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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

|                          |            |
|--------------------------|------------|
| IN THE MATTER OF:        | )          |
|                          | )          |
| DAVID & SUSI SHELTON,    | )          |
| Petitioners,             | )          |
|                          | )          |
| vs.                      | )PCB 96-53 |
|                          | )VOLUME 5  |
| A. STEVEN & NANCY CROWN, | )          |
|                          | )          |
| Respondents.             | )          |

REPORT OF PROCEEDINGS taken in the above-entitled matter, taken before MS. JUNE EDVENSON, Hearing Officer for the Illinois Pollution Control Board, commencing on the 16th day of July, A.D., 1996 at the offices of the Pollution Control Board, 100 W. Randolph Street, Chicago, Illinois, at approximately 9:00 a.m.

1           PRESENT:

2

3           FOR THE PETITIONERS:       THE JEFF DIVER GROUP  
4   BY: MR. JEFFREY DIVER  
5   MR. STEVEN KAISER  
6   45 South Park Blvd-270  
7   Glen Ellyn, IL 60137

8

9           FOR THE RESPONDENTS:       GOULD & RATNER  
10                                       BY: MR. RICHARD ELLEDGE  
11                                       MR. ROBERT CARSON  
12                                       222 N. LaSalle Street  
13                                       Chicago, IL 60601

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| 3 | DAVID SHELTON | 808       |     |     |     |
| 4 |               |           | 925 |     |     |

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|----|---------------------|-----------------|-------|-------|--|
| 5  |                     | E X H I B I T S |       |       |  |
| 6  |                     |                 | OFR'D | REC'D |  |
| 7  | Exhibit No. 48      | 825             |       | 825   |  |
| 8  | Exhibit No. 47      | 839             |       | 840   |  |
| 9  | Exhibit No. 107     | 841             |       | 842   |  |
| 10 | Exhibit No. 45      | 843             |       | 843   |  |
| 11 | Exhibit No. 20      | 847             |       | 848   |  |
| 12 | Exhibit No. 43 A, B | 852             |       | 852   |  |
| 13 | Exhibit No. 19      | 853             |       | 854   |  |
| 14 | Exhibit No. 108C    | 873             |       | 875   |  |
| 15 | Exhibit No. 7       | 879             |       | 882   |  |
| 16 | Exhibit No. 35      | 885             |       | 886   |  |
| 17 | Exhibit No. 41      | 891             |       | 891   |  |
| 18 | Exhibit No. 37      | 897             |       | 897   |  |
| 19 | Exhibit No. 8       | 898             |       | 898   |  |
| 20 | Exhibit No. 28      | 899             |       | 899   |  |
| 21 | Exhibit No. 22      | 905             |       | 905   |  |
| 22 | Exhibit No. 111     | 910             |       | 910   |  |

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1 HEARING OFFICER: Welcome. We will  
2 resume proceedings in the case PCB 96-53, the  
3 Sheltons versus the Crowns. And, we're in the  
4 midst of the direct testimony of Mr. David Shelton  
5 for Complainant's case in chief.

6 MR. KAISER: Thank you very much, Madam  
7 Hearing Officer. Good morning, Mr. Shelton.

8 MR. CARSON: Would it be okay if I raised  
9 a scheduling issue, just because when I saw Mr.  
10 Diver walk out, I thought perhaps there's another  
11 witness coming. We're trying to determine if  
12 we'll be starting our case this afternoon.

13 MR. KAISER: I believe you will be.

14 MR. CARSON: So, you'll probably be done  
15 by noonish, you think?

16 MR. KAISER: Yes.

17 MR. CARSON: Thank you.

18 HEARING OFFICER: You may proceed.

19 MR. KAISER: Good morning, Mr. Shelton?

20 A. Good morning.

21 MR. KAISER: Mr. Shelton, you'll recall  
22 when we adjourned--

23 HEARING OFFICER: Excuse me, perhaps we  
24 should have the re-swearing of the witness.

1 (Witness sworn)

2 D A V I D S H E L T O N,

3 after having been first duly sworn on oath,

4 deposes and testifies as follows:

5 DIRECT EXAMINATION

6 BY MR. KAISER:

7 Q. Mr. Shelton, you'll recall that when we  
8 adjourned late in the afternoon last Friday, we  
9 were reviewing a letter dated October 11th, 1993  
10 which you had sent to Steven Crown. Do you recall  
11 just generally that that was where we were in your  
12 testimony?

13 A. Yes, I do.

14 Q. And that we'd covered issues like the  
15 test firing of the Crown air conditioner unit in  
16 September of 1993 and those matters?

17 A. Yes.

18 Q. And now, we're into October of 1993.  
19 And, I want to draw your attention to the first  
20 paragraph of the letter dated October 11th, 1993  
21 and previously identified for the record as  
22 Exhibit 49. And, it states with reference to the  
23 air conditioner as follows: "The noise is  
24 unbelievable. It penetrates our entire house,

1 even with closed windows. We actually have  
2 vibration from it in our windows and china. And,  
3 the sound echos throughout our backyard." Was  
4 that, in fact, a true statement on or about  
5 October 11th, 1993 concerning the sound emanating  
6 from the Crown air conditioning unit?

7 MR. CARSON: Object to the form of the  
8 question as leading.

9 HEARING OFFICER: Could you rephrase the  
10 question?

11 MR. KAISER: Yes, I could.

12 BY MR. KAISER:

13 Q. Did you write that, essentially, the  
14 first paragraph of this letter and, in fact, did  
15 you write that entire letter?

16 A. Yes, I did.

17 Q. And, are the things, have you had a  
18 chance to review that letter in preparation for  
19 your testimony--

20 A. I have.

21 Q. -- here today? And, are the matters set  
22 forth in that letter true and accurate?

23 A. They are.

24 Q. Thank you. And, is this, in fact, a true

1 and accurate copy of the letter that you sent to  
2 Steven Crown on or about October 11th, 1993?

3 A. Yes, it is.

4 Q. Thank you, thank you very much.

5 Now, I'd like to move forward -- strike  
6 that -- did you have any conversations with Steven  
7 Crown in the latter part of 1993 concerning the  
8 air conditioning unit?

9 A. I had the conversation the day after the  
10 test firing in September.

11 Q. And, was that the telephone conversation  
12 you had with Mr. Crown where you called him at his  
13 office?

14 A. It was, it was.

15 Q. All right.

16 A. I, along with my wife, subsequently had  
17 the conversation I testified to last Friday with  
18 Mr. Keller where we discussed relocation of the  
19 unit.

20 Q. And, Mr. Keller, again, to recapitulate  
21 the testimony, was the construction superintendent  
22 for Mr. Crown?

23 A. I don't know his exact title, but it's my  
24 understanding that that's the role he was playing,

1           yes.

2           Q.    All right.

3           A.    When we didn't hear back from Mr. Keller,  
4           who we expected to hear back from about  
5           relocation, we then wrote this letter.  I did  
6           not--

7           Q.    This letter being the October 11th, 1993  
8           letter?

9           A.    Yes.

10          Q.    I did not receive a response to the  
11          letter and didn't have a conversation that I  
12          recall with Mr. Crown for some months, though my  
13          wife had a conversation with him.

14          Q.    All right.  And what is the, do you  
15          recall that the Crown air conditioning unit was  
16          turned on again in April of 1994?

17          A.    Yes, it was.

18          Q.    What, if anything, occurred in connection  
19          with the air conditioning unit between October  
20          11th, 1993 when you wrote the letter that's been  
21          previously identified as Exhibit 49, and the time  
22          in April of 1994 when the Crown air conditioning  
23          unit was turned on?

24          A.    I know only what I've been told and heard



1           in the earlier testimony. And, I'm not sure I  
2           recall the exact chronology, but apparently the  
3           unit was turned and at some point there might have  
4           been some insulation put on the inside. There was  
5           supposed to have been a meeting with the Trane  
6           engineers in early January, which was to include a  
7           visit--Trane engineers were to meet at the Crown  
8           house, which was to include a visit to our house.  
9           And, we waited for them to come and they never  
10          came. And, we were never told that the meeting  
11          had been cancelled.

12                       MR. CARSON: Your Honor, object to the  
13           last portion of the answer as being without  
14           foundation and being non-responsive to the  
15           question in the narrative form. We move to strike  
16           it. There was supposed to be a meeting, there is  
17           no foundation for that, your Honor.

18                       MR. KAISER: I can lay a foundation for  
19           that, Madam Hearing Officer.

20                       HEARING OFFICER: I will permit the  
21           counsel to lay a foundation.

22                       MR. KAISER: Thank you.

23           BY MR. KAISER:

24           Q. Mr. Shelton, sometime in the latter part

1 of the 1993 or early part of 1994, did you become  
2 aware that there was a meeting scheduled to take  
3 place on or about the Crown residence sometime in  
4 January of 1994 for the purposes of discussing the  
5 air conditioner and the noise emanating from the  
6 Crown air conditioner?

7 A. Yes.

8 Q. How did you become aware of that proposed  
9 meeting?

10 A. Mr. Crown talked with my wife and asked  
11 if it would be all right for them to come to our  
12 house.

13 MR. CARSON: Objection, hearsay. Move to  
14 strike the response and the reference to the  
15 "there was supposed to be a meeting".

16 MR. KAISER: I don't know that we're  
17 trying to prove any of the essential elements of  
18 the case, it's more of a foundational matter. So,  
19 I don't know that hearsay would necessarily  
20 preclude introduction of that statement for those  
21 limited purposes.

22 MR. CARSON: I'm not aware that there's  
23 any aspect of this case where it would be relevant  
24 that there was supposed to be, a meeting didn't

1 take place. What, clearly, what they're trying to  
2 do is to create the impression that nothing was  
3 done, and that's the purpose that they're doing  
4 this. They're trying to establish there was a  
5 meeting scheduled and it didn't happen. And, Mrs.  
6 Shelton was here, and if she was engaged in a  
7 conversation with Mr. Crown at which this was  
8 discussed, then she should have so testified, but  
9 she didn't.

10 HEARING OFFICER: Counsel, what is your  
11 purpose with this testimonial approach?

12 MR. KAISER: I'm just trying to put  
13 before the Board the chronology of events here and  
14 efforts made to come up with a solution and,  
15 frankly, unsuccessful efforts. And those efforts  
16 included a proposed meeting in January of 1994,  
17 which I believe Mr. Shelton will testify that he  
18 was at his home with his wife awaiting  
19 representatives of Mr. Crown and the Trane  
20 engineers, and those people never appeared. And,  
21 there was no explanation offered for their failure  
22 to appear. I think it's relevant and material to  
23 the Board's consideration of these events.

24 HEARING OFFICER: The objection is

1           sustained with respect to what another person  
2           said. The witness may testify to what his  
3           understanding was at any point in time.

4           BY MR. KAISER:

5           Q.    Mr. Shelton, in the latter part of  
6           December, 1993 or early part of January, 1994, did  
7           you form a belief as to whether there was going to  
8           be a meeting at the Crown residence to discuss  
9           problems associated with Crown air conditioning  
10          system?

11          A.    Yes.

12          Q.    When did you form a belief as to when  
13          that meeting was to occur?

14          A.    It was my belief it was to occur in early  
15          January. I don't recall the exact date at this  
16          moment.

17          Q.    And, that would be January of 1994?

18          A.    Yes.

19          Q.    What, if any, steps did you personally  
20          take to make yourself available for that meeting?

21          A.    I didn't go to the office first thing in  
22          the morning as I normally do, I waited at home.

23          Q.    Do you recall how long you waited at  
24          home?

1           A.    I waited until midmorning, 10:00  
2           o'clockish.

3           Q.    And, to the best of your recollection,  
4           that was sometime in the early portion of January,  
5           1994?

6           A.    Yes.

7           Q.    And, on that morning where you stayed  
8           home from the office, waited at your home, did you  
9           have any conversation with Mr. Crown or any agents  
10          or representatives of Mr. Crown?

11          A.    No.

12          Q.    And, at what point did you make the  
13          determination that it was more fruitful to go to  
14          the office?

15          A.    Midmorning.

16          Q.    To this day, have you, do you have any  
17          understanding as to why a meeting that you had  
18          formed a belief was going to occur in early  
19          January of 1994 at the Crown residence for the  
20          purpose of discussing the Crown air conditioning  
21          system, why that meeting did not occur?

22                MR. CARSON:  Objection, no foundation.

23                MR. KAISER:  All we're asking for is any  
24          belief.  If we get that there is a belief, then we

1 can put in the foundation. But, we don't need to  
2 lay a foundation if, in fact, there is no belief.

3 HEARING OFFICER: Overruled.

4 A. I have no belief as to why it didn't  
5 occur. I don't know why it didn't occur.

6 BY MR. KAISER:

7 Q. Do you recall when the Crown air  
8 conditioning system was turned on in April of  
9 1994?

10 A. It was in the third week of April, as I  
11 recall.

12 Q. Do you recall what the Crown air  
13 conditioning system sounded like when it was  
14 started up again in the third week of April, 1994?

15 A. It was terribly loud and disruptive.

16 Q. Was it disruptive when you were inside  
17 your home?

18 A. Yes, it was.

19 Q. Do you recall whether your windows were  
20 open or closed during the third week of April,  
21 1994?

22 A. We were unable to keep our windows open.  
23 We, in fact, even left the storm windows up,  
24 excuse me, left the storm windows on to try to

1 reduce the noise.

2 Q. Did keeping the storm windows closed  
3 reduce, did you perceive it as reducing the noise  
4 from the Crown air conditioning system?

5 A. It perhaps reduced the noise, I don't  
6 really know whether it reduced it very much or  
7 not. I know that the noise was unbearable, even  
8 with them on.

9 Q. And, can you describe for the Board some  
10 of the activities that were made more difficult or  
11 impossible because of the noise, the unbearable  
12 noise coming from the Crown air conditioning unit  
13 in the third week of April, 1994?

14 A. Yes. The noise, it was an extensive,  
15 deep, powerful drone that penetrated the house.  
16 And, it was interspersed with huge sound surges,  
17 booms, if you will, as different components of the  
18 system kicked in and out. At times, particularly  
19 in the evening, we could also hear higher pitched  
20 sound such as a waterfall and hear also beating  
21 sounds, which I'm told were probably different  
22 phases of the system or different components of  
23 the system going in and out of phase with each  
24 other. The combination of these various noises

1 had a lot of impact physically on the family,  
2 which I believe my wife testified to, such as loss  
3 of sleep, my son having to move out of his room,  
4 our inability to use our backyard or our patio.  
5 Extreme tiredness, depression and anxiety resulted  
6 in the family. We were all very jumpy, more short  
7 tempered than normal. I rambled a bit, I'm not --

8 Q. Thank you. And, do you recall for how  
9 long the Crown air conditioning unit remained on  
10 once it was re-started in the third week of April,  
11 1994?

12 A. It was on only during the daytime hours  
13 until Father's Day weekend in June. Father's Day  
14 weekend in June, it was on 24 hours a day. Then,  
15 it operated during the daytime hours only until  
16 the last few days of June when it went back on 24  
17 hours a day and remained that way for the rest of  
18 the cooling season.

19 Q. During that Father's Day weekend of 1994,  
20 and we've heard testimony from your wife and from  
21 your son concerning the impact of the unit on  
22 them, can you tell us how you experienced the  
23 sound from the Crown air conditioning unit during  
24 the Father's Day weekend of 1994, what affects did



1 it have on you?

2 A. Again, the physiological reactions and  
3 emotional reactions such as stress and anxiety  
4 were the same as they described. I, in addition  
5 to what they've said, which I think I could  
6 incorporate as being very much how I felt, felt a  
7 particular, concern may be too mild a word,  
8 helplessness. As head of the family, here I was  
9 seen by a family unable to sleep. My wife  
10 actually in tears, my son telling me dad, I can't  
11 sleep in my room. I tried to barbeque that  
12 weekend for Father's Day, barbeque, and it was  
13 horribly depressing. Every time the compressors  
14 would kick on and off, I would start. In my mind,  
15 it was nothing short of a torture, and it was  
16 beyond my control. I've never felt so helpless  
17 and impotent in my life.

18 Q. Did those feelings continue throughout  
19 July of 1994?

20 A. Yes, they did and--yes, they did.

21 Q. Did those feelings continue throughout  
22 August of 1994?

23 A. Yes, they did and some new feelings  
24 actually came into being. One was the fact that

1 I'm, there is nowhere to go to escape this thing.  
2 It's like being seasick on a boat in the middle of  
3 Lake Michigan. It's, for anyone who has  
4 experienced that, it's a horrible feeling and  
5 there's absolutely nowhere you can go to get away  
6 from it. So, there was that sense of lack control  
7 over my life. There was a sense that this  
8 violation of the sanctity of our home was a  
9 violation of us, perhaps something akin to what a  
10 rape victim must feel when you've lost something  
11 basic and fundamental that is yours, which is your  
12 ability to enjoy your family and enjoy your home  
13 during the summertime. Those kinds of feelings.  
14 The fact that this was happening beyond my control  
15 intensified as the summer went on.

16 Q. Now, I want to pull back in time a moment  
17 here, and I want to direct your attention to June  
18 30th of 1994. I want to show you what's  
19 previously been marked for purposes of  
20 identification as Exhibit 48. I want to show you  
21 that. It's a letter from David Shelton to Steven  
22 Crown dated June 30th, 1994. And, as I said,  
23 previously marked for purposes of identification  
24 as Exhibit 48. Do you recognize that letter?

1 A. I do.

2 Q. Did you write this letter?

3 A. Yes, I did.

4 Q. Did you mail this letter to Mr. and Mrs.

5 A. Steven Crown on or about June 30th, 1994?

6 A. Yes, I did.

7 Q. I note in the roughly upper right third,  
8 it indicates certified mail. Do you know whether  
9 you sent this letter via certified mail?

10 A. Yes, I did.

11 Q. Do you recall that sometime in June or  
12 thereabouts of 1994, the Crowns caused to be  
13 installed fences, trees and baffling?

14 A. I must backtrack for just a moment. Once  
15 the air conditioner was turned on in April, my  
16 wife and I had, on different occasions, talked via  
17 the phone and, in certain instances, face-to-face  
18 about their plans for the air conditioner.

19 Q. Their plans meaning the plans of the  
20 Crowns?

21 A. The Crowns plans for attenuating the  
22 noise on the air conditioner. They had indicated  
23 that there would be a fence and some trees put  
24 around the air conditioner, and that they alluded

1 to certain other things such as the turning of the  
2 air conditioner and I believe the cones, and I'm  
3 not sure what else they might have mentioned as  
4 possibilities for them. I reiterated what I had  
5 been told by a number of people that fences and  
6 trees were unlikely to be of much help in reducing  
7 the sound. And, it was my understanding that they  
8 weren't going to operate the system in the evening  
9 after the Father's Day weekend until such time as  
10 we had seen how the fences and trees were going to  
11 work and make sure that the noise was going to be  
12 acceptable. Unfortunately, that was not to be.  
13 On June 27th, I believe it was, the air  
14 conditioner commenced operating around the clock  
15 again, which I had understood wouldn't happen. I  
16 had a different conversation with Mr. Crown at  
17 that time, but came away thinking --

18 Q. Excuse me, was that conversation in  
19 person or by telephone?

20 A. It's by telephone.

21 Q. Do you recall whether you called him or  
22 he called you?

23 A. I called him.

24 Q. Did you call him at home or at his

1 office?

2 A. I believe it was at the office.

3 MR. CARSON: Your Honor, I'd like to  
4 interrupt here with an objection to the previous  
5 reasons, I understand counsel's attempt to  
6 establish a foundation for the conversation Mr.  
7 Shelton just alluded to. However, he just a  
8 moment ago said something about he had an  
9 understanding as to the unit not being operated  
10 for 24 hours until these sound attenuating devices  
11 were put into place. And, there was no foundation  
12 at all for that testimony, and I move to strike  
13 it.

14 MR. KAISER: We may lay the foundation  
15 later, Madam Hearing Officer.

16 HEARING OFFICER: I'm going to grant the  
17 motion to strike that portion of the testimony.  
18 And, I'm going to ask counsel, before we proceed,  
19 you indicated that Exhibit 48 had been introduced,  
20 but I do not reflect that in the records. Could I  
21 see Exhibit 48?

22 MR. KAISER: Yes. I apologize. I may  
23 have drawn it from the wrong pile there.

24 HEARING OFFICER: For identification

1 purposes, Exhibit 48 is a letter from Mr. Shelton  
2 to Mr. and Mrs. Crown dated June 30th, 1994.

3 BY MR. KAISER:

4 Q. Before we go any further, Mr. Shelton,  
5 just to put it all on the record in one place,  
6 did you, in fact, write this letter dated June  
7 30th, 1994 and identified as Exhibit 48?

8 A. I did.

9 Q. And, did you mail it to Mr. and Mrs. A.  
10 Steven Crown on or about June 30th, 1994?

11 A. Yes, I did.

12 Q. And, is this a true and accurate copy of  
13 the letter that you sent to the Crowns on or about  
14 June 30th, 1994?

15 A. It is.

16 Q. Are the statements contained therein true  
17 and accurate as of June 30th 1994?

18 A. They are.

19 MR. KAISER: Madam Hearing Officer, I  
20 move for the admission into evidence of Exhibit  
21 48.

22 MR. CARSON: No objection to Exhibit 48.

23 HEARING OFFICER: Exhibit 48 is entered  
24 into. Thank you.

1 BY MR. KAISER:

2 Q. Now, you were describing for us a  
3 telephone conversation you initiated with Mr.  
4 Crown. Was it the late part of June of 1994?

5 A. Yes.

6 Q. And, what did you say to him and what did  
7 he say in response?

8 A. I told him that the trees and fencing  
9 were doing very little to reduce the noise, and  
10 that we continued to be deeply bothered by the  
11 noise. And also, to tell him that based upon  
12 earlier phone and face-to-face conversations we'd  
13 had in the prior few weeks, that it was my  
14 understanding they weren't going to be running the  
15 unit at night. But that, in fact, it was now  
16 running at night and asked him to please turn it  
17 off at night.

18 Q. And what, if anything, did Mr. Crown say  
19 in response?

20 A. He indicated that they had tried to  
21 accommodate us, but had accommodated us about as  
22 much as they could.

23 Q. About how long did that telephone  
24 conversation last?

1           A.    It wasn't long, 5 minute type of  
2           conversation.

3           Q.    What, if anything, did you do after  
4           concluding that telephone conversation with Mr.  
5           Crown?

6           A.    I was extremely anxious as to what was  
7           happening, very concerned that we were making no  
8           progress. I had to go out of town on business  
9           and --

10           MR. KAISER: Excuse me, if I can just  
11           back up one second. Did Mr. Crown -- you  
12           mentioned that during the telephone conversation  
13           you've just described with Mr. Crown, you stated  
14           to him that you had an understanding that the air  
15           conditioning unit would not be operated around the  
16           clock?

17           A.    Yes.

18           Q.    What was the basis for your understanding  
19           that the unit would not be operated around the  
20           clock?

21           A.    Earlier face-to-face and phone  
22           conversations with Mr. Crown.

23           MR. CARSON: Objection, foundation.

24           MR. KAISER: If we may lay the



1 foundation?

2 HEARING OFFICER: Overruled.

3 MR. KAISER: May I proceed?

4 HEARING OFFICER: Yes.

5 BY MR. KAISER:

6 Q. Do you recall during what months the  
7 telephone conversations -- did Mr. Crown make  
8 those representations that unit would not be  
9 operated around the clock, in a telephone  
10 conversation to you or in a face-to-face  
11 conversation with you?

12 A. I'm not certain specifically which  
13 conversations it occurred in. There were several  
14 conversations. I had 2 or 3 conversations on the  
15 phone with him and met him at a swim meet where  
16 our kids were competing.

17 Q. And, these conversations took place  
18 between the latter part of April, 1994 and  
19 Father's Day weekend of 1994?

20 A. Yes, yes they did. And, my wife also had  
21 some conversations with him. And, I can't recall  
22 specifically which of those conversations in which  
23 he indicated that they're only keeping it on  
24 during the day.

1 Q. Do you recall talking with Mr. Crown  
2 during your children's swim meet in the spring of  
3 1994?

4 A. Yes.

5 Q. Did the subject of the air conditioner,  
6 was that one of the topics about which you talked?

7 A. Yes, it was.

8 Q. And, did you discuss whether the unit  
9 would be operated 24 hours a day during your  
10 conversation with Mr. Crown at the swim meet in  
11 the spring of 1994?

12 A. To the best of my recollection, he did  
13 indicate that the unit would just be operating  
14 during the day when construction was going on.

15 Q. And, when you say indicate, what ways did  
16 he indicate that?

17 A. He told me that that was the way it would  
18 be operating.

19 Q. Do you recall who provided you with the  
20 name of Al Shiner and Associates?

21 A. I got the name from two sources; one was  
22 from Greg Zack at the Illinois EPA. And, the  
23 other was from our architect who had worked with  
24 Al Shiner on another occasion.

1 Q. Do you recall during what time frame you  
2 obtained the name of Al Shiner?

3 A. We got the name during the, as best I  
4 recall, we got the name during the week of June  
5 27th, 1994.

6 Q. Did you and your wife, in fact, retain  
7 Shiner and Associates to obtain property line  
8 noise level measurements? I want to show you  
9 what's previously been marked for purposes of  
10 identification as Exhibit 56. And, Madam Hearing  
11 Officer, I believe Exhibit 56 has been offered and  
12 admitted into evidence.

13 HEARING OFFICER: You're correct.

14 BY MR. KAISER:

15 Q. Showing you a letter from Alan Shiner to  
16 David Shelton dated July 5th 1994. Do you  
17 recognize that?

18 A. Yes, I do.

19 Q. What do you recognize that to be?

20 A. That's the letter that Al Shiner faxed to  
21 us on July 5th with the results of his noise  
22 readings.

23 Q. I want to show you what's previously been  
24 marked for purposes of identification as Exhibit

1 17, a letter from you to A. Steven Crown dated  
2 July 6th, 1994. And I believe, Madam Hearing  
3 Officer, this has been offered and admitted into  
4 evidence.

5 HEARING OFFICER: Correct.

6 BY MR. KAISER:

7 Q. I show you that letter dated July 6th,  
8 1994 and ask you if you recognize that?

9 A. Yes, I do.

10 Q. And did you, in fact, write that letter  
11 on or about July 6th, 1994?

12 A. Yes.

13 Q. And, did you send that letter to A.  
14 Steven Crown?

15 A. Yes, I did.

16 Q. Does this letter dated July 6th, 1994  
17 truly and accurately set forth steps taken or  
18 contemplated by you and your wife in the latter  
19 part of June and early part of July, 1994?

