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ILLINOIS POLLUTION CONTROL BOARD

AMERICAN BOTTOM CONSERVANCY)
and SIERRA CLUB,)
)
 Plaintiffs,)
) PCB 07-84
 vs.)
)
 CITY OF MADISON, ILLINOIS)
 and WASTE MANAGEMENT OF)
 ILLINOIS, INC.,)
)
 Defendants.)

RECORD OF HEARING
August 23, 2007

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Reported by Holly A. McCullough, C.S.R., C.C.R., R.P.R.

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AMERICAN BOTTOM CONSERVANCY)
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Plaintiffs,)
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vs.) PCB 07-87
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CITY OF MADISON, ILLINOIS)
and WASTE MANAGE OF)
ILLINOIS, INC.,)
)
Defendants.)

APPEARANCES:

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- (Exhibits were marked for identification by respective parties and were retained by the Hearing Officer.)

1 BE IT KNOWN that a record of hearing was made on August
2 23, 2007, at the Madison County Administration Building,
3 County Board Room 203, 157 North Main Street, Edwardsville,
4 Illinois, before Holly A. McCullough, an Illinois Certified
5 Shorthand Reporter, a Missouri Certified Court Reporter, a
6 Registered Professional Reporter and a Notary Public. Also,
7 it is stipulated and agreed by and between counsel for
8 Plaintiff and counsel for Defendant that this record may be
9 taken in stenotype by Holly A. McCullough and thereafter
10 transcribed into typewriting.

11
12
13 HEARING OFFICER WEBB: Good morning. My name is Carol
14 Webb. I'm a Hearing Officer with the Pollution Control
15 Board. This is PCB 07-84, American Bottom Conservancy and
16 Sierra Club versus City of Madison and Waste Management of
17 Illinois. It is August 23rd, 2007, and we are beginning at
18 9:00 a.m.

19 At issue in this case is Waste Management's application
20 to expand the Milam recycling and disposal facility located
21 in Fairmont City to a site called North Milam located in the
22 City of Madison. Petitioner appeals on the grounds that the
23 City's proceedings were not fundamentally fair and that the
24 City's approval of the siting application was against the

1 manifest weight of the evidence. The decision deadline is
2 November 15th, 2007.

3 You should note that it is the Pollution Control Board
4 and not me that will make the final decision in this case.
5 My purpose is to conduct the hearing in a neutral and orderly
6 manner so that we have a clear record of the proceedings. I
7 will also assess the credibility of any witnesses on the
8 record at the end of the hearing.

9 I'll note for the record that we do have a couple
10 members of the public present. The procedural rules and the
11 Act provide that members of the public shall be allowed to
12 speak or submit written statements at hearing. I will call
13 for any statements from members of the public at the
14 conclusion of the proceeding.

15 This hearing was noticed pursuant to the Act and the
16 Board's rules and will be conducted pursuant to Sections
17 101.600 through 101.632 of the Board's procedural rules.

18 At this time, I would like to ask the parties to please
19 make their appearances on the record.

20 MR. MORRISON: Bruce A. Morrison, attorney for both
21 Petitioners, American Bottom Conservancy and Sierra Club.

22 MR. MORAN: Donald Moran on behalf Waste Management of
23 Illinois, Inc.

24 MR. PAPA: John C. Papa on behalf of the City of

1 Madison.

2 MS. LIVINGSTON: And Penni Livingston on behalf of Waste
3 Management of Illinois.

4 HEARING OFFICER WEBB: Thank you. Are there any
5 preliminary matters anyone wishes to discuss on the record?

6 (No response.)

7 HEARING OFFICER WEBB: "No"? Okay. Would the
8 Petitioners like to give an opening statement?

9 MR. MORRISON: Well, I've got a few sentences.
10 Petitioner's case will be based largely on the record made
11 before the City of Madison. Part of the case, though, is
12 whether Madison conducted the proceedings in a fundamentally
13 fair manner. Miss Kathy Andria will testify on behalf of
14 both Petitioners that the proceedings that Madison conducted
15 were not fundamentally fair for reasons in the pleadings. At
16 the hearing, she was prohibited from questioning Waste
17 Management's witnesses about archaeological issues at the
18 proposed North Milam site. She was prohibited from
19 questioning Waste Management's witnesses about wetland issues
20 of the site. That will be some of the proof that will be
21 presented.

22 HEARING OFFICER WEBB: Thank you. Would the Respondents
23 like to make an opening statement?

24 MR. MORAN: Yes, just briefly. The proceedings held by

1 the City of Madison in all respects supported what the
2 applicable rules providing for fundamental fairness of a
3 siting hearing for local government bodies. Applicable case
4 law both from the Appellate Court and the Pollution Control
5 Board itself make clear that the right of fundamental
6 fairness of any participant has relates to the right to
7 present a case, to present evidence, in fact, cross examine
8 witnesses, and to obtain impartial rulings on the evidence.

9 The evidence that will be presented here will amply
10 demonstrate that Miss Andria, American Bottom Conservancy and
11 Sierra Club had full and ample opportunity to present
12 whatever case, whatever evidence they believed was
13 appropriate, cross examine any witnesses on matters that were
14 pertinent and relevant to the proceeding here. The
15 contention that the American Bottom Conservancy and Sierra
16 Club were unable to question any witnesses on relevant
17 matters will seem to be unfounded, and that some of the areas
18 that were desired to be acquired about were, in fact, matters
19 of no relevancy for a siting.

20 So, when all the evidence is presented on these issues,
21 it will be eminently clear that fundamental fairness was
22 provided these Petitioners, and that the decision ultimately
23 of the City of Madison ought to be affirmed. Thank you.

24 HEARING OFFICER WEBB: Thank you. Does the City have

1 any?

2 MR. PAPA: City will waive them.

3 HEARING OFFICER WEBB: Thank you. Mr. Morrison, you may
4 call your first witness.

5 MR. MORRISON: Thank you, Miss Webb. And before I
6 forget here, as part of the Plaintiffs' case -- this may not
7 be necessary, but I know there's a case on -- a record made
8 and a record has been filed with the Illinois Pollution
9 Control Board. I'd like to move that that record be part --
10 be entered into evidence, if that is necessary.

11 HEARING OFFICER WEBB: It is not necessary.

12 MR. MORRISON: I appreciate it. Thank you. And,
13 Mrs. Kathy Andria, would you please take the stand.

14

15 KATHY ANDRIA, called as a witness, is sworn in under
16 oath.

17

18 D I R E C T E X A M I N A T I O N

19 by Mr. Bruce A. Morrison:

20 Q. Please state your name.

21 A. Kathy Andria.

22 Q. And what is your position with American Bottom
23 Conservancy and Sierra Club?

24 A. I am president.

1 Q. Is American Bottom Conservancy an Illinois
2 corporation in good standing?

3 A. Yes.

4 Q. Would you please tell us about the mission or the
5 objectives of American Bottom Conservancy?

6 A. American Bottom Conservancy was formed to
7 protect, preserve, enhance, restore and promote the cultural
8 and natural resources of the American Bottom floodplain and
9 to educate the public as to the importance of those
10 resources.

11 Q. Does American Bottom Conservancy have any
12 interest in the preservation of Horseshoe Lake State Park?

13 A. Yes. American Bottom Conservancy is -- has
14 worked to conserve the wetlands of the American Bottom, to
15 protect Horseshoe Lake, to protect water sources, water
16 supply and also to increase the amount of land that's
17 preserved and to keep it from development.

18 Q. Does American Bottom Conservancy as part of its
19 mission or objectives have any interest in preserving or
20 enhancing the Cahokia Mounds world heritage site?

21 A. American Bottom Conservancy has been working
22 since its beginning to preserve the cultural resources,
23 archaeological resources in the American Bottom. We are
24 working currently to establish a trail that links Cahokia

1 Mounds with the Eads Bridge that goes along the mounds
2 through East St. Louis, and we've worked on various sites
3 throughout the American Bottom to keep them from developing,
4 to make sure that the integrity of the resources and the
5 Native Americans' heritage is protected.

6 Q. And what work has American Bottom Conservancy
7 done in connection with the siting of landfills in American
8 Bottom?

9 A. I'm sorry. You're going to have to speak louder,
10 Mr. Morrison.

11 Q. What work has American Bottom Conservancy done
12 over the years in connection with the siting of landfills?

13 A. We participated in various landfill siting
14 decisions and permitting decisions with regard to the
15 landfill that's in the middle of the Mississippi River, Shoto
16 (phonetic) Island, which is a Waste management landfill, with
17 regard to the expansion of the Milam landfill in Fairmont
18 City, which is the existing landfill, and with regard to
19 encroachment into wetlands through the 404 Clean Water Act
20 permitting process.

21 Q. Okay. Now, tell me, does American Bottom
22 Conservancy at this point have a physical office address?

23 A. No, we do not.

24 Q. Are you using a post office box as your address?

1 A. Yes, we are.

2 Q. Have you taken steps to change that physical
3 office address?

4 A. We are registered -- It was brought to our
5 attention that we are existing -- the address of the
6 registered agent was wrong in the deposition. So, we've
7 corrected that. We have an office registered agent now at
8 402 East Main in Mascoutah. Yes, we would love to have a
9 physical office.

10 Q. And that is something that you addressed just
11 yesterday, I believe?

12 A. That's correct.

13 Q. Now, does American Bottom Conservancy have any
14 members?

15 A. Yes. We have about 110 or so members.

16 Q. Are you a member of American Bottom Conservancy?

17 A. Yes, I am.

18 Q. Do you visit the area in the vicinity of the
19 proposed North Milam landfill?

20 A. Yes, I do.

21 Q. Where do you go?

22 A. I visit Horseshoe Lake at least once a week on
23 average, sometimes more, sometimes less. I visit Eagle Park
24 Marsh, which is not far from there. It's on the Illinois

1 natural inventory's list. I drive by the landfill
2 frequently. So, I'm in the area, and I also visit Canteen
3 Lake, and I keep an eye on wetlands in that area and report
4 anything to the Corps of Engineers that I think is an
5 encroachment on wetlands.

6 Q. And how often do you make these visits?

7 A. I am in that area usually several times a week.

8 Q. During any of these visits, are you with other
9 members of American Bottom Conservancy at any time?

10 A. Sometimes.

11 Q. How about, are you with any members of Sierra
12 Club?

13 A. Sometimes.

14 Q. Is American Bottom Conservancy concerned about
15 the impacts of the proposed North Milam landfill?

16 A. Extremely concerned, yes.

17 Q. What are the concerns for you?

18 A. It is -- I'm sorry. Did you ask me the new
19 landfill?

20 Q. The proposed North Milam landfill.

21 A. Yes, we're concerned, first, that it's located in
22 wetlands, that it's located in an archaeologically important
23 area, that it's located about 2,000 feet from Horseshoe Lake,
24 and that it's located within I think 2,100 feet of the

1 Cahokia Mounds world heritage site and national historic
2 landmark boundaries.

3 Q. Backing up for a few questions back, when did you
4 last check the status of American Bottom Conservancy with the
5 Illinois Secretary of State as far as whether the corporation
6 is in good standing?

7 A. This morning.

8 Q. And what did the Secretary of State's records
9 show?

10 A. It said that we were in good standing.

11 Q. Now, tell me, do you have any positions with
12 Sierra Club?

13 A. Yes. I'm conservation chair for the Kaskaskia
14 group, I'm chair of the state chapter for the waste land
15 recycling committee, I'm on the clean air campaign for the
16 state, and I'm also on Midwest coal group, and I'm on the
17 water quantity committee.

18 Q. Is Sierra Club a corporation in good standing?

19 A. Yes, it is.

20 Q. Can you tell me something briefly about Sierra
21 Club's missions and objectives as they relate to the
22 floodplain in the area?

23 A. Well, the mission of Sierra Club is to explore,
24 enjoy and protect the planet. It's worked for many years on

1 work on the floodplain issues and protecting the rivers, the
2 impacts to the river and on -- in the American Bottom and in
3 the rivers leading to the Mississippi River.

4 Q. And has its work in particular dealt with the
5 Mississippi River -- part of the Mississippi River in the
6 vicinity where the proposed North Milam facility is proposed
7 to be located?

8 A. Yes. There's a committee -- a national committee
9 that addresses river and floodplain issues, and the local
10 groups have worked on wetlands and floodplain issues.

11 Q. Does the Sierra Club have members?

12 A. Yes.

13 Q. About how many of them in Illinois?

14 A. In Illinois, it's about 26,000. In the national,
15 it's, according to the web site, 1.7 million, and locally
16 there's perhaps 1,500 local members in the Metro East in two
17 groups, and then there are many more across the river in the
18 Eastern Missouri group.

19 Q. Are you a member of Sierra Club?

20 A. Yes, I am.

21 Q. And did any members of Sierra Club participate in
22 the public hearing before the City of Madison?

23 A. Yes, they did.

24 Q. Did any members of American Bottom Conservancy

1 participate in the public hearing before the City of Madison?

2 A. Yes, they did.

3 Q. Let me switch gears on you and get away from
4 standing issues, start talking about fundamental fairness
5 issues. Now, are you familiar with an ordinance of the City
6 of Madison relating to conducting a public hearing for siting
7 landfills?

8 A. Yes, I am.

9 Q. When did you first learn that there was a City
10 ordinance governing the procedures for a public hearing for
11 siting a landfill or a pollution control facility?

12 A. On the Monday before the hearing. I think it's
13 December 18th.

14 Q. And how was it that you came to learn about the
15 ordinance?

16 A. I visited the office of the City of Madison, City
17 Hall, the clerk, and I saw the ordinance.

18 Q. Okay. What efforts did you make to obtain a copy
19 of that ordinance?

20 A. I asked for a copy of the ordinance, to have a
21 copy of the ordinance.

22 Q. Okay. And were you charged for a copy of the
23 ordinance?

24 A. I was -- They quoted me a figure of I believe it

1 was \$5 for the first so many pages, and then it was a dollar
2 a page afterwards, and I asked if that was what they charged
3 for everything that they did, and they said, "Yes." I said,
4 "Even if somebody gets one piece of paper, it's \$5?" Then I
5 asked if there was a copy at the local library, because my
6 memory from the library is that they charged, I think, a
7 quarter a page. The woman said, "No." The person behind the
8 counter said, "No," that there wasn't one.

9 MEMBER OF THE PUBLIC: Can you speak up? It's hard to
10 hear.

11 A. Is this better? I'm sorry.

12 (Member of public nods head.)

13 A. The person behind the desk said, "No," there was
14 not a copy at the library, and she went to a telephone, and
15 she called someone and spent a little time on the phone
16 discussing my request, and that -- and I didn't hear her
17 conversation, but I know that she was talking to someone on
18 the phone about the request.

19

20 BY MR. MORRISON:

21 Q. Did you consider the charge that Waste Management
22 sought to impose for that ordinance excessive?

23 MR. MORAN: Objection. I don't think Waste Management
24 is charging for records.

1 MR. MORRISON: I'm sorry.

2 MR. PAPA: The City would acknowledge that the City was
3 making the charges.

4 HEARING OFFICER WEBB: Yes. Would you like to re-ask
5 the question?

6 MR. MORRISON: I would.

7

8 BY MR. MORRISON:

9 Q. Before I ask it, I think probably Waste
10 Management deserves a better plug than that because during
11 the course of these proceedings, Waste Management had given
12 you documents relating to this siting without charge; right?

