approximately how many did you have in
13 1998?

14 A. Oh, twelve to fifteen I'm -- in '98.

15 Q. Why have you had -- have you had fewer in
16 1999 than 1998 --

17 A. Well --

18 Q. -- fewer disc jockeys?

19 A. To give you a brief history, since we
20 opened, we tried it without them for the first few
21 months, and the bar crowd just wasn't there.

22 I had requests, both ends of towns -- both
23 other bars run live entertainment on the weekends.
24 They said, Why don't you guys?

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1 So, we thought we'd give it a try for -- I
2 think we tried it for about two and a half months
3 once a weekend, or I think one month we tried it
4 every other weekend. I'm not sure. But it just
5 didn't -- it didn't pan out. So we quit.

6 Q. When was the period in 1998 when you were
7 trying disc jockeys on this sort of heavy basis?

8 A. September, October, November.

9 Q. Was that the same time when the
10 establishment across the street was trying to
11 attract people there in the late p.m. and early a.m.
12 hours?

13 A. Yes.

14 Q. Do you have plans to use deejays much in
15 the future?

16 A. No. Probably like the same schedule we
17 did this year.

18 Q. Have you had any live bands in your
19 establishment since you opened?

20 A. No.

21 Q. The disc jockey who was there on September
22 25th, 1999, when the Fan Fest was occurring outside
23 and you were having that occurring inside, is that
24 disc jockey somebody that you had used before?

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1 A. Yes.

2 Q. Approximately how many times?

3 A. Couple anyway.

4 Q. Was there anything different about the
5 sound levels that that deejay produced that night in
6 relation to other times that that deejay had been
7 there?

8 A. No.

9 Q. You heard the -- that Mr. Yerges had taken
10 certain readings that night. Do you recall that
11 testimony?

12 A. Yes.

13 Q. Do you recall the testimony that the
14 complaining parties in this case could not even
15 produce a 50 decibel reading on their equipment?
16 Did you hear that testimony?

17 A. Yes. Yes.

18 Q. Was there anything different about the
19 deejay that night combined with -- well, the deejay
20 that night and other deejays that you had in terms
21 of noise levels?

22 A. I don't think so. No.

23 Q. And on that night you had the added
24 phenomenon of the Fan Fest outside?

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1 A. Correct.

2 Q. Have you ever thought to go up to the
3 master bedroom of the complaining witnesses in this
4 case when they were ready for bed and in their bed
5 clothes to run measurements?

6 A. No. Never was invited.

7 Q. In terms of what you've heard and places
8 where you can be at that time of night out in the

9 street, by the curb, or on the side street, have you
10 heard loud music coming from your premises?

11 A. No.

12 Q. Is it fair to say that everybody can take
13 measurements out there by the curb, whether it's you
14 or the parties next door?

15 A. Correct.

16 Q. And everybody can take the measurements
17 outside, right?

18 A. Correct.

19 Q. Would you ever think of going there while
20 they're trying to get to sleep and taking
21 measurements in their bedroom?

22 A. No.

23 Q. Did you have a conversation in April of
24 1998 with either of the complaining witnesses in

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1 this case?

2 A. Yes.

3 Q. Which one?

4 A. Mr. Pawlowski.

5 Q. And was that approximately April 10th,
6 1998?

7 A. Yeah, I guess.

8 Q. You didn't write it down anywhere?

9 A. No.

10 Q. Was it -- can you tell the tribunal what

11 you said and what he said during that first contact

12 and where you were?

13 MR. HARDING: Objection, foundation; who was

14 present, what time of day?

15 HEARING OFFICER FELTON: Mr. O'Day, why don't

16 you just establish that.

17 MR. O'DAY: We can do that. I thought it was

18 already.

19 HEARING OFFICER FELTON: Go through the

20 formalities then.

21 BY MR. O'DAY:

22 Q. Where was this conversation?

23 A. Behind the -- behind the building.

24 Q. And --

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1 A. 103.