20 A. It does. Should I --

21 Q. Yes.

22 A. It does. I should perhaps explain the  
23 village council meeting.

24 Q. Yes, please.

1           A.    In the last conversation I had with Mr.  
2           Crown on June 30th after the air conditioner  
3           continued to run, he had told me that they had  
4           accommodated us all they were going to accommodate  
5           us and weren't going to do any more.  That was  
6           that, and that we could do whatever we thought we  
7           had to do.  At that point, having spent the prior  
8           9 months trying to work this out directly with  
9           neighbor to neighbor, we felt we had no  
10          alternative but to turn to the Village for help;  
11          which we did.  We also talked to the police, who  
12          the Village had originally indicated we should  
13          work with on this, but they, in turn, indicated we  
14          should work with the Village, that it was not  
15          their pervue.  With that in mind, we were on the  
16          agenda of the July 5th Village Council meeting.  
17          And, to that end, the day of July 5th, we were  
18          able to get the noise readings by Shiner, and that  
19          is the Village Council meeting that's referred to  
20          here in this letter of July 6th.

21          Q.    During the early part of July, 1994, did  
22          you also talk with certain Winnetka Village  
23          trustees?

24          A.    Yes.  During the weekend of the 4th of

1 July, two trustees came to our house to listen and  
2 suggested that we come to the village council  
3 meeting and also suggested that we ask neighbors  
4 to listen to the unit and to attest to whether  
5 they thought it was a noise nuisance or not.

6 Q. Do you recall the names of those  
7 trustees?

8 A. Yes, Louise Holland and Arnie Levy.

9 Q. If I may just take a look at that letter,  
10 Mr. Shelton? Thank you. I note that you  
11 reference a conversation with a person by the name  
12 of Bill Devers. Do you know a Bill Devers,  
13 D-e-v-e-r-s?

14 A. Yes. Bill, at the time, lived near to us  
15 on Ardsley Road. He was a neighbor.

16 Q. What was your purpose for talking with  
17 Mr. Devers?

18 A. We asked Bill if he would listen to the  
19 air conditioner and give us his reaction. He did  
20 and told us he thought it was a serious problem.  
21 I told him that it had been suggested to us that  
22 we start a petition and asked if he would be, feel  
23 comfortable signing the petition. He said that he  
24 would prefer to play the role of a peace maker, if

1           you will. That rather than sign the petition, he  
2           was going to be in Aspen the 4th of July weekend  
3           where the Crown family was having a 4th of July  
4           party, and that he was going to be at that party  
5           and suggested that would talk with Steven and that  
6           perhaps he could help mediate the problem between  
7           the two of us.

8                         MR. CARSON: Your Honor, objection to the  
9           portion of witness' answer that characterizes what  
10          Mr. Devers said about the sound, that's hearsay.  
11          I move to strike that portion of the answer.

12                        MR. KAISER: I'm sorry, counsel, I was  
13          consulting with my co-counsel.

14                        HEARING OFFICER: A motion to strike the  
15          testimony related to the characterization of the  
16          sound by Mr. Devers has been made, and I'm going  
17          to grant that.

18                        MR. KAISER: Thank you, your Honor.

19          BY MR. KAISER:

20                        Q. I want to show you what's previously been  
21          marked for purposes of identification as  
22          Plaintiffs Exhibit 91. It's a letter from Greg  
23          Zack to you, Mr. Shelton, dated July 11th, 1994  
24          and again, Madam Hearing Officer, if I may confirm

1           that this has been offered and admitted into  
2           evidence.

3                         HEARING OFFICER: That's correct.

4           Q.    Mr. Shelton, did you receive this letter  
5           on or about July 11th, 1994?

6           A.    Yes, I did.

7           Q.    And, had you talked to Mr. Zack prior to  
8           receipt of that letter?

9           A.    Yes, I had talked to him late June.

10          Q.    Do you recall who provided you with Mr.  
11          Zack's name or suggested that you contact the  
12          Illinois Environmental Protection Agency?

13          A.    The recommendation came from one of the  
14          police officers in Winnetka.

15          Q.    And did you, in fact, obtain Mr. Zack's  
16          telephone number and contact him sometime early,  
17          late June or early July of 1994?

18          A.    Yes, I did, but I can't remember exactly  
19          who gave me Mr. Zack's name. I do know that I did  
20          talk to him prior to June 30th, I believe that was  
21          the certified letter.

22          Q.    I see.

23          A.    Mr. Zack had suggested that, to get a  
24          record of this thing started, that we should send



1 a certified letter.

2 Q. And, that was the June 30th, 1994 letter  
3 also known as Exhibit 48 which you sent to Mr.  
4 Crown on or about June 30th, 1994 by certified  
5 mail?

6 A. Yes.

7 Q. I want to show you what's previously been  
8 marked for purposes of identification as Exhibit  
9 34. It's a letter, Alan H. Shiner to David R.  
10 Shelton dated July 12th, 1994. And again, Madam  
11 Hearing Officer, I'd like to confirm that Exhibit  
12 34 has been offered and admitted into evidence.  
13 Showing a copy of that letter to Respondent, to  
14 Mr. Shelton.

15 HEARING OFFICER: That's correct.

16 BY MR. KAISER:

17 Q. I ask you do you recognize that letter?

18 A. Yes, I do.

19 Q. Is that a letter you received from Mr.  
20 Shiner on or about July 12th, 1994?

21 A. It is.

22 Q. Thank you. Did that letter enclose on  
23 the second page a diagram for a sound reduction or  
24 acoustical enclosure?

1 A. Yes.

2 Q. I want to now show you what's marked for  
3 purposes of identification as Exhibit 47. This is  
4 a letter from David R. Shelton to Alan L. Shiner  
5 dated July 21, 1994. I don't know that this has  
6 previously been offered, Madam Hearing Officer.

7 HEARING OFFICER: This has been  
8 introduced, but not admitted into evidence.

9 BY MR. KAISER:

10 Q. I show you that letter. Do you recognize  
11 that?

12 A. Yes, I do.

13 Q. What do you recognize it to be?

14 A. It's a letter that I sent to Al Shiner  
15 giving him additional information that I had  
16 obtained from Trane.

17 Q. And, Trane being the manufacturer of the  
18 air conditioning unit at the Crown residence?

19 A. Yes.

20 Q. I note at the bottom of Page 2, you  
21 indicate that carbon copies were sent to S. Crown  
22 and G. Zack. Is S. Crown Steven Crown?

23 A. Yes.

24 Q. Did you cause a copy of this letter,

1 Exhibit 47, to be mailed to Steven Crown on or  
2 about July 21st, 1994?

3 A. Yes, I did.

4 Q. Did you also cause a copy of this letter  
5 to be mailed to Greg Zack on or about that date?

6 A. Yes, I did.

7 Q. Did the letter that you sent to Mr.  
8 Shiner also include a three page attachment?

9 A. Yes, it did.

10 Q. Now, I note that on the, and I'm looking  
11 at the third page of Exhibit 47, that there is  
12 some handwriting in the upper right hand corner  
13 that indicates Trane engineering bulletin covering  
14 RAUC series units. Do you know whose handwriting  
15 that is?

16 A. That's my handwriting.

17 Q. And where did you obtain the copies of  
18 this Trane engineering bulletin?

19 A. It was sent to me by Chris Seda at Trane.

20 Q. And, were these 3 pages, the last 3 pages  
21 of Exhibit 47, those portions that you've  
22 identified as excerpts from the Trane engineering  
23 bulletin, were those attached to the carbon copy  
24 of the July 21st 1994 letter that Mr. Crown was

1 sent a carbon copy of?

2 A. Yes.

3 MR. KAISER: Madam Hearing Officer, I  
4 move for admission into evidence of Exhibit 47.

5 MR. CARSON: Your Honor, Exhibit 47 has  
6 the same problem that we've raised previously with  
7 reference to other exhibits that have this  
8 unauthenticated and inapplicable Trane bulletin  
9 attached. We know from prior testimony regarding  
10 Exhibit No. 99 that the bulletin was not even  
11 issued at the time that this particular unit was  
12 purchased and, therefore, it's not applicable and  
13 not relevant. And, we're objecting to the  
14 introduction of the letter and the attachment for  
15 that reason.

16 MR. KAISER: Madam Hearing Officer, it's  
17 simply not true that these 3 pages excerpted from  
18 the Trane engineering bulletin are  
19 unauthenticated. We had Mr. Seda come in, in  
20 part, for that purpose of authenticating these  
21 portions of the Trane engineering bulletin. And,  
22 you'll recall that on Friday, Mr. Carson made the  
23 argument that these things may be rubbish or  
24 something of that nature. And, we said even if

1           it's only rubbish, it still goes in to demonstrate  
2           to the Board notice that Mr. Crown received on or  
3           about July 21st, 1994. So, we think the objection  
4           is without merit and that the entire exhibit  
5           should be received. Again, that the Trane  
6           engineering bulletin is not being offered for the  
7           truth of the matter, but it's being offered to  
8           show the Board what Mr. Crown had in his  
9           possession in the latter part of July of 1994 so  
10          that the Board can then judge the response made by  
11          Mr. Crown.

12                         HEARING OFFICER:     The objection is  
13                         overruled and the Exhibit will be admitted into  
14                         evidence.

15                         BY MR. KAISER:

16                         Q.     Now, Mr. Shelton, I'd like to show you  
17                         what's been marked for purposes of identification  
18                         as Exhibit 107. And frankly, counsel, I'm not  
19                         certain you've seen -- I'm certain you've seen it,  
20                         I'm not certain I have a copy for you. Exhibit  
21                         107 is a letter from David R. Shelton to Mr. A.  
22                         Steven Crown dated September 2, 1994. I'm showing  
23                         it to counsel for Respondent. Mr. Shelton, again,  
24                         I'm showing you what's been marked for purposes of

1 identification as Exhibit 107, the letter from you  
2 to Mr. Crown dated September 2, 1994. I want you  
3 to look at that document, tell me if you recognize  
4 it?

5 A. Yes, I do.

6 Q. What do you recognize it to be?

7 A. It's a letter I wrote to Steven Crown on  
8 September 2nd, 1994.

9 Q. Did you mail that letter to Mr. Crown?

10 A. Yes, I did.

11 Q. Are the facts contained in that  
12 letter--first, is this a true and accurate copy of  
13 the letter that you mailed to Mr. Crown on or  
14 about September 2, 1994?

15 A. Yes, it is.

16 Q. Are the facts set forth in this letter  
17 true and accurate as of September 2nd, 1994?

18 A. Yes, they are.

19 MR. KAISER: Madam Hearing Officer, we  
20 would, at this time, move for the admission into  
21 evidence of Exhibit 107, a letter from David  
22 Shelton to Steven Crown dated September 2, 1994.  
23 And, we can arrange to have copies. I'm giving  
24 you the original here.

1 HEARING OFFICER: Are there any  
2 objections?

3 MR. CARSON: No objection to 107.

4 HEARING OFFICER: Exhibit 107 will be  
5 admitted into evidence.

6 MR. DIVER: Madam Hearing Officer, if I  
7 may take the exhibit, I'll get copies made right  
8 now.

9 HEARING OFFICER: Thank you.

10 BY MR. KAISER:

11 Q. Mr. Shelton, I now want to show you  
12 what's been marked for purpose of identification  
13 as Exhibit 45, a letter from David R. Shelton and  
14 Robert S. Julian to Mr. A. Steven Crown dated  
15 September 14th, 1994. I ask you if you recognize  
16 that?

17 A. Yes, I do.

18 Q. What do you recognize it to be?

19 A. It's a letter that Bob Julian and I sent  
20 to Steven Crown on September 14th, 1994.

21 Q. Did you prepare that with Mr. Julian?

22 A. Yes.

23 Q. Is that your signature at the lower left  
24 hand corner or side of the document?

1 A. Yes.

2 Q. Is this a true and accurate copy of the  
3 letter that you sent to Mr. Crown on or about  
4 September 14th, 1994?

5 A. It is.

6 Q. Are the facts set forth therein true and  
7 accurate as of September 14th, 1994?

8 A. Yes, they are.

9 MR. KAISER: Madam Hearing Officer, I  
10 move for the admission into evidence of Exhibit  
11 45.

12 MR. CARSON: No objection to 45.

13 HEARING OFFICER: Exhibit 45 will be  
14 entered into evidence.

15 BY MR. KAISER:

16 Q. Do you recall making observations during  
17 September of 1994 concerning the operations of the  
18 Crown air conditioning system and the outdoor air  
19 temperature during the evenings of September,  
20 1994?

21 A. The temperatures were starting to get  
22 cooler in the evening. I don't recall specific  
23 temperatures at the time, but they were getting  
24 cooler and certainly below temperatures where we



1 operated our air conditioner.

2 Q. Do you recall the range of temperatures  
3 which the temperature fell during two evenings in  
4 September of 1994?

5 A. I don't recall the specifics. I actually  
6 recall specifics a year later, but I don't, at the  
7 time I didn't think to keep a log.

8 Q. All right. Well, when we get to 1995,  
9 I'll ask you for that comparison, thank you.

10 Q. I want to show you what's been marked for  
11 purposes of identification as Exhibit 20, a letter  
12 from A. Steven Crown to David R. Shelton and Mr.  
13 Robert S. Julian dated September 15th, 1994. I  
14 want to show you that, Mr. Shelton. Tell me if  
15 you recognize that?

16 A. Yes, this is a letter I received from  
17 Steven, though I didn't receive it until a number  
18 of days later.

19 Q. Do you recall approximately how many days  
20 later?

21 A. Yes, I recall specifically the letter was  
22 postmarked September 21st and I received it the  
23 23rd.

24 Q. And, is this a true and accurate copy of

1 a letter you received from Mr. Crown in the latter  
2 part of September, 1994?

3 A. To the best of my recollection, yes.

4 Q. And, I note that there are some, for  
5 instance, underlines and marginalia on the first  
6 page. Do you know whose handwriting that is?

7 A. No, I'm not sure where this--

8 Q. I take it those were not on the original  
9 letter you received from Mr. Crown?

10 A. No, they were not. They are not my  
11 notes.

12 MR. CARSON: Can I interject here with an  
13 objection and a proposal? Exhibit Number 44 --  
14 oh, I guess it's a little bit different, the  
15 handwritten thing. I'm concerned about the  
16 notations on Exhibit Number 20 as affecting the  
17 authentication of that document. And, somebody  
18 was making some commentary in the margin on that,  
19 and we don't know who. Exhibit 44 is one that's  
20 not been marked up, of the same letter. It does  
21 have a different P.S., and when I started to  
22 interrupt here, I didn't realize the P.S. was  
23 different.

24 HEARING OFFICER: I have a concern also

1 about the marginal notes, but proceed, counsel.

2 MR. KAISER: Here's a possible solution.  
3 Perhaps we can create a hybrid of 44 where we use  
4 not only that Page 2 which has the handwritten  
5 note which appears to be from Mr. Crown to Mr.  
6 Zack, but also then append to it Page 2 from  
7 Exhibit 20, which contains the handwritten note  
8 from Mr. Crown.

9 MR. CARSON: Effectively redacting the --

10 MR. KAISER: Just taking off the cover  
11 sheet.

12 MR. KAISER: May I use your copy of 44  
13 for that purpose?

14 MR. CARSON: I need that copy of 44.

15 MR. KAISER: Let's see if we have that  
16 copy. We may, Madam Hearing Officer.

17 HEARING OFFICER: Let's go off the record  
18 for just a minute.

19 (WHEREUPON a 10-minute recess was taken.)

20 AFTER RECESS

21 HEARING OFFICER: We'll continue at this  
22 time with the testimony of Mr. Shelton.

23 BY MR. KAISER:

24 Q. Thank you, Ms. Edverson. As you recall

1 before the break, we were talking about, Mr.  
2 Shelton and counsel for Respondents, an  
3 appropriate Exhibit 20. The initial exhibit  
4 offered contained certain marginalia and  
5 underlining which we were not able to identify the  
6 author of those marks. We now have a clean copy  
7 of Exhibit 20, the letter from Mr. Crown to Mr.  
8 Shelton and Mr. Julian, and I would ask to  
9 substitute into the record this clean copy of  
10 Exhibit 20 and offer Exhibit 20 for admission into  
11 evidence at this time.

12 MR. CARSON: I think that would be fine,  
13 if I can just take a moment and look at it.

14 MR. CARSON: Thank you. Can I have just  
15 a moment to confer with counsel?

16 MR. KAISER: Madam Hearing Officer, I  
17 note, for the record, that there's one bit of  
18 marginalia, Page 2 of Exhibit 20 which, by  
19 agreement with counsel for the Respondents, I'm  
20 now marking out so that what remains is a  
21 fascimile of the original letter from Mr. Crown  
22 dated September 15, 1994.

23 MR. CARSON: That revised Exhibit 20 is  
24 acceptable to us, your Honor.

1 HEARING OFFICER: All right. Then  
2 Exhibit 20 will be entered into evidence.

3 MR. KAISER: Thank you.

4 BY MR. KAISER:

5 Q. Mr. Shelton, I'd like to show you what's  
6 been marked for purposes of identification as  
7 Exhibit 43, a letter you sent to village manager  
8 Douglas Williams dated September 27th, 1994. Mr.  
9 Shelton, I'm showing you what's now been marked  
10 for purposes of identification as Exhibit 43. I  
11 want you to take a look at that, tell me if you  
12 recognize that?

13 A. Yes, I do.

14 Q. What do you recognize that to be?

15 A. Something is stapled --

16 Q. Well, Exhibit 43 contains, in essence,  
17 two letters. One is from David R. Shelton to  
18 Village Manager Douglas Williams dated September  
19 27th, 1994, and another is a letter from you to  
20 Mr. Crown dated September 27th, 1994. And, as  
21 they address, as I understand it, the same issue  
22 and are, in essence, a response to Mr. Crown's  
23 letter dated September 15th, 1994 and previously  
24 marked for purposes of identification as Exhibit

1           20, they have been joined as one exhibit and now  
2           are before you as Exhibit 43.

3           A.    I understand.  Yes, these are letters  
4           that I sent to Mr. Williams and to Steven Crown.

5           Q.    Did you draft these letters?

6           A.    I did.

7           Q.    And, are these both true and accurate  
8           copies of the letters you sent to Mr. Williams and  
9           Mr. Crown on or about September 27th, 1994?

10          A.    Yes, they are.

11          MR. CARSON:  I'm not meaning to  
12          interrupt, but I'm not sure I heard correctly.  
13          Was it Exhibit 22 that's now attached to 43?

14          MR. KAISER:  No, I was just offering by  
15          way of explanation that the two letters which are  
16          contained in 43, and maybe it would clarify the  
17          record to call it 43 A, which is the letter to Mr.  
18          Williams, and 43 B, the letter to Mr. Crown and  
19          the attachments, yes.

20          MR. CARSON:  And the letter to Mr. Crown  
21          and attachments is Exhibit 22.

22          MR. KAISER:  Is it also 22?

23          MR. CARSON:  I believe so.

24          MR. KAISER:  Madam Hearing Officer, can

1 we confirm whether, in fact, Exhibit 22 was, in  
2 fact, a letter from Mr. Shelton to Mr. Crown dated  
3 September 27th, 1994.

4 HEARING OFFICER: Exhibit 22 is September  
5 21, 1995 letter from Mr. Shelton to Mr. Crown.  
6 And, it was admitted for limited purposes.

7 MR. KAISER: I'm sorry, the date on  
8 Exhibit 22?

9 A. 9-21-95.

10 HEARING OFFICER: It was admitted for  
11 limited purposes on July 1st.

12 MR. KAISER: May I take look at that  
13 exhibit.

14 HEARING OFFICER: Sure.

15 MR. CARSON: I could use a look at it,  
16 too, because I've got something else marked as 22.

17 MR. KAISER: May I hold this out for just  
18 a moment? Thank you. All right.

19 BY MR. KAISER:

20 Q. Well, if we may proceed, then, what you  
21 have in front of you, Mr. Shelton, has been marked  
22 for purposes of identification, and allow me to  
23 mark this one as such, as 43 A, which is the  
24 letter to Mr. Williams, and 43 B, which is the

1 letter to Mr. Crown. And I want you to look at  
2 both 43 A and 43 B and tell me if those are true  
3 and accurate copies of the letters you sent to Mr.  
4 Williams and Mr. Crown on or about September 27th,  
5 1994?

6 A. Yes, it is.

7 Q. And, I note that the letter to Mr. Crown  
8 contained certain attachments. Can you identify  
9 for the Board what documents were attached to the  
10 letter to Mr. Crown dated September 27th, 1994?

11 A. Yes. There are two attachments. One is  
12 a copy of Al Shiner's July 5th, 1994 noise level  
13 readings.

14 Q. And, on that, I note that there's some  
15 handwritten material at the bottom of that July  
16 5th, 1994 letter. Do you recognize that  
17 handwriting?

18 A. Yes, that's my handwriting. The second  
19 attachment is a 2 page excerpt from the Trane  
20 engineering bulletin that I received from Chris  
21 Seda, and that I referred to a few minutes ago.

22 Q. And, were those attachments part of the  
23 letter that was sent to Mr. Crown on or about  
24 September 27th, 1994?



1           A.    Yes, they were.

2           Q.    And you note that on the letter to Mr.  
3           Williams dated September 27th, 1994, it indicates  
4           in the c.c. that a carbon copy of 43 A was sent to  
5           Mr. A. Steven Crown. Do you know whether you sent  
6           a carbon copy of Exhibit 43 A to Steven Crown on  
7           or about September 27th, 994?

8           A.    Yes, I did.

9           MR. KAISER: Madam Hearing Officer, I  
10          move for admission into evidence Exhibit 43, both  
11          43 A and 43 B.

12          MR. CARSON: No objection to 43 A and 43  
13          B, your Honor.

14          HEARING OFFICER: All right. The two  
15          letters of Exhibit 43 will be entered into  
16          evidence.

17          BY MR. KAISER:

18          Q.    I want to show you now what's been marked  
19          for purposes of identification as Exhibit 19.  
20          It's a letter from you to Mr. Crown dated November  
21          9th, 1994. I'm showing you a copy of that, asking  
22          you if you recognize that?

23          A.    Yes, I do.

24          Q.    What do you recognize that to be?

1           A.    It's a letter I sent to Steven Crown on  
2           November 9th. I faxed it to him.

3           Q.    Is this a true and accurate copy of the  
4           letter that you faxed to Mr. Crown on or about  
5           November 9th, 1994?

6           A.    It is.

7           MR. KAISER: I move for admission into  
8           evidence of Exhibit 19.

9           MR. CARSON: Can we have a moment to  
10          confer on Exhibit 19?

11          HEARING OFFICER: Yes.

12          MR. CARSON: Your Honor, we would object  
13          to Exhibit 19 as containing hearsay. You'll note  
14          that in the second paragraph of Exhibit 19,  
15          there's a statement attributed to several  
16          unidentified real estate brokers, and we don't  
17          have an opportunity to examine those unidentified  
18          real estate brokers. And, it's clearly being  
19          offered to show this problem that the Sheltons  
20          purportedly had as far as difficulty to sell this  
21          home. And, it would be inappropriate to accept  
22          this because of that hearsay.

23          MR. KAISER: It's being offered, once  
24          again, to show what Mr. Crown knew and when he

1 knew it, or what information was communicated to  
2 Mr. Crown when. And then, of course, collaterally  
3 what did he do or what did he not do once he  
4 obtained that information. It clearly was a  
5 letter written by Mr. Shelton, which was sent to  
6 Mr. Crown. It's true and accurate, it's part of  
7 the dialogue between the Sheltons and the Crowns.  
8 And frankly, regardless of the truth of the matter  
9 asserted, it's an act that stands alone. The  
10 drafting of the letter, the sending of the letter,  
11 the accepting of the letter, that's an act  
12 independent, frankly, of the content. And while  
13 it's not being offered for the truth of the matter  
14 asserted, it's being offered to show what the  
15 level and tone of communications between the  
16 parties was in November of 1994. And, for that  
17 purpose, we'd move for its admission.

18 HEARING OFFICER: The objection is  
19 overruled and Exhibit 19 will be admitted into  
20 evidence, but for the limited purpose of showing  
21 notice to Mr. Crown of Mr. Shelton's concerns.

22 BY MR. KAISER:

23 Q. By way of explanation here, Mr. Shelton,  
24 could you, is it true that in November of 1994,

1           you and your wife were talking with brokers about  
2           possibly listing your home at 707 Ardsley Road in  
3           Winnetka, Illinois, for sale?

4           A.    Yes, we were.

5           Q.    Why were you considering listing your  
6           home for sale November of 1994?

7           A.    There were several reasons.  One reason  
8           is that we had been concerned for some time about  
9           the need for additional construction at the house,  
10          an addition of our own.  As I think I testified  
11          last Friday, our original goal when we bought this  
12          adult ranch house was to make it a house of  
13          sufficient size for our family with two additions  
14          as we could afford them.  We did the first in 1990  
15          and were hoping to do the second later on.  
16          However, having lived in the house through half of  
17          our first addition, plus by the middle of 1994,  
18          having lived next door to the construction on the  
19          Crown house for some almost 3 years, we were very  
20          tired of construction and we were having second  
21          thoughts about whether we wanted to live through  
22          any more of it.  Therefore, selling the house  
23          seemed like a good alternative.  But, that had  
24          been a concern for a year or so at that point.

1           The other things that had pushed us over the edge  
2           insofar as deciding to sell the house had to do  
3           with the Crown air conditioner. The first was we  
4           had had what, for us, was an unbelievably horrible  
5           experience through the summer and fall of 1994  
6           with the noise, and were frankly at wits end.  
7           And, at that point, even though there had been at  
8           very late some communications about what was going  
9           to be done, it had been exceptionally slow in  
10          coming in. And, the communications we had gotten  
11          were very inconsistent with each other. And, we  
12          were not at all comfortable that there would be a  
13          solution to this problem. So, that was a serious  
14          concern for us, and the reason that we thought it  
15          would be better to get on with our lives where we  
16          didn't have to worry about it. The third factor  
17          was that, to a great extent, I think one can say  
18          that a home is as much on memories and emotions as  
19          it is a physical structure. And, we had loved our  
20          house and loved our neighborhood. But with this  
21          battle with the neighbor, which we'd never, ever  
22          had a problem with a neighbor before, with this  
23          battle with our neighbor and this concept, problem  
24          with the noise, the basic joy out of living in

1           that house had gone away. And for those reasons,  
2           we had decided that it's best to get on with our  
3           life and sell the house.

4           Q.    And, it was for that reason you met with  
5           real estate brokers in late October and early  
6           November of 1994?

