

1 ILLINOIS POLLUTION CONTROL BOARD

2

3 LOWE TRANSFER, INC., and)
 4 MARSHALL LOWE,)
)
 5 Petitioners,)
)
 6 vs.) No. PCB 03-221
) (Pollution Control
) Facility Siting
 7 COUNTY BOARD OF McHENRY) Appeal)
)
 8 COUNTY KANE COUNTY,)
)
 9 ILLINOIS,)
)
)
 Respondent.)

10

11 The REPORT OF PROCEEDINGS before
 12 the HONORABLE BRADLEY P. HALLORAN, taken
 13 before Mary Ellen Kusibab, Certified
 14 Shorthand Reporter and Notary Public in and
 15 for the County of Cook, State of Illinois, at
 16 2109 Crystal Lake Road, Cary, Illinois,
 17 commencing at 10:30 a.m. on the 14th day of
 18 August, A.D., 2003.

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1 HEARING OFFICER HALLORAN: I will
2 just introduce myself. My name is Bradley
3 Halloran. I'm a hearing officer with the
4 Illinois Pollution Control Board. I'm also
5 assigned to this matter, and it's Lowe
6 Transfer, Inc., and Marshall Lowe,
7 Petitioners, versus the County Board of
8 McHenry County, Illinois. The corresponding
9 Pollution Control Board number is 3-221.

10 Can you all hear me in the stands?

11 THE AUDIENCE: Barely.

12 HEARING OFFICER HALLORAN: You
13 can't? All right. Is that any better?

14 In any event, today is August 14th,
15 the year 2003. It's approximately 10:40 a.m.
16 I want to state that the Petitioner's appeal
17 on the grounds that the siting decision below
18 was incorrect and several findings regarding
19 the statutory criteria was against the
20 manifest weight of the evidence. This
21 hearing has been scheduled in accordance with
22 the Illinois Pollution Control Board Act, the
23 Illinois Environmental Protection Act and the
24 Board's Rules and Procedures. It will be

1 conducted according to the procedural rules
2 Section 107.400 and 101, Subpart F.

3 We do have about 50 or so members
4 of the public here in the forum as we speak,
5 and public comment will be allowed. But I
6 want to stress that it must pertain and must
7 be based on -- exclusively on the record
8 below. In other words, you can stand up here
9 and you can testify or give comment under
10 oath subject to cross-examination. Or you
11 can just stand up here and state your piece
12 and public comment and not be sworn in and
13 sit back. However, that will be weighed
14 accordingly by the Board.

15 And it's my understanding that the
16 parties will not have any witnesses today,
17 and my vision is that there will probably be
18 a statement by Mr. McArdle and Mr. Helsten,
19 and that will conclude your case-in-chief.
20 However if it runs on, I will interrupt
21 and -- because I know all of you have
22 somewhere else to be. And you can step up
23 and we can start public comment if you need
24 to leave.

1 In any event, before I begin, I
2 would like to talk a moment about the Board's
3 hearing process. First, I think the majority
4 of the people here already know and are
5 familiar with the process. I will not be
6 making the ultimate decision in the case --

7 AUDIENCE MEMBERS: Please adjust
8 your mike.

9 We can't understand you.

10 We can't hear you.

11 HEARING OFFICER HALLORAN: Well,
12 you know, this is the best I can do. This is
13 the best that was given me by Cary School
14 District, and I don't know what else to do.

15 AUDIENCE MEMBERS: Hold it closer.

16 Hold it closer to your mouth.

17 HEARING OFFICER HALLORAN: Okay.

18 Thanks. A show of hands would be great
19 instead of yelling out. It's rather
20 disruptive.

21 I do want to caution everybody,
22 this hearing is much akin to a trial in
23 Circuit Court, so I would ask the proper
24 decorum. Thank you.

1 Again, the Board will review the
2 transcript and the proceedings and the
3 remainder of the record and decide the case.
4 My job is to ensure an orderly hearing and
5 that a clear record is developed so the
6 Pollution Control Board will look at that and
7 decide.

8 After the hearing, the parties will
9 also have an opportunity to submit
10 posthearing briefs. These, too, will be
11 considered by the Board. Public comment is
12 also accepted and also said in the public
13 comment period.

14 With that said, would the
15 Petitioner and Respondents please introduce
16 themselves?

17 MR. McARDLE: My name is David
18 McArdle on behalf of the
19 Petitioner-Applicant.

20 HEARING OFFICER HALLORAN: I think
21 you're going to have to speak up, because
22 there's a few people in the bleacher section
23 that can't hear you. Thank you, Mr. McArdle.

24 MR. McARDLE: Again, my name is

1 David McArdle. I'm the attorney for --

2 HEARING OFFICER HALLORAN: We have
3 a gentleman up there raising his hand.

4 Yes, sir?

5 AUDIENCE MEMBERS: We can't hear
6 him. He's got to put the mike up front.
7 Thank you.

8 HEARING OFFICER HALLORAN: Thank you
9 very much, sir.

10 Mr. McArdle, you heard the
11 gentleman. If you could probably hold the
12 mike like I am -- like an entertainer --
13 they'll probably be hearing a little better.

14 MR. McARDLE: I'm the attorney for
15 the Applicant Petitioner. He's also present.

16 HEARING OFFICER HALLORAN: Can you
17 all hear that?

18 AUDIENCE MEMBERS: No.

19 HEARING OFFICER HALLORAN: Well, I
20 think speaking are (unintelligible). It has
21 nothing to do with the mike.

22 I think you'll pretty much have to
23 swallow the mike.

24 Sir, you can also move down. There

1 are plenty of seats in the front.

2 AUDIENCE MEMBERS: Nobody can hear
3 you.

4 HEARING OFFICER HALLORAN: Mr. McArdle,
5 can you put your lips close to the mike.

6 Can you hear me if I swallow the
7 mike?

8 AUDIENCE MEMBERS: Yes.

9 HEARING OFFICER HALLORAN: We have
10 a resounding yes. Mr. McArdle, can you do
11 likewise?

12 MR. McARDLE: Right.

13 HEARING OFFICER HALLORAN: I'm sorry?

14 MR. McARDLE: I introduced myself.

15 David McArdle on behalf of the Applicant and
16 the Petitioner on appeal, Marshall Lowe, Lowe
17 Transfer, Inc., present.

18 HEARING OFFICER HALLORAN: Mr. Helsten?

19 MR. HELSTEN: Yes. Mr. Hearing
20 Officer, Mr. McArdle, good morning.

21 Chuck Helsten representing the
22 McHenry County Board.

23 HEARING OFFICER HALLORAN: Thank you,
24 Mr. Helsten.

1 We'll start with the case-in-chief.
2 Was my vision pretty much accurate,
3 Mr. McArdle, if you need anything where we
4 have no witnesses by the Petitioner and
5 you'll just be giving a statement and rest
6 upon the record below?

7 MR. McARDLE: Right. By way of
8 just clarification, I want to make sure we're
9 straight on this. I consider this an
10 argument on appeal to support the manifest
11 weight argument. And if there is any reply
12 by myself at the end of this proceeding, it
13 will be strictly based on whatever anybody
14 said during the hearing and will not be by
15 way of repeating an argument/statement. In
16 other words, I'll go through what I believe
17 the evidence in the record supports the
18 manifest weight argument as well as my
19 argument, and then I'll stop, listen to
20 public comment. And if there's any reply, it
21 will be based strictly on whatever somebody
22 said. It won't be my argument, so to speak.

23 HEARING OFFICER HALLORAN: Mr. Helsten,
24 you don't have -- if there's anything Mr. --

1 MR. HELSTEN: No. Since -- as
2 Mr. McArdle has aptly stated and represented,
3 we are confined based upon the contents of
4 his petition to the underlying record, I
5 intend to only to again, as Mr. McArdle,
6 argue what I think the underlying record
7 shows, listen to the public comment and
8 reserve the right, if I may, to possibly make
9 a closing statement again offering further
10 argument on what the public comment may have
11 shed on the significance or meaning of the
12 underlying record.

13 HEARING OFFICER HALLORAN: Mr. McArdle,
14 you may begin.

15 MR. McARDLE: Okay. I would ask
16 the court reporter -- what's happening here
17 is we don't use the microphones, she can
18 understand it. If we use them, it's going to
19 be difficult for her. I want her to
20 understand.

21 So if you don't understand
22 something, stop; we'll turn these off.

23 As the Board knows, the standard in
24 this case and the case that I filed on

1 appeal, the Board was to determine whether
2 the County Board's decision was against the
3 manifest weight of the evidence. The
4 decision is against the manifest weight of
5 the evidence if the opposite result is
6 clearly evident, plain or indisputable from a
7 review of evidence. That's the McClain
8 County disposal case, 207 Ill. App. 3d 2352.
9 I cite that in my brief, and I will give more
10 detail on the standard. But we all
11 understand that's the issue before the Board
12 in this proceeding.

13 Need is not an issue on appeal.
14 The County Board revealed the solid waste
15 plans some 13 years ago that the County was
16 badly in need of handling solid waste.
17 Landfill attempts to site back ten, 15 years
18 ago all failed. Nothing has happened in the
19 solid waste field in McHenry County in ten
20 years. And Lowe's is the first applicant for
21 a transfer station in this particular County.
22 The County, in its solid waste plan,
23 advocates transfer stations that are
24 privately held and in the populated portion

1 of McHenry County. That's where transfer
2 stations work. They don't work on lower
3 areas. You need a site that's populated in
4 portions, which is what Mr. Lowe proposes in
5 his application.

6 He hired the most qualified people
7 to design his proposed transfer station -- a
8 man named Keith Gordon. Although his
9 expertise as testified to and in his resume,
10 Mr. Lowe spared no expense in minimizing any
11 potential or perceived adverse impact on
12 surrounding property values. If there was a
13 site to be located in McHenry County for the
14 first site handling solid waste by a transfer
15 station, this is the one. It's in a
16 populated portion of the County, surrounded
17 and in this industrial zone property and
18 unused parcels down in the unincorporated
19 portion of the County.

20 Now, the decision by the County
21 Board followed ten full days of evidence.
22 Nine of those days were 12-hour days. It's a
23 very extensive 4,000 page transcript, more
24 than 100 exhibits. The record was closed on

1 April 15th, and the County make its decision
2 on May 6th. So from May 15th to May 6th, the
3 County Board had not considered the record of
4 4,000 pages. One copy was made. Duplicate
5 copies were not made to the County Board
6 Members. The County Board Members -- 24 of
7 them -- met one time for 30 minutes to adopt
8 the resolution finding Lowe not meeting three
9 of the criteria designed -- relating to
10 design and location. During that one time
11 meeting for 30 minutes, there was no
12 deliberation by the Board. This Board should
13 review that day's proceedings, which is some
14 47 pages long, primarily governed by its
15 attorneys, Mr. Helsten, directing the Board
16 in a very quiet session with Board Members
17 looking at their shoes. There was no
18 discussion, no conversation. There's no
19 deliberation. There's to indication why the
20 County made its decision. There's no
21 discussion about credibility of witnesses.
22 There's no findings of fact. All we have is
23 the proposed resolution that was passed by
24 the County Board consisting of strictly

1 conclusions of law. So the question is if
2 copies of the transcript -- 4,000 pages --
3 was not provided to 24 members during that
4 two- or three-week period between when the
5 record closed and when the decision was made
6 and they never met to discuss it, and on the
7 day they met for 30 minutes, they didn't
8 discuss, what's the basis of the County
9 Board's decision? I submit that the reason
10 the site was rejected was because of local
11 objections by the village of Cary and
12 surrounding residents in the Bright Oaks
13 development, and it was not based on the
14 evidence. And I would ask that this Board
15 review the evidence very carefully to confirm
16 my suspicion.

17 During the hearings, the ten days'
18 of evidence that was received by the
19 committee and public comment before the
20 Board, audience members did participate.
21 There were a total of 81 oral comments,
22 including attorneys. That number, out of
23 280,000 residents in the County, represents
24 less than one half of one percent that came

1 and objected to the hearings or at least made
2 comments at the hearings. I suggested that's
3 a very nominal objection made in the County
4 for a County-wide transfer station, and that
5 should be taken into consideration by the
6 Board.

7 The adjoining city of Crystal Lake
8 to which this proposal is on it's southeast
9 gateway, never objected, never came to the
10 proceeding, never passed any sort of
11 resolution one way or the other. Crystal
12 Lake has a tremendous interest in this, just
13 as the village of carry does, and the Board
14 should consider that.

15 Now, there's four issues that I
16 raise in my petition. The issue relating to
17 real estate Criteria 3 -- the location; the
18 issue relating to design and fire, which is
19 criteria 2 and 5; the unnumbered criteria and
20 the imposition of a fee as a condition. I'll
21 take those one at a time.

22 The first one -- location,
23 Criteria 3. As you know, the criteria states
24 that the facility must be located so as to

1 minimize incompatibility with Cary and the
2 surrounding area and minimize the effect had
3 on values on the surrounding property. By
4 definition, as I meant to indicate, the
5 transfer station must be sited in the
6 populated portion of the County. Otherwise,
7 it makes no sense, and it will never be
8 sited, because that's where the garbage is
9 created. That's where the waste has to be
10 removed from in order to make it economically
11 viable. The County staff supported the
12 McHenry County Board recommended approval of
13 this criteria. The Board should consider
14 that. The evidence that, I believe,
15 indicates it's plain and clear that the
16 location is sited so as to minimize the
17 impact on neighbors is the following: We
18 have our extensive landscaping plan that's
19 incorporated with the application surrounding
20 the site. That landscaping plan was designed
21 in conjunction with the McHenry County
22 Conservation District. A large property
23 owner of the conservation area to the west
24 and to the north before the application was

1 filed.

2 There's two structures on the
3 proposed site. One is the existing concrete
4 block building to the northwest, and the
5 other is the proposed facility itself, which
6 will be a concrete structure to the due east
7 on the site. Those two structures provide
8 for blockage of noise, view and wind to
9 both -- 1200 feet to the east, clearly, and
10 to the McHenry County Conservation District
11 to the west and to the northwest. Both of
12 those building provide interior surfaces in
13 detail.

14 There's a 1400-foot buffer from
15 Bright Oaks, which is a gaping hole created
16 by the mining company that grafted it out.
17 I'm not sure of the depth. I think it's 80
18 or 90 feet deep, and it's anywhere from four
19 to 1800 feet wide. And the separation to the
20 east between the subject property and Bright
21 Oaks multifamily development.

22 There's industrial zoning and uses
23 on-site and adjacent, and that will be
24 detailed in the brief as well. This

1 particular site is zoned heaviest industrial
2 zoning in the County called I-2 heavy
3 industry. I'll go through those in a bit.
4 The parcel immediately to the south and the
5 parcel immediately to the southwest are also
6 zoned heavy industrial I-2 in the County and
7 actually used as heavy industrial uses. The
8 parcel to the south is an asphalt and
9 concrete crushing facility that's been in use
10 compatibly with the McHenry County
11 Conservation District for years. There was
12 testimony in the record that no evidence has
13 ever been filed by the Conservation District
14 as to the crushing and trucking operation at
15 that facility. And then immediately to the
16 southeast of the facility is the Welch
17 Company that manufacturers concrete pipe and
18 stores pipes -- concrete pipes for
19 distribution at a later date. And as far as
20 I know, there's been no testimony regarding
21 any objection to that.

22 The gravel pit that's being
23 reclaimed to the east that I mentioned was
24 the separation between the site and Bright

1 Oaks. It is zoned light industrial -- I-1
2 it's called in the County -- at the time of
3 filing my petition. When I filed my
4 application, at the time, this matter was
5 heard by the Board, it was zoned I-1, light
6 industrial, with no for to gravel pit and is
7 now a completed process in the County. The
8 parcel to the immediate north and northwest
9 which is owned by the McHenry County
10 Conservation District is also zoned the
11 heaviest industrial zoning in the County I-2.
12 And as I indicated is used by the
13 Conservation District as an open space
14 conservation area and has been for years.

15 The site has access -- direct
16 access -- to State Route 14. It's a Class 1
17 highways, 80 thousand pounds more than --
18 between 20 and 30,000 cars travel it every
19 day as testified to. As far as queuing is
20 concerned for the 600 ton per day proposed
21 transfer station, it was testified there were
22 18 to 24 spaces provided for the stacking of
23 collection trucks carrying them into the
24 site. He has below grade loading to, again,

1 provide sound and noise insulation for the
2 transfer trailers as they're being loaded.

3 It should also be noted as far as
4 the location is concerned that the gravel pit
5 that was there made some maneuvers during
6 this proceeding to annex the property to the
7 village of Cary, and that's all in the
8 record. The annexation petition was filed in
9 February, and it was annexed after the
10 proceeding. That all happened after the
11 application was filed. When the application
12 was filed on November 20th last year, that
13 site was, as I indicated, I-1 and being
14 reclaimed as a gravel pit in the County.

15 The Bright Oaks development, which
16 are the multifamily development, is 12 to
17 1400 feet east of this proposed site
18 preexisted the gravel mine that was being --
19 that preexisted the McHenry County
20 Conservation area. Bright Oaks moved their
21 development to that site knowing that that
22 site was being mined and not knowing that it
23 was going to be owned by the McHenry County
24 Conservation District. It moved to that site

1 knowing the asphalt and concrete crushing
2 operation was in existence and knowing that
3 Welch Drywell Pipe business was heavy
4 industrial use. And it moved there knowing
5 all of those were I-2 uses.

6 Now, I brought with me Exhibit
7 15 -- or a summary of Exhibit 15 for
8 demonstration purposes that I'll show you.
9 Exhibit 15 is the McHenry County Zoning
10 Ordinance, and in that zoning ordinance, it
11 indicates permitted uses -- not conditions,
12 but permitted uses in the I-2 industrial use
13 categories. That would include the MCCD
14 acreage; the proposed site is I-2; the site
15 immediately to the south, which is the
16 asphalt and concrete recycling facility and
17 the Welch facility for pipe manufacturing
18 facility.

19 In addition to those uses, there's
20 a list of permitted uses that any of those
21 parcels can go to the County today and get a
22 building permit, so long as they put up a
23 six-foot fence and they meet the industrial
24 use regulations of that particular zoning

1 classification. And these uses are very
2 offensive. And the point of these uses --
3 I've indicated this to the Board, and I'll
4 list them -- permanent asphalt concrete
5 facility, meat packing plant, rendering
6 plant, processing facility for the recycling
7 of the slaughterhouse, wrecking yard, grain
8 elevator and the processing of stored coal
9 clay coke and tire products, fertilizer
10 products, smelting, rubber, stone, asphalt,
11 sawmill, welding and a trucking terminal.

12 The reason I indicate that is
13 because when Bright Oaks moved to this
14 facility, they knew that the proposed site
15 and the surrounding sites to the south and
16 southeast and McHenry County Conservation
17 area could only be used for this heavy
18 industrial use. And we know based on the
19 record that a transfer facility is nothing
20 but a trucking facility, and it's
21 indicated -- it's designated as being a light
22 industrial use by the U.S. EPA in its
23 documents that was submitted to the Board.

24 As far as real estate is further

1 considered, there was a lot of discussion
2 about the Northbrook transfer station and its
3 comparability with this particular site
4 because, ironically, there's a high-end
5 multifamily development 200 feet away from
6 the Northbrook transfer station that seems to
7 be doing fine. And what I did by way of
8 evidence is there were two -- there were two
9 letters that I requested for two significant
10 owners of the property in the Northbrook area
11 that I read into the record, and I would like
12 to read portions of those letters in relation
13 to this particular category. When it comes
14 to relevance of the Northbrook transfer
15 station, really the only distinction between
16 that facility and the proposed facility is
17 the proximity -- it's much closer to Bright
18 Oaks -- to the facility. And there's a
19 railroad track northwest. He had a railroad
20 track on this site, but it's probably a
21 thousand feet to the south. The Northbrook
22 transfer station -- railroad facility is
23 within that 200 feet. It's between the
24 Northbrook facility and the residents of the

1 Princeton Village Homeowner's Association,
2 which is the condo association in Northbrook.
3 Other than that, it's remarkably -- it's
4 remarkable.

5 So I'll read a portion of the two
6 letters for the Board's benefit. And this
7 appears as C191, pages 42 through 45. And
8 I'm only going to read the excerpts. A full
9 version of this first letter is excerpted on
10 this page. But the first letter is from
11 John E. Crawford, who states the following:

12 I'm a resident of Princeton
13 Village Homeowner's Association as
14 well as a trustee on the Glenview
15 Village Board. Our subdivision has
16 194 homes including four-unit
17 buildings and town homes. The homes
18 range from 300,000 to \$600,000 in
19 value. I have no financial
20 interest in (unintelligible) and I
21 have no interest in (unintelligible)."

22 He indicates. Now, I'll go to the end:

23 "The transfer station next to
24 us was established in the early

1 eighties before construction of our
2 development in the early nineties.
3 It operates on a small site on
4 Shermer Road north and adjacent to
5 the southeast corner of our
6 property, adjacent on the elevated
7 railroad right-of-way owned by
8 Union Pacific along with the
9 Northwest Railroad. It's a
10 double-decked (unintelligible) 200
11 feet right-of-way was built. This
12 elevated right-of-way is the only
13 property separating Princeton
14 Village from the transfer facility
15 and providing adequate screening
16 from our homes along Princeton Lake
17 and the southeast corner.

