

ILLINOIS POLLUTION CONTROL BOARD
HEARD BEFORE CAROL WEBB

MICHAEL A. PETROSIUS and)
DARLA G. PETROSIUS,)
Complainants,)
vs.) No. PCB 04-36
THE ILLINOIS STATE TOLL HIGHWAY) Citizens' Enforcement
AUTHORITY,) Noise
Respondent.)

Report of proceedings had at the hearing in
the above-entitled cause, commencing at 12:25 p.m. on
the 5th day of December, A.D., 2005.

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2 APPEARANCES:

3 Mr. Scott J. Dworschak
4 (Law Office of Scott J. Dworschak)
5 1343 North Wells Street
6 Chicago, Illinois 60610
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8 On behalf of the Complainants;

9 Mr. Victor F. Azar
10 (Assistant Attorney General, Legal Department,
11 Illinois State Toll Highway Authority)
12 2700 Ogden Avenue
13 Downers Grove, Illinois 60515
14 Phone: (630) 241-6800

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16 On behalf of the Respondent.

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1 THE COURT: Good afternoon. My name is
2 Carol Webb. I'm a hearing officer with the Pollution
3 Control Board. This is PCB 04-36, Petrosius vs.
4 Illinois State Toll Highway Authority. It is
5 December 5th, and we're beginning at approximately
6 12:25 p.m.

7 I will note for the record that
8 there are no members of the public present. Members of
9 the public are allowed to provide public comment if
10 they so choose -- Actually, I take it back. There are
11 two members of the public present. I'm sorry.

12 At issue in this case is the
13 complainants' allegation in that noise from the tollway
14 traffic unreasonably interferes with the use and
15 enjoyment of their property at 7335 Maridon Road in
16 LaGrange, Cook County.

17 You should know that it is the
18 Pollution Control Board and not me that will make the
19 final decision in this case. My purpose is to conduct
20 the hearing in a neutral and orderly manner so that we
21 have a clear record of the proceedings. I will also
22 assess the credibility of any witnesses on the record
23 at the end of the hearing.

24 The Board's procedural rules and

1 the Act provide that members of the public shall be
2 allowed to speak or submit written statements at
3 hearing. Any person offering such testimony today
4 shall be subject to cross-examination by both parties
5 or may submit public comment which is not subject to
6 cross-examination.

7 This hearing was noticed pursuant
8 to the Act and the Board's rules and will be conducted
9 pursuant to Sections 101.600 through 101.632 of the
10 Board's procedural rules.

11 At this time I would like to ask
12 the parties to, please, make their appearances on the
13 record.

14 MR. DWORSCHAK: Scott Dworschak for
15 complainants.

16 MR. AZAR: Victor Azar, A-Z-A-R, on
17 behalf of Illinois State Toll Highway Authority,
18 respondent.

19 THE COURT: Thank you.

20 Are there any preliminary matters
21 to discuss on the record?

22 MR. DWORSCHAK: None.

23 THE COURT: Okay. Mr. Dworschak, would
24 you like to make an opening statement?

1 MR. DWORSCHAK: Yes, your Honor.

2 OPENING STATEMENT ON BEHALF OF THE COMPLAINANTS

3 MR. DWORSCHAK: Good afternoon. We have
4 a number of witnesses today and tomorrow, so I'll keep
5 my opening remarks brief.

6 We believe, as you said in your
7 opening statement, that the Tollway is in violation of
8 Section 901.102(a) and they create a substantial
9 nuisance violation under 900.102. You'll be hearing
10 testimony not only from residents of the area but an
11 expert in noise. And we believe these combined will
12 show, in fact, there is a violation.

13 Thank you.

14 THE COURT: Thank you.

15 Mr. Azar, would you like to make an
16 opening statement?

17 MR. AZAR: Yes, briefly.

18 OPENING STATEMENT ON BEHALF OF THE RESPONDENT

19 MR. AZAR: The Illinois State Toll
20 Highway Authority operates a system of tollways
21 throughout northern Illinois in which tens of billions
22 of dollars of commerce are transported in a vital link
23 for the northeastern section of the state. It provides
24 transportation for the general public as well as

1 trucks, which provide goods and commerce to the State
2 of Illinois, Chicago area, and the entire nation. It
3 is a vital aspect of the toll highway -- the regional
4 roadway system, and the evidence will show that the
5 Tollway, at substantial expense, built, in 1993 and
6 1995, a system of noise walls along the 294 roadway
7 near the petitioners' residence. That roadway -- That
8 was about an 11-million-dollar project which was
9 expended putting in noise walls. The Tollway, pursuant
10 to its policies, conducted, as they expanded the
11 tollway -- adding additional lanes and building an
12 interchange at Route -- or 75th Street -- the Tollway
13 installed a noise wall in that area after conducting a
14 noise study and hired a professional engineer to do a
15 design based on that noise study and followed the rules
16 and regulations issued by the Federal Department of
17 Highways. The Tollway followed the regulations set
18 forth by its own agency as well as the Federal Highway
19 Administration in implementing the new -- the noise
20 wall.

21 The degree of injury here is
22 minimal as compared to the social and economic value of
23 the pollution source, which is the tollway. The area
24 in question here is an industrial area where just north

1 of it -- excuse me -- just east of the petitioners'
2 residence is a heavily industrialized area, including a
3 UPS terminal, a Santa Fe intermodal railroad, and two
4 canals in which commerce is transported.

5 Through this, the Illinois State
6 Toll Highway Authority, pursuant to state legislature
7 and acting on a request that that roadway be built,
8 built the road in compliance with the rules and mandate
9 of the State.

10 There has been a number of expenses
11 incurred by the Tollway to meet the objectives of the
12 noise wall. The petitioner seeks, according to his own
13 expert, to have a million-dollar wall installed. The
14 Tollway's expert estimates about a 1.3-million-dollar
15 expenditure to ameliorate a noise source for one home
16 that is valued at approximately \$300,000.

17 This violation is -- There is no
18 violation here in terms of the numerical guidelines.
19 It is simply a nuisance violation based upon an
20 individual who purchased the house in the current
21 condition as it was when it was -- currently as the
22 wall was installed. The roadway was expanded. The
23 interchange was installed when the petitioner purchased
24 his home. So he moved into the location. The priority

1 of the location clearly is on the side of a tollway.

2 The Tollway has tried numerous
3 times to address any noise issues. On two occasions,
4 the complainant has complained about impact noises
5 coming from trucks that were rattling. The Tollway was
6 responded by sending out individuals to grind down the
7 roadway where there were, in fact, bumps in the road
8 causing that banging.

9 The Tollway has tried to
10 accommodate Mr. Petrosius as well as the other
11 neighbors in ameliorating the noise problem. However,
12 the Tollway has a policy which is applied throughout
13 all 274 miles of roadway. And to make an exception for
14 one individual would be -- set a precedence for
15 everybody else which would incur hundreds of millions
16 of dollars of noise walls every time an individual
17 asks -- or finds the noise to be a nuisance after
18 purchasing a house.

19 So based on the factors set forth
20 by the Board, the Tollway does not believe there is a
21 violation of any sort here. The nuisance here is,
22 according to the Board, a trifling inconvenience, an
23 annoyance, or minor discomfort that's outweighed by the
24 substantial impact it would have on both the Tollway as

1 well as other agencies who have to maintain roadways.

2 Thank you.

3 THE COURT: Thank you.

4 Mr. Dworschak, you may present your
5 case.

6 MR. DWORSCHAK: I'd like to start with
7 the public-comment phase. We have two witnesses -- two
8 people that would like to speak during the public
9 comment. The first lady is Krista Dolgner.

10 PUBLIC COMMENT

11 THE COURT: Have a seat up here, please.

12 MS. DOLGNER: My name is Krista Dolgner;
13 K-R-I-S-T-A, last name D-O-L-G-N-E-R. I live on the
14 corner of Fifth Avenue Cutoff and Maridon Road at 10331
15 Fifth Avenue Cutoff. I'm two houses from the
16 expressway.

17 While it's true that we have
18 industrial to our east, there's quite a bit of
19 residential all around us. We're not just a couple of
20 houses stuck in an industrial park. To the north and
21 to the west, there's a lot of residential area.

22 I moved in -- My husband and I
23 purchased the house in 1987, and then the widening
24 program came in. They widened the road. They put the

1 wall -- But the wall is low, so you can see the highway
2 from our house. It wasn't built up at a level that
3 would block the highway. So because of that you can
4 see and hear the highway at all times.

5 In the summertime, of course, it's
6 a lot different because if you open your windows,
7 especially in an upper level, you can really hear the
8 traffic. In the winter -- If you were to move in in
9 the winter -- we have a brick house -- if you have all
10 your windows shut up, it's not that noticeable as it is
11 in the summertime. You have a tendency to leave your
12 air on so you don't have to hear that all night long of
13 the motorcycles and the trucks and stuff going by.

14 Our -- We have a brick house. The
15 front yard is -- seems to catch more noise than the
16 back, so we do more in the back yard than we would in
17 the front yard to kind of avoid a noise level.

18 I can hear it all night long when I
19 sleep. The traffic comes around. And I know -- When I
20 go down the highway, I notice that the sound walls in
21 other neighborhoods seem to go up higher to cover more
22 of your eye level. So maybe that's why other
23 neighborhoods don't notice it as much. I think if this
24 wall was built higher, it would have taken a lot of the

1 impact away.

2 You just hear it all the time. And
3 we're not as bad as a couple of the houses that are
4 closer because we are two properties away. So it's an
5 impact on your everyday life and your entertaining.
6 You work around it.

7 I think that's all I have to say
8 about it.

9 THE COURT: Okay. Thank you very much.

10 MS. DOLGNER: Thank you.

11 MR. DWORSCHAK: We have Pat Biegel who'd
12 like to speak.

13 THE COURT: Okay.

14 MS. BIEGEL: Hello. My name is Pat
15 Biegel. My last name is spelled B-I-E-G-E-L. I live
16 at 10321 Fifth Avenue Cutoff. I am Mike and Darla's
17 neighbor. My back yard adjoins their yard.

18 We came out and looked at this
19 house back in March of 1984. It was cold outside, and
20 we basically didn't -- We went into the house to look,
21 and from the inside of the house, because we have a lot
22 of windows, you could see the yard. So I did not spend
23 a lot of time outside. We bought the -- We decided to
24 buy the house, and we closed on it in June, the end of

1 June. And we moved in that week. We had the air
2 conditioning on. The windows were closed.

3 We had a bad thunderstorm shortly
4 after moving into this house which knocked out our
5 power for 5 days. The wind was so strong cutting
6 across the toll road that a semitruck flipped. I have
7 a perfect view. I'm a little bit higher up, and from
8 my kitchen window and driveway, the toll road is even.

9 In fact, when we first met Darla
10 and Mike, in the talk of the wall, I asked them, What
11 wall? Because from my house, there is no wall. The
12 trucks are right there. The wall is basically down in
13 the front.

14 So we ended up without any power.
15 The frightening part was the truck that flipped with
16 this high wind we had. So without any power, of
17 course, we had to open up the windows in the house.
18 That's when I discovered just how loud the tollway was.
19 I lived with this for 5 days not able to shut the
20 windows because it was just too hot.

21 My swimming pool is in the front of
22 my yard, my hot tub is in the front of my yard, my
23 patio is in the front of my yard because you cannot use
24 the back yard. The noise is deafening back there. I

1 have a small patio in the back. I wanted to put my hot
2 tub back there in a little secluded area. I cannot do
3 it. It is just too loud. I had to have the tub moved
4 to the front of the house.

5 My land, I have an acre of
6 property. My house sits in the middle of the property,
7 which gives me a beautiful front yard and back yard.
8 The back yard is just a few trees. You drive by my
9 home and you will see a swimming pool, a patio, a
10 basketball hoop, and a hot tub in the front of my home
11 because I cannot use the back yard.

12 I understand that we have to live
13 together as neighbors. The toll road is my neighbor.
14 And I don't feel that I need to sell my home or limit
15 myself in the use of my home because of a neighbor who
16 is disruptive to me and my lifestyle. And I just --
17 Being new in the area, I just cannot understand why the
18 toll road is not helping the people who live there.
19 We're all neighbors. And why should we have to suffer
20 and be limited in the way we use our homes? I can't
21 open my windows when the weather is nice to let some
22 fresh air in because it's just -- you can't hear
23 yourself talk. You have to talk louder to your own
24 family. On the phone, I have to shut the windows when

1 I want to make a phone call. You can't watch TV. It's
2 terrible. And I was very, very upset when we moved in
3 and this happened to us, not only the stress of not
4 having any power but for the fact that the noise was
5 constant.

6 Even during the night, I was
7 sleeping and woke up a few times during the night
8 because of the truck traffic. It startled me awake. I
9 thought there was another accident occurring on the
10 toll road. I took 2 days sick off because I could not
11 stay in a constant sleep during the night. It was just
12 such a shock to me to find this kind of noise, and I
13 was very, very upset. But there's nothing more that I
14 can do. I can't leave. I can't afford to relocate
15 again. I just can't do it.

16 So that's what I have to say.

17 THE COURT: Okay. Thank you very much.

18 MS. BIEGEL: Okay. Thank you.

19 MR. DWORSCHAK: We'd like to call our
20 first witness, Mike Petrosius.

21 THE COURT: Will the court reporter
22 please swear in the witness.

23 (Witness sworn.)

24

1 WHEREUPON:

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

5 DIRECT EXAMINATION

6 BY MR. DWORSCHAK:

7 Q. Could you state your name and spell it for
8 the record, please?

9 A. Michael Petrosius, P-E-T-R-O-S-I-U-S.

10 Q. And you and your wife, Darla, filed a
11 complaint against the Illinois Tollway regarding the
12 property at 7335 Maridon Road, LaGrange, Illinois, on
13 September 19th, 2003?

14 A. Correct.

15 Q. And when did you purchase the property in
16 question?

17 A. 1995.

18 Q. And this property is located next to the
19 I-294 toll road, commonly known as the Tri-State?

20 A. Yes.

21 Q. And, in fact, your property line and the
22 tollway's property meet, correct?

23 A. Yes.

24 Q. I'm going to show you a series of photos to

1 kind of help us all get a feeling for the neighborhood
2 in which you live in. I'll have you help identify
3 them, and we'll talk about them.

4 I'm showing you -- We're marking
5 Joint Exhibits 1, 2, and 3 for display. And since the
6 judge is our primary witness, we'll let her get the
7 best view.

8 These, I believe, are aerial shots
9 of your neighborhood. Do you --

10 A. Correct.

11 Q. -- recognize them?

12 A. Yes.

13 Q. Are they true and accurate representations of
14 the area?

15 A. Yes.

16 MR. DWORSCHAK: Your Honor, I move to
17 have these three pictures entered as Joint 1, 2, and 3.

18 MR. AZAR: That is correct. I have no
19 objection.

20 THE COURT: Okay. Joint Exhibits 1, 2,
21 and 3 are admitted.

22 (Joint Exhibit Nos. 1 through 3
23 were admitted into evidence.)

24 BY MR. DWORSCHAK:

1 Q. Okay. We're looking at Exhibit No. 1 which
2 is an aerial view in color, 8-and-a-half by 11, of your
3 neighborhood.

4 And could you identify your home on
5 this property?

6 A. Right there (indicating).

7 Q. And is there some noise wall on this picture?
8 Could you point to that?

9 A. Right there (indicating).

10 MR. AZAR: Do you want to have him
11 circle it --

12 THE COURT: Yeah. I was going to ask
13 you if you had a marked-up copy.

14 MR. DWORSCHAK: I don't have a marked-up
15 copy. I'm just going to circle it for --

16 MR. AZAR: Yeah, just so it's clear
17 because the Board won't know which one it is.

18 BY MR. DWORSCHAK:

19 Q. Right here?

20 A. Yeah.

21 Q. Okay. I'm going to show you Complainants'
22 Exhibit No. 1.

23 Mike, do you recognize that home?

24 A. Yes. That is my home.

1 Q. And is that a true representation of the
2 area?

3 A. Yes.

4 MR. DWORSCHAK: Your Honor, I move to
5 have Complainants' Exhibit No. 1 entered into evidence.

6 MR. AZAR: No objections.

7 THE COURT: Complainants' Exhibit No. 1
8 is admitted into evidence.

9 (Complainants' Exhibit No. 1 was
10 admitted into evidence.)

11 BY MR. DWORSCHAK:

12 Q. So, Mike, you have -- In your yard, could you
13 point to where the noise wall would be, roughly?

14 A. It would be directly right here (indicating).
15 The view is actually looking from the noise wall.

16 Q. Okay. Now I'm showing you Exhibit No. --
17 Complainants' Exhibit No. 2 for display purposes, which
18 is another view of the yard.

19 Mike, do you recognize that
20 picture?

21 A. Yes.

22 Q. And is that a true and accurate
23 representation of the area?

24 A. Yes. That is a view from my home towards the

1 noise wall.

2 MR. DWORSCHAK: Your Honor, I move to
3 have Complainants' Exhibit No. 2 moved into evidence.

4 MR. AZAR: No objection.

5 THE COURT: Complainants' Exhibit No. 2
6 is admitted into evidence.

7 (Complainants' Exhibit No. 2 was
8 admitted into evidence.)

9 BY MR. DWORSCHAK:

10 Q. Mike, referring you back to Exhibit No. 1,
11 the windows we see, actually, all the bedrooms actually
12 face the tollway; is that correct?

13 A. Two out of the three do, yes.

14 Q. Okay. And we're looking at Complainants'
15 Exhibit No. 2.

16 From your property, can you see the
17 roadway surface?

18 A. Yes.

19 THE COURT: May I just ask a question to
20 clarify that response?

21 Is that the -- On top of the wall
22 through the trees, are you talking about, or right here
23 (indicating)?

24 MR. DWORSCHAK: I'm sorry. I meant that

1 he could see the actual tollway pavement above --

2 THE COURT: Okay. So in Complainants'
3 Exhibit No. 2, we're looking through the trees over at
4 the noise wall, not the pavement in the front of the
5 photo?

6 MR. DWORSCHAK: That's correct.

7 THE COURT: Okay.

8 MR. DWORSCHAK: Your Honor, I'm marking
9 Complainants' Exhibit No. 3 for identification, and I'm
10 handing a copy to Victor.

11 BY MR. DWORSCHAK:

12 Q. Mike, I'm showing you Complainants' Exhibit
13 No. 3.

14 Is that a true and accurate
15 representation of your side yard?

16 A. Yes.

17 Q. And do you know the exact dimensions of this
18 side yard?

19 A. Approximately 130 by 100.

20 MR. DWORSCHAK: Okay. Your Honor, I
21 move to have Complainants' Exhibit No. 3 entered into
22 evidence.

23 MR. AZAR: No objection.

24 THE COURT: Complainants' Exhibit No. 3

1 is admitted into evidence.

2 (Complainants' Exhibit No. 3 was
3 admitted into evidence.)

4 MR. DWORSCHAK: Your Honor, I'm marking
5 Complainants' Exhibit No. 4 for identification. I'm
6 showing you a copy and Victor.

7 BY MR. DWORSCHAK:

8 Q. Mike, do these pictures look familiar to you?

9 A. Yes.

10 Q. And there are actually two pictures on this
11 exhibit.

12 Could you describe the top picture?

13 A. The top picture was taken standing in the
14 middle of my side yard facing the noise wall.

15 Q. Okay. And this picture displays a difference
16 in the wall height?

17 A. Correct.

18 Q. Okay. And according to the caption, the wall
19 height is 8-and-a-half feet and 13 feet; is that
20 correct?

21 A. Yes.

22 Q. Okay. Referring you, now, to the second
23 picture on the slide -- on the exhibit, what does that
24 show?

1 A. That is a picture taken from Fifth Avenue
2 Cutoff looking towards the toll road.

3 Q. And does this picture depict a rise in the
4 topography from the end of the road looking south?

5 A. The road does slope down towards the noise
6 wall from this location.

7 MR. DWORSCHAK: Your Honor, I move to
8 have Complainants' Exhibit No. 4 entered into evidence.

9 MR. AZAR: No objection.

10 THE COURT: Complainants' Exhibit No. 4
11 is admitted into evidence.

12 (Complainants' Exhibit No. 4 was
13 admitted into evidence.)

14 MR. DWORSCHAK: Your Honor, I'm marking
15 Complainants' Exhibit No. 5 for display purposes.

16 BY MR. DWORSCHAK:

17 Q. Mike, could you take a look at that.

18 Do you recognize the depiction in
19 this photo, Mike?

20 A. Yes.

21 Q. And what does it display?

22 A. It is a picture taken from my front yard
23 facing the noise wall.

24 Q. And this picture is taken when the leaves are

1 off the trees; is that correct?

2 A. Correct.

3 Q. So do we get a little better view of what you
4 might see from your yard towards the tollway in this
5 picture?

6 A. Yes. This would be the view from, I'd say,
7 October through March.

8 MR. DWORSCHAK: Your Honor, I'm marking
9 Complainants' Exhibit No. 6 for identification. I'm
10 giving a copy to Victor.

11 BY MR. DWORSCHAK:

12 Q. Mike, do you recognize the two photos in this
13 exhibit?

14 A. Yes.

15 Q. And the top photo, what does that display?

16 A. The top photo displays a semitruck heading
17 north up the ramp taken from Fifth Avenue with a zoom
18 lens.

19 Q. And the picture -- And in the picture, we can
20 see the entire truck?

21 A. I can see the entire truck minus the bottom
22 rubber of the wheels.

23 Q. Okay. So you can see everything except the
24 tires hitting the pavement?

1 A. Correct.

2 Q. And the second picture on the exhibit, what
3 does that show?

4 A. That shows the body of a tanker truck heading
5 north on the ramp also.

6 Q. And can you see the entire tanker truck in
7 that picture?

8 A. The center body, top to bottom, I can see,
9 yes.

10 MR. DWORSCHAK: Your Honor, I move to
11 have Complainants' Exhibit No. 6 entered into evidence.

12 MR. AZAR: I'm going to object because
13 of the telephoto lens of the photographs. They don't
14 depict the scene accurately as they would -- I mean,
15 it's an accurate portrayal, but it's a telephoto lens
16 so it magnifies and shortens the distance. I don't
17 believe it's a proper photograph to establish what he
18 wants -- I don't know what he's trying to establish,
19 but I don't believe it's proper to use a telephoto lens
20 for this type of photograph.

21 MR. DWORSCHAK: If I could, your Honor,
22 these two pictures come from their own expert's noise
23 study. So it's nothing that we developed. It's
24 actually their own pictures.

1 THE COURT: Well, I'm going to allow it
2 because it's clearly labeled "telephoto," and I'm sure
3 the Board will take note of that.

4 (Complainants' Exhibit No. 6 was
5 admitted into evidence.)

6 MR. AZAR: Okay.

7 THE COURT: Did you admit Exhibit 5 into
8 evidence?

9 THE COURT REPORTER: (Shaking head.)

10 THE COURT: No, okay.

11 MR. DWORSCHAK: I'm sorry. I move to
12 have Complainants' Exhibit No. 5 entered into evidence.

13 MR. AZAR: I have no objection.

14 I presume you're going to tie up
15 the foundation with the --

16 MR. DWORSCHAK: It comes from --

17 MR. AZAR: No. I presume you'll tie up
18 the foundation with Mr. Zak tomorrow?

19 MR. DWORSCHAK: Yes.

20 MR. AZAR: No objection.

21 THE COURT: Okay. Then Exhibit 5 is
22 admitted.

23 (Complainants' Exhibit No. 5 was
24 admitted into evidence.)

1 BY MR. DWORSCHAK:

2 Q. Now, Mike, referring to these pictures, at
3 some times you can see the entire vehicle; is that
4 correct?

5 A. Correct.

6 Q. And at all times you always can see the
7 smokestack or the exhaust stack of the trucks; is that
8 correct?

9 A. Correct.

10 MR. AZAR: I'm going to object. I don't
11 think he's laid the foundation as to what photograph
12 he's referring to.

13 MR. DWORSCHAK: I'll refer back to
14 Complainants' Exhibit No. 4, Complainants' Exhibit
15 No. 2, and Complainants' Exhibit No. 6.

16 MR. AZAR: The answer was he could see
17 trucks, but you can only see it in Complainants' 6 and
18 you can't see it in the other ones.

19 MR. DWORSCHAK: Well, I was saying that
20 at times, if you cannot see the vehicle, you can only
21 see the smokestack. So I was trying to lay the
22 foundation that the wall height is not as high as the
23 smokestack of a semitruck.

24 MR. AZAR: No objection. I'm sorry. I

1 misunderstood the question.

2 THE COURT: Okay. Thank you.

3 BY MR. DWORSCHAK:

4 Q. Okay. One more picture, Mike.

5 MR. DWORSCHAK: I'm marking
6 Complainants' Exhibit No. 7 and giving a copy to
7 Victor.

8 BY MR. DWORSCHAK:

9 Q. Mike, is that an accurate portrayal of the
10 tollway property on the other side of the wall next to
11 your residence?

12 A. Yes.

13 Q. And what does this picture show?

14 A. This picture is a view of the toll plaza that
15 is --

16 Q. Is that the 75th Street --

17 A. Yes.

18 Q. -- toll plaza?

19 A. Correct.

20 Q. And, in fact, that plaza is to serve the
21 75th Street toll plaza interchange?

22 A. Yes.

23 Q. And that ramp actually runs close to your
24 home as well as the mainline of the tollway?

1 A. Yes.

2 MR. DWORSCHAK: Your Honor, I move to
3 have Exhibit No. 7 entered into evidence.

4 MR. AZAR: No objection.

5 THE COURT: Exhibit No. 7 is admitted
6 into evidence.

7 (Complainants' Exhibit No. 7 was
8 admitted into evidence.)

9 BY MR. DWORSCHAK:

10 Q. Okay. Mike, I think we have a clear idea of
11 the -- your property and the relationship of the
12 tollway to it.

13 When did you first notice that
14 noise was coming from the tollway?

15 A. After immediately moving in.

16 Q. But when you bought your home, the toll road
17 was there, correct?

18 A. Correct.

19 Q. So some people might ask, Why would you buy a
20 house next to a tollway?

21 A. When we came to look at the house, we were
22 living in the city where houses were very close
23 together. And when we pulled up, the houses being so
24 far apart, we immediately liked that about the area.

1 We went into the house. We liked the one-level ranch,
2 the location to shopping, and we didn't think what was
3 going to happen in the future.

4 Q. When you looked at the home, you didn't try
5 sleeping there, did you?

6 A. No.

7 Q. And how many times did you look at the home
8 before you purchased it?

9 A. Just once.

10 Q. Now, what types of noises come from the
11 tollway that you hear?

12 A. You hear revving of trucks, Jake-braking of
13 trucks, bouncing of empty tractor-trailers, and just a
14 constant roar from the regular traffic.

15 Q. Do you occasionally hear motorcycles racing
16 by?

17 A. Yes.

18 Q. Do you occasionally hear empty trucks bumping
19 on the road pavement?

20 A. That's constant.

21 Q. And what does a Jake brake sound like?

22 A. A Jake brake is a low, loud noise that lasts
23 approximately 5 seconds. Sometimes Jake-brakers will
24 start, stop, start, stop, or they just let it

1 continuously run.

2 Q. And a Jake brake comes from a semitruck?

3 A. Yes.

4 Q. Now, do the conditions of the noise coming
5 from the tollway change depending on the time of year?

6 A. Yes. They're louder in the fall, winter, and
7 springtime.

8 Q. And are there any changes due to which way
9 the wind is blowing?

10 A. Yes. It's louder when it blows in towards
11 our house.

12 Q. But no matter what time of year or wind
13 direction, you always have noise coming from the
14 tollway?

15 A. Yes.

16 Q. Earlier I showed you Complainants' Exhibit
17 No. 7 which, I believe, is the toll plaza picture.

18 Do you have that in front of you?

19 A. Yes.

20 Q. How do you think the proximity of this toll
21 plaza effects the level and noise coming from the
22 tollway that you hear?

23 A. When the trucks are coming up the ramp, if
24 they don't have I-Pass, which has just been added this

1 year, they would have to stop and start back up again.
2 They came up a ramp as it was, but they were revving up
3 the ramp, then stopped, and then continued to rev up
4 another ramp past my house. So it slows them down.

5 Q. So you not only get noise from mainline
6 traffic, people that are on the main part of the road,
7 you get noise from the additional ramp close to your
8 home, correct?

9 A. Correct.

10 Q. And how does this tollway noise effect you?

11 A. It mainly effects me from lack of use
12 outdoors. We have to change locations, depending on
13 what the event is outside.

