

1                                   BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2           ANTHONY and KAREN ROTI,                                    )

3           PAUL ROSENSTROCK and                                    )

              LESLIE WEBER,    )

  )

4                                   Complainants,                    )

  )

5                                   vs.                                        )    No. PCB 99-019

  )    VOLUME VI

6           LTD COMMODITIES,   )

  )

7                                   Respondent.                        )

8                                   The following is the transcript of a hearing

9                                   held in the above-entitled matter taken

10                                  stenographically by DEBORAH T. BRAUER, CSR, a notary

11                                  public within and for the County of Lake and State of

12                                  Illinois, before JOHN KNITTLE, Hearing Officer, at 118

13                                  West Cook Avenue, Libertyville, Illinois, on the 23rd

14                                  day of May, 2000, A.D., commencing at 9:35 a.m.

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PRESENT:

STEVEN P. KAISER & ASSOCIATES  
BY: MR. STEVEN P. KAISER  
4711 Golf Road  
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(847) 677-7066

Appeared on behalf of the  
Complainants;

BAIZER & KOLAR  
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5th Floor  
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(847) 433-6677

Appeared on behalf of the  
Respondent.

ALSO PRESENT:

Mr. Michael Hara  
Ms. Leslie Weber

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1 HEARING OFFICER KNITTLE: Good morning. My name  
2 is John Knittle. I'm a hearing officer with the  
3 Illinois Pollution Control Board. I'm also the  
4 assigned Hearing Officer for this matter which is PCB  
5 Docket No. 1999-019, Anthony and Karen Roti, Paul  
6 Rosenstock and Leslie Weber versus LTD Commodities.

7 This is the second go-around of hearings.  
8 The first set of hearings were held November 1st  
9 through November 5th in 1999. This hearing was noticed

10 up pursuant to the Illinois Environmental Protection  
11 Act and the Board of Regulations. It is approximately  
12 9:35 a.m.

13 I do not think there are any members of the  
14 public.

15 Sir, are you here to testify?

16 MR. BYRNES: Yes, I am.

17 HEARING OFFICER KNITTLE: Okay. There are no  
18 members of the public present, and I think that's all I  
19 have.

20 As in the last hearing, this hearing will be  
21 run pursuant to the Board's Rules under Section 103201  
22 and 202, I think. Let me take a look.

23 (Pause in proceedings.)

24 HEARING OFFICER KNITTLE: 103202 and 203, my

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1 apologies. And we'll be conducting it in that manner.  
2 Correct me if I'm wrong but we're still proceeding with  
3 complainants' case in chief?

4 MR. KAISER: Yes, that's where we left it when we  
5 adjourned back in November. And at this point the

6 respondents rest.

7 HEARING OFFICER KNITTLE: The complainants?

8 MR. KAISER: The complainants rest.

9 HEARING OFFICER KNITTLE: We don't want to rest  
10 Mr. Kolar quite yet.

11 All right. The complainants rest.

12 Have you offered all your exhibits, Mr.  
13 Kaiser?

14 MR. KAISER: I believe we have. I just had a  
15 chance to look over the Hearing Officer's notes and the  
16 exhibits, and I believe we have offered every exhibit.  
17 And virtually every exhibit offered has been admitted.

18 HEARING OFFICER KNITTLE: I think so. I see there  
19 were a couple. One was reserved and that is C-23.

20 MR. KAISER: Let's take a look at that.

21 HEARING OFFICER KNITTLE: That's the only one I  
22 really want to address. The rest have either been  
23 admitted or denied.

24 MR. KAISER: C-23. A letter from Schomer &

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1 Associates to Thomas Thunder dated February 27, 1998.

2 HEARING OFFICER KNITTLE: Correct.

3 And, for whatever reason, in my disposition  
4 column of the exhibit list I have "reserved."

5 MR. KAISER: This was a letter which I believe was  
6 referenced extensively in Dr. Schomer's deposition  
7 transcript which was Exhibit C-65. I would ask you,  
8 Mr. Knittle, to review your notes and see whether C-65  
9 has been offered and admitted.

10 HEARING OFFICER KNITTLE: C-65 is offered and  
11 admitted.

12 MR. KAISER: And I would suggest that C-23 be  
13 admitted at this point.

14 MR. KOLAR: I think the reason we reserved this is  
15 because Mr. Thunder is testifying in my case, in fact  
16 tomorrow, and I had a problem with this just being  
17 admitted without him because of the reference in  
18 Paragraph 1 where Mr. Schomer implies that Mr. Thunder  
19 agrees it should be a Class B use and in fact he does  
20 not.

21 HEARING OFFICER KNITTLE: Mr. Kaiser, is that your  
22 recollection? You want to wait until we hear Thunder's  
23 testimony?

24 And, Mr. Kolar, would you allow Mr. Kaiser to



1 offer it at that point?

2 MR. KOLAR: Sure.

3 HEARING OFFICER KNITTLE: Even those his case is  
4 closed?

5 MR. KOLAR: Sure.

6 HEARING OFFICER KNITTLE: Is that okay with Mr.  
7 Kaiser?

8 MR. KAISER: That's fine.

9 HEARING OFFICER KNITTLE: Let's do that then.

10 Mr. Kolar, you mentioned you had a  
11 preliminary matter you wanted to address before we got  
12 rolling?

13 MR. KOLAR: Right.

14 And just one thing for the record, Mr. Hara  
15 is here as well this morning.

16 HEARING OFFICER KNITTLE: Correct.

17 MR. KOLAR: I don't recall if I heard that. Maybe  
18 you said that.

19 HEARING OFFICER KNITTLE: I did not, you are  
20 correct. I do note Mr. Hara from LTD Commodities is  
21 present here today.

22 MR. KOLAR: And the complainants are not here.

23 HEARING OFFICER KNITTLE: I also note that there  
24 are no complainants present at this point in time.

1 MR. KOLAR: One thing I wanted to do is I thought  
2 it would help for the record at the start of our case I  
3 have -- the complainants each answered basic  
4 interrogatories, which are marked as Respondent's 1, 2  
5 and 3. I just wanted to read, as admissions into the  
6 record, at one spot what the complainants have stated  
7 regarding when they acquired their property because now  
8 we have a very lengthy record with that information  
9 throughout the proceedings.

10 HEARING OFFICER KNITTLE: You want to let Mr.  
11 Kaiser take a gander?

12 MR. KOLAR: Interrogatory 4 for each of the  
13 complainants. And I would just read verbatim their  
14 answer. Do you have a problem with that?

15 MR. KAISER: I mean, I think it's a little  
16 unusual. All three of those individuals were called  
17 here, were sworn and testified at some length under  
18 oath. And if there was any issue about when they moved  
19 into their house, I think that was better addressed  
20 through direct testimony.

21 MR. KOLAR: Well, it's my case. They have made

22 admissions in interrogatory answers, and, as I recall,  
23 they all didn't have the best of memories as to when  
24 exactly they moved into their homes or purchased their

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1 homes. It's a pretty simple matter. It's a crucial  
2 issue with the case regarding priority of location I  
3 think is what it says under Section 33 factors.

4 HEARING OFFICER KNITTLE: You'd want to read these  
5 in as acknowledging that they're hearsay statements but  
6 the fact that they're admissions from the opposite  
7 party?

8 MR. KOLAR: Right. And I think admission is not  
9 hearsay. Admission of a party by definition is not  
10 hearsay.

11 MR. KAISER: I withdraw my objection. I mean, I  
12 assisted in the preparation of those. Those are clear  
13 statements as to when they moved in. It will benefit  
14 the Board to have unequivocal statements about when  
15 they moved in. And so I withdraw my objection.

16 HEARING OFFICER KNITTLE: Okay. Let's do it.

17 MR. KOLAR: Okay. First, Respondent's Exhibit 1,

18 the Rotis, Mr. Roti moved in in August 1990.

19 Next, Paul Rosenstock. He entered into a  
20 contract to purchase the land and house in the fall of  
21 1987. He closed on the purchase in the summer of 1988.

22 Leslie Weber. July 6, 1988 purchased the  
23 vacant land. January 1992 assumed occupancy of home.

24 HEARING OFFICER KNITTLE: Mr. Kolar, those are

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1 your Respondent's Exhibits 1, 2 and 3. Are you  
2 planning on offering those at a later time?

3 MR. KOLAR: I'm not sure yet.

4 HEARING OFFICER KNITTLE: Can you just identify  
5 then for the record when the interrogatories were  
6 proffered and responded to?

7 MR. KOLAR: Sure.

8 Respondent's Exhibit 1, the Roti interroagory  
9 answers signed by Karen Roti December 21, 1998.

10 Paul Rosenstock signed his interrogatory  
11 answers December 17, 1998. And his is Respondent's  
12 Exhibit 2.

13 Respondent's 3, Leslie Weber signed hers also

14 on December 17, 1998.

15 HEARING OFFICER KNITTLE: Thank you.

16 MR. KOLAR: Then respondent would call the first  
17 witness, appraiser Kevin Byrnes.

18 HEARING OFFICER KNITTLE: Mr. Byrnes, can you have  
19 a seat and the court reporter will swear you in.

20 (Witness sworn.)

21 HEARING OFFICER KNITTLE: Mr. Kolar.

22 KEVIN BYRNES,  
23 called as a witness herein, having been first duly  
24 sworn, was examined and testified as follows:

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1 DIRECT EXAMINATION

2 BY MR. KOLAR:

3 Q. Could you state your name for the court  
4 reporter, please?

5 A. Kevin Byrnes, B-y-r-n-e-s?

6 Q. And what do you do for a living?

7 A. I'm a real estate appraiser and consultant.

8 Q. Where do you live?

9 A. In Elmhurst, Illinois.

10 Q. Who do you work for?  
11 A. William A. McCann & Associates.  
12 Q. Where is that business located?  
13 A. That's located at 414 North Orleans in  
14 Chicago.  
15 Q. How long have you worked at McCann &  
16 Associates?  
17 A. Approximately five years.  
18 Q. How long has McCann been in business if you  
19 know?  
20 MR. KAISER: Objection, relevance.  
21 HEARING OFFICER KNITTLE: Mr. Kolar.  
22 MR. KOLAR: No response.  
23 HEARING OFFICER KNITTLE: Overruled.  
24 THE WITNESS: Mr. McCann has been independently in

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1 business under his own name since 1962.  
2 BY MR. KOLAR:  
3 Q. Can you tell the Pollution Control Board what  
4 you do for William A. McCann & Associates?  
5 A. I'm an appraiser on the staff, principal

6 associate partially responsible for day-to-day  
7 management of the firm, as well as performing appraisal  
8 projects.

9 Q. How many appraisers are there on the staff?

10 A. There is approximately 10 at the moment.

11 Q. And for the five years that you have been  
12 there can you name some representative clients of the  
13 firm that would have no objection with you giving their  
14 names?

15 MR. KAISER: Objection. Representative clients of  
16 the firm doesn't tell the Board anything about Mr.  
17 Byrnes' qualifications. I wouldn't object to  
18 representative clients that Mr. Byrnes has done work  
19 for. To try to buff up his credentials by reference to  
20 what the firm has done I think is inappropriate.

21 MR. KOLAR: I'll withdraw the question.

22 BY MR. KOLAR:

23 Q. You were hired by LTD Commodities regarding  
24 this noise hearing?

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1 A. Yes, I was.

2 Q. And you're being paid?

3 A. Yes.

4 Q. What's your rate?

5 A. We're billing LTD at my hourly rate, which is  
6 \$175 per hour.

7 Q. And is that a standard rate for private  
8 clients?

9 A. Yes, that's what we charge generally.

10 Q. In the five years prior to coming to McCann  
11 what did you do for a living?

12 A. I was a commercial appraiser for a company  
13 called Real Estate Analysis Corporation located in  
14 downtown Chicago.

15 Q. And what type of properties did you appraise  
16 working for that company?

17 A. A variety of commercial and residential  
18 properties.

19 Q. How long were you there?

20 A. For five years.

21 Q. What did you do before working at Real Estate  
22 Analysis Corporation?

23 A. I was a real estate salesperson in the  
24 southwest suburbs of Chicago.



1 Q. If I understand the law correctly, a  
2 salesperson works under a broker's license?

3 A. That's right.

4 Q. What business did you work for?

5 A. At the time the sponsoring broker's name was  
6 Regina Mundell, and the franchise was ERA Reggie &  
7 Associates on Cicero Avenue.

8 Q. So as a salesperson you had some sort of  
9 license from the State of Illinois?

10 A. Yes, I had a salesperson's license.

11 Q. How long did you -- can we call that -- was  
12 that when you were a realtor or is that not a proper  
13 term?

14 A. Well, I was a dues paying member of the  
15 National Association of Realtors. And "realtor" is a  
16 trademark name. And if you're a member of the  
17 Association of Realtors, you can call yourself a  
18 realtor. So the answer is yes.

19 Q. All right. How long were you in this  
20 business as a salesperson/realtor?

21 A. Approximately five years before going to Real  
22 Estate Analysis Corporation, although I continued to  
23 hold my real estate license after that.

24 Q. As of today?

1 A. Currently it's not active. I haven't really  
2 used it.

3 Q. That was just a voluntary decision on your  
4 part because you were in a new line of business?

5 A. Yes.

6 MR. KAISER: Objection, leading.

7 HEARING OFFICER KNITTLE: Mr. Kolar, you want to  
8 rephrase.

9 BY MR. KOLAR:

10 Q. Why don't you have your license active  
11 anymore?

12 A. Because I'm not engaged in the sale of  
13 single-family homes. My business is completely taken  
14 up as a real estate appraiser/consultant.

15 Q. When you were a salesperson what type of  
16 properties did you list?

17 A. Either vacant lots for development or  
18 improved single-family homes, also attached  
19 single-family homes, condos and townhouses.

20 Q. What is your education after high school?

21 A. After high school I attended University of  
22 Notre Dame and received a Bachelor of arts degree. And

23 then I attended the University of Chicago and received  
24 a Master of arts degree. Following that I have also

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1 taken education courses related to the real estate  
2 field, which were required both for my real estate  
3 salesperson license and for my state general  
4 certification license from the Office of Banks and Real  
5 Estate.

6 Q. What did you have to do to obtain your  
7 salesperson license when you did that in terms of  
8 courses?

9 A. That was basically to take a course which I  
10 believe met nightly. That was quite a while ago, but  
11 my recollection serves it met nightly for eight to ten  
12 weeks, and there was an exam. When you passed the  
13 exam, then you were qualified to sit for the State's  
14 exam for a salesperson.

15 Q. And then you took the State's exam?

16 A. Yes.

17 Q. And passed it?

18 A. Yes.

19 Q. And in terms of education as a real estate  
20 appraiser can you explain to the Board the courses you  
21 took in that regard?

22 A. Well, the requirements of the State of  
23 Illinois to become a State General Certified Appraiser,  
24 which is my current designation with the State, at the

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1 time that I was so qualified, were, I believe, 165  
2 hours of courses and 2,000 hours of appraisal  
3 experience submitted in a log and also passing an  
4 examination. And I submitted all those requirements  
5 and was accepted.

6 Q. So then you have been in the business as a  
7 real estate appraiser as of today for how many years?

8 A. Approximately ten years.

9 Q. Now, there is a designation in the appraisal  
10 business known as MAI for Member Appraisal Institute,  
11 correct?

12 A. That's right.

13 Q. Do you have that?

14 A. No, I don't.

15 Q. Are you doing anything to obtain that?

16 A. Yes. I'm in the last -- close to the final  
17 stages of finishing the requirements of the Appraisal  
18 Institute to apply for that designation.

19 Q. Have you had any experience in Lake County  
20 regarding appraising homes?

21 A. Yes, I have.

22 Q. Can you explain to the Pollution Control  
23 Board the areas in Lake County where you have had  
24 experience appraising homes?

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1 A. I have appraised homes in Lake Bluff, in  
2 Highland Park, in Barrington and South Barrington. The  
3 homes were either single-family detached homes singly  
4 or, in one case, the entire Wynstone subdivision, which  
5 included a large number of single-family homes.

6 Q. And that's in the Barrington area?

7 A. Right, off of Route 12.

8 Q. Is that a golf course community?

9 A. Yes.

10 Q. About how many homes were involved there?

11 A. I believe there were about 100 homes.

12 Q. And for what purpose did you appraise those  
13 homes?

14 A. The Homeowner's Association was embarking on  
15 a collective property tax appeal, and, therefore, I had  
16 to appraise all the homes in the community.

17 Q. Do you have any non-residential appraisal  
18 experience in Lake County?

19 A. Yes.

20 Q. Can you explain that to the Board?

21 A. In the last ten years I have appraised  
22 various industrial properties, office properties, and  
23 vacant land in areas again such as Lake Bluff. I'm  
24 currently working on an appraisal for the City of Lake

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1 Forest on Western Avenue of some vacant land. I have  
2 also appraised property in the Waukegan area, in  
3 Libertyville, and throughout the general Lake County  
4 area.

5 Q. How about experience outside of Lake County  
6 in terms of residential and non-residential?

7           A.    I have appraised residential properties  
8           including both single-family homes, attached  
9           condominium type homes, and large garden apartment or  
10          elevator apartment buildings throughout the six county  
11          area over the last ten years.  That would include Cook  
12          County and all the surrounding collar counties.

13          Q.    What states have you worked in as an  
14          appraiser?

15          A.    Well, they're listed on my professional  
16          biography, which I believe you have a copy of.  But,  
17          among others, obviously the State of Illinois.  I have  
18          appraised property in Missouri, Ohio, Florida, Texas,  
19          New York State, Tennessee recently.  In about ten  
20          different states.

21          Q.    As an appraiser have you testified before any  
22          courts or administrative agencies?

23          A.    Yes.

24          Q.    Where have you testified in terms of court

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1           experience?

2           A.    I have testified before the Circuit Court of

3 Cook County and the Bankruptcy Court of the Northern  
4 District of Illinois.

5 Q. In terms of administrative agencies where  
6 have you testified, what boards?

7 A. Illinois Property Tax Appeal Board, various  
8 Boards of Review around the State, City of Chicago  
9 Zoning Boards of Appeals, the Cook County and Du Page  
10 County Zoning Boards of Appeals.

11 Q. And when you say various Boards of Review  
12 around the State, these are the county boards that  
13 initially hear and assess valuation complaints from  
14 property owners?

15 A. Yes, once those property owners have reached  
16 what they think is a satisfactory result from the  
17 township assessor, they can then pursue their appeal  
18 with the Local Board of Review at the county level.

19 Q. And then the level after that is what?

20 A. The Property Tax Appeal Board.

21 Q. And have you testified before that Board?

22 A. Yes.

23 Q. The Property Tax Appeal Board, that's an  
24 Illinois statewide --



1 A. Yes.

2 Q. -- Board, correct?

3 A. That's right.

4 Q. Do you have any knowledge of LTD Commodities  
5 before work on this project?

6 A. Yes.

7 Q. And how did you have familiarity with LTD  
8 before this project?

9 A. Before this project I was actually hired by  
10 LTD to appraise its property in relation to an assessed  
11 value question.

12 Q. Okay. And as part of that project did you  
13 familiarize yourself with the area?

14 A. Yes, I did.

15 Q. In terms of again the LTD appraisal project  
16 what did you do in terms of familiarizing yourself with  
17 the area?

18 A. Well, at the time I did what I --

19 MR. KAISER: Can we get a time frame on that just  
20 for foundation?

21 HEARING OFFICER KNITTLE: Mr. Kolar.

22 BY MR. KOLAR:

23 Q. Do you recall when that was?

24 A. That would have been -- I believe we were

1 first hired in 1996 and worked through the early part  
2 of 1998 prior to the resolution of that matter.

3 Q. And in terms of familiarizing yourself with  
4 the area what did you do in terms of the appraisal  
5 project?

6 A. Well, in addition to inspecting the property  
7 itself, I did what I always do when I'm appraising a  
8 property which is to look at what the surrounding uses  
9 are. I didn't investigate the area to the north, which  
10 is part of the subject case right now, as intensively  
11 as I have for this assignment. But I was aware that  
12 there were single-family homes immediately to the north  
13 of LTD at that time, as well as commercial office  
14 buildings to the east, and commercial uses to the  
15 south, and the Tri-State to the west.

16 Q. And is LTD your client in this case?

17 A. Yes.

18 Q. Respondent's Exhibit 4 is a copy of the  
19 Pollution Control Board complaint. Have you seen this  
20 before?

21 A. Yes, I have.

22 Q. And Paragraph 8, did you read this at some

23 point?

24 A. Yes.

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1 Q. In Paragraph 8 did you read the allegation by  
2 the complainants that LTD "depresses the value of the  
3 complainants' properties"?

4 A. Yes, I did.

5 Q. Did LTD or I guess myself on behalf of LTD  
6 request you to do anything in regard to that  
7 allegation?

8 A. Yes.

9 Q. Okay. Have you formed opinions relative to  
10 that allegation?

11 A. Yes, I have.

12 Q. Before we get to that, what, if anything, did  
13 you do to investigate or do background work before  
14 forming your opinions?

15 A. Well, initially, after receiving the  
16 assignment, I reviewed any of the documentation that we  
17 were sent, which in the early course I believe was a  
18 copy of the Pollution Control Board complaint. And

19 then, towards the end of March and beginning of April  
20 of 1999, I received copies of deposition transcripts  
21 for each of the complainants plus two real estate  
22 brokers and also one of the complainant's husband's,  
23 which was Henry Weber. And so I read those.

24 I also investigated the area, through

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1 physical inspections, on a number of occasions. Of  
2 course, I immediately inspected the area after being  
3 retained and then also went to the local township  
4 Assessor's Offices, reviewed plats of survey and the  
5 plats of the subdivision. I went on the MLS to see  
6 what homes were selling for in the area.

7 Q. What's MLS?

8 A. That the Multiple Listing Service of Northern  
9 Illinois which is a computer-related service where you  
10 can call up properties which have either been sold or  
11 listed or currently listed and expired, what they sold  
12 for, who the brokers were, and that sort of  
13 information.

14 Q. In terms of inspecting the area, can you be

15 more specific where did you go, walk, drive?

16 A. Well, on my first inspection I believe I  
17 exited the Tri-State and drove east to Telegraph Road  
18 and then north on Telegraph and then eventually made my  
19 way along Arbor Lane and down to Wedgewood Drive which  
20 is where the three complainants' homes were located.  
21 And at that point Wedgewood Drive is parallel to -- it  
22 runs east and west. It's parallel to the south  
23 property lines of the complainants' properties. So I  
24 drove through there and noted what kinds of

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1 improvements were on the lots. I had tax plat maps and  
2 subdivision maps in hand both from the Wedgewood Drive  
3 side and also the LTD parking lot side. I looked to  
4 see where those property lines were and how the land  
5 was actually improved.

6 In the LTD case there was a surface parking  
7 lot leading up to a short grassy area and then some  
8 shrubbery and trees and then fences for the backs of  
9 the lots of the complainants.

10 And then on the subdivision side, obviously I

11 saw a number of single-family homes which I was aware  
12 were built generally from the late '80s into the early  
13 1990s.

14 Q. And in terms of -- you mentioned improvements  
15 on the lots, you're talking about the homes on the  
16 complainants' lots?

17 A. That's right.

18 Q. For this particular project did you go on the  
19 LTD property?

20 A. Yes.

21 Q. Did you look at Lake Forest more generally as  
22 part of this assignment?

23 A. Yes. I drove through areas north of Old Mill  
24 Road, which is an east-west road which more or less

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1 defines the northern terminus of the immediate  
2 residential market area for the complainants'  
3 properties. I also drove up and down Telegraph Road  
4 and then east of Telegraph Road, in other words, more  
5 or less an area that would be described as Central Lake  
6 Forest. And then east all the way to the Market Square

7 area on Western. And finally over towards the lake  
8 front just to generally be acquainted with the range of  
9 housing types and the prices that were paid for houses  
10 based on the MLS information throughout that whole  
11 geographical area.

12 Q. Did you, through document review or  
13 otherwise, investigate when the complainants purchased  
14 their homes and when the LTD operations were built,  
15 expanded, etc.?

16 A. Yes.

17 Q. Why did you do that?

18 A. Well, part of the question at hand is, as I  
19 understand it, that there was an additional level of  
20 operations causing noise and light problems as  
21 specified in Item A of the complaint. And I knew from  
22 my appraisal of LTD that the property originally was  
23 built in the late 1970s, I believe 1977. And it was  
24 expanded in 1986 and '87 to provide what is the current

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1 truck dock configuration. And then the warehouse  
2 operation was physically expanded in 1995 on the side

3 of the LTD property away from the complainants' houses.  
4 And part of what I considered was whether there were  
5 any depreciative influences on market value when the  
6 complainants first moved into their homes.

7 Q. And you heard me read into the record the  
8 information regarding when the complainants acquired  
9 their properties?

10 A. Yes.

11 Q. And that's consistent with what you learned  
12 as well?

13 A. Yes, that's right.

14 Q. I know I cut you off, but anything else that  
15 you -- before we get to your opinions, anything else  
16 that you did investigative wise, preparation work that  
17 we haven't discussed?

18 A. That's generally it. I mentioned the MLS,  
19 the assessor's records, the depositions of the  
20 complainants, the deposition of the two brokers who  
21 have listed the Rotis' house, physical inspection of  
22 the area, and observation of the layout of the area and  
23 how it correlated to some of the things that were  
24 testified to in those depositions that I had reviewed.



1 Q. You read those depositions?

2 A. Yes.

3 Q. And you reviewed assessor records?

4 A. Yes.

5 Q. Now, depositions, are those things that you  
6 typically rely upon in your profession in forming  
7 opinions relative to real estate valuation issues?

8 A. Yes.

9 Q. And the assessor documents, can you be more  
10 specific? What does the assessor have that you look at  
11 in this case?

12 A. The assessor has property record cards for  
13 each established lot. And in the case of the subject  
14 subdivision each established subdivision lot  
15 corresponds to a property index number, which then can  
16 be identified in the assessor's records. And I was  
17 able to see when the subdivision was first platted,  
18 what the initial assessed values were, as well as what  
19 the assessed values were when I did my investigation.

20 Q. And do assessors have tax maps?

21 A. Yes.

22 Q. Did you look at tax maps as well?

23 A. Yes, I did.

24 Q. Do tax maps have the permanent index numbers

1 on them?

2 A. That's right.

3 Q. And do you as an appraiser typically rely  
4 upon property record cards in forming your opinions as  
5 an appraiser?

6 A. That's one of the sources that we use, yes.

7 Q. People in your profession do that on a  
8 regular basis?

9 A. Yes.

10 Q. Do you typically rely upon tax maps in  
11 forming your opinions as an appraiser?

12 A. Yes, that's one of the ways that we can  
13 identify where properties are located.

14 Q. The MLS service that you explained, is this a  
15 computer service?

16 A. Yes, it is. In the last ten years the MLS  
17 services in the Northeast Illinois area pretty much  
18 banded together from a loose association of groups that  
19 put out either -- some were putting out books, some had  
20 on -- not on-line but computer services. And I believe  
21 for the last seven or eight years there has been a  
22 group called the Multiple Listing Service of Northern  
23 Illinois which you can access through on-line

24 interfaces. And you can call up multiple listing

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1 records for practically any property in Northeast  
2 Illinois.

3 Q. How do you access that service, do you access  
4 it at home, at the office?

5 A. I do it at home and at my office.

6 Q. Does MLS have listings and sales or just  
7 listings?

8 A. They have listings. They have sales. They  
9 have records of property that were listed but the  
10 contracts expired. They have listings of properties  
11 which are under contract or which are under contract  
12 subject to a contingency. There is six or seven  
13 different categories of properties as they're listed on  
14 the MLS service.

15 Q. And that service, is that something that you  
16 and appraisers typically rely upon in forming opinions  
17 regarding property valuation?

18 A. Yes.

19 Q. In this case did you form an opinion whether

20 LTD's operations, specifically noise, depresses the  
21 value of complainants' properties?

22 A. Yes, I did.

23 Q. And what is that opinion?

24 A. Well, in my opinion, and this is taking into

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1 consideration the scope of work, which was not only the  
2 allegation in the complaint but in reading the  
3 complainants' depositions and in moving through this  
4 case, understanding that the focus is the reported  
5 increase in operations from some time in 1996 and  
6 continuing through the dates of the complainants'  
7 depositions, in other words, a change from a  
8 one-shift-a-day to a two-shift-a-day operation. And so  
9 my opinion was specifically focused on the effect of  
10 that change in operations. And, in my opinion, by  
11 going from one-shift-a-day to two-shift-a-day  
12 operations the LTD operations did not have any impact  
13 to add depreciation on the value of the complainants'  
14 homes.