2 Q. One -- pardon?

3 A. 103 West Locust.

4 Q. And approximately what time of day?
5 A. That I don't know. I'm guessing midday.
6 Q. Was it daytime or nighttime?
7 A. It was daytime.
8 Q. And who was present?
9 A. Bob Nusbaum, myself, and my wife, and
10 Mike.
11 Q. Who is Bob Nusbaum?
12 A. Bob's the guy we bought the building
13 from.
14 Q. Was he present when you had this
15 conversation?
16 A. I believe so.
17 Q. Did he -- was he close enough to hear it?
18 A. Yes.
19 Q. And were all the people you named close
20 enough to hear it?
21 A. Yes.
22 Q. What do you recall being said during that
23 conversation?
24 A. I -- I remember Bob introduced us. And

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1 basically how Mike described it earlier. I'm not

2 going to deny what I said. I said yes, there will
3 be sound.

4 Q. Some what?

5 A. I said there will be sound.

6 Q. Oh, okay.

7 A. They voiced his concerns about sound. And
8 I said, well, there will be some sound.

9 Q. Did you do anything to try to ease their
10 concerns?

11 A. Well, when they had dinner in Colfax, I --
12 later, I met them, and I went over and talked to
13 them. I didn't realize at that time that my
14 statement had upset Mike so much.

15 But, you know, I talked to them then in
16 Colfax, not knowing of that situation, that it upset
17 him that much. But they had asked me then about my
18 plans for entertainment in Fairbury, and I basically
19 said what -- what they said I said. Financially
20 isn't -- financially usually isn't responsible to
21 pay for a deejay and not increase your bottom line;
22 so, you know, it wasn't in our plans.

23 Q. To the best of your knowledge, has any --
24 this Fairbury location, the one that you left your

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1 job at the DOC for, have you spent -- how many hours
2 a day do you think you average there?

3 A. Well, my wife would be a better one to
4 ask. Twelve, fifteen.

5 Q. Average hours a day?

6 A. Yeah.

7 Q. Have you ever -- has that been true since
8 it opened?

9 A. Yes.

10 Q. Have you heard any complaints from any
11 customers or employees besides your next door
12 neighbors there?

13 A. No.

14 Q. Any complaints about noise at all?

15 A. No.

16 Q. There was a liquor commission hearing in
17 about August of 1998, wasn't there?

18 A. Yes.

19 Q. And that was something that was convened
20 on the complaint of your next door neighbors, right?

21 A. Correct.

22 Q. And you -- did you go to the hearing?

23 A. Yes.

24 Q. And did -- was there testimony presented

1 about, you know, what the noise had been and all
2 that?

3 A. Yes.

4 Q. Did police officers testify?

5 A. Yes.

6 Q. And was a consensus reached by the
7 tribunal regarding whether you would or would not
8 have some kind of penalty?

9 A. Yes.

10 Q. What was the decision?

11 A. I believe they found that we would have no
12 penalty.

13 Q. Has this also been the subject of city
14 council meetings in the City of Fairbury, this
15 alleged noise?

16 A. Yes.

17 Q. What's been the outcome when you've
18 monitored those city council meetings?

19 A. I don't think I have.

20 Q. Oh, you haven't. Okay.

21 A. No.

22 Q. Has anybody, whether -- not a customer,
23 not an employee, but an outsider, police, city

24 officials, anybody else, ever complained about the

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1 noise level other than in a situation where your
2 next door neighbors complained?

3 A. No.

4 Q. Did you move to this area, your
5 restaurant, knowing that there was any kind of a
6 residence located next door?

7 A. No.

8 Q. When was the first time that you heard any
9 hint that there would be somebody living next door
10 to this location?

11 A. I would say right around that time I was
12 introduced to Mike in the alleyway.

13 Q. What steps had you already taken at that
14 point to acquire and start working on this location?

15 A. Well, a location, that location or
16 location of Fairbury, we had already bought all the
17 -- we had already bought all the equipment in the
18 bar. The bar and the back bar, we bought that the
19 fall before.

20 I had already given my notice of my job,

21 we had already applied for the liquor license, and
22 it had been granted.

23 Q. After that liquor control -- liquor
24 commission meeting, was there a period of time when

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1 the music level was reduced?

2 A. Not on purpose. I mean, not -- business
3 always falls off in September and October.

4 Q. Have you looked over the log submitted in
5 evidence by Mr. Pawlowski --

6 A. I --

7 Q. -- yesterday?

8 A. I -- yes.

9 Q. Did you see areas where he called you a
10 bastard or the chief moron or an idiot?

11 A. Yes.

12 Q. Have you taken that kind of an approach to
13 be a moron or an idiot in developing this location?

14 A. I don't believe so.

15 Q. Have you tried to be responsible in
16 developing this business at this location?

17 A. Yes, sir.

18 Q. Is it your livelihood?

19 A. Yes, it is.

20 Q. Did you see in there where he accused you
21 of egging his vehicle?

22 A. Said there was an egg on his vehicle, and
23 the chief moron was out there.

24 Q. And when he's referred to chief moron in

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1 his diary, who has he referred to as the chief
2 moron?