14 We have a major party for the girls
15 once a year, and we put the music and the swings and
16 water slide and stuff on the outside towards the
17 tollway, and we set up the food in the garage where we
18 put the tables in my driveway which has the house
19 buffering that. So everything's organized and planned
20 to be comfortable for the older people and the people
21 eating to be quieter. And the kids, who are already
22 loud, could be kids.

23 Q. Has the noise from the tollway interfered
24 with your sleep?

1 A. Yes.

2 Q. And could you explain how it interferes with
3 your sleep?

4 A. There's constant different noises coming --
5 emitting off the tollway all night long. You would
6 hear the banging of the trucks or it would be a Jake
7 brake or it would be just the constant roar. But
8 it's -- Mainly at night it's the noises that aren't
9 constant. It's the banging of the trucks and the
10 Jake-braking.

11 Q. And how many times would you say, since
12 you've moved in, that noise from the tollway has
13 interrupted your sleep?

14 A. I would say almost every night.

15 Q. And did you ever go see a doctor about your
16 inability to sleep?

17 A. Yes.

18 Q. And which doctor did you visit?

19 A. Dr. Scott Robertson.

20 Q. And did he prescribe any medication for you?

21 A. Yes. At this time I am on my sixth type of
22 sleeping pill.

23 Q. Do you know the name of that pill?

24 A. Trazodone.

1 Q. And has that been of assistance in helping
2 you sleep?

3 A. They've all had their own way of helping me
4 sleep, and the reason I'm on my sixth one is nothing
5 stops the constant wake-up. One puts me to sleep
6 faster. One puts me through longer. But the wake-up
7 in the middle of the night, none can put me down that
8 hard to not hear that.

9 Q. Now, you certainly have a family.
10 How has this tollway noise effected
11 your family?

12 A. We don't play outside as much as I would like
13 to. We don't use the side yard. We --

14 Q. I'm sorry to interrupt.

15 When you say "side yard," can you
16 refer to the exhibit which shows that side yard?

17 A. Exhibit 3. We don't use that area except
18 for, like I said, the larger parties or when family
19 comes over. We play baseball and whiffle ball and
20 things like that because that's the biggest part of the
21 area. We don't eat outside except for parties and
22 possibly once in a great while. We don't invite people
23 over to hang outside. If it's a beautiful day, we'll
24 ask if they -- if we can meet you out somewhere or we

1 go to their house. So we don't entertain at our house.

2 Q. And what you referred to in Complainants'
3 Exhibit No. 3, your side yard, is a substantial portion
4 of the property, correct?

5 A. Half.

6 Q. And do you know the dimensions of that?

7 A. It is, I think I said, 150 by 100 -- 130 by
8 100.

9 Q. Does the tollway noise affect you when you're
10 inside the house?

11 A. When the windows are shut, just when I'm
12 sleeping, you can hear the trucks. But when you're in
13 the normal house and the air's on and the windows are
14 shut, no.

15 Q. And have you done anything to try to mitigate
16 or lessen the noise coming from the tollway?

17 A. Yes. In 1997 I planted over 30 trees. I
18 found them in a magazine. They stated they would grow
19 15 foot a year. So in 1997 I hired a company to come
20 and rototill 120 foot by 6 foot. Then I dug out
21 35 holes. I filled half the hole with manure. I
22 filled -- put the trees in, all 35. I filled -- I had
23 sod -- I'm sorry -- soil delivered, and I filled the
24 other half with fresh soil. I ran a 120-foot drip

1 system, which is a slow-dripping water every 3 feet
2 onto the tree. And then I ordered, from a company, a
3 truck of mulch, and then I shoveled mulch, 120 feet by
4 6, overall the trees.

5 Q. Do you have any idea of the cost that you
6 incurred to do this?

7 A. It was over \$1,000.

8 Q. And when you refer to the trees, those are
9 the trees that we see in Complainants' Exhibit No. 5?

10 A. Yes.

11 THE COURT: And Exhibit 2, also, are
12 those the same trees?

13 THE WITNESS: Yes.

14 BY MR. DWORSCHAK:

15 Q. I believe Exhibit No. 2 displays the trees in
16 the summer, and Exhibit No. 5 displays them in the
17 winter; is that correct, Mike?

18 A. That's correct.

19 Q. Did you purchase anything else to try to help
20 with your sleep such as a sound machine or any other
21 kind of device?

22 A. Yes. We use a sound machine.

23 Q. And has that been able to help out?

24 A. It helps a lot.

1 Q. And did you attempt to add any insulation to
2 your home?

3 A. Yes. I insulated the entire roof. I did not
4 insulate walls because I have a brick home.

5 Q. So you have no ability to --

6 A. No.

7 Q. -- add to it?

8 Okay. When you started having
9 problems with the tollway noise, what kinds of things
10 did you do to learn more about the noise coming from
11 the tollway?

12 Did you buy a noise meter? Did you
13 investigate anything on the -- at the library or on the
14 Web about noise?

15 A. Well, yes. In 2003, after speaking with the
16 Tollway, I purchased a sound meter and took readings.
17 I took videos of them readings. I researched the Web
18 looking for a source to possibly help have the wall
19 larger.

20 Q. And you said you did buy a noise meter
21 device?

22 A. Yes.

23 Q. Do you remember the name or model?

24 A. It's a Radio Shack, and I have the model in

1 my booklet if you need it.

2 Q. And what kind of noise level readings did
3 this meter show you?

4 MR. AZAR: I'll object to that.
5 That's -- That meter is not a reliable source. There's
6 no evidence that he's trained in using it, and there
7 are expert witnesses who will testify to what those
8 readings were. I don't believe it's relevant. Or It's
9 not admissible for under these type of proceedings.

10 MR. DWORSCHAK: Your Honor, I believe it
11 goes to weight, not relevance. I mean, if the Board
12 doesn't think that a hand-held meter is important,
13 they'll decide that. But I believe I need to show what
14 types of things my client did to learn about the noise
15 and what kind of evidence and what kind of information
16 he was given by this meter. It's not --

17 THE COURT: I'm going to go ahead and
18 allow it. The Board knows he's a lay witness. We've
19 got a noise expert coming, so I'll just let you
20 continue that train of thought.

21 BY MR. DWORSCHAK:

22 Q. Now, you also have a hand-held VCR r
23 videotape machine?

24 A. A camcorder, yes.

1 Q. Camcorder. And did you use this to get a
2 feeling and record the types of noise that was
3 affecting you?

4 A. Yes. My sound measurements were recorded on
5 video.

6 Q. And you actually have some videotapes showing
7 noise, showing how it affects you?

8 A. Yes.

9 Q. And could you explain what those videotapes
10 would depict?

11 A. Yes. I've taken various times and locations
12 on the property. I've taken a measurement inside my
13 daughter's bedroom with the windows shut ranging from
14 56 to 59 and opening the window with the noise levels
15 increasing between 64 and 72. I've taken measurements
16 at 10:00 at night ranging from 72 to 81, not going
17 under 69 but twice in 15 minutes.

18 Q. And when you refer to numbers, you're talking
19 about decibels; is that correct?

20 A. Decibels, yes. And I have had my sound meter
21 calibrated by Mr. Zak professionally.

22 Q. And in 2003 did you seek assistance from
23 anyone about your problem?

24 A. Yes. I spoke to Zona Anderson from the

1 Tollway.

2 Q. And what did you ask the Tollway or Zona to
3 do?

4 A. I asked her if there was any chance that they
5 would possibly retest the area and see if there's any
6 way of increasing the wall, and I also asked her if we
7 could possibly get a Jake brake sign. And the answers
8 to both were -- The first one was no, and the second
9 one, she said she believed that putting up a Jake brake
10 sign encouraged truckers to Jake brake.

11 Q. And did Ms. Anderson ever send you anything
12 in the mail?

13 A. Yeah. She sent me a Tollway brochure of the
14 sound requirements for a sound study.

15 MR. DWORSCHAK: Your Honor, I'm marking
16 Complainants' Exhibit No. 8 for identification and
17 display purposes.

18 BY MR. DWORSCHAK:

19 Q. Mike, I'm handing you what I believe is a
20 reasonable facsimile of what she mailed you; is that
21 correct?

22 A. Yes.

23 Q. And could you read the title of the document?

24 A. Illinois Tollway Traffic Noise Policy.

1 MR. DWORSCHAK: Your Honor, I move that
2 Complainants' Exhibit No. 8 be moved into evidence.

3 MR. AZAR: No objection.

4 THE COURT: Complainants' Exhibit 8 is
5 admitted into evidence.

6 (Complainants' Exhibit No. 8 was
7 admitted into evidence.)

8 BY MR. DWORSCHAK:

9 Q. Now, Mike, when you read this noise policy
10 from the Tollway, did you feel that it could help you?

11 A. Yes.

12 Q. And how did you -- Why did you determine it
13 could help you?

14 A. I was looking mainly at the source of noise
15 reflection and deflection and the way noise goes. And
16 with the proximity of our wall in the picture that you
17 have here, the way the wall -- the noise shoots up over
18 a wall, I thought with -- with the noise being at the
19 decibels it has and with -- The reason I called
20 Ms. Anderson also was a tire flying over -- I thought
21 that we could come to some type of agreement to retest
22 the area.

23 Q. Now, when you refer to a tire flying over,
24 could you expand upon that?

1 A. In 2003 a double-axle tire flew over the wall
2 and knocked a tree over next to my children's
3 playhouse, and that's the original reason, also, I
4 called Ms. Anderson.

5 Q. Now, going back to Ms. Anderson, you had a
6 phone conversation with her.

7 Did she ever come out for a visit?

8 A. She never set up a visit with me, but I saw
9 her on the property, yes.

10 Q. So she came out for a visit but not with you;
11 she just came out for an inspection?

12 A. I saw her with Mr. Zuccherro.

13 Q. And Mr. Zuccherro is another Tollway employee?

14 A. Yes.

15 Q. Now, you had several phone calls with
16 Ms. Anderson about the noise problem; is that correct?

17 A. Correct.

18 Q. And did you ever follow up with a meeting at
19 the Tollway headquarters in Downers Grove?

20 A. Yes. After Ms. Anderson said there was
21 nothing they would do and only if they were to increase
22 or modify the roadway, could they retest, I still was
23 unsatisfied and asked her if there was somebody higher
24 up. No disrespect to her. She's very nice. I asked

1 her if I could speak to somebody that was actually
2 involved in the project, and I asked her who the person
3 in charge of the project was. And she told me Mr. John
4 Wagner.

5 So in July I spoke to her and asked
6 her to have a meeting with Mr. Wagner, and I told her I
7 was available, if she was, the week of November 4th --
8 I'm sorry -- August 4th.

9 Q. And did you, in fact, have a meeting with
10 Mr. Wagner?

11 A. 2 weeks later I went there and we sat down
12 and Mr. Zuccherro came in, and Ms. Anderson said that
13 Mr. Wagner was on vacation that week.

14 Q. And what transpired at that meeting?

15 A. Mr. Zuccherro came in with a large stack of
16 notes, but nothing transpired at all. He was very
17 unaware of the situation. I don't believe he was there
18 at the time. And the meeting was very unprepared and
19 nothing came about.

20 Q. Do you feel that the Tollway has been
21 responsive to your requests in helping to reduce the
22 noise?

23 A. No. I did appreciate them coming out and
24 grinding the ramp the time they did. Other than that,

1 no.

2 Q. So because of the Tollway's unwillingness to
3 add additional noise wall, you filed your complaint
4 with the Pollution Control Board; is that correct?

5 A. Yes.

6 Q. And do you feel the noise from the Tollway
7 has adversely affected your quality of life?

8 A. Yes.

9 Q. And how would you say it's affected your
10 quality of life?

11 A. Lack of sleep, lack of use of property, lack
12 of normal living, lack of inviting people over, and all
13 the things I mentioned on the other question. We seem
14 to live a different way of life than other people.

15 Q. And do you believe that the noise from the
16 Tollway is in violation of the Illinois Pollution
17 Control Board's rules and regulations?

18 MR. AZAR: I'm going to object to that
19 conclusion. He's rendering an opinion that he isn't
20 qualified to make, and I believe it's the ultimate
21 trier of fact's decision on whether there's a
22 violation. So I object to the conclusionary nature of
23 the question.

24 MR. DWORSCHAK: Well, I'm only asking

1 for his opinion. We all know he's not an attorney.

2 THE COURT: Well, I think we probably
3 all know the answer to that question anyway, but I'll
4 allow it. He's a lay witness. He filed a complaint.
5 I don't think it's going to be a big surprise what his
6 answer is.

7 But go ahead.

8 BY THE WITNESS:

9 A. Yes.

10 BY MR. DWORSCHAK:

11 Q. And, Mike, do you believe that the additions
12 to the noise wall -- I'm sorry. Strike that.

13 You've asked for additional noise
14 wall; is that correct?

15 A. Correct.

16 Q. And what specifically did you ask for?

17 Did you ask for a lengthening of
18 the wall, a raising of the wall? What --

19 A. We've asked what our sound expert recommended
20 which was a quarter mile wide by 18 foot above road
21 level.

22 Q. Because actually, as the pictures in the
23 exhibits explain, there is -- next to your property,
24 you have about an 8-foot-high wall; is that correct?

1 A. Yes.

2 Q. And then to the north of your property, it
3 goes up to 13 feet; is that correct?

4 A. Correct.

5 Q. And at the edge of your property line, that
6 concrete wall stops?

7 A. It goes another 10 feet, but, yes, it stops
8 after that.

9 Q. And then what kind of wall is after that
10 8-foot concrete wall?

11 A. There's another 8-foot wood fence.

12 Q. And how long does that extend?

13 A. I'm not sure.

14 Q. And when I say "the height of the wall,"
15 although it's an 8-foot-high wall, you have to take
16 into account where it's placed in terms of the road; is
17 that correct?

18 A. Yes.

19 Q. And we spoke about it earlier, that the wall
20 is -- although it's 8 feet high, you can still see
21 pavement of the road?

22 A. Correct. The road, I would estimate, is
23 12 foot high.

24 Q. So actually, the pavement is much higher than

1 the base where the noise wall is placed; is that
2 correct?

3 A. Yes.

4 Q. And these types of additions to the wall that
5 you asked for from the Tollway, do you believe that
6 those are feasible, that those are able to be built?

7 A. Yes.

8 MR. AZAR: I'll object.

9 What's the basis for his scientific
10 conclusion that it's able to be built?

11 MR. DWORSCHAK: Well, in terms of do you
12 believe it's feasible, he's not a contractor --

13 MR. AZAR: Well, he has to show some
14 kind of foundation to --

15 THE COURT: Well, feasible to build or
16 feasible to resolve the problem, I guess.

17 MR. AZAR: I believe the answer was it's
18 feasible to build this.

19 THE COURT: Well, I'll sustain that.

20 BY MR. DWORSCHAK:

21 Q. Do you believe that adding to the wall would
22 help your situation?

23 A. Yes.

24 Q. And you're not asking for the Tollway to shut

1 down, are you?

2 A. No.

3 Q. You understand it's a vital part of commerce,
4 correct?

5 A. I use it every day.

6 Q. And you're just asking for them to help out
7 your particular situation, correct?

8 A. Mine and my neighbors', yes.

9 MR. DWORSCHAK: Thank you. I have
10 nothing further.

11 THE COURT: Thank you.

12 CROSS-EXAMINATION

13 BY MR. AZAR:

14 Q. Mr. Petrosius, you moved into that area, you
15 indicated, because you liked the area?

16 A. Yes.

17 Q. And that was partially due to the convenience
18 of the location because of transportation?

19 A. Also transportation.

20 Q. So the fact that the toll road is there was a
21 motivating factor for you?

22 A. No.

23 Q. The fact that it was a nice large lot for an
24 inexpensive price, did that impact it?

1 A. An average price. It wasn't cheap.

2 Q. Well, did the fact of the location effect the
3 price of your house?

4 A. Yes.

5 Q. So the fact that -- When you got your
6 appraisal for the house, there was a notation that
7 there was -- the proximity to the tollway impacted the
8 value of the house, correct?

9 A. Yes.

10 Q. So if it wasn't by the Tollway, you would
11 have paid a lot more?

12 A. Yes.

13 MR. DWORSCHAK: Objection. He's not an
14 appraiser.

15 MR. AZAR: He knows what he was looking
16 for at the time, and he was able to answer the
17 question.

18 MR. DWORSCHAK: But he's not a
19 professional appraiser. He doesn't know the value of
20 one house over the other. He's just an average buyer
21 looking at a home.

22 THE COURT: Well, I'll allow it. You
23 can redirect on it, but he did -- you know, he did have
24 an appraisal on the home, and it's really a

1 common-sense question.

2 BY MR. AZAR:

3 Q. Now, when you went to see -- inspect the
4 house, who went with you?

5 A. My wife.

6 Q. So the two of you inspected the house, and
7 you noticed there was a noise wall, correct?

8 A. Correct.

9 Q. And did you go outside at all?

10 A. Yes.

11 Q. And you didn't hear anything?

12 A. I heard traffic.

13 Q. Okay. But at that time it was much lower
14 than it was when you moved in?

15 A. Yes.

16 Q. Can you explain why all of a sudden, a couple
17 weeks later, noise went from barely noticeable to
18 unbearable?

19 A. Well, we slept there. It wasn't unbearable
20 at first. Traffic had increased tremendously since
21 then. As a matter of fact, the ramp has tripled
22 traffic from 1995 to 2000 when I filed.

23 Q. And is that partly because you being one of
24 those persons who use the road?

1 A. No. That's partly because of the meeting
2 that UPS had with the Tollway Authority stating that
3 they were shutting down all their facilities in the
4 state and going to the Hodgkin's area, which I was not
5 aware of when I purchased the home either.

6 Q. You use the road, correct?

7 A. I use the highway all the time.

8 Q. And so you make part of the noise, correct?

9 A. For other people, unfortunately, yes.

10 Q. So the noise -- When you drive away, your
11 wife, if she's in the house, hears your tires, correct?

12 A. Only if I skid or stop and then screech. My
13 argument is with the trucks.

14 Q. So a solution would be to ban trucks on the
15 tollway?

16 A. A solution would be a higher wall.

17 Q. Now, you indicated that when you moved in,
18 you knew the wall was there; you knew the ramp was
19 there. Correct?

20 A. Correct.

21 Q. And when you first moved in, you didn't find
22 it a problem? When you inspected the house, there was
23 no problem?

24 A. Right.

1 Q. Was there any difference in the traffic that
2 day as any other traffic day?

3 A. Yes. It was a weekday -- I'm sorry. It was
4 a weekend, plus it was summer.

5 Q. You indicated that the noise is constant,
6 always a problem?

7 A. Correct.

8 Q. So what made that one day out of almost 10
9 years exceptional?

10 A. I was blinded by the area. I wasn't
11 listening.

12 Q. So you picked that house based on factors
13 that you were aware of, but you ignored the noise,
14 correct?

15 MR. DWORSCHAK: I'm going to object.
16 He's already answered why he bought the house.

17 BY MR. AZAR:

18 Q. But you ignored the fact that there was noise
19 from the road?

20 MR. DWORSCHAK: He never said he ignored
21 it. He said he had other factors on his mind.

22 THE COURT: You can answer it.

23 BY THE WITNESS:

24 A. I would say that's incorrect.

1 BY MR. AZAR:

2 Q. Now, you indicate that you have problem
3 falling asleep -- Do you have a problem with falling
4 asleep?

5 A. No -- Well, yes, I do, depending on how noisy
6 it is.

7 Q. Now, is that from the tires on the road or
8 the banging from the trucks?

9 A. Mainly the banging from the trucks and the
10 revving up the ramp.

11 Q. And those are regular roadway noises or
12 impact noises that are -- that are not part of the
13 constant roar of the traffic?

14 A. Both of them are not the constant roar of the
15 traffic.

16 Q. So they're unusual events that are
17 occurring --

18 A. Correct.

19 Q. -- that disturb your sleep?

20 A. Yes.

21 Q. Are they low frequency or high frequency?

22 A. The banging is high frequency, and the
23 revving is a low frequency but exceptionally loud.

24 Q. Now, does your design -- your expert's design

1 take into consideration the fact that those are low
2 noises or impact noises?

3 A. I would hope he does.

4 Q. What happens if the wall gets put up to
5 18 feet and doesn't -- low frequency noises don't
6 impact it? Are you going to come back and sue again?

7 MR. DWORSCHAK: I'm going to object,
8 your Honor. he's not the expert sound witness. He's
9 going to testify later. He's not aware of low and high
10 frequencies. He can ask Mr. Zak that tomorrow.

11 BY MR. AZAR:

12 Q. Well, the question is: If the wall gets
13 18 feet above roadway and it doesn't work because
14 there's different -- the noises that you are
15 complaining of aren't addressed, are you going to come
16 back?

17 A. No. I would feel that you've done our
18 neighborhood justice and be satisfied with whatever the
19 result was.

20 Q. So would it be reasonable to spend a
21 million-and-a-half dollars for a 200,000-dollar house?

22 A. If I gross 600 million a year, I think a
23 million is very low for something that important to
24 people along the road.

1 Q. Wouldn't it be more reasonable to buy your
2 house -- or sell it to somebody who doesn't care?

3 A. Is that an offer?

4 Q. Well, that's the question. The question is:
5 Is --

6 A. We're here now to decide if the wall's going
7 up or not. If you wanted to buy my house --

8 Q. The other question -- Do you understand the
9 question, or should I restate?

10 A. Please restate it.

11 THE COURT: Yeah, please.

12 BY MR. AZAR:

13 Q. Is it reasonable to spend a
14 million-and-a-half dollars for a house that's worth
15 \$250,000?

16 A. It would have been, yes. It would have been
17 reasonable to buy the house.

18 I'm misunderstanding the question.

19 Q. Do you think it would be reasonable that the
20 house be condemned?

21 A. I think that would have been a good place to
22 start.

23 Q. Okay. So when you moved into the house, did
24 you do any improvements to the house?

1 A. Yes.

2 Q. You actually went and redid the garage,
3 correct?

4 A. Correct.

5 Q. You got rid of the garage and made a family
6 room?

7 A. Correct.

8 Q. And then you proceeded to put a back yard
9 porch -- enclosed porch in the back yard, right?

10 A. Right.

11 Q. And how did that -- Why would you do that in
12 a house that has -- is such an inconvenience to you?

13 A. Well, we were having children. My wife was
14 pregnant. We had 7 months. It was either move -- And
15 moving costs 20,000, so I figure let's spend 20,000 and
16 not move.

17 Q. So you made the side -- The living room where
18 the garage was converted was on the other side of the
19 roadway, correct?

20 A. Correct.

21 Q. Did you spend any money improving the
22 windows?

23 A. No. My windows are in great shape. I had a
24 window company come out, and they said, You have

1 Anderson windows. Even though they're original,
2 there's no draft. They open and close fine. And to
3 upgrade to double-pane and triple-pane would be money
4 wasted.

5 Q. So how much did you spend on the trees?
6 \$1,000, right?

7 A. Yes.

8 Q. How much would it cost to do those three
9 windows?

10 A. Them three windows in triple-pane would have
11 been \$5,000.

12 Q. Okay. Then how much did you spend on the
13 family room and the new garage?

14 A. The family room's on the opposite side of the
15 house.

16 Q. Right. How much was that?

17 A. 25,000.

18 Q. And how much did you spend on a new garage?

19 A. Another -- That was with the --

20 Q. With the garage, you spent a total of
21 \$25,000?

22 A. Let me do the math.

23 About 33,000.

24 Q. You spent \$33,000 to improve the home on a

1 side where you don't even sleep on --

2 A. Correct.

3 Q. -- and you can't sleep on the other side of
4 the house, correct?

5 A. I don't understand.

6 Q. On one side of the house, you improve it, but
7 you don't do anything for the biggest problem in your
8 house, which is your ability to sleep?

9 A. There was nothing to do. It's a brick home,
10 and there's nothing to do on that side. Do you want me
11 to build an addition on that side to block it?

12 Q. No. The question is: You could have bought
13 new windows, right?

14 A. Sure.

15 Q. And that would have solved the problem --

16 A. No.

17 Q. -- with your sleep?

18 A. Not at all.

19 Q. And who told you that?

20 A. The window company. They said -- I mean,
21 they didn't say it, but I'm saying it. They said that
22 thermal-pane windows are going to help but not solve.
23 So if you want to spend your money to help, spend your
24 money to help or get your new child a bedroom or buy

1 windows.

2 Q. So you elected not to sleep? You made a
3 choice, correct?

4 MR. DWORSCHAK: I'm going to object.
5 He's never said he doesn't sleep. He's testified that
6 he has problems sleeping.

7 THE COURT: Mr. Azar, this is getting a
8 little argumentative. He didn't do anything to the
9 bedroom.

10 Is that correct?

11 THE WITNESS: Right. And the reason
12 was, I was told by a professional I have Anderson
13 windows that don't need to be replaced. And for me to
14 have to replace a window to sleep is why we're here.

15 BY MR. AZAR:

16 Q. Now, you indicated that the property -- the
17 homes in the area go up -- From the tollway, there's a
18 grade going upwards, correct?

19 A. Correct.

20 Q. So the further away you get, the higher the
21 elevation?

22 A. Yes.

23 Q. Now, where do you work, Mr. Petrosius?

24 A. Creative Vinyl Products in Elk Grove Village.

1 Q. What do you do there?

2 A. Sales.

3 Q. Sales of what?

4 A. Educational products.

5 Q. And you use the toll road every day to get
6 there to do your sales?

7 A. Not every day; pretty much, though, plenty.

8 Q. Now, the area you live on, you are at the
9 very edge of a residential area, correct?

10 A. Yes.

11 Q. So looking at Joint Exhibit 3, do you see
12 your home there?

13 A. Yes.

14 Q. Why don't you circle it just so it's clear
15 where you're referring to.

16 (Witness complying.)

17 BY MR. AZAR:

18 Q. So you're at the -- Adjoining you is the toll
19 road?

20 A. Correct.

21 Q. The UPS facility?

22 A. I don't -- I don't know if they own that
23 property in between them and --

24 Q. The photograph depicts the UPS intermodal --

1 trucking facility?

2 A. Yes.

3 Q. And does it show the Santa Fe -- the
4 Burlington Northern-Santa Fe intermodal facility?

5 A. If that's what that is, yes. I don't know.

6 Q. Does it show two canals to the north --

7 A. Yes.

8 Q. -- on the top part?

9 And those are -- To one side of you
10 is residential, and the other side is that, correct?

11 A. Correct.

12 Q. So you're at the very edge of a residential
13 area, correct?

14 A. Correct.

15 Q. What came first, your home or the tollway?

16 A. The tollway.

17 Q. Okay. What came -- What was there first, the
18 tollway or the canals; do you know?

19 A. I would say what came first was the tollway
20 with four lanes.

21 Q. No, no. In regards to the canal and the
22 railroad --

23 A. I have no idea when the canal was brought in.
24 I know they used to transport stuff 100 years ago, so

1 I'm assuming the canal. But I'm not --

2 Q. So that is historically an
3 industrial-commercial area, correct?

4 A. Correct.

5 Q. So you're right on the border of an
6 industrial-commercial area, correct?

7 MR. DWORSCHAK: I'm going object --

8 BY THE WITNESS:

9 A. I don't know about a border. That's far
10 away.

11 MR. DWORSCHAK: -- he's not an urban
12 planner. I don't think he knows --

13 MR. AZAR: He's looking at a photograph
14 where --

15 BY THE WITNESS:

16 A. The canal's over a mile away. It's not a
17 border. You don't border a mile.

18 THE COURT: I'll allow it. I think you
19 can tell from -- Because he circled the photo, I
20 think --

21 BY THE WITNESS:

22 A. I'm not bordering a mile away. What I'm
23 bordering is the ramp at 92 feet.

24 BY MR. AZAR:

1 Q. All right. Now, the noises that disturb you
2 the most are those related to the trucks?

3 A. Yes.

4 Q. And those are sudden intermittent noises,
5 correct?

6 A. Correct.

7 Q. And the problem you have is you have a
8 difficult time falling -- you wake up in the night?

9 A. The intermittently part is the nighttime, but
10 the problem out in the yard is all three, the roar, the
11 roar when you're --

12 Q. Right. I understand. But the problem you
13 have with sleeping is the intermittent noises that wake
14 you up?

15 A. Yes.

16 Q. Now, where did you live before coming to that
17 area?

18 A. In the city, 63rd and Menard.

19 Q. Was that a densely urban area?

20 A. Yes.

21 Q. Were the noise levels louder there?

22 A. No.

23 Q. Were they loud or quiet?

24 MR. DWORSCHAK: I'm going to object. He

1 didn't take a noise meter reading at his old house.