15 Q. Did you form an opinion as to whether these

16 particular lots were priced at a value before the  
17 complainants purchased their homes to take into  
18 consideration their location?

19 A. Yes.

20 Q. What's your opinion in that regard?

21 A. Well, in forming my opinion I found that  
22 there are a number of factors that preexist the  
23 addition of a second --

24 MR. KAISER: Excuse me, I'm going to interpose an

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1 objection. I don't know that this opinion has been  
2 disclosed.

3 HEARING OFFICER KNITTLE: Mr. Kolar.

4 MR. KOLAR: It has been disclosed. Besides his  
5 deposition that Mr. Kaiser took the opinion disclosed  
6 is, LTD's operation has not depreciated the value of  
7 complainants' homes since trucking docks existed on the  
8 site before the homes were built. Any depreciation in  
9 the value of complainants' property occurred before  
10 they bought their lands and homes.

11 So I think this opinion is certainly

12 consistent with the second sentence. I guess I  
13 basically just want him to explain his opinion here.

14 HEARING OFFICER KNITTLE: Mr. Kaiser.

15 MR. KAISER: I mean, if we begin with the opinion  
16 that was disclosed in response to respondent's  
17 interrogatories, I'm more comfortable using that as a  
18 starting point. It sounds as if Mr. Byrnes has begun  
19 to shape and taylor his opinion as the litigation is  
20 unfolding and has tried to form his opinion to more  
21 fully meet LTD's perceived litigation needs, which have  
22 changed over the last nine months. So I think if he  
23 begins with the opinion he originally gave us, and so  
24 we can see the evolution of his opinion so the board

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1 can take that evolution into consideration, I'd be more  
2 comfortable with that.

3 MR. KOLAR: I'll restate the question here. I'll  
4 make it more specific.

5 BY MR. KOLAR:

6 Q. Do you have an opinion whether there was any  
7 depreciation in the value of the three complainants'

8 properties before they bought their land and homes?

9 A. Yes.

10 Q. And what is that opinion?

11 A. That there was depreciation to the value of  
12 those properties.

13 Q. What's the basis for that opinion, that there  
14 was existing depreciation before they came in and  
15 purchased the lots?

16 A. Well, there were several factors at work  
17 there. And hopefully as I explain this, this may or it  
18 may not clarify for Mr. Kaiser my opinion, but the  
19 factors at work here are location -- it's essentially  
20 the location but there are several elements of location  
21 at work here. One is that the three complainants'  
22 properties are all immediately adjacent to a commercial  
23 industrial district in Bannockburn. That commercial  
24 industrial district preexisted the subjects'

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1 subdivision. Now, part of the reason for this arising  
2 historically, and it was just a matter that I noted and  
3 considered, is that there are two different

4 municipalities here. The LTD property comes up to the  
5 north end of the Bannockburn corporate border. North  
6 of that is Lake Forest. If you go to the south along  
7 the east side of the Tri-State, you see there is -- and  
8 extending beyond the map, which is in front of us as an  
9 exhibit --

10 Q. Exhibit 89 for the record.

11 A. -- there is a band of commercial industrial  
12 type developments extending far to the south. Now,  
13 when you go north of LTD, you have got a residential  
14 subdivision. And I just note that historically you  
15 have had a commercial industrial development in LTD and  
16 the Corporate 100, then the subdivision was built. Now  
17 the three properties that are fronting on that --

18 MR. KAISER: I'm going to object with respect to  
19 lack of foundation with respect to Corporate 100 unless  
20 he wants to lay a foundation as to when that was built.  
21 I move to strike his testimony with respect to  
22 Corporate 100.

23 HEARING OFFICER KNITTLE: Mr. Kolar.

24 MR. KOLAR: I'll ask him a question in that



1 regard.

2 BY MR. KOLAR:

3 Q. What's the basis for -- strike that.

4 Exhibit 89 --

5 A. Yes.

6 Q. -- you have seen this before, correct?

7 A. Yes.

8 Q. And it shows the LTD facility, right?

9 A. Yes.

10 Q. And your understanding, based on working for  
11 LTD, is that this box that says 1986, that's the FMC  
12 building?

13 A. Yes.

14 Q. And your understanding is that was there  
15 since when?

16 A. Approximately 1977.

17 Q. And then the '87 box, that means what to you  
18 as an appraiser with a familiarity of this building?

19 A. That was in addition to the original  
20 building.

21 Q. 1995, that's what?

22 A. That's a further addition to the south of the  
23 same subject property building.

24 Q. When you said "Corporate 100" was that -- do

1 you see where we wrote "C100" on this map?

2 A. Yes.

3 Q. What do you understand that building to be?

4 A. That's an office building.

5 Q. And is that what you referred to as

6 "Corporate 100"?

7 A. Yes.

8 Q. Now, do you know when Corporate 100 was  
9 built?

10 A. No, I don't.

11 Q. Do you know when Corporate 100 was built  
12 relative to the subdivision to the north?

13 A. Well, I can tell you that in the depositions  
14 of the complainants --

15 MR. KAISER: Objection, asked and answered. He  
16 doesn't know when it was built.

17 HEARING OFFICER KNITTLE: I think it's a different  
18 question.

19 Correct, Mr. Kolar?

20 MR. KOLAR: Right. The second question was, "What  
21 do you know about Corporate 100 versus the subdivision  
22 to the north in terms of priority?"

23 HEARING OFFICER KNITTLE: I'll let him attempt to

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1 THE WITNESS: Thank you.

2 Based on complainants' depositions, they  
3 stated that one of the factors they were aware of, when  
4 they were buying their lots or their homes, was the  
5 existence of the Corporate 100 building, which they  
6 didn't always identify as Corporate 100 but they  
7 identified it as a commercial office building, which  
8 means that regardless of when it was built it certainly  
9 preexisted the complainants coming to their properties.

10 MR. KAISER: I'm going to move to strike. I don't  
11 think that satisfies the foundational requirement  
12 unless he can tell me which complainant's deposition  
13 he's recalling and who made that observation. I don't  
14 think it holds uniformly to complainants plural, it may  
15 apply to one but not all of the complainants.

16 HEARING OFFICER KNITTLE: Mr. Kolar.

17 MR. KOLAR: I think it's a big waste of time to go  
18 through deposition transcripts. I think the record  
19 will speak for itself regarding the complainants'

20 knowledge of commercial to the south. If you want to  
21 make it one or more of the complainants, that's fine,  
22 we would stipulate that one or more of the complainants  
23 had knowledge of the office building to the south when  
24 they purchased their lots.

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1 HEARING OFFICER KNITTLE: Mr. Kaiser, does that  
2 alleviate your objection and motion to strike?

3 MR. KAISER: Yes. I allow it to be qualified to  
4 that extent.

5 BY MR. KOLAR:

6 Q. Unless you can tell us as you sit there.

7 A. I can tell you as I sit here that Henry  
8 Weber, who is not one of the complainants, but he's  
9 married to Leslie Weber who's one of the complainants  
10 jointly with her purchased their lot in 1988. And when  
11 they were discussing the fact -- as was stated in the  
12 depositions, one of the factors that he considered was  
13 there was a commercial office building to the south of  
14 their property. And in some respects he thought that  
15 that was -- there were certain pluses because it would

16 be a quiet neighbor but then certain negatives because  
17 you're located next to an office building.

18 However, my foundation for stating that the  
19 Corporate 100 preexisted any of the complainants coming  
20 to their properties is at the very least Mr. Weber  
21 saying that they bought their lot in 1988 and he knew  
22 that the office building was there.

23 Q. Anyway, I think you were giving us the basis  
24 for your opinion that three complainants' lots had

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1 experienced depreciation before they even purchased  
2 their lots, do you recall where you were in that  
3 regard?

4 A. Yes.

5 Q. Okay.

6 A. There were several factors that already  
7 preexisted the complainants purchasing their lots or,  
8 in the case of the Rotis, they bought the house already  
9 built. The Tri-State was there. LTD was already  
10 there. Corporate 100 was already there.

11 Another factor is the fixed character of

12 their location in the far southwest corner of Lake  
13 Forest has a negative impact on the value of these  
14 properties compared to what they would have if they  
15 were in central or eastern Lake Forest. That's a  
16 preexisting factor that can't be changed. All those  
17 factors were there prior to the reported 1996 and later  
18 addition of the second shift operation at LTD. And, in  
19 my opinion, all those factors contributed substantial  
20 depreciation already to the complainants' homes.

21 Q. In terms of setting the value of the lots  
22 before the complainants purchased them?

23 A. Yes or in the case of the Rotis' property,  
24 their home when they bought it in 1990.

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1 Q. Based on what you told us, this '95 expansion  
2 came after each of the complainants were living to the  
3 north?

4 A. Yes.

5 Q. And what's the basis for your opinion that  
6 you don't believe the '95 expansion has depressed the  
7 value of their homes?

8           A.    Well, maybe the best way to do this is  
9           explain how I looked at this.  And if you say -- the  
10          positive hypothesis I was testing was, was there  
11          depreciation caused by what they're alleging in their  
12          complaint which is that in -- some time in 1996 there  
13          was an increase in operations and that the noise and  
14          light from LTD causes depreciation.

15                 Now, in looking at the three complainants'  
16          depositions, Karen Roti said -- when she was asked if  
17          there was a depreciative effect, she said that she  
18          thought there was because no one would want to live  
19          next to a 24 hour operation.  So she was very clear in  
20          thinking that, yes, there was a clear depreciative  
21          effect, not only I assume since 1990, but she  
22          specifically referenced a 24 hour operation.  In other  
23          words, what I understood was a two-shift operation not  
24          a three-shift operation, but, in any event, a growth in

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1           the operations of LTD is what she was referencing.

2                 Now, I next looked at --

3           Q.    Let me ask you a question.

4 A. Yes.

5 Q. Do you have any knowledge that LTD is a 24  
6 hour operation?

7 A. Well, I can tell you I have never spent 24  
8 hours at the LTD property. However, I spoke with Jack  
9 Voigt, who's employed with LTD, and specifically asked  
10 him, "Has there ever been a 24 hour operation at LTD?"  
11 And he told me there was not, there was a second shift  
12 that went from -- that was added that went from 3:30 to  
13 12:30, and that at certain points in the late '90s,  
14 during the period under question, they did incur some  
15 overtime which would take them to 1 or 1:30 in the  
16 morning. That's what was represented to me. And that  
17 then the addition of a warehouse in Aurora took some of  
18 the pressure off that overtime.

19 Q. So what did that mean to you relative to  
20 Karen Roti's comment that nobody would want to live by  
21 a 24 hour operation?

22 A. Well, I understand that Mrs. Roti is not a --  
23 say a litigation expert or I understand where she's  
24 coming from so to speak. On the other hand, if she



1 really was trying to base her argument on the fact that  
2 there were 24 hours of operations, then to some extent  
3 you have to discount her opinion because it was not a  
4 24 hour operation. However, I will grant that in her  
5 opinion she thought there was a depreciative value  
6 based on increased operations. The way she put it was  
7 24 hour, maybe she was saying that for emphasis or  
8 maybe she really thought there were 24 hours of  
9 operations, but that's not what I understand.

10 Q. And then the other bases for your opinion  
11 that you don't believe the '95 expansion has depressed  
12 the value of their land?

13 A. Well, as I was saying --

14 MR. KAISER: Excuse me. Just by way of  
15 clarification, '95 expansion, are you talking about  
16 strictly the physical expansion of the warehouse to the  
17 south in 1995 or are you talking about the increase in  
18 truck traffic on the dock area located at the northern  
19 end of the building?

20 MR. KOLAR: Well, I object to his objection. I  
21 don't know if that accurately states the facts in the  
22 record, but I assume he's going to explain to us the  
23 basis for his opinion and whether it's the warehouse  
24 itself or any alleged increase in truck traffic. So I

1 think it's premature. I think he was getting to that.

2 HEARING OFFICER KNITTLE: Mr. Kaiser.

3 MR. KAISER: Well, let's see where he goes.

4 THE WITNESS: Okay.

5 MR. KAISER: I just want to note for the record  
6 there is some ambiguity to the question.

7 HEARING OFFICER KNITTLE: I take it, Mr. Kaiser,  
8 you're concerned that the Board is going to be confused  
9 about the '95 expansion to the south of LTD and the  
10 alleged --

11 MR. KAISER: Right. If you confuse the '95  
12 expansion -- if you confuse a physical expansion of the  
13 warehouse facility with an increase in truck traffic --  
14 I mean, he's about to tell us the 1995 expansion didn't  
15 have any impact. And if you're reading the records and  
16 you're not certain that he's talking about just an  
17 increase in the square footage of the warehouse and not  
18 the increase in truck traffic, I think you could be  
19 confused about his opinion.

20 HEARING OFFICER KNITTLE: Okay. I'm going to  
21 overrule it. I think you can address that on cross  
22 examination.

23 MR. KAISER: All right. Thank you.

24

1 BY MR. KOLAR:

2 Q. Mr. Byrnes, you have been to the LTD property  
3 how many times since that expansion to the south was  
4 completed?

5 A. Well, I was there several times when I was  
6 appraising the property. I was there four times, I  
7 believe, before Mr. Kaiser took my deposition last  
8 July. And I have gone by there probably three or four  
9 times, maybe more, since then. In some cases if I was  
10 doing appraisal work in the area I would just go by to  
11 see if anything had changed.

12 Q. So as part your work for this particular  
13 noise hearing have you observed LTD's trucking  
14 operations since the building was expanded in 1995?

15 A. Yes.

16 Q. Can you continue on explaining the basis for  
17 your opinion regarding that?

18 A. I suppose I can clarify at this point, just  
19 to make life easier for everybody, that what I was  
20 talking about, even back in my deposition and what I

21 would represent today, is that I'm talking about the  
22 effect of not only the physical construction of the  
23 1995 addition but the increased level of operations  
24 because, as I think I said, Mr. Voigt did tell me that

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1 there was a second shift added. So I do understand  
2 that there was an addition to the level of activities.  
3 And that's part of the basis of my opinion.

4 All right. So I was going through the  
5 complainants' depositions particularly with what they  
6 said about the question of whether there has been  
7 depreciation on their properties. Okay. Karen Roti is  
8 pretty clear that she thinks there was. Now, Leslie  
9 Weber, when she was asked that question -- she was  
10 asked in her deposition, "Now, do you believe that the  
11 value of your house and lot have in any way been  
12 depreciated by LTD's operations?" And her answer was,  
13 "No." That was the sum total of her answer. So from  
14 Leslie Weber's answer, you would think that she didn't  
15 think there was -- that there had ever been any  
16 depreciation, let alone from the recent increase in

17 operations, which is a contradiction to what Karen  
18 Roti's opinion seems to be.

19 Then the third complainant Paul Rosenstock  
20 was asked, "Do you believe that your house is worth  
21 more than \$550,000 today?" And his deposition was  
22 taken in March of 1999. And his answer was, "I hope  
23 so." In other words, he hopes that it is worth more.

24 Q. What was the relevance of the \$550,000

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1 number?

2 A. The \$550,000 is the amount that Mr.  
3 Rosenstock paid for the lot and house which was built  
4 for him as a build-to-suit.

5 And then as a follow-up question he was asked  
6 whether his house has depreciated due to the influence  
7 of LTD's operations. And his answer was, "I don't  
8 know."

9 So in looking at what complainants had to  
10 say, as a first level of seeing what the opinions would  
11 be, Karen Roti says "Yes;" Leslie Weber says, "No;" and  
12 Paul Rosenstock says, "I don't know." So there

13 doesn't seem to be a consensus among the complainants,  
14 at least in their deposition records, as to whether  
15 there is any depreciative influence due to LTD's  
16 operations.

17 Now, why would I be interested in what they  
18 have to say? Well, the reason is that depreciation --

19 Q. Why would you be interested in -- let me ask  
20 you a question.

21 Why would you be interested in what the  
22 complainants had to say about this issue?

23 A. I'm sorry, I wasn't try to play the  
24 attorney's role.

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1 MR. KAISER: Objection, narrative I think would be  
2 appropriate at this point.

3 HEARING OFFICER KNITTLE: But we have corrected  
4 that, correct?

5 MR. KAISER: yes.

6 HEARING OFFICER KNITTLE: You can proceed, sir.

7 THE WITNESS: The complainants are owners of their  
8 properties and therefore they are part of the potential

9 market for their properties. And that's relevant  
10 because the question of depreciation has to be examined  
11 in the context of market value. Market value is  
12 developed by what buyers and sellers think and perceive  
13 to be the influences on value.

14 BY MR. KOLAR:

15 Q. So besides the deposition testimony of the  
16 complainants, what other bases for your opinion  
17 relative to the '95 expansion and any activity because  
18 of that depresses the value of the complainants'  
19 properties?

20 A. I also took into account the statements in  
21 their depositions of Marcia Rowley and Karen Dickey.

22 Q. And who are they?

23 A. They are real estate brokers who successively  
24 listed the Rotis' house for sale in 1996 and 1997.

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1 Q. What, if anything, did you rely upon in that  
2 regard?

3 A. I noted that each of the brokers showed the  
4 homes many times. I believe Marcia Rowley showed the

5 house -- I shouldn't say that she personally showed it,  
6 but while it was listed with her she testified that  
7 there were about 60 showings. Karen Dickey, while the  
8 property was listed with her, testified that there were  
9 30 to 40 showings. And neither of these brokers had an  
10 offer on the property.

11 Now, when asked about various factors that  
12 were negative factors for the Roti house, which was the  
13 house they listed, not one of them cited noise  
14 specifically from LTD. They did have some very  
15 specific and in some cases reiterated opinions on what  
16 the true factors were that caused depreciation to the  
17 Rotis' property. Namely, the location in the sort of  
18 peripheral or far southwestern part of Lake Forest as  
19 well as simply the physical --

20 MR. KAISER: I'm going to object at this point  
21 unless he's going to site particular portions of Ms.  
22 Rowley and Ms. Dickey's deposition transcripts. I know  
23 we're going to have Ms. Rowley testify, but his summary  
24 without reference to the actual transcript, I think is





1 Q. What page is that?

2 A. Page 28.

3 Q. Is that the page that you were relying upon  
4 for your earlier comment of drawbacks?

5 A. Well, it's certainly one of the pages. I  
6 read her entire deposition. She makes several, but I  
7 can read you what she said, the question and the  
8 answer.

9 Q. This is something you relied upon?

10 A. Yes. Now, the question was, "What were the  
11 drawbacks to the Roti home?" The answer was, "The  
12 drawbacks were that the yard, in that there was more  
13 side yard than backyard, so people felt it was less of  
14 a functional backyard because most of the yard was to  
15 the side. And the house wasn't placed in the center of  
16 the property. The fact that it was very far west,  
17 southwestern corner of Lake Forest, and the noise, and  
18 the commercial development. Those four things."

19 Q. And that and other references in the  
20 transcript, what relevance did that have to your  
21 opinion that the '95 expansion and trucking activity  
22 did not depress the value of the complainants'  
23 properties?

24 A. Well, I also took into account in answering

1 your question Page 37 where she was asked this  
2 question, "And I take it, just so I'm clear, as you sit  
3 here today you're not able to distinguish between noise  
4 that would come from the office building to the south,  
5 noise that might be coming from the LTD facility or  
6 noise that's coming from the tollway?" Marcia Rowley's  
7 answer was, "Correct."

8 Q. For the record that was a question by Mr.  
9 Kaiser.

10 So those two passages, how do those provide  
11 the bases for your opinion that the '95 expansion and  
12 truck activity from that expansion did not depress the  
13 Roti property value and the other complainants'  
14 properties?

15 A. Because Marcia Rowley cited a number of  
16 factors that she thought were important, such as we  
17 just heard: The location within Lake Forest, the  
18 proximity to commercial development, the particular  
19 configuration of the way the house is cited on the lot,  
20 the short backyard. But she wasn't able to

21 specifically point to noise from LTD as a factor that  
22 she could distinguish from the tollway noise or any  
23 other noise in the area.

24 Q. In your experience, as a realtor and an

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1 appraiser, do people look at homes at 12:30 in the  
2 morning?

3 A. No.

4 Q. Does that have any impact on your opinion as  
5 to the LTD operations?

6 A. Yes.

7 Q. How is that?

8 A. Well, one of the factors involved here is,  
9 again, as the two realtors testified in their  
10 depositions, there were anywhere from 90 to 100  
11 showings of this property. Now, neither Karen Roti nor  
12 the brokers told the buyers that there was a noise  
13 problem or that they felt there was a noise problem  
14 from LTD. So if the buyers are looking at the  
15 properties at the traditional times of day, some of  
16 them will look at the property during weekdays during

17 the day, some when they get home from work which may be  
18 late afternoon, early evening, maybe right after  
19 dinner, others will look at properties that they might  
20 be wanting to buy on Saturdays or Sundays but they're  
21 not going to be looking at properties late in the  
22 evening, 10:30, 11:30, 12:30 at night. So for the  
23 alleged factors -- even if we said, for the sake of  
24 argument, that the hypothesis was true, that these late

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1 night operations did cause some additional depreciative  
2 effect, there is no way that the prospective buyers  
3 going to the Roti property would have known about it  
4 because it wasn't disclosed by the brokers or by the  
5 Rotis. And unless they went by late at night, they  
6 being the potential buyers, to see this, they wouldn't  
7 know about any alleged unpleasant noise at night. And  
8 if they don't know about it, it can't be a factor in  
9 their purchase decision. If it's not a factor in their  
10 opinion of the price or value, then it can't have a  
11 depreciative effect because depreciation again is  
12 dependent on the perceptions of buyers and sellers.

13 And as we -- again, as I said, there was no such  
14 perception on the part of the prospective buyers.

15 Q. In your experience as a realtor and an  
16 appraiser when people come to look at any of the three  
17 complainants' properties and they see the tollway, they  
18 see the LTD and office to the south, making a decision  
19 whether to buy is a black and white decision that  
20 either I don't mind living by that or I do or do they  
21 go to degrees like as long as it's not noisy at night I  
22 can live there, what's your experience in that regard?

23 MR. KAISER: Objection, calls for speculation.

24 HEARING OFFICER KNITTLE: Overruled.

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1 THE WITNESS: The factors that were mentioned by,  
2 for example, Marcia Rowley and also by Karen Dickey,  
3 which were the proximity -- the physical proximity to  
4 commercial industrial development, in my experience as  
5 a realtor, formerly, and in my appraisal of properties,  
6 you're going to find buyers are going to either want to  
7 live -- they'll be willing to live next to a major  
8 400,000 square foot warehouse distribution center or

9           they won't. And you're not going to find people, in my  
10           opinion, basing their decision on is there or isn't  
11           there a second shift at this 26 truck dock 400,000 foot  
12           distribution warehouse. They're going to base their  
13           decision on there is a distribution warehouse south of  
14           my property line, do we want to live here? What's the  
15           effect going to be on potential resale? That's a  
16           subject the Webers discussed when they first bought  
17           their lot, which predated the 1995 expansion.

18                         So, to summarize the answer to your question,  
19           in my opinion either buyers are going to say that  
20           living next to a distribution warehouse does not bother  
21           them or it does. And the question of whether there is  
22           a second shift or not is not going to add further  
23           depreciation to all the depreciative factors that I do  
24           recognize already were inherent in that location.

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1           BY MR. KOLAR:

2                         Q. And I guess just to sort of summarize, then  
3           I'll be done, the depreciative factors that you  
4           mentioned, the tollway, LTD and the office building,

5           you acknowledge that those at some point did have an  
6           impact on setting the value for these -- what became  
7           the Roti, Rosenstock and Webers' lots, right?

8           A.    Yes.

9           Q.    It's just that that happened when the  
10          subdivision was first platted and the market is setting  
11          the value for the complainants' lots versus lots to the  
12          north in the subdivision?

13          A.    Yes.

14          Q.    I don't know, do I have any other questions?  
15          I think we covered your -- have we covered the bases  
16          for your opinions?  Anything that we missed that you  
17          feel is important for the Pollution Control Board to  
18          know?

19          A.    There were a few other ancillary or  
20          supportive factors.  And, again, I apologize to the  
21          Board, these are based on things I read in the  
22          complainants' depositions.  If required, I can find the  
23          references precisely, but one major factor, that was  
24          cited by several of the complainants, was a piece of



1 equipment called a yard pig, which was -- I believe Mr.  
2 Rosenstock even said that was the worst offender as  
3 far as noise was concerned. And they also admitted  
4 that they knew, they being the complainants, they knew  
5 that LTD in 1998 had gotten a new yard pig to haul the  
6 trailers around and that it was quieter. So that's a  
7 subsidiary consideration that I have taken into account  
8 that if one of the major alleged sources of extra noise  
9 is now quieter, then all the less likely that this 1995  
10 expansion of building and operations has had a  
11 depreciative effect on the complainants' properties.

12 Q. Okay. Anything else or is that it?

13 A. No.

14 MR. KOLAR: I don't have any further questions.

15 MR. KAISER: Cross.

16 HEARING OFFICER KNITTLE: Mr. Kaiser.

17 CROSS EXAMINATION

18 BY MR. KAISER:

19 Q. Mr. Byrnes, have you read any of the  
20 transcripts from the first part of this hearing which  
21 was conducted in early November 1999?

22 A. No, I haven't.

23 Q. You have not then read the testimony of Henry  
24 or Leslie Weber in this case?

1           A.    No.

2           Q.    You have not read --

3           MR. KOLAR:  Objection, I think there was a motion  
4           to basically exclude witnesses, so I think it would  
5           have been improper for him to read the transcript.  
6           That that would have been, I think, tantamount to  
7           violating the motion to exclude witnesses.

8           MR. KAISER:  I think if there had been any kind of  
9           motion made for Mr. Byrnes to be allowed to update his  
10          information by reference to the transcript in this  
11          hearing, it would have been allowed by the Hearing  
12          Officer.  I think that's an argument without merit.

13          HEARING OFFICER KNITTLE:  I'm going to allow the  
14          question to stand but with both caveats noted.

15          BY MR. KAISER:

16          Q.    And I take it then you didn't review Karen  
17          Roti's testimony during the course of this hearing?

18          A.    No.

19          Q.    Nor that of Mr. Rosenstock?

20          A.    That's correct.

21          Q.    And so this impact of the yard pig being  
22          quieted in 1998, you don't know what affect that had on  
23          noise levels at LTD and in the vicinity of LTD during  
24          the fall of 1999, do you?

1 A. No.

2 Q. Now, as I understood your argument towards  
3 the end here, it's essentially that there is a certain  
4 class of buyers who will go out to the south end of the  
5 subdivision, see Corporate 100, see LTD's dock area,  
6 see the tollway, and decide they either can live near  
7 those uses or they can't, is that your opinion?

8 A. I would say that -- yes, as a generalization  
9 that's my opinion.

10 Q. And that those who can live next to those  
11 uses will not be disturbed by LTD's now extended hours  
12 of operation, is that right?

13 A. No, I think the record shows that they are  
14 disturbed by it.

15 Q. I see. So you're making the distinction --  
16 and this is important. You're not saying that LTD may  
17 not be a nuisance, right?

18 A. I'm not here to testify as to whether it's a  
19 nuisance or not.

20 Q. That's right. You're solely here to tell the  
21 Board whether you think LTD's operations and the noise

22 from LTD depreciates the value of the Roti, Rosenstock  
23 and Weber homes, correct?

24 A. That's right.

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1 Q. And you have no opinion to offer the Board as  
2 to whether LTD is currently or in the past has been a  
3 nuisance as defined by the Illinois Environmental  
4 Protection Act, correct?