18 Princeton Village was approved
19 by the Glenview Planning Commission
20 and the Village Board 12 years ago.
21 The village did not find the
22 creation of our subdivision to be
23 incompatible with the operation of
24 the transfer station. Our

1 subdivision has many residents,
2 including me, who has been here
3 from the very beginning. And the
4 value of our homes has increased
5 constantly over the years. We've
6 had many contacts with real estate
7 agents concerning this (unintelligible).
8 I have heard no adverse comments
9 concerning the facility. Yours
10 truly.

11 The second letter is from a William
12 Bashkin -- B-a-s-h-k-i-n. He wrote about
13 he's an appraiser in Glenview. And he
14 indicates the following:

15 "I moved to my house -- my
16 home -- two years ago. I lived at
17 the corner of Princeton Lane and
18 Yale Court. My unit is on the
19 second floor, the one in the
20 Village closest to the transfer
21 station. I can go out of my home
22 office and see the trucks carrying
23 the site. There's been almost no
24 impact to our subdivision because

1 of the operations of the waste
2 transfer station. I'm an
3 appraiser, so I have experienced
4 evaluating fluctuations in property
5 values. All of the properties in
6 our subdivision have consistently
7 maintained their property value.
8 And, in fact, values have increased
9 each year. In my work as well as
10 discussions with other residents of
11 Princeton Village, the slight
12 increase in the value of homes
13 between the homes on the western
14 side and the eastern side of the
15 subdivision is directly
16 attributable to the location of the
17 railroad tracks and not to the uses
18 east of the railroad tracks.

19 Sincerely yours.

20 Now, for my last point on real
21 estate, it has to do with a witness called by
22 the village of Cary, Mr. Whitney -- Bright
23 Oaks, I'm sorry.

24 Mr. Whitney testified to one

1 question as follows. This was a question on
2 Volume C220, pages 80 and 81. This is a
3 question asked by Anne Kay. Anne Kay is a
4 member of the County Board, and she asked the
5 following question:

6 Mine may be as screwy as his,
7 but let's take a hypothetical here.
8 Bright Oaks has a grocery store
9 strip mall shopping center with
10 fast food restaurants not too far
11 away. It has an extremely busy
12 Highway 14 not too far away. And
13 at one time, it had gravel on it.
14 There's industry around. There is
15 a railroad track nearby. Would a
16 transfer station make that much
17 difference if it went in?

18 Here's Mr. Whitney's answer:

19 "Without having done a proper
20 study on the effect of surrounding
21 property values, I really couldn't
22 responsibly answer your questions.
23 I don't have an opinion until I do
24 that type of analysis."

1 This is their expert on the issue
2 of Criterion 3 -- the values of surrounding
3 properties. Saying he doesn't have an
4 opinion. He hasn't done a study. That's
5 a -- completely negates his testimony as an
6 expert and a witness for Bright Oaks. And
7 I'll object because he's the only witness on
8 the other side. That's all I have on
9 Criteria 3.

10 Criteria 2 and 5, these criteria,
11 they tend to go together based on their
12 standards. Criterion 2 indicates the
13 facility must be so designed proposed to be
14 operating that the public health, safety and
15 welfare will be protected. Criterion 5
16 indicates the plan of operations for the
17 facility must be so designed as to minimize
18 the danger to the surrounding area from fire,
19 spills or other operational accidents.

20 Now, as far as the interpretation
21 of these, I once cited each that I'll go
22 further into in my brief. Criterion 2, which
23 doesn't have the minimized language, requires
24 a demonstration that the proposed facility

1 does not pose an unacceptable risk to the
2 public health, safety and welfare. It does
3 not require a guarantee against any risk or
4 problem. That's Industrial Fuel 227 Ill.
5 App. 3d 5383 and the File -- F-i-l-e -- case,
6 219 Ill. App. 3d 897.

7 Criterion 5 requires
8 (unintelligible) only -- not elimination of
9 any problems, because it is virtually
10 impossible to guarantee that no absence will
11 occur. It does not allow rejection of a site
12 based only on the existence of a danger.
13 Rather, it requires approval if the facility
14 is designed to minimize the danger. That's
15 the Wabash case 198 Ill. App. 3d 388, and the
16 Watts Turley case, PCB 83-167. I would note
17 as with Criterion 3, the County staff
18 recommended approval of these two criterion
19 as well -- 2 and 5.

20 Now, I indicated at the beginning
21 that we went out to hire the best. In my
22 opinion, based on the resumes that are in and
23 the testimony that was given, Keith Gordon is
24 by far the best. He literally wrote the book

1 on landfill transfer design stations,
2 designing of those facilities. He's the
3 editor and technical advisor to the EPA with
4 regard to the solid waste transfer station --
5 a manual for making decisions. He's the
6 principal author of the Solid Waste Transfer
7 in Illinois and Citizen's Handbook for
8 Planning, Siting and Technology. This
9 document was commissioned by the DuPage
10 County Solid Waste Department and public
11 education document. He's a project manager
12 with regard to the preparation of the solid
13 waste transfer station -- design guy for the
14 Waste Management of North America, SWANAS.
15 And he's the editor-in-chief with regard to
16 the SWANAS transfer station management
17 certification manual. He's also the senior
18 trainer of the SWANA course for that
19 certification.

20 Now, the only other demonstrative
21 exhibit I'd like to go through quickly is --
22 and I did this in my closing argument before
23 the County Board. The witness called on
24 behalf of the objectors in this case -- I

1 believe it was the village of Cary -- they
2 called Andrew Nickodem. And, of course, we
3 had Keith Gordon. Now, I understand the law
4 with regard to reweighing evidence, and
5 that's not what I'm suggesting at all needs
6 to be done in this case. What I'm suggesting
7 to the Board is that the evidence completely
8 supports our side. And according to the
9 standard is plain. Even when you look at
10 Mr. Nickodem's testimony and his experience
11 that he testified to during the proceedings.

12 Now, Mr. Nickodem was the principal
13 engineer -- the design engineer -- for the
14 Woodland application by Waste Management in
15 the Woodland proceeding in Kane County that
16 this Board is well aware of. Mr. Nickodem
17 testified extensively as to how he designed
18 that facility, because he supported that
19 design. And in many respects, the design by
20 Mr. Lowe and, of course, Mr. Gordon
21 paralleled not only Woodland but exceeded it.
22 So I think for that purpose, it's worth going
23 through a rundown of how Mr. Nickodem's
24 design for Woodland that he supported is the

1 same as Lowe's and how Mr. Lowe's design
2 exceeds Woodland and Mr. Nickodem supported
3 it. He agreed that those design parameters
4 that exceeded the Woodland facility by
5 Mr. Lowe were supporting the mitigation
6 factor of Criteria 5 and supported a better
7 design in Criteria 3. And I'll go through
8 that testimony with you.

9 Now, as far as the similarities
10 between the Woodland facility and the Lowe
11 facility, Mr. Nickodem testified as follows:
12 He testified that in both proceedings, there
13 was a residence in Woodland and, of course,
14 the Bright Oaks residents here -- 13 to
15 1400 -- feet away. So he was designing this
16 facility to accommodate or deal with those
17 residents -- homeowners. He aligned his
18 buildings in the Woodlands in such a way to
19 block the prevailing wind to that particular
20 resident. And in Lowe's situation, as I
21 indicated, the exact same thing is done.
22 This facility that we're building, not the
23 existing one. The new concrete structure
24 will be separating the activities on the

1 tipping floor from the Bright Oaks facility.

2 Mr. Nickodem testified that his
3 design was adjacent to a conservation path in
4 an industrial area. And, of course, in our
5 case, we're adjacent to industrial sites to
6 the south and southeast and the McHenry
7 County Conservation District to the west.

8 His design in Woodland provided for
9 the daily removal of waste from the floor of
10 the facility, as does Lowe. And that, of
11 course, prevents the potentials for insects
12 and the cleanliness of it. He suggested in
13 his plan for Woodland that he was going to
14 seal expansion joints on the tipping floor,
15 and we're doing that as well. The tipping
16 floor slopes to the drains to prevent the
17 accumulation of water on the tipping floor,
18 and that's done in the Lowe design by
19 Mr. Gordon. Mr. Nickodem testified that
20 there was no quantification in his
21 application for noise generated at the site,
22 and there was some criticism of our testimony
23 because there was to quantification. And so
24 that was the same in both proceedings that he

1 supported.

2 There were no misters at either
3 site. There was some discussion about
4 whether or not the tipping floor should have
5 a scented mist, and there was no design in
6 the Woodland facility because of some
7 hazardous situations that might occur that
8 was testified to in this litigation as well.

9 There was no public recycling in
10 either site, and both were operated on a
11 septic system. So those are the similarities
12 between Mr. Nickodem's design that he
13 supported and Mr. Lowe's that he's apparently
14 objecting to.

15 Now, over and above that are the
16 design criteria installed by Mr. Gordon to
17 exceed what was happening at Woodland and to
18 exceed the standard design and what we call,
19 actually, state of art in some respects.
20 First of all, the difference between the two
21 facilities, Woodland was a much larger
22 facility. It was suggesting a proposed site
23 to handle anywhere from 2,000 to 2600 tons
24 per day. The Lowe site was proposing 600

1 tons per day. So it's a smaller site, yet
2 the queuing -- the queuing of the Woodland
3 facility was between six and eight collection
4 trucks. And Lowe at a much smaller facility
5 was queuing up to 24 collection trucks.

6 Working hours. The working hours
7 at the Woodland facility were 20 hours a day,
8 and Mr. Lowe is suggesting ten hours a day
9 more toward the working day to, again, keep
10 the noise levels down during the nonworking
11 hours. The groundwater monitoring wells were
12 provided by Mr. Lowe adjacent and in
13 coordination with the conservation district,
14 and no groundwater monitoring wells were
15 provided in the Woodland facility.

16 Concrete structure was being
17 proposed by the Lowe in order to reduce the
18 noise, keep the smells in better and just a
19 better appearance from the outside, whereas a
20 metal building was being proposed at the
21 Woodland facility.

22 As far as fueling the trucks, the
23 Woodland facility was fueling those outside
24 over unprotected areas as far as going into

1 the contact water system inside the tipping
2 floor. They would have been running directly
3 into their -- whatever storm system they had
4 on the asphalt outside. If there was a
5 spill, Lowe was suggesting -- proposing
6 fueling his inside over the contact water
7 system so any spills would go into a contact
8 tank that would be protected. And all of
9 these factors Mr. Nickodem testified were
10 advantages. Carbon filters were proposed by
11 Lowe on the ventilation system to reduce the
12 smells. That was not provided for in the
13 Woodland facility. No overnight waste was
14 being represented by the Lowe proposal.
15 There will be no storage inside or outside.
16 All trailers full will be removed from the
17 site. On the other hand, in Woodland, they
18 were storing those inside and outside. They
19 might have just been inside the facility
20 overnight. But, clearly, that was a
21 distinction.

22 Radiation detection was being
23 provided by Lowe. None was being provided by
24 Woodland. Random load inspections were being

1 proposed by Lowe; none was provided by
2 Woodland. Lowe was providing for a
3 geomembrane liner similar to under landfill
4 under the tipping floor entirely to provide
5 further insulation to groundwater. That was
6 advocated or supported by Mr. Nickodem as
7 being an additional measure of protection.
8 And that was not provided for in Woodland.
9 And he testified not -- to his knowledge,
10 it's never been provided for in any transfer
11 facility in the state of Illinois.

12 Indoor tarping is another unheard
13 of. Indoor tarping by Mr. Lowe was being
14 provided for to, again, cover the activity,
15 reduce the potential for blowing litter and
16 safety to the workers. That was not provided
17 for by Woodland.

18 We also had the indoor scale
19 facility which was the separate facility to
20 the northwest portion of the site. That was
21 not provided for in the Woodland facility.
22 That again provides for protection of blowing
23 waste, securing the screens over the trailers
24 to make sure they're covered properly and

1 general safety of the workers.

2 We have below grade loading and
3 indicated that was from soundproofing of the
4 transfer trailer activity. That was not
5 provided for in Woodland, where the transfer
6 trailers on our proposed site are all moving
7 forward, which is safer than reverse, which
8 was being provided for by Woodland.

9 HEARING OFFICER HALLORAN: Mr. McArdle,
10 pleas speak up, please. We've got some
11 hands.

12 MR. McARDLE: Mr. Nickodem agreed
13 with that, and we -- lastly, we have direct
14 access to the Class 1 Route 14 Highway. And
15 Woodland does not have access to that
16 particular type of highways. It had access
17 to Route 25, which had low limitations and
18 height limitations.

19 So what we're suggesting here,
20 there are at least seven areas of what I
21 refer to as --

22 HEARING OFFICER HALLORAN: Excuse
23 me, Mr. McArdle.

24 Yes, sir?

1 MR. APPLETON: Can you hear me?

2 HEARING OFFICER HALLORAN: Yes, sir.

3 MR. APPLETON: Nobody can
4 understand what's going on.

5 HEARING OFFICER HALLORAN: Okay.
6 At the top of the hearing, sir, I said if
7 anybody can't hear, raise your hand. And the
8 people to the left just raised their hand
9 (unintelligible). The hearing -- so just
10 raise your hand. So nobody can hear now in
11 the middle row?

12 MR. APPLETON: The problem is not
13 the way they're talking. It's that the
14 acoustics in this room are terrible. Now,
15 why don't you sit -- the presenter sit here
16 and you sit there and forget about the
17 microphone.

18 HEARING OFFICER HALLORAN: Well, I
19 think -- can you hear me now, sir?

20 MR. APPLETON: Yes.

21 HEARING OFFICER HALLORAN: Okay.
22 Remember when I was asking Mr. McArdle to
23 hold the microphone up to his lips so the
24 people in the bleachers can hear him.

1 MR. APPLETON: But it's acoustics
2 that's the problem.

3 HEARING OFFICER HALLORAN: You can
4 hear me now, sir; is that correct?

5 MR. APPLETON: I can hear every
6 word. I just can't understand.

7 Is that correct?

8 AUDIENCE MEMBERS: Correct.

9 MR. APPLETON: How many people
10 would like them to move closer and forget
11 about the microphone?

12 (Whereupon, the audience
13 members clapped in
14 agreement.)

15 MR. APPLETON: This is a shame. We
16 can't understand what people are talking
17 about.

18 HEARING OFFICER HALLORAN: Sir,
19 sir, I had asked you at the top -- the whole
20 audience -- at the top of the hearing, if you
21 cannot hear, raise your hand. I've sat here
22 for approximately 30, 40 minutes, and this is
23 the first hand I've seen.

24 MR. APPLETON: Because you didn't

1 look.

2 HEARING OFFICER HALLORAN: I've
3 been monitoring here for the last 40 minutes.

4 Yes, ma'am?

5 AUDIENCE MEMBER: What he is saying
6 is not a matter of we can't hear. It's a
7 matter of it's garbled because of the size of
8 this room. We can hear, but we can't
9 understand.

10 HEARING OFFICER HALLORAN: Okay.
11 That might be all clear. We'll stop the
12 proceedings right now and move up. However,
13 I'm assured by the Village of Cary School
14 District that the acoustics (unintelligible)
15 and this is a great place for a hearing. So
16 with that said -- yes, ma'am?

17 AUDIENCE MEMBER: I was just going
18 to say it's not the first mistake the school
19 district has made.

20 HEARING OFFICER HALLORAN: But in
21 any event, what we'll try to do, as you
22 suggest, I'm going to go ahead and suspend
23 the hearing for the next five minutes and
24 we'll move up and see if everybody can hear.

1 AUDIENCE MEMBERS: Thank you.

2 (A short break was had.)

3 HEARING OFFICER HALLORAN: All
4 right. We're back on the record.

5 I think Mr. McArdle was starting
6 his Criteria 8 argument.

7 Is that correct?

8 MR. McARDLE: I'm sorry. I had
9 somebody talking in my ear.

10 HEARING OFFICER HALLORAN: Okay.
11 We're back on the record now. We took
12 approximately 12 minutes to relocate. We're
13 not using the mikes now pursuant to the
14 request of the public here, which -- I'm
15 never any good at this -- probably 50 to 75
16 people.

17 But in any event, Mr. McArdle, you
18 still have the floor.

19 MR. McARDLE: Thank you. And I'm
20 almost done.

21 So the question becomes with regard
22 to Criteria 2 and 5 is whether we can prove,
23 based on the record, that it's clearly
24 evident, plain or indisputable using the

1 standard -- clearly plain, evident or
2 indisputable that the design works -- that
3 the design is there to protect the public's
4 health, safety and welfare. And I'm
5 suggesting and I'm arguing that based on
6 Mr. Nickodem's testimony himself, as well as
7 the design by Mr. Gordon, that the eight
8 state of the art facilities that exceeded
9 Mr. Nickodem's own design that he advocated
10 show clearly that the design meets that
11 standard. And those eight again are the
12 concrete facility, the concrete -- as opposed
13 to metal -- the geomembrane liner, the
14 monitoring wells, the stacking or queuing
15 lane, the indoor tarping, the indoor scales,
16 the segregated fire pit -- which I'll get
17 into here -- and the underground loading
18 tunnel. All of those eight issues are
19 matters that the Board should consider that
20 exceed the standard of designing transfer
21 stations in this day and age. And for that
22 reason, we meet that standard.

23 Now, as far as Criterion 5 and the
24 fire design, there wasn't a lot of discussion

1 about this at the hearing. But what we did
2 in our application and the testimony shows is
3 that the Cary Fire Protection District
4 supported the design that we had for
5 controlling and designing the fire concerns
6 of a transfer facility, specifically, we had
7 a segregated fire pit outside. That, again,
8 is unusual, but supported and recommended by
9 the Cary Fire Protection District so that if
10 there were any hot loads inside on the
11 tipping floor, they would simply be pushed
12 outside into the containment area and taken
13 care of.

14 There was testimony regarding
15 sprinkler systems. Mr. Nickodem testified
16 that sprinkler systems are not the standard
17 in the industry for transfer station
18 facilities. And there is no waste being
19 stored overnight, and he indicated that
20 lowers the risk of any potential fire that
21 could occur in the facility, of course,
22 because there's nothing in it.

23 Now I'll move on to the unnumbered
24 criteria. The County Board may also consider

1 as evidence the previous operating experience
2 and past record of convictions or admissions
3 or violations of the applicant in the field
4 of solid waste management when considering
5 Criterias 2 and 5. And in their conclusion
6 resolution, the County Board indicated it did
7 consider that. It didn't indicate how it
8 considered it. It didn't indicate whether it
9 was considering the experience or whether it
10 felt there was some record of violation or
11 whatever. But the record is perfectly clear.
12 The testimony is perfectly clear and
13 indisputable --

14 HEARING OFFICER HALLORAN: Mr. McArdle,
15 obviously --

16 You know, maybe if you move over
17 here and take my suggestion and move over to
18 the center more. There's plenty of room over
19 here, and maybe that will help. You know,
20 I'm not sure what else to do.

21 Yes, sir? You in the striped
22 shirt.

23 AUDIENCE MEMBER: He could talk
24 louder. I'm sorry, but he's not talking loud

1 enough.

2 HEARING OFFICER HALLORAN: Mr. McArdle,
3 could you please keep your voice up, please?

4 MR. McARDLE: You know, I do this
5 every day, and that's the voice I use for
6 people that are 12 -- 12 people standing ten
7 feet away or anybody in the audience in a
8 courtroom. This is my voice. I don't know
9 what you want me to do, sir. I have no idea
10 what you want me to do.

11 HEARING OFFICER HALLORAN: Just try
12 to keep your voice up.

13 Excuse me, sir.

14 Just try to keep your voice up,
15 Mr. McArdle.

16 Other than that, you're going to
17 have to move up and over.

18 MR. McARDLE: Okay.

19 The record is clear that Mr. Lowe
20 has no operating experience. He doesn't have
21 bad experience; he has no operating
22 experience of transfer station facilities.
23 The record is plenty full as to his
24 experience with hauling, trucking, loading

1 heavy loads of material. He owns the asphalt
2 concrete crushing facility. He's been doing
3 this his whole life. He's been transporting
4 material in trucks the way we're talking
5 about this trucking operation his whole life.
6 The record is replete with experience that's
7 unimpeached as far as any kind of violation,
8 much less in the solid waste field.

9 So if the County Board is
10 considering no experience, which it didn't
11 do -- it didn't say, hey, you have no
12 experience, so we think you don't meet this
13 criteria. It just said we considered it.
14 But if they're considering no experience as a
15 bad thing, Mr. Nickodem testified that in his
16 Woodland facility, they were going to hire
17 experienced operators and qualified managers.
18 And as did in this proceeding, Mr. Gordan and
19 Mr. Lowe both testified and their application
20 represents that we intend to hire those
21 particular personnel that are qualified to
22 operate the facility, certified under the
23 SWANAS training course and to have taken that
24 course, read the manual, then trained --

1 Mr. Gordon will be involved in that process.
2 All that's been testified to. And,
3 certainly, there's no cases indicating no
4 experience means you don't qualify. That is
5 not what the law provides. It says you
6 consider previous operating experience. And
7 that's that aspect of it.

8 As far as past record of
9 convictions or admissions in this field,
10 there are none. There are absolutely zero in
11 the record of any violations. All there is
12 is a bunch of questioning of Mr. Lowe as to
13 how he conducts other aspects of his life in
14 his excavation field, in his concrete
15 crushing field and so forth. But there have
16 been absolutely no violations in this record.
17 And so the unnumbered criteria is irrelevant.