13 A. They absolutely did.

14 Q. They've been very good in that respect?

15 A. Yes, they have.

16 Q. In particular, Miss Livingston and Joe Durako
17 over there?

18 A. Yes.

19 MR. MORRISON: I'm not to here bash --back to the City
20 bash.

21 MR. PAPA: None taken, sir.

22

23 BY MR. MORRISON:

24 Q. So, the charge that the City of Madison sought to

1 impose, did you consider that to be excessive?

2 A. Yes. It's my understanding to get documents --
3 for the public to get documents, they're supposed to be
4 charged the cost of the production, and local Kinko's, etc.,
5 Casey's charge from 7 cents to 10 cents to 15 cents to a
6 quarter, and I think a dollar a page is excessive.

7 Q. Why does that make a difference to you that it's
8 excessive?

9 A. Because I and our organization have limited
10 funds.

11 Q. Do you charge members anything to be members of
12 for American Bottom Conservancy?

13 A. No. I also think it's unfair for the general
14 public, not just for me, citizens of Madison.

15 Q. Now, in your view, before the hearing before the
16 City of Madison, did you receive any information that you
17 considered to be inaccurate concerning how the hearing would
18 be conducted?

19 A. I'm sorry. Would you repeat that?

20 Q. Before the hearing the City of Madison held, did
21 you receive any information from anyone with the City that
22 you considered to be not accurate concerning how the hearing
23 was to be held?

24 A. Yes. I called on Friday the week before the

1 hearing. I think the hearing was on December 21st and
2 December 22nd, and I called that Friday to the City Hall, and
3 I asked if there were -- if there was anything in place that
4 I have to register or what were the rules with regard to the
5 hearing.

6 Q. Okay. And what were you told?

7 A. It was a gentleman who answered the phone, and he
8 said, "No. Just show up."

9 Q. But then after that, you took some steps to
10 obtain -- well, seek out a City ordinance?

11 A. Well, before I did that, I asked how the hearing
12 was going to be conducted, who was going to be testifying, if
13 there were any information about that, and he directed me to
14 call the City attorney, John Papa, and gave me a phone number
15 to call.

16 Q. Now, jumping ahead a couple of days to when you
17 went to City Hall to get a copy or saw that there was an
18 ordinance that the City of Madison had, at what point did you
19 review that ordinance?

20 A. I'm sorry. At what point --

21 Q. Did you at some point review the ordinance that
22 you obtained from the City of Madison?

23 A. I looked at it. I didn't read it all right then,
24 but I scanned it right then.

1 Q. Okay. And what did you learn after reading that
2 ordinance about how the proceedings were to be conducted?

3 A. That I was supposed to have everything --
4 anything I was going to submit, any reports, a list of
5 witnesses, all of these -- the things that are contained in
6 one of those paragraphs, I was supposed to have done that the
7 previous Friday.

8 Q. So, after reading that ordinance, did that have
9 any effect on how you conducted your portion of the
10 proceedings before the City of Madison?

11 A. I'm sorry. I'm having trouble hearing.

12 Q. So, after reading that ordinance, did that have
13 any effect on the manner in which you dealt with the facts
14 and proceeded before the City of Madison at a public hearing?

15 A. Well, I had been hoping to do some -- have some
16 information and questions and perhaps a report on the
17 archaeology of the site and to be able -- I had gotten a copy
18 of some archaeology papers from Miss Livingston -- well,
19 actually, from Mr. Durako, and that interfered -- since I was
20 not going to be able to present anything or since we weren't
21 going to be able to have reports or anything, that that
22 changed the conduct of how we would tackle the public
23 hearing.

24 Q. Okay. As far as change, you make an allegation

1 in the Petition about the City having changed its rules
2 governing the conduct of the proceedings. Is this what
3 you're speaking about, or is this what the allegation goes to
4 as far as changing rules?

5 A. No. There were different rules that were
6 changed, different things that happened along the way before
7 the hearing and during the hearing that seemed to shift.
8 When the hearing was going to be called, there was suddenly a
9 hearing that had not been public noticed that was at night
10 that was -- actually, we were invited to by the Corps of
11 Engineers, but we didn't understand what that purpose and who
12 was holding that hearing. There was -- Whether we could
13 submit something and whether we couldn't, Mr. Moran agreed
14 that we couldn't in the beginning, and then at the end of it,
15 he allowed to submit things. So, there was a shifting --
16 There was shifting rules and different things that happened
17 throughout the process.

18 Q. I suppose, if there are any changes in the rules
19 of the proceedings happening during the hearing, those
20 changes would be reflected in the transcript itself?

21 A. Yes.

22 Q. Have you talked about all the rule changes that
23 occurred before the hearing, before a transcript was made?

24 A. All of the rule changes?

1 Q. So far, I've only heard one, and there may only
2 be one, about being told one thing on a Friday before the
3 hearing by a City official as far as just showing up, and an
4 ordinance saying something else. I just want to make sure
5 that I'm covering the allegations in the Petition.

6 A. There may be. It's not coming to my mind right
7 at this moment. Perhaps I'll be able to think of something
8 as the hearing goes on.

9 Q. Let me ask you a little bit about archaeology,
10 archaeological issues brought up at the hearing. Before the
11 hearing, did you receive any papers from anyone concerning
12 archaeological issues in connection with the proposed
13 landfill?

14 A. Yes. I received some papers from Mr. Durako that
15 he said he didn't know if that was all they had on
16 archaeology, and I had been asking for the archaeology report
17 for quite some time, and I don't know the exact date Miss
18 Livingston had me sign that I received it. So, she would
19 have that information, but I don't know the exact date, but
20 it was only within a few weeks of the public hearing.

21 Q. Now, these papers that you received, did you --
22 what did you do with these papers?

23 A. I contacted Dr. John Kelly, who's an
24 archaeologist. I took them also to show some other people.

1 I gave the file to Dr. Kelly, and he reviewed it and made
2 notes, and he put stickies at various points on it.

3 Q. You say Dr. Kelly is an archaeologist. Does he
4 practice in archaeology?

5 A. He has -- He is a consultant. He teaches at
6 Washington University. He works with Cahokia Mounds, does a
7 lot of the archaeological digs at the Mounds, conducts
8 archaeology classes with teaching students archaeology
9 techniques, and he's an expert on the Mississippian culture
10 and the East St. Louis Mounds group.

11 Q. Was Dr. Kelly critical in any way of the papers
12 that you gave him that you received from Waste Management
13 concerning archaeological issues?

14 MR. MORAN: Objection. There's an attempt here to now
15 find out what Dr. Kelly may have reviewed, evaluated with
16 respect to some documents that were given to him, and in
17 indeed it may very well be whatever this evaluation is we're
18 about to hear is information that may have been presented at
19 the siting hearing I believe these Petitioners claim have
20 some relevance to the siting hearing. So, now we're getting
21 into the area of substantive testimony about allegedly
22 relevant matters in this hearing and not simply a fundamental
23 fairness proceeding. I object to the relevance of this, and
24 there appears to be an attempt to introduce evidence that

1 should have been presented during the siting hearing.

2 MR. PAPA: The City would join in that objection.

3 HEARING OFFICER WEBB: Okay.

4 MR. MORRISON: I think this will all become clear a few
5 more questions down the road, but the substance of what Dr.
6 Kelly said -- Now is probably a good time to pass out these
7 Exhibits and see what gets admitted into the record and what
8 doesn't. But what we're going to hear very soon is on
9 fundamental fairness, and this is in the transcript, but the
10 transcript will show that there was an attempt by Ms. Andria
11 to question at the hearing a Waste Management witness about
12 archaeological issues at the site, and there were objections
13 made that these questions about, "Well, what about these
14 mounds found within the area where the landfill is proposed,
15 what the significance of these?", there was an objection that
16 there was no significance. There was no relevance. This
17 didn't have anything to do with compatibility with the
18 existing area. So, what these notes are going to be relevant
19 for, they're going to support Ms. Andria's testimony that she
20 was prepared at that hearing to bring out testimony from the
21 applicant's witnesses about archaeology, and if the Pollution
22 Control Board determines that there was error in excluding
23 that evidence, well, the question is going to be whether the
24 Petitioners were prejudiced at all. Now, certainly if the

1 notes are meaningless and they just ask what were the name of
2 the witness, it's going to be hard to find prejudice, but the
3 substance of Kathy Andria sought to get from the witness is
4 important in determining prejudice. And in substance, these
5 notes are offered to show the substance of that inquiry, not
6 to offered to prove the truth of the matters asserted in
7 those notes. In a post hearing brief, if there's going to be
8 mention of those notes by me, it's going to be in the fashion
9 of fundamental fairness.

10 MR. MORAN: With respect to any notes that Dr. Kelly may
11 have prepared, clearly if that's what they are, based on the
12 ruling the hearing officer made during the siting hearing to
13 exclude such materials, if it were appropriate, the proper
14 procedure would have been for American Bottom Conservancy or
15 Sierra Club to make its appropriate offer of proof and lay
16 out that information during the hearing, not to attempt to
17 introduce it during the Pollution Control Board hearing on
18 the appeal. So, the whole notion that we need to find out
19 what that information was now can only be offered for the
20 truth of the matters asserted therein because it's evidence
21 that ABC alleges is relevant to this proceeding. It isn't --
22 It should have been presented at the siting hearing. There
23 should have been an offer of proof made. There wasn't. And
24 it's improper to introduce it at this point.

1 HEARING OFFICER WEBB: Well, since the substance of that
2 testimony is not part of the record, although I think the
3 allegation is that they wanted to comment and were not able
4 to. So, I'm going to allow you to ask some questions about
5 it within reason as an offer of proof to the Board.

6 MR. MORRISON: At this point, let me pass out -- I
7 probably should have done this before the hearing, but I've
8 got these Exhibits. Some may come in, and some may come in
9 as offers of proof. If I may take a minute to give everybody
10 a set, including you, Ms. Webb.

11 HEARING OFFICER WEBB: Okay.

12 MR. MORAN: Miss Hearing Officer, if I might clarify.
13 Is it your ruling --

14 HEARING OFFICER WEBB: He may ask a few questions.

15 MR. MORAN: We are proceeding as if it's an offer of
16 proof?

17 HEARING OFFICER WEBB: This is an offer of proof. Let
18 me know when this line of questioning is completed so we can
19 reflect on the record that we're back.

20

21 BY MR. MORRISON:

22 Q. Are you ready, Miss Andria?

23 A. Yes, I am.

24 Q. Now, forgive me if I asked this, but was Dr.

1 Kelly in any way critical of papers that you gave him that
2 you received from Waste Management?

3 A. He was extremely critical of the papers and the
4 procedures and the way the surveys were reported and taken
5 and undertaken, that the procedures.

6 Q. Did you and he discuss rebutting the report
7 either through applicant witnesses or presenting your own
8 evidence?

9 A. Yes, we did.

10 Q. Did he give you any notes that you could use in
11 connection with that effort?

12 A. Yes, he did.

13 MR. MORRISON: Ms. Webb, I've mistakenly given to you
14 the original Exhibits. I have a courtesy copy for you.
15 Thank you. Ms. Webb, if I may approach Ms. Andria and hand
16 her what's been marked Exhibit 11.

17 HEARING OFFICER WEBB: You may.

18 (Mr. Morrison hands document to witness.)

19

20 BY MR. MORRISON:

21 Q. Ms. Andria, I've handed you what's been marked
22 ABC Exhibit 11. Would you identify that, please?

23 A. It's says "Milam North Archaeology, History of
24 Investigation." It's two pages, plus a third page that lists

1 various sites, locations and what was found. It's notes that
2 John Kelly gave to me.

3 Q. Now, I believe the transcript of the proceedings
4 before the City of Madison shows your effort to question a
5 Waste Management witness about archaeological issues?

6 A. Yes. It seemed logical that the archaeology, the
7 mounds on the site, the only thing that it seemed to fall
8 under in terms of the siting criteria is incompatibility, and
9 we certainly consider it to be incompatible to have a
10 landfill on top of important Indian remains and mounds that
11 are eligible for the national historic registry listing. So,
12 we -- I forgot your question. I'm sorry.

13 Q. Well, I think you've answered that question. But
14 another question, were any of your questions that you were
15 going to ask at that hearing going to be based upon what is
16 set out in these notes, that ABC Exhibit 11?

17 A. Yes. I assumed there was going to be the
18 archaeology report presented at the hearing. I did not see
19 the list of witnesses that they had. When they announced who
20 was going to do that, I did not see an archaeologist.
21 Mr. Schanuel was the person who was listed as the
22 incompatibility person. So, I attempted to ask questions on
23 archaeology and cultural resources and the mounds from him.
24 The report was not submitted at the hearing. It was not --

1 An archaeologist wasn't there. We were denied asking
2 questions, and the report apparently was submitted at the end
3 of the public comment period.

4 Q. And when you say "a report was not submitted," at
5 least at the hearing, what report are you talking about?

6 A. The archaeology, the papers that were given to me
7 by Mr. Durako and then the archaeology report -- I do not
8 know if they're the same -- that was submitted by Waste
9 Management by Mr. Shinn, I think is his name, from Burns and
10 McDonnell at the City of Madison after the close -- or at the
11 close of the public hearing -- I mean, at the close of the
12 public comment period, not at the public hearing.

13 Q. So, this archaeology report, what you're
14 referring to as a report that was not submitted during the
15 public hearing, is that what you're calling the papers that
16 you had received from Waste Management and given to Dr.
17 Kelly?

18 A. That's what -- I received a file folder of
19 documents that looked to be a report. I do not know if it is
20 the archaeology report since it was never identified as such.

21 Q. Okay. But those papers were not submitted at the
22 public hearing or beforehand?

23 A. That's correct.

24 Q. And the notes that you had from Dr. Kelly

1 pertained to those papers?

2 A. That's correct.

3 Q. Now, you've just said that there was an
4 archaeology report submitted by Waste Management during the
5 public comment period?

6 A. At the very end is my understanding, of the
7 public comment period.

8 Q. Why did you not respond to that report?

9 A. It was at the end of the public comment period.
10 I didn't know it was there. I don't think there was time to
11 respond.

12 MR. MORRISON: That concludes the offer of proof.

13 HEARING OFFICER WEBB: Thank you.

14

15 BY MR. MORRISON:

16 Q. Before the public hearing, did you have any
17 information on wetlands impacts arising out of the proposed
18 landfill?

19 A. Yes. The Waste Management had applied sometime
20 perhaps -- I'm not even sure of the date, but quite sometime
21 before to the Corps of Engineers for a permit -- a 404 permit
22 to destroy 18 acres of wetlands and in order to use that as
23 soil to cover garbage, and there was a phrase -- and I don't
24 remember the exact wording of the phrase -- that said that it

1 might be used as part of other activities at North Milan.

2 Q. And did you attempt to elicit from any witnesses
3 -- Waste Management witnesses at the public hearing any
4 information about incompatibility with the wetlands?

5 A. I did. I tried to ask questions of the
6 incompatibility expert and was not allowed to ask questions
7 on wetlands.

8 MR. MORRISON: Miss Webb, that concludes the Direct
9 testimony of Ms. Andria. It's not the Petitioners' case in
10 its entirety.

