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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

LAND AND LAKES COMPANY,

Petitioner,

vs.

No. PCB 99-069

RANDOLPH COUNTY BOARD OF

COMMISSIONERS,

Respondent.

Proceedings held on May 9, 2000, at 10:00 a.m., at the
Randolph County Courthouse, 1 Taylor Street, Chester, Illinois,
before the Honorable John Knittle, Hearing Officer.

Reported by: Darlene M. Niemeyer, CSR, RPR
CSR License No.: 084-003677

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A P P E A R A N C E S

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	I N D E X	
3	WITNESS	PAGE NUMBER
4	KEN DOUGLAS MARKLEY	
	Direct Examination by Ms. Harvey.....	33
5	Cross Examination by Mr. Porter.....	58
	Redirect Examination by Ms. Harvey.....	61
6		
	RONALD STORK	
7	Direct Examination by Ms. Harvey.....	66
	Cross Examination by Mr. Porter.....	112
8	Redirect Examination by Ms. Harvey.....	127
9		
	TERRY MOORE	
	Direct Examination by Ms. Harvey.....	132
10	Cross Examination by Mr. Porter.....	139
	Redirect Examination by Ms. Harvey.....	142
11	Recross Examination by Mr. Porter.....	144
12		
	CLEMENT ESKER	
	Direct Examination by Ms. Harvey.....	146
13	Cross Examination by Mr. Porter.....	152
14		
	MICHAEL RIEBELING	
	Direct Examination by Ms. Harvey.....	154
15	Cross Examination by Mr. Porter.....	167
16		
	DOROTHY RINNE	
	Direct Examination by Ms. Harvey.....	171
17	Cross Examination by Mr. Porter.....	177
	Redirect Examination by Ms. Harvey.....	181
18	Recross Examination by Mr. Porter.....	182
19		
	MARVIN CAMPBELL	
	Direct Examination by Ms. Harvey.....	184
20	Cross Examination by Mr. Porter.....	194
	Redirect Examination by Ms. Harvey.....	195
21	Recross Examination by Mr. Porter.....	197
	Further Redirect Examination by Ms. Harvey.....	198
22		
	THOMAS GEORGE SMITH	
23	Direct Examination by Ms. Harvey.....	200
	Cross Examination by Mr. Porter.....	220
24		

KEEFE REPORTING COMPANY
1-800-244-0190

	I N D E X (continued)	
1		
2		
3	WITNESS	PAGE NUMBER
4	ALAN WEBER	
	Direct Examination by Ms. Harvey.....	225
5	Cross Examination by Mr. Porter.....	241
6		
7	(The following witnesses are from the public comment portion of the hearing.)	
8	RANDY BERTETTO	245
9	Direct Examination by Mr. Porter.....	246
10	ROBERT MOFFAT	247
11	Direct Examination by Ms. Harvey.....	249
12	RAY NITZSCHE	251
13	Direct Examination by Ms. Harvey.....	254
14	WILBERT SCHOENBECK	255
15		
16	NELLIE GERLACH	258
17	ALAN WEBER	260
18	Direct Examination by Ms. Harvey.....	262
19	RAY NITZSCHE	263
20	Direct Examination by Ms. Harvey.....	264
21	CHRIS TABING	267
22	Direct Examination by Ms. Harvey.....	271
23	ED DEROUSSE	272
24		

KEEFE REPORTING COMPANY
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1	E X H I B I T S		
2			
3	NUMBER	MARKED FOR I.D.	ENTERED
4	Petitioner Exhibit 1	14	official notice
	Petitioner Exhibit 2	16	16
5	Petitioner Exhibit 3	83	withdrawn
	Petitioner Exhibit 4	159	165
6			
7	Respondent Exhibit 1	24	24
	Respondent Exhibit 2	25	25
8	Respondent Exhibit 3	27	27
	Respondent Exhibit 4	28	28
9			
10	Public Comment Exhibit 1	250	250
	Public Comment Exhibit 2	259	259
11	Public Comment Exhibit 3	262	262
	Public Comment Exhibit 4	272	272
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			

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1 PROCEEDINGS

2 (May 9, 2000; 10:00 a.m.)

3 HEARING OFFICER KNITTLE: On the record. Good morning. My
4 name is John Knittle. I am a Hearing Officer with the Illinois
5 Pollution Control Board. I am also the assigned Hearing Officer
6 for this case, which is entitled Land and Lakes Company versus
7 Randolph County Board of Commissioners. It is Pollution Control
8 Board Docket Number 1999-069. Today's date is May 9th. It is
9 about 10:00 a.m. We are starting a little bit late. I apologize
10 for that. We had a little problem with the rooms and now we have
11 it straightened out. This is where we are going to be today and,
12 if necessary, tomorrow, as well.

13 I note, for the record, that there are no other members of
14 the Illinois Pollution Control Board present, excluding myself.
15 I also want to note, for the record, that this hearing was
16 scheduled in accordance with the Illinois Environmental
17 Protection Act, along with the Board's rules and regulations.

18 We are going to be conducting this hearing in accordance
19 with Section 103.202, and that does allow for members of the
20 public to comment. So we are going to have a place for that. I
21 am going to allow both written after the hearing comments and
22 oral comments. If you provide an oral public comment you are
23 going to be required to be sworn in and you will be subject to

24 cross-examination by both parties, that is Mr. Porter and Ms.

6

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1 Harvey.

2 I am going to ask that the comments be relevant to the case
3 and the issues before us. I will tell you that I am planning on
4 having those comments after the parties present their
5 case-in-chiefs and are finished with their case. I would
6 consider allowing public comments before that to those with
7 unavailable conflicts. I am going to want to hear about that
8 beforehand and it will be decided on a case-by-case basis.

9 I just want to tell you a little bit about the hearing
10 process with the Illinois Pollution Control Board. I want to
11 make clear that I don't make the ultimate decision on this, as
12 much as I would like to. The decision is made by the Illinois
13 Pollution Control Board, which is comprised of seven members
14 throughout the State of Illinois. We have some in Chicago,
15 Springfield, Jacksonville, and I think there is -- there is no
16 longer one in Alton. But there are seven members throughout the
17 State of Illinois. They will take the transcript of these
18 proceedings, along with all of the exhibits and all of the public
19 comments and they will take it back and they will make a decision
20 on this case.

21 My job is to provide a clear record for the Board so they
22 can make an informed decision. They are also going to be
23 listening and weighing post-hearing briefs that will be submitted

24 by both parties. In this case we have what we call amicus

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1 curiae. They are going to be allowed to submit briefs, as well.

2 Before I get to the preliminary matters, of which we have
3 quite a few, I want to have the parties introduce themselves
4 starting with the petitioner.

5 MS. HARVEY: My name is Elizabeth Harvey, and I represent
6 the petitioner, Land and Lakes Company. Also here on behalf of
7 Land and Lakes is James Kelley and Steve Hedinger.

8 HEARING OFFICER KNITTLE: Thank you. Sir?

9 MR. PORTER: Good morning. My name is Richard Porter. I
10 represent the Randolph County Board of Commissioners.

11 HEARING OFFICER KNITTLE: We do have amicus curiae, if you
12 could introduce yourself, as well.

13 MR. BLEYER: Yes, sir. My name is Ken Bleyer. I represent
14 Kenny Heine and Doris Spinney.

15 HEARING OFFICER KNITTLE: Is there another amicus, sir?

16 MR. BLEYER: Yes, my law partner, Herbert McMeen, as well.

17 HEARING OFFICER KNITTLE: Is he here today?

18 MR. BLEYER: Yes, but I don't know if he is in the room.
19 He may be out speaking with someone at the moment.

20 HEARING OFFICER KNITTLE: All right. Well, thank you, sir.

21 There are, as I said, a couple of preliminary matters that
22 I want to touch on first. I want to address recording of

23 hearings, which is provided for in Section 101.221 of the Board's
24 rules and regulations. I am just going to read this for you.

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1 Hearings -- well, actually, this applies to things other than
2 recordings, as well. Hearings should be conducted with fitting
3 dignity and decorum. Any person may record the proceedings by
4 tape, film, or other means. The Hearing Officer may prescribe
5 rules to govern such recordings. If the Hearing Officer
6 determines that recording is disruptive or detrimental to the
7 proper development of the record, he or she may limit or prohibit
8 the recording. Also, if any witness refuses to say testify on
9 the grounds that they don't want to be testifying in front of a
10 recording, that witness can ask that the recording be turned off,
11 and I would consider that, as well.

12 I want to ask both parties right now if they have any
13 objection to -- it looks like we have a number of recording
14 devices going on right now.

15 MS. HARVEY: I don't have any objection to recording
16 devices, although, of course, reserving my right to make an
17 objection if they should become disruptive.

18 HEARING OFFICER KNITTLE: Mr. Porter?

19 MR. PORTER: No objection.

20 HEARING OFFICER KNITTLE: Okay. We are going to allow
21 those to go on. Keep in mind that if it does become
22 disruptive -- if I think it becomes disruptive, I am going to ask

23 that you turn them off and take them out of the room. So that's
24 the first preliminary matter.

9

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1 The second is we had a number of motions filed right before
2 the hearing. I want to address petitioner's motion in limine
3 first. This was granted in the Hearing Officer order dated May
4 4th. In that order I granted petitioner's motion in limine which
5 asked that only parties be allowed to present testimony and
6 evidence and cross-examine the witnesses. The respondent filed a
7 response, but they did not oppose the motion so long as the
8 motion would be granted in accordance with the Board's
9 regulations and the Illinois Environmental Protection Act. In my
10 opinion that was done, so I granted that motion.

11 So at this hearing only the parties will be allowed to
12 present testimony and evidence or cross-examine the witnesses.
13 In my order I noted that this does not preclude anybody from
14 presenting public comment, nor does it prevent anybody from
15 providing written public comment, nor does it prevent the amicus
16 curiae or the amici from filing a post-hearing brief, as is their
17 right.

18 The second thing that I dealt with is a motion to bar filed
19 by the respondent. But, Mr. Porter, I understand, pursuant to
20 our telephone status conference on May 5th, that you withdrew
21 that motion.

22 MR. PORTER: That motion became moot when the witness that
23 I sought to be barred was withdrawn by the petitioner.

24 HEARING OFFICER KNITTLE: So that --

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1 MR. PORTER: So we then withdrew our motion to bar.

2 HEARING OFFICER KNITTLE: And that motion was not ruled on
3 by me, nor will it be, because it has been withdrawn. That is
4 all that I have.

5 I should note that the hearing today is only scheduled to
6 go to 4:30. If we finish things up here and it is possible to
7 get public comment in if we stay a little bit later, I have asked
8 each of the parties off the record and they have each agreed to
9 that. We are going to do that within reason. So that being
10 said, we are only scheduled to go to 4:30, but that is not a set
11 in stone time.

12 Do you have any preliminary matters, Ms. Harvey?

13 MS. HARVEY: Yes, Mr. Hearing Officer. There are a couple
14 of preliminary matters related to the state of the record. I had
15 indicated a desire to call Mr. Bill Rabe, who is the Randolph
16 County Clerk, to clear up a couple of issues regarding the
17 completeness of the record that was filed with the Pollution
18 Control Board. Unfortunately, I understand that Mr. Rabe is ill
19 and is not available to be here today.

20 I believe that Mr. Porter and I have agreed to stipulate
21 that the record of this proceeding, as the Randolph County Clerk

22 saw it, has been filed and certified to by the Randolph County
23 Clerk and has been filed with the Pollution Control Board and it
24 exists there. I think I state that correctly, Mr. Porter.

11

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1 MR. PORTER: That is correct.

2 MS. HARVEY: The additional issue that arose from that,
3 that I wanted to explore with Mr. Rabe is there is a document
4 that has been known throughout this proceeding as the Rhutasel
5 Report, which was generated by the County's environmental
6 consultant. It was filed with the Randolph County Clerk on July
7 20th, 1998, which is during the pendency of the local proceeding,
8 and, indeed, it is file stamped. However, on my review of the
9 certification of record, I could not tell for sure if that report
10 is actually in the record.

11 What I would like to do is move this as an exhibit at this
12 hearing today, since I am unable to ask Mr. Rabe if it is,
13 indeed, included in the record, simply to guard against the
14 possibility that it may not be there.

15 I think that it should be admitted on a couple of grounds.
16 First of all, I believe that the Planning Commission decision and
17 perhaps also the County Board's decision specifically referred to
18 the Rhutasel Report, so it was clearly something that was within
19 the minds of the decision-makers at the time. It was part of the
20 record. It is filed with the clerk. I also think the Board can

21 take official notice of it under 103.206.

22 So I would like to move the Rhutasel Report as Petitioner's
23 Exhibit Number 1.

24 HEARING OFFICER KNITTLE: Mr. Porter, do you want a chance

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1 to look at that?

2 MR. PORTER: I need one minute, Mr. Knittle.

3 HEARING OFFICER KNITTLE: We will give you as much time as
4 you want.

5 MR. PORTER: Okay. Mr. Hearing Officer, I do have an
6 objection.

7 HEARING OFFICER KNITTLE: Excuse us. I am going to have to
8 ask that you keep quite back there, otherwise people are not
9 going to be able to hear.

10 MEMBER OF THE PUBLIC: Well, we can't hear you back here
11 anyway.

12 HEARING OFFICER KNITTLE: Oh. Is there any way that we can
13 try to speak -- can you hear me?

14 MEMBER OF THE PUBLIC: Barely.

15 MEMBER OF THE PUBLIC: No, we can't hear you back here at
16 all.

17 HEARING OFFICER KNITTLE: I will try my best to speak up.
18 It is going to help a lot if everyone is quiet. If there is only
19 one person talking, the chances are you going to hear me a lot
20 better. So try to keep that in mind. Have some courtesy for the

21 people in the back of the room.

22 Okay, Mr. Porter.

23 MR. PORTER: Mr. Knittle, I do have an objection to the
24 admission of the Rhutasel Report. I do not know if it is part of

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1 the public record, and the County is allowed to hire a
2 consultant, and that consultant's report does not have to be made
3 part of the public record. I do see that it is file stamped.
4 If, indeed, it is part of the record from the Pollution Control
5 Board then, obviously, I have no objection at this time. But
6 without knowing that, and there is no way that I can know that
7 while sitting here, I have a current objection to it being
8 admitted.

9 HEARING OFFICER KNITTLE: Okay. Anything further, Ms.
10 Harvey?

11 MS. HARVEY: I think it speaks for itself. It was referred
12 to during the course of the proceeding. It was clearly something
13 in the minds of the decision-maker, and under the Board's rules
14 you can take official notice of that. It is file stamped.

15 HEARING OFFICER KNITTLE: Yes, I do note that it is file
16 stamped. I am going to take official notice of this. I don't
17 know if that makes it an exhibit or not. I am not admitting it
18 as an exhibit. But I, as Hearing Officer, am going to take
19 official notice of this document. So it is part of the record.

20 MS. HARVEY: Thank you, Mr. Hearing Officer.
21 (Whereupon said document was duly marked for purposes of
22 official Hearing Officer notice as Petitioner's Exhibit 1
23 as of this date.)
24 HEARING OFFICER KNITTLE: Anything else, Ms. Harvey?

14

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1 MS. HARVEY: There is one more document that we would like
2 to request that the Board take official notice of or enter it
3 into the record. One of the issues in this case revolves around
4 the consistency of this proposal with the County Solid Waste
5 Management Plan. My review of the record indicates that the
6 complete County Solid Waste Management Plan was never entered
7 into the record of this proceeding. There are pages from the
8 plan that have been entered into the record, but there is no
9 complete copy.

10 For similar reasons that it was relied upon and, in fact, I
11 believe actually parts of it were quoted in the Planning
12 Commission's written recommendation, as well as the official
13 notice provisions, I would like to move the Solid Waste
14 Management Plan for Bond, Clinton, Randolph and Washington
15 Counties in Illinois into the record.

16 HEARING OFFICER KNITTLE: Mr. Porter?

17 MR. PORTER: I just need to check and make sure it is the
18 correct plan, Mr. Knittle. I certainly have no objection to the
19 Solid Waste Management Plan being admitted into the evidence.

20 HEARING OFFICER KNITTLE: Okay.

21 MS. HARVEY: Then I would move its admission as
22 Petitioner's Exhibit Number 1, please.

23 HEARING OFFICER KNITTLE: That is accepted. May we make it
24 Number 2, Ms. Harvey?

15

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1 MS. HARVEY: Sure.

2 HEARING OFFICER KNITTLE: I have the previous document you
3 offered as Number 1, and then the objection, and then it being
4 accepted as official notice.

5 MS. HARVEY: Oh, okay. Thank you. I am sorry.

6 (Whereupon said document was duly marked for purposes of
7 identification as Petitioner's Exhibit 2 and entered into
8 evidence as of this date.)

9 HEARING OFFICER KNITTLE: Okay. Is there anything
10 further?

11 MS. HARVEY: There are two additional issues. One is that
12 I have, at your direction, submitted a proposed -- or a witness
13 list. I would move that the people I have identified on that
14 witness list who are the -- at that time the County Board members
15 and the Planning Commission members be excluded from the hearing
16 room until they testify. After they testify I have no problem
17 with them remaining in the room.

18 HEARING OFFICER KNITTLE: Mr. Porter?

19 MR. PORTER: As to County Board members past and present, I
20 believe they are parties to this action and have a right to be in
21 the room. Likewise, the Planning Commission members, which are
22 the Pollution Control Committee which prepared the report on
23 behalf of Randolph County were employees of the County and I
24 believe, therefore, should have the right to remain in the room.

16

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1 HEARING OFFICER KNITTLE: Okay. Anything further?

2 MR. PORTER: No.

3 HEARING OFFICER KNITTLE: Ms. Harvey?

4 MS. HARVEY: No. I would just like to add -- I neglected
5 to ask as part of my motion that they, if excluded, be admonished
6 not to speak to other potential witnesses who have also been
7 excluded.

8 HEARING OFFICER KNITTLE: Regarding the case?

9 MS. HARVEY: Regarding the subject of this hearing.

10 HEARING OFFICER KNITTLE: We will let them talk, otherwise,
11 if we exclude them?

12 MS. HARVEY: If they want to talk about lunch, that is
13 fine.

14 HEARING OFFICER KNITTLE: I am going to grant that in part.
15 I think that any member of the County Board who is here and was a
16 member of the County Board at the time that the petition was
17 filed is a party to this case so those people can stay. Anybody
18 else is going to be asked to be excluded, and I am going to ask

19 that you don't talk about the case while you are excluded. Once
20 you testify you can come back in and you can listen. I don't
21 know who those people are by name.

22 MS. HARVEY: I would be happy to name them for you. Marvin
23 Campbell.

24 HEARING OFFICER KNITTLE: Mr. Campbell, are you here? Sir,

17

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1 if you could step outside, please.

2 MR. CAMPBELL: Thank you.

3 MS. HARVEY: Mike Riebeling.

4 HEARING OFFICER KNITTLE: Mr. Riebeling?

5 MR. PORTER: He is not here yet. He will be here this
6 afternoon.

7 MS. HARVEY: Dorothy Rinne.

8 HEARING OFFICER KNITTLE: Is there a Dorothy Rinne present?

9 MS. HARVEY: I know she was here earlier.

10 MEMBER OF THE PUBLIC: She is outside.

11 MS. HARVEY: Okay. And Tom Smith.

12 HEARING OFFICER KNITTLE: Mr. Smith, Tom Smith.

13 MR. PORTER: Tom Smith, I told to be back here in an hour,
14 and I already told him that he would probably be excluded from
15 the room.

16 HEARING OFFICER KNITTLE: Okay. Is that sufficient, Ms.
17 Harvey?

18 MS. HARVEY: Thank you, Mr. Hearing Officer.

19 HEARING OFFICER KNITTLE: Any other preliminary matters on
20 behalf of the petitioner?

21 MS. HARVEY: One final matter. I would like to make a
22 request that when we get to the public comment portion that
23 members of the public be instructed that the subject matter of
24 their comment should be limited to the three issues that are

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1 before the Pollution Control Board in this case. The first of
2 those issues is the fundamental fairness of the proceedings. The
3 second issue is whether or not the County Board's decision that
4 the application did not meet criteria and, two, whether that
5 decision is against the manifest weight of the evidence. And the
6 third issue is a similar manifest weight issue, as to whether or
7 not their decision on criterion 8 is against the manifest weight.

8 The public certainly has the right to comment on this
9 proceeding, but it is our position that they only have the right
10 to comment on the issues that are before the Pollution Control
11 Board, and those are the only three issues before the Pollution
12 Control Board.

13 HEARING OFFICER KNITTLE: Mr. Porter?

14 MR. PORTER: Randolph County has no position on this
15 motion.

16 HEARING OFFICER KNITTLE: I don't want to grant that in
17 terms of a motion in limine where we disallow or give an advisory

18 opinion. I am aware of your arguments and I think they have
19 merit. I don't want to let things get too far afield. I note
20 that Section 103.203 under conduct of the hearing allows for
21 written statements relevant to the subject matter and reasonable
22 oral testimony the Hearing Officer shall permit.

23 I want to make sure that we don't exclude any testimony
24 that we want to offer from the public. I want to make sure that

19

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1 the public has the right to comment as they see fit, so long as
2 it is reasonable and I do think that reasonable is relevant to
3 the case before the Board. So I am not going to grant that
4 motion.

5 However, I do want to take it on a case-by-case basis. If,
6 in fact, it becomes unduly burdensome and we are going over the
7 same thing again, I would probably ask you to revisit this motion
8 at that point in time.

9 MS. HARVEY: I certainly will. Thank you.

10 HEARING OFFICER KNITTLE: Anything further?

11 MS. HARVEY: Just a moment, please. I guess I just have
12 kind of a general timing issue. If there is an indication of how
13 many of the people who are here today would like to give public
14 comment, I am just trying to figure out the logistics more than
15 anything else, not to limit anyone.

16 HEARING OFFICER KNITTLE: Sure. I don't have a problem

17 with that. Mr. Porter, do you want to --

18 MR. PORTER: I would love that information, as well.

19 HEARING OFFICER KNITTLE: Who here is interested in
20 providing public comment? Just indicate by raising your hands.

21 Okay. Let's all do a tally here. I have 12.

22 MS. HARVEY: I have 12, as well.

23 HEARING OFFICER KNITTLE: Mr. Porter, is there anyone back
24 there we are missing.

20

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1 MR. PORTER: There is. There are two others. You have
2 14, it looks like.

3 HEARING OFFICER KNITTLE: So we are looking at 14 people.
4 I do want to note for the record, and I have not done this yet,
5 that we are in the third floor conference room. I don't know
6 what the capacity is here, but there is a large number of
7 citizens. I would say if that was 14, that we probably have 50
8 to 60 citizens present. Do you two agree with that assessment?

9 MS. HARVEY: Yes, I do.

10 MR. PORTER: Yes.

11 HEARING OFFICER KNITTLE: Okay. Also, a number of -- at
12 least one member of the local media, I think two or three,
13 though, probably. Okay. That is noted for the record.

14 Ms. Harvey, is there anything else?

15 MS. HARVEY: No.

16 HEARING OFFICER KNITTLE: We have about 14 people wanting

17 to provide public comment.

18 MS. HARVEY: No, I just was interested in the timing
19 issues.

20 HEARING OFFICER KNITTLE: Sure. Mr. Porter, do you have
21 any preliminary issues before we get started?

22 MR. PORTER: Well, I guess I do. I intended to do this
23 during the direct examination of the various Board members, but
24 counsel for the applicant brought up two exhibits that she wanted

21

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1 to introduce. I also have four other exhibits, which I know are
2 part of the record because I attached them to motion for summary
3 judgment. However, I would like them admitted as well as
4 exhibits today.

5 Specifically, the relevant portions of the Randolph County
6 Code, which establishes the procedures for the hearing.

7 The proposed findings of the Randolph County Board of
8 Commissioners, which is a report prepared for the County Board.

9 The minutes of the meeting on October 19, 1998, at which
10 time Land and Lakes was given the opportunity to address the
11 Board again and a vote was taken.

12 Finally, the findings, conditions, and decision of the
13 County Board.

14 HEARING OFFICER KNITTLE: Okay. Let's take those one by
15 one. Ms. Harvey, do you have an objection to those?

16 MS. HARVEY: I think all of those documents are already in
17 the record, but I would like to see them. I think I can identify
18 where some of those already are actually, because I have looked
19 at a couple of these issues.

20 I can tell you the first one that Mr. Porter brought up,
21 which is the Randolph County ordinance providing the sitting,
22 that is already in the record as Hearing Officer Exhibit 1 from
23 the local hearing. The Hearing Officer put that in, actually put
24 in a copy that I believe was actually certified into the record

22

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1 at that time. This one is a printout from a codification
2 service. So I would have an objection only on the grounds that
3 it is already in the record.

4 HEARING OFFICER KNITTLE: Mr. Porter?

5 MR. PORTER: As long as that is correct I have absolutely
6 no problem withdrawing the exhibit. But I don't want to end up
7 in a situation where we are sending the record to the Pollution
8 Control Board or further than that, and not have a copy of the
9 ordinance in the record. So I would feel better if we admitted
10 it for the purpose of -- I mean, what does it matter if we have a
11 redundant record?

12 MS. HARVEY: The only other issue I have is because they
13 are two different copies of the ordinance, I know what the
14 Hearing Officer used. The Hearing Officer used a copy that
15 appeared to me to be a photocopy of a certified version of the

16 ordinance. Because this is from a codification service, I don't
17 know if it could have been amended subsequently or just a
18 different -- you know, somebody made a typo.

19 HEARING OFFICER KNITTLE: You are saying the other one is
20 part of the record, the certified copy?

21 MS. HARVEY: The Hearing Officer at the local proceedings
22 in July of 1998, put that in as Hearing Officer Exhibit 1. The
23 only reason I know that number is because I checked the same
24 issue to be sure it was in the record.

23

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1 HEARING OFFICER KNITTLE: Let's do this. I think Mr.
2 Porter is being reasonable about this, as are you. I think you
3 raise some valid points. I am going to admit it, but if I find
4 that it is part of the record in my hearing report afterwards --
5 I am going to go back to the Illinois Pollution Control Board and
6 take a look at our record. If it is redundant, I am going to
7 strike it at that time.

8 MS. HARVEY: Okay.

9 MR. PORTER: Okay.

10 HEARING OFFICER KNITTLE: But it is -- help me out here.

11 MR. PORTER: Respondent's Exhibit 1.

12 MS. HARVEY: I don't have a --

13 HEARING OFFICER KNITTLE: Provisional. It is a provisional
14 admittance. It is a term we use in golf when we hit a ball and

15 we can't find the ball. We hit a provisional ball. So this will
16 be a provisional admitting of Respondent's Exhibit Number 1.

17 (Whereupon said document was duly marked for purposes of
18 identification as Respondent's Exhibit 1 and entered into
19 evidence as of this date.)

20 HEARING OFFICER KNITTLE: All right. Now we have
21 Respondent's Number 2.

22 MS. HARVEY: Just a second, please.

23 HEARING OFFICER KNITTLE: Certainly.

24 MS. HARVEY: Respondent's Number 2 is the Planning

24

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1 Commission's written findings, conditions and recommendation that
2 was their recommendation to the County Board. I, again, have a
3 similar objection, I guess. I don't have an objection to it
4 being in the record. I think it is already in the record. But I
5 can't site you to exactly where it is. I guess I would request
6 that if you find it is already in the record that you do the same
7 thing and strike this version.

8 MR. PORTER: I have no problem with that same ruling.

9 HEARING OFFICER KNITTLE: Let's do the same thing for that.
10 That will be admitted provisionally.

11 MR. PORTER: For the purpose of this hearing we are going
12 to refer to it, though, as Respondent's Exhibit Number 2.

13 HEARING OFFICER KNITTLE: That is certainly okay.

14 MS. HARVEY: Okay.

15 (Whereupon said document was duly marked for purposes of
16 identification as Respondent's Exhibit 2 and entered into
17 evidence as of this date.)

18 MS. HARVEY: What I believe is Respondent's Exhibit Number
19 3 is, I know, also already in the record. I actually moved to
20 supplement the Clerk's record in March of 1999 or so, to the
21 Pollution Control Board with this document, which is the court
22 reporter -- the transcript of that meeting. That was granted by
23 the Board in a Pollution Control Board order. I believe this is
24 already part of the record.

25

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1 HEARING OFFICER KNITTLE: Do you know when that was,
2 roughly?

3 MS. HARVEY: March of 1999, I believe.

4 HEARING OFFICER KNITTLE: Mr. Porter?

5 MR. PORTER: Again, for the sake of ease of this hearing,
6 we are going to need to refer to it as a specific exhibit. I
7 would ask the same ruling. If it is already in the record then
8 it will be stricken later. For the purposes of this hearing it
9 would be Respondent's Exhibit Number 3.

10 HEARING OFFICER KNITTLE: March 4th of 1999. Yes, I will
11 grant -- I guess I am not granting. I will accept it under the
12 same terms just for ease of referring to it at the hearing.

13 MS. HARVEY: Okay.

14 HEARING OFFICER KNITTLE: But this one we know we are going
15 to be using. I am going to substitute the copy of that that was
16 submitted to the Board with your -- I think it was a motion.

17 MS. HARVEY: Yes.

18 HEARING OFFICER KNITTLE: That will be the official copy in
19 the record.

20 MR. PORTER: Okay.

21 HEARING OFFICER KNITTLE: I know this was done on March
22 4th, because we had a Board order on it.

23 MR. PORTER: Thank you.

24 HEARING OFFICER KNITTLE: Is that okay, Ms. Harvey?

26

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1 MS. HARVEY: Yes. I have no objection.

2 (Whereupon said document was duly marked for purposes of
3 identification as Respondent's Exhibit 3 and entered into
4 evidence as of this date.)

5 MS. HARVEY: Then the 4th one, which I believe is, if I
6 have it right, Mr. Porter, it is the County Board's findings on
7 the -- it is their actual written decision.

8 MR. PORTER: I guarantee that is in the record.

9 MS. HARVEY: It is in the record. I attached it actually
10 to my petition for review. It is also part of the certification.
11 I want to say it is even listed on here. So I guess I have the
12 same objection I did to Number 2, which is only that it is not
13 the same. This is an unsigned copy. It is not signed and dated.

14 I think the copy I submitted in the record is signed by the
15 Commissioners and dated in October of 1998. So I don't object to
16 it being in the record. I believe it is already in the record,
17 so I guess I do object to this particular document being
18 admitted.

19 MR. PORTER: Actually, I will withdraw the admission, but I
20 am going to refer to the document as Respondent's Exhibit Number
21 4, because I know it is in the record as well.

22 HEARING OFFICER KNITTLE: Okay. Well, let's admit it as we
23 did the Number 3, just for the use of this hearing only. You can
24 refer to it as Respondent's Exhibit Number 4.

27

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1 MR. PORTER: All right. Thank you.

2 (Whereupon said document was duly marked for purposes of
3 identification as Respondent's Exhibit 4 and entered into
4 evidence as of this date.)

5 HEARING OFFICER KNITTLE: Anything further, Mr. Porter?

6 MR. PORTER: No, Mr. Knittle.

7 HEARING OFFICER KNITTLE: Ms. Harvey, do you have an
8 opening statement?

9 MS. HARVEY: I have a very brief opening statement, Mr.
10 Hearing Officer. I will try and speak up so that you can all
11 hear me.

12 This is an appeal of the Randolph County Board's October

13 19, 1998, decision denying Land and Lakes Company siting approval
14 for its proposed Grand Prairie Waste Disposal Facility. Land and
15 Lakes has appealed on three grounds, which I mentioned earlier.
16 The first is the fundamental fairness argument. It is our
17 contention that the combination of a number of ex parte contacts
18 from members of the public to the decision-makers, that is the
19 County Board members and the Planning Commission members, which
20 contacts are improper, combined with threats and intimidation,
21 made it impossible for Land and Lakes to get a fair decision on
22 its application. That is the subject of the witnesses that we
23 will be presenting today, and the testimony that we will be
24 presenting today.

28

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1 There are two other issues in this case that we have
2 raised. The first one is that the County Board's decision, which
3 found that Land and Lakes failed to satisfy criterion 2, which is
4 whether or not the proposed facility protects the public's
5 health, safety, and welfare is against the manifest weight of the
6 evidence. We believe that it is against the manifest weight of
7 the evidence and will make such arguments. The third issue is
8 similar to number two. The Randolph County Board also denied
9 this application on criterion 8, which is consistent with the
10 Solid Waste Management Plan. We believe that that decision is
11 also against the manifest weight of the evidence and will be
12 making appropriate argument.

13 Because the scope of this hearing under Section 40.1 of the
14 Environmental Protection Act is limited to fundamental fairness
15 aspects of the case, that will be the only subject that Land and
16 Lakes will address today. We will reserve our legal arguments on
17 the two other issues on criterion 2 and 8 until the filing of our
18 written briefs which will happen after this hearing. I don't
19 have anything further.

20 HEARING OFFICER KNITTLE: Thank you, Ms. Harvey. Mr.
21 Porter?

22 MR. PORTER: I will try to be equally brief. The Randolph
23 County hearing was fundamentally fair. That is what the evidence
24 will show. Any communications by the public to the County Board

29

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1 members were inevitable, inconsequential and not prejudicial.
2 The facts of this case are that the applicant proposed a landfill
3 which was within one mile of the city limits of Sparta, Illinois.
4 The Solid Waste Management Plan for Randolph County excluded any
5 and all landfills that were within one and a half miles from a
6 city limits. That is what the evidence will show. The County
7 Board based its decision upon the lack of consistency with that
8 Solid Waste Management Plan, not based upon any communications
9 from the public which were inevitable and inconsequential. It is
10 for these reasons that we will ask at the conclusion of this
11 hearing that the County Board decision be affirmed.

12 HEARING OFFICER KNITTLE: All right. Thank you, Mr.
13 Porter.

14 Ms. Harvey?

15 MS. HARVEY: I would only like to note for the record that
16 Mr. Kelley, also an attorney for Land and Lakes, has joined us.

17 HEARING OFFICER KNITTLE: Thank you. Are you ready to call
18 your first witness?

19 MS. HARVEY: I am.

20 HEARING OFFICER KNITTLE: Please do.

21 MS. HARVEY: I would like to call Kenny Markley as my first
22 witness, please, who I do believe is here.

23 HEARING OFFICER KNITTLE: Mr. Markley.

24 MR. MARKLEY: Sir, I had no knowledge that I was to be a

30

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1 witness here.

2 MR. PORTER: Actually, I do have an objection to calling
3 Mr. Markley, as well.

4 HEARING OFFICER KNITTLE: Okay. Let's let Mr. Porter do
5 his objection.

6 MR. PORTER: Mr. Knittle, we received -- well, we sent
7 interrogatories a year ago asking for the various witnesses that
8 the petitioner expected to call. We also exchanged witness
9 lists, oh, I would say three weeks ago as well as an amended copy
10 one week ago. At no time was Mr. Markley, whose identity has
11 been known for several years, been identified. Rather, the only

12 identification was potential members of F.O.R.C.E.

13 Considering the fact that Mr. Markley has been known for
14 several years, we do not believe that his disclosure was made and
15 certainly at this last hour it is untimely and we would ask that
16 it be barred on that grounds.

17 HEARING OFFICER KNITTLE: Ms. Harvey?

18 MS. HARVEY: I have two responses. First of all, my
19 witness list does indeed identify any other person who attends
20 the hearing including, but not limited to, members and
21 representatives of F.O.R.C.E. So I think I did disclose
22 potential witnesses on that ground.

23 Secondly, as to the reference to my interrogatory answers,
24 the record should be clear that I objected to that interrogatory.

31

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1 I did respond to it without waiving my objection, and the reason
2 I objected to it is because this is a hearing that is supposed to
3 explore fundamental fairness issues. I am not required to have
4 all of the answers before the hearing. I think he is a proper
5 witness.

6 HEARING OFFICER KNITTLE: All right. Anything further, Mr.
7 Porter?

8 MR. PORTER: No.

9 HEARING OFFICER KNITTLE: Okay. We are going to allow this
10 witness to be called, so, sir, your objection is overruled.

11 Mr. Markley, would you please have a seat right here.
12 MEMBER OF THE MEDIA: Sir, could I place this microphone up
13 here in order to hear his --
14 HEARING OFFICER KNITTLE: Any objections?
15 MEMBER OF THE MEDIA: It does not amplify his voice at all.
16 MS. HARVEY: No objection.
17 MR. PORTER: No objection.
18 HEARING OFFICER KNITTLE: There is no objection.
19 MEMBER OF THE MEDIA: Thank you.
20 HEARING OFFICER KNITTLE: Have a seat, sir. Would you
21 state your full name, please.
22 MR. MARKLEY: Ken Douglas Markley.
23 HEARING OFFICER KNITTLE: Okay. Could you swear him in,
24 please.