7           A.    Yes, it was.

8           Q.    Did you subsequently list your house with  
9           a real estate broker?

10          A.    Yes, we did. In February of 1995, I  
11          believe.

12          Q.    Do you recall the name of that broker?

13          A.    The name of the brokerage firm was Kahn  
14          Realty, K-a-h-n, and the broker was Ann  
15          Montgomery.

16          Q.    Is that branch of Kahn Realty located in,  
17          where is it located?

18          A.    It's located in Winnetka.

19          Q.    Did you talk with Ann Montgomery or  
20          anyone else at Kahn Realty concerning the problems  
21          you had been having with the Crown air  
22          conditioning system?

23          A.    We did, plus unfortunately when we were,  
24          when we reached an impasse in trying to work this

1 out directly with our neighbors and were forced to  
2 go to the Village for help, it had become somewhat  
3 of a public issue. So, unfortunately, it was  
4 common knowledge that there was an air conditioner  
5 problem here. We also talked specifically with  
6 her about it.

7 MR. KAISER: Madam Hearing Officer, if  
8 you can please let me know what is the last  
9 exhibit number that we've used in this proceeding?

10 HEARING OFFICER: That's Number 107.

11 MR. KAISER: So, any new exhibit would  
12 be 108.

13 BY MR. KAISER:

14 Q. I'm showing counsel for Respondent what  
15 I've just marked for purposes of identification as  
16 Complainant's Exhibit 108. It's a 3 page document  
17 which has presently been tendered to counsel for  
18 Respondent in your response to interrogatories and  
19 document production requests. It's a listing of  
20 the Shelton residence with Kahn Realty Companies.  
21 Original listing date on or about February 1,  
22 1995. Showing you a 3-page document that I've  
23 marked for purposes of identification as  
24 Plaintiff's Exhibit 108. I ask you to review

1 those 3 pages, tell me if you recognize that  
2 document?

3 A. Yes, I do. This is information  
4 pertaining to the listing of our house that we  
5 supplied to the Crown attorneys in the  
6 interrogatories.

7 Q. Is that, where did you obtain that  
8 information?

9 A. From our broker, Ann Montgomery.

10 Q. And, are those true and accurate copies  
11 of the information you obtained?

12 A. Yes.

13 MR. CARSON: Objection, foundation--of  
14 the copies he obtained? I withdraw the objection.

15 BY MR. KAISER:

16 Q. Are those true and accurate copies of the  
17 document you obtained from your broker, Ann  
18 Montgomery?

19 A. Yes.

20 Q. And, was it your testimony you listed  
21 your home with Ann Montgomery in February of 1995?

22 A. Yes.

23 Q. And, did you have a conversation with Ms.  
24 Montgomery and anyone else at Kahn Realty



1 concerning the Crown air conditioning unit?

2 A. Yes, we did. We met with, I believe the  
3 name is Joe Cavolek, I'd have to check my notes to  
4 be certain, but I believe C-a-v-o-l-e-k, and Joe  
5 is the number 2 person at Kahn Realty. We went  
6 with Joe and Ann to talk about the implications of  
7 the air conditioner problem for our listing.

8 MR. CARSON: Your Honor, just can I raise  
9 an objection in a preliminary fashion in that  
10 where this is going, obviously, is for us to hear  
11 what Joe Cavolek and Ann Montgomery had to say  
12 about the air conditioning problem. It's  
13 objectionable hearsay and we're, we want to go on  
14 record as soon as possible objecting to the  
15 admissibility of that testimony.

16 HEARING OFFICER: Counsel, can you tell  
17 us where you plan to go with this testimony?

18 MR. KAISER: Yes. All I'd like to do is  
19 establish that this was the listing agreement and  
20 that as a condition to listing the Shelton home  
21 with Kahn Realty Companies, Kahn Realty asked that  
22 Page 3 of the agreement, air conditioner noise  
23 rider, be attached to the listing and that this,  
24 in fact, is a true and accurate copy of the rider

1           that Kahn Realty placed upon the listing  
2           agreement.

3                       MR. CARSON:  There is no authentication,  
4           there is no ability to authenticate these Kahn  
5           Realty documents with this witness, and that's all  
6           inadmissible hearsay, unauthenticated.

7                       HEARING OFFICER:  All right.  We've had  
8           the production of the exhibit to the witness and  
9           we've had the witness verify that the exhibit is  
10          the item that he received from the reality.  
11          Proceed.

12                      MR. KAISER:  I want to mark for purposes  
13          of identification as 108 A, B, and C.  And,  
14          drawing your attention in particular to 108 C,  
15          which is titled air conditioner noise.  When did  
16          you first see the page that's been marked as  
17          Exhibit 108 C?

18                      A.  I actually drafted it just prior to the  
19          listing of the house.

20                      Q.  Why did you draft it?

21                      A.  Kahn requested that I write a description  
22          of the situation with regard to the Crown air  
23          conditioner as it related to our house.

24                      Q.  What, if any, concerns did you have as of

1 February, 1995 with respect to liability to future  
2 purchasers of your home at 707 Ardsley Road in the  
3 event that you did not disclose the problems you'd  
4 had with noise emanating from the Crown air  
5 conditioning system?

6 MR. CARSON: Object to that question as  
7 calling for a conclusion. And, in this case, a  
8 legal conclusion as to what his liability would  
9 be.

10 MR. KAISER: Excuse me, that's not what's  
11 called for. I asked for Mr. Shelton's concerns.  
12 He can have concerns regarding liability and  
13 doesn't need to be a lawyer to have those  
14 concerns. That's all I want to know, did he or  
15 did he not have concerns in February of 1995  
16 concerning liability. If he has a concern, then  
17 I'll lay a foundation on the basis of his concern.  
18 Although living in the United States in the 1980's  
19 and 1990's, I think everyone has a basis for a  
20 concern. But--

21 HEARING OFFICER: As to the objection  
22 objection to the question that was asked, the  
23 objection is sustained.

24 BY MR. KAISER:

1           Q.    Mr. Shelton, in February of 1995, did you  
2           have concerns with respect to liability to a  
3           future purchaser of your home in the event that  
4           you did not disclose or remain silent about the  
5           problems you'd had in connection with the Crown  
6           air conditioning unit?

7                     MR. CARSON:  Same objection, and I  
8           believe it was the same question.

9                     HEARING OFFICER:  I'll permit the witness  
10          to answer.  Objection overruled.

11          A.    I had two concerns.  The first that it  
12          was my understanding that a new regulation had  
13          been passed in Illinois fairly recently prior to  
14          this, I don't know the exact date, that required  
15          increased disclosure by home owners who were  
16          selling.  I also understood from talking with  
17          counsel and Kahn that it was my understanding that  
18          while this regulation might not technically  
19          require our disclosure, it, there was a sufficient  
20          gray area that we might have some exposure if we  
21          didn't disclose this.

22                     The second concern I had was not  
23          really a legal concern, simply a question of  
24          ethics.  I didn't think it would be right to sell

1           our house to someone knowing that there was this  
2           problem without telling them about it.

3                       MR. CARSON: Renew the objection and move  
4           to strike the response. The witness started by  
5           giving his interpretation of the status of  
6           Illinois law with respect to the new statute, and  
7           then he went on to tell us what opinions he  
8           received from Kahn Realty, whoever that is, and  
9           counsel, unidentified, and it's hearsay and it's  
10          inappropriate, and we move to strike the response.

11                      MR. KAISER: Madam Hearing Officer,  
12          again, we're not offering it for the truth of the  
13          matter asserted, whether, in fact, there was a new  
14          Illinois regulation; whether, in fact, Mr.  
15          Shelton's problem with the Crown air conditioning  
16          system fell into a gray area, those are not the  
17          matters we're trying to prove here. What we want  
18          to determine is what was in the Shelton's minds in  
19          February of 1995. What obligations did he  
20          perceive, either based in law or in the area of  
21          ethics and morality, that caused him to generate  
22          the document that we're looking at, Exhibit 108 C.  
23          That's an entirely appropriate area of inquiry and  
24          for testimony.

1                   MR. CARSON:  There's no hearsay rule if  
2                   everything is introduced for the purpose of  
3                   establishing the state of mind when it's obvious  
4                   that it's a subtrofuge.  It's being offered to  
5                   prove, again, if his state of mind is based upon  
6                   some erroneous understanding of the law, how is  
7                   that erroneous understanding of the law even  
8                   relevant or material to the proceeding?

9                   HEARING OFFICER:  Thank you, counsel.

10                  MR. CARSON:  Would it be okay if we  
11                  looked at the exhibit again?

12                                Your Honor, if I can also make an  
13                   additional comment regarding the contents of the  
14                   Exhibit.

15                  HEARING OFFICER:  Proceed.

16                  MR. CARSON:  Exhibit 108 C contains a  
17                  number of statements that are a total  
18                  contradiction to the evidence that we've heard so  
19                  far in this proceeding.  It states here that the  
20                  unit commenced operation in the summer of 1994.  
21                  We've heard testimony that, in fact, it commenced  
22                  operation in the fall of 1993.  It states that  
23                  decibel readings from the unit indicated that  
24                  noise levels were in excess of Illinois EPA

1 standards. While I don't think we have any direct  
2 evidence in this proceeding to this point, I think  
3 the Board is certainly aware that these EPA  
4 standards are not applicable to units communicated  
5 from a residence to another residence. It also  
6 states that the enclosure was erected in January,  
7 around the unit, was erected in January of 1995  
8 when, in fact, the evidence is it was erected  
9 sometime later, approximately April of 1995. It's  
10 not a reliable document, and there is no  
11 opportunity for us to test this information.  
12 There's no opportunity for us to test the  
13 information contained on this listing sheet  
14 because it was all generated by somebody at Kahn  
15 Realty who is not available for cross examination.

16 MR. KAISER: I know, your Honor, or Madam  
17 Hearing Officer, that at this point, we're talking  
18 solely about Exhibit 108 C, and we've not moved  
19 for admission of 108 A, 108 B or even at this  
20 point, for 108 C. We're laying the foundation for  
21 its admission.

22 HEARING OFFICER: All right. At this  
23 point the objection, which is with respect to  
24 testimony proffered by Mr. Shelton, is overruled

1 and the motion to strike is denied. I perceived  
2 this testimony as admissible as a foundation for  
3 Mr. Shelton's authorship of 108 C. I will receive  
4 this testimony.

5 MR. KAISER: I've lost track whether  
6 there is a question pending. I'd ask that Madam  
7 Court Reporter find it and read it back. If there  
8 is not, then I can just proceed.

9 MR. CARSON: As I recall, I interrupted  
10 after the answer before your next question.

11 MR. KAISER: All right.

12 BY MR. KAISER:

13 Q. Now, with respect to 108 C, what is your  
14 testimony concerning the authorship of 108 C?  
15 Who, in fact, drafted what we're referring to as  
16 Document 108 C?

17 A. I drafted it, and disagreed with some of  
18 the Respondent counsels assertions about it.

19 Q. The facts that he challenged in his  
20 objection?

21 HEARING OFFICER: The facts are not at  
22 issue right now.

23 BY MR. KAISER:

24 Q. Right. And, I ask did you draft the



1 document we're referring to as Exhibit 108 C?

2 A. I drafted it because our brokerage firm  
3 said that we would have to have a disclosure of  
4 this kind in order for them to list the house.  
5 And, secondly, because I felt it was the right  
6 thing to do, the ethical thing to do.

7 MR. CARSON: Re-raising the same  
8 objection and move to strike the response for the  
9 same grounds previously stated.

10 HEARING OFFICER: Motion to strike as to  
11 the broker's statement is granted.

12 BY MR. KAISER:

13 Q. Did you show this Exhibit 108 C to Ms.  
14 Montgomery or anyone else at Kahn Realty?

15 A. Yes, I did.

16 Q. Do you know whether Kahn Realty was  
17 willing to list your home for sale with them in  
18 the absence of 108 C?

19 A. It's my understanding they would not.

20 Q. What was the basis for your  
21 understanding?

22 A. A meeting we had with Ms. Montgomery and  
23 Mr. Cavolek to discuss the housing and the related  
24 noise problem.

1 Q. And, do you recall what month and what  
2 year that meeting took place?

3 A. It was, to the best of my recollection,  
4 January of 1995.

5 Q. After tendering a copy of 108 C to, did  
6 you, in fact, give Ms. Montgomery a copy of this  
7 document we're referring to as 108 C?

8 A. Yes, we did.

9 Q. What, if any, action did Kahn Realty take  
10 with respect to listing your home once their  
11 agent, Ms. Montgomery received a copy of the  
12 document we're referring to as 108 C?

13 A. They proceeded with the listing.

14 Q. Is 108 C a true and accurate copy of the  
15 document you provided to Ms. Montgomery prior to  
16 Kahn Realty proceeding with the listing in  
17 February of 1995?

18 A. Yes, it is. I might add that we did wait  
19 to list the house until the enclosure was done so  
20 that we could, in fact, say that it was completed,  
21 and Mr. Crown had indicated to us at a meeting  
22 with the village officials in January of 1995 that  
23 the enclosure was completed.

24 Q. Thank you. Did you have any conversation

1 with Ms. Montgomery at the time that you provided  
2 her with this document, 108 C?

3 A. Yes.

4 Q. Where did that conversation take place?

5 A. There were several conversations as we  
6 discussed the listing, and then put it into  
7 effect. We had the meeting with her and Mr.  
8 Cavolek at the Kahn Realty Office in Winnetka.  
9 She also visited our home on more than one  
10 occasion, and we had phone conversations. And, at  
11 various times during those conversations, we  
12 talked about this disclosure, as well as other  
13 aspects of the listing.

14 Q. In January of 1995, did you form an  
15 opinion as to whether a disclosure statement was a  
16 necessary attachment to a listing agreement with  
17 Kahn Realty?

18 MR. CARSON: Objection, calls for a  
19 conclusion.

20 HEARING OFFICER: Sustained.

21 MR. KAISER: I'm sorry, Madam Hearing  
22 Officer, Mr. Shelton can't testify to his opinion  
23 or belief in January of 1995?

24 HEARING OFFICER: Would the Court

1 Reporter please read back the question?

2 (WHEREUPON, the record was  
3 read by the Court  
4 Reporter.)

5 HEARING OFFICER: Thank you. My ruling  
6 stands. I would like to ask counsel for  
7 Complainants to use a less leading questioning  
8 style.

9 BY MR. KAISER:

10 Q. What, if any, opinion did you form in  
11 January of 1995? What, if any, opinion did you  
12 form in January of 1995 concerning the conditions  
13 imposed by Kahn Realty in connection with the  
14 listing of your residence for sale?

15 MR. CARSON: Your Honor, again, I'm going  
16 to object. What counsel is attempting to  
17 establish here is that Kahn Realty said, you have  
18 to make this disclosure. We're not going to  
19 accept the listing. If that's what he intends to  
20 prove, why don't they bring Kahn Realty here to so  
21 testify? This is an inappropriate way to bring in  
22 this testimony. It's also legal conclusions.  
23 We're dealing with the applicability of the  
24 Illinois Real Estate Disclosure Act, and why do we

1 have to listen to a lay witness tell us what the  
2 law is through what some real estate broker told  
3 him? It's inappropriate and it shouldn't be  
4 permitted.

5 MR. KAISER: If that argument could  
6 change the facts, then there might be a basis for  
7 excluding it. But, the facts are, and I'm  
8 offering this as an offer of proof, the facts are  
9 that Kahn Realty did insist that Mr. Shelton  
10 attach a rider to the listing agreement. Whether  
11 that had an appropriate basis in law or didn't is  
12 not the question here. We're not litigating that.  
13 What we're demonstrating is that there were  
14 consequences to the persistent noise emanating  
15 from the Crown air conditioning unit. One of  
16 those consequences was that when Mr. Shelton went  
17 to list his home, the realtor insisted on a air  
18 conditioning noise rider. Now, whether that was  
19 well founded in law or whether Mr. Carson might  
20 have advised the reality company to do otherwise,  
21 that's what's irrelevant. But, it's highly  
22 relevant the fact that there was this requirement,  
23 and that Mr. Shelton abided by it.

24 HEARING OFFICER: The objection is

1           sustained.

2                       MR. KAISER:  Madam Hearing Officer, just  
3           for the record, as a matter of proof, if Mr.  
4           Shelton were allowed to testify, he would testify  
5           that he had meetings with Ms. Montgomery and the  
6           manager for Kahn Realty in Winnetka, Illinois.

7                       HEARING OFFICER:  I believe he has  
8           testified to that already.

9                       MR. KAISER:  Yes, I believe he has.  
10          But, that the substance of those conversations  
11          were that, in fact, a rider was a necessary  
12          condition to listing his home for sale.  I believe  
13          he's also testified that he drafted this rider,  
14          that he tendered it to Ms. Montgomery and that  
15          after receipt, Kahn Realty did, in fact, list the  
16          home for sale.  With that, I move for admission  
17          into evidence of Plaintiffs Exhibit 108 C.

18                      MR. CARSON:  We're objecting to 108 C,  
19          your Honor, that the witness has testified as to a  
20          number of facts as to his perceptions at the time.  
21          The document itself, though, is hearsay.  It's his  
22          purported summary of events that he gave to a  
23          realtor for an unknown purpose, and it's  
24          inadmissible hearsay.  I stated earlier all the

1 factual statements we believe to be incorrect as  
2 well.

3 MR. KAISER: My response is it's not  
4 being offered for the truth of the matter  
5 asserted. We're not attempting to prove, through  
6 this, the facts contained therein. What we want  
7 to establish is that in February of 1995, Mr.  
8 Shelton drafted this document, tendered this  
9 document to Ms. Montgomery of Kahn Realty, and  
10 that upon receipt of this document, Kahn Realty  
11 then listed the Shelton residence for sale.

12 HEARING OFFICER: Thank you, counsel.

13 MR. CARSON: May I make one other point  
14 with respect to 108 C, your Honor?

15 HEARING OFFICER: Yes.

16 MR. CARSON: It states in the closing  
17 sentence, excuse me for taking yours, I want to  
18 show it to her, the last sentence there, if  
19 further attenuation is needed, additional steps  
20 can be taken. There is no foundation for that  
21 statement. This is just, I mean, is this witness  
22 now an expert in sound attenuation?

23 HEARING OFFICER: Okay, thank you.

24 MR. KAISER: If I just may point out,

1 Madam Hearing Officer, in fact more attenuation,  
2 additional steps were taken in the spring of 1996.  
3 So, it's somewhat bizarre to argue that this is a  
4 false statement and, therefore, this document  
5 shouldn't be admitted when we've all sat through  
6 hearings and know that they've scaled back the air  
7 conditioning operations protocols in the spring of  
8 1996 as additional steps to be taken to attenuate  
9 sound.

10 MR. CARSON: I'm not arguing the truth or  
11 falsity of the statement. This witness would be  
12 permitted to make that statement here in this  
13 hearing on why should he be able to make that  
14 statement indirectly through that piece of paper.

15 MR. KAISER: Madam Hearing Officer, we  
16 would stipulate that this document can be used for  
17 the purposes of establishing a violation of any  
18 noise, of numerical noise standards established by  
19 the Board already.

20 HEARING OFFICER: The objection is  
21 overruled. However, the document, Exhibit 108 C  
22 will be admitted only for the limited purpose of  
23 showing that Mr. Shelton authored it and provided  
24 it to his real estate agent. It's not admitted



1 for the truth of any matter asserted in it.

2 MR. KAISER: Thank you. If I may  
3 substitute, Mr. Carson, do you have a problem if I  
4 substitute this copy of 108 C. It's in a little  
5 better repair.

6 HEARING OFFICER: Thank you.

7 BY MR. KAISER:

8 Q. Showing counsel for Respondents what's  
9 marked for purposes of identification as Exhibit  
10 7, it's a letter from Mr. Shelton to the Winnetka  
11 Village Council dated January 16th, 1995. I  
12 believe it's been the subject of some prior  
13 testimony, though it's my recollection that it's  
14 not yet been formally admitted into evidence.

15 Mr. Shelton, I'm showing you what's been  
16 marked for purposes of identification as Exhibit  
17 7. I ask you if you recognize that?

18 A. Yes, I do.

19 Q. What do you recognize that to be?

20 A. It's a copy of a letter that I sent to  
21 the Village Council in January of 1995.

22 Q. Is that a true and accurate copy of the  
23 letter that you sent to the Village Council on or  
24 about January 16th, 1995?

1           A.    It is.

2           Q.    I note that there is a number of  
3           attachments to that letter.  And, if we could just  
4           show it to Madam Hearing Officer.

5                    HEARING OFFICER:  Mr. Kaiser, would you  
6           remove the note that I placed on it?

7                    MR. KAISER:  Yes, I'd be happy to.

8           BY MR. KAISER:

9           Q.    I note that there are a number of  
10           attachments to this letter.  Can you please go  
11           through and, for the Board's benefit, identify the  
12           attachments?

13           A.    Yes.  The first attachment is a 2-paged  
14           excerpt from the Trane engineering bulletin  
15           regarding noise levels of RAUC air conditioners  
16           that we referred to in other documents.  The  
17           second attachment is the copy of a petition that  
18           we had neighbors sign during the summer of 1994.  
19           The third attachment is a copy of the Al Shiner  
20           noise readings of July 5th, 1994.

21           Q.    And again, on that attachment, Mr.  
22           Shelton, I notice that that contains--is that your  
23           handwriting at the bottom of the page of the  
24           Shiner Associates letter?

1           A.    It is.  It's not the same notation that  
2           was on the copy that we looked at a few minutes  
3           ago, but as the months progressed, I became a  
4           little more learned and, in the arcane area of  
5           noise.  And so, this was a little more accurate  
6           understanding of what I feel the facts were that I  
7           note here.  All right.  And, lastly is a letter  
8           from Greg Zack at the EPA to Mr. Shiner where he's  
9           talking about the effects of the enclosure being  
10          constructed by the Crowns.

11          Q.    And, were these attachments all contained  
12          in the letter that you sent to the Winnetka  
13          Village Council on or about January 16th, 1995 and  
14          identified for purposes of this hearing as Exhibit  
15          7?

16          A.    Yes, they were.

17          Q.    I note that at the bottom of Page 4 of  
18          that letter, there's a c.c. to an A. Steven Crown.  
19          Is that Mr. Crown the Respondent in this  
20          proceeding?

21          A.    It is.

22          Q.    And, I see that there's a little  
23          handwritten check beside his name.  What, if  
24          anything, does that indicate?

1           A.    That I did, in fact, mail the copy to  
2           him.

3           Q.    And the copy that you sent to Mr. Crown,  
4           would that have contained the attachments to the  
5           letter as well, as well as the body of the letter  
6           itself?

7           A.    Yes, it would.

8           Q.    And, is this a true and accurate copy of  
9           the letter that you sent to the Village on or  
10          about January 16th, 1995?

11          A.    It is.

12                 MR. KAISER:  Move for admission into  
13                 evidence of Exhibit 7.

14                 MR. CARSON:  We object to the admission  
15                 of Exhibit 7, in particular attachments which  
16                 include the irrelevant and inapplicable Trane  
17                 Bulletin, the blatant hearsay petition, the  
18                 recitation by this witness who is obviously not an  
19                 expert witness as to what decibel readings mean  
20                 and the letter from Mr. Zack as having no proper  
21                 foundation.  The attachments to the letter are all  
22                 inadmissible.  The letter itself directed to the  
23                 Winnetka Village Council is of questionable  
24                 relevance as well, and we're objecting to Exhibit

1           7.

2                       HEARING OFFICER: Counsel, can you inform  
3 me which of these exhibits have already been  
4 admitted as a separate exhibit?

5                       MR. KAISER: The Trane Bulletin has been  
6 authenticated and admitted through Mr. Seda. The  
7 petition has been the subject of testimony from  
8 Complainant, Susi Shelton but not yet, to my  
9 knowledge, been offered and admitted. The letter  
10 of Mr. Shiner dated July 5, 1994 and except the  
11 annotation at the bottom by Mr. Shelton I believe  
12 has been admitted. And Mr. Zack's letter of  
13 October 19th, 1994, to the best of my  
14 recollection, has been admitted.

15                      MR. CARSON: Can I respond to that?

16                      HEARING OFFICER: Yes.

17                      MR. CARSON: If this portion of the Trane  
18 Bulletin has been admitted, it has been as an  
19 attachment to a letter for a limited purpose. The  
20 document itself has not been admitted into  
21 evidence. The Petition, to my knowledge, has not  
22 been admitted into evidence. Mr. Shelton's  
23 commentary regarding what decibel readings mean  
24 has never been admitted into evidence. And, if

1           this letter that Greg Zack, that purports to be a  
2           letter from Greg Zack dated October 19th has been  
3           admitted into evidence, I'd like to know what the  
4           exhibit number is. I'd like to verify it with my  
5           own notes because I don't recall that being the  
6           case.

7                         MR. KAISER:  Already.  Madam Hearing  
8           Officer, I stand corrected by, certainly, Mr.  
9           Carson's remarks.  I believe he's correct that Mr.  
10          Zack's letter of October 19th, 1994 has not  
11          previously been added.  And, I believe, certainly  
12          agree he's correct when he states the Trane  
13          Bulletin has been admitted for a limited purpose.  
14          You'll recall the entire bulletin was the subject  
15          of confidentiality between the Respondent and the  
16          Trane Company on whether it was shown and was used  
17          by Mr. Seda to authenticate these excerpts.  The  
18          entire Trane bulletin was, of course, not offered  
19          and weren't admitted into evidence.  Again, we're  
20          looking to get this information in for the  
21          purposes of establishing what actions Mr. Shelton  
22          has taken by way of seeking a remedy outside of  
23          these proceedings.  And again, it goes to notice,  
24          what Mr. Crown knew, when he knew it, what he did

1 or did not do with that knowledge.

2 HEARING OFFICER: Okay. I'm going to  
3 permit Exhibit 7 to be entered into evidence.  
4 With respect to the Trane engineering pages, the  
5 same limitations will apply as applied in our  
6 previous examination of this exhibit. This will  
7 not be admissible for the truth of the information  
8 asserted. With respect to the petition, that will  
9 be added as a petition, as evidence of a petition.  
10 The sound test results of Mr. Alan Shiner are  
11 already admitted, and the letter from Greg Zack  
12 will be added as evidence that he was in touch  
13 with Mr. Shiner related to this issue.

14 MR. KAISER: Thank you.

15 BY MR. KAISER:

16 Q. Mr. Shelton, I want to show you what's  
17 been marked for purposes of identification as  
18 Exhibit 35. It's a, I believe it's a 3-page  
19 document which has as its cover a letter from you  
20 to members of the Winnetka Village Council, Mr.  
21 Crown, Mr. Al Shiner. It's dated January 21st,  
22 1995. Counsel, I see you have a copy on your  
23 table here, 35, I apologize.