11 HEARING OFFICER WEBB: Thank you. Is anyone adverse to
12 taking a five-minute break before Cross Examination?

13 (No response.)

14 HEARING OFFICER WEBB: We'll take a five-minute break.

15

16 (A brief recess off the record.)

17

18 HEARING OFFICER WEBB: All right. We will go back on
19 the record and pick up with Miss Andria's Cross Examination.

20 MR. MORAN: Thank you.

21

22 C R O S S E X A M I N A T I O N

23 by Mr. Donald J. Moran:

24 Q. Miss Andria, you've been involved in site

1 location proceedings prior to this one; haven't you?

2 A. Yes, I have.

3 Q. A number of them; correct?

4 A. Yes, I have.

5 Q. How many?

6 A. I think six.

7 Q. And, in fact, the first one you were involved in

8 was one that was, in fact, presented to the City of Madison;

9 isn't that correct?

10 A. I don't know.

11 Q. Were you ever involved in a siting proceeding

12 before this one that was held before the City of Madison?

13 A. Yes.

14 Q. And when was that?

15 A. When?

16 Q. Approximately.

17 A. Maybe ten years ago. I'm not sure of the date.

18 Q. And you participated in that siting proceeding in

19 what capacity? Were you representing an organization? Did

20 you appear on your personal behalf?

21 A. I represented an organization, and a group of

22 citizens also bantered together, and I don't remember whether

23 I was involved individually or just as the organization.

24 Q. What was the organization's name?

1 A. SPILL, S-P-I-L-L.

2 Q. And that's an acronym for something?

3 A. Stop Polluting Illinois.

4 Q. So, you were opposed to that siting application
5 pending before the City of Madison?

6 A. That's correct.

7 Q. Did the City of Madison have a siting ordinance
8 that applied to that proceeding?

9 A. I believe so.

10 Q. And did you review that siting ordinance prior to
11 your participation in that siting hearing?

12 A. I know that we handed in documents. So, I must
13 have reviewed it. I don't remember the details. I remember
14 some of the details very vividly. I don't remember all the
15 details of that.

16 Q. Isn't it true that that siting ordinance provided
17 that if there were any documents or exhibits any party wished
18 to use at the siting hearing, those documents had to be filed
19 five days before the start of the public hearing?

20 A. I know that there was -- part of the ordinance
21 said something about pre-filing. I do not remember the
22 specifics of the ordinance.

23 Q. And the provisions in the ordinance that applies
24 to this proceeding, in fact, provided that any documents or

1 exhibits that a party wished to use must be filed five days
2 before the start of the public hearing; isn't that correct?

3 A. What was the first part of your question?

4 Q. In this proceeding before the City of Madison, a
5 city ordinance provided and provides that if any party wished
6 to use an exhibit or document, that exhibit or document had
7 to be filed five days before the start of the public hearing?

8 A. That's correct.

9 Q. And that's, in fact, the same provision that was
10 in the ordinance applied to the proceeding you participated
11 in on behalf of SPILL approximately ten years ago; is that
12 correct?

13 A. I don't know if it's the same.

14 Q. Did you file any exhibits or documents on behalf
15 of SPILL in the proceeding before the City of Madison
16 approximately ten years ago?

17 A. My memory is that we did, yes.

18 Q. And did you file those documents within the
19 requisite period of time before the public hearings began on
20 that proceeding?

21 A. I'm sorry. I do not remember.

22 Q. Now, you indicated here that you first became
23 aware the existence of the City of Madison's siting ordinance
24 on Monday, December 18th; is that correct?

1 A. That's correct.

2 Q. And I believe you indicated that you first made
3 any contact with the City of Madison about whether it had a
4 siting ordinance on December 15th of 2006?

5 A. No, that's not what I said. I said I called to
6 find out if there were any rules in place. I didn't ask
7 about an ordinance. It didn't occur to me to ask about an
8 ordinance. I said just, "Do I have to register? What rules
9 are in place?"

10 Q. So, when you called the City of Madison on
11 December 15th, what you're telling us is that you had no
12 thought or indication about whether or not the City of
13 Madison had a siting ordinance that might apply to this
14 siting application; would that be correct?

15 A. I did not know that there was a siting ordinance.
16 I had heard that there might be something in place, that I
17 needed to do something, but I did not know that there was a
18 siting ordinance, and I did not know to ask.

19 Q. Did your knowledge of the fact that the City of
20 Madison had a siting ordinance in 1995 at all enter into your
21 mind?

22 A. I'm afraid, no, it did not. It was ten years
23 ago, and I just did not remember that.

24 Q. So, when you called the City of Madison on

1 December 15th, you didn't ask whether the City had a siting
2 ordinance that applied to this proceeding?

3 A. I did not use those words, no.

4 Q. You simply asked whether there were any rules
5 that applied to the siting hearing?

6 A. I asked, "Do I have to register for the public
7 hearing? Are there any rules in place?", and he said, "No.
8 Just show up," and then I asked how the hearing was going to
9 be conducted and how they were going to take witnesses, and
10 that's when he told me to call Mr. Papa.

11 Q. So, the information you received on December 15th
12 was that you should just show up to the hearing; correct?

13 A. That's correct.

14 Q. And there was no discussion about whether there
15 was any siting ordinance; correct?

16 A. That's correct.

17 Q. And you were told to call Mr. Papa?

18 A. That's correct.

19 Q. Did you call Mr. Papa?

20 A. I called Mr. Papa's office at the number that the
21 gentleman had gave me, and a woman answered. I identified
22 myself and why I was calling and asked to speak to Mr. Papa,
23 and I was told that they were all at a party -- a Christmas
24 party all day long, and they wouldn't be back.

1 Q. Did you ask for any other information about
2 Mr. Papa by which you may be able to contact him, in other
3 words, a cell phone number or some other means to contact
4 him?

5 A. I did not.

6 Q. So, you didn't talk to anybody over that weekend,
7 that is the 16th and 17th of December, regarding the
8 questions you had asked the City of Madison on the 15th;
9 correct?

10 A. I didn't talk to anybody at the City, is that
11 what you're asking me?

12 Q. Yes.

13 A. I did not talk to anybody from the City.

14 Q. And you didn't talk to Mr. Papa over that
15 weekend; correct?

16 A. No, I did not.

17 Q. So, as of Monday then, you still hadn't heard
18 from Mr. Papa; correct?

19 A. I believe that's correct.

20 Q. And your understanding was you should just show
21 up at the hearing; correct?

22 A. Well, let's put it this way: That was what I was
23 told on Friday, but when I called and could not get any
24 information and a law office was going to be closed all day,

1 because I called in the morning, that's when I went straight
2 to City Hall to find out what was there and what was in
3 place.

4 Q. Now, wait a minute. Who was closed all day?

5 A. I was told Mr. Papa's office on Friday that
6 they're all gone for the whole day at a Christmas party.

7 Q. I'm trying to understand what you were thinking
8 over this weekend when you hadn't heard from Mr. Papa and you
9 were told simply to show up at the hearing. So, at that
10 point, you still had no knowledge about whether there was a
11 siting ordinance; correct?

12 A. What I was thinking is that there was funny
13 business.

14 Q. You thought there was a funny business?

15 A. I said it did not seem logical to me that a law
16 office would close all day on a Friday for a Christmas party,
17 and I did not think that -- I thought something was funny. I
18 identified myself. I gave my name. I said, "Why are you
19 calling on Friday?" You asked me what I was thinking. I was
20 thinking that something was not right about this.

21 Q. Did you have or at any point learn facts or
22 information to support your thought that there was some funny
23 business going on?

24 A. Do I know that they were there? I mean, I don't

1 understand --

2 Q. No. I'm just trying to focus on your use of the
3 term "funny business". I'm not sure what you actually mean
4 by that. But I'm asking, were there any facts or information
5 you learned afterwards that supported your thought that there
6 was some funny business going on?

7 A. I'm finding it difficult to understand the
8 question you're asking. What you asked me was what my
9 thinking was. My thinking has been that there had been
10 fundamental unfairness found on the part of the City before.
11 There had been fundamental unfairness found on the part of
12 Waste Management. I did not think that I was going to have
13 to deal with either of these for this situation until after I
14 tried to get what rules were in place and what was going to
15 be happening on that Friday. That's when I started to think,
16 "Something's not right here."

17 Q. So, when you referred to "funny business," what
18 you were thinking is fundamental unfairness; would that be
19 accurate?

20 A. That's correct.

21 Q. So, as of the weekend of December 16th and 17th,
22 you're thinking there may be some fundamental unfairness
23 going on with respect to the siting application?

24 A. I was thinking that there was the possibility

1 that I was not being given all of the information that I was
2 asking for.

3 Q. So, would it be accurate to say that you believed
4 that Mr. Papa was deliberately not calling you back over that
5 weekend; did that thought occur to you?

6 A. I guess I did not think about -- Since the office
7 was closed on Friday, I did not think about a weekend being
8 business, that the City or that Mr. Papa would be operating
9 as if it were a weekday, especially with it was the last
10 weekend before Christmas.

11 Q. So, you didn't view it as unusual in any way that
12 Mr. Papa did not return your call over the weekend; is that
13 accurate?

14 A. I did not say that, and I would not say that.

15 Q. Okay. Well, what was your point about saying
16 this is the weekend before Christmas, and you didn't
17 necessarily expect that there would be some response over the
18 weekend?

19 A. I'm saying I did not make a determination that it
20 was unusual that he did not call me back. I'm saying I did
21 not think that it was usual. I'm just saying -- You're
22 asking me did I make a decision; did I have this thought in
23 my mind; was I waiting by the phone for him to call? No, I
24 was not, although the number I gave was my cell number. I'm

1 trying to answer your questions.

2 Q. And you didn't try to reach Mr. Papa with his
3 cell number; would that be correct -- over that weekend?

4 A. I do not have Mr. Papa's cell number, and I did
5 not.

6 Q. And you didn't ask for his cell number when you
7 called his office on Friday?

8 A. I did not.

9 Q. So, Monday morning, you don't know any more than
10 you knew on Friday; correct?

11 A. I believe that's correct.

12 Q. Did you receive any phone calls from anyone on
13 Monday, December 18th?

14 A. I do not remember.

15 Q. Did you take any actions on Monday, December
16 18th?

17 A. Yes.

18 Q. What did you do?

19 A. I believe I went with Mr. Norman to the -- Jack
20 Norman to the City of Madison City Hall.

21 Q. Why did you go to the City of Madison on Monday
22 morning with Mr. Norman if you hadn't heard back from
23 Mr. Papa or anyone else?

24 A. Because the City is where the repository of

1 information is, the City Clerk's office.

2 Q. But you didn't go to the City of Madison on
3 Friday; did you?

4 A. No, I did not.

5 Q. But you went on Monday; correct?

6 A. That's correct.

7 Q. And you went for what purpose?

8 A. I went to see what was -- what was in place, if
9 there were rules, what was going on with the hearing, and I
10 got a copy of the ordinance I believe.

11 Q. And who gave you a copy of the ordinance?

12 A. I do not know.

13 Q. Was it a man a woman?

14 A. It was a woman I believe.

15 Q. Did you ask for the ordinance, or was it simply
16 offered to you?

17 A. I asked -- I don't remember the words that I
18 used. I asked about what -- how it was going to be
19 conducted, if there were anything there that I could see. I
20 don't remember the words that I used.

21 Q. And were you asked to pay for a copy of the
22 ordinance?

23 A. Yes.

24 Q. What was the charge for the ordinance?

1 A. It was to be -- As I said, I don't remember. I
2 think it was \$5 for up to three pages or up to five pages.
3 I'm not sure. If you got one page, it was still \$5, and for
4 every page after that, it was a dollar.

5 Q. How long was the ordinance in pages?

6 A. It was 11 pages.

7 Q. Did you receive any documents in addition to the
8 siting ordinance when you went to the City on December 18th?

9 A. I'm not sure if I did.

10 Q. Well, isn't it true that you also received a
11 document that set out and identified the witnesses that Waste
12 Management of Illinois was going to present at the siting
13 hearing?

14 A. That's possible.

15 Q. Because one of the things the ordinance required
16 was that in conjunction with the filing of other documents or
17 exhibits, that the applicant and the other parties submit a
18 list of its witnesses that it intended to call at the hearing
19 also five days before the hearing; is that correct?

20 A. That's correct.

21 Q. So, you received those two documents, the siting
22 ordinance and a list of witnesses that were going to be
23 called by Waste Management of Illinois; correct?

24 A. I believe so.

1 Q. And you were charged for both of those documents?

2 A. I don't remember the specific charge.

3 Q. But you were charged for them?

4 A. I believe so.

5 Q. You did pay some amount of money --

6 A. I did.

7 Q. -- for these documents?

8 A. I did.

9 Q. You believe it was at least \$5?

10 A. I do not remember the amount. I'm sorry.

11 Q. So, it could have been less than \$5?

12 A. I do not remember the amount.

13 Q. As you sit here now, you have no idea what the

14 amount was?

15 A. That's correct.

16 Q. Do you have any information about whether you

17 were charged the customary amount for those documents or

18 whether you were given those documents at some reduced

19 amount?

20 A. I was -- There was a phone conversation. The

21 clerk or -- I don't know that it was the clerk or the deputy

22 clerk called someone and talked to someone on the telephone,

23 and they had a rather -- they talked for several minutes, and

24 they charged me then less than the full amount would have

1 been, and I do not remember the difference, and I looked and
2 didn't find a receipt. So, I could not tell you the amount
3 that I was charged, but I do also know that I was not given
4 -- after the close of the public comment period, I was not
5 given a reduced rate. I had to pay a dollar a page for
6 everything that I got -- the minutes and everything.

7 Q. This would have been after the decision was
8 rendered by the City of Madison?

9 A. This would have been after the vote was taken.

10 Q. And the vote was taken on February 6th of 2007?

11 A. I don't have that date.

12 Q. I understand that you don't recall what the
13 amount was you paid for the ordinance and the list of
14 witnesses, but it's your contention that whatever that amount
15 was, it was excessive; is that correct?

16 A. My contention is that it was excessive for the
17 City to charge what they were wanting to charge, and that
18 apparently -- I asked questions about the charging policy by
19 the City, and I firmly believe that it's against the law what
20 they're charging citizens to get copies of City documents.

21 Q. Is it your contention that what you were charged
22 here for these documents was against the law?

23 A. I was given the special rate. I do not remember
24 what it was, but it was -- I would assume specifically the

1 clerk was told to charge me less because of the previous
2 appeal that we had -- and a decision on fundamental fairness
3 that I got a special rate up-front because it was me. I
4 think the next person could have gone, and they would have
5 not got a special rate. I think that's fundamentally unfair
6 to citizens.

7 Q. Do you have any facts or information to support
8 your belief that the reason you were given a lesser charge
9 for these documents was because of the appeal of the SPILL
10 matter back in 1995?

11 A. Do I have proof of that?

12 Q. Or any facts or information. Did somebody say
13 that? Did you hear anything that suggested that was the
14 reason?

15 A. Well, they had an interesting discussion over on
16 the side, the woman employee of the City whoever was on the
17 other end of the phone.