18 The last issue to discuss is the
19 imposition of the fee as a condition. The
20 law provides an imposition of a fee is not a
21 reasonable and necessary condition in order
22 to accomplish the purposes of Section 39.2.
23 To extend Section 39.2 to allow the
24 imposition of a fee would go beyond the

1 confines of the statute. That's County of
2 Lake, 120 Ill. App. 3d 89, and E.E. Hauling,
3 629 FedSupp. 973. And so our position on
4 this is the fee is not allowed under Illinois
5 law to impose this condition. And because
6 we're non-Home Rule, they further don't have
7 that authority.

8 And for those reasons, we're asking
9 for the Board to reverse the County Board's
10 proceeding.

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

13 Mr. Helsten, I can't remember if
14 you wanted to give, I guess, a quasi opening,
15 and, if so, how long? Because I know there's
16 at least one member of the public here that
17 wanted to read something into the record, and
18 he had to be out of here, I think, by noon.

19 MR. HELSTEN: Can you all hear me?

20 THE AUDIENCE: Yes.

21 MR. HELSTEN: I'd rather, as the
22 famous stand-up comedian said, work without a
23 mike if possible. I think I would probably,
24 in rebuttal to what Mr. McArdle has raised

1 and Mr. Halloran, have about 30 to 35 minutes
2 of comments. That being the case and to
3 accommodate the public, I would suggest we
4 take the public comment out of order of the
5 person who has only limited time to attend
6 it.

7 HEARING OFFICER HALLORAN: Okay.
8 Very well. And I do want to read the
9 order -- the August 7th order. There was a
10 motion in limine filed by the Petitioner and
11 response made. And they denied the motion in
12 limine in part and granted it in part. And
13 the bottom line is to ensure that the hearing
14 can be completed with a clear and concise
15 record, the hearing officer may limit the
16 time allowed for oral statements consistent
17 with provisions of Section 101.628 (a).

18 With that said, I did have a sign
19 up sheet at the podium, and the last time I
20 looked, there was about ten citizens signed
21 up. How many people do want to make public
22 comment here? And I guess I should qualify
23 that with you can stand up here and make
24 public comment not under oath, and it will be

1 weighed accordingly. However, if you do
2 decide to make a statement, it will be under
3 oath and subject to cross-examination. If
4 you choose to submit written statements, you
5 must be able to be cross-examined and under
6 oath. However, if you just submit a written
7 statement without being under oath, it will
8 be considered and treated as a public
9 comment.

10 With that said, any public comment
11 and/or statement, testimony must pertain to
12 the record below. No new evidence may come
13 in. It's confined exclusively on the record
14 that was made below.

15 Now, with that said, I think there
16 was a gentleman here by the first name of Hal
17 had to leave at noon. Anybody else have time
18 constraints? And how many people plan to
19 step up here and make comment or statements?

20 (Whereupon, various
21 audience members raised
22 their hands in response.)

23 HEARING OFFICER HALLORAN: I see
24 ten people. That may change.

1 But in any event, sir, you may come
2 up here.

3 Are you going to be put under oath
4 and subject to cross?

5 THE WITNESS: Sure, why not?

6 (Whereupon, the witness was duly sworn.)

7 MR. McARDLE: May I make an
8 objection just for the record?

9 HEARING OFFICER HALLORAN: Yes, you
10 may.

11 MR. McARDLE: On behalf of Mr. Lowe
12 and Lowe Transfer, I would object to any oral
13 statements, as I indicated in my motion in
14 limine. This is strictly based on the
15 record. And if people want to come up and
16 make comments citing to the record as I did,
17 that's fine. But the suggestion of oral
18 statements and cross-examination clearly
19 indicate going beyond that. And I object to
20 any type of oral statement on that basis.

21 HEARING OFFICER HALLORAN: Mr. Helsten?

22 MR. HELSTEN: The County would
23 stand upon its response to Mr. McArdle's
24 motion in limine wherein we stated that the

1 appropriate rules under the Illinois
2 Administrative Code and under the case law
3 governing this matter has made it clear that
4 public comment is encouraged. If the Board
5 is well able, as the County has taken the
6 position before, Mr. Halloran, the Board is
7 well able to determine what is relevant, what
8 is appropriate, what does properly relate to
9 the underlying record and what does not. And
10 I think it's better to err on the side of the
11 conclusion of everything and let the Board
12 determine what is relevant and appropriate
13 rather than exclude commentary.

14 HEARING OFFICER HALLORAN: Thank
15 you. Mr. Helsten, I am -- Mr. McArdle, your
16 objection is so noted for the record.
17 However, I will overrule it. I think the
18 Board is capable to disregard any statements
19 that are not in the record below. And feel
20 free to make specific objections as we go
21 along.

22 MR. McARDLE: Thank you.

23 HEARING OFFICER HALLORAN: Sir, I
24 don't know if you stated your name for the

1 record. And then just proceed.

2 MR. RUBEL: Hal Rubel.

3 THE COURT REPORTER: How do you
4 spell your last name?

5 MR. RUBEL: R-u-b-e-l.

6 HEARING OFFICER HALLORAN: Have you
7 signed up on the sheet?

8 MR. RUBEL: Yes, I did.

9 HEARING OFFICER HALLORAN: Thank
10 you, sir. You may proceed.

11 MR. RUBEL: Thank you.

12 PUBLIC COMMENT BY HAL RUBEL

13 on Tuesday, May 6th, 2003, the
14 McHenry County Board voted to deny the
15 application to site a waste transfer facility
16 along U.S. Route 14 by the proposed Marshall
17 Lowe facility on Northwest Highway waste
18 transfer facility, also known as solid waste
19 transfer station. There were nine
20 required -- there are nine required
21 state-established criteria for siting a waste
22 transfer station. The Applicant was denied
23 the application because of the failure to
24 meet all nine criteria. In fact, it was the

1 McHenry County Board's determination that the
2 Applicant did not meet three out of the nine
3 required criteria. It is not a question of a
4 near-miss here. One-third or roughly 33
5 percent of the criteria were not met. Those
6 are Criteria No. 2, 3 and 5.

7 We support the McHenry County
8 Board's unanimous decision that these three
9 criteria were not met by the Applicant. If
10 the application was approved, there would be
11 a substantial increase in garbage truck
12 traffic --

13 MR. McARDLE: Objection.

14 Judge, that's this person's opinion
15 about the effect of this proposed transfer
16 facility on the surrounding property, and
17 that's outside the record.

18 HEARING OFFICER HALLORAN: Mr. Helsten?

19 MR. HELSTEN: I believe that this
20 individual is simply commenting upon a part
21 of the underlying record. There was expert
22 witness testimony by the objector's witnesses
23 that, in fact, the proposed transfer station
24 would greatly increase traffic impacts. And

1 I think what this individual is doing is just
2 commenting upon that. He's just reiterating.
3 What he's saying is I agree with that part of
4 the record that shows that, and I urge the
5 Pollution Control Board to consider that as
6 well as the other things that the Applicant
7 has emphasized in their opening statement.

8 MR. McARDLE: That all may be what
9 he might have wanted to say, but that's not
10 what he said. He started the sentence out we
11 believe. That was his opinion, and that's
12 where he's going with it.

13 HEARING OFFICER HALLORAN: Okay.
14 I'm going to overrule your objection,
15 Mr. McArdle. And, again, I will instruct the
16 Board when they review the transcript to
17 disregard anything that falls outside the
18 record that was generated below.

19 You may proceed.

20 MR. RUBEL: Also, for the record, I
21 did not say we believe, and it doesn't say
22 that in my letter.

23 If the application was approved,
24 there would be a substantial increase in

1 garbage truck traffic, which would lead to
2 increased air pollution, noise pollution,
3 vermin, potential groundwater pollution,
4 unwelcome odors and garbage smells. If the
5 application was approved, the proposed
6 location of the waste transfer facility would
7 border the Hollows, a sensitive McHenry
8 County conservation area, threatening the
9 sensitive area's well-being and, ultimately,
10 the public's welfare.

11 If the application was approved,
12 the proposed location of the waste transfer
13 facility would be just over 1,000 feet from
14 Bright Oaks, one of Cary's largest
15 residential neighborhoods. Residents do not
16 want garbage in their backyards. If the
17 application was approved, proper protection
18 of the public's health, safety and welfare
19 would be at grave risk. The proposed waste
20 transfer facility site is simply far too
21 close to neighboring residents and sensitive
22 conservation areas and would simply downgrade
23 our quality of life. If the application was
24 approved, the waste transfer facility would

1 have led to a significant increase in
2 slow-moving truck traffic, including garbage
3 and semi-trailer trucks, adding to an
4 ever-increasing traffic congestion problem
5 and resulting in a significant impact on
6 existing traffic flow.

7 My wife and I strongly support the
8 McHenry County Board's decision to deny this
9 application and hereby request that our
10 support of the Board's decision be added to
11 the public record. And we're also submitting
12 a signed copy of this letter to Cameron
13 Davis, village administrator for the village
14 of Cary and the IPCB hearing officer.

15 Thank you.

16 HEARING OFFICER HALLORAN: Thank you.

17 Mr. McArdle, any questions --

18 Remain seated, please.

19 MR. RUBEL: Sorry.

20 HEARING OFFICER HALLORAN: Thank you.

21 MR. McARDLE: I have two questions.

22

23

24

1 HAL RUBEL,
2 called as a witness herein, having been first
3 duly sworn, was examined and testified as
4 follows:

5 DIRECT EXAMINATION

6 BY MR. McARDLE:

7 Q. Do you live in Bright Oaks?

8 A. No.

9 Q. Where do you live in relation to --

10 A. I live in Cary.

11 Q. Where do you live in relation to
12 the site?

13 A. I live in, I guess it would be
14 called, Hanson's Corners.

15 Q. Where is that in relation to the
16 site?

17 A. That is a little bit south and a
18 little bit east.

19 Q. How little bit?

20 HEARING OFFICER HALLORAN: Can you
21 speak up, Mr. McArdle, please?

22 BY THE WITNESS:

23 A. My address is 156 Wagner Drive.

24

1 BY MR. McARDLE:

2 Q. Do you have any opinion about how
3 far that is from this site?

4 A. I would say it's within a mile.

5 Q. And you didn't make any comments at
6 the County Board hearing, correct?

7 A. No, I did not.

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

9 HEARING OFFICER HALLORAN: Thank you,
10 Mr. McArdle.

11 Any questions of this witness,
12 Mr. Helsten?

13 MR. HELSTEN: No, Mr. Halloran.

14 HEARING OFFICER HALLORAN: Thank you.

15 You may step down. Thank you,

16 Mr. Rubel.

17 MR. RUBEL: Thank you.

18 HEARING OFFICER HALLORAN: Before I

19 forget, I know the village of Cary was

20 granted amicus status, and I will allow them

21 to make a statement. I think Miss Angelo is

22 here representing the village of Cary.

23 However, if it's fine with you, we should get

24 the public up here in case they do have

1 things to do so...And I count about seven or
2 eight members of the public that wish to make
3 comment or statement, so we can go and maybe
4 15 minutes -- we'll take a break for about 20
5 minutes or 15 minutes, and then we'll come
6 back and finish up.

7 MS. ANGELO: The village is
8 certainly willing to wait until after
9 Mr. Helsten makes his comments as well. We
10 understand the desire to have the people who
11 have to leave have time to make their
12 presentations beforehand. So we're perfectly
13 willing to wait.

14 HEARING OFFICER HALLORAN: Okay.
15 And for the benefit of the court reporter,
16 you are Miss Angelo?

17 MS. ANGELO: My name is Percy
18 Angelo -- P-e-r-c-y -- A-n-g-e-l-o. And our
19 statement actually is going to be made by the
20 acting mayor, Steve Lamal.

21 HEARING OFFICER HALLORAN: Okay.
22 Thank you.

23 Who wants to be next? Ma'am?
24 (Whereupon, the witness was duly sworn.)

1 PUBLIC COMMENT BY KATHLEEN PARK

2 MS. PARK: Kathleen, with a K;
3 Park, like park the car.

4 HEARING OFFICER HALLORAN: Have a
5 seat.

6 MS. PARK: Thank you.

7 MR. McARDLE: And I missed this.
8 Is this a statement or a comment?

9 HEARING OFFICER HALLORAN: It's a
10 statement. She was sworn.

11 MS. PARK: I am the former mayor of
12 Cary, 1985-1989. And prior to that, I was a
13 trustee in Cary. Marshall Lowe was a trustee
14 in Cary. We frequently sat next to each
15 other at the Board meetings. Early in my
16 term of mayor, Marshall brought to the
17 Village Hall a man named Ray Plote. And
18 he --

19 MR. McARDLE: Objection.
20 This is beyond the scope of the
21 record.

22 MS. PARK: No, sir. This --

23 HEARING OFFICER HALLORAN: Ma'am,
24 ma'am --

1 MS. PARK: -- addresses the land.

2 Oh, sorry.

3 HEARING OFFICER HALLORAN: Thank you.

4 MR. McARDLE: And the reason this
5 objection is so material is because there was
6 a lot of testimony about this person who owns
7 the property to the east -- Mr. Plote -- who
8 actually didn't testify; his son did. And
9 there was no discussion about Mr. Lowe
10 bringing Mr. Plote to the Village Hall at any
11 time during any point in history. So
12 whatever she's about to say, it's completely
13 outside the record. And I understand the
14 Board can appeal through this one way or the
15 other, but that is clearly not testified to
16 down below.

17 HEARING OFFICER HALLORAN: Mr. Helsten?

18 MR. HELSTEN: I stand on my prior
19 response, Mr. Halloran, that the Board is
20 well able to determine what is relevant, what
21 is not relevant, what public comment properly
22 relates to the existing underlying record.

23 HEARING OFFICER HALLORAN: Okay.

24 I'm going to sustain Mr. McArdle's objection.

1 However, you may proceed, Miss
2 Park, under an offer of proof. And if the
3 Board so feels that it is relevant and it was
4 in the record below, they can overrule me.
5 But you may proceed under an offer of proof.

6 MS. PARK: Thank you.

7 The reason I brought that up is
8 because when Mr. Lowe and Mr. Plote came to
9 see me in the village about 1986, they were
10 talking about the land that Mr. Plote since
11 has mined for sand and gravel. And they were
12 talking about developing it into a mixed-use
13 commercial and PUD town house development,
14 including a large spring-fed lake.

15 After that meeting, a planning
16 commission meeting was held and a -- Mark
17 Johnson and Russ Taylor of Donohue and
18 Associates presented Cary Lakes Development,
19 which is the land you alluded to,
20 Mr. McARDle, as industrial land. Now, this
21 is 1986; today is 2003. I wanted to put that
22 into the record so that it will substantiate
23 what I'm saying in this letter.

24 MR. McARDLE: I move to strike all

1 that.

2 HEARING OFFICER HALLORAN: I've
3 made my ruling. Your objection is noted and
4 taken as an offer of proof. Thank you.

5 MS. PARK: The proposed waste
6 transfer facility at 3412 Northwest Highway,
7 owned by Mr. Marshall Lowe, is incompatible
8 with this site. Criteria 2, this site fails
9 to meet the public health, safety and welfare
10 of the area for the following reasons.
11 Ingress and egress to the site of 60 garbage
12 trucks per day would require both left and
13 right turns within a short distance of a
14 currently congested four-way intersection
15 which includes a Metra railroad crossing. A
16 hazardous situation would be created
17 increasing accidents in the area for all
18 drivers and adversely affecting our
19 community's safety.

20 The garbage trucks would drop
21 litter on our roads. There would be litter
22 from the site to the adjacent properties.
23 The particulate matter would cause asthmatics
24 to have more attacks. Any and all of this

1 will adversely affect the health and welfare
2 of our community.

3 Areas adjacent to the site include
4 a conservation area that allows only
5 nonmotorized boats to keep pollution away
6 from the lake, a planned unit development
7 containing many seniors living in what they
8 consider their final home and another
9 spring-fed lake in the proposed residential
10 development on the third side of Mr. Lowe's
11 site. The welfare of these established sites
12 should have priority over this proposed waste
13 transfer site.

14 Criteria No. 3: Incompatibility
15 with the character of the surrounding area
16 and effect of the value on the surrounding
17 area. A waste transfer facility at this site
18 would have a devastating effect on land
19 values within Algonquin Township, our Cary
20 community and also the treasury of the state
21 of Illinois. According to your criteria
22 guidelines, this type of facility should be
23 located so as to minimize the effect on the
24 value of the surrounding area. Most people

1 do not wish to live or own residential
2 property next to a garbage transfer station.
3 Mr. Lowe, his family and his experts will not
4 be living next to this site. However, they
5 think it is all right for other people to put
6 up with the daily stench of its operation
7 permeating the adjacent residential and
8 commercial properties.

9 Criteria 5: Plan of operation is
10 designed to minimize the danger to the
11 surrounding area from fire, spills and other
12 operational accidents. This site's ingress
13 road is immediately along the boundary line
14 bordering the Hollows Conservation District
15 land. The minimal acreage of this site does
16 not provide a fire safety lane adjacent to
17 this ingress road that would protect this
18 conservation land from the frequent fires
19 that occur in garbage trucks as they wait to
20 dump their loads. The drywell drainage of
21 this operation will pollute the water tables
22 of our area.

23 This is not a case of not in my
24 backyard. This proposed site is too close to

1 residential developments. It has an unsafe
2 ingress and egress. It is a potential
3 polluter of the air we breathe, our water
4 wells and as a polluter of the esthetics of
5 our surroundings. This site will be a
6 pollution problem. Truck traffic, truck
7 noise, truck exhaust as trucks go forward and
8 backward dumping their loads will be the new
9 sounds of our environment. Garbage odors,
10 garbage litter, garbage-loving rodents will
11 be added to our residential neighborhoods.
12 Peace and quiet, the sounds of frogs, ducks,
13 geese and songbirds will be a thing of the
14 past.

15 Please deny this application for a
16 waste transfer site at this location now and
17 forever. Sincerely, Kathleen A. Park, mayor
18 of Cary -- former mayor of Cary.

19 HEARING OFFICER HALLORAN: Ma'am.

20 First, before we get to
21 Mr. McArdle, Miss Park just laid something on
22 my desk. I'm not sure what it is.

23 MS. PARK: I'm sorry. We were told
24 we could give a letter to the hearing

1 officer. It's a copy of what I just read.

2 HEARING OFFICER HALLORAN: Okay. I
3 have to mark it appropriately. That's fine.

4 I'm going to mark Miss Park's
5 letter -- it doesn't have a date on it, but
6 it's the statement she just read into the
7 record.

8 MS. PARK: August 13th.

9 HEARING OFFICER HALLORAN: August
10 13th, I'm sorry.

11 I'll mark it as Hearing Officer
12 Exhibit 1.

13 (Whereupon, said document
14 was marked as Hearing
15 Officer Exhibit No. 1,
16 for identification, as
17 of 8-14-03.)

18 HEARING OFFICER HALLORAN: Mr. McArdle,
19 your witness.

20 MR. McARDLE: I just have one
21 question.

22

23

24

1 KATHLEEN PARK,
2 called as a witness herein, having been first
3 duly sworn, was examined and testified as
4 follows:

5 DIRECT EXAMINATION

6 BY MR. McARDLE:

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

8 A. I live in Greenfield -- it's 125
9 Carlisle Court. I am about a mile and-a-half
10 from this site.

11 And since you asked me this, I'm
12 going to add into my answer that I lived even
13 farther from the mink farm that we had in
14 Cary. I probably lived two or three miles
15 from the mink farm. And in my distance, I
16 still could smell the effects when they were
17 killing the mink and skinning them, because
18 wind and -- there's a thing called osmosis.
19 And smells that are concentrated -- I'm
20 answering you -- concentrated smells get to
21 permeate the air and go from the concentrated
22 to the less concentrated. So I, too, would
23 be able to smell things that are far away,
24 including a waste transfer station or a mink

1 farm.

2 MR. McARDLE: I'll move to strike
3 all the information about the mink farm
4 for being outside the record.

5 HEARING OFFICER HALLORAN: Your --

6 MS. PARK: That's my answer.

7 HEARING OFFICER HALLORAN: I'm
8 sorry, Miss Park.

9 Your motion is denied to the extent
10 that, again, all of Miss Park's testimony
11 is taken under an offer of proof, based
12 on Mr. McArdle's earlier objection.

13 MR. McARDLE: Thank you. That's all.

14 HEARING OFFICER HALLORAN: Thank
15 you. And I'm going to qualify this.
16 This public comment, I'm going to name it
17 Public Comment No. 1 from Miss Park.

18 Thank you.

19 (Whereupon, said document
20 was remarked as Public
21 Comment Exhibit No. 1,
22 for identification, as
23 of 8-14-03.)

24 HEARING OFFICER HALLORAN: Mr. Helsten?

1 MR. HELSTEN: Nothing.

2 HEARING OFFICER HALLORAN: Thank you,
3 Miss Park.

4 All right. Who's next? Number
5 three? Yes, sir? Come on up.

6 (Whereupon, the witness was duly sworn.)