24 MR. KAISER: Madam Hearing Officer,

1 perhaps you could advise me whether this has been  
2 offered and admitted previously, or whether I need  
3 to lay a foundation?

4 HEARING OFFICER: 5 has been admitted  
5 into evidence on July 1st.

6 MR. CARSON: My notes indicate a limited  
7 purpose of notice for Exhibit 35. Is that  
8 consistent with your notes, Madam Hearing Officer?

9 HEARING OFFICER: Yes, it is.

10 BY MR. KAISER:

11 Q. Do you recognize that document?

12 A. I do.

13 Q. What do you recognize it to be?

14 A. It's a synopsis of the discussion that we  
15 had with representatives of the Village, Steven  
16 Crown and Bob Julian on January 17th, 1995, and Al  
17 Shiner was on the speaker phone a good part of  
18 that conversation.

19 Q. Is this a true and accurate copy of the  
20 letter that you sent to these addressees on or  
21 about January 21st, 1995?

22 A. It is.

23 Q. And, did you enclose in that letter this  
24 2-page synopsis of the January 17th, 1995 meeting?



1           A.    I did.  I might also point out that in  
2           Point 2 of the synopsis, was referring to Al  
3           Shiner's point, this is where, what I based our  
4           real estate disclosure statement, that additional  
5           steps could be taken, this was the basis for that  
6           statement.

7           Q.    I see.  Did you, in fact, participate in  
8           a meeting concerning the Crown air conditioning  
9           unit on or about January 17, 1995 at the Winnetka  
10          Village Hall?

11          A.    Yes.

12          Q.    I note that at the top of the second page  
13          of the document, you note people attending.  Is  
14          that, in fact, an accurate summary of the persons  
15          who were in attendance at the meeting?

16          A.    It is.

17          Q.    And, I see that Mr. Shiner is indicated  
18          as attending by phone.  What did you mean by that?

19          A.    He was not physically at the meeting, but  
20          we did have a speaker phone in the conference room  
21          and he was listening and talking with the group  
22          via the phone.

23          Q.    Was one of the subjects discussed testing  
24          of the air conditioning unit?

1 A. Yes, it was.

2 Q. When you refer to testing, what are you  
3 talking about?

4 A. Additional noise readings.

5 Q. What agreements, if any, did you reach  
6 with the Crowns concerning payment for additional  
7 noise readings?

8 A. We agreed that we would share the cost of  
9 the testing.

10 Q. Now, what, if any, agreements did you  
11 reach with the Crowns concerning the timing of  
12 such tests?

13 A. That we would test as, essentially, as  
14 weather permits.

15 Q. Did you make that summary of the meeting  
16 and the points discussed at the meeting on or  
17 about the time of the meeting?

18 A. I didn't.

19 Q. And, as you review that today, is that a  
20 true and accurate summary of the points in the  
21 meeting, location, persons attending and subjects  
22 covered?

23 A. Yes, it is.

24 MR. KAISER: I move for admission into

1 evidence of Exhibit 35 without restriction.

2 MR. CARSON: No objection to Exhibit 35.

3 HEARING OFFICER: Okay, thank you.

4 Exhibit 35 is entered into evidence without  
5 restriction.

6 BY MR. KAISER:

7 Q. I want to show you what's previously been  
8 marked for purposes of identification as Exhibit  
9 60, a letter from Alan H. Shiner to David Shelton  
10 dated June 20th, 1995, asking you if you recognize  
11 that?

12 A. Yes, I do.

13 Q. Is that a true and accurate copy of a  
14 letter you received from Mr. Shiner?

15 A. It is.

16 Q. Does that, in fact, summarize the noise  
17 results that Mr. Shiner obtained in June of 1995?

18 A. Yes it does.

19 Q. I believe Exhibit 60 has already been  
20 admitted into evidence. If it hasn't, I now move  
21 for its admission.

22 HEARING OFFICER: Exhibit 60 has been  
23 entered into evidence.

24 BY MR. KAISER:

1           Q.    I want to show you what's been marked for  
2           purposes of identification as Exhibit 41, which I  
3           believe has been offered and admitted into  
4           evidence.

5                   MR. CARSON:    Can I, I'm sorry to  
6           interrupt, but can I just raise a question with  
7           respect to Exhibit 60?  Is there a difference  
8           between 60 and 33?  Looks like 33 is one that has  
9           Mr. Shiner's signature on it and 60 does not.  
10          And, I don't have a note as to whether 33 was  
11          already in or not, but perhaps for the sake of  
12          avoiding duplication and so the record is clear,  
13          we can just put one or the other.

14                   HEARING OFFICER:  33 was never introduced  
15          in this meeting.  And, there are several numbers  
16          of exhibits that were pre-numbered that have not  
17          been introduced, and I will share with you my  
18          draft list of the exhibits during our next break.  
19          I'll get some copies of these.  They'll assist  
20          everyone, I think.

21                   MR. CARSON:  But, for purposes of going  
22          forward, then, we're working with 60 and not 33.

23                   MR. KAISER:  That's correct.  And, Madam  
24          Hearing Officer, do you have a copy of 60 now?

1 HEARING OFFICER: No.

2 MR. KAISER: Allow me to provide you  
3 with one.

4 BY MR. KAISER:

5 Q. I want to show you what's previously been  
6 marked for purposes of identification as Exhibit  
7 41, a letter from David R. Shelton to A. Steven  
8 Crown dated June, 26th 1995. And, Mr. Shelton, I  
9 show you Exhibit 41 and ask you if you recognize  
10 it?

11 A. Yes, I do.

12 Q. What do you recognize it to be?

13 A. It's a letter that I sent to Steven after  
14 the June, 1995 noise readings were completed by  
15 Mr. Shiner.

16 Q. Did the letter contain certain  
17 attachments?

18 A. Yes, it did.

19 Q. Can you describe to the Board what those  
20 attachments are?

21 A. The first attachment is a copy of the  
22 June 20 letter from Al Shiner with his results.  
23 And, I have written in my hand at the bottom the  
24 results of readings at, near lot lines which Mr.

1 Shiner neglected to include. And, I also noted  
2 the daytime standards.

3 The second attachment is a summary of  
4 secondary kinds of issues that I thought should be  
5 addressed. And, the third issue is a letter  
6 regarding projections, what the enclosure would do  
7 and comparing that to, in the way of reducing  
8 sound, as compared to what the readings, in fact,  
9 were in June of 1995.

10 Q. And, were those attachments included in  
11 the letter that you sent to Mr. Crown?

12 A. Yes, they were.

13 Q. On or about June 26th, 1995 and  
14 identified as Exhibit 41. I note that the first  
15 sentence states "The new enclosure has helped, but  
16 it has not solved the air conditioner noise  
17 problem." Was that, in fact, your opinion as of  
18 June 26th, 1995?

19 A. Yes, it has.

20 Q. Describe again, for the Board, the sound  
21 of the air conditioning unit as you experienced it  
22 in your home in late June, 1995?

23 A. When the unit commenced operation in the  
24 spring of 1995, we were very disappointed that the

1 reduction in sound was not greater. In fact, it  
2 was to our ear, trying to recollect back to the  
3 prior fall when the system had been operating, it  
4 was a very minimal reduction in the noise levels.  
5 During the night of the test, the noise test that  
6 Mr. Shiner conducted, however, the cones that have  
7 been testified to previously were removed and  
8 that, in fact, did lead to an improvement in the  
9 sound levels.

10 Q. So, up until the night of the readings,  
11 the impact on you was essentially the same as it  
12 had been in 1994?

13 A. After the cones were removed with the  
14 enclosure, there was some relief from sound.  
15 However, it continued to present us with some  
16 quite serious problems. We continued to have  
17 difficulty sleeping, even with our windows closed.  
18 A particular drone penetrates through the windows,  
19 even with the storms on, we continued to keep the  
20 storms on and we could hear the air conditioner.  
21 It would wake us up. We continued to sleep with  
22 the fans on and would sometimes sleep with ear  
23 plugs. We continued to find the noise levels too  
24 high in our backyard and patio, particularly later

1 in the evening, and what, in our minds, was a very  
2 serious problem. Our son couldn't sleep in his  
3 room still, he had to vacate that. And, as a  
4 result of all those things, the loss of sleep and  
5 so on, we continued to have anxiety and stress, I  
6 think being tired, depressed, that sort of thing.

7 Q. And, did you form an opinion as to what  
8 was the cause of your loss of sleep in the summer  
9 of 1995?

10 A. Yes, though with the cones off, the noise  
11 levels were clearly reduced, it was still a  
12 problem for us sleeping.

13 Q. And, when you refer to it, what are you  
14 referring to?

15 A. The Crown air conditioner, the chiller.

16 MR. KAISER: I move for admission into  
17 evidence of Exhibit 41 to the extent it hasn't  
18 been so moved and so received.

19 HEARING OFFICER: Exhibit 41 was admitted  
20 into evidence July 1st for a limited purposes.

21 MR. CARSON: No. No objection to  
22 Exhibit 41.

23 HEARING OFFICER: All right, thank you.  
24 Exhibit 41 is entered into evidence without



1 restriction.

2 BY MR. KAISER:

3 Q. I want to show you what's been marked for  
4 purposes of identification now and received into  
5 evidence as Exhibit 41. And, I want to direct  
6 your attention to the 5th page, the section which  
7 you've entitled Other Issues and dated June 26th,  
8 1995. Did you, in fact, create this document,  
9 this attachment, other issues, about that date?

10 A. Yes.

11 Q. And, I believe you just talked about the  
12 noise reduction gotten from the enclosure was must  
13 less than expected. I note that in the Paren 2,  
14 you note sound surges were not tested. What do  
15 you mean by that?

16 A. The tests were being conducted at 10:00  
17 o'clock or later on Monday evening. As a result,  
18 we limited the test. In fact, this was limited to  
19 a protocol that had been agreed to by Mr. Shiner  
20 and Mr. Mautner, and that didn't include any  
21 measurement of the impact of a compressor cycling  
22 on and off. And, those were the sound surges I  
23 was referring to.

24 Q. And what impact had those sounds had on

1           you and your family?

2           A.    They were particularly disruptive, the  
3           change in sound levels in particular would awaken  
4           us or caused you to start if it were during the  
5           day time.

6           Q.    I note that at Paren 3, you note sections  
7           that are sound levels, levels were tested.  What  
8           do you mean by that statement?

9           A.    We'd been concerned from the beginning of  
10          this whole matter that particularly our son's  
11          second floor bedroom was directly overlooking the  
12          Crown air conditioner, and the enclosure that they  
13          built did not have anything on top of it.  As a  
14          result, there was a direct line of sight from his  
15          room to the air conditioner and the noise levels  
16          weren't any louder in our sound room, they were  
17          quite loud.  And, unfortunately, that night, those  
18          noise levels were tested.

19          Paren 4, sound pulsations, beatings  
20          were not tested.  What are you referring to by  
21          sound pulsations?

22          A.    Particularly during 1994 and the early  
23          part of 1995, one could hear increases and  
24          decreases in the sound levels which I've used the

1 term "beating" to describe them. And, it's my  
2 understanding, I realize I'm a layman, that that's  
3 the result of different components of the Crown  
4 chiller getting into and out of phase with each  
5 other. It increases, then decreases. It's a  
6 pulsating kind of rhythm to it and we could listen  
7 to that all night in our bedroom.

8 Q. Paren 5 shows frequency problems. What  
9 are you referring to?

10 A. I must say it was drawn up on some of the  
11 information that Mr. Shiner provided along the  
12 way. Particularly, in our bedroom, there seemed  
13 to be a particular drone that was very  
14 bothersome. Mr. Zack had thought that it might be  
15 what he calls a discreet tone problem, which I  
16 believe he alluded to in his testimony last week.  
17 It's a particularly low frequency at which the  
18 frequencies on either side are much lower. And,  
19 when that phenomenon happens, it can cause a  
20 particularly irritating sound.

21 Q. Where, if ever, have you experienced that  
22 type of particular irritating sound?

23 A. Our bedroom.

24 Q. When you say your bedroom, you're

1 referring to your bedroom at 707 Ardsley Road in  
2 Winnetka, Illinois?

3 A. Yes.

4 Q. During what time frame did you experience  
5 that especially irritating sound?

6 A. During the evening hours when we're  
7 trying to sleep.

8 Q. Did you experience that during the summer  
9 months of 1994?

10 A. Yes.

11 Q. Did you experience that in the late  
12 spring and early summer of 1995?

13 A. Yes.

14 Q. Duration of sound, Paren 7. What are you  
15 referring to there?

16 A. I was referring to the fact that in my  
17 experience, when people think of residential air  
18 conditioners, they think of air conditioners that  
19 are used on particularly hot days and not on days  
20 when it isn't so hot. And, living relatively near  
21 to the lake shore, we have a lot of cool days.  
22 And, as a result, most people that I know don't  
23 operate their air conditioners at their homes  
24 constantly. Even when they are operating, the

1 units are frequently cycled off and may not run at  
2 all during the night if things are cooled down.  
3 The Crown chiller is completely unlike that. It  
4 essentially operates 24 hours a day for many  
5 months at a time.

6 Q. Without interruption or relief?

7 A. There, I should say there was a change  
8 made sometime in the spring of 1995, I think it  
9 was my impression it was just prior to the Shiner  
10 tests in June of 1995 where they reduced--back up  
11 for a moment. They adjusted the system controls  
12 so that the system did not cycle on and off as  
13 frequently as it had before. That, in fact, there  
14 was some part of the system that was on absolutely  
15 continually, and then other parts would kick on  
16 and off above that. But, I sort of lost track of  
17 where I was on the question there. That's  
18 essentially what I mean by duration of this thing.  
19 Right now, it operates continually.

20 Q. Thank you. I want to show you now, I  
21 want to back track just a bit and show you what  
22 we've marked for purposes of identification as  
23 Exhibit 37, a handwritten letter from you to  
24 Steven Crown dated 5-19-95. Showing you a copy of

1 that, ask you if you recognize that.

2 A. Yes, I recognize this.

3 Q. What do you recognize that to be?

4 A. It's a letter that I sent to Steven  
5 talking about the spring readings that we had,  
6 noise readings that we had agreed to in our  
7 meeting with Village officials in January, 1995.

8 Q. Is that a true and accurate copy of the  
9 letter that you sent to Mr. Crown on May 19, 1995?

10 A. It is.

11 MR. KAISER: Move for admission into  
12 evidence of Exhibit 37.

13 MR. CARSON: Could we have just a  
14 moment?

15 HEARING OFFICER: Yes. Let the record  
16 reflect that Exhibit 37 does not include any  
17 readings per se.

18 MR. CARSON: No objection to 37.

19 BY MR. KAISER:

20 Q. Showing the witness what's marked  
21 previously for purposes of identification as  
22 Exhibit 8, a letter from David Shelton to A.  
23 Steven Crown dated June 16, 1995. Showing it to  
24 the witness, ask you, Mr. Shelton, do you

1 recognize that?

2 A. Yes.

3 Q. What do you recognize it to be?

4 A. It's a letter to Steven that I wrote  
5 concerning the noise level tests conveying, I  
6 think, some frustration that it was taking him so  
7 long to get them done. And also conveying to him  
8 that we were still having serious problems with  
9 noise levels.

10 Q. Is that a true and accurate copy of the  
11 letter that you sent to Mr. Crown on or about June  
12 6th, 1995?

13 A. Yes, it is.

14 MR. KAISER: Move for admission into  
15 evidence of Exhibit 8.

16 MR. CARSON: No objection to 8.

17 BY MR. KAISER:

18 Q. Showing counsel for Respondent what's  
19 previously been marked for purposes of  
20 identification as Exhibit 28. Showing a copy to  
21 the witness. It's a letter from David R. Shelton  
22 to A. Steven Crown dated June 12, 1995. Mr.  
23 Shelton, do you recognize that letter?

24 A. Yes.

1 Q. What do you recognize it to be?

2 A. A letter I sent to Steven concerning the  
3 noise tests and the fact that the noise continued  
4 to be a problem for my family.

5 Q. Is that a true and accurate copy of the  
6 letter you sent to Mr. Crown on or about June  
7 12th, 1995?

8 A. It is.

9 MR. KAISER: Move for admission into  
10 evidence of Exhibit 28.

11 MR. CARSON: No objection.

12 HEARING OFFICER: All right.

13 BY MR. KAISER:

14 Q. Showing the witness, showing counsel for  
15 Respondents first a copy of a letter dated June  
16 30th, 1995 from A. Steven Crown to David R.  
17 Shelton. I believe it's previously been offered  
18 and admitted into evidence as Exhibit 40. Mr.  
19 Shelton, I ask you to take a look at that document  
20 and tell me if you recognize it?

21 A. Yes, I do.

22 Q. What do you recognize it to be?

23 A. This is a letter I receive from Steven,  
24 actually received it in early July, saying that



1 the results of the Shiner test notwithstanding,  
2 they were not going to do anything more about the  
3 noise.

4 Q. What was your emotional response to the  
5 receipt of that letter?

6 A. To answer the question, I need to back up  
7 for just a moment, I think, to characterize my  
8 whole mindset at the time. I've described, again,  
9 the physical reactions we were continuing to have  
10 with the noise. By this time, I was also getting  
11 very horribly frustrated and concerned about the  
12 opportunity cost of what this thing was, this  
13 whole matter was doing, the amount of time it was  
14 taking, you know, the thought being essentially  
15 that I have a terrific family and I have some  
16 interesting business things going on, the world  
17 has all kinds of things happening, the last thing  
18 in the world we need to do is to be talking about  
19 an air conditioner problem. I was unbelievably  
20 frustrated at the cost of not being able to do  
21 those things because of having to deal with this  
22 whole matter. I kept asking myself where could we  
23 have done something differently so we hadn't  
24 gotten to this point. I couldn't find anything.

1 I was very scared of where this letter left us. A  
2 line had been drawn in the sand the prior January  
3 when they told us they would do no more, and that  
4 forced us to go to the Village. A line in the  
5 sand was being drawn again, which was going to  
6 have to force us to go to Pollution Control or  
7 some kind of litigation. The thought of pitting  
8 our resources against those of the Crowns in  
9 litigation was, quite frankly, very scary to me.

10 MR. CARSON: Objection to that last  
11 comment and move to strike it. It's irrelevant  
12 and it's prejudicial. It's clearly inappropriate.

13 MR. KAISER: It's responsive, Madam  
14 Hearing Officer, to the question asked, what was  
15 his emotional response? It's just a genuine  
16 reaction and appropriate testimony.

17 MR. CARSON: It may be a genuine  
18 feeling, but it also is an attachment to object  
19 property into this proceeding that's never a  
20 consideration for this Board or any governing  
21 body.

22 MR. KAISER: It goes to the legitimacy of  
23 this complaint in so many regards as to what  
24 caused him to finally take this step and to pursue

1 litigation and to see it through. I think it  
2 gives credance to all of his testimony concerning  
3 the extent of the problem and the unreasonableness  
4 and the interference with his life. And, this is  
5 just one component. Granted, Respondent's don't  
6 want to hear about, don't want the Board to  
7 consider it, but it's something that was in his  
8 mind and is an appropriate consideration for the  
9 Board.

10 HEARING OFFICER: The objection is  
11 overruled. However, the witness' testimony with  
12 respect to the financial resources of the parties  
13 is not admissible for the truth of the matter  
14 asserted.

15 A. Finally, going through my mind was a  
16 grave disappointment that the Village hadn't been  
17 able to solve our problem, and a continued feeling  
18 of utter helplessness that here we were, we were  
19 precluded from putting an addition onto our house  
20 because it would make us closer to this noise  
21 problem. On the other hand, this thing was  
22 clearly handicapping our ability to sell our home.  
23 And, it was clearly taking away the joy of living  
24 in our home. Maybe the right adjective was

1           despair, was in despair when I saw this. I  
2           couldn't believe it was happening. So, that was  
3           my reaction when I got this letter.

4           Q. I want to show you what's previously been  
5           or perhaps not previously been marked, but --  
6           well, previously been marked, I can't frankly  
7           state whether it's been offered or accepted into  
8           evidence, it's Exhibit 22, a handwritten letter  
9           from David Shelton to Steven Crown dated September  
10          21st, 1995.

11           HEARING OFFICER: That was entered into  
12          evidence on July 1st for limited purposes.

13          BY MR. KAISER:

14          Q. I want to show you Exhibit 22, Mr.  
15          Shelton, ask you if you recognize that?

16          A. Yes, I do.

17          Q. What do you recognize that to be?

18          A. It's a note that I sent to Steven Crown  
19          in September after receiving his June 30, I  
20          believe it was, letter. Our correspondence and  
21          communications had dropped off markedly. In fact,  
22          I'm not sure if we had any during that time  
23          period. However, the air conditioner was  
24          continuing to run and I, in fact, did keep

1 notations during this time period. There were  
2 nights when our thermometer showed temperatures in  
3 the '30's, '40's and '50's when the air  
4 conditioner was running.

5 Q. Is that farenheit?

6 A. It is.

7 Q. Where is that thermometer located?

8 A. Outside our current window.

9 Q. Have you ever had the opportunity to  
10 observe the reading on your thermometer outside  
11 the window at your residence at 707 Ardsley Road  
12 in Winnetka, Illinois and compare the purported  
13 temperatures that you saw on your thermometer with  
14 those you heard on radio or television broadcasts?

15 A. I've noticed over time that it seems to  
16 be reasonably accurate, particularly within a mile  
17 of the lake shore. There's frequently a fairly  
18 large difference between the temperature reported  
19 at O'Hare and Midway and what it is at the lake  
20 shore. But generally, it's been reasonably  
21 accurate. Certainly, I would think within plus or  
22 minus 5 degrees or so. But, which accuracy seemed  
23 sufficient to me to continue to be nonplussed at  
24 the fact that here it is with our thermometer

1 showing the '50's and the '40's even on a couple  
2 of occasions the '30's, and the air conditioner is  
3 running.

4 Q. And, when you say the air conditioner  
5 again, just for precision, what air conditioner  
6 are you referring to?

7 A. The Crown chiller. And, I might add that  
8 it's been our experience that as it gets colder,  
9 the noise actually seems to be louder. Whether  
10 that's because colder air transmits sound better  
11 or not, I don't know what the phenomenon is. But,  
12 that's our sensation. So, it particularly drove  
13 us up a wall to have the system operating when it  
14 was that cold. This particular letter, in  
15 response to your question, I faxed to Steven in  
16 September. Susi, I was having a cornea transplant  
17 and really needed to get some sleep. And so, I  
18 faxed this letter to him. I don't know if he was  
19 in his office to see it or not, but I in any  
20 event, the air conditioner was not shut off.

21 MR. KAISER: Move for admission into  
22 evidence of Exhibit 22 without restriction.

23 MR. CARSON: No objection.

24 MR. KAISER: Madam Hearing Officer, I

1 would like to show to counsel for Respondents what  
2 I'm marking for purpose of identification as  
3 Exhibit 109. Tendering a copy to Respondent's  
4 counsel and also showing the original to Madam  
5 Hearing Officer. This is a certified copy of  
6 portions of the Winnetka Village Code pertaining  
7 to free standing heating or cooling devices. As  
8 I'm sure you're aware, Illinois Revised Statutes  
9 provide for judicial notice of village codes and  
10 any municipal ordinances. And, we would, at this  
11 time, move for admission into evidence of Exhibit  
12 109.

13 MR. KAISER: The effective date, Mr.  
14 Elledge, is January 17th, 1996.

15 MR. CARSON: If you don't mind my asking  
16 23.35, that's pertinent here?

17 MR. KAISER: That's correct. That's  
18 right.

19 MR. CARSON: Can we go off the record for  
20 just a moment?

21 HEARING OFFICER: Let's go off the record  
22 for a moment.

23 (WHEREUPON, the luncheon recess was  
24 taken)

1                                   AFTER RECESS

2                   MR. DIVER:  Madam Hearing Officer, back  
3                   on the record?  I believe the last thing we were  
4                   talking about were two identified exhibits, 108  
5                   and 110.  108 being a purported copy of the  
6                   Winnetka Village Code and Plaintiff's 110 being a  
7                   purported copy of an ordinance--

8                   MR. CARSON:  153-95.

9                   HEARING OFFICER:  Yes.  And counsels,  
10                  would you please note that on my draft exhibit  
11                  list, the second entry 109 should read 110.  That  
12                  was an inadvertent --

13                  MR. DIVER:  110 should be for the  
14                  ordinance.

15                  HEARING OFFICER:  Yes.

16                  MR. DIVER:  On reviewing these and  
17                  having considered Madam Hearing Officer's comment  
18                  as to whether or not an actual change was effected  
19                  and if so, what, by virtue of this ordinance, what  
20                  we've determined to do is to wait until we return  
21                  the next time for hearing and then present a copy,  
22                  a certified copy of the ordinance as it was before  
23                  being amended and make that as our last element of  
24                  proof in the case.  Basically, the ordinance prior



1 to amendment.

2 HEARING OFFICER: All right. And, I  
3 don't think we have any motion for the  
4 introduction of these exhibits into evidence at  
5 this time, is that correct?

6 MR. KAISER: That's correct.

7 HEARING OFFICER: Okay.

8 MR. DIVER: We'll bring those back as  
9 the first item of business at our next hearing  
10 date and make that as the last element of our  
11 case.

12 HEARING OFFICER: Okay. We'll handle  
13 that as a preliminary activity in August.

14 MR. DIVER: The 19th.

15 HEARING OFFICER: 19th. All right. Mr.  
16 Kaiser, you wish to proceed with testimony of Mr.  
17 Shelton?

18 MR. KAISER: Yes, if I may.

19 BY MR. KAISER:

20 Q. Showing counsel for Respondents, having  
21 previously shown counsel for Respondent's what's  
22 marked for purposes of identification as Exhibit  
23 111, I'm showing a copy of that exhibit, which  
24 states at the top, Plat of Survey, B.H. Suhr and

1 Company, Inc., that's S-u-h-r. Showing you this  
2 document, Mr. Shelton, I ask you if you recognize  
3 that?

4 A. Yes.

5 Q. What do you recognize that to be?

6 A. It's a Plat of Survey of our home.

7 Q. And, that's your home at 707 Ardsley  
8 Road, Winnetka, Illinois?

9 A. Yes.

10 Q. Did you cause that survey to be  
11 performed?

12 A. Yes.

13 Q. And, is this a document that's been in  
14 your files?

15 A. Yes.

16 Q. Is this a true and accurate copy of the  
17 survey you received on or about November 6th,  
18 1991?

19 A. Yes, it is. I'm noticing for the first  
20 time that it does say one story brick residence.  
21 I don't know if they're counting our second story  
22 as one and a half story and, therefore, one, or if  
23 it's two story. But, other than that, this is,  
24 it's true and accurate as to what I received.