18 Q. But you didn't hear any of that discussion; did
19 you?

20 A. No, I did not.

21 Q. So, other than that, you don't have any basis to
22 conclude the reason that you were given whatever charge you
23 were given was because of the involvement in the SPILL
24 proceeding back in 1995?

1 A. I think that it's a logical deduction from the
2 way Waste Management handled this proceeding and the way the
3 City handles it that that could be the case, and I found that
4 at another siting hearing that I was at that I attempted to
5 get information, it was cited -- or asked, "Are you the lady
6 that sued over this?", or something, and then they just gave
7 me something. So, yeah, I think you get special treatment if
8 someone doesn't want a lawsuit to be there, but I still think
9 that what they did and how they did it was fundamentally
10 unfair. It's not only unfair to us; it's unfair to anyone
11 who wanted -- If Jane Smith went in there and wanted to get a
12 document to participate in the hearing, I really firmly
13 believe they would not give them her a special price.

14 Q. But in this case, you contend that you received
15 special treatment with respect to the amount you were
16 charged?

17 A. With respect to the ordinance, yes, not with
18 respect to the public comments that were submitted or the
19 decision, as you call it, the vote, I call it the minutes of
20 that meeting, with regard to the end of the public comment
21 period, yes.

22 Q. And you're contending that the amount you were
23 charged was fundamentally unfair; correct?

24 A. I am considering -- Yes, the amount I was charged

1 was fundamentally unfair.

2 Q. And are you contending the amount you were
3 charged for the ordinance and the list of witnesses was
4 excessive?

5 A. No, I am not saying that the amount I was charged
6 was excessive. I don't remember what it was. I do know it
7 was a reduction from what it was first said to be.

8 Q. In your Petition for Review that you filed in
9 this proceeding, you allege that the City's sum that was
10 being charged for the ordinance that you received was
11 excessive. Are you now saying that this allegation ought to
12 be changed and deleted because you're now not claiming the
13 amount you were charged was excessive?

14 MR. MORRISON: If I may object. That may
15 mischaracterize the Petition. For clarity, what paragraph,
16 counsel, please?

17 MR. MORAN: I'm sorry. It is paragraph 16, Petition For
18 Review, and the specific sentence I'm referring to is the
19 last sentence. I'll just read that. It says, "Further, in
20 light of the excessive sum the City sought to charge for a
21 copy of Ordinance 1670, the City should have borne the burden
22 of including Ordinance 1670 within the record."

23 A. I think that statement is correct. Sought to
24 charge is what they sought to charge. They sought to charge

1 me a dollar a page after the initial amount.

2

3 BY MR. MORAN:

4 Q. So, you're still contending that the amount the
5 City initially quoted you for the ordinance and the list of
6 witnesses was excessive?

7 A. I do.

8 Q. But are you saying that the amount you were
9 actually charged for the ordinance and the list of witnesses
10 was not excessive?

11 A. I am saying that I don't remember the amount.
12 So, I couldn't say whether I think it was excessive or not.

13 Q. So, it's fair to say, as you sit here now, you
14 are unable to say whether the amount you were actually
15 charged was excessive; would that be fair?

16 A. That's fair.

17 Q. Are you contending that the amount you were
18 actually charged for the ordinance and the list of witnesses
19 was against the law?

20 A. The amount that I paid, is that what you're
21 asking.

22 Q. Yes.

23 A. I don't know. I doubt it.

24 Q. Are you contending the amount that was quoted to

1 you for the ordinance and the list of witnesses was against
2 the law?

3 A. I believe it's against the freedom of information
4 law and the access to public records, yes.

5 Q. And your claim here is that the amount you were
6 actually charged for the ordinance and list of witnesses was
7 in any case fundamentally unfair; correct?

8 A. I'm sorry. Would you --

9 Q. And what you're saying here is the amount you
10 were actually charged for the ordinance and the list of
11 witnesses was fundamentally unfair?

12 A. You just asked me that question.

13 Q. I just want to make sure that I understand that
14 that's your contention here.

15 A. I said I don't know the amount that I was
16 actually charged. I was relieved to get it less than \$11 or
17 however much more because if I got the list of witnesses,
18 that was -- I don't know how many pages that was. So, I
19 don't know what the total was. I needed that ordinance. I
20 had no place else to get it. It was not at the library. So,
21 I was relieved that I could get it for a discount, shall we
22 say.

23 Q. Are you saying now that you are unable to state
24 whether the amount you were actually charged for the

1 ordinance and the list of witnesses was fundamentally unfair?

2 A. Mr. Moran, I will say it again. I do not
3 remember the amount I was given. I cannot make a judgment as
4 to whether I think it was against the law.

5 Q. That wasn't my question. I'm focusing now on the
6 fundamental fairness. Forget about the question about
7 whether it's against the law.

8 A. Okay.

9 Q. Now I'm only asking about the fundamental
10 fairness.

11 A. Okay.

12 Q. Are you saying that because you don't know as you
13 sit here what you were charged, you don't know whether that
14 amount was fundamentally unfair, and you're not contesting
15 that it was fundamentally unfair because you can't -- you
16 don't know what the amount charged was?

17 A. I don't know the amount that I paid was for that.

18 Q. I'm saying don't you know whether the amount that
19 you were charged was fundamentally unfair?

20 A. Right. I do know what I did pay at the end of
21 the -- after the vote was taken.

22 Q. So, would it be accurate to say then that you are
23 not contending as you sit here now the amount you were
24 charged for the ordinance and the list of witnesses was

1 fundamentally unfair? You're not saying that now; correct?

2 A. I am not saying that it was fundamentally unfair.
3 I am not saying it was fundamentally fair. Since I don't
4 know the amount, I can't say that.

5 Q. Now, you indicated that you received a copy of
6 the ordinance on Monday, December 18th; correct?

7 A. Yes.

8 Q. And you said you skimmed over the ordinance on
9 the 18th; would that be accurate?

10 A. While I was still at the office.

11 Q. Was there ever a time when you actually read
12 through the ordinance start to finish?

13 A. I would assume so.

14 Q. But as you sit here, you don't know whether you
15 did that before the hearing started?

16 A. Every word, I don't know when I did. I don't
17 know whether I read it in part. I don't know whether I sat
18 down and read it from start to finish. I really don't know
19 the answer to the question.

20 Q. At some point, did you learn that the ordinance
21 contained within it the same provision as in the previous
22 ordinance from 1995 that said any exhibits or documents
23 intended to be used at the hearing had to be filed five days
24 before the start of the public hearing?

1 A. Yes, I learned that on Monday.

2 Q. On Monday you learned that?

3 A. Yes.

4 Q. December 18th?

5 A. Yes.

6 Q. And, so, you determined based on your reading of
7 that ordinance on the 18th that any documents you wanted to
8 use at the hearing had to have been filed five days before
9 December 21st?

10 A. On Monday, you said December 18th?

11 Q. That was Monday, December 18th.

12 A. Yeah. I'm sorry. I have my dates mixed up.
13 Yes, I learned that I should have filed the previous Friday
14 of the public hearing.

15 Q. Yes. By Friday, December 15th; correct?

16 A. Yes.

17 Q. Now, did you ask anyone to read the ordinance and
18 indicate to you whether your reading of the ordinance was
19 correct in that regard?

20 A. I don't believe so.

21 Q. So, you didn't consult with a lawyer about what
22 the contents of that ordinance said or meant; correct?

23 A. I think I discussed it with Mr. Norman, and I
24 discussed it with Dr. Kelly, and I'm sure I discussed it with

1 other people, but I did not consult an attorney, I do not
2 believe.

3 Q. So, you did not at any time seek any legal advice
4 as to what the intent or meaning of that ordinance language
5 was; correct?

6 A. I believe that's correct.

7 Q. You talked to Mr. Norman?

8 A. I did.

9 Q. And who is Mr. Norman, by the way?

10 A. Mr. Norman is both a Sierra Club and an ABC
11 member.

12 Q. And Dr. Kelly you've already identified?

13 A. Yes.

14 Q. Who were the other people that you talked to
15 about this provision of the ordinance?

16 A. Other people perhaps that were involved and who
17 were going to be going to the hearing, Sierra Club members.
18 I don't remember specifically.

19 Q. But they all concurred in your view that in order
20 to submit any documents, they would have had to be filed no
21 later than Friday, December 15th?

22 A. I don't remember that we took a vote. I mean, it
23 said what it said, and that's how we -- It's pretty clear
24 what it said.

1 Q. And did reading that in any way refresh your
2 recollection that the City of Madison ordinance that you had
3 dealt with back in 1995 had exactly the same provision?

4 A. Oh, yes.

5 Q. So, then you remembered that indeed, "Here's that
6 same provision that we dealt with back in 1995"?

7 A. Yes.

8 Q. Now, as of December 18th of 2006, was it your
9 intention to have any documents or exhibits prepared that
10 would be presented at the siting hearing?

11 A. As of which date?

12 Q. December 18th, Monday.

13 A. Would you repeat the question? I'm sorry.

14 Q. Yes. As of Monday, December 18th, was it your
15 intention or plan to have any documents or exhibits prepared
16 so they could be submitted at the siting hearing?

17 A. Yes. I had done -- I had started doing a google
18 search and going to some sites that I know about landfill
19 impacts and various studies that I've seen and been aware of
20 from previous work on impacts where landfills on groundwater
21 on how --

22 MEMBER OF THE PUBLIC: Speak up, please.

23 A. I'm sorry. I had started to compile studies from
24 the Internet on different impacts that I knew of with health

1 related things to communities living around landfills, to
2 impacts to groundwater, to various things. I had begun doing
3 those to bring to the hearing that I would have introduced
4 and asked questions from.

5

6 BY MR. MORAN:

7 Q. When did you start that google search? That day,
8 Monday, December 18th?

9 A. No. I had gotten some other documents from when
10 the first 404 permit for the Corps of Engineers, I believe I
11 handed in some documentation on that. And, so, I was -- Some
12 of the research had already been done. Some of it was -- I
13 was getting copies of things that I knew or that I had turned
14 in, and then there was the archaeology.

15 Q. So, some of these reports that you intended or
16 planned to present at the siting hearing you had obtained
17 during the 404 permitting process?

18 A. Some of them, yes.

19 Q. And you said you submitted those documents. To
20 whom did you submit them?

21 A. To the Corps of Engineers.

22 Q. And when was that?

23 A. Whatever the deadline was for public comments,
24 and then there was -- I don't remember the dates. I'm sorry.

1 And I think that -- It's my understanding that they held it
2 open for new information. And, so, I did submit additional
3 studies and reports.

4 Q. Was your submission of those initial reports done
5 sometime prior to December 15th of 2006?

6 A. Yes.

7 Q. How long before? Approximately a few months?

8 A. I'm sorry. I don't have a timeline in my head.

9 Q. Do you recall when you first became involved in
10 any part of 404 permit process?

11 A. I don't remember the date.

12 Q. Was it in 2005?

13 A. I believe so.

14 Q. So, it would have been well over a year before
15 this siting application was even filed; correct?

16 A. I believe so.

17 Q. Now, those documents that you submitted in the
18 404 permitting process, you intended or planned to submit
19 here, did you, in fact, offer any of those documents at the
20 siting hearing?

21 A. I believe I offered one. I'm not sure if I tried
22 to offer more than one, but I know that there was one that I
23 wanted to question Scott Schanuel on, which was impact of
24 landfills on the community. I thought that was a

1 compatibility issue.

2 Q. And when you offered that document, was it
3 admitted into evidence?

4 A. No, it was not.

5 Q. Which document was it?

6 A. I don't remember the name of it.

7 Q. Is it your recollection that at some point during
8 the hearings, all of the documents you offered were admitted
9 as part of this record?

10 A. I don't believe so.

11 Q. What documents weren't admitted?

12 A. I don't believe that the landfill document from
13 Rachel's was admitted, and I'm not sure if there were others.

14 Q. Do you know the circumstances under which you
15 offered that document relating to landfills from Rachel's?

16 A. I think I just said it was during the -- when I
17 was questioning Mr. Schanuel, I was asking him about impact
18 and compatibility on surrounding communities.

19 Q. And then later you were given the opportunity to
20 again offer that exhibit into evidence; weren't you?

21 A. It was at the end of the hearing, and there was a
22 magnanimous gesture, "Put it in since it's not going to
23 matter anymore," because there were no more witnesses to
24 question. So, it really had no -0 I mean, it lost its

1 impact. I couldn't question from it. I couldn't do
2 anything. I couldn't give a document that --

3 Q. Well, was it your understanding that you were
4 unable to ask questions of a witness based on a document that
5 you hadn't offered and admitted into evidence?

6 A. Well, I tried to ask questions, and my memory is
7 that the hearing officer said -- you objected, and he
8 sustained your objection. There were a lot of instances of
9 that. Some I attribute to the fact that I'm not an attorney
10 and maybe don't know how to lay a foundation to ask those
11 questions, and some I attribute to that there was -- I was
12 just not going to be able to ask questions about things that
13 the proponents didn't want asked.

14 Q. But ultimately isn't it true that that exhibit
15 you sought to have offered and you did offer was admitted as
16 part of the proceeding?

17 A. I don't know what its condition, what its status
18 was. There was some sort of something at the end where you
19 asked me, I believe, who the author was, and I cited -- I
20 read some of his credentials, and I said he was a respected
21 person, and I said that we can't bring these people -- we
22 can't -- citizens can't pay people to come to testify who
23 have done, I think, professional research. So, I think you
24 objected, and you wanted -- you said that, I believe -- and

1 this is just from not very solid memory, but I think you said
2 that weren't the hazardous waste sites, and I said that I
3 thought landfills all take in hazardous waste because that's
4 the toxic chemicals that we get, and we had a discussion
5 about that. So -- But I don't think it was admitted as
6 evidence, no.

7 Q. You were asked to provide additional information
8 with respect to that report so that a determination could be
9 made as to the relevance of the information contained; isn't
10 that correct?

11 A. You asked me to provide something, yes.

12 Q. And did you ever provide that information?

13 A. I don't believe I did.

14 Q. Okay. Now, during the course of this hearing,
15 you -- and also the post hearing period, you submitted more
16 public comments; correct?

17 A. That's correct.

18 Q. And one of those public comments had to do with
19 the archaeological issues you wished to raise; is that
20 correct?

21 A. Some of the -- Are you talking about the one on
22 the coroner's report?

23 Q. If that's what you characterize as an
24 archaeological study, yes.

1 A. Well, it was proof that there were burial remains
2 at the site, and it also indicated that the way that it was
3 being handled was not, I think, the way it should have been
4 handled according to the law, and I do know that I did not
5 see that coroner's report in what you submitted as the
6 archaeology report, but at least it was not in the documents
7 that were given to me before the hearing.

8 Q. What you just indicated to us were the contents
9 of the written comment -- a public comment that you submitted
10 during the post hearing public comment period; correct?

11 A. What I just said was what I had in my public
12 comment period, is that what your question?

13 Q. Yes. What you just described for us.

14 A. I believe so.

15 Q. Now, you're not contending here that you were
16 unable or prohibited from presenting any information
17 regarding archaeological issues; are you?

18 A. No, I'm not saying I was prohibited from
19 commenting on archaeological issues. I'm saying that a
20 report on the archaeology of the site was handed in at the
21 very end when we had no opportunity to question the person
22 who submitted the report, who compiled the report and to ask
23 the questions that we knew that were -- that had some
24 problems with procedure and results.