32

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1 (Whereupon the witness was sworn by the Notary Public.)
2 THE COURT REPORTER: Would you spell your last name,
3 please.
4 MR. MARKLEY: It is M-A-R-K-L-E-Y.
5 HEARING OFFICER KNITTLE: Ms. Harvey, your witness.
6 MS. HARVEY: Thank you very much.
7 K E N D O U G L A S M A R K L E Y,
8 having been first duly sworn by the Notary Public, saith as
9 follows:
10 DIRECT EXAMINATION

11

BY MS. HARVEY:

12 Q. Mr. Markley, my name is Elizabeth Harvey. I represent
13 Land and Lakes Company. The issues that I want to explore with
14 you today are the events that happened during the pendency of the
15 landfill siting application. That time period is April of 1998
16 through October of 1998.

17 I just have a few background questions I want to ask you
18 first. What is your address?

19 A. 7651 Cabin Creek Lane, Sparta.

20 Q. Who do you live there with?

21 A. My wife and children.

22 Q. How old are your children?

23 A. They are 25 and 21, and I have four grandchildren.

24 Q. Okay. And are you employed?

33

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1 A. Yes.

2 Q. What do you do?

3 A. I am an ornamental blacksmith in Eureka, Missouri.

4 Q. Did you follow the events of the siting application, the
5 procedures of the siting application in 1998?

6 A. No, I was under the understanding that we were looking
7 at a small, local type landfill, as we have had in the past, only
8 up to modern standards. To the best of my knowledge, nobody that
9 I had any conversations with, which was very limited because I

10 thought it was, like I said, a local facility, had any idea of
11 the scope, the magnitude of the facility that was being presented
12 until the public hearings.

13 Q. Did you attend those public hearings?

14 A. Yes, I did.

15 Q. Just for the record, I believe those public hearings
16 happened in July of 1998. Does that sound correct?

17 A. The 27th and 28th, if I remember right.

18 Q. Thank you. Did you attend both days of the hearings?

19 A. I was present all but the evening of the first day. I
20 had to go to work.

21 Q. Okay. And did you subsequently take a position on
22 whether or not you believed this landfill should be sited?

23 A. Yes.

24 MR. PORTER: Objection. Irrelevant.

34

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1 HEARING OFFICER KNITTLE: Ms. Harvey?

2 MS. HARVEY: I think it is part of the public record. I
3 don't see how it could be irrelevant. His position is -- if you
4 will give me a little bit of latitude here, I think it is
5 background as to whether or not -- the question I am about to ask
6 him about fundamental fairness issues.

7 HEARING OFFICER KNITTLE: Mr. Porter?

8 MR. PORTER: This individual is not a party. His opinions
9 regarding the landfill are completely irrelevant as to whether

10 the procedures of Randolph County were fundamentally unfair.

11 HEARING OFFICER KNITTLE: Ms. Harvey?

12 MS. HARVEY: When we are talking about ex parte contacts,
13 we are not talking about just procedures that were followed by
14 the County itself. We are talking about events that occurred
15 during the siting application period. And those, by definition,
16 involve members of the public.

17 HEARING OFFICER KNITTLE: The objection is overruled.

18 Sir, do you need the question put back to you.

19 THE WITNESS: Would you please repeat the question?

20 Q. (By Ms. Harvey) Did you take a position on whether or
21 not the landfill siting application should be granted?

22 A. I formed an opinion during the two days that there was
23 something terribly wrong in the case that Land and Lakes
24 presented. It was based on minimum standards, at best. It

35

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1 bothered me when Mr. Rhutasel tried to give comments and the
2 lawyers for Land and Lakes would not allow him. They demanded
3 that they met the standards, and, well, yes, you do meet
4 standards, but that is it. It was a very slipshod case that it
5 was -- I felt that the wool had been pulled over my eyes, as well
6 as the rest of the public. That no one came in and told us, the
7 public, what was being said, what was being planned. Nothing --
8 we knew nothing. And then all of the sudden I am not even

9 allowed to talk to my elected officials.

10 Q. We will come back to that in a second. So would it be
11 correct for me to say that you determined in your opinion that
12 the landfill siting application should not be granted?

13 A. Yes.

14 Q. Did you become involved with other people who felt that
15 same way?

16 A. Yes.

17 Q. Was there a group formed?

18 A. Yes.

19 Q. What is the name of that group?

20 A. F.O.R.C.E.

21 Q. Can you tell me what F.O.R.C.E. stands for?

22 A. Probably not. Fighting Opponents for Randolph County
23 Environment, if I remember right.

24 Q. Okay. Do you know when that group, F.O.R.C.E., was

36

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1 formed?

2 A. It was at least two or three weeks before we had the
3 first gathering. It was kind of informal, just people speaking
4 their opinions.

5 Q. By the first gathering you mean it was -- was it formed
6 before the local hearings?

7 A. No, no.

8 Q. Formed after the local hearings?

9 A. After.

10 Q. Do you know what month it was formed?

11 A. Probably sometime in August.

12 Q. Was it formed during the public comment period --

13 A. No.

14 Q. -- that followed?

15 A. If it was in August, it had to have.

16 Q. For the record, is it your memory that there was a

17 public comment of 30 days that followed the July of 1998

18 hearings?

19 A. Yes.

20 Q. And is it your recollection that F.O.R.C.E. was formed

21 during that public comment period?

22 A. I believe it was.

23 Q. Okay. Thank you. What is the purpose of F.O.R.C.E.?

24 A. It is the citizens speaking their opinion.

37

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1 Q. Does F.O.R.C.E. still exist?

2 A. Yes.

3 Q. Is it a formal group, for example, is it a registered

4 non-profit organization?

5 A. I don't know. It is a grass-roots organization.

6 Q. Okay. How do you become a member of F.O.R.C.E.?

7 A. Come to a meeting.

8 Q. Is there a formal membership list?

9 A. I have no idea.

10 Q. To your knowledge are there officers of F.O.R.C.E.?

11 A. Yes.

12 Q. Who are the officers?

13 MR. PORTER: I am going to object again. The group
14 F.O.R.C.E., if such a group exists, is not a party and was not a
15 party to the County proceedings and, accordingly, the individuals
16 that belong to it are irrelevant to this proceedings. The
17 question is whether or not there were any ex parte
18 communications, whether or not there were any communications
19 between the County Board and the parties to the proceeding
20 without the other party being present. And that is not the
21 situation here and, therefore, this entire line of questioning is
22 irrelevant.

23 HEARING OFFICER KNITTLE: Ms. Harvey?

24 MS. HARVEY: I think it is absolutely relevant. I disagree

38

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1 with Mr. Porter's definition of ex parte contacts. First of all,
2 I believe and I think we have argued this previously, that
3 members of the public can, indeed, engage in ex parte contacts.
4 It is relevant to this whole hearing as to what occurred between
5 members of the public and the decision-makers, including
6 opposition groups, during that time period.

7 HEARING OFFICER KNITTLE: How is the structure of

8 F.O.R.C.E. relevant?

9 MS. HARVEY: I think it is relevant to some of the
10 activities that may or may not have occurred. I think it is a
11 little background to know how big it was, whether it was a 500
12 member group or a 50 member group. It gives us an idea of what
13 may have been occurring.

14 HEARING OFFICER KNITTLE: Mr. Porter, anything further?

15 MR. PORTER: No.

16 HEARING OFFICER KNITTLE: I am going to allow it to go on
17 for a while. But I agree that we don't want to get too far
18 afield.

19 MS. HARVEY: Thank you, Mr. Hearing Officer.

20 Q. (By Ms. Harvey) Mr. Markley, is there -- do you pay dues
21 to become a member of F.O.R.C.E.?

22 A. No.

23 Q. I think I was asking you about officers of F.O.R.C.E.
24 Are there officers of F.O.R.C.E.?

39

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1 A. Yes.

2 Q. Who are they?

3 A. Alan Weber is president.

4 Q. Okay.

5 A. I am vice president.

6 Q. Okay.

7 A. Due to some illnesses, I can't -- I am not sure who are
8 the others right now. Due to my situation right now I am not
9 sure who might be the other officers.

10 Q. Do you remember who were the other officers in 1998?

11 A. No, ma'am, I don't.

12 Q. And you were the vice president?

13 A. Uh-huh.

14 Q. Are you still the vice president?

15 A. Yes.

16 Q. Was there a secretary?

17 A. Yes, but I can't tell you who it was back then or even
18 now.

19 Q. Okay. Was there a treasurer?

20 A. I believe.

21 Q. Can you tell me who it was at that period of time?

22 A. No, because I don't believe they were from Sparta, and I
23 was not familiar with the person.

24 Q. Were there other officer positions besides president,

40

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1 vice president, secretary and treasurer?

2 A. Not that I am aware.

3 Q. Did you have an attorney?

4 A. No.

5 Q. Are there other people -- were there other people who
6 held what you might consider informal leadership roles in

7 F.O.R.C.E, in other words, who were very active F.O.R.C.E.
8 members?

9 A. Well, anybody could be active. Anybody could -- you
10 know, if they had an idea that they thought needed pursued, we
11 had no problem, as long as they kept it legal and honest, no
12 disinformation or going -- anything that could land anybody or
13 anything in jail.

14 Q. In addition to you and Mr. Weber was there anybody that
15 took a role as say a spokesperson or dealt with, say, media
16 inquiries?

17 A. Not anybody specific.

18 Q. Okay. Are there other people in the room today who were
19 very active members of F.O.R.C.E. in 1998?

20 A. About three-fourths of the room.

21 Q. Can you name a couple of those people for me?

22 A. Mr. --

23 MR. PORTER: The same objection.

24 HEARING OFFICER KNITTLE: Do you want to restate it, Mr.

41

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1 Porter?

2 MR. PORTER: I believe that the objection is that this is
3 irrelevant to the issue of whether or not the proceedings
4 conducted by Randolph County were fundamentally fair.

5 MS. HARVEY: I am attempting to explore who, if anyone,

6 might have been involved in what we intend to be illegal and
7 improper ex parte contacts.

8 HEARING OFFICER KNITTLE: I am going to sustain this
9 objection. I don't see how him naming a few people who might be
10 in the room and involved in 1998 is relevant.

11 MS. HARVEY: Okay.

12 Q. (By Ms. Harvey) Did F.O.R.C.E. have events to raise
13 funds?

14 A. We have taken donations. We have had a few barbecues.
15 The people supporting your side have done their best to make sure
16 that businesses know that they will not do business there if they
17 support us in any way.

18 Q. Any other ways?

19 A. Private contributions. Private contributions and
20 donations at meetings. We have had a couple of dinners. They
21 helped pay mailing expenses. We try to send out letters to
22 people that live outside the county that can't come on a regular
23 meeting just to let them know if we are having a meeting or what
24 is being done. Soft drinks and snacks at our meetings, things

42

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1 like that. As far as trying to raise a large amount of money, we
2 have never attempted to do that.

3 Q. So would I be correct to summarize by saying you had a
4 couple of dinners and fund-raising type barbecues and
5 additionally you receive private donations?

6 A. Yes.

7 Q. Is there any other source of funds?

8 A. Not that I am aware of.

9 Q. Okay. What kind of activities did F.O.R.C.E. -- what
10 kind of activities did F.O.R.C.E. undertake, let's say in August
11 of 1998, during the public comment period?

12 A. Information.

13 Q. Information to whom?

14 A. The public.

15 Q. And by what method?

16 A. Talking, doing research, handing out information to
17 people that were interested if we could -- on what we could find.
18 We were -- if I recall, we were under very tight time restraints
19 for our limited knowledge and research at that time. So we
20 basically just tried to get people aware of what was being tried
21 to be put in our county without making us aware of it. Just
22 tried to pass out knowledge.

23 Q. And you passed out that knowledge by -- did you do
24 mailings?

43

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1 A. Not that I know of. We didn't have any -- if it was, it
2 had to be private, because nobody had any money.

3 Q. Did you talk with the media? By you I mean F.O.R.C.E.
4 I am sorry.

5 A. To a degree. The local papers naturally had an interest
6 in it. We were contacted, I believe, by some of the TV stations
7 in Southern Illinois and St. Louis to see what was going on.

8 Q. Did you put signs up?

9 A. Some people did.

10 Q. Was there discussion at F.O.R.C.E. meetings about
11 appropriate ways to get F.O.R.C.E.'s position out? Were there
12 specific discussions about let's do mailings, let's put signs up,
13 lets --

14 A. Well, we discussed on how to best inform the public and
15 pass out knowledge that we felt people should know.

16 Q. And what were your conclusions of those discussions?
17 How did you decide was the best way to let people know your
18 position?

19 A. Just get out and talk to them and do whatever research
20 we could and make our facts factual, be able to back up what we
21 say by what literature is available to us, what research we were
22 doing. We were fortunate that some people are just excellent
23 researchers and knew where -- seemed to know where to go to find
24 information.

44

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1 Q. So during that public comment period you spoke --
2 members of the F.O.R.C.E. spoke to people and some members of
3 F.O.R.C.E. put signs up, there was some contact with the media.
4 Did F.O.R.C.E., as a group, file public comment or public

5 comments with the Randolph County Clerk?

6 A. Not as a group, per se, that I know of. We all --
7 almost everybody did on their own opinion. As far as a group
8 media or a group mailing, not that I know of.

9 Q. Okay. After the public comment period ended in late
10 August of 1998, but before the County Board made its decision in
11 1998, what kind of activities did F.O.R.C.E. undertake in that
12 period of time?

13 A. About the same, as far as I can recall. Nothing changed
14 much. It was still just dealing with the information and talking
15 to the people.

16 Q. Did you attend County Board meetings?

17 A. Yes.

18 Q. Did you speak at a County Board meeting or County Board
19 meetings?

20 MR. PORTER: I have to voice an objection to vagueness. We
21 are using the term "you" now. Do we mean this witness in
22 particular?

23 MS. HARVEY: I am sorry.

24 HEARING OFFICER KNITTLE: Yes, Ms. Harvey, if you could

45

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1 specify, please.

2 MS. HARVEY: Certainly. I am sorry.

3 Q. (By Ms. Harvey) Did F.O.R.C.E., as a group, attend

4 regularly scheduled County Board meetings in September and
5 October of 1998?

6 A. I went to every Board meeting I could personally.
7 Nobody was forced to go to a Board meeting. A number of people
8 were interested in what was going on, to hear what was being
9 said. So if we went, we went as a scheduled Board meeting. We
10 didn't go as members. We went as individuals.

11 Q. Okay. Did you personally attend regularly scheduled
12 Board meetings, and let's make it in the period August through
13 October of 1998?

14 MR. PORTER: I object. I think we have to be more specific
15 in regard to the dates.

16 HEARING OFFICER KNITTLE: Ms. Harvey?

17 MS. HARVEY: I believe there was one on August 24th of
18 1998.

19 Q. (By Ms. Harvey) Do you remember if you attended that
20 County Board meeting?

21 A. That particular date does not mean a thing to me.

22 Q. Okay. Did you attend a County Board meeting in the
23 beginning of October of 1998?

24 A. More than likely.

46

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1 Q. Do you have a specific recollection of an October Board
2 meeting?

3 A. I attended every Board meeting I could from August of

4 1998 until approximately July of last year.

5 Q. In the period of time between August through October of
6 1998, did you individually have the opportunity to speak on the
7 landfill application at a regularly scheduled County Board
8 meeting?

9 MR. PORTER: I am going to object to relevancy again.

10 HEARING OFFICER KNITTLE: Ms. Harvey?

11 MS. HARVEY: I think it is relevant to whether there was an
12 ex parte contact that was outside the record and outside the
13 presence of the applicant.

14 HEARING OFFICER KNITTLE: Objection overruled.

15 MS. HARVEY: Do you want me to restate the question, Mr.
16 Markley?

17 THE WITNESS: Can I ask you a question, Mr. Hearing
18 Officer?

19 HEARING OFFICER KNITTLE: You can ask.

20 THE WITNESS: Can I answer this in my own interpretation
21 without being cut off?

22 HEARING OFFICER KNITTLE: I can't state whether or not
23 there is going to be an objection to your answer on either -- for
24 either party. All I can tell you is that you are under an

47

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1 obligation to tell the truth as you know it.

2 THE WITNESS: Okay.

3 HEARING OFFICER KNITTLE: And answer the questions as
4 honestly as you can.

5 Let's read the question back. Well, do you want to read it
6 or do you want --

7 MS. HARVEY: Yes, why don't you read it back.

8 (Whereupon the requested portion of the record was read
9 back by the Reporter.)

10 HEARING OFFICER KNITTLE: Okay, sir.

11 THE WITNESS: Yes.

12 Q. (By Ms. Harvey) Can you tell me the circumstance? How
13 many times? Strike that. How many times? How many different
14 Board meetings? I am sorry.

15 A. To the best of my knowledge, I was given I think two
16 minutes at one meeting to express my opinion.

17 Q. Do you remember what the date of that meeting was?

18 A. No, ma'am, I do not. As I said, that was about the time
19 I started hearing something about not being able to talk to my
20 elected officials. They did give me -- I said two minutes in a
21 meeting to express my opinion. And then I do remember, I believe
22 it was the October 19th meeting, they gave Mr. Cally five minutes
23 to express his opinions, because they had heard opinions from
24 their citizens.

48

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1 Q. Do you remember -- strike that. Was there more than one
2 County Board meeting at which you spoke, other than the October

3 19th meeting?

4 A. Not that I recall. We kind of -- me, anybody from --
5 that had an anti-landfill interest basically were not talked --
6 did not talk to County Commissioners at meetings or at any other
7 time.

8 Q. You mentioned a little earlier that you learned at some
9 point that you were not supposed to be talking about the
10 application to the elected officials. When did you learn that?

11 A. I think I started hearing it in September of that year,
12 though it was not ever made exactly plain, because at that time,
13 as I recollect, there was a discussion of why we were not allowed
14 to talk to the elected officials.

15 Q. Who informed or who raised the issue initially to you
16 that you may not be able to talk to elected officials?

17 A. I believe Commissioner Stork told me that he didn't
18 think he was supposed to talk to me, but as a citizen, a voter of
19 this county, he thought that --

20 MR. PORTER: Objection. Hearsay.

21 HEARING OFFICER KNITTLE: Ms. Harvey?

22 MS. HARVEY: This is an administrative proceeding with
23 relaxed rules of evidence, and it is also -- he is not -- I am
24 not asking him for the testimony for the truth of the matter

49

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1 asserted therein. I am asking him for his recollection of how he

2 learned it.

3 HEARING OFFICER KNITTLE: I am going to overrule. This is
4 an administrative proceeding. We do have relaxed hearsay rules.

5 Sir.

6 THE WITNESS: Well, he -- you know, he basically felt that
7 he had an obligation to hear my -- what I had to say. We talked
8 for a couple of minutes. Mainly I said, you mean I am not
9 allowed to talk to you. And he said no. He said, I don't agree
10 with it, and I think it is wrong. And it was a very short
11 conversation.

12 Q. Was it a phone conversation?

13 A. No, it was person to person.

14 Q. Okay. Did you ever have any phone conversations with
15 Mr. Stork about the siting application before the decision on it?

16 A. No, not that I can recollect.

17 Q. Okay. Did you ever talk to -- during this same period
18 while the application was pending, did you ever talk to Terry
19 Moore, who was -- who is a County Board member, about the
20 application?

21 A. No.

22 Q. During that same period, did you ever talk to Clem
23 Asker, who was at that point a County Board member?

24 A. No.

50

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1 Q. Did you talk to any of the members, any of the four

2 members of the Planning Commission?

3 MR. PORTER: Objection. Irrelevant.

4 HEARING OFFICER KNITTLE: Ms. Harvey?

5 MS. HARVEY: It is relevant, again, to explore the
6 fundamental fairness aspects of a person who made the
7 recommendation to the County Board.

8 MR. PORTER: May I respond?

9 HEARING OFFICER KNITTLE: Yes, sir.

10 MR. PORTER: That particular committee did not have any
11 decision making authority. Therefore, I believe that their
12 communication with the public are irrelevant.

13 MS. HARVEY: There is Pollution Control Board case law, I
14 think it is the LaSalle County Land Comp case, that says the
15 actions of a staff person or an advisor can be, not in all cases,
16 can be held to be fundamentally unfair. So I think I am entitled
17 to at least inquire about what happened.

18 HEARING OFFICER KNITTLE: Mr. Porter, anything further?

19 MR. PORTER: No.

20 HEARING OFFICER KNITTLE: I do recall that is from the Will
21 County hearing, as well, that we addressed this issue. And we
22 found it to be reasonable testimony. So the objection is
23 overruled.

24 THE WITNESS: No, I have no contact with any of the --

1 Q. (By Ms. Harvey) The Planning Commission?
2 A. The Planning Commission people.
3 Q. Okay. Did you -- other than public comments that you
4 submitted to the Randolph County Board or through the clerk, did
5 you send letters to any -- you, as an individual, send letters to
6 any County Board member?
7 A. No.
8 Q. Did you send letters to any Planning Commission member?
9 A. No.
10 Q. Did you write any letters to the Editor?
11 A. No.
12 Q. Did members of F.O.R.C.E., to your knowledge, write
13 letters to the Editor?
14 A. Quite a few members did, if I recollect right.
15 MS. HARVEY: Okay. Can I have just a second, Mr. Hearing
16 Officer?
17 HEARING OFFICER KNITTLE: Yes. Let's go off the record
18 (Whereupon a short recess was taken.)
19 HEARING OFFICER KNITTLE: Back on the record. Ms. Harvey,
20 any further questions for this witness?
21 MS. HARVEY: I think I have just a couple of additional
22 questions for Mr. Markley.
23 Q. (By Ms. Harvey) Prior to the time when you learned --
24 and when you learned that it was inappropriate for you to contact

1 the elected officials regarding this application --

2 MR. PORTER: Objection. I believe that is a
3 mischaracterization of the law.

4 HEARING OFFICER KNITTLE: Could you please explain?

5 MR. PORTER: The law is clear that the public contacts of
6 Board members are inevitable and are not proscriptive by any
7 fundamental fairness rule or case. For Counsel to suggest that
8 it is inappropriate for those contacts to have occurred, assumes
9 a law that does not exist.

10 HEARING OFFICER KNITTLE: Okay. You are objecting to the
11 phrase of --

12 MR. PORTER: The phraseology of the question, correct.

13 HEARING OFFICER KNITTLE: Could you rephrase that, Ms.
14 Harvey?

15 MS. HARVEY: I guess I would like to make a response. If
16 Mr. Porter is going to continue to object on the grounds that --
17 we have a disagreement on the state of the law as to what an ex
18 parte contact is. I would suggest maybe he makes a standing
19 objection for the record as to that. I would be happy to
20 rephrase my question in this particular instance, but I would
21 rather not fight this battle with every question I ask. We have
22 a legitimate disagreement that I think the Board is going to have
23 to resolve, and I am concerned about that. For purposes of this,
24 I would be happy to rephrase the question.

1 HEARING OFFICER KNITTLE: Why don't you rephrase it this
2 time. If it continues to be a problem, we can revisit this and
3 Mr. Porter might be inclined to give a standing objection at that
4 point, if necessary.

5 MR. PORTER: Yes. This question I would like rephrased.
6 But I understand Counsel's point, and I may be able to agree to a
7 standing objection.

8 HEARING OFFICER KNITTLE: Okay. For this question, let's
9 rephrase it.

10 MS. HARVEY: I would be happy to rephrase the question.

11 Q. (By Ms. Harvey) Mr. Markley, you testified a little
12 earlier that at some point you became aware there was an issue as
13 to whether or not it was appropriate for you to contact elected
14 officials regarding this application; is that correct?

15 A. Yes.

16 Q. Prior to that -- and did we -- I believe you testified
17 that was around the beginning of September when you discovered
18 this?

19 A. Sometime in September.

20 Q. Okay. Prior to that September time when you were given
21 this information, was F.O.R.C.E. advised or were members of
22 F.O.R.C.E. suggesting to each other that there be direct contact
23 with the elected officials on this issue?

24 A. Most of us could not believe that there would be a law

1 banning us from giving our opinion to our elected officials that
2 we put in office to make rules for us. We just could not believe
3 that anybody would make that kind of a law, to take the --
4 banning the ability for the people to speak.

5 Q. Do you know if members of F.O.R.C.E. contacted elected
6 officials directly?

7 A. No. I can say that all I -- if I say yes, it is on
8 hearsay.

9 Q. You said if you say yes it is on hearsay. Do you have
10 any personal knowledge that other members of F.O.R.C.E. directly
11 contacted elected officials on this issues?

12 A. I only know that Mr. Weber and I, the conversation that
13 I had with Mr. Stork, I ran into him one day when he was leaving
14 a meeting with -- my mind is going blank -- Mr. Farris, who was
15 your attorney at that time.

16 Q. Okay. So you -- Mr. Weber was with you when you had
17 that conversation with Mr. Stork?

18 A. We happened to walk out of the rest room.

19 Q. Okay. Other than that occurrence when you and Mr. Weber
20 were both together, do you have any personal knowledge of members
21 of F.O.R.C.E. directly contacting elected officials?

22 A. On their own, no.

23 Q. When you say on their own, do you mean -- was there any
24 kind of group contact?

1 A. Not that I know of.

2 Q. You earlier identified Mr. Weber as the president of the
3 group. Was Doris Spinney an active member of F.O.R.C.E. at that
4 time?

5 A. I believe.

6 Q. Okay. How about Mark Zolner?

7 MR. PORTER: I have to object again. Earlier this witness
8 testified that there was no membership list, so I don't believe
9 that -- I think Counsel is assuming facts that are not in
10 evidence, that there is such a membership list.

11 MS. HARVEY: I don't think there has to be a membership
12 list for there to be members. I think Mr. Markley also testified
13 that there was a group of people that constituted the group
14 F.O.R.C.E.

15 HEARING OFFICER KNITTLE: Objection overruled. If you know
16 that someone was a member, regardless of whether there was a
17 list, I would direct you to answer the question.

18 THE WITNESS: Could you state the question again.

19 Q. (By Ms. Harvey) Sure. Was Mark Zolner a member of
20 F.O.R.C.E. at that time?

21 A. He became a member, but I can't tell you exactly when.

22 Q. Okay. Was Kenneth Heine a member of F.O.R.C.E. at that
23 time?

24 A. I believe.

1 Q. Mr. Markley, what was your understanding of the purpose
2 of the written public comment period during that 30 days after
3 the close of the hearings?

4 MR. PORTER: I am sorry. I object to relevancy. This
5 witness' understanding of the purpose of that period is
6 completely irrelevant.

7 HEARING OFFICER KNITTLE: Ms. Harvey?

8 MS. HARVEY: I think it goes to -- it potentially goes to
9 fundamental fairness, since he testified that none of them could
10 believe that they would be prohibited from contacting their
11 elected officials.

12 HEARING OFFICER KNITTLE: But how does that apply to the
13 written public comment period?

14 MS. HARVEY: Well, there would be some -- the purpose of
15 the written public comment period was to express the public's
16 views on it, which is what Mr. Markley was concerned about.

17 HEARING OFFICER KNITTLE: I am going to overrule this one
18 objection, but I would advise you that I am not going to let it
19 go too far.

20 Q. (By Ms. Harvey) Let me rephrase the question a little
21 bit. Mr. Markley, did you have an understanding of what the
22 purpose of the public comment period was?

23 A. I thought it was the only chance that the people had to
24 express their opinion.

1 Q. You say the only chance. Do you say the only chance
2 because of the -- what your understanding was of a prohibition on
3 contacting the elected officials?

4 A. Well, yeah. You know, if you are not allowed to talk to
5 elected officials and you are allowed to write something down on
6 paper, which who knows where it went.

7 Q. I have just one more question, Mr. Markley. Was Bill
8 Watson a member of F.O.R.C.E. at that time?

9 A. He became a member sometime towards the beginning, but
10 the actual date I cannot tell you.

11 MS. HARVEY: Okay. Thank you. I don't have any questions
12 for Mr. Markley. Thank you very much.

13 HEARING OFFICER KNITTLE: Thank you. Mr. Porter, do you
14 have any questions for Mr. Markley?

15 MR. PORTER: I do have a few.

16 CROSS EXAMINATION

17 BY MR. PORTER:

18 Q. Isn't it true that before the application was ever
19 filed, the County Board had a policy whereby people could come to
20 a public meeting, a County Board meeting, and express public
21 comment upon any subject?

22 MS. HARVEY: I am going to object on a couple of grounds.
23 First of all, I understand he can lead on cross-examination, but
24 I think he is testifying.

1 Number two, there is no evidence that Mr. Markley knows
2 anything about the County Board's policies regarding speaking at
3 a meeting. He is not a County Board member, nor, if I understand
4 correctly, he is not a County employee.

5 HEARING OFFICER KNITTLE: Mr. Porter, anything further?

6 MR. PORTER: No.

7 HEARING OFFICER KNITTLE: I am going to overrule the
8 objection.

9 THE WITNESS: Could you say it again?

10 Q. (By Mr. Porter) Let me ask it this way. Did you attend
11 County Board meetings before this application was ever filed?

12 A. No.

13 Q. Okay. I will withdraw the question. As I understand
14 correctly, you personally never spoke substantively about the
15 application with a member of the County Board after you were told
16 that they couldn't speak to you; is that right?

17 A. Right.

18 MS. HARVEY: I would object only because he is leading the
19 witness.

20 HEARING OFFICER KNITTLE: I am going to --

21 MR. PORTER: He is not my witness.

22 HEARING OFFICER KNITTLE: Yes. I am going to allow this on
23 cross-examination. It is a bit of a dicey situation, because I
24 don't know if he was an adverse witness when you called him or

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1 not. But I am going to allow him to lead the witness on his
2 examination.

3 MS. HARVEY: I also believe that it mischaracterizes his
4 previous testimony.

5 HEARING OFFICER KNITTLE: Okay. You would have to say the
6 question again for me to --

7 MR. PORTER: Could it be read back?

8 HEARING OFFICER KNITTLE: Let's read it back.

9 (Whereupon the requested portion of the record was read
10 back by the Reporter.)

11 HEARING OFFICER KNITTLE: Do you have an objection to the
12 mischaracterization?

13 MS. HARVEY: I had understood Mr. Markley's previous
14 testimony to be that he did discuss it with Mr. Stork in a short
15 conversation.

16 HEARING OFFICER KNITTLE: Let's let him answer the
17 question.

18 MR. PORTER: I believe we have an answer.

19 HEARING OFFICER KNITTLE: Pardon?

20 MR. PORTER: He answered right.

21 HEARING OFFICER KNITTLE: Did you answer right, sir?

22 THE WITNESS: Well, I said right. When it became
23 definitely clear to me that I was not allowed to speak to him we
24 never spoke on the subject again. You know, I spoke to him the

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1 one day for just a few minutes, and he informed me of this, what
2 I said earlier, and that pretty well ended the conversation.

3 MR. PORTER: So if I understand correctly, as soon as Mr.
4 Stork told you that he had been counseled that he shouldn't talk
5 to members of the public about the landfill, you then stopped
6 trying to talk to him; is that correct?

7 A. Yes.

8 MR. PORTER: Nothing further.

9 HEARING OFFICER KNITTLE: Is there redirect?

10 MS. HARVEY: Yes. I have one question on redirect, please.

11 REDIRECT EXAMINATION

12 BY MS. HARVEY:

13 Q. Before the time when you learned it was -- that you
14 believed it was inappropriate to discuss the substance of this
15 with Mr. Stork, so prior to that conversation when you were told
16 that, did you have any substantive conversations regarding the
17 landfill application with Mr. Stork?

18 A. Not that I recall.

19 Q. Did you have any substantive conversations with any
20 other member of the County Board?

21 A. No.

22 Q. Did you have any substantive conversations with any
23 member of the Planning Commission?

24 A. No.

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1 MS. HARVEY: Okay. I don't have anything further.

2 MR. PORTER: Nothing further.

3 HEARING OFFICER KNITTLE: Thank you, sir. You may step
4 down.

5 MS. HARVEY: Thank you, Mr. Markley.

6 (The witness left the stand.)

7 HEARING OFFICER KNITTLE: I am going to take a five minute
8 recess. We are going to go off the record for five minutes and
9 meet back here.

10 (Whereupon a short recess was taken.)

11 HEARING OFFICER KNITTLE: All right. Let's go back on the
12 record.

13 Hello. We are back on record. As I said before -- I don't
14 know if there is any new citizens here -- my name is John
15 Knittle. I am Chief Hearing Officer with the Illinois Pollution
16 Control Board. We are here on PCB 1999-069, Land and Lakes
17 Company versus Randolph County Board of Commissioners.

18 Just so you all know, I am planning on taking a lunch break
19 at 1:00, so you may want to plan accordingly.

20 I note that someone is raising their hand. Sir?

21 MR. ALAN WEBER: Could I say that at lunch break there will
22 be free brats and soda down here on the lawn.

23 HEARING OFFICER KNITTLE: That is very good to know. Thank
24 you very much.

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1 MR. ALAN WEBER: Land and Lakes Counsel is invited.

2 HEARING OFFICER KNITTLE: But no one is going to talk to
3 them, right?

4 (Laughter from the members of the public.)

5 HEARING OFFICER KNITTLE: No, I am just kidding, of course.
6 This is a very -- we want to keep this as cordial as possible. I
7 do appreciate your offer.

8 That being said, we will plan for 1:00. If it is a little
9 late, that may happen. We are going to shoot for 1:00. So if
10 anyone wants to leave, we should be starting up again around
11 2:00. So let's just start.

12 Ms. Harvey, do you have an additional witness?

13 MS. HARVEY: Can you guys hear me now? I will try and talk
14 into the microphone.

15 Before I proceed with Mr. Stork as a witness, I do want to
16 ask -- indicate my intention to call a few additional members of
17 F.O.R.C.E. as potential witnesses during this proceeding. So I
18 would like them to be excluded under the same provisions that the
19 Planning Commission members were excluded.

20 Those members of F.O.R.C.E. are Alan Weber, Doris Spinney,
21 Kenneth Heine, Bill Watson and Mark Zolner. To the extent that
22 they are at the hearing today, I would like to ask that they be
23 excluded from the room and admonished not to talk to each other.

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1 MR. PORTER: Well, I guess I have one statement. These
2 witnesses are not under subpoena. I don't believe that there is
3 any duty upon them to step forward to testify. Obviously, if
4 they volunteer to do so, that is their prerogative. I don't know
5 if they are even here. Other than that, I have no objection if
6 they are removed from the room.

7 HEARING OFFICER KNITTLE: Ms. Harvey?

8 MS. HARVEY: I agree that they are not under subpoena. I
9 also don't know if all of them are here. I am merely indicating
10 my intention to the extent that if they are here I am going to
11 call them as witnesses, or I may call them as witnesses.
12 Therefore, I would like them excluded, because I intend to call
13 them as witnesses.

14 HEARING OFFICER KNITTLE: Mr. Porter?

15 MR. PORTER: I would reiterate my objection. I believe
16 their testimony is irrelevant. As far as whether or not they are
17 going to be witnesses, I don't have an objection to a witness
18 being excluded from the proceeding.

19 HEARING OFFICER KNITTLE: Are you -- I don't want to
20 exclude anybody who may be called and is not on a witness list.
21 Now, if you can tell me that you are going to call them.

22 MS. HARVEY: I can tell you for sure that I do plan to call
23 Alan Weber as a witness. There are two others, Doris Spinney and

24 Kenneth Heine, depending upon the testimony that may or may not

64

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1 come from Mr. Weber, quite frankly.

2 HEARING OFFICER KNITTLE: Is there an Alan Weber here?

3 (Mr. Alan Weber raised his hand.)

4 HEARING OFFICER KNITTLE: Oh, the brats. How about -- was
5 it Doris Spinney?

6 MEMBER OF THE PUBLIC: She had to leave to go to her car
7 for a while.

8 HEARING OFFICER KNITTLE: Is she going to be back?

9 MEMBER OF THE PUBLIC: I think so.

10 HEARING OFFICER KNITTLE: And how about Heine?

11 MEMBER OF THE PUBLIC: I saw them leave, too.

12 HEARING OFFICER KNITTLE: Okay.

13 MEMBER OF THE PUBLIC: He was not feeling well.

14 MEMBER OF THE PUBLIC: They are probably coming back.

15 HEARING OFFICER KNITTLE: Okay. I am going to definitely
16 exclude Mr. Weber here.

17 Because, you are going to call him, correct?

18 MS. HARVEY: Yes.

19 HEARING OFFICER KNITTLE: Sir, I am going to ask you to
20 step outside during the pendency of this hearing until you are
21 called.

22 MR. ALAN WEBER: I will go cook the brats.

23 (Laughter from the members of the public.)

24 HEARING OFFICER KNITTLE: We appreciate that. If one of

65

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1 the other witnesses come in, I suppose we could check
2 periodically. But there is really no way I have of knowing that
3 they are here.