3 A. Well, I'm taking it to mean me.

4 Q. Did you egg his vehicle?

5 A. Maybe that's paranoia. No, I did not.

6 Q. Have you ever done anything on purpose to
7 try to hurt the complaining parties in this case?

8 A. Absolutely not.

9 Q. Have you ever done anything other than try
10 to run a business there that you planned for and
11 left your job for to run?

12 A. No.

13 Q. Have you tried to be vindictive at all in
14 running it?

15 A. No.

16 Q. Have you run it like your other locations?

17 A. Yes.

18 Q. Have you run it like other bars in the
19 area?

20 A. I would hope better.

21 Q. Have you run it in a manner that you
22 believe to be consistent with its location in
23 downtown Fairbury, Illinois?

24 A. Yes.

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1 MR. O'DAY: Those are my questions.

2 HEARING OFFICER FELTON: Mr. Harding?

3 CROSS-EXAMINATION

4 BY MR. HARDING:

5 Q. Let me ask you, you bought this building
6 or are buying it from Bob Nusbaum; is that correct?

7 A. Correct.

8 Q. And Bob Nusbaum introduced you to the
9 Pawlowskis or to Mike Pawlowski?

10 A. Right.

11 Q. We believe to be Good Friday of April,
12 1998. Did you have any indication that Bob knew the
13 Pawlowskis before then?

14 A. Not that I'm aware of.

15 Q. How did you determine which side, 101 or
16 103, should be the bar and which bar should be the
17 restaurant?

18 A. Well, that was probably the deciding
19 factor in us buying that, was -- have you ever been
20 in Benchwarmers?

21 Q. No, I haven't.

22 A. Okay. The bar area itself is -- is
23 natural brick, and it has an antique tin ceiling on
24 it. It's a beautiful room.

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1 Q. Is it an antique tin ceiling?

2 A. Yeah, tin or copper. I believe it's --
3 Larry, is it copper? It doesn't matter. It's 100
4 years old.

5 Q. So that was how the determination was
6 made?

7 A. (Witness nods head.)

8 Q. And that determination remained in place
9 after April 10th?

10 A. Yes.

11 Q. Now, you say you gave your notice as
12 correctional officer around -- I want to get this
13 right, the 10th of March -- around the 28th? You
14 gave 30 days' notice?

15 A. Pay periods are at 15th and 30th. I'm
16 probably giving it around March 15th.

17 Q. Okay. The liquor license was approved
18 April 1st?

19 A. Yes.

20 Q. Now, Cooksville Benchwarmers is a
21 freestanding building, right?

22 A. Yes.

23 Q. Doesn't abut any other buildings?

24 A. No.

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1 Q. Were you at Benchwarmers in Fairbury on
2 July 1st, the morning of July 1st, 1998, when
3 Officer Frickey came?

4 A. I don't recall. No, I don't think I was.

5 Q. Okay. Have you ever been -- have you ever
6 been on the second floor of 105 West Locust?

7 A. No, sir.

8 Q. Have you ever been on the first floor of

9 105 West Locust?

10 A. No.

11 Q. Have you ever -- you've never been in 105

12 West Locust?

13 A. No. I would have been willing to go

14 listen to their problem, though.

15 Q. Have you ever done an analysis of

16 Benchwarmers' business over time?

17 A. Time of the day?

18 Q. Yes.

19 A. I could give you a fair --

20 Q. Okay.

21 A. What, the --

22 Q. Hit me.

23 A. It's a restaurant, so lunchtime. I

24 increase my -- I increase my --

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1 Q. Let me stop you. You also do breakfast

2 business, right?

3 A. Right.

4 Q. What time do you open for breakfast?

5 A. Five a.m.; lunchtime I increase my help

6 from 11:30 till 1:00; and dinnertime, I increase my
7 help from 5:00 to 8:00. So that should tell you
8 then when we make the most money.