5 A. That's correct.

6 Q. Now, in fact -- and you're familiar with this  
7 aerial photograph, aren't you?

8 A. Yes.

9 Q. You have seen this many times, haven't you?

10 A. No.

11 Q. Well, you saw it today, right?

12 A. Yes, I saw it yesterday.

13 Q. All right. When you were with Mr. Kolar  
14 preparing for your testimony, right?

15 A. That's right.

16 Q. And how many hours did you spend with Mr.  
17 Kolar?

18 A. About 45 minutes.

19 Q. And you see that this is marked -- here is  
20 the Weber house, Mr. Rosenstock's house and the Roti  
21 residence, you recognize those in relation to LTD,  
22 don't you?

23 A. Yes.

24 Q. And you told us that the Webers purchased

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1 their land in 1988, did you not?

2 A. I believe that's correct, yes.

3 Q. And you told us that you reviewed Henry  
4 Weber's deposition, right?

5 A. Yes.

6 Q. And you recall the portions of Mr. Weber's  
7 deposition where he acknowledged that to the south  
8 there was the Corporate 100 office building, right?

9 A. Yes.

10 Q. And he saw that LTD had a warehouse operation  
11 to the southwest, correct?

12 A. Yes.

13 Q. And Mr. Weber at that time was a person who

14 found he could live next to Corporate 100, LTD and the  
15 tollway as it existed and as it was in operation in  
16 1988, correct?

17 A. Yes.

18 Q. Did you ever ask Mr. Weber whether he would  
19 buy the property now, now that LTD operates five months  
20 a year for 20 hours a day?

21 MR. KOLAR: Objection, misstates the testimony in  
22 the record.

23 HEARING OFFICER KNITTLE: Mr. Kaiser.  
24

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1 BY MR. KAISER:

2 Q. It's a simple question. Did you ever in  
3 part, in preparation of your opinion, ask Mr. Weber  
4 whether he would buy his property today?

5 MR. KOLAR: Objection, it's an unfair question.  
6 Since he's represented by counsel, I don't think my  
7 opinion witness or LTD's opinion witness could ask Mr.  
8 Weber that question.

9 MR. KAISER: He certainly by agreement could have

10 asked that question. His counsel could have asked that  
11 question in the course of the deposition. He's telling  
12 us that people who once they make the jump and can buy  
13 next to these uses will be happy with that, they can  
14 accommodate those uses to the south.

15 HEARING OFFICER KNITTLE: Hold on, Mr. Kaiser.  
16 I'm going to sustain the objection as to a  
17 mischaracterization of testimony, but then you asked it  
18 a second time which I did not think mischaracterized  
19 the testimony. If you want to ask that question, that  
20 will be allowed.

21 MR. KAISER: Just so we know what question is  
22 acceptable, maybe the court reporter could read that  
23 back.

24 HEARING OFFICER KNITTLE: Go ahead.

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1 MR. KOLAR: My objection was he could not ask that  
2 question to Mr. Weber because he's represented by  
3 counsel. And that would be like me discussing an issue  
4 with a person represented by counsel.

5 He's LTD's retained opinion witness. I don't

6 think the rules permit him to call on Mr. Weber and  
7 say, "I know you're represented by Steve Kaiser but I'd  
8 like to talk to you on the side here."

9 MR. KAISER: I would have allowed Mr. Kolar to  
10 call me and say, "Mr. Byrnes feels it important to know  
11 whether Mr. Weber and Ms. Weber, whether Mr.  
12 Rosenstock, whether the Rotis would still pay the  
13 price they paid for their property in light of the  
14 changed circumstances to the south."

15 HEARING OFFICER KNITTLE: I'm going to overrule  
16 the objection and allow the question to stand. I'm not  
17 making a ruling one way or the other whether that's a  
18 proper question or whether that could have been asked  
19 under the Board's procedural rules. But if you want to  
20 ask that question, you can go ahead.

21 BY MR. KAISER:

22 Q. Did you ever ask Mr. Kolar to contact me so  
23 that you could get information whether Henry and Leslie  
24 Weber would still purchase their property?

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1 A. No.



2 Q. And did you ever ask Mr. Kolar to try to talk  
3 with me so that you can inquire of Mr. Rosenstock  
4 whether he would still purchase his property?

5 A. No.

6 Q. And did you ever ask Mr. Kolar to contact me  
7 so that he could ask the Rotis whether they would still  
8 today buy their property?

9 A. No.

10 Q. Now, it was your testimony, in light of your  
11 experience as a real estate salesperson here in the  
12 State of Illinois, that people don't typically go look  
13 at houses they're interested in buying at 12:30 a.m.,  
14 was that your testimony?

15 A. Yes.

16 Q. But those same people who may buy those  
17 houses live in their houses at 12:30 a.m., do they not?

18 A. Yes.

19 Q. And it was your testimony that the market  
20 doesn't take into consideration LTD's increased dock  
21 operations because potential purchasers don't know  
22 about the increase, that was your testimony, wasn't it?

23 A. Yes, that's one of the bases of my opinion.

24 Q. Which way had real estate prices in southwest

1 Lake Forest been trending over the last three years?

2 A. Over the last three years there has been a  
3 rather minimal amount of sales activity in southwest  
4 Lake Forest. In my opinion there is not enough  
5 information to make a meaningful trend analysis. You  
6 could probably take one or two sales and say that the  
7 trend may have been upward, but I haven't found any  
8 evidence to the contrary.

9 Q. You haven't found evidence to the contrary,  
10 that is, that the trend has been upward?

11 A. I haven't found any evidence of a downward  
12 trend.

13 Q. Well, are you aware of any downward trend in  
14 the price of real estate anywhere along the North  
15 Shore --

16 MR. KOLAR: Objection, relevance.

17 BY MR. KAISER:

18 Q. -- over the last three years?

19 MR. KOLAR: Objection, relevance to the North  
20 Shore.

21 HEARING OFFICER KNITTLE: Mr. Kaiser, you want to  
22 explain the relevance.

23 MR. KAISER: I think it's common knowledge that  
24 real estate in the Chicagoland area, unless you're in a

1 community like Dalton or Harvey or Waukegan or Zion,  
2 has gone up and gone up rather dramatically over the  
3 last three years.

4 BY MR. KAISER:

5 Q. Is that your sense of the market, Mr. Byrnes?

6 A. Yes. In general that's --

7 MR. KOLAR: Objection, I thought he was --

8 MR. KAISER: I'll rephrase.

9 MR. KOLAR: -- responding to my objection.

10 HEARING OFFICER KNITTLE: So did I, Mr. Kaiser. I  
11 didn't realize you were going to ask another question.

12 MR. KAISER: I rephrased the question.

13 HEARING OFFICER KNITTLE: Do you want to withdraw  
14 your objection based on that rephrasal?

15 MR. KOLAR: Fine.

16 Is Dalton on the North Shore? I don't know.

17 HEARING OFFICER KNITTLE: I don't even know where  
18 Dalton is so --

19 MR. KAISER: It's in the Chicagoland area.

20 MR. KOLAR: If you rephrase it, I'll --

21 BY MR. KAISER:

22 Q. Unless you're in a distressed or blighted  
23 community the market prices have gone up, isn't that  
24 true, Mr. Byrnes?

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1 MR. KOLAR: I object. He had a question pending.  
2 I withdrew my objection. He had another question  
3 pending before he gave him a chance to answer that one,  
4 then he gave another question. So I move to strike  
5 that question and let Mr. Byrnes answer the previous  
6 question.

7 MR. KAISER: I'd go along with that.

8 HEARING OFFICER KNITTLE: I'll go along with that  
9 too.

10 Do you recall the previous question or do you  
11 need the court reporter to read it back?

12 THE WITNESS: I believe the previous question  
13 was -- I'm paraphrasing of course -- isn't it true that  
14 over the last three years in virtually the whole  
15 Chicagoland area that residential prices have gone up  
16 dramatically except for areas like Dalton, Harvey,  
17 Zion, Waukegan and other similar areas which I assume

18 counsel thinks are less desirable areas for people to  
19 live in. And if that's the question, I can answer it.

20 BY MR. KAISER:

21 Q. That's a fair paraphrase of the question,  
22 yes.

23 A. Okay. Generally speaking the answer is yes.

24 Q. So what would be possible --

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1 MR. KOLAR: This is the Marcia Rowley who entered.

2 MR. KAISER: No, this is Ms. Weber.

3 MR. KOLAR: You're right. I'm sorry.

4 I apologize, Ms. Weber.

5 MR. KAISER: One of the complainants, Leslie

6 Weber.

7 Good morning. Welcome.

8 MR. KOLAR: I stand corrected.

9 BY MR. KAISER:

10 Q. I mean, that's a fair general statement of  
11 the trends in real estate in the Chicagoland area for  
12 the last three years, correct?

13 A. Yes. In fact Karen Dickey said that she

14 thought the Rotis in 1999 would have a much better  
15 chance of selling their property than when she listed  
16 it in 1997.

17 Q. And that's because the market for many  
18 reasons has improved over the last three years, right?

19 A. That would certainly be one of the reasons.

20 Q. Now, you read us from portions of Mr.  
21 Rosenstock's deposition transcript, and you read us  
22 the section where Mr. Kolar asked Mr. Rosenstock  
23 whether he thought his house was now worth more than  
24 \$550,000, do you recall reading that portion?

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1 A. Yes.

2 Q. You recall that Mr. Rosenstock's answer was  
3 "I hope so"?

4 A. Yes.

5 Q. And you took that as an argument or a  
6 statement that supported your opinion that LTD's  
7 increased dock operations have not reduced the value of  
8 Mr. Rosenstock's home, wasn't that one of the bases?

9 A. Yes.

10 Q. Now, it's possible, is it not, speaking  
11 strictly theoretically here, for Mr. Rosenstock's home  
12 to have increased in value but not at a rate similar to  
13 homes in southwest Lake Forest over the same time  
14 period?

15 A. Theoretically, yes, that's possible.

16 Q. And it's theoretically possible that it  
17 didn't keep pace with the increased value in southwest  
18 Lake Forest over the last three years in part because  
19 of the increased dock operations at LTD to the extent  
20 prospective purchasers knew about the increased dock  
21 operations?

22 A. It doesn't correspond to my opinion.

23 Q. That's not your opinion. Even theoretically  
24 you wouldn't admit that as a possibility?

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1 A. That's correct.

2 Q. Now, you talked about the hypothesis that you  
3 were testing, do you remember using that term?

4 A. Yes.

5 Q. And do you recall during the course of your

6 deposition that you were investigating a theory as to  
7 whether LTD's increased dock operations had an impact  
8 on the fair market value, do you recall that?

9 A. That's correct.

10 Q. And you referred to this was a somewhat  
11 subsidiary analysis in line with the general  
12 theoretical analysis, an analysis based on my  
13 experience, do you recall that description of your work  
14 in process?

15 A. Yes.

16 Q. And I don't think you're going to tell the  
17 Board that appraising real estate is a hard science,  
18 are you?

19 A. Well, I'm not sure what that question means.  
20 But I think what you're saying is it's not a hard  
21 science in the respect of if you're a chemist testing a  
22 chemical reaction, it's going to come out  
23 quantitatively a certain way, whereas when you're  
24 appraising properties, there is not enough market data

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1 usually to formulate answers that way and you have to



2 use some judgment.

3 Q. And you used judgment here, did you not?

4 A. Yes.

5 Q. And you'd admit to the possibility, wouldn't  
6 you, Mr. Byrnes, that another appraiser could reach the  
7 exact opposite conclusion that you have reached and  
8 given the Board here this morning, correct?

9 A. Yes.

10 Q. Do you have any idea how much McCann &  
11 Associates have billed LTD for your work to date?

12 A. Yes.

13 Q. How much is that?

14 MR. KOLAR: Objection. For this particular  
15 project?

16 MR. KAISER: Yes, for this particular project.

17 HEARING OFFICER KNITTLE: Is the objection  
18 withdrawn based on the --

19 MR. KOLAR: Yes.

20 THE WITNESS: Approximately \$5,900 on an hourly  
21 basis.

22 BY MR. KAISER:

23 Q. And that's for your time in connection with  
24 the preparation of your opinion?

1           A.    Yes.

2           Q.    And, as I understood it, during your  
3 deposition I asked a question, "Who else did you rely  
4 on down there at McCann to help you formulate this  
5 opinion?" And you told me it was essentially your  
6 opinion, you may have used somebody to pull some  
7 information together but really this is your work  
8 product, right?

9           A.    Yes.

10          Q.    Now, you gave us a list of what I called  
11 locational elements --

12           MR. KOLAR: That's Marcia Rowley, I think.

13           MS. ROWLEY: Yes.

14          BY MR. KAISER:

15          Q.    -- that affected the value of Ms. Weber's  
16 property, Mr. Rosenstock's property and the Rotis'  
17 property.

18          A.    Yes.

19          Q.    Do you recall those?

20          A.    Yes.

21          Q.    And you noted that all three of the  
22 complainants' properties were immediately adjacent to  
23 commercial usages, correct?

24          A.    Yes.

1 Q. And that these commercial usages preexisted  
2 to some extent the Webers' arrival, Mr. Rosenstock's  
3 arrival and the Rotis' arrival, right?

4 A. Yes.

5 MR. KAISER: And I would just take a minute here,  
6 Mr. Knittle, to ask that the witness be excluded  
7 because her testimony may bear or be influenced to a  
8 certain degree by Mr. Byrnes' testimony.

9 HEARING OFFICER KNITTLE: Mr. Kolar.

10 MR. KOLAR: I think you have a right to do that.  
11 That's why I didn't have Mr. Byrnes read the  
12 transcripts from the hearing. I have no objection. I  
13 understand that's the order we're working under.

14 HEARING OFFICER KNITTLE: Ma'am, if you could step  
15 outside. We'll come get you.

16 Let's go off the record.

17 (Discussion off the record.)

18 BY MR. KAISER:

19 Q. Mr. Byrnes, as I understand your opinion, you  
20 make no distinction between LTD's level of dock  
21 operations in 1986 and LTD's current level of dock  
22 operations, is that correct?

23 A. No, that's not correct.

24 Q. Well, explain to me and to the Board how you

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1 take into account the increased volume of truck traffic  
2 at LTD's dock operations?

3 A. Well, in answering your previous question you  
4 asked if I considered that there was a difference  
5 between the 1986 level of operations and what there was  
6 say today, and, properly considered, what I looked at  
7 was the level of 1987 and subsequent operations because  
8 the current number of truck docks were not added until  
9 1987, they weren't all there in 1986.

10 Q. All right. So by 1987 then we have 20 or  
11 more truck docks along the north end of LTD?

12 A. That's right.

13 Q. And just so I'm clear, it's your statement  
14 that once you get the 20 docks in there, whether  
15 they're used 12 hours a day or 20 hours a day doesn't  
16 really matter?

17 A. What I'm saying is whether they're -- just to  
18 sharpen my answer in relation to your question, whether

19           it's a one-shift or two-shift-a-day operation is not  
20           the major factor contributing to the depreciation of  
21           these properties.

22           Q.    Is it a factor at all?

23           A.    No.

24           Q.    That's my point.  You're telling the Board

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1           that as soon as you get the 20 docks in, whether  
2           they're in operation 12 hours a day or 20 hours a day  
3           doesn't matter if we're talking about fair market value  
4           of the Roti, Rosenstock and Weber residences, right?

5           A.    Yes, Counsel.  As I said, the question is  
6           whether --

7           Q.    That's fine.  You have answered it.  Your  
8           answer is yes, right?

9           MR. KOLAR:  Objection.  I don't think his question  
10          called for a yes or no answer, so I would object and  
11          ask that the Hearing Officer allow him to finish his  
12          answer.

13          HEARING OFFICER KNITTLE:  Overruled.  You can  
14          address this in redirect.

15 BY MR. KAISER:

16 Q. Now, one of the sources of information that  
17 you relied on was a conversation you had with Jack  
18 Voigt, right?

19 A. Yes.

20 Q. And Jack Voigt's one of the senior managers  
21 at LTD, correct?

22 A. That's what I understand.

23 Q. And you brought that question to him and you  
24 said, "Mr. Voigt, is it true you're operating 24 hours

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1 a day?" You asked him that, didn't you?

2 A. Yes.

3 Q. And he told you that is absolutely false,  
4 didn't he?

5 A. Not in those exact words but --

6 Q. But he told you, "We don't operate 24 hours a  
7 day," right?

8 A. That's what he told me.

9 Q. "We only operate two shifts," that's what he  
10 told you, right?

11           A.    He told me two shifts and that at some points  
12 they had had overtime prior to the opening of the  
13 Aurora facility.

14           Q.    And that sometimes that overtime went even  
15 until 1 or 1:30 he told you, right?

16           A.    Yes.

17           Q.    But he didn't tell you that overtime went on  
18 some occasions until 2:30 in the morning, did he?

19           A.    Not to my recollection.

20           Q.    Well, when I asked you that question during  
21 the course of your deposition on July 21, 1999, you  
22 told me he didn't tell you that, do you remember that?

23           MR. KOLAR:  Objection, not impeaching.  I think he  
24 said the same thing in his answer here moments ago.

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1           HEARING OFFICER KNITTLE:  Sustained.

2                    I don't understand, Mr. Kaiser, how this is  
3 any different than --

4           MR. KAISER:  I'm going to impeach him properly.

5           BY MR. KAISER:

6           Q.    Question -- and this is reading from the

7 transcript of your deposition.

8 HEARING OFFICER KNITTLE: Mr. Kolar, do you have a  
9 problem? Do you want to look at it before he does?

10 MR. KOLAR: I'd like to know the page and line.

11 MR. KAISER: Page 58, Line 15 through 20.

12 BY MR. KAISER:

13 Q. Question, "And did he" --

14 MR. KOLAR: Objection, not impeaching. Before he  
15 reads it in the record, if you can take a look at it, I  
16 think he just answered consistently with the deposition  
17 testimony.

18 BY MR. KAISER:

19 Q. All right. May I refresh your recollection  
20 as to what Mr. Voigt told you --

21 HEARING OFFICER KNITTLE: Hold on, Mr. Kaiser.

22 MR. KOLAR: Objection, asked and answered.

23 HEARING OFFICER KNITTLE: I think --

24 MR. KOLAR: Page 58, Line 15.

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1 HEARING OFFICER KNITTLE: Let's go off.

2 (Discussion off the record.)



3 HEARING OFFICER KNITTLE: Mr. Kaiser, I don't see  
4 how it's any different but I'm going to allow you to  
5 make an offer of proof if you like.

6 MR. KAISER: I'll offer to refresh his  
7 recollection.

8 BY MR. KAISER:

9 Q. You have just told us now, Mr. Byrnes, this  
10 morning that you don't recall whether Jack Voigt told  
11 you that LTD's docks on occasion operated until 2:30  
12 a.m., do you recall saying "I don't remember if he said  
13 that"?

14 A. Yes.

15 Q. All right. Now, I want to show you Page 58  
16 of your deposition transcript where I asked essentially  
17 that same question.

18 A. Yes.

19 Q. And if you'd look there at Lines 15 through  
20 20 and let me know if that refreshes your recollection  
21 as to what Mr. Voigt told you?

22 A. It refreshes my recollection of my answer to  
23 the question that you phrased to me.

24 Q. But it doesn't refresh your recollection with

1 respect to what Mr. Voigt told you?

2 A. No.

3 Q. Now, did Mr. Voigt ever tell you that with  
4 some regularity semitractors and their trailers arrive  
5 at the LTD facility before 6 a.m. in the morning?

6 A. No.

7 Q. No, he didn't tell you that, did he?

8 A. No.

9 Q. Do you feel there is a significant  
10 difference -- well, strike that.

11 Now, one of the sources of information that  
12 you relied on was information you obtained from the  
13 Township Assessor's Office, is that right?

14 A. That's right.

15 Q. And you went over -- is that the west  
16 Deerfield Township Assessor's Office?

17 A. Yes.

18 Q. And you went to that office in person, didn't  
19 you?

20 A. Yes.

21 Q. And you had them pull out these property  
22 record cards, right?

23 A. Yes.

24 Q. And you pulled out some tax maps so you could

1 see where those parcels of real estate were located in  
2 relation to one another, correct?

3 A. That's right.

4 Q. And you looked at the entire subdivision in  
5 which the Roti, Weber and Rosenstock residences are  
6 located, correct?

7 A. Yes.

8 Q. And you looked at the assessed value of every  
9 parcel of real estate within that subdivision, did you  
10 not?

11 A. Yes.

12 Q. And with one exception, the West Deerfield  
13 Township assessor assessed the value of the parcels  
14 within the entire subdivision --

15 MR. KOLAR: Objection, relevance, assessment.

16 MR. KAISER: It's one of the bases he relied on.

17 MR. KOLAR: He didn't say he relied on assessment.

18 Assessment is some assessor's note of a percentage of  
19 fair market value and it often has nothing to do with  
20 fair market value even though the statute may indicate  
21 an assessment should be one third of fair market value  
22 or sometimes counties have an ordinance that it should

23 be a certain percentage of fair market value. But if  
24 he's going to offer what the assessor does in terms of

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1 assessment, he should have called the assessor.

2 Assessment is completely different than fair market  
3 value.

4 HEARING OFFICER KNITTLE: Mr. Kaiser.

5 MR. KAISER: Mr. Kolar knows that in the course of  
6 Mr. Byrnes' deposition we spent almost an hour going  
7 over the assessed value of these properties and certain  
8 conclusions Mr. Byrnes drew or couldn't draw on the  
9 basis of that assessment and he's kept that out of the  
10 direct examination because he knows it's harmful to  
11 LTD.

12 MR. KOLAR: It doesn't make it relevant because he  
13 asked him questions at his deposition about assessment.

14 HEARING OFFICER KNITTLE: I agree. Mr. --

15 MR. KAISER: Oh, absolutely does. Absolutely  
16 does, Mr. Knittle. His argument that he's getting paid  
17 175 an hour to put in front of the Board is that the  
18 properties on the peripheral of the -- the periphery of

19 the subdivision are less valuable than the properties  
20 in the center and north. That's his argument, that  
21 because they're located next to these inharmonious land  
22 uses, to borrow Mr. Byrnes' expression from the  
23 deposition, that they're less valuable. Now I think  
24 it's highly relevant whether the Township assessor

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1 considers these parcels less valuable.

2 HEARING OFFICER KNITTLE: I wasn't disagreeing  
3 with you on relevance. What I want to know, Mr.  
4 Kaiser, is -- and, sir, your last name again?

5 THE WITNESS: Byrnes.

6 HEARING OFFICER KNITTLE: Mr. Byrnes, what did  
7 you -- you pulled the assessor's cards?

8 THE WITNESS: Property record cards, yes.

9 HEARING OFFICER KNITTLE: Property record cards.

10 Mr. Kaiser, what I wanted to know is whether  
11 or not he covered this on his direct examination, if it  
12 was in fact beyond the scope of the direct examination.

13 MR. KAISER: Yeah, he covered it. He said he went  
14 to the office and he pulled these cards, and these were

15 part of the basket of information he put together to  
16 evaluate this hypothesis that he tested.

17 MR. KOLAR: It's relevant and the reason is  
18 because in Illinois you have -- the statute says  
19 assessment should be one third of fair market value but  
20 in fact they're not. That's why we have things called  
21 township multipliers and state multipliers because you  
22 have variances across the county which requires the  
23 county officials to apply a multiplier onto assessment  
24 to try to bring them up to what the statute says they

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1 should be. And then on top of that, the state tries to  
2 equalize assessments throughout the state by use of a  
3 state equalizer. So what I'm telling you is the  
4 objection is not assessments are not relevant because  
5 more often than not assessments are not one-third of  
6 fair market value as the assessed -- as they're  
7 supposed to be by statute. And that's because you  
8 might have an assessor who hasn't had a chance to get  
9 through that subdivision in a number of years or  
10 because of a whole multitude of factors. So we're

11 talking fair market value in his opinion, and I think  
12 it's irrelevant to bring in what the assessor has in  
13 terms of assessments for these particular properties.

14 HEARING OFFICER KNITTLE: Mr. Kolar, he based his  
15 opinion in part on what the assessed values of these  
16 properties were.

17 Correct, sir?

18 THE WITNESS: I believe what I said, and I hope I  
19 didn't misstate it, is, one of the sources of  
20 information that I consulted was the assessor's  
21 property record cards so that I knew historically when  
22 the lots were developed. Also, I did review in one of  
23 my files, which Mr. Kaiser looked at in my deposition,  
24 was a listing of the assessor's indicated fair market

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1 value of the lots, the land only for all the lots  
2 within the subdivision. And that is something we  
3 talked about at my deposition. And I considered it,  
4 but I wouldn't say that it was something that I based  
5 my opinion on if I can make that distinction.

6 HEARING OFFICER KNITTLE: I'm going to overrule

7 the objection, Mr. Kolar.

8 Mr. Kaiser, go ahead.

9 MR. KAISER: Thank you.

10 BY MR. KAISER:

11 Q. Just to get back on track here, you went to  
12 the West Deerfield Township Assessor's Office, correct?

13 A. Yes.

14 Q. You pulled these property cards, right?

15 A. That's right.

16 Q. You pulled the tax map, right?

17 A. Yes.

18 Q. You looked at the valuation the assessor had  
19 given to every lot within the subdivision in which the  
20 Roti, Weber and Rosenstock homes are located, correct?

21 A. Yes.

22 Q. And you noted that, with one exception, the  
23 West Deerfield Township assessor assigned the identical  
24 value to all the property within that subdivision,

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1 correct?

2 A. To all the lots, yes.



3 Q. All the lots in that subdivision.

4 And that was -- if I'm recalling correctly --  
5 the assessed value was 90,000, right?

6 A. The assessed value was about \$98,000.

7 Q. \$98,000.

8 That 98,000, that was the assessed value for  
9 the Weber property, right?

10 A. Right.

11 Q. And for the Rosenstock property, right?

12 A. Yes.

13 Q. And for the Roti property, correct?

14 A. Yes.

15 MR. KOLAR: Objection, relevance and foundation.

16 You get a new assessment every year, so he's just  
17 saying for this assessment, for this assessment, for  
18 this assessment without any reference to a year.

19 BY MR. KAISER:

20 Q. Do you recall, Mr. Byrnes, what year you  
21 looked at?

22 A. Since my investigation was done at the  
23 Assessor's Office I believe in April of 1999, the  
24 relevant tax year probably would have been 1998.

1 Q. And you looked at lots located in the  
2 interior of the subdivision, did you not?

3 A. Yes.

4 Q. And the assessor had assigned the value of  
5 \$98,000 for those lots, correct?

6 A. Yes.

7 Q. And you looked at lots within the subdivision  
8 located closer to Telegraph Road and closer to the  
9 center part of Lake Forest, right?

10 A. Yes.

11 Q. And the assessor has assigned the value to  
12 those lots of \$98,000, correct?

13 A. I'm sorry, you're asking about lots which are  
14 no longer located within the subject subdivision?

15 Q. No, within the subject subdivision.

16 A. Then the answer is yes, they are uniform on  
17 all those lots.

18 Q. Now, this MAI certification, is that -- what  
19 is that?

20 A. That's a designation given by a private  
21 appraisal organization which is called the Appraisal  
22 Institute. And it's given after taking a number of  
23 courses, submitting experience credits, and writing a  
24 demonstration appraisal and passing a comprehensive

1 exam. They then grant that professional designation of  
2 MAI.

3 Q. And do you have that?

4 A. No, I don't.

5 Q. When was the last time you talked to Jack  
6 Voigt?

7 A. In 1999.

8 Q. Do you know whether the construction of LTD's  
9 facility in Aurora actually reduced noise emissions  
10 from LTD's dock areas during the fall of 1999?

11 A. I don't know.

12 Q. After talking with Mr. Voigt you concluded  
13 that the increase in dock operations at the LTD  
14 facility in Bannockburn was but a temporary phenomenon  
15 and that you didn't foresee it would go on into the  
16 future, was that the conclusion you drew from your  
17 conversation with Mr. Voigt some time in 1999?

18 A. Mr. Voigt, yes, basically told me that -- and  
19 I believe it may have been in the context of overtime,  
20 but generally the conversation I had with him indicated  
21 that any of the extra overtime pressures that were  
22 leading to these later hours would be relieved by the  
23 Aurora facility.

24

Q. But, again, as you sit here today you don't

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1 know whether that Aurora facility relieved any of these  
2 overtime pressures on the LTD Bannockburn facility  
3 during the fall and winter of 1999, do you?