1 Q. And, in fact, did you have any intention or plan
2 to present an archeological report or study during the course
3 of the hearing?

4 A. We were trying to get a report. I submitted what
5 Mr. Durako gave me. I gave that to Dr. Kelly. It was a file
6 that was large. Dr. Kelly tried to go through it, and he
7 made notes about different things. We were going to try to
8 get a report together that we could use and then also prepare
9 questions to ask the archaeology person about the report.

10 Q. When did you first contact Dr. Kelly about
11 reviewing any of the information in this siting application?

12 A. Well, Dr. Kelly and I were working together on
13 the 404, and, so, he knew about the 404, but as soon as I got
14 a copy of the archaeology files from Mr. Durako, I called Dr.
15 Kelly.

16 Q. When did you get that copy of the archaeological
17 document from Mr. Durako?

18 A. It was in the weeks before the hearing. I don't
19 remember the date. I'm sorry.

20 Q. Would it be fair to say it was in the early part
21 of December of 2006, a few weeks before the hearing?

22 A. It's fair to say that.

23 Q. And that's when you first had a discussion with
24 Dr. Kelly about the possibility of putting a book together to

1 submit at the hearing?

2 A. Well, we didn't know -- We were looking for what
3 was found at the site and trying to get information from the
4 Illinois Historic Preservation Agency, talking to people at
5 the mounds, talking to other archaeologists who may know
6 things. I do not know who all Dr. Kelly talked to. We were
7 trying to find out what other people knew, but we did not
8 have the official archaeology -- the archaeologist's report
9 or -- Burns and McDonnell is an engineering firm, not an
10 archaeology firm. We didn't have their report.

11 Q. So, it would be accurate to say that Dr. Kelly
12 was aware of these different archaeological matters and
13 issues at least by the early part of December of 2006 when
14 you had the first discussion with him about the possibility
15 of submitting a report and siting information; correct?

16 A. Yes.

17 Q. And you at some point determined that you would
18 not present any report on archaeological issues at the
19 hearing because you had missed the deadline for submitting
20 such documents; correct?

21 A. That's correct. We were -- We had gotten the
22 documents, the archaeology file late, and he was going
23 through it. I'm not -- I don't have the technical background
24 to go through and to read it. So, he had to go through it,

1 and he has classes and other things. So, he did as much as
2 he could. When I found out that there was not -- it was too
3 late to submit a report, I said, "We can't submit a report."
4 So, he gave me the questions that I was going to ask the
5 archaeologist about the different parts about what was wrong
6 with the waste or things that were done and try to figure out
7 where the mounds were because there are several that are
8 eligible for registry, national historic registry, to ask
9 questions about remains because archaeologists hear about
10 what's happening, but not everything is shared. There's not
11 like some place you can go out to find out what someone found
12 very easily.

13 Q. Did you talk with Dr. Kelly at all about the
14 public comment that you subsequently filed regarding
15 archaeological issues?

16 A. I gave Dr. Kelly a copy of the coroner's report
17 when I got it, and I think he had heard that they had found a
18 body or that they had found bones, remains or something, and
19 I don't believe that he knew what the details were, and I got
20 that from going to the coroner's office. I did not know how
21 else to get it.

22 Q. You prepared the public comment that addressed
23 the archaeological issues that you submitted; is that
24 correct?

1 A. That's correct.

2 Q. Did Dr. Kelly have any input or provide any
3 information that you used in preparing that written comment?

4 A. I don't remember the comment. I haven't looked
5 at it lately. So, I couldn't answer that question just now.

6 Q. Did you make any determination that you would
7 file the comments that Dr. Kelly had given you to use in
8 cross-examining witnesses?

9 A. Would you repeat that? I'm sorry.

10 Q. Yes. Did you make any determination whether to
11 file the document, your notes that Dr. Kelly gave you for
12 your use in cross-examining witnesses? He gave you these
13 files as a public comment?

14 A. Well, I have no -- It's not my document. I have
15 no way of saying what it is, of proving what it is when I
16 hand it in. So, I --

17 Q. So, would it be fair to say you made the
18 determination not to file the document that Dr. Kelly had
19 given you?

20 A. I don't remember there was a determination made.
21 I'm not sure what my thinking was about it. I knew that it
22 was a big file, and that it had lots of sticky papers with
23 his notes on, and it was a challenge. So, I don't know -- I
24 didn't have the ability to write a report and assess what it

1 was.

2 Q. Did you ask Dr. Kelly to prepare a written
3 comment or submission that could be filed as part of the
4 siting process?

5 A. I think Dr. Kelly wrote a letter of comment from
6 the Powell Archaeological Research Center. I don't think he
7 compiled a report.

8 Q. Did you ask him to prepare that letter?

9 A. I don't think so.

10 Q. Did you talk to him about his preparation of such
11 a letter?

12 A. We discussed -- We discussed it there. We
13 discussed it at meetings that we have. I mean, there were
14 many -- There was a lot of concern about the archaeology on
15 the site, about the Indian remains.

16 Q. Did you review his letter before he filed it?

17 A. No, I did not.

18 Q. So, you never saw it until after it was filed?

19 A. I did not see it until I picked up the comment
20 from Madison City's office when I got the -- when I saw that
21 the archaeology report was there. So, I think that that's
22 the first time I saw that letter and the archaeology letter,
23 and I'm not sure when I saw that the Mayor had responded to
24 them.

1 Q. So, you somewhat became aware that Dr. Kelly was
2 submitting his own letter; correct?

3 A. I think I knew he might be doing that. I don't
4 remember -- I don't remember because he was out of town for a
5 lot of that period. I think he was doing some archaeology
6 somewhere. So, I don't really have a lot of memory of the
7 details of that period, what was done when or --

8 Q. Did you ask Dr. Kelly to attend the siting
9 hearing?

10 A. I think that I had hoped that he would, but I
11 think that he was unable to. I think he was out of town. I
12 think my memory is that -- it may not be correct, but I think
13 that was -- he was visiting family at Christmas.

14 Q. Did you consult with any person with respect to
15 the wetland issues you wished to raise with regard to the
16 site?

17 A. Did I consult with anyone?

18 Q. Yes.

19 A. I talked with Mr. Brensman (phonetic). I talked
20 to a lot of people who are concerned about wetlands. I
21 talked to people who are concerned about -- I talked to
22 people with 404 knowledge.

23 Q. Did you talk with any individual about preparing
24 a letter or any written document addressing the wetland

1 issues you thought were important at the site?

2 A. You mean an expert?

3 Q. An expert or anyone who's knowledgeable about
4 wetlands who can prepare a document that would set out those
5 issues as you saw they were important at the siting hearing?

6 A. I talked to someone, and I don't remember his
7 name, but I believe he submitted a comment, although I think
8 it was late. He was an academic from somewhere, but it
9 was -- We had a discussion, and he submitted something, but
10 it was difficult for me to understand what he was saying.

11 Q. Did you ask that person to attend the siting
12 hearing?

13 A. No. I did not know about that person.

14 Q. But your understanding is that this person did
15 submit a written comment during or maybe after the post
16 hearing comment period?

17 A. It's my understanding. He had offered to come,
18 but it was too late.

19 Q. That's because you didn't learn about the hearing
20 until the -- or the ordinance until the 18th?

21 A. No. I didn't know about the man.

22 Q. Of the four written comments that you submitted,
23 did any of them address wetland issues?

24 A. Well, the soil survey is all about wetlands and

1 floodplain and soil chemistry composition.

2 Q. So, in fact, one of your written submission did
3 address the wetland issues that you thought were important
4 regarding the siting area; correct?

5 A. It addressed the soil issues. It did not -- I'm
6 not remembering whether I read it recently. I don't know
7 that it talked about flood storage ability of wetlands or
8 what mitigation was on the site because I know that there's
9 been mitigation on the site, and that's a question I would
10 have asked the wetlands expert. When you put -- Where is the
11 landfill going to go? Is it going to interfere with any
12 mitigation that's there now from other impacts to wetlands?
13 How is it going to -- Just the fact that you're taking
14 wetlands. Those are all questions I would have asked of the
15 wetland expert.

16 Q. Are you aware that with respect to the
17 archaeological issues you sought to raise at the siting
18 hearing, that it was the position of the applicant that any
19 such issues were not properly considered as part of the
20 siting ruling process?

21 A. That's what you said.

22 Q. Are you aware of what the regulatory scheme is to
23 address archaeological issues in the State of Illinois?

24 A. Scheme?

1 Q. Well, regulatory set up, for instance, agencies
2 who review these issues. Do you have any understanding or
3 knowledge as to any of that?

4 A. Well, there are various components, and I'm
5 certainly not an expert on that. Because it's also a wetland
6 site, archaeology falls under the federal rule, and that's
7 triggered -- triggers -- I forget the law that it triggers
8 about confrontation with tribes. Without the 404 permit, if
9 there's not federal permitting, the State -- the Illinois
10 Historic Preservation Agency, and I'm not sure -- I think
11 there's a lot of latitude sometimes given. So, I'm not
12 really sure of all the law.

13 Q. But you are familiar with the Illinois Historic
14 Preservation Agency and their role in considering these
15 issues?

16 A. I certainly am.

17 Q. And with respect to the wetlands issues, you've
18 already referred to the 404 permit process?

19 A. Correct.

20 Q. Is that indeed the regulatory format in which
21 wetland issues are addressed at this type of proposed
22 landfill site?

23 A. Well, I believe Phillip -- I'm not sure if it's
24 been gutted or not, but I think the US EPA also has

1 jurisdiction over the floor on wetland issues.

2 Q. And was it your understanding that the position
3 of the applicant is that those kind of wetland issues are
4 more properly addressed by the agency and the Corps of
5 Engineers and part of the 404 permitting process; that's the
6 reason why we did not believe those issues were properly
7 considered at the siting hearing?

8 A. That's my understanding of your reading. Our
9 understanding is that those things go to the very heart of
10 the compatibility.

11 Q. You mentioned also that you became aware that
12 there was a written comment filed by the applicant that
13 related to archaeological investigations done at the site; is
14 that correct?

15 A. That's correct.

16 Q. I believe you said that your understanding is
17 that that written comment was filed on the last day of the
18 public comment period?

19 A. Close to the last day or the last day. I'm not
20 sure.

21 Q. Did you read that written comment?

22 A. Did I read it?

23 Q. Yes.

24 A. I don't think I read the whole entire.

1 Q. Were you aware that the comment was submitted
2 with the expressed statement that it was not a necessary or
3 relevant consideration for the local siting hearing body to
4 consider, but was submitted only because the issue had been
5 raised by ABC and the Sierra Club, and it felt it was
6 appropriate to at least describe the investigative work and
7 fieldwork that had been done to that date with respect to
8 those issues; were you aware of that?

9 A. I'm aware that that's your contention that it's
10 not relevant. It's not the feeling of the Native Americans
11 who are members of ABC. It's not the feeling of ABC, and we
12 think it's a very relevant issue.

13 Q. Did you read the written comment that was
14 submitted by the applicant as it related to the 404
15 permitting issues?

16 A. Mr. Harding's comments.

17 Q. Yes.

18 A. I think I skimmed it. I don't know that I read
19 everything.

20 Q. Did you note in your review of that submission
21 that the statement was clearly set out that it was not the
22 appropriate conclusion that the letter was in any way
23 necessary or even relevant to the issues in the siting
24 hearing; it was simply to describe information purposes to

1 identify the steps that had been taken to date as part of the
2 404 permitting process?

3 A. I read that he said that, and I do not agree. I
4 think that is your contention, and that's part of what we are
5 saying is not right, because it's like when you just put it
6 at the end and say you're doing it because we brought it up,
7 you're circumventing it. You're circumventing us from being
8 able to question those people. And the Mayor says in the
9 letter to the two archaeological groups that he made a
10 decision that those -- that report was enough for him, and he
11 didn't want to hear what the archaeology groups, the
12 professional archaeologists, who had been working on this for
13 many, many years, he didn't want to hear that. So, I think
14 that's fundamentally unfair, sir.

15 Q. So, would it be accurate to say that your
16 contention is that you were negatively affected in your
17 ability to cross examine Scott Schanuel because there was no
18 report filed on archaeological issues by the applicant?

19 A. I'm sorry?

20 Q. Is it your contention that your ability to cross
21 examine Scott Schanuel was negatively affected by the fact
22 that the applicant did not file a written report describing
23 its archaeological investigations at the site?

24 A. It's our contention that we were unable to

1 question Mr. Schanuel because you said that he's not the
2 archaeology person, and we tried to ask archaeology
3 questions, yet you had no archaeology person, and you
4 submitted an archaeology report at the very end that we could
5 not refute, rebut or question.

6 Q. Is that the extent of your contention with
7 respect to your ability to cross examine Mr. Schanuel, what
8 you just stated?

9 A. Is it the extent? I don't think so. I mean, I
10 tried repeatedly to ask him on specific issues. He's a
11 planner, a land use planner, and that's what he was, I
12 believe -- I can't think of the word I want, but that's what
13 you certified him as, that that was his field of expertise,
14 and I think my understanding of land planners from my work in
15 various growth issues and land use planning is that they have
16 to take account of what is at a site, what is adjacent to a
17 site, what the potential -- or what's going to happen to
18 around the site while this landfill is in use, and he
19 admitted that that didn't happen, not while the landfill is
20 open for 19 years, and he admitted that he did not do other
21 kinds of things that were -- that should have been required
22 for how the landfill would impact the area around and the
23 land use as it is.

24 Q. In addition to Mr. Schanuel, are you contending

1 your ability to cross examine any other witness was
2 negatively affected?

3 A. I think it was a challenge to try and question
4 Mr. Connor, who -- I'm sorry -- but I think that the
5 information presented on floodplain and the site being in the
6 floodplain and a map that you all contended -- a floodplain
7 map that you all contended in the last siting hearing for
8 Milam you said was an inaccurate map, and then you go and use
9 this map at this hearing as it is the truth, and I think that
10 you made it very difficult for us to ask questions, and just
11 declaring that it's not in the floodplain without showing
12 proof that it's not in the floodplain, I think that made it
13 difficult for us.

14 Q. Would it be accurate to say that you are claiming
15 that your ability to cross examine Mr. Connor was impaired
16 because of your belief that we did not submit sufficient
17 information to establish that the facility was not within a
18 hundred year floodplain?

19 A. That's correct.

20 Q. Was there anything else about your ability to
21 cross examine Mr. Connor that was impaired or restricted?

22 A. I do not -- Nothing comes to mind right now, but
23 I can't exclude that there wasn't.

24 Q. Were you negatively affected in your ability to

1 cross examine any other witness who was presented in the
2 siting hearing?

3 A. Negatively impacted by how?

4 Q. I'm asking if that's your contention. I don't
5 presume to know how someone was restricted in their ability
6 to cross examine someone. I'm asking you. Were there other
7 witnesses that you are contending you could not effectively
8 cross examine?

9 A. Oh, I was unable to effectively cross examine
10 people because the lack of technical background, but that's
11 not something I can do anything about or you can.

12 Q. We would all agree to that. Are there any other
13 witnesses that you're contending your right or ability to
14 cross examine was negatively affected, other than Mr. Connor
15 and Mr. Schanuel, as you've already indicated?