7 MR. MACKINTOSH: My name is a
8 Greg --

9 HEARING OFFICER HALLORAN: You have
10 to speak up and talk to the audience.

11 MR. MACKINTOSH: Okay. I'll try to
12 do that.

13 Greg -- G-r-e-g -- Mackintosh --
14 M-a-c-k-i-n-t-o-s-h.

15 PUBLIC COMMENT BY GREG MACKINTOSH

16 I believe it was stated in the
17 record that Criteria 2 relates to the effect
18 on the value of property holders. An
19 important determinant of that value relates
20 to the taxes and assessments that homeowners
21 pay. Also an important determinant to that
22 value, both relating to the taxes that people
23 pay and to other property holders, are the
24 bondholders. These --

1 MR. McARDLE: I'll object to this
2 on the same basis of Miss Park's --

3 I'm sorry, sir.

4 Objection based on the fact that
5 his testimony he's rendering is outside the
6 record. Again, clearly -- I'm only going to
7 make this objection if it's clear. There
8 were no questions about this field at all
9 during the proceedings.

10 HEARING OFFICER HALLORAN: Mr. Helsten?

11 MR. HELSTEN: Again, I stand on my
12 prior position on behalf of the County Board.

13 HEARING OFFICER HALLORAN: So your
14 argument is this witness is testifying to --

15 MR. McARDLE: Issues about real
16 estate, which is fine, so long as they're
17 based on the record. But what he had just
18 been testifying to, those words were never
19 mentioned during the underlying proceeding.
20 We've never discussed those topics that he
21 just mentioned.

22 HEARING OFFICER HALLORAN: Again, I
23 will sustain your objection, Mr. McArdle. I
24 will take the witness's statements in an

1 offer of proof, and the Board will be so
2 instructed to look at it as such.

3 You may continue, sir.

4 MR. MACKINTOSH: Thank you.

5 I believe it's common sense that
6 property A and property B, all things being
7 equal, if property A requires payments of
8 higher real estate taxes would be worth less
9 money than property B if those property taxes
10 are higher. Hence, I do believe that
11 statements of value go to the very core of
12 what the impact of this transfer station
13 would be to the value of those instruments.

14 If you look at the scope of what
15 determines those taxes, that includes what
16 happens to the bonds. The village of Cary or
17 an entity that Cary controls sold bonds worth
18 \$17.7 million to fund development of
19 infrastructure in the very neighborhood that
20 we're talking about. Those bonds mature in
21 the year 2030. Now, it's my understanding
22 that those bonds are secured not by the
23 village general fund, but by the value of the
24 land -- the value of the land in the direct

1 vicinity in visual site of where the proposed
2 transfer station is. Clearly, anything that
3 affects the value of the land, then, would
4 affect the value of the bonds and could
5 affect Cary's bond rating with Moody's and
6 Standard and Poor's, which means it also
7 affects the village's ability to borrow the
8 money.

9 There's also a potential liability
10 issue here, I believe, and that's that the
11 offering memorandum -- which, unfortunately,
12 I've not been able to obtain to read,
13 although I've requested it -- includes a
14 continuing disclosure agreement. That
15 agreement requires that material events be
16 disclosed to the bondholders. So obviously,
17 I'm wondering is this hearing, is this
18 proposed transfer station a material event?
19 Has the village attorney apprised the village
20 that it is not? I'm also wondering if there
21 are disclosure requirements that the SEC --
22 Securities and Exchange Commission -- require
23 regarding this bond issue.

24 I simply want to make sure that

1 these matters are known, understood and made
2 available to the Board. The last thing that
3 the village of Cary needs is to become
4 embroiled in a financial scandal or
5 potentially a class action lawsuit brought by
6 the bondholders.

7 Thank you.

8 HEARING OFFICER HALLORAN: Thank you.

9 Mr. McArdle, your witness under the
10 understanding this is under an offer of
11 proof. So you may proceed.

12 MR. McARDLE: First of all, for the
13 record, I understand your ruling. I'll make
14 a motion to strike the testimony regarding
15 taxes and bonds for the reasons I indicated.

16 HEARING OFFICER HALLORAN: You want
17 to speak up, Mr. McArdle? We have hands in
18 the audience. Could you repeat what you just
19 said?

20 MR. McARDLE: Yeah. I'll make a
21 motion to strike the testimony regarding
22 bonds and taxes, because that testimony was
23 not referred to in the record.

24 HEARING OFFICER HALLORAN: Okay.

1 Motion denied; it's is taken as an offer of
2 proof. You may proceed, Mr. McArdle.

3 GREG MACKINTOSH,
4 called as a witness herein, having been first
5 duly sworn, was examined and testified as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. McARDLE:

9 Q. You made no comments at the County
10 Board proceeding, correct?

11 A. Correct.

12 Q. Did you ever show up to any County
13 Board proceedings?

14 A. I was not aware of any County Board
15 proceeding.

16 MR. McARDLE: Thank you. That's
17 all I have.

18 HEARING OFFICER HALLORAN: Mr. Helsten?

19 MR. HELSTEN: Nothing.

20 HEARING OFFICER HALLORAN: Sir, you
21 may step down, but did you sign up on the
22 sign up sheet?

23 MR. MACKINTOSH: No, I did not.

24 HEARING OFFICER HALLORAN: Could

1 you do me a favor and do so?

2 MR. MACKINTOSH: Absolutely.

3 HEARING OFFICER HALLORAN: Thanks.

4 And somebody's white pen is here.

5 I don't want to take off with it.

6 MISS PARK: No, keep it. Keep it.

7 Keep it.

8 HEARING OFFICER HALLORAN: Are you

9 sure?

10 MISS PARK: Yes.

11 HEARING OFFICER HALLORAN: It's one

12 of the better pens I have.

13 I think what we'll do now is take a

14 ten- or 15-minute -- let's take a 15-minute

15 break, unless somebody has to get out of here

16 in a hurry. And then we'll proceed with

17 public comment. Is that fine?

18 (No response.)

19 HEARING OFFICER HALLORAN: I see no

20 hands, so let's take a break. Thanks.

21 (A short break was had.)

22 HEARING OFFICER HALLORAN: All

23 right. If we can have our seats, please.

24 We're starting now; it's about 12:20. And I

1 just want to note for the record Miss Park --
2 what I marked Public Comment No. 1, this is
3 not what she was reading into the record
4 earlier when she testified. It's another
5 document, and I'm not sure Mr. McArdle has
6 had an opportunity to take a look at it. But
7 it will be taken as Public Comment No. 1.

8 (Discussion held off
9 the record.)

10 HEARING OFFICER HALLORAN: The
11 record will make that clear.

12 MISS PARK: Keep it.

13 HEARING OFFICER HALLORAN: Miss
14 Park just gave me a -- some minutes of
15 Monday, October 20th, 1986.

16 And you say you did not read this
17 into the record? You read paragraph No. 3?

18 MISS PARK: I referred to that, and
19 Mr. McArdle objected that it was not on the
20 previous testimony. I referred to that for
21 historical significance where we're talking
22 about the zoning and what's allowed on the
23 property surrounding Mr. Lowe's property.
24 And Mr. McArdle, when he opened his remarks

1 today, said that that was all industrial
2 zoning and all the uses and that's what
3 Mr. Lowe was going by. But I said that the
4 history of that planning commission minutes
5 indicates that Mr. Lowe knew that that land
6 was intended to be a mixed-use commercial
7 residential with a spring-fed lake when the
8 sand was finished being dug out of it.

9 HEARING OFFICER HALLORAN: Was this
10 in the record below, ma'am?

11 MISS PARK: Record below what?

12 HEARING OFFICER HALLORAN: Was this
13 generated in the record below at the County
14 Board? Was this read --

15 MISS PARK: That piece of paper --

16 HEARING OFFICER HALLORAN: -- into
17 the record?

18 Ma'am, please, the court reporter
19 can only take one voice at a time.

20 MISS PARK: No, that piece of paper
21 was not entered. So if you want to throw it
22 away, you can do so.

23 HEARING OFFICER HALLORAN: No, no,
24 I don't want to -- if you want me to take it

1 as public comment, and the record will bear
2 this out that this is not really a comment,
3 but, you know what? We'll just add it to
4 your Public Comment No. 1. We'll add it as
5 an exhibit to your Public Comment No. 1 and
6 date it August 13th, 2003.

7 MISS PARK: Fine.

8 HEARING OFFICER HALLORAN: Thank you.

9 And the Board will disregard any
10 statements in here that are not in the record
11 generated below.

12 With that said, who wants to be the
13 next witness or next comment?

14 Yes, ma'am. Step up.

15 MS. POST: I'm Betty Post.

16 HEARING OFFICER HALLORAN: Do you
17 want to be sworn in?

18 MS. POST: Yes.

19 HEARING OFFICER HALLORAN: Thank you.

20 (Whereupon, the witness was duly sworn.)

21 PUBLIC COMMENT BY BETTY POST

22 HEARING OFFICER HALLORAN: And I'm
23 going to add -- I'm sorry. Miss Post's name
24 is here.

1 You may proceed, Miss Post. Thank
2 you.

3 MS. POST: Thank you.

4 I support the decision of the
5 McHenry County Board and the existing record
6 arrived at after 11-plus long days of
7 hearings, which I personally attended.

8 Following are some of the points
9 I'm sure they have used in the County Board's
10 decision. The proposed waste transfer
11 station would be great in the right location
12 and on an adequately-sized property. It is
13 not right for a small 2.6 acre property. In
14 McHenry County, you can't keep a horse on 2.6
15 acres.

16 It is adjacent to the -- it is next
17 to residential and retail areas. The Lowe
18 property is adjacent to the east and south of
19 the Hollows Conservation area. It was
20 purchased by the McHenry County Conservation
21 District in 1977 from Vulcan Material
22 Corporation. Although its zoning was never
23 changed from industrial, it is a 350-plus
24 acre site with hiking trails, fishing,

1 picnicking and camping sites. It houses many
2 protected species of birds, mammals, reptiles
3 and amphibians. Lake Atwood has been stocked
4 with various species of fish.

5 1,346 feet to the east is an
6 80-acre subdivision of 422 homes established
7 in 1972. It houses many seniors and young
8 couples -- seniors with health problems. The
9 area directly east is 56 acres is a proposed
10 220-home subdivision, which plans were drawn
11 up in 1986, and a copy was given to
12 Mr. Fuller and Mr. Fuller mentioned in his --
13 in one of his testimonies.

14 To the north is Lake Killarney with
15 over 350 homes and a lake. Mr. Lowe
16 classified this area as highly industrial.
17 His asphalt crushing plant -- which, at the
18 time of the hearing, did not have a permit --
19 and a small concrete plant are the only
20 industrial businesses.

21 Transfer stations, even the best
22 run, still brings smell, sea gulls, vectors
23 and could contain hazardous waste. The
24 Hollows would be greatly affected by an

1 adjacent transfer station as well as the
2 nearby residents and businesses. Chemical
3 and household waste could contaminate the
4 lakes and affect the underground ecology.

5 The entrance is a long two-lane
6 road that should there be an accident or a
7 breakdown could block traffic on Northwest
8 Highway as well and would not be adequate for
9 emergency vehicles. The intersection of
10 Three Oaks and Northwest Highway is a quarter
11 mile southeast and is classified by Cary
12 police as the most dangerous intersection in
13 Cary. Northwest Highway is already blocked
14 by -- as trucks leave the present Lowe
15 facility. The property sits higher than its
16 adjacent neighbors, and the proposed building
17 would sit even higher and stick out like a
18 sore thumb. There is not room for adequate
19 safety precautions.

20 Water needs to be pumped out of two
21 500-gallon tanks. The area cannot be washed
22 daily as most designers recommend it. I
23 believe after 11 days of hearings, this
24 County Board made the only decision it could

1 make by denying the application for the Lowe
2 transfer station at this location. I support
3 their thoughtful decision.

4 Mr. Lowe, find another site for
5 this needed facility, one that can have
6 recycling and not infringe on its residential
7 and retail community.

8 Thank you.

9 HEARING OFFICER HALLORAN: Thank
10 you. Miss Post, you may remain seated,
11 please.

12 I would also ask the audience not
13 to clap after each and every witness gets
14 finished with their testimony. And I do --
15 I'll take this moment now. I have it on good
16 authority that at one time I think I counted
17 50 to 75 members of the public in the stands.
18 However, I've been told there is 161 -- at
19 least there was at one time.

20 So in any event, with that said,
21 Mr. McArdle, your witness.

22 MR. McARDLE: No questions.

23 HEARING OFFICER HALLORAN: Thank you.

24 Mr. Helsten?

1 MR. HELSTEN: No questions.

2 HEARING OFFICER HALLORAN: Thank you,
3 Miss Post.

4 Who wants to go next? I have
5 Mr. Lamal next in line if you want to go.

6 Okay, sir?

7 MR. McCUE: I'm on the list.

8 HEARING OFFICER HALLORAN: Do you
9 want public comment or be sworn in?

10 MR. McCUE: You can swear me in.

11 (Whereupon, the witness was duly sworn.)

12 PUBLIC COMMENT BY JOHN McCUE

13 MR. McCUE: Now, remember, we can't
14 have any clapping. Shame on you.

15 My name is John McCue. I live at
16 394 Ann Street, and I'm a resident of the
17 village of Cary. I've lived in the home that
18 we own since 1979.

19 When I became aware of the fact
20 that there was a proposal to site the waste
21 transfer station near my home, I decided to
22 get in my car and drive over to Mr. Lowe's
23 location, which is plainly marked on Route
24 14, and turn around and drive back to my

1 house to see how far I was from this. That
2 turns out to be eight-tenths of a mile,
3 because I drive down Route 14 to Three Oaks,
4 and Three Oaks to Silver Lake and then you're
5 right at Ann Street. So that's really what
6 it is from my driveway to his place of
7 business. During the meetings -- I think I
8 attended all but maybe one or two -- I heard
9 a great deal of testimony, and I talked about
10 how this -- and I heard people speak about
11 how this site wouldn't change the character
12 of the area. Well, if you took the famed
13 route -- drive from Mr. Lowe's property to my
14 home, you'd come upon Thornton's Gas Station,
15 you'd come upon the Jewel shopping center.
16 You'd come down a little further, and you'd
17 find Bright Oaks. There's Coil Craft,
18 there's Seequist, there's Lion's Park and a
19 whole bunch of homes. I got lots of
20 neighbors. So the idea that this site
21 wouldn't change the character of the area is
22 complete and absolute fiction.

23 But I'm able to understand today
24 Mr. Lowe and Mr. McArdle would be confused by

1 this, because, after all, a waste transfer
2 station is just a big trucking operation.
3 And taking that reasoning just a step
4 further, that would make a coil refinery just
5 a big rail and trucking operation. So I
6 think that it not only changes the character
7 of the area eight-tenths of a mile from where
8 his site is proposed, but I think it changes
9 the character of the commercial occupancies
10 that are around him, because they aren't
11 offensive.

12 And what makes them offensive? I
13 heard about how much noise would be developed
14 during the hearings -- the air pollution,
15 primarily, mostly; I guess just the stench of
16 the garbage. And I heard a term I didn't
17 know the definition for initially -- vectors.
18 And I guess vectors are things like rodents
19 and sea gulls, which we have a few of at the
20 Jewel -- at the Jewel -- at the shopping
21 center where Jewel is at. And I'm sure
22 they'll be relieved to know that they'll all
23 be feeding Mr. Lowe's waste transfer station.

24 Another thing that's disturbing

1 about this proposal was what I didn't hear at
2 the meetings that I attended. I didn't hear
3 anything about a perpetuation plan. And
4 being about Mr. Lowe's age and a little
5 overweight like he is --

6 MR. LOWE: Speak for yourself,
7 buddy.

8 MR. McCUE: You'll make sure that
9 Mr. Lowe's comments --

10 HEARING OFFICER HALLORAN: I don't
11 think we have to get personal, Mr. McCue.
12 You may proceed.

13 MR. McCUE: This is the most
14 personal thing that has happened in the 62
15 years I've been alive.

16 HEARING OFFICER HALLORAN: I don't
17 think you have to make reference to a
18 person's weight. Thank you. You may
19 proceed.

20 MR. McCUE: There was no mention of
21 a perpetuation plan, and that would include
22 if the business was sold. I heard a lot of
23 technical information about how this facility
24 would work, and I have to admit that that was

1 quite an education. But I also heard, and I
2 think even Mr. McArdle admitted this, that
3 Mr. Lowe has no experience running one of
4 these transfer stations, but that the remedy
5 would be that he would hire somebody that
6 did.

7 The other thing that wasn't ready
8 for people to review was the application to
9 the EPA so that we'd get better insights as
10 to what the real projected production of a
11 facility like this might be. Could things be
12 added? Could an incinerator be added? I
13 didn't hear anything about a financial plan,
14 and that struck me odd, too, because how
15 could you invest the kind of money and
16 proposing and developing a site like this
17 without backing? And none of that
18 information was volunteered.

19 As far as there being a crying need
20 for this facility, I've lived on Ann Street
21 since 1971, and I have never once had any
22 trouble having somebody pick up my garbage.

23 Thank you for listening to me.

24 HEARING OFFICER HALLORAN: Thank you.

1 Mr. McArdle?

2 MR. McARDLE: I have no questions.

3 HEARING OFFICER HALLORAN: Mr. Helsten?

4 MR. HELSTEN: None.

5 HEARING OFFICER HALLORAN: Thank

6 you, Mr. McCue. You may step down.

7 MR. McCUE: Thank you.

8 HEARING OFFICER HALLORAN: Who

9 wants to volunteer next to step up and make

10 their comment? Yes, sir? Come on in.

11 MR. O'SHAUGHNESSY: Good morning.

12 HEARING OFFICER HALLORAN: Good

13 morning. Step up and raise your right hand.

14 (Whereupon, the witness was duly sworn.)

15 PUBLIC COMMENT BY BRIAN O'SHAUGHNASSY

16 HEARING OFFICER HALLORAN: And

17 you're signed in here, sir?

18 MR. O'SHAUGHNESSY: Yes.

19 HEARING OFFICER HALLORAN: Okay.

20 Thank you. You may state your name and speak

21 your piece. Thank you.

22 MR. O'SHAUGHNESSY: My name is

23 Brian O'Shaughnessy. I've been a resident of

24 Cary for about 18 years.

1 The objections raised by Mr. Lowe
2 regarding Criteria 2, 3 and 5 are based on
3 the physical plant -- the plan of this
4 physical plant. And it seems to me that
5 they've worked very hard to make this as safe
6 as can be expected.

7 Of course, there are unexpected
8 things that affect it. Something that refers
9 directly to those three that are not
10 mentioned in the defense of their proposal is
11 the garbage truck traffic. Referring to
12 Criterion 2, the facility is so designed,
13 located and proposed to be operated that the
14 public health, safety and welfare will be
15 protected. I say that a stream of garbage
16 trucks flowing into Cary every day will go
17 against the public health, safety and
18 welfare.

19 Criteria No. 3, the facility is
20 located so as to minimize incompatibility
21 with the character of the surrounding area.
22 I think that a steady flow of garbage
23 traffic, whether it's the garbage trucks or,
24 indeed, the transfer semis, are not

1 compatible with the residential community and
2 the industrial areas that we have dedicated
3 solely for industry.

4 Criteria No. 5 says the plan of
5 operations for the facility is designed to
6 minimize the danger to the surrounding area
7 from fires, spills or other operational
8 accidents. And the key that I'm speaking to
9 right now is operational accidents. I think
10 that the plan will, in fact, maximize the
11 danger by increasing the traffic flow. The
12 objections here address just the garbage --
13 my objections, I mean, object the garbage
14 truck traffic. This traffic is
15 uncontrollable by legislation, local code or,
16 in fact, what it will fall to -- the honor
17 system -- our trust that the garbage truck
18 drivers will, in fact, drive carefully. The
19 traffic becomes, in effect, if not in fact,
20 part of the facility's infrastructure in that
21 it is flowing in and out all day long at
22 least five days a week.

23 The rest of my notes here have to
24 do with more personal feelings about it and

1 are really not relevant to my points, so I
2 will end my statement there.

3 HEARING OFFICER HALLORAN: Thanks,
4 Mr. O'Shaughnessy.

5 Mr. McArdle, your witness.

6 MR. McARDLE: Yeah. I just have
7 the same two questions I've asked of other
8 people.

9 BRIAN O'SHAUGHNESSY,
10 called as a witness herein, having been first
11 duly sworn, was examined and testified as
12 follows:

13 DIRECT EXAMINATION

14 BY MR. McARDLE:

15 Q. Can you tell me where you live in
16 relation to the proposed site?

17 A. I live in the town of Cary.

18 Q. And where is your home in
19 relation --

20 A. My address is 307 Candlewood Trail.

21 Q. And how far is that, approximately,
22 from the proposed site? I don't know where
23 that is.

24 A. I think a village map would better

1 answer that than I.

2 Q. You have no opinion?

3 A. I have no opinion.

4 Q. Are you further than the Bright

5 Oaks Development?

6 A. Yes.

7 Q. And you didn't make any comments at

8 the County Board proceeding, correct?

9 A. Was the -- let me clarify. The

10 meetings that were in Crystal Lake, were

11 those part of the County Board?

12 Q. Yeah. At the library?

13 A. Yes.

14 Q. Yes?

15 A. Okay. Yes, I did.

16 Q. You did on that day?

17 A. Yes.

18 MR. McARDLE: Thank you.

19 That's all I have.

20 HEARING OFFICER HALLORAN: Thank

21 you, Mr. McArdle.