4 MR. KOLAR: Objection, asked and answered.

5 HEARING OFFICER KNITTLE: Sustained.

6 BY MR. KAISER:

7 Q. Did Mr. Voigt ever tell you that the LTD  
8 Bannockburn facility, once the Aurora facility was up  
9 and running, would scale back to only one shift a day?

10 A. No.

11 MR. KAISER: I have no further questions. Thank  
12 you.

13 HEARING OFFICER KNITTLE: Redirect, Mr. Kolar.

14 MR. KOLAR: Yes. Thank you.

15 REDIRECT EXAMINATION

16 BY MR. KOLAR:

17 Q. Mr. Byrnes, the designation MAI, that means  
18 Member Appraisal Institute, correct?

19 A. Yes.

20 Q. And people who are currently MAIs are members  
21 of the Appraisal Institute?

22 A. Yes.

23 Q. And they're the ones who set the courses and  
24 other requirements for people like you who want to

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1 become part of this group, right?

2 A. That's right.

3 Q. And you're in the process of doing that?

4 A. Yes. Technically I'm identified as an  
5 associate member which is not given, you know, a letter  
6 or abbreviation type designation like the MAI.

7 Q. And you're following the normal progression  
8 that a person who wanted to become an MAI follows to be  
9 an MAI, correct?

10 A. Yes.

11 Q. Now, you told us that you have testified  
12 before local boards of review throughout the collar  
13 county area, correct?

14 A. Yes.

15 Q. And you have testified before the Illinois

16 Property Tax Appeal Board, correct?

17 A. Yes.

18 Q. And that's where people come before Boards of  
19 Review or the Property Tax Appeal Board and say, "My  
20 assessment is too high because it doesn't accurately  
21 reflect the fair market value of the property," for  
22 example, right?

23 MR. KAISER: Objection, leading.

24 HEARING OFFICER KNITTLE: Sustained.

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1 Can you rephrase, Mr. Kolar.

2 BY MR. KOLAR:

3 Q. In your experience people come before the  
4 Board of Review or the Property Tax Appeal Board and  
5 complain that their assessment is too high, right?

6 A. Yes.

7 Q. So based on your knowledge the Rotis, the  
8 Rosenstocks and the Webers, if they really believe  
9 that their property value was depressed because of  
10 operations of the LTD property, they, like anybody  
11 else, would have the right to file an assessed

12 valuation complaint with the Lake County Board of  
13 Review and make that argument, right?

14 MR. KAISER: Objection, leading.

15 HEARING OFFICER KNITTLE: Sustained.

16 BY MR. KOLAR:

17 Q. To your knowledge do the Rotis, the Webbers  
18 and the Rosenstrocks have the right here in Lake  
19 County, Illinois to file assessed valuation complaints  
20 regarding their assessments?

21 MR. KAISER: Objection, foundation.

22 HEARING OFFICER KNITTLE: Mr. Kolar, any response?

23 MR. KOLAR: No.

24 HEARING OFFICER KNITTLE: Foundation how, Mr.

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1 Kaiser, his knowledge --

2 MR. KAISER: I mean, we could put Mr. Kolar on the  
3 stand, and I think he could qualify as an expert in  
4 this area. I don't know that Mr. Byrnes knows a thing  
5 about it other than what Mr. Kolar's spoonfeeding him  
6 this morning in the form of leading questions.

7 MR. KOLAR: I thought I heard a foundation

8 objection.

9 MR. KAISER: Yeah, it is because you're trying to  
10 give him the foundation through a leading improper  
11 question.

12 HEARING OFFICER KNITTLE: I think the question  
13 probably was leading and I would sustain on that. But  
14 I think this witness has been well qualified to answer  
15 this type of question. So I would allow these  
16 questions to go forward but in a nonleading fashion.

17 BY MR. KOLAR:

18 Q. Have you ever testified regarding the  
19 assessment of a property where a property owner said  
20 there is a negative influence that affects the value of  
21 my property?

22 A. Well, yes, actually every time I have worked  
23 for a tax payer who's protesting their assessment, they  
24 have always said that there is some factor that the

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1 assessor hasn't recognized that's a negative on their  
2 value and should push it lower.

3 Q. And based on -- have you worked in Lake



4 County in terms of assessed value?

5 You have assessed valuation complaints in  
6 Wynstone, right?

7 A. Yes.

8 Q. That's Lake County?

9 A. Yes.

10 Q. So have you appeared before the Lake County  
11 Board of Review?

12 A. Yes.

13 Q. Have you appeared before the Illinois  
14 Property Tax Appeal Board concerning Lake County  
15 properties?

16 A. No.

17 Q. So do you have a knowledge as to generally  
18 how the system works if a person believes his  
19 assessments is too high?

20 A. Yes, I do.

21 Q. So, for example, if the Rotis tell me -- if  
22 the Rotis believe that LTD Commodities, the operations  
23 from LTD Commodities depresses the value of their  
24 property, based on your understanding of the process,

1 can they file an assessed valuation complaint and make  
2 that argument?

3 A. Yes.

4 Q. And if Rosenstroch believes that his property  
5 is depressed by LTD operations, he could do that as  
6 well?

7 A. Yes.

8 Q. Same for the Webers, correct?

9 A. Yes.

10 Q. And then if they prevail, and you went and  
11 looked at the assessor's records, we would see a lower  
12 assessment for the land of the Roti, Rosenstroch and  
13 Weber properties relative to the other lots in the  
14 subdivision, correct?

15 MR. KAISER: Objection, calls for speculation.

16 HEARING OFFICER KNITTLE: I think the speculation  
17 is inherent in the question. You said if they win?

18 MR. KOLAR: Right.

19 HEARING OFFICER KNITTLE: Based on that  
20 assumption, I don't think there is any speculation, so  
21 overruled.

22 THE WITNESS: Based on what I would represent to  
23 you is my considerable experience with property tax  
24 matters in Illinois, the results of property tax

1 appeals, the likely result of any of the complainants  
2 winning such a hypothetical appeal would be a reduced  
3 assessment either of their land assessment, the  
4 improvement assessment or both components. But, at any  
5 rate, their total assessment would be reduced.

6 BY MR. KOLAR:

7 Q. If you win, your assessment is reduced,  
8 that's a fact, right?

9 A. Yes.

10 Q. Do you have any knowledge of in the last five  
11 years the Rotis, the Rosenstocks, the Webers filing an  
12 assessed valuation complaint with the Lake County Board  
13 of Review?

14 A. No.

15 Q. Now, in terms of your fee for this hearing,  
16 you kind of in effect appeared twice, correct?

17 A. That's right.

18 Q. You thought you were going to testify in  
19 November 1999, right?

20 A. Yes.

21 Q. You prepared at that time, correct?

22 A. Yes, I did.

23 Q. You were geared up to testify?

24

A. Yes.

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1 Q. And you set the file down, correct?

2 A. Yes.

3 Q. You had to gear up again here in May 1999,  
4 correct?

5 A. Year 2000.

6 Q. May 2000. You had to gear up again in May  
7 2000 for the hearing, correct?

8 A. That's right.

9 Q. Now, you mentioned on direct then with Mr.  
10 Kaiser that in your experience there is a class of  
11 people who will come to the Roti, the Rosenstock and  
12 the Weber property, look at the tollway and the  
13 influences to the south and either say "I'll buy the  
14 property" or "I won't," right?

15 A. Yes, that was a major distinction that I  
16 made.

17 Q. So the Rotis, the Rosenstocks and the  
18 Webers, based on your understanding of the chronology  
19 of events here, fit into the class of people who knew

20 of the tollway, looked to the south and bought the  
21 lots?

22 A. Yes.

23 Q. And based on your review of the record, only  
24 the Rotis have listed their property for sale since

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1 they acquired it, correct?

2 A. To the best of my knowledge that's right.

3 Q. Mr. Kaiser went into great detail regarding  
4 the '95 expansion and trucking operations, do you know  
5 if Mr. Hara testified in this hearing that there were  
6 nighttime trucking operations before 1990 when Mr.  
7 Voigt started working at the property, do you know what  
8 he said in that regard?

9 A. No, I don't.

10 Q. Do you know if Mr. Voigt testified that there  
11 were nighttime truck operations in 1994 before the '95  
12 expansion?

13 A. I don't know how he testified on that.

14 Q. If those things were true, would that be  
15 further support for your opinion regarding this case?

16 A. No, it wouldn't change my opinion.

17 Q. In terms of looking at Mr. Rosenstock's  
18 transcript, when he was asked if this property had  
19 appreciated, and he said, as Mr. Kaiser indicated, "I  
20 hope so," you read that question and read that answer,  
21 correct?

22 A. That's right.

23 Q. And did you look at that testimony by Mr.  
24 Rosenstock relative to his allegation that LTD

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1 "depresses the value of complainants' properties"?

2 A. Yes.

3 Q. And that was the hypothesis that you were  
4 testing, correct?

5 A. Yes.

6 Q. So that was information you thought was  
7 relevant to testing the allegation by the complainants?

8 A. Yes, I certainly wanted to see what they had  
9 to say about it.

10 Q. You felt from that testimony that Mr.  
11 Rosenstock was at least not consistent with this

12 allegation?

13 A. Yes, I felt it was inconclusive.

14 Q. When you have been out to the street that the  
15 complainants live on have you heard tollway noise?

16 A. Yes.

17 MR. KAISER: Objection, beyond the scope.

18 HEARING OFFICER KNITTLE: Sustained.

19 MR. KOLAR: I don't have anything else.

20 MR. KAISER: Briefly redirect.

21 HEARING OFFICER KNITTLE: Yes, recross.

22 MR. KAISER: Yes, recross.

23

24

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1 RECROSS EXAMINATION

2 BY MR. KAISER:

3 Q. Now, you have just told the Board that you  
4 have substantial experience and even expertise in  
5 property tax assessment challenges, is that right?

6 A. Yes.

7 Q. You told us that if the Rotis, Webers and Mr.

8           Rosenstock felt that LTD's dock operations were  
9           depressing the value of their property, they could go  
10          to the assessor, right?

11           A.    I believe they have that legal right, yes.

12           Q.    But you wouldn't expect them to get any  
13          relief from the assessor, would you?

14           A.    I don't know how the assessor would react,  
15          although I did ask him specifically about that  
16          hypothetical.

17           Q.    Well, you have told us that LTD's dock  
18          operations even operating 20 hours a day, don't depress  
19          the value of the Roti, Weber or Rosenstock homes,  
20          isn't that right?

21           A.    What I said was that under the preexisting  
22          conditions that the presence of LTD was one of the  
23          depreciative factors, along with the tollway, the other  
24          commercial uses and the location of the far southwest

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1          part of Lake Forest.

2           Q.    Did the preexisting conditions include LTD  
3          dock operations five and a half days a week for 20



4 hours a day for five months, is that the preexisting  
5 condition?

6 MR. KOLAR: Objection, misstates the record  
7 regarding LTD operations.

8 THE WITNESS: What I'm saying is that --

9 HEARING OFFICER KNITTLE: Hold on, sir.

10 THE WITNESS: I'm sorry.

11 HEARING OFFICER KNITTLE: I'm going to overrule  
12 and take that in terms of a hypothetical. I can't  
13 recall what the record states, Mr. Kolar, at this  
14 point. We have come back and forth on it a number of  
15 times and I don't think the record is entirely clear --

16 MR. KAISER: I certainly can, and I think I  
17 formulated that accordance with what the proofs have  
18 been so far.

19 HEARING OFFICER KNITTLE: I'm going to allow the  
20 question to stand.

21 THE WITNESS: Can I hear the question again.

22 HEARING OFFICER KNITTLE: Can you read it back.

23 (Record read as requested.)

24 THE WITNESS: I guess I would have to ask you to

1 further explain that question in terms of preexisting  
2 to what date or just generally preexisting?

3 BY MR. KAISER:

4 Q. Well, weren't you saying the docks were added  
5 in 1987?

6 A. Yes.

7 Q. All right. That's the preexisting condition,  
8 right?

9 A. Right.

10 Q. That's the baseline, right?

11 A. Yes.

12 Q. Nothing since 1987 has affected or further  
13 depreciated the value of the Roti, Weber or  
14 Rosenstock's residences, right?

15 A. As I answered, there was substantial  
16 depreciation from those preexisting factors and, yes,  
17 what's happened since then has not added to the  
18 depreciation for market value.

19 Q. Has not added in any way, correct?

20 A. Not from a market value point of view.

21 Q. Perhaps from a noise nuisance, perhaps from  
22 an ability to use and enjoy your property it might have  
23 affected it, right?

24 A. I don't know.

1 Q. Now, when this prospective buyer comes, looks  
2 at either the Weber, Roti or Rosenstock residences and  
3 observes the tollway to the west, Corporate 100 to the  
4 south, and LTD's dock operations, do you think that  
5 prospective purchaser makes an assumption that LTD will  
6 conduct its operations in accordance with Illinois  
7 state law?

8 A. Well, I would assume that if a buyer posed  
9 that question to themselves, and I think only a minority  
10 of buyers would actually pose the question to  
11 themselves in that manner, but if they did, I would  
12 assume, yes, that they would think that they would  
13 operate legally.

14 Q. With that be a full hearty assumption that  
15 LTD would operate within the bounds of state law here  
16 in Illinois?

17 A. No.

18 Q. That would be a fair assumption, right?

19 A. Yes.

20 Q. So to the extent that Leslie Weber thought  
21 LTD would operate its dock in compliance with Illinois  
22 state law, that was a fair assumption she made, wasn't  
23 it?

24 MR. KOLAR: Objection to the question. It's

1 basically assuming that LTD is violating Illinois state  
2 law and that hasn't been determined at all.

3 MR. KAISER: I think that's been -- there is ample  
4 support for that in the record.

5 HEARING OFFICER KNITTLE: I think that's what  
6 we're here to decide.

7 MR. KOLAR: I didn't know Mr. Kaiser made that  
8 determination. That's my objection.

9 HEARING OFFICER KNITTLE: I'll allow the question  
10 to stand, but I will note for the record that there has  
11 been no determination to the best of my knowledge that  
12 LTD is in violation of any state laws at this point.

13 BY MR. KAISER:

14 Q. Do you recall the question?

15 A. Yes, I do.

16 And I never thought of the question in  
17 exactly those terms, whether Mrs. Weber particularly  
18 thought that LTD would operate a legal operation. But  
19 I can tell you that I would think that any of the  
20 complainants, and in fact any property owner, would be

21 fair to assume that any adjacent use would be operated  
22 legally.

23 MR. KAISER: Thank you. I have no further  
24 questions.

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1 HEARING OFFICER KNITTLE: Mr. Kolar, do you have  
2 any re-redirect?

3 MR. KOLAR: No.

4 HEARING OFFICER KNITTLE: Sir, I thank you very  
5 much for your time. You can step down.

6 THE WITNESS: Thank you.

7 HEARING OFFICER KNITTLE: Let's go off the record.

8 (Short break.)

9 HEARING OFFICER KNITTLE: Mr. Kolar, your next  
10 witness is on the stand.

11 MR. KOLAR: Yes, we call Marcia Rowley, a  
12 realtor.

13 HEARING OFFICER KNITTLE: Can you swear her in,  
14 please.

15 (Witness sworn.)

16 MARCIA ROWLEY,

17 called as a witness herein, having been first duly  
18 sworn, was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. KOLAR:

21 Q. Can you state your name for the record,  
22 please?

23 A. Marcia Rowley.

24 Q. And what do you do for a living?

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1 A. I'm a realtor with Caldwell Banker.

2 Q. And would it be correct that you're a  
3 salesperson?

4 A. Yes, a sales associate.

5 Q. And you work under some brokers license?

6 A. Yes, I do.

7 Q. Are you licensed by the State of Illinois?

8 A. Yes, I am.

9 Q. Where is your office located?

10 A. 280 East Deerpath in Lake Forest.

11 Q. Where do you live?

12 A. In Lake Forest.

13 Q. How long have you lived in Lake Forest?  
14 A. 18 years.  
15 Q. Do you have a business administration degree  
16 from Kansas?  
17 A. Yes, I do.  
18 Q. How long have you been a realtor?  
19 A. Almost nine years.  
20 Q. Do you take listings outside of Lake Forest?  
21 A. In Lake Bluff I do.  
22 Q. So in terms of where you handle real estate  
23 listings that would be what?  
24 A. 99 percent Lake Forest.

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1 Q. And then some in Lake Bluff?  
2 A. Lake Bluff, yes.  
3 Q. And at one point were you working as a  
4 salesperson for the Anthony and Karen Roti property on  
5 Wedgewood in Lake Forest?  
6 A. Yes, I was.  
7 Q. How many listings did you have, do you  
8 recall?

9 A. At that point in time?  
10 Q. That's a vague question. I'll withdraw that.  
11 Let me show you Respondent's Exhibits 8 and  
12 9. I'll show you 9 first. What do you recognize 9 to  
13 be?  
14 A. The listing agreement.  
15 Q. For the Roti property?  
16 A. Yes.  
17 Q. And this one is dated when?  
18 A. June 1, '96.  
19 Q. Then what do you recognize Exhibit 8 to be?  
20 A. Also the renewal listing agreement.  
21 Q. For the Roti property?  
22 A. Yes.  
23 Q. I should have numbered those differently,  
24 but, all right, so Exhibit 9 is the first listing and

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1 then Exhibit 8 is a renewal?  
2 A. Yes because it was for 90 days and then this  
3 should have been about six months, yes, for 180 days.  
4 Q. So when you say "90 days," you were pointing



5 to the first listing, Exhibit 9?

6 A. Correct.

7 Q. And then the second one was 180 days?

8 A. Correct.

9 Q. It's a little hard to read.

10 On Exhibit 9, the first listing, the market

11 price or listing price is?

12 A. 695.

13 Q. And then on the second one we have what?

14 A. 674.

15 Q. Who decided on what the listing price should

16 be?

17 A. Mr. Roti.

18 Q. And did Mr. or Mrs. Roti tell you why they

19 wanted to sell their home, do you recall?

20 A. Basically what I remember it as being that

21 they wanted more space.

22 Q. Do they have children, if you recall?

23 A. Yes.

24 Q. The number of children?

1           A.    Four or five.

2           Q.    During the time that you were working with  
3           the Rotis as their realtor trying to sell their house  
4           did either of them ever say to you that LTD is noisy at  
5           night from fall until Christmas time?

6           A.    I don't recall that.

7           Q.    Did either of them ever say to you LTD's  
8           noise prevents them from falling asleep at night?

9           A.    No, I don't recall that statement.

10          Q.    Did either of them tell you that LTD's noise  
11          wakes them at night?

12          A.    I never recall a conversation like that.

13          Q.    Did either of them tell you that LTD  
14          operations shake their home?

15          A.    I don't recall a conversation like that.

16          Q.    You were at the Roti property?

17          A.    Yes.

18          Q.    You looked it over, I assume, right?

19          A.    Yes.

20          Q.    Did you hear noise when you were at the Roti  
21          property?

22          A.    Noise?

23          Q.    Yes.

24          A.    I heard noise.

1 Q. Do you recall hearing truck noise?

2 A. No.

3 Q. Would you characterize what you heard as just  
4 noise but you weren't able to really distinguish  
5 whether it was tollway noise, office building noise or  
6 LTD operation noise?

7 MR. KAISER: Objection, leading.

8 MR. KOLAR: I'll withdraw that question.

9 BY MR. KOLAR:

10 Q. Were you able to determine where the noise  
11 was coming from that you heard?

12 A. I can tell you what I thought the noise was.  
13 Is that answering the question? Is that what --

14 Q. Let me ask you this question. Could you  
15 distinguish --

16 MR. KAISER: Can we get a foundation as to when  
17 she was there, whether it was daytime, nighttime, which  
18 season, what year?

19 HEARING OFFICER KNITTLE: Mr. Kolar, do you mind  
20 asking those questions?

21 MR. KOLAR: That's fine.

22 BY MR. KOLAR:

23 Q. So the record is clear, the first listing,  
24 Respondent's Exhibit 9, was for 90 days beginning what

1 day?

2 A. Technically the date my broker signed it,  
3 June 3rd.

4 Q. So you had a listing for 90 days from June 3,  
5 1996, right?

6 A. Uh-huh.

7 Q. Yes?

8 A. Yes.

9 Q. And then a 180 day listing from September 19,  
10 1996?

11 A. Correct.

12 Q. Were you at the Roti property on summer days?

13 A. Yes.

14 Q. Were you able to hear noise on days in the  
15 summer in 1996?

16 A. Yes.

17 Q. Was it really bad during the summer?

18 MR. KAISER: Objection.

19 BY MR. KOLAR:

20 Q. How would characterize it in the summer?

21           A.    Well, in the summer the windows are open, so  
22           you would hear more noise inside, but you really didn't  
23           hear anything unless you were outside.

24           Q.    Do you recall being there on some nice summer

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1           days at the Roti property?

2           A.    Yes.

3           Q.    And do you have a specific recollection of  
4           what the noise was like on the nice summer days?

5           A.    It depended. It was different each time I  
6           was there. Some days it was quieter than other days  
7           when it was -- the noise was louder. It also depended  
8           on what way the wind seemed to be blowing too.

9           Q.    Did you hear noise with windows closed?

10          MR. KAISER: Objection, foundation.

11          HEARING OFFICER KNITTLE: Sustained.

12          BY MR. KOLAR:

13          Q.    Were you in the Roti house at times when the  
14          windows were closed?

15          A.    Yes.

16          Q.    Were you able to hear noise with the windows

17 closed?

18 A. No, not that I recall.

19 Q. And at some point did you make a report --  
20 strike that.

21 Were you able to sell the Roti house?

22 A. No.

23 Q. At some point did you report to them feedback  
24 you received from brokers and/or buyers as to their

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1 property?

2 A. Yes, after every two or three showings that  
3 we would have, I would call them and give them feedback  
4 on -- after I was able to get ahold of the other  
5 agents, sometimes it would be the same day, sometimes  
6 it would be several days later, I would give them  
7 feedback on what the agents told me why the people  
8 didn't -- what they thought about the house.

9 Q. Do you recall then giving what you would  
10 classify as drawbacks to the Rotis concerning selling  
11 their house?

12 A. Yes.

13 Q. What drawbacks did you tell them in terms of  
14 feedback?

15 A. Okay. The ones that I can remember today  
16 were the -- okay, the size of the family room was  
17 small, how the house was placed on the lot, that it was  
18 not centered on the lot, it was all side yard, no  
19 backyard, and noise. Those are the three that come to  
20 mind right now.

21 Q. And the noise that was -- strike that.

22 The things you just mentioned, those were  
23 things reported to you that you reported to the Rotis?

24 A. Yes.

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1 Q. Do you recall if anybody reported to you the  
2 location of the Roti house as being in the southwestern  
3 corner of Lake Forest as being an issue?

4 A. You mean geographically away from the center?

5 Q. Right.

6 A. Right now I can't remember. I don't recall.  
7 They might have. I don't remember.

8 Q. Let me show you Page 28 of your deposition

9 transcript starting at Line 17. Read that answer to  
10 yourself and then tell me when you're done to see if  
11 that refreshes your recollection.

12 (Pause in proceedings.)

13 THE WITNESS: That's almost what I just said.

14 BY MR. KOLAR:

15 Q. So do you recall reporting to the Rotis that  
16 there were comments that their house was located in the  
17 southwest corner of Lake Forest?

18 A. Yes, I'm sure --

19 MR. KAISER: Excuse me, Mr. Knittle, are we  
20 offering this for the truth of the matter asserted,  
21 these hearsay second and thirdhand hearsay statements  
22 or what is the basis? I guess I'm objecting as  
23 hearsay.

24 HEARING OFFICER KNITTLE: Objecting as hearsay

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1 how, her statements to the Rotis?

2 MR. KAISER: This witness is about to tell us what  
3 she heard from brokers who heard it from people once  
4 removed there, prospective purchasers. So we're



5 hearing double hearsay at this point.

6 MR. KOLAR: The question, which she was answering,  
7 was, "What did you tell the Rotis regarding drawbacks  
8 to selling their home?"

9 MR. KAISER: Which I have no problem. That's a  
10 perfectly fine question. But what did these people  
11 say, as if this secondhand/thirdhand reporting of what  
12 they said can be reliable in any way, I object.

13 HEARING OFFICER KNITTLE: Yeah, I don't think  
14 that's before us right now though based on this  
15 question.

16 MR. KAISER: All right. I mean, I think Mr. Kolar  
17 can ask a question that's not objectionable.

18 MR. KOLAR: I think I have done that quite a bit  
19 in this hearing.

20 MR. KAISER: You certainly have, Mr. Kolar.

21 MR. KOLAR: Thank you.

22 BY MR. KOLAR:

23 Q. I'll break it down.

24 Ms. Rowley, do you recall telling the Rotis

1           that the drawback in selling their home was that there  
2           was a small backyard and a relatively large side yard?

3           A.    Yes.

4           Q.    In this Exhibit 9 here, do you recognize from  
5           an aerial perspective the Roti house here, can you see  
6           that far?

7           A.    Yes, I can see that far.

8           Q.    And so this area to the east is the side yard  
9           you're talking about?

10          A.    Yes.

11          Q.    And do you recall, in terms of drawbacks you  
12          told the Rotis, that another one was their home was  
13          located in the southwest corner of Lake Forest away  
14          from the central town area?

15          A.    Correct.

16          Q.    Do you recall as a drawback that some of the  
17          amenities inside the home were a problem?

18          A.    It had a smaller family room but that was it.

19          Q.    Anything regarding bathrooms?

20          A.    It would have been nice to have another  
21          family bathroom upstairs.  There was only two full  
22          baths upstairs.

23          Q.    In your experience how many baths do people  
24          looking for homes in Lake Forest expect with a house

1 the size of the Rotis?

2 A. Well, they would like to have three family  
3 bathrooms upstairs.

4 Q. In terms of your personal experience at the  
5 Roti property how often did you hear noise?

6 A. Well, just about the majority of the time  
7 when you would go on the property you could hear noise.

8 Q. Could you tell us where the noise came from  
9 that you remember hearing?

10 A. I --

11 Q. Yes or no? I think you to have answer that  
12 question, then I'll ask you another.

13 A. Yes, I can try. I can tell you where I'm  
14 assuming it was coming from, yes.

15 Q. Well, I'm asking back at the time when you  
16 were there in '96 did you know where the noise was  
17 coming from that you heard?

18 A. Yes.

19 Q. Well, as you recall you gave your deposition  
20 in March 1999, correct?

21 A. Uh-huh.

22 Q. Right?

23 A. Yes.

24 Q. And you don't have a copy of your transcript,

1 right?

2 A. I have never seen a copy of it.

3 Q. So you don't remember exactly what you said  
4 in that transcript, right? Is that accurate?

5 A. Yes, that's accurate. I mean, hopefully it  
6 would be the same answers that I'll give you today.

7 Q. I understand. I'm not staying you're doing  
8 anything improper.

9 As of -- strike that.

10 March 19, 1999, that sounds like about the  
11 date that you gave your deposition?

12 A. Yes.

13 Q. Okay. And as of the date of the deposition  
14 were you able in your mind to distinguish between noise  
15 that would come from the office building to the south,  
16 noise that might be coming from the LTD facility, and  
17 noise that was coming from the tollway?

18 A. Was I asked that question?

19 Q. Do you recall if you were asked that  
20 question?

21 A. I don't think I was ever asked that question.

22 Q. Let me show you Page 37 starting at Line 15.  
23 Read Line 15 to the end there and see if you recall  
24 being asked that question by Mr. Kaiser.

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1 (Pause in proceedings.)

2 BY MR. KOLAR:

3 Q. Is your memory now refreshed?

4 A. Yes.

5 Q. You were asked that question?

6 A. Okay.

7 Q. Right?

8 A. Yes, I was.

9 Q. So as of the date of your deposition you  
10 could not distinguish between where the noise was  
11 coming from that you heard on the Roti property,  
12 correct?