1 Q. Looking at where your one story, what's  
2 identified as a one story home, but in November of  
3 1992 was, in fact, a 2 story home, does that, can  
4 you confirm whether that indicates where your  
5 residential structure is located within your lot  
6 lines?

7 A. Yes, it does accurately show that.

8 MR. KAISER: I move for admission into  
9 evidence of Exhibit 111.

10 MR. CARSON: No objection to 111.

11 HEARING OFFICER: Number 111 is entered  
12 into evidence.

13 BY MR. KAISER:

14 Q. Mr. Shelton, I'd now like to talk with  
15 you a little bit about the subject that came up  
16 during the course of Mr. Crown's examination.  
17 You'll recall that there was testimony from Mr.  
18 Crown that at one time in, I believe it was the  
19 Spring of 1993, you had offered to sell your home  
20 at 707 Ardsley Road to Mr. Crown. Do you recall  
21 that testimony during Mr. Crown's examination?

22 A. Yes, I do.

23 Q. Please tell us the circumstances  
24 surrounding that offer of sale?

1           A.    By the spring of 1993, we were thinking  
2           about the second phase of our addition plans.  
3           However, we were also a little concerned that we  
4           had, as I mentioned earlier, lived through a half  
5           a construction project before and also by that  
6           time, we had been living next door to the Crown  
7           construction for some year and a half.  And, we  
8           were a little concerned about going forward and  
9           living through another project.  The reality of it  
10          was a little more intimidating than the original  
11          thoughts about it scattered over the years.  We  
12          thought that perhaps a better alternative would be  
13          to find a house that had the remaining things that  
14          we felt we needed without an addition.  However,  
15          we were concerned about selling the house on  
16          Ardsley and going out and looking for a new one  
17          because of the risk and hassle of listing the  
18          house for sale.  We had, in fact, had a very bad  
19          experience in 1989 when we bought the house at 707  
20          Ardsley, we ended up with two houses for almost a  
21          year.  And, that left a very sharp memory in our  
22          minds.  And so, we were hesitant on the one hand  
23          to go forward with construction.  But, on the  
24          other hand, to go through the effort of listing

1 the house. As we talked about this, it came to  
2 our minds that perhaps our neighbors, the Crowns,  
3 though they weren't living there yet, might be  
4 interested in our house. They were obviously  
5 undertaking a mammoth construction project that  
6 was on, for the size house, a relatively small  
7 piece of land. And so, it seemed that they would  
8 be an obvious possibility of someone who might be  
9 interested in buying our house without us having  
10 to go through the risk and hassle of listing it.  
11 So that I called Steve and told him about it. He  
12 asked what we would be asking for the house. I  
13 told him that I would need to talk with some  
14 brokers to get an idea and would get back to him.  
15 I did that, I got back to him with an indicated  
16 value. His reaction was that while that might be  
17 a fair value with a house on it, they would be  
18 looking at it as vacant land and it would not be  
19 worth nearly as much to them. There was a big  
20 difference. And so, I said I completely  
21 understand, and that was the end of it. We never  
22 broached the subject again.

23 Q. Now, I want to talk about an issue that  
24 came up during the course of your wife, Susi

1           Shelton's, testimony and that is the decision you  
2           and Susi made in January of 1996 to relocate your  
3           family to the State of Ohio. Can you please  
4           describe for us the considerations that entered  
5           into your decision to locate your family to the  
6           State of Ohio in January of 1996?

7           A. Yes. If I can previously back up, I'm  
8           President of a company called Montgomery Shelton &  
9           Company. I have two partners in the business, and  
10          we have, over the years, acquired some different  
11          businesses. When I say we, the principals along  
12          with some other investors. One of those  
13          businesses is a company called the NEEF Company  
14          and it's located in Greenville, Ohio,  
15          manufacturers and markets directly to schools,  
16          awards product letters, banners, school jackets,  
17          things of that sort. I played the role of CEO of  
18          the company since we acquired it in 1987. Since  
19          1991, I have, in fact, spent a lot of time with  
20          the company making 3 to 4 trips per month to the  
21          company of 1 to 3 days at a time. In the fall of  
22          1995, the Board of the company asked if I would  
23          step in full time as its Chief Operating Officer,  
24          as well as the CEO of the business. And, the

1           expectation was that I would do that for a year  
2           and a half, by which time we would recruit a new  
3           President from the outside. I agreed to do that,  
4           with the realization that this would require some  
5           increase in my commuting to make, to being a  
6           regular weekly event going down on Monday morning,  
7           coming back on Thursday night was the expectation  
8           that we had. After talking this over with Susi,  
9           my wife, we concluded that the commuting is  
10          certainly not desirable. On the other hand, it's  
11          certainly been manageable for the years since  
12          we've been doing it in 1991. And, the idea of  
13          moving the family, taking the kids out of school  
14          mid year and causing all that dislocation is  
15          something that we didn't want to do. So, on  
16          balance, those things alone considered, we would  
17          have continued with the commuting for the extra  
18          year and a half. However, the toll of all that's  
19          gone on regarding the air conditioner, the noise  
20          and all of the anguish that's gone on in trying to  
21          get this problem resolved has taken a toll,  
22          serious toll, particularly on my wife, who's been  
23          at home most of the time during the day, as well  
24          as evening, and had to bear the brunt of it. And,

1 as we talked about it, we concluded that, you  
2 know, it might be good for all of us to get away  
3 from this, to try to relieve some of the stress.  
4 So, with that thinking, we decided that we'll go  
5 ahead and move down to Ohio for the year and a  
6 half. And, that's the reason for the relocation.

7 Q. And then since January of 1996, you and  
8 your family have been residing in the State of  
9 Ohio?

10 A. We've been, Montgomery Shelton & Company  
11 still has its office in Winnetka. My office is  
12 still there. We've rented our home in Winnetka to  
13 tenants. We have rented a home in Greenville for  
14 that 18 month period, and have been living down  
15 there for that time period.

16 Q. How have your children adjusted to the  
17 move?

18 A. The move has not gone well for our  
19 family. It's been much more difficult than we had  
20 realized. There's been considerable culture shock  
21 involved. Also, I think taking the kids out of  
22 school mid year made things quite a bit more  
23 difficult than we had expected they would. As a  
24 result, our kids are, in varying ways, struggling



1 quite badly. And, we have essentially concluded  
2 that we need to come back to Winnetka to get them  
3 back into school here sooner rather than later.  
4 We've also, by the way, been quite disappointed in  
5 the quality of the schools in Greenville. We knew  
6 that they weren't terrific schools, but due to a  
7 long period of financial problems they are, in  
8 fact, quite disappointed. So, we're planning, as  
9 of right now, to relocate back to Winnetka prior  
10 to the start of this coming school year, the  
11 1996-97 school year, and we'll have to make  
12 temporary housing arrangements until our lease on  
13 our house is terminated next spring. And, I will  
14 resume commuting at that time.

15 Q. Mr. Shelton, have you, we're referring in  
16 your testimony towards the latter part of the  
17 morning to the lost opportunity costs that this  
18 whole air conditioner problem has caused you to  
19 incur. Could you again describe for the Board  
20 what you mean by lost opportunity or the  
21 opportunity cost, what that concept means to you?

22 A. Yes, there are two aspects of it. One is  
23 very difficult to quantify, and it has to do with  
24 the pain and suffering in a situation like this

1 and the distraction, loss of sleep, tiredness,  
2 that sort of thing which can reduce your  
3 effectiveness. And, whether that be in business  
4 or family matters, that has a cost to it. And, I  
5 don't know how to quantify that. However, we have  
6 made some effort to determine the other kind of  
7 opportunity cost which has to do with actual time  
8 you had to spend working on the problem as opposed  
9 to doing other things. We didn't keep a detailed  
10 log all the way through this, we had no idea it  
11 was ever going to come to all of this. However,  
12 we have gone back and can reasonably estimate that  
13 for specifically identifiable kind of time, it's  
14 excluding the hearing times and so on, the travel  
15 times here, so on, the food, 400 hours and I would  
16 guess that that's, you know, only a small part of  
17 the time that we spent on this, my wife and I  
18 together since this has been going on.

19 Q. So that number, 400 hours represents time  
20 you and Susi have spent?

21 A. Going to meetings, writing letters, going  
22 to the sound readings, preparing for things, that  
23 sort of thing. And, again, I didn't begin to  
24 count the numerous phone calls and that sort of

1           thing, or contemplation time that went into this.  
2           The research time, you know, in addition to the  
3           Trane people here in Chicago, I talked to Trane  
4           engineers at the production plant in Tennessee.  
5           I've talked to the air conditioning refrigeration  
6           institute, I talked to U.S. EPA, I talked to the  
7           Illinois EPA. I didn't count all of that time.

8           Q.    You did not count that time, is that your  
9           testimony?

10          A.    Certainly not all of it. I'd have to go  
11          back and look at it in detail, but most of it I  
12          certainly didn't count.

13          Q.    Is it my understanding you excluded from  
14          that total the time spent in hearing?

15          A.    Yes.

16          Q.    And have you, in fact, been present  
17          throughout the hearing?

18          A.    I have.

19          Q.    Are you aware of the current operational  
20          instructions for the Crown air conditioning unit?

21          A.    Yes, I am. I was present at the readings  
22          a couple of weeks ago when they tested the system  
23          with those operating instructions.

24          Q.    And, what is your understanding of how

1 the system is to operate currently?

2 A. It's my understanding that it's geared  
3 for one compressor, I believe it's the 10 ton  
4 compressor, to operate along with one or possibly  
5 two fans between the hours of 10:00 p.m. and  
6 either 6:00 or 7:00 a.m., I've forgotten exactly  
7 which.

8 Q. And, do you have an opinion as you sit  
9 here this afternoon, as to whether that would be  
10 an effective remedy to the noise problem you've  
11 been enduring for in excess of two and a half  
12 years now?

13 MR. CARSON: Objection to the form of the  
14 question, and also it's calling for a conclusion.

15 HEARING OFFICER: Can you rephrase the  
16 question?

17 BY MR. KAISER:

18 Q. Do you have an opinion, as you sit here  
19 this afternoon, as to whether the operating  
20 instructions that you have just described will  
21 cause a reduction in noise from the Crown air  
22 conditioner that will be sufficient to allow you  
23 to sleep at night.

24 MR. CARSON: Same objection.

1 HEARING OFFICER: Sustained.

2 Q. Do you have an opinion concerning these  
3 proposed operating instructions that are  
4 currently in place?

5 MR. CARSON: Same objection. It's calling  
6 for an opinion.

7 MR. KAISER: A witness who is capable of  
8 rendering an opinion. I don't understand that as  
9 a basis for objection.

10 HEARING OFFICER: Sustained.

11 BY MR. KAISER:

12 Q. Were you present during these sound  
13 readings taken by Greg Zack in the latter part of  
14 June, 1996?

15 A. Yes -- in the latter part of 1996 or--

16 Q. Yes, wasn't that June, late June of 1996?

17 A. Oh, late June.

18 Q. Late June of 1996.

19 A. I'm sorry, you said the latter part of  
20 1996.

21 Q. Yes.

22 A. Yes, I was.

23 Q. Did you have an opportunity to listen to  
24 the sound emanating from the Crown air conditioner

1 during that evening in late June, 1996?

2 A. Yes, I did?

3 Q. At what different locations on your  
4 property and on the Crown property did you have an  
5 opportunity to hear the sound from the air  
6 conditioning unit in late June, 1996?

7 A. During the course of measurements, we  
8 were moving around the perimeter of the air  
9 conditioner, the chiller primarily on the north  
10 side. The readings themselves were taken directly  
11 north of the chiller. There were then some  
12 readings done on our property at the southeast  
13 corner of our house. So, I listened from there as  
14 well and I also walked out into our back yard and  
15 patio.

16 Q. Can you describe for the Board how the  
17 sound that you heard in late June of 1996 compares  
18 to the sound you had last experienced on your  
19 property in October or November of 1995?

20 A. The, it's very difficult with the gap in  
21 time to make a direct comparison. I found the  
22 sound level to be very troublesome, and as I  
23 walked around my backyard, that's the dominant  
24 sound and in the past found myself being

1 completely enveloped in the sound. It's, as far  
2 as I can tell, not a great reduction. I did not  
3 have the opportunity to go to the second floor  
4 that evening, but certainly Mr. Zack's tests  
5 showed, the sound levels at the second floor, even  
6 at this one third operating condition, are  
7 extraordinarily loud, and that would continue to  
8 be a very serious problem. In fact, as I recall  
9 the readings, they were well above the daytime  
10 readings, let alone the nighttime readings 60 feet  
11 away from the chiller. It would also be, with  
12 this limited operation, which was well in excess  
13 of both nighttime and daytime standards, be very  
14 concerned about the fact that they are only  
15 talking about this limited operation between 10:00  
16 p.m. and 6:00 or 7:00 a.m. in the morning, which  
17 means that we'd have to endure the full force of  
18 the machine during the evening hours when we'd  
19 like to be out on the patio enjoying an evening  
20 dinner and so on. And, during the early morning  
21 hours when, particularly on the weekends, our kids  
22 would like to sleep in and so on. That would  
23 certainly be impossible after that kind of an  
24 operating regime. Plus, as Mr. Crown

1           acknowledged, they and Mr. Mautner, they can't  
2           commit that this is a workable solution and  
3           certainly they don't know what will happen if  
4           there are a lot of people in the house and they  
5           have a party. Can that limited operation cool the  
6           house? They frankly don't know. Furthermore,  
7           what would happen if they were to sell the house  
8           or there were guests there when they weren't, and  
9           they got too hot, would they turn on the unit, you  
10          know, it's just not a permanent solution, it's  
11          nothing that they can guarantee. I think it would  
12          be a presumption for continued strife because it  
13          can't be policed. It's just not a permanent  
14          solution.

15                   MR. KAISER: Thank you, Mr. Shelton, I  
16           have no further questions at this time.

17                   MR. CARSON: Can we take just a few  
18           minutes?

19                   HEARING OFFICER: Yes, I believe we have  
20           come to the conclusion of the Complainant's case  
21           in chief.

22                   MR. DIVER: Madam Hearing Officer, with  
23           the exception of the documents that we indicated  
24           that we would attempt to put on during, at the



1 very close of our case, the only other matter that  
2 remains, and I'm not sure procedurally how exactly  
3 Madam Hearing Officer would like to do this, but  
4 there's a matter of interrogatory answers that we  
5 would like to have the Board consider that as  
6 interrogatory answers which were filed by Mr.  
7 Crown, as well as the request to admit facts that  
8 were served upon Defendant and were unresponded  
9 to. We would move to have both those considered  
10 by the Board, if such a motion is necessary, to  
11 allow the Board to consider those documents which  
12 are already to be reported.

13 HEARING OFFICER: I believe those have  
14 been filed with the Board and that includes  
15 responses that Respondents counsel made on behalf  
16 of Respondent.

17 MR. DIVER: I believe that the requests  
18 to admit were filed and there were objections to  
19 certain of them.

20 HEARING OFFICER: Okay. Let's go off  
21 the record for just a couple of minutes, then.

22 (WHEREUPON, a short recess was  
23 taken.)

24 HEARING OFFICER: Back on the record, and

1 we'll have the cross-examination of Mr. Shelton at  
2 this point in time.

3 CROSS EXAMINATION

4 BY MR. CARSON

5 Q. Mr. Shelton, if I understood your  
6 testimony correctly you're the Chief Operating  
7 Officer of a company that's based in Greenville,  
8 Ohio, is that correct, sir?

9 A. Yes.

10 Q. And, I think you indicated it was to be a  
11 one and one half year term?

12 A. Yes.

13 Q. And, has that been committed to any sort  
14 of Board resolution, the one and one half year  
15 term?

16 A. I don't believe that the specific term  
17 was in the Board resolution. I don't believe, I'd  
18 have to go back and look at the Board resolution.

19 Q. But, you understood it was to be a term  
20 of one and one half years, though, is that right?

21 A. Yes.

22 Q. And, has the successor been named yet,  
23 sir?

24 A. No, he has not.

1 Q. Okay. Now, you said on direct  
2 examination that you're planning to move back to  
3 Winnetka before the commencement of school in the  
4 fall of 1996, is that correct?

5 A. We're about 95, 96 percent determined  
6 that that's what we will do, yes.

7 Q. So, you're not 100 percent sure at this  
8 time?

9 A. Until we've actually done it, I suppose  
10 there's always some possibility that we won't, but  
11 we are essentially there. We just have to make  
12 sure that the kids can get into the Winnetka  
13 School system, we can get that back on track.  
14 We're in the process of doing that right now.

15 Q. In fact, at one time you have stated,  
16 haven't you, that we're planning to stay in  
17 Greenville, Ohio into 1997?

18 A. I don't believe I had said that.

19 Q. Did you ever plan to stay in Greenville,  
20 Ohio into 1997?

21 A. We have never planned that. It's  
22 possible that it could have extended beyond that  
23 for an extra year or so. But, certainly that was  
24 never our plan. The year and a half revolved

1 around the end of the school year.

2 Q. Did you ever state that you planned to  
3 return to your home in Winnetka after March of  
4 1997?

5 A. After March of 1997?

6 Q. Yes, sir.

7 A. Our plans were after June of 1997, the  
8 lease on our house in Winnetka expires in June of  
9 1997, as does the lease that we have on the house  
10 in Greenville expires in June of 1997.

11 Q. I see. You have a lease on your home in  
12 Winnetka. It's being occupied by some tenants,  
13 right?

14 A. Yes.

15 Q. And, another lease in Greenville, Ohio  
16 pursuant to which your family is now occupying  
17 your home there, right?

18 A. Yes.

19 Q. And, both leases expire in June of 1997?

20 A. Yes.

21 Q. Yet, you stated on direct examination or,  
22 and is corrected by you now that you're 96 or so  
23 percent sure that you're going to be returning to  
24 Winnetka in 1996?

1           A.    Yes.

2           Q.    And has that been something that has come  
3           up recently as far as your plans?

4           A.    We've talked about it for a number of  
5           weeks as a possibility.  Things have not gone well  
6           for our kids at Greenville Schools academically.  
7           We've been very disappointed in the schools and  
8           emotionally our daughter, in particular, is having  
9           a very serious bout with depression, and our  
10          youngest son needs some particular help that he  
11          just can't get.

12          Q.    Mr. Shelton, excuse me.  I don't want to  
13          interrupt you, but my question was really pretty  
14          straightforward.  Have you recently arrived at  
15          this decision, this 96 percent sure decision to  
16          come back to Winnetka in 1996?

17          A.    In the last week or so, yes.

18          Q.    So, if you had said in March of 1996 that  
19          you were planing to stay in Greenville, Ohio for  
20          another year, that statement was accurate at that  
21          time?

22          A.    As of that time, correct, yes.

23          Q.    I see.  It's only right on the verge of  
24          this hearing, in fact, that you've determined that

1 maybe we'll come back to Winnetka?

2 A. I can assure you that it has nothing to  
3 do with this hearing, if that's what you're trying  
4 to suggest.

5 Q. Isn't it the case, sir, that you may, in  
6 fact, never move back to Winnetka?

7 A. Exceptionally unlikely.

8 MR. KAISER: Objection, argumentative.

9 A. We've lived in Winnetka since 1979, which  
10 is almost 20 years. This is our home. We  
11 consider it to be our home. I think I explained  
12 our reasons for moving which, in fact, had largely  
13 to do with getting away from a very difficult  
14 situation. It hasn't worked out. It's been very  
15 difficult for the kids, we're trying to rectify it  
16 for the kids.

17 Q. As I understand it, your reasons for  
18 moving, you felt that the reasons were so  
19 compelling, you actually took your kids out of  
20 school mid-year, is that right?

21 A. Yes.

22 Q. This was in February that you moved to  
23 Greenville, Ohio?

24 A. January.

1 Q. January of which year?

2 A. 1996.

3 Q. Okay, January of 1996, you took your kids  
4 out of school, moved to Greenville, Ohio. Was the  
5 annoyance from the air conditioner particularly  
6 difficult in January of 1995?

7 MR. KAISER: Objection.

8 MR. DIVER: Or 1996?

9 MR. CARSON: 1996, excuse me 1996?

10 A. The anticipation of noise in the spring  
11 and summer of 1996, anticipation in January of  
12 1996 and the strain of the whole situation, trying  
13 to get this thing resolved has placed on our  
14 family was sufficient to make us move, yes. The  
15 air conditioner obviously wasn't running in  
16 January of 1996.

17 HEARING OFFICER: Okay. Mr. Shelton,  
18 would you please try to answer the question, only  
19 the question that's asked and as succinctly as  
20 possible. And also, if an objection is raised,  
21 please wait to answer the question until the  
22 objection has been resolved.

23 A. Yes, ma'am.

24 HEARING OFFICER: Thank you.

1 BY MR. CARSON:

2 Q. So my understanding is correct, Mr.  
3 Shelton, that your kids were taken out of school  
4 mid year and the family relocated to Ohio at a  
5 time when the air conditioner wasn't operating?

6 A. Yes.

7 Q. And, based on your own experience, it  
8 would be as the warmer weather would arrive in  
9 spring time that you would expect the air  
10 conditioner to begin operation, right?

11 A. Yes.

12 Q. So, the kids could have, in fact,  
13 virtually completed the school year before and  
14 have moved before the air conditioner even was  
15 started, isn't that the case?

16 MR. KAISER: Objection, argumentative.

17 MR. CARSON: I don't know what's  
18 argumentative about it. It's a pretty  
19 straightforward question.

20 MR. KAISER: It's a question that can be  
21 written into Respondent's briefs and doesn't  
22 really require an answer. There's nothing within  
23 Mr. Shelton's particular knowledge that makes him  
24 more credible in responding to that question than



1           anybody on the planet would be. Its essence is to  
2           argue facts and to elicit clarification or  
3           additional information.

4                         HEARING OFFICER: I find the question  
5           calls for a rather hypothetical answer, and so I'm  
6           going to sustain the objection.

7           BY MR. CARSON:

8                         Q.    When was it that you entered into the  
9           lease for, to let out the Winnetka home?

10                        A.    I don't recall the exact execution date,  
11           but the lease commenced in February. Either the  
12           1st or the 15th, I'm not certain as I sit here  
13           today, one of those two dates.

14                        Q.    And, that would be this year, 1996?

15                        A.    That's when it commenced, yes.

16                        Q.    And, is it correct that the present  
17           tenants are not aware of the air conditioner  
18           issue?

19                        A.    No, that's not correct.

20                        Q.    Is it a correct statement that your  
21           tenants are not aware of history with air  
22           conditioner?

23                        A.    They are aware of some of the history of  
24           the air conditioner at this point.

1           Q.    Okay.  What point are you referring to,  
2           sir, today?

3           A.    No.  Prior to the noise readings in late  
4           June, we contemplated having some readings done  
5           from our lot line.  And to that end, we found it  
6           necessary to tell them that there had been  
7           concerns with the neighboring air conditioner and  
8           we were trying to get those resolved.

9           Q.    That was at what point, sir?

10          A.    January of 1996.

11          Q.    So, within the last four weeks or so?

12          A.    Yes.

13                 MR. KAISER:  Objection to this whole line  
14                 of questioning and move to strike.  There is no  
15                 relevancy as to when the tenant became aware or  
16                 whether the tenant became aware of any issue.  I  
17                 mean, what does it go to?  What issue that's  
18                 critical to the resolution of this complaint is  
19                 addressed by this line of questioning?

20                 MR. CARSON:  What the condition of the  
21                 sound emissions were from Mr. Crown's property in  
22                 the summer of 1996 is the very essence of what  
23                 we're here to gather evidence for the Board to  
24                 determine.

1                   MR. KAISER:  And how does the knowledge,  
2                   if I may, how does the question asked bear upon  
3                   the objective or even subjective apprehension?

4                   MR. CARSON:  I'm interested in having the  
5                   Hearing Officer's ruling or answering the  
6                   questions the Hearing Officer might have.

7                   HEARING OFFICER:  Counsel, where are you  
8                   going with this line of questioning?

9                   MR. CARSON:  Well, we heard from this  
10                  witness on direct examination and from his wife  
11                  that they took it upon themselves to inform the  
12                  whole neighborhood, representatives of the  
13                  Village, and anybody else that would listen, come  
14                  over and listen to the noise of this air  
15                  conditioning unit.  And, I think it's relevant  
16                  whether they found it appropriate to inform the  
17                  tenants that were going to be occupying the very  
18                  premises where it's unlivable for this man's  
19                  family.

20                  MR. KAISER:  The relevance has to be  
21                  determined.  How does it bear on one of the issues  
22                  at question?  If his sole purpose is, you know, to  
23                  cast dispersions on David Sheltons's character or  
24                  to badger Mr. Shelton while he's here this

1           afternoon, I mean, I guess I see how the question  
2           is effective in that regard, as to whether it  
3           provides the Board with information essential to  
4           resolution of this issue, I don't see the  
5           relevance, and I don't think counsel's  
6           demonstrated it.

7                       MR. CARSON: I'll concede it's for the  
8           purpose of discrediting the witness' testimony.

9                       HEARING OFFICER: The objection is  
10          overruled and the motion to strike is denied. The  
11          questioning may proceed.

12                      A.    Could you repeat the question, please?

13                      HEARING OFFICER: Do we have a standing  
14          question?

15                      MR. CARSON: I thought we did, but I'm  
16          not sure.

17                               (WHEREUPON, the record was  
18                               read by the Court Reporter)

19                      HEARING OFFICER: The record shows that  
20          the answer to question was given. You may  
21          proceed.

22          BY MR. CARSON:

23                      Q.    Mr. Shelton, is it correct, then, that  
24          you did not deem it appropriate to inform your

1 prospective tenant of the history of the Crown air  
2 conditioner before they entered into this lease  
3 with you?

4 A. We, in conjunction with Kahn Realty, who  
5 is our listing agent on the rental, concluded that  
6 it was not necessary.

7 Q. So, the answer to my question is no, you  
8 didn't deem it appropriate to do so?

9 A. Correct.

10 Q. Now, as I understood your testimony this  
11 morning, you feel that it was your ethical  
12 obligation to make a specific disclosure regarding  
13 the neighbors air conditioner noise in connection  
14 with your efforts to sell the house, did I  
15 understand that correctly?