4 MS. HARVEY: That is fine, Mr. Hearing Officer.

5 HEARING OFFICER KNITTLE: Okay. Let's proceed, then, with
6 your next witness.

7 MS. HARVEY: Land and Lakes would like to call Ron Stork as
8 our next witness.

9 HEARING OFFICER KNITTLE: Mr. Stork, could you raise your
10 right hand, please.

11 Would you please swear him in.

12 (Whereupon the witness was sworn by the Notary Public.)

13 HEARING OFFICER KNITTLE: You may proceed, Ms. Harvey.

14 R O N A L D S T O R K ,

15 having been first duly sworn by the Notary Public, saith as
16 follows:

17 DIRECT EXAMINATION

18 BY MS. HARVEY:

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

20 A. Ronald Stork.

21 Q. How do you spell the last name?

22 A. S-T-O-R-K.

23 Q. Mr. Stork, where do you live?
24 A. 216 South Dickey, in Sparta, Illinois.

66

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1 Q. Who lives there with you?
2 A. My wife and two daughters.
3 Q. How old are your daughters?
4 A. They are 15 and 13.
5 Q. And what kind of business are you in?
6 A. I am in the construction business.
7 Q. Do you own your own business?
8 A. Yes, I do.
9 Q. What is the name of the business?
10 A. Ron's Construction Service, Incorporated.
11 Q. What kind of construction work do you do?
12 A. We are general contractors, do a variety of work.
13 Q. Do you do both residential and commercial work?
14 A. Yes.
15 Q. How long has Ron's Construction Service existed?
16 A. About 16 years.
17 Q. Okay. The reason I have called you today is for
18 testimony relating to your involvement in the decision on Land
19 and Lakes' application for local siting approval for a proposed
20 landfill facility. Just to set the time period, I believe the
21 time period on that is April of 1998, through the County Board's

22 decision in October of 1998. That is the period of time in which
23 we are interested today. During that period of time, were you a
24 County Board member?

67

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1 A. Yes, I was.
2 Q. When did you become a County Board member?
3 A. I believe it was 1994.
4 Q. And you served -- are you currently a County Board
5 member?
6 A. No, I am not.
7 Q. When you did leave the County Board?
8 A. 1998.
9 Q. Were you the Chairman of the Board during that period,
10 the --
11 A. Yes, I was.
12 Q. -- County Board?
13 A. For two years of my four-year term.
14 Q. So for 1996 through 1998; is that correct?
15 A. Yes.
16 Q. Prior to your election to the County Board did you ever
17 hold any other elected office?
18 A. Eight years as City of Sparta Commissioner.
19 Q. Was that immediately proceeding your service on the
20 County Board?
21 A. No, I believe there was a three or four-year lapse

22 between the two offices.

23 Q. Okay. What was -- as a County Board Chairman, what was
24 your involvement with the hearing process and decision on Land

68

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1 and Lakes' siting application? What did you do?

2 A. Well, as County Chairman you lead the meetings and
3 basically you do the day-to-day activities of the Commissioners.

4 Q. Did you attend the two local siting hearings that
5 occurred in July of 1998?

6 A. No, I did not.

7 Q. So is it correct to say that your involvement on the
8 application was a consideration and then subsequently a vote on
9 the application itself in October of 1998?

10 A. That's correct.

11 Q. Okay. And just for the record, what was the outcome of
12 that vote?

13 A. We denied it based on two criteria.

14 Q. And did you also vote to deny it?

15 A. Yes, I did.

16 Q. During the period of time when this application was
17 pending, did you have contact with persons other than through the
18 written public comments that were submitted to the county clerk
19 and through the hearing process? Did you have individual contact
20 with persons or groups involving -- regarding the substance of

21 this application?

22 A. There were no groups. We turned down or I personally
23 turned down requests from various groups that wanted me to speak
24 about the landfill. I did appear before the Farm Bureau, because

69

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1 they had not yet formed an opinion, and they were wanting to find
2 out what I knew about it and how I perceived it.

3 Q. Okay.

4 A. Individuals, there were a limited amount of individuals
5 that mailed me letters, which I turned those over to the county
6 clerk because that is where they were supposed to go. Some of
7 them were duplicates, and some were not. And then personally I
8 tended to advise people that I would just as soon that we did not
9 talk about issues.

10 Q. The Farm Bureau meeting that you mentioned, do you know
11 what month that happened in?

12 A. I do not recall.

13 Q. Was it while the application was pending?

14 A. I think it was after the public input period or it might
15 have been during. I really don't remember.

16 Q. Okay. You said that you spoke to the Farm Bureau about
17 the application. What did you say?

18 A. I really did not speak to them as much as it was a
19 question and answer. They had questions about the application
20 and I simply told them what I knew about it.

21 Q. Were the questions involving the substance of the
22 application?

23 A. The location, I think, which was pretty much public
24 knowledge at that time, and just about the height. There had

70

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1 been a lot of rumors about height, what I knew about the height.
2 I just simply referred them to the application.

3 Q. Did they also have questions about the procedures that
4 were going on at that time?

5 A. Not that I recall.

6 Q. Okay. How many people were at that meeting?

7 A. I don't recall. I am going to guess somewhere in the
8 twenty range.

9 Q. Okay. Are those meetings open to the public?

10 A. Yes, they are.

11 Q. You mentioned that you had invitations from other groups
12 to come to speak. Who else invited you to speak?

13 A. Well, there was a message left at the office one day
14 that F.O.R.C.E. was going to have a meeting and asked me to
15 appear.

16 Q. Was the message left with your secretary?

17 A. Yes.

18 Q. Did you return that call?

19 A. No, I did not.

20 Q. Did you appear at the meeting?
21 A. No, I did not.
22 Q. Was there anybody else other than F.O.R.C.E. and the
23 Farm Bureau who asked you to attend a meeting about the landfill
24 siting application?

71

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1 A. No.
2 Q. You also mentioned that you received some mail?
3 A. Uh-huh.
4 Q. Where did you receive the mail?
5 A. Some of it at home and some of it at the office.
6 Q. What did you do with that?
7 A. Any letters of input during the public input period was
8 given to Bill Rabe, our County Clerk.
9 Q. Did you receive any mailings after the close of the
10 public comment period?
11 A. Not that I remember.
12 Q. But it is correct to say that you put any mailing that
13 you received at home in the County Clerk's record?
14 A. If it was during the public input period, yes.
15 Q. Do you know how many letters you received?
16 A. It was very limited. We had made it pretty well-known
17 that any public input information had to be filed and would be
18 filed with the County Clerk, and that is where the bulk of it
19 was. I would say it was less than five pieces that I received at

20 the office.

21 Q. Okay. Did you have phone calls -- let's start with at
22 your business -- from people wanting to talk to you about the
23 landfill?

24 MR. PORTER: I am going to object unless we establish a

72

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1 time frame.

2 MS. HARVEY: Okay. That's fine.

3 Q. (By Ms. Harvey) Between April of 1998 and October of
4 1998, did you receive any phone calls from people wanting to
5 discuss the substance of the landfill application?

6 A. I recall that there was a couple of phone calls.

7 Q. Okay. One that you recall, who was the person who
8 called you?

9 A. You know, I can't really remember. A lot of people
10 really didn't identify themselves.

11 Q. How many phone calls did you get?

12 A. It was pretty limited, as far as on the landfill. I
13 really didn't get many phone calls. A couple people stopped by
14 to say hi and wanted to talk about it, friends, you know, it is a
15 small community.

16 Q. Okay. On the phone calls that you do remember, can you
17 give me an estimate of how many there were?

18 A. Again, I don't think there was five or six phone calls.

19 Q. Okay. What about public contact, people that you saw in
20 person, in addition to the two meetings, or the -- excuse me --
21 the one meeting, the Farm Bureau meeting that we discussed?

22 A. I don't follow that question.

23 MR. PORTER: I am sorry. That's my objection. The
24 question is vague.

73

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1 MS. HARVEY: I would be happy to restate the question.

2 Q. (By Ms. Harvey) You mentioned that you had personal
3 contacts with some people. Other than the contact with the Farm
4 Bureau meeting that we discussed a little earlier, how many
5 contacts were there?

6 A. You know, I didn't keep a count. Off-the-cuff
7 conversations were fairly limited.

8 Q. Would you say there were 25?

9 A. No.

10 Q. Would you guess there were less -- were there ten?

11 A. I would say less than ten.

12 Q. I am sorry. I think you answered this question, but I
13 don't remember your answer. How many phone calls did you
14 receive?

15 A. I would say less than five, five or less.

16 Q. Okay. Other than the letters that you discussed a
17 minute ago that you put into the record, did you receive anything
18 else in the mail at home?

19 MR. PORTER: I am going to object again to the time frame
20 issue.

21 HEARING OFFICER KNITTLE: Could you specify --

22 Q. (By Ms. Harvey) Between April and October of 1998, did
23 you receive any mail related -- did you receive anything that you
24 perceived to be related to the landfill at your home other than

74

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1 the letters that we just discussed?

2 A. Landfill related input, is that what you are asking me?

3 Q. Anything that was sent to you as a result of the
4 landfill siting application?

5 MR. PORTER: I am going to object again. He already
6 testified that any documents that he received during the public
7 comment period he would turn in, and you said April to October.
8 Did you mean after August to October?

9 MS. HARVEY: I want to know if during that period of April
10 through October of 1998, he received anything in the mail in
11 addition to the letters that we just discussed.

12 HEARING OFFICER KNITTLE: Any objection to --

13 MS. HARVEY: I say related to the landfill because,
14 obviously, Mr. Stork received mail from April through October of
15 1998.

16 THE WITNESS: There was a package received at the house
17 that appeared to be garbage. We never opened it.

18 Q. (By Ms. Harvey) What did the package look like? How big
19 was it?

20 A. I am going to say about the size of that notebook.

21 MS. HARVEY: Just for the record, Mr. Stork is pointing to
22 his notebook, which I think is a standard eight and a half by
23 eleven notebook.

24 Q. (By Ms. Harvey) Was it flat?

75

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1 A. No. I think it had some lumps or something in it.

2 Q. Was it rectangular?

3 A. Yes.

4 Q. You said --

5 A. It was like a manila envelope, as opposed to a box.

6 Q. Okay. You said you thought it had garbage in it?

7 A. Yes.

8 Q. Why did you think that?

9 A. There was stuff leaking out of it.

10 (Laughter from the members of the public.)

11 Q. Did it have an odor?

12 A. I really didn't smell it.

13 (Laughter from the members of the public.)

14 Q. Okay. What did you do with it? You said you didn't
15 open the package?

16 A. No, I did not.

17 Q. What did you do with the package?

18 A. I gave it to the police department.
19 Q. The Sparta Police Department?
20 A. Yes.
21 Q. Do you know what they did with it?
22 A. I don't really know. I have my assumptions, but I don't
23 know.
24 Q. Was that an informal process of just giving it, or was

76

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1 there a report of some kind filed?
2 A. There was no report filed.
3 Q. Okay. Thank you. Do you think that package had
4 something to do with this landfill proceeding?
5 MR. PORTER: Objection. It calls for conjecture.
6 MS. HARVEY: I want to know what he thinks. I don't think
7 that is conjecture to know what Mr. Stork thinks.
8 HEARING OFFICER KNITTLE: Overruled.
9 THE WITNESS: Yes, I think so.
10 Q. (By Ms. Harvey) Okay. Thank you. Did you receive any
11 phone calls that you perceived to be threatening?
12 MR. PORTER: I, again, have to object as far as a time
13 frame. If you want to establish one time frame that is ongoing I
14 don't have a problem with that.
15 MS. HARVEY: Certainly.
16 Q. (By Ms. Harvey) As I think I said in the very beginning,

17 the time period I am interested in here, Mr. Stork, is April of
18 1998 through October of 1998. So I am asking if you received any
19 threatening phone calls during that period or calls you perceived
20 to be threatening?

21 A. Yes, we did.

22 Q. Can you tell me, was there more than one?

23 A. I personally received one.

24 Q. Tell me about that call?

77

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1 A. It was a simple phone conversation that a lady that did
2 not identify herself said that she was at a meeting, that she had
3 overheard conversations that my equipment could be vandalized.

4 Q. It was a woman who called you?

5 A. Yes.

6 Q. Was she passing on the threat or passing on the
7 information -- excuse me -- or was she actually stating that
8 herself?

9 A. She was not --

10 MR. PORTER: Objection. That calls for conjecture.

11 HEARING OFFICER KNITTLE: Ms. Harvey?

12 MS. HARVEY: I guess I would be happy to rephrase the
13 question.

14 HEARING OFFICER KNITTLE: Okay.

15 Q. (By Ms. Harvey) Did you understand the female caller to
16 be making that statement herself?

17 A. No, passing on what she had heard.

18 Q. Thank you. Do you know when within the period that
19 happened?

20 A. No.

21 Q. Was it after -- do you know if it was after the close of
22 the public comment period?

23 A. I do not remember.

24 Q. Did you interpret that passed on threat to be related to

78

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1 the landfill application?

2 A. It was an assumption that I made at the time.

3 Q. Did anything happen to your equipment?

4 A. No.

5 Q. Other than that phone call, did you receive any other
6 phone calls which you perceived to be threatening or
7 intimidating?

8 A. Not that we personally received. There was a few
9 mischievous things happening that seemed to coincide with the
10 time frame that we are looking at.

11 Q. What kinds of mischievous things?

12 A. Well, at the time I was -- in the middle of the process
13 was my -- I was chamber president.

14 Q. Chamber of Commerce? I am sorry?

15 A. Yes.

16 Q. Okay.

17 A. At my last meeting someone had called the Frontier Steak
18 House, which we had held our meetings at and advised them that --
19 apparently, it was a lady caller and that it was my wife calling
20 and that we were going to pick up the tab for everybody's meal.
21 Not.

22 (Laughter from the members of the public.)

23 A. And there was a couple of chairs that were ordered from
24 a local furniture store to be delivered to my house in honor of

79

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1 my birthday by my wife again, supposedly. You know, just little
2 things like that. Flowers that were sent. Pizzas that were
3 ordered.

4 Q. Okay. You mentioned some chairs that were supposedly
5 ordered by your wife for your birthday. Did your wife, indeed,
6 order chairs for your birthday?

7 MR. PORTER: I have to object to the relevancy. We are not
8 even talking now about ex parte contacts, or alleged ex parte
9 contacts. We are talking about pranks. I am unaware of any case
10 law that would suggest that because a prank is played on someone
11 that that somehow impacts the fundamental fairness of the
12 Randolph County proceedings.

13 HEARING OFFICER KNITTLE: Ms. Harvey.

14 MS. HARVEY: I think if the prank was played upon the
15 decision-maker and that prank was perceived to have been related

16 to the ongoing consideration of the landfill application, I think
17 that is definitely relevant to fundamental fairness. In fact, as
18 you know and Mr. Porter knows, that has been Land and Lakes'
19 claim, was that the combination in this particular case of ex
20 parte contacts and the type of ex parte contacts that are
21 relevant here.

22 HEARING OFFICER KNITTLE: Anything further, Mr. Porter?

23 MR. PORTER: Again, I don't believe there has been any
24 testimony that there was any specific communication and,

80

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1 therefore, it is irrelevant.

2 HEARING OFFICER KNITTLE: I am going to overrule. I think
3 it could be relevant and it is possibly a form of communication,
4 for that matter. So with that, that is going to be for the Board
5 to decide and I don't want to deprive them of that opportunity.

6 Ms. Harvey, you can proceed.

7 MS. HARVEY: Thank you.

8 Q. (By Ms. Harvey) So we have talked about furniture being
9 ordered that was not ordered by your wife, correct, and an
10 indication that you were to pick up the tab for the Chamber of
11 Commerce luncheon, and that was not correct?

12 A. It was correct, the phone call was made, but it was not
13 correct that I was going to pick the tab up.

14 Q. Thank you. Did you end up having to pay that bill?

15 A. No.

16 Q. Okay. Thank you. Did you mention flowers or flyers?

17 A. Flowers.

18 Q. Flowers. Tell me about that incident?

19 A. There was some flowers ordered and sent -- actually,

20 they were ordered and it was an unusual order. So the flower

21 shop called. Actually, it was where my wife had worked and, you

22 know, said this is kind of unusual and, you know, where do you

23 want them delivered. So they were not actually delivered or

24 tried to be delivered, just simply the phone calls took care of

81

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1 it.

2 Q. But had somebody ordered -- am I correct that someone

3 ordered flowers on behalf of your wife or to be sent to your

4 wife?

5 A. I don't know if we were ever clear on what was going on.

6 I said flowers. I think they were actually potted plants.

7 Q. Did you perceive that floral order to be related to the

8 landfill application?

9 A. I assumed that it was.

10 Q. How about the order of the furniture?

11 A. I assumed it was.

12 Q. And the Chamber of Commerce lunch?

13 A. The same.

14 Q. Okay. Were there any other pranks, or as you said

15 mischievous events, in addition to those three things?

16 A. Those are the ones that come to mind. Sometimes as an
17 elected official there is little games that are played and you
18 tend to forget them.

19 Q. But those three things you perceived at the time to be
20 related to the landfill application?

21 A. I assumed that, yes.

22 Q. Okay. Mr. Stork, I am going to show you what -- I am
23 going to -- well, actually, I have a proposed exhibit. This is
24 a -- this would be Petitioner's Exhibit Number 3, I believe.

82

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1 (Whereupon a document was duly marked for purposes of
2 identification as Petitioner's Exhibit 3 as of this date.)

3 Q. (By Ms. Harvey) This is a copy of a Wednesday, October
4 26th, 1998, article from the Sparta News Plain Dealer, that is an
5 article about a County Board meeting relating to this landfill
6 application. I would like -- Mr. Stork, can you take a look at
7 that?

8 MR. PORTER: I have an objection to the use of this
9 document.

10 HEARING OFFICER KNITTLE: What is the objection, Mr.
11 Porter?

12 MR. PORTER: Well, it is clearly double or triple hearsay.
13 I realize there is reduced rules in an administrative proceeding,

14 but these are not the minutes of a Board meeting. The witness
15 did not write the document. The document, as far as I know and I
16 can't swear to this, was not provided to me ahead of time. It
17 purports to have testimony of or statements of Mike Riebeling,
18 who I know is a Planning Commission member, and accordingly at a
19 minimum it is double hearsay. I believe it is irrelevant and
20 inadmissible and should not be used either.

21 MS. HARVEY: Can I respond, please?

22 HEARING OFFICER KNITTLE: Yes.

23 MS. HARVEY: First of all, on the issue as to whether or
24 not Mr. Porter has seen this, this was actually provided and used

83

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1 as an exhibit in Mr. Stork's deposition. So either Mr. Porter
2 or his partner have seen it.

3 MR. PORTER: I was mistaken, then, and I will withdraw that
4 portion of my statement.

5 MS. HARVEY: Secondly, there is a reference at the end of
6 the article to Mike Riebeling, but it does not have anything to
7 do with the landfill application, and I am not asking -- it is a
8 general summary of what happened at that County Board meeting.
9 So I am not asking to use that as anything related to Mr.
10 Riebeling's position or activities. Thirdly, I am not moving for
11 the truth of the matters asserted. I would like to actually have
12 a little latitude to ask Mr. Stork about the events of this
13 meeting.

14 HEARING OFFICER KNITTLE: Mr. Porter.

15 MR. PORTER: Is it being offered to refresh his
16 recollection? If so, I don't believe she has exhausted his
17 recollection yet as to the meeting.

18 HEARING OFFICER KNITTLE: Ms. Harvey?

19 MS. HARVEY: I would be happy to do it that way if you
20 would prefer.

21 MR. PORTER: I definitely would prefer it.

22 MS. HARVEY: I was trying to simplify it.

23 HEARING OFFICER KNITTLE: Let's go along that way. I take
24 it you are not going to offer the exhibit at this point,

84

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1 regardless?

2 MS. HARVEY: How about if I explore his recollection of the
3 meeting before I say whether I am going to offer it. I will
4 withdraw it for the time being.

5 HEARING OFFICER KNITTLE: Okay.

6 MS. HARVEY: Okay. Thank you.

7 Q. (By Ms. Harvey) Mr. Stork, I believe that there was a
8 County Board meeting around the time of August 24th of 1998.
9 Does that sound --

10 A. We had Board meetings approximately every two weeks.

11 Q. Do you remember a Board meeting at which opponents of
12 the landfill siting were given an opportunity to speak to the

13 County Board?

14 A. Our County Board policy was that anyone that appeared
15 before the Board would be given an opportunity to speak on any
16 items that they wished to discuss with the Board.

17 Q. All right. Were they -- was the subject of the landfill
18 on the agenda for that day?

19 A. The landfill was not on the agenda at any time except
20 when we had the public hearing, and that was a special hearing
21 set strictly for the landfill.

22 Q. Okay. So were opponents of the landfill given the
23 opportunity to speak to the County Board at that August 24th,
24 1998 meeting?

85

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1 A. Again, I am not sure of the date, but there were
2 occasions when people identified themselves as being against the
3 landfill at the Randolph County Board meetings.

4 Q. Do you have any recollection if that would have been
5 August 24th of 1998?

6 A. I do not remember the dates.

7 Q. Okay. Do you remember specific individuals who spoke to
8 the County Board at those -- at some such meeting?

9 A. I recall a Doris Spinney being there. I do not remember
10 if she spoke. There were members or people that I assumed were
11 members of F.O.R.C.E. who were at the meeting, every meeting that
12 we had during that time frame. I remember, I think, a Ken

13 Markley attended. I am not sure if he spoke. I do remember Mr.
14 Weber speaking.

15 Q. Do you remember Mr. Heine speaking?

16 A. I do not remember that.

17 Q. Were the Land and Lakes representatives present at any
18 of those County Board meetings?

19 A. Not that I remember.

20 MS. HARVEY: I would like to use the document for purposes
21 of refreshing Mr. Stork's recollection, the document that I
22 provided to Mr. Porter.

23 Mr. Hearing Officer, do you have a copy?

24 HEARING OFFICER KNITTLE: No. Thank you.

86

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1 MR. PORTER: On what issue? If I may interpose an
2 objection. He has testified that he does recall numerous
3 incidents or occurrences at those Board meetings. If there is a
4 specific issue that he does not recall, then I think it would be
5 appropriate to refresh his recollection. Until we get to that
6 point, I do not believe it is appropriate.

7 MS. HARVEY: I would like to refresh his recollection that
8 the August 24th of 1998 meeting was the meeting at which three
9 people who identified themselves as representatives or members of
10 F.O.R.C.E. spoke to the County Board.

11 HEARING OFFICER KNITTLE: Anything further, Mr. Porter?

12 MR. PORTER: Not at this time.

13 HEARING OFFICER KNITTLE: Why don't you proceed, Ms.
14 Harvey.

15 Q. (By Ms. Harvey) Mr. Stork, this is, as we talked
16 earlier, this is an August 26th, 1998, newspaper article, which
17 purports to summarize the events at what we believe to be the
18 August 24th, two days earlier, County Board meeting. Have you
19 had a chance to look at that?

20 A. I glanced at it.

21 Q. Take a minute and --

22 A. The second page I can't read.

23 Q. Oh, well, that's a problem.

24 HEARING OFFICER KNITTLE: Is this one any better?

87

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1 THE WITNESS: I don't have my glasses.

2 MS. HARVEY: I will admit that it is not a very clear copy.
3 I apologize for the quality of the copy. I think it is the copy
4 of the copy of the copy phenomenon. Okay. This one is much
5 clearer. It is attached to Mr. Stork's deposition transcript. I
6 am not -- I only want to allow him to look at this as an
7 identical copy. I think it is a little clearer.

8 HEARING OFFICER KNITTLE: Okay. Can you show Mr. Porter
9 first?

10 MS. HARVEY: Of course.

11 MR. PORTER: As long as it is the same document, I have no

12 problem.

13 MS. HARVEY: It is actually made from that.

14 (The witness reviewing document.)

15 Q. (By Ms. Harvey) Have you had a chance to look at that,
16 Mr. Stork?

17 A. Yes, I have.

18 Q. Does that newspaper article refresh your recollection as
19 to the events of the August 24th, 1998, County Board meeting?

20 A. I recall this, yes.

21 Q. Is that an accurate summary or report of what happened?

22 A. I would say it is.

23 Q. Okay.

24 A. As I remember it.

88

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1 Q. Okay. The newspaper article recounts that Mr. Weber
2 spoke at that meeting; is that correct?

3 A. Yes, it does.

4 Q. And what did Mr. -- do you have an independent
5 recollection of what Mr. Weber spoke about, what he said?

6 A. You mean other than what this says?

7 Q. Yes. Do you have independent recollection?

8 A. Just that he was against the landfill.

9 Q. Does reading this document refresh your recollection on
10 the substance of what he said?

11 A. Yes.

12 Q. Okay. What did Mr. Weber say at that Board meeting?

13 A. Just simply that the public was against it, and that he
14 was a member of F.O.R.C.E. and that their organization was
15 opposed to it.

16 Q. Who else spoke at that meeting?

17 A. According to this, Kenny Markley did speak.

18 Q. Do you remember Mr. Markley speaking?

19 A. Yes, I do.

20 Q. Do you have an independent recollection of the substance
21 of his remarks?

22 A. I really didn't remember until I glanced at this.

23 Q. What does the report indicate that he discussed?

24 MR. PORTER: I object. That is clearly hearsay, double

89

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1 hearsay, triple hearsay. If the witness now recalls after having
2 reviewed the document, I think that is a different question.

3 HEARING OFFICER KNITTLE: Could you rephrase, Ms. Harvey?

4 MS. HARVEY: Yes.

5 Q. (By Ms. Harvey) Mr. Stork, is it correct for me to
6 summarize this by saying that Mr. Markley discussed traffic
7 issues and possible rail use of the site in addition to the
8 opposing expert testimony? Is that a correct summary of this
9 article?

10 A. I guess it is a summary of --

11 MR. PORTER: The same objection.

12 HEARING OFFICER KNITTLE: Ms. Harvey, I am inclined to
13 agree that this does not meet the Board's requirements for what a
14 reasonably prudent person would rely upon in pursuit of serious
15 affairs. Is that the standard that we are looking at here? Yes.
16 In the conduct of serious affairs. So I don't really feel
17 comfortable allowing this to be used as evidence if he doesn't
18 remember independently what happened at that meeting.

19 MS. HARVEY: Let me try a different way.

20 Q. (By Ms. Harvey) Mr. Stork, after having -- does that
21 article refresh your recollection as to the substance of the
22 remarks that Ken Markley made at that meeting?

23 A. I remember him talking about the roads. I do not
24 remember about the rail.

90

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1 Q. Okay. Does that article refresh your recollection about
2 the substance of the remarks that Ken Heine made at that meeting?

3 A. No. I simply don't remember those.

4 Q. Okay. Do you remember any other member or person who
5 identified themselves as associated with F.O.R.C.E. speaking at
6 that August 24th, 1998, Board meeting?

7 A. No, I do not.

8 Q. Okay. Mr. Stork, we have talked today that you received
9 some number of phone calls relating to the landfill application,

10 correct?

11 A. Yes.

12 Q. You received some number of phone calls?

13 A. Yes, I did.

14 Q. Did you talk to any of those people regarding the
15 substance of the application?

16 A. Not about the application. Most of the questions were
17 simply clarification of procedures. A couple of calls about time
18 frame of when the meetings were and that type of thing. I do not
19 really remember any about the substance of what Land and Lakes
20 had filed in the way of application.

21 Q. Okay. Do you -- did any of those people identify
22 themselves?

23 A. I don't remember.

24 Q. And you said that you had a handful of applications -- a

91

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1 handful of phone calls; is that correct? I am sorry.

2 A. Yes.

3 Q. I think you said less than ten?

4 A. Yes, I think I said about five, but I really don't
5 remember the number. But it was pretty limited.

6 Q. Okay. Then in addition to the phone calls you did
7 receive some mailings at either your home or your business which
8 you placed into the record with the County Clerk?

9 A. That's correct.

10 Q. You also received a mailing, a package that you think
11 had garbage in it; is that correct?

12 A. I think that is what was in it.

13 Q. Okay. And you were asked to speak to the Farm Bureau
14 and invited to a F.O.R.C.E. meeting; is that correct?

15 A. Yes.

16 Q. In addition to those four things were there any other
17 contacts --

18 A. Not that I --

19 Q. -- regarding the landfill?

20 A. Not that I remember.

21 MS. HARVEY: Can we take just a second, please?

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

23 (Whereupon a short recess was taken.)

24 HEARING OFFICER KNITTLE: All right. Could we go back on

92

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1-800-244-0190

1 the record.

2 Q. (By Ms. Harvey) Mr. Stork, do you remember having your
3 deposition taken in November of 1999? In this case? Excuse me.

4 A. I remember a deposition. I don't remember the day.

5 Q. Okay. Does that sound right, November of 1999?

6 A. That sounds about right.

7 Q. Okay. I am going to show you from the transcript of
8 your deposition -- Mr. Knittle, do you want to mark this for

9 referral purposes? I am not going to move this as an exhibit into
10 evidence, but --

11 MR. PORTER: I am waiting to see what Counsel intends to do
12 with the deposition. I assume that she is trying to impeach. I
13 do not know what she is seeking to impeach, so I am waiting at
14 this time.

15 HEARING OFFICER KNITTLE: My assumption is let's see where
16 it goes. I don't need you to mark it. We can refer to it as his
17 deposition of whatever date that was.

18 MS. HARVEY: I am referring to the deposition transcript
19 that is dated November 23rd, 1999.

20 HEARING OFFICER KNITTLE: Thank you.

21 MS. HARVEY: Which I think has previously been filed with
22 the Board in conjunction with some other motions that Mr. Porter
23 and I had.

24 Q. (By Ms. Harvey) I am going to show you pages 11 through

93

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1 13. If you would take a look at that down through there.

2 (The witness reviewing document.)

3 MR. PORTER: I am just waiting for a question.

4 MS. HARVEY: I am just giving him an opportunity to take a
5 look at it.

6 HEARING OFFICER KNITTLE: I just thought you were trying to
7 catch my eye, Mr. Porter.

8 MR. PORTER: No, not yet.

9 Q. (By Ms. Harvey) Mr. Stork, those pages that I just asked
10 you to read, pages 11 through 13 of that transcript, we discussed
11 a phone conversation between you and Ken Markley. The testimony
12 in that deposition transcript indicates that there was a phone
13 conversation between you and Mr. Markley regarding some
14 substantive issues on this landfill.

15 MR. PORTER: Objection.

16 HEARING OFFICER KNITTLE: What is the objection, Mr.
17 Porter?

18 MR. PORTER: I think that is improper impeachment and it is
19 a mischaracterization of the several pages that are at issue
20 here. In addition, the several pages don't indicate a time frame
21 as to any conversation with Mr. Markley and, therefore, it cannot
22 be impeachable of this witness' previous testimony.

23 MS. HARVEY: I guess I want to see first of all if this
24 refreshes the recollection of the witness. There may not be a

94

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1 necessity to impeach him. I can show the portions of the
2 transcript that indicate that the time frame is the time frame
3 that is at issue here. I wanted to start by seeing if this
4 refreshed the witness' recollection.

5 HEARING OFFICER KNITTLE: Do you want to identify the time
6 frame first, Mr. Porter, or do you want to see if the witness now
7 remembers this conversation? I am going to allow her to at least

8 attempt to identify the time frame to see if it is an impeachable
9 document.

10 MR. PORTER: My problem with refreshing the recollection is
11 that I don't believe the witness has ever testified that his
12 recollection was exhausted as to any conversation with Mr.
13 Markley and, therefore, there is no reason to be refreshing his
14 recollection at this time.

15 MS. HARVEY: I think he testified that he couldn't remember
16 any individual that he spoke to on the phone. I would be happy
17 to ask him if his recollection is exhausted, if that would speed
18 the matter along.

19 HEARING OFFICER KNITTLE: I tend to remember her -- the
20 line of questions, and that he did not have any idea who the
21 other -- or didn't have a recollection as to who the other
22 telephone participants might have been. I can't say for sure,
23 Mr. Porter.

24 MR. PORTER: I am just trying to follow what is happening.

95

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1 At this point we are just refreshing the witness' recollection?

2 HEARING OFFICER KNITTLE: Let's try with that first.

3 MS. HARVEY: Thank you.

4 HEARING OFFICER KNITTLE: Ms. Harvey, maybe you could ask
5 him if his recollection was exhausted before.

6 MS. HARVEY: I would be happy to.

7 Q. (By Ms. Harvey) Mr. Stork, prior to reading these

8 transcript pages, was your recollection of the phone
9 conversations you had regarding this landfill exhausted? Did you
10 tell me everything you knew, that you remembered about the phone
11 calls relating to this application?

12 A. Yes, I did.

13 Q. Okay. Having read those two pages of the deposition
14 transcript, does that refresh your recollection?

15 A. Yes, and I think I had referred to those earlier when I
16 commented that some of the questions were clarifications of
17 height because of the rumors and stuff.

18 Q. Okay. Just so I am clear and the record is clear, do
19 you remember discussing those issues with Ken Markley on the
20 phone?

21 A. Yes, I do.

22 Q. Okay. Thank you very much. Did you have more than one
23 phone conversation with Mr. Markley, do you remember?

24 A. I don't remember. It has been too long.

96

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1 Q. Okay. Is it your recollection that that phone
2 conversation happened in this period of April of 1998 through
3 October of 1998?

4 A. Yes, it would be in that time frame.

5 Q. Okay. Mr. Stork, you also testified, I believe, that
6 you thought you got less than five -- I think it is appropriate

7 for me to characterize what you said as five to ten phone calls?

8 A. (Nodded head up and down.)

9 Q. I am going to show you -- do you have any further
10 recollection of receiving phone calls, other than what you
11 testified to? Is your recollection exhausted?

12 A. Yes. I simply just don't remember the number.

13 Q. Okay. This is page 34 of the deposition transcript. If
14 you would just take a look at this from the question that starts
15 Mr. Stork, down through the end of the page.

16 A. (The witness reviewing document.) Okay.

17 Q. Mr. Stork, that deposition transcript -- during that
18 deposition you testified that you estimated that you might --

19 MR. PORTER: I object to the Counsel characterizing what
20 the testimony was. If the witness' recollection is refreshed I
21 think she can reask her question that needed refreshing.

22 MS. HARVEY: I will do so.

23 Q. (By Ms. Harvey) Mr. Stork, does this refresh your
24 recollection as to the number of phone calls that you received?

97

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1 A. Not really, because I don't remember the number. And I
2 think I stated there that I didn't put a mark on the calendar, so
3 I really --

4 Q. Right.

5 A. -- had no place to go to say how many there were.

6 Q. Okay. In this deposition transcript in response to the

7 question: "How many of those phone calls would you say that you
8 received within this time period or this window that we are
9 talking about?"

10 Your answer is: "I did not keep a count. If I was going
11 to guess, maybe two or three dozen."

12 Is there -- has your recollection changed during that
13 period? Is there -- can you tell me whether it was two to three
14 dozen or five to ten?

15 A. I really don't remember.

16 Q. Okay. Mr. Stork, did you have occasion to have a trap
17 and trace procedure put on your phone line?

18 A. Yes, I did.

19 Q. Can you tell me a little bit about that?

20 A. We were in the middle of all of these pranks and
21 carrying-ons. I was just concerned about my family. I felt like
22 I was elected and they weren't and so, yes, I did have that put
23 on.

24 Q. Can you tell me about how that procedure works? Who do

98

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1 you contact to have trap and trace put on?

2 MR. PORTER: Objection. Irrelevant.

3 HEARING OFFICER KNITTLE: Ms. Harvey?

4 MS. HARVEY: I think he has just testified that he was a
5 little concerned about the number of phone calls or the -- or

6 about the phone calls, and I would like to know a little about
7 the procedure, who he --

8 HEARING OFFICER KNITTLE: Is there a comment, Mr. Porter?
9 Any further objection?

10 MR. PORTER: Well, the issue --

11 HEARING OFFICER KNITTLE: Aside from the relevancy?

12 MR. PORTER: No.

13 HEARING OFFICER KNITTLE: I think this could be relevant,
14 so I am going to overrule that objection.

15 MS. HARVEY: I just want a little latitude here. I just
16 want the outlines of the procedure.

17 Q. (By Ms. Harvey) Mr. Stork, who do you contact to have
18 trap and trace put on?

19 A. I was not sure, and at the time I was friends with the
20 police chief and I asked him the procedures, and he told me he
21 would have it taken care of for me.

22 Q. Did he, indeed, have that taken care of?

23 A. I never used it. I never had occasion after that to use
24 it. So I am assuming that he did, but I don't know that.

99

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1 Q. Okay. But you never had reason to actually follow-up to
2 ask for a trace on a particular call?