13 A. Correct, because it was noise. I didn't go  
14 look to see where the noise was coming from.

15 Q. It was just noise?

16 A. It was just noise.

17 Q. It was just loud?

18 A. Very loud at times.  
19 Q. And it was just noise and it was just loud in  
20 the summer months of June and July 1996?  
21 A. Yes.  
22 Q. August 1996?  
23 A. August, right.  
24 Q. It just seemed to be loud whenever you were

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1 there?  
2 MR. KAISER: Objection.  
3 HEARING OFFICER KNITTLE: Yes, Mr. Kaiser.  
4 MR. KOLAR: I'll withdraw that question.  
5 I don't have any further questions for Ms.  
6 Rowley. Thank you.  
7 THE WITNESS: Uh-huh.  
8 HEARING OFFICER KNITTLE: Ms. Kaiser -- Mr.  
9 Kaiser, do you have cross examination?  
10 MR. KAISER: Yes. Thank you.  
11 HEARING OFFICER KNITTLE: I didn't mean to slur  
12 your masculinity there, Mr. Kaiser.  
13 MR. KOLAR: Actually I had one more question. I

14 said I didn't, but --

15 HEARING OFFICER KNITTLE: Mr. Kaiser, do you  
16 object to letting Mr. Kolar have one more go here?

17 MR. KAISER: No.

18 HEARING OFFICER KNITTLE: Go ahead, Mr. Kolar.

19 BY MR. KOLAR:

20 Q. As you sit here today do you recall Tony Roti  
21 ever saying to you, Marcia or Ms. Rowley, do I need to  
22 disclose noise to any of these prospective buyers?

23 A. I never recall having any kind of  
24 conversation like that with Tony.

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1 MR. KOLAR: Thank you. I don't have anything  
2 else.

3 HEARING OFFICER KNITTLE: Mr. Kaiser.

4 MR. KAISER: Thank you.

5 CROSS EXAMINATION

6 BY MR. KAISER:

7 Q. About how many times did you talk with Tony  
8 Roti?

9 A. Maybe once.

10 Q. Maybe once.

11 During the course of that conversation you  
12 don't recall whether he asked you whether he had to  
13 disclose to prospective purchasers the noise from LTD's  
14 dock area, is that your testimony?

15 A. I don't recall us having that conversation at  
16 all.

17 Q. All right. You're not denying or  
18 contradicting Mr. Roti if he said that he had that  
19 conversation, are you?

20 A. Denying that he said that to me?

21 Q. Yes.

22 A. It was four years ago. I don't remember him  
23 ever saying that to me.

24 Q. All right. So you don't recall that?

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1 A. No, I don't recall him ever saying that to  
2 me.

3 Q. All right. Do you recall how long this one  
4 conversation you had with Mr. Roti lasted?

5 A. Yes.



6 Q. How long did it last?  
7 A. About 45 minutes.  
8 Q. Where did it take place?  
9 A. At the hockey rink.  
10 Q. In which community?  
11 A. Highland Park.  
12 Q. Do you recall everything that was said  
13 between you and Mr. Roti during that 45 minute  
14 conversation at the Highland Park hockey rink?  
15 A. Every word, no.  
16 Q. Every subject that was discussed?  
17 A. I remember the subject that -- I was giving  
18 him the market evaluation of his home there during  
19 hockey practice or something during a game.  
20 Q. Was one of your children engaged in hockey  
21 practice?  
22 A. Both of our children.  
23 Q. Is it fair to say you were talking business  
24 and watching what was going on on the rink?

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1 A. We weren't watching what was going on.

2 Q. You have seen enough hockey practices in your  
3 life to --

4 A. Right.

5 Q. All right. Other than the summer months,  
6 June, July, August, September of 1996 have you ever  
7 been out to the Roti residence?

8 A. During those --

9 Q. You were there during those months, June,  
10 July, August, September of 1996?

11 A. Yes.

12 Q. Have you been there since then?

13 A. On the property?

14 Q. Yes.

15 A. I have not actually been to their house since  
16 I have lost the listing in March of '97.

17 Q. March of '97 would have been the last time?

18 A. I have been in the area but not at their  
19 house, right at their house.

20 Q. Did you ever go back to their house or to the  
21 area for the purposes of gathering more information in  
22 preparation for your deposition testimony or for the  
23 hearing today?

24 A. Back to that property?

1 Q. Yes.

2 A. Not that I recall, no.

3 Q. All right. During September, October,  
4 November, December of 1997 do you know what noise  
5 levels were like at the Roti residence between the  
6 hours of 6 p.m. and 12 -- 11:59 p.m. Monday through  
7 Friday?

8 A. You said '97, I was never there in the fall  
9 of '97.

10 Q. So you have no information about noise levels  
11 at the Roti property during that time frame, 1997?

12 A. Not after March of '97.

13 Q. And, similarly, you have no information or no  
14 ability to tell the Board anything about noise  
15 conditions at the Roti property in 1998?

16 A. No.

17 Q. And you can't tell the Board whether LTD was  
18 noisy or quiet during the fall and early winter of  
19 1999, can you?

20 A. No.

21 Q. Do you have any reason to doubt or call into  
22 question Karen Roti's testimony that LTD's dock  
23 operations disturb her while she's in her home with the  
24 windows closed during the evening hours?

1 A. Say that again, please.

2 MR. KAISER: Read that back.

3 MR. KOLAR: Objection. It's an improper question  
4 for her to I guess rule on the credibility of Karen  
5 Roti's testimony I think is what he's in fact doing.

6 MR. KAISER: Well, he asked the question: "Did  
7 Karen Roti ever tell you it's noisy at night?" with the  
8 implication being, and the argument I can anticipate in  
9 LTD's response brief, in 1996 when Karen Roti listed  
10 her house she never even told the realtor, it wasn't a  
11 problem in '96.

12 Now Karen has told us it was loud in '96.

13 HEARING OFFICER KNITTLE: I agree though with Mr.  
14 Kolar. I don't know if it's proper for this witness to  
15 comment past whether or not she heard from Ms. Roti  
16 whether there was a noise a problem. You're asking her  
17 to speculate whether there was a problem with Ms. Roti.

18 BY MR. KAISER:

19 Q. Ms. Rowley, did you ever ask Karen Roti  
20 whether noise from LTD's dock operations interfered  
21 with her use and enjoyment of her property?

22           A.    I had no reason to ever ask her about noise  
23           from there.

24           Q.    So you never asked her?

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1           A.    I never asked her. I had no reason to ask  
2           her.

3           Q.    During the course of your 45 minute  
4           conversation with Tony Roti did you ever ask him  
5           whether noise from LTD's dock operations interfered  
6           with his use of enjoyment?

7           A.    I had no reason to ask him that question.

8           Q.    So is your answer no that you never asked  
9           them?

10          A.    I have never asked them about that noise from  
11          LTD operations.

12          HEARING OFFICER KNITTLE: Can you hold on a  
13          second, ma'am?

14          THE WITNESS: Yes.

15          HEARING OFFICER KNITTLE: Do you guys know who  
16          this is?

17          MR. KOLAR: I don't know. Who is that?

18 MR. KAISER: Mr. Kracower, the witness for the  
19 afternoon.

20 HEARING OFFICER KNITTLE: Sir, is your name Mr.  
21 Kracower?

22 MR. KRACOWER: Yes.

23 MR. KAISER: We don't need to exclude him. I have  
24 no problem with him being here.

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1 HEARING OFFICER KNITTLE: Have a seat then, sir.

2 You can proceed, Mr. Kaiser. Sorry to  
3 interrupt.

4 BY MR. KAISER:

5 Q. Have you ever driven up Lakeside Drive and  
6 into the parking lot at the north end of LTD's dock  
7 operations?

8 A. No, never.

9 Q. Which part of Lake Forest do you live in?

10 A. I live east of 41.

11 Q. And --

12 A. North of Westlake.

13 Q. And west of the railroad tracks?

14 A. Which railroad tracks? There is three sets.

15 Q. The Chicago Northwestern railroad tracks by  
16 Deerpath.

17 A. No, I live west of those tracks.

18 Q. West of those tracks but east of Highway 41?

19 A. Correct.

20 Q. Thank you.

21 Have you ever lived in the vicinity of a  
22 warehouse and loading dock operation?

23 A. No.

24 Q. Have you ever shown property to people in the

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1 vicinity of a warehouse and loading dock operation?

2 A. Specifically a warehouse and loading dock?

3 Q. Yes.

4 A. Okay. Ask that question again.

5 Q. Have you ever shown prospective purchasers  
6 residential property which was in the vicinity of a  
7 warehouse and dock operation?

8 A. I believe I showed the Roti property.

9 Q. All right. Fair enough. So you showed that.

10                   But any others besides the Roti property?  
11                   A.   Not that I can immediately recall, no.  
12                   Q.   Now, you have been in real estate for nine  
13                   years, right?  
14                   A.   Uh-huh.  
15                   Q.   Do you think, on the basis of your nine years  
16                   experience, and over that course of the nine years --  
17                   well, how many people did you show the Roti home to?  
18                   A.   Over 60.  
19                   Q.   And I take it -- and you ask the people and  
20                   try to get feedback from them as to what they like and  
21                   don't like about the homes, right?  
22                   A.   Right.  
23                   Q.   And is it fair to say you have had thousands  
24                   of conversations over the last nine years with

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1                   prospective purchasers of residential property about  
2                   what they like and don't like?  
3                   A.   I don't know about thousands but hundreds.  
4                   Q.   Certainly hundreds?  
5                   A.   Yes.



6 Q. All right. Based on your experience do you  
7 have an opinion as to whether a prospective purchaser  
8 of somebody like the Rotis' home would make a  
9 distinction between a loading dock that operated only  
10 five days a week between the hours of 6 a.m. and 4 p.m.  
11 and a loading dock which operated five and a half days  
12 a week between the hours of 6 a.m. and 1:30 or 2 a.m.  
13 in the morning?

14 MR. KOLAR: Objection, beyond the scope.

15 THE WITNESS: It was a long question.

16 MR. KAISER: Could you read it back, Madam Court  
17 Reporter.

18 HEARING OFFICER KNITTLE: Let me check what he  
19 talked about on the record.

20 (Pause in proceedings.)

21 HEARING OFFICER KNITTLE: I can't say for sure  
22 whether it's beyond the scope. I'm going to allow the  
23 question. Maybe you could make it -- well, you can  
24 read it back for her.

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1

(Record read as requested.)

2 HEARING OFFICER KNITTLE: Ma'am, do you understand  
3 that question?

4 THE WITNESS: I think I do.

5 HEARING OFFICER KNITTLE: Okay. Answer to the  
6 best of your ability.

7 THE WITNESS: To the best of my ability in my  
8 opinion someone who's looking at that house isn't going  
9 to know, by looking at it, when it operates. I mean,  
10 they're just going to see a building there. All  
11 they're going to see is a building.

12 BY MR. KAISER:

13 Q. But if they were made aware of the fact that  
14 the dock, instead of closing at 3:30 or 4 in the  
15 afternoon, ran a second shift, which continued until  
16 12:30, 1, 1:30 in the morning, continuous operation  
17 between 6 a.m. and 1 or 1:30 in the morning, do you  
18 think that would make a difference to a prospective  
19 purchaser?

20 A. Okay. In my opinion it would, but I was  
21 never made aware of any issues there. So if someone  
22 asked me I could never have told them because the Rotis  
23 never told me there was a problem that I can recall  
24 with loading facilities there.

1           Q.    I understand.  But, as I understood, your  
2           testimony now is, yes, that information would make a  
3           difference to a prospective purchaser?

4           A.    If I knew it and it was asked, I would have  
5           to share it.  Yes, it would make a difference.

6           Q.    And is it fair to say that the difference  
7           would be the prospective purchaser would be less likely  
8           to purchase the home if they knew the dock was  
9           operating from 6 a.m. in the morning until 1 or 2 a.m.  
10          the following morning as opposed to a dock that they  
11          knew would close at 3:30 or 4 in the afternoon?

12          A.    That's a tough question.  I mean --

13          Q.    I mean, I don't want to push you beyond where  
14          you feel comfortable.  If you don't have anything, then  
15          we can just --

16          A.    You know, I can't -- I'm sure if someone  
17          thought it was going to run all night, it might make  
18          some influence on whether they purchased the house, but  
19          it also depends on if the house was priced to reflect  
20          that issue.

21          Q.    And the house would have to be reduced in  
22          price, wouldn't it, to reflect the operations into the  
23          night and early morning?

24          A.    It should be.  It should reflect it, but I

1 did not know about those issues.

2 Q. I understand. If you had known though --  
3 it's a hypothetical question. If you had known that  
4 information, if in fact we demonstrated through the  
5 record here that LTD did operate from 6 in the morning  
6 until 1 or 2 in the morning, that's something that the  
7 price should reflect, shouldn't it?

8 A. Right, but I never priced this house, Mr.  
9 Roti priced this house.

10 Q. I understand. I'm simply asking you that  
11 that would be a factor that you would take into  
12 consideration in pricing the house, wouldn't you?

13 A. Yes.

14 Q. And the way you would -- the effect it would  
15 have on the price is that if LTD operated late into the  
16 night and into the early morning, the price of the Roti  
17 home should go down, right?

18 A. Yes.

19 MR. KAISER: Thank you. No further questions.

20 MR. KOLAR: I have a few questions.

21 HEARING OFFICER KNITTLE: Mr. Kolar.

22

REDIRECT EXAMINATION

23

BY MR. KOLAR:

24

Q. So Ms. Rowley, as a realtor you rely on the

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1

sellers to be forthcoming with you regarding the

2

amenities for their property and any maybe negative

3

influences?

4

A. Correct.

5

Q. And you were relying on the Rotis to be

6

forthcoming to you regarding any negative influences on

7

their property?

8

A. Correct.

9

Q. Would you agree that, generally speaking,

10

when prospective buyers come to the Roti house, you

11

could generally classify them into two groups, you're

12

going to have one group that says, "I may be willing to

13

live next to a truck operation, commercial building and

14

a tollway" and another group will just say, "I don't

15

want anything to do with this location"?

16

A. I guess you could classify them that way.

17

Q. You would agree with that generally?

18

A. Yes.

19 Q. Would you agree that if the north half of the  
20 LTD building, with all the truck docks that existed in  
21 1987, and there was no home on the Roti property, the  
22 Rosenstock property or Weber property, that at that  
23 point in time the market would take into consideration  
24 the presence of LTD in setting a value for those lots?

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1 A. Wait. It was there in '87?

2 Q. Let me break it down. Assume in 1987 we have  
3 the tollway in existence, correct?

4 A. Correct.

5 Q. And in 1987 we have the north half of the LTD  
6 building with all the truck docks in existence, okay?

7 A. Okay.

8 Q. And assume we have Corporate 100 with its  
9 parking lot in existence, all right?

10 A. Yes.

11 Q. So then if we have a developer in Lake Forest  
12 to the north that wants to subdivide this whole  
13 property, at that point in time would you agree that  
14 the market is going to take into consideration

15 Corporate 100, LTD and the tollway in setting the value  
16 of the lots closest to those influences?

17 A. Yes.

18 Q. And then that influence would be that the  
19 lots closest to LTD, Corporate 100 and the tollway  
20 would be worth less than lots away from those  
21 influences?

22 MR. KAISER: Objection, leading.

23 THE WITNESS: Correct.

24 HEARING OFFICER KNITTLE: I'd sustain that. She's

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1 already answered but --

2 MR. KAISER: So strike the answer.

3 HEARING OFFICER KNITTLE: Is that what you're  
4 asking, Mr? Kaiser.

5 MR. KAISER: Yes.

6 HEARING OFFICER KNITTLE: I will grant your motion  
7 to strike and ask Mr. Kolar to rephrase the question.

8 BY MR. KOLAR:

9 Q. What would be the influence of LTD, Corporate  
10 100 and the tollway on the lots immediately to the

11 north in terms of setting a price on those versus lots  
12 farther north away from those influences.

13 A. The lots on the south side of Wedgewood would  
14 be priced less than on the north side of Wedgewood or  
15 further north.

16 In fact, in my market analysis I gave to Mr.  
17 Roti, I had told him that the houses on the north side  
18 sell better than the houses on the south side.

19 Q. Then that influence -- would that influence  
20 continue on as long as -- strike that.

21 Would that impact on the value of the Roti,  
22 Rosenstock, Weber houses would that just continue on  
23 into the future as long as you had a tollway, LTD and  
24 Corporate 100?

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1 A. Yes, I believe so.

2 MR. KOLAR: I don't have anything else.

3 HEARING OFFICER KNITTLE: Do you have any recross,  
4 Mr. Kaiser?

5 MR. KAISER: Yes, briefly.

6 RECROSS EXAMINATION



7 BY MR. KAISER:

8 Q. Do you know whether the West Deerfield  
9 Township assessor makes a distinction when he or she  
10 values properties within the -- is this the Oak Knoll  
11 subdivision?

12 A. I don't remember exactly.

13 Q. Within the subdivision in which the Roti,  
14 Weber and Rosenstock's homes are located, do you know  
15 whether the West Deerfield Township assessor  
16 distinguishes in value between the homes located south  
17 of Wedgewood Drive and those located north of Wedgewood  
18 Drive?

19 A. I don't know.

20 MR. KOLAR: Objection, beyond the scope of my  
21 redirect.

22 MR. KAISER: We just heard about sale prices north  
23 of Wedgewood, the value north of Wedgewood, it's  
24 directly germane.

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1 HEARING OFFICER KNITTLE: I'm going to sustain the  
2 objection. I don't think we covered what the assessor

3 feels or doesn't feel on redirect. We did not cover  
4 that, Mr. Kaiser.

5 MR. KAISER: We talked about, Mr. Knittle,  
6 opinions on value.

7 HEARING OFFICER KNITTLE: We did talk about this  
8 witness' views of value and nothing else.

9 BY MR. KAISER:

10 Q. Ms. Rowley, do you know whether back in 1987  
11 LTD operated the docks at the north end of its property  
12 in Bannockburn, Illinois during September, October,  
13 November and December of 1987, five days a week until  
14 midnight or beyond?

15 A. I don't know that answer.

16 Q. And frankly you don't know really anything  
17 about whether LTD's dock operations have increased or  
18 decreased since 1987, do you know?

19 A. I don't know anything about their operations.

20 MR. KAISER: Thank you. I have no further  
21 questions.

22 MR. KOLAR: I have no questions.

23 HEARING OFFICER KNITTLE: Thank you, ma'am. You  
24 can step down.

1 MR. KOLAR: Thanks for your time.

2 HEARING OFFICER KNITTLE: We're going to go take a  
3 lunch break. Let's go off the record.

4 (Lunch break.)

5

6

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1 A F T E R N O O N S E S S I O N

2 MR. KAISER: On the record, Mr. Kolar, still your  
3 case.

4 MR. KOLAR: LTD would call Allen Kracower as a  
5 witness.

6 HEARING OFFICER KNITTLE: Could you swear him in.

7 (Witness sworn.)

8 HEARING OFFICER KNITTLE: Mr. Kolar.

9 Allen Kracower,  
10 called as a witness herein, having been first duly  
11 sworn, was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. KOLAR:

14 Q. Would you state your name for the record,  
15 please?

16 A. Allen Kracower, K-r-a-c-o-w-e-r.

17 Q. Where do you live?

18 A. I reside at 1111 Elm Road, Lake Forest,  
19 Illinois.

20 Q. Is that east or west of 294?

21 A. West -- it's unincorporated Lake Forest Post  
22 Office but west of 294.

23 Q. About how far from the LTD site as the way a  
24 crow flies?

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1 A. As the way a crow flies I would say somewhere  
2 around three miles, if that.

3 Q. How long have you lived in Lake County?

4 A. I have lived in the county for approximately  
5 30 years.

6 Q. What do you do for a living?

7 A. I'm a land planning and zoning consultant and  
8 landscape architect.

9 Q. Where is your office located?

10 A. 100 Lexington Drive, Buffalo Grove, Illinois.

11 Q. What's the name of the company that you're  
12 associated with?

13 A. It is Allen L. Kracower & Associates, Inc.

14 Q. That's you in the name?

15 A. My name is in the name, yes.

16 Q. Okay. How many years has that firm been in  
17 existence?

18 A. I started the company approximately 30 years

19           ago, a little over 30 years.

20           Q.    How long have you been in the business of  
21           land planning consultation?

22           A.    My whole career spans a period of  
23           approximately -- in the range of 36 years.

24           Q.    And you were hired by LTD Commodities

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1           concerning this noise complaint, correct?

2           A.    Yes.

3           Q.    What's your hourly rate for working for LTD  
4           Commodities?

5           A.    \$285 per hour.

6           Q.    And is that consistent with the rate you  
7           would charge other private clients?

8           A.    Yes.

9           Q.    Is your compensation in any way contingent on  
10          your testimony and participation in this case?

11          A.    No.

12          Q.    And you thought you were going to testify  
13          last November, correct?

14          A.    That's correct.

15 Q. And did you prepare at that time as though  
16 you were going to testify in that first week of  
17 November?

18 A. Yes, I did.

19 Q. Then you learned that we weren't going to get  
20 to you, correct?

21 A. That's correct.

22 Q. So did you have to prepare once again here in  
23 May 2000?

24 A. Yes.

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1 Q. And as you sit here today do you know how  
2 much you have charged LTD?

3 A. No, I don't.

4 Q. Regardless, it would include two preparations  
5 because of the hearing being continued?

6 A. That's correct.

7 Q. And have you and I ever worked together on  
8 another matter?

9 A. Not that I recall. It's been pleasurable  
10 this time but I don't recall a previous occasion.

11 Q. What's your education after high school?

12 A. I have a Bachelor of science degree from the  
13 University of Wisconsin, a major in landscape  
14 architecture. And then I have another one, I have a  
15 Master of science degree also from the University of  
16 Wisconsin. I forgot.

17 Q. What's that one in?

18 A. That was a mixture of majors in planning.  
19 The predominant one was still landscape architecture.

20 Q. What type of services do you provide as a  
21 land planner or through Allen L. Kracower & Associates?

22 A. They're relatively diverse. Our office  
23 provides services to local levels of government,  
24 municipalities, counties in the area of comprehensive

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1 planning, zoning, subdivision control. We review  
2 development plans, when asked to, and render advice to  
3 government generally in the area of regulatory controls  
4 inclusive of zoning. In addition to that, then in the  
5 private sector we work with builders, developers in  
6 designing housing developments or office developments.



7           There is a wide range of things ranging all the way to  
8           gravel sites and landfill sites. Then, in addition to  
9           that, we do real estate consulting advising normally  
10          private property owners, financial institutions, and  
11          trusts relative to the highest and best use of their  
12          property. And then, lastly, we also have a very large  
13          landscape architectural component.

14                 Q.    You mentioned comprehensive plan, what is  
15                 that for the record?

16                 A.    Comprehensive plan is a document undertaken  
17                 by a local level of government, like a village or a  
18                 city or a county, that sets forth its goals and its  
19                 aspirations as to what it wants to be, how it wants to  
20                 grow, the type of changes that it would like to see  
21                 take place. Their document is authorized under State  
22                 statute for local levels of government in the State of  
23                 Illinois.

24                 Q.    Can you recall every municipality you have

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1           ever worked for in terms of as a land planner or  
2           consultant?

3 A. No, I cannot.

4 Q. Do you have them listed in your CV?

5 A. Yes, most of them.

6 Q. Would these be municipalities that you have  
7 worked for?

8 A. Yes.

9 Q. So would the municipalities that you have  
10 worked for include Addison, Batavia, Bensenville,  
11 Bloomingdale, Blue Island and Boca Raton, Florida?

12 A. Those are some of them, yes.

13 Q. And others would include Buffalo Grove?

14 A. Yes.

15 Q. Burr Ridge?

16 A. Yes.

17 Q. Carpentersville?

18 A. Yes.

19 Q. Cicero?

20 A. Yes.

21 Q. Darien, Illinois?

22 A. Yes.

23 Q. Des Plaines?

24 A. Yes.

1 Q. Let me list a few more before you say, "Yes."

2 Have you also worked for Elk Grove Village,  
3 Fox River Grove, Gilberts, Glenview, Hanover Park,  
4 Harwood Heights, Hazel Crest, Hickory Hills, Highland  
5 Park, Hinsdale?

6 A. Yes to all of those.

7 Q. Have you worked for the Illinois Attorney  
8 General?

9 A. Yes.

10 Q. In what capacity?

11 A. As an expert in highest and best use study  
12 and testimony in matters pertaining to eminent domain  
13 litigation.

14 Q. Have you worked for the Du Page Airport  
15 Authority?

16 A. Yes.

17 Q. Du Page County Illinois Regional Planning  
18 Commission?

19 A. Yes.

20 MR. KAISER: Objection, cumulative.

21 HEARING OFFICER KNITTLE: Mr. Kolar, do you have  
22 any that you want to hit in particular?

23 MR. KOLAR: Well --

24 HEARING OFFICER KNITTLE: As far as I can tell

1 we're only on "I."

2 MR. KOLAR: Okay. I don't need to go on.

3 BY MR. KOLAR:

4 Q. Besides those have you worked from other  
5 municipalities?

6 A. Yes.

7 Q. Approximately how many municipalities do you  
8 think you have worked for as a land planner?

9 A. I would guess somewhere between 40 or 50.

10 Q. And in working for those municipalities,  
11 would that be performing services that you described  
12 for us earlier?

13 A. Some are difficult to remember as you were  
14 going over them, but generally they were for  
15 comprehensive planning, zoning, site plan review,  
16 general consultation on land development policies,  
17 subdivision control. Each one was a little bit  
18 different, but the answer to your question would be  
19 yes.

20 Q. What about private sector clients that you  
21 have been involved with, some of the major ones that  
22 you can recall?

23 A. Well, the closest to the village hall that

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1 estate which was a 1,500 acre property. I was  
2 responsible for the land planning, the zoning and all  
3 of the landscape architecture. I have worked also --  
4 nearby would be Lake Forest for the Sunset Food chain  
5 doing real estate consulting. And I did part of the  
6 land planning, and I think we did all the landscape  
7 architecture on their store, their shopping center in  
8 Lake Forest. I worked for McDonald's in that same  
9 area.

10 Q. In Lake Forest?

11 A. In Lake Forest.

12 Q. The one that doesn't look like a McDonald's?

13 A. The one that looks so nice, yes.

14 HEARING OFFICER KNITTLE: The one that doesn't  
15 have a drive-in window?

16 THE WITNESS: Now it does because the sales  
17 achieved a certain level so that they now are able to  
18 drive through. In fact I broke my diet the other day  
19 and drove through. That's the only reason I know it's

20 open.

21 HEARING OFFICER KNITTLE: Thank you, sir.

22 THE WITNESS: I have worked on projects in Buffalo  
23 Grove. We have done numerous communities in the Lake  
24 County area, at least, you know, three, four, five. I

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1 have -- I was mentioning before I represent the Brach  
2 foundation and their properties, their hundreds of  
3 acres, the Rice estate which was 1,500 acres. There is  
4 just many. I have designed and worked on these for so  
5 many years, it's hard to recall all of them.

6 BY MR. KOLAR:

7 Q. Going back to municipalities, have you been  
8 the village planner so to speak by contract for certain  
9 municipalities?

10 A. Yes, I have.

11 Q. Can you name a few of those?

12 A. I was in Round Lake Beach which is north of  
13 here up until about a year or two ago, we're not any  
14 longer. We were recently retained by the Village of  
15 Gilberts, which is out in McHenry County. For a number

16 of years, about 12 years, I was the village planner for  
17 the Village of Bloomingdale which is out in Du Page  
18 County. Many of the ones that you read off -- in fact  
19 in most instances, there were some exceptions, we  
20 served -- or I served as the village planner where I  
21 went attended their meetings and assisted them.

22 Q. Are you a member of any land planning  
23 organizations?

24 A. I belong to the American Planning

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1 Association, the American Association of Consulting  
2 Planners -- I'm not quite sure what those initials  
3 are -- and the American Society of Landscape  
4 Architects.

5 Q. Have you ever lectured regarding land  
6 planning issues, land consultation?

7 A. Yes, I have.

8 Q. Where at?

9 A. I have lectured at Northwestern University,  
10 they have a graduate school in real estate. I lectured  
11 before the Attorney General's Office. Every -- this is

12 about two or three years ago, they have an educational  
13 seminar for attorneys on eminent domain. I have  
14 lectured in the Department of Urban Geography at  
15 Carthage College. And I have given numerous speeches  
16 before planning commissions and other public bodies  
17 throughout the years.