22 Mr. Helsten?

23 MR. HELSTEN: Nothing.

24 HEARING OFFICER HALLORAN: Thank you,

1 Mr. O'Shaughnessy, you may step down.

2 Thank you.

3 Who's next, please? Sir?

4 Are you going to make a public
5 comment or be sworn in and make a statement?

6 MR. HANSON: I'll be sworn in.

7 HEARING OFFICER HALLORAN: Thank you.
8 You may raise your right hand.

9 (Whereupon, the witness was duly sworn.)

10 PUBLIC COMMENT BY DAVE HANSON

11 HEARING OFFICER HALLORAN: Thank
12 you. State your name and --

13 MR. HANSON: My name is Dave
14 Hanson, and I'm from Lake Killarney --
15 K-i-l-l-a-r-n-e-y.

16 Through the hearings, there was a
17 lot of public testimony given where people
18 could come up and talk. You had cub scouts,
19 girl scouts. You had people from all walks
20 of life that came out and spoke how they felt
21 about this being next to the Hollows. And
22 they have to sign up to get that. They rent
23 that out or, you know, they sign up as a
24 usage of it. And I have a sheet here that

1 tells those people, you know, where they
2 signed up for it at cub scout packs and that.
3 Girl scouts, there's all sorts of people that
4 use the Hollows who objected to this.

5 Through the entire hearing,
6 Mr. McArdle referred to it as I-2 zoning.
7 The Hollows may be zoned I-2, but it is not
8 used as I-2 zoning. And they really just
9 stressed their point -- it's I-2. It's not.
10 It's not I-2.

11 The property is also adjacent to
12 Bright Oaks. The difference between Bright
13 Oaks and Princeton Village is that the people
14 in Princeton Village bought their property
15 knowing that was next to them and accepting
16 that. The people in Bright Oaks didn't have
17 a say as to what went next to them.

18 Now, it's up -- you know,
19 everybody's come out and said their piece.
20 And on the public record, you have people
21 from all over the area. You have people from
22 all over, not just Bright Oaks, but all over,
23 who state that this doesn't work here.
24 McHenry County needs one of these. This is

1 not the right site. They are usually in an
2 industrial area, not a conservation district
3 or residential.

4 Lake Killarney is to the north.
5 The stormwater runoff is a concern into the
6 surface water. That water drains directly
7 toward Lake Killarney. It's a public record
8 through all the previous testimony in that
9 the site proposed does not meet the Criterion
10 3. It's not compatible. It's not compatible
11 with the surrounding area at all.

12 The job of the County Board was to
13 evaluate the testimony -- hours and hours and
14 days and weeks of it. They thought it would
15 go for two days, and it went for two weeks.
16 Everybody was there.

17 You were there.

18 It was -- those were long days.
19 And they were to go back with a
20 recommendation to the County Board as to how
21 they felt. And they went back and told the
22 County Board that it's not going to work. It
23 doesn't meet three of the criterion. During
24 the testimony in Woodstock, they brought up,

1 in fact, Criterion 5. They didn't know who
2 they were going to call if there was a
3 accident or a major spill -- that this would
4 just be scooped up and done with and stored
5 in a container there overnight. And that's a
6 danger to the surrounding area.

7 When the County Pollution Control
8 Board Members and some of the objectors went
9 to the two sites -- the Glenview and the
10 other one was Palatine -- there was one thing
11 that both sites had in common: A terrible,
12 terrible smell. That smell blows around it.
13 It can't be contained in any way. That's a
14 threat to the surrounding property values.
15 Who would want to buy a property next to one
16 of those facilities that smelled like that
17 constantly all the time? It's hard to
18 contain smell.

19 That's it.

20 HEARING OFFICER HALLORAN: Thank you,
21 Mr. Hanson.

22 Mr. McArdle?

23

24

1 DAVE HANSON,
2 called as a witness herein, having been first
3 duly sworn, was examined and testified as
4 follows:

5 DIRECT EXAMINATION

6 BY MR. McARDLE:

7 Q. Where do you live again?

8 A. I'm in Lake Killarney.

9 MR. McARDLE: No questions.

10 Thank you.

11 HEARING OFFICER HALLORAN: Thank you.

12 Mr. Helsten?

13 MR. HELSTEN: Nothing.

14 HEARING OFFICER HALLORAN: Mr. Hanson,

15 would you like to take what you handed
16 me -- you have the Hollows Usage Report,
17 and you referred to it briefly in your
18 testimony. Do you want me to take that
19 as Public Comment No. 2?

20 MR. HANSON: Yes.

21 HEARING OFFICER HALLORAN: Okay.

22 All right. I'll take it with the case.

23 Thank you, Mr. Hanson.

24

1 (Whereupon, said document
2 was marked as Public
3 Comment Exhibit No. 2,
4 for identification, as
5 of 8-14-03.)

6 HEARING OFFICER HALLORAN: Miss
7 Johnson?

8 And I haven't forgot about you,
9 Mr. Lamal.

10 Are you going to give public
11 comment or...

12 MS. JOHNSON: (Nodding.)
13 (Whereupon, the witness was duly sworn.)

14 PUBLIC COMMENT BY SUZANNE JOHNSON

15 HEARING OFFICER HALLORAN: You may
16 have a seat. Thank you. State your name.

17 MS. JOHNSON: S-u-z-a-n-n-e --
18 J-o-h-n-s-o-n.

19 My name is Suzanne Johnson. I
20 attended most of the testimony. The thing
21 that surprised me when the Board voted was
22 that they voted unanimously. Those of us
23 that were there heard the testimony. I also
24 had concerns that the Members of the Board

1 would not read and follow everything. Our
2 County Board Members are not elected
3 throughout the County. Therefore, who I am
4 able to vote for and all the people from
5 Cary, it is not the full Board. It is only a
6 few members. The full Board voted
7 unanimously to turn this down.

8 When you mention that there were
9 not that many people that spoke, I can tell
10 you I was afraid to speak. Did we count the
11 number of people that signed petitions that
12 were turned in that were against this? I
13 think you would find that there were a great
14 number of people from Cary that signed
15 petitions in opposition to this waste
16 transfer station.

17 The thing that concerned me most
18 was the last day of testimony we had brought
19 back some witnesses. And Mr. Gordon was
20 questioned about the auto turn program. Much
21 of the testimony on the actual facility was
22 whether it was too large for the space that
23 was there and the turns. Mr. Gordon
24 mentioned that he was familiar with the auto

1 turn program and that he did not use it for
2 the large trucks, but he did manually feel
3 that the large trucks could safely make the
4 turns. The question was never brought to him
5 as to why you would use smaller trucks in the
6 program and not the larger ones. And I feel
7 that the concerns of the danger with having
8 spills would be very large if these large
9 trucks are able to use this facility.

10 The other concern that I had was we
11 talked about the value to the property.
12 Those that are familiar with property know
13 that when you buy, the cost of your property
14 has already built in the surrounding things
15 that are already there. The area that they
16 looked at that they claimed and you submitted
17 your letters that increased in value,
18 increased in value only nominally in each
19 year, where Bright Oaks has been showing a
20 large increase in value. Therefore, a
21 facility such as this is not built into the
22 value for Bright Oaks, where it was in your
23 other facility.

24 I just feel that the Board did look

1 at everything. I feel that the siting
2 committee did a wonderful job in showing up
3 for all those hours of testimony. And I also
4 feel that a great number of people did attend
5 the hearings, even if they did not speak.

6 Thank you.

7 HEARING OFFICER HALLORAN: Thank you,
8 Miss Johnson.

9 Mr. McArdle?

10 SUZANNE JOHNSON,
11 called as a witness herein, having been first
12 duly sworn, was examined and testified as
13 follows:

14 DIRECT EXAMINATION

15 BY MR. McARDLE:

16 Q. Ma'am, you, in fact, did make a
17 comment at the hearing below, correct?

18 A. Correct.

19 Q. And do you remember Mr. Nickodem's
20 testimony where he actually listed six
21 facilities that were similar in size to the
22 one proposed by Mr. Lowe?

23 A. Yes, yes.

24 MR. McARDLE: That's all I have,

1 thank you.

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

4 Mr. Helsten?

5 MR. HELSTEN: Nothing.

6 HEARING OFFICER HALLORAN: Thank you.
7 You may step down. Thank you, ma'am.

8 Mr. Lamal? Am I pronouncing that
9 correctly?

10 MR. LAMAL: Pardon?

11 HEARING OFFICER HALLORAN: Am I
12 pronouncing that correctly?

13 MR. LAMAL: Yes, that's fine.

14 I have some additional copies for
15 the record.

16 HEARING OFFICER HALLORAN: Okay.
17 Thank you.

18 MR. LAMAL: Thank you.

19 (Whereupon, the witness was duly sworn.)

20 PUBLIC COMMENT BY STEVE LAMAL RUBEL

21 MR. LAMAL: My name is Steve Lamal,
22 and I'm the acting mayor of the village of
23 Cary.

24 Cary participated actively in the

1 proceedings on the Lowe transfer station
2 before the McHenry County Board, and we
3 certainly welcome the opportunity to support
4 the decision of the Board denying siting
5 approval. Because of the length of the
6 record below, I will address only limited
7 parts of it today, but my comments are based
8 on the record before the County Board and are
9 in support of the Board's decision on
10 Criterias 2, 3 and 5.

11 The proposed transfer station
12 directly abuts the village of Cary. The
13 proposed Plote Family property, a large
14 residential and commercial development
15 designated as residential in the official
16 Cary Comprehensive Plan and the subject of
17 planning between the Plote Family and the
18 village of Cary for well over a decade
19 borders the proposed site. This development,
20 which the Lowe application assumed
21 incorrectly would be industrial, is vital --
22 absolutely vital -- to the future of the
23 village of Cary.

24 The 435-unit Bright Oaks

1 subdivision in the village of Cary is only
2 1300 feet from the proposed transfer station.
3 Many Bright Oaks residents, which include a
4 high proportion of senior citizens and young
5 children participated in opposition to the
6 Lowe site in the County hearings. Bright
7 Oaks is a very stable, well cared for
8 community of over 30 years old. Lowe's
9 application claimed that a berm prevented the
10 Bright Oaks residents from seeing the
11 transfer station site. Pictures and
12 testimony at hearing made it clear that this
13 was incorrect. The proposed station site
14 sits on high ground directly west of Bright
15 Oaks and is very visible, directly impacting
16 the Bright Oaks neighbors.

17 Other sensitive areas near or
18 bordering the site include a proposed
19 commercial development south of the site in
20 Cary, and vitally important to the future of
21 Cary, which was not even considered by Lowe's
22 application. Besides the nearby residential
23 and commercial uses, the Lowe site will also
24 impact the McHenry County Conservation

1 District Hollows property bordering the site
2 to the west. Lowe's application simply
3 dismissed this area as industrial -- its
4 original zoning -- even though it has been
5 reclaimed and operated as a very popular
6 conservation area for many years. The
7 McHenry County Conservation District provided
8 its own resolution objecting to the proposed
9 site. The Hollows is a highly sensitive use
10 directly abutting the site and the long
11 entrance road to that site. Concern for
12 these neighboring uses was noted by the
13 County Board Committee in their votes
14 rejecting this site.

15 The record demonstrates that the
16 proposed transfer station is incompatible
17 with the area and will adversely impact
18 surrounding properties. There was much
19 testimony on the negative impact that the
20 station would have on properties, such as the
21 Plote property, Bright Oaks and the Hollows
22 in terms of odors, noise, dust, litter and
23 traffic. As noted by the County Board Siting
24 Committee in its vote on the application, the

1 concerns regarding impact were substantiated
2 by Lowe's own application which included a
3 study of the effect of other transfer
4 stations on property values. Only one
5 example could be found in the entire state
6 where a station was sited near a residential
7 area. And as noted by the County Committee,
8 that study -- Princeton Village near the
9 Northbrook transfer station in Northfield
10 Township -- showed a decrease in property
11 values for many homes, and 18 of 37 homes
12 with appreciation rates under one percent,
13 this despite the fact that appreciation rates
14 in North Suburban Cook County are generally
15 five to six percent, and Northbrook itself as
16 high as 16 percent. Princeton Village
17 demonstrates the likelihood with serious
18 impacts where residential areas are so close.

19 The County correctly found that
20 neither Criteria 2 nor 5 was met, because
21 this transfer station is not located or
22 designed so as to protect the public health,
23 safety and welfare. The Lowe site itself is
24 very small -- only 2.64 acres -- leaving no

1 room for a buffer zone. Because of its small
2 size, its stormwater is proposed to be
3 infiltrated into the groundwater by an
4 infiltration basin. Expert testimony showed
5 that the stormwater would carry contaminants
6 and that the groundwater into which those
7 contaminants would be infiltrated flows at a
8 very rapid rate directly into Lake Plote on
9 the Plote property, Lake Atwood on the
10 McHenry County Conservation District property
11 and then to an area of wetlands designated as
12 irreplaceable and unmitigatable by the Army
13 Corps of Engineers. Mr. Lowe's application
14 did not identify these impacts. It didn't
15 even identify the downgradient water bodies
16 impacted by the proposed transfer station.
17 In addition to these flows through the
18 infiltration basin, any spills or drips from
19 garbage or transfer trucks on the site access
20 road will go to an existing stormwater pipe
21 which discharges to the McHenry County
22 Conservation District.

23 The County also found that Lowe had
24 not adequately designed or proposed to

1 operate the site. The record is full of
2 support for that finding. The site has no
3 sprinkler system and no firefighting water
4 supply. Testimony and modeling showed that
5 the site is so small that the large transfer
6 trailers will not be able to turn the corners
7 into the site or the corners into and out of
8 the transfer building. It was clear, and
9 Lowe's witnesses agreed, that the goal had
10 been to try to design the transfer station
11 onto property he owned, not to find an
12 environmentally good site for a transfer
13 station.

14 The County also properly considered
15 Mr. Lowe's experience. Evidence was also
16 presented at hearing about Mr. Lowe's
17 operating experience, or lack thereof. Lowe
18 admits he has no experience. His operating
19 shell corporation, Lowe Transfer, has no
20 experience, no employees and no money. Lowe
21 admitted at hearing that Lowe Transfer is set
22 up to shield Lowe from liability if anything
23 goes wrong. To excuse his own lack of
24 experience, Lowe contended he would hire

1 people who did have experience, such as his
2 consultants. Again and again, however, he
3 overrode the statements and promises of his
4 own consultants, casting doubt on his
5 willingness to hire or follow expert advice,
6 even if that could make up for his lack of
7 experience.

8 Finally, Mr. Lowe currently
9 operates a concrete and asphalt recycling
10 facility next to the site. Testimony showed
11 that he does not have a permit for that
12 facility under Section 21(d) of the
13 Environmental Protection Act. Testimony
14 showed his operations are also not in
15 compliance with Section 22.38 of the Act
16 regarding construction and demolition debris
17 operations. Lowe's testimony revealed a
18 number of activities by his current
19 operations which present environmental
20 compliance issues, which Lowe was either
21 unaware of or unconcerned with. Lowe has not
22 explained how the McHenry County Board's
23 consideration of his background and
24 experience with respect to Criteria 2 and 5

1 was improper, even though his petition states
2 that this is an element of his appeal. The
3 statute specifically says that background and
4 experience are relevant to Criteria 2 and 5.
5 Facilities like transfer stations may have
6 serious environmental consequences when their
7 owners or operators don't know what they're
8 doing or don't take compliance seriously.
9 Mr. Lowe's operating history raises grave
10 doubts about his willingness and his ability
11 and/or interest in operating a station in
12 compliance with environmental requirements.

13 Section 22.14 of the Act prohibits
14 establishment of a garbage transfer station
15 at the proposed location. Finally, the Board
16 should note in Section 22.14 of the Act
17 prohibits establishment of a garbage transfer
18 station within 1,000 feet of a dwelling or
19 property zoned as --

20 HEARING OFFICER HALLORAN: Sir --
21 Mayor --

22 MR. LAMAL: Yes?

23 HEARING OFFICER HALLORAN: Mr. Lamal?

24 MR. McARDLE: I'm sorry. I need to

1 make an objection.

2 MR. LAMAL: That's okay.

3 MR. McARDLE: The discussion here
4 centers around Section 22.14. This was
5 discussed over objection at the County Board
6 level regarding the thousand-foot
7 restriction, and I'm making the same
8 objection as to relevance in this proceeding.

9 HEARING OFFICER HALLORAN: Mr. Helsten?

10 MR. HELSTEN: Again, I stand on --
11 the County stands on its previous position
12 that so long as comments that are being made
13 here are relevant to the evidence that has
14 been introduced in the underlying record and
15 documents that were introduced in the
16 underlying record, it's appropriate to hear
17 those comments. So far, this gentleman's
18 comments, I think, have been directly
19 relevant to the underlying record. And,
20 accordingly, he can make his argument and
21 make his comment about what the significance
22 of those matters in the underlying record is.
23 Whether or not 22.14 is applicable or not, as
24 I will say in my statement, is really -- is

1 not relevant. It's the potential relevance
2 or the potential applicability or the
3 potential import of 22.14 as it relates to
4 Criterion 3 overall. That is very relevant,
5 and that's why I think this is fair game.

6 HEARING OFFICER HALLORAN: Thank you,
7 Mr. Helsten.

8 Mr. McArdle, I'm going to overrule
9 your objection. Mr. Lamal may proceed;
10 however, I would ask the Board to disregard
11 any statements or testimony by Mr. Lamal that
12 was not generated in the record below.

13 You may proceed, sir.

14 MR. LAMAL: Thank you. May I go
15 back to the beginning?

16 HEARING OFFICER HALLORAN: The
17 beginning of --

18 MR. LAMAL: No, no. Just the
19 beginning of this little section.

20 HEARING OFFICER HALLORAN: You
21 scared me.

22 MR. LAMAL: One sentence.

23 HEARING OFFICER HALLORAN: Yes, you
24 may.

1 MR. LAMAL: I didn't mean to scare
2 you.

3 Finally, the Board should note that
4 Section 22.14 of the Act prohibits
5 establishment of a garbage transfer station
6 within 1,000 feet of a dwelling or property
7 zoned residential. The Lowe property is
8 adjacent to the Plote property which is zoned
9 residential. It is also only 1346 feet from
10 the longstanding and outstanding Bright Oaks
11 residential subdivision. Knowing of the
12 attempt by Plote and Cary to develop the
13 Plote property, Mr. Lowe tried to get his
14 transfer station sited before the Plote
15 property could be annexed by the village and
16 zoned residential. And the record shows he
17 tried to get the County to keep his
18 application preparations secret. While Lowe
19 is not always clear about his theories, we
20 understand from the record below that he
21 believes that compliance, or noncompliance,
22 with Section 22.14 and his ability to get an
23 IEPA permit for his proposed facility is
24 irrelevant in siting. We simply disagree.

1 The immediate proximity to residential areas
2 is an important question which is extremely
3 relevant under several of the siting
4 criteria, including Criterias 2, 3 and 5.

5 The County Board's decision was
6 reached after an extensive hearing which
7 assembled a record providing overwhelming
8 support for its rejection of siting. The
9 County Board's decision is clearly in
10 accordance with law and supported by the
11 manifest weight of the evidence, and we ask
12 that it be affirmed.

13 On behalf of all of the residents
14 of the village of Cary, thank you.

15 HEARING OFFICER HALLORAN: Thank you,
16 sir.

17 Mr. McArdle?

18 MR. McARDLE: I just have one area
19 of questioning, if I could.

20 STEVE LAMAL,
21 called as a witness herein, having been first
22 duly sworn, was examined and testified as
23 follows:
24

1 DIRECT EXAMINATION

2 BY MR. McARDLE:

3 Q. You were at some of the hearings,
4 right?

5 A. I was.

6 Q. And were you there when Dave Plote
7 testified?

8 A. I was not.

9 Q. Did you read the transcript?

10 A. No.

11 Q. So you wouldn't recall him
12 testifying that it was not a good idea to
13 develop residential property next to I-2
14 heavy industrial?

15 A. I don't know that he made that. I
16 have counsel here if you would like to ask
17 that question of counsel.

18 Q. No, I just want to know if you
19 heard that.

20 A. I did not hear the comment.

21 MR. McARDLE: And that would be at
22 C210, page 34, thank you.

23 HEARING OFFICER HALLORAN: Mr. Helsten?

24 MR. HELSTEN: Nothing.

1 HEARING OFFICER HALLORAN: Thank you,
2 Mayor. You may step down.

3 MS. ANGELO: As the attorney for
4 Cary, could I ask that the copy of the
5 testimony which includes the citation to
6 the record that Mr. Lamal was relying on
7 be included as a written comment?

8 MR. LAMAL: That's what I gave
9 him.

10 HEARING OFFICER HALLORAN: I have a
11 statement. I was going to enter it as
12 Public Comment No. 3.

13 MS. ANGELO: Thank you.

14 HEARING OFFICER HALLORAN: Thank you
15 very much.

16 MR. LAMAL: All right. Thank you.

17 (Whereupon, said document
18 was marked as Public
19 Comment Exhibit No. 3,
20 for identification, as
21 of 8-14-03.)