16 A. Yes, you did.

17 Q. But, you didn't feel any such ethical  
18 obligation in entering into an 18-month lease for  
19 your home, is that right?

20 A. Yes, there were two differences. The  
21 first difference is that the Pollution Control  
22 Board complaint had been filed some months  
23 earlier, and we had a hearing date that we felt  
24 comfortable was going to have this thing resolved

1 prior to the cooling season for 1996. Secondly,  
2 we were talking about a relatively short term  
3 rental as opposed a permanent purchase property.  
4 And, those two factors together caused us to  
5 conclude that on balance, it was not necessary to  
6 make this disclosure on the rental.

7 Q. You concluded that it wasn't necessary or  
8 appropriate?

9 A. In conjunction with Kahn, yes.

10 Q. I have a number of exhibits that I want  
11 to refer to. Are the original exhibits here,  
12 or --

13 HEARING OFFICER: I believe I have most  
14 of them, if counsel for Complainant could bring  
15 forward the others that were allowed.

16 MR. KAISER: We'll put in this stack  
17 everything that we used this morning. Some are  
18 duplicate copies that have been admitted, but just  
19 so there is no question. And, we can sort it out  
20 before the close. Thank you.

21 MR. CARSON: Off the record for just a  
22 moment so we can work out the exhibits.

23 (Off the record)

24 BY MR. CARSON:

1           Q.   Mr. Shelton, this is Exhibit Number 49  
2           and you identified this earlier as a letter that  
3           you sent to Steve Crown in October of 1993, right?

4           A.   Yes.

5           Q.   If I can just get a little history, prior  
6           to your sending this letter, this came, I don't  
7           know, almost four weeks after the initial  
8           operation of the air conditioner unit, which I  
9           think you testified was September 13th of 1993,  
10          right?

11          A.   If that's the date, yes.

12          Q.   And, as I recall your testimony, you and  
13          your wife were watching the news, it was 10:00 or  
14          10:30 at night, and you heard a loud sound  
15          outside?

16          A.   Yes.

17          Q.   And, I think your wife described it as an  
18          explosion. You said you wouldn't call it an  
19          explosion, you used another description. Do you  
20          remember what it was?

21          A.   I don't recall saying I wouldn't describe  
22          it as an explosion, I think I characterized it as  
23          a bang or boom, more than one, it was several of  
24          them. It certainly could be characterized as an

1 explosion.

2 Q. Prior to that time, had you ever been  
3 over to look at that air conditioning unit?

4 A. I don't believe that we had, though we  
5 did go over to take the pictures that I think have  
6 been entered as evidence. I believe that that was  
7 shortly after the early test firings. I'm trying  
8 to get a sense, sir. You testified that after you  
9 heard this loud noise, you were able to determine,  
10 within a matter of roughly 10 minutes, that it was  
11 the air conditioning unit that was the source of  
12 this loud noise, isn't that right?

13 A. Yes.

14 Q. And, how were you able to determine,  
15 within that short amount of time, that it was the  
16 air conditioner that was emitting this, or which  
17 had emitted this explosion like sound?

18 A. We went outside the house to outside of  
19 our house and we could hear some of these booms,  
20 if you will, intermingled with the commencement of  
21 the running of the air conditioner.

22 Q. If I recall your testimony, you stated  
23 that when you went out there, it wasn't making  
24 quite the same noise as you had heard earlier?



1           A.    Correct.  The air conditioner had turned  
2           on, but there were some subsequent loud noises.  
3           It was as if the control of this system, after I  
4           realized what it was, as if it were a bit out of  
5           control, turning things on and off, on and off,  
6           making some strange noises.

7           Q.    Do you know for sure that it was the air  
8           conditioner that made this explosion like sound?

9           A.    We, after hearing that the air  
10          conditioner was, in fact, operating, it was pretty  
11          obvious then that the air conditioner was going  
12          and the sound was coming from the same direction.  
13          So, we assumed that it was the air conditioner.

14          Q.    So, you were able to say one way or  
15          another for sure whether you had ever looked at  
16          that air conditioner previous to this event?

17          A.    We had looked at it from a distance,  
18          going by the driveway.

19          Q.    You knew it was there?

20          A.    Yes, and I must say when I first saw it,  
21          I was very concerned.

22          Q.    So, the first time you saw it, you  
23          thought, I wonder how loud that thing is, is that  
24          right?

1           A.    Yes.

2                    HEARING OFFICER:   Say yes or no.

3           BY MR. CARSON:

4           Q.    And then, when you heard this loud noise  
5           on September 13th, you thought well, here it is,  
6           they turned on the air conditioner?

7           A.    Not when I first heard it, those bangs,  
8           booms, explosions, whatever you call them, were  
9           not the sound of an air conditioner.  As it turns  
10          out, they were the sounds of this air conditioner,  
11          but I had never heard an air conditioner like that  
12          before in my life.

13          Q.    You and your wife went outside to look at  
14          it, and you were able to determine that the noise  
15          that had disturbed you was this air conditioner,  
16          right?

17          A.    As best we can determine, yes.

18          Q.    Now, you sent this letter, which is  
19          Exhibit 49, that states at the end of the second  
20          paragraph, "it seems to us that the only viable  
21          solution is relocation".  Did I read that  
22          correctly?

23          A.    You did.

24          Q.    And, at that time that you made that, had

1           you done any analysis of the available methods to  
2           reduce the sound emission from this air  
3           conditioner?

4           A.    I did.

5           Q.    You had done an analysis?

6           A.    I had done some preliminary research.

7           Q.    And, using your expertise as a HVAC  
8           person or a sound emissions person?

9           A.    I had done several things.

10          Q.    Listen to my question.

11          A.    Not relying on my expertise, no.

12          Q.    And, did you do any analysis of what it  
13          would cost to relocate the unit?

14          A.    No, I didn't.

15          Q.    You had already made up your mind at the  
16          time you sent this letter that the only viable  
17          solution would be relocation?

18          A.    Based upon my research, yes.

19          Q.    And, you have not waived from that  
20          position from the time you sent this letter  
21          October of 1993, all way up to today, isn't that  
22          right?

23          A.    No, that's not right.

24          Q.    Have you ever been satisfied that this

1 unit need not be relocated?

2 A. Yes, we have heard alternatives presented  
3 by Mr. Zack of ways to control the sound right  
4 where it is, those would satisfy us.

5 Q. So, you're not, at this point in time,  
6 seeking to have this unit relocated.

7 A. All we want is for the noise to be  
8 reduced to an acceptable level. How it's done is  
9 up to Mr. Crown.

10 Q. At the time you wrote this letter in  
11 October of 1993, had any of the approaches or  
12 methods for sound attenuation been implemented?

13 A. I don't know, I don't think so.

14 Q. We know today that there are quite a  
15 number of them that have been tried, isn't that  
16 correct?

17 MR. KAISER: Objection to that  
18 characterization, quite a number. There is a  
19 specific number, quite suggests more than what's  
20 actually done in this case.

21 HEARING OFFICER: Mr. Carson, can you  
22 rephrase your question?

23 MR. CARSON: Sure.

24 BY MR. CARSON:

1           Q.    We know that the time that you heard it  
2           in September 13th of 1993, it was the first time  
3           the unit had ever been operated, to your  
4           knowledge, right?

5           A.    Yes.  And, it's been test fired.

6           Q.    So, there may have been some fine tuning  
7           or some steps taken to tighten up the operation of  
8           this unit after the first operation, right?

9           A.    Yes, yes.

10           MR. KAISER:  Objection, calls for  
11           speculation.

12           BY MR. CARSON:

13           Q.    And since that time, shrubbery has been  
14           planted around the unit, isn't that right?

15           A.    Yes.

16           Q.    Arbor vitae, how do you say it?  Arbor  
17           vitae trees have been planted around the unit, is  
18           that right?

19           A.    Yes.

20           Q.    Can you describe what those trees look  
21           like?

22           A.    They're tall evergreens.  There is a long  
23           screen of them between our houses of some 20 feet  
24           high, I suspect on average, and there is another

1 ring of them around the air conditioner.

2 Q. Okay. So, these trees are evergreen type  
3 trees that don't lose their leaves?

4 A. Yes, they're also scattered around the  
5 rest of the perimeter of the house. It's not just  
6 around the air conditioner. There's also a  
7 stockade fence. I don't recollect if my last  
8 visit there, whether it's still there after the  
9 enclosure was put up or not.

10 Q. There was a stockade fence. Would you  
11 describe the stockade fence that you saw there?

12 A. Yes, there was a stockade fence of 6 feet  
13 or so that was put around the unit in the spring  
14 of 1994.

15 Q. And, there is also, isn't there a  
16 stockade fence that separates your property from  
17 the Crown property in addition to the stockade  
18 fence that separates the unit?

19 A. There was one there before. And the  
20 Crowns, with our permission, replaced it with a  
21 new one.

22 Q. Is that stockade fence on Mr. Crown's  
23 property or our property?

24 A. The original was on our property, I

1 believe it was our fence.

2 Q. So, he replaced your fence with your  
3 permission at his expense, right?

4 A. Yes, though there was some debate with  
5 Mr. Keller about that, but yes.

6 Q. The unit was also rotated 90 degrees?

7 MR. DIVER: I'll object to that. The  
8 testimony in this matter, nobody can testify that  
9 had anything to do with sound reductions at all,  
10 and I'll object to any characterization that that  
11 anything to do with sound from this unit.

12 MR. CARSON: We intend to prove it was  
13 done for the purpose of reducing sound.

14 MR. DIVER: He's asking whether the unit  
15 was rotated. Fine, if he's asking him to  
16 stipulate because, that was rotated because of the  
17 sound reduction effect, we object.

18 HEARING OFFICER: I believe the question  
19 was limited. The objection is overruled. You can  
20 answer the question.

21 A. I've been told it was rotated, I assume  
22 that it was. I frankly don't know it was or not.

23 Q. And, you've been told that it was done  
24 for the purpose of trying to achieve some

1           lessening of sound?

2           A.    I've heard that said by Mr. Crown.

3           Q.    And, you're aware, aren't you, that a  
4           blanket like insulation was placed over the  
5           compressors of the unit in an effort to try to  
6           lessen the sound?

7           A.    And later removed, I think, yes.

8           Q.    And, did it get a lot worse after the  
9           blankets were removed?

10          A.    Never noticed the difference with any of  
11          these things.

12          Q.    And, are you aware that insulation was  
13          placed on the inside of the panels?

14          A.    Certainly didn't help the noise levels.  
15          If they were, I don't know.  I've been told --

16                    HEARING OFFICER:  Answer the question to  
17          the best of your ability.

18          A.    I don't know I've been told that  
19          insulation was put there.

20          Q.    And, are you aware that cones or baffles  
21          were installed?

22          A.    Yes, I did see those.

23          Q.    And, that was in an effort to lessen the  
24          sound as well?



1 A. That's what I've been told.

2 Q. And, the cones later were removed in an  
3 effort to lessen the sound.

4 MR. KAISER: Objection, calls for  
5 speculation as to the motivation.

6 HEARING OFFICER: Overruled. You can  
7 answer to the best of your ability.

8 A. Yes. And, the removal of the cones that  
9 had been put on for sound control helped.

10 BY MR. CARSON:

11 Q. And, you're aware that an acoustically  
12 designed enclosure was constructed around this  
13 unit?

14 A. Yes.

15 Q. And, are you aware that the operations  
16 were adjusted in 1995, I believe you testified to  
17 that this morning, that you became aware in 1995  
18 that the operations of the unit were adjusted in  
19 an effort to limit, or the time of the noise?

20 A. To limit the number of times it would  
21 cycle on and off, yes.

22 Q. Yes.

23 MR. KAISER: Just a point of  
24 clarification. I believe that that was 1996.

1 BY MR. CARSON:

2 Q. What was it, 1995 or 1996?

3 A. There was a change in 1995 just prior to  
4 the Shiner readings. Then there's this further  
5 change in 1996.

6 Q. Okay. And the last item on my list, and  
7 I've forgotten some, is that the program controls  
8 or the controls were reprogrammed in 1996 in the  
9 manner described this morning to cut back on the  
10 number of compressors, the number of fans working  
11 at certain hours, right?

12 A. We're told that's being tested, yes.

13 Q. And you've, in fact, been told that's  
14 been done, and you've heard it right.

15 A. On a test basis, it can't be guaranteed,  
16 it will continue.

17 Q. By my count, the list that I just gave is  
18 12. Now, I used earlier in a question quite a  
19 number of approaches have been taken to lessening  
20 the sound. And, when I say quite a number, I mean  
21 12. Would you agree with my statement, sir?

22 MR. DIVER: Objection again to the  
23 characterization that these were all for the  
24 purpose of soundproofing, that these were done,

1           this witness can testify to that, these were done  
2           to the purpose of soundproofing this witness can't  
3           testify to. Mr. Crown can testify to that,  
4           somebody from this side can certainly testify, but  
5           this witness can't testify as to what motivated  
6           them to do any of these 12 so-called soundproofing  
7           alterations.

8                         MR. CARSON: The whole tenure of this  
9           witness' testimony has been that he kept  
10          complaining and knowing what's being done. And,  
11          this goes to his knowledge to what has been done,  
12          and I'm just asking what he is aware of. He  
13          doesn't have to tell me what he doesn't know  
14          about.

15                        HEARING OFFICER: Overruled, you can  
16          attempt to answer the question, whether you knew  
17          that there were 12.

18                 A. I didn't count them all, but--

19                 Q. Will you accept my arithmetic?

20                 A. I'll accept it.

21                 Q. I have them written down here as I was  
22          reading them to you. Will you accept that?

23                        HEARING OFFICER: Perhaps we can have the  
24          repetition of the 12. I don't know that I counted

1 12.

2 MR. CARSON: Fine tuning of the unit  
3 after the initial test firing, planting of  
4 shrubbery, that's two. Planting of arbor vitae  
5 trees, that's three. Installation of a stockade  
6 fence surrounding the unit, that's 4. Insulation  
7 of the fence on the property line, that's 5.  
8 Rotating the unit 90 degrees, that's 6. Putting a  
9 blanket like device over the compressors, that's  
10 7. Installing the cones, that's 8. Putting the  
11 insulation in the panels around the unit, that's  
12 9. Installing the acoustic enclosure, that's 10.  
13 Removing the cones, that's 11. Reprogramming the  
14 controls, that's 12. Adjusting the operation in  
15 1995, that would be 13. But, I suppose it's not  
16 fair to count removing the cones and installing  
17 the cones, maybe it's just one.

18 A. I'm not sure exactly what I'm supposed to  
19 answer. I find it very difficult to answer yes or  
20 no. I can say that this was the double counting  
21 of the cones, the blankets have been removed, so I  
22 don't think one should count that. The various  
23 fine tunings, I would think, are the normal part  
24 of operations. The trees were put all over the

1 yard, so I'm not sure you can count that. There  
2 was already a fence there between our yard, so I'm  
3 not sure you can count that. So, you come down to  
4 a pretty limited number of things that you have  
5 told us were done for sound control and yes, I  
6 will acknowledge that you have told us that  
7 limited number of things were done for sound  
8 control.

9 Q. At the time that you wrote your letter in  
10 which you had already made up your mind that the  
11 only viable solution is relocation, had any of  
12 those of yet been done?

13 A. I don't believe that they had.

14 Q. At the time you wrote this letter,  
15 Exhibit 49, though, you knew that Mr. Crown and  
16 his contractors were planning various steps to  
17 reduce the noise, is that correct, sir?

18 A. At that time, we didn't know what they  
19 were planning to do. They hadn't told us what  
20 they were going to do.

21 Q. Did you tell Mr. Crown in the letter  
22 which is Exhibit 49, we know that you plan various  
23 steps to reduce the noise?

24 A. He had told me in general terms that they

1           were planning to do some things, but they didn't  
2           know what things they were going to do.

3           Q.    You knew that he planned various steps,  
4           but you didn't precisely know what the steps were?

5           A.    Correct.

6           Q.    And, you went on to say in the same  
7           letter we're likely to have a noise problem  
8           regardless of what steps you take?

9           A.    Yes.

10          Q.    You had already made up your mind that  
11          whatever he tried, it wasn't going to work?

12          A.    I had been advised by people who know  
13          more about air conditioning than either myself or  
14          Mr. Crown that that was likely to be the case.

15          Q.    So, and this person that you consulted,  
16          is that somebody that has testified here in this  
17          hearing?

18          A.    No.

19          Q.    According to your letter, Pete says that  
20          your unit can be located anywhere around the  
21          house. Did you discuss with Pete how long it  
22          would take to relocate the unit to a new location?

23          A.    No, we didn't talk about that.

24          Q.    Did you talk to Pete about the impact on

1 the length of the project which, obviously, was a  
2 long project, did you discuss with him what affect  
3 you would have on the project's schedule if he  
4 were to cause the unit to be relocated to another  
5 place on the property?

6 A. I don't recall talking about the  
7 schedule, no.

8 Q. Did you talk to Pete about how much it  
9 would cost in dollars to relocate the unit to  
10 another location at that point in time?

11 A. No, I didn't.

12 Q. I would ask you to describe for us, to  
13 the best of your ability, word for word, to the  
14 best of your ability, what Pete Keller told you  
15 prior to October 11, 1993 concerning potential  
16 relocation of the unit?

17 A. Susi, my wife, was with me when we went  
18 over to the construction site shortly after the  
19 initial turn on and after my first call to Steven.  
20 Prior to that, I had talked with an architect and  
21 with folks at one of the companies.

22 Q. Let me stop you there. I'd like you to  
23 describe the conversation you had with Pete  
24 Keller, please, in which the relocation was

1           discussed and as best you can, word for word,  
2           without a lot of embellishment about your other  
3           conversations with other people.

4           A.    I told Pete that based on conversations  
5           with other people, that relocation would be the  
6           simplest solution to noise that was likely to be  
7           generated by a unit of this size, particularly  
8           since it was up against a stone wall, it probably  
9           would reflect a lot.  And, I asked him if that  
10          could be done, and he emphasized that, you know,  
11          construction is still very much open, a lot of  
12          things are going on.  This is a long way from  
13          being completed.  Could it be done at this time so  
14          it would be good to do now rather than later on,  
15          when it will be much more expensive.  And, to the  
16          best of my recollection and my wife's, Pete said  
17          of course, the unit can be relocated.  We could  
18          put it at different points around the house.

19          Q.    Did he also tell you that the house could  
20          be moved?

21          A.    No.

22          Q.    That never happened?

23          A.    I would remember something as light as  
24          that because we were extremely concerned and



1           levity like that would have sent me through the  
2           roof. He didn't say that, no.

3           Q.    Mr. Shelton, you did have a problem with  
4           construction noise on the Crown residence  
5           renovation, right?

6           A.    From time to time, it was quite noisy,  
7           yes.

8           Q.    And, I take it that this was a source of  
9           complaint from your wife?

10          A.    It was much more difficult for her since  
11          the construction was during the day, and I was  
12          typically gone while she was there.

13          Q.    Did she complain to you about it quite a  
14          bit?

15          A.    I wouldn't say quite a bit, she did, on  
16          several occasions after a particularly noisy  
17          amount of work had been going on. There was no  
18          screening put up between us.

19          Q.    By the time the air conditioning unit was  
20          turned on in September of 1993, the construction  
21          had been going on for over a year, a year and a  
22          half?

23          A.    About a year.

24          Q.    About a year -- I'm sorry, I know

1           September of 1991, about 2 years.

2           A.    About two years, yes, sir.

3           Q.    And during the early stages of  
4           construction, they were working on the if I can  
5           call it the shell of the home, the outer walls and  
6           involved a lot of heavy equipment?

7           A.    Yes.

8           Q.    And, that was a source of some  
9           frustration to you and your family, is that right?

10          A.    No more so than the rest of the  
11          neighborhood, I don't believe at that point.

12          Q.    You mentioned in the letter to Mr. Crown,  
13          which is Exhibit 49, that the workmen were  
14          arriving at work too early?

15          A.    Yes.

16          Q.    And, was the purpose of raising that was  
17          to try to get him to work on taking steps to quiet  
18          down over there?

19          A.    The purpose was to ask if he could have  
20          the workmen come at 7:00 o'clock, which was the  
21          village code, rather than arriving at 6:00 in the  
22          morning.

23          Q.    Well, it was because you felt they were  
24          too noisy, right?

1           A.    Yes, 10 to 15 cars and trucks lined up to  
2           get in at 6:00 and 6:30 in the morning was quite  
3           noisy weapon it's 28 feet from your son's bedroom.

4           Q.    So, they came in your side?

5           A.    All the construction was centered on our  
6           side, after the initial work was done.

7           Q.    So, the trucks and cars that arrived for  
8           the job would come on the side of the Crown house  
9           which is toward your house?

10          A.    Yes.

11          Q.    You raised the issue of dealing with the  
12          construction project and the strain on your family  
13          in correspondence with the village, hadn't you?

14          A.    I'd have to refresh myself on the  
15          particular correspondence.

16          Q.    Did you--

17          A.    I may have.

18          Q.    Did you write a letter dated June 8, 1994  
19          to Doug Williams, Winnetka Village Manager in  
20          which you told him that the project had been a  
21          strain on your family and neighborhood?

22          A.    I believe that I probably did, yes, this  
23          is a letter I wrote to Mr. Williams.

24                MR. CARSON:    I think we had four photos

1 that we had introduced through Mr. --

2 HEARING OFFICER: Yes, those are at the  
3 back of the folder.

4 MR. ELLEDGE: So, the next number is 5?

5 HEARING OFFICER: Yes.

6 MR. DIVER: Respondent's 5 will be the--

7 MR. CARSON: June 28, 1994 letter to Mr.  
8 D. Williams.

9 MR. CARSON: Doug Williams, right. Is it  
10 okay with you if I substitute a non highlighted  
11 version of this letter?

12 MR. DIVER: No, I think we'd probably  
13 prefer it.

14 BY MR. CARSON:

15 Q. If you would kindly ignore the  
16 highlighting on there and aside from the  
17 highlighting on Respondent's Exhibit No. 5, is  
18 that a true and correct copy that you sent to Doug  
19 Williams on or about June 28th of 1994?

20 A. Yes, yes.

21 Q. And, who is Doug Williams?

22 A. Doug Williams is the Village Manager of  
23 Winnetka.

24 MR. CARSON: I apologize, I thought this

1 was already marked. I couldn't find it.

2 HEARING OFFICER: Is there a motion for  
3 its introduction?

4 MR. CARSON: No, not yet. I simply  
5 wanted to show it to you so you can make note of  
6 it.

7 HEARING OFFICER: Thank you.

8 BY MR. CARSON:

9 Q. You told Mr. Williams that you had  
10 considered moving, but your real estate broker  
11 told you you couldn't sell the house until the air  
12 conditioner problem was resolved?

13 A. That's correct.

14 Q. Did you consult with other real estate  
15 brokers?

16 A. We talked with, I think, 3 firms when we  
17 eventually did the appraisal by the realtors. We  
18 also talked with at least one other broker  
19 extensively about this. So, there were two  
20 brokerage firms that we talked with extensively  
21 about, as of this time.

22 Q. One of them was Kahn?

23 A. Kahn, yes.

24 Q. Kahn Realty?

1 A. Yes.

2 Q. And, who was the other?

3 A. The other was Wendy Cross as one of the  
4 owners of, I'm at a loss for the name of her firm  
5 in Winnetka. It's on Lincoln Avenue. I can't  
6 think of it right now.

7 Q. Did you say there was also a third?

8 A. When we, it was actually subsequent to  
9 that when we later had brokers come through in the  
10 fall we, of course, had several other brokers.

11 Q. At this point in time that you  
12 corresponded with Doug Williams, you told him you  
13 considered moving, but your real state broker said  
14 you can't sell the house until the air  
15 conditioning problem is resolved at that time.  
16 You weren't looking to formally list your house?

17 A. We couldn't.

18 Q. You couldn't because the air conditioning  
19 problem hadn't been resolved, that was your  
20 opinion?

21 A. Yes. And, at that point, Mr. Crown had  
22 told us they were going to do no more.

23 Q. On June 28th of 1994?

24 A. Yes, between June 28 and June 30, we had

1 two conversations. The gist of the first was that  
2 they are essentially done, the clear indication in  
3 the June 30th conversation is that they were going  
4 to do no more. We have been accommodated all we  
5 were going to be accommodated, I think was the  
6 word.

7 Q. Is that what prompted the letter to the  
8 Village?

9 A. What prompted the letter to the Village  
10 is that it was becoming clear as time passed on  
11 and the things that were being done were extremely  
12 limited in their scope, that we were not going to  
13 be able to resolve this between neighbors, and  
14 that with we were being forced to turn to the  
15 Village.

16 Q. What did you expect the Village to do  
17 about it?

18 A. We hoped that they would either, by  
19 application of their noise nuisance ordinance or  
20 by some other methods of intercession, be able to  
21 persuade the Crowns or force the Crowns to take  
22 steps to reduce the noise.

23 Q. Now, within a matter of just a few days  
24 or a week or so after this June 28th letter, there

1           were some sound measurements taken?

2           A.    Yes.

3           Q.    And shortly thereafter, Mr. Crown was  
4           made aware of the sound measurements and some  
5           investigation was done into the construction of an  
6           enclosure around the unit?

7           A.    Yes?

8           Q.    In an effort to reduce the sound?

9                       MR. DIVER: Object to the form of the  
10           question. There are multiple statements that he's  
11           being asked to attest to, including when Mr. Crown  
12           learned about the results of the sound test.

13                      HEARING OFFICER: Could you rephrase  
14           your question?

15                      MR. CARSON: I'll try to break it down  
16           into components.

17           BY MR. CARSON:

18           Q.    The, your letter to Mr. Williams was  
19           dated June 28th?

20           A.    Yes.

21           Q.    And, it was within a matter of a week or  
22           thereabouts that Mr. Shiner took his first set of  
23           sound measurements, correct?

24           A.    Yes.



1 Q. And, shortly thereafter, Mr. Crown was  
2 made aware of the results of the sound  
3 measurements, as far as you know, right?

4 A. I faxed him the results the same day.

5 Q. And, within a matter of a few days, Mr.  
6 Crown, to your knowledge, met with experts to  
7 discuss a plan for attenuation of the sound.

8 A. He met with the engineer we had hired to  
9 do the readings.

10 Q. He met with Al Shiner?

11 A. Yes.

12 Q. And, as far as you know, he also met with  
13 Brad Mautner, right, and Pete Keller to talk about  
14 a way to resolve the problem?