3 A. No, I did not.

4 Q. Okay. Did you have trap and trace only put on your home
5 phone?

6 A. No, I had also the business phone.

7 Q. Okay. Did callers ever talk to your wife or daughters
8 about this, other than to ask for you?

9 A. I don't remember. It seems like there were phone calls,
10 but I don't really remember.

11 Q. Okay. We talked a little earlier about what I will call
12 the passed along threat about the equipment, the potential
13 equipment damage. I think you testified that nothing ever
14 happened to your equipment?

15 A. (Nodded head up and down.)

16 Q. For the record, we were discussing the equipment
17 associated with your construction business?

18 A. Uh-huh.

19 Q. Okay.

20 A. I think I said that I did not remember anything.

21 Q. Okay.

22 HEARING OFFICER KNITTLE: Sir, just let me -- you have to
23 say yes or no, because the court reporter can't pick you up when
24 you say uh-huh or nod. She is good, but she is not that good.

100

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1 (Laughter from the members of the public.)

2 THE WITNESS: Okay.

3 Q. (By Ms. Harvey) Have you exhausted your recollection of
4 anything -- of any occurrences to your equipment?

5 A. Yes. I don't remember anything really happening.

6 Q. Okay. I am going to show you page 35 of your deposition
7 transcript. And starting with this question here. "Did anything
8 come to mind that was out of the ordinary?" Could you just read
9 the next couple of answers.

10 A. (The witness reviewing document.) Okay.

11 Q. Okay. Does this deposition transcript refresh your
12 recollection?

13 A. Yes, actually, it does. It seems like I had stated that
14 we had some flat tires shortly after that phone call.

15 Q. How many flat tires?

16 A. Apparently it was four.

17 Q. Do you remember having four flat tires?

18 A. Yes, I do, but we have had a lot since then so.

19 Q. Okay. The flat tires we were discussing right now, did
20 those all happen in one day?

21 A. Yes.

22 Q. Is that unusual, for you to have four flat tires in one
23 day?

24 A. Yeah, it is.

101

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1 Q. Were they all on the same piece of equipment?

2 A. I do not think so.

3 Q. Do you know how many pieces of equipment that they were
4 on?

5 A. I don't recall. I think I said three there. I really
6 don't remember.

7 Q. Yes, yes. You testified two on one trailer, and one on
8 a truck, one on another trailer. It is unusual to have four flat
9 tires in one day, is that your experience?

10 A. Yes.

11 Q. Were those tires ruined?

12 A. I think one was ruined. Because I don't think I pulled
13 off the road quick enough. The others, I simply don't remember.

14 Q. Who fixed the tires?

15 A. I don't know if my shop guy did, or if we took them --
16 typically if we have time we will fix them. If not, we will take
17 them to Gateway FS and have them fix them. I didn't handle tire
18 repair.

19 Q. Do you know how much it cost to replace the tire that
20 was ruined?

21 A. No, I do not.

22 Q. Okay. We also earlier discussed other personal contacts
23 about the landfill during that period of time between April and
24 October of 1998. Have you exhausted your recollection on that

102

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1 issue?

2 A. About personal contacts?

3 Q. Of personal contacts, yes.

4 A. Yes, I don't really remember.

5 Q. Okay. I am going to show you pages 17 through 19 of
6 your deposition transcript.

7 A. (The witness reviewing documents.)

8 Q. Have you had a chance to look at this?

9 A. Yes.

10 Q. Does this refresh your recollection as to personal
11 contact regarding the landfill?

12 A. Yes, I do remember those.

13 Q. Okay. Can you tell me about the first one?

14 A. One is simply Mr. Corbin, and he had expressed to me
15 that he felt that the public was against the landfill.

16 Q. Who is Mr. Corbin?

17 A. Allen Corbin owns Southern Food Park. He is a gentleman
18 that my construction company does a lot of work for.

19 Q. Are you friends?

20 A. Friends, business acquaintances.

21 Q. How many -- how much work -- how many projects have you
22 done for Mr. Corbin?

23 A. As of now, I would say we have done about ten different,
24 and maybe even a few more than that, projects for him.

103

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1 Q. Have you done work for him recently?

2 A. Yes, I have.

3 Q. Were you doing work for him at the time that you talked

4 with us?

5 A. I don't know if we had a project going then or not.

6 Q. Okay. What did Mr. Corbin say to you? I am sorry. I
7 know you answered this.

8 A. Just simply that his take on the public input was that
9 people were opposed to the landfill.

10 Q. Okay. Did he indicate that he thought it could have
11 personal consequences for you?

12 A. He mentioned that he didn't think it would be good for
13 my business.

14 Q. You said he didn't think that it would be good for your
15 business?

16 A. That's right.

17 Q. Okay. Did he say anything about your family?

18 A. I don't recall.

19 Q. Okay. Anything else about that conversation with Mr.
20 Corbin that you remember?

21 A. Not really.

22 Q. Was there more than one conversation?

23 A. I only remember the one.

24 Q. Okay.

104

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1 A. But we have had a lot of conversations during the course
2 of business.

3 Q. But only one that you remember that was related to the
4 landfill?

5 A. Yes.

6 Q. Okay. And then there is another conversation that we
7 discussed at your deposition?

8 A. Yes.

9 Q. Do you remember this?

10 A. Yes, Dave and Peggy Guebert.

11 Q. Okay. What did the Gueberts have to say?

12 A. They were simply opposed to the landfill.

13 Q. Did they indicate concerns for your business, like Mr.
14 Corbin did?

15 A. I don't remember that.

16 Q. Okay. Do you remember any other personal contacts?

17 A. No, I really don't.

18 Q. Mr. Stork, all of these things cumulatively, the phone
19 calls that you received, the mailings that you received, the
20 package of what you perceived to be garbage that you received,
21 people indicating that they thought it might not be good for your
22 business to proceed with the landfill, and the pranks and the
23 flat tires, do those things cumulatively have any impact on your
24 ability to make a decision on this application?

105

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1 A. Not in the end.

2 Q. What do you mean by not in the end?

3 A. When it came down to reviewing the criteria at the
4 hearing, it was obvious that it didn't meet one of the criteria,
5 and I don't remember the numbers. It was within a mile and a
6 half of the city limits of Sparta, which was an exclusionary
7 criteria, if I remember the correct term. And then we did have
8 some concerns about the safety of Holloway Road, which I believe
9 was another criteria of the public safety.

10 Q. Okay. I am going to show you page 42. Actually, I am
11 going to have you start on page 41, page 41 of your deposition
12 transcript continuing on through the bottom of page 42.

13 A. (The witness reviewing document.) Okay.

14 Q. Mr. Stork, at your deposition in November of 1999 --
15 well, let's try it this way. Does reading these two pages
16 refresh your recollection as to whether or not those issues I
17 identified earlier cumulatively had an affect on your ability to
18 make a decision?

19 MR. PORTER: Objection. The witness just testified that it
20 did not have an affect. There is no question that he recalled
21 whether or not it had an affect, and he just testified under oath
22 that it didn't.

23 HEARING OFFICER KNITTLE: Sustained.

24 Q. (By Ms. Harvey) Mr. Stork, at your deposition in

1 November of 1999, you were asked -- this is a little -- because

2 of some objections, it is a little attenuated, if you will give
3 me a little bit of latitude here.

4 The question was: "Taken into consideration the telephone
5 calls, some of the threatening phone calls you testified about
6 today, some of the comments, some of the -- obviously, the
7 meaning behind the package that you received, did all of those
8 things combined make you concerned about your position here in
9 the community, about your political position, about the welfare
10 of your business, about the welfare of your family?"

11 Your answer to that was: "Yeah, I guess I am a proud
12 person so, yes, naturally you are concerned. As far as my
13 political career, I got whipped in the primary, so my political
14 career was over. I had no political agenda, but it boiled down
15 to simply the personal and business end of it."

16 MR. PORTER: Objection. Improper impeachment.

17 HEARING OFFICER KNITTLE: Ms. Harvey?

18 MS. HARVEY: I would like an opportunity to ask Mr. Stork
19 which of his testimony is correct, as to whether or not -- that's
20 the only place I am going.

21 MR. PORTER: The question was whether or not it affected
22 his decision. He said ultimately it did not. It was based upon
23 criteria. In impeachment you have -- your purported impeachment
24 asks -- or he answers that he was concerned about his political

1 career. That has nothing to do with whether or not his decision

2 was affected.

3 MS. HARVEY: Actually, I think now Mr. Porter is
4 mischaracterizing testimony. Mr. Stork indicated that he was not
5 concerned about his political career. The reason I asked for a
6 little latitude here is that the question on the next page, on
7 page 42, says: "Do you think this cumulative -- do you think all
8 these things cumulatively" -- referring back to that first
9 question -- "did they have an affect on your ability to make a
10 decision about this landfill?"

11 There is an objection from Mr. Helsten, but he allows him
12 to answer.

13 And then Mr. Stork says: "Yes, I would say they do."

14 HEARING OFFICER KNITTLE: Mr. Porter?

15 MR. PORTER: Again, I don't believe we have a ruling on my
16 initial objection. The second situation may indeed be proper
17 impeachment.

18 HEARING OFFICER KNITTLE: I was going to say, up until then
19 I don't think it probably went to what he had stated on testimony
20 and, therefore, probably would not be proper impeachment, but
21 this clearly seems to indicate that he provided a contrary answer
22 at his deposition. I will allow that to go forward.

23 MR. PORTER: I did not object to that.

24 HEARING OFFICER KNITTLE: Right. So I am not going to rule

1 on the first objection, because it seems that we are going to
2 give her some latitude in order to let her get to that final
3 statement.

4 MS. HARVEY: I am only trying to set the stage for the
5 question.

6 Q. (By Ms. Harvey) The question says: "Do you think this
7 cumulative -- do you think all of these things cumulatively, did
8 they have an affect on your ability to make a decision about this
9 landfill?"

10 There is an objection by Mr. Helsten. Mr. Stork asks for
11 the question to be read back, and then he answers the question:
12 "Yes, I would say they do."

13 Mr. Stork, was your testimony -- which of those two things
14 are correct?

15 A. Could I have an opportunity to review that?

16 Q. Certainly.

17 A. (The witness reviewing document.) Okay.

18 Q. Thanks. Do you need the question read back?

19 A. I think I remember it.

20 Q. Okay.

21 A. And I simply think that both answers are correct, if you
22 take them in the context that they were presented.

23 Q. Okay. And can you summarize for me the context that you
24 think they were presented?

1 A. Well, I think that is a general statement from the
2 deposition that says all of those factors taken into
3 consideration does it have an affect on your ability to make a
4 decision.

5 Q. And did it?

6 A. Yes. Anyone under any pressure, extenuating factors
7 does make it more difficult and does have an affect on the
8 ability to make a decision.

9 Q. Okay. Can you give me just a minute?

10 HEARING OFFICER KNITTLE: Yes. Do you need to go off?

11 MS. HARVEY: Yes. I think I am almost done.

12 HEARING OFFICER KNITTLE: Okay. Off the record.

13 (Discussion off the record.)

14 HEARING OFFICER KNITTLE: Back on record.

15 MS. HARVEY: I think I have just a couple of more
16 questions, Mr. Stork.

17 Q. (By Ms. Harvey) You indicated that you had received a
18 message from F.O.R.C.E. inviting you -- a phone message inviting
19 you to one of their meetings. Do you know when that was?

20 A. I think I stated that my office received that.

21 Q. I am sorry. You are right?

22 A. I don't think I personally received any phone calls or
23 messages from them.

24 Q. Do you know when your office received that message?

1 A. I do not know the date. I do know it was during the
2 time frame that you have asked about.

3 Q. Okay. Do you know if it happened during the public
4 comment period?

5 A. I cannot recall that.

6 Q. Okay. So the time frame we are talking about is the
7 April through October period?

8 A. That's correct.

9 Q. Okay. You also indicated that you thought that there
10 were representatives of F.O.R.C.E. at every County Board meeting
11 during this period or at least after the hearings. How did you
12 know they were F.O.R.C.E. members?

13 A. In one case Mr. Weber stated that he was a member of
14 F.O.R.C.E., and I think Mrs. Spinney was pretty widely known as
15 being a member of F.O.R.C.E.

16 Q. Other than the August 24th County Board meeting that we
17 talked about a little earlier, do you remember F.O.R.C.E. members
18 speaking at any of those meeting regarding landfills?

19 I am sorry. That was a very inartfully done question, Mr.
20 Porter. Let me rephrase the question.

21 Other than the August 24th, 1998, County Board meeting that
22 we discussed earlier, do you remember any other County Board
23 meeting in which members or representatives of F.O.R.C.E. were
24 given an opportunity to speak?

1 A. I don't recall.

2 Q. And then the last question I have for you is did you
3 discuss your testimony here today with anyone?

4 A. No, I did not.

5 MS. HARVEY: Okay. I don't have anything further.

6 HEARING OFFICER KNITTLE: Mr. Porter?

7 CROSS EXAMINATION

8 BY MR. PORTER:

9 Q. How long was the application filed by Land and Lakes
10 Company?

11 A. I don't understand the question.

12 Q. How many volumes was it?

13 A. Oh, if I recall, it was like ten or twelve volumes. It
14 took two boxes to hold them.

15 Q. And the hearing was held over two long days; is that
16 right?

17 A. The hearing --

18 Q. The County hearing on July 28th and 29th was held over
19 two long days, right?

20 A. I was not present.

21 Q. You reviewed the transcript of that hearing?

22 A. Yes, I did.

23 Q. And was that transcript in excess of 350 pages?

24 A. I would assume that it is.

1 Q. Was Land and Lakes Company given a fair and complete
2 opportunity to present their case?

3 MS. HARVEY: I am going to object as to his -- Mr. Stork's
4 ability to make that. It is a legal conclusion.

5 HEARING OFFICER KNITTLE: Mr. Porter?

6 MR. PORTER: I believe he has an opinion as a County Board
7 member as to whether or not they were given a fair and complete
8 opportunity to present their case. It is a factual question.

9 HEARING OFFICER KNITTLE: I will allow him to answer in his
10 capacity as a County Board member, but not touching on the legal
11 standards that that may impinge upon.

12 THE WITNESS: It would be my opinion that the process was
13 fair.

14 Q. (By Mr. Porter) And that they were given a complete
15 opportunity to present their case; is that right?

16 A. That's correct.

17 Q. Three County Board members -- strike that. There were a
18 total of three County Board members; is that right?

19 A. That is correct.

20 Q. And on October 19, 1998, a Board meeting was held and
21 all three of those members voted against the application as to
22 two criteria, criterion 8 and criterion 2; is that correct?

23 A. I don't remember the numbers, but I will take your word
24 that that is the numbers.

1 Q. Did the three Board members all vote against the
2 application as complying or being consistent with the Solid Waste
3 Management Plan?

4 A. We found it not consistent with our Solid Waste
5 Management Plan.

6 Q. And for the purpose of this hearing, that relates to
7 criterion 8. Okay?

8 A. Okay.

9 Q. And did those same three Board members all agree that
10 the plan -- strike that.

11 Did the same three Board members all agree that the
12 application did not comply with criterion 2 regarding safety,
13 health and welfare?

14 A. Yes, we did.

15 Q. On October 19th, 1998, was there ever any discussion
16 between the three Board members concerning the pranks and the few
17 phone calls and the package that you received?

18 A. We did not discuss the landfill in any capacity until
19 after the hearings.

20 Q. Okay. On October 19, 1998, there was discussion as to
21 each and every criteria; is that correct?

22 A. That's correct.

23 Q. During those discussions at any time did you tell the
24 other Board members, you know, I got some phone calls or I

1 received a package, anything like that?

2 A. I did not tell them.

3 Q. Isn't it true that before that meeting on October 19,
4 1998, Land and Lakes Company was given an opportunity to address
5 the Board?

6 A. Yes, they were.

7 Q. And specifically they were given an opportunity to
8 address the Board regarding the comments that had been made at
9 public meetings; is that right?

10 A. That's correct.

11 MS. HARVEY: I am going to object. I think that is a
12 mischaracterization of what happened. I am also going to object
13 on the grounds he is really leading the witness and borderline
14 testifying for him.

15 HEARING OFFICER KNITTLE: Mr. Porter?

16 MR. PORTER: I did not call this witness and, therefore, I
17 think I should be allowed to ask leading questions. I have never
18 heard of a borderline testifying objection. I can lead --

19 MS. HARVEY: Okay. He is testifying for the witness.

20 MR. PORTER: -- (continuing) as much as I want, as long as
21 it is appropriate to lead. Therefore, I am taking the position
22 that I can lead this witness since I did not call him.

23 I think the other part of the objection was that that was
24 not what happened. Well, that is what redirect is for.

1 HEARING OFFICER KNITTLE: I am going to allow the
2 testimony, and I will allow you to ask leading questions since
3 you didn't call this witness.

4 Sir, do you remember the question?

5 THE WITNESS: No. Repeat it, please.

6 MR. PORTER: I don't recall what it was.

7 (Laughter from the members of the public.)

8 (Whereupon the requested portion of the record was read
9 back by the Reporter.)

10 MR. PORTER: We have an answer.

11 HEARING OFFICER KNITTLE: You answered that previously,
12 sir?

13 THE WITNESS: Yes.

14 HEARING OFFICER KNITTLE: Thank you.

15 Q. (By Mr. Porter) Before the vote you never discussed with
16 the other Board members how you anticipated or intended to vote;
17 is that right?

18 A. We did not.

19 Q. As a matter of fact, before the vote on October 19th,
20 1998, you never spoke to anyone about how you anticipated or
21 expected that you were going to vote; is that correct?

22 A. My only comments were to the effect that we would review
23 the transcript and follow the criteria as established by our
24 Solid Waste Management Plan.

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1 Q. You certainly have no criticism about Mr. Esker's or Mr.
2 Moore's votes, do you?

3 A. No, I do not.

4 Q. As far as you know, neither Mr. Esker nor Mr. Moore
5 received communications or threats; is that right?

6 A. Not that I am aware of.

7 Q. At no time after the application was filed and before
8 the vote, did you or any other Board member contact the applicant
9 or communicate with the applicant outside of the hearing process;
10 isn't that right?

11 A. After the application was filed?

12 Q. Yes.

13 A. I don't understand the question.

14 Q. After the application was filed and before the vote, did
15 you ever speak with the applicant themselves other than outside
16 of the hearing process?

17 A. No, we did not.

18 Q. Isn't it true that the Solid Waste Management Plan
19 explicitly provides that the County would, and I will quote,
20 "exclude all areas within one and a half miles" --

21 MS. HARVEY: Mr. Hearing Officer --

22 Q. -- (continuing) "of the municipal corporate limits"?

23 HEARING OFFICER KNITTLE: Let's --

24 MS. HARVEY: I have an objection to him asking questions

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1 about the criterion. It is not a subject of the testimony that
2 was given by Mr. Stork. I didn't ask him anything about it. As
3 a practical matter, I think the testimony is barred by Section
4 40.1 of the Act.

5 HEARING OFFICER KNITTLE: Mr. Porter?

6 MR. PORTER: The reason I am asking about this is Counsel
7 is suggesting that Mr. Stork's decision was impacted or affected
8 by some type of communications with the public. I want to
9 establish and have a right to establish that his decision was
10 solely on the grounds of the criteria themselves. He was not
11 affected by any of these alleged ex parte contacts. Therefore,
12 my questioning goes directly to the fundamental fairness of the
13 proceeding.

14 HEARING OFFICER KNITTLE: I think he did speak to the
15 criteria briefly.

16 MS. HARVEY: I would certainly agree that he can ask Mr.
17 Stork what the basis of his decision was if he chooses to do so,
18 but to read portions of the substance of the County's Solid Waste
19 Management Plan and then ask Mr. Stork to testify as to those, I
20 think is inappropriate. It is not the same thing as asking him
21 the basis for his decision, which I did open up.

22 HEARING OFFICER KNITTLE: Mr. Porter?

23 MR. PORTER: I am laying the ground work for whether or not
24 he followed that Solid Waste Management Plan.

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1 MS. HARVEY: Which is different than asking him what the
2 basis for his decision was.

3 HEARING OFFICER KNITTLE: Can you read back the question.

4 MR. PORTER: If it is quicker, I can.

5 HEARING OFFICER KNITTLE: Okay. Let's do it that way.

6 What was the question again?

7 Q. (By Mr. Porter) As to criterion 8, isn't it true that
8 the Solid Waste Management Plan explicitly provided that the
9 County would, quote, exclude within one and a half miles --
10 excuse me -- exclude all areas within one and a half miles of the
11 municipal corporate limits. That was the question.

12 MS. HARVEY: I have the same objection.

13 HEARING OFFICER KNITTLE: It is a good objection, but I do
14 think I am going to allow him some leeway here. The objection is
15 overruled.

16 Mr. Porter, I am going to caution you, though. I am
17 sympathetic to some of the arguments made during her objection.
18 I don't want to get too far into the Solid Waste Management Plan
19 and I don't want to get too far into the technical details of the
20 criteria.

21 MR. PORTER: This is the only part of the Solid Waste
22 Management Plan that matters. Let me reiterate.

23 Q. (By Mr. Porter) Isn't it true that the Solid Waste
24 Management Plan provided that the County would exclude all areas

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1 within one and a half miles of the municipal corporate limits?

2 A. I know there is an exclusionary factor that says within
3 one and a half miles it would be excluded. I am not aware of
4 what the exclusionary number was.

5 Q. And at the time you voted you knew that the application
6 and the report of the Planning Commission stated that the
7 landfill was proposed to be placed less than one mile from the
8 municipal limits of the City of Sparta, right?

9 A. I do know that it was located within that one and a half
10 mile.

11 Q. Was that indisputable fact the basis of your decision?

12 A. That --

13 MS. HARVEY: I will object to the characterization of it as
14 an indisputable fact. I don't have any objection to him asking
15 the basis.

16 HEARING OFFICER KNITTLE: Sustained.

17 Q. (By Mr. Porter) Was that fact the basis of your
18 decision?

19 A. The fact that it was within one and a half miles and the
20 fact that we were concerned about the safety on Holloway Road
21 were the two reasons that we voted -- or that I voted against the
22 siting application.

23 Q. So it was your decision, based solely on the County

24 record and the evidence?

120

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1 A. That's correct.

2 Q. Did you base your decision upon any communication of any
3 sort that you may have received outside of the public hearing
4 process?

5 A. No, I did not.

6 Q. All right. I am going to talk briefly about the
7 specific communication that Counsel brought up. She mentioned a
8 telephone call with a Kenneth Markley. Did Mr. Markley attempt
9 to pressure you to vote one way or the other?

10 A. Not that I remember.

11 Q. Did you ever tell Mr. Markley -- strike that. Did you
12 tell Mr. Markley that whatever decision the Board made, either
13 for or against, it would have a justification for that decision?

14 A. I had said from day one that I would vote based on the
15 criteria and the evidence that was presented.

16 Q. And you told that to Mr. Markley during that telephone
17 conversation?

18 A. As I remember, I did.

19 Q. As to the Farm Bureau meeting, that meeting merely
20 involved a description of the application; is that right?

21 A. As I recall, yes.

22 Q. And do you know what the opinion of the majority of the
23 members of the Farm Bureau was at that time?

24 A. I don't think --

121

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1 MS. HARVEY: I will object to that. He is asking him to
2 testify about the opinions of someone who was not there -- who is
3 not here. Excuse me. The Farm Bureau.

4 MR. PORTER: I am asking if he knew.

5 HEARING OFFICER KNITTLE: The question was only if he knew
6 of their opinions?

7 MR. PORTER: Yes.

8 HEARING OFFICER KNITTLE: Anything on that?

9 MS. HARVEY: If he is asking him what he knows, that is
10 fine. If is he asking him to speculate, that is not fine.

11 HEARING OFFICER KNITTLE: Okay. That objection is
12 overruled to that question.

13 Could you rephrase it for him, please.

14 Q. (By Mr. Porter) Do you know what the opinion of the
15 majority of the room was at that Farm Bureau meeting as to the
16 landfill?

17 A. No, I did not.

18 Q. Then as to your conversations with Mr. Corbin and the
19 Gueberts --

20 A. Uh-huh.

21 Q. Is that name correct?

22 A. Gueberts.

23 Q. Did you ever discuss the merits of the application with
24 these individuals?

122

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1 A. No.

2 Q. You never told either of these individuals how you were
3 going to vote; is that right?

4 A. No, I did not.

5 Q. As to these anonymous phone calls and pranks that you
6 allegedly received, how much merit do you put to a phone call
7 where the caller does not identify themselves?

8 A. None.

9 Q. You don't have any idea who made the threatening call as
10 to your personal property; is that right?

11 A. I am not sure.

12 Q. You certainly don't know if it was a party to this
13 landfill --

14 MS. HARVEY: Objection. He just --

15 Q. -- (continuing) application, do you?

16 MS. HARVEY: Objection. I am sorry, Mr. Porter.

17 Objection. He just testified that he didn't know.

18 HEARING OFFICER KNITTLE: Sustained.

19 Q. (By Mr. Porter) As to the pranks, isn't it true that
20 some of these could have been in relation to your election which
21 was going on at that time, your Chamber of Commerce involvement,
22 or involvement in the Board irrespective of the landfill hearing?

23 A. They could have been for any reason.

24 Q. You have no specific information that they were related

123

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1 to this landfill; is that correct?

2 A. Other than the one phone call which stated that it was.

3 Q. As an elected official it was not unusual to receive
4 negative comments or disagreeing comments on issues; is that
5 right?

6 A. I have had a lot of negative comments.

7 Q. As a matter of fact, as an elected official you have
8 been the subject of election day pranks also; isn't that correct?

9 A. That's correct.

10 Q. I want to -- Counsel brought up County Board meetings.
11 Can you reiterate, please, what the policy was as to allowing
12 public comment at County Board meetings, even before the
13 application was filed?

14 A. My policy as County Board Chairman was to allow anyone
15 that wanted to show up at a County Board meeting to have an
16 opportunity to speak of any issue that they choose to speak
17 about.

18 Q. The date of every public meeting was advertized and
19 published in all four newspapers servicing this area; is that
20 right?

21 A. County Board meetings are set on a quarterly basis.

22 They are set by the County Board and they are publicized by the
23 County Clerk on a quarterly basis.

24 Q. And every citizen was invited to appear at those public

124

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1 meetings; is that right?

2 A. They are public meetings and, thereby, open to anyone
3 who wishes to attend.

4 Q. Did you give any substantive weight to any of the
5 comments that were made at the public meetings after the close of
6 the public comment period?

7 A. I don't know what meetings you are referring to.

8 Q. Well, there were County Board meetings that took place
9 after the close of the public comment period; is that right?

10 A. That's correct.

11 Q. Did you give any substantive weight to any of the
12 comments regarding the landfill that you heard at that meeting?

13 A. No.

14 Q. Were the comments that you heard in that -- strike that.
15 Were the comments that you heard in those public meetings before
16 the vote was taken the same in nature as the comments you heard
17 during the hearing process?

18 A. Negative comments about the landfill, yes.

19 Q. Was there anything new that you heard that you had not
20 heard before?

21 A. No.

22 Q. Likewise, in the phone calls and the personal
23 conversations when you were approached on the street, and the
24 documents that you may have received in the mail, including the

125

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1 parcel of garbage, did any of those contain information that you
2 had not learned during the hearing process?

3 A. No.

4 Q. At no time before the vote did you discuss any
5 communication that you received with the other Board members,
6 right?

7 A. We had -- I had personally followed what had happened in
8 Perry County with their landfill issues, and they were in
9 somewhat of hot water for having discussions with their landfill
10 company. When I became County Board Chairman before the
11 application was filed, I had told the other two County Board
12 members that we were not going to discuss any issues relating to
13 the landfill because of the problems that Perry County had had,
14 and we had no conversations about this siting hearing at all.

15 Q. Did you have any conversations about the unsolicited
16 communications that you may have received with those other Board
17 members before they voted?

18 A. Not before the vote.

19 Q. And, once again, did any of the communications,
20 telephone calls, things you may have received in the mail or

21 otherwise outside of the hearing process, newspaper articles, the
22 general feeling of the community, did any of that affect your
23 ability to issue a decision, or did you make that decision based
24 upon the record?

126

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1 MS. HARVEY: I am going to object because I am not exactly
2 sure what the question is. I think it is compound.

3 HEARING OFFICER KNITTLE: Yes, could you rephrase the
4 question.

5 MR. PORTER: I will rephrase it.

6 Q. (By Mr. Porter) Did you base your decision solely upon
7 the record?

8 A. I based my decision based on the fact that it was within
9 the mile and a half limits of the City of Sparta, and that I was
10 concerned about the traffic on Holloway Road.

11 Q. All of the information that you used to come to that
12 decision was contained within the record; is that correct?

13 A. That is correct.

14 MR. PORTER: Nothing further.

15 HEARING OFFICER KNITTLE: Ms. Harvey?

16 MS. HARVEY: Yes, I have a couple.

17 REDIRECT EXAMINATION

18 BY MS. HARVEY:

19 Q. Mr. Stork, the pranks that we talked about, the three
20 that we have talked about, the floral order, the furniture

21 delivery or order, and the Chamber of Commerce lunch, did those
22 occur in that period of April to October of 1998?

23 A. I would say that they did.

24 Q. Were you currently -- were you at that time a candidate

127

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1 for office?

2 A. I think the primary was over in March.

3 Q. So you were not a candidate for office at the time that
4 those pranks occurred?

5 A. No, I was not.

6 Q. Okay. I believe you testified a little earlier that you
7 perceived those pranks to be related to the landfill; is that
8 correct?

9 A. Yes, I did.

10 Q. Mr. Porter read you part of the County Solid Waste
11 Management Plan and asked you if that is what you based your
12 decision on. Are you aware that the County Solid Waste
13 Management Plan also calls those exclusionary factors recommended
14 local criteria?

15 A. I am not aware of that, no.

16 Q. Okay. Then, finally, I think you testified a little
17 earlier this morning that the combination of the events that we
18 discussed, the phone calls, may have had some affect on your
19 decision that the -- I think what you termed pressure does have

20 an affect on one's decision making process; is that correct?

21 A. What I am trying to say is that as an elected official
22 you represent the people, and if all the criteria had been met
23 that would have been a difficult decision to make based on the
24 overwhelming opposition against the landfill. In the end it was

128

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1 very clear that the criteria, at least one of the criteria was
2 not met, and in my estimation that two of the criteria was not
3 met, and it was not a difficult decision when it came down to the
4 final hearing.

5 MS. HARVEY: I don't have anything else.

6 HEARING OFFICER KNITTLE: Mr. Porter?

7 MR. PORTER: No follow-up.

8 HEARING OFFICER KNITTLE: Sir, you can step down. Thank
9 you for your time.

10 THE WITNESS: So I can go home?

11 HEARING OFFICER KNITTLE: Yes, you can do that, too.

12 (The witness left the stand.)

13 (Applause from the members of the public.)

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

15 (Discussion off the record.)

16 HEARING OFFICER KNITTLE: We will take our lunch break now
17 and we will come back at 2:00.

18 (Whereupon a lunch recess was taken from 1:00 p.m. to 2:15
19 p.m.)

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129

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1 A F T E R N O O N S E S S I O N

2 (May 9, 2000; 2:15 p.m.)

3 HEARING OFFICER KNITTLE: We are back on the record after a
4 somewhat lengthier lunch break than we intended. It is about
5 2:15. Just for the record, this is Pollution Control Board
6 Number 99-069, Land and Lakes Company versus Randolph County
7 Board of Commissioners. My name is John Knittle. I am the
8 Hearing Officer assigned to this case. We are continuing with
9 the petitioner's case-in-chief.

10 Ms. Harvey, do you have a witness?

11 MS. HARVEY: I do. Before I call my next witness, Mr.
12 Hearing Officer, I would just like to renew my -- I think my
13 already granted request, that anybody who is going to be a
14 witness be excluded from the hearing room. I don't know if any
15 of those people have returned.

16 HEARING OFFICER KNITTLE: Would you like to go over those
17 names again?

18 MS. HARVEY: I would be happy to. The Planning Commission

19 members who are Mr. Campbell, Mr. Riebeling, Mr. Smith and Mrs.
20 Rinne and --

21 HEARING OFFICER KNITTLE: Can we see if any of them are
22 here.

23 MS. HARVEY: Yes. I am sorry.

24 HEARING OFFICER KNITTLE: Are any of you -- is it current

130

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1 Planning Commissioners?

2 MS. HARVEY: Yes, actually.

3 HEARING OFFICER KNITTLE: Are there any current Planning
4 Commissioners in the room?

5 MR. PORTER: There is a current Planning Commissioner in
6 the room, but he was not a Planning Commissioner at the time.

7 HEARING OFFICER KNITTLE: Okay.

8 MR. PORTER: All of the Planning Commissioners at the time,
9 the names that Counsel has just mentioned, are in the hallway.

10 HEARING OFFICER KNITTLE: Thank you, Mr. Porter.

11 MS. HARVEY: The others that we discussed earlier were
12 witnesses that were F.O.R.C.E. members, Mr. Weber, Mrs. Spinney,
13 Mr. Heine, Mr. Watson, and Mr. Zolner.

14 HEARING OFFICER KNITTLE: Okay. Mr. Weber is out. Oh,
15 sir, we will have to ask you step outside again until you are
16 ready to be called.

17 And then it was Ms. Spinney, correct?

18 MS. HARVEY: Mrs. Spinney.

19 MEMBER OF THE PUBLIC: Ms. Spinney.
20 MS. HARVEY: It is Ms. I am sorry.
21 MEMBER OF THE PUBLIC: She is not here.
22 HEARING OFFICER KNITTLE: And Mr. Heine? The other two
23 names I don't have.
24 MS. HARVEY: Mr. Watson?

131

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1 MEMBER OF THE PUBLIC: Mr. Zolner had to go to work.
2 HEARING OFFICER KNITTLE: Okay. Those were the other two?
3 MS. HARVEY: Yes.
4 HEARING OFFICER KNITTLE: Okay. I think everybody you want
5 out is out.
6 MS. HARVEY: Thank you, Mr. Hearing Officer. I would like
7 to call Terry Moore as the next witness, please.
8 HEARING OFFICER KNITTLE: Mr. Moore, could you have a seat,
9 please.
10 Would you swear him in, please.
11 (Whereupon the witness was sworn by the Notary Public.)
12 T E R R Y M O O R E,
13 having been first duly sworn by the Notary Public, saith as
14 follows:
15 DIRECT EXAMINATION
16 BY MS. HARVEY:
17 Q. Would you state your name for the record, please.

18 A. Terry Moore.
19 Q. And Mr. Moore, what is your address?
20 A. 109 Estate Drive, Chester, Illinois.
21 Q. Who do you live there with?
22 A. My wife and kids.
23 Q. How old are your kids?
24 A. I tell you what, some of them we never get rid of. They

132

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1 are back and forth. They range from 26 to 12.
2 Q. Okay.
3 A. They must like it too good, I think. I don't know.
4 Q. How many children do you have?
5 A. Four.
6 Q. Are you employed?
7 A. Yes, I am.
8 Q. What business are you in?
9 A. I am a self-employed grocer.
10 Q. Here in Sparta? I mean here in Chester? Excuse me.
11 A. In Chester.
12 Q. What is the name of the business?
13 A. Chester Marketplace.
14 Q. How long has that been in operation?
15 A. We have actually been there since October of 1999, but
16 we were in business prior to that since 1969.
17 Q. And again, the period of time that I am going to be

18 asking questions about today is the period from April of 1998
19 through October of 1998, which is the period in which Land and
20 Lakes Company's application for local siting approval was pending
21 before the County Board. During that period, were you a County
22 Board member, Mr. Moore?

23 A. Yes, I was.

24 Q. When were you first -- were you elected to the County

133

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1 Board?

2 A. 1988.

3 Q. Have you served continuously since then?

4 A. Yes, I have.

5 Q. And you are currently a County Board member?

6 A. Yes, ma'am.

7 Q. What was your involvement with the -- what kind of
8 involvement did you have regarding the siting application?

9 A. We were charged with making a final decision on the site
10 because that is what the statutes of Illinois say.

11 Q. Did you attend the local hearings in July of 1998?

12 A. I did not.

13 Q. During this time period from April to October of 1998,
14 did you have contact with any individuals regarding the landfill
15 application with the exception of any public comment that you
16 read or anything in the actual record of the application itself?

17 A. I had one phone call.
18 Q. Okay. Where did you receive that phone call?
19 A. At my home.
20 Q. Do you know who it was that called you?
21 A. Yes, I do.
22 Q. Who was it? Who called you?
23 A. Patty Watson.
24 Q. And what did Ms. Watson say?