9 Q. Okay. What kind of money do you make
10 after 10:00?

11 A. Amount-wise is what you want to know?

12 Q. Yes, as compared to breakfast, lunch, or
13 dinner?

14 A. Friday and Saturday nights, I would say
15 20 percent of the day is made after 10:00.

16 Q. Okay. What about Monday through --

17 A. After 8:00, after dinner hour.

18 Pardon me?

19 Q. I'm sorry.

20 A. After 8:00, after the rush, 20 percent of
21 the day is made. You're going to make 60 to 70
22 percent of your day on Friday and Saturdays from
23 five to eight. That's your money time.

24 Q. Okay. Then the rest of it is sprinkled

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1 between -- after the dinner hour, after 8:00 and
2 before the dinner hour?

3 A. Right.

4 Q. Breakfast, lunch, right? Is that fair?

5 A. Yes.

6 Q. Okay. What about during the rest of the

7 week, Monday through Thursday?

8 A. Actually, the way it's been going, the

9 majority of the money is made during the day, our

10 breakfasts and lunches.

11 Q. You say "majority." Are you talking

12 51 percent or --

13 A. I would probably wager it to be more

14 70 percent.

15 Q. For breakfast and lunch?

16 A. Breakfast and lunch.

17 Q. So 30 percent dinner and after?

18 A. Yes. Would you like a breakdown of our

19 food to alcohol?

20 Q. Love to have it.

21 A. Would you? 75 percent food, 25 percent

22 alcohol.

23 Q. Thank you. And the jukebox accounts for a

24 whopping 140?

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1 A. 140 bucks.

2 Q. Okay. I'm not going to ask you the

3 smart-alecky question, "Where do you spend it?"

4 What time's the restaurant close?

5 A. It closes Monday through Thursday at ten,

6 Friday and Saturday at eleven, Sundays at nine.

7 Q. Okay. And then your establishment closes

8 at 1:00 Monday through Saturday?

9 A. Well --

10 Q. And then 10:00 on?

11 A. That's our legal hours, yes. It closes

12 earlier most of the time.

13 Q. But it does periodically remain open?

14 A. Correct.

15 Q. Just give me a second, if you will.

16 Directing your attention to requests for production

17 that were served upon you, request number two and

18 three?

19 A. Request for what?

20 Q. Production --

21 A. Okay.

22 Q. -- of documents.

23 A. All right.

24 Q. Request number two asked for federal and

1 state income tax returns, W-2s, schedules and
2 attachments for each of the respondents, yourself,
3 Mr. Quinley, and Benchwarmers, Inc.; and number
4 three asks for statements of assets, liability,
5 income, or expenses filed by either respondent with
6 any financial institutions or government agencies
7 during the past two years.

8 To each of those, you objected and did not
9 produce documents. Is there any particular reason?

10 A. You'd have to ask my attorney.

11 Q. Do you wish, if a nuisance is found, to
12 have your economic situation considered?

13 A. Economic situation considered?

14 MR. O'DAY: Objection. This witness isn't
15 prepared to talk about the law.

16 MR. HARDING: He's prepared to talk about his
17 desires. I'm not asking for a conclusion.

18 HEARING OFFICER FELTON: Sustained.

19 MR. O'DAY: Well, his desires would be
20 irrelevant. I object on relevancy to his desires.
21 I object as to what might be relevant to what
22 penalty -- any penalty phase on the ground that's
23 he's not competent to give a legal opinion.

24 HEARING OFFICER FELTON: Sustained. Pursuant

1 to the act, the board will look at Section 33(c) and
2 42(h) for conclusive penalties, and the complainants
3 can act accordingly.

4 MR. HARDING: I'm not looking for --

5 HEARING OFFICER FELTON: Sustained. I don't
6 see the relevancy in this.

7 MR. HARDING: Yeah, the economic costs of
8 making what alterations might be necessary to
9 dissipate the nuisance.

10 HEARING OFFICER FELTON: Well, I don't think
11 that that's going to be elicited by this question.

12 MR. HARDING: Well, there is no other question
13 that elicits it.

14 HEARING OFFICER FELTON: Well, I'm overruling
15 -- I mean I'm sustaining the objection.

16 MR. HARDING: Okay. Oh, I would note that it's
17 my understanding here that there is no penalty phase
18 in this proceeding.