16 A. You mean the witnesses who testified, not
17 Mr. Harding?

18 Q. Right. We're not talking about your ability to
19 cross examine witnesses who never testified, that would be
20 correct.

21 A. Mr. Dennison.

22 Q. And in what way were you negatively affected in
23 your ability to cross examine Mr. Dennison?

24 A. Well, from my understanding from both Dr. Kelly

1 and from the application and from an archaeologist I've
2 talked to since then, there's a huge safety issue, in that
3 the landfill as it's supposed to be constructed lies along
4 side -- I was wondering why it was a strange shape, but it
5 lies along a pipeline. When I asked who I could question
6 about the pipeline, you brought Mr. Dennison out, and he
7 seemed -- he said he did not consider it, he did not know who
8 owned it, he did not know the nature of it, and I find it
9 hard to believe that -- he seems a very capable engineer --
10 that he would not know those things or that Waste Management,
11 who is a big, important company, would not have addressed
12 those issues.

13 Q. So, is it accurate to say that your contention is
14 that your ability to cross examine Mr. Dennison was
15 negatively affected because he did not have, in your view,
16 the level of knowledge that you would have liked to have been
17 able to inquire about?

18 A. No, I didn't say he didn't have the level of
19 knowledge. I said he did not provide information.

20 Q. Is it your understanding that any part of this
21 facility boundary is within or includes that pipeline?

22 A. What you've told me or what -- whoever was there,
23 I think Mr. Dennison said it's 200 feet away.

24 Q. So, the pipeline that you wanted to ask about was

1 200 feet away from the facility boundary; correct?

2 A. The archaeologists that have looked at the maps
3 and know much more about such situations than I do think it's
4 a big deal.

5 Q. That wasn't my question. My question is, is it
6 accurate to say that the pipeline that you were concerned
7 about was located at least 200 feet away from the facility
8 boundary?

9 A. I do not have personal knowledge of that. That's
10 what you told me. The way they described it to me, it's
11 along the boundary.

12 Q. Were there any other witnesses who you claim your
13 ability to cross examine was negatively affected?

14 A. I'm not sure that there is, but -- I'm not sure
15 that there is.

16 Q. As you're sitting here now, you do not recollect
17 that there were any other witnesses for whom you claim that
18 was --

19 A. I thought about it for a minute, and I can't come
20 up with anything, but I'm not -- I don't discount that I
21 might not just be thinking of it at this moment.

22 Q. Are you contending that the decision rendered by
23 the City of Madison was fundamentally unfair?

24 A. Are we contending that the decision was

1 fundamentally unfair?

2 Q. Yes.

3 A. I think they're contending they didn't make a
4 decision.

5 Q. When you say the City of Madison did not make a
6 decision, would you describe for us what you mean?

7 A. Well, I think that the -- And I don't know that
8 I'm going to have all of this correct, but it's my
9 understanding that the vote for siting must be based upon --
10 that each of the criteria -- of those nine criteria must be
11 proven, and it must include their findings, and the City of
12 Madison voted as at a city council meeting, and there's few
13 sentences in a middle of the city council minutes, and there
14 was -- when we went to get a copy of the -- because we read
15 about that there was a vote, and we went to get a copy of the
16 decision, there was no decision, and that's what we were
17 given was the three-page copy of the minutes with a few lines
18 about the vote.

19 Q. So, is it your contention that the City of
20 Madison did not follow appropriate procedures in reaching its
21 decision granting siting approval?

22 A. I'm saying that I don't believe that they did
23 have siting approval. I can't talk about the reaching part.
24 I mean, they voted. I wasn't there. I didn't hear what was

1 discussed or anything with the reaching. All I know is that
2 they did not submit a decision and the reasons for their
3 decision that they complied with all the nine criteria.

4 Q. So, your contention is that the City of Madison
5 did not render a decision on the siting application?

6 A. That's correct.

7 Q. Can you describe for us why the action taken by
8 the City of Madison was inappropriate or improper?

9 A. Well, if the citizens or anybody don't have a
10 proper decision, then they don't have the ability to appeal.
11 They have to know what it is that they're appealing, and they
12 have to know when the decision was made because there's a
13 certain timeline -- I'm not for sure, but maybe 35 days or
14 something -- after which they must -- or during which they
15 must appeal, and if you're waiting for that decision and the
16 decision document, and then they're counting the vote that
17 they took as the decision, and you blow your 35 days, then
18 you're out of luck. So, we chose and the Pollution Control
19 Board accepted that a vote -- we could appeal from that vote,
20 even though there was, in our view, no decision rendered.

21 Q. So, you're saying that the steps taken by the
22 City of Madison here may prevent an interested party or
23 citizen from appealing a decision or a punitive decision made
24 by the City of Madison; correct?

1 A. Yes.

2 Q. And, yet, you're here having filed this appeal
3 and presenting your case before the Pollution Control Board;
4 correct?

5 A. And because we decided that we better because we
6 didn't know -- You could -- I think there's in the law that
7 if the City doesn't render its decision within so many days
8 after you submit your application, then it's automatically
9 deemed granted, the application of the siting is granted.
10 So, if we wait around and we don't appeal within that time,
11 then they can grant it, and we lose all our rights, and I
12 think that's fundamentally unfair.

13 Q. So, if you're right that the City did not take
14 the proper steps to decide this appeal, we should be arguing
15 in this case that there should be a deemed approval, we
16 shouldn't be going through this exercise; is that correct?

17 A. That's a decision for the Pollution Control
18 Board.

19 MR. MORAN: Thank you, Miss Andria. I have no further
20 questions.

21 HEARING OFFICER WEBB: Mr. Papa, do you have any
22 questions?

23 MR. PAPA: Yes, ma'am. Thank you.

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C R O S S E X A M I N A T I O N

by Mr. John Papa:

Q. Miss Andria, I'm John Papa. You and I have met several times before.

A. Yes, sir.

Q. I'd like to ask some follow-up questions. If I'm not clear in my questions, would you be kind enough to ask me to restate them or rephrase them?

A. Yes, sir.

Q. Thank you. Ma'am, a good portion of what I'd like to talk to you about and we'll go back over the attempts you made to obtain information --

A. I can't hear you.

Q. -- attempts you made to gain information from the City about the process that was ongoing concerning this application. Just so we have a good understanding about this process, you had known of the intent of Milam to expand this landfill for some months before the hearing in December of 2006; correct?

A. That's correct. And I want to correct what you're saying. We are contending that it's not an expansion, that it's a whole new landfill.

Q. That's fine. I don't take exception to whatever you want to characterize it as yourself. However, the

1 application was not something that was a surprise to you
2 several months before this hearing in December of 2006;
3 correct?

4 A. Was the application a surprise to me?

5 Q. Yes.

6 A. The application, I knew that it was coming.

7 Q. That application -- in fact, you obtained a copy
8 of that application, which is several inches thick, and I
9 believe you indicated from Mr. Durako; is that correct?

10 A. I don't know if it was from Mr. Durako or from
11 Miss Livingston, but, yes, Waste Management provided us with
12 a copy of the application.

13 Q. And that was how many months before the hearing
14 in December, do you remember?

15 A. I do not remember.

16 Q. Is it fair to say that it was at least two or
17 three months before the hearing?

18 A. I do not know.

19 Q. You've raised issues of fundamental fairness, and
20 I gather that one of the aspects of fundamental fairness that
21 you believe is important in this process is to make sure that
22 the people involved in the decision-making process be given
23 enough information as far in advance as possible so they can
24 react to the information and take appropriate action; is that

1 right?

2 A. Are you talking about the City or a citizen? I
3 don't understand your question.

4 Q. Well, let's talk about that. In this instance,
5 what is your understanding as to the role of the City when
6 one of these applications for a siting approval is filed;
7 what's the City supposed to do?

8 A. The City -- There's rules about what the City is
9 supposed to do and what they have to do.

10 Q. Is it your understanding that the role of the
11 City is to actually make a decision as to whether the
12 application should or should not be granted or approved?

13 A. It's my understanding that the role of the City
14 is to decide whether the applicant has met all nine criteria
15 that are required under the law of the State of Illinois.

16 Q. And does your understanding of the process
17 include the fact that, in addition to receiving information
18 from the applicant, the process provides for opportunities to
19 members of the public to provide information to the City for
20 consideration?

21 A. I believe that there's a very fine line of the
22 citizens in interacting with the City until the public
23 comment period. I think that you're not supposed to discuss
24 it -- The decision-making body is not supposed to discuss the

1 application because they're the decision makers.

2 Q. But you understand that private citizens are
3 given a role in presenting information to the City for
4 consideration; are you not?

5 A. In the public comment section in the hearing,
6 yes.

7 Q. The hearing and the public comment section;
8 correct?

9 A. Yes.

10 Q. Now, the law, as you understand it, doesn't limit
11 citizen participation to citizens of the municipality itself;
12 does it?

13 A. That's correct.

14 Q. That's how you got to be involved in this; isn't
15 it? You don't live in Madison; do you?

16 A. I do not.

17 Q. Okay. You've got members of your organization
18 who have grown up in Madison, though; correct?

19 A. We have members who have -- either live or have
20 lived in Madison, yes.

21 Q. You understood that fundamental fairness gave
22 these citizens an opportunity during the hearing and during
23 the public comment period to give information to the City of
24 Madison so that they could consider that in making its

1 decision as to whether to approve the application or not;
2 correct?

3 A. Correct.

4 Q. And you knew that months in advance of this
5 hearing in December of 2006; didn't you?

6 A. Did I know that the citizens could participate?

7 Q. Yes.

8 A. Yes.

9 Q. And you knew the citizens could introduce
10 evidence into the hearing; correct?

11 A. I think that's a difficult thing. I think it's
12 provided for, but it's a difficult thing to accomplish in
13 reality.

14 Q. Well, you said that ABC, your organization, has
15 over a hundred members; right?

16 A. Yes.

17 Q. Some of those members are professionals, like an
18 archaeologist like Dr. Kelly; correct?

19 A. Right.

20 Q. I presume other ABC members have other expertise
21 that they are in possession of; correct?

22 A. Some of them do.

23 Q. How about yourself? Let's talk about your
24 background. What is your educational background?

1 A. May I ask the relevance of the question?

2 Q. No. I think it's a legitimate question.

3 HEARING OFFICER WEBB: Do you not want to give your
4 educational background?

5 A. I have a degree in art history, I have graduate
6 work in math communications, and I have a lot of work in
7 political science.

8

9 BY MR. PAPA:

10 Q. Do you have any engineering background?

11 A. Absolutely none.

12 Q. Do you have any scientific background?

13 A. Absolutely none. Nor legal.

14 Q. Did you understand well in advance of this
15 hearing in December of 2006 that you personally would not be
16 qualified to render opinions about issues relative to
17 archaeology?

18 A. I'm sorry. Render opinions?

19 Q. Opinions, yes, about archaeological issues that
20 might impact this siting application.

21 A. Oh, absolutely not. I think that anybody with
22 any sense when you hear that there are mounds prehistorical
23 ancient Indian mounds, when something is close to the
24 2,000 feet from an archaeological world heritage site --

1 there aren't many of them in the world -- when there are
2 Indian remains found, I think anyone without an archaeology
3 degree can decide whether that's appropriate or not to put a
4 landfill and dump garbage on it.

5 Q. Well, I'm not asking you about your opinions
6 about what may be appropriate or not generally. I'm wanting
7 to know whether you have expertise where you can give
8 opinions to a reasonable degree of scientific certainty about
9 the impact or effect that this landfill might have on the
10 site where it was being proposed to be located?

11 A. I know how to do research, I know how to question
12 experts, I know how to gather information, and I know how to
13 present it. Just because I present something, it doesn't
14 mean that it's necessarily invalid because I don't have a
15 degree.

16 Q. Would that opinion be true also for wetlands
17 issues that might come up in one of these siting
18 applications?

19 A. What, that I don't have a valid opinion on
20 wetlands?

21 Q. That you're not qualified to express your
22 opinions to a reasonable degree of scientific certainty in
23 reference to those issues.

24 A. Well, I was asked to testify in front of a house

1 government, a committee on government reform on wetlands.
2 That gives me some credibility. I've worked on wetlands
3 issues for a long time. I know their value, and I certainly
4 know the record and the history of Mr. Harding and the record
5 of wetlands destruction in the American Bottoms.

6 Q. Are you taking the position today that you are an
7 expert in wetlands science?

8 A. No, I'm not.

9 Q. Given your background and history in this kind of
10 work where you have participated in siting application
11 processes in the past, you understood generally speaking that
12 at a hearing, witnesses presented on behalf of the applicant
13 would be testifying; correct?

14 A. Correct.

15 Q. You understood that witnesses could be called by
16 people in opposition to the application to testify; correct?

17 A. I'm a little fuzzy on that part.

18 Q. Well, when you read the ordinance that you picked
19 up at City Hall --

20 A. 1670.

21 Q. -- 1670, you certainly saw there that, in
22 addition to submitting documents, that you would be allowed
23 to present testimony as to any issues you felt were relevant
24 to the application itself; correct?

1 A. I don't remember that part of it, but I'm sure
2 it's there.

3 Q. Well, from your experience in other hearings, you
4 knew that people could come and testify, could be called to
5 testify about the application itself; correct?

6 A. I'm not clear that people can -- that we as
7 citizens can call someone to testify. I think that involves
8 subpoenas and all other kinds of things. If someone
9 voluntarily wants to testify, that's a whole other thing, but
10 to call a witness, I don't think you can do that.

11 Q. That's your understanding, that you don't have
12 the right to have a witness testify if you asked them to come
13 and testify?

14 A. No, that's not what I said.

15 Q. So, you do believe that if you asked someone to
16 come and testify, they could testify at a hearing such as was
17 conducted in December of 2006?

18 A. I do believe that if someone wants to come
19 testify, that they can do so, yes.

20 Q. And this case reflects that some people did come
21 up and give statements about their feelings concerning this
22 application during that hearing; correct?

23 A. I don't believe anyone testified. I believe the
24 comments that were held that they strangely called being the

1 meeting, I believe all of those were public comments without
2 testifying. And, so, those, my understanding, receive lesser
3 weight.

4 Q. You didn't hear anyone that asked to testify be
5 denied the opportunity to testify during that hearing; did
6 you?

7 A. I don't believe so.

8 Q. You mentioned that there was a part of the
9 hearing that you didn't think was properly noticed; is that
10 correct?

11 A. That's correct.

12 Q. Just so the record is clear, you indicated that
13 you first heard about that from the Corps of Engineers;
14 correct?

15 A. Correct.

16 Q. Would you agree with me that you came to
17 understand after you began to attend the hearing that was
18 properly noticed, which you acknowledge; correct?

19 A. The daytime part, yes, it was properly noticed.
20 I believe so. I didn't look into it that it was or wasn't,
21 but --

22 Q. You haven't challenged it; correct?

23 A. No.

24 Q. So, you got a notice about a hearing?

1 A. No, I did not get a notice. I got an e-mail.

2 Q. You received information that informed you that
3 this hearing was going to take place beginning at what, 9:00
4 o'clock in the morning?