134

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1 A. To tell you the truth, I knew I was not supposed to be
2 talking to her, but she is a friend of my wife, and I was not
3 going to make my wife mad. I listened but I did not pay any
4 attention to what she said.
5 Q. Do you remember what she talked about?
6 A. I am sure it was the landfill.
7 Q. Was it about the substance of the application? Did
8 she --
9 A. I would say it was more just that they were against the
10 landfill.
11 Q. Okay. Do you know when that contact occurred?
12 A. No, I don't.
13 Q. Okay.
14 A. It was during that period, though.
15 Q. Did you receive any other phone calls?
16 A. I have had a couple of phone calls. I never answered

17 them. They didn't give their names. I had one other call who
18 identified himself as a resident of Prairie du Rocher that was in
19 favor of the landfill, and I said I can't talk about it.

20 Q. So did you have -- so I am sure I understand, Ms. Watson
21 called you and somebody else called you actually in favor of the
22 landfill. Were there other phone calls?

23 A. I probably only had three or four phone calls. And when
24 they said what the subject was, then I kind of excused myself.

135

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1 Q. Okay. Do you know who any of those other individuals --

2 A. No, I do not. They did not identify themselves.

3 Q. Did you keep any records of those phone calls?

4 A. No, I did not.

5 Q. Did you receive anything in the mail about --

6 A. There was some literature that came through the mail.

7 Q. What kind of literature?

8 A. Some letters that -- some were signed and some were not
9 signed. And there was some campaign literature at that time that
10 referred to the landfill.

11 Q. Okay. Let's talk about the letters for a second. Can
12 you estimate how many letters you got?

13 A. I wouldn't think over three or four. I really don't
14 recall. I have been -- when they are unsigned I normally don't
15 read them.

16 Q. Were all of them unsigned?
17 A. Two of them were signed, if I recall.
18 Q. Do you remember who wrote those?
19 A. No, I don't.
20 Q. What did you do with the letters?
21 A. I threw them away.
22 Q. Okay?
23 A. I did not keep them.
24 Q. Okay.

136

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1 A. We get a lot of letters in this position, and it is one
2 of those routine deals.
3 Q. So you got maybe three or four --
4 A. Yes.
5 Q. -- that were about the landfill?
6 A. Yes, right.
7 Q. Okay. And you say you got some campaign literature?
8 A. Yes.
9 Q. Whose campaign was that for?
10 A. Well, there was a race -- I guess it was Dan Wrights'
11 race and his opponent sent some literature out that showed bags
12 of trash and that sort of thing.
13 Q. Is that the State Representative race?
14 A. Yes.
15 Q. Who was his opponent?

16 A. Bruce Brown.

17 Q. So would it be correct to say that the tenor of that
18 campaign literature was against the landfill?

19 A. I would say so.

20 Q. Was it a mass mailing?

21 A. That is very hard for me to say. I got a copy. I
22 really don't know.

23 Q. Was it targeted just to you? Could you tell?

24 A. No. I know some other people that got the literature.

137

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1 Q. Okay. Is that the -- are those the only types of
2 mailings you got, the campaign literature and three or four
3 letters that you received?

4 A. I am sure that is correct.

5 Q. Okay. Did you have people approach you in person about
6 the landfill during this period?

7 A. Not really. I am a little further removed, being here
8 in Chester, and I did not.

9 Q. So nobody asked to speak to you on the street or
10 anything?

11 A. No.

12 Q. Okay. Were you invited to any meetings of F.O.R.C.E.?

13 A. As I think back, I am sure that I was. I am not sure if
14 it was by mail or by -- it had to have been by mail. I am sure I

15 was.

16 Q. Did you attend that meeting?

17 A. No, I did not.

18 Q. Do you know when it was?

19 A. No, I do not.

20 Q. But it was during this period?

21 A. I would not say it was exactly during that period, but

22 it was during the time that everything broke loose.

23 Q. It was before the decision was made by the County?

24 A. Yes.

138

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1 Q. Okay. Was it after the conclusion of the public comment
2 period?

3 A. I am not sure.

4 Q. Did Mr. Stork ever talk to you about contacts that he
5 had received regarding the landfill?

6 A. He did not.

7 Q. Did Mr. Esker, who also is a -- was a County Board
8 member, did he --

9 A. He did not.

10 Q. Did you discuss the phone calls that you received?

11 A. Did not.

12 MS. HARVEY: Okay. I don't have anything else right now.

13 HEARING OFFICER KNITTLE: Mr. Porter, do you have

14 cross-examination?

15 MR. PORTER: Yes, I do.

16 CROSS EXAMINATION

17 BY MR. PORTER:

18 Q. Who are the current Board members?

19 A. Becky McClure and Terry Leer.

20 Q. Who were the Board members at the time of the vote?

21 A. Clem Esker, Ron Stork, and myself.

22 Q. What was the basis of your decision?

23 A. The basis of the decision for the denial of the sitting
24 were the criteria we felt -- I felt were not met, the safety

139

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1 issue and the mile and a half from the city limits of Sparta.

2 Q. At any time before the vote did Mr. Stork inform you
3 that he had received a threat to his personal property?

4 A. He did not.

5 Q. Before the vote did you ever have any pranks or devious
6 acts committed to your person?

7 A. No.

8 Q. When you would receive an unsolicited telephone call
9 regarding the landfill, what would you tell the caller?

10 A. When they said what it was, with one exception that I
11 talked about, I said I am not at liberty to discuss it at this
12 time.

13 Q. That one exception was Patty Watson; is that right?

14 A. That's correct.

15 Q. Why did you allow Patty Watson to talk?

16 A. As I said before, she was a friend of my wife and I was
17 not going to make my wife mad.

18 Q. And did you really listen to what Mrs. Watson had to
19 say?

20 A. No, I didn't.

21 Q. Do you remember what she had to say?

22 A. Other than that she had called because she was opposed
23 to the landfill.

24 Q. Did she say anything that you did not hear during the

140

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1 hearing process in either written public comments or in the
2 hearing transcript?

3 A. I am sure she did not.

4 Q. I may have asked this. Did you ever receive any
5 threats?

6 A. No.

7 Q. Did you ever tell a telephone caller your intentions, if
8 any, as to your vote?

9 A. I did not.

10 Q. Did you provide any substantive weight to any call that
11 you received, including that from Patty Watson?

12 A. I did not.

13 Q. Did you consider these telephone calls evidence?

14 A. No.

15 Q. Did you ever discuss the merits of the application with
16 anyone before the vote was taken?

17 A. I did not.

18 Q. Did you ever go around and ask people for their opinions
19 regarding the landfill?

20 A. No.

21 Q. In regard to the mailings, do you know for certain who
22 sent the flyers?

23 A. No, I do not. It is paid political advertisement.

24 Q. Did any mailing you receive impact or influence your

141

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1 decision in any way?

2 A. No.

3 Q. Did any telephone call you received impact or influence
4 your decision in any way?

5 A. No.

6 Q. Is it true that the Board had a long-standing policy
7 even before this application was filed that members could come
8 and -- strike that. Is it true that -- actually, strike that and
9 withdraw the question.

10 Did you base your decision upon anything other than the
11 record?

12 A. That was it.

13 Q. So your answer is you did not base your decision on
14 anything other than the record; is that correct?

15 A. We based everything on the record.

16 MR. PORTER: Nothing further.

17 HEARING OFFICER KNITTLE: Ms. Harvey, do you have any
18 redirect?

19 MS. HARVEY: I have just a couple of questions.

20 REDIRECT EXAMINATION

21 BY MS. HARVEY:

22 Q. Mr. Moore, if I understood correctly you testified that
23 you didn't really pay too much attention to what Ms. Watson
24 actually said?

142

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1 A. No.

2 Q. So do you know whether she said anything that you hadn't
3 heard before?

4 A. No, I do not. I was just trying to be polite.

5 Q. And then the only other question I have is were you in
6 attendance at a Board meeting in August of 1998 at which
7 F.O.R.C.E. members spoke, a County Board meeting?

8 A. I am sure I was.

9 Q. Do you remember it?

10 A. Specifically, no.

11 Q. Do you remember ever being in attendance at a County
12 Board meeting at which members of F.O.R.C.E. spoke?

13 A. Yes, I do.
14 Q. Do you remember what they talked about?
15 A. They talked about the landfill.
16 Q. What did they say?
17 A. They expressed their oppositions as citizens of the
18 County, that they were opposed.
19 Q. Do you remember individuals who spoke?
20 A. No, I do not.
21 MS. HARVEY: Okay. I don't have anything else.
22 MR. PORTER: I do have some recross.
23 HEARING OFFICER KNITTLE: Okay.
24

143

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1 RECCROSS EXAMINATION
2 BY MR. PORTER:
3 Q. Did the Board have a long-standing policy before the
4 application was filed of allowing any individual or group that
5 would show up at a public meeting to speak during the public
6 comment portion of that meeting?
7 A. That's true. Usually it was the tradition or whoever
8 was Chairman at that time would make that decision. As long as I
9 have been there anyone that has come to a County Board meeting
10 was allowed to speak.
11 Q. So this was not a special concession for the members of

12 F.O.R.C.E., then, was it?

13 A. No, it was not.

14 Q. Was the date of every public meeting advertised and
15 published in all four newspapers servicing the County?

16 A. Yes.

17 Q. Was the public invited to speak on any topic at any
18 time?

19 A. I don't know if they were invited to speak, but if they
20 were there they were not denied.

21 Q. Was the information you heard during those public
22 meetings any different than the information you heard during the
23 hearing process?

24 A. Well, as I testified, I did not attend the hearings. I

144

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1 did read the transcript. No, I did not hear anything different.

2 Q. So if I understand correctly, the hearings you did not
3 attend were the Section 39.2 landfill siting hearings, but you
4 read the --

5 A. Yes, I did.

6 Q. -- transcript; is that right?

7 A. Yes, I did.

8 Q. And you were present at the public Board meetings that
9 took place after the July 29th landfill hearings; is that right?

10 A. Yes, sir.

11 Q. The information that you heard at those public Board

11 having been first duly sworn by the Notary Public, saith as
12 follows:

13 DIRECT EXAMINATION

14 BY MS. HARVEY:

15 Q. Would you state your name for the record, please.

16 A. Clement Esker.

17 Q. Mr. Esker, where do you live?

18 A. Red Bud, Illinois.

19 Q. What is your street address?

20 A. 280 Charles.

21 Q. Who do you live there with?

22 A. My wife, Marsha.

23 Q. Do you have children?

24 A. Yes.

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146

1 Q. Are they grown?

2 A. Yes.

3 Q. Are you employed?

4 A. Yes.

5 Q. What do you do?

6 A. I work for Prudential Insurance.

7 Q. How long have you done that?

8 A. Seven years.

9 Q. Again, as with Mr. Moore, the time period that we will
10 be discussing this afternoon is the period from April of 1998

11 through October of 1998, which is the period in which Land and
12 Lakes' application for siting approval was pending before the
13 County. During that time period were you a County Board member?

14 A. Yes.

15 Q. When did you join the County Board?

16 A. I am not sure of the date. I am very poor on dates. It
17 was 1998.

18 Q. Okay. Were you elected?

19 A. No, I was appointed.

20 Q. Who appointed you?

21 A. A group of people. Dan Wrights left and the position
22 was open, and several people were appointed to go after the job,
23 and I received the opportunity.

24 Q. Do you know who it is that makes that final decision on

147

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1 who is appointed? Who has the authority to appoint someone?

2 A. There was not any one certain person. It was by vote of
3 the precinct committeemen.

4 Q. Okay. Had you ever held elective office prior to that?

5 A. Yes, I was the Mayor of Red Bud before that and alderman
6 before that and school board for many years.

7 Q. Were you the Mayor of Red Bud at the time that you were
8 appointed to the County Board?

9 A. Yes.

10 Q. Did you resign that position?
11 A. Yes.
12 Q. And then previous to that you had been an alderman in
13 Red Bud?
14 A. Yes.
15 Q. And the school board before that?
16 A. Yes.
17 Q. Okay. What was your involvement with the siting
18 process? What was your role?
19 A. Nothing. I mean, I am just being honest.
20 Q. Yes. Did you attend the landfill hearings?
21 A. No.
22 Q. Did you review the record and the transcripts of the
23 hearings?
24 A. Not really.

148

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1 MR. PORTER: Objection. This calls for -- the question
2 asks for the witness to discuss the deliberative process in
3 coming to a decision.

4 HEARING OFFICER KNITTLE: Ms. Harvey?

5 MS. HARVEY: It does ask for that, but Mr. Porter has asked
6 on cross-examination the other witnesses about their process and
7 whether or not they reviewed the transcripts.

8 HEARING OFFICER KNITTLE: Mr. Porter?

9 MR. PORTER: I have not waived that right in regard to this

10 witness.

11 HEARING OFFICER KNITTLE: I am going to have to sustain the
12 objection. I think barring a showing of what is it -- I have it
13 written down -- improper behavior or bad faith, the mental
14 processes of the administrators are not subject to examination.

15 MS. HARVEY: Okay.

16 HEARING OFFICER KNITTLE: I don't think such a showing has
17 been made at this point.

18 Q. (By Ms. Harvey) Mr. Esker, did you cast a vote on the
19 application?

20 A. Yes.

21 Q. And what was that vote?

22 A. Nay.

23 Q. During this time period from April to October of 1998,
24 did you have contacts with any person outside the hearing

149

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1 officer -- hearing process, excuse me, other than --

2 A. One person. One person contacted me.

3 Q. Okay. Well, how did that occur?

4 A. A gentleman came to my office, at my insurance office,
5 and when he came in I told him that we couldn't talk about it.

6 Q. Do you know who he was?

7 A. Mr. Watson.

8 Q. Do you know Mr. Watson's first name?

9 A. No, I don't.

10 Q. Okay. Did you have any substantive conversations with
11 him about that?

12 A. No. He was very nice.

13 Q. Am I correct in stating your testimony that you told him
14 that you couldn't discuss it?

15 A. Correct.

16 Q. Do you know when this happened?

17 A. Not really. I don't remember the date at all.

18 Q. Do you know if it happened after the hearings were held?

19 A. I would be lying if I said. I don't.

20 Q. I only want to know what you know. Is that the only
21 personal visit that you had?

22 A. Yes.

23 Q. Did you ever have any phone calls?

24 A. After I thought about it, yes, one, but I didn't take

150

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1 the call.

2 Q. Was the call at your office?

3 A. At home.

4 Q. At home. You didn't talk to the person?

5 A. No, I didn't.

6 Q. Did they leave a message?

7 A. No.

8 Q. Did they talk to your wife?

9 A. No, my mother-in-law. She just happened to be there.
10 Q. Okay. Is that the only phone call you received?
11 A. Yes.
12 Q. Did you receive anything in the mail?
13 A. Not -- the only thing I would have received and brought
14 to my mind is the advertisement for people running for office.
15 And I don't even look at my own, let alone theirs.
16 Q. So you may have received a political --
17 A. I could have.
18 Q. -- mailing? Did you receive anything in the mail from
19 F.O.R.C.E.?
20 A. Not that I remember.
21 Q. Were you invited to a meeting of F.O.R.C.E.?
22 A. Not that I know of. If it was, it would have been
23 something I didn't look at, but I never considered it.
24 Q. You don't have any recollection of that?

151

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1 A. No.
2 MS. HARVEY: Okay. I don't have anything else.
3 HEARING OFFICER KNITTLE: Mr. Porter?
4 MR. PORTER: Just a few.
5 CROSS EXAMINATION
6 BY MR. PORTER:
7 Q. When you were personally approached by Mr. Watson,

8 exactly what did you did tell him?

9 A. I just told him that we weren't really -- we couldn't
10 talk about it.

11 Q. And was any substantive information relayed in that
12 conversation?

13 A. No. We talked about Illinois Power.

14 Q. Nothing to do with the landfill?

15 A. No. That is where he works.

16 Q. So if I understand correctly, you had absolutely no
17 communications, whatsoever, with anyone regarding the landfill
18 outside the hearing process; is that correct?

19 A. No.

20 Q. My statement was correct?

21 A. Your statement is correct, yes.

22 Q. Your decision on the landfill was based upon the record;
23 is that correct?

24 A. Right.

152

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1 MR. PORTER: I have nothing further.

2 HEARING OFFICER KNITTLE: Ms. Harvey?

3 MS. HARVEY: I don't have anything else. Thank you.

4 HEARING OFFICER KNITTLE: Sir, you can step down. Thank
5 you for your time.

6 THE WITNESS: Thank you.

7 (The witness left the stand.)

8 HEARING OFFICER KNITTLE: Ms. Harvey, do you need a second
9 before your next witness?

10 MS. HARVEY: Yes, just a second to converse with Mr.
11 Porter, if that would be all right.

12 HEARING OFFICER KNITTLE: Yes, let's go off the record.
13 (Whereupon a short recess was taken.)

14 HEARING OFFICER KNITTLE: All right. Let's go back on the
15 record.

16 Ms. Harvey, your next witness, please.

17 MS. HARVEY: Thank you, Mr. Hearing Officer. I would like
18 to call Mike Riebeling, please.

19 HEARING OFFICER KNITTLE: All right. Would you swear in
20 the witness, please.

21 (Whereupon the witness was sworn by the Notary Public.)

22
23
24

153

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1 MICHAEL RIEBELING,
2 having been first duly sworn by the Notary Public, saith as
3 follows:

4 DIRECT EXAMINATION
5 BY MS. HARVEY:

6 Q. Would you state your name for the record, please.

7 A. Michael Riebeling.
8 Q. Spell your last name.
9 A. R-I-E-B-E-L-I-N-G.
10 Q. Mr. Riebeling, where do you live?
11 A. Ellis Grove.
12 Q. Your street address?
13 A. 5547 South Harmony.
14 Q. Who do you live there with?
15 A. My wife and four kids.
16 Q. How old are your kids?
17 A. They are 14, 12, 10, and 8.
18 Q. Are you employed?
19 A. Yes.
20 Q. What do you do?
21 A. I am a civil engineer.
22 Q. Who are you employed by?
23 A. Randolph County.
24 Q. How long have you been employed by Randolph County?

154

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1 A. Since July of 1990.
2 Q. The period of time that we are going to be discussing
3 today is the period from April of 1998 through October of 1998,
4 which is the time period when Land and Lakes application for
5 siting approval was pending. During that time were you a member
6 of the Randolph County Planning Commission?

7 A. Yes.

8 Q. Is that an appointed office?

9 A. Yes.

10 Q. When did you become a member of the Randolph County
11 Planning Commission?

12 A. I believe shortly after I took the position as county
13 engineer in July of 1990.

14 Q. Are you still a member of the Planning Commission?

15 A. Yes.

16 Q. Does it hold regular meetings?

17 A. No.

18 Q. Am I correct to say that it meets on an as needed basis?

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

20 Q. What was the Planning Commission's involvement in this
21 particular landfill siting process? What was its role?

22 A. Our role was to attend the hearings, to review the
23 application and make a recommendation to the County Board as to
24 whether or not the application met the criteria set forth by the

155

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1 State of Illinois.

2 Q. Did you, in fact, attend the local hearings that were
3 held in July of 1998?

4 A. Yes.

5 Q. Did the Planning Commission subsequently meet regarding

6 this application prior to the meeting at which they made their
7 decision -- you made your recommendation? Excuse me.

8 A. Yes.

9 Q. How many times?

10 A. I believe twice.

11 Q. Were those open meetings? Were there members of the
12 public at the meeting?

13 A. No.

14 Q. Who was at the meetings?

15 A. The Planning Commission and an attorney who assisted us,
16 Christine Zeman.

17 Q. Anybody else?

18 A. No.

19 Q. Mr. Riebeling, during this period from April of 1998 to
20 October of 1998, with the exception of the information that you
21 received, that you heard at the hearings, anything in the record
22 of the hearing, and written public comments, did you have any
23 contacts with anybody about the application?

24 A. Yes.

156

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1 Q. Okay. How did those contacts occur? Let's start with
2 this. Did you have any phone calls?

3 A. Yes.

4 Q. How many phone calls?

5 A. I don't remember exactly. From what I can remember, it

6 was maybe six or eight at home and six or eight at work.

7 Q. Do you remember any of the individuals who phoned you
8 at -- let's start with at home?

9 A. No.

10 Q. Did any of them identify themselves?

11 A. They may have, but I don't recall the names if they did.

12 Q. Okay. How about the people that called you at work?
13 Did they identify themselves?

14 A. There again, I don't remember specifically. I don't
15 remember the names if they did identify themselves.

16 Q. What did the people who called you at home say?

17 A. There again, I don't remember exactly, but the typical
18 phone call was they would start off by saying that they wanted to
19 talk about the landfill or something of that nature. And then I
20 would explain to them that I was not supposed to discuss it with
21 anybody at the time so.

22 Q. What about the phone calls that you got at work?

23 A. The same thing.

24 Q. So you would tell them that you couldn't discuss it?

157

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1 A. Right.

2 Q. But they would indicate -- did they indicate whether
3 they were for or against the landfill, any of those calls?

4 A. I believe some of them did before I could get them to

5 stop.

6 Q. Did anybody indicate that they were in favor of the
7 landfill?

8 A. I don't recall anybody saying that, no.

9 Q. Did you keep any records of those phone calls?

10 A. No.

11 Q. So am I summarizing your testimony correctly to say that
12 you received maybe six to eight phone calls at home and maybe six
13 to eight phone calls at your office?

14 A. Yes.

15 Q. Okay. Any other phone calls that you can think of?

16 A. No.

17 Q. Did you receive anything in the mail?

18 A. Yes, I did.

19 Q. Okay. What did you get in the mail?

20 A. There was a letter addressed to me, my name, but the
21 address here at the courthouse. And it was at the County Clerk's
22 Office. Some of our mail at my office in Sparta does come to the
23 courthouse once in awhile. Someone in the clerk's office told me
24 there was a letter there for me. I picked it up and took it back

158

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1 to my office. When I opened it, it was just a bunch of newspaper
2 clippings about landfills, and there was a small piece of paper
3 with a -- it looked like a Seal of the State of Illinois on it,
4 and someone had handwritten across it, oppose landfill.

5 Q. What did you do with that document?

6 A. If I remember correctly, I sent it to Mr. Helsten and
7 then I believe he put it in the public record.

8 Q. Okay. Do you know if it was put in the public record
9 before a decision was made? By the County Board? I am sorry.
10 Before October of 1998?

11 A. I don't recall.

12 Q. Okay. This is a copy of what was produced by the
13 County. Mr. Riebeling, if you could take a look at that and see
14 if that is a correct copy of what it was that you received?

15 A. (The witness reviewing document.)

16 MS. HARVEY: I am going to ask to have this marked, and I
17 think it is Petitioner's Exhibit --

18 HEARING OFFICER KNITTLE: Number 4.

19 MS. HARVEY: Thank you.

20 (Whereupon said document was duly marked for purposes of
21 identification as Petitioner's Exhibit 4 as of
22 this date.)

23 THE WITNESS: The copy of the envelope looks right and this
24 part looks right. The newspaper clippings I don't recall if

159

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1 those were the ones or not.

2 Q. (By Ms. Harvey) Okay. The second page on that where it
3 says oppose landfill, is that the -- do you believe -- strike

4 that.

5 Does that look as though it is the piece of paper that had
6 the Seal of the State of Illinois on it?

7 A. Yes, it does look like it.

8 Q. But the Seal of the State of Illinois is not visible on
9 this photocopy?

10 A. That's correct.

11 Q. You said that when you got this that you transmitted it
12 to Mr. Helsten, the County's attorney; is that correct?

13 A. Not right away.

14 Q. Okay.

15 A. When -- later on Mr. Helsten contacted me.

16 MR. PORTER: I am going to object.

17 MS. HARVEY: I don't want to know what he said to him. I
18 am not trying to invade the -- I am trying to establish what
19 happened to the document. I don't want to know what Mr. Helsten
20 told Mr. Riebeling.

21 MR. PORTER: I am going to voice an objection on that
22 grounds, too. We have not established when this document was
23 sent. I don't know if there is any duty for anything to happen
24 with the document if it wasn't during the public comment period.

160

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1 HEARING OFFICER KNITTLE: Ms. Harvey?

2 MS. HARVEY: I will rephrase my question, but I thought
3 that we were talking about the events of April through October of

4 1998. I thought we had already established that. I would be
5 happy to ask the question again and --

6 HEARING OFFICER KNITTLE: Yes, if you could just make that
7 a little more clear for the record.

8 Q. (By Ms. Harvey) Mr. Riebeling, did you receive this
9 document during that time period from April to October of 1998?

10 A. I am not sure. I don't remember for sure if I did or
11 not.

12 MR. PORTER: May I clarify my objection? In regard to
13 whether or not this has to be made part of the record, one would
14 argue, and I am arguing, that it would have to occur during the
15 public comment period, taking place after July 29th of 1998 and
16 before August 29th of 1998.

17 MS. HARVEY: Well, I would disagree. If that is something
18 that Mr. Riebeling received during the pendency of the
19 application, that would be one of the definitions of an ex parte
20 contact.

21 HEARING OFFICER KNITTLE: Okay. I don't think I have to
22 make a ruling on this particular issue. That is for the Board to
23 decide. If you have an objection on the admittance of this, we
24 can raise that at the appropriate time.

161

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1 MR. PORTER: Are you admitting it?

2 MS. HARVEY: I would like to ask Mr. Riebeling a couple of

3 additional questions, but I am going to ask to have it admitted.

4 Q. (By Ms. Harvey) Mr. Riebeling, is it correct that you
5 don't know for sure -- do you know for sure if this mailing was
6 received before the County Board made its decision on the
7 landfill application?

8 A. I don't recall if it was or not.

9 Q. Do you have any memory of receiving any mailing about
10 the landfill after the decision was made?

11 A. Can I back up one question?

12 Q. Sure, absolutely.

13 A. It was before the County's decision, because I remember
14 commenting on it to the other Planning Commission members at one
15 of our two meetings.

16 Q. Okay.

17 A. Sorry.

18 Q. Thank you. So this was received sometime while the
19 application was pending, you got this?

20 A. Yes.

21 Q. Did you put this letter in the record that was
22 maintained by the Randolph County Clerk?

23 A. No.

24 MS. HARVEY: I am going to move the admission of this

162

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1 document as a contact that was made with a Planning Commission
2 member during the pendency of this application that was not

3 placed in the record.

4 HEARING OFFICER KNITTLE: Mr. Porter?

5 MR. PORTER: I believe the witness first testified that he
6 believed it was placed in the record by Mr. Helsten. I cannot
7 independently verify one way or the other.

8 Second, the County obviously made this -- made LALC aware
9 of this, because we produced it to them in response to their
10 production request. Furthermore, I don't believe it should be
11 admitted because the witness has indicated that he does not know
12 for certain if the letters to the Editor are the letters to the
13 Editor that were attached to the letter that he received.
14 Therefore, there has not been enough foundation to show that he
15 has an independent recollection that this is, indeed, the
16 document that he received.

17 HEARING OFFICER KNITTLE: Ms. Harvey, if you want to just
18 address that last point.

19 MS. HARVEY: Yes, I would be happy to redact the last pages
20 of the exhibit and move only the admission of the first two
21 pages, which is the photocopy of the envelope and the piece of
22 paper that says oppose landfill written on it. As to the other,
23 it is absolutely true that the County produced that to us, and
24 that is kind of the point, nobody knew about it prior to that. I

163

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1 can indicate in terms of what Mr. Helsten may or may not have

2 done. I believe what Mr. Riebeling might be referring to is the
3 fact that the County did produce this in response to our
4 discovery request, but it is not a part of the record -- it is a
5 part of the record of this appeal, and it is not a part of the
6 record --

7 HEARING OFFICER KNITTLE: The underlying record.

8 MS. HARVEY: The underlying record. Thank you.

9 HEARING OFFICER KNITTLE: Are you, then, withdrawing the
10 last one, two, three, four, five, six pages?

11 MS. HARVEY: Since Mr. Riebeling cannot identify those as
12 being copies --

13 HEARING OFFICER KNITTLE: There are seven pages. I am
14 sorry.

15 MS. HARVEY: -- (continuing) I would move only the
16 admission of the first two pages.

17 HEARING OFFICER KNITTLE: You don't want to move to admit
18 the last part?

19 MS. HARVEY: No.

20 HEARING OFFICER KNITTLE: Okay. Then I am just going to
21 separate it.

22 MS. HARVEY: That's fine.

23 HEARING OFFICER KNITTLE: Is there an objection to just
24 these two pages, Mr. Porter?

164

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1 MR. PORTER: No.

2 HEARING OFFICER KNITTLE: Okay. Then this will be
3 admitted.

4 (Whereupon said document was admitted into evidence as
5 Petitioner's Exhibit 4 as of this date.)

6 HEARING OFFICER KNITTLE: Okay, Ms. Harvey.

7 Q. (By Ms. Harvey) Mr. Riebeling, this letter that we just
8 discussed you said you had mentioned it to the other Planning
9 Commission members?

10 A. Yes.

11 Q. What did you tell them?

12 A. I told them that I received this letter.

13 Q. Did you show it to them?

14 A. I don't recall if I did or not. I may have. I don't
15 know.

16 Q. Did you have any further conversation other than telling
17 them that you received it?

18 A. Not that I recall.

19 Q. Other than this letter, this Petitioner's Exhibit Number
20 4, this mailing, did you receive anything else in the mail
21 regarding the landfill siting application?

22 A. Not that I recall, no.

23 Q. Did you get any mass mailings from F.O.R.C.E.?

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

1 Q. Did you get any mass -- any campaign literature that you
2 recall that discussed the landfill?

3 A. No.

4 Q. Did you have anybody approach you in person about the
5 landfill during this time period?

6 A. Not that I recall.

7 Q. Were you invited to any meetings of the group
8 F.O.R.C.E.?

9 A. I don't think so, no.

10 Q. So if I could just sum up your testimony, you received
11 six to eight phone calls at home; is that correct?

12 A. That's an estimate. I don't recall a firm number.

13 Q. Okay. And is it correct also that you estimate that you
14 received probably six to eight phone calls at work?

15 A. Yes.

16 Q. And you received this particular mailing in the mail; is
17 that correct?

18 A. Well, yes. It was addressed to me.

19 Q. Yes.

20 A. I got it from the courthouse here. It didn't come
21 directly to me, but I did get it at the County Clerk's Office,
22 yes.

23 Q. Okay. Any other contacts that you had with anyone
24 regarding the landfill application?

1 A. Not that I recall.

2 MS. HARVEY: I don't have anything else.

3 HEARING OFFICER KNITTLE: Mr. Porter?

4 CROSS EXAMINATION

5 BY MR. PORTER:

6 Q. In regard to this post-it note that said oppose
7 landfill, did that affect your decision as to how you were going
8 to make a recommendation to the County Board?

9 A. Absolutely not.

10 Q. Do you have any idea who sent this correspondence with
11 the post-it note that says oppose landfill?

12 A. No.

13 Q. Do you know whether or not it was a party to the 39.2
14 application hearing?

15 A. No.

16 Q. Whenever someone -- well, strike that. Did you testify
17 that anybody tried to -- strike that.

18 You did testify that you had six to eight phone calls.
19 When someone would call you, what would you tell them?

20 A. I would, as quick as I could without being impolite, try
21 to explain to them I was not supposed to discuss it with anybody,
22 and would get off the phone as quick as possible.

23 Q. Did you ever discuss or comment on the merits of the
24 application with the makers of these unsolicited telephone calls?

1 A. No, not that I recall.

2 Q. Were any of the calls threatening or coercive?

3 A. No.

4 Q. Did you ever tell the telephone callers what your
5 opinions were with regard to the application?

6 A. No.

7 Q. Did you attach any weight to these telephone calls?

8 A. No.

9 Q. Did you consider these telephone calls substantive
10 evidence?

11 A. No.

12 Q. Was your decision to recommend the finding that the
13 applicant failed to meet two of the criteria influenced in any
14 way by the telephone calls or the mailing that you received?

15 MS. HARVEY: I have an objection.

16 HEARING OFFICER KNITTLE: Okay.

17 MS. HARVEY: I don't think there has been anything
18 established that the Planning Commission recommended a denial on
19 two criteria.

20 MR. PORTER: I will withdraw the question and rephrase.
21 Counsel is correct.

22 Q. (By Mr. Porter) Isn't it true the Planning Commission
23 authored a report which recommended that the County Board find
24 that the application failed to meet criteria number 8?

1 A. If that is the criteria about the compliance with the
2 County's Solid Waste Management Plan, then that is correct, yes.

3 Q. And isn't it true that the Solid Waste Management Plan
4 excluded any landfill that was within one and a half miles of a
5 municipal corporate limits?

6 A. That's right.

7 MS. HARVEY: I will object to the relevancy of that
8 question.

9 HEARING OFFICER KNITTLE: Mr. Porter?

10 MR. PORTER: Again, it gets to the basis of his decision.

11 MS. HARVEY: I object to the relevancy of his decision. I
12 don't think Mr. Porter has made any showing that he can invade
13 the mind of the decision-maker.

14 HEARING OFFICER KNITTLE: Mr. Porter?

15 MR. PORTER: That is certainly in this particular -- well,
16 strike it. I will withdraw the question.

17 HEARING OFFICER KNITTLE: Thank you.

18 Q. (By Mr. Porter) Was your decision to recommend the
19 County Board find that criteria number 8 was not met in any way
20 based upon anything outside of the public record?

21 MS. HARVEY: I have the same objection.

22 HEARING OFFICER KNITTLE: The mind of the decision-maker.

23 MS. HARVEY: Uh-huh.

24 HEARING OFFICER KNITTLE: Mr. Porter?

1 MR. PORTER: He is not a decision-maker.

2 HEARING OFFICER KNITTLE: Anything else, Ms. Harvey?

3 MS. HARVEY: That is in issue.

4 HEARING OFFICER KNITTLE: Pardon?

5 MS. HARVEY: That is an issue that the Board has not
6 resolved. And if he is not a decision-maker, then it is not
7 relevant.

8 HEARING OFFICER KNITTLE: I am going to allow the question.
9 The objection is overruled. Sir, do you remember the question?

10 THE WITNESS: You might want to repeat that.

11 MR. PORTER: I couldn't even attempt to try.

12 (Whereupon the requested portion of the record was read
13 back by the Reporter.)

14 THE WITNESS: No.

15 MR. PORTER: Nothing further.

16 HEARING OFFICER KNITTLE: Ms. Harvey?

17 MS. HARVEY: I don't have anything else. Thank you.

18 HEARING OFFICER KNITTLE: Thank you, sir. You may step
19 down.

20 THE WITNESS: Thank you.
21 (The witness left the stand.)

22 HEARING OFFICER KNITTLE: Ms. Harvey?

23 MS. HARVEY: Yes.

24 HEARING OFFICER KNITTLE: Do you care if he keeps that?

1 MS. HARVEY: Oh, no, that is fine.

2 HEARING OFFICER KNITTLE: Okay.

3 MS. HARVEY: I think he already has one.

4 HEARING OFFICER KNITTLE: Your next witness, please.

5 MS. HARVEY: Yes. I would like to call Dorothy Rinne,
6 please.

7 HEARING OFFICER KNITTLE: We will go off the record for a
8 second while we get her.

9 (Whereupon a short recess was taken.)

10 HEARING OFFICER KNITTLE: Back on the record. Ms. Harvey,
11 this is your next witness?

12 MS. HARVEY: Yes. I would like to call Dorothy Rinne,
13 please.

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

15 (Whereupon the witness was sworn by the Notary Public.)

16 HEARING OFFICER KNITTLE: Ms. Harvey.

17 D O R O T H Y R I N N E,

18 having been first duly sworn by the Notary Public, saith as

19 follows:

20 DIRECT EXAMINATION

21 BY MS. HARVEY:

22 Q. Would you state your name for the record, please.

23 A. Dorothy Emma Rinne.

24 Q. How do you spell your last name?

1 A. R-I-N-N-E.

2 Q. Mrs. Rinne, where do you live?

3 A. It is actually on Route 150, here in Chester.

4 Q. Okay. Who do you live there with?

5 A. My husband.

6 Q. Do you have children?

7 A. One.

8 Q. Grown?

9 A. Yes.

10 Q. Mrs. Rinne, are you employed outside the home?

11 A. No.

12 Q. The period of time that we are going to talk about this

13 afternoon is the period from April of 1998 to October of 1998

14 while the application for siting approval that was filed by Land

15 and Lakes was pending here in Randolph County. During that

16 period of time were you a member of the Randolph County Planning

17 Commission?

18 A. Yes, I was.

19 Q. Are you still a member of the Planning Commission?

20 A. Yes.

21 Q. When were you first -- is that an appointed office?

22 A. Yes.

23 Q. When were you first appointed to that Commission?

24 A. I don't remember.

1 Q. Was it --

2 A. Four years or something.

3 Q. Okay. So well before this application was filed?

4 A. Yes.

5 Q. Okay. What was the Planning Commission's role in the
6 landfill siting process here in Randolph County?

7 A. For development, plan and usage of the land.

8 Q. Okay. Did you have -- as a Commission, did you have
9 a -- what were your responsibilities?

10 MR. PORTER: Well, I --

11 MS. HARVEY: I would be happy to rephrase that if you would
12 like.

13 MR. PORTER: The Planning Commission itself is an entity
14 that exists and has other responsibilities. The Pollution
15 Control -- they were appointed as the Pollution Control Committee
16 with regard to the landfill. So I think the question is vague
17 and misleading.