18 Q. Where did you work as a land planner before  
19 starting Allen Kracower & Associates?

20 A. I worked with the United States Department of  
21 Housing and Urban Development.

22 Q. HUD?

23 A. HUD.

24 Q. What did you do there?

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1 A. I served as the special assistant to the  
2 administrator, and I was stationed in Chicago and  
3 responsible, along with three other specials and the  
4 administrator, for administration of the agency's  
5 programs throughout the Midwestern sector of the United  
6 States.

7 Q. And have you testified as a land planner in



8 courts or in administrative hearings?

9 A. Yes.

10 Q. Can you name some courts that you testified  
11 in?

12 A. I have testified as an expert in this county,  
13 Lake County, Will County, Kane County, McHenry County,  
14 Cook County, Du Page County, Dekalb County. I think  
15 there may be some others, but those are the ones that I  
16 can recall.

17 Q. Have you ever testified before the  
18 Environmental Protection Agency or in an E.P.A. matter  
19 or Pollution Control Board matter?

20 A. I have, yes.

21 Q. Are you familiar with the LTD property in  
22 Bannockburn?

23 A. Yes, I am.

24 Q. And did you have a familiarity with that

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1 property before working on this project?

2 A. Yes, I did, but more I would say in a  
3 generalized sense because I live in the area and I have

4           been in the industrial park before and driven by it.  
5           So my knowledge prior to this assignment was more of  
6           a -- I think a generalized knowledge rather than a very  
7           specific knowledge.

8           Q.    And just generally, relative to this project,  
9           what was the nature of your assignment?

10          A.    It was to basically evaluate the subject  
11          property from a land use perspective and, based on my  
12          profession, to make a determination as to the  
13          compliance of the subject property in terms of the  
14          SLUCM code or the standards, environmental pollution  
15          control standards that would govern complainants'  
16          requests such as noise.  And I generally looked at  
17          several criteria that I felt related to land use to  
18          make that determination.  One of those would be the  
19          classification where there was A, B, C, D.  Another was  
20          to generally make a general determination as to whether  
21          or not this property had any economic significance or  
22          social significance in the context of its geographic  
23          area and to ultimately determine if there was any  
24          significant adverse impact to the -- you know, the

1 community as a whole.

2 Q. And, in terms of your job, at some point I  
3 had basically showed you the Section 33(c) factors from  
4 the Environmental Protection Act and asked what, if  
5 anything, you could investigate further from LTD's  
6 perspective?

7 A. Yes.

8 Q. About how many times have you been to the LTD  
9 property for this?

10 A. Up until this, I would say five times as of  
11 today.

12 Q. Have you been inside the warehouse building?

13 A. Yes.

14 Q. When were you last at the LTD property?

15 A. I was there yesterday.

16 Q. And when you were inside the building did you  
17 receive a tour?

18 A. Yes, I did.

19 Q. And Jack Voigt do you recall gave you that  
20 tour?

21 A. Yes. Mr. Voigt gave me a tour of almost all  
22 the building.

23 MR. KAISER: Foundation, please. Are we talking  
24 about yesterday's visit or the first visit?

1 BY MR. KOLAR:

2 Q. When was it that you received a tour from Mr.  
3 Voigt?

4 A. That was my first visit to the property back  
5 in 19- -- I would say the latter part of 1999, in that  
6 in time frame.

7 Q. And generally in the nonoffice part of the  
8 building what did you see on your tour?

9 A. Certain storage of materials of various types  
10 that are -- the best way I can describe them is they  
11 are portrayed in a variety of catalogs. There are  
12 hundreds of different things, so it would be difficult  
13 to describe each one. Then I noticed predominantly  
14 packaging and crating people were essentially taking  
15 items off of shelves, packing them into boxes, sealing  
16 boxes, taking the boxes, moving them off to the freight  
17 area, and loading them on trucks.

18 Q. Did you see any conveyer belts?

19 A. Yes.

20 Q. And what were those used for generally?

21 A. It was movement of boxes and goods. There  
22 were packing materials, quite a significant labor  
23 supply, assembling, packaging, crating, taking the

products, making them ready for transport to whatever

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1 location they were going to.

2 Q. And on any of your visits did you see the  
3 trucking operations in terms of its truck staging area?

4 A. Yes.

5 Q. And you walked around outside?

6 A. On all of my visits I drove through and/or  
7 walked.

8 Q. Did you visit the complainants' properties to  
9 the north?

10 A. I did.

11 Q. How did you do that?

12 A. I did it in two ways. I drove my car to the  
13 back of the property -- to what I would call the back  
14 of LTD's property line. There is a hedge row back  
15 there and fence. I parked my car on a couple occasions  
16 and stood in the back along the fence because I felt  
17 that generally approximated the boundaries between the  
18 residential core to the north or the industrial type or  
19 LTD property to the south. I then inspected the front

20 of the plaintiffs' property by parking my car in the  
21 street, I think it's Wedgewood Street, and then I would  
22 either put my windows down 'cause I was interested in  
23 noise and/or on a couple of occasions I got out and I  
24 walked back and forth along the front property line,

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1 which would be the street cross section, so that I  
2 could hear anything that was going on at that  
3 particular time. So that way I was able to hear noise  
4 in the front property line and noise on the back  
5 property line, which from a land planning or land use  
6 perspective was adequate.

7 Q. What was your personal experience regarding  
8 noise when you were on Wedgewood by the complainants'  
9 properties?

10 MR. KAISER: Objection, relevance and lack of  
11 disclosure.

12 HEARING OFFICER KNITTLE: Mr. Kolar.

13 MR. KAISER: It's not relevant to his opinion that  
14 he's going to offer here today and it's never been  
15 disclosed that he was going to render observations

16 about noise or the qualities of noise.

17 MR. KOLAR: Well, he's got an opinion regarding  
18 the Section 33(c) factor which is since located at a  
19 major commercial business interchange. LTD's  
20 operations does not interfere with the health and  
21 general welfare and physical property of the people,  
22 and it's not -- well, it's not an opinion, number one,  
23 he's here as a land planner regarding suitability of  
24 the LTD site and classification of the LTD site. I

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1 think it's --

2 HEARING OFFICER KNITTLE: Does his opinion that  
3 you disclosed reference the 33(c) factors you just  
4 enumerated?

5 MR. KOLAR: No, but I can pretty much quote them  
6 verbatim the disclosed opinions. This is what was  
7 given to Mr. Kaiser. I do have it marked as an  
8 exhibit. This is my copy but --

9 HEARING OFFICER KNITTLE: Mr. Kaiser, if it  
10 references the 33(c) factors, I can see that the  
11 suitability of the environment and LTD in that

12 environment are proper terms of disclosure. I know  
13 that doesn't make a lot of sense, but I'm going to over  
14 the objection.

15 MR. KAISER: That's fine.

16 HEARING OFFICER KNITTLE: It's too close to after  
17 lunch for me to make large amounts of sense.

18 Mr. Kolar, you can proceed.

19 BY MR. KOLAR:

20 Q. What was your personal experience on your  
21 visits on Wedgewood regarding noise?

22 A. In terms of noise, and I did not measure it  
23 by machine, I'm not qualified in that area, but I  
24 observed it because it's part of my land use analysis

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1 and part of the foundation at least to a nominal  
2 degree. The noise that I heard was tollway noise in  
3 the front. On none of the occasions that I was there  
4 did I hear any noise that I would consider to be truck  
5 noise such as I did hear when I was on the LTD  
6 property. There I heard trucks backing up and beeping.  
7 I heard engines running. But what I heard on the



8 street or at the curb line was predominantly -- and I  
9 want to call it the roar of traffic from the Tri-State  
10 toll road which I'm quite familiar with 'cause I hear  
11 it at my home, it was a similar type of noise but much  
12 stronger and louder than where I live. I live about  
13 one mile from the tollway.

14 Q. One mile west of the tollway?

15 A. One mile west. And these homes, if you look  
16 at that aerial photograph, which is exhibit -- I don't  
17 know.

18 Q. 89.

19 A. Exhibit 89. And if one inch equals 100  
20 feet -- I'm just going to estimate -- there are about  
21 12 inches here, so you're about 1,200 feet less than,  
22 you know, a quarter of a mile, and you would anticipate  
23 the noise would be louder. So that's what I observed  
24 in terms of generalized sounds from the frontage of the

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1 Plaintiffs' properties, all three.

2 Q. In fact this Exhibit 89, a March 1999 aerial,  
3 and Exhibit 88, a 1988 aerial, you obtained these maps?

4 A. Yes, I did.

5 Q. And gave them to me?

6 A. Yes, sir.

7 Q. I'd ask if you could step down so you can  
8 explain to us, using 89, the location of LTD and just  
9 explain the land planner, the land uses in the area.

10 A. Very generally, the predominant land use in  
11 the area is the Tri-State tollway going from Illinois  
12 to the south to Wisconsin further to the north.

13 LTD, which I'll call the subject property, is  
14 located on the northeast quadrant of the Tri-State  
15 tollway and Highway 22. Highway 22 is a state highway,  
16 an arterial highway going almost from the eastern  
17 limits of the lake, westerly out probably toward the  
18 Algonquin area and beyond. It transcends Lake County.  
19 So the subject property or at least the LTD property is  
20 at this northeast quadrant. Also significant, in terms  
21 of land use, is the fact that this is a four-way  
22 interchange. So traffic going east and westbound on  
23 Highway 22 can access the Tri-State tollway. And  
24 traffic that goes north and southbound on the Tri-State

1 tollway can access Highway 22. So in land use planning  
2 eviction this would be called a large transportation  
3 node. LTD takes part in that location.

4 Very briefly, the other significant  
5 components on here would be Trinity College, which is  
6 south of Highway 22 and east of the tollway. There is  
7 an office structure immediately to the southeast corner  
8 of the tollway and 22. At the southwest corner of 22  
9 and the tollway are the Tri-State office buildings.  
10 They front almost on the west side of the Tri-State  
11 tollway. They have been there for many years. There  
12 is also a hotel. And then, as one goes further west,  
13 the residential use.

14 Most of the land west of the Tri-State  
15 tollway and south of 22 is in the Village of  
16 Lincolnshire. Most of the land north of 22 and west of  
17 the Tri-State tollway, including the large structures,  
18 several large structures of the Hewitt buildings, they  
19 also are corporate office use. In Lincolnshire the  
20 land generally on the east side of Highway 22, both  
21 north and south -- east of the tollway, both north and  
22 south of 22, are generally located in the Village of  
23 Bannockburn.

24 The only other significant issues would be

1 east of LTD is an office structure with parking behind  
2 it that fronts upon the residential area to the north.  
3 There is a newer office building, a three-story  
4 building built by Pazzuti.

5 Q. And that would be this building directly to  
6 the east of the 1995 expansion of LTD?

7 A. Yes. And, lastly, I said that twice, but  
8 really lastly, to the north of LTD is a totally  
9 consistent change of land use including the plaintiffs'  
10 properties and other residential land uses, and they  
11 are in another regulatory control, the City of Lake  
12 Forest, Illinois.

13 Q. And as part of your work did you examine the  
14 Bannockburn zoning map?

15 A. Yes.

16 Q. That's a copy as Exhibit 90, a current  
17 zoning, January 1, 1998, correct?

18 A. Yes.

19 Q. And in terms of land planning, laying out,  
20 zoning, what does this show to you regarding the  
21 Bannockburn area?

22 A. Well, the zoning map as well as aerial  
23 photographs portray land use patterns. What's  
24 significant here in terms of land use and land use

1 planning, and it's the Bannockburn zoning map, is that  
2 this Tri-State tollway, which is a transportation land  
3 use, is the western boundary. And all the land along  
4 the eastern boundary in the Village of Bannockburn is  
5 either listed as a C, a college district, an O, as an  
6 office research district, and something that they call  
7 FH, flood plan hazard overlay. In other words, all the  
8 land uses adjacent to the Tri-State tollway are  
9 nonresidential in character. There are no residential  
10 land uses within this area of the Village of  
11 Bannockburn. The same situation can be seen on the  
12 aerial photograph but in more of a pictorial birds-eye  
13 view.

14 Q. As you get further east from the tollway how  
15 does it change?

16 A. As one gets further east of the tollway, with  
17 the noise and its intended problems, then, as I  
18 mentioned before, there are the commercial type office  
19 uses that buffer the tollway. And then as Bannockburn  
20 gets into its planning process, it's moved into

21 predominantly residential land uses as you get off  
22 toward Waukegan Road. So it goes from the tollway to a  
23 buffer of office/commercial type uses, then into the  
24 residential section. So, in city planning terms, these

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1 are all transitions of land use. And LTD is located in  
2 the buffer -- what I'm going to call the buffer  
3 transition zone, not just to the Tri-State toll road  
4 but also to the interchange at 22 and the Tri-State  
5 which places it in an ideal location from a city  
6 planning perspective.

7 Q. Thank you.

8 Do you have an opinion whether LTD  
9 Commodities is suitable for the area in which it is  
10 located in Bannockburn?

11 A. Yes, I do.

12 Q. What is that opinion?

13 A. Well, it's suitable.

14 Q. What's the basis for that opinion?

15 A. Some of the things that I have just gone  
16 over. First of all, it is a nonresidential use and

17           it's located at the northeast quadrant of the -- what I  
18           call the transportation node of 22 and the Tri-State  
19           toll road. It has a significant amount of truck  
20           traffic and vehicular traffic. So in terms of land  
21           planning, it should be located in an area where it has  
22           reasonable and rapid access to major arterial roads or  
23           highways so that traffic does not have to go through  
24           residential neighborhoods to get to it. In the case of

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1           LTD, traffic can go almost immediately from their plant  
2           to Lakeview Drive, which is a road that goes out on  
3           Highway 22, and then it can be dispersed onto a state  
4           highway east or west on 22 to whatever its destination  
5           is or go directly onto the Tri-State toll road for  
6           intrastate type traffic either to the north or south.  
7           So it probably couldn't have a better location in terms  
8           of urban planning than it shares today.

9           Q.    What about the homes to the north though in  
10           terms of how can LTD be suitably located and you have  
11           residential homes in Lake Forest immediately to the  
12           north?

13           A.    There are -- what's happened here is there  
14           are two different governmental entities each having,  
15           through their police power, zoning authority and  
16           planning authority.  There is Bannockburn of which the  
17           subject -- of which LTD is in and then to the north the  
18           plaintiffs, and the subdivision of which they are a  
19           part, live in the City of Lake Forest.  They're not  
20           generally consistent land uses, one with the other,  
21           residential single family with industrial type  
22           development.  But in this particular case LTD and the  
23           office park of which it's a part were zoned prior -- or  
24           I should say built prior to the time that the

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1           residences or the plaintiffs' homes were built.  So it  
2           was a preexisting land use condition.  And then  
3           thereafter the City of Lake Forest allowed the  
4           residential units to the north to be built without any  
5           type of significant buffer in between them.

6           Q.    And do you understand that LTD was expanded  
7           in stages?

8           A.    Yes, I do.



9 Q. You have been in the county long enough, do  
10 you recall FMC had occupied the building originally?

11 A. I remember FMC. I never knew what FMC did  
12 but I remember FMC.

13 Q. So from a land planning perspective, it's not  
14 good planning by Lake Forest to allow homes --

15 MR. KAISER: Objection, leading.

16 BY MR. KOLAR:

17 Q. Would you call it good planning by Lake  
18 Forest -- strike that.

19 How would you characterize the planning  
20 decision by Lake Forest to have the Roti, Rosenstock  
21 and Weber lots in their proximity to the uses in  
22 Bannockburn to the south?

23 A. Under the condition in which they did it, it  
24 was -- I don't know how to say this politely -- it was

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1 not properly designed, and that if residential land use  
2 was to go there, two things should have happened.  
3 There should have been a significant difference in  
4 spacing between these homes and the Bannockburn

5 properties or a larger urban berm. In other words, it  
6 should have been buffered and it was not. And the same  
7 buffering should have taken place along the Tri-State  
8 tollway, which in essence it did not.

9 As one goes further north on the tollway  
10 today, you will see that Lake Forest and/or the  
11 property owners, including Conway Farms, which is a  
12 very large development north of Everett Road, have  
13 correctly put in large urban berms to protect the  
14 residential uses from the problems of the tollway. So  
15 it was an example really of planning that lacked  
16 excellence.

17 MR. KOLAR: Just for the record Mr. Hara has to  
18 leave for his traffic ticket.

19 HEARING OFFICER KNITTLE: Thank you, Mr. Hara.

20 BY MR. KOLAR:

21 Q. Mr. Kracower, as part of your work on this  
22 case did you review what I marked as Respondent's  
23 Exhibit 34, and that's the Standard Land Use Coding  
24 Manual?

1 A. Yes.

2 Q. As part of your work in this case did you  
3 form an opinion as to whether LTD should be classified  
4 as a C classification or B classification under the  
5 index attached to the Pollution Control Board  
6 Regulations?

7 A. Yes, I did.

8 Q. Why did you refer to the Standard Land Use  
9 Coding Manual in determining the proper classification  
10 of LTD?

11 A. I referred to that manual, it's called S  
12 for -- a synonym almost, S-L-U-C-M. It's called  
13 Standard Land Use Coding Manual. It's called Standard  
14 Land Use Coding Manual because within the Pollution  
15 Control Board Regulations there is reference to this  
16 document, and it requires in part that a determination  
17 be made as to the land use classification. And this is  
18 the document that they make reference to.

19 Q. In terms of the regulations, where you note  
20 that it's referenced, you talk about the definition  
21 sections?

22 A. Well, one would be the definition sections  
23 and the other would be back in the standards section.  
24 The title would be under Section 901.101,

1           classifications of land according to use. It indicates  
2           that land shall include all land used as specified by  
3           the SLUCM code, and then it goes on.

4           Q.    Then as we indicated earlier part of your  
5           work in this case -- you see this Appendix B, standard  
6           land use coding system --

7           A.    Yes.

8           Q.    -- attached to the regulations?

9           A.    Yes.

10          Q.    And you formed an opinion regarding the  
11          proper classification under this Appendix B?

12          A.    Yes, I did.

13          Q.    Okay. Had you ever worked with that Standard  
14          Land Use Coding Use Manual before this project?

15          A.    Yes. I have that in my office, and I have  
16          something called the Standard Industrial Classification  
17          System. And I periodically, although they're getting  
18          rather dated I might add, would look at these things as  
19          I prepared zoning ordinances for lists of uses. They  
20          sometimes serve as an interesting guide.

21          Q.    So you said Standard something  
22          classification, SIC?

23          A.    Yes, Standard Industrial Classification.

24          Q.    Right. And that Appendix B has SIC

1 referenced on it as well, right?

2 A. Yes. I believe it's in industrial. It's a  
3 SIC code, S-I-C.

4 Q. I think you're right. It says in Footnote 1  
5 on the Appendix, the use of standard industrial  
6 classification nomenclature.

7 When you were inside the LTD operations --  
8 I'll mark this as LTD Exhibit 100, a box -- did you see  
9 boxes like this?

10 A. Yes, I saw boxes all different sizes that  
11 look something like that.

12 (Respondent's Exhibit No. 100  
13 was marked for  
14 identification.)

15 BY MR. KOLAR:

16 Q. So based on your site inspection, your land  
17 planning experience, the SLUCM, do you have an opinion  
18 regarding the proper classification of LTD under this  
19 Appendix B to the Pollution Control Board Regulations?

20 A. Yes, I do.

21 Q. In terms of lettering what would your opinion  
22 be?

23 A. C as in Charlie.

24 Q. And in terms of actual numbering, did you

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1 form an opinion as to what would be the --

2 A. Yes.

3 Q. What would that be?

4 A. There were two numbers. I had 4921, which is  
5 freight forwarding services. And 4922, packaging and  
6 crating services. I believe those are the right  
7 numbers, but, if not, those are the terms that  
8 accompany them.

9 Q. Here. Let's look. I have got a copy of  
10 Appendix B. 4921, freight forwarding services?

11 A. That's correct.

12 Q. That was your opinion?

13 A. Yes.

14 Q. And 4922, packing and crating services?

15 A. That's correct.

16 Q. All right. And in terms of reaching that

17 conclusion regarding the Class C and the actual  
18 numbering, how, if at all, did the SLUCM help you, the  
19 manual?

20 A. The manual basically sets forth the generic  
21 categories that breaks it down more definitively into  
22 more detailed categories. It also periodically has  
23 certain footnotes that one can use, if necessary, to  
24 refine terminology. As I have said before, it is

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1 getting a little -- the document becomes a little bit  
2 dated. Some of the terms are a little different than  
3 today, but generally, by almost a process of  
4 elimination, one can go through and come up with what  
5 really serves as a primary functional category. The  
6 manual really indicates that the activity is the single  
7 most important factor of determining land use. So you  
8 really have to look at not just the building or the  
9 generic character of a building that, you know, a lay  
10 person might use or even an architect or anybody might  
11 use but you have to look at what really is the  
12 predominant activity or activities, plural, that go on

13 in a building in order to come up with an alphabetical  
14 classification determination.

15 Q. And from a laymen's perspective I guess you  
16 can call that building a warehouse?

17 A. You could call it a warehouse. I'm sure a  
18 lot of people do call it -- I mean, generally if you  
19 look at it you'd say it's a warehouse or the city might  
20 call it a warehouse. But calling it that generically  
21 or crudely and then going back and having to comply  
22 with the SLUCM regulations is a totally different  
23 scenario, and at that point you're required to be far  
24 more far specific.

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1 Q. In terms of -- you mentioned activity. In  
2 terms of activity at the LTD headquarters, what in your  
3 opinion of what you saw the largest activity that --  
4 the greatest activity there in terms of use of the  
5 building?

6 A. Well, the greatest activity and the area that  
7 consumed what I would call the predominant floor area  
8 was packaging and crating.



9 Q. And that's one of the classifications you  
10 have selected?

11 A. Packaging and crating services is 4922, and  
12 that was one of the two categories that went on. Motor  
13 freight forwarding would involve trucks, you know,  
14 bringing materials there and taking them away.

15 Q. And you witnessed the truck activity?

16 A. Yes, I did.

17 Q. Now, this Appendix B to the regulations has a  
18 code 637, warehousing and storage services, did you see  
19 that?

20 A. Yes.

21 Q. Why didn't you use that code for LTD?

22 A. Warehousing and storage, in addition to what  
23 you just read, also has, and it's hard to see it, a  
24 little footnote after it, No. 2, and if you find that

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1 footnote back here --

2 Q. I think it's back here farther. Let's see.

3 You were going the right way. Sorry. I

4 think it's on Page B20 of the appendix.

5           A.    So if you research that footnote, if you're  
6           inclined to do something like that under a code,  
7           warehousing and storage includes only those facilities  
8           that are used by or open to the public.

9           Q.    What's your understanding of LTD's building  
10          in that regard?

11          A.    Well, LTD's building is not really a public  
12          warehousing facility.

13          HEARING OFFICER KNITTLE:  Mr. Kolar, the document  
14          you were just referring to, is that going to be listed  
15          as an exhibit?

16          MR. KOLAR:  No, this is just -- I think anybody  
17          would -- this is what I got from the Pollution Control  
18          Board.

19          HEARING OFFICER KNITTLE:  Then it must be proper  
20          and accurate.  I just want the Board to know what we're  
21          talking about.

22          MR. KOLAR:  It's dated June '91, but this is what  
23          Dorothy Gunn sent me in August of '99 when I had a  
24          question regarding the impulsive section.  I wanted to

1 make sure I had the --

2 HEARING OFFICER KNITTLE: And this is Title 35,  
3 Subtitle H, noise, Chapter I.

4 MR. KOLAR: Yes. And it says, includes -- in  
5 terms of a regulation, includes amendments through  
6 January 28, 1987.

7 HEARING OFFICER KNITTLE: And that's fine, you  
8 identified the pages. I just wanted to make sure we  
9 knew which documents we're talking about.

10 MR. KOLAR: And the appendix attached, Appendix B,  
11 standard land use coding systems, it has numbers B-1  
12 through B-25.

13 HEARING OFFICER KNITTLE: Thank you.

14 BY MR. KOLAR:

15 Q. Mr. Kracower, again these -- using I think  
16 Mr. Knittle's copy of the Environmental Protection Act,  
17 Section 33(c)(i), you read that paragraph before today,  
18 right?

19 A. Yes.

20 Q. It says, in making its orders and  
21 determination the Board shall consider "the character  
22 and degree of injury to or interference with the  
23 protection of the health, general welfare and physical  
24 property of the people."

1                   Do you have an opinion whether LTD's  
2                   operation here at 294 and Route 22 in Bannockburn  
3                   interfered with the protection of the health, general  
4                   welfare and physical property of the people?

5                   MR. KAISER: I would object with respect to  
6                   foundation. I don't think Mr. Kracower has any  
7                   expertise which would allow him to address injury to  
8                   the health of the people.

9                   HEARING OFFICER KNITTLE: Mr. Kolar.

10                  MR. KOLAR: I think that's what land planning is  
11                  all about, that you plan so as to minimize the impact  
12                  of land uses on people. That's why you have transition  
13                  zones and things like that.

14                  HEARING OFFICER KNITTLE: Objection, overruled.

15                  BY MR. KOLAR:

16                  Q. Do you have an opinion regarding that?

17                  A. Yes.

18                  Q. And what is your opinion?

19                  A. That generally the facility does not have a  
20                  significant adverse impact to the public health, safety  
21                  or welfare.

22                  Q. And you acknowledge that the Rotis,  
23                  Rosenstocks and Webers are complaining about LTD?

24                  A. Well, I understand that they may be -- they

1 have complained about noise --

2 Q. But in terms of --

3 A. -- but in terms of area wide planning, we  
4 talked about the people and I would say there is no  
5 significant adverse impact. And it's basically the  
6 same finding that the Village of Bannockburn made when  
7 they zoned this land.

8 MR. KAISER: Objection, foundation.

9 HEARING OFFICER KNITTLE: Mr. Kolar.

10 MR. KOLAR: I don't have a response.

11 HEARING OFFICER KNITTLE: I was going --

12 MR. KAISER: Well --

13 HEARING OFFICER KNITTLE: Go ahead, Mr. Kaiser,  
14 what were you going to say?

15 MR. KAISER: I was going to say this. I mean, Mr.  
16 Kolar is going to make whatever arguments he will about  
17 what the zoning approval by Bannockburn may or may not  
18 be, but I don't think Mr. Kracower is entitled to do  
19 that.

20 HEARING OFFICER KNITTLE: I was going to sustain  
21 your objection.

22 MR. KAISER: You still will?

23 HEARING OFFICER KNITTLE: I still am.

24 Objection sustained.

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1 BY MR. KOLAR:

2 Q. From a land planning perspective when you  
3 prepare comprehensive plans for villages or look at  
4 land plans that a person brings to a village for  
5 approval, does a land planner consider if a use will  
6 interfere with the health, general welfare and physical  
7 property of the people?

8 A. I don't know about other people. I do and I  
9 have testified to it for many years. The answer is  
10 yes. It's a general factor that we look at in  
11 comprehensive planning and zoning.

12 Q. In terms of if you want an LTD facility in  
13 your community, from a land planning perspective to  
14 minimize the impact on the people generally in a  
15 community, is this an appropriate location?

16 A. Yes. As I have said before, it is  
17 appropriately located.

18 Q. Do you have an opinion if LTD provides social  
19 and/or economic value to the area, its operation there  
20 in Bannockburn?

21 MR. KAISER: Objection, foundation.

22 HEARING OFFICER KNITTLE: Mr. Kolar.

23 I can rule on it with no response.

24 MR. KOLAR: I have no response.

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1 HEARING OFFICER KNITTLE: The objection is  
2 overruled. I think this does qualify under his land  
3 planning background.

4 Do you need the question repeated, sir?

5 THE WITNESS: No, I remember it.

6 Yes, I do.

7 BY MR. KOLAR:

8 Q. And what is your opinion?

9 A. It provides both social and economic  
10 attributes and benefits to the community.

11 Q. In what regard?

12 A. Socially -- I mean, they employ somewhere in  
13 excess of 600 to 1,200 or 1,000 people, so it provides

14 an employment base, employment opportunities and  
15 economic opportunities for people who work there.