19 HEARING OFFICER FELTON: So noted.

20 MR. HARDING: I have no further questions of
21 this witness.

22 HEARING OFFICER FELTON: Any further redirect?

23 MR. O'DAY: No.

24 HEARING OFFICER FELTON: Do the complainants

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1 have anything on their case in rebuttal?

2 MR. HARDING: Have the respondents rested?

3 MR. O'DAY: Yes, we rest.

4 HEARING OFFICER FELTON: Yes.

5 MR. HARDING: I don't see a case in rebuttal.

6 HEARING OFFICER FELTON: Okay. Great. Since
7 there is no case for rebuttal and the respondents --
8 both parties have rested, we'll proceed briefly with
9 the conclusory statements by both parties. And then
10 we can discuss off the record a briefing schedule if
11 the parties request that.

12 MR. HARDING: Our strong, strong desire here,
13 preference would be to submit our comments -- since
14 they're going to be in writing one way or the other
15 -- submit our comments in writing, closing
16 comments.

17 HEARING OFFICER FELTON: So the parties are
18 waiving their conclusory statements?

19 MR. SHIELDS: Sure.

20 HEARING OFFICER FELTON: Okay. Let's go off

21 the record for a second.

22 (A discussion was held off the record.)

23 HEARING OFFICER FELTON: Seeing that the
24 parties have waived their closing statements, we

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1 have discussed about when the transcript will be
2 available in this matter. Assuming that the
3 transcript is available by or about November 22nd,
4 1999, the complainants' post-hearing brief is due on
5 Monday, December 13th, 1999. The respondents'
6 response is due on December 29th, 1999.

7 And the complainants have articulated a
8 request to file a reply. The respondents have no
9 objection. So the complainants' reply, if filed,
10 will be due on January 3rd, 2000, which is a
11 Monday. Accordingly, the record in this matter will
12 close on that January 3rd, 2000. The mailbox rule
13 as set forth at 35 Illinois Administrative Code
14 101.102 and 101.42(d) will apply to all post-hearing
15 filings.

16 MR. HARDING: If I may stop your record for
17 just a moment, I thought we were January 4th to

18 reply.

19 HEARING OFFICER FELTON: Excuse me. I thought
20 we said January 3rd. Did you request January 4th?
21 I think at one point you said January 4th.

22 HEARING OFFICER FELTON: I wrote down
23 January 3rd.

24 MR. HARDING: Okay.

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1 HEARING OFFICER FELTON: Change all these.
2 Therefore, the complainants' reply, if there's no
3 objection from the respondents, will be due on
4 January 4th, 2000. There's no -- is there any
5 objection?

6 MR. SHIELDS: No objection.

7 HEARING OFFICER FELTON: Okay. Then the
8 record, therefore, will close on January 4th, which
9 is a Tuesday, of 2000.

10 Before we close, I just have a few closing
11 remarks. Pursuant to Section 103.203(d) of the
12 board's procedural rules regarding enforcement
13 proceedings, the hearing officer is required to make
14 a statement as to the credibility of the witnesses.
15 I will also make this in writing; but just for the

16 record, upon review of the testimony heard today and
17 my legal judgment and experience, I do not find
18 credibility to be an issue in this matter.

19 If there are no other matters to discuss
20 at this time, are there any between the parties?

21 Okay. Seeing that there are none, this
22 hearing is adjourned. We will look forward to
23 receiving your post-hearing comments, and I thank
24 all of you for your participation today.

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1 MR. SHIELDS: Thank you.

2 MR. HARDING: Thank you.

3 (Whereupon, the proceedings were terminated at
4 1:28 p.m.)

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3 STATE OF ILLINOIS :
: SS
4 COUNTY OF PEORIA :

5 I, JENNIFER E. JOHNSON, Certified
Shorthand Reporter, Registered Merit Reporter, in
6 and for the County of Tazewell, State of Illinois,
do hereby certify that the foregoing transcript of
7 proceedings is true and correct to the best of my
knowledge and belief;

8

9 That I am not related to any of the
parties hereto by blood or marriage, nor shall I
benefit by the outcome of this matter financially or
10 otherwise.

11

12

JENNIFER E. JOHNSON
Certified Shorthand Reporter
Registered Merit Reporter
Notary Public, State of
Illinois at Large

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My Commission expires April 18, 2001.
(License #084-003039)

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