18 MS. HARVEY: I would be happy to rephrase it.

19 Q. (By Ms. Harvey) Mrs. Rinne, the duties of the Planning
20 Commission, as they relate to this application only, would it be
21 correct for me to say that they were to consider the application
22 and make a recommendation?

23 A. Yes, on the criteria basis.

24 Q. Okay. Did you attend the local hearings that were held

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1 here in Chester in July of 1998?

2 A. Yes.

3 Q. Did the Planning Commission, when they were seated as
4 the Pollution Control Commission, did they hold -- did you hold
5 meetings to discuss this application after the hearing?

6 A. No.

7 Q. Okay. Did you subsequently have a meeting at which you
8 made a recommendation? You, meaning the Planning Commission?

9 Excuse me.

10 A. Here at the courthouse.

11 Q. Okay. Do you remember when that was?

12 A. Not the date.

13 Q. Does September sound correct, September of 1998?

14 A. That sounds right, yes.

15 Q. Okay. During the time period from April to October of
16 1998, did you have contact with any person outside of the hearing
17 process or the written public comments about this landfill
18 application?

19 A. No, I did not.

20 Q. Did you receive any phone calls?

21 A. Yes.

22 Q. Okay. Did you get those phone calls at home?

23 A. Yes.

24 Q. Do you know how many there were?

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1 A. No.

2 Q. Were there less than ten?

3 A. Yes.

4 Q. Okay. Did you talk to these callers?

5 A. Not very much.

6 Q. What do you mean by not very much?

7 A. I was busy, maybe just as soon as I could get them off

8 the phone.

9 Q. Did you tell them that you were not allowed to talk to

10 them?

11 A. Yes.

12 Q. Did any of these callers identify themselves?

13 A. Yes.

14 Q. Do you remember who they were?

15 A. No.

16 Q. What did they say about the landfill?

17 A. It was what I heard here.

18 Q. Were they against the landfill?

19 A. Yes.

20 Q. Did you have any callers who were in favor of the

21 landfill?

22 A. No.

23 Q. Did you receive any mailings or any letters in the mail

24 about the landfill application?

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1 A. Yes.

2 Q. How many did you receive?

3 A. I don't remember.

4 Q. Would you think it would be less than ten?

5 A. Yes.

6 Q. Did you read those letters?

7 A. No.

8 Q. What did you do with them?

9 A. Threw them away.

10 Q. Did you talk to the other Planning Commission members
11 about those letters?

12 A. No.

13 Q. Did anybody approach you in person to discuss the
14 landfill?

15 A. No.

16 Q. Were you ever invited to any meeting of the group
17 F.O.R.C.E.?

18 A. No.

19 Q. Did you ever talk to anybody who identified themselves
20 as a member of F.O.R.C.E.?

21 A. No.

22 MS. HARVEY: I don't have anything else right now.

23 HEARING OFFICER KNITTLE: Mr. Porter?

24 MR. PORTER: Yes.

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1 CROSS EXAMINATION

2 BY MR. PORTER:

3 Q. Did you give any substantive weight to anything said to
4 you in these unsolicited phone calls about the landfill?

5 A. No.

6 Q. Did you consider these unsolicited phone calls evidence?

7 A. No.

8 Q. Did you ever discuss the merits of the application with
9 the maker of this unsolicited phone call?

10 A. No.

11 Q. You didn't go around asking people for their opinions,
12 did you?

13 A. No.

14 Q. Were you ever threatened?

15 A. No.

16 Q. Did you feel threatened or coerced?

17 A. No.

18 Q. Did you ever sustain any property damage during this
19 time?

20 A. No.

21 Q. When a caller -- strike that. When you received one of
22 these unsolicited telephone calls, would you tell the caller that
23 you were not going to discuss the issue?

24 A. Yes.

177

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1 Q. Did any of these calls involve any information which you
2 had not already heard during the hearing process?

3 A. No.

4 Q. Did any of the mailings that you received have any
5 information that you did not already receive during the hearing
6 process?

7 A. Not that --

8 MS. HARVEY: Objection.

9 THE WITNESS: No.

10 HEARING OFFICER KNITTLE: Ma'am.

11 MS. HARVEY: I think she testified that she didn't read
12 them.

13 THE WITNESS: I didn't.

14 HEARING OFFICER KNITTLE: What was your response, ma'am?

15 MR. PORTER: She said no. If I may respond to the
16 objection, I think that is appropriate for redirect.

17 HEARING OFFICER KNITTLE: Okay. I am going to let the
18 answer stand. She answered, no, she didn't read them, but then
19 she also just now answered yes to your question, as well. So you
20 may want to address that on redirect.

21 MS. HARVEY: Thank you.

22 Q. (By Mr. Porter) Did you read -- strike that. Did you
23 skim the mailings to determine what they were about?

24 A. Well, I knew I did not know them so --

178

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1 Q. Did you skim the mailings to determine that they were
2 about the landfill?

3 A. Yes.

4 Q. And once you figured out they were about the landfill
5 you threw them away?

6 A. Yes.

7 Q. So you did not even read them at that point?

8 A. No.

9 Q. Okay.

10 MS. HARVEY: I am going to object. Mr. Porter I know is
11 able to lead the witness. But I think he is testifying for her
12 at this point.

13 HEARING OFFICER KNITTLE: Mr. Porter?

14 MR. PORTER: Again, a leading question is a leading
15 question, Mr. Knittle. There is no objection for a really
16 leading question.

17 MS. HARVEY: But there is an objection for testifying for
18 the witness.

19 HEARING OFFICER KNITTLE: I am going to overrule the
20 objection. But, Mr. Porter, I think you are walking a dangerous
21 edge there in terms of cross-examination. So in the future if
22 you could keep that in mind, I would be inclined to sustain

23 future objections along those lines.

24 Q. (By Mr. Porter) Did any mailing you receive influence

179

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1 your decision on the recommendation in any way?

2 A. No.

3 MS. HARVEY: I am going to object. I think he is invading
4 the mind of the decision-maker.

5 HEARING OFFICER KNITTLE: Mr. Porter?

6 MR. PORTER: It is basically the same line we went through
7 before. She is not the decision-maker. They were merely the
8 entity that drafted the report for the decision-maker.

9 MS. HARVEY: Then if she is not the decision-maker, it is
10 irrelevant.

11 MR. PORTER: I absolutely agree that any communications
12 with this individual are irrelevant. I think this has all been a
13 waste of time. Nonetheless, that is the case that they are
14 bringing and, therefore, I need an opportunity to respond to it.

15 HEARING OFFICER KNITTLE: That objection is overruled. Ms.
16 Harvey, did you have something else? I did not mean --

17 MS. HARVEY: No.

18 HEARING OFFICER KNITTLE: -- (continuing) to deprive you of
19 the opportunity to comment.

20 MS. HARVEY: No. Thank you.

21 MR. PORTER: I have nothing further.

22 HEARING OFFICER KNITTLE: All right. Ms. Harvey, do you

23 have redirect?

24 MS. HARVEY: I do.

180

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1 REDIRECT EXAMINATION

2 BY MS. HARVEY:

3 Q. Mrs. Rinne, if I understand your testimony correctly,
4 you skimmed the letters that you received to determine if they
5 were related to the landfill; is that correct?

6 A. Yes.

7 Q. And when you determined that they were related to the
8 landfill, you -- did you read any further?

9 A. No.

10 Q. And then if I am correct you testified that you threw
11 those letters away?

12 A. Right, yes.

13 Q. So do you know if those letters contained anything that
14 you had not read in the hearings or in the public record?

15 A. I did not feel that I should. I really can't remember
16 that far back just exactly what I thought at the time, but --

17 Q. But I am correct --

18 A. -- I did throw them away.

19 Q. Okay. But I am correct that you did not read those
20 letters in detail?

21 A. No.

22 Q. So do you know for sure whether or not those letters
23 contained any information that would have been new to you?
24 A. No, I don't know.

181

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1 MS. HARVEY: I don't have anything further.
2 HEARING OFFICER KNITTLE: Mr. Porter?
3 RECROSS EXAMINATION
4 BY MR. PORTER:
5 Q. Regardless of how much you read the letters, did they
6 influence your recommendation or your vote on the recommendation
7 to the County Board?
8 MS. HARVEY: The same objection.
9 HEARING OFFICER KNITTLE: Can you restate that for the
10 record, Ms. Harvey?
11 MS. HARVEY: The basis for her vote is that the issue that
12 Mr. Porter raised earlier about the mental process.
13 HEARING OFFICER KNITTLE: Okay. We have addressed this and
14 I have overruled that. I just wanted to give you an opportunity.
15 MS. HARVEY: May I make a standing objection for the
16 record? Maybe that would be easier.
17 HEARING OFFICER KNITTLE: You may. Mr. Porter?
18 MR. PORTER: I have no objection to a standing objection.
19 HEARING OFFICER KNITTLE: Okay. We will note a standing
20 objection whenever this issue comes up.
21 MS. HARVEY: Thank you, Mr. Hearing Officer.

22 HEARING OFFICER KNITTLE: From here on from this point
23 forward.

24 MS. HARVEY: Thank you.

182

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1 HEARING OFFICER KNITTLE: Did you get her answer to the
2 question?

3 THE COURT REPORTER: I didn't hear her answer. Would you
4 like the question read back?

5 MR. PORTER: Please read the question back.

6 (Whereupon the requested portion of the record was read
7 back by the Reporter.)

8 THE WITNESS: No.

9 MR. PORTER: Nothing further.

10 HEARING OFFICER KNITTLE: Ms. Harvey?

11 MS. HARVEY: I don't have anything else.

12 HEARING OFFICER KNITTLE: Ma'am, you may step down. Thank
13 you.

14 (The witness left the stand.)

15 HEARING OFFICER KNITTLE: Ms. Harvey, your next witness,
16 please.

17 MS. HARVEY: I would like to call Mr. Marvin Campbell,
18 please.

19 THE WITNESS: Present.

20 HEARING OFFICER KNITTLE: Sir, can you spell your last name

21 for the court reporter.

22 THE WITNESS: C-A-M-P-B-E-L-L.

23 HEARING OFFICER KNITTLE: Okay. Would you swear him in,
24 please.

183

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1 (Whereupon the witness was sworn by the Notary Public.)

2 M A R V I N C A M P B E L L,

3 having been first duly sworn by the Notary Public, saith as
4 follows:

5 DIRECT EXAMINATION

6 BY MS. HARVEY:

7 Q. Would you state your name for the record, please.

8 A. It is Marvin Campbell.

9 Q. Mr. Campbell, where do you live?

10 A. Tilden, Illinois.

11 Q. Do you have a street address?

12 A. 101 Lindell Avenue.

13 Q. Who do you live there with?

14 A. My wife.

15 Q. Do you have children?

16 A. I have two children, both --

17 Q. Are they grown?

18 A. Grown.

19 Q. What do you do for a living?

20 A. I am the airport manager and the operator of the FBO

21 services at Sparta Airport.

22 Q. What does FBO mean?

23 A. Fixed base operator. We provide services for aircraft
24 that come and go from the airport and rentals for people in the

184

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1 area.

2 Q. How long have you had that position?

3 A. Ten years.

4 Q. The period of time that I am going to be asking you
5 about this afternoon is the period from April of 1998 through
6 October of 1998, which is roughly the period in which Land and
7 Lakes' application for local siting approval was pending in
8 Randolph County. In that period of time, from April to October
9 of 1998, weren't you a member of the Randolph County Planning
10 Commission?

11 A. That's correct.

12 Q. Are you still a member of the Planning Commission?

13 A. Yes, ma'am.

14 Q. If I understand correctly, that is an appointed
15 position?

16 A. That's correct.

17 Q. When were you appointed to the Planning Commission?

18 A. Whenever it was initiated, somewhere in the 1993 time
19 frame. I believe it was the 1992-1993 time frame.

20 Q. Have you served continuously on the Planning Commission?

21 A. Yes, ma'am.

22 Q. Does the Planning Commission hold regular meetings?

23 A. No, they do not. It is on a time and need basis,

24 depending upon issues that do come up to the County.

185

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1 Q. What was the Planning Commissions' role in connection
2 with this landfill siting application?

3 A. As I understand it, it is basically an adjudicatory kind
4 of role where we do the hearing process and make recommendation
5 to the County Board of Commissioners in regard to the land, the
6 solid waste land proposal.

7 Q. Did you attend the local hearings that were held in July
8 of 1998?

9 A. I sure did.

10 Q. After those local hearings, did the Planning Commission
11 meet to discuss the application?

12 A. Yes, they did. We discussed the information that was
13 presented at the hearing.

14 Q. How many times did you meet, excluding now the public
15 meeting at which you made your actual recommendation? How many
16 times did you meet before that?

17 A. Between the hearing time frame and there, I would -- I
18 don't recall positively, but two or three meetings.

19 Q. Were those meetings open to the public?

20 A. No, they were not.
21 Q. Who attended those meetings?
22 A. The Planning Commission and counsel that was appointed.
23 Q. Was that Ms. Zeman?
24 A. Yes, it was.

186

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1 Q. Just so the record is complete, then you subsequently
2 held an open public meeting at which you made your
3 recommendation?
4 A. That is correct. We announced what our position was on
5 each of the criteria.
6 Q. Okay. Was that September of 1998, roughly?
7 A. Yes, it was.
8 Q. Okay. During this time period, from April to October of
9 1998, did you have any contacts with people regarding the
10 landfill siting application excluding, of course, the information
11 that you received at the hearing through the actual official
12 record and any written public comments?
13 A. There were numerous attempts to contact me during that
14 time frame, and people that wished to present their position. In
15 most cases those were more wanting to know how the process was
16 going to be evolved because our names had been mentioned in the
17 public as the parties that were going to be involved in the
18 hearing.

19 Q. How did you receive those inquiries? Let's start with
20 did you receive phone calls?

21 A. As the hearing process got underway, yes, I received
22 quite a number of phone calls, you know, at my home and at my
23 business. Though essentially -- at that time frame we had
24 already been advised as to how we should handle those. In most

187

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1 cases I told them I could not discuss the situation with them
2 except in the hearing process.

3 Q. Who told you that you were not to discuss the situation?

4 MR. PORTER: I will object to the extent that it invades
5 the attorney-client privilege.

6 MS. HARVEY: I don't want to know what -- I am not looking
7 for confidential information. I don't want to --

8 HEARING OFFICER KNITTLE: Okay. I will overrule the
9 objection unless, in fact, it does start to impact on the
10 attorney-client confidentiality. You can ask your question.

11 MR. PORTER: Well, can I voir dire the witness?

12 MS. HARVEY: Maybe I can make this a little bit easier.

13 HEARING OFFICER KNITTLE: I don't think the name itself is
14 an issue, but if you want to --

15 MR. PORTER: Maybe the question could be rephrased.

16 HEARING OFFICER KNITTLE: Do you want it rephrased or do
17 you want to go off the record?

18 MS. HARVEY: I think I would like to just withdraw the

19 question. I will go a different direction.

20 HEARING OFFICER KNITTLE: Okay.

21 Q. (By Ms. Harvey) So, Mr. Campbell, it was your
22 understanding that you were not to talk to these people about the
23 substance of the landfill application?

24 A. Especially after the close of the hearing and before we

188

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1 made our public announcement.

2 Q. Okay. You said that you received phone calls at home.
3 Do you know how many phone calls you got at home?

4 A. I would estimate in the 30 ball park.

5 Q. Did you talk to most of those people?

6 A. No, I didn't. Most of them ended up being on my
7 recording machine just prior to our public meeting that we were
8 holding, and I figured what they were wanting and I didn't
9 respond to them.

10 Q. Did those callers identify themselves?

11 A. In most cases, yes, their names appeared.

12 Q. Do you remember any of the names?

13 A. Not specifically, no.

14 Q. Were there callers who left message is who -- strike
15 that. I will go back a second.

16 Were you aware of the existence of a group called

17 F.O.R.C.E.?

18 A. Due to the hearing time frame, yes. Not prior to that,
19 though.

20 Q. Were any of the callers who left messages on your home
21 machine associated, in your mind, with F.O.R.C.E.?

22 A. I don't know that I could determine that.

23 Q. Callers who left messages, did they indicate their
24 position on the landfill?

189

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1 A. I don't recall any that specifically did, you know, just
2 indicating that they wanted to talk.

3 Q. Okay. So you got about, you are estimating, in the 30s
4 of messages at home?

5 A. That's correct.

6 Q. Did you get phone calls at work?

7 A. I did. I would not know -- it was considerably less
8 than I received at home. I would assume most of them did not
9 know where to contact me.

10 Q. Did you talk to any of the people who called you at
11 work?

12 A. I know that I spoke to probably three, four or five,
13 somewhere in that ball park.

14 Q. What did you say to them?

15 A. Again, I conveyed to them that I couldn't discuss that,
16 anything dealing with it, and that they needed to make their
17 testimony at the hearings.

18 Q. Did those people identify themselves?
19 A. I am sure they did. It was probably somebody I knew,
20 too, because they would have called me at work.
21 Q. Do you remember any of the people who called you at
22 work?
23 A. I can't recall specifically, no.
24 Q. Of the callers that you spoke to, either at home or at

190

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1 work, and indicated that you couldn't speak, what kind of
2 reaction did you get from them?
3 A. In most cases they were not happy that I would not
4 entertain their information or their position.
5 Q. When you say not happy, were they --
6 A. Well, I think they felt that they had a just right to
7 present information to the people who were going to be the
8 decision-makers and, you know, it is something that we were told
9 not to do.
10 Q. Did anybody threaten you?
11 A. No, I received no threats at all.
12 Q. Did you ever receive a phone call from Alan Weber?
13 A. I don't think that I talked to Alan.
14 Q. Did you ever receive a phone call from Ken Markley?
15 A. No, I don't think so.
16 Q. Did you ever receive --

17 A. If so, they would have been those that were on the
18 recording machine. I know I didn't speak with them personally.

19 Q. Okay. Did you speak with Doris Spinney?

20 A. I don't believe so.

21 Q. Did you speak with Kenneth Heine?

22 A. No, I don't recall that at all.

23 Q. Did you receive any mailings or -- excuse me -- any
24 mailings regarding the landfill during this time period?

191

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1 A. No, I did not. None other than those that were from the
2 county administrative people.

3 Q. Okay. So you didn't get any mass mailings from
4 F.O.R.C.E.?

5 A. No. The only contacts I had were the normal
6 publications in the paper. I don't think they circulated them to
7 any extent in the Tilden area, which is probably the reason I
8 didn't get it.

9 Q. Did you receive any political literature that referenced
10 the landfill?

11 A. I don't recall any.

12 Q. Were you ever approached in person about the landfill?

13 A. Yes, there were a number of people that came up to me at
14 various places in public that wanted to talk about it.

15 Q. Can you give me an idea of how many people?

16 A. It has been a long time. Probably not more than maybe

17 eight or ten, at tops.

18 Q. Were these people you knew or were they --

19 A. Generally they were people that knew me and then I knew
20 them, that they just wanted to find out what was going on or what
21 the position was becoming or what was happening in regards to it.

22 Q. Did you have substantive conversations with these people
23 about the landfill application? I mean, did you discuss --

24 A. Not during the time frame at least of the hearings to

192

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1 the public meeting. And in the cases where I did, again, it was
2 more in terms of what the procedures were and what was
3 materializing as a decision-making process.

4 Q. Do you remember any of the names of the people who
5 approached you in person?

6 A. I know that Jan Weber did one day at McDonald's. I
7 remember that specifically.

8 Q. What did Ms. Weber say about the landfill?

9 A. I specifically told her that I couldn't discuss it.

10 Q. Did you --

11 A. I do remember that clearly.

12 Q. Okay. What kind of reaction did she have when you
13 indicated that you couldn't talk about it?

14 A. I don't think that it was terribly adverse. She wanted
15 me to listen to her point of view, though.

16 Q. Do you know what her point of view was?
17 A. I think she was negative on the project.
18 Q. Is there anybody else that you remember the names of who
19 approached you in person?
20 A. There were some people that came to the airport, but I
21 can't remember who it was specifically.
22 Q. Okay.
23 MEMBER OF THE PUBLIC: She is stretching this out.
24 MS. HARVEY: I don't have anything further right now.

193

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1 HEARING OFFICER KNITTLE: We don't want any comments about
2 the -- what the attorneys for either side are doing. If I hear
3 anything else, I am going to toss -- if I can find out who it is,
4 that person out. Okay. Just so everybody knows.
5 Cross-examination?
6 MR. PORTER: Briefly.
7 CROSS EXAMINATION
8 BY MR. PORTER:
9 Q. Did any of these phone calls or contacts that you had,
10 where you would tell the person you couldn't discuss it, affect
11 your recommendation in any way?
12 A. No.
13 Q. Did the atmosphere of the community affect your decision
14 in any way?
15 A. No.

16 Q. Did you receive any threats?

17 A. I received no threats, no.

18 Q. Did you have any fear for your person or property for a
19 vote in favor of recommending the landfill?

20 A. No.

21 MR. PORTER: Nothing further.

22 HEARING OFFICER KNITTLE: All right. Ms. Harvey, any
23 redirect?

24 MS. HARVEY: Yes, I do.

194

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1 REDIRECT EXAMINATION

2 BY MS. HARVEY:

3 Q. Mr. Campbell, Mr. Porter just asked you about whether
4 the atmosphere in the community affected your recommendation.
5 What was -- how would you sum up the atmosphere in the community?

6 A. I would say it was fairly negative.

7 Q. Would you characterize it as intimidating?

8 A. To some people.

9 Q. Was it intimidating to you?

10 A. No.

11 Q. Did you ever discuss the atmosphere in the community
12 with the other Planning Commission members?

13 A. No, I don't think -- well, I didn't discuss it with
14 them, but I think that the comments that they had contacts, you

15 know, it was natural to be a part of it.

16 Q. So did the Planning Commission members discuss with each
17 other the fact that you had all received contacts?

18 MR. PORTER: I will object to the extent that it invades
19 the attorney-client privilege. As long as that discussion did
20 not take place in a meeting with Attorney Zeman, I have no
21 objection.

22 HEARING OFFICER KNITTLE: Ms. Harvey, do you have a
23 comment?

24 MS. HARVEY: I can break that down.

195

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1 Q. (By Ms. Harvey) In any context outside a meeting at
2 which Ms. Zeman was present did Planning Commission members
3 discuss with each other or mention to each other that there had
4 been contacts from members of the public?

5 A. No, I don't believe so. In fact, we didn't meet or meet
6 together except in those meetings.

7 Q. At the time that you made your recommendation, were you
8 aware that other Planning Commission members had received
9 contacts?

10 A. Yes.

11 Q. How did you know that?

12 MR. PORTER: The same objection.

13 HEARING OFFICER KNITTLE: We will deal with it if it comes
14 up. You can answer the question.

15 THE WITNESS: During those meetings where we were
16 deliberating.

17 MR. PORTER: The same objection. Move to strike.

18 HEARING OFFICER KNITTLE: Ms. Harvey?

19 MS. HARVEY: I am sorry?

20 HEARING OFFICER KNITTLE: He has renewed his objection and
21 moved to strike the last answer. I am wondering if you have a
22 response.

23 MS. HARVEY: I am not sure that -- I am not seeking to get
24 into the protected attorney-client information. However, I am

196

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1 not sure that everything that happens at a meeting of a public
2 body with an attorney present is necessarily protected by the
3 attorney-client privilege. So I think just asking -- that is all
4 the further I intended to go with the line of questioning.

5 HEARING OFFICER KNITTLE: I will deny the motion to strike.

6 Q. (By Ms. Harvey) Did you ever discuss the -- I may have
7 asked you this. I apologize if I did. Did you ever discuss the
8 atmosphere in the community with the other Planning Commission
9 members?

10 MR. PORTER: Objection. Asked and answered.

11 MS. HARVEY: Did you say asked and answered?

12 HEARING OFFICER KNITTLE: Yes, he did.

13 MS. HARVEY: Okay. Then I will withdraw my question.

14 HEARING OFFICER KNITTLE: Okay.

15 MS. HARVEY: I don't have anything else for Mr. Campbell.

16 HEARING OFFICER KNITTLE: Do you have a question? I am
17 having trouble seeing you between the microphones.

18 MR. PORTER: I have one follow-up.

19 RE CROSS EXAMINATION

20 BY MR. PORTER:

21 Q. Did the fact that other Planning Commission members had
22 received unsolicited contacts in any way affect your
23 recommendation?

24 A. No.

197

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1 MS. HARVEY: I would like to note my standing objection.

2 HEARING OFFICER KNITTLE: So noted.

3 MS. HARVEY: I have one more question.

4 HEARING OFFICER KNITTLE: Were you finished, Mr. Porter?

5 MS. HARVEY: Oh, I am sorry.

6 MR. PORTER: I am done.

7 HEARING OFFICER KNITTLE: I am sorry. I didn't hear him
8 say he was finished. It was probably my error.

9 Ms. Harvey?

10 FURTHER REDIRECT EXAMINATION

11 BY MS. HARVEY:

12 Q. Mr. Campbell, we talked a minute ago about whether you
13 were intimidated. Do you think there were other members of the

14 Planning Commission that were intimidated?

15 MR. PORTER: Objection. Beyond the scope. It also calls
16 for conjecture.

17 HEARING OFFICER KNITTLE: Sustained.

18 Q. (By Ms. Harvey) Do you have an opinion, Mr. Campbell, as
19 to whether there were other members of the Planning Commission
20 who were intimidated by the atmosphere in the community?

21 MR. PORTER: That same objection. She is merely calling
22 for conjecture now by asking for the opinion.

23 MS. HARVEY: I am asking his opinion.

24 MR. PORTER: That is the conjecture.

198

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1 HEARING OFFICER KNITTLE: I will sustain that. I don't
2 know if it was beyond the scope. But I am sustaining it on that
3 it calls for him to speculate on what the other Planning
4 Commission members were thinking.

5 MS. HARVEY: I don't have anything else.

6 MR. PORTER: Nothing.

7 HEARING OFFICER KNITTLE: Sir, you can step down. Thank
8 you.

9 THE WITNESS: Thank you.

10 (The witness left the stand.)

11 HEARING OFFICER KNITTLE: Let's take a little -- let's go
12 off the record.

13 (Discussion off the record.)
14 HEARING OFFICER KNITTLE: We will break for ten minutes.
15 (Whereupon a short recess was taken.)
16 HEARING OFFICER KNITTLE: We are back on the record. We
17 are continuing with the testimony for the petitioner.
18 Do you have another witness, Ms. Harvey?
19 MS. HARVEY: I do, Mr. Hearing Officer. I would like to
20 call Tom Smith.
21 HEARING OFFICER KNITTLE: You are Mr. Smith?
22 THE WITNESS: I am him.
23 HEARING OFFICER KNITTLE: Will you swear him in, please.
24 (Whereupon the witness was sworn by the Notary Public.)

199

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1 HEARING OFFICER KNITTLE: Ms. Harvey.
2 T H O M A S G E O R G E S M I T H,
3 having been first duly sworn by the Notary Public, saith as
4 follows:
5 DIRECT EXAMINATION
6 BY MS. HARVEY:
7 Q. Will you state your name for the record, please.
8 A. Thomas George Smith.
9 Q. Mr. Smith, where do you live?
10 A. I live at 1734 Swanwick in Chester, Illinois.
11 Q. Who do you live there with?
12 A. My wife and two boys.

13 Q. How old are your sons?
14 A. They are 17 and today 26. No, 18 and today 26.
15 Q. Happy birthday.
16 A. Or yesterday, I guess. No, not me. Him.
17 (Laughter from the members of the public.)
18 Q. Yes, I know. Happy birthday to him. Are you employed?
19 A. Yes, I am.
20 Q. What do you do?
21 A. I am the administrator for the Monroe Randolph Bi-County
22 Health Department.
23 Q. How long have you held that position?
24 A. A little over nine years.

200

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1 Q. What did you do before you held that position?
2 A. I was the Director of Environmental Health for the
3 Livingston County Public Health Department for 15 years.
4 Q. Do you have a college degree?
5 A. Yes, I have two of them.
6 Q. What are your degrees in?
7 A. I have a Bachelor in Science in biology from the
8 University of Illinois. I have a Master's in public
9 administration from Sangamon State University.
10 Q. Mr. Smith, the period of time that we are going to talk
11 about this afternoon is the period from April of 1998 through

12 October of 1998, which is the period in which Land and Lakes'
13 application for local siting approval was pending in Randolph
14 County. During that period from April to October of 1998, were
15 you a member of the Randolph County Planning Commission?

16 A. Yes, I was.

17 Q. Are you still a member of the Randolph County Planning
18 Commission?

19 A. Yes, I am.

20 Q. Is that an appointed position?

21 A. Yes.

22 Q. When were you appointed to that position?

23 A. Precisely, I can't tell you.

24 Q. Can you tell me a year?

201

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1 A. I can guess. Probably about 1994.

2 Q. So is it fair to say well before this application was
3 filed?

4 A. Correct.

5 Q. Does the Planning Commission meet on a regular basis?

6 A. No. We meet on an as needed basis to consider -- we
7 have considered -- this was the third environmental siting
8 request that we had considered, and that is all we have
9 considered.

10 Q. What was your role in considering this request by Land
11 and Lakes, the siting request?

12 A. Our task was to review the evidence presented at the
13 hearings in relation to the nine very specific criteria that were
14 set forth, I believe, by the state legislature.

15 Q. Did you attend the local hearings in this matter in July
16 of 1998?

17 A. I was hear for both of them, yes, for both days.

18 Q. After that, after those hearings closed, did the
19 Planning Commission meet as a group to discuss its recommendation
20 on this issue?

21 A. Yes. We met, I believe, twice with Counsel.

22 Q. Okay. Does that -- does that, that number of two
23 meetings, exclude the public meeting in which you --

24 A. Yes, that excludes -- those were closed meetings. We

202

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1 were concerned that we had to follow the correct format and tried
2 not to deviate from that.

3 Q. Who attended those two meetings?

4 A. Who attended?

5 Q. Uh-huh.

6 A. You mean on the Planning Commission or the -- the public
7 did not attend.

8 Q. Was there anybody present other than the Planning
9 Commission and your attorney?

10 A. No.

11 Q. And your attorney was Ms. Zeman?

12 A. Pardon?

13 Q. Your attorney was Ms. Zeman, Chris Zeman?

14 A. Correct.

15 Q. During the period from April of 1998 to October of 1998,
16 did you have contacts with any persons about the substance of the
17 landfill application excluding, of course, information that you
18 received at the hearing or that was included in the official
19 record or was part of the written comments?

20 A. I had three contacts, as I recall.

21 Q. Okay.

22 A. The first was with Land and Lakes, and I was there as a
23 representative of the Randolph County Recycling Task Force, and
24 when our attorney, Christine Zeman, brought the fact that -- you

203

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1 know, asked if we had any contacts with either side, I, of
2 course, said, yes, I had. I don't think that they knew that I
3 was a Planning Commission member, and I was not there as a
4 Planning Commission member.

5 Q. Okay.

6 A. And no questions were brought up in that regard.

7 Q. So in your meeting with Land and Lakes regarding
8 recycling, you did not appear as a member of the Planning
9 Commission?

10 A. No. As a matter of fact, they were trying to present

11 their recycling plans to the Task Force.

12 Q. Okay. Tell me a little bit about the Task Force. Who
13 makes up the Task Force? Who is on the Task Force?

14 A. The -- I can tell you who attended the meetings. It was
15 rather a loose confederation of people that were interested in
16 recycling.

17 Q. Okay. Let me back up just a second.

18 A. Okay.

19 Q. Is this an official governmental Task Force?

20 A. I don't believe so.

21 Q. It is more of an ad hoc Task Force?

22 A. Yes.

23 Q. Okay.

24 A. We had -- now I am going to be at a loss for words

204

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1 because I can't remember their names.

2 MR. PORTER: Mr. Knittle, I don't believe a question is
3 pending.

4 MS. HARVEY: All right.

5 Q. (By Ms. Harvey) Who was at the meeting of the Recycling
6 Task Force that you referred to a minute ago?

7 A. I know Mike Springston was.

8 Q. Okay.

9 A. He was the unofficial head, and is now the recycling

10 coordinator. But he was really kind of the coordinator of the
11 Task Force, although we didn't have an election or an
12 appointment, as such.

13 Q. Okay.

14 A. Other than that, I can't recall specifically who was
15 there at that particular meeting.

16 Q. But this was a meeting of an ad hoc group about
17 recycling, and not specifically about this application?

18 A. Precisely.

19 Q. I think you indicated a minute ago that you may have had
20 a couple of other contacts about the landfill?

21 A. I had at least two other phone calls at home.

22 Q. Okay. Did you talk to those callers?

23 A. Yes, I did.

24 Q. What did you say to them?

205

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1 A. I think basically in both cases, because they came
2 fairly close together, either the same day or a couple of days
3 apart, I reminded them that the -- any evidence that we -- I
4 think was in the comment period between the public hearings and
5 the final meeting to present the decision. I reminded them that
6 any information that they wanted to present had to be in writing
7 and had to be filed with the County Clerk's Office, and also that
8 we had to review it in relation to the nine criteria.

9 Q. Did those -- do you know who those two callers were?

10 Did they identify themselves?

11 A. They probably identified themselves, but I couldn't -- I
12 didn't make a log or anything, so I don't remember.

13 Q. You don't have any recollection today who they were?

14 A. No, I do not.

15 Q. Okay. Did they discuss with you the substance of the
16 application or their opinion of the application? Do you know why
17 they were calling?

18 A. Well, they were -- I inferred that they were calling
19 to -- well, I shouldn't.

20 HEARING OFFICER KNITTLE: Yes, Mr. Porter?

21 MR. PORTER: I think the question calls for conjecture. I
22 was going to allow the witness to answer, but then he indicated
23 that he was going to infer what they were saying. So I am going
24 to state the objection. It calls for conjecture.

206

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1 HEARING OFFICER KNITTLE: I will sustain that.

2 MS. HARVEY: I will be happy to rephrase my question.

3 Q. (By Ms. Harvey) The two phone calls that you received at
4 home, Mr. Smith, did either of those callers indicate their
5 position on the landfill application?

6 A. Yes, that they were opposed to it.

7 Q. They were both opposed to it?

8 A. Yes.

9 Q. Okay. Did you receive any phone calls at work about the
10 landfill?
11 A. I don't believe that I did.
12 Q. Okay. Did you get anything in the mail at home or at
13 work about the landfill?
14 A. Yes, I did. I --
15 Q. What --
16 A. -- received a letter.
17 Q. What did you get?
18 A. I am sorry. I received a letter, in opposition to the
19 landfill, at home.
20 Q. Okay. Did you read the letter?
21 A. Yes, I did.
22 Q. What did you do with it?
23 A. I took it to my office and date stamped it.
24 Q. Okay.

207

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1 A. Because I knew I would never remember when I received
2 it.
3 Q. Okay.
4 A. I don't remember right now when I received it.
5 Q. Okay. Did you give it to the County Clerk to put in the
6 record?
7 A. No.
8 Q. Did you discuss that letter with any other members of

9 the Planning Commission?

10 A. Well, as it happens, a copy of that letter was filed
11 with the County Clerk, so that became part of the official
12 record.

13 Q. Okay. Did you have a specific conversation with any of
14 the Planning Commission members about receiving that letter at
15 home?

16 A. I might have mentioned it, but I don't recall.

17 Q. Okay. Is that letter the only piece of mail that you
18 received about the landfill?

19 A. That's correct.

20 Q. Did you receive any political campaign literature that
21 discussed the landfill?

22 A. You have got me.

23 Q. To your recollection did you receive any?

24 A. I couldn't tell you.

208

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1 Q. Okay. Were you invited to a meeting or a rally held by
2 F.O.R.C.E.?

3 A. Yes.

4 Q. How was that invitation extended?

5 A. It was during at least one of the telephone calls that I
6 received at home.

7 Q. Okay. Did you go to that meeting?

8 A. No, I did not.

9 Q. Did anybody approach you personally about the landfill
10 during this time period?

11 A. You mean other than the phone calls?

12 Q. Other than the phone calls or the one mailing?

13 A. Not that I recall.

14 Q. Not in person? No one walked up to you and said, hey, I
15 want to talk about the landfill?

16 A. No.

17 Q. Actually, we had been counseled by Christine that we --

18 MR. PORTER: There is no question pending, and he is about
19 to testify regarding something that is totally under the
20 attorney-client privilege.