22 HEARING OFFICER HALLORAN: I have
23 no more witnesses on the list -- or, excuse
24 me -- public comment. Would anybody like to

1 make a public comment, and then we'll take a
2 poll between the attorneys and possibly the
3 audience whether we want to take a quick
4 lunch or another 15-minute break? But in any
5 event, anybody else would like to step up
6 here and give comment or testify?

7 Yes, sir? You in the blue shirt?

8 MR. APPLETON: I just want to make
9 a few comments.

10 HEARING OFFICER HALLORAN: You want
11 to get sworn under oath or just comments?

12 MR. APPLETON: I'll swear under
13 oath.

14 (Whereupon, the witness was duly sworn.)

15 PUBLIC COMMENT BY ROBERT APPLETON

16 MR. APPLETON: My name is Robert
17 Appleton. I live at 117 Lloyd Street in
18 Cary, and I lived in Cary since 1961. When I
19 moved to Cary, we bought a house for worth --
20 it's worth about \$15,000. And I was very
21 ashamed, and I'm still a shamed, of what's
22 going on and what has been going on Route 14.
23 You come into 14 from the south, if you look
24 to the left, you see manufacturers of septic

1 tanks. I've been upset about that for years.

2 The city never did anything.

3 And then you go up to Thornton's,
4 and everything is pretty normal -- normal
5 development. And then north of Thornton's,
6 I've been very upset and embarrassed about
7 all the things that go north up until the
8 county or the -- well, it's up to the north
9 of there. Including that is Mr. Lowe's
10 current operation.

11 Now, I will say that his current
12 operation, he's done a good job on hiding it.
13 He's built a berm there, but that's only part
14 of it. There's other things adjacent to his
15 property that I'm really embarrassed. Now
16 you can come into Cary and you can spend
17 easily \$500,000 on a house. Now, is this a
18 way to treat the citizens of Cary to have
19 this type of scenery as you come and go out
20 of Cary? No. And Mr. Lowe has made, I
21 assume, a fairly decent living all the years
22 he's lived in Cary. And I'm shocked that he
23 wants to do this to the people of Cary who
24 have given him the opportunity to make a

1 living all these years.

2 And he's not a young man anymore,
3 as I'm not, but it's hard to tell what's
4 going to happen. And I don't know that he
5 has family members that would take over and
6 run it. He may promise you the moon right
7 now. But how much longer is he and I going
8 to be around, particularly him, to run this
9 the way he said he wants to? So I'd just
10 like to make my objection to the -- because
11 of the scenic view and the atmosphere that's
12 already there.

13 Thank you.

14 HEARING OFFICER HALLORAN: Thank you.

15 Mr. McArdle?

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

20 DIRECT EXAMINATION

21 BY MR. McARDLE:

22 Q. Sir, where do you live?

23 A. I live at 117 Lloyd Street, which
24 is directly south of the high school. It's

1 about -- almost a mile from the -- it's not
2 where I live. It's the view that we have to
3 look at.

4 Q. So you live about a mile from the
5 proposed site?

6 A. Yes, right.

7 Q. And did you make any comments at
8 the McHenry County Board proceeding?

9 A. No. I'm in Florida a good part of
10 the year.

11 Q. Did you go to any of the
12 proceedings?

13 A. No, I did not.

14 MR. McARDLE: Thank you.

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

17 Mr. Helsten?

18 MR. HELSTEN: Nothing.

19 HEARING OFFICER HALLORAN: Sir --
20 Mr. Appleton, I do have a question.
21 Earlier in the hearing, you did have
22 issues with the way the hearing was
23 proceeding. Are you satisfied at this
24 point?

1 MR. APPLETON: Oh, yes. It's much
2 better. We're getting along. We can
3 hear, and we can understand.

4 HEARING OFFICER HALLORAN: Thank you.

5 MR. APPLETON: And it's nothing to
6 do with the way you were using the
7 microphone. It was the acoustics in this
8 room. We should have used the auditorium
9 in the high school, because this is
10 terrible here.

11 HEARING OFFICER HALLORAN: But this
12 is -- you're satisfied now?

13 MR. APPLETON: Yes.

14 HEARING OFFICER HALLORAN: I just
15 wanted to get -- okay. Thank you very
16 much, sir. Thank you.

17 All right. Anybody else wish --
18 yes, ma'am?

19 MS. PRITCHARD: I just have a
20 public comment. I don't know if it should be
21 on the record or not.

22 HEARING OFFICER HALLORAN: It will
23 be on the record. Do you want to get sworn?

24 MS. PRITCHARD: I don't care.

1 HEARING OFFICER HALLORAN: Okay.

2 MS. PRITCHARD: Karen Pritchard.

3 (Whereupon, the witness was duly sworn.)

4 PUBLIC COMMENT BY KAREN PRITCHARD

5 THE COURT REPORTER: And can you
6 please spell your last name for me?

7 MS. PRITCHARD: P-r-i-t-c-h-a-r-d.

8 I live at 7510 South Rawson Bridge
9 Road in Cary, right at the corner of Three
10 Oaks and South Rawson Bridge Road.

11 I'm going to stand.

12 HEARING OFFICER HALLORAN: You may --
13 okay. You can stand.

14 MS. PRITCHARD: I'm a graduate from
15 Glenbrook North High School, 1985. All four
16 years that I went to Glenbrook North High
17 School, the first six to eight weeks of
18 school -- and this can be -- you can call the
19 high school, if you want -- outside --

20 MR. McARDLE: Objection --

21 MS. PRITCHARD: -- gym for six to
22 eight weeks --

23 HEARING OFFICER HALLORAN: Excuse me.

24 MR. McARDLE: I assume, ma'am, that

1 you're going to be testifying about an event
2 that took place earlier in your life,
3 unrelated to this --

4 MS. PRITCHARD: No, it's very much
5 related.

6 HEARING OFFICER HALLORAN: Was it
7 in the record below?

8 MS. PRITCHARD: I was in
9 Northwestern Hospital -- and I could back
10 that up -- for six weeks during these trials.
11 I couldn't come to them because I was
12 hospitalized for my disease.

13 HEARING OFFICER HALLORAN: Okay.

14 MS. PRITCHARD: Okay?

15 HEARING OFFICER HALLORAN: I
16 appreciate that.

17 So Mr. McArdle...

18 MR. McARDLE: Well, you know, I'll
19 let her go a little further.

20 HEARING OFFICER HALLORAN: Thank you.

21 MS. PRITCHARD: That's fine.

22 Anyway, the first usually four to
23 five to six weeks of school in August -- we
24 always started at the end of August going

1 into the beginning of September -- if we had
2 morning gym in our semesters, sometimes they
3 had to cancel and we had to have it inside
4 because of the stench.

5 MR. McARDLE: Objection.

6 You're talking about another
7 facility that smelled, according to your
8 perception.

9 MS. PRITCHARD: Well, you read a
10 letter and confused everybody about the
11 Glenbrook and the Northbrook facilities.
12 That's what I'm trying to go to.

13 MR. McARDLE: I'm objecting to this
14 testimony. It's outside the record. It's
15 irrelevant. And it's going to prejudice the
16 Board.

17 HEARING OFFICER HALLORAN: Mr. Helsten?

18 MR. HELSTEN: As I understand the
19 witness -- and I may be wrong -- what she is
20 attempting to comment upon is one of the
21 facilities -- either one of two things.
22 Either one of the two facilities that
23 Mr. McArdle referenced in his opening
24 statement or generally the phenomenon of odor

1 in that same area from transfer stations. I
2 think this is a classic example of why the
3 County's position both in his -- in
4 Mr. McArdle's motion in limine and now is
5 correct. If the Board -- I think it's
6 important to hear this, especially if this
7 witness verifies -- and I'm not sure she
8 is -- verifies that what she's commenting
9 upon is something that Mr. McArdle brought up
10 in his opening statement. I heard her say
11 the two letters. I assume where she's going
12 here, she's going to say, no, I don't want
13 those facilities and here's my rebuttal to
14 what she said. I think that's fair comment
15 under the case law and under the rules -- the
16 Illinois Administrative Code Rules that have
17 been promulgated to govern this facility.
18 What the Board does with that is another
19 matter.

20 And, again, the County's position
21 is the hearing officer and the Board are full
22 well able to sift through what is directly
23 germane and relevant and applicable to the
24 underlying record and what is not. That's

1 why I think it should be included and heard.

2 HEARING OFFICER HALLORAN: Mr. McArdle,
3 any rebuttal?

4 MR. McARDLE: Yes. There is no
5 case law about this subject that we're
6 talking about. There's no case law that
7 gives us any direction as to what's
8 admissible in this, quote, hearing, close
9 quote. What we do know is the statute
10 requires it to be limited to the record. And
11 this lady has admitted she didn't go to the
12 proceedings. And the discussion she's about
13 to have is not part of the record. It's
14 outside the record, and it will be
15 prejudicial to the judges in this case and
16 the judges that are the PCB that are
17 listening to this transcript. And so I move
18 to strike what she said.

19 HEARING OFFICER HALLORAN: I don't
20 think the Board will be prejudiced. I will
21 sustain your objection. However, I will
22 allow her testimony to come in as an offer of
23 proof. They can take a look at it. They can
24 take a look at the record below and see if,

1 in fact, it was in the record. The Board
2 will decide that.

3 I sustain Mr. McArdle's objection.
4 However, you may speak as an offer of proof.
5 The Board can take a look at it and, you
6 know, see whether or not --

7 MS. PRITCHARD: I'm going to say
8 something on -- actually, in your defense.

9 HEARING OFFICER HALLORAN: Miss --

10 MS. PRITCHARD: That site was a lot
11 bigger than the site he's --

12 HEARING OFFICER HALLORAN: I'm
13 sorry. You know, I didn't get your name.

14 MS. PRITCHARD: Karen, with a K;
15 Pritchard -- P-r-i-t-c-h-a-r-d.

16 HEARING OFFICER HALLORAN: Okay.

17 MS. PRITCHARD: Okay. I wasn't
18 going to talk, but I just feel that there was
19 confusion about the Glenview facility and the
20 Northbrook facility. We also had, I have to
21 say, down Techny Road is where when we were
22 younger, we, all as teenagers, hung out.
23 There were rats bigger than our poodles that
24 crossed that street. I'm more concerned

1 about the welfare and the health of the
2 people that live within the couple miles of
3 what this facility is going to be. This
4 facility I feel is too small of an area to be
5 doing this and needs to be on more property
6 and away from human beings. I, for one, that
7 has an autoimmune disease -- severe,
8 terminal -- would not want to live anywhere
9 near you. And I thank God I bought my house
10 where I did, because if I lived where I live,
11 I would just abandon my house. I wouldn't
12 even care if I sold or not. I would abandon
13 and leave, because I'm tired of my disease,
14 and environmental impact plays a big role in
15 my disease. And where I grew up, in my mind
16 and in some of my doctors' minds, has
17 something to do with my autoimmune disease.

18 That's all I have to say. Thank
19 you.

20 HEARING OFFICER HALLORAN: Thank you,
21 Miss Pritchard.

22 Mr. McArdle, any questions?

23 MR. McARDLE: Yeah, I have a couple
24 questions.

1 KAREN PRITCHARD,
2 called as a witness herein, having been first
3 duly sworn, was examined and testified as
4 follows:

5 DIRECT EXAMINATION

6 BY MR. McARDLE:

7 Q. This Techny Road that you lived
8 nearby or on, was there a landfill near
9 there?

10 A. Yeah. It's right at Techny and
11 Waukegan Road. It's closed now. It's huge.

12 Q. And that's what you were referring
13 to --

14 A. Absolutely --

15 Q. -- when you said there was a
16 problem?

17 A. Absolutely. And then Glenbrook
18 North High School was about three-quarters of
19 a mile away from that site.

20 Q. So you're talking about the smell
21 from the landfill?

22 A. Absolutely. If it was morning --
23 and August is still hot, September is still
24 hot -- there were some days we had to have

1 gym inside because of the stink.

2 MR. McARDLE: Thank you.

3 HEARING OFFICER HALLORAN: Mr. Helsten?

4 MR. HELSTEN: Nothing.

5 HEARING OFFICER HALLORAN: Thank you,
6 Miss Pritchard.

7 MR. McARDLE: For the record, may I
8 just make my motion to strike the entire
9 testimony on the basis that I already
10 indicated?

11 HEARING OFFICER HALLORAN: Okay.
12 And on the basis I've already indicated,
13 I've taken it; I've sustained your
14 objection. However, I will not strike
15 it. I will keep it as an offer of proof,
16 and the Board will do with it as they so
17 choose. Thanks.

18 Any other witnesses, please?

19 All right. We can go off the
20 record for a minute.

21 (Discussion held off
22 the record.)

23 (A short break was had.)

24 HEARING OFFICER HALLORAN: Okay.

1 Do we have any more -- before we get started
2 again, do we have any more members out there
3 that would like to make a statement or
4 testify?

5 (No response.)

6 HEARING OFFICER HALLORAN: I see no
7 hands, therefore, Mr. Helsten, you're on.

8 MR. HELSTEN: Thank you.

9 Mr. McArdle, Miss Turnbull,
10 Mr. Lowe -- wherever you are -- Mr. Halloran,
11 members of the public, I will try to be
12 brief. I will try simply to respond to the
13 points that Mr. McArdle raised.

14 Point number one, Mr. McArdle says
15 the record shows no basis for the decision.
16 As he, himself, said, there were 11-plus days
17 of testimony. The transcript will indicate
18 when we started each day and when we ended
19 each day. That transcript will reflect that
20 on many days we were in session taking
21 evidence nine, ten and 11 hours. That, as
22 Mr. McArdle said, generated -- it's
23 uncontroverted -- generated over 4,000 pages
24 of testimony.

1 In addition, as Mr. McArdle
2 accurately represented, we have over 100
3 exhibits. I believe there are 101 exhibits
4 if I'm not mistaken. I would submit, number
5 one, it would have been physically
6 impossible, logistically impossible, for the
7 County to have reproduced for all Board
8 Members 4,000 pages of transcript and copies
9 of the 101 exhibits.

10 Also, that is not what the law says
11 the Board must do. The law does not say that
12 the Board must -- each member of the Board
13 must individually be provided with a copy of
14 the record. Both the statute and the case
15 law says the record in the underlying
16 proceeding must be made available, not only
17 to the County Board, but to the public. In
18 this case, there is no evidence that it was
19 not presented to the County Board, made
20 available to the County Board for its
21 inspection and consideration or to the
22 public. I think Mr. McArdle's conceded that.
23 And even if he hasn't conceded that, there is
24 nothing in the record that shows otherwise.

1 Mr. McArdle did not choose to make this a
2 fundamental fairness case. He has a
3 reputation as being the most formidable
4 litigator in this county. I'm sure if he
5 thought he could have made the case that the
6 record was not available, Hollow A, B, C
7 case, that some portion of the record was not
8 available for the decision-maker or the
9 public to look at, he would have pursued that
10 on an evidentiary basis in this hearing. He
11 did not do so. I submit he did not do so
12 because he knows there's no basis for that.

13 Now, Mr. McArdle asked the
14 rhetorical question what did the Board rely
15 upon? We need only look at the resolution
16 which he attached to his petition for review.
17 That resolution, which is the resolution
18 which was passed by the County Board denying
19 siting approval, says -- and I quote --
20 whereas after a review of the application,
21 all expert testimony, all lay testimony, all
22 exhibits, the hearing record as a whole, all
23 public comments, the proposed findings of
24 fact and conclusions of law submitted by

1 various parties herein, as well as the report
2 of the McHenry County staff -- and I would
3 emphasize the following -- the record of the
4 proceeding as a whole. And after considering
5 all relevant and applicable factors and
6 matters as well as the committee's findings
7 and recommendations herein, the McHenry
8 County Board hereby finds as follows. That,
9 Mr. McArdle, and that, Mr. Applicant, is what
10 the County Board relied upon. Consistent
11 with the E & E Hauling case, consistent with
12 the Beasely case and consistent with the
13 Sierra Club Wood River case, the Pollution
14 Control Board and the reviewing courts have
15 said all you need to do is indicate what you
16 relied upon and then indicate what your vote
17 is on each of the criterion. There need be
18 nothing more -- there need be nothing more
19 than that.

20 If we follow Mr. McArdle and the
21 Applicant's rationale, what we get into is a
22 situation where each County Board Member --
23 that each Board Member -- all 20-some of the
24 County Board Members -- would have been

1 required to articulate on the record, oh, no,
2 I think this is the one portion of this day's
3 testimony and the next portion of the next
4 day's testimony and the next portion of the
5 next day's testimony that I base my opinion
6 on, plus Exhibits No. 18, 52, 53, 73, 79, 86,
7 89, 91, 92, 100 and 101. That might be
8 County Board Member No. 1. Where County
9 Board Member No. 2 says, well, that might be
10 your opinion, but what I based my denial upon
11 on this criterion was not Day 1, but Day 3 of
12 the testimony in this regard; Day 5, not
13 Day 8 of the testimony. And Exhibits No. 1
14 through 20, Exhibits No. 40 through 60,
15 Exhibits No. 80 through 85. Then we go into
16 County Board Member 3.

17 That is not -- the Pollution
18 Control Board and the courts have wisely said
19 that is not required, so long as -- also, the
20 law, both 39.2 and the ordinance which
21 Mr. McArdle referenced in his petition,
22 simply say there must be -- the basis for the
23 decision must be articulated. State law 39.2
24 and the ordinance do not say the evidentiary

1 basis must be articulated in detail. The
2 factual basis relied upon must be articulated
3 in detail. There's a good reason for that, I
4 would submit. That's because the legislature
5 and the County and the Pollution Control
6 Board in its decisions in siting those
7 matters realize that its untenable, unwieldy
8 and impractical to go through in detail on
9 the record what each Board Member may have
10 relied upon.

11 The important thing is -- the
12 touchstone requirement is -- was the record
13 as a whole considered in making the vote?
14 The official resolution passed. The findings
15 of the County Board make it clear that they
16 relied upon the record as a whole. So I
17 think that dispenses with that argument.

18 Mr. Lamal stole my thunder in
19 several regards, but he shouldn't feel bad.
20 I'll just touch upon some of the points that
21 he made as well as some of the points the
22 other members of the public made. I think
23 Mr. -- no, it was Miss Johnson. Miss Johnson
24 also adequately points out, hey, this was a

1 lengthy hearing. Again, it was many days.
2 There were many exhibits, as she pointed out.
3 The record will make clear the hearing
4 officer would indicate every day not only
5 what members of the committee were present
6 but what members of the County Board were
7 present. The record will show that on many
8 days, not only was the committee there, there
9 were other County Board Members personally
10 there.

11 If Mr. McArdle and the Applicant
12 want to know what did they base the record
13 on -- their decision on, I would suspect it
14 would be the fact that they were there every
15 day listening to the testimony, reviewing the
16 exhibits that were introduced. That would be
17 the basis. As Miss Johnson said -- and,
18 again the record will indicate what committee
19 members were there, for how long they were
20 there. The committee attended. The record
21 will show the committee attended the
22 proceedings religiously and diligently. They
23 were there on an ongoing basis every day.

24 In addition, as Miss Johnson

1 indicated, their findings -- they deliberated
2 on the record, and the record of those
3 deliberations was filed as part of the
4 overall record and forwarded to the County
5 Board for its consideration. So when the
6 Applicant asked what was the basis, in other
7 words, there was no discussion, there was no
8 protracted debate. Well, number one, there
9 doesn't need to be. All the Applicant needs
10 to do is look at the findings of the
11 committee and the transcript of the hearing
12 if held by the committee. Now, that isn't
13 all they relied upon. That isn't all they
14 have to rely upon. But, again, as Miss
15 Johnson, a member of the public, pointed out,
16 all that was in front of the County Board.
17 So there was an ample basis upon which they
18 could make their decision. Mr. McArdle said,
19 well, only a small percentage of the people
20 in the county overall objected to this.
21 That's not the standard. The standard is
22 satisfaction of the criterion. If it was how
23 many people objected, what we would have is a
24 contest where the applicant would bus in "X"

1 number of people, the objectors would bus in
2 "X" number of people. We'd count heads.
3 Whoever had the most people there either
4 objecting or supporting it would win, and
5 that would be it.

6 That, however, wisely, is not how
7 the legislature has contemplated the process
8 will take place. The decision is made not
9 upon the number of people that object. The
10 people is made upon the -- the decision is
11 made upon the evidence that is introduced.
12 And when weighed by the decision-maker -- and
13 we'll get into this a little more later --
14 the credibility and weight given to that
15 evidence that's produced.

16 Now, Mr. McArdle, in his opening
17 statement, has, in essence, urged the
18 Pollution Control Board to retry this case.
19 Again, I would respectfully submit and the
20 Pollution Control Board has made clear in its
21 decisions, it does not retry the case. It
22 does not stand as a substitute judge. It
23 must defer if the manifest weight of the
24 evidence supports the decision made by the

1 local unit of government. It will and should
2 defer to those decisions. Again, based upon
3 what I said earlier, there is a legion of
4 evidence that has been presented here that
5 would support the -- and the record as a
6 whole -- 11-plus days of testimony and
7 hearing more than I, and close to 25 years of
8 experience in this area, have ever seen at a
9 transfer station hearing. I have never seen
10 4,000 pages of transcript and 101 exhibits.
11 A very complete and very voluminous record
12 was developed here for the County Board to
13 consider. Again, the Pollution Control Board
14 should not and I do not believe they will
15 retry the record and place themselves in the
16 position of the triers of fact. That would
17 not be right.