2 THE COURT: Who's they? I'm sorry.

3 BY MR. AZAR:

4 Q. I mean your house, was the area that you
5 lived in loud or quiet?

6 A. It was quieter.

7 Are we comparing, or are you just
8 asking?

9 Q. I'm just asking, was it quiet or loud?

10 A. It was quiet.

11 Q. Now, when you met with Ms. Anderson -- or you
12 called the first time, you talked about -- you
13 indicated a tire came over the road [sic]?

14 A. Yes.

15 Q. And you also indicated that the wall wasn't
16 built correctly -- or the wall was too low?

17 A. Correct.

18 Q. And she sent you a brochure?

19 A. Correct.

20 Q. Okay. And that's --

21 MR. DWORSCHAK: That's No. 8.

22 BY MR. AZAR:

23 Q. Exhibit No. 8?

24 A. Mm-hmm.

1 Q. Now, you indicated that you made a complaint
2 about the banging noises and Ms. Anderson took care of
3 getting it ground down?

4 A. No. I explained to her it was in the second
5 or third row of the main highway that the trucks were
6 bouncing, and they came out the next day and did
7 something outside of the ramp -- or in the center of
8 the ramp.

9 Q. Do you know if they inspected the road?

10 A. Who?

11 Q. Whoever went out and did the grinding.

12 A. Oh, I have no idea. It was in the early
13 morning, so I'd assume not or else there would have
14 been a back-up.

15 Q. Was there any difference from when they
16 grounded down the road?

17 A. No.

18 Q. Now, you indicated that your understanding of
19 what needs to be done is there has to be -- The wall's
20 currently at 13 feet, 13-and-a-half feet, correct?

21 A. Above road level --

22 Q. 13-and-a-half, that's what the wall is
23 currently, correct? I mean, you can see over the --

24 A. No, 8 foot.

1 Q. They're 8 foot. So that's the -- You only
2 care about the 8-foot-wall wood section?

3 A. No.

4 MR. DWORSCHAK: I think that's a
5 compound question. I think he's confused on what
6 you're referring to.

7 BY MR. AZAR:

8 Q. Okay. I'll back up. Which part of the wall
9 is a problem, the wood or the concrete?

10 A. Both.

11 Q. Okay. How high is the concrete section?

12 A. 8 foot on my property, 13 to the right of me.

13 Q. Okay. So it's 8 feet, and your property
14 adjoins the wall?

15 A. Yes.

16 Q. So if the wall gets built, you're going to
17 have your children playing out there?

18 A. Sure.

19 Q. So the wall's going to be, what, 26 feet
20 tall?

21 A. 26 foot, yes.

22 MR. AZAR: No further questions.

23 THE COURT: Any redirect?

24 MR. DWORSCHAK: Yes, your Honor.

1 REDIRECT EXAMINATION

2 BY MR. DWORSCHAK:

3 Q. Mike, referring to Joint Exhibit No. 3, which
4 Victor talked about in your cross-examination, how far
5 away is the UPS terminal from your home?

6 A. If I had to guess, a mile.

7 Q. And the intermodal facility, is that farther?

8 A. Further.

9 Q. And how far away are the two canals?

10 A. Double that, so far.

11 Q. And of these three items -- the UPS terminal,
12 the intermodal facility, and the two canals -- do you
13 ever hear any noise from them?

14 A. None that I know of.

15 Q. Now, Victor refers to your neighborhood as on
16 the edge of an industrial area.

17 Do you feel that's a fair
18 characterization?

19 I mean, when you look around your
20 neighborhood, all you see is homes, correct?

21 A. Correct.

22 Q. You don't see any factories from your home,
23 do you?

24 A. I see no factories, no stores, no gas

1 stations. No.

2 Q. In fact, your neighborhood is separated from
3 these other facilities by an eight-lane tollway
4 facility, correct?

5 A. Correct.

6 Q. All right. Going back to when you purchased
7 your home, you stated that you just visited it once
8 before your purchased it, correct?

9 A. Yes.

10 Q. And you didn't try sleeping there when you
11 were on your site visit, did you?

12 A. No.

13 Q. And what types of things were in your mind
14 when you were out purchasing a home?

15 A. I was checking the roof. I was looking for
16 central air, how many bedrooms, shopping facilities,
17 things like that.

18 Q. And it's your previous testimony that the
19 noise from the road, although you were aware of it, was
20 not a main concern, correct?

21 A. Correct.

22 Q. And isn't it true that constant noise wears
23 on you?

24 A. Yes.

1 MR. AZAR: I'll object to that. There's
2 no foundation for that.

3 MR. DWORSCHAK: Well, he's already had
4 testimony earlier saying how the constant noise
5 affected him.

6 MR. AZAR: Well, he's making a
7 generalization on that. And actually, the Board has
8 ruled the other way on constant background noises. So
9 unless there's a foundation for it --

10 THE COURT: What was the exact question
11 again?

12 MR. DWORSCHAK: I'm sorry. Could you
13 read it back?

14 (Record read as requested.)

15 MR. DWORSCHAK: Okay. Can I rephrase?

16 THE COURT: Yes.

17 BY MR. DWORSCHAK:

18 Q. Do you feel that constant noise wears on you?

19 A. Yes.

20 Q. Okay. Now, going to the additions that you
21 made to your home, when you purchased the home, did you
22 have any children?

23 A. No.

24 Q. And the additions you made to the home were

1 away from the tollway side of the residence, correct?

2 A. Correct.

3 Q. And you testified as to -- you had a window
4 company come out and take a look at your windows?

5 A. Yes.

6 Q. And what was the cost of fixing those
7 windows?

8 A. The entire house was 2,000. And if I broke
9 it out to the noise areas, it was over 5-.

10 Q. And do you feel it's your duty to fix your
11 house up for noise that you don't generate?

12 A. No.

13 Q. And do you feel that adding additional
14 windows would have made a difference?

15 A. It probably would have helped a very little
16 bit, yes.

17 Q. Now, when you moved in in 1995 -- Isn't it
18 true that the traffic is increasing every year on the
19 tollway system?

20 A. Yes. I found out that it tripled --

21 MR. AZAR: Objection. This is beyond
22 the scope of cross-examination.

23 THE COURT: Well, there was some
24 testimony about how traffic has increased over the

1 decade. I don't remember who raised it.

2 MR. DWORSCHAK: I'm referring to Victor
3 when he talked about if the tollway was already there,
4 his question was -- he answered yes but traffic goes up
5 every year. And I'm asking him to rephrase that.

6 THE COURT: Okay. I'll allow it.

7 MR. DWORSCHAK: Can I have just a
8 minute.

9 THE COURT: Sure.

10 BY MR. DWORSCHAK:

11 Q. Okay. Mike, referring to the porch that you
12 constructed, is it screened in or do you have windows?

13 A. Windows.

14 Q. And why did you use windows instead of
15 screen?

16 A. Weather-proofing, soundproofing.

17 Q. Okay.

18 A. Better quality item.

19 MR. DWORSCHAK: Nothing further, your
20 Honor.

21 THE COURT: Any recross?

22 MR. AZAR: Yes, just a couple.

23

24

1 RECROSS-EXAMINATION

2 BY MR. AZAR:

3 Q. You indicated that the room -- Is that a
4 four-season room?

5 A. Three.

6 Q. Three season. And it extends into the back
7 yard, correct?

8 A. Correct.

9 Q. How many feet?

10 A. 16 -- Or 18 -- 16.

11 Q. Has your property value gone up or down?

12 A. Up.

13 Q. It's gone up substantially, hasn't it?

14 A. From the time I moved in till the appraisal;
15 is that what you're asking?

16 Q. You purchased it for \$145,000?

17 A. 100- -- I think it was 150-, 151-. That may
18 not be the signed contract.

19 Q. No. It's the appraisal. Let me just show it
20 to you. It's Respondent's Exhibit No. 1.

21 MR. AZAR: It's the contract.

22 MR. DWORSCHAK: Yes.

23 BY MR. AZAR:

24 Q. The appraisal's \$150,500, and the purchase

1 price is \$145,000?

2 A. Okay. Yes.

3 Q. And that was in 1995?

4 A. Yes.

5 Q. And then you did a refinance for your house,
6 and the valuation was \$202,000 -- or \$185,000? Excuse
7 me.

8 A. Yes.

9 Q. And that's in Respondent's Exhibit No. 2; is
10 that correct?

11 A. Correct.

12 Q. And then it went up currently -- Or the most
13 recent one, which was 2003, the value is now at
14 \$260,000?

15 A. Correct.

16 Q. And that's reflected in Respondent's Exhibit
17 No. 3 for identification?

18 A. Correct.

19 Q. So the value of your house has increased?

20 A. Yes. As of the first one, when we purchased
21 the home, the reason we bought it in one day, the
22 houses in the area were going for over 200,000. So we
23 were aware that 145- was low. 185- was actually
24 accurate. And we knew we were getting a deal. The

1 gentleman knew we were getting a deal. And that's why,
2 2 years later, it came out to 185- because it was
3 actually almost 170-, 175- at the time we bought it.

4 Q. Now, the appraisal says \$150,500.

5 A. The appraisal always says close to the
6 purchase price. They don't rock the boat.

7 Q. Now, it indicates that the price went from
8 143- to 145-.

9 Why was that? Is that a typo?

10 A. No. That was the earnest money.

11 Q. Okay. Now, did you talk to the owner about
12 the house?

13 A. Yes.

14 Q. What did he tell you about it?

15 A. He said he built it. It's a well-built,
16 sturdy house. He was 85. He made sure he had brick,
17 just story after story. There was nothing he could
18 really tell us. It was just a two-bedroom home in a
19 nice lot.

20 Q. Did he mention the noise?

21 A. No.

22 Q. Did you ask about the noise?

23 A. No.

24 MR. AZAR: I'd ask that 1, 2, and 3 be

1 admitted?

2 MR. DWORSCHAK: No objection.

3 THE COURT: Respondent's Exhibits 1, 2,
4 and 3 are admitted into evidence.

5 (Respondent's Exhibit Nos. 1
6 through 3 were admitted into
7 evidence.)

8 THE COURT: Any --

9 MR. AZAR: No further questions.

10 MR. DWORSCHAK: Real quick, your Honor.

11 THE COURT: Okay.

12 FURTHER REDIRECT EXAMINATION

13 BY MR. DWORSCHAK:

14 Q. Mike, you're not an appraiser, are you?

15 A. No.

16 Q. But you're aware that in this economy, in the
17 Chicago market, most homes have gone up in price since
18 1995?

19 A. Yes. I'm aware that the home was worth 180-
20 in 1997. I put 40,000 into it. It puts me at 210-
21 10, 12 years later, it's worth 60,000 more. I mean, I
22 don't feel that's a good jump. But, yes, in answer to
23 your question.

24 Q. And, in fact, if you weren't next to the

1 tollway, your house could have gone up even more; is
2 that correct?

3 A. There was a line in the appraisal that puts a
4 house next to a liquor store and a main street as more
5 desirable than mine in the same appraisal.

6 MR. DWORSCHAK: Thank you.

7 Nothing further.

8 THE COURT: Mr. Azar, anything further
9 on that from you?

10 MR. AZAR: Just one question.

11 FURTHER RECROSS-EXAMINATION

12 BY MR. AZAR:

13 Q. The appraisal with the purchase, since you
14 are not an appraiser, was \$150,000, correct --
15 \$150,500; is that correct? The initial appraisal, that
16 was the valuation that was given?

17 A. I don't have it, but --

18 Q. That's No. 1.

19 MR. DWORSCHAK: Do you want to show him,
20 Victor?

21 MR. AZAR: (Nodding.)

22 BY THE WITNESS:

23 A. Oh, there it is, yes.

24 Q. So that's the value that a certified

1 appraiser gave to the house, correct?

2 A. Correct.

3 Q. You thought it was worth 185,000, correct?

4 A. Yes.

5 MR. AZAR: Nothing further.

6 THE COURT: Any --

7 MR. DWORSCHAK: I have nothing further.

8 THE COURT: Okay. Thank you very much,

9 Mr. Petrosius.

10 (Witness excused.)

11 THE COURT: I would like to take about a

12 5-minute recess or so.

13 MR. DWORSCHAK: No objection.

14 (A short break was had.)

15 THE COURT: All right. Mr. Dworschak,

16 you may call your next witness.

17 MR. DWORSCHAK: I call Darla Petrosius.

18 THE COURT: Will the court reporter

19 please swear in the witness.

20 (Witness sworn.)

21

22

23

24

1 WHEREUPON:

2 DARLA G. PETROSIUS,
3 called as a witness herein, having been first duly
4 sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. DWORSCHAK:

7 Q. Darla, could you state your name and spell
8 it, for the record, please?

9 A. Sure. Darla Petrosius; D-A-R-L-A, last name
10 P-E-T-R-O-S-I-U-S.

11 Q. And you're the wife of Mike Petrosius?

12 A. Yes.

13 Q. And together, you bought the home at
14 7335 Maridon Road, LaGrange, Illinois?

15 A. Yes.

16 Q. And you were present when your husband
17 testified, correct?

18 A. Yes.

19 Q. And you saw the pictures that I showed as
20 exhibits --

21 A. Yeah.

22 Q. -- depicting your neighborhood and the
23 property in question?

24 A. Yes.

1 Q. And do you believe they are a fair
2 representation of what you experience there?

3 A. Yes.

4 Q. Now, as you heard your husband's testimony,
5 I'll try to make yours a little bit brief, but I
6 certainly want you to talk about how it's affected you
7 and your family. But I will be asking you some of the
8 same questions.

9 A. Okay.

10 Q. When you heard your husband testify earlier,
11 do you agree with the substance of what he said?

12 A. Yes.

13 Q. And how it affects your life?

14 A. Mm-hmm, yes.

15 Q. And if I asked you those same questions,
16 would you concur on his answers?

17 MR. AZAR: I would object to that.
18 That's kind of overbroad.

19 MR. DWORSCHAK: I'm trying to save a
20 little time by not asking her the exact same questions
21 showing --

22 THE COURT: Is that okay with you, or do
23 you want him to go through --

24 MR. AZAR: Well, as long as it's

1 preliminary, I mean, it's kind of redundant then. I
2 don't know if he -- When you're talking about how it
3 impacts the family, that's one thing. How it impacts
4 an individual is kind of different.

5 MR. DWORSCHAK: I'll strike it. I'll
6 ask her direct questions, then.

7 THE COURT: Okay. All right.

8 BY MR. DWORSCHAK:

9 Q. Now, Darla how many times did you visit the
10 house before you bought it?

11 A. Once.

12 Q. And when you looked around the house -- or
13 the yard, did you see the noise wall?

14 A. Yes, I did.

15 Q. And what did you think about that noise wall?

16 A. Well, I was concerned about the tollway, so I
17 thought to myself, Well, there's a sound wall there. I
18 guess it's doing its job. So I kind of overlooked it
19 and looked at the yard and the house, and we went
20 forward from there.

21 Q. Now, some people would question you, saying,
22 Well, why would you buy a house next to the tollway.

23 So why did you?

24 A. As I said, I saw a sound wall. I knew the

1 purpose of a sound wall. And I assumed that the
2 Tollway knew what they were doing when they put it up.
3 So I dismissed my concerns and focused in on the area,
4 the home, and what I was looking for.

5 Q. And when you purchased your home, what kind
6 of concerns were in your mind?

7 A. Oh, the yard, the quality of the house, the
8 size, I liked a ranch, different concerns like that.

9 Q. And at the time you purchased the home, you
10 didn't have any children, correct?

11 A. Correct.

12 Q. Okay. And you have children now?

13 A. Yes.

14 Q. And their names and ages?

15 A. Courtney is 8, and Morgan is 6 right now.

16 Q. And when did you first start noticing the
17 loud noises coming from the tollway?

18 A. The first month we lived there.

19 Q. And what types of noises did you hear?

20 A. Well, there was a constant noise of a roar;
21 and then, of course, there was significant noises such
22 as, you know, bang- -- metal banging, revving, what we
23 called the Jake brakes, you know, different significant
24 noises coming from the tollway.

1 Q. And when you say "Jake brakes," you're
2 referring to brakes of a semitruck, correct?

3 A. Yes.

4 Q. Did you hear any other kind of odd noises?

5 A. Not that I can remember.

6 Q. Now, does the noise from the tollway change
7 through the year depending on the season or which way
8 the wind is blowing?

9 A. Yeah. It's -- It changes through the
10 seasons, the days, the different weather, but it's
11 still a nuisance every day, every minute.

12 Q. So no matter what time of year, there's
13 always a noticeable noise or noises coming from the
14 tollway?

15 A. Yes.

16 Q. And how has this noise from the tollway
17 affected you?

18 A. Well, you know, besides the sleeping
19 disruptions, which is, you know, my most concern
20 especially as a mother, and the use of our yard, I
21 don't enjoy being in our yard most of the time. So
22 overall, the quality of life and changing of our
23 lifestyles is significantly affected by this noise.

24 Q. And referring you to some of the exhibits

1 that were entered during your husband's testimony,
2 Complainants' Exhibit No. 5 and Complainants' Exhibit
3 No. 2, could you kind of describe for the hearing what
4 those pictures show and how that affects you?

5 A. Well, our lot is 100 feet by 255 feet wide.
6 Our house sits on the northern section of this, and
7 it's wider than it is deeper. So the most part of our
8 usable yard is alongside the tollway.

9 So our first viewing of the house,
10 the yard we saw was nice and large. Unfortunately, the
11 most significant part of our yard is not usable or
12 comfortable to use because of the tollway noise.

13 Q. And isn't it true that from the bedroom
14 window you can actually see the tollway pavement?

15 A. Yes. From most areas of our house, you can
16 see the tollway pavement.

17 Q. And when I mean [sic] total, you can actually
18 see the whole vehicle as well as the tires hitting the
19 pavement?

20 A. Yes.

21 Q. And the wall a little bit to the right of
22 your property where it goes up, you can still actually
23 see vehicles even with that increased height; is that
24 correct?

1 A. Yeah, more so the trucks, we can see, at
2 least half of them.

3 Q. And at all points along the wall, you can see
4 the smokestack and hear the smokestack of a semitruck,
5 correct?

6 A. Yes.

7 Q. You mentioned how the noise has affected the
8 use of the yard. Your husband talked about how you
9 tend not to use certain parts of the property. Is that
10 correct?

11 A. Correct.

12 Q. And when you have social gatherings, you tend
13 to do what differently?

14 A. Well, we stay to the areas that are quietest,
15 and usually it's affected by, you know, the blocking by
16 our house or our garage. Otherwise, we can't hear
17 someone that's 5 feet from us.

18 Q. And has this noise limited the ability for
19 you to have social gatherings at your home?

20 A. Yeah, it limits it.

21 Q. But you still have some, correct?

22 A. Yeah, once in a while.

23 Q. Now, going back to your plans to keep the
24 noise out of the house, do you tend to keep your

1 windows closed?

2 A. Yes, definitely.

3 Q. And on a nice day when you don't need air
4 conditioning, do you keep your windows open or you
5 close them because of the noise?

6 A. We typically keep them closed.

7 Q. Do you run your air conditioner more than you
8 would like?

9 A. Yes.

10 Q. And running the air conditioner costs you
11 money, doesn't it?

12 A. Oh, yeah.

13 Q. So on a nice day, if you didn't have the
14 noise, you could have the windows open; but because of
15 the noise, you run the air conditioner and close the
16 windows, correct?

17 A. More than I would like.

18 Q. How has the noise affected your life inside
19 the house?

20 A. I think significantly is the sleep
21 interruptions. Otherwise, we tend to hang on to the
22 northern part of our house which is away from the
23 highway.

24 Q. And you mentioned that the noise affects your

1 sleep?

2 A. Yes.

3 Q. How does it affect your sleep?

4 A. Mainly disruptions during the night. It's a
5 very rare night that I'm not awakened by some sort of a
6 significant noise.

7 Q. And how many times would you say that your
8 sleep has been disturbed by the noise?

9 A. As a percentage or number of days?

10 Q. Number of days. Is it every night, most
11 nights?

12 A. Most nights.

13 Q. So the noise from the tollway has
14 substantially and frequently interfered with your
15 sleep?

16 A. Yes.

17 Q. Do you feel that you seldom get a full
18 night's rest?

19 A. Yes.

20 Q. Okay. Referring to you trying to sleep how
21 is the noise from the tollway different at night versus
22 the noise during the day?

23 A. Well, when you're trying to sleep and, you
24 know, falling asleep, staying asleep, whatever, any

1 significant loud noise is startling whereas if you're
2 up and you're doing things, I suppose I don't notice it
3 as much.

4 Q. Now, I had asked your husband earlier about
5 the things you had done to mitigate the noises; the
6 trees, the insulation, the noise machine.

7 Is there anything that I may have
8 missed?

9 A. Not inside the house, no.

10 Q. Now, Darla, you mentioned you have two
11 daughters, Courtney and Morgan.

12 A. Mm-hmm.

13 Q. Does this noise affect their sleep?

14 A. Yes. The daughter that has the bedroom
15 alongside the tollway side, which would be the south
16 side bedroom.

17 Q. Which daughter is that?

18 A. That's Morgan. She's 6.

19 Q. And is she often awakened by the noise?

20 A. Not as often as Mike and I but enough where
21 it's a significant concern for a mother anyhow.

22 Q. And has this noise affected your daughters'
23 lives adversely?

24 A. Only when I don't let them go outside because

1 I can't hear them call me or what have you. I have to
2 be out there with them, you know, just --

3 Q. Do your children use all of your yard?

4 A. They use the back mostly.

5 Q. Okay. I'm showing you Complainants' Exhibit
6 No. 8 which is the Tollway's noise policy. Do you
7 recognize that document?

8 A. Yes.

9 Q. And when did you first see that?

10 A. When it was mailed to us.

11 Q. And have you read it, and do you understand
12 it?

13 A. I went through it with Mike.

14 Q. Okay. And do you feel that this policy
15 covers the home?

16 A. Yes.

17 Q. And how do you feel that it does?

18 A. Well, in reading through this, in their own
19 policy it says, Sites eligible for traffic noise study,
20 and we -- You know, our conditions are all three. So I
21 thought that it would apply to us.

22 Q. And you were aware when Mike was contacting
23 the Tollway; he kept you informed of his efforts,
24 correct?

1 A. Yes.

2 Q. And you're aware of what he was asking for in
3 terms of wall lengthening and adding height to the
4 wall?

5 A. Yes. I read the recommended report.

6 Q. And do you agree with those additions?

7 A. I agree with the recommendations to this
8 expert. That's all I can ...

9 Q. Do you believe it would help?

10 A. I believe so.

11 Q. Do you feel that the Illinois Tollway has
12 been responsive to your needs?

13 A. No.

14 Q. And how is that?

15 A. I don't think that -- you know, that what we
16 were asking for and the responses and different
17 meetings, that we were given a fair hearing or a fair
18 voice.

19 Q. Now, you use the tollway, don't you?

20 A. Yes.

21 Q. And you're aware of its importance?

22 A. Yeah.

23 Q. But you're not asking for the Illinois
24 Pollution Control Board to shut down the tollway to

1 help your noise, are you?

2 A. No.

3 Q. You're just asking for an additional sound
4 wall; is that correct?

5 A. Yes, the correct sound wall.

6 Q. And do you feel, overall, that the tollway
7 noise has adversely affected your overall quality of
8 life?

9 A. Yes.

10 Q. And because the Tollway was unresponsive to
11 your needs, you and your husband filed your complaint;
12 is that correct?

13 A. Yes.

14 Q. And if the Tollway had put up a higher and
15 longer wall in the first place, we wouldn't be here,
16 correct?

17 A. I would hope not.

18 MR. DWORSCHAK: Nothing further.

19 THE COURT: Okay. Mr. Azar.

20 CROSS-EXAMINATION

21 BY MR. AZAR:

22 Q. You previously indicated that you liked the
23 area the house was located in?

24 A. I liked -- Yes.

1 Q. And that was one of the key factors in your
2 selection of the home?

3 A. Yes.

4 Q. And you noticed the wall, but other factors
5 convinced you that the house was worth buying?

6 A. I saw the wall. I assumed it was doing its
7 job. I was not an expert.

8 Q. But you went outside, correct?

9 A. For a brief time, yes.

10 Q. And you heard the traffic noise?

11 A. Yeah.

12 Q. And you saw the sound wall?

13 A. Yes.

14 Q. You went in the bedroom?

15 A. Yes.

16 Q. You looked out the window?

17 A. Yeah.

18 Q. You saw the pavement on the road. You saw
19 the trucks. Correct?

20 Everything you're complaining about
21 now, you saw it there?

22 A. I wasn't paying attention to all that.

23 Q. But was it there?

24 A. I don't know.

1 Q. Was there anything different from when you
2 looked at it than what it is today?

3 A. Except for the trees we put in, no.

4 Q. So get rid of the trees.

5 A. Okay.

6 Q. That's what was there, correct?

7 A. Yes.

8 Q. So you would have had an even clearer view
9 then than you would have now of the roadway?

10 A. Correct.

11 Q. And you didn't notice that?

12 A. I didn't notice what?

13 Q. The trucks driving by.

14 MR. DWORSCHAK: Objection. She's
15 already testified she had a lot of things on her mind
16 when she looked at the house.

17 THE COURT: Well, she can answer it.

18 BY MR. AZAR:

19 Q. You didn't notice the trucks driving by?

20 A. I did not notice, no.

21 Q. But after you moved in, you noticed them?

22 A. Yes.

23 Q. Now, the house is on an elevated -- on a
24 little hill, correct?

1 A. Yes.

2 Q. So the back yard or the side of the yard is
3 actually lower than where the house is, correct?

4 A. Yes.

5 Q. So if you're in that area, can you see the
6 trucks?

7 A. Yes.

8 Q. So when you're up against -- by the wall, you
9 can see trucks?

10 A. Yes.

11 Q. Can you see the pavement?

12 MR. DWORSCHAK: I'm not sure if she
13 understands the question.

14 BY THE WITNESS:

15 A. I can't see pavement.

16 THE WITNESS: I'm sorry. What --

17 MR. DWORSCHAK: Victor, I think she's
18 confused as to where she is in relation to the wall.

19 BY MR. AZAR:

20 Q. Okay. In that area --

21 A. 130 feet by 100 feet.

22 Q. From this side -- you're over here
23 (indicating), which would be the side of the house --
24 you can see the road?

1 A. From -- If I'm standing next to the wall?
2 Q. No, in that grassy area on your property.
3 A. I would say within 20 feet of the wall, I
4 could see the trucks.
5 Q. Is it quieter or louder over there?
6 A. It's probably about the same.
7 Q. So are there quieter and louder places on
8 your property?
9 A. The only quieter place, by a little bit, is
10 behind our house on the north side where the cement
11 building is blocking, you know ...
12 Q. You don't notice any difference in any
13 different parts of your lot?
14 A. I haven't paid attention. It's always noisy.
15 Q. Now, is it noisy all the way to the end of
16 Maridon Road?
17 A. Yes.
18 Q. And do you know where that noise is coming
19 from?
20 A. I assume, the tollway. It's the same noise
21 by my house.
22 Q. Or is it from 55?
23 A. No. It's from the tollway.
24 Q. Now, you indicated that you can't -- you

- 1 don't use the house the way you'd like to, correct?
- 2 A. Mm-hmm.
- 3 Q. What would you like to do with the house?
- 4 A. I would like to spend more time in my big
- 5 yard.
- 6 Q. Specifically doing what?
- 7 A. Playing with my kids.
- 8 Q. Okay. So you don't play with the kids in the
- 9 back yard?
- 10 A. In the side yard.
- 11 Q. Okay. So you -- But you play with them in
- 12 the back yard?
- 13 A. Sometimes, not as much as I'd like.
- 14 Q. Okay. Are you at home all the time?
- 15 A. No. I work.
- 16 Q. Okay. Now, what windows are impacted the
- 17 most by the noise?
- 18 A. Well, the bedrooms are in the south end of
- 19 our house, which is my husband and I's bedroom and my
- 20 6-year-old daughter's bedroom.
- 21 Q. Right. So those two -- Those three windows
- 22 facing the roadway, are those where the noise comes in?
- 23 A. When I'm sleeping, yes.
- 24 Q. Okay. What about the other rooms?