21 MS. HARVEY: I can ask him a question about it.

22 Q. (By Ms. Harvey) Mr. Smith, was it your understanding
23 that you should not be having conversations with members of the
24 public about the substance of the landfill application at that

209

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1 time?

2 A. That's correct.

3 Q. Did you ever receive any -- were any of the contacts
4 that we discussed threatening?

5 A. No.

6 Q. Were you aware of the general view in the County as to
7 whether or not the landfill should be sited?

8 MR. PORTER: Objection. Calls for conjecture.

9 MS. HARVEY: I am asking if he was --

10 HEARING OFFICER KNITTLE: I will overrule.

11 Do you understand the question?

12 THE WITNESS: Yes. I guess I would have to qualify that
13 answer, because I am not sure what the general feeling was or
14 even is today. I am in -- if I can explain just briefly.

15 Q. (By Ms. Harvey) Yes, please.

16 A. I am in public health. We deal a lot with statistics
17 with community wide assessments, and there has been no -- any
18 kind of scientific study or sampling of the general feeling of
19 the county. I would be hard-pressed to guess.

20 Q. Okay. I don't want you to guess.

21 A. Thank you.

22 Q. Putting aside whether or not there was a statistical
23 decision on the general view about the landfill in the community,
24 did you have a sense of what the public believed to be the

210

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1 general view? What was the overriding feeling?

2 A. Well --

3 MR. PORTER: I apologize for cutting you off. I object.

4 He just got done saying that he -- in order to come up with that
5 answer he would have to guess. Obviously, a witness is not
6 supposed to guess. He has already answered that question. I

7 guess the objection is asked and answered.

8 HEARING OFFICER KNITTLE: Anything?

9 MS. HARVEY: I just want to know if outside of his caveat
10 that he didn't have a statistical viewpoint of the general view,
11 I wanted to know if he had an opinion or his understanding of
12 what he perceived to be going on. I didn't say it very artfully.

13 MR. PORTER: The same objection.

14 HEARING OFFICER KNITTLE: Well, I will definitely allow him
15 to answer whether or not he had an opinion, or ask whether or not
16 he had an opinion.

17 MS. HARVEY: Okay.

18 Q. (By Ms. Harvey) Mr. Smith, outside of the bounds of what
19 we just discussed, that there is clearly no statistical
20 information on what the general viewpoint in the County was, did
21 you have an opinion on what people perceived to be the general
22 viewpoint?

23 A. I think people in the Sparta area generally feel that
24 they are -- you know, that the landfill is inappropriate. I am

211

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1 not sure it is shared by the majority of the residents of
2 Randolph County.

3 Q. Okay.

4 A. Does that answer your question?

5 Q. Yes, it does. Thank you.

6 A. Okay.

7 Q. Mr. Smith, did the Planning Commission members discuss
8 among themselves the contacts that the individual Commission
9 members had received from the public?

10 MR. PORTER: I am going to object on the grounds of
11 foundation. The only discussions that have been testified to
12 today regarding Planning Commission members took place in the
13 presence of their Counsel. Therefore, I think it invades the
14 attorney-client privilege. Absent --

15 MS. HARVEY: I would indicate again that -- I am sorry.

16 MR. PORTER: Absent some foundation that the communication
17 took place outside of the presence of Counsel, I believe it is
18 objectionable.

19 HEARING OFFICER KNITTLE: Ms. Harvey?

20 MS. HARVEY: I would indicate, as I did previously, that I
21 am not seeking to invade that privilege. However, I don't think
22 that privilege is as broad as saying that anything that happened
23 within the presence of Counsel is protected by attorney-client
24 privilege. Facts, for example, I don't think are protected by --

212

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1 I don't want to ask him about any legal advice that they
2 received. But I don't think just because it occurred at a
3 meeting at which Counsel is present it is automatically
4 protected.

5 HEARING OFFICER KNITTLE: I will overrule to the point that

6 I don't think it is a blanket privilege that would apply to
7 anything that happened, just because the attorney was present.

8 I would advise you, Mr. Porter, if something looks to be
9 coming up that might be attorney-client privilege, to renew your
10 objection.

11 MR. PORTER: I guarantee it.

12 HEARING OFFICER KNITTLE: Ms. Harvey?

13 MS. HARVEY: I am sorry. Could I ask the court reporter to
14 read the question back, please.

15 (Whereupon the requested portion of the record was read
16 back by the Reporter.)

17 THE WITNESS: Yes and no. I believe we discussed that we
18 had received some phone calls, but not the substance.

19 Q. (By Ms. Harvey) Okay. Did --

20 A. Did not discuss -- I don't think we really discussed
21 them. They were not pertinent to our task at hand.

22 Q. Okay. Did you talk about specific phone calls that you
23 had received or specific numbers, specific --

24 A. No.

213

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1 Q. Were you of the opinion at that point that all of the
2 Planning Commission members had received contacts?

3 A. I had a general feeling that they had.

4 Q. Okay. Do you think any of the Planning Commission
5 members were intimidated?

6 MR. PORTER: Objection. That clearly calls for conjecture.

7 MS. HARVEY: I am asking for his opinion.

8 MR. PORTER: The question was do you think any of the
9 Planning Commission members felt intimidated.

10 HEARING OFFICER KNITTLE: Sustained.

11 Q. (By Ms. Harvey) Mr. Smith, do you have an opinion, a
12 personal opinion, on whether or not any of the Planning
13 Commission members were intimidated?

14 A. I don't think any of them felt intimidated.

15 Q. Thank you. Other than the general discussion that you
16 may have all received phone calls or contacts, was there anything
17 more specific in discussing that? I mean, did you talk about any
18 personal contacts or mailings, for example?

19 A. Not to my knowledge. We were careful to restrict our
20 exploration to those nine criteria.

21 Q. Mr. Smith, did you vote to deny this landfill?

22 A. At what point?

23 Q. Okay. I am sorry. When the Planning Commission made
24 its recommendation --

214

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1 A. Its final recommendation?

2 Q. Yes, its final recommendation. Did you believe, for
3 example, that the criterion 8 had been satisfied?

4 MR. PORTER: I am going to object to the extent that I

5 agree that it is admissable and relevant as to what the body did
6 as a total in making a recommendation to the County Board. As a
7 matter of fact, it is already a matter of public record. But
8 what an individual member voted as to whether the recommendation
9 should be made, I don't believe that is relevant or admissable.

10 MS. HARVEY: I believe in the past that Mr. Porter has
11 argued that it is certainly relevant as to the fact that two --
12 basically two County Board members would have been enough. In
13 other words, it would be possible to discount one vote. So I
14 think it is certainly within the realm of possibility to explore
15 Mr. Smith's opinion on that. It is public record.

16 MR. PORTER: We are mixing apples and oranges, Mr. Knittle.
17 Again, she is referring to the County Board and whether or not
18 the majority received contacts to the degree that Mr. Stork did.
19 That is a completely different issue than whether or not the
20 Planning Commission members voted one way or the other. I don't
21 see that that has any relevancy whatsoever.

22 HEARING OFFICER KNITTLE: Can you read back the question?
23 (Whereupon the requested portion of the record was read
24 back by the Reporter.)

215

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1 HEARING OFFICER KNITTLE: Why don't you rephrase it. I am
2 not quite sure how to rule on that, to be perfectly honest with
3 you.

4 MS. HARVEY: I would be happy to rephrase the question.

5 Maybe I should make it a little less objectionable.

6 Q. (By Ms. Harvey) Mr. Smith, at the meeting in which the
7 Planning Commission made its final recommendation in September of
8 1998, did you personally -- did you vote -- strike that. I will
9 try this one more time.

10 HEARING OFFICER KNITTLE: Take your time.

11 Q. (By Ms. Harvey) At the Planning Commission meeting when
12 you made your final recommendation as a Commission, did you
13 individually find that criterion 8, regarding the County Solid
14 Waste Management Plan, had been satisfied?

15 HEARING OFFICER KNITTLE: Mr. Porter?

16 MR. PORTER: I may have an objection.

17 (Laughter by the members of the public.)

18 HEARING OFFICER KNITTLE: When are you going to let us know
19 that?

20 (Laughter by the members of the public.)

21 MR. PORTER: Depending on what the answer is.

22 (Laughter by the members of the public.)

23 HEARING OFFICER KNITTLE: Well, you can always move to
24 strike, as I am sure you know.

216

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1 MR. PORTER: I believe it is objectionable. The action as
2 to -- the action of that committee in toto is relevant, and that
3 action was that they recommended a finding that the criterion 8

4 was not met. How each individual committee member voted, I do
5 not believe is relevant, and that is my objection.

6 HEARING OFFICER KNITTLE: Anything further, Ms. Harvey?

7 MS. HARVEY: I still think it is relevant as to how the
8 process worked. It was a public process.

9 HEARING OFFICER KNITTLE: But how was that relevant -- how
10 is what his decision was on this criteria relevant to the issue
11 of fundamental fairness?

12 MS. HARVEY: Well, it really kind of goes more, to be quite
13 honest with you, to the weight given to the recommendation by the
14 County Board, and I think Mr. Porter has raised that to some
15 degree, earlier in this proceeding, not today.

16 HEARING OFFICER KNITTLE: The weight --

17 MS. HARVEY: Whether or not --

18 HEARING OFFICER KNITTLE: But how is the weight of what the
19 Planning Commission gave to the County Board relevant to
20 fundamental fairness?

21 MS. HARVEY: Well, Mr. Porter is probably going to argue
22 that at some point in this proceeding that what happened to the
23 County -- or the Planning Commission members was irrelevant. And
24 I don't think he can have it both ways. So it is either --

217

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1 HEARING OFFICER KNITTLE: You are saying it is relevant
2 because the County Board relied upon it?

3 MS. HARVEY: And in the context of this particular

4 criterion specifically adopted the Planning Commission's finding.

5 HEARING OFFICER KNITTLE: So it would be fundamentally
6 unfair how?

7 MS. HARVEY: If that decision was based upon fundamentally
8 unfair contact.

9 HEARING OFFICER KNITTLE: Okay. I am not trying to argue
10 with you. I am just trying to find out what is going on. But if
11 what you said is true, how is what he thought fundamentally
12 unfair, or how does that lead to fundamental unfairness?

13 MS. HARVEY: I am only trying to explore it. That's the
14 purpose of this hearing. I don't know.

15 HEARING OFFICER KNITTLE: Mr. Porter?

16 MR. PORTER: I believe -- I think you understand my
17 argument. I can add one more thing. There has been no
18 foundation that any -- the two phone calls or the -- I think
19 there was a chance mailing, that that in any way affected his
20 recommendation. Absent that foundation, at a minimum, it is
21 completely irrelevant.

22 HEARING OFFICER KNITTLE: Okay. I am not sure I would go
23 that far. But here is what I am going to do. I am going to
24 sustain his objection, and if you want to make an offer of proof

218

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1 I would allow you to do that on this particular issue.

2 MS. HARVEY: No thank you. I think what is in the public

3 record is sufficient.

4 HEARING OFFICER KNITTLE: Okay.

5 MR. KELLEY: Mr. Knittle, the gentleman who was just here
6 asked if he could speak to you about the courthouse being locked
7 up immediately and us being held here overnight.

8 (Laughter from the members of the public.)

9 HEARING OFFICER KNITTLE: We don't want that.

10 MR. KELLEY: So I hate to interrupt you, but I thought you
11 might want to know something about this.

12 COURTHOUSE EMPLOYEE: We are just going to leave the front
13 doors of the courthouse open. The other doors will be all
14 secured. If anybody needs to go in and out they can use the
15 front door.

16 HEARING OFFICER KNITTLE: Are we then able to stay past
17 4:30? Is that going to be a problem?

18 COURTHOUSE EMPLOYEE: You can stay as long as you please
19 tonight.

20 HEARING OFFICER KNITTLE: Okay. Well, I don't think we are
21 going to be late into the night or anything. We were planning
22 and we have talked about this off the record, and I think we
23 ought to convey this to the members of the public that we are
24 planning on trying to wrap up the two final witnesses and getting

219

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1 some public comment in tonight and possibly staying until about
2 6:00, for what it is worth.

3 Thank you, sir. We appreciate it.

4 HEARING OFFICER KNITTLE: Ms. Harvey, you are still on the
5 clock.

6 MS. HARVEY: I don't have any other questions for Mr.
7 Smith.

8 HEARING OFFICER KNITTLE: Mr. Porter?

9 MR. PORTER: Thank you.

10 CROSS EXAMINATION

11 BY MR. PORTER:

12 Q. Isn't it true that the duty of the Planning Commission
13 was to make a recommendation to the Board?

14 A. That's correct.

15 Q. The Board had the final decision making authority; is
16 that right?

17 A. That's correct.

18 Q. Did you review the application itself?

19 MS. HARVEY: I would just like to note my standing
20 objection for the record.

21 MR. PORTER: I will withdraw the question.

22 Q. (By Mr. Porter) If I understand correctly, you only
23 received two telephone calls; is that right?

24 A. To the best of my knowledge.

220

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1 Q. And you informed those callers that you would not

2 discuss the issue; is that correct?

3 A. Well, I listened to what they had to say, but I didn't
4 discuss how I felt about it.

5 Q. And what they had to say, was that any different than
6 anything you had heard during the hearing process?

7 A. No, it was not.

8 Q. Did you ever discuss your impressions of the evidence
9 with those two callers?

10 A. No.

11 Q. You never informed those two callers whether or not you
12 believed the nine criteria were met, did you?

13 A. No.

14 Q. You never informed those two callers of what you thought
15 your recommendation might be, did you?

16 A. No.

17 Q. The one mailing that you received, is that from a Cecil
18 Compton?

19 A. I believe that is correct.

20 Q. And it is your understanding that mailing was made part
21 of the public record; is that right?

22 A. Yes. That same letter was, yes.

23 Q. You have mentioned a recycling meeting. If I understand
24 correctly, the applicant, Land and Lakes, was present at that

221

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1 meeting; is that correct?

2 A. Yes, they were invited to that meeting.

3 Q. And you were there and they were there; is that right?

4 A. That's correct.

5 Q. Now, did you consider any of the telephone calls, the
6 one -- well, strike that.

7 Did you consider the telephone calls or that meeting
8 evidence in the 39.2 hearing?

9 A. No. They did not address any of the nine criteria.
10 That's all we were there to consider.

11 Q. Now, you did consider the letter of Cecil Compton
12 because that was part of the public record, correct?

13 A. That's right.

14 Q. Did anything happen to you that you felt was an attempt
15 to pressure, influence or coerce your recommendation to the
16 Board?

17 A. No.

18 Q. Did you base your opinion on anything other than the
19 information at the public hearing or the written comments
20 received?

21 A. No.

22 MR. PORTER: Nothing further.

23 HEARING OFFICER KNITTLE: Ms. Harvey?

24 MS. HARVEY: I don't have any redirect.

1 HEARING OFFICER KNITTLE: Thank you, sir.

2 THE WITNESS: Thank you.

3 (The witness left the stand.)

4 HEARING OFFICER KNITTLE: All right. Your next witness,
5 Ms. Harvey?

6 MS. HARVEY: For my next witness I would like to call Alan
7 Weber. I hope Mr. Weber is still waiting in the hall.

8 HEARING OFFICER KNITTLE: Please have a seat here, sir.
9 Can you state your name for the reporter.

10 THE WITNESS: Alan Weber.

11 HEARING OFFICER KNITTLE: Can you call your next witness.

12 MS. HARVEY: I would like to call Mr. Alan Weber.

13 HEARING OFFICER KNITTLE: Could you swear him in, please.

14 (Whereupon the witness was sworn by the Notary Public.)

15 HEARING OFFICER KNITTLE: I was informed that Mr. Porter
16 had an objection to this testimony.

17 MR. PORTER: I have the same objection to Mr. Weber's
18 testimony that I had to Mr. Markley's testimony. This witness
19 was not disclosed prior to today's date, though his identity was
20 certainly discoverable much before today's date. The only
21 disclosure was that unknown members of F.O.R.C.E. may be called
22 to testify. We do not believe that is sufficient. We do not
23 believe the County should have been required to attempt to
24 determine who these members of F.O.R.C.E. were and contact all of

1 those members in order to take their depositions. I believe that
2 by approaching it in this way we are essentially having a trial
3 by ambush.

4 HEARING OFFICER KNITTLE: Ms. Harvey?

5 MS. HARVEY: Mr. Knittle, as I stated this morning in
6 regards to Mr. Markley, I do think that it was disclosed that we
7 might call members of F.O.R.C.E. The purpose of this hearing is
8 to explore the fundamental fairness issues. This is not a trial,
9 actually. It is a hearing on fundamental fairness issues to put
10 in the record. There is not a decision made based solely here at
11 this proceeding. I think, as with Mr. Markley, I identified that
12 I might call witnesses who are related with F.O.R.C.E., and
13 that's the purpose of this hearing.

14 HEARING OFFICER KNITTLE: Okay. Anything further, Mr.
15 Porter?

16 MR. PORTER: I have not heard what the anticipated
17 testimony of this witness is going to be as to whether or not he
18 had any specific ex parte communications. Accordingly, I think
19 absent some voir dire on those issues, his testimony is
20 irrelevant.

21 HEARING OFFICER KNITTLE: Anything further?

22 MS. HARVEY: No.

23 HEARING OFFICER KNITTLE: I am going to overrule the
24 objection, as I did with the previous witness. But I will let

1 you make that argument to the Board if you think it important
2 enough.

3 Ms. Harvey, can you hold on a second?

4 MS. HARVEY: Yes.

5 HEARING OFFICER KNITTLE: Sir, are you okay?

6 MEMBER OF THE PUBLIC: I am fine.

7 HEARING OFFICER KNITTLE: Are you sure? We can hold up for
8 a little bit if you want.

9 MEMBER OF THE PUBLIC: That is all right.

10 HEARING OFFICER KNITTLE: Okay. Ms. Harvey, your witness.

11 MS. HARVEY: Thank you, Mr. Knittle. I would like to call
12 Alan Weber. Did I say that already?

13 HEARING OFFICER KNITTLE: Yes, I think you did.

14 MS. HARVEY: Has he been sworn?

15 HEARING OFFICER KNITTLE: He has been sworn.

16 MS. HARVEY: Okay.

17 A L A N W E B E R,

18 having been first duly sworn by the Notary Public, saith as
19 follows:

20 DIRECT EXAMINATION

21 BY MS. HARVEY:

22 Q. Would you state your name for the record, please.

23 A. I thought I did.

24 Q. I think you did. I just want to identify it right here

1 in this part of the transcript. Please state your name.

2 A. My name is Alan Weber.

3 Q. Mr. Weber, where do you live?

4 A. I live in Sparta.

5 Q. What is your address?

6 A. 7929 State Route 4.

7 Q. Who do you live there with?

8 A. My wife.

9 Q. Do you have children?

10 A. Yes.

11 Q. Are they grown?

12 A. Yes.

13 Q. Do they live at your home?

14 A. Some of them.

15 Q. Mr. Weber, are you employed?

16 A. Yes.

17 Q. What do you do?

18 A. I am self-employed.

19 Q. What do you do?

20 A. Farm.

21 Q. Okay. The period of time that we are going to be

22 asking -- that I am going to be asking questions about today is

23 April of 1998 through October of 1998, which was the time period

24 during which Land and Lakes' application for local siting

1 approval --

2 A. Excuse me. What was the second part of the date?

3 Q. April of 1998 through October of 1998.

4 A. Okay.

5 Q. While the application was pending before the Randolph
6 County Commissioners. When did you become aware of Land and
7 Lakes' application for siting approval?

8 A. Probably a few weeks before the public hearings.

9 Q. Did you attend those public hearings?

10 A. Yes.

11 Q. Those were the hearings that were held in July?

12 A. Yes.

13 Q. Did you give comment at those public hearings?

14 A. Yes.

15 Q. And what was the substance of your comments?

16 A. I don't know. It should be in the record.

17 Q. Did you take a position on whether or not the
18 application should be granted?

19 A. I began to form an opinion at that time.

20 Q. What was that opinion?

21 A. That the landfill was not suitable for our area.

22 Q. Okay. Did you become involved with a group called
23 F.O.R.C.E.?

24 A. Yes.

1 Q. Do you know when F.O.R.C.E. was formed?
2 A. F.O.R.C.E. evolved.
3 Q. When did F.O.R.C.E. evolve?
4 A. During the summer of 1998.
5 Q. What did it evolve from?
6 A. What did it evolve from?
7 Q. Uh-huh.
8 A. The citizens of Randolph County.
9 Q. Did that start prior to the hearings?
10 A. No.
11 Q. Okay. So it started after the hearings?
12 A. In the summer.
13 Q. Did it start during the public comment period that
14 happened after the hearings?
15 A. Yes. It didn't start. It evolved.
16 Q. Okay. Is F.O.R.C.E. a formal organization?
17 A. It is an informal grass-roots organization. If you are
18 familiar with a grass roots organization, that's what we are.
19 Q. Okay. So it is not a registered non-profit
20 organization?
21 A. No.
22 Q. Does it have officers?
23 A. Yes, as --
24 Q. Who are the officers?

1 A. -- an identification of a chain of some form of command,
2 so to speak.

3 Q. Are you one of those officers?

4 A. Yes.

5 Q. What is your position?

6 A. I am the president.

7 Q. Were you president in the summer of 1998?

8 A. In the summer of 1998?

9 Q. Uh-huh.

10 A. That's when it evolved from the citizens of Randolph
11 County; I became president.

12 Q. Are you currently the president?

13 A. Yes.

14 Q. Have you been president the whole time?

15 A. Yes.

16 Q. Who else served as an officer or in the chain of
17 leadership, if you will?

18 A. I think that you know that Ken Markley was vice
19 president.

20 Q. Yes.

21 A. The secretary/treasurer position has bounced around to
22 whoever was available to do it.

23 Q. Do you remember who the secretary -- is the
24 secretary/treasurer one position?

1 A. It has been both.

2 Q. In the summer of 1998, or during this period of time
3 when this landfill application was pending, do you know who the
4 secretary was?

5 A. Yes.

6 Q. Who was that?

7 A. Mary Bean.

8 Q. Is Mary -- is Mrs. Bean still the secretary of
9 F.O.R.C.E.?

10 A. Mary Bean is not even actively involved with F.O.R.C.E.
11 at this time.

12 Q. Okay. Do you know who the treasurer of F.O.R.C.E. was
13 in this period in 1998?

14 A. Yes.

15 Q. Who was that?

16 A. It was Marcella Slavens, who has had a stroke. If you
17 would like to call her, I don't believe she is able to testify.

18 Q. I wouldn't want to do that, no, sir. Any other
19 officers?

20 A. No.

21 Q. Okay. How do you become a member of F.O.R.C.E.?

22 A. You just show up.

23 Q. Show up at what?

24 A. To the meeting.

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1 Q. How often do you have meetings?

2 A. There is no schedule.

3 Q. Okay.

4 A. We met fairly regularly during the period that you
5 mentioned.

6 Q. Where did you meet at?

7 A. Public places.

8 Q. Give me an example.

9 A. The Rotary's -- the Sparta Rotary's Pavilion in Sparta.

10 Q. How did you publicize those meetings?

11 A. Mostly word of mouth.

12 Q. What happened at those meetings?

13 A. What happened? A lot of times we had barbecues, fish
14 fries. They were mostly what we call informational meetings.

15 Q. Okay. Did you do fund-raising at those meetings as
16 well?

17 A. We had a donation bucket.

18 Q. Were you aware of the three County Board members who
19 were the members at the time that this applications was pending?

20 A. I don't know what your question means. Am I aware of
21 them?

22 Q. Do you know who they were?

23 A. At that time?

24 Q. Yes?

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1 A. Yes.

2 Q. Who were they?

3 A. Ron Stork and Terry Moore and Clem Esker.

4 Q. Did any of those three County Board members ever come to
5 a F.O.R.C.E. meeting?

6 A. I don't believe that they ever did.

7 Q. Were you aware of the Planning Commission members? Did
8 you know who they were?

9 A. I did, yes.

10 Q. Can you tell me who they were?

11 A. Marvin Campbell and Mike Smith and Mike Riebeling and
12 the lady, Mrs. --

13 Q. Mrs. Rinne?

14 A. Rinne.

15 Q. Did any of those four people come to any of the
16 F.O.R.C.E. meetings, to your knowledge?

17 A. No, they never did.

18 Q. At those F.O.R.C.E. meetings did you discuss, as a
19 group, activities to undertake in terms of getting your message
20 out?

21 A. Such as what?

22 Q. Such as letters to the editor, telephone calls to
23 people, personal contacts?

24 A. There was occasions when we were -- different ones told

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1 us that phone calls, for instance, were something that maybe we
2 should do. We never really got -- advised anybody to do that,
3 because we -- by the time that we were evolving into an
4 organization that had some substance to it, we were beginning to
5 understand the rules that had been placed before us. So we
6 didn't pursue that particular option.

7 Q. Okay. What options did you choose to pursue?

8 A. Basically public awareness.

9 Q. How did you raise public awareness?

10 A. By just making our presence known.

11 Q. Did you come to County Board meetings?

12 A. Yes.

13 Q. Did you come to the Planning Commission meeting?

14 A. I didn't know they had meetings.

15 Q. The Planning Commission meeting at which they made their
16 recommendation? I am sorry?

17 A. They made the recommendation to the County Board?

18 Q. They adopted a formal recommendation in September of
19 1998. Were you at that meeting?

20 A. Yes.

21 Q. Any other ways that you raised public awareness?

22 A. Well, I am sure that you have -- I guess I am not
23 supposed to ask the questions. We did parades. We had a lot of
24 barbecues.

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1 Q. How much money would you raise at a barbecue?
2 A. Oh, I don't know. It varied, depending on who came.
3 Q. Can you give me a range?
4 A. Oh, \$50.00, \$150.00.
5 Q. What did you do with the money?
6 A. We used it for advertisement. We did run some ads in
7 the papers stating our policy as part of the public awareness.
8 Q. Did you ever do any mass mailings?
9 A. No.
10 Q. Did you ever contact other political candidates or
11 political candidates?
12 A. Most of the political candidates contacted us.
13 Q. Okay. Who were some of the candidates that contacted
14 you?
15 A. Candidates that contacted us?
16 Q. Yes.
17 A. Well, Bruce Brown was one of them.
18 Q. Am I correct that he was candidate for State
19 Representative?
20 A. Yes.
21 Q. Who else?
22 A. Probably most all of the candidates in this district,
23 whether they were congressional or whether they were whatever.

24 Some of them we felt that they didn't have any position or place

234

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1 to play, part to play in what we had. So we just told them that
2 we didn't really feel like that they were what we were looking
3 for.

4 Q. Why would you believe that -- what would make it so that
5 you would believe that they didn't have a part to play in what
6 you were doing?

7 A. Because they were using us.

8 Q. In what way?

9 A. Because we had an organization that was reaching the
10 community with something that was bringing interest to the people
11 in their participation in how things took place. They saw that
12 as a possible situation that would be either positive -- would be
13 positive for their campaign.

14 Q. Okay. Do you remember the political candidates whose
15 participation you were not interested in, their names?

16 MR. PORTER: I am going to object. I have been trying to
17 hold my tongue for quite some time. I don't see how any of this
18 is relevant to the fundamental fairness procedures employed by
19 Randolph County. How is the politicians that contacted some
20 group named F.O.R.C.E. at all relevant? That's my objection.

21 HEARING OFFICER KNITTLE: Ms. Harvey, can you tell us the
22 relevance.

23 MS. HARVEY: I am trying to explore a little bit the

24 fundamental fairness aspect. I can end this particular line of

235

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1 questioning right now, if you will allow me just to finish the
2 question who it was. I am only trying to explore if there was
3 anybody who was running for office at that point who was also
4 potentially a decision-maker.

5 HEARING OFFICER KNITTLE: Okay. I will allow this last
6 question.

7 Q. (By Ms. Harvey) I am sorry. I think my question, Mr.
8 Weber, was do you remember the names of the people whose
9 participation -- the candidates whose participation you were not
10 interested in, that you thought were using you as a group?

11 A. That we thought were using us?

12 Q. Uh-huh. Who were those candidates?

13 A. Well, I don't remember.

14 Q. Okay. What was the purpose -- what was F.O.R.C.E.'s
15 purpose in raising public awareness?

16 A. An issue was presented by your company that you are
17 employed by that has far-reaching consequences to the people in
18 our county. And the way that it had been handled up to that
19 time, the public was not aware of the magnitude of what this was.

20 Q. And so the point in raising public awareness was what?

21 A. I think I just said.

22 Q. What affect did you hope to have by raising public

23 awareness?

24 A. Public awareness is to make people aware.

236

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1 Q. Did you have a desired result for raising public
2 awareness?

3 A. You are asking the same question.

4 Q. I don't think you have answered my question.

5 MR. PORTER: Actually, I agree. It is asked and answered.
6 That's my objection.

7 HEARING OFFICER KNITTLE: Overruled. Sir, if you can
8 answer the question as put to you, I suggest that you do so.

9 THE WITNESS: Ask the question again.

10 HEARING OFFICER KNITTLE: Do you want it read back, Ms.
11 Harvey?

12 MS. HARVEY: No, I would be happy to ask it again.

13 Q. (By Ms. Harvey) Did F.O.R.C.E. have a desired result
14 that they hoped to accomplish as a result of raising public
15 awareness?

16 A. Public awareness is to -- for the public to be aware of
17 what the particular issue is.

18 Q. Did you hope to have a particular impact on the
19 decision-makers on this application?

20 A. The decision-makers are their own people. I mean, they
21 are their own person. We were dealing with the awareness of the
22 people. A newspaper makes -- presents information to the people

23 that they are aware of it. I don't know that -- what is wrong
24 with that?

237

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1 Q. Mr. Weber, did you personally make any phone calls to
2 either the County Board members or the Planning Commission
3 members?

4 A. I made one phone call to Ron Stork at the very end of
5 the hearing process.

6 Q. Uh-huh.

7 A. And I will make this very clear. For one reason.
8 Because the Counsel for Land and Lakes, to my knowledge, had been
9 bouncing the hearing date around and nobody at this courthouse
10 could answer a question about when the hearing was. So I called
11 Ron to ask him when is the hearing date, period.

12 Q. By the hearing date you mean the local hearings that
13 were held in July?

14 A. No, I mean the final decision to be made.

15 Q. The County Board meeting at which the final decision was
16 to be made?

17 A. That's correct.

18 Q. What was the basis of your opinion that it was Counsel
19 for Land and Lakes that was changing that date?

20 A. Why was my opinion of that?

21 Q. Uh-huh?

22 A. Because it had been publicized that the meetings would
23 be held at a certain time and they were postponed.

24 Q. Do you have any knowledge that they were postponed

238

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1 because of Land and Lakes?

2 A. I believe that is what the common -- I don't think that
3 you came and told us that you did that. I think that the common
4 knowledge out on the street had something to do with that, not
5 necessarily anything that we cooked up.

6 Q. Other than the phone call that you just referred to, to
7 Mr. Stork, did you make any other phone calls to the Planning
8 Commission members or the County Board members?

9 A. No, I did not.

10 Q. Did you ever talk to any of them personally about the
11 landfill application?

12 A. About the application?

13 Q. Uh-huh.

14 A. No.

15 Q. Did you ever send them anything in the mail?

16 A. No.

17 Q. Mr. Weber, are you related to Jan Weber?

18 A. She is my mother.

19 Q. Mr. Weber, was -- did F.O.R.C.E. have an attorney
20 advising it during this period from April to October of 1998?

21 A. No.

22 MS. HARVEY: Give me just a second, Mr. Knittle.

23 HEARING OFFICER KNITTLE: Let's go off.

24 (Whereupon a short recess was taken.)

239

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1 HEARING OFFICER KNITTLE: Back on the record.

2 MS. HARVEY: I think I just have a couple more questions
3 for Mr. Weber.

4 Q. (By Ms. Harvey) Mr. Weber, did you attend a meeting of
5 the County Board that was held in August of 1998, a regularly
6 scheduled meeting?

7 A. I am sure that I did, but I am sure that there was more
8 than one, so I don't know which one you are talking about.

9 Q. Okay. Let's do it more generally. In the time period
10 after the close of the public hearings, that would be July of
11 1998, until the time that the County Board made the decision on
12 October 19th, 1998, did you regularly attend County Board
13 meetings?

14 A. I don't think it was regular. It was -- I don't really
15 know how many I attended. I did attend some.

16 Q. At any of the times you attended a County Board meeting,
17 were you given an opportunity to speak?

18 A. Yes, I was.

19 Q. How many times?

20 A. Once I remember for sure. I think maybe twice.

21 Q. What did you say to the County Board when you were given
22 that opportunity?

23 A. We stated that we didn't -- we were opposed to the
24 landfill and didn't ask them to do anything.

240

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1 MS. HARVEY: I don't have anything else.

2 HEARING OFFICER KNITTLE: Mr. Porter.

3 MR. PORTER: Very briefly.

4 CROSS EXAMINATION

5 BY MR. PORTER:

6 Q. The group F.O.R.C.E. never entered an appearance in the
7 actual County Board hearings; isn't that right?

8 A. That's right.

9 Q. So the group F.O.R.C.E. was never a party to that
10 hearing; isn't that correct?

11 A. That's correct.

12 Q. The group F.O.R.C.E. did not advocate making calls to
13 Board members or Committee members; is that right?

14 A. We basically did the opposite of that. We felt that was
15 not in the best interest, and I stated earlier that when these
16 types of things were brought to us and maybe this is what we
17 should do, and we were beginning to understand the rules that we
18 were to operate by, and we felt that we didn't like it, I can
19 state that, but we did discourage the people from doing that
20 because there were some that wanted to do that, and we

21 discouraged them from doing it.

22 Q. And in the one telephone call that you made to Mr.
23 Stork, you did not discuss the substance of the application with
24 him at that time; is that right?

241

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1 A. Did not say anything about it. We knew -- the only
2 reason that he was contacted was because the other officials in
3 this county courthouse here did not have a clue what was going
4 on.

5 Q. I understand. The only thing you asked him was when is
6 the hearing date and he told you the date, correct?

7 A. That's it.

8 MR. PORTER: Nothing further.

9 HEARING OFFICER KNITTLE: Ms. Harvey?

10 MS. HARVEY: I don't have any redirect, Mr. Knittle.

11 HEARING OFFICER KNITTLE: Sir, thank you. You may step
12 down.

13 THE WITNESS: Thank you.

14 (The witness left the stand.)

15 HEARING OFFICER KNITTLE: Do you need some time, Ms.
16 Harvey?

17 MS. HARVEY: Mr. Knittle, at this time Land and Lakes does
18 not have any additional witnesses to call. However, we had, I
19 believe as we discussed earlier, discussed the possibility of

20 calling a couple of other members of F.O.R.C.E., who, it is my
21 understanding, are not presented today. I would like to reserve
22 the right to call them tomorrow if they come. But other than
23 that, we don't have any additional witnesses.

24 HEARING OFFICER KNITTLE: Okay. Mr. Porter, do you have an

242

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1 objection to her reserving that right?

2 MR. PORTER: Yes. We have known of this hearing date for
3 quite some time. I think that they could have been subpoenaed if
4 they needed to here today. They were not subpoenaed to testify
5 today. I object.

6 HEARING OFFICER KNITTLE: Okay. I am going to overrule
7 that objection. It is past the notice time of the hearing, so
8 technically the hearing could be over and we could just proceed
9 tomorrow at 9:00 with your case-in-chief. I do want to get some
10 public comments in, though. So we are going to do that. I think
11 we would be doing this regardless at this point.

12 Did you have a desire to call a witness today, Mr. Porter?

13 MR. PORTER: I do not.

14 HEARING OFFICER KNITTLE: Okay. Why don't we just not
15 close your case-in-chief, then, and do some public comments.

16 MS. HARVEY: Okay. That's what I was going to --

17 HEARING OFFICER KNITTLE: But the objection is noted for
18 the record and can be taken up with the Board.

19 All right. We are going to listen and take some public

20 comments here. I am going to ask whoever wants to provide a
21 public comment to raise their hand and come on up and sit in this
22 chair and say what you have got to say. Bear in mind we are
23 going to swear you in and expose you to some limited
24 cross-examination from the parties, if they so desire.

243

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1 Does anyone wish to provide public comment at this point?

2 I see someone in the back. Sir, you can come on up.

3 MS. HARVEY: Mr. Knittle, I just want to -- I am sorry.

4 For the record, I just want to re-raise my request to have public
5 comment limited to the three issues that we believe are relevant
6 before the Board, for the record.

7 HEARING OFFICER KNITTLE: Okay. That is noted for the
8 record. I am going to read again what the Board thinks public
9 comment can entail, as soon as I find it.

10 This is the form -- this is oral public comment, and under
11 103.203 the Board allows the Hearing Officer to permit any person
12 to offer reasonable oral testimony, whether or not a party to the
13 proceedings. I think there is -- like I said, it has to be
14 reasonable, and I understand your point, that in order to be
15 relevant to the proceedings it has to touch on one of those three
16 issues.