5 A. No, no, no.

6 Q. I'm talking about the notice for the hearing that
7 was published in the newspaper.

8 A. Okay. The notice -- I don't believe I saw the
9 notice. I know I said that in the deposition, but I don't
10 believe I saw that notice in the paper, because I believe
11 Miss Livingston called me to tell me it was going to be on
12 the Belleville paper on a certain date, and it wasn't. I
13 believe I saw or heard from somebody who saw an article that
14 it was going to be. So, I'm not sure that I saw the public
15 notice that was in the paper. But you're talking about for
16 the regular hearing, not for the one that the Corps of
17 Engineers attended; right?

18 Q. Well, I'm talking about the hearing that began on
19 Thursday morning, I believe, at 9:00 o'clock. Okay?

20 (Witness nods head.)

21 Q. You had gotten information about that hearing was
22 going to take place; you believe that the information in the
23 notice was sufficient and complied with the law; correct?

24 A. I believe so.

1 Q. And you showed up at 9:00 o'clock for that
2 hearing to begin; correct?

3 A. I did.

4 Q. And at that time or shortly thereafter, you found
5 out that there was going to be an extension from that date
6 after 5:00 o'clock if people wanted to come and attend
7 another session of that hearing later that evening; correct?

8 A. I don't know that I found that out then. I think
9 I remember that I got an e-mail the evening before, late in
10 the afternoon from Keith McMullen from the Corps of
11 Engineers, and I don't remember the contents of the e-mail,
12 but it said something about the Corps was inviting us to come
13 to a public hearing in the City of Madison on the Milam. I
14 don't remember the specific wording. I think that was the
15 first I heard that there was a separate public hearing on
16 that night.

17 Q. All right. So, this hearing that you're deeming
18 a separate hearing was a hearing that took place the day on
19 which a notice was issued about the hearing taking place on
20 this application; correct?

21 A. It was on the evening of the day that the public
22 hearing started at 9:00 o'clock.

23 Q. In your experiences with these public hearings,
24 you know that sometimes the public hearings are conducted

1 during the day; correct?

2 A. Correct.

3 Q. Sometimes those public hearings are conducted
4 during the evening; correct?

5 A. Correct.

6 Q. Sometimes they're conducted both in the morning,
7 afternoon and evening of a particular day; aren't they?

8 A. I am aware that that has happened. I don't know
9 that I've been at one that's gone day -- morning, afternoon
10 and evening. Maybe on a continuous basis. I'm not sure. I
11 can't remember that I was involved in one, but I can't be
12 sure that I was.

13 Q. In any event, you were able to attend all of
14 these hearings personally yourself both on Thursday and then
15 the next day, on Friday; correct?

16 A. That's correct.

17 Q. Now, let's go back to the Friday before the
18 hearing when you went to or you called the City Hall and
19 spoke with an individual about the hearing and whether you
20 had to preregister for the hearing; right?

21 A. Yes.

22 Q. You were prompted to make that phone call by
23 what?

24 A. I think I had a conversation with Miss Livingston

1 that she said there might be something that you have to do
2 before the hearing.

3 Q. So, you had been in communication with counsel
4 for Waste Management in the days and weeks leading up to that
5 date about the application?

6 A. I wouldn't put it on a regular basis. I had
7 periodically conversations or meetings.

8 Q. You also -- Well, had you remembered at that time
9 that in the prior siting application that you participated in
10 at the City of Madison -- and I'll represent to you it was
11 back in 1995 -- that the City had, in fact, adopted certain
12 rules and regulations about the hearing and how it was going
13 to be conducted?

14 A. Are you asking me if I remember?

15 Q. Had you remembered that back around that time?

16 A. I only remembered it after I saw the ordinance.

17 MR. PAPA: Madam Hearing Officer, may I approach,
18 please?

19 (Hearing Officer Webb nods head.)

20

21 BY MR. PAPA:

22 Q. Ma'am, I'd like to show you what I've marked as
23 City of Madison Exhibit No. 1, and ask you if you recall this
24 to be Ordinance Number 2158 of the City of Madison adopted on

1 July 5th, 1995 relative to a procedure for approving a
2 regional pollution control facility site in the City; is this
3 a document that you had familiarized yourself with years
4 before this hearing in December of 2006?

5 A. I remember that there was an ordinance back 10
6 years ago, 12 years I guess it is. I don't remember what was
7 in the ordinance. I do remember taking the document back
8 things -- different things on hazardous waste, incineration
9 and different things to the City.

10 Q. You remember back in 1995 that you actively
11 participated in a hearing before a hearing officer by the
12 name of William King during a hearing that spanned several
13 days; correct?

14 A. You reminded me of that during the deposition,
15 and I could not come up with his name or remember a lot about
16 it. I remember some things very vividly from that time. I
17 did not remember Mr. King. I'm sorry.

18 Q. So, when you obtained the Ordinance Number 1670
19 from the Clerk of the City of Madison and looked at it, did
20 that refresh your recollection that, in fact, Madison had a
21 similar ordinance back in 1995 when you participated in that
22 siting application hearing?

23 A. Yes, it did.

24 Q. Now, do you remember back from 1995 that the

1 hearing officer, Mr. King, did make certain rulings that
2 related to the application of the rules that were set forth
3 within the ordinance about admission of evidence and
4 documents and exhibits?

5 A. I'm sorry, Mr. Papa, but I do not remember.
6 Those are the things that I do not remember about that.
7 There are things that I do remember about that time, but I do
8 not remember Mr. King's rulings.

9 Q. Let me see if I can refresh your recollection.

10 MR. PAPA: And this would be, Madam Hearing Officer, the
11 Court can take judicial notice of since it is part of the
12 findings of the hearing officer, Mr. King, that would be part
13 of the record of the Pollution Control Board from back during
14 that period of time.

15 HEARING OFFICER WEBB: The ordinance you mean?

16 MR. PAPA: No. His findings that were made part of the
17 record in the appeal of that process.

18 HEARING OFFICER WEBB: Okay.

19

20 BY MR. PAPA:

21 Q. The case number -- I don't have that -- I think
22 it's 3-14-95, but on September 11th, 1995, Mr. King rendered
23 certain findings that included the following, on Page 10:
24 "It will be noted that in compliance with Rule 13 of that

1 ordinance, providing that the rule shall be interpreted
2 liberally by the hearing officer, and that the hearing
3 officer has power to bury the rules and deviate therefrom
4 when deemed necessary by him in order to conduct the public
5 hearing consistent with fundamental fairness. The hearing
6 officer, in fact, did not require the proponents or opponents
7 of the application to strictly follow the ordinance, but, for
8 instance, granted opportunity for verbal cross examination by
9 both the proponents and opponents, permitted the introduction
10 of exhibits which were not previously marked or offered for
11 evidence, permitted the testimony of witnesses not named on a
12 witness list submitted to the hearing officer prior to the
13 hearing, and generally permitted the proponents and opponents
14 to offer into evidence provided it's all verbal testimony and
15 documentation presented by both sides during the public
16 hearing process or in the 30 days following the conclusion of
17 the public hearing." Do you recall -- Does that refresh your
18 recollection at all as to how the hearing officer back in
19 1995 conducted that hearing that involved an application
20 before the City of Madison?

21 A. Again, I have some very vivid memories of that,
22 and those were not of my memory of that time, but I remember
23 Mr. King briefly as to what he did, and that I think he was
24 an attorney in Edwardsville, but I really don't remember.

1 That was 12 years ago. And I don't remember that hearing in
2 terms of how it was conducted by Mr. King.

3 Q. Well, you will agree with me, will you not, Miss
4 Andria, in Ordinance 1670, it specifically relates that, "The
5 hearing officer shall make all decisions and rulings in
6 accordance with 40.1 of the Act and fundamental fairness"; do
7 you recall that portion of the ordinance?

8 A. If you're reading from it, I'm sure it's there.
9 Could I ask one question? Is 1670 -- And are you submitting
10 this to the record is, this 1670 in the record?

11 HEARING OFFICER WEBB: Please just answer the question
12 that's asked. Mine is labeled 1258.

13 MR. PAPA: This is the old one.

14 HEARING OFFICER WEBB: Oh, okay. Thank you for the
15 clarification.

16

17 BY MR. PAPA:

18 Q. You mentioned 1670. And yesterday you remember
19 giving a deposition?

20 A. Yes.

21 Q. And I asked you to bring to the hearing today a
22 copy of any documents you received from the City of
23 Madison --

24 A. Yes.

1 Q. -- correct? You received -- You're acknowledging
2 you received Ordinance 1670; do you not?

3 A. Yes.

4 Q. You didn't bring that today; did you?

5 A. Did I?

6 Q. I'll show you what your counsel had given to me.

7 A. If I didn't bring it, then I didn't have it, or I
8 couldn't find it.

9 Q. Ma'am, is my understanding correct, that one of
10 the reasons that you believe the process conducted by the
11 City of Madison was not fair to you is because you weren't
12 allowed to introduce evidence that you wanted to introduce at
13 this hearing?

14 A. That was one of the things that we thought was
15 unfair.

16 Q. Part of the evidence that you wanted to introduce
17 was archaeological evidence; correct?

18 A. That's correct.

19 Q. You knew about issues relative to archaeological
20 matters related to this site, at least in your mind, well in
21 advance of the hearing; didn't you?

22 A. Did I know about archaeology matters on the site
23 in advance of the hearing? Yes.

24 Q. You probably tried to bring those back up with

1 the Fairmont City application several years ago; correct?

2 A. I know that archaeology was brought up. I think
3 it was a member of the community that brought up putting
4 landfills and garbage on Indian mounds. She was of Native
5 American heritage. I don't remember specifically that we
6 were -- Since it was a vertical expansion and not a
7 horizontal expansion, I don't think we went into a lot of
8 what was going to happen destroying additional land on the
9 ground.

10 Q. Would you agree with me that the person you were
11 getting most of your information from in terms of these
12 archaeological issues is probably Dr. Kelly?

13 A. Well, also the archaeologist at the mounds.
14 There are several archaeologists at the mounds.
15 Archaeologists that I've talked to with some of the
16 university, not just Dr. Kelly, no.

17 Q. Well, what you've brought here today, this
18 Plaintiff's Exhibit 11, that you're asking to be introduced
19 into this record, your representation is that these three
20 pages, Exhibit 11, are your notes based upon what Dr. Kelly
21 was telling you about this site and issues that he felt
22 needed to be raised about the archaeology issues relative to
23 this site; correct?

24 MR. MORRISON: Object to the question. It lacks

1 foundation. That was not her prior testimony that those were
2 her notes.

3

4 BY MR. PAPA:

5 Q. Perhaps I need some clarification then. What is
6 your purpose in introducing Plaintiff's Exhibit 11? What's
7 this supposed to be?

8 A. You asked me, I believe, at the deposition
9 whether I was prepared, whether we had done -- and you were
10 trying to insinuate or Mr. Moran was -- I'm not sure -- that
11 we weren't preparing any information and questions with
12 regard to the hearing and archaeology, and those are Dr.
13 Kelly's -- some of Dr. Kelly's notes on some of the things he
14 found to question in the archaeology report that was handed
15 in at the end of the hearing, and he got those from the notes
16 that were filed that Mr. Durako gave to me. He looked
17 through that, and he --

18 Q. I'm really confused now. I thought you testified
19 yesterday that you had --

20 MR. MORAN: Tuesday.

21 A. Tuesday.

22

23 BY MR. PAPA:

24 Q. I'm sorry. Thank you. I thought you indicated

1 in your deposition on Tuesday that you had meetings or phone
2 calls with Dr. Kelly, and you had made some personal notes
3 that you intended to use at the hearing to cross examine
4 people. Is that what these notes are?

5 A. No. That was Dr. Kelly's notes.

6 Q. So --

7 A. And I was going to use them with some other
8 things that are with pink stickies to question the
9 archaeologist on parts of the archaeology report that was in
10 question and that were inadequate, and that's from Dr. Kelly.
11 That's not my writing.

12 Q. Well, can you show me on Plaintiff's Exhibit 11
13 where Dr. Kelly's name appears anywhere?

14 A. I don't think it does.

15 Q. Can you show me on Exhibit 11 a date that shows
16 when this document was prepared?

17 A. I don't think it does.

18 Q. When you say that you were prejudiced or
19 adversely impacted by not being able to cross examine someone
20 because of Dr. Kelly's notes during the hearing --

21 A. I don't think I said that.

22 Q. Is that an accurate statement; did you have some
23 notes that you were going --

24 A. I wasn't able to cross.

1 Q. Did you want to cross examine someone based upon
2 notes that you had received from Dr. Kelly during this
3 hearing?

4 A. Did I want to cross examine someone based on Dr.
5 Kelly's notes and reading of the archaeology papers that were
6 given to us? Yes, I did.

7 Q. Are you saying you were given archaeology papers
8 in advance of the hearing?

9 A. That's correct.

10 Q. Okay. Do you remember what those were, what
11 those papers were that you were given in advance of the
12 hearing about archaeology issues? I'm presuming you were
13 given them by the applicant?

14 A. By Mr. Durako.

15 Q. So, you had this information in advance of the
16 hearing. Dr. Kelly -- Is that correct? You had some
17 archaeology information in advance of the hearing; correct?

18 A. Correct.

19 Q. You got that from Mr. Durako; correct?

20 A. Yes.

21 Q. You understood that that was a position taken by
22 or documents that were going to be relied upon by the
23 applicant in reference to the application; correct?

24 A. I assumed so.

1 Q. You went to a member of your organization, who is
2 a professor. Is he an archaeology professor? What's his
3 degree at Wash U?

4 A. He's got a doctor. I'm not sure what it is.
5 He's an archaeologist. He's, I think, a cultural
6 anthropologist. I'm not sure.

7 Q. And this is Dr. Kelly; correct?

8 A. Correct.

9 Q. In advance of the hearing, you have an
10 opportunity to meet with Dr. Kelly or talk to him on the
11 phone, and he looks at documents that were given to you by
12 applicant in this case; correct?

13 A. Correct.

14 Q. You make some notes from your discussions with
15 him; correct?

16 A. Correct.

17 Q. Exhibit 11 is not those notes, though; right?

18 A. No. That's from Dr. Kelly. That's his notes.

19 Q. Okay. Do you know when these were made?

20 A. I think a couple days before the hearing.

21 Q. Would you agree with me then that any issue that
22 you have relative to fundamental fairness and the
23 introduction of Dr. Kelly's observations into this case would
24 be moot if Dr. Kelly subsequent to the hearing submitted

1 documentation for consideration by the City?

2 A. Well, Dr. Kelly's report or documentation is
3 precluded on what this is, and this was never identified what
4 this is, the papers that we got. It's not an official
5 application. It wasn't an official report. It wasn't
6 anything. It was basically given to me by Mr. Durako. He
7 said, "This is what I can find on archaeology. I don't know
8 if it's all there."

9 Q. I want to make sure the record is clear. The
10 information contained on Plaintiff's Exhibit 11 is
11 information that you are submitting was prepared by Dr. Kelly
12 in advance of this hearing; correct?

13 A. Correct.

14 Q. You've indicated that you're aware Dr. Kelly
15 submitted a report as a member of the Powell Archaeological
16 Research Center in Fairmont City, Illinois after the hearing;
17 correct?

18 A. No, he did not submit a report. He submitted --
19 I believe Powell Archaeological Research Center submitted a
20 comment letter.