1 A. The other rooms, you can still hear the
2 tollway.

3 Q. The family room, you can hear the tollway?

4 A. Yes. Yes, you can hear it.

5 Q. I want to show you what's marked as
6 Respondent's No. 3?

7 MR. DWORSCHAK: Okay. The layout of the
8 home?

9 MR. AZAR: The layout of the home in the
10 back.

11 BY MR. AZAR:

12 Q. So the noise is by the bedrooms, correct?

13 A. The noise is everywhere.

14 Q. The noise is throughout the entire house?

15 A. Yes.

16 Q. Same levels?

17 A. No.

18 Q. But you can hear it?

19 A. Yes.

20 Q. Is it louder in the bedrooms?

21 A. Yes.

22 Q. Louder in the kitchen or less loud in the
23 kitchen?

24 A. Less loud in the kitchen.

1 Q. How about in the family room?

2 A. About the same as the kitchen. The back of
3 the house faces the tollbooth.

4 Q. Now, did you go meet with the Tollway
5 authorities, the people from the Tollway?

6 A. Only at the deposition we were requested by
7 you.

8 Q. So you never met with Ms. Anderson or
9 Mr. Zuccherro or anyone else from the Tollway?

10 A. No.

11 Q. So how do you know how those meetings went?

12 A. My husband told me all about them.

13 Q. Okay. So you have no firsthand knowledge of
14 whether things went well or bad, correct?

15 A. No.

16 Q. Now, you read the traffic study, the traffic
17 noise policy?

18 A. Most of it.

19 Q. Okay. And you said the three factors that
20 are listed are eligible for you?

21 A. From how I read them, yeah.

22 Q. So that would be the, Sites eligible for
23 traffic noise study, correct?

24 A. Yes.

1 Q. So at this point in time, there are new lanes
2 being built?

3 A. No.

4 Q. Okay. So that doesn't apply?

5 A. Not that I know of.

6 Q. Okay. So that doesn't apply?

7 A. Right.

8 Q. So the area is a residential area, you're
9 impacted by, correct?

10 A. What number is that?

11 Q. Number 2.

12 A. Well, let's go back to No. 1. It says,
13 Reconfiguration of a toll-collection plaza.

14 Q. Was that before or after you were there, the
15 plaza --

16 A. While we were there, the plaza was there, but
17 there were I-Pass lanes put in.

18 Q. Was that an additional lane or a conversion
19 of a lane?

20 A. I don't know. I just saw people working
21 there for a length of time.

22 Q. So do you know whether a new lane was added?

23 A. I do not know that for sure.

24 Q. Okay. So if no lane was being built, how

1 would that -- how would that qualify for you?

2 A. Well, let's define "reconfiguration of a
3 toll-collection plaza." That doesn't --

4 Q. Do you know what the definition would be?

5 A. No. Do you?

6 Q. Yeah, I do, but I'm not -- That will be
7 later.

8 A. Okay.

9 Q. So you don't really know --

10 A. "Reconfiguration," in my mind, is different
11 than adding a lane or -- "Reconfiguration" is anything
12 done differently.

13 Q. So your reading of this is whenever anything
14 is done to the roadway, a new noise study has to be
15 conducted?

16 A. Your wording says --

17 Q. Is that the way you read it?

18 A. -- A reconfiguration of a toll-collection
19 plaza by the addition of an I-Pass or an I-Pass express
20 lane. The I-Pass express lanes were not there when we
21 moved in.

22 MR. DWORSCHAK: Your Honor, I'm going to
23 object. It was asked and answered. I don't know how
24 many times we're going to go through this one sentence.

1 THE COURT: Where -- Are you making or
2 getting to a point?

3 MR. AZAR: Well, I was trying to
4 understand what she was trying -- what she was -- what
5 her understanding of it is.

6 THE COURT: Okay.

7 BY MR. AZAR:

8 Q. So that's how you -- you basically meet that
9 criteria?

10 A. I believe so.

11 Q. Okay. And when was that done?

12 A. I can't recall.

13 Q. Last year?

14 A. I don't know.

15 Q. Okay. Was it 2 years ago?

16 You have no recollection?

17 A. It was in the last 10 years.

18 Q. Well, I understand that. But was it before
19 you filed your suit or after you filed your suit?

20 A. I can't recall.

21 Q. Do you know if the abatement can be achieved
22 cost effectively?

23 A. What's an abatement?

24 Q. The noise reduction.

1 A. Could you rephrase the question?

2 Q. Okay. You said that the criteria is all met
3 here, so I'm going to the next section here.

4 Another section says, Sites not
5 eligible for traffic noise abatement.

6 A. Mm-hmm.

7 Q. It says, Abatement cannot be achieved in a
8 cost-effective manner.

9 Do you know if that can be done
10 effectively -- cost effectively or not?

11 A. No, I don't know that.

12 MR. DWORSCHAK: Your Honor, I'm going to
13 object. She didn't write this policy. I don't know
14 why she has to do --

15 MR. AZAR: Well, you elicited from her
16 that the criteria was met, so I am cross-examining her
17 on her opinion. And if she's going to testify she
18 doesn't know, well, that's fine. Then I'll end the
19 questioning. But she gave the opinion that she meets
20 the criteria based on her understanding, and so I'm
21 exploring it.

22 MR. DWORSCHAK: And she explained to
23 you -- In, Sites eligible for traffic noise study, she
24 gave you a specific example where she felt they were

1 eligible.

2 MR. AZAR: And there's another section
3 which she read which says, Sites not eligible.

4 THE COURT: I'll allow it.

5 BY MR. AZAR:

6 Q. So do you know whether the noise reduction
7 could be done cost effectively?

8 A. No.

9 Q. Okay. Do you know if any -- the changes
10 would pose a threat to safety or hinder maintenance or
11 create operational problems? Do you know that?

12 A. No.

13 Q. So basically you're not real sure. You think
14 you should qualify but you don't know for sure; is that
15 a fair assessment?

16 A. Yes.

17 Q. Okay. Now, why would you say the Tollway
18 didn't treat you fairly?

19 A. I don't think I said they didn't treat us
20 fairly. I just said I don't think they gave us a
21 fair -- I can't think of the word -- hearing or they
22 didn't hear us out. They didn't give us the time of
23 day, that kind of thing.

24 Q. So if they've spoken with you or your husband

1 several times --

2 A. My husband.

3 Q. Okay. (Continuing.) -- is that reasonable?

4 A. Yeah, it is, but I don't think they were --
5 you know, they didn't concern themselves with our
6 problems.

7 Q. And did they -- Do you know if they discussed
8 whether or not the policy -- there is a sound wall
9 policy that has to be followed uniformly for
10 everybody?

11 A. I'm sorry. Rephrase that question.

12 Q. Were you informed that there's a sound policy
13 that has to be enforced for everybody equally?

14 A. I don't recall that.

15 Q. Okay. Do you think you should be treated
16 better than anybody else?

17 A. No.

18 Q. You should be treated the same as everybody
19 else?

20 A. Yep.

21 Q. So if there are 55 miles of tollway that have
22 no noise walls at all, should they get noise walls,
23 too?

24 A. If their noise in their yard is unbearable as

1 ours, yes.

2 Q. Okay. What if the policy doesn't allow for
3 it?

4 A. I don't know.

5 Q. Aren't you being treated differently?

6 A. I don't know.

7 MR. DWORSCHAK: I'm going to object. He
8 asking the witness to comment on Tollway policy again.
9 He's asking her --

10 MR. AZAR: All I'm asking her is about
11 the fairness. She said it was unfair, and the question
12 is, Well, what is fair? And we're going through that.
13 Is it fair, in her opinion.

14 THE COURT: Well, she did testify that
15 she did not feel they were treated fairly, so I'll
16 allow it.

17 BY MR. AZAR:

18 Q. So they told you -- Did they tell you whether
19 or not the policy was being followed?

20 A. I'm sorry. Say that again.

21 Q. Were you ever told that the Tollway policy
22 was being followed?

23 A. No.

24 Q. Was your husband, to your knowledge?

1 A. I don't recall.

2 MR. AZAR: I have nothing further.

3 THE COURT: Redirect?

4 REDIRECT EXAMINATION

5 BY MR. DWORSCHAK:

6 Q. Darla, when you visited the home before you
7 purchased it, you didn't try taking a nap there or
8 sleep there, did you?

9 A. No.

10 Q. So it wasn't until you moved in and tried
11 sleeping that you were aware of how that would affect
12 you, correct?

13 A. Yes. That was our first noticeable noise
14 problem.

15 Q. And going back to the situation of the home,
16 I'm going to refer you to Complainants' Exhibit No. 1.

17 A. Okay.

18 Q. And I think -- In terms of Victor's question
19 about the rise of the home, I think that picture gives
20 a nice portrayal -- and correct me if I'm wrong -- of
21 the back yard -- The side yard is flat, and then
22 immediately, for the home, there's a quick rise of
23 about 4 to 5 feet; is that fair?

24 A. Yes.

1 Q. Okay. Now, in terms of the 75th Street
2 interchange toll plaza that's near your home that's
3 also displayed in Complainants' Exhibit No. --

4 A. This one?

5 Q. Yep. (Continuing.) -- Number 7, is that the
6 toll plaza where they added the I-Pass express lane?

7 A. I don't know if they added a lane, but it was
8 not always express. There was not I-Pass when we moved
9 in. It was just regular toll lanes.

10 Q. And the basic premise of an I-Pass lane is,
11 the vehicle doesn't have to stop?

12 A. Right. It's express.

13 Q. So if a vehicle's coming on this plaza --
14 coming towards this plaza and they have I-Pass, they
15 zoom through that plaza, correct?

16 A. Yes.

17 Q. And that means they'd be driving faster near
18 your home; is that correct?

19 A. Yes.

20 Q. And a faster car creates more noise?

21 A. I would say so.

22 Q. Okay. Referring back to Complainants'
23 Exhibit No. 8, which is the Tollway's noise policy --

24 A. Yes.

1 Q. -- it was your testimony that the I-Pass
2 express lanes were covered under their policy --

3 A. That's how --

4 Q. -- in your belief?

5 A. That's how I would interpret that policy
6 statement.

7 Q. And in your testimony, you were asked whether
8 the abatement could be achieved in a cost-effective
9 manner?

10 A. Yes.

11 Q. Wouldn't you say that the term "cost
12 effective" is based upon the person writing the policy?

13 A. I suppose it would be subjective, yes.

14 Q. And if I was a car dealer and I told you, No
15 best offer accepted, I decide as the car dealer what
16 the best offer is, correct?

17 A. True.

18 Q. And that's the same as the Tollway; they get
19 to decide what's cost effective, not you. Is that
20 correct?

21 A. True.

22 Q. And the Tollway policy itself, it's not law,
23 is it, that you're aware of?

24 A. Not that I'm aware of.

1 Q. It was written by the Tollway, correct?

2 A. Yep.

3 MR. DWORSCHAK: Could we have a minute?

4 THE COURT: Sure.

5 (Brief pause.)

6 MR. DWORSCHAK: Nothing further.

7 THE COURT: Okay. Anything further.

8 MR. AZAR: Just a couple of questions.

9 RE CROSS-EXAMINATION

10 BY MR. AZAR:

11 Q. If regards to the I-Pass only lanes you

12 indicate -- Let me back up.

13 Your biggest complaint is the sound

14 from the trucks, correct?

15 A. Sounds from numerous vehicles on the tollway,

16 yes.

17 Q. Okay. So the trucks aren't particularly your

18 problem?

19 A. They're a big part of it, yes.

20 Q. And what particular part of it, the revving

21 of the engines? Is that a problem that you hear?

22 A. The revving of the engines, the Jake or

23 engine braking, the bouncing of empty trailers.

24 Q. Now, when do trucks rev?

1 A. I would assume when they're trying to pick up
2 speed.

3 Q. And when they're slowing down?

4 A. I would assume that would be the engine
5 brake.

6 Q. Okay. So you hear at the stop sign at the
7 toll plaza before, the engines Jake- -- the trucks
8 Jake-braking and then paying the toll and then revving
9 the engine as they leave, correct?

10 A. I don't know.

11 Q. Okay.

12 A. I mean, I haven't stood there and paid that
13 much attention to it.

14 Q. So you don't know what -- the noise that's
15 coming from the ramp is, then?

16 A. Well, there's numerous noises from the ramps.
17 I've never really stood out there and tried to see what
18 exactly the noises are and when they are and ...

19 Q. So the I-Pass may actually be better for your
20 noise?

21 A. I don't know that either.

22 Q. Okay. You don't know if it made it worse or
23 better, right?

24 A. No, I don't.

1 MR. AZAR: Okay. Nothing further?

2 THE COURT: Anything?

3 FURTHER REDIRECT EXAMINATION

4 BY MR. DWORSCHAK:

5 Q. I just want to clarify the Jake-braking
6 question.

7 You hear Jake brakes on the road,
8 and it's not up to you to determine whether they come
9 from the ramp or the mainline. You hear them. They
10 affect you. Is that correct?

11 A. Correct.

12 MR. DWORSCHAK: Nothing further.

13 THE COURT: Anything further for you,
14 Mr. Azar.

15 MR. AZAR: No, thank you.

16 THE COURT: Okay. Thank you very much,
17 Mrs. Petrosius.

18 (Witness excused.)

19 MR. DWORSCHAK: Could we take a
20 couple-minute break before the next witness? Just 5 --

21 THE COURT: Do you have another witness
22 here?

23 MR. DWORSCHAK: Yes. We have two more
24 witnesses.

1 THE COURT: Oh, okay. All right, yeah.
2 Sure. Let's take another 5-minute recess.

3 MR. AZAR: Just so it's clear, he is
4 going to call both of them? They are from the Tollway,
5 and then I'll just piggy-back on just so we don't have
6 to call them again tomorrow.

7 THE COURT: Okay. Great. Works for me.

8 MR. DWORSCHAK: That's fine.

9 (A short break was had.)

10 THE COURT: Mr. Dworschak, you may call
11 your next witness.

12 MR. DWORSCHAK: We call Zona Anderson.

13 THE COURT: Okay. Would the court
14 reporter, please, swear in the witness.

15 (Witness sworn.)

16 WHEREUPON:

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

20 DIRECT EXAMINATION

21 BY MR. DWORSCHAK:

22 Q. Ms. Anderson, could you state your name and
23 spell it for the record, please?

24 A. Zona, Z-O-N-A, Bunny, B-U-N-N-Y, Anderson,

1 A-N-D-E-R-S-O-N.

2 Q. And is it true most people refer to you as
3 Bunny?

4 A. Yes.

5 Q. And would it be all right if I called you
6 Bunny?

7 A. Oh, please.

8 Q. Bunny, could you tell us a little bit about
9 your educational background?

10 A. I've got degrees in political science and
11 journalism from the University of Kentucky and a
12 master's from Indiana University.

13 Q. And what is your current position at the
14 Illinois Tollway?

15 A. I'm the liaison for engineering projects for
16 the Illinois Tollway.

17 Q. And what does that job entail?

18 A. Basically it's a conduit of a channel of
19 communication, if you will, for design, planning,
20 maintenance, and construction with the 102
21 municipalities and 35 townships that bound the Illinois
22 tollway system. I communicate externally and
23 internally.

24 Q. And what department of the Tollway do you

1 work out of?

2 A. I am currently in the planning department.

3 Q. All right. Now, you understand the subject
4 of this hearing today, right?

5 A. Yes, I do.

6 Q. And I've laid out before you a number of the
7 exhibits which depict the residence in question. I'm
8 going to give you a minute to take a look at them.

9 A. I'm familiar with them, Mr. Dworschak.

10 Q. Fine. And they are true and accurate --

11 A. Yes.

12 Q. -- portrayals of the conditions there?

13 A. Yes.

14 Q. Now, earlier, we talked about the Tollway's
15 noise policy --

16 A. Yes.

17 Q. -- which I believe is --

18 A. Right here, Exhibit No. 8.

19 Q. -- Exhibit No. 8?

20 A. Mm-hmm.

21 Q. Does that document look familiar to you?

22 A. Yes, it does.

23 Q. And, in fact, you hand that out to a lot of
24 folks, don't you?

1 A. Yes, I do.

2 Q. Okay. And you're pretty much well-versed in
3 that policy; is that correct?

4 A. It is my intent to do so, yes.

5 Q. And how would you characterize the noise
6 policy?

7 A. It is basically the same policy set by the
8 guidelines by the Federal Highway Administration, and
9 it's the same guidelines that the Illinois Department
10 of Transportation follows. And it is the guidelines by
11 which we determine our noise abatement throughout our
12 entire roadway system.

13 Q. And when you refer to the federal noise
14 guidelines --

15 A. Yes.

16 Q. -- the key word in that is "guideline,"
17 correct?

18 A. They are our guidelines, yes.

19 Q. And when I refer to them as "guidelines,"
20 it's because, unless you accept federal funds for a
21 project, the guidelines don't have any force; is that
22 correct?

23 A. Not being an attorney, I don't know how to
24 address that question.

1 Q. Okay. Does the Tollway accept any federal
2 money that you're aware of?

3 A. Not to my knowledge.

4 Q. And when the Tollway builds either a noise
5 wall or roadway, you use funds that you derive from the
6 collection of tolls, correct?

7 A. Solely by tolls, yes, sir.

8 Q. In your job as public liaison, how many
9 times -- or how many people have you met with to talk
10 about the noise generated from the tollway?

11 A. Over a period of years, period of months,
12 period of weeks?

13 Q. As long as you've been in that position.

14 A. Directly on the phone or in person?

15 Q. Any kind of contact, whether you met with
16 them, whether you talked to them on the phone.

17 A. An average of maybe about one or two calls a
18 month.

19 Q. Okay. Have you ever met Mike or Darla
20 Petrosius?

21 A. I met Mr. Petrosius.

22 Q. And how did you come about meeting him?

23 A. He made a call to our office in May of '03,
24 and through several phone calls, he indicated the

1 desire to meet with us directly at the Tollway. And I
2 arranged such a meeting in August of '03.

3 Q. And what was his concern when he contacted
4 you?

5 A. Well, his initial concern was a tire that had
6 come across the pavement onto his property. Then he
7 segued into a conversation regarding noise emanating
8 from the roadway, specifically noise from the mainline
9 pavement. And so we sent out the maintenance
10 department to investigate.

11 Q. And what did the maintenance yard [sic]
12 discover?

13 A. They found an asphalt joint that needed to be
14 repaired on the roadway, and that was done within
15 24 hours.

16 Q. And could you explain to us what an asphalt
17 joint is?

18 A. Again, as a say, I defer to the experts on
19 it. I'm not a maintenance engineer, so I can only tell
20 you what --

21 Q. In terms of a layman, what is it?

22 A. It would be a bump in the road.

23 Q. Okay. And at these meetings with
24 Mr. Petrosius either by phone or in person, you

1 informed him of the Tollway's noise policy?

2 A. On numerous occasions, yes.

3 Q. And you tried to explain to him what it
4 meant?

5 A. Yes. I explained that to him, and I also
6 sent him a copy of the policy twice.

7 Q. And did you make any notes regarding your
8 conversations with Mr. Petrosius?

9 A. Yes, I did.

10 MR. DWORSCHAK: Okay. Your Honor, I'm
11 marking Exhibit -- Complainants' Exhibit No. 9 for
12 identification.

13 MR. AZAR: I'd object to her notes. I
14 mean, she can testify -- I don't know whether the notes
15 of conversations and summaries are really appropriate.
16 I mean, she can testify they're just there for her
17 recollection. I don't know if they're business
18 records -- I don't think they're business records.

19 THE COURT: Well, what are -- Is it
20 something she can testify to?

21 MR. DWORSCHAK: Well, I'd like her to
22 review them to refresh her memory, and then I may enter
23 them.

24 If you want to object --

1 MR. AZAR: I have no objection to him
2 showing them to her to refresh her recollection, but I
3 think the testimony is better than having them --
4 unless she's being impeached.

5 THE COURT: But you haven't moved it
6 yet?

7 MR. DWORSCHAK: No, I haven't moved on
8 it yet.

9 THE COURT: Okay.

10 BY MR. DWORSCHAK:

11 Q. I'm showing you Complainants' Exhibit No. 9.

12 A. Yes.

13 Q. Do you recognize that document?

14 A. Yes.

15 Q. And what is that document?

16 A. It's a reflection of notes that I do -- as I
17 do on any project. I take notes regarding any issues
18 that come up on specific issues, and I file that as a
19 reflection so that I can know what was said or what was
20 the concern at the time that the complaint was made. I
21 do it more for my edification than actual full official
22 minutes.

23 Q. And do you often keep notes of the meetings
24 or phone calls you have with --

1 A. Well, just as I have done today, I've taken
2 notes. And I do that simply to keep myself refreshed
3 as to what is being said.

4 Q. And as you testified, these are your notes --

5 A. Yes.

6 Q. -- of the May 22nd, 2003 --

7 A. Right.

8 Q. -- phone conversation with Mr. Petrosius?

9 A. Yes.

10 Q. Okay. Now, you've mentioned you had other
11 contacts with Mr. Petrosius.

12 Did you go to his home in August of
13 2003?

14 A. I went to the site of his home. I did not go
15 to his home directly and knock on his door. I went to
16 the site of the house.

17 Q. You didn't meet with him, but you looked
18 around?

19 A. Yes.

20 Q. And what was the purpose of that visit?

21 A. I wanted to educate myself to the location as
22 to what the concern was regarding the noise that he
23 seemed to indicate was coming from our mainline, and I
24 wanted to see the site myself.

1 Q. And actually some of the complainants'
2 exhibit pictures that were entered earlier are pictures
3 that you actually took; is that correct?

4 A. I did not myself, actually, take the photos;
5 but, yes, those pictures were taken at the time.

6 Q. I'm sorry. Did anyone accompany you on your
7 inspection?

8 A. Yes, our senior environmental planner, Rocco
9 Zuccherero.

10 Q. And did Mr. Zuccherero take some of those
11 photos?

12 A. Yes.

13 Q. Now, you said you went out in August for an
14 inspection.

15 Could you briefly explain to us
16 what the inspection determined?

17 A. Well, the inspection determined that there
18 was, in fact, a noise wall that protects them from the
19 mainline. We also took pictures of -- as you can see,
20 of the areas that are around the noise wall showing the
21 culvert and then also the plazas and the yard.

22 Q. All right. Now, you testified that you're a
23 prodigious note-keeper.

24 Did you make any notes for your

1 August inspection?

2 A. I believe I did. You know, I cannot recall
3 that specifically. But knowing myself, I would
4 probably say, yes, I probably did make the notes.

5 Q. I'm showing you Complainants' Exhibit No. 10
6 for your inspection.

7 A. Yes.

8 Q. Does that look familiar?

9 A. That looks familiar.

10 Q. Is that your handwriting?

11 A. That's my handwriting.

12 Q. Is that the document you created to remind
13 you what happened at the on-site inspection?

14 A. Yes.

15 Q. And I'm having a little bit of a hard time
16 reading your handwriting.

17 Could you read the paragraph --
18 what you call paragraph A for me? It starts with the
19 word "residential."

20 A. You're not alone with your handwriting
21 analysis.

22 Residential noise rating: Range
23 was 63 to 68 DCB. Note: House is built on an incline
24 to where a person could see trucks and cars pass.

1 Do you want me to continue?

2 Q. No. That's good enough. Thank you.

3 A. Okay.

4 Q. Now, when you say the noise rating range was
5 63 to 68, how did you determine that noise level?

6 A. Mr. Zuccherro had a noise meter, and we took
7 some noise readings, but preliminary. They were not as
8 professional as what our noise experts would do.

9 Q. So it was a brief nonscientific study?

10 A. Yes.

11 Q. Okay. And you mentioned, as you just read,
12 that the house is built on an incline to where a person
13 could see trucks and cars pass?

14 A. Yes.

15 Q. And if I refer you to Complainants' Exhibit
16 No. 2, would that be a fair pictorial of what your own
17 notes said?

18 A. Yes. We could see the tops of trucks.

19 Q. Could you see any more than the tops of
20 trucks?

21 A. I would defer to that note.

22 Q. Do you think a noise wall can be effective if
23 you can see the car?

24 A. I'm not a noise expert, so I cannot testify

1 to that.

2 Q. But you represent the Tollway on noise-type
3 issues?

4 A. Right.

5 Q. You have a basic understanding of noise and
6 the noise walls?

7 A. I have a basic understanding of it, yes, but
8 I don't have the technical knowledge of it.

9 Q. You're not an expert?

10 A. I am not an expert, nor have I ever claimed
11 to be an expert, Mr. Dworschak.

12 Q. And I didn't say that you were, but thank
13 you.

14 Do you know what the average daily
15 traffic is for this section of the tollway system?

16 A. No, I do not.

17 MR. DWORSCHAK. I'm marking
18 Complainants' Exhibit No. 11 for review.

19 BY MR. DWORSCHAK:

20 Q. Bunny, I'm showing you average daily traffic
21 numbers for a section of roadway. Would you take a
22 look at that?

23 A. Yes.

24 Q. Is that average daily traffic number

1 representative of the neighborhood of the property in
2 question?

3 MR. AZAR: I'm going to object on
4 foundation. I don't know if she's even seen these
5 reports before.

6 BY THE WITNESS:

7 A. This is.

8 BY MR. DWORSCHAK:

9 Q. Okay. Bunny have you ever seen an average
10 daily traffic report before?

11 A. I've seen an average daily traffic report,
12 but I have not seen this one. So I cannot comment on
13 it.

14 Q. But you're aware of what --

15 A. I know --

16 Q. You know what average daily traffic is,
17 correct?

18 A. Indeed, I do, but I have not seen this
19 particular document. So I cannot address it.

20 Q. All right -- Well, let me finish.

21 A. Okay.

22 Q. Average daily traffic is the tollway or any
23 roadway system determination of what you can expect in
24 terms of traffic, on average, for a particular section

1 of roadway; is that correct?

2 A. Yes.

3 Q. And the Tollway has a contractor named Wilbur
4 Smith that assists in preparing these documents?

5 A. Yes.

6 Q. And although you've never seen this
7 particular section, you are aware of what an average
8 daily traffic map looks like, correct?

9 A. Yes.

10 Q. And you could read one --

11 A. Yes.

12 Q. -- if some one gave you one?

13 So if I were to show you -- or ask
14 you to determine particular traffic levels in a
15 particular area, these are the type of maps you would
16 use; is that correct?

17 A. Yes.

18 Q. Referring back to the map, if you look at
19 this map in relation to the aerial maps, which we've
20 talked about earlier --

21 A. Yes.

22 Q. -- it would be fair to assume that the
23 Petrosius residence is in this area known as MP22.84?

24 A. Well, it's not highlighted on this report, so

1 I can't --

2 Q. Okay. I'm just trying to use the aerial map
3 where you can clearly see his home to assist you in
4 determining where his home is on this map. Do you
5 understand that?

6 A. Yes.

7 Q. Okay. So if we have -- Here (indicating) is
8 the Willow Springs interchange, 75th Street, which is
9 on this map here, just to the right, and the Petrosius
10 home is just immediately north of that plaza, correct?

11 A. Yes.

12 Q. Would it be fair to assume that this is the
13 area in which this section of roadway refers to?

14 A. I would defer.

15 Q. Okay --

16 MR. AZAR: I'm going to object because
17 that's not the way -- The way the -- The arrow means
18 that it's a continuation further on. So this is a
19 separate -- This would go over here (indicating). So
20 Willow Springs, 34 is where the residence is.

21 THE COURT: Gentlemen, I would just like
22 to remind you that when you're reading a transcript, it
23 can be difficult to understand such things as you, you
24 know, pointing out things on an map. So if you could

1 keep that in mind, it would be helpful for the Board.

2 BY MR. DWORSCHAK:

3 Q. All right. Bunny, if you use the aerial map
4 and your knowledge of the area --

5 A. Yes.

6 Q. -- the property IN question is right near
7 this Willow Springs, 75th Street interchange; is that
8 correct?

9 A. Yes.

10 Q. Okay. And you can see on the map the
11 residence in question?

12 A. Yes.

13 Q. And it's immediately north of the 75th Street
14 interchange; is that correct?

15 A. Yes.

16 Q. So based upon that information, can you
17 determine from this average daily traffic map what the
18 average daily traffic is for 2003 at that location?

19 And would it be fair -- Can I point
20 it out?

21 It would be fair that 77,000
22 vehicles a day, on average, travel the northbound lanes
23 near the Petrosius residence?

24 A. This is the first TIME I have seen this

1 document. So for me to make that kind of
2 interpretation on this data that I have not any
3 knowledge of other than my first experience with it
4 here, I would decline to answer.