18 Mr. McArdle -- or the Applicant's
19 third argument is essentially if there is
20 some evidence that supports my position, you
21 have to consider that to the exclusion of
22 everything else. What Mr. McArdle did today
23 on behalf of the Applicant -- is a very good
24 advocate, is an excellent advocate -- is he

1 went nugget hunting, which I do when I'm in
2 his position. I sit there and go, oh, boy,
3 I've got to find some nuggets that support my
4 position and I better pound those home hard.
5 I better hammer these home hard. I would
6 submit, as the public comment showed, for
7 every nugget that Mr. McArdle brought up,
8 there is probably in the record 40 or 50 that
9 hold to the contrary or indicate to the
10 contrary. That's why the legislature has
11 wisely determined that it will be the county
12 board, the local unit of government, that
13 will not take these isolated nuggets. Again,
14 will not take these isolated nuggets and
15 consider them outside the context of the
16 record as a whole, but rather will consider
17 the record as a whole. That's why the
18 resolution passed by the County Board
19 includes an express finding that they
20 considered the record as a whole in making
21 their decision.

22 Now, Mr. McArdle emphasized that
23 the County solid waste management plan makes
24 it clear that the transfer station should be

1 located in a heavily populated urbanized
2 area. The implication there is if you locate
3 a transfer station in a heavily urbanized,
4 heavily populated area pursuant to the County
5 plan, you're automatically home-free.
6 However, that's not the case. While it's
7 true that transfer stations by logistical
8 necessity are located where the waste is
9 generated, by the same token, any proposed
10 facility must comport with the criterion.
11 It's not enough to simply be in a heavily
12 urbanized area, heavily populated area close
13 to where the waste is generated and where the
14 waste centrally is. Also, you must ensure,
15 as Criterion 3 states, that you're compatible
16 with the surrounding area. Also as Criterion
17 2 states in part, you must be so located so
18 as to protect the public -- I should have
19 this memorized I've done it so many years --
20 public health, safety and welfare. In this
21 case, again, I would submit and as Mr. Lamal
22 touched upon, if we only consider -- let's
23 assume we want to take Mr. McArdle's nugget
24 theory that focus on my evidence to the

1 exclusion of the record as a whole, and if
2 you look at my evidence only, it supports the
3 granting of that. As Mr. Lamal pointed out,
4 the Applicant's own witness on property
5 values -- on the impact on property values --
6 and the Applicant's own exhibits -- most
7 notably the Princeton Village study -- showed
8 that 18 of 37 units in Princeton Village,
9 which was next to a transfer station, had an
10 appreciation in real estate value of under
11 one percent, which appeared to be an
12 aberration when compared to the surrounding
13 area. I recall -- if the Applicant wants to
14 talk about what was the basis of the
15 committee and the County Board, I recall in
16 the committee deliberations, one County Board
17 Member, Mr. Clausen, specifically saying, I
18 relied upon this. To me, the Applicant's
19 witness disproves their own case. And that's
20 my position. As Miss Johnson said, that
21 record was carried forward and to the County
22 Board as a whole. And on that one basis, I
23 would submit that basis and that basis alone,
24 the County Board could have said, yes, you do

1 not meet the Criterion 3 because you have not
2 demonstrated that impacts upon property
3 values have been minimized. Although I would
4 submit the record is replete with other
5 evidence that Criterion 3 was not met. As
6 one of the members of the public that made a
7 public comment noted, there were many
8 experts -- I believe it was Mr. Lamal --
9 there were many qualified experts that
10 testified on behalf of the objectors. And
11 the testimony of any one of which would have
12 supported the County Board's position.
13 Mr. McArdle, on behalf of the Applicant,
14 emphasized the fact that his property is
15 properly zoned for the operations that are
16 presently there. Again, however, the statute
17 makes clear zoning is not the touchstone
18 focus here. It's not the seminal focus here.
19 What is the focus is whether the proposed use
20 is compatible with the surrounding area.
21 That's why 39.2 (g) makes very clear that
22 zoning is not the be-all and the end-all.
23 And properly so. You must look not at the
24 property itself, what you must look at under

1 Criterion 2 and 3 is the location -- the
2 impact on the surrounding area. The
3 Applicant in a way I found it interesting
4 wants to have his cake and eat it too, wants
5 it both ways, wants to say, well, my zoning
6 is proper, but disregard the zoning status of
7 the properties immediately surrounding it.
8 Again, I think the record was clear.
9 Irrespective of the Section 22.4 setback
10 argument, the Board doesn't even need to go
11 to that. The record was clear that zoning of
12 the property immediately adjacent to this
13 proposed facility that zoning as R-1 was
14 eminent. An R-1 designation had been
15 included in the comprehensive plan for Cary
16 for some time. This was not something that
17 had been ginned up at the last minute. For
18 some time, the comprehensive long-range plan
19 for development of Cary included this when it
20 was annexed in as R-1. There were two
21 witnesses that testified that annexation and
22 zoning as R-1 were eminent. As we all know,
23 by the time the record was closed, it was
24 zoned R-1. Again, if Mr. McArdle urges the

1 County to consider the status of his client's
2 zoning, we must also consider the status of
3 the zoning of surrounding areas and what the
4 uses will be. Now, Mr. McArdle's position
5 may have some -- or the Applicant, rather,
6 may have some minimal relevancy -- and,
7 again, I would emphasize minimal relevancy --
8 if this station was only going to operate for
9 one day, one week, one month or one year.
10 However, as the Applicant's own proposal
11 indicated, this facility was proposed to be
12 in existence for at least 20 years and
13 probably 25 or 27 years. That's good solid
14 waste plan. You put it in there to satisfy
15 the long-range needs of the county. However,
16 where a facility is going to be in place for
17 25 years or 27 years, you don't -- I would
18 submit the County Board should not focus upon
19 the zoning of the surrounding area just
20 today, but must look forward. Not only is
21 it -- may it look forward and consider what
22 the intended long-range use is of the
23 surrounding area. I would submit under that
24 statute and under the case law, it must

1 consider the long-range intended use of the
2 surrounding area when it considers Criterion
3 3 and when it considers the location element
4 of Criterion No. 2.

5 Now, Mr. McArdle also made
6 reference to Mr. Nickodem's testimony and
7 said, you know, even the objector's witnesses
8 in part support our case. So the County
9 Board should have found in our favor on
10 Criterion 2 and Criterion 5. Again, I would
11 cite to the CDT case which I believe Miss
12 Angelo was even involved in as I recall from
13 my -- what I recollect of that case. In that
14 case, only the applicant put on evidence.
15 Nonetheless, the decision-maker, which I
16 believe was a downstate county board, said we
17 don't care if the only evidence that was put
18 on was evidence by you. In that case, there
19 was not even evidence put on by an objector's
20 group, which there was here. Volumes and
21 volumes of evidence put on by an objector's
22 group. But I would submit that even if
23 Mr. McArdle and the Applicant had only put on
24 evidence, as Mr. Lamal pointed out, there

1 were holes in that evidence. And in the CDT
2 case, essentially what the decision-maker
3 said was yes, we acknowledge that you were
4 the only one that put on evidence. But you
5 know what? We're not forced to believe that
6 evidence. We're not forced to accept that
7 evidence simply because you're the only one
8 that put on that evidence. And as a matter
9 of fact, Section 39.2 mandates us to weigh
10 the credibility of that evidence, and we just
11 don't accept it. We just don't accept it as
12 you having met the criterion. Again, as
13 Mr. Lamal pointed out, there are in 11-plus
14 days of testimony even in Mr. McArdle's own
15 witness's testimony, it's enough fissures,
16 enough cracks that the County Board could
17 have well said we don't even need to listen
18 to the objector's testimony. We don't even
19 need to listen to the number of people that
20 made public comment here. We just don't
21 believe it or we don't believe that it
22 supports your case. We believe that there
23 are problems with your own analysis.

24 Now, Mr. McArdle said nobody

1 contested here that the design of the
2 facility was proper, so we meet Criterion 2
3 and 5. That may be true, and I would still
4 argue -- I would still argue with Mr. McArdle
5 that there's some room for disagreement if
6 Criterion 2 only related to design. However,
7 as Mr. McArdle knows as the excellent
8 practitioner he is, Criteria No. 2
9 provides -- and I state -- the facility is so
10 designed -- design is only one of the
11 components -- located -- located is the
12 second component -- and No. 3, proposed to be
13 operated -- operations -- proposed operations
14 are the third component -- that the public
15 health, safety and welfare will be protected.
16 So that being the case, criterion -- even if
17 Mr. McArdle's witnesses carried the day and
18 his impeachment of the objector's witnesses
19 carried the day on the design issue, there's
20 two other components which he did not
21 address, which are location and proposed
22 operation. Again, I've gone through some of
23 the testimony that supported the
24 determination on Criteria No. 3 that the

1 facility would have a disparate impact on the
2 surrounding area, on property values or it
3 was not compatible with the surrounding area.
4 I would submit to this Board, submit to the
5 Applicant and to you, Mr. Halloran, that if
6 you don't meet Criteria No. 3, you don't meet
7 the component of No. 2 that says the facility
8 is so located so that the public health,
9 safety and welfare will be protected. So my
10 point is design is not the be-all and end-all
11 in determining whether you meet Criteria
12 No. 2 or whether you meet Criteria No. 5.

13 Moreover, as Mr. Lamal noted,
14 Mr. Lowe had an admitted lack of experience
15 in operating a Pollution Control facility.
16 That being the case, I believe the County
17 board that was admitted by Mr. Lowe in his
18 testimony in cross-examination and in direct
19 examination and was admitted by Mr. -- very
20 candidly. And I'll give the Applicant,
21 Mr. McArdle, credit today. They were very
22 candid today and said he doesn't have any
23 experience. That being the case, I believe
24 the County Board was well within its rights

1 to say under Criteria No. 2, well, wait a
2 minute. It says proposed to be operated in a
3 manner in which the public health, safety and
4 welfare will be protected. They could have
5 easily found that -- an applicant that by his
6 own admission has no prior experience in
7 running pollution control facilities may not
8 be able to operate the facility so that the
9 public health, safety and welfare is
10 protected. Moreover, going to No. 5, which
11 states the plan of operations for a facility
12 is designed to minimize the danger to the
13 surrounding area from fire, spills and other
14 operational accidents. The Board could have
15 found, based upon Mr. Lowe's lack of
16 experience, that you could have the best plan
17 in the world, but if you cannot pull the
18 trigger and you cannot implement, if you
19 don't have experience in the area, then you
20 haven't met 5 as well. Again, I would submit
21 the record has enough -- more than enough
22 evidence to support the Board's determination
23 on that aspect of Criterion 2 and Criterion 5
24 as well.

1 Now, on the unnumbered criterion,
2 again, you can't have it both ways. Mr. Lowe
3 can't get up and tell us about how good a job
4 he's done in other areas of solid waste
5 management -- asphalt recycling, rock
6 recycling -- and it appears Mr. Lowe is a
7 very good businessman. And, yet, not have
8 the Board consider the cross-examination of
9 him by the objectors' attorneys. Okay? Now,
10 again, the cross-examination by the
11 objectors' attorneys, by me, by County staff
12 attorneys and by the County Board Members
13 made it clear that he doesn't have any
14 experience in that area. He does not have
15 any experience in the area of operating a
16 transfer station. However, over and above
17 that, as Mr. Lamal said, there was
18 cross-examination. He referred to the
19 cross-examination by the objectors' attorneys
20 on the issue of Mr. Lowe's present compliance
21 with IEPA permit -- IEPA regulations, or,
22 actually, technically, regulations of the
23 Board concerning permits. There was a
24 considerable amount of cross-examination by

1 Ms. Angelo as to whether or not Mr. Lowe, in
2 addition to the air permit he had, needed
3 other solid waste permits. Now, whether or
4 not he did need or have those is not -- it's
5 relevant, but not as relevant as the fact
6 that the County Board could have believed by
7 the cross-examination that if Mr. Lowe needed
8 the solid waste permit under Section 21 of
9 the Act, he didn't have one. If Mr. Lowe
10 needed a permit, then also he was in
11 violation of the section the Mr. Lamal noted
12 his attorneys raised, which is 22.3 (a) of
13 the Act, which says you can only have a
14 general construction and demolition facility,
15 if you handle only that and exclusively
16 handle that and nothing else. But there's
17 testimony in the record at cross-examination
18 designed to elicit from Mr. Lowe that, in
19 fact, he may be handling other things, which
20 would then prompt the requirement that he
21 have a permit. In turn, as Mr. Lamal said,
22 the objectors' attorney brought out that,
23 well, Mr. Lowe, if you do, in fact, need more
24 than an air permit, if you do need permits

1 from the Bureau of Land and you have none,
2 not only are you in violation of these other
3 sections, you could potentially be illegally
4 dumping. Again, we don't need to get into an
5 analysis of whether or not those permits were
6 absolutely necessary. The point is Mr. Lowe,
7 in taking the stand and touting his
8 experience in the area of solid waste
9 management, put the matter into issue. His
10 testimony was relevant, I think, more than
11 anything else, to establish his mindset
12 concerning compliance with environmental
13 rules. And in cross-examination by
14 Ms. Angelo -- let me put it this way. I
15 believe it is the contention of the
16 objectors, based upon the cross-examination,
17 that Mr. Lowe did not look into whether his
18 business was required to obtain permits from
19 the Bureau of Land. I think, sitting through
20 that hearing, it was also the objectors'
21 contention that Mr. Lowe, based upon his
22 answers to Ms. Angelo, should tell him when
23 he's required to get a permit rather than him
24 doing a compliance audit or a compliance

1 evaluation to determine that. That being the
2 case, I think the Board, under the unnumbered
3 criteria, when considering No. 2 and No. 5,
4 again could have said the mindset of Mr. Lowe
5 in complying with regulations is somewhat
6 relaxed. Based upon that, we have no
7 confidence that No. 2, the facility will be
8 operated in a manner that the public health,
9 safety and welfare will be protected, or,
10 No. 5, that the plan of operations will be
11 properly carried out. Again, I would --
12 contrary to the Applicant's assertion, I
13 think there is enough -- there is more than
14 enough in the record to show that the County
15 Board's consideration of the unnumbered
16 criterion was proper and that there was
17 evidence in the record upon which they could
18 carry their determination under the
19 unnumbered criterion back to No. 2 and 5 and
20 hold that Mr. Lowe and the Applicant had not
21 satisfied their burden on Criterion 2 and
22 Criterion 5.

23 I only touch briefly as Mr. McArdle
24 did on the host fee argument number one, and

1 we will go into this in our posthearing
2 brief. I believe we could impose it. The
3 Special Condition Provision of section 39.2
4 provides that the County Board may impose
5 such conditions as are reasonable and
6 necessary to accomplish the purposes of this
7 section, this section being the siting
8 statute. I would submit to you that,
9 Mr. Hearing Officer, that the touchstone of
10 Section 39.2 is minimization of impacts to
11 the environment, which includes -- and to the
12 surrounding area, which includes the County
13 as a whole. So we could have imposed a host
14 fee that was designed, as the record makes
15 clear, to reimburse the County for inspection
16 request, reimburse the County for other
17 oversight costs that may incur and, moreover,
18 to reimburse the County generally for overall
19 impacts that the County may experience as a
20 result of the facility being there.
21 Moreover, as I've said in the past in this
22 case, we still could have imposed it under
23 Criterion 8. Criterion 8 relates or
24 references the Illinois Solid Waste Planning

1 and Recycling Act. That Act specifically
2 says that in considering a proposed facility,
3 a county may consider not only the
4 environmental -- potential environmental
5 detriments and enhancements of the proposed
6 facility, but also the possible economic
7 enhancements or detriments. So I think we
8 could have imposed it. However, we don't
9 even get to us imposing it here. We didn't
10 impose it. Mr. Lowe proposed it. I find it
11 interesting that the Applicant takes issue
12 with imposition of a post-benefit payment
13 when the Applicant was the one -- and its --
14 in a summary that's offered it --
15 unilaterally offered it to the County. I
16 cross-examined Mr. Lowe and I established it.
17 Mr. Lowe -- and he was very candid and
18 forthright -- was your intention here to
19 reimburse the County or offset any impacts
20 that the County may experience? Very
21 candidly, he said, yes. I said, well, did
22 you do any study to determine whether the fee
23 of 40 cents that you propose per ton is
24 adequate or it's roughly proportionate to the

1 impacts that your facility would be creating?
2 Again, he said, no, we didn't do any study.
3 And if the County -- if there's something in
4 the record in this proceeding that indicates
5 it should be more than that, then I'm willing
6 to pay that, and I understand that that may
7 have to be increased in the future. I could
8 right now go to the exact section -- but I
9 don't think that's necessary; I'll do it in
10 the posttrial brief -- where Mr. Lowe gave me
11 those answers in response to questions I
12 asked. That being the case, I don't see how
13 the Applicant can now be held to complain
14 about imposition of a payment that he
15 proposed unilaterally in his application. We
16 did not impose it. We simply further defined
17 it, clarified it and flushed it out. That's
18 what the County staff did and the County
19 Board ultimately found what the appropriate
20 payment should be.

21 Lastly on that issue, I don't think
22 it's right. And in our posthearing brief,
23 Mr. Hearing Officer, we don't think that
24 whole issue is right. It would have been

1 right had Mr. Lowe received siting approval
2 and had, then, in turn, he been compelled to
3 pay that. But we don't think, at this point,
4 it's right or relevant, and it's moot at this
5 point.

6 In total, Mr. Hearing Officer,
7 irrespective of what Mr. Lowe does there now,
8 irrespective of how well Mr. Lowe does what
9 he does there at his current facility now or
10 how he otherwise conducts his operation, and
11 that's for the record as a whole to -- and
12 the decision-maker to determine. One thing
13 is clear, the fact that this facility
14 presently processes rock and asphalt --
15 reprocesses that -- is not directly relevant
16 to how Mr. Lowe will operate a transfer
17 station. Rock does not smell. Rock does not
18 rot. Rock is not protrusible. Rock does not
19 attract vectors. Same with asphalt. Garbage
20 does. That's why the inquiry made by the
21 Board as a whole on this record here was
22 appropriate. Again, I have never seen a
23 record this voluminous or this complete in
24 any hearing. It is the position of the

1 County Board that the record as a whole
2 overwhelmingly supports the decision made by
3 the County Board and the County Board
4 respectfully asks the Pollution Control Board
5 to affirm its decision.

6 Thank you.

7 HEARING OFFICER HALLORAN: Thank you,
8 Mr. Helsten.

9 Mr. McArdle, rebuttal argument?

10 MR. McARDLE: I do. I wasn't going
11 to have one, but since you went longer than
12 the 20 minutes, I'll give a short one.

13 Mr. Helsten constantly referred to
14 the County Board could have, would have,
15 should have. As far as --

16 HEARING OFFICER HALLORAN: Mr. McArdle,
17 we're having trouble hearing again, if you
18 could speak up. I apologize for
19 interrupting.

20 MR. McARDLE: The significance of
21 my comments regarding the findings by the
22 County Board in a 30-minute meeting after
23 having this voluminous transcript for two
24 weeks, unavailable to them other than in, you

1 know, one location, and having 24 County
2 Board Members, we all know sitting here it's
3 impossible for 24 Board Members to have
4 looked at that transcript thoroughly and
5 exhibits. We know that didn't happen. I
6 don't know what they did, but they didn't
7 read it.

8 The County Board Members --

9 MR. HELSTEN: I move to strike. I
10 move to strike that comment because there's
11 no basis in the underlying record or the
12 record produced here that the County Board
13 Members did not consider the record as a
14 whole to the extent they deemed necessary.
15 As I indicated in my arguments, Mr. Hearing
16 Officer, had Mr. McArdle had evidence of
17 that, he could have trotted up. He could
18 subpoena those Board Members, brought them up
19 today and asked them, five minutes each, what
20 did you consider? What didn't you consider?
21 And how long did you consider it before you
22 voted? That's the essence of the fundamental
23 fairness case, which Mr. Lowe did not -- or
24 fundamental fairness appeal which he did not

1 choose to make here. So you can't now argue
2 a quasi fundamental fairness case when
3 there's nothing in the record to support it.

4 HEARING OFFICER HALLORAN: Mr. McArdle?

5 MR. McARDLE: Okay. Let's assume
6 for purposes of argument that 24 people
7 actually did read the transcript because we
8 know all 24 didn't go to the proceedings. I
9 challenge this Board, and perhaps I'll do it
10 in my brief to match it up, but I know there
11 were a number of County Board Members that
12 never went to the meeting at all.

13 HEARING OFFICER HALLORAN: Okay.
14 What I'll do, I'm going to --

15 MR. HELSTEN: I would just like a
16 continuing objection and motion to strike any
17 of Mr. McArdle's characterizations that I
18 personally know that some of the Board
19 Members did not review the record as a whole,
20 because if that's the case, again, as I said,
21 legend has it, and my own personal experience
22 has it, that he is probably one of the most
23 vaunted, if not the most vaunted, and
24 formidable litigators in this County. He's

1 well able to have brought those people
2 forward to so testify. But they didn't
3 testify. There's nothing in the record to
4 support these allegations.