21 Q. Okay. Are you familiar with the fact that on
22 January 19th, 2007, he authored a document that was submitted
23 during the comment section or period of this case?

24 A. Yes, I am.

1 Q. Did you participate with Dr. Kelly in the
2 preparation of the document dated January 19th, 2007?

3 A. I did not.

4 Q. Have you actually read what he submitted?

5 A. At one time I did. I haven't read it lately.

6 Q. Certainly you understand this process of a siting
7 application and the comment period to allow opponents, as
8 well as proponents, to submit whatever information they want
9 to have considered admissible by who's making the decision in
10 this case during this comment period?

11 A. That's correct.

12 Q. So, if Dr. Kelly wanted to relate everything that
13 was contained on Plaintiff's Exhibit 11 during the comment
14 period, you know of no reason why he would have been
15 prohibited from doing so; do you?

16 A. Well, it refers to specific information in the
17 papers that, to our knowledge, haven't been submitted. So,
18 if you say, "On page something," or cite "Page 1 of this
19 something," cite 158 or whatever it was, it doesn't make any
20 sense. It doesn't have any relevance. No one knows what
21 he's saying or implying. That's why it was important to
22 submit the archaeology report, Waste Management, Burns and
23 McDonnell, Mr. Shinn's report while we could still ask
24 questions on it. A document with questions about something

1 that's not in evidence is nothing. It means nothing.

2 Q. You indicated that you made an attempt to contact
3 my office on Friday before the hearing in December of 2006;
4 correct?

5 A. Correct.

6 Q. And I was not available when you made that call;
7 correct?

8 A. That's correct.

9 Q. You indicated that you did speak with an
10 individual at the office; correct?

11 A. That's correct.

12 Q. Did you make any attempts during -- later in the
13 day on that Friday to reach me?

14 A. No. The receptionist or whoever answered the
15 phone said that you wouldn't be there the rest of the day.
16 So, I did not.

17 Q. Do you think it was important for you to get in
18 touch with somebody from the City about how this hearing was
19 going to be conducted?

20 A. I identified who I was, what I was calling about,
21 and that it was important, and I would assume that your
22 receptionist would have given you the message.

23 Q. Why did you feel it was important for you to
24 contact someone from the City about how the hearing was going

1 to be conducted?

2 A. Why was it important?

3 Q. To you.

4 A. So I would know what the rules are.

5 Q. You felt that was going to be very -- You didn't
6 want to have any problems in presenting whatever you wanted
7 to present during that hearing; did you?

8 A. I really didn't want problems with this. I
9 really did not.

10 Q. You certainly have had access before that date to
11 representatives from Waste Management; correct?

12 A. Yes, absolutely.

13 Q. In fact, one of their lawyers communicated with
14 you from time to time about this whole process; correct?

15 A. As did Mr. Durako through his attorney, but I did
16 meet with him.

17 Q. So, the applicant in this case appeared to be
18 cooperating with you; did they not?

19 A. Yes, they did.

20 Q. You weren't expecting any funny business, as you
21 quote, as you described it, from the applicant; did you?

22 A. I certainly didn't expect anything like that, no.

23 Q. And when you called the City Hall on Friday, the
24 Friday before this hearing, it wasn't out of the ordinary for

1 you to be told that you should direct your questions about
2 how a hearing is going to be conducted to the City attorney;
3 right?

4 A. Was it unusual? I don't know. I don't call city
5 halls and ask things like that often. So, I don't know.

6 Q. But you're a seasoned veteran, if you will, of
7 these siting applications; are you not, Ms. Andria?

8 A. I guess I would say that, yes.

9 Q. You knew well enough to call the City Hall that
10 day to inquire about how the hearing is going to be
11 conducted; correct?

12 A. Yes. And like I said before, I think that the
13 information belonged at the City Clerk's office. I don't
14 think that citizens have to track down an attorney. I think
15 that the proper procedure is to have information available at
16 the City Clerk's office.

17 Q. Well, the only way to get the information from
18 the City Clerk's office is to go to the City Clerk's office;
19 correct?

20 A. I called. That's why I called them.

21 Q. I understand. Where did you call from?

22 A. Where did I call from?

23 Q. Yes, ma'am.

24 A. What City?

1 Q. Sure.

2 A. I don't remember.

3 Q. I mean, were you in Madison County? Were you out
4 of state?

5 A. I'm not positive, but I'm pretty sure I wasn't in
6 Madison County.

7 Q. Okay. Could you have made this call the day
8 before and inquired about any rules or procedures to be
9 followed?

10 A. I think I said that I just -- I had a
11 conversation with Miss Livingston, and she said, "I think
12 there's some rules or something in place." So, I did not --
13 I think I only found out then.

14 Q. So, the only reason you called is because Miss
15 Livingston suggested maybe you should look into this?

16 A. That's my memory.

17 Q. So, that was the diligence that you were
18 exercising on behalf of American Bottom Conservancy and the
19 Sierra Club in reference to this application that you knew
20 was pending for several months before that date?

21 A. There was nothing in any articles or anything or
22 anything that said there was a precondition of filing, and I,
23 frankly, did not remember your -- 12 years, the experience
24 beforehand.

1 Q. Well, when you weren't able to reach me that
2 Friday, did you have the heightened sense of concern about
3 having your rights being jeopardized because of your
4 inability to reach me that day?

5 A. I was unhappy. I don't know. Heightened
6 concerned is -- As I said before, I thought this did not go
7 well.

8 Q. Did you make any other attempts to reach me that
9 Friday?

10 A. I did not.

11 Q. Did you call back to City Hall after you tried to
12 reach me at my office and inquire if there was another way
13 for them to contact me to return your call?

14 A. I did not.

15 Q. Did you call anyone on Saturday?

16 A. I did not.

17 Q. Anyone on Sunday?

18 A. You mean from the City?

19 Q. Or me.

20 A. No.

21 Q. Did you look in a telephone book to see whether I
22 was listed with a home address?

23 A. No.

24 Q. Were you able to look in a telephone book to find

1 out whether I was listed at a home address?

2 A. Do I have a telephone book, is that the question?

3 Q. You can interpret it that way, sure.

4 A. Well, I left my name, my cell number and the
5 reason I called. I assumed that you had that information or
6 would get that information. I made no further attempt to
7 keep calling you.

8 Q. So, you left your cell number?

9 A. Yes.

10 Q. What number was that?

11 A. I'd rather not put that in a record that's going
12 to be on the Pollution Control Board site.

13 Q. Will you give an address?

14 A. Absolutely not.

15 Q. So, you're telling this Court that even though
16 you aren't willing to disclose an address or a cell phone
17 number, that you gave that number to someone at my office to
18 call you whenever I wanted to; is that your testimony today?

19 A. That I left my -- I assume my cell phone number.

20 Q. You're not certain; are you?

21 A. That's a good question. Maybe I didn't. Maybe I
22 didn't want to leave my cell phone number.

23 Q. Are you certain you even left your name?

24 A. Absolutely. I identified myself and the reason

1 that I called, and that the City -- I had just talked to the
2 City, and they wanted me to -- I mean, I don't remember all
3 the specifics that I said, and I recounted it in the
4 transcript of the hearing. I remember specifically after I
5 identified who I was, what I was calling about, that I was
6 told you guys were going to be gone all day long.

7 Q. Who's the secretary/treasurer of the American
8 Bottom Conservancy?

9 A. Mark Feldworth.

10 Q. Was he the secretary/treasurer back in December
11 of 2006?

12 A. I believe so.

13 Q. You were aware that Mark Feldworth and I grew up
14 together in Madison; were you not -- back in December of
15 2006?

16 A. I had been aware at some point that he knew you
17 and that you may have gone to school together. I wasn't sure
18 in what proximity.

19 Q. In fact, had you inquired, you would have
20 determined that his father continues to live next door to my
21 parents in the 1800 block of Third Street in Madison; would
22 you not?

23 A. I know that his father lives in Madison. I did
24 not know it was next to you. And I did ask Mr. Feldworth

1 right after the deposition, I told him what you said, that I
2 should have asked him for how to get in touch with you, and
3 he said he hadn't seen you in years, and that he did not know
4 how to get in touch with you and certainly didn't have your
5 cell phone number.

6 Q. Needless to say, you made no attempts, even
7 though you knew Mr. Feldworth was from Madison, that his
8 parents live next door to my parents or at least we grew up
9 together, you made no attempts to contact Mr. Feldworth to
10 find out how you might be able to get me over that weekend;
11 correct?

12 A. Mr. Papa, at that day, any knowledge I had about
13 you and Mr. Feldworth was not in my mind at all, and I had no
14 idea, I had no memory whether he was even in town then. He's
15 travels a lot. But, no, there was no -- nothing that I
16 remember connecting, "Oh, Mark, will know how to get in touch
17 with him." That did not happen.

18 Q. Monday morning comes around. Do you make another
19 telephone call to my office?

20 A. I don't believe so.

21 Q. Did you make a call to City Hall?

22 A. I went to City Hall.

23 Q. About what time of the day?

24 A. I do not remember.

1 Q. You're positive you went on Monday, the 18th?

2 A. I'm pretty sure. I don't remember. I know I
3 didn't want to go alone. I wanted to go with someone. And I
4 waited until Mr. Norman was available to go with me. So, I
5 don't remember the time.

6 Q. Were you concerned about your security coming to
7 Madison?

8 A. I would like to have had Mr. Norman with me to
9 observe and learn and ask any questions, and I just feel more
10 comfortable having him come with me.

11 Q. So, you wanted him to come along so he could
12 learn what to do under circumstances like this?

13 A. I wanted not to go to the City Hall alone.

14 Q. You get to City Hall, and you ask for whether
15 there's any ordinances, I gather, or rules that are going to
16 apply to this hearing --

17 A. I wasn't. I'm sorry. I interrupted you.
18 Finish.

19 Q. Is that what you asked for, whether there were
20 any ordinances and rules that could apply to this hearing?

21 A. I don't think I used the word "ordinance" because
22 it didn't occur to me. I think I asked something about the
23 nature how the hearing was going to be conducted, and I don't
24 remember specifically.

1 Q. At that time, did the clerk -- And you remember
2 this was a female clerk; correct?

3 A. Yes.

4 Q. The clerk advised you that there was an ordinance
5 that had been passed back in June that related to this
6 hearing?

7 A. I believe so. I don't know that she said it was
8 in June, but it was written on there.

9 Q. You asked for a copy of the ordinance?

10 A. Yes.

11 Q. She told you that it was going to cost so much
12 money for the copy and charges; correct?

13 A. Correct.

14 Q. You took exception to the amount you were being
15 quoted; correct?

16 A. Correct.

17 Q. She went and made a phone call and then came back
18 and told you that you were going to be charged a lesser
19 amount, and you willingly paid that lesser amount; correct?

20 A. Correct.

21 Q. She made out a receipt for you for the money that
22 you gave her; correct?

23 A. I assume so.

24 Q. You don't have a copy of that; right?

1 A. I do not have that receipt. I couldn't find it.

2 Q. Two days ago I asked you to look around and find
3 that receipt; right?

4 A. I did look.

5 Q. You found a receipt from three months or four
6 months later; correct?

7 A. It was with the documents that I brought.

8 Q. But you couldn't find the receipt from December
9 of 2006; right?

10 A. That's correct.

11 Q. She made that receipt out or at least made some
12 note of the receipt the day you were there; didn't she?

13 A. I'm sorry?

14 Q. She actually made that receipt out the day you
15 were there?

16 A. I would assume. Why would she make it at another
17 time?

18 MR. PAPA: May I approach the witness?

19 (Hearing Officer Webb nods head.)

20

21 BY MR. PAPA:

22 Q. Ms. Andria, I'm going to represent to you this is
23 a copy of the receipt ledger from the City Clerk's office in
24 Madison, Illinois. I'd like to direct your attention to the

1 third entry -- actually, the fifth entry from the top that
2 has your name on it, Kathy Andria. Do you see that?

3 A. Yes.

4 Q. See where it says that a copy was made of
5 Ordinance 1670 and two documents for the hearing?

6 A. Yes. It's hard to see, but I see "1670". I
7 can't read what it says.

8 Q. What date is shown for the date of that?

9 A. 12-19-06.

10 Q. What's the amount shown for how much you paid?

11 A. \$1.80.

12 Q. Does that refresh your recollection as to the
13 amount you paid?

14 A. It seems very reasonable.

15 Q. Does that refresh your recollection as to the
16 date you were there?

17 A. I don't -- I don't know that -- I guess I was
18 there that date then. I don't know. I thought I went
19 Monday.

20 Q. All right.

21 A. But I know I wanted Mr. Norman with me.

22 Q. Is it possible that you didn't go to City Hall
23 until Tuesday as that document seems to indicate?

24 A. It is possible, but I don't have that receipt to

1 prove that I did or didn't.

2 Q. In the event you didn't go to City Hall until
3 Tuesday to inquire about rules for this hearing, what
4 attempts did you make to reach me on Monday?

5 A. I don't believe I did try to reach you on Monday.
6 It was my memory -- and if this is wrong, it's wrong, but I
7 really wish -- This says 1.80. If there's a receipt, I think
8 that you would have that -- the copy of the receipt like this
9 one was. It was not just a ledger page, but it was something
10 that had a number and everything. I would --

11 MR. PAPA: Believe me, Miss Andria, I wish you had that
12 receipt like you have the other one. I don't have anything
13 further.

14 HEARING OFFICER WEBB: Thank you. I'm guessing there's
15 quite a bit of Re-Direct.

16 MR. MORRISON: Madam Hearing Officer, there's not quite
17 a bit. Seven distinct questions based upon one of
18 Mr. Moran's questions.

19 HEARING OFFICER WEBB: Okay. Would you like to do that
20 now, or would you like to take a five-minute break, or I
21 guess --

22

23 (A brief discussion off the record.)

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R E D I R E C T E X A M I N A T I O N

by Mr. Bruce A. Morrison:

Q. Miss Andria, thanks for bearing with us and hanging in there. Several follow-up questions on one of Mr. Moran's questions. Mr. Moran asked you if it was your contention that your ability to cross examine Mr. Schanuel about archaeology was negatively affected by the applicant not filing a written report on archaeology. Now, the applicant had given to you before the hearing papers on archaeology; is that right?

A. The applicant had given me papers on archaeology before the hearing, yes.

Q. And you gave those to Dr. John Kelly?

A. I did.

Q. And in return Dr. John Kelly gave you some notes; is that right?

A. That's correct.

Q. And those notes are marked ABC Exhibit No. 11 at the bottom; is that right?

A. Yes.

Q. And you had those notes with you when you sought to question Mr. Schanuel on archaeology; is that right?

A. Yes, they were in a folder.

Q. Questions you sought to ask, were they based on

1 those notes?

2 A. I'm sorry?

3 Q. The questions you sought to ask Mr. Schanuel and
4 ask other Waste Management witness present at that hearing,
5 were your questions going to be based on those notes?

6 A. Well, they're not precisely because they have --
7 they refer to specific Phase 1 surveys and material that
8 wasn't in evidence and that he hadn't knowledge of, but they
9 were -- there were some things that I gleaned out of it
10 that was because of the incompatibility of the archaeology.

11 Q. So, what did negatively affect your ability to
12 ask Mr. Schanuel or