5 I think, basically, it's unfair to
6 present to me a document that I've just now seen and
7 then asking me to make a judgment on it.

8 Q. But you've seen documents like this before?

9 A. I have, indeed. But I've also had the
10 chance, before I go into a situation, to research it
11 before I go in and asked to testify on it.

12 Q. And this document was obtained by discovery
13 from the Tollway?

14 A. I'm assuming, Mr. Dworschak.

15 Q. All right. So -- But if I told you, since
16 you're having a hard time understanding my questions or
17 understanding the map or feel it's too short a
18 notice --

19 A. I think it's too short of a notice.

20 Q. Okay. If I explained to you that -- Would it
21 be fair that the average number of daily traffic in
22 front of the Petrosius home on the northbound Tri-State
23 in 2003 was 77,000 vehicles? Would that be incorrect?

24 A. I would want that verified by Wilbur Smith

1 directly.

2 Q. Well, these documents came from Wilbur Smith.

3 A. Well, then, I would defer to our attorney as
4 to how --

5 MR. AZAR: If she knows --

6 THE COURT: If you don't know --

7 THE WITNESS: I don't know.

8 BY THE WITNESS:

9 A. You're asking me to testify to a document
10 I've just now seen.

11 BY MR. DWORSCHAK:

12 Q. Okay. All right. We're going to move on.

13 MR. DWORSCHAK: I'm sorry. Your Honor,
14 I'm going to move that Complainants' Exhibit No. 11 --

15 THE COURT: 9, 10, and 11 are
16 outstanding.

17 MR. DWORSCHAK: (Continuing.) --
18 Number 9 be admitted as evidence.

19 MR. AZAR: I object --

20 THE COURT: May I see those two
21 exhibits, please.

22 MR. DWORSCHAK: I'm sorry. I meant this
23 one for now -- I'm not admitting her --

24 THE COURT: Okay. Okay. Okay. We're

1 talking about No. 11 right now?

2 MR. DWORSCHAK: Yes.

3 THE COURT: And do you have any
4 objection to No. 11?

5 MR. AZAR: No.

6 THE COURT: Okay. Exhibit No. 11 is
7 admitted.

8 (Complainants' Exhibit No. 11 was
9 admitted into evidence.)

10 BY MR. DWORSCHAK:

11 Q. Okay. Bunny, going back to the area in
12 question and the noise walls, the Tollway has certainly
13 installed some noise walls in this area, correct?

14 A. Yes.

15 Q. And these noise walls were installed before
16 you were employed by the Tollway?

17 A. Yes.

18 Q. And in this area, the walls consist of a
19 combination of concrete and wood walls?

20 A. Yes.

21 Q. And would it be fair to state that the walls
22 vary in height from around 13-and-a-half feet to
23 18 feet in the immediate vicinity of the property in
24 question?

1 A. They appear to be. I did not measure them.

2 Q. What is the tallest wall -- noise wall that
3 the Tollway installs?

4 A. I think how tallest that would be in our
5 limits would be 20 foot.

6 Q. What's the shortest wall that you'll put up,
7 the Tollway will put up?

8 A. 8 foot.

9 Q. Referring back to Complainants' Exhibit
10 No. 2 -- I'll give you a minute to look at that.

11 If you notice in the picture, there
12 are two separate wall heights?

13 A. Yes.

14 Q. Do you have any idea why that wall height is
15 different there?

16 A. No, I do not. When the central Tri-State was
17 designed noise studies were conducted, and they showed
18 exactly where the noise walls should be in and at that
19 the height in the design specifications were followed.

20 Q. And were the design specifications followed
21 along the whole system for the noise wall?

22 A. To my knowledge, yes. Again, they were
23 installed in the mid '90s, and it was prior to my --

24 Q. Thank you.

1 And did the Petrosiuses ask to you
2 extend and heighten the noise wall in this area?

3 A. Yes.

4 Q. And what was their reasoning for that?

5 A. They indicated that they -- Mr. Petrosius --
6 I never had any conversations with his wife --
7 indicated that he felt there was noise coming from the
8 mainline into his home area.

9 Q. And what was your response?

10 A. My response was, I explained to him the
11 criteria of the noise policy. We adhere to that quite
12 faithfully. And we explained to him the sites for
13 abatement and the criteria that we follow in making our
14 decisions and that the central Tri-State had been
15 widened and at that time noise studies were conducted
16 and we followed the guidelines as to where those walls
17 should be placed and their height of placement. And
18 those design specifications, Mr. Dworschak, were shown
19 to him in our meeting with him in our offices.

20 Q. We have that on the record. Thank you.

21 A. You're welcome.

22 Q. And do you know, has the Tollway ever
23 deviated from their traffic noise policy?

24 A. The only exception I'm aware of is one in

1 which they had an intergovernmental agreement. As to
2 the details of that, Mr. Dworschak, I am not privy.

3 Q. But you are aware of a deviation?

4 A. I am -- It was A deviation that was based on
5 an intergovernmental agreement.

6 Q. And do you know where that wall is located?

7 A. It's on the north Tri-State.

8 Q. Would that be the area around Deerfield?

9 A. I believe so, yes, sir.

10 Q. And would that wall be adjacent to a golf
11 course?

12 A. Close to or next to.

13 Q. Okay. Referring back to Exhibit No. 9 --

14 MR. DWORSCHAK: Did we admit No. 9?

15 MR. AZAR: No.

16 BY MR. DWORSCHAK:

17 Q. (Continuing.) -- again, I'm referring to your
18 notes which you wrote of your May 22nd meeting.

19 You recognize those, correct?

20 A. Mm-hmm.

21 Q. On the second page, you have some writing
22 which I'm having a little difficulty reading.

23 Can you read those last two
24 paragraphs for me, please?

1 A. Yes. All right. Number 1, Yes, he came here
2 to review our design. If he wants a copy, he will have
3 to (inaudible) --

4 THE COURT REPORTER: I'm sorry. I can
5 barely -- I can't hear you.

6 BY THE WITNESS:

7 A. The two paragraphs are in relation to a
8 conversation I had with our acting chief engineer at
9 that time, John Wagner.

10 Number 1, according to Mr. Wagner,
11 Yes, he -- Mr. Petrosius -- came here to review the
12 designs. If he wants a copy, he will have to provide a
13 FOIA, Freedom of Information Act.

14 2, We've more than done enough to
15 prove why we had placed the walls where we did based on
16 the design. The resident needs to prove that the wall
17 was designed incorrectly.

18 Q. And, Bunny, in fact, those words are in
19 quotations; is that correct?

20 A. Yes.

21 Q. Okay. And what did you mean by saying if the
22 walls were done incorrectly, he needs to tell us?

23 A. That was a quote from our acting chief
24 engineer that the resident -- if he believed that they

1 were put in incorrectly, he needs to show us how they
2 were put in incorrectly.

3 Q. So if it was found that the noise wall was
4 installed incorrectly, would the Tollway fix their
5 error and build additional noise wall or correct their
6 error?

7 A. That would be a decision to be made by our
8 Board of Directors.

9 Q. But based upon the statement of your chief
10 engineer, isn't that what you just read?

11 Did I somehow mischaracterize what
12 you just read?

13 A. I think you did because he said, We've more
14 than done enough to prove that we have placed the walls
15 where we did based on the design. The resident needs
16 to prove that the wall was done incorrectly.

17 We followed the design
18 specifications.

19 Q. And my question was: If it was found that
20 the wall was installed incorrectly --

21 A. If they were found.

22 Q. If they were found.

23 (Continuing.) -- would the Tollway
24 fix their error?

1 A. That would be a decision not by me but by our
2 Board of Directors.

3 Q. But it would be fair to assume, based upon
4 that reading, that's where you're going with that? The
5 burden of proof --

6 MR. AZAR: Objection --

7 BY THE WITNESS:

8 A. That would be your assumption, Mr. Dworschak.

9 MR. DWORSCHAK: Withdrawn.

10 THE COURT: Okay.

11 BY MR. DWORSCHAK:

12 Q. Okay. Bunny, I'm showing you Complainants'
13 Exhibit No. 12 for identification purposes.

14 A. Yes.

15 Q. Does that document look familiar to you?

16 A. Yes.

17 Q. And what is that document?

18 A. This is a collection of noise concerns that
19 had been voiced along our entire roadway system at the
20 Illinois Tollway. I do not know the years within which
21 this was compiled, but I would say --

22 Q. Is this a document that you compiled?

23 A. Not myself personally, no.

24 Q. Is this a document that you assisted in

1 compiling?

2 A. Yes.

3 Q. Okay.

4 MR. DWORSCHAK: Your Honor, I ask that
5 Complainants' Exhibit No. 12 be entered into evidence.

6 MR. AZAR: No objection.

7 THE COURT: Complainants' Exhibit 12 is
8 admitted into evidence.

9 (Complainants' Exhibit No. 12 was
10 admitted into evidence.)

11 BY MR. DWORSCHAK:

12 Q. And, Bunny, referring back to Exhibit No. 12,
13 there are what appears to be a number of citizens who,
14 it looks like, live in various parts of the tollway
15 system that had comments regarding traffic noise; is
16 that correct?

17 A. Yes.

18 Q. And you dealt with many of these
19 individuals --

20 A. Yes.

21 Q. -- to the best of your memory?

22 A. Yes.

23 Q. And do you know, has the Tollway policy, as
24 it existed -- was it ever able to help any of these

1 people?

2 A. Essentially, no, because --

3 Q. That's enough. Thank you.

4 A. I think if you're going to ask a question
5 that needs to be elaborated on, because you're leaving
6 it hanging --

7 Q. I'll let you finish.

8 A. All right. Because the policy is very
9 specific in that when we widen our system, then we can
10 do noise studies that will help assist in noise
11 abatement concerns.

12 At the time we did not have the
13 money, but through our congestion relief plan, we do
14 have the money and we are widening our entire roadway
15 system. A lot of these concerns will be addressed in
16 that plan.

17 Q. But they were not addressed when they first
18 came to you; is that correct?

19 A. Exactly.

20 MR. DWORSCHAK: Could I have a minute,
21 your Honor?

22 THE COURT: Sure.

23 (Brief pause.)

24 MR. DWORSCHAK: No further questions.

1 Victor.

2 MR. AZAR: Thank you.

3 CROSS-EXAMINATION

4 BY MR. AZAR:

5 Q. Bunny, what is your major job
6 responsibilities?

7 A. As I said earlier, it is primarily a channel
8 of communication internally and externally with the
9 municipalities, the townships, and county governments
10 regarding all of our engineering projects, be it the
11 widening or open-road tollway.

12 Q. If an individual has concerns about the
13 roadway, do they talk to you also?

14 A. Yes.

15 Q. So your responsibilities also include dealing
16 with individuals?

17 A. Yes.

18 Q. So if a person calls about a noise complaint,
19 who do they get sent to?

20 A. Either to me or to our senior environmental
21 planner.

22 Q. Which is Mr. Zuccherro?

23 A. Right.

24 Q. So if someone has a complaint about or

1 concern about wanting a new road built or plazas or
2 municipal concerns, they come to you?

3 A. First, yes.

4 Q. When a municipality calls about a complaint
5 concerning traffic noise, do you take it seriously?

6 A. Yes, we do. We take any complaint seriously.

7 Q. So when this list of people that's in No. 12
8 called, did you just ignore them?

9 A. No.

10 Q. Do you take notes for everybody who calls?

11 A. Yes I do. I make a noise form complaint, and
12 I share that with our senior environmental planner. We
13 have it for the record. That's how this listing came
14 about.

15 Q. So if a -- Say a municipality calls up and
16 says, Hey, there's a bunch of noise from banging
17 trucks, what do you do?

18 A. Well, if you're talking about that specific
19 kind of noise, we will first notify our maintenance
20 division and have them go out and inspect the pavement
21 to see if there's a problem with the pavement. If it's
22 a problem with the pavement, it's fixed usually within
23 24 to 48 hours. If it's not the pavement, then we tend
24 to look and see what other sources of noise could be

1 the cause for that concern.

2 Q. And if a citizen calls in about --

3 A. It would be the same. It's the same standard
4 operating procedure.

5 Q. So when Mr. Petrosius called in about the
6 noise from the roadway and he mentioned banging of
7 trucks, what did you do?

8 A. The first thing we did was contact the
9 maintenance department to find out exactly if there
10 might be a problem coming from the mainline pavement,
11 and, in fact, it was the asphalt joint. And that was
12 grounded down and smoothed down.

13 Q. So you tried to address his concerns?

14 A. Just as we would with any of them.

15 Q. Okay. Now, are you authorized to expend
16 money to build noise walls?

17 A. No.

18 Q. Many people call asking for noise walls,
19 correct?

20 A. Yes, yes.

21 Q. And actually, you have all these complaints
22 in Exhibit 12 dealing with noise complaints?

23 A. Yes.

24 Q. And there's a section on the Interstate 294

1 central Tri-State; is that correct?

2 Can you locate that, what page that
3 is?

4 A. Right.

5 Q. And that is where 75th Street and Maridon
6 Road is located?

7 A. Yes.

8 Q. And that's a rather short list of complaints?

9 A. Only five.

10 Q. And there are other sections of the roadway
11 which have a lot heavier complaints?

12 A. Indeed, yes.

13 Q. Now, what is your standard answer to an
14 individual who asks for a noise wall? Do you say, No,
15 we can't do it for you, or do you explain what the
16 problem is?

17 A. First we determine where they live, find out
18 where the house is in relation to the roadway. If it's
19 in an area or section of the roadway system now that is
20 going to be expanded, we can determine if a noise
21 abatement study is going to be done. We usually do
22 that when we do a road expansion.

23 As I say the noise studies will
24 tell us, then, where noise abatement needs to be

1 installed along the system.

2 Q. Now, even if an individual doesn't complain
3 about it and if they're in the path of an expansion, is
4 the area checked over?

5 A. Mm-hmm.

6 Q. Can you answer yes or no?

7 A. Yes.

8 Q. And a noise study is done as part of the
9 environmental impact statement?

10 A. Yes, that is part of it that is required.

11 Q. And so that is part how the Tollway
12 mitigates --

13 A. Right.

14 Q. -- the environmental impact on the citizens?

15 A. Right. Whenever we are widening the system,
16 we need to include noise studies whether or not we're
17 requested to by the residents or not. If they've
18 already requested it, they will then be satisfied with
19 the noise studies that will be done.

20 Q. Now, you had contact with Mr. Petrosius on
21 several occasions, correct?

22 A. Yes.

23 Q. And what was the first time?

24 A. In late May of '03.

1 Q. And his principal complaint at that time
2 was --

3 A. A tire.

4 Q. -- at first, was a tire?

5 A. Right.

6 Q. And did -- What did he say happened?

7 A. He indicated that a tire had flown off of the
8 pavement, the mainline pavement, onto his side yard.

9 Q. Are noise walls designed to block objects?

10 A. No. They're primarily put in to provide
11 noise abatement.

12 Q. Okay. Now, did you go out to the scene, to
13 Mr. Petrosius' home, after he made that complaint?

14 A. Yes, I did. He called earlier in the morning
15 that day, and there was a two-point question. There
16 was a question regarding a tire removal and a question
17 about noise. And so I wanted to make sure that the
18 tire itself was removed.

19 And so after I contacted the
20 maintenance department, I went there to investigate
21 myself to make sure that the tire had been, in fact,
22 removed and then -- Go ahead.

23 Q. Did he indicate to you that anything had been
24 hit or anything?

1 A. He indicated it got into his side yard near
2 his children's playground or play area, to the best of
3 my recollection.

4 Q. Okay. And when you went there, did you see
5 any sign of the tire at all?

6 A. No, I did not see any sign of the tire or any
7 tire treads.

8 Q. Did you speak to the maintenance department
9 to make sure that was taken care of?

10 A. Yes.

11 Q. And what did they tell you?

12 A. They indicated that they had been out there
13 to remove it.

14 Q. And where did they find it?

15 A. They found it in their yard, if I remember
16 right.

17 Q. And what was the next time -- And after that,
18 you also discussed the noise, correct?

19 A. I indicated, again, the noise policy and
20 explained that, again, to him.

21 Q. And you sent him a copy of the policy?

22 A. Yes. I sent him -- the policy to him twice.

23 Q. And that was -- Initially you sent Exhibit
24 No. 8?

1 A. Yes.

2 Q. Complainants' Exhibit No. 8?

3 A. Yes.

4 Q. And then you sent it to him a second time?

5 A. Yes.

6 Q. And then you met with him at the Tollway?

7 A. We met with him and other senior

8 environmental planner in early August of '03.

9 Q. Now, how did you prepare for that meeting

10 Mr. Zuccherro?

11 A. Mr. Zuccherro and I went over the design

12 drawings of the central Tri-State at that time, and we

13 had those ready and were prepared to show

14 Mr. Petrosius.

15 Q. And were those shown to him?

16 A. Yes.

17 Q. And did he review them?

18 A. Yes.

19 Q. Did -- Were they explained to him?

20 A. Yes.

21 Q. And was there any indication given to him

22 that the sound wall was made -- or built as to its

23 design?

24 A. It was built to the specifications in the

1 design, yes.

2 Q. And who else was present at the meeting?

3 A. Just the three of us.

4 Q. Okay. And did he give you any indication
5 that you didn't -- you were not prepared to discuss
6 this matter with you [sic] or that he was unsatisfied
7 with what was provided to you [sic]?

8 A. He did not indicate that to us. He didn't
9 indicate any unhappiness with what we've shown to him.
10 I think he probably was unhappy with the results of the
11 conversation that we shared with him.

12 Q. And what was the results?

13 A. The results were that the design of the wall
14 was followed to the specifications and that because we
15 have already done the widening of the central
16 Tri-State, we would not be doing any further noise
17 abatement.

18 Q. Now, when you talked to him, did he indicate
19 that the wall was designed effectively -- or designed
20 incorrectly or built incorrectly?

21 A. He indicated that several times in this
22 conversation.

23 MR. DWORSCHAK: Objection, hearsay.

24 She's testifying what he said.

1 MR. AZAR: I believe that's the party
2 opponent. She can testify as to what he testified --
3 their discussion, which he testified to.

4 THE COURT: Yeah. I think --

5 MR. DWORSCHAK: Because he already
6 stated it.

7 THE COURT: I'm sorry?

8 MR. DWORSCHAK: I'm sorry. Okay.

9 THE COURT: Okay.

10 BY MR. AZAR:

11 Q. So he indicated -- Did he indicate to you
12 that there were problems with the design?

13 A. Yes, he did.

14 Q. And did he indicate how he knew this?

15 A. Yes. He indicated that there had been a
16 tollway representative that had told him that the wall
17 had been designed incorrectly.

18 Q. And did you ask for the identity of that
19 person?

20 A. Yes, I did.

21 Q. And did he ever give you that information?

22 A. He did.

23 Q. Who was it?

24 A. Scott Dworschak.

1 Q. Okay. Now, did he ever give you any
2 information --

3 MR. DWORSCHAK: I'm going to object,
4 your Honor. That's hearsay. Now she's talking about
5 what someone else told her about someone else.

6 MR. AZAR: No. I asked what the
7 complainant told her. That's what she testified.

8 MR. DWORSCHAK: And it wasn't in his
9 original testimony.

10 MR. AZAR: Well, I think it's perfectly
11 relevant as a party opponent. A statement made by a
12 party opponent is not hearsay. It's an exception to
13 the hearsay rule.

14 THE COURT: I think you're right. Go
15 ahead.

16 BY MR. AZAR:

17 Q. Now, did he also indicate whether there was
18 any documents to reflect the design?

19 A. He indicated that there had been a letter on
20 tollway stationery that had been sent to either him or
21 to a resident who had been having these similar
22 concerns with the tollway, and I asked him for a copy
23 of that letter --

24 Q. Was it ever produced to you?

1 A. No, it was not.

2 Q. And did he also -- What was his response to
3 the production request to produce the document?

4 A. I never received it.

5 Q. Are you aware of any letter going out to that
6 effect?

7 A. No, sir.

8 Q. Are you aware of anybody who -- saying that
9 the wall was defectively designed?

10 A. No.

11 Q. Now, when you went out to the site with
12 Mr. Zuccherro, you indicated that it was sound
13 studies -- sound readings that you got?

14 A. Yes.

15 Q. Do you recall the conversation of August 6th,
16 '03?

17 A. Yes. Rocco and I were out in the field.

18 Q. So you were out there at the house -- The
19 readings by the house were 63 to 83, correct?

20 A. Mm-hmm.

21 Q. You need to answer yes or no.

22 A. Yes. I'm sorry.

23 Q. Thank you.

24 And did you do an examination of

1 the noise at the highway?

2 A. Yes, we did.

3 Q. And those were 75 to 80?

4 A. Yes.

5 Q. And was your conclusion that the noise levels

6 were, in fact, reduced based on the noise wall?

7 A. Based on the readings that were done both in

8 front of and behind the wall, the wall did exactly what

9 it was supposed to do, and that was to reduce the

10 sound.

11 Q. And that was over 10 decibels, correct?

12 A. Yes.

13 Q. Now, you indicated that the walls were at

14 different heights?

15 A. Yes.

16 Q. Is that the beginning of the wall on

17 75th Street?

18 A. Yes.

19 Q. So that's -- Why -- Is the purpose of the

20 wall to be stepped up?

21 A. Yes.

22 Q. Are you familiar with why that was designed

23 that way?

24 A. No, I am not.

1 Q. Okay. Now, in regards to Deerfield, do you
2 know who paid for the cost of that?

3 A. It was an intergovernmental agreement between
4 the Tollway and, I believe, the Deerfield Park
5 District. They received State funding for that.

6 Q. And they got -- The Tollway was reimbursed
7 for half the cost?

8 A. Yes.

9 Q. And the State of Illinois, through a grant to
10 Deerfield Park District, paid the other half?

11 A. Yes.

12 Q. And is that the only reason why it was built?

13 A. To my knowledge.

14 MR. AZAR: Okay. I have no further
15 questions.

16 THE COURT: Thank you.

17 REDIRECT EXAMINATION

18 BY MR. DWORSCHAK:

19 Q. Bunny, referring back to Complainants'
20 Exhibit No. 12 which is the list of noise
21 complainers --

22 A. It's right here, mm-hmm.

23 Q. -- let the record reflect that it is broken
24 down by the different interstates that the Tollway

1 operates?

2 A. Right, all four roads.

3 Q. And if I refer you to the page where it says
4 the central Tri-State, can you find that?

5 A. Yes.

6 Q. Okay. Isn't it true that when the Tollway
7 widened, the central Tri-State, in 1994 that about
8 20 miles of noise walls were part of that project?

9 A. I'm not aware of that because I was not here
10 at the Tollway at that time.

11 Q. But you're aware of the conditions now?

12 A. Yes.

13 Q. Okay. Would it be fair to say that the
14 central Tri-State has a significant number of noise
15 walls?

16 A. As called for by the noise abatement studies,
17 yes.

18 Q. I understand. But there are noise walls
19 present there, correct?

20 A. Yes. And they're there because of the
21 studies.

22 Q. And that would probably be one reason why the
23 number of complaints along that specific road would be
24 less than other roads, because there is noise wall

1 there and other roads don't have noise wall?

2 A. Yes.

3 Q. Bunny, are you aware of any additions to the
4 noise walls on the central Tri-State that the Tollway
5 has installed since 1994?

6 A. No, I'm not.

7 Q. And, Bunny, you're not a noise engineer, are
8 you?

9 A. No, nor have I ever professed to be.

10 Q. Or a noise expert?

11 A. No.

12 Q. And your main job is public relations; would
13 that be a fair assumption?

14 A. That's part of the job, yes.

15 MR. DWORSCHAK: Nothing further.

16 MR. AZAR: Nothing. Thank you.

17 THE COURT: Okay. Thank you.

18 (Witness excused.)

19 MR. DWORSCHAK: Can we take a 5-minute
20 break before Rocco?

21 THE COURT: Yeah, let's take another
22 5-minute break.

23 (A short break was had.)

24 THE COURT: Mr. Dworschak, you may call

1 your next witness.

2 MR. DWORSCHAK: We call Rocco Zuccherro.

3 THE COURT: Okay. Would the court
4 reporter, please, swear in the witness?

5 (Witness sworn.)

6 WHEREUPON:

7 ROCCO ZUCCHERO,
8 called as a witness herein, having been first duly
9 sworn, was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. DWORSCHAK:

12 Q. Mr. Zuccherro, could you state your name and
13 spell it for the record, please?

14 A. Rocco Zuccherro; R-O-C-C-O, Z-U-C-C-H-E-R-O.

15 Q. And would it be all right if I refer to you
16 as Rocco?

17 A. That would be terrific.

18 Q. Rocco, could you give us a little background
19 on your education background and training?

20 A. Sure. I'm a graduate of Purdue University
21 with a bachelor's degree in organizational leadership
22 and supervision. I graduated in '91. And then I went
23 on for a master's degree at the University of
24 Illinois-Chicago in urban planning.

1 My background, I started with the
2 State of Illinois in ' '91/'92 working in roadway
3 construction for the Illinois Department of
4 Transportation. I spent 2 years doing road
5 construction oversight, and then I transitioned into
6 doing environmental oversight for the Department of
7 Transportation. I spent a couple years doing public
8 transit work, and then I came to the Tollway
9 approximately 5 years ago as the senior environmental
10 planner.

11 Q. So you came to the Tollway in 2000?

12 A. 2000.

13 Q. And are you a licensed professional engineer?

14 A. No.

15 Q. And have you always had the same job at the
16 Tollway? You're the licensed -- You're the -- I'm
17 sorry. What was your position?

18 A. Senior environmental planner.

19 Q. Okay. And do you have a different position
20 right now?

21 A. Yeah, acting chief of planning.

22 Q. And what does that job entail?

23 A. Basically the oversight of project
24 development implementation, outreach, things like that.

1 Q. And is noise part of your bailiwick?

2 A. Yes.

3 Q. And were you always in the department of
4 planning?

5 A. It used to be engineering. Now we're
6 planning as of 2 years ago.

7 Q. And now you're head of the department?

8 A. Acting head of the department.

9 MR. DWORSCHAK: Okay. And, your Honor,
10 if I could have a little leeway with the witness. We
11 talked about the policy of the Tollway, and I just need
12 Victor to talk about some general concepts of how the
13 Tollway's operating. I just wanted to give you a
14 heads-up.

15 BY MR. DWORSCHAK:

16 Q. Now, Victor -- Rocco, the Illinois Tollway
17 was granted authority to operate toll roads by the
18 Illinois General Assembly, correct?

19 A. Correct.

20 Q. And the I-294 Tri-State Tollway is one of
21 those roads, correct?

22 A. Correct.

23 Q. And you're aware of why we're here today?

24 A. Correct.

1 Q. And you know that the Tri-State is one of the
2 roads in question, correct?

3 A. Yes.

4 Q. And the basic premise of the tollway system
5 is that you charge motorists to use the toll roads and
6 then you collect those tolls and then use it to pay for
7 the maintenance, pay off the debt, pay the salaries,
8 including your own salary; is that correct?

9 A. Correct.

10 Q. And to your knowledge, does the Tollway
11 receive any funds from the State of Illinois?

12 A. No, not for our roadways, to my knowledge.

13 Q. And you don't receive any tax funds from the
14 State of Illinois?

15 A. No.

16 Q. Have you received any tax monies from the
17 federal government?

18 A. No.

19 Q. And the Illinois Tollway doesn't receive any
20 funds from the motor fuel tax, do you?

21 A. No.

22 Q. Okay. And how is the Tollway Authority
23 governed?

24 A. By a Board of Directors, and the Board is

1 appointed by the governor, the members of the Board.

2 Q. So actually those Board members are appointed
3 by the governor and approved by the Illinois Senate?

4 A. Yes.

5 Q. And it's the Board that actually does the
6 real approval/decision-making at the Illinois Tollway?

7 A. Correct.

8 Q. And the Tollway Board approves the Tollway's
9 budget?

10 A. Correct.

11 Q. Okay. I'm showing you Complainants' Exhibit
12 No. 13 which is highlighted sections of your 2005
13 annual budget.

14 I'm going to give you a minute,
15 Rocco, to look through it and to familiarize yourself
16 with it.

17 A. I thought you said you highlighted parts of
18 it. It's just the --

19 Q. I'm sorry. I'm sorry. What I meant is the
20 document itself is probably 150 pages --

21 A. Sure.

22 Q. -- and I have about 10 or 12 here. That's
23 what I meant. And they're the most germane to our
24 discussion. That's why.