16 Secondly, I think from an economic point of  
17 view it provides a significant tax revenue about ---  
18 it's in excess of \$600,000 a year to all of the local  
19 taxing districts. And I know that -- as I recall the  
20 school districts here receive somewhere between 60 to  
21 70 percent of the tax revenue in Bannockburn. That  
22 would be the Deerfield High School and the Bannockburn  
23 Elementary School district. So the attributes socially  
24 pertain to employment base and to the various levels of

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1 local government that are receptive to receiving in  
2 excess of \$600,000 on an annual reoccurring basis.

3 And then lastly, like many nonresidential  
4 land uses, the tax revenues that go to the school  
5 districts are unique because this development does not  
6 generate any school children to the school system such  
7 as a residential development would. So that's an extra  
8 bonus for communities that have these kind of uses  
9 within them.



10 Q. In terms of real estate taxes, you would  
11 defer to the tax bill for the exact amount?

12 A. Yes.

13 Q. I think you misspoke. I would move to  
14 introduce Respondent's Exhibit 39 which is a public  
15 record of the tax bill for 1999.

16 A. Did I say 600?

17 Q. Yes.

18 A. I meant over 300. I'm sorry.

19 Q. Okay. Good.

20 HEARING OFFICER KNITTLE: Mr. Kaiser, do you have  
21 an objection to Respondent's 39 which --

22 MR. KOLAR: Which is a photocopy of the real  
23 estate tax bill for 1999 payable this year 2000.

24 HEARING OFFICER KNITTLE: The '99 real estate

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1 bill?

2 MR. KOLAR: Right.

3 HEARING OFFICER KNITTLE: Is that of LTD?

4 MR. KOLAR: Right.

5 MR. KAISER: I have no objection.

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HEARING OFFICER KNITTLE: It's admitted.

(Respondent's Exhibit No. 39  
was admitted into evidence.)

MR. KOLAR: For the record the -- I guess you  
could check my math, but I added up '99, and it totals  
304,339.68. So I'll give you that one.

BY MR. KOLAR:

Q. Did I forget anything? I don't have any  
other questions.

HEARING OFFICER KNITTLE: I don't know, Mr. Kolar.

MR. KOLAR: I always like to ask my witness that  
question.

Then I have no further questions of Mr.  
Kracower.

HEARING OFFICER KNITTLE: Mr. Kaiser, do you want  
to start now or do you want a little break?

MR. KAISER: I'd like a break because I want to  
see whether we already have in the record a document  
I'd like to show Mr. Kracower. So if we could take

2 HEARING OFFICER KNITTLE: Take an eight minute  
3 recess.

4 MR. KAISER: Sure. Thanks.

5 (Short break.)

6 HEARING OFFICER KNITTLE: Mr. Kolar, you had some  
7 clarification on your Exhibit 39?

8 MR. KOLAR: Right. Just so there is no confusion,  
9 LTD is made up of four parcels which have individual  
10 permanent index numbers, and they are 16-18-300-021,  
11 16-18-301-001, 15-13-407-001 and 15-13-400-026. And  
12 those four pin numbers, if you add up the taxes for the  
13 year 1999 payable in 2000, by my math equal 304,339.68.

14 HEARING OFFICER KNITTLE: Thank you.

15 Mr. Kaiser, you can begin your cross exam.

16 Mr. Kracower, you probably know this but  
17 you're still under oath.

18 THE WITNESS: Thank you.

19 CROSS EXAMINATION

20 BY MR. KAISER:

21 Q. Mr. Kracower, now you identified LTD as  
22 having certain social and economic value to the  
23 community, is that right?

24 A. Yes.

1 Q. And with respect to the social value, you  
2 said it employs somewhere between 600 and 1,200 people  
3 at the Bannockburn facility, correct?

4 A. Yes.

5 Q. So that's 600 to 1,200 people at the building  
6 right here in the center of Respondent's Exhibit 89,  
7 correct?

8 A. I believe that's where they go, yes.

9 Q. And the economic value you said were the tax  
10 revenues that were generated for the County of Lake,  
11 the Forest Preserve, West Deerfield Township, Village  
12 of Bannockburn, Deerfield-Bannockburn Fire and so forth  
13 as indicated on Respondent's Exhibit 39, the tax bill,  
14 right?

15 A. Yes.

16 Q. In what way would the social or economic  
17 benefits of LTD have been diminished if LTD or if  
18 Bannockburn had required LTD to build a berm on the  
19 northern boundary of LTD's property?

20 A. There would be no relationship between the  
21 social and economic benefits in a berm.

22 Q. But you could build a berm and it wouldn't  
23 reduce the commercial or economic benefits, would it?

24 A. I don't know what size berm one could build

1 there. It's pretty narrow.

2 Q. Well, this is your business, isn't it?

3 A. It was not part of my assignment to get into  
4 mitigation.

5 Q. You're a land planner, right?

6 A. Yes.

7 Q. You're a landscape architect?

8 A. Yes.

9 Q. You have designed berms before, haven't you?

10 A. Yes.

11 Q. You have been out to the LTD facility a half  
12 a dozen times, right?

13 A. Yes.

14 Q. You were out there yesterday, weren't you?

15 A. Yes.

16 Q. You parked your own car at the northern  
17 boundary of the parking lot, haven't you?

18 A. Yes.

19 Q. In order to look onto the Roti, Rosenstock  
20 and Weber properties, correct?

21 A. Yes.

22 Q. Do you have a professional opinion as you sit  
23 here today whether LTD could have constructed a noise  
24 berm along the northern boundary of their property?

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1 A. It was not part of my assignment, but I can  
2 tell you that I just designed a berm on the Pazzuti  
3 building and it wouldn't fit.

4 Q. It would not fit here?

5 A. No.

6 Q. Would a noise wall fit here?

7 A. I have no expertise in noise walls.

8 Q. Did you read any of the transcripts of the  
9 hearing from November in preparation for your testimony  
10 today?

11 A. No.

12 Q. Do you have any reason to believe  
13 construction of a noise wall, right along the northern  
14 boundary of the truck staging area, would reduce the  
15 social or economic value of LTD's Bannockburn facility?

16 MR. KOLAR: Objection, asked and answered  
17 regarding noise walls.

18 MR. KAISER: It hasn't been asked nor has it been  
19 answered.

20 HEARING OFFICER KNITTLE: You were talking noise  
21 berms before?

22 MR. KAISER: Yes, and I said along the northern  
23 property line. Now I have moved it into the area that  
24 Mr. Huff described and Mr. Zak described immediately

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1 north of the truck staging area and to the south of  
2 LTD's northern parking lot.

3 MR. KOLAR: He said noise berm, then I thought he  
4 said noise wall, and Mr. Kracower said it's not his  
5 area, noise walls.

6 HEARING OFFICER KNITTLE: Right. But I think he's  
7 moved the -- whatever the noise barrier is farther  
8 south. Is that correct, Mr. Kaiser.

9 MR. KAISER: That's correct.

10 HEARING OFFICER KNITTLE: So I'll overrule.

11 Do you need the question repeated?

12 THE WITNESS: No. I remember the question.

13 As I said, I have no expertise at all in

14 noise walls, and I have no understanding of the height  
15 of a wall or what it looks like or how it operates, and  
16 it transcends the nature of my assignment. So I'm not  
17 able to really tell you what impact something like that  
18 could have. I don't know if it's, you know, six feet  
19 high or 80 feet high.

20 BY MR. KAISER:

21 Q. Well, let me give you a few more facts, Mr.  
22 Kracower. It would be 13 feet high, and it would run  
23 from the western end of the dock area to the eastern  
24 end and make the curb towards Lake Drive there,

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1 whatever the heck it's called, that eastern road coming  
2 up along the side of the LTD facility. With that  
3 information, can you give us an opinion?

4 A. No.

5 Q. I see. So you can only give us a very  
6 limited opinion of the economic and social value as it  
7 is today, but you have no opinion as to whether a noise  
8 wall would affect LTD's social and economic value, is  
9 that right?



10           A.    That's correct because I said that, number  
11           one, I have no expertise in noise walls.  I have never  
12           seen a design for a noise wall in any of the  
13           documentation that I have or was made available to me.  
14           And, thirdly, it's such an innocuous subject that I  
15           think that in the broad context of urban planning I  
16           don't know how a noise wall would or would not have any  
17           relationship at all to the broad ramifications of tax  
18           revenues generated or an employment base.

19           Q.    You can't put that together with all your  
20           training, your 30 years of experience, your Master's  
21           degrees, you can't tie in a noise wall and give us any  
22           kind of an opinion as to whether that would affect the  
23           tax revenues from LTD's Bannockburn facility?

24           MR. KOLAR:  Objection, asked and answered.  I'd

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1           ask that the question be stricken.

2           HEARING OFFICER KNITTLE:  Sustained.

3                     But, Mr. Kaiser, I think you misunderstand  
4           his answer.

5           BY MR. KAISER:

6 Q. What part of a noise wall is innocuous to you  
7 as a land planner?

8 A. I think what I'm trying to -- what I have  
9 tried to say is that, once again, not having any  
10 expertise in it, not having any idea what you're  
11 talking about or seen any real plans from an expert  
12 other than your own testimony, the subject is so  
13 innocuous in the context of generation of tax revenue  
14 that it's like saying if I designed a building to be a  
15 triangle versus a square, would that have any impact on  
16 the tax revenue, and that has no relationship. So  
17 whether there is a noise wall or no noise wall, whether  
18 the building is square or triangle, none of those  
19 issues really have any relationship to my direct  
20 testimony pertaining to the generation of revenues,  
21 economic benefits or social benefits to a community.

22 Q. Well then how did, if you know, the County of  
23 Lake determine what the appropriate real estate tax  
24 would be for LTD?

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1 A. It was the Lake County -- it was probably the

2 township assessor that made the assessment, and it's  
3 done in a rather complicated way with building land  
4 fixtures, and that's the extent of my knowledge. The  
5 assessor would know better than I would.

6 Q. So other than knowing that \$300,000 in tax  
7 revenues is in general a good thing for the bodies who  
8 receive that money, you don't know much about real  
9 estate taxation, is that fair?

10 A. No.

11 Q. That's not fair?

12 A. No.

13 Q. Well, tell us what you know about real estate  
14 taxation.

15 A. First of all, the question is so broad, could  
16 you refine it for me?

17 Q. No.

18 A. Then I couldn't answer it. I'm sorry.

19 Q. Well, what, if any, impact does the fact that  
20 LTD's building is roughly rectangular -- it is  
21 rectangular and roughly a square, does the size of it  
22 and the shape of it as a square as opposed to a  
23 triangle have any impact on the tax revenues?

24 A. No.

1 Q. None whatsoever, right?

2 A. None.

3 Q. So why earlier did you throw out that example  
4 of I don't know if it's triangle or square, that has no  
5 relevance, does it?

6 A. I was trying to explain the innocuous nature  
7 of the question that you posed to me in the context of  
8 trying to relate it to social and economic benefits. I  
9 think it's apples and oranges.

10 Q. So one of the benefits is LTD generates tax  
11 revenues, right?

12 A. Yes.

13 Q. And you don't know or have any opinion as to  
14 whether construction of a noise wall would raise, lower  
15 or keep the tax rate on LTD's Bannockburn facility the  
16 same, correct?

17 A. That's another question.

18 Q. Do you have an answer?

19 A. If there was a physical improvement on the  
20 property, it could impact the real estate taxes.

21 Q. Would you consider a noise wall a physical  
22 improvement?

23 A. Yes.

24 Q. And what would be its impact, the

1 construction of a 13 foot noise wall along the northern  
2 boundary of the dock staging area, what might its  
3 impact be?

4 A. I have no idea.

5 Q. Okay. Fair enough.

6 Do you think any people would lose their jobs  
7 if LTD had to build a noise wall, a 13 foot high noise  
8 wall along and around the dock staging area on the  
9 north end of its building?

10 A. I don't think it would be related to jobs or  
11 employment.

12 Q. The question was, do you think anyone would  
13 lose their job at LTD's Bannockburn facility if  
14 Bannockburn were required to build a noise wall -- if  
15 LTD was required to build a noise wall along the truck  
16 dock area?

17 A. I couldn't see any employment loss due to a  
18 noise wall.

19 MR. KOLAR: Except the person that trims those  
20 hedges there, Steve.

21 BY MR. KAISER:

22 Q. Now, one of your opinions was that you

23 thought there was no significant adverse impact from  
24 LTD's operations on the health and welfare of the

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1 people, is that right?

2 A. Yes.

3 Q. During the spring of 2000, other than what  
4 you learned about health through your own experience,  
5 did you take any courses in public health?

6 A. No.

7 Q. When was the last time you took a course in  
8 public health?

9 A. I don't believe I have ever taken a course in  
10 public health.

11 Q. What was the last article you read on the  
12 health affects of sleep deprivation?

13 A. I just read an article while I was in the  
14 hospital interestingly enough about a month ago.

15 Q. And what do you recall from that article?

16 A. That inadequate sleep leads to stress.

17 Q. Do you have any reason to argue with that  
18 conclusion of the article that you read while in the

19 hospital?

20 A. It really meant nothing to me because I'm not  
21 qualified in sleep deprivation.

22 Q. All right. But it at least struck you in  
23 some way that you remember it here this afternoon?

24 A. Yes.

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1 Q. Do you have any reason to doubt that  
2 proposition, that sleep loss can lead to stress?

3 A. Once again, I have no expertise at all in  
4 sleep loss or stress other than what I have incurred  
5 myself in my 60 years of life, but I am not an expert  
6 in stress or sleep loss.

7 Q. Did you read the deposition transcripts of  
8 any of the complainants in preparation for your  
9 testimony?

10 A. I did some time ago.

11 Q. Do you recall that Karen Roti talked about  
12 noise from LTD's dock operations preventing her from  
13 falling asleep?

14 A. I don't recall that, no.

15 Q. Do you recall Karen Roti testifying that  
16 noise from LTD's dock operations awakened her, and on  
17 numerous occasions her children, and kept them from  
18 falling back to sleep?

19 A. I remember some statement to that effect.

20 Q. Those statements or that information that  
21 Karen Roti and her family members were losing sleep  
22 because of LTD's dock operations, did you take that  
23 into consideration in reaching your opinion?

24 A. Yes.

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1 Q. And in what way did you consider Karen Roti  
2 and her family's loss of sleep in generating in your  
3 opinion that LTD has no significant adverse health  
4 effect?

5 A. Well, first of all I don't know -- that's  
6 someone's statement that somebody testified to. I  
7 don't know if there actually was a loss of sleep,  
8 that's number one. Number two, I made my own on-site  
9 observations external to the property in the front yard  
10 and the rear yard. I did not go into their bedroom,



11 but I assume if I was in the rear yard, the noise would  
12 be as loud if not louder. And it's my opinion that the  
13 noises that I heard originating from the the toll road  
14 were as severe or even worse in most instances than  
15 what I heard coming from LTD. In fact on a couple of  
16 occasions when I was at LTD there was almost no noise.  
17 It was silent. And the only thing one could hear was  
18 the tollway noise. The true test of what I'm  
19 testifying is that for anybody to come to a conclusion  
20 of the severity of the plaintiff's suggestion about  
21 losing sleep would be to stand in the front yard of the  
22 property and the rear yard, as I did, and see what they  
23 hear for themselves. When I did that, I concluded that  
24 there was no significant adverse impact to that

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1 property from LTD by itself. The property --

2 Q. How many times were you in a position to hear  
3 the sound either at the rear of LTD's property, that is  
4 to the south of the Rotis, or on Wedgewood Drive to the  
5 north of the Rotis?

6 A. I have been there on five occasions, and on

7 five of the five occasions I went through that same  
8 process. And on each one I was overwhelmed by the  
9 significant noise coming from the tollway. And what I  
10 observed on each one of those occasions --

11 MR. KAISER: Move to strike. The question as how  
12 many times. He told me five. Nonresponsive.

13 HEARING OFFICER KNITTLE: Mr. Kolar.

14 MR. KOLAR: I'm going to have to hear his question  
15 again.

16 MR. KAISER: I asked how many times was he there,  
17 he said five, the rest of it was nonresponsive.

18 HEARING OFFICER KNITTLE: I'll grant the motion to  
19 strike.

20 BY MR. KAISER:

21 Q. What training do you have in the physics of  
22 sound?

23 A. None. As I testified I'm not a sound expert.

24 Q. And do you know whether sound at the level at

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1 which you were standing at the northern edge of LTD's  
2 parking lot would be perceived identically to the

3 sound -- if the sound source is LTD's dock area, do you  
4 have any basis for concluding that the way you  
5 perceived the sound at the northern portion of LTD's  
6 parking lot was identical to the way Karen Roti and her  
7 children perceived the sound from LTD's dock on the  
8 second floor of their home?

9 A. No.

10 Q. What was it you concluded was the predominant  
11 activity at LTD's Bannockburn facility?

12 A. Packaging and crating.

13 Q. And how did you determine that packaging and  
14 crating was the predominant activity?

15 A. By observation.

16 Q. Do you know how much of LTD's building in  
17 Bannockburn -- approximately what percentage of the  
18 entire square footage is devoted to storage?

19 A. There is approximately a 400,000 square foot  
20 building. There is about 50,000 square feet in  
21 administrative use, and the remainder of that is in the  
22 packaging and crating operation. And there is  
23 approximately 24 loading docks attached to it.

24 Q. Do you know what percentage of that 350,000

1 square feet remaining, after you subtract the 50,000 in  
2 administrative areas, is committed to the storage of  
3 boxes like these, LTD Exhibit 100?

4 A. Well, no, because it doesn't operate that  
5 way.

6 Q. You were in there, weren't you?

7 A. Yes.

8 Q. You saw row after row after row of shelves  
9 with boxes on them, didn't you?

10 A. Yes but they were being --

11 Q. That's enough. You answered my question, Mr.  
12 Kracower. Thank you.

13 What is the predominant basis for LTD's  
14 profits?

15 A. I'm sorry, I don't understand your question.

16 Q. Do you know whether LTD makes a profit?

17 A. No.

18 Q. Did you talk with Jack Voigt or Michael Hara  
19 about LTD's business?

20 A. What do you mean by "business"?

21 Q. What do you know LTD to do? What does LTD  
22 do, Mr. Kracower?

23 A. They have a catalog, and they sell a variety  
24 of different products on a business-to-business basis.

1 Q. Have you seen Complainants' Exhibits C-2,  
2 their Christmas 1998 catalog?

3 A. I have seen various catalogs, not the 1998  
4 one. I have seen other ones.

5 Q. Have you seen the spring of 1999 catalog,  
6 Complainants' Exhibit C-1?

7 A. I have seen several catalogs, but I can't  
8 tell you this is the exact one I have seen, but they  
9 all look very similar to me.

10 Q. Do you make any distinction between the  
11 social value of selling nicknacks and gift items and  
12 the social value of selling health care supplies?

13 A. No.

14 Q. You don't make any distinction between those  
15 two?

16 A. No.

17 Q. As long as it makes a profit it has a social  
18 value, is that right?

19 A. No. I think you're testifying for me, and  
20 that is not what I said.

21 Q. As long as they pay taxes they have social  
22 value, is that it?

23           A.    Once again, I didn't say that.  I mean, your  
24           questions are very argumentative, and I'm trying to

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1           answer them but you're suggesting that I have testified  
2           to things that I have not testified to.  So the answer  
3           to your question would be no.

4           Q.    That there is no distinction -- well, I'll  
5           withdraw the question.

6                     Do you know does LTD contract -- well, do you  
7           know what percentage of LTD's profits are derived from  
8           the sales of the goods in these and similar catalogs?

9           A.    No, that's beyond my assignment.

10          Q.    Well, your assignment was to determine  
11          whether this was a Class B or Class C land use, that  
12          was part of your assignment, wasn't it?

13          A.    To determine what the classification would  
14          be, yes.

15          Q.    And part of your methodology was determining  
16          the predominant activity of LTD at its Bannockburn  
17          facility, wasn't it?

18          A.    Yes.

19 Q. And "predominant activity" I think you would  
20 agree is a somewhat vague term, isn't it, Mr. Kracower?

21 A. I don't think it is in this case.

22 Q. But you didn't ask Mr. Hara or Mr. Voigt or  
23 find out from any source within LTD what is the  
24 predominant basis for LTD's revenues?

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1 A. That's correct, I did not use that word.

2 Q. Well, what word did you use? Did you ask  
3 them at all how do you make money?

4 A. I asked them about the nature of their  
5 business. I did not ask them to look at their books or  
6 whether they made money or lost money. It was  
7 completely irrelevant --

8 Q. Did you ask them do you --

9 MR. KOLAR: Objection, would he be allowed to  
10 finish his answer before Mr. Kaiser cuts him off and  
11 starts another question?

12 HEARING OFFICER KNITTLE: Sustained.

13 Did you pick that up? Did you pick up what  
14 he said?

15

(Record read as requested.)

16

HEARING OFFICER KNITTLE: Is there anything past

17

there?

18

THE WITNESS: There was a few more words. It was

19

completely irrelevant to the nature of my assignment.

20

BY MR. KAISER:

21

Q. Do you know who owns this parcel of property

22

on which the LTD building is located at Bannockburn,

23

Illinois?

24

A. No, I do not.

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1

Q. Do you know who leases this building which

2

houses LTD's operations?

3

A. No, I do not.

4

Q. Do you know who owns the goods that are

5

stored under roof at LTD's Bannockburn facility?

6

A. No.

7

Q. Do you know who owns the trucks that deliver

8

the goods to LTD's Bannockburn facility?

9

A. Generally -- in a generic way they are

10

outside purveyors.



11 Q. Do you know who owns the trucks that take the  
12 goods away from LTD's Bannockburn facility?

13 A. Same response.

14 Q. Do you know whether LTD stores anyone else's  
15 products under its roof at the Bannockburn facility?

16 A. Not that I'm aware of.

17 Q. So what you're aware of is that everything  
18 under the roof at the Bannockburn facility belongs to  
19 LTD, is that right?

20 A. I just said I don't know who it belongs to.  
21 You asked me that, and I said I do not know the actual  
22 legal ownership.

23 Q. Do you have any reason to believe that LTD is  
24 leasing out warehouse space in Bannockburn to third

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1 parties?

2 A. I'm not aware of that.

3 Q. Does that mean that -- well, do you have a  
4 belief as to whether they're doing that?

5 A. I have no knowledge of it.

6 Q. How would you define -- do you have your

7 SLUCM code in front of you there, Mr. Kracower?

8 (Document tendered.)

9 MR. KAISER: Thank you.

10 BY MR. KAISER:

11 Q. Respondent's Exhibit 34.

12 Freight forwarding services 4921, that's what  
13 you are telling the Board best describes LTD's  
14 predominant activity at its Bannockburn facility, is  
15 that right?

16 A. I said it was one of the predominant  
17 activities.

18 Q. And the other predominant activities was  
19 packing and crating services?

20 A. Yes.

21 Q. And you felt that those predominant  
22 activities better describe what was going on at LTD  
23 than, for instance, retail or wholesale sale of goods,  
24 right?

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1 A. Yes.

2 Q. You looked at retail sales within the SLUCM

3 code, didn't you?

4 A. Yes.

5 Q. And you concluded that LTD is not really a  
6 retail sales outfit, is it?

7 A. That's correct.

8 Q. And you looked at wholesale sales within the  
9 SLUCM code, did you not?

10 A. That's correct.

11 Q. And you concluded, well, LTD is not really a  
12 wholesaler either, right?

13 A. You're correct.

14 Q. But you would concede LTD seems to sell an  
15 awful lot of stuff, you'd grant us that, wouldn't you,  
16 Mr. Kracower?

17 A. Yes, they have a very large volume.

18 Q. And that volume comes in on Lakeside Drive,  
19 right?

20 A. Yes.

21 Q. It's unloaded into the warehouse, right?

22 A. Yes.

23 Q. And it stays there for some period of time,  
24 correct?

1 A. Yes.

2 Q. And then it leaves again, right?

3 A. Yes.

4 Q. And didn't Mr. Voigt tell you that the  
5 inventory at the LTD facility in Bannockburn turns  
6 approximately 12 times a year?

7 A. Yes, every 30 days is the way he put it.

8 Q. Right. He said things come in, and at the  
9 most they stay there every 30 days?

10 A. Yes.

11 Q. And you recall during your deposition you and  
12 I explored whether the amount of time that goods stayed  
13 there impacted whether it was viewed as a warehouse or  
14 a storage facility, is that right?

15 A. Not correct. Not exactly.

16 Q. What do you recall?

17 MR. KOLAR: Objection, relevance as to what he  
18 asked him at his dep. I think the dep is only relevant  
19 regarding impeaching.

20 MR. KAISER: I withdraw the question.

21 BY MR. KAISER:

22 Q. Do you know on the basis of your education  
23 and experience what the average time is for retail or a  
24 catalog sales house for inventory to remain on-site?

1 A. No.

2 Q. Did you make any effort to find that out or  
3 figure that out in order to render your opinion to the  
4 Board?

5 A. The answer is no, it was not relevant.

6 Q. Thank you. That is the answer.

7 Is there any place that you would look for a  
8 definition of freight forwarding services? Is there  
9 any place within the Standard Land Use Classification  
10 Manual where that term is defined?

11 A. I would not recall.

12 Q. You don't recall or you don't know?

13 A. I have not seen it, not that I remember.

14 Q. And packing and crating services, do you  
15 recall seeing a definition of that within the Standard  
16 Land Use Coding Manual?

17 A. Within the manual?

18 Q. Yes.

19 A. I would have to look at it to answer your  
20 question. I didn't understand the last two questions  
21 then.

22 Q. So you're saying that maybe it occurs within  
23 the manual, maybe there is someplace within the manual

24

where those two terms are defined?

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1           A.    Could you please ask the question again  
2           because I don't understand the question.

3           Q.    Well, you have described the predominant  
4           activities as freight forwarding services, and you see  
5           that in the footnotes there on the bottom of Page 55  
6           where certain of these terms used in the manual are  
7           defined. For instance, rapid rail transit and street  
8           railway right-of-way includes only that land which is  
9           not within the public right-of-way. The footnotes in  
10          some ways define the terms. Did you find any place  
11          within the manual where these terms, "freight  
12          forwarding services" or "packing and crating services,"  
13          were defined?

14          A.    I don't recall seeing those definitions.

15          Q.    Do you know of any other source that you or  
16          people in your field might rely upon in order to locate  
17          a working definition of freight forwarding services?

18          A.    No.

19          Q.    Does the word "services" seem to be an

20 essential part of the definition or surplusage as used  
21 in the Standard Land Use Coding Manual?

22 A. I have no opinion on that.

23 Q. You have no opinion on that?

24 A. That's correct.

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1 Q. Does LTD provide freight forwarding services  
2 to any third party?

3 A. What do you mean by a third party?

4 Q. Someone other than LTD.

5 A. Yes.

6 Q. To whom?

7 A. I can't tell you that. I don't know. I  
8 don't know where the truck goes. The truck leaves the  
9 premises with product in it that have been packaged and  
10 crated, and it is then distributed. I do not know  
11 where it goes once it leaves the premises other than  
12 it's a business to business transaction.

13 Q. Do you know who owns the goods when they  
14 leave on the truck off of LTD's facility?

15 A. The customers, as I recall Mr. Voigt

16 explaining to me, and as I recall from Mr. Hara's  
17 deposition, have an account with LTD. It is charged to  
18 their account, the product then leaves the premises,  
19 and, I imagine, after that they're appropriately  
20 invoiced.

21 Q. Well, do you know when title to those goods  
22 changes from LTD to the customer?

23 A. I would think that's more of a legal question  
24 than a planning question, so I could not answer that.

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1 Q. You don't know?

2 MR. KOLAR: Objection, that calls for a legal  
3 conclusion. Probably a UCC Article II expert would  
4 have to answer that.

5 HEARING OFFICER KNITTLE: I'll sustain it, but  
6 he's already stated that he does not know the answer to  
7 that question.

8 MR. KOLAR: Okay.

9 BY MR. KAISER:

10 Q. To whom does LTD supply packing and crating  
11 services?



12 A. Their customers.

13 Q. And that's your basis for determining that  
14 LTD -- each of these little customers then, those are  
15 the people to whom they provide the service?

16 A. Yes.

17 Q. LTD is not providing goods to them, they're  
18 not providing them the Spirited Hand Painter Holder  
19 that's so realistically detailed, the Woodland Santa  
20 Planter -- is that LTD's product?