15 A. You're asking only about sound experts,  
16 and I certainly wouldn't put those gentlemen in  
17 that category.

18 Q. Al Shiner is a sound expert, isn't he?

19 A. Yes.

20 Q. And, he's a good sound expert, isn't he?

21 A. Yes.

22 Q. He's the one you selected to try to solve  
23 the problem.

24 MR. DIVER: Objection, he selected him

1 to measure the sound, that's the testimony, not to  
2 solve the problem.

3 HEARING OFFICER: Sustained.

4 BY MR. CARSON:

5 Q. Did you hire Al Shiner to try to solve  
6 the problem?

7 A. No, we hired Al Shiner to do sound  
8 readings.

9 Q. And, you weren't interested in solving  
10 the problem, you only wanted to know what the  
11 readings were?

12 MR. DIVER: Object to the argumentative  
13 nature of the question as to what he was or not  
14 interested in.

15 MR. CARSON: To me, it defies common  
16 sense that you didn't want Al Shiner to help solve  
17 the problem. Is that your testimony?

18 HEARING OFFICER: Sustained.

19 BY MR. CARSON:

20 Q. Is it correct you hired Al Shiner to  
21 conduct sound measurements from your property in  
22 an effort to quantify the sound emissions from the  
23 Crown air conditioning unit?

24 A. Yes.

1           Q.    What, if any, other benefit did you hope  
2           to gain from Mr. Shiner's measurement of that  
3           sound?

4           A.    The benefit and, at that time, the only  
5           benefit we'd hoped to gain was to be able to  
6           demonstrate to Mr. Crown that these were not crazy  
7           neighbors complaining, that there was a basis in  
8           fact of an egregious violation, and that he should  
9           act on it. That was the only benefit we expected  
10          from hiring Mr. Shiner.

11          Q.    Okay. And, at that time, you had in mind  
12          demonstrating for Mr. Crown that there was an  
13          egregious violation of what?

14          A.    Of the Illinois Numeric Noise Standards.

15          Q.    Did you later learn that Illinois Numeric  
16          Noise Standards are not applicable?

17                MR. DIVER:  Objection.

18                MR. KAISER:  Objection, calls for a legal  
19          conclusion.

20                HEARING OFFICER:  Sustained.

21                MR. CARSON:  Fine, your Honor. The  
22          Petitioner has been permitted to adduce all sorts  
23          of evidence for the purpose of notice and state of  
24          mind. And, in this instance, the purpose of the

1 question is not for the purpose of establishing  
2 the legal standard, but whether what Mr. Shelton's  
3 understanding was.

4 MR. DIVER: Same objection.

5 HEARING OFFICER: Would you read back  
6 the question?

7 (WHEREUPON, the record was read by  
8 the Court Reporter.)

9 HEARING OFFICER: The objection is  
10 sustained. The question will have to be rephrased  
11 so as not to elicit a legal opinion in the  
12 hearing.

13 BY MR. CARSON:

14 Q. If you would please take a look at  
15 Exhibit Number 48.

16 MR. KAISER: Could we have that  
17 identified for the record, please?

18 MR. CARSON: Exhibit Number 48 is  
19 evidence as --

20 HEARING OFFICER: It's the letter from  
21 D. Shelton to S. Crown dated 6-30-94, and it has  
22 been admitted into evidence.

23 MR. KAISER: Thank you.

24 A. Yes, I recognize this letter.

1 MR. CARSON:

2 Q. And, this is the letter you sent to Mr.  
3 and Ms. Crown on or about June 30th, 1994?

4 A. Yes.

5 Q. And, if I recall your testimony this  
6 morning, you sent this letter by certified mail  
7 because Greg Zack suggested that?

8 A. Yes.

9 Q. Were you preparing for litigation at that  
10 point?

11 A. I wasn't preparing for litigation at that  
12 point. We had not engaged counsel and to the  
13 contrary, I was hoping, if at all possible, to  
14 avoid litigation. However, it had become clear  
15 from my conversations with Steven, we were moving  
16 into a more combative state with either the EPA or  
17 the Village.

18 Q. You had Mr. Zack's advice as to how to  
19 establish a record that might be useful in a  
20 proceeding like this, right?

21 A. How to commence a record, yes.

22 Q. Now, in your opening sentence in Exhibit  
23 48, you told be Nancy and Steven, we have had  
24 conversations about how to resolve the noise

1           problem. That was true at the time you said it,  
2           wasn't it?

3           A.    Yes, it was.

4           Q.    So, it's not, it wasn't a problem that  
5           they were being uncommunicative?

6           A.    Up until that point, we had a number of  
7           times, yes.

8           Q.    And, up to that point in time, you were  
9           aware of both the planned and the ultimate  
10          installation of fences, trees, and baffling,  
11          right?

12          A.    At this point, we had heard the evidence  
13          of their installation and seen that they had  
14          little, if any, effect.

15          Q.    Of course, you knew that they would have  
16          little, if any, effect back in October of 1993?

17                   MR. DIVER:  Objection to the  
18          argumentative nature of the question.

19                   HEARING OFFICER:  Could you rephrase your  
20          question?

21           BY MR. CARSON:

22          Q.    You were of the opinion that these sound  
23          attenuation methods would be ineffective, even  
24          before they were installed?

1           A.    The various experts we had talked to  
2           predicted that, and it appears that they were  
3           correct.

4           Q.    You presented Mr. and Ms. Crown with an  
5           ultimatum, we need your response within 15 days  
6           of this letter.  What was the significance of 15  
7           days from the date of this letter?

8           A.    There were two reasons for the specific  
9           date.  One is that we needed something done  
10          quickly because my family was going crazy.  We  
11          couldn't get away from this sound.  The second  
12          thing is that Steven, the night before, had drawn  
13          the line in sand and said they weren't doing any  
14          more, and we could do whatever we had to do.  And,  
15          then, they left for 4th of July weekend to go to  
16          Colorado.  We felt that we had to have a fairly  
17          tight timeframe in order to get any kind of a  
18          response.

19          Q.    This conversation that you just alluded  
20          to was that at the swim meet?

21          A.    No, that was earlier.  This was a phone  
22          conversation on, I believe, 29th of June.  On the  
23          evening of the 29th of June.

24          Q.    Did you make Mr. Crown aware that a sound

1 engineer was coming out to take measurements?

2 A. At the time we talked, I didn't know that  
3 one was. It was only on the morning of June 30th  
4 that, in our desperation, we started doing a lot  
5 of things at once. We visited the police, we  
6 talked to the village council members, we  
7 commenced the petition, we got on the agenda for  
8 the village council meeting, and we arranged for  
9 the sound engineer. And, if memory serves me, we  
10 may not have been able to reach him until the day  
11 he took the readings, and he happened to have some  
12 time availble that morning, the 5th.

13 MR. CARSON: Respondent's Exhibit 6 is  
14 dated July 1, 1994. It's a handwritten note from  
15 David Shelton addressed to Steven.

16 HEARING OFFICER: Thank you.

17 BY MR. CARSON:

18 Q. Respondent's Exhibit No. 6, is that a  
19 note in your handwriting?

20 A. It is.

21 Q. And, did you transmit this note somehow  
22 to Steve Crown?

23 A. I don't specifically recall when I wrote  
24 this. It's clearly in my handwriting. It looks



1           like it might have been the cover for something  
2           else, but I'm not sure what else.

3           Q.    As you sit here today, you don't remember  
4           writing this note?

5           A.    I don't specifically remember writing the  
6           note, but it's my handwriting.

7           Q.    You testified that around June 30th, this  
8           was evidently written July 1, you were going to  
9           the police, you were going to the village, and you  
10          were going to track down the sound engineer?

11          A.    I believe that happened on Tuesday, yes.

12          Q.    If you know.

13          A.    I believe it was Friday, the 4th was a  
14          Monday.

15          Q.    Okay.  And the measurements were actually  
16          taken on the following Tuesday?

17          A.    Yes.

18          Q.    You stated you were going in several  
19          directions in this note, is that a reference to  
20          going to the village, going to the police, trying  
21          to locate a sound engineer?

22          A.    Yes, it is a reference to all of those  
23          things.  I'm sure that that's the case.  I just  
24          don't recall specifically why I sent Steven or

1           what might have accompanied it, that's the only  
2           thing I'm at a loss for. But, that's clearly what  
3           it was referring to because those are the things  
4           that were going on that weekend.

5           Q.    Do you recall why it would be either you  
6           would not tell Steve Crown in one of these  
7           communications that you're retaining a sound  
8           engineer to conduct readings?

9           A.    We had, when we arranged for the engineer  
10          on Tuesday, and I believe we didn't arrange for  
11          him until Tuesday morning, I did let him know via  
12          fax. We also left a message at both his home and  
13          office that we were planning to go to the Village  
14          council that night and we had gotten engineering  
15          readings. He was gone, however. In fact, he  
16          made --

17          Q.    That night being what night?

18          A.    I believe that they, Steven would know  
19          his schedule better than I, but I believe they  
20          left on Thursday or Friday, the 4th of July  
21          weekend, and probably didn't return until mid week  
22          the following week. We have tried to be very  
23          careful about communicating every step of the way  
24          here, and have tried to avoid doing things without

1           letting the Crown folks know what we're doing.

2           Q.    Mr. Shelton, did you, in fact, contact  
3           the Winnetka Police Department at the end of June?

4           A.    Yes, we did.

5           Q.    Concerning the air conditioner noise?

6           A.    Yes, the night of the 29th, as I recall.

7           Q.    And, did the Winnetka Police inform you  
8           that there was some violation of the law involved  
9           here?

10           MR. DIVER:  Objection to the extent that  
11           he's trying to introduce by hearsay testimony a  
12           statement of legal opinion with respect to whether  
13           it was or was not a violation of the law.

14           MR. CARSON:  Again, it goes to what this  
15           witness' state of mind was.

16           MR. DIVER:  It's not being introduced for  
17           establishing the truth of anything the officer  
18           said.  I withdraw my objection.

19           HEARING OFFICER:  I'll permit the  
20           witness to answer the question.  So, the objection  
21           is either withdrawn or overruled.

22           MR. DIVER:  All right, make it overruled.

23           A.    We had sometime earlier approached the  
24           Village about whether there were code controls

1 over there, sort of thing or not, and --

2 HEARING OFFICER: Mr. Shelton, could you  
3 just answer the question specifically?

4 A. Could we have the reading of the question  
5 back?

6 MR. CARSON: Rather than read it back,  
7 I'll rephrase it.

8 HEARING OFFICER: All right. We'll have  
9 the question rephrased.

10 BY MR. CARSON:

11 Q. On the basis of your consultation with  
12 the Winnetka Police, did you form a belief as to  
13 whether there was a violation of the law involved  
14 here?

15 MR. DIVER: Which law, Winnetka law,  
16 Illinois law, federal law, Winnetka law, are we  
17 talking about --

18 MR. CARSON: Whatever law he discussed  
19 with the police, violation of the law.

20 HEARING OFFICER: I'll permit the  
21 witness to answer the question.

22 A. They indicated that we might be able to  
23 prosecute forward on the basis of a public noise  
24 nuisance, that the code covered that. However, it

1 would most likely be kicked to a circuit court  
2 where the judge would say that this is an EPA or  
3 Pollution Control Board kind of issue. And, one  
4 of the officers at the meeting suggested that we  
5 contact the EPA. That if we wanted to go forward  
6 with filing a noise nuisance complaint, we could,  
7 but that it would end up being a lot of busy work.

8 Q. I take it based on your answer, then,  
9 that the Winnetka Police didn't view it as a  
10 matter appropriate for the Winnetka Police?

11 MR. KAISER: Objection.

12 MR. DIVER: Objection,  
13 mischaracterization of testimony. The testimony  
14 is what it is.

15 HEARING OFFICER: Could you phrase it as  
16 a question?

17 BY MR. CARSON:

18 Q. Did the Winnetka police respond to it as  
19 a police matter?

20 A. The Winnetka Police said that they could  
21 respond to it as a police matter, but that it was  
22 unlikely to render a permanent solution. They  
23 suggested the EPA and going back to the village.

24 Q. And, when they told you that they could

1           respond to it as a police matter, but it would not  
2           likely result in a permanent solution, did you  
3           think that that meant that they would go to Mr.  
4           Crown's house and place him under arrest? I'm  
5           trying to get an understanding of what you thought  
6           the police could do about it, or should do about  
7           it on the basis of your discussions with them, and  
8           and is the answer nothing?

9           A.     Prior to the meeting, we thought that the  
10          public noise nuisance ordinance was absolutely  
11          clear and that the police would be able to come  
12          over and cause the Crowns to stop operating their  
13          unit. We subsequently, as we talked with the  
14          police, found that there's a gray area as to  
15          what's a public nuisance as opposed to a private  
16          nuisance, and that it wasn't clear that enough  
17          people were being affected here to make it a  
18          public nuisance, and that's the only way that the  
19          village can get involved.

20          Q.     I thought you testified this morning that  
21          the Winnetka Police said go see the Village of  
22          Winnetka, and the Village of Winnetka said see the  
23          police, and you were getting that kind of a  
24          bureaucratic runaround, is that an accurate way

1 of starting it?

2 A. Yes, we had earlier approached the  
3 village and they said go see the police if there's  
4 a problem, and that's when we went to see the  
5 police on the 30th, said go see the village and  
6 the EPA.

7 Q. So, it's a matter of enforcement of any  
8 law or village code, neither of those, the village  
9 or the police, took responsibility for taking  
10 enforcement action, is that correct?

11 A. As of that time, that's correct.

12 MR. DIVER: Madam Hearing Officer, I  
13 wonder if we might ask for a brief recess at this  
14 point, we understand. Mr. Shelton's been on the  
15 stand for about two hours now. We just have kind  
16 of an energy grabbing break, nothing too long, 5  
17 minutes.

18 HEARING OFFICER: I think we can take our  
19 afternoon break at this time. All right. Let's  
20 take 5 minutes.

21 (WHEREUPON, a brief recess was  
22 taken.)

23 AFTER RECESS

24 MR. CARSON: If you would, Mr. Shelton,

1 please take an look at Exhibit Number 17, which is  
2 a July 6th, 1994 letter to Mr. Crown from you.

3 A. Yes.

4 Q. This letter was written after you  
5 received Al Shiner's sound measurements, is that  
6 right?

7 A. Yes.

8 Q. And, were the sound measurements  
9 transmitted to Mr. Crown with this letter?

10 A. No, I faxed the sound measurements the  
11 afternoon of the 5th when I received them.

12 Q. Okay, the preceeding day?

13 A. Yes.

14 Q. And, it appears that already within a one  
15 day's time, that Mid/Res could or Mid/Res, that's  
16 the same company, right?

17 A. Yes.

18 Q. That Mid/Res could, had asked for Mr.  
19 Shiner's assistance in working on this issue?

20 A. Yes.

21 Q. And, how was that communicated to you?

22 A. Mr. Shiner called to ask if it would be  
23 acceptable to me for him to be engaged by Mid/Res,  
24 the Crowns to help find a solution for the



1           problem, and I told him that my concerns about  
2           conflict of interest notwithstanding, our interest  
3           was in finding a solution, and it was acceptable  
4           with us for him to work with Mid/Res and the  
5           Crowns.

6           Q.    So, at that point, you consented to Mr.  
7           Shiner assisting in finding a solution?

8           A.    Yes.

9           Q.    And, you stated in this letter that you  
10          gave that permission because Mr. Shiner is good  
11          and can probably help resolve the problem, is that  
12          way you felt about it at that time?

13          A.    Yes.

14          Q.    It also says in this letter that you had  
15          intended to press the Village for action at last  
16          Tuesday's council meeting.  What action did you  
17          intend to press village for?

18          A.    We were asking the Village to either  
19          take -- strike that -- we contemplated asking the  
20          village to help by either taking action under the  
21          existing noise nuisance ordinance or by adopting a  
22          new ordinance that would prevent this sort of  
23          noise from being created in the village.

24          Q.    The existing noise pollution ordinance

1           that you were referring to, which ordinance is  
2           that?

3           A.    There was a, in the general list of  
4           ordinances, there's a, there was a public noise  
5           nuisance ordinance.

6           Q.    For the Village of Winnetka?

7           A.    For the Village of Winnetka, yes.

8           Q.    Did you ever pursue a complaint with the  
9           Village of Winnetka utilizing that ordinance?

10          A.    Yes, we did.

11          Q.    And, has that been resolved in some  
12          fashion?

13          A.    We filed that complaint, I say we, Bob  
14          Julian and I filed that complaint September of  
15          1994. We then withdrew the complaint when we, on  
16          the day that we filed it, received plans for an  
17          enclosure.

18          Q.    That was when Mr. Crown provided you with  
19          the plans for the acoustical enclosure which was  
20          constructed the following spring?

21          A.    I thought it was January, but yes.

22          Q.    You thought it was constructed in  
23          January?

24          A.    That's when we withdrew the complaint

1 when we received the plans.

2 Q. On this letter, however, Exhibit 17, it  
3 says that you intended to press the village for  
4 action. However, after talking with Bill Devers,  
5 we did not do this. Who is Bill Devers?

6 A. Bill Devers was a neighbor of ours on  
7 Ardsley, and also a friend of the Crown family.

8 Q. And, you had a conversation with Bill  
9 Devers concerning this air conditioning noise  
10 issue?

11 A. Yes. I testified this morning --

12 Q. Tell me when that conversation took  
13 place, please?

14 A. It was prior to the 4th of July. I don't  
15 recall the exact date. I do believe that there's  
16 a letter that has been entered into evidence from  
17 Mr. Devers that might indicate the date, but it  
18 was sometime. The initial conversation was  
19 sometime prior to the 4th of July.

20 Q. According to this letter, Exhibit 17, you  
21 had intended to press the village for action at  
22 last Tuesday's council meeting. However, after  
23 talking with Bill Devers we did not do this. So,  
24 would that refresh your memory that the

1 conversation with Bill Devers was sometime around  
2 the end of June?

3 A. There was --

4 Q. Early July time frame.

5 A. There was a conversation on July 5th, I'm  
6 sorry, I thought you were talking about the  
7 initial conversation which was prior to the 5th  
8 when he offered to be a mediator or peacemaker  
9 here, if you will. He talked with Steven, as I  
10 understood it, in Colorado on the 4th and called  
11 me on the 5th to tell me his conversation with  
12 Steven.

13 Q. I see. In your first conversation with  
14 Mr. Devers, and that was approximately when?

15 A. Again I'm not sure the date, it was  
16 sometime around the 30th or the 1st, most likely  
17 one of those two days.

18 Q. In that conversation, did you tell Bill  
19 Devers of any of the sound attenuation efforts  
20 that had been attempted up to that time?

21 A. No, but he listened to the noise.

22 Q. You didn't tell him about Mr. Crown's  
23 efforts to lessen the noise up to that time?

24 A. I told him that Mr. Crown had said he was

1 going to do no more.

2 Q. Okay. Maybe it's the way that I'm asking  
3 the question that's causing you not to be able to  
4 answer.

5 A. I didn't specifically tell him about the  
6 landscaping or the fences, turning the unit  
7 around, if that's what you're asking.

8 Q. Okay. You didn't think that those things  
9 were relevant, is that the reason that you didn't  
10 tell him?

11 A. I thought that the relevant thing was the  
12 noise that was being created as of that time?

13 Q. After, to your understanding, then, Mr.  
14 Devers had an opportunity to talk to Mr. Crown,  
15 and then he called you back. And, as a result of  
16 something Mr. Devers told you, you withdrew your  
17 plans to press the village for action?

18 A. I pulled back on what we planned to talk  
19 with the village about for two reasons. One was  
20 the call from Mr. Devers. The second was that we  
21 had, as of that date, gotten the sound readings  
22 and I did not want to go public with the village  
23 on this matter without telling Steven the  
24 readings. So, I wanted to wait until he knew

1           about the readings before I asked the, formally  
2           asked the village for help. So, it's for those  
3           two reasons. By the way, what Mr. Devers told me  
4           was that he had talked with Steven and that if we  
5           proceeded to take this thing public, that they  
6           would do no more.

7                       MR. CARSON: Move to strike the last  
8           portion as non-responsive to any question.

9                       HEARING OFFICER: Is there a response to  
10          the motion?

11                      MR. KAISER: The objection was, I'm  
12          sorry, non-responsive? I'm sorry, I didn't--

13                      HEARING OFFICER: There was a motion to  
14          strike the last portion of the testimony given by  
15          the witness as non-responsive to the question. Is  
16          there a response to that motion? All right. The  
17          motion is granted. That portion of the testimony  
18          is stricken.

19                      Q. You learned that Mid/Res had asked the  
20          acoustical engineer to consult with them on this  
21          air conditioner noise, right?

22                      A. Yes.

23                      Q. And that I take it was a step forward  
24          from where you had been?

1 A. Yes.

2 Q. Who did you talk to first, Bill Devers or  
3 Al Shiner?

4 MR. DIVER: If I might help, Exhibit  
5 Number 14 might be of assistance to both counsel  
6 and the witness. That's a letter from Mr. Devers  
7 to Mr. Crown dated July 1, 1994.

8 MR. CARSON: I'm not talking about that,  
9 that pertains to the first conversation with Mr.  
10 Devers. You had a second conversation with Mr.  
11 Devers that you already said occurred on July 5th?

12 A. Yes. I got the results of the Shiner  
13 readings, if memory serves me, late in the  
14 morning. I got the actual hard copy faxed to me  
15 in the afternoon. I talked with Mr. Devers late  
16 in the afternoon on Tuesday the 5th.

17 Q. When was it that Mr. Shiner informed you  
18 that Mid/Res had asked him to consult with them on  
19 resolving the air conditioner problem?

20 A. That was the following day, the 6th that  
21 he called me?

22 Q. So, if I understand the chronology, you  
23 learned from Mr. Devers that if you go public --  
24 I'm going withdraw that, that testimony is

1           stricken. I'll withdraw that.

2                         This is Exhibit 34, Exhibit 34 is the  
3           letter from Al Shiner with the drawing attached.  
4           The letter dated July 12, 1994?

5           A.    Yes, I received this.

6           Q.    You received this from Al Shiner on or  
7           about July 12, 1994?

8           A.    Yes.

9           Q.    And, at that time, you were aware that a  
10          plan was in the works for construction of some  
11          sore of enclosure around the air conditioner,  
12          right?

13          A.    I thought this enclosure--yes.

14          Q.    And, did you respond to Mr. Shiner with  
15          your critique of his proposed enclosure?

16          A.    I'm not sure what you mean by critique.

17          Q.    Showing counsel Exhibit 47 dated July 21,  
18          1994.

19                         MR. DIVER: This is from David Shelton to  
20          Al Shiner, c.c. Steven Crown and Gregory Zack.

21                         HEARING OFFICER: Okay, thank you.

22          A.    Yes, I responded with this letter. I  
23          don't know that I would characterize it as a  
24          critique, but this is a letter I wrote.



1 Q. You requested it, didn't you, you  
2 questioned his plans?

3 A. I only asked if there had been any sound  
4 reduction calculations made, and that was the  
5 suggestion of Greg Zack that I ask that question.  
6 I also sent copies of Trane information I had  
7 received between the time of the readings on July  
8 5th and the date of this letter.

9 Q. Were you already concerned that this  
10 enclosure was not likely to be effective?

11 A. I was hoping very much that it would be  
12 effective. Greg Zack suggested that I ask about  
13 the reduction calculations, and had also advised  
14 that noise problems like this with units of this  
15 size are very complicated to eliminate and--

16 Q. Did you still have a preference as of  
17 July, 1994 that the unit be relocated?

18 A. No. All we wanted to do was get the  
19 noise reduced.

20 Q. In the last paragraph on the first page  
21 of Exhibit 47, you expressed concern that there  
22 should be an adequate margin of safety below  
23 Illinois' Numeric Standards. What were you  
24 referring to?

1           A. I was referring to the Illinois Numeric  
2 Noise levels.

3           Q. What about the margin of safety, what's  
4 that in reference to?

5           A. I was thinking about the fact that the  
6 design should be such that there's some margin for  
7 error in it.

8           Q. So, if the enclosure was designed in a  
9 manner intended to achieve meeting the IEPA  
10 nighttime standards, would that satisfy you or did  
11 you want it lower?

12          A. If it would meet the standards, that  
13 would certainly be acceptable to us. I was simply  
14 concerned that in the course of designing, if it  
15 were designed to exactly meet the standards, it  
16 was a very good chance that it wouldn't, and so  
17 that the prudent thing to do would be to allow a  
18 margin of safety, that's all I had in mind.

19          Q. Is it your belief that in designing a  
20 sound attenuation device, it's appropriate, under  
21 these circumstances, to shoot for a level below  
22 those standards?

23          A. I'm not a sound expert, but as a --

24          Q. That was what you were suggesting in this

1 letter, not that you were a sound expert, but that  
2 it would be appropriate to shoot for a level below  
3 the IEPA nighttime standards?

4 A. I would think a reasonable person would  
5 think that they should have a bit of margin of  
6 error in their design that would be, as a  
7 businessman, I would certainly expect that kind of  
8 margin of error.

9 Q. And, you also expressed the concern  
10 again, reading from Exhibit 47, that an inadequate  
11 solution would simply extend the stress that your  
12 family family is now living with and would cause  
13 the Crowns to spend money wastefully. In making  
14 that statement, was it your intent to express the  
15 concern that why construct an enclosure unless  
16 you're sure it's going to work?

17 A. Could you repeat the question?

18 Q. Was it your intent to express the view  
19 that one should not construct the enclosure  
20 without having certainty that it would work?

21 A. To the degree possible, if one is going  
22 to try to put a solution in place, they should do  
23 their best to make sure that it will work.

24 Q. So, you wouldn't find fault with somebody

1 for being careful and deliberate in their process  
2 of selecting a sound attenuation enclosure?

3 MR. DIVER: We're talking about  
4 carefulness and deliberateness or tardiness?

5 MR. CARSON: Your Honor, I would ask that  
6 comments like that, that counsel be instructed to  
7 refrain from comments like that. It's totally  
8 inappropriate. He's directing his comments to  
9 me..

10 HEARING OFFICER: Let's have a motion or  
11 else no comments or a motion or objection or no  
12 comments.

13 MR. DIVER: My objection is to the  
14 ambiguity of the question, asking for carefulness  
15 and deliberateness as opposed to what that  
16 particularly means to this witness.

17 HEARING OFFICER: Overruled. You can  
18 answer the question.

19 BY MR. CARSON:

20 Q. Mr. Shelton, you wouldn't fault someone  
21 for being careful or deliberate in their selection  
22 of a sound enclosure, would you?

23 HEARING OFFICER: The question asks for a  
24 yes or no answer.

1           A.    I find it difficult to answer just yes or  
2           no, but no, I guess if I have to say one word,  
3           Madam.