1 (Witness viewing document.)

2 BY MR. DWORSCHAK:

3 Q. So you're familiar with the Tollway's budget
4 in terms of this document and how the budget's
5 presented; is that correct?

6 A. Partially. This -- The acting title is
7 about 2 weeks, so I don't get involved in -- I wasn't
8 involved at all with the 2005 budget process.

9 Q. If you -- If I refer you to page 17 of the
10 document -- I'm sorry. Let me back up a minute.

11 MR. DWORSCHAK: I move to have
12 Complainants' Exhibit No. 13 entered into evidence.

13 MR. AZAR: I -- Can we hold off subject
14 to cross-examination? I don't know what the relevance
15 is on it.

16 THE COURT: Fine.

17 MR. DWORSCHAK: That's fine.

18 MR. AZAR: Thanks.

19 BY MR. DWORSCHAK:

20 Q. I'm sorry, Rocco. Back to page 17, the page
21 titled The Executive Summary -- And there's a title
22 called The Budget Summary?

23 A. Mm-hmm.

24 Q. I'm going to give you a minute to read the

1 budget summary, which is about five paragraphs.

2 (Witness viewing document.)

3 BY THE WITNESS:

4 A. Okay.

5 BY MR. DWORSCHAK:

6 Q. And now I'm going to ask you a few questions
7 about what you just read.

8 So according to this document, the
9 budget for the Tollway in FY 2005 is \$650 million?

10 A. Correct.

11 Q. And that number reflects an increase of
12 242 million over the previous year?

13 A. Correct.

14 Q. And do you know the reason for that big
15 increase in revenue?

16 A. Due to the recent toll increase and also the
17 numerous projects that we are currently undertaking
18 across the entire system.

19 Q. And briefly, would it be fair to state that
20 the toll increase -- you doubled the tolls for trucks,
21 you doubled the tolls for cash, and people that had an
22 I-Pass, their tolls remained the same?

23 A. Correct.

24 Q. Okay. Now, referring you to page 181,

1 there's a table called Table 1?

2 A. Mm-hmm.

3 Q. There is a -- At the bottom of that table
4 there is a line called Yearly Total?

5 A. Mm-hmm.

6 Q. Could you do me a favor and read that to
7 yourself and then read it out loud for me?

8 A. Yearly Total. Estimated 2004, \$391,060,000.
9 Total Vehicles, percent change, 60.4. Estimated 2005,
10 627,165,000.

11 Q. And it would be fair to assume that the toll
12 increase in actuality is going to mean a 60 percent
13 increase in revenue for the Tollway?

14 A. Yes.

15 Q. Okay. Now, referring you to Table 2, which
16 is the next page, 182 -- Now, this document's a little
17 more difficult to read, so I blew up a copy which may
18 help you read it.

19 If you can read the other one,
20 that's fine. It was hard for my eyes, so ...

21 A. It's just bigger and blurrier.

22 Q. I'll give you a minute to take a look at this
23 table.

24 (Witness viewing document.)

1 BY THE WITNESS:

2 A. Mm-hmm.

3 BY MR. DWORSCHAK:

4 Q. And it explains toll revenue by tollway
5 section?

6 A. Mm-hmm.

7 Q. And you're aware of a document like this;
8 you've seen something like this before?

9 A. I'm sure I've seen it somewhere before if
10 it's in our budget.

11 Q. Okay. Now, this document breaks down the
12 four roads that the Tollway operates; is that correct?

13 A. Correct.

14 Q. And then among those four roads, it breaks it
15 down by section; is that correct?

16 A. Correct.

17 Q. And on this list, we have the Tri-State
18 Tollway, correct?

19 A. Correct.

20 Q. And we have the three sections of the
21 Tri-State Tollway the north, the central, and the
22 south -- is that correct?

23 A. Correct.

24 Q. And you've been listening to the testimony

1 today.

2 The property in question, what
3 section would you consider that property to be in?

4 A. Central.

5 Q. The central section, okay.

6 Could you read -- There is the
7 estimated 2004 revenues from that section and then the
8 estimated 2005 estimates for that section. Do you see
9 that?

10 A. Sure.

11 Q. Could you read those for me?

12 A. Estimated 2004 for the central Tri-State is
13 68,640,000, and the estimated 2005 is \$104,000,091.

14 Q. And between those two lines, there's a
15 percent change. Could you read that for me?

16 A. 51.6.

17 Q. So it would be fair to say that this document
18 shows, for the toll increase between 2004 and 2005 for
19 the central section of the Tri-State Tollway, the
20 Tollway expects to bring in 51.6 more revenue than the
21 year before?

22 A. 51.6 percent, yes.

23 Q. Okay. Rocco, according to some
24 interrogatories that were served upon the Tollway --

1 and I think you helped prepare them -- in response to
2 the Complainants' -- the second interrogatory response,
3 you were identified as the Tollway's most knowledgeable
4 employee as it comes to noise walls.

5 A. Thank you.

6 Q. Is that correct?

7 A. Correct.

8 Q. I'm showing you Exhibit No. 8 which is the
9 Tollway's noise policy.

10 A. Mm-hmm.

11 Q. You're aware of that document?

12 A. Yes.

13 Q. And you've seen it many times before?

14 A. Yes.

15 Q. And I think you already stated before that
16 the Tollway's planning department, of which you're the
17 acting department head, has jurisdiction over the
18 Tollway's traffic noise policy?

19 A. Correct.

20 Q. Do you know how this policy was developed?

21 A. Well, it was developed in reaction to the
22 building of the Interstate 355, from my knowledge of
23 it. When we built that roadway, there was an
24 opportunity to address noise from a system-wide

1 perspective, and we developed a policy.

2 At the point in time, we followed
3 federal guidelines. We didn't have anything of our
4 own. And then it emanated from that point to this
5 policy in this form.

6 Q. Do you know who at the Tollway would have
7 approved this policy?

8 A. The Tollway's engineering committee.

9 Q. And the engineering committee is a section of
10 the Tollway Board?

11 A. Correct.

12 Q. And you have three members of the Tollway
13 Board of Directors who serve on the engineering
14 committee?

15 A. I don't know for sure, but I would imagine
16 so.

17 Q. Would that be fair to make that assumption?

18 A. That would be fair to make that assumption.

19 Q. So normally staff at the Tollway would
20 develop a plan?

21 A. Mm-hmm.

22 Q. And then it would either go to the Tollway
23 Board or a committee of the Tollway Board?

24 A. Correct.

1 Q. Okay. Are you aware of any locations on the
2 tollway system in which noise walls has been built due
3 to that policy?

4 A. Yes.

5 Q. And where would those sections be?

6 A. That would be up on the north end of the
7 Tri- -- No. Actually, I'm going to have to take this
8 back.

9 As of 2000, there are walls that
10 are being built as we speak, on Interstate 88. There
11 are some walls up on Interstate 90. There are a few
12 different areas that were built in reaction to this
13 policy.

14 Q. And when you make those references, is that
15 in conjunction with the rehabilitation and widening
16 projects that the Tollway has ongoing currently?

17 A. Correct.

18 Q. And by -- I mean, by "projects," you're
19 adding lanes of traffic, reconfiguring plazas,
20 rebuilding lanes; is that correct?

21 A. Adding plazas, adding lanes, yes.

22 Q. And it's a pretty big project, right?

23 A. Yes.

24 Q. And could you give me a ballpark figure on

1 what the entire cost would be?

2 A. For what?

3 Q. The Tollway's, I believe you called it,

4 traffic --

5 A. Congestion relief --

6 Q. -- congestion relief plan.

7 A. \$5.3 billion to 500 billion.

8 Q. And how would that 5.3 billion be paid for?

9 A. Through tolls.

10 Q. Do you know if the Tollway's traffic noise

11 policy is followed every time you install noise walls?

12 A. As long as I've been there, yes.

13 Q. Are you aware of any times when it wasn't

14 used?

15 A. Prior to the policy. I mean, this policy --

16 Q. As long as you've been there, are you aware

17 of any?

18 A. No.

19 Q. You're not aware of any times it was not

20 used?

21 A. No.

22 Q. Okay. Now, Rocco, as a person knowledgeable

23 about noise issues, are you aware of how a noise wall

24 can reduce the amount of noise coming from the roadway

1 to property off the roadway?

2 A. Sure.

3 Q. And based upon your expertise, where is the
4 best placement of noise walls in terms of noise
5 reduction?

6 A. Closest to the receptor, the noise -- The
7 receptor would be the home or whatever it might be.
8 The closer it is, the more effective the wall is.

9 Q. And in terms of -- As a term of art, that's
10 called -- that's also known as "edge of shoulder?"
11 That would be the best place to put the noise wall?

12 A. There is no best place to put a noise wall.
13 It could be wherever -- I mean, you have to look at all
14 the different factors. The edge of the shoulder is one
15 place. But further away is also a better place, along
16 the right-of-way line, because, as I said, the wall is
17 better as it's closer to the receptor itself. So there
18 are different -- And then you have to look at the
19 different environmental factors and drainage and stuff
20 like that.

21 Q. And I agree. It's a complicated system to
22 determine where to put the wall. There are other
23 considerations besides just noise reduction.

24 You have to worry about traffic

1 safety, correct?

2 A. Correct.

3 Q. And you have to worry about drainage
4 problems?

5 A. Correct.

6 Q. And you also have to look at sometimes the
7 roadway is elevated above the properties or the homes;
8 is that correct?

9 A. Correct.

10 Q. And sometimes the roadway is depressed as in
11 terms of the roadway; is that correct?

12 A. Correct.

13 Q. So that's why, if you drive portions of the
14 tollway system, you see noise walls, for lack of a
15 better term, all over the place; sometimes on the
16 right-of-way line, sometimes on the edge of the
17 shoulder, sometimes in between?

18 A. Correct.

19 Q. Okay. And what are the types of noise coming
20 from the toll road? What -- What are those generators?
21 What generates that noise?

22 A. The vehicles. There's -- Basically it's the
23 tires meeting the road. The mufflers on a car affects
24 the noise. The aerodynamics of a vehicle affects the

1 noise. If there's a -- If a car is driving around with
2 a loose bumper and it rattles or a tarp and it flaps in
3 the wind, those generate noise.

4 Q. And there's also types of noise --

5 A. Pavement.

6 Q. -- if a truck hits a dip in the pavement?

7 A. Yes.

8 Q. Or if the truck is empty, it tends to bounce
9 a little more and make a different type of noise?

10 A. Correct.

11 Q. Going back to your expertise on noise wall,
12 there's different materials the Tollway uses; is that
13 correct?

14 A. Correct.

15 Q. You use concrete, wood, and I think you even
16 have a small section of composite plastic?

17 A. Yes.

18 Q. Do you know which type of material works
19 better?

20 A. They're all effective. The -- The concrete
21 lasts the longest. They're all effective in different
22 ways. Actually, the most effective material is soil
23 itself and the land. We've got some berms out there as
24 well.

1 Q. But if you use a berm, you need quite a bit
2 of property to make that berm high enough; is that
3 correct?

4 A. Correct.

5 Q. And that's why you tend -- the Tollway tends
6 to build a noise wall versus building berms, because of
7 the inability of space?

8 A. Correct.

9 Q. Now, you're aware that the purpose of this
10 hearing is based upon the complaint filed by the
11 Petrosiuses, correct?

12 A. Correct.

13 Q. Have you ever met the Petrosiuses or Mike?

14 A. Mike.

15 Q. And when did you meet Mike?

16 A. In 2003, with Bunny. I don't know the exact
17 date.

18 Q. And what was the purpose of that meeting?

19 A. To review -- Mr. Petrosius had an issue with
20 some noise wall. So we met with him to talk a little
21 bit more about -- get, basically, an understanding of
22 what the concern was.

23 Q. And can you characterize what his concerns
24 were?

1 A. Noise was one of the concerns, but one of the
2 things that also came out was the safety issue with the
3 tire.

4 Q. And how could you -- How would you
5 characterize the outcome of the meeting?

6 A. We discussed what our plans were out there.
7 We -- We went over the plans, and we went over the
8 noise study, what was done. We talked about the lay of
9 his land. And to get a better understanding, we went
10 out there with Bunny and we did a site visit to --
11 again, to get an understanding of what the issue is.

12 Q. So you've actually been out to the property
13 in question?

14 A. Yes.

15 Q. And when was that?

16 A. Probably -- I think it was August 2003.
17 These (indicating) are my photos.

18 Q. Yeah. There's a number of photos laid before
19 you that many have been offered as exhibits?

20 A. Mm-hmm.

21 Q. I want you to take a look at them and tell me
22 if they accurately reflect what you saw on your visit
23 in August of 2003.

24 A. Yes, they do.

1 Q. And, in fact, several of those pictures, you
2 took yourself; is that correct?

3 A. Exhibit 1, Exhibit 2, Exhibit 3, and
4 Exhibit 7.

5 Q. Now, when you went out to the property, did
6 anybody go with you?

7 A. Bunny Anderson.

8 Q. And what were the results or conclusions of
9 your inspection?

10 A. We walked around -- I had my noise meter with
11 me -- just kind of getting a sense of whether or not
12 the walls that are out there are truly effective. And
13 we walked around in front of the walls along the side
14 of the roadway, which you can see that in Exhibit 7.
15 And then walked at varying points throughout the
16 property to get a sense of what was happening. So the
17 results were -- basically showed that the walls did
18 reduce the noise from Interstate 294.

19 Q. And referring you to Exhibit No. 2, does that
20 look familiar to you?

21 A. Yes.

22 Q. And when you were on your inspection, were
23 you able to see traffic on the road from the property?

24 A. Yes.

1 Q. Okay. And referring you to Exhibit No. 6,
2 there is a picture of a truck, granted using a
3 telephoto lens --

4 A. Obviously.

5 Q. But does that give you an accurate portrayal
6 of traffic along that section of the wall?

7 A. No.

8 Q. And why does that not?

9 A. The photo was taken from -- Looking at it,
10 the angle on it, it was taken from the top of the hill.

11 Q. There's a rise?

12 A. From the rise, looking down.

13 Q. You didn't take this photo, did you?

14 A. No, I did not take that photo. That does not
15 seem to be at all consistent with the ground level up
16 there with the --

17 Q. But it's fair to state that the wall height,
18 which has been already previously testified to as 8
19 feet, you can see traffic; is that correct?

20 A. Correct.

21 Q. And at multiple places along the property?

22 A. At one place along the property.

23 Q. Just one?

24 A. On the south side.

1 Q. And what do you mean by the "south side"?

2 I'm not --

3 A. The south side of the property.

4 Q. Do you mean near the home?

5 A. No, where -- the southern portion of the
6 property. The property's north to south. If you look
7 to north, you don't see the traffic. But if you look
8 to the south, you can see the traffic because there's
9 undulating terrain both at the home and on the roadway
10 itself.

11 Q. But that site you're talking about is on the
12 property in question, correct?

13 A. Correct.

14 Q. Rocco, do you think that noise wall is
15 effective when you can see traffic?

16 A. Yes. A wall can be effective when you see
17 traffic. If you look in one direction, you can see
18 traffic. This -- A photo such as this -- And what I
19 was trying to do is get that one moment right there.
20 But there's also -- What's not captured in here is the
21 remaining of the system. You don't try to alleviate
22 traffic from one vehicle at one particular moment. You
23 try to alleviate all traffic at different moments. So
24 as you go further north, this wall provides noise

1 abatement for anything traveling fast and down. I
2 think the roadway itself starts dipping down as you go
3 further to the north. So that wall -- So just because
4 you see traffic doesn't mean the wall is ineffective.

5 Q. Now, on your inspection, the -- there's two
6 types of wall out there, correct? There's concrete
7 wall of about 13-and-a-half feet high?

8 A. Correct.

9 Q. Another section of concrete wall about 8 feet
10 high?

11 A. Mm-hmm.

12 Q. And then a section of wood wall extending a
13 couple hundred feet past that to the south --

14 A. Correct.

15 Q. -- is that correct?

16 A. (Nodding.)

17 Q. Do you know why there's a change in ...

18 A. It's kind of -- And I'm not an engineer. But
19 the design that we use is a step design to basically --
20 instead of having a blunt end of your wall, you try to
21 step it down to taper it down to something more
22 measurable so it's not such a blunt end.

23 Q. And when the Tollway designs walls, do you do
24 that in-house?

1 A. No.

2 Q. You hire a consultant?

3 A. Yes.

4 Q. And these walls were put up before you worked
5 for the Tollway?

6 A. Yes.

7 Q. Are you aware of how they were put up in
8 terms of was a consultant hired? Was plans developed
9 from that consultant?

10 A. Correct.

11 Q. Would that be fair to assume?

12 A. Correct.

13 Q. And do you know whether the recommendations
14 of that consultant, in terms of noise-wall placement,
15 were followed all of the time?

16 A. To the best of my knowledge.

17 Q. Okay. Thank you.

18 MR. DWORSCHAK: Could I have a minute?

19 THE COURT: Sure.

20 (Brief pause.)

21 BY MR. DWORSCHAK:

22 Q. Rocco, I'm going to refer you back again to
23 Complainants' Exhibit No. 5.

24 Is that an accurate portrayal of

1 the conditions you saw on your visit? And I know you
2 did not take this specific picture --

3 A. Yes.

4 Q. And in this picture, can you see a white car?

5 A. Yes.

6 Q. And can you see the tires of that car?

7 A. Yes.

8 Q. And can you see the roadway pavement?

9 A. Yes.

10 MR. DWORSCHAK: Nothing further. Thank
11 you.

12 CROSS-EXAMINATION

13 BY MR. AZAR:

14 Q. Rocco, how long did you work at IDOT?

15 A. 8 years.

16 Q. And you were involved mainly in environmental
17 planning?

18 A. Construction and environmental planning,
19 yeah.

20 Q. So you do environmental impact statements?

21 A. Yes.

22 Q. And you submit those to the Federal Highway,
23 EPA, and various other administrative agencies?

24 A. Correct.

1 Q. And based on the -- What factors are
2 considered in the environmental impact statement?

3 A. The full range of environmental. Within an
4 environmental impact statement, you're looking at all
5 the federal environmental laws: the Clean Water Act,
6 the Clean Air Act. We also look at noise. We look at
7 wet lands, biological resources.

8 Q. Now, environmental impact statements are
9 required for Federal Highway projects?

10 A. Correct.

11 Q. And those are usually defined as those that
12 use federal funds or have a significant impact on
13 federal roads?

14 A. Correct.

15 Q. So at 75th Street, for example, there are no
16 federally funded roads there, are there?

17 A. No.

18 Q. And there are no significant impacts to
19 federal projects there, are there?

20 A. No.

21 Q. Okay. So you don't even need to do an
22 environmental impact statement for that area?

23 A. No.

24 Q. So when the Tollway did that as part of the

1 widening, that was done so the public knows exactly
2 what the Tollway is doing, correct?

3 A. I would assume so.

4 Q. So the Tollway went a step beyond what's
5 legally required?

6 A. Yes.

7 MR. DWORSCHAK: I'm going to object. He
8 wasn't there when they put the walls up.

9 MR. AZAR: He's testified as to what the
10 requirements are as a federally high- -- I think his
11 opinion stands. I mean, I don't know what the
12 objection is.

13 THE COURT: I --

14 MR. DWORSCHAK: I don't know how he
15 could testify to walls that were built before he worked
16 there. So there's --

17 THE COURT: No. He was, I think,
18 testifying as to the requirements that needed to be
19 followed for that particular --

20 MR. AZAR: For the environmental impact
21 statements, not the walls.

22 MR. DWORSCHAK: Okay. All right.

23 BY MR. AZAR:

24 Q. Now, in regards to the walls, what are the

1 applicable standards?

2 A. As far as ...

3 Q. Well, let's back up.

4 The Tollway is a state agency,
5 correct?

6 A. Correct.

7 Q. And it has requirements to follow state law?

8 A. Correct.

9 Q. And that is, I think, the Toll Highway Act?

10 A. Correct.

11 Q. And the purpose outlined is in the Toll
12 Highway Act, the preamble, correct?

13 A. Correct.

14 Q. I'll show you what's been marked as
15 Respondent's Exhibit No. 1 -- or No. 4 -- excuse me.

16 Section 1 is the Toll Highway Act.
17 Does that look familiar?

18 A. Yes.

19 Q. And basically what is the function of the
20 tollway?

21 A. To -- It actually says right here, to
22 construct, operate, and maintain a safe, moderate, and
23 limited access highway designed for the accommodation
24 and the needs of the traveling public through and

1 within the state of Illinois.

2 Q. And that's what the Tollway does?

3 A. Correct.

4 Q. So when the Tollway builds the roads, 294 in
5 particular, it does all these things it's doing in
6 compliance with state law?

7 A. Yes.

8 Q. And that's its statutory function?

9 A. Yes.

10 Q. Is there any profit in this? Does the
11 Tollway make a profit off of this?

12 A. Off of the roadways?

13 Q. Yes.

14 A. No.

15 Q. Now, in regards to the planning, let's go to
16 the budget for a moment.

17 In the budget, it indicates the
18 Tollway has all sorts of revenue coming in.

19 Mr. Dworschak asked you all those questions about the
20 revenue, right?

21 A. Correct.

22 Q. On page 17, which is the second page of the
23 report, third paragraph, it indicates -- Well, let's go
24 through the line items.

1 So there's all this revenue, but
2 there's expenditures that have increased, correct?

3 A. Correct.

4 Q. So every dollar that has been raised by tolls
5 and bonds, there's a commensurate expenditure?

6 A. Correct.

7 Q. So at the end of the day, there's zero left
8 over?

9 A. Correct.

10 Q. And that assumes everything is on budget; is
11 that correct?

12 A. That is correct.

13 Q. So if there is an increase in budgetary
14 expenditures on capital plans, how does impact the
15 budget, the plan?

16 A. Then we have to decide what gets cut, be it
17 project, staff, or otherwise.

18 Q. Has there been increases in budgetary -- in
19 the forecast in expenditures?

20 A. Yes.

21 Q. So all this revenue that is being generated
22 from the bond issuance and the toll increase is all
23 gone and then some?

24 A. Correct.

1 Q. So there are tough budgetary decisions to be
2 made in the future --

3 A. Yes.

4 Q. -- as to what gets done?

5 A. Correct.

6 Q. So when we look at all this revenue that's
7 coming in, it's already spoken for?

8 A. It's programmed, yes.

9 Q. It's programmed. So there's not anything
10 extra to put in additional features?

11 A. No.

12 Q. Okay. Now, in regards to the Tollway's
13 policy for -- the noise policy, that one was approved
14 when, the one that you have -- the traffic noise
15 policy?

16 A. 2000.

17 Q. Okay. Was there a previous version of that?

18 A. There were draft versions.

19 Q. Okay. And was that what was operated by the
20 Tollway in planning things before 2000?

21 A. That would have been in engineering, yes.

22 Q. I just want to show you what's being marked
23 as No. 5.

24 What's that?

1 A. This is the draft tollway siting of barriers
2 policy -- noise barriers, that would be -- from may
3 1995.

4 Q. And was that supplement- -- or modified in
5 June, Exhibit No. 6?

6 A. Yes, it was.

7 Q. Now, in those policies, this would have been
8 what was used when the noise study was done in the
9 construction -- or actually before this. This was what
10 was done after, actually, the Versar study, which we'll
11 get into in a second, and the sound study for the 75th
12 Street and Tri-State widening, correct?

13 A. Correct.

14 Q. So before this was built, this plan, this
15 actually came about afterwards, correct?

16 A. Correct.

17 Q. Now, let's go through the June one.

18 It talks about eligible locations
19 on page 3?

20 A. Mm-hmm.

21 Q. What makes -- What is the criteria to put --
22 Just sum it up -- Can you just explain what would make
23 an eligible criteria for the location of a sound wall.

24 A. We look at the adjacent landings and the

1 proximity of that adjacent landing to the roadway. It
2 must be an outdoor human activity to make it eligible.
3 It has to be within 500 feet, whatever the noise
4 receptor is. And then also, to make it eligible, is
5 the -- whether or not we are entering into a major
6 project.

7 Q. Okay. And I guess that's the critical issue
8 here.

9 What is the criteria for build- --
10 When would -- What would set off -- What would be the
11 trigger for building a noise wall?

12 A. The first thing we would look at is what type
13 of project we're entering into. Is it a lane or
14 capacity addition where there's going to be more
15 traffic? Is there a new interchange? Is there an
16 adding of a -- the I-Pass express lanes?

17 Q. So when you say "adding" an express lane,
18 does that include changing a lane from one use to
19 another?

20 A. A substantial reconfiguration.

21 Q. So what does that mean?

22 A. That for some of the plazas, we went from a
23 typical toll plaza -- automatic lanes, manual planes --
24 to now we have completely opened it up to running

1 straight I-Pass express -- three lanes, four lanes of
2 full-speed traffic through as opposed to a stopped
3 condition and then you go through.

4 Q. So that's increasing traffic capacity, or
5 house does that --

6 A. No, it's not an increase in traffic capacity.
7 That would just be a --

8 Q. Reconfiguration?

9 A. -- a reconfiguration of a toll plaza, sort of
10 a lane configuration.

11 Q. So if you go from -- let's say at
12 75th Street -- from a manual lane to an I-Pass lane, is
13 that considered a significant reconfiguration or
14 reconfiguration?

15 A. The 75th Street toll plaza was there, and it
16 was adding a -- taking out one of the automatic or
17 manual lanes and putting in an I-Pass-only lane.

18 Q. Is that considered reconfiguration?

19 A. No. That would just be a change of the
20 equipment.

21 Q. So -- Just so it's clear, what is a
22 reconfiguration? I just want to --

23 A. Moving a footprint from here -- moving it
24 closer.

1 Q. So this would be -- Sometimes you have to
2 expand the roadway?

3 A. Yes.

4 Q. And that's usually what a reconfiguration
5 means?

6 A. And then you would bring your noise source
7 closer to the receptor.

8 Q. So the criteria is if you move the noise
9 source close to the receptor, right?

10 A. That's one of the criteria.

11 Q. So did that occur at 75th Street when the
12 I-Pass -- they put in the I-Pass lane?

13 A. Not to my knowledge. It seemed to be just a
14 simple reconfiguration. We did that as soon as we
15 started accepting I-Pass.

16 Q. Now, is there a new sound policy that was
17 adopted by the Board?

18 A. There will be.

19 Q. There will be. So there is plans -- The
20 Tollway doesn't actually have a formal policy approved
21 by the Board yet?

22 A. We've got the policy that was approved in
23 2000.

24 Q. Okay. Is that approved by the Board or --

1 A. That was approved by the engineering
2 committee.

3 Q. Is there going to be a Board-approved one?

4 A. Yes.

5 Q. So that would be the final version approved
6 by the Board?

7 A. Correct.

8 Q. And that's the official rules?

9 A. For the Tollway, yes.

10 Q. Okay. Now, what is the basis for the noise
11 criteria? I mean, what is the impetus for doing a
12 noise study? Is there any federal regulations or
13 guidelines that you follow?

14 A. There are federal guidelines, yes. And
15 that's what we followed as a basis for our policy?

16 Q. I'll show you what's been marked as
17 Respondent's Exhibit No. 7.

18 Do you recognize that,

19 Mr. Zuccherro?

20 A. Yes.

21 Q. And what is this?

22 A. This is the --

23 Q. Why don't you look it over real quick.

24 A. This is the -- The federal noise policy,

1 23 CFR 772.

2 Q. Is that what the Tollway's criteria is based
3 upon?

4 A. It's largely based upon this, yes.

5 Q. Now, these are mandatory for federally funded
6 road expansions, correct?

7 A. Correct.

8 Q. Is it required or mandated for non-federally
9 funded roadways?

10 A. No.

11 Q. So the Tollway technically wouldn't have to
12 follow this?

13 A. No.

14 Q. So anytime the Tollway puts up noise walls,
15 it is a benefit to the community at its own expense,
16 essentially?

17 A. Correct.

18 Q. So this is above and beyond anything required
19 by legislature or the federal government?

20 A. Correct.

21 Q. And you try to follow these rules in the
22 policy, correct?

23 A. Correct.

24 Q. Now, how many vehicles use the tollway?

1 A. More than 1.4 million a day.

2 Q. Okay. What value -- economic value is
3 that -- do you have any idea? -- the estimated value to
4 the community?

5 A. 1.4 million vehicles, commercial and
6 otherwise, billions.

7 Q. All right. Now, in regards to Exhibit
8 No. 11, Complainants' 11, which is the noise study --
9 That's Respondent's 11 -- or

10 THE COURT: Complainants'.

11 BY MR. AZAR:

12 Q. -- Complainants' 11.

13 Now, are you familiar with that
14 study?

15 A. Yes.

16 Q. All right. In the noise study, it indicates
17 how many vehicles, starting -- Well, why don't we start
18 at the very back of the book at 1988.