17 I agree to a certain extent, but I am going to allow some
18 leeway for the public to voice their opinion, because it is very

19 important for the Illinois Pollution Control Board to hear what
20 the public in the area that is affected has to say. That's why
21 we want to have these public hearings, and that is why we want to
22 hear what you have to say.

23 I do want to caution everybody that the only issues before
24 the Board are what Ms. Harvey has pointed out. And those are,

244

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1 Ms. Harvey?

2 MS. HARVEY: Fundamental fairness of the proceedings and
3 the County Board's decisions on criteria 2 and 8.

4 HEARING OFFICER KNITTLE: Right. So that is what the Board
5 is going to be deciding. Anything else that you want to say is
6 not really relevant. As I said, some of these issues are less
7 well-defined than others, and I am going to allow reasonable oral
8 testimony. But if I think you are getting too far afield I am
9 sure Ms. Harvey will jump in and if she doesn't I will end it on
10 my own.

11 Sir, your name, please.

12 RANDY BERTETTO: Randy Bertetto, B-E-R-T-E-T-T-O.

13 HEARING OFFICER KNITTLE: Could you swear him in.

14 (Whereupon the witness was sworn by the Notary Public.)

15 HEARING OFFICER KNITTLE: Mr. Bertetto, it is your
16 opportunity to speak your piece.

17 RANDY BERTETTO: I think basically what I would like to
18 address is I think it would be the criteria 8, the solid waste --

19 the Randolph County Solid Waste Management Plan. I am very aware
20 of the fact that this is a county issue. The siting application
21 is in the county, but I think the community that it probably
22 impacts the most is Sparta. I am presently a city commissioner
23 in Sparta. There is not many weeks that go by that I don't get
24 calls from people that are concerned, people that are opposed to

245

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1 this landfill. Very few calls have I had that anyone is in favor
2 of it. This mile and a half issue seems to -- you know, is a
3 very apparent threat to our community. It is a concern to us.

4 Recently, probably in the last six months, there has been
5 property south of Sparta that has annexed that has even put the
6 city limits of Sparta closer to this siting proposal than what it
7 was when this thing originally started. So basically I am here
8 to convey the concern of the citizens of Sparta that has
9 contacted myself. And I would also like to say that I am not
10 necessarily here to represent everyone's opinion on the city
11 council of Sparta, but this is an opinion that I bring based on
12 the input from the citizens that I have been contacted by.

13 HEARING OFFICER KNITTLE: Is that it, sir?

14 RANDY BERTETTO: Pretty much it.

15 HEARING OFFICER KNITTLE: Thank you very much. Anything,
16 Ms. Harvey?

17 MS. HARVEY: No.

18 HEARING OFFICER KNITTLE: Mr. Porter?

19 MR. PORTER: Yes.

20 DIRECT EXAMINATION

21 BY MR. PORTER:

22 Q. How close are the city limits now to the proposed
23 landfill, if you know?

24 A. Within a half mile.

246

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1 MR. PORTER: Nothing further.

2 HEARING OFFICER KNITTLE: Anything, Ms. Harvey?

3 MS. HARVEY: No thank you.

4 HEARING OFFICER KNITTLE: Thank you, sir. You can step
5 down.

6 (The witness left the stand.)

7 HEARING OFFICER KNITTLE: Is there anybody else who wishes
8 to provide public comment?

9 Okay. Why don't we get the gentleman up front, and then I
10 will get you, sir, in the back.

11 ROBERT MOFFAT: I don't have anything to do with the
12 fairness of the hearing, but --

13 HEARING OFFICER KNITTLE: Let's get you by the mic and get
14 your name before we get going. That way everybody can hear.

15 ROBERT MOFFAT: Robert Moffat, M-O-F-F-A-T.

16 HEARING OFFICER KNITTLE: Can you swear him in, please.

17 (Whereupon the witness was sworn by the Notary Public.)

18 HEARING OFFICER KNITTLE: Sir, you can provide your
19 comment.

20 ROBERT MOFFAT: I really have a letter that I have written.
21 I have got 40 years of public service, 20 years -- eight years
22 elected office and 12 years on boards.

23 My letter goes, today has been a learning experience. It
24 was news to me that you could not express your opinion on a

247

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1 public matter to an elected official without it becoming a
2 possible criminal offense. Learning experience or not, it all
3 boils down to the fact that the proposed site is within one and a
4 half miles of the corporate limits of Sparta, hence, does not
5 meet all the criteria required.

6 In addition, this is a site adjacent to our public potable
7 water source supply in Sparta and adjacent rural water district
8 buying potable water from Sparta. There is also a possibility
9 that this could contaminate groundwater sources supplying nearby
10 farm wells and the deep wells from which Steeleville gets its
11 potable water.

12 With the coal mines in Southern Illinois closing, Sparta's
13 future has to be as a residential and shopping center. One
14 hundred or more 18-wheelers in and out of Sparta daily bringing
15 material to a mega-landfill does not add to the allure of the
16 area for a residential and shopping center.

17 Thanks for your consideration of these comments and your
18 final decision, Robert A. Moffat.

19 HEARING OFFICER KNITTLE: Thank you, sir. Are you wanting
20 to submit this to the Board, as well?

21 ROBERT MOFFAT: Yes.

22 HEARING OFFICER KNITTLE: I will take this as public --
23 sir, can you sit back down?

24 ROBERT MOFFAT: Yes.

248

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1 HEARING OFFICER KNITTLE: We have a couple of questions
2 from Ms. Harvey.

3 DIRECT EXAMINATION

4 BY MS. HARVEY:

5 Q. Mr. Moffat, while this -- before -- strike that. Mr.
6 Moffat, between April of 1998 and October of 1998, while this
7 application was pending, did you contact any of the County Board
8 members about this?

9 MR. PORTER: Objection. Beyond the scope.

10 MS. HARVEY: First of all, I don't think when asking a
11 question of a public commenter, that I am limited. Secondly, he
12 did raise the issue of whether or not he could talk to his County
13 Board members.

14 ROBERT MOFFAT: I can answer.

15 HEARING OFFICER KNITTLE: Anything further, Mr. Porter?

16 MR. PORTER: No.

17 HEARING OFFICER KNITTLE: I will overrule it since he
18 brought up the subject in his letter here.

19 Can you answer the question, sir?

20 ROBERT MOFFAT: I am not sure of the date but at one time I
21 wrote a letter to the County Chairman -- I mean -- not the
22 Chairman. Bill Rabe. That's who we were told to write to. That
23 was the only letter I wrote to Mr. Rabe. Now, I have written a
24 lot of letters on other subjects. I write letters from time to

249

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1 time.

2 Q. (By Ms. Harvey) You didn't -- did you personally talk to
3 any County Board members?

4 A. No, I did not personally talk to them. I wrote to Mr.
5 Rabe. That's who I was told to write to.

6 MS. HARVEY: Okay. Thank you.

7 HEARING OFFICER KNITTLE: Mr. Porter?

8 MR. PORTER: Nothing.

9 HEARING OFFICER KNITTLE: Thank you, sir. You may step
10 down. I will take your comments back to the Board and I will
11 take this back to the Board with me as well.

12 (The witness left the stand.)

13 (Whereupon said document was duly marked for purposes of
14 identification as Public Comment Exhibit 1 and entered into
15 evidence as of this date.)

16 MS. HARVEY: Mr. Knittle, for the record, is Mr. Moffat's
17 letter from today?

18 HEARING OFFICER KNITTLE: Yes, it is dated 05-09-00.

19 MS. HARVEY: Thank you.

20 HEARING OFFICER KNITTLE: I am assuming --

21 MR. MOFFAT: I wrote it sitting here.

22 HEARING OFFICER KNITTLE: I am assuming that is the --

23 MS. HARVEY: Thank you. That's today.

24 HEARING OFFICER KNITTLE: Do you want to take a look?

250

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1 MS. HARVEY: No, thank you.

2 HEARING OFFICER KNITTLE: Sir, you are up. If you could
3 have a seat, please, and identify yourself for the court
4 reporter.

5 RAY NITZSCHE: My name is Ray Nitzsche, N-I-T-Z-S-C-H-E.

6 HEARING OFFICER KNITTLE: Thank you, sir. Could you swear
7 him in, please.

8 (Whereupon the witness was sworn by the Notary Public.)

9 HEARING OFFICER KNITTLE: Sir, your comment, please.

10 RAY NITZSCHE: I have several items. First of all, it has
11 been alleged that at best -- I should say at worst, there may be
12 an attitude of opposition to the landfill in the county and that
13 somehow affected the decision. Okay. I want to talk a minute
14 about fairness. Okay. The decision on the acceptance of the
15 landfill rests on Randolph County. Now, the Illinois Pollution

16 Control Board may force it to be accepted by saying that the
17 County Board's decision to reject was made incorrectly. But it
18 is by law the Randolph County. The decision on a landfill
19 serving 49 counties and three states is up to one county, one
20 little County Board, three people.

21 In addition, the rules that this county must use to decide
22 upon the siting, the Solid Waste Management Plan were agreed upon
23 collectively by four counties; Bond, Clinton, Randolph, and
24 Washington. Rules that were to apply to waste in a four-county

251

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1 group are being applied to waste from a 49-county area. Both of
2 the above two conditions exist because in order for the landfill
3 to be economically feasible and to satisfy the landfill need
4 criteria in the Solid Waste Management Plan, it had to encompass
5 this 49-county area. In any event, the decision was based upon
6 this 49-county service area.

7 However, if the landfill is approved, waste can be accepted
8 from anywhere; Chicago, New York, anywhere. No law says that the
9 waste must come from only the 49 counties. Thus, waste can come
10 from anywhere to a landfill justified according to a 49-county
11 service area, according to the rules of only four counties, with
12 the decision resting upon only one of these four counties. Now,
13 this is unfair. That's what I call unfair.

14 I have some things here. Oh, I would like to go on the

15 record saying in the future I anticipate that the -- I think Land
16 and Lakes would be called the plaintiff here -- says that the
17 health and safety criteria -- are going to say that the health
18 and safety criteria, criterion 2, is now satisfied since the old
19 landfill road will be used as access instead of Holloway Road. I
20 would like to go on record that the substitution of the old
21 landfill road for Holloway Road solves perhaps only five percent
22 of the road safety problem. Solving the problem from the last
23 half mile of access does not solve the safety problem getting to
24 and from the old landfill road anymore than Holloway Road. We

252

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1 are talking about 230 semi-trucks and plus all of the local
2 traffic and other things. Okay.

3 The Solid Waste Management Plan for the four counties,
4 including Randolph, was prepared by the Southwestern Illinois
5 Municipal and Regional Planning Commission under funds from the
6 Solid Waste Planning & Recycling Act, a State of Illinois law.
7 This plan outlined a number of procedural and organizational
8 steps necessary to implement the Solid Waste Management Plan.
9 Among these was a set of criteria for siting new landfills.
10 These are referred to in the plan as recommended, as was pointed
11 out earlier today.

12 They are referred to as recommended only because the entire
13 plan was being recommended by -- I will use this acronym, SIMRP,
14 for adoption by the county boards. They were recommending this

15 plan for the county boards. Once any county board adopts the
16 plan, they are no longer recommendations and become a part of the
17 active, adopted plan. The Randolph County Board voted to accept
18 the recommended plan, thus, these criteria must be followed to
19 site any landfill in Randolph County.

20 I oppose the landfill, of course, obviously, and to me with
21 the two criteria not being met, to me it is really a no-brainer.
22 And the testimony today was we were trying to say that there was
23 not any influence, and they were trying to say there was
24 influence. So I may be shooting myself in the foot here, okay,

253

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1 but I would like to say this. This whole process, the siting
2 hearing, this hearing, is about whether the criteria were met or
3 not met, whether there was separate or ex parte communication,
4 etcetera. All items as to whether some regulations were met.

5 Now, suppose all the criteria were met, everything was okay
6 with the application, all regulations were met and documents
7 signed. Suppose further that all of the residents of Randolph
8 County opposed the landfill, all but three, the County Board
9 members. Should this landfill be allowed? No, obviously not.
10 But how are the three Board members to know that nobody wants it
11 if the residents can't talk to them? They must be allowed access
12 to the Board or the system does not work. Furthermore, and this
13 is the most important, decisions of this type cannot be based

14 solely upon rules and regulations. The people must be heard. I
15 think that's all that I have right now.

16 (Applause from the members of the public.)

17 HEARING OFFICER KNITTLE: Could you note the applause for
18 the record.

19 All right. Ms. Harvey, do you have any questions?

20 MS. HARVEY: I do have one question, I believe.

21 DIRECT EXAMINATION

22 BY MS. HARVEY:

23 Q. Were you aware of the existence of the public comment
24 period that followed the landfill hearings in -- well, the

254

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1 landfill hearings were in July of 1998, so the public comment
2 that went through August of 1998?

3 A. Yes. I was here present for the first half day of those
4 hearings. I work, so I was not able to stay for anymore. Go
5 ahead.

6 Q. Okay. And what was your feeling on what the purpose of
7 that public comment period was? To let people -- was it -- let
8 me rephrase that and make it a little more specific.

9 Would you agree with the statement that the public comment
10 period is exactly for that purpose, and that is to give people
11 the opportunity to state their position?

12 A. Yes.

13 MS. HARVEY: Okay. I don't have anything else.

14 HEARING OFFICER KNITTLE: Mr. Porter?
15 MR. PORTER: No questions.
16 HEARING OFFICER KNITTLE: Thank you, sir.
17 (The witness left the stand.)
18 HEARING OFFICER KNITTLE: Anybody else? I see somebody
19 there. Sir, you can come on up. Sir, if you could sit down and
20 identify yourself for the court reporter.
21 WILBERT SCHOENBECK: Okay. My name is Wilbert Schoenbeck.
22 I am from Red Bud.
23 HEARING OFFICER KNITTLE: Can you spell that name, sir?
24 WILBERT SCHOENBECK: It is W-I-L-B-E-R-T,

255

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1 S-C-H-O-E-N-B-E-C-K.
2 HEARING OFFICER KNITTLE: Could you swear him in, please.
3 (Whereupon the witness was sworn by the Notary Public.)
4 HEARING OFFICER KNITTLE: Sir, you can provide your
5 comment.
6 WILBERT SCHOENBECK: I guess over the last eight years or
7 so myself and my family, we have purchased several tracts of land
8 at the Sparta Lake and south of the Sparta Lake, and that was
9 before all this took place. At that time I was quite surprised
10 that the Sparta City Lake was not incorporated into the city
11 limits. And then when landfill issue came up, I just couldn't
12 believe that they would site that thing that close to the city

13 water supply. I just couldn't believe it. But now within the
14 last, I don't know, six or eight weeks Sparta has annexed those
15 areas. To the best of my knowledge, the City of Sparta butts up
16 against the land that is supposedly owned by this landfill. I
17 think that all that is between there is about a 20-foot road.

18 I went to the courthouse here and had Mr. Rabe to go over
19 the records and make sure that I was not mistaken. So you are a
20 whole lot closer than a mile and a half here. It is
21 unbelievable. I just couldn't believe that they would do
22 something like that, that close to a city like that, a city that
23 is expanding. I don't live in Sparta. I have no business there.
24 But I am concerned about the people that do live there. And,

256

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1 naturally, the City of Sparta is going to continue to grow, like
2 all cities, and where can they go. Other than that, I don't have
3 much comment. I was not involved in any movement or anything.
4 But I was very shocked when I found out that they were going to
5 put this humongous landfill that close to the city and the water
6 supply.

7 HEARING OFFICER KNITTLE: Thank you very much, sir. Could
8 you stay there and we will see if we have any questions.

9 MS. HARVEY: I don't have any questions.

10 HEARING OFFICER KNITTLE: Mr. Porter?

11 MR. PORTER: No questions.

12 HEARING OFFICER KNITTLE: Thank you for your comment. You

13 may step down.

14 WILBERT SCHOENBECK: Thank you.

15 (The witness left the stand.)

16 HEARING OFFICER KNITTLE: Anybody else wishing to provide
17 public comment at this point?

18 Yes, ma'am. Could you identify yourself for the court
19 reporter.

20 NELLIE GERLACH: My name is Nellie Gerlach, N-E-L-L-I-E,
21 G-E-R-L-A-C-H.

22 HEARING OFFICER KNITTLE: Could you swear her in, please.

23 (Whereupon the witness was sworn by the Notary Public.)

24 HEARING OFFICER KNITTLE: Ma'am, you can proceed.

257

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1 NELLIE GERLACH: I was planning to speak to you on
2 earthquakes, because I had done some research. I got some
3 brochures from WHEO, if you want to go out, it is right next to
4 how to prepare for earthquakes. It gives you some information as
5 to how vulnerable we are to earthquakes. I am going to submit
6 this, my findings, to the Board. But I only want to read two
7 paragraphs to sum up what my findings will tell you.

8 It was pointed out by Dr. George Noble of Environmental
9 Consultants during the hearing that the Land and Lakes
10 application was flawed and it violated criteria 2, which deals
11 with health and safety. The safety factor that they submitted

12 was 1.3 and should have been 1.11 and, therefore, the design is
13 dangerous and unstable under earthquake conditions. Dr. Neal
14 Williams bluffed his way out of this error by saying that the
15 design was short-term. I submit to you that the longevity of
16 this vertical mound is far from being short-term. It is forever.

17 Can you imagine the mess and the ramifications of a
18 250-foot pyramid of garbage blowing its cap and spewing out its
19 contents like a volcano? Plus, the underground water pollution
20 as the earth beneath slips and slides, very possibly changing the
21 underwater ground courses. It will not only be Sparta and
22 Steeleville that will have water problems.

23 Now, I admit that I cannot sit here and tell you that a
24 destructive or a ruinous or a disastrous earthquake will occur,

258

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1 but neither can you tell me that it will not. Those who study
2 the science have indicated a probability more than an
3 improbability. One thing I can tell you for certain, is no
4 matter when that earthquake comes, the Grand Prairie Landfill
5 will be here to contend with if it is approved.

6 So I will close leaving this thought with you. The
7 decision the Board makes remains with those of us who live in
8 this County and our children indefinitely, but all you have to do
9 is just walk away. I submit the rest of my findings.

10 HEARING OFFICER KNITTLE: Do you want to submit that, the
11 letter as well?

12 NELLIE GERLACH: Yes, everything.

13 HEARING OFFICER KNITTLE: Okay.

14 (Whereupon said document was duly marked for purposes of
15 identification as Public Comment Exhibit 2 and entered into
16 evidence as of this date.)

17 NELLIE GERLACH: I do want to say this. Before you --

18 (Applause from the members of the public.)

19 HEARING OFFICER KNITTLE: Note the applause.

20 NELLIE GERLACH: Before you rule this out, I would like to
21 point out that the U.S. Geological Survey estimates that enough
22 strained energy has been built up along the New Madrid Fault
23 since 1812 to produce shocks of 7.6 magnitude on the Richter
24 scale. This, they say, would be a disaster, destructing services

259

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1 and utilities, destroying property, and causes great losses of
2 human life.

3 HEARING OFFICER KNITTLE: Thank you, ma'am.

4 NELLIE GERLACH: You are welcome.

5 HEARING OFFICER KNITTLE: Ms. Harvey?

6 MS. HARVEY: I don't have any questions.

7 HEARING OFFICER KNITTLE: Mr. Porter?

8 MR. PORTER: No questions.

9 HEARING OFFICER KNITTLE: Thank you very much.

10 (The witness left the stand.)

11 (Applause from the members of the public.)

12 HEARING OFFICER KNITTLE: Does anybody else have a comment
13 that they want to issue?

14 Mr. Weber, please step up. Sir, if you could have a seat,
15 please. Let me remind you that you are still under oath.

16 ALAN WEBER: I remember.

17 HEARING OFFICER KNITTLE: You can proceed.

18 ALAN WEBER: I really don't have too much to say. I just
19 have some materials to hand in to you. One set is 13 communities
20 in Randolph County who have passed resolutions opposing the
21 landfill. I wanted this entered into the record that you are
22 doing today. I would like you to pay close attention to the
23 dates. They were after the decision was made. After the
24 decision was made.

260

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1 MS. HARVEY: Mr. Knittle, I have an objection to the
2 relevancy of resolutions from Randolph County communities as to
3 the issues that are before the Pollution Control Board.

4 HEARING OFFICER KNITTLE: Okay. Mr. Porter, do you have
5 anything?

6 MR. PORTER: No position.

7 HEARING OFFICER KNITTLE: Okay. I will note your
8 objection. I have to take this public comment to the Board, but
9 I am not going to rule on the objection. It will be presented to
10 the Board along with the public comment.

11 MS. HARVEY: Thank you.

12 ALAN WEBER: Thank you, Mr. Knittle.

13 HEARING OFFICER KNITTLE: Anything else, sir?

14 ALAN WEBER: Yes, I have another thing. I was going to let
15 Randy present this, but we got our wires crossed a little bit. I
16 will present it while I am here. This is, again, something for
17 the Board. Since this mile and a half issue is one of the
18 biggies, Sparta is very concerned that the economic direction of
19 their community is being threatened with something so close.
20 These are the signatures of a little less than 100 businesses
21 from Sparta who have signed kind of a petition against this
22 landfill. I would like to enter that in, too.

23 MS. HARVEY: For the record, Mr. Knittle, I have the same
24 objection as to relevancy.

261

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1 HEARING OFFICER KNITTLE: Okay. I will accept these public
2 comments and note your objection.

3 MS. HARVEY: Thank you.

4 HEARING OFFICER KNITTLE: Do you have any oral comments,
5 sir?

6 ALAN WEBER: No.

7 HEARING OFFICER KNITTLE: Anything for Mr. Weber?

8 MS. HARVEY: Just one question.

9 DIRECT EXAMINATION

10

BY MS. HARVEY:

11 Q. When you say that Sparta is concerned about it, you are
12 not speaking --

13 A. I am not an official of Sparta.

14 MS. HARVEY: Thank you.

15 HEARING OFFICER KNITTLE: Mr. Porter? Oh, I am sorry.
16 Ms. Harvey was there anything else?

17 MS. HARVEY: No, that is all I have. Nothing further.

18 MR. PORTER: No questions.

19 HEARING OFFICER KNITTLE: Thank you, sir. You may step
20 down.

21 HEARING OFFICER KNITTLE: I will accept this as Public
22 Comment Number 3, Group Public Comment.

23 (Whereupon said documents were duly marked for purposes of
24 identification as Group Public Comment Exhibit 3 as of this

262

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1 date.)

2 Is anybody else wishing to provide comment?

3 RAY NITZSCHE: May I please have a chance to respond to Ms.
4 Harvey's last question?

5 HEARING OFFICER KNITTLE: Sir, you have already provided
6 your public comment. I don't know -- let's see what Ms. Harvey
7 has -- do you have an objection to that?

8 MS. HARVEY: Well, I don't think I said anything other than
9 asked a question. If he wants to add to his public comment, I

10 don't have an objection, but I didn't -- I only asked a question.

11 HEARING OFFICER KNITTLE: Mr. Porter, do you mind if he
12 resumes his public comment?

13 MR. PORTER: No objection.

14 HEARING OFFICER KNITTLE: All right. Why don't you come
15 down here and have a seat. Let me remind you that you are still
16 under oath.

17 RAY NITZSCHE: Yes. The final question was did I
18 understand the 30 days after the hearing were for public comment
19 period, I think, meaning that should be the time when the people
20 had to speak, myself included. However, myself, like many
21 others, at that time during that period I had just become aware.
22 I first heard about this landfill mentioned slightly in a County
23 Board meeting, hearing minutes, you know, four or five years ago.
24 Then I didn't hear a thing. It just went away. Then all of the

263

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1 sudden here is this hearing, okay, and what is this hearing on
2 this landfill, as many people were, okay, a lack of information.

3 So during that 30-day period I did not know about an
4 application, a ten-volume application. I had to read that. I
5 had to get the hearing stuff and read that. I didn't know about
6 the Solid Waste Management Plan. Now, I don't know whether this
7 situation with myself, as well as others, was due to something --
8 some purposeful thing by somebody like Land and Lakes or whether

9 it was because of the ineptitude of our county government, or
10 whether it was just my failure as a citizen to become aware of --
11 to keep myself aware of what is going on. But I and many people
12 could not respond, especially substantive, technical -- I am an
13 engineer -- substantive, technical arguments about the landfill,
14 because we didn't know about these documents. Okay.

15 MS. HARVEY: I have --

16 HEARING OFFICER KNITTLE: Sir, you are subject again to
17 cross-examination.

18 RAY NITZSCHE: Okay.

19 MS. HARVEY: I have a couple of questions.

20 DIRECT EXAMINATION

21 BY MS. HARVEY:

22 Q. Are you aware that in April of 1998, Land and Lakes
23 published the required legal notice that it was going -- of its
24 intend to file the application?

264

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1 A. No.

2 Q. Are you aware that at least 30 days prior to those
3 hearings that the County of Randolph published notice of the
4 hearing which, again, informed people that there was -- there
5 were copies of the application available for review in the County
6 Clerk's Office?

7 A. No. From --

8 Q. Did you --

9 A. From what I understand, those types of -- if I am not
10 incorrect, those types of notice are posted on the front door of
11 the courthouse on a piece of paper. Now, I am supposed to come
12 by here every week and look at the courthouse window?

13 Q. Were you aware that those notices were published in the
14 local newspapers?

15 A. No.

16 Q. Were you --

17 A. I think sometimes the official notices of that type are
18 only published in the Chester Herald Tribune. I don't get that
19 paper.

20 Q. Do you know for sure -- well, I don't want to follow-up
21 on that one.

22 So you were not aware that Land and Lakes published notice
23 of its application in April of 1998?

24 A. No.

265

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1 Q. And you were not aware that the County Board published
2 notice of the hearing, including notification of the availability
3 of the application, at least 30 days prior to the hearing date?

4 A. No.

5 Q. Did you read any of the news of the local newspapers,
6 any of the local newspapers, during the period, say, June and
7 July of 1998?

8 A. Yes, I get one local newspaper.
9 Q. Which paper do you get?
10 A. The Sparta newspaper.
11 Q. Did you ever read any newspaper articles about the
12 landfill application?
13 A. Not prior to the hearing or anything.
14 MS. HARVEY: Okay. I don't have anything else.
15 HEARING OFFICER KNITTLE: Mr. Porter?
16 MR. PORTER: No questions.
17 HEARING OFFICER KNITTLE: Thank you, sir.
18 (The witness left the stand.)
19 GAIL McELROY: Excuse me. I just need to get my sound
20 equipment.
21 HEARING OFFICER KNITTLE: You can take your sound
22 equipment. We will keep going without you. We do -- I just want
23 to note for the record, ma'am, your name. Ma'am?
24 GAIL McELROY: What?

266

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1 HEARING OFFICER KNITTLE: What was your name?
2 GAIL McELROY: Gail McElroy.
3 HEARING OFFICER KNITTLE: Thank you very much, Gail, for
4 providing us these microphones.
5 GAIL McELROY: You are welcome.
6 HEARING OFFICER KNITTLE: Is there anybody else wishing to
7 provide public comments?

8 Sir, why don't you step up to the area that used to have a
9 microphone by it and have a seat. Please identify yourself for
10 the record, sir.

11 CHRIS TABING: Yes. For the record, my name is Chris
12 Tabing. That is T, as in Tom; A; B, as in boy; I-N-G.

13 HEARING OFFICER KNITTLE: And would you swear him in,
14 please.

15 (Whereupon the witness was sworn by the Notary Public.)

16 HEARING OFFICER KNITTLE: Sir, you can provide your
17 comment.

18 CHRIS TABING: All right. Thank you very much. I have a
19 written presentation. I am just sitting here burning to comment
20 on some of Ms. Harvey's comments or statements of just a moment
21 ago. So if I could, I would like to respond.

22 One of the issues that Alan Weber tried to express that has
23 to do with the entirety of these proceedings is that even though
24 technically speaking there may have been the required notices

267

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1 posted or published, the attitude within Randolph County
2 immediately prior to the commencement of these public hearings
3 was one that was distorted because there was no discussion that
4 had occurred, as one might expect, concerning this very big
5 project that someone wanted to bring to this county.

6 In addition to this lethargic sort of state in the

7 consciousness of the public, was another element that is very
8 significant and relates to Ms. Harvey's comments, and that is
9 that when people did become aware of what was being presented,
10 there was an undercurrent of thought that said this was a done
11 deal. There were people who came to discuss the landfill and
12 communicate amongst themselves, and it was a very discouraging
13 time because the public was encouraged to believe that not only
14 did they not have really anything to say, but that this was going
15 to be the way it was.

16 I think to the credit of the people of Randolph County,
17 they were willing to meet this initial condition and to come
18 forward and express themselves once the information began to come
19 forward. So to suggest that people did not care is not really --
20 or were not paying attention is not really accurate. There was,
21 number one, a lot of resistance and, number two, there was really
22 no understanding about what all of this meant or anything else of
23 that nature.

24 That brings me to my written comment. I will just read

268

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1 this, omitting the first paragraph, because I really thought the
2 Pollution Control Board would be here, for some unknown reason.
3 So it is set up for them and not for this format, necessarily.

4 But, anyway, my comment goes as follows. I would like to
5 begin my public comments to this Board by asking a somewhat
6 rhetorical question. Why are you here today? In response to

7 this question I submit that we are all here today because Land
8 and Lakes Company has decided to further beat the carcass of its
9 dead horse, the Grand Prairie Landfill siting application.
10 Notwithstanding Land and Lakes' posturing and legal maneuvering,
11 the following comments will demonstrate that the Grand Prairie
12 Landfill is, in fact, a dead horse that can never be resurrected.

13 Land and Lakes has known from the very outset of the
14 application process that Randolph County's Solid Waste Management
15 Plan was inconsistent with its Grand Prairie Landfill siting
16 application. Land and Lakes, apparently, believed that it could
17 overcome this defect by greasing the political wheels in Randolph
18 County. Land and Lakes began to apply this political grease when
19 it hired Sparta's City Attorney to represent its interest before
20 Randolph County officials. As the agent of Land and Lakes
21 Company, Sparta's City Attorney then became the architect of a
22 Sparta City Council resolution which made numerous implicit
23 references to infringements upon the buffer zone provision of the
24 Randolph County Solid Waste Management Plan, while at the same

269

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1 time purportedly expressing the City's approval of Land and
2 Lakes' siting application.

3 In what amounted to nothing more than legal artifice, Land
4 and Lakes intended to skirt the buffer provision within the
5 County's Solid Waste Management Plan by suggesting the Randolph

6 County residents had implicitly waived this provision because of
7 the resolution that was prepared for and adopted by the Sparta
8 City Council. Land and Lakes' strategy crumbled when the Sparta
9 City Council rescinded its sham resolution prior to the Randolph
10 County Board of Commissioners' denial of the Grand Prairie
11 Landfill siting application.

12 When this resolution was rescinded by the City of Sparta,
13 the Solid Waste Management Plan's buffer provision could not be
14 overcome and Land and Lakes was faced with a fatally defective
15 siting application. With respect to this fatal defect, this
16 Agency must understand that the buffer provision in the Solid
17 Waste Management Plan is a factual reality that absolutely,
18 independently, and forever dictates the disposition of this case.
19 If this issue cannot be resolved in Land and Lakes' favor, the
20 buffer provision creates an outcome determinative situation and
21 all other points raised on appeal become irrelevant.

22 Since the siting application does, in fact, encroach and
23 infringe upon the one and a half mile buffer provision and since
24 that encroachment cannot be legally cured, Land and Lakes' appeal

270

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1 is clearly frivolous, its siting application is truly a dead
2 horse, and this Board must deny this appeal.

3 The residents of Randolph County have lawfully defined the
4 areas where landfills can be sited within our county. We have
5 spoken and our express declaration of public policy within our

6 communities must be respected by adjudicating authorities that
7 function within the framework of a society that legitimately and
8 consistently applies the rule of law in resolving public
9 controversies. We, therefore, expect the Illinois Pollution
10 Control Board to uphold and enforce the rule that was designed to
11 protect our county. That concludes my presentation.

12 (Applause from the members of the public.)

13 HEARING OFFICER KNITTLE: Sir, are you looking to submit
14 that to the Board?

15 CHRIS TABING: Yes, I can, I suppose.

16 HEARING OFFICER KNITTLE: Ms. Harvey, do you have any
17 questions?

18 MS. HARVEY: I think I just have one or two.

19 DIRECT EXAMINATION

20 BY MS. HARVEY:

21 Q. Mr. Tabin, are you aware that under the Environmental
22 Protection Act a landfill can actually be located within a
23 municipality?

24 A. I am aware that the Solid Waste Management Plan provides

271

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1 that communities can participate in the siting of these
2 facilities and that the Solid Waste Management Plan in this
3 community says we don't want it within a mile and a half.

4 Q. What I asked you was are you aware that the

5 Environmental Protection Act allows for the siting of landfills
6 within a municipality?

7 A. The answer to that question is no.

8 MS. HARVEY: I don't have anything else.

9 HEARING OFFICER KNITTLE: Mr. Porter?

10 MR. PORTER: No questions.

11 HEARING OFFICER KNITTLE: Thank you, sir, for your
12 comments.

13 CHRIS TABING: Thank you.

14 (Whereupon said document was duly marked for purposes of
15 identification as Public Comment Exhibit 4 and entered into
16 evidence as of this date.)

17 HEARING OFFICER KNITTLE: I just need a second for some
18 housekeeping. Anybody else wishing to provide public comment?

19 Yes, sir, in the back. Could you identify yourself for the
20 court reporter.

21 ED DEROUSSE: I am Ed Derosse, D-E-R-O-U-S-S-E

22 (Whereupon the witness was sworn by the Notary Public.)

23 HEARING OFFICER KNITTLE: Sir, you can begin.

24 ED DEROUSSE: One of the things that I have heard today

272

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1 was -- and I would like to talk about the fairness issue. To me
2 it seems as if the people in the area, and it was not just
3 Sparta, there is people here from Chester and people here from
4 Red Bud, have said that this is something that they don't think

5 that we want. Of all of the testimony that I have heard today I
6 have only heard of one case where one individual made the contact
7 to someone who said that they were in favor of the landfill.
8 Everything else that I heard to me sure sounded like no one was
9 in favor of this landfill.

10 The thing that I don't understand and the thing I don't
11 think is fair is that if the people of the area don't want it
12 regardless of whether it is allowed legally to be in there, don't
13 we have a say in what we want. That's basically my comment.

14 HEARING OFFICER KNITTLE: Thank you, sir.

15 (Applause from the members of the public.)

16 HEARING OFFICER KNITTLE: Sir, you need to stay seated in
17 case they have a question.

18 ED DEROUSSE: Okay.

19 HEARING OFFICER KNITTLE: Ms. Harvey, do you have any
20 questions for this witness?

21 MS. HARVEY: I don't have any questions. Thank you.

22 HEARING OFFICER KNITTLE: Mr. Porter?

23 MR. PORTER: No.

24 HEARING OFFICER KNITTLE: All right. Thank you for your

273

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1 comment, sir.

2 (The witness left the stand.)

3 HEARING OFFICER KNITTLE: Anybody else wishing to provide

4 public comment?

5 I see no hands being raised. Mr. Porter, can you look down
6 there. Is there anybody with their hand up?

7 MR. PORTER: No.

8 HEARING OFFICER KNITTLE: Okay. We are going to reconvene
9 here tomorrow morning at 9:30 a.m. We don't know if the
10 petitioner has any additional witnesses that they will call that
11 will be objected to by the respondent.

12 At that time I will also entertain public comments. If
13 anybody wishes to appear at that time they are more than welcome.
14 I want to thank you all for your time. Good night.

15 (All hearing exhibits were retained by Hearing
16 Officer Knittle.)

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274

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1 STATE OF ILLINOIS)
2) SS
3 COUNTY OF MONTGOMERY)

3 C E R T I F I C A T E

4

5 I, DARLENE M. NIEMEYER, a Notary Public in and for the
6 County of Montgomery, State of Illinois, DO HEREBY CERTIFY that
7 the foregoing 274 pages comprise a true, complete and correct
8 transcript of the proceedings held on the 9th of May A.D., 2000,
9 at Randolph County Courthouse, 1 Taylor Street, Chester,
10 Illinois, in the case of Land and Lakes v. Randolph County Board
11 of Commissioners, in proceedings held before the Honorable John
12 Knittle, Hearing Officer, and recorded in machine shorthand by
13 me.

14 IN WITNESS WHEREOF I have hereunto set my hand and affixed
15 my Notarial Seal this 17th day of May A.D., 2000.

16

17

18

19

20 Notary Public and
21 Certified Shorthand Reporter and
Registered Professional Reporter

22 CSR License No. 084-003677
My Commission Expires: 03-02-2003

23

24

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275