4           Q.    Why did you see Mr. Zack a copy of the  
5           July 21, 1994 letter, Exhibit 47?

6           A.    My experience with this situation to date  
7           had been that progress was painfully slow and the  
8           results frequently weren't what had been told me  
9           were going to be. I felt that it was important to  
10          keep some momentum going to keep the EPA involved,  
11          that's why I sent the copy to the EPA. I didn't  
12          trust that what had been represented to me in Mr.  
13          Shiner's letter was, in fact, going to be carried  
14          forward.

15          Q.    You knew at that time that Mr. Crown and  
16          his consultants were working on a sound enclosure?

17          A.    Only communication I had received was the  
18          one letter from Mr. Shiner in.

19          Q.    My question, sir, is you knew as of July  
20          21 that Mr. Crown and his consultants were working  
21          on a sound enclosure?

22          A.    Yes, and I simply provided some  
23          additional information and copied the EPA.

24          Q.    I'm going to show you, and I've shown

1           counsel, and I'm now showing the Hearing Officer  
2           Exhibit 45. This is a letter that you prepared  
3           and you and Bob Julian signed, right?

4           A.    Yes.

5           Q.    And, this was in September of 1994. And,  
6           at this time, you also were aware that a sound  
7           enclosure was in the works, right?

8           A.    I was not sure, at that time, that there  
9           was one in the works.

10          Q.    At that time, you thought that it might,  
11          the plan might have been abandoned?

12          A.    Yes.

13          Q.    Did you call Al Shiner and ask him?

14          A.    Yes, several times.

15          Q.    And did Al Shiner tell you the plan had  
16          been abandoned?

17          A.    He told me he didn't know, that he had  
18          been expecting specs and hadn't received them. I  
19          called roughly weekly starting the end of July  
20          through early September, and he was increasingly  
21          exasperated that he hadn't gotten any feedback, he  
22          had no idea where the specs were.

23          Q.    You sent this letter to Steve Crown,  
24          copying Doug Williams with the Village of Winnetka

1 and the Winnetka Village Council and Gregory Zack  
2 with the Illinois EPA, is that right?

3 A. Yes.

4 Q. And, why did you copy all those people  
5 with this letter?

6 A. I've already explained why I kept the EPA  
7 informed. The reason I kept the Village informed  
8 is that we had dropped our momentum with our  
9 effort to get the Village to help. Based upon  
10 what we thought was a commitment on the part of  
11 the Crowns to get this thing resolved. By the  
12 middle of September, with little or no evidence  
13 that they were going forward, other than the quick  
14 letter from Mr. Shiner, we had lost faith that  
15 they were, in fact, moving forward and decided  
16 that we had to reinitiate our efforts with the  
17 village.

18 Q. Was your concern over getting the sound  
19 reduced or was it over being informed at every  
20 step of way?

21 A. There were two things going on here. The  
22 first, that we thought that it was terribly  
23 important, under the circumstances, that there be  
24 some activity shown, and that we be made aware of

1           it. We thought that was the right thing to have  
2           happen, and we weren't. The only direct  
3           communication we had from Mr. Crown was a  
4           conversation, a not very cordial one, he had with  
5           my wife in late July in which he told her that  
6           construction will begin at or around Labor Day,  
7           and that time came and went, nothing had still  
8           happened, and we had gotten no more  
9           communications. So, we had no reason to have  
10          confidence that anything was happening. And,  
11          under the exigencies of a hot summer, we thought  
12          that that was unacceptable. The second thing that  
13          was going on is this thing was devastating my  
14          family. There was no one living in that house,  
15          and yet the air conditioner was running 24 hours a  
16          day. And, we had to continue to communicate to  
17          them that they had to stop doing this to my  
18          family.

19                        HEARING OFFICER: Can we go off the  
20                        record for a moment to discuss exhibits?

21                                        (Off the record)

22                                        AFTER RECESS

23                        MR. CARSON: We've agreed that it's okay  
24                        to use this one, even though there is a clean copy



1           someplace, we just can't get our hands on it right  
2           now.

3                         HEARING OFFICER:    Okay.  All right.  
4           Just ignore that because we know we have the other  
5           in the record, so we don't have to talk about  
6           that.

7                         MR. DIVER:    What's the date on that,  
8           counsel?

9                         MR. CARSON:    September 15, 1994.    This  
10          is Exhibit No. 20.

11         BY MR. CARSON:

12                        Q.    Mr. Shelton, is this a letter you  
13          received from Steve Crown?

14                        A.    Yes, I received it the 23rd or 24th.

15                        Q.    This is the letter you said was  
16          postmarked after September 15th?

17                        A.    Yes, some 6 days.

18                        Q.    Do you know, since you looked so closely  
19          at the postmark, did you see where it was  
20          postmarked from?

21                        A.    I don't recall.

22                        Q.    If it was someplace far away, would you  
23          remember that?  Would it refresh your recollection  
24          if I told you it was mailed from Honolulu?

1           A. I think the postmark date's the issue, not  
2           how long the mail took to get here. The postmark  
3           versus the letter date, it was a 6 day gap.

4           MR. KAISER: Is that an offer of proof,  
5           counsel, that was postmarked from Honolulu,  
6           Hawaii.

7           MR. CARSON: No, it's not an offer of  
8           proof. I'm asking to refresh his recollection.  
9           Does it refresh your recollection?

10          A. I don't recall where it was postmarked  
11          from. I just recall the date because I noted it  
12          on my letter.

13          Q. You did receive with -- strike that --  
14          upon receipt of this letter, you knew that in fact  
15          the design for the acoustical enclosure was  
16          complete?

17          A. With the receipt of this letter and the  
18          accompanied plans, we understood that there were  
19          now plans, no construction, but plans.

20          Q. You had in your September 14th letter,  
21          Exhibit 45, set a deadline for response, is that  
22          right?

23          A. Yes.

24          Q. And you wanted, you essentially were

1           telling Steve Crown on September 14th that unless  
2           you received specific plans by September 23rd, you  
3           would ask the Village to take necessary steps to  
4           remedy the situation, right?

5           A.    Yes.

6           Q.    And, I take it then that you did not take  
7           steps with the Village of Winnetka at that time?

8           A.    No, on the contrary. We, in fact, did  
9           take the action of filing a letter of complaint  
10          with the Village as of the 23rd. We had not yet  
11          received Mr. Crown's letter at that time.

12          Q.    Upon receipt of Mr. Crown's letter,  
13          Exhibit 20, you withdrew the complaint?

14          A.    Yes.

15          Q.    Now, showing you what has been marked  
16          Exhibit 48 A and B and received into evidence.

17                   HEARING OFFICER:    Do you mean 43 A and  
18          B?

19          Q.    Excuse me, 43 A and 43 B.

20          A.    Yes, I sent these letters.

21          Q.    The first is a letter dated September 27,  
22          1994 to Doug Williams, Village Manager, Village of  
23          Winnetka. In that letter, you advised Mr.  
24          Williams that you're withdrawing the complaint,

1 correct?

2 A. Yes.

3 Q. And, you suggested there's a chance at  
4 making progress between neighbors, right?

5 A. Yes.

6 Q. However, you questioned the effectiveness  
7 of the, or you suggested that there are questions  
8 about the effectiveness of the proposed enclosure.  
9 Did someone tell you that the proposed enclosure  
10 might not be effective?

11 A. Yes, Mr. Zack did express some  
12 reservations.

13 Q. Okay. So, you received it on September  
14 23rd and you obtained Mr. Zack's review of the  
15 plans by September 27th when you sent this letter?

16 A. Mr. Zack had reviewed the original  
17 proposal described by Al Shiner, and I described  
18 the kind of enclosure we were talking about here,  
19 and he had expressed some reservations. In  
20 addition to that, my experience on this at this  
21 time with the extreme slow timetable I think it's  
22 fair to say reluctance on making any progress in  
23 this matter, made me very concerned that progress,  
24 in fact, wouldn't be complete.

1           Q.    I'm referring specifically to the portion  
2           of your letter that refers to questions about the  
3           effectiveness of the proposed enclosure.  Now,  
4           what questions had been raised to you and by whom  
5           about the effectiveness of the enclosure which was  
6           shown on the plans that accompanied Exhibit 20?

7           A.    The questions have been primarily based  
8           upon the enclosure that was shown to us and in Al  
9           Shiner's letter in July, July 12th, I believe it  
10          was.

11          Q.    Did you understand when you received the  
12          plans with Exhibit 20 that the enclosure was not  
13          going to be exactly as had been drawn by Pete  
14          Keller in the preceding July?

15                MR. KAISER:  Objection, I believe that  
16          misstates the testimony.  It wasn't drawn up --  
17          wasn't it drawn by Al Shiner?

18                MR. CARSON:  I believe the testimony was  
19          that it was drawn up by Pete Keller.

20                MR. KAISER:  I apologize.

21                HEARING OFFICER:  You can answer the  
22          question.

23          A.    Could you repeat the question?

24                HEARING OFFICER:  I'll have the question

1 read back.

2 (WHEREUPON, the record was read.)

3 A. Yes, I observe that that was the case.

4 Q. You observed that the plans --

5 A. When I got the plans.

6 Q. -- that the plans had changed?

7 A. Yes. For example, there was a top shown  
8 on the plans.

9 Q. Had you obtained comments from Greg Zack  
10 or any other expert about the proposed enclosure  
11 that we saw in September by the time you wrote to  
12 Doug Williams telling him that you had questions  
13 about the effectiveness of the proposed enclosure?

14 A. I had not, at that time, had a chance to  
15 send him a copy of the full plans, I don't  
16 believe. I might have done it simultaneous with  
17 this. I don't believe that I had had a chance to  
18 look the detailed plans, though. I generally  
19 described the nature of the structure.

20 Q. Is this another situation when you had  
21 already decided that it wouldn't work, even before  
22 it was implemented?

23 MR. DIVER: Object to the  
24 characterization of this witness' testimony

1           beforehand. Move that the question be struck.

2                       MR. CARSON: We've already seen --

3                       MR. DIVER: This is another example of  
4           your deciding in advance, I don't believe there's  
5           been any testimony by this witness that he had  
6           decided in advance that nothing would work.

7                       MR. CARSON: There certainly was, and it  
8           concerned Exhibit No. 4, near the beginning of my  
9           Cross-examination of this witness when the witness  
10          decided before anything had been done that the  
11          only viable solution was relocation.

12                      MR. DIVER: You talking about October  
13          11th, 1993?

14                      MR. CARSON: Yes, sir.

15                      MR. DIVER: Before anything had been  
16          done.

17                      MR. CARSON: Yes, sir.

18                      MR. DIVER: Not that a particular  
19          proposal had been on the table, whether or not  
20          that would work.

21                      HEARING OFFICER: I'm going to sustain  
22          the objection and ask that if you wish to pursue  
23          that, rephrase your question.

24                      Q. You told M. Williams that there were

1 questions about the effectiveness of the proposed  
2 enclosure when, in fact, you didn't have any idea  
3 at all as to whether the enclosure would be  
4 effective, isn't that true?

5 A. That's true.

6 Q. You didn't have any comment from any  
7 experts regarding the proposed enclosure at that  
8 time, did you?

9 A. I had the following, I had the experience  
10 of what had purportedly been done prior to July of  
11 1994, which had had almost no effect, despite  
12 enormous delays. I had reviewed the structure  
13 that Al Shiner designed in early July of 1993,  
14 excuse me early July of 1994 with the State EPA,  
15 and they did raise some questions about that  
16 structure. I was now looking at the structure and  
17 it had taken two and a half months during the air  
18 conditioning season of 1994 to get a plan to us  
19 while my family was being devastated, and I saw  
20 that it didn't even have a roof on it, those were  
21 the bases for me being to some degree, concerned  
22 that this might not be the final solution.

23 MR. CARSON: Exhibit 7 and Exhibit 35.

24 HEARING OFFICER: All right.



1 BY MR. CARSON:

2 Q. I'm handing you Exhibit 7 and Exhibit 35.  
3 These are documents that both bear on a meeting  
4 that occurred with the Village Council in January  
5 of 1995, right?

6 A. The letter of January 21st bears on that  
7 meeting. The letter of January 16th was, I  
8 believe prior to the meeting and in response to a  
9 letter that Mr. Crown had written.

10 Q. Did you request a meeting with the  
11 Village of Winnetka in January of 1995, the  
12 Village Board,

13 A. No, Mr. Crown did.

14 Q. Was there an earlier meeting that Mr.  
15 Crown was not in attendance at where the issue of  
16 his air conditioner was the subject of discussions  
17 also in January of 1995?

18 A. There was a meeting in November, but not  
19 in January -- there was a village council meeting  
20 on January 10th, I believe it was in Winnetka.

21 Q. Okay. And, the Crown air conditioner was  
22 the subject of a discussion at a Winnetka Village  
23 Council meeting around January 10th of 1995,  
24 right?

1           A. I wouldn't say it was the subject of  
2 discussion per se. There were two proposed  
3 ordinances that were to be discussed at what was a  
4 public study group of the village council.

5           Q. And, you were there because you knew that  
6 these matters were going to be the subject of  
7 discussion?

8           A. Yes, the village had sent the information  
9 to both Mr. Crown and myself.

10          Q. You didn't inform Mr. Crown that that  
11 meeting was going on?

12          A. The village had informed him.

13          Q. How much notice did Mr. Crown receive, do  
14 you know?

15          A. According what Mr. Williams said the  
16 night of that meeting, Mr. Crown had just --

17          Q. Excuse me for interrupting, Mr. Shelton,  
18 I'm really just interested in knowing if you know  
19 how much notice was given to Steven Crown of that  
20 meeting?

21          A. I assume it was the same amount of notice  
22 that was given to us.

23          Q. How much notice did you receive?

24          A. The materials were mailed to us roughly a

1 week before.

2 Q. At the time that this January 10th  
3 meeting occurred, were you aware that there was a  
4 plan to construct an acoustical enclosure around  
5 the air conditioning unit?

6 A. I had been, I had received the plans in  
7 September, yes.

8 Q. And, I take it you were frustrated  
9 because the enclosure hadn't been built already?

10 A. Well, I had two purposes being at the  
11 meeting. There's fairly good attendance that  
12 night. There were several things being discussed  
13 at the meeting, but one was the particular concern  
14 about the Crown air conditioner. If history was  
15 any indicator, we could not be very confident  
16 that there would be a timely or effective solution  
17 for the noise. The second was having lived in the  
18 Village for approaching 20 years, I was very  
19 concerned about things that are going on in the  
20 village, and I thought it terribly important that  
21 an ordinance be put in place so that kind of thing  
22 would never happen again, which the village  
23 subsequently did.

24 Q. Okay.

1 A. Put an ordinance in place.

2 Q. Just to put your statement about if  
3 history was any indicator, up to this point in  
4 time, there had been a significant number of  
5 efforts or identifiable things done to try to  
6 reduce the sound?

7 A. There had been a series of small things  
8 done prior to July of 1994, all of which had  
9 failed.

10 Q. None of them had satisfied you.

11 A. And most had been, the landscaping in  
12 particular had been predicted by, we talked, which  
13 I don't know if the Crowns talked to any experts  
14 or not, but the ones we had talked to said  
15 landscaping is of little relevance to sound  
16 control. Trane engineers even told us that.  
17 Subsequent to that time, we had had the quick  
18 reaction on the Shiner drawing and then the two  
19 and a half months as my family was living through  
20 this thing of not even a plan, let alone a  
21 construction. And then suddenly being told that a  
22 different kind of enclosure that doesn't happen to  
23 have a top on it is being built.

24 HEARING OFFICER: Okay, thank you. Were

1           you finished, I'm sorry, I thought you were  
2           finished.

3           A.    So, for those reasons, I did not have a  
4           high level of confidence that the solution was yet  
5           in sight.

6                       HEARING OFFICER:   Okay.  I'm going to ask  
7           once again at this point that the witness answer  
8           the questions directly posed by counsel as  
9           succinctly as possible.

10          A.    Sorry, ma'am.

11          Q.    As far as the history of what had  
12           happened up until that point, a number of  
13           different attempts or fixes had been attached with  
14           respect to the sound.  None of which however,  
15           satisfied you and your family, is that a fair  
16           characterization?

17          A.    The minor things done before July of 1994  
18           had not been effective.

19          Q.    The rotation of the unit, that was a minor  
20           thing?

21          A.    We don't know if that was for sound.

22          Q.    The blanket over the compressor, that was  
23           a minor thing?

24          A.    That was later removed.

1 Q. Was it a minor thing, sir?

2 A. I don't know, but it was later removed.

3 Q. I'm trying to use your words. You said  
4 they were minor things. The installation of the  
5 cones, the installation of the panels, these were  
6 minor things?

7 HEARING OFFICER: Answer to the best of  
8 your ability.

9 A. Yes.

10 Q. Are you aware of the cost of these minor  
11 things?

12 A. No, I'm not.

13 Q. They didn't satisfy you or your family,  
14 though, right?

15 A. Correct, the noise was still extremely  
16 high.

17 Q. There was then a meeting with a number of  
18 village representatives on January 17, 1995 and  
19 Exhibit No. 35, which you have before you, I  
20 think--

21 A. Yes.

22 Q. -- speaks to that meeting?

23 A. Yes.

24 Q. And, as I understood your testimony on

1 direct examination, these notes that are attached  
2 to Exhibit No. 35 are notes that were put together  
3 by you and Bob Julian as to what transpired at the  
4 meeting?

5 A. The notes were put together by me. I  
6 thought it important that we memorialize what  
7 transpired at the meeting.

8 Q. Did you have handwritten notes at the  
9 meeting or did you make handwritten notes at the  
10 meeting?

11 A. Yes, I did.

12 Q. And, did your handwritten notes contain a  
13 notation that Steven Crown stated "or that he  
14 would", take whatever steps are necessary for the  
15 Crowns air conditioner to comply with the IEPA  
16 nighttime standards? These steps will be taken as  
17 fast as is practical concerning design,  
18 fabrication, and construction lead times.

19 A. That was my understanding from the  
20 meeting. I did not attempt to use exact words, I  
21 was trying to describe the essence of the meeting  
22 with this outline.

23 Q. And you remember Mr. Crown stating that  
24 he would take whatever steps are necessary?

1           A.    That was my understanding, yes.

2           Q.    Well, what did he say that caused you to  
3           have that understanding?

4           A.    I thought that he said that if the  
5           readings are not satisfactory, then we will take  
6           the necessary further steps.  And by that, I  
7           thought he was alluding to the steps Al Shiner had  
8           talked about, if you will look under Point 2 where  
9           Mr. Shiner had said that with this enclosure, if  
10          it doesn't work, then additional steps can be  
11          taken to make it comply with the nighttime  
12          standards.  And I believe that Mr. Crown  
13          subsequently indicated that he agreed that Mr.  
14          Shiner had indicatd this.

15          Q.    And in fact, Mr. Crown also subsequently  
16          responded to your letter saying I did not say that  
17          I would take whatever steps are necessary to  
18          comply with Illinois EPA nighttime standards?

19          A.    He agreed with these points, with the  
20          exception of Point 4 A, which has to with taking  
21          the further steps.

22          Q.    At that meeting, was it also discussed  
23          that -- strike that -- did you say at that meeting  
24          that if the unit would come within 10 percent of



1 the IEPA nighttime standards, that would be  
2 satisfactory?

3 A. I don't remember saying that  
4 specifically. I may well have said that if the  
5 unit, you know, our goal is to try to get the  
6 noise reduced, if it comes within a reasonable  
7 proximity of the night time standards, that would  
8 be all right. I vaguely recall saying something to  
9 that effect. I don't recall saying 10%.

10 Q. Before Leaving Exhibit Number 7, on Page  
11 4, this is a portion of your letter where you  
12 state that you're pointing out 3 points in  
13 Steven's January 10th letter that were  
14 particularly in error, and the second one states  
15 in 1993, we had asked the Crowns if they would be  
16 interested in buying our house, and that was a  
17 statement that had been made in Mr Crown's  
18 January 10 letter, right?

19 A. Yes.

20 Q. But, that was not in error, was it?

21 A. I would have to refresh myself by looking  
22 at his letter, but the context in which it was  
23 stated that there was something sinister about our  
24 phone call, and I wanted to clarify that that was

1 not the case at all. It's just as it's laid out  
2 here, and as I testified to a little bit ago.

3 Q. You telephoned Steven Crown and said  
4 would you like to buy my house, right?

5 A. Yes.

6 Q. And, you gave him a price of \$1.2  
7 million, give or take, right?

8 A. I Believe it was 1.1.

9 Q. \$1.1 million, and he expressed no  
10 interest in buying your house, right?

11 A. Short circuiting it, there were a couple  
12 of phone calls during which time we went back to a  
13 broker and so on, and I explained to him why we  
14 were thinking about this.

15 Q. Okay. And, this exchange of phone calls  
16 occurred pror to the installation or certainly  
17 prior to firing up of this air conditioner, right?

18 A. Right.

19 Q. And, after he turned you down at sometime  
20 later, the air conditioner is started and you  
21 begin to make statements that it's making your  
22 house unlivable and you're going to have to move  
23 right? And, you've made a series of those  
24 statements to various people, including in this

1 hearing, right?

2 A. I think I can't agree with what you're  
3 saying, counsel. You're trying to characterize,  
4 put words into my mouth, taking things a little  
5 out of context.

6 Q. I'm just raising a question as to whether  
7 it might appear that something is confusing or  
8 sinister about this.

9 MR. KAISER: Objection.

10 HEARING OFFICER: Okay, let's go off the  
11 record for just a moment to discuss the need to  
12 come to an agreement as to the conclusion of our  
13 day's proceedings today.

14 (Off the record)

15 HEARING OFFICER: Back on the record.  
16 We've been discussing the scheduling and we will  
17 pick up immediately on an objection we had now, we  
18 have an objection to the last statement made by  
19 counsel for Respondents during the cross  
20 examination. Counsel, did you have a response to  
21 the objection?

22 MR. CARSON: I thought it was a question  
23 that I asked, you just said it was a statement.  
24 Maybe if we have it read back.

1 HEARING OFFICER: Let's have it read  
2 back.

3 MR. CARSON: My response, your Honor, is  
4 simply that on Exhibit No. 7, this witness stated  
5 that he doesn't see anything confusing or  
6 sinister about it. I tried to give him in  
7 explaining the series of events and then now I'm  
8 asking him to reconsider if he sees anything  
9 confusing or sinister about it.

10 MR. KAISER: Asks him to speculate on  
11 whether it might appear sinister to some who knows  
12 who, whether to himself or some third party, it's  
13 irrelevant and calls for speculation.

14 HEARING OFFICER: All right. The  
15 objection is sustained. I would like to ask the  
16 witness again to answer each question to the best  
17 of his ability and succinctly, and counsel, you  
18 may continue with your questioning on that issue.  
19 And then, I believe we'll be taking a break  
20 shortly.

21 Q. Mr. Shelton, you did make the statement  
22 in this letter, we don't see anything confusing.  
23 or sinister about this, as suggested by Steven,  
24 right?

1 A. Yes, I did.

2 Q. And where is it that Steven suggested  
3 that there was something sinister about it?

4 A. There was a letter that Steven wrote as  
5 of January 10th. I don't have a copy in front of  
6 me, however, it was our feeling that a number of  
7 the facts were wrong and that in particular he had  
8 insinuated in that letter that there was  
9 something connected between our complaint about  
10 the air conditioner and the fact that we talked  
11 about selling our house to him some months  
12 earlier.

13 Q. Was our next Exhibit, your Honor, 7?

14 HEARING OFFICER: Yes.

15 MR. CARSON: I'll wrap up this area in  
16 just a moment.

17 Q. Respondent's Exhibit 7 is a letter dated  
18 January 10th, 1995 to Winnetka Village Council  
19 from Steven Crown. This is Respondent's Exhibit  
20 No. 7, is that the letter you're referring to?

21 A. Yes.

22 Q. And, in fact, the letter that's been  
23 identified as Exhibit 7, Petitioner's Exhibit 7  
24 is, in essence, your response to Respondent's

1 Exhibit number 7?

2 A. Yes, it is?

3 Q. In Mr. Crown's letter, he described the  
4 circumstances concerning the possible purchase of  
5 your home in the second full paragraph on the  
6 second page, do you see that?

7 A. Yes, I do.

8 Q. And in the middle of that paragraph, he  
9 says this was somewhat confusing, but he didn't  
10 say it was sinister, did he?

11 A. I think if you read the entire paragraph,  
12 counsellor, that at least as I read it, it posed  
13 questions that, to me, seemed intended to arouse  
14 suspicions.

15 Q. Suspicions that perhaps your motivations  
16 might arise from a desire to sell your home?

17 A. That's what I thought the implication in  
18 this paragraph was.

19 Q. But, you didn't get the same implication  
20 from the circumstances as you believe Mr. Crown  
21 was trying to insinuate?

22 A. For one thing, I don't have to rely on  
23 implication, I know in my mind what happened. I  
24 know for a fact what happened, and there is

1 absolutely no linkage. Secondly, when I stand  
2 back and try to objectively look at the fact I  
3 don't see anything that is suspicious at all as  
4 was suggested by this paragraph and Steven's  
5 letter. That's why we have the response.

6 Q. The fact remains, though, does it not,  
7 that you desired to sell your home, before the air  
8 conditioner became operational and after the air  
9 conditioner became operational?

10 A. As I testified this morning, in the  
11 spring of 1993, we were considering the  
12 possibility of selling, but had concluded that we  
13 didn't want to go through the listing process. We  
14 would only do it if a sale happened to be readily  
15 available. And, Mr. Crown was an obvious  
16 possibility, a neighbor building an enormous house  
17 and it seemed an innocent kind of question to ask  
18 if he would be interested in buying our house.

19 Q. You wanted to sell the house, then, if it  
20 could be easily done?

21 A. If it could be easily done.

22 MR. CARSON: This would be a good time to  
23 break.

24 HEARING OFFICER: All right. We have

1           now come to the conclusion of this day's  
2           proceedings. And, the continuation of this hearing  
3           will occur on August 19th at 9:00 a.m. The room  
4           will be announced. In the interim, a transcript  
5           of the proceedings we have had to date will be  
6           available in the interim. Thank you for your  
7           attendance and cooperation in our process and  
8           we'll see you then.

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CERTIFICATION

I, VERNETTA MCCREE, A Certified shorthand Reporter doing business in the State of Illinois, Certify that I reported in shorthand the testimony taken in above-entitled matter, and that this constitutes a true and accurate transcription of my shorthand notes so taken as aforesaid.

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VERNETTA MCCREE