19 How many vehicles are in the area
20 of the central Tri-State by -- where 75th Street is?

21 A. 47,600, is that the number we're looking --
22 Or 50,630.

23 Q. So that's the number on the top -- Why don't
24 you circle that number.

1 A. Actually, you've got -- Okay.

2 Q. Circle the number.

3 (Witness complying.)

4 BY MR. AZAR:

5 Q. And that's coming -- That is the northbound
6 Tri-State, central Tri-State --

7 A. Northbound Tri-State, correct.

8 Q. All right. Now, fast-forward to 1994.

9 How many vehicles are going through
10 by the -- that area, the north Tri-State?

11 A. 57,600 to the south and 57,300 to the
12 south -- I mean, to the north.

13 Q. Now, the Willow Springs Road, Plaza 34,
14 that's also 75th Street?

15 A. Correct.

16 Q. All right. So those two names are
17 interchangeable?

18 A. Yes.

19 Q. Okay. How many vehicles are going on a daily
20 basis through that, the northbound?

21 A. In 1994 or currently?

22 Q. '94.

23 A. 540-.

24 Q. As of 2000 -- Does it increase -- Looking at

1 the next sets of average traffic reports, are those
2 numbers going up every year?

3 A. Yeah, they're going up every year.

4 Q. And what is the economic impact of all of
5 those vehicles? Is that a substantial economic impact?

6 A. 70,000 vehicles, 78,000 vehicles has a
7 substantial impact on the economy.

8 Q. And how many are -- Do you have a number as
9 to what the percentage would be of truck traffic going
10 through there?

11 A. On average, it's about 15 percent.

12 Q. So that's a substantial amount of truck
13 traffic?

14 A. That's a substantial amount of truck traffic.

15 Q. And how much economic impact in approximate
16 dollars that go through there in a year, just that
17 area?

18 A. Actually, if you just give me a moment, this
19 is one of the things I looked at for the percentage of
20 truck traffic actually using that particular
21 interchange.

22 30 percent commercial vehicles.

23 Q. So that's higher than usual?

24 A. Yes.

1 Q. And that's a -- Where is that coming from?

2 A. I would assume, the industrial facilities
3 through there: UPS, Burlington-Northern.

4 Q. I'm going to have you look at what's been
5 marked as Joint 3 and Joint -- Do you recognize that
6 area?

7 A. Yes.

8 Q. And what area is that?

9 A. The Petrosius residence area, 75th Street
10 interchange, I-294, I-55.

11 Q. Immediately to the southwest of the area,
12 what is that?

13 A. The Chicago Sanitary and Ship Canal.

14 Q. And what's the historical use of that area?

15 A. It's freight.

16 Q. Is that -- And what else is located in the
17 area?

18 A. Burlington Northern freight yard, rail yard.

19 Q. Are those substantial noise generators, rail
20 yards?

21 A. Yes, they can be.

22 Q. How about the other facility there?

23 A. The UPS facility?

24 Q. Yes.

1 A. Yes.

2 Q. Is that one of the largest in the country?

3 A. Yes.

4 Q. What's the economic impact of those two
5 facilities on the surrounding community?

6 MR. DWORSCHAK: I'm going to object.
7 He's not an economist.

8 BY THE WITNESS:

9 A. I could ballpark it and say it would be
10 billions, easily. With the amount --

11 THE COURT: Wait, wait. Hang on. We're
12 still talking about what --

13 MR. AZAR: Well, he does the planning,
14 and he can give approximate numbers. I think the Board
15 needs to make -- an indication as to what the economic
16 impact is, and this is the only way to get that. I
17 mean, there's nobody who would -- Unless we subpoenaed
18 UPS and Burlington Northern and ask what their figures,
19 it's an estimate. It should be sufficient just to say
20 that it is substantial.

21 THE COURT: What was the exact question
22 again?

23 (Record read as requested.)

24 MR. DWORSCHAK: He's testified he's a

1 planner for the Tollway. He plans roads and
2 environmental impact, not economic studies of adjacent
3 industrial or commercial enterprises.

4 THE COURT: I mean, I guess, can you
5 establish any foundation that he would have knowledge
6 of that type of information?

7 MR. AZAR: Sure. I can back up.

8 BY MR. AZAR:

9 Q. You indicated that you have a degree in urban
10 planning?

11 A. Correct.

12 Q. In an environmental impact statement, do
13 you -- is there an assessment of the communities
14 involved?

15 A. Yes, there is an assessment of all the
16 communities involved and the impact on those
17 communities both from a population growth and an
18 economic standpoint. It's called a socioeconomic
19 impact analysis. It's part of Title 6.

20 Q. So is that something that the data comes to
21 you and you do an environmental impact statement with
22 the community and what is present in the community, how
23 it's impacted by the roadway?

24 A. Yes. That's things that we looked at all the

1 time, was, when you build this roadway, what's that
2 going to mean to the economy and how is that going to
3 affect job growth from the standpoint of if you put in
4 a roadway, you're intermixing traffic with businesses
5 and there's growth associated with that. That has to
6 be handled by our system.

7 MR. AZAR: I believe that should be
8 sufficient.

9 THE COURT: I think that's sufficient.

10 MR. DWORSCHAK: Okay.

11 BY MR. AZAR:

12 Q. So what would be, approximately -- I know you
13 don't have exact numbers, but how would this impact the
14 communities?

15 A. Just the job growth -- I mean, the jobs,
16 period, that something like this would create -- I
17 don't know how you would even quantify the amount of
18 money that would come through not just the jobs but the
19 amount of goods and services that pass through this
20 entire facility. I would say it has to be in the
21 billions if it's one of the largest UPS facilities, if
22 that's what we're looking at, the UPS facility. That's
23 huge.

24 And I know freight itself is a

1 6-billion-dollar a year industry for this area along
2 the Chicago Sanitary and Ship Canal. And also with the
3 rail freight, especially the Burlington Northern, the
4 growth that is going on with the Burlington Northern
5 freight facilities throughout this industry, you're
6 talking billions of dollars --

7 Q. And the --

8 A. -- generated by facilities such as this.

9 Q. And the intermodal is defined as a -- goes
10 from train to truck, correct?

11 A. Correct.

12 Q. And the truck traffic goes onto I-294 at
13 75th Street mainly, correct?

14 A. Correct. Intermodal would also include a
15 freight hookup as well for the canal, the shipping.

16 Q. So all three play into the traffic that go
17 onto 75th Street?

18 A. Yes.

19 Q. And how would this area be categorized, as a
20 residential area or a commercial or industrial?

21 A. When you look at different exhibits -- This
22 one characterizes it -- Exhibit whatever this is -- it
23 looks much more industrial here and then residential --

24 MR. DWORSCHAK: Rocco, can you be

1 specific as to what he's referring to?

2 THE COURT: This is Joint Exhibit No. 3,
3 you're looking at?

4 THE WITNESS: I didn't see that. Is
5 there a number on it?

6 THE COURT: (Indicating).

7 THE WITNESS: Oh, okay.

8 BY THE WITNESS:

9 A. It looks pretty industrial, but there is
10 definitely a residential component.

11 BY MR. AZAR:

12 Q. The house borders -- is on the transition
13 area, correct?

14 A. You could say that.

15 Q. So they get a little bit of everything?

16 A. Mm-hmm.

17 Q. Now, that area also has Interstate I-55 going
18 through it?

19 A. Correct.

20 Q. So going through that area, you have the
21 canal, the Burlington Northern Santa Fe, I-55, 294, and
22 the UPS facility; is that correct?

23 A. Correct.

24 Q. And all those generate noise?

1 A. Yes.

2 Q. Now, is the interchange there suitable for
3 the use that the property's being used -- for the area?

4 A. "Suitable" as in --

5 Q. Well, is it a good place to put an
6 interchange?

7 A. Yes. This is where people would want to get
8 to a system, and that is just going to create a lot of
9 the growth through this area. So yes, it would seem to
10 be suitable.

11 Q. Now, when we -- when you -- Let's back up.

12 Now, you described the wall as a
13 step-down?

14 A. It's a step wall.

15 Q. Step wall. So it's stepping up from 75th
16 back to the full height?

17 A. Sure, yes.

18 Q. Now, who designs a wall like that?

19 A. Our engineering consultants.

20 Q. Okay. Let's back up.

21 What's the first step in designing
22 a wall?

23 A. To do a noise study.

24 Q. And did the Tollway conduct a noise study out

1 there?

2 A. Yes.

3 Q. And who conducted the study?

4 A. Versar.

5 Q. And what did the noise study consist of?

6 A. It consisted of existing traffic noise
7 levels, future traffic noise levels based on projected
8 traffic volumes. It identified all the different noise
9 receptors along the entire stretch of Interstate 294,
10 and it also recommends a noise wall location.

11 Q. Okay. So there's -- There was -- Part of the
12 study was to actually go out there and monitor the
13 sound?

14 A. Correct.

15 Q. And the next part was to do
16 computer-modeling?

17 A. Correct.

18 Q. All right. I'm going to show you what's been
19 marked as Respondent's Exhibits 8, 9, and 10.

20 Can you identify them and indicate
21 where they came from?

22 MR. AZAR: And I don't know if the Board
23 wants the entire study or just relevant portions.

24 THE COURT: Well, I don't know what it

1 is right now --

2 MR. DWORSCHAK: I'm not sure what I'm
3 looking at.

4 Did you give this to us ahead of
5 time?

6 MR. AZAR: Sure.

7 MR. DWORSCHAK: When did you give it to
8 me?

9 MR. AZAR: In discovery, the Versar
10 study.

11 BY MR. AZAR:

12 Q. Can you identify No. 8?

13 A. Yes. This is the field data sheet from the
14 Versar traffic noise study.

15 Q. And what's 9 and 10?

16 A. Some of the technical noise modeling
17 information that came from the report after the
18 modeling was done.

19 Q. Okay. So these were the two parts of the
20 noise study, the field numbers and computer modeling?

21 A. Correct.

22 Q. All right. Now, in the field study, does the
23 train- -- what affects the noise receptor when you're
24 taking the study, the numbers? What can affect the

1 noise level?

2 A. The volume of traffic, the type of traffic,
3 the terrain. The -- Some of the surrounding building
4 features or landscape features can affect the noise.

5 Q. How about distance?

6 A. Distance.

7 Q. Okay. So if you do a noise study from, let's
8 say, 10 feet away from the edge of the road, you're
9 going to get one number, correct?

10 A. Correct. That would be a higher number.

11 Q. All right. But if the terrain is higher or
12 lower, would it differ?

13 Let's say you're in the middle at
14 Point X and you move 10 feet over and the ground level
15 drops, say, 5 feet and you move in another direction
16 and the altitude goes -- the ground level goes up
17 5 feet, will the readings be the same?

18 A. They could vary.

19 Q. So the noise levels may vary depending on
20 just the train within a couple feet?

21 A. Mm-hmm.

22 Q. So a -- The noise study there would -- may
23 differ from the noise study you conducted out in the
24 field, correct?

1 A. Correct.

2 Q. And it could differ from the study that
3 Mr. Zak did?

4 A. It could differ from that. It could differ
5 by the time of day that somebody's out there.

6 Q. So it's difficult to determine what the
7 actual number is because of all these variables?

8 A. Correct.

9 Q. So when you do a noise study, what numbers do
10 you go by?

11 A. You'd enter the -- What you do with the --
12 When you go out there and actually do your
13 measurements, you take a field measurement of that
14 particular moment in time and you take that measurement
15 and put it into your noise model, which is intended to
16 simulate the conditions based on the mix of traffic,
17 the number of vehicles, and things like that. That
18 would get factored in the model. And you take your
19 noise measurement and calibrate it to your noise model,
20 and that's when you get your results.

21 Q. Okay. So you get your noise numbers, and
22 what does -- and then there's, in there,
23 recommendations in the study as to how to abate the
24 noise, correct?

1 A. Correct.

2 Q. And they recommend X number of feet, correct?

3 A. Correct.

4 Q. And the wall is built?

5 A. Correct.

6 Q. Now, when the wall is built, does the

7 Tollway's policy tell you how it's to be designed? So

8 there's a difference between the Versar study's

9 recommendations and the design, correct?

10 A. The Tollway policy doesn't mention anything

11 about design. That is up to the engineering company

12 who has to make up the design of the wall.

13 Q. Who designed this?

14 A. Alfred Benesh.

15 Q. Okay. Alfred Benesh is a professional

16 engineering firm?

17 A. Yes.

18 Q. And they would submit design plans and

19 certify them as professional engineers?

20 A. Correct.

21 Q. Now, are there factors, when they're

22 designing the wall, taken into consideration -- local

23 topography -- that maybe the Versar study wouldn't have

24 looked at?

1 A. Topography and also the geology, the
2 underlying soil conditions.

3 Q. And what about the drainage?

4 A. They have to look at drainage. You don't
5 want to put anything in a drainageway to block --

6 Q. What happens if a wall is built where
7 there's -- without consideration to the drainage?

8 A. It could possibly back up, the storm water
9 runoff. You could have flooding.

10 Q. How about the impact on the wall itself?

11 A. Oh, then it would -- I would imagine -- Not
12 being an engineer, I would imagine it would
13 disintegrate your substructure. Then the wall would
14 be -- the effectiveness of the wall would be reduced
15 because what you want to do with the wall, it should be
16 a solid piece with no gaps on the sides or underneath.
17 And if there's drainage flowing underneath, you've
18 basically created a funnel for that noise to go
19 underneath.

20 Q. I'll show you what's been marked as
21 Respondent's Exhibits 11, 12 and 13.

22 Do you recognize those?

23 A. Yes.

24 Q. And what are those?

1 A. These are photos that I took when we were out
2 in the field of the drainage area immediately west of
3 the noise wall. And Exhibit 13, I believe the
4 Petrosius home is located (indicating) ...

5 Q. Do you want to make an X on that so the Board
6 can see what you're referencing?

7 (Witness complying.)

8 MR. DWORSCHAK: Do you have copies for
9 us?

10 MR. AZAR: Yeah.

11 MR. DWORSCHAK: You showed me. Then you
12 took them away.

13 BY MR. AZAR:

14 Q. Now, Rocco, in regards to the drainage there,
15 what do those photographs illustrate in regards to the
16 drainage?

17 A. That there's a rather substantial waterway
18 coming through this area when there's a -- when there's
19 rain. You can see that the water is all -- Or the --
20 The ditch itself, or the drainageway, is pitched to go
21 down to this -- it looks like an inlet or an outlet of
22 where the water would be intercepted and taken off, I
23 would imagine, to one of the sanitary and ship canals
24 or -- But it shows a rather substantial drainageway.

1 Q. So does that prevent a wall from being right
2 by the roadway?

3 A. It doesn't prevent it. It inhibits your
4 ability to put something there because then what you've
5 done, if you put the wall up near a roadway, you've got
6 a maintenance consideration of an area that, in looking
7 at these photos, would obviously have to be maintained
8 quite a bit to ensure that there's no blockage of that
9 drainageway. Like I said, if there were blockage of
10 the drainageway, you'd probably get flooding upstream
11 or -- definitely upstream in this area. So if you
12 relocated the wall closer to the roadway, you would
13 have a hidden drainage area behind the wall that it
14 would be very difficult for maintenance crews to
15 address if there was a problem.

16 Q. Now, in the noise policy, which is No. 8,
17 that is a factor, isn't it, that is considered in
18 designing the walls and whether or not a wall should be
19 put in place, maintenance issues?

20 A. It's definitely something we look at in all
21 of our projects.

22 Q. And in doing sites not eligible for
23 abatement, No. 2 ...

24 A. Abatement measures would pose a threat to

1 safety, hinder a maintenance or create an operational
2 problem to drain the environment, destruct drainage, or
3 alter watershed boundaries.

4 Q. So those are factors that have to be
5 considered by -- That's a feasibility issue --

6 A. Correct.

7 Q. -- whether a wall should actually be
8 installed and how it should be built, correct?

9 A. Correct.

10 Q. So when the Tollway built this wall, those
11 were factors that were considered in how it was
12 designed?

13 A. I would have to assume so.

14 Q. Okay. Now, going to the walls here, the wall
15 heights are 13 feet and 8 feet; does that sound right?

16 A. Yes.

17 Q. Okay. Now, those are -- Those, again, were
18 designed by the professional engineers?

19 A. Correct.

20 Q. And what are the -- What are the maximum
21 heights of walls that the Tollway builds?

22 A. Typically, 20 feet is the highest we build.
23 We've got some that are probably just a little bit
24 above 20, maybe 22 feet. But that's typically the

1 highest.

2 Q. And why is that?

3 A. Structural stability. By building a higher
4 wall, you'd have to make a much larger foundation in
5 the ground to hold up the vertical wall wind loads and
6 such things like that.

7 Q. So if you get to a wall that's 30, 40,
8 45 feet, does that pose a danger at that height?

9 A. I'm not a structural person. I would assume
10 the wall -- if you build it up that high, if it
11 fell ...

12 Q. Okay. Now, does the Tollway, in its policy,
13 which would be the June and May 1995 policy -- do they
14 have a dollar amount? Can you -- What's the exhibit
15 number there?

16 A. Exhibit 6.

17 Q. Okay. Respondent's 6, what's the dollar
18 threshold that the Tollway considers for each
19 individual residence?

20 A. In the 1995 policy?

21 Q. Yes.

22 A. The total cost of a noise barrier wall shall
23 not exceed \$30,000 per abutting residence.

24 Q. Okay. Now, are you familiar with IDOT's

1 policies?

2 A. Yes.

3 Q. And what is there cost structure?

4 A. Their walls shall not exceed a cost of
5 \$24,000 per resident's benefit.

6 Q. So the Tollway spends a lot more per
7 resident?

8 A. Well, this is a draft policy, so -- But what
9 we do with our policy, we don't set a dollar amount.
10 But the wall has to be what's deemed cost effective
11 when looking at all the different factors.

12 Q. Okay. So the cost of a wall is a fact at
13 issue that -- You wouldn't put up a wall if it
14 wasn't -- Has the Tollway ever put up a wall for one
15 house?

16 A. No.

17 Q. Okay. How about for certain neighborhoods?

18 A. Sure, as part of our normal course of
19 operation.

20 Q. Okay. And those have to meet the
21 cost-effectiveness criteria?

22 A. Correct.

23 Q. So if it's affecting a couple people, is the
24 Tollway more reluctant to do it if the cost is

1 substantial?

2 A. What we look at is -- Like I said, we look at
3 all the varying factors. It's not just a
4 cost-effective criteria because we don't want to get
5 caught into that little dollar amount. We want to look
6 at all the different factors. And what we look at is
7 what the existing noise levels are, what the future
8 noise levels are, who was there first. These are what
9 we call the reasonable and feasible factors. What are
10 the maintenance operation issues if we were to build
11 it? What are the effects on the other environmental
12 issues? So we look at a much broader range.

13 Q. So when this wall was built, all those
14 factors were considered?

15 A. I can't say yes or no. But just judging from
16 the wrapping and actually hugging the drainage well
17 itself, that was one of the -- obviously, one of the
18 things they looked at.

19 Q. Now, are you familiar with any walls that
20 exceed 30 feet?

21 A. Not particularly. I've heard of a wall out
22 in Washington, D.C., but everybody knows of a
23 particular instance of something --

24 Q. So there's just a couple walls that are

1 extremely large, correct?

2 A. (Nodding.)

3 Q. You need to say yes or no.

4 A. Yes.

5 Q. Okay. Are those anomalies or a regular

6 business?

7 A. Definitely an anomaly.

8 Q. What are the average heights of walls in the

9 community?

10 A. In -- On the Tollway system?

11 Q. Or in -- With IDOT, too.

12 A. Anywhere between 12 to 16 feet would be an

13 average height, 10 to 16 feet.

14 Q. What's the highest that IDOT would do?

15 A. 20 feet, right around there. You don't want

16 to go too much higher than 20 feet.

17 Q. Does that get into a cost-effectiveness,

18 feasibility issue?

19 A. It gets into a cost-effectiveness issue and

20 also gets into the structural issues. And I'm not a

21 structural person --

22 Q. Right. But it's a feasibility -- whether

23 it's feasible --

24 A. Right.

1 Q. -- to actually build this?

2 A. Right.

3 Q. So it's -- The feasibility becomes a problem

4 when it's over 20 feet?

5 A. Correct.

6 Q. Now -- Almost done. When you met with

7 Mr. Petrosius, you went out there with a -- Excuse me.

8 When you went to his house -- Well, let's back up.

9 You met with him, correct -- with

10 Bunny, correct --

11 A. Correct.

12 Q. -- at the Tollway in August?

13 A. May, I believe it was.

14 Q. I'm sorry. So when you met with him, what

15 did you do to prepare yourself and bring with you?

16 A. I did a -- I looked at the noise analysis. I

17 tried to gather whatever information was available at

18 that point in time -- any of the design plans,

19 construction plans -- to get a sense of what was --

20 what had happened back then. I looked at some aerial

21 photos, get a sense of -- You don't want to blindly go

22 into something, not understanding what the person

23 you're meeting with is going to be talking about.

24 Q. So you had with you the design plans,

1 correct?

2 A. I believe I had the design plans. I don't
3 recall specifically. I definitely had the noise
4 report. I remember that.

5 Q. Okay. And did you show him those things?

6 A. Yes.

7 Q. And did you explain them to him?

8 A. I explained them and actually provided copies
9 of some of that information.

10 Q. Okay. And did you explain how this thing was
11 built and under what circumstances it was built when it
12 was built?

13 A. Probably not at that meeting because after
14 doing the site visit, I'd get a better understanding of
15 exactly what happens out there.

16 Q. So you made a site visit?

17 A. Yes. Not being an engineer, I have to go out
18 and see things. I can't tell everything by looking at
19 a --

20 Q. Before I go on, the project that was -- this
21 was built was under 668 ABC -- or 66- -- yeah, 666 ABC?

22 A. Correct.

23 Q. All right. I'm going to show you what's been
24 marked as Respondent's Exhibit No. 14.

1 Do you recognize that?

2 A. Yes.

3 Q. What is that?

4 A. This is basically a bid tabulation sheet
5 showing what the cost and expense of the projects are.

6 Q. And those were for the noise walls
7 specifically along the south -- the central Tri-State?

8 A. Yes. These are all the pay items for the
9 noise wall contract.

10 Q. And how much did the Tollway expend just for
11 those noise walls?

12 A. The contract amount -- The adjusted contract
13 amount is \$11,318,357.60.

14 Q. So Mr. Petrosius's sound wall was part of
15 that project?

16 A. Correct.

17 Q. So it was an 11-million-dollar-plus project
18 to put up noise walls for the people along the south
19 Tri-State?

20 A. Correct.

21 Q. Okay. Now -- Sorry about that transition.

22 Now, shift gears to your site visit
23 with Bunny to the Petrosius residence.

24 Do you recall that?

1 A. Yes.

2 Q. What did you bring with you?

3 A. The noise meter that we have.

4 Q. What kind of noise meter is that?

5 A. Bruhl & Greer (phonetic). I don't know the
6 exact model number of it.

7 Q. Did -- Were you trained on how to use it?

8 A. Yes.

9 Q. Who trained you?

10 A. The people who have been there before who
11 have had experience with that model.

12 Q. Now, is that a professional-grade noise
13 meter?

14 A. Mm-hmm.

15 Q. You need to say --

16 A. Yes, it is. I'm sorry. Yes.

17 Q. And that's what's used by the Tollway
18 personnel to do informal noise studies?

19 A. Yes.

20 Q. Is that comparable to a Radio Shack, or is
21 this something that would be used by professionals?

22 A. It would be something that's used by a
23 professional. It's an older model, but it's still
24 something that would be a professional model. Bruhl &

1 Greer is one of the more recognized noise equipment
2 manufacturers.

3 Q. Okay. Now, do you have to calibrate that
4 machine every time you use it?

5 A. Yes.

6 Q. And did you calibrate it before you used it
7 that day?

8 A. From what I recall, yes.

9 Q. Okay. Do you recall your -- the noise levels
10 you got out there?

11 A. We walked all over the place. It depends.
12 When we were close to the roadway, they were up in the
13 near-80-decibel range -- Actually, in front of the
14 noise wall by the roadway, it was near 80. And then we
15 walked around towards the driveway. We didn't really
16 walk too much onto their property, but in that area, it
17 got down to maybe -- anywhere between 63 and
18 68 decibels.

19 Q. Okay. How about over -- You said 63 to 68 by
20 the residence?

21 A. I believe that's what it was.

22 Q. Okay. I'm going to show you what's been
23 marked as Respondent's Exhibit No. 15.

24 What is that?

1 A. This is a little write-up that I did after
2 going out onto the site.

3 Yeah, between 63 and 68 decibels.

4 Q. So that's a write-up you do.

5 Now, is that something you do every
6 time you go out into the field?

7 A. For the most part, yes. Somebody's got to
8 transcribe some of Bunny's notes and put it into
9 something that's in somewhat of a usable format.

10 Q. All right. Now, in that report, do you go
11 through the -- discuss the noise criteria and the
12 noise --

13 A. Yes.

14 Q. -- issues?

15 A. His issues?

16 Q. Yes, that the noise wall was designed
17 defectively and that there was problems with the
18 design, et cetera.

19 A. Yes, in paragraphs 1 and 2.

20 Q. Okay. Going through your report, you
21 reference that the -- there's a need to do appropriate
22 noise mitigation to control the noise levels, correct?

23 A. Correct.

24 Q. All right. And you indicate that there is --

1 objects have achieved 67 decibels?

2 A. Correct.

3 Q. All right. Now, the 67 decibels, is that to
4 get to that number or is that the threshold by which,
5 if it exceeds that, you mitigate?

6 A. That is the federal noise abatement criteria
7 that they use that -- as an indicator. If you're
8 approaching or exceeding 67 decibels, you are on the
9 threshold where you have a noise impact.

10 Q. Okay. And that's what you do in a noise
11 study?

12 A. Correct.

13 Q. You determine whether or not there's
14 feasibility, there's cost effectiveness, et cetera,
15 correct?

16 A. Correct.

17 Q. All right. And then there is a need to
18 achieve a 10-decibel noise reduction, correct?

19 A. That is a -- It's not a need. It's a goal --

20 Q. A goal.

21 A. -- to achieve a 10-decibel reduction, which
22 is basically cutting the noise in half or the -- You
23 know, there's different variants. But that's what you
24 always strive for.

1 Q. All right. Now, when does noise become --
2 How many -- What's the number of decibels before --
3 that you could hear a change?

4 A. 3 decibels is pretty much average on the
5 human ear, 2 to 3 decibels.

6 Q. So if there's a 5-decibel reduction, it's --

7 A. Yeah, it's perceptible.

8 Q. Okay. Now, did you find a reduction in the
9 noise levels as a consequence of the wall?

10 A. Yes.

11 Q. And what was the decibel range?

12 A. Well, when I went out by the driveway, it was
13 ranging between 63 to 68 decibels.

14 Q. And that was a reduction from the --

15 A. From the roadway side of 15 to 18 decibels,
16 not necessarily attributed to the wall itself. That
17 was just the reduction of noise from one point to
18 another point.

19 Q. Now, these readings could have been different
20 if you went to the house, up on a hill, correct?

21 A. Correct.

22 Q. So depending on where you go on the site, the
23 numbers could be different?

24 A. Correct.

1 Q. All right. So based on -- Did you come to a
2 conclusion as to whether or not the Tollway met the
3 criteria set forth by the Federal Highway
4 Administration and the Tollway traffic noise policies?

5 A. My conclusion after being out on-site is that
6 the walls were effective at achieving that 67 decibels
7 on the site based upon that reading of 63 to 68.

8 Q. How about the 10-decibel reduction?

9 A. It reduced it by -- anywhere between 15 to
10 18 decibels from the roadway.

11 Q. So in you opinion, it was effectively
12 reducing it to the criteria required by the
13 recommendations by the federal government?

14 A. In my opinion, the wall provided noise
15 abatement on that property to achieve a 67-decibel
16 [sic] reduction, which was the intent and goal of the
17 noise study.