21 A. That's one of the items that is packaged and  
22 crated.

23 Q. Well, what is LTD selling, the product or the  
24 service?

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1 A. Both.

2 Q. Can you describe for the Board your role in  
3 preparing Appendix B to the noise -- the Board's noise  
4 pollution regulations?

5 A. I don't understand the question. I'm sorry.

6 Q. Could you describe to the Board your role in  
7 creating Appendix B to the Board's noise regulations?

8           A.    I did not create Appendix B to the noise  
9 regulations.

10           Q.    So I take it you didn't have a role in the  
11 preparation of Appendix B?

12           A.    You would have to define for me what you mean  
13 by "Appendix B."

14           Q.    Well, that's the portion of the regulations  
15 that refers to the Standard Land Use Coding Manual,  
16 isn't it?

17           A.    I would have to look. I don't recall. I  
18 don't remember all the appendices.

19           Q.    Did you look at any legislative history with  
20 respect to the Board's noise pollution regulations in  
21 preparing your opinion?

22           MR. KOLAR:  Objection, the regulations are not  
23 legislative, they're administrative regulations.

24           HEARING OFFICER KNITTLE:  Sustained.

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1           BY MR. KAISER:

2           Q.    Did you look at any of the administrative  
3 history with respect to the promulgation of the Board's

4 noise regulations in preparing your opinion?

5 A. No, it was not available to me.

6 Q. What efforts did you make to get that  
7 information, the administrative history?

8 A. I probably would not have reviewed it if it  
9 was available. It was irrelevant. I would rather look  
10 at the regulations rather than the legislative history  
11 which would be meaningless to me because they are  
12 not -- the administrative regulations that we use are  
13 something to be implemented, the legislative history is  
14 an interesting anecdote.

15 Q. You have never in the course of your 30 years  
16 practice looked at a preamble to regulations or looked  
17 at legislative or administrative history with respect  
18 to regulations in order to better implement those  
19 regulations?

20 A. I have learned many years ago as a federal  
21 official, quite active in legislative matters, that the  
22 legislation itself is a document to be evaluated and  
23 implemented and that the legislative history is  
24 absolutely meaningless in the context of putting

1 regulations or law into effect. Because if we went by  
2 legislative history, each one of us would have a  
3 different interpretation of what rules and regulations  
4 are. That's why they end up in specific defined  
5 guidelines even though they may be ambiguous in part.

6 Q. And if they're ambiguous in part, where does  
7 someone like yourself go for clarification?

8 A. I rely on my training and my experience and  
9 whatever libraries or documentation I have available to  
10 me that I use on a standard basis in my office.

11 Q. But you don't consider administrative history  
12 of the regulations you're seeking to interpret part of  
13 that working body of information that you would rely  
14 on?

15 A. That's correct.

16 Q. Have you ever read any United States Supreme  
17 Court opinions where the Court has relied on  
18 legislative history in order to resolve a problem of  
19 statutory or regulatory interpretation?

20 A. Opinions of the United States Supreme Court  
21 periodically come to my office through our planning  
22 journals but I think they would be maybe more relevant  
23 to somebody like yourself in the legal profession than  
24 they would be to me as a planner working on more

1           mundane matters. I would be more concerned about what  
2           the opinion of the Court is versus how the Court got to  
3           that opinion.

4           Q.    Have you ever seen an invoice that LTD sends  
5           its customers?

6           A.    No.

7           Q.    Do you know whether LTD breaks down on the  
8           invoice a certain cost for the goods and a certain cost  
9           for the freight forwarding, packaging and crating  
10          services?

11          A.    Since I haven't seen an invoice, I couldn't  
12          answer your question.

13          Q.    You didn't ask Mr. Voigt whether LTD  
14          typically invoiced for the crating and packaging  
15          services as a separate line item?

16          A.    Again, it was not relevant to a land use  
17          determination.

18          Q.    You didn't ask Mr. Hara whether LTD invoiced  
19          separately for the packing and crating services you  
20          claim they provide their customers?

21          A.    I think I answered that twice and the answer  
22          is no.

23          MR. KAISER: Can we see the zoning map again, Mr.

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1 MR. KOLAR: Why certainly.

2 BY MR. KAISER:

3 Q. We're looking now at Respondent's Exhibit 90,  
4 which you identified earlier as the Village of  
5 Bannockburn zoning map. You can see that from where  
6 you're seated, can't you, Mr. Kracower?

7 A. Partially, yes.

8 Q. And I'm looking in the upper left-hand corner  
9 where it appears to be an "O," office research  
10 district, in the far northwestern corner of  
11 Bannockburn, is that where LTD's facility is located?

12 A. Yes.

13 Q. Do you see any manufacturing zones along the  
14 tollway within the Village of Bannockburn?

15 A. No.

16 Q. So LTD is located within this office research  
17 district, is that correct?

18 A. I can't see the legend from here but if  
19 that's what the "O" means, the answer the yes.

20 Q. Yes, and I'll represent that's what the  
21 legend says, office research district.

22 When you lectured at Northwestern University,  
23 was the subject of your lecture interpretation and  
24 application of the Standard Land Use Coding Manual?

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1 A. No.

2 Q. When you did work for the many municipalities  
3 you listed including Glenview, Highland Park, Cicero,  
4 Buffalo Grove, Des Plaines, Addison, Batavia,  
5 Bensenville, did any of your services to those  
6 municipalities require you to interpret or apply the  
7 Standard Land Use Coding Manual?

8 A. No.

9 Q. The courses you took at the University of  
10 Wisconsin in Madison, did any of those assign to you as  
11 assigned reading the Standard Land Use Coding Manual?

12 A. That's an interesting question. I remember  
13 that there was a professor by the name of Henry Fagen  
14 at the University of Wisconsin who was in one of my  
15 courses. And I remember that he was one of the authors

16 or one of the people who worked on the Standard Land  
17 Use Coding Manual.

18 But recognizing that I began college in 1958,  
19 I'm 60 years old, and it's the year 2000, my recall  
20 isn't that great as to -- I'd probably have trouble  
21 telling you what courses I took let alone whether or  
22 not I looked at the Standard Land Use Coding Manual.

23 Q. Would you say that interpretation and  
24 application of the tables within the Standard Land Use

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1 Coding Manual is closer to an art or a science?

2 A. What I remember from graduate school is that  
3 planning is both an art and a science, and I think that  
4 that would be applicable here too.

5 Q. And with art it's been said beauty is in the  
6 eye of the beholder, have you heard that expression?

7 A. Yes.

8 Q. And could it also be said that with respect  
9 to the proper classification using the Standard Land  
10 Use Classification Manual that the proper  
11 classification or an appropriate classification is also



12 open to the interpretation of the person called upon to  
13 render the opinion?

14 A. No, that would be the science part of it.

15 Q. Please distinguish for me which parts of your  
16 analysis were the scientific portion that could yield  
17 only one correct answer and which parts were the  
18 interpretive elements?

19 A. Well, there is an interpretive element I  
20 think to all of it, but it's not that ambiguous or it's  
21 not that it would lead one to dramatically stray. And  
22 I think that the science part of it is the fact that  
23 through a winnowing down or a deductive reasoning  
24 process one can come up with the answers that I have

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1 come up with. So if experience and science go hand and  
2 hand, and I think they do, I think that any planner  
3 looking at this, although I guess I'm the only planner  
4 doing it, but that any planner looking at this would  
5 come up with the same conclusions that I have come up  
6 with.

7 Q. Any planner? You don't think there is a

8 single planner who would look at it and come up with a  
9 different classification?

10 A. I have testified to what I believe to be the  
11 truth, and if there is somebody else that would like to  
12 testify, they'd be welcome to do the same.

13 Q. And you would admit, wouldn't you, Mr.  
14 Kracower, that someone could describe this differently  
15 and not be necessarily wrong about the way in which  
16 they described it?

17 MR. KOLAR: I object to that and probably should  
18 have objected to a similar question to the appraiser in  
19 that there is no land planner on the other side. So I  
20 think it's an improper method of getting another land  
21 planning opinion in when they didn't hire a land  
22 planner. It calls for speculation as well.

23 HEARING OFFICER KNITTLE: I'll sustain it on  
24 calling for speculation.

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1 BY MR. KAISER:

2 Q. Do most land planners in the Lake County area  
3 charge \$285 an hour for their services?

4 A. I have no idea what other people charge.

5 Q. Do you have any idea how much you have  
6 charged LTD to date for your opinion?

7 A. No. I actually do not even review bills in  
8 my office unless there is a problem with one.

9 Q. Do you think you would be sitting here today  
10 being paid \$285 an hour by LTD if you had told LTD in  
11 the spring of 1999 that under this SLUCM code they're  
12 actually a Class B land use?

13 MR. KOLAR: Objection, argumentative.

14 HEARING OFFICER KNITTLE: Sustained.

15 BY MR. KAISER:

16 Q. Have you ever spent time on the deck located  
17 at the southwest corner of Henry and Leslie Weber's  
18 property?

19 A. No.

20 Q. Have you ever spent time in Paul  
21 Rosenstock's kitchen?

22 A. No, I have never been in the gentleman's  
23 kitchen.

24 Q. Would you consider a falling light fixture a

1 threat to human health?

2 A. A falling light fixture? Could you tell me  
3 where or what?

4 Q. Yes, a light fixture suspended from the  
5 ceiling of Paul Rosenstock's kitchen and eating area.  
6 If you were seated at the table beneath that light  
7 fixture and it fell, would that pose a risk to human  
8 health?

9 A. It's nothing I testified to, but I assume if  
10 a light fixture -- I don't have any expertise in his  
11 kitchen, I have no expertise in the light fixture or  
12 any facts about what you're talking about. The only  
13 thing I can tell you is I imagine if a light fixture  
14 fell on somebody, it would certainly not be beneficial  
15 to their health.

16 MR. KAISER: Thank you. I have no further  
17 questions.

18 HEARING OFFICER KNITTLE: Mr. Kolar.

19 MR. KAISER: Wait. Sorry. I spoke too soon. I  
20 have a few quick questions if I may.

21 HEARING OFFICER KNITTLE: Go ahead.

22 BY MR. KAISER:

23 Q. I want to show you what's previously been  
24 marked for purposes of identification as Complainants'

1 Exhibits 60, 62, 63, 64 and I'm marking --

2 MR. KOLAR: Do you have copies for me?

3 MR. KAISER: You have been given copies.

4 HEARING OFFICER KNITTLE: I think you were up to  
5 65.

6 MR. KAISER: -- Complainants' 66.

7 (Complainants' Exhibit No. 66  
8 was marked for  
9 identification.)

10 BY MR. KAISER:

11 Q. With respect to Complainants' 60, it's a  
12 building permit preapplication for zoning and  
13 architectural review approval, Village of Bannockburn.  
14 Have you ever seen this document before, Mr. Kracower?

15 A. I don't recall.

16 Q. You note that it appears that the applicant  
17 is LTD Commodities, Inc.?

18 A. Yes.

19 Q. And that they describe their interest in the  
20 subject property as a warehouse addition?

21 A. Yes.

22 Q. Do you see that term?

23 A. Yes.

24 MR. KOLAR: I don't have copies of these. Can I

1 have a moment to look at what you're showing him?

2 MR. KAISER: Sure.

3 MR. KOLAR: Because I was not given copies of  
4 these exhibits.

5 (Pause in proceedings.)

6 HEARING OFFICER KNITTLE: Mr. Kolar, I have all  
7 these admitted except C-61.

8 MR. KAISER: Okay.

9 HEARING OFFICER KNITTLE: Which was reserved, and  
10 C-65.

11 MR. KOLAR: There is no 61 here.

12 HEARING OFFICER KNITTLE: I didn't realize he  
13 hadn't included it. I thought he went from 60 to 64.

14 MR. KAISER: Let's see what 61 is.

15 HEARING OFFICER KNITTLE: 61 is a Bannockburn  
16 ordinance.

17 MR. KOLAR: What he has here is 60, 62, 63, 64 and  
18 a new one of 66.

19 HEARING OFFICER KNITTLE: Right. I have got 66.  
20 60, 62, 63 and 64 are all previously admitted.

21 I wanted to tell you on 65 --

22 MR. KAISER: Which is the Schomer dep transcript.

23 HEARING OFFICER KNITTLE: -- I think we admitted

24 that.

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1 MR. KAISER: I think so. That was --

2 HEARING OFFICER KNITTLE: I can't read my --

3 MR. KAISER: I believe we stipulated to that the  
4 first day.

5 HEARING OFFICER KNITTLE: Is that your  
6 understanding as well, Mr. Kolar?

7 MR. KOLAR: Well, that's certainly something that  
8 is part of the record, but there are objections in  
9 there that would have to be resolved.

10 HEARING OFFICER KNITTLE: Right, I have "subject  
11 to objections."

12 MR. KOLAR: Right, that's accurate then subject to  
13 you looking at the objections.

14 HEARING OFFICER KNITTLE: Right, we haven't done  
15 that yet, right?

16 MR. KOLAR: Right.

17 HEARING OFFICER KNITTLE: I just can't read my  
18 note whether it's admitted or not.

19 MR. KOLAR: I thought you were going to do that on  
20 your own.

21 HEARING OFFICER KNITTLE: I think I probably will  
22 at some point.

23 MR. KOLAR: I have looked at them.

24 HEARING OFFICER KNITTLE: Go ahead, Mr. Kaiser.

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1 MR. KAISER: Thank you.

2 BY MR. KAISER:

3 Q. All right. Just to pick up the thread here,  
4 Mr. Kracower, I understand that you do not recall  
5 seeing Complainants' Exhibit 60, this building permit  
6 preapplication for zoning and architectural review  
7 approval, is that right?

8 A. Yes.

9 Q. Do you recall seeing C-62 which is a letter  
10 from Lohan & Associates to David Lothspeich,  
11 L-o-t-h-s-p-e-i-c-h, of the Village of Bannockburn  
12 dated February 21, 1994?



13 A. No.

14 Q. You have never seen that or you don't recall  
15 seeing it?

16 A. I just don't recall seeing it. I don't  
17 remember that name.

18 Q. All right. And, again, that talks about the  
19 LTD warehouse expansion, do you see that?

20 A. Yes, I do.

21 Q. C-63, a letter again from Lohan & Associates  
22 to Mr. Lothspeich dated February 21, 1994, have you  
23 ever seen that?

24 A. Not that I recall, no.

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1 Q. C-64, Village of Bannockburn ordinance, do  
2 you recognize that?

3 A. I may have seen this -- I think I have seen  
4 this before.

5 Q. In connection with the preparation of your  
6 opinions in this case?

7 A. Yes.

8 Q. Do you recall about how much time you spent

9 looking at this document, Village of Bannockburn's  
10 ordinances?

11 A. Well, I am not certain I have seen it. There  
12 were several rezonings of the property dating back to  
13 1977, and I don't know if that's one of them that I  
14 have reviewed. I can't be that certain.

15 Q. But you see there in the first paragraph that  
16 they refer to LTD is the occupant of a warehouse and  
17 office facility?

18 A. Yes, I see that.

19 Q. Do you recall seeing anywhere in this  
20 document reference to LTD operating a freight  
21 forwarding service at the Bannockburn location?

22 MR. KOLAR: This document is in evidence?

23 HEARING OFFICER KNITTLE: Yes.

24 MR. KOLAR: Then I object. It speaks for itself.

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1 People can read it and see if it says that.

2 HEARING OFFICER KNITTLE: Sustained.

3 BY MR. KAISER:

4 Q. And I'm just asking, can you, Mr. Kracower,

5 show us anywhere in that document where it describes  
6 LTD's operations as either freight forwarding services  
7 or packing and crating services?

8 MR. KOLAR: Same objection.

9 HEARING OFFICER KNITTLE: Mr. Kaiser, how is that  
10 different than --

11 MR. KAISER: I mean, if he wants to just say, "No,  
12 I can't," then we're done, then Mr. Kolar can find it  
13 and bring it to the Board's attention during his  
14 response brief. I don't think it's in there.

15 THE WITNESS: It talks about loading areas.

16 BY MR. KAISER:

17 Q. Does it use the term "crating and packing  
18 services" or "freight forwarding services"?

19 HEARING OFFICER KNITTLE: I'm going to sustain the  
20 objection. I think the document will speak for itself;  
21 and if it does say so, the Board will take note of  
22 that.

23 MR. KAISER: Okay. Very good.

24

1 BY MR. KAISER:

2 Q. Have you seen this letter from Mr. Kolar to  
3 the Village of Bannockburn dated May 4, 1998 and  
4 identified for the record as Complainants' Exhibit 66?

5 A. Yes, I have seen this.

6 Q. Did you read that in preparation of your  
7 opinions that you offered here today?

8 A. Yes.

9 Q. Do you see here on Page 1 that Mr. Kolar  
10 refers to FMC Corporation built an approximately  
11 155,000 square foot warehouse with offices at the north  
12 half of the LTD property?

13 A. Uh-huh, yes, I see that.

14 Q. At what point in your preparation and  
15 analysis did you review Mr. Kolar's letter of May 4,  
16 1998?

17 A. Rather early on.

18 MR. KAISER: Thank you. I have no further  
19 questions.

20 HEARING OFFICER KNITTLE: Mr. Kracower, do you  
21 want to take a break or --

22 THE WITNESS: No, I'm fine.

23 HEARING OFFICER KNITTLE: Mr. Kolar, do you need  
24 any time?

1 MR. KOLAR: No, I'd like to go ahead.

2 HEARING OFFICER KNITTLE: Let's do the redirect.

3 REDIRECT EXAMINATION

4 BY MR. KOLAR:

5 Q. In that letter of May 4, 1998 did you also  
6 read the reference to the April 20, 1997 letter by Paul  
7 Schomer?

8 A. Yes.

9 Q. And you read that Paul Schomer was  
10 Bannockburn's noise consultant?

11 A. Yes.

12 Q. And in that letter of April 20, 1997 he  
13 agreed with you that LTD should be a C, as in Charles,  
14 classification?

15 A. That's correct.

16 Q. Again, in terms of that 400,000 square feet  
17 thing in Bannockburn, generally or generically, it's a  
18 warehouse, correct?

19 A. People such as yourself, and with all due  
20 respect are lawyers, and there is another gentleman  
21 here who's an architect who wrote a letter, Lohan  
22 Company and others, there is nothing wrong calling the  
23 entire structure a warehouse in a generic sense. And  
24 that's commonly done, and I don't believe it's

1           inappropriate. In terms of looking at the SLUCM code,  
2           in having to be more definitive and more scientific,  
3           it's necessary to break things down in a much more  
4           definitive manner, which I have done and which  
5           everybody who uses that SLUCM code is compelled to do.  
6           So you can't say to somebody that they're dramatically  
7           wrong when they talk in broad terms about a warehouse.  
8           But the SLUCM code says you must look inside the  
9           warehouse and look at the specific uses and the  
10          predominant uses that are going on. And it also says  
11          you must look at those areas that have, you know, the  
12          predominant floor area and what's happening in there.  
13          And that's when a person is compelled to make a more  
14          specific land use determination.

15                 Q. Where we are today, we can call this a  
16                 building, right?

17                 A. We are in an office building today but there  
18                 are all kinds of office buildings. We happen to be in  
19                 a public governmental building or we could be in a  
20                 courthouse or we could be in an insurance building that

21 is labor intensive, but there are all types of office  
22 buildings, there are all types of so-called warehouses,  
23 there are all types of manufacturing plants, there are  
24 all types of housing, but housing can be single family,

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1 multiple family townhomes. So that really is the  
2 purpose of the SLUCM code. And if you read the  
3 introduction of the code, it goes through the analogy  
4 of how at that time HHFA and the Bureau of Highways  
5 felt it was necessary to be more -- for cities to be  
6 more specific in land use determinations.

7 Q. In terms of that SLUCM code, did you read in  
8 my May 4, 1998 letter that it was published in 1969, at  
9 least according to my letter?

10 A. Yes.

11 Q. Were you in college in 1969?

12 A. No, I was not.

13 Q. Well, if that's true, it would have been  
14 published after you completed your education?

15 A. That would be correct. Maybe that's why I  
16 never read it.

17 Q. Could be.

18 Let me ask you some of the follow-ups that  
19 you weren't able to answer in cross examination.

20 You mentioned you were at LTD on five  
21 occasions, correct?

22 A. Yes.

23 Q. And on four of those occasions what did you  
24 notice regarding the tollway?

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1 A. On four of the five occasions I noticed that  
2 the noise from the tollway was equal to, if not more,  
3 severe than the generation of noise from the  
4 truckloading docks at LTD.

5 Q. Would you say that on any of those four  
6 occasions you were overwhelmed by the noise of the  
7 tollway?

8 A. On four of those occasions, when I parked my  
9 car and walked in front of the plaintiffs' three homes,  
10 I was actually overwhelmed by the significance of the  
11 noise from the tollway. I never anticipated that the  
12 noise would be that severe.



13 Q. Mr. Kaiser mentioned or discussed with you  
14 whether a berm could be built between LTD and the  
15 complainants' properties, do you recall those  
16 questions?

17 A. Yes.

18 Q. A good time for a landscape architect or land  
19 planner to look at a berm would have been before this  
20 whole subdivision was platted, correct?

21 MR. KAISER: Objection, leading.

22 HEARING OFFICER KNITTLE: Sustained.

23 BY MR. KOLAR:

24 Q. When would have been a good time for someone

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1 such as yourself to analyze a type of berm to put in  
2 between LTD Commodities and the residential use in Lake  
3 Forest to the north?

4 MR. KAISER: Objection, relevance.

5 HEARING OFFICER KNITTLE: Overruled.

6 THE WITNESS: It would have been at the time the  
7 subdivision to the north of LTD was designed and  
8 platted.

9 BY MR. KOLAR:

10 Q. And the berm that you described along 294 by  
11 the new subdivision to the north, Conway Farms --

12 A. Yes.

13 Q. -- about how high is that berm?

14 A. I can only estimate that that would be  
15 somewhere in the 20 foot range or more. It's a very  
16 high berm.

17 Q. Could you fit a berm like that between LTD  
18 and the complainants' properties at that width and that  
19 height?

20 A. No because berms normally should be in the  
21 range of three feet to one, and it would not physically  
22 fit.

23 MR. KAISER: I'm going to object to this line of  
24 questioning. It wasn't disclosed.

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1 HEARING OFFICER KNITTLE: Overruled. This was  
2 covered on cross examination.

3 BY MR. KOLAR:

4 Q. And in terms of social and economic value of

5 LTD to the community, it's your testimony that the real  
6 estate taxes generated is one aspect of that value,  
7 correct?

8 A. Yes.

9 Q. Another aspect would be jobs created,  
10 correct?

11 A. Yes, that's what I said.

12 Q. But you're not saying here today that those  
13 two things are only things that go into determining the  
14 social and/or economic value of a business, is that  
15 accurate?

16 A. No, they're -- but I think the employment  
17 base, the tax revenue and -- I mean, there are other  
18 factors that I did not discuss such as secondary  
19 sources of revenue. In other words. If you have in  
20 excess of 60 employees, which they do, it's possible  
21 that they buy goods and services in the community. So  
22 there are other revenues and attributes that go into  
23 not just LTD but all of the nonresidential uses in that  
24 development.

1 Q. Why is the length of time that LTD's  
2 inventory would be in the warehouse before it's packed,  
3 crated and shipped to their customers, why is that not  
4 relevant to you? You had indicated that in an answer  
5 to Mr. Kaiser.

6 A. I don't know whether it's 10 days, 30 days or  
7 50 days has any relationship to determining the  
8 classification of land use. I mean, once you know what  
9 the use is, the time element is of no significance.

10 Q. As you sit here today do you know if LTD  
11 Commodities includes in the cost it charges its  
12 customers for its products, its labor cost which would  
13 include picking product, packing product and shipping  
14 it?

15 A. I would only -- I don't know as a fact, I can  
16 only assume it would.

17 Q. You don't know if there is a separate line  
18 item for packing and crating --

19 A. No.

20 Q. -- or if it's built into the cost of selling  
21 the products, right?

22 A. No, I had indicated I'm not familiar with  
23 their invoicing system or their accounting system.

24 Q. You know generally as a land planner that

1 businesses try to price their goods or services so that  
2 they'll make a profit?

3 A. I know I do that in my business. I assume  
4 that's pretty much the American way unless it's  
5 not-for-profit.

6 MR. KOLAR: I don't have any other questions.

7 MR. KAISER: Just a few.

8 HEARING OFFICER KNITTLE: Recross.

9 RE CROSS EXAMINATION

10 BY MR. KAISER:

11 Q. Mr. Kracower, how often do you think or do  
12 you know any of LTD's customers call up LTD and say,  
13 "We don't want to buy your goods, we just want you to  
14 pack and ship a few things of our own"? How often do  
15 you think that happens?

16 A. I don't understand. I don't know what you  
17 mean "of our own."

18 Q. Things that don't belong to LTD.

19 Say I'm one of LTD's customers, in the past I  
20 bought the Santa Planter from them. I paid them the  
21 invoice they sent me. Now I want them to store in  
22 their warehouse and then ship to me a lawn mower, how  
23 often do you suppose that happens?

24 A. I don't believe they sell lawn mowers.

1 Q. Well, say I ask them to send me a nice towel  
2 set but not one of the towel sets that LTD sells  
3 through their catalog, do you think that happens very  
4 often, Mr. Kracower?

5 A. I have no idea.

6 Q. How often do you think a customer of LTD's  
7 calls up and says, you know, "I just need to store a  
8 few of my own goods in your warehouse, give me 10  
9 square feet in the back"? How often do you think that  
10 happens?

11 MR. KOLAR: If at all.

12 BY MR. KAISER:

13 Q. If at all?

14 A. I have -- I just have no understanding of  
15 what you're even asking me to be honest at this stage.

16 Q. You're telling the Board that LTD provides  
17 packing and crating services to its customers. I'm  
18 asking you how often do those customers, to whom LTD is  
19 providing packing and crating services, how often do  
20 they call up LTD and say, "I'd like you to pack and  
21 crate products of my own, something I'm manufacturing"?

22           A.    I have no idea.  I think you're best off  
23 asking somebody from LTD if that ever happened.

24           Q.    Did you ever ask anyone at LTD whether that

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1           happened?

2           A.    I couldn't even contemplate that would  
3 happen, so the answer is no.

4           Q.    And you couldn't contemplate that because  
5 that's not what LTD does, right?

6           A.    I don't believe that's predominantly what  
7 they do.

8           MR. KAISER:  Thank you.  I have no further  
9 questions.

10          MR. KOLAR:  No questions.

11          HEARING OFFICER KNITTLE:  Thank you, sir.  You can  
12 step down.

13                    Let's go off the record.

14                                    (Off the record.)

15          HEARING OFFICER KNITTLE:  Mr. Kaiser, you wanted  
16 to move for the admission of C-66?

17          MR. KAISER:  Yes, I would ask that the Board to

18 receive Complainants' Exhibit 66.

19 HEARING OFFICER KNITTLE: Mr. Kolar, do you object  
20 to that.

21 MR. KOLAR: No.

22 HEARING OFFICER KNITTLE: That's admitted.

23 (Complainants' Exhibit No. 66  
24 was admitted into evidence.)

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1 HEARING OFFICER KNITTLE: That's it for today.

2 We'll see you back here tomorrow.

3 MR. KOLAR: 9:30 tomorrow?

4 HEARING OFFICER KNITTLE: 9:30.

5 (Which were all the  
6 proceedings had in the  
7 above-captioned cause at this  
8 time.)

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1 STATE OF ILLINOIS )  
 ) SS.  
2 COUNTY OF C O O K )

3 I, DEBORAH T. BRAUER, Certified Shorthand  
4 Reporter and Notary Public in and for the County of  
5 Lake, State of Illinois, do hereby certify that I  
6 caused to be reported in shorthand and thereafter  
7 transcribed the foregoing transcript of proceedings.

8 I further certify that the foregoing is a  
9 true, accurate and complete transcript of my shorthand

10 notes so taken as aforesaid; and further, that I am not  
11 counsel for nor in any way related to any of the  
12 parties to this action, nor am I in any way interested  
13 in the outcome thereof.

14 IN TESTIMONY WHEREOF, I have hereunto set my  
15 hand and affixed my notarial seal this 6th day of June,  
16 2000.

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Deborah T. Brauer, CSR

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