5 HEARING OFFICER HALLORAN: Okay.
6 Here's what I'm going to do, Mr. Helsten.
7 I'm going to deny your motion to strike.
8 However, I will take it as an offer of proof
9 any characterization of the Board Member not
10 being able to review the record. With all
11 due respect, I'm going to keep it as an offer
12 of proof so the Board can review it and take
13 a look at it and overrule me if they so
14 choose, because I don't think we all want to
15 come back here again in two months and do the
16 same thing. So we'll just get it in the
17 record, and we can proceed.

18 Mr. McArdle?

19 MR. McARDLE: I'm not going to make
20 that comment any longer, so are we out of the
21 offer of proof?

22 HEARING OFFICER HALLORAN: We're
23 out of the offer of proof.

24 MR. McARDLE: You know, as I

1 indicated in my opening, they met to pass
2 this resolution for no more than 30, 40
3 minutes -- whatever it was --

4 HEARING OFFICER HALLORAN: Mr. McArdle,
5 I'm sorry. We have a hand up. If you could
6 raise your voice, please. Thanks.

7 MR. McARDLE: They met for 30 or 40
8 minutes -- whatever that time frame was --
9 and the transcript has the pages there. And
10 what's significant is there's no findings of
11 fact or credibility of any witness. No one
12 ever mentioned, you know, I don't believe
13 Mr. Lowe's witness on this particular point.
14 Or I really believe the village of Cary's
15 witness on this particular point, and that's
16 why I'm voting my way. So the whole point of
17 that isn't to attack the resolution as not
18 being adequate from a matter of law; the
19 whole point is the Pollution Control Board
20 has no basis to somehow weigh the credibility
21 of the objectors' witnesses in its favor of
22 supporting the decision as opposed to not
23 giving credibility to Mr. Lowe's witnesses,
24 because those findings of credibility were

1 never made. It would have been very easy,
2 even in the resolution itself, to say, you
3 know, we support Mr. Whitney's comment, even
4 though you have an opinion when Miss Kay
5 asked him about it. But we support
6 Mr. Whitney's testimony more so than
7 Mr. Harrison's testimony on behalf of
8 Mr. Lowe. And that's why we're finding
9 against Criteria 3. So there's no -- I just
10 want to make it clear to the PCB there are no
11 findings of credibility and no findings of
12 fact as far as the County Board's resolution
13 is concerned. It has conclusions of law, but
14 that's in, and there's to discussion to
15 support it from that standpoint. And that
16 was the only point of my -- I understand the
17 rules on weighing credibility and all that.
18 That was the only reason I made that
19 argument.

20 As far as these nuggets are
21 concerned and that argument, but the points I
22 just made during my opening and in the
23 closing before the County Board, specifically
24 about Andrew Nickodem's testimony -- the

1 engineer -- are completely un rebutted. I'll
2 cite to this in my brief, but where
3 Mr. Nickodem said, you know, here's what I
4 did in the Woodland facility. That's
5 completely un rebutted. The manifest weight
6 of the evidence standard is met as far as him
7 saying, you know, I thought this was a good
8 design in Woodland, but I don't like
9 Mr. Lowe's because of such and such. He
10 agrees that where we overlap on the Woodland
11 design on these substantial issues was a good
12 idea. And he also agreed -- and I'll cite to
13 it -- that these state of the art design
14 methods that we incorporated through
15 Mr. Gordon were also over and above the
16 safety standard or the criteria standard. I
17 asked him, you know, does that make it -- is
18 it more conservative to put a geo liner under
19 the concrete? Will that help prevent
20 infecting the -- any aquifer if there were an
21 event, and he agreed that there was. It was
22 more conservative, and, therefore, it
23 minimizes the impact.

24 As far as the Plote property next

1 door to the east, there is testimony
2 un rebutted by Mr. Plote himself that all of
3 this gel -- he's been looking at this
4 property for the past ten or 15 years. No
5 doubt he's been looking at it for some sort
6 of multifamily, although he testified R-1 is
7 completely inappropriate next to an I-2 zoned
8 piece of property. But in any event, he
9 certainly has been talking to the village of
10 Cary. But you'll find in the record there's
11 been no public proceeding on any of
12 Mr. Plote's dreams of doing a multifamily
13 development until after we filed this
14 petition for the transfer facility. Once we
15 filed that application in November, it
16 finally gelled, and the relationship suddenly
17 got a lot better between Mr. Plote and the
18 village of Cary. They held hands together,
19 and they finally annexed the property
20 mid-proceeding or post-proceeding. And
21 that's all in the record as well.

22 So this development of residential
23 finally came together, you know, as a way of
24 objecting and 22.14 issue. All of that came

1 together by way of standing as a roadblock to
2 Mr. Lowe's proceeding. It's certainly isn't
3 because he has a great desire to develop a
4 residential zoning next to an I-2 zone piece
5 owned by Mr. Lowe as the rock concrete
6 crushing facility or the Welch property, who
7 has the concrete pipe facility.

8 And, finally, on the none -- the
9 unnumbered criteria, all of the testimony by
10 Percy Angelo on behalf of the village and as
11 repeated by Mr. Helsten here just a little
12 while ago, all of that is, again, what if?
13 What if you need this permit, Mr. Lowe?
14 Isn't it a fact you don't have it? Well,
15 that's true. What if he does? If he does,
16 he doesn't have it. He testified as to what
17 permits he had. He also testified to the two
18 requirements in that particular unnumbered
19 criteria. One is he has no permit violations
20 issued by the EPA with regard to solid waste
21 management. That's the issue. And he
22 testified to his prior experience. All of
23 the rest of it is pure speculation on her
24 part.

1 As far as the fee, then -- the last
2 issue -- the fee imposed by the County, you
3 know, Mr. Lowe did suggest a 40-cent fee in
4 his application. And, certainly, if that was
5 imposed as a condition to the granting of the
6 application, there would be no basis to
7 object because that was his proposal. But
8 out of the blue, the County comes with \$2.90.
9 There's no basis in the record to support
10 \$2.90, even if the basis was sufficient to
11 accept that type of criteria. But under the
12 cases I previously cited, the law prevents
13 imposing a fee requirement on an applicant.

14 So for that reason and the reasons
15 set out in my opening, I would request a
16 reversal.

17 HEARING OFFICER HALLORAN: Thank you,
18 Mr. McArdle.

19 Before we proceed into housekeeping
20 matters, any other members of the public wish
21 to make a statement before we close these
22 proceedings?

23 MR. HELSTEN: Mr. Halloran, we do
24 have a County Board Member here that I think

1 wanted to make a statement or public comment.

2 HEARING OFFICER HALLORAN: Okay.

3 You can step up.

4 If you could sign in here, please.

5 (Witness complying.)

6 (Whereupon, the witness was duly sworn.)

7 PUBLIC COMMENT BY ANNA MAE MILLER

8 MS. MILLER: Anna Mae Miller. I

9 live at 1415 East Main Street Road in Cary,
10 and I'm one of the County Board Members that
11 was part of the decision-making process.

12 Now, I don't have a prepared
13 statement. Honestly, I didn't think I was
14 even going to come and have to address it. I
15 wouldn't have, except that some of the
16 testimony today has addressed the fact that
17 they think that we didn't -- what I hear you
18 saying is that we didn't do our job. I
19 attended will hearings -- not every minute of
20 it. I was not on the committee, but I
21 arranged my schedule so I that could go and
22 be at as many of them as I could.

23 Now, I understand the Applicant's
24 right to question the outcome of things, but

1 I really question his saying we listened to
2 things and that our conclusion was erroneous;
3 that we had no right to come to that
4 conclusion; that, instead, you know, we had
5 to somehow, when we were being asked to vote
6 on the different criterion, give a discussion
7 of why we arrived at -- why we arrived at
8 whatever our conclusion was.

9 During the course of all these
10 hearings, we were given much instruction as
11 to not discussing this with anybody. It was
12 to be a decision we arrived at ourselves.
13 Nowhere right down to the County Board
14 meeting where we went through the criterion
15 one by one did anybody say, well, you know,
16 now when we get to you Anna Mae, I want you
17 to tell me how you arrived at the conclusion
18 you did. And there are different reasons for
19 each one of the criterion that I arrived at
20 the conclusion I did. And some of my votes
21 were different than some of the votes of my
22 fellow County Board Members. But nobody did
23 come to us and ask us to explain at any point
24 in time how we arrived at what we arrived at.

1 And I want you to know that I didn't take it
2 lightly; that I didn't go in with any
3 preconceived notions; that I attended as much
4 of the hearings; read all of the material
5 that was given to me; and that I arrived at
6 what I did in good conscience and would stand
7 by my decision yet again.

8 HEARING OFFICER HALLORAN: Thank you.

9 Mr. McArdle?

10 MR. McARDLE: Yeah. I just have a
11 couple of questions.

12 ANNA MAE MILLER,
13 called as a witness herein, having been first
14 duly sworn, was examined and testified as
15 follows:

16 DIRECT EXAMINATION

17 BY MR. McARDLE:

18 Q. Are you aware of any County Board
19 Members who did not show at all for any of
20 the committee hearings?

21 A. No, no.

22 MR. HELSTEN: I'm going to
23 object --

24 HEARING OFFICER HALLORAN: Mr. Helsten?

1 BY THE WITNESS:

2 A. No, honestly, no; I am not aware of
3 any County Board Member. I didn't take a
4 roll. We didn't sign in. I am not aware of
5 anybody who did not attend some of the
6 hearings.

7 HEARING OFFICER HALLORAN: Are you
8 going to withdraw your objection?

9 MR. HELSTEN: I'm going to withdraw
10 it.

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

13 BY MR. McARDLE:

14 Q. And during the hearings, did you
15 have any discussions with any of the
16 objectors about this site?

17 MR. HELSTEN: I'm going to object
18 to this being irrelevant, because we have
19 no -- there's been no allegation in the
20 petition for review of a denial
21 fundamental fairness based upon improper
22 preadjudication of the merits of the
23 application, upon ex parte contacts -- on
24 any of myriad of fundamental fairness

1 matters. And I don't think now we can go
2 mushroom hunting when we haven't alleged
3 and tried to cherry pick evidence when we
4 haven't alleged that as a basis that
5 we're here for in the underlying
6 petition.

7 HEARING OFFICER HALLORAN: Mary
8 Ellen, could you please read the question
9 back, please?

10 (Whereupon, the record
11 was read as requested.)

12 HEARING OFFICER HALLORAN: Mr. McArdle,
13 your follow-up to Mr. Helsten's as
14 objection?

15 MR. McARDLE: Well, she indicated
16 she considered certain things in making
17 her decision, and I want to know if one
18 of those was discussions she had with the
19 objectors.

20 THE WITNESS: Let me address that.
21 I'm very comfortable with that.

22 HEARING OFFICER HALLORAN: Mr. Helsten,
23 are you going to --

24 MR. HELSTEN: Well, I think -- I'll

1 let her answer, sir, if you so find that
2 subject to my objection.

3 HEARING OFFICER HALLORAN: I do.
4 She may answer it if she's able.

5 And, again, we're almost finished
6 with this, and I don't --

7 THE WITNESS: And I didn't want to
8 throw a monkey wrench into it.

9 HEARING OFFICER HALLORAN: No, no,
10 no. And I don't -- what I'm going to do
11 is take it as an offer of proof, and you
12 may answer it like that. So proceed.

13 BY THE WITNESS:

14 A. We were admonished that we could
15 discuss anything procedural about the siting
16 facility, but we were not to talk about
17 anything substantive. So no, in talking to
18 some of the neighbors of mine from Cary,
19 people would come in -- actually, I work at
20 the Algonquin Township, and I had several
21 people come to me and ask, and I admonished
22 them just like I had been -- no, I'm sorry;
23 if you want to ask me about when the hearings
24 are or what we're allowed to do or what we're

1 not. But as for the actual siting of it or
2 anything regarding the facility, no, I did
3 not.

4 BY MR. McARDLE:

5 Q. So no one ever gave you their
6 opinion of the proposed site, either during
7 the hearings when you were there or at the
8 Algonquin Township Hall?

9 A. I was at the --

10 MR. HELSTEN: Objection --

11 BY THE WITNESS:

12 A. -- public participation portion of
13 some of the hearings, and I was able to hear
14 what some of those people said. No, they did
15 not come up to me as an individual. Then, I
16 guess I've been really very lucky --

17 HEARING OFFICER HALLORAN: Excuse
18 me, Miss Miller, when Mr. Helsten
19 objects, we should probably stop. And my
20 note is -- we have to maybe back up,
21 because Mary Ellen did not get it.
22 However, I do note Mr. Helsten's
23 objection. I will let it in as an offer
24 of proof. So there.

1 Miss Miller, do you want to repeat,
2 if you can remember what you said.

3 BY THE WITNESS:

4 A. Well, not verbatim. What I said is
5 that I was at some of the hearings where --
6 during the public participation portion, and
7 so I was able to hear some of the people's
8 comments on the facility and when they
9 addressed it. But, no, I did not ever have
10 an in-depth or discussion on the facility,
11 and nobody came up to me and exchanged
12 their...

13 BY MR. McARDLE:

14 Q. Did you read the transcript?

15 A. No.

16 Q. Do you know where the transcript
17 was located if you wanted to read it?

18 A. Yes.

19 Q. Where?

20 A. In the County Board -- in the -- I
21 think it's the human resources area -- the
22 room you wind your way through the County
23 Board office, and it was a room where you had
24 to sign in and sign out if you wanted to

1 see...

2 Q. And how do you know that?

3 A. Because we were instructed where we
4 could access any of the material if we wanted
5 to go over it.

6 Q. Do you know whether any County
7 Board Member read the transcript?

8 MR. HELSTEN: Again, we're
9 getting --

10 HEARING OFFICER HALLORAN: Yes.

11 Mr. McArdle, are you going to wrap
12 this up? This is still under an offer of
13 proof, and I've notes Mr. Helsten's
14 objection.

15 MR. McARDLE: It's the last
16 question.

17 HEARING OFFICER HALLORAN: I don't
18 see where this is relevant.

19 MR. McARDLE: It's the last
20 question.

21 HEARING OFFICER HALLORAN: Okay.
22 Thank you. You can proceed. One last
23 question.

24

1 BY MR. McARDLE:

2 Q. Do you know whether any other
3 County Board Member read the transcript?

4 A. Yes, I do know that other County
5 Board Members read portions of the
6 transcript.

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

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

10 Any questions?

11 MR. HELSTEN: Nothing.

12 HEARING OFFICER HALLORAN: Thank you,
13 Miss Miller.

14 Any other members of the public?

15 A couple of housekeeping matters.

16 The public sign up sheet, I'm going to take
17 it with the case as Hearing Officer Exhibit
18 No. 1. And, earlier, I said I took Public
19 Comment No. 1, 2 and 3 as public comment, but
20 pursuant to Section 101.628, I will take them
21 as public statements because they were
22 subject to cross-examination and made under
23 oath. So those public comments -- No. 1, 2
24 and 3 become Public Statements No. 1, 2

1 and 3.

2 And Mr. McArdle reminds me that
3 pursuant to, at least in our case, the
4 protocol that I am to make a credibility
5 determination of the witnesses that testified
6 here today. And based on my observations,
7 legal judgment and experience, I find that
8 there are no issues of credibility with any
9 of the witnesses that testified here today.

10 I think, briefly, we're going to --
11 we've already off the record discovered or
12 discussed posthearing briefing schedule. And
13 the state -- the Pollution Control Board, at
14 its own expense, has requested an expedited
15 transcript, and Mary Ellen has assured me
16 that she will have it finished by August
17 19th, which is a Tuesday. And I believe
18 under contract, it must be finished by 4:30.
19 However, with that said, it may not be posted
20 on our website until possibly August 20th --
21 that morning. But, hopefully, I'll notify my
22 clerk, and as soon as this comes in, we'll
23 get at it.

24 The alternative is you can approach

1 the court reporter and make arrangements with
2 her personally. You might be able to receive
3 it faster.

4 In any event, since the transcript
5 will be ready and on our website -- and I
6 will read the website and out address we mail
7 anything to a little later. But the
8 transcript should be ready August 19th, 2003;
9 August 22nd, 2003, simultaneous opening
10 briefs are due. That means Mr. McArdle and
11 Mr. Helsten will have their briefs --
12 respective parties will have the opponents'
13 briefs in hand on August 22nd, as will the
14 Board. So you have to deliver -- hand
15 delivered August 22nd or overnighted for the
16 August 21st. So the bottom line is everybody
17 should have a brief that's supposed to have a
18 brief by August 22nd.

19 I'm going to make public comment
20 due and the amicus due by the village of Cary
21 on August 25th, 2003. And the mailbox rule
22 will apply there. So that's basically -- if
23 you want to file a public statement, just
24 slip it in the mailbox on or before August

1 25th, and that will be considered filed in
2 time.

3 And while I'm at it, I want to give
4 you our address. And if any reporters are
5 here, if they could publish our address as
6 well, or I'll give you my phone number. You
7 can call. For public comment, our address is
8 the Illinois Pollution Control, 100 West
9 Randolph Street, James R. Thompson Center,
10 Suite 11-500, Chicago, Illinois, 60601. My
11 phone number -- and I'm a little hesitant to
12 give it to you, but, you know, I don't have
13 the clerk's number, so you can call me. And
14 if I can't answer it, the clerk will. But my
15 direct line is 312-814-8917. And the website
16 for the Illinois Pollution Control Board is
17 www.ipcb.state.il.us. And it's pretty
18 user-friendly. You can get on our website,
19 and you go to -- well, it directs you. You
20 go to the clerk's library and you just follow
21 the directions. And if you can't get to it,
22 call me or I'll pass you over to the clerk,
23 and he or she can help you. And if you
24 didn't get any of the information, I have

1 about seven, ten business cards up here that
2 you can take home with you.

3 And while I'm at it, I'd like to
4 state that presently there's about 45, give
5 or take, members of the public here. And I
6 counted it this time, so I know I'm right.

7 The simultaneous replies by the
8 parties -- Petitioner and Respondent -- if
9 any, is due on or before September 2nd, 2003.
10 And, again, the mailbox rule does not apply,
11 so the respective parties and the Board must
12 be in receipt of the reply brief on or before
13 September 2.

14 MR. McARDLE: Could I make one
15 change?

16 HEARING OFFICER HALLORAN: Yes.
17 You can suggest it.

18 MR. McARDLE: The amicus brief
19 needs to be delivered that day, because if
20 she mails it from Chicago on the 25th, which
21 is a Monday, I won't get it until Wednesday,
22 that's not going to be enough time to do a
23 response. Because it's due on Labor Day, I
24 plan on having this done on Friday before

1 Labor Day. It gives me two days.

2 MS. ANGELO: Mr. Hearing Officer,
3 we'll represent that we'll have it
4 overnighted.

5 MR. McARDLE: And I'll do the same.

6 HEARING OFFICER HALLORAN: Okay.
7 And Mr. McArdle will have it on August 25th.

8 MS. ANGELO: 26th.

9 HEARING OFFICER HALLORAN: August
10 26th. Overnight it on the 25th.

11 MR. McARDLE: I'm going to do the
12 same thing with my Petitioner brief on the
13 22nd or -- yeah, the 22nd.

14 HEARING OFFICER HALLORAN: So now
15 your brief is due the 23rd?

16 MR. McARDLE: No. Just between us.
17 I'm going to make sure that the amicus has my
18 brief FedEx'd --

19 HEARING OFFICER HALLORAN: Okay.
20 Okay. On the 22nd.

21 MR. McARDLE: -- in the same
22 fashion.

23 HEARING OFFICER HALLORAN: Okay.
24 But public comment is still due on or before

1 August 25th, so slip it in the mail that way.

2 Mr. Helsten, Mr. McArdle, have I
3 covered pretty much everything?

4 MR. HELSTEN: Yes.

5 MR. McARDLE: The record closing is?

6 HEARING OFFICER HALLORAN: September
7 2nd the record closes, because the Board
8 needs 30 days prior to the decision due date,
9 and I think the Board meeting is October 2nd.
10 So it's, you know...

11 In any event, I want to thank the
12 parties for their professionalism and
13 civility, and I want to thank everybody for
14 their hospitality and the Village of Cary
15 School District for the use of the
16 facilities.

17 I see a hand up by Miss Angelo.

18 Yes, ma'am?

19 MS. ANGELO: Mr. Hearing Officer,
20 there's some confusion about where the record
21 is currently, because we have portions of it,
22 but we certainly don't have the citations
23 that have been affixed to it by the County.
24 So for purposes of citing our brief, is the

1 record available at the Pollution Control
2 Board?

3 HEARING OFFICER HALLORAN: It has
4 been for a while now. That's where they
5 filed it.

6 MS. ANGELO: All right. Thank you.

7 HEARING OFFICER HALLORAN: And the
8 exhibits are there too. I think there's
9 numerous exhibits.

10 Thank you very much. Have a safe
11 trip home.

12 (Whereupon, those were all
13 the proceedings held in
14 the matter on this day.)

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1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF C O O K)

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4

5 I, MARY ELLEN KUSIBAB, CSR,
6 do hereby state that I am a court reporter
7 doing business in the City of Chicago, County
8 of Cook and State of Illinois; that I
9 reported by means of machine shorthand the
10 proceedings held in the foregoing cause, and
11 that the foregoing is a true, correct and
12 accurate transcript of my shorthand notes so
13 taken as aforesaid.

14

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19 Mary Ellen Kusibab, CSR
 Notary Public, Cook County, IL
 Illinois License No. 084-004348

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