18 MR. AZAR: I have further questions.

19 Thank you.

20 THE COURT: Mr. Azar, before you step
21 down, I do have one question.

22 MR. AZAR: Can I do one thing? Can I
23 have those exhibits -- I think they were 6 through
24 15 -- admitted.

1 MR. DWORSCHAK: The only one I have a
2 problem with Victor is this one.

3 THE COURT: I'm sorry. Which exhibit
4 are we discussing?

5 MR. DWORSCHAK: This is the one I have
6 an objection to that Victor and I are going to work
7 out.

8 THE COURT: Which number is that? I
9 can't see that far away.

10 MR. AZAR: It's the Versar field study.

11 THE COURT: Did you move that?

12 MR. AZAR: That was 8, 9, and 10.

13 THE COURT: Oh, this is 8, okay.

14 Respondent's Exhibit 8.

15 MR. DWORSCHAK: And I have no objection
16 to the other ones.

17 THE COURT: Wait. Before we take a
18 break, let me just -- let's get through these exhibits
19 here.

20 MR. DWORSCHAK: That's fine. I'm not
21 going anywhere.

22 THE COURT: You have moved Exhibit 4
23 through 15?

24 MR. AZAR: Yes.

1 THE COURT: Okay. 4 through 15.

2 And the only objection you have is
3 to 8?

4 MR. DWORSCHAK: That's correct.

5 THE COURT: Okay. And what is your
6 objection to 8?

7 MR. DWORSCHAK: I don't believe I was
8 given this prior to this hearing, although I may have
9 asked for it.

10 MR. AZAR: I thought I gave it to him.

11 MR. DWORSCHAK: So Victor and I decided,
12 off to the side, we'll work it out and decide tomorrow
13 what to do.

14 THE COURT: Would you like to hold this
15 one tonight and check your file tonight?

16 MR. DWORSCHAK: Yes.

17 THE COURT: Okay. So we'll just hold
18 Respondent's Exhibit 8 for now, and we will admit
19 Respondent's Exhibits 4, 5, 6, 7, 9, 10, 11, 12, 13,
20 14, and 15.

21 (Respondent's Exhibit Nos. 4
22 through 7 and 9 through 15 were
23 admitted into evidence.)

24 THE COURT: And my question -- I had a

1 question about something you had said probably, oh -- I
2 don't know -- about 40 minutes ago --

3 THE WITNESS: Oh, that long, we were
4 talking?

5 THE COURT: -- that I just wanted to
6 clarify.

7 When you were talking about the
8 economic impact with UPS, Burlington, and testimony to
9 that effect, was that based on your education and
10 experience or do you actually do research when you do
11 your studies?

12 THE WITNESS: When we do studies, we do
13 research -- or it's a combination of both --

14 THE COURT: So your figures were based
15 on research?

16 THE WITNESS: Not particularly for this
17 area but research that we've done on other projects --

18 MR. DWORSCHAK: But you haven't done
19 research in this specific area?

20 THE WITNESS: Not specifically on this
21 area but research and studies on --

22 THE COURT: So based on your
23 experience --

24 THE WITNESS: -- of the effect of

1 transportation.

2 THE COURT: -- with other projects --

3 THE WITNESS: Right.

4 THE COURT: You came up with figures for
5 this area?

6 THE WITNESS: Yes.

7 THE COURT: Okay. Thank you.

8 Okay. We will take a 5-minute
9 break.

10 (A short break was had.)

11 THE COURT: Mr. Dworschak, your witness.

12 MR. DWORSCHAK: Your Honor, I'm checking
13 my records, and I don't think that I moved to enter
14 Complainants' Exhibit -- the annual budget into
15 evidence.

16 THE COURT: I believe that's correct.

17 MR. DWORSCHAK: And so I now move to
18 inter it into evidence.

19 MR. AZAR: No objection.

20 THE COURT: Okay. Complainants'
21 Exhibit 13 is admitted.

22 (Complainants' Exhibit No. 13 was
23 admitted into evidence.)

24 THE COURT: You also did not move

1 Exhibits 9 and 10 which were Bunny's notes.

2 Are you coming back to those, or
3 were you just not going to move those?

4 MR. DWORSCHAK: I thought you were going
5 to object.

6 MR. AZAR: I object.

7 MR. DWORSCHAK: Yeah. I may come back
8 to it tomorrow at this point.

9 THE COURT: Okay. All right.

10 REDIRECT EXAMINATION

11 BY MR. DWORSCHAK:

12 Q. Okay. Now, Rocco, you gave a lot of
13 testimony on the noise walls that were constructed in
14 conjunction with the widening of the central Tri-State
15 in 1994, correct?

16 A. I gave testimony on noise walls in general
17 and my findings when I went out.

18 Q. And then Victor asked you specific questions
19 about the noise wall placed next to the property in
20 question, correct?

21 A. Correct.

22 Q. But you didn't work for the Tollway when that
23 noise wall was either designed or built, did you?

24 A. No.

1 Q. And any information you have on it is not
2 direct; it's secondhand or what you've heard. Is that
3 correct?

4 A. It's from research into different -- looking
5 at the noise reports.

6 Q. Now, referring back to the aerial map which,
7 I believe, is Joint Exhibit No. --

8 A. 3.

9 Q. -- 3, and there are -- You're familiar with
10 that, correct?

11 A. Correct.

12 Q. And it shows the canal, the UPS facility, the
13 Burlington Northern facility, correct?

14 A. Correct.

15 Q. And it shows the Tri-State Tollway dissecting
16 it, correct?

17 A. Mm-hmm.

18 Q. Is there any way to get from the area in
19 question to the UPS facility directly?

20 And what I mean by that, there's no
21 road -- you have to go around to get to, quote/unquote,
22 the industrial area, correct?

23 A. You can get right onto 294 from the UPS
24 facility directly.

1 Q. But when you're coming from the Maridon side
2 road -- Maridon Road side, Maridon Road dead-ends,
3 correct?

4 A. Yes.

5 Q. So if you wanted to get over to the UPS
6 facility from Maridon Road, what would you do?

7 A. You'd take whatever this is. I think this
8 Fifth Avenue --

9 Q. That's Fifth Avenue Cutoff, Will

10 A. -- and whatever that is --

11 Q. Willow Springs Road.

12 A. -- Willow Springs Road, and back around to
13 get on.

14 Q. So there's no direct route? Would you call
15 making three left turns a direct way?

16 A. No.

17 Q. Okay. And until terms of distance, do you
18 have any idea how far away the Burlington Northern
19 tracks are from the property in question?

20 A. The tracks here from this property -- If the
21 roadway width is about 300 feet, you would probably --
22 I think somebody said about a mile, and I think that's
23 about right, maybe a little less.

24 Q. And the canal itself, how far away is that?

- 1 A. Maybe a mile-and-a-half, 2 miles.
- 2 Q. And the UPS facility?
- 3 A. Three-quarter mile.
- 4 Q. Okay. So all the, quote/unquote, industrial
- 5 areas are at least half a mile to three-quarters of a
- 6 mile away from the property in question, right?
- 7 A. Yes.
- 8 Q. And in between these, quote/unquote,
- 9 industrial facilities is the Tri-State Tollway,
- 10 correct?
- 11 A. Correct.
- 12 Q. And in your expertise as a noise expert, the
- 13 Tri-State Tollway generates a significant amount of
- 14 noise, correct?
- 15 A. We are contributing to the noise, yes.
- 16 Q. And what would happen to a noise that's
- 17 generated farther away from the receptor area, such as
- 18 the UPS facility, when it has to come in contact with
- 19 another noise generator and then reach the property in
- 20 question?
- 21 A. It gets filtered into the noise waves and
- 22 probably gets drowned out at some point in time in
- 23 there.
- 24 Q. So basically -- you're the expert -- if you

1 have a noise generator like a highway system -- and in
2 this example, it's eight lanes of traffic -- it alone
3 generates a significant amount of noise?

4 A. The system doesn't generate the noise. The
5 vehicles that's on the system generates the noise.

6 Q. And that would interfere with any noise
7 coming from any other noise source farther away?

8 A. It depends on what the source of noise is.
9 You could stand on the interstate but hear a plane
10 flying overhead. You can stand in here and maybe hear
11 a train whistle. You could stand in here and maybe
12 hear a truck dropping something. So there's an
13 intermix of that noise.

14 Q. But you could also stand in a certain
15 location and only hear --

16 A. The tollway --

17 Q. -- the traffic?

18 A. That's right.

19 Q. Okay. Now, going back to the Tollway's
20 budget, we had some testimony on what you're doing with
21 all the new toll revenues?

22 A. Correct.

23 Q. And you have a large rebuilding and widening
24 program underway, correct?

1 A. Correct.

2 Q. And the Tollway's going to pay for that from
3 toll revenues, correct?

4 A. Correct.

5 Q. And is there a time when the tollway's going
6 to go out of existence?

7 A. Not to my knowledge.

8 Q. Okay. So in all intents and purposes, the
9 Tollway will continue to collect tolls and continue to
10 use that revenue to pay for operations and
11 improvements, correct?

12 A. Operations, improvements, and debt service,
13 yes.

14 Q. And when you have -- And the Tollway has an
15 inability -- I'm sorry. Strike that.

16 The Tollway has the ability to sell
17 bonds if you need a large infusion of revenues to pay
18 for projects, correct?

19 A. Correct.

20 Q. And those bonds would be paid for out of toll
21 revenues, correct?

22 A. By our customers, yes.

23 Q. So if the Tollway has a large bill, you don't
24 have a certain deadline as to when you have to pay

1 that, correct?

2 A. I don't know how the funding works. That
3 part of the funding --

4 Q. Well, the tollway's going to continue, so
5 you're always going to have money coming in and money
6 coming out, correct?

7 A. Yes.

8 Q. Now, the UPS facility, do you know when that
9 was built?

10 A. Mid '90s.

11 Q. Okay. And you mentioned that the 75th Street
12 interchange was a good place to build an interchange;
13 is that what your testimony was?

14 A. I don't recall saying it was a good place to
15 build an interchange, but from the types of facilities
16 and everything going on here, yes, it appears to be.

17 Q. Because there's industrial development there?

18 A. Because you've got a lot of open space, I
19 presume, that was over here and you've got industrial
20 development, yes. Judging by the lay of the land, it
21 looked like a suitable place for a facility like that.

22 Q. But the interchange wasn't built until 1992,
23 correct?

24 A. Early '90s.

1 Q. Okay. And the Tollway -- The roadway there,
2 the Tri-State itself, was built in the late '50s,
3 correct?

4 A. Correct.

5 Q. So there wasn't really a need -- Or the
6 Tollway didn't feel the need for an interchange for
7 nearly 25 years; is that correct?

8 A. Correct.

9 Q. And do you know when the UPS facility -- It
10 was the mid '90s, correct, when it was operating? It
11 was built on or about the same time as the interchange?

12 A. Correct.

13 Q. Okay. I mean, they kind of were sisters;
14 there was a reason for both of them?

15 A. Correct. There was an agreement between the
16 village, the State, and the Tollway?

17 Q. That's right. And was -- When the -- When
18 Versar did their sound study for the noise walls to be
19 placed with the Tri-State widening project conducted in
20 the mid '90s -- early '90s, did they take into
21 consideration the large number of trucks that were
22 coming from that UPS facility?

23 A. No.

24 Q. And, earlier, you testified as to the traffic

1 numbers in the area in question?

2 A. Mm-hmm.

3 Q. And I believe we were talking, as of 2003,
4 around 77,000?

5 I'll let you look at your notes if
6 you want.

7 A. Yeah, 77,000 plus.

8 Q. And that's for the northbound side?

9 A. Correct.

10 Q. And the southbound side was 71,000?

11 I'll let you look at -- It's the
12 top page there.

13 A. Yes, 71,000.

14 Q. So roughly, we're talking nearly 150,000
15 vehicles a day going near the property in question,
16 right?

17 A. Correct.

18 Q. And you also testified that the normal
19 percentage of truck traffic on the tollway system is
20 about 15 percent, on average, correct?

21 A. Correct.

22 Q. And then you testified that in this specific
23 location, you looked it up and it's 30 percent; is that
24 correct?

1 A. On the plaza -- At the interchange there,
2 yes. Mainline, it's only 15 percent.

3 Q. But the plaza itself generates 30 percent
4 traffic -- truck traffic?

5 A. Correct.

6 Q. Okay. And what makes more noise, a car or a
7 semitruck?

8 A. A semi.

9 Q. Okay. So in this specific area in question,
10 we have a larger-than-normal percentage of trucks,
11 correct?

12 A. Correct.

13 Q. And trucks make more noise than cars?

14 A. Yes, but I -- It's not a larger percentage of
15 trucks on the system. Mainline is 15 percent.

16 Q. So you have 30 percent coming off the ramp?

17 A. I wouldn't say it's larger than normal
18 because any facility near anything like this would
19 generate similar traffic numbers as far as the usage of
20 that ramp.

21 Q. Any ramp near a commercial facility would
22 generate higher numbers of trucks?

23 A. Right, as you would expect.

24 Q. Okay. Now, referring you to the -- Exhibit

1 No. 6, it's the June 9th, 1995 toll highway guideline.

2 A. Mm-hmm.

3 Q. Is there a big "draft" stamped on that?

4 A. Yes, there is.

5 Q. So did this policy ever go into effect?

6 A. Not in that form. It was -- A different
7 policy went into effect in 2000.

8 Q. So this policy really doesn't have any
9 authority, does it? It's a draft?

10 A. It's a draft. It was a guideline.

11 Q. All right. Now, going back to the tollway
12 ramp -- I think it's Complainants' Exhibit No. 7 which
13 depicts the ramp -- toll plaza ramp -- you testified
14 that the Tollway changed one of the lanes from an
15 automatic where you throw in coins to an I-Pass
16 express?

17 A. That's what my thought was when we changed
18 things out. That's what we were doing a lot of once we
19 started taking I-Pass.

20 Q. And you've done that at many, many ramps.
21 That's not exclusive to this ramp. Correct?

22 A. Correct.

23 Q. Okay. And the idea is that people that are
24 in I-Pass, either a truck or a car, can drive through

1 the plaza without stopping and pay their toll
2 electronically, correct?

3 A. Correct, at a much reduced speed.

4 Q. But they're not stopping like they were
5 before to pay the toll?

6 A. Correct.

7 Q. So the truck or the car is going a little
8 faster than it was before?

9 A. Slightly. The transaction time difference is
10 seconds, yes. But there's definitely a continuation.

11 Q. But they're not starting from a complete stop
12 as they would have if they had been an automatic lane?

13 A. Correct.

14 Q. So you're going to have a little more noise
15 coming from a car going a little faster than from
16 one --

17 A. No.

18 Q. Why not?

19 A. The movement of that car to generate, any
20 significant measurable traffic noise -- and you can
21 maybe talk to the expert people tomorrow -- it has to
22 be moving at a greater speed, 40 miles per hour, to
23 generate that tire-pavement noise. At a slower 15 mile
24 per hour, which is posted -- I would imagine, through

1 here, 15, 20 miles per hour, that's not a major
2 generator of noise. A car moving slower is a lot
3 quieter than a car moving faster. It's pavement
4 friction.

5 Q. Has it been your experience that the speed
6 limits for the express lanes have been ignored by many
7 motorists?

8 A. I follow the speed limit.

9 Q. I'm not saying you. I'm saying that the
10 Tollway has found motorists are ignoring the speed
11 limit.

12 A. I don't deal with that study.

13 Q. Isn't it true that you've added additional
14 police to have people slow down because there's a
15 speeding problem?

16 A. Statewide, we police our traffic. And in
17 construction areas as well, people speed.

18 Q. Okay. Now, you've talked about a new sound
19 wall policy that's coming out but has not yet been
20 officially approved?

21 A. Mm-hmm.

22 Q. Could you tell me the difference between what
23 this new policy says and what -- Exhibit No. 8, which
24 is your current noise policy?

1 A. Yeah. The differences are -- Somebody was
2 showing an exhibit earlier that we've got this big,
3 long list of people and we don't do anything to help
4 them. What we've tried to do -- How we're striving to
5 improve what you've learned on, we've tried to
6 basically develop a policy that provides that
7 consistent level of review on every single project. We
8 look at -- What we don't have in our policy -- There's
9 some major differences.

10 First of all, we will no longer
11 build walls for any development that was approved after
12 the date of public knowledge on a project. We've got a
13 whole congestion relief plan where we're spending
14 \$5 billion that was approved on September 30th, 2004,
15 or whatever it was. We're not going to build walls for
16 any new developments after that because of the expense.

17 The -- What we've asked is the --
18 and this is part of our policy as well -- guidelines
19 for communities to provide noise abatement for their
20 own community. For any new developer that comes in,
21 putting in the double-pane and triple-pane windows. If
22 you're going to build next to the tollway, realize that
23 we are a traffic-noise generator and be cognizant of
24 that.

1 We also, as part of the policy,
2 have cost sharing for local municipalities because we
3 get a lot of pages and pages and pages worth of
4 complaints for situations similar to this or other
5 where -- other places where we're not doing projects
6 where we want to provide an opportunity for that local
7 community to cost-share, similar to the Deerfield issue
8 that was raised before. Those are some of the key
9 issues.

10 And we also, as part of our new
11 policy --

12 Q. Thank you. Thank you.

13 A. You asked for the differences.

14 Q. I thought you were finished.

15 A. We also, as part of the new policy, because
16 we've heard from people complaining about traffic and
17 the pavement markings and the volume of pavement in and
18 of itself -- So we're going to quieter pavement
19 texturing.

20 So, you know, there are a lot of
21 differences in the new policy.

22 Q. But this policy you just spoke about is not
23 in effect yet, correct?

24 A. It's our guidelines that we're using right

1 now. It's just a procedural issue right now. We've
2 done presentations on it, and the Board is ready to
3 approve it.

4 Q. One last question about the UPS and the other
5 commercial properties, you didn't look at their
6 financial statements or their revenue numbers before
7 this hearing, did you?

8 A. No.

9 Q. So any comments you have about their economic
10 viability would be, at best, in general terms, correct?

11 A. In educated general terms, when you see
12 trucks upon trucks upon trucks carrying what I notice
13 to be cargo, maybe not in all of them, and looking at
14 the rails and knowing the impact on communities of
15 trucks and rail, that's --

16 Q. But you don't not the specific --

17 A. I don't know the specific --

18 Q. -- dollar amount --

19 A. I don't think anybody would know the specific
20 dollar amount.

21 Q. Going to the -- back to the wall that was
22 constructed near the property in question --

23 A. Mm-hmm.

24 Q. -- you talked about -- and Victor asked you

1 questions about the placement of the drainage?

2 A. Mm-hmm.

3 Q. And I believe one of your exhibits does a
4 good job of showing us that, Respondent's Exhibit
5 No. 11?

6 A. There's three of them.

7 Q. Yeah, I'm sorry. There are three of them.

8 A. 11, 12, and 13.

9 Q. 11, 12, and 13.

10 Now, you mentioned that placement
11 of the wall near a drainage facility could cause some
12 operational problems for the Tollway, correct?

13 A. Mm-hmm.

14 Q. But if you place the wall away from the
15 drainage, as seen here, you don't have those problems;
16 is that correct?

17 A. You're able to identify and readily maintain
18 your problems from the roadside as opposed to trying to
19 get into a residential neighborhood. I mean, if this
20 drainage ditch were behind the wall, we would have to
21 have maintenance crews come down a dead-end street to
22 get onto it. So we wouldn't readily be able to
23 identify blockage until somebody complains that there
24 is.

1 Q. And there's ways around that. You could
2 stagger a wall so that you have an access point from
3 the --

4 A. Yes.

5 Q. -- tollway?

6 And you've done that in other
7 circumstances --

8 A. And we've done that in other areas, yes.

9 Q. And in this wall in particular, the drainage
10 ditch location wouldn't affect the height of the walls,
11 would it?

12 A. No.

13 MR. DWORSCHAK: Okay. Give me a minute
14 here.

15 (Brief pause.)

16 BY THE WITNESS:

17 A. You know, I can't speak for sure of whether
18 or not that drainage ditch -- I mean, I didn't do the
19 engineering on it, so I don't know what really affected
20 that design, so -- by just looking at it.

21 BY MR. DWORSCHAK:

22 Q. Your testimony was that the Tollway has never
23 built a wall for just one house; is that correct?

24 A. To my knowledge, no.

1 Q. Okay. I'm showing you Complainants' Exhibit
2 No. 14 which is known as Contract MIP975500, noise
3 abatement walls, issued for construction July 1, 1998.

4 Now I'm probably sure you're not
5 aware of that document --

6 A. No.

7 Q. -- but could you take a look at it for a
8 minute?

9 A. All 250 pages?

10 Q. No. I think you could -- Clearly, on the
11 cover --

12 A. It looks like a set of contract plans on the
13 southbound Tri-State at 31st and 55th Streets.

14 Q. Okay. And again, I understand it's limited
15 knowledge, but would it be fair to characterize that is
16 an addition to existing noise wall on the Tri-State?
17 It's a contract for existing noise wall on the
18 Tri-State?

19 A. I don't know.

20 Q. Do you want to take a minute and take a look
21 at it?

22 A. Yes. Let me read through this.

23 Q. Okay.

24 (Witness viewing document.)

1 MR. AZAR: You know what? I'm going to
2 object to this whole line of questions. He can
3 identify what he's specifically speaking to instead of
4 asking general types of questions. He may be able to
5 identify he's looking at so then he can just go to
6 page X and find out -- see what he's looking for.

7 BY THE WITNESS:

8 A. Again, I'm not an engineer. So for me to
9 really --

10 BY MR. DWORSCHAK:

11 Q. And I've taken that into account.

12 I'll refer to you page -- Drawing
13 No. 22 of 67. Take a look at that and tell me when
14 you're ready.

15 A. Yes, mm-hmm.

16 Q. Does this show a placement of noise abatement
17 wall along the Tri-State Tollway near 31st Street?

18 A. It appears to.

19 Q. And would it be fair to say that the diagram
20 depicts the additional noise wall placement as well as
21 the location of existing noise wall?

22 A. Yes.

23 Q. Okay. Do you know how many homes are on the
24 residential side of this facility?

1 A. I've never seen this until today, no.

2 Q. Okay. And if you looked on the cover sheet
3 of the document, you'll see -- where you talk about the
4 31st Street site, there's also a site for wall at
5 55th Street; is that correct?

6 A. Correct, I see that.

7 Q. And if you look at page -- I'm sorry --
8 Drawing 24 of 67 --

9 A. Mm-hmm.

10 Q. -- does that show or depict additional noise
11 wall installation?

12 A. Yes.

13 Q. And is there existing noise wall at this
14 location as well?

15 A. Yes.

16 MR. DWORSCHAK: Your Honor, I move to
17 have Complainants' Exhibit No. 14 admitted for
18 evidence.

19 MR. AZAR: I'll object as to relevance.

20 THE COURT: I was -- had a question
21 about that myself.

22 What --

23 MR. DWORSCHAK: Well, it goes -- The
24 witness testified earlier on direct that he was not

1 aware of any additional noise wall added to the
2 Tri-State original wall they put up in the mid '90s. I
3 have a contract which, in fact, shows in 1998, they did
4 add additional noise wall. And I think it's important
5 for the record, in terms of weight and relevance, that
6 it be admitted.

7 THE COURT: Can I see? It.

8 MR. AZAR: The problem I have it with it
9 is it doesn't impeach his statement. He's testified he
10 was not aware of anything. He -- And all this says is
11 that there was noise walls, and there's no explanation
12 as to why they were built. Are they damaged? There's
13 nothing to back up their explanation as to why these
14 were installed, and I think his testimony stands with
15 the cross-examination that here's an additional study.
16 I don't see the reason to clutter up the record with a
17 document that doesn't add anything.

18 MR. DWORSCHAK: Well, I say it does add
19 when we're talking about that the wall, especially
20 around the Petrosiuses' property was built, and that's
21 the way we kept it. He followed the Versar
22 recommendations, and that's it. And, in fact, we now
23 have a document that shows, Well, we did make some
24 mistakes, and we did add some wall.

1 MR. AZAR: There's no indication there
2 was a mistake made. It's simply a drawing.

3 MR. DWORSCHAK: Well, what's the reason
4 for additional noise wall?

5 MR. AZAR: I don't know. That's the
6 problem. And you haven't laid a foundation to impeach
7 his credibility on the issue. All it is is simply
8 saying, Here's a drawing of an event --

9 THE COURT: Are you using this to
10 impeach his --

11 MR. DWORSCHAK: Well, it's hard to
12 impeach when he said, "I don't know." And "I don't
13 know" is a way of saying no. So --

14 MR. AZAR: He said I'm not aware of
15 anything other than this. And then the question as to
16 what these things are -- I mean, you called him as a
17 witness; and it's kind of unfair, now, to ambush him
18 with this document and simply say, Please, look at the
19 documentation --

20 MR. DWORSCHAK: Well, I'm not ambushing
21 him. This document was obtained from discovery from
22 you folks. So you knew it was out there. This isn't
23 something you didn't know about.

24 MR. AZAR: Well, I'm saying the witness

1 wasn't aware of it, and he was called by you. I mean,
2 I think --

3 MR. DWORSCHAK: The witness prepared, by
4 his own admission, a lot of your responses. So I'm not
5 sure what he did or did not prepare or what he did or
6 did not see. I mean, one of your responses to my
7 discovery request was signed by Rocco. So he certainly
8 was involved in the process, and I certainly don't
9 think I'm ambushing him.

10 MR. AZAR: Well, you're bringing up a
11 document that doesn't have a noise study that goes with
12 it. It simply -- It is a record drawing, and there's a
13 whole host of procedurals -- procedures that go ahead
14 of that.

15 THE COURT: And this is not the area
16 that is the subject of this complaint that --

17 MR. DWORSCHAK: That's correct.

18 THE COURT: Okay. I'm not really
19 convinced of its relevance either, but I'll take it as
20 an offer of proof if you'd like to make one.

21 MR. DWORSCHAK: Well, I think the Board
22 can determine its weight later.

23 THE COURT: Well, if the Board can
24 determine its admissibility -- I'll take it as -- I

1 don't see the relevance, and I don't think the witness
2 can really testify to it --

3 MR. DWORSCHAK: Okay. I'll withdraw it.
4 When we have more witnesses tomorrow, I will attempt to
5 lay a foundation which makes the other party more
6 comfortable.

7 THE COURT: Okay. That sounds good.

8 MR. DWORSCHAK: One minute.

9 (Brief pause.)

10 MR. DWORSCHAK: Okay. No further
11 questions.

12 THE COURT: Okay. Mr. Azar.

13 MR. DWORSCHAK: Victor.

14 MR. AZAR: Thank you.

15 RE CROSS-EXAMINATION

16 BY MR. AZAR:

17 Q. Rocco, in regards to the -- You indicated
18 there's an expense associated with the sound walls,
19 correct?

20 A. Correct.

21 Q. What is the expense per mile currently?

22 A. It's about a million-and-a-half dollars per
23 mile.

24 Q. What was it before --

1 A. 100 million [sic] --

2 Q. In other words, the costs have gone up in
3 what time frame, are we talking about?

4 A. The last 2 years. Steel prices have
5 increased substantially, and also fuel prices have
6 increased.

7 Q. So the costs have gone up 50 percent?

8 A. In that order or magnitude, yeah.

9 Q. And what's the per square foot or the cost
10 for the wall per height?

11 A. 30 to \$35 per square foot where it used to be
12 20 to 25.

13 Q. So the costs have escalated?

14 A. Mm-hmm.

15 Q. Now, does that include the design or just the
16 construction?

17 A. The construction.

18 MR. AZAR: I have no mother questions.

19 MR. DWORSCHAK: Nothing further.

20 THE COURT: Okay. Thank you very much.

21 THE WITNESS: Thank you.

22 (Witness excused.)

23 THE COURT: Mr. Dworschak, you are done
24 for the day, is my understanding?

1 MR. DWORSCHAK: Yes.

2 THE COURT: Okay. Mr. Azar, do you have
3 anything further you want to add before we go off the
4 record today?

5 MR. AZAR: No. We plan -- Just so
6 you're aware, we've planned to start at 10:00 tomorrow?

7 THE COURT: Yes.

8 I will note that even though this
9 hearing was noticed to continue at 9:00 o'clock in the
10 morning tomorrow, Mr. Dworschak has said that his
11 witness is not able to come until 10:00. So there's no
12 point, I suppose, in making everyone come at 9:00.
13 We'll just reconvene again tomorrow at 10:00 in the
14 morning.

15 All right. Thank you, everyone.

16 (Which were all the proceedings had
17 in the above-entitled cause.)

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8 That she reported in shorthand the
9 proceedings had at the foregoing Illinois Pollution
10 Control Board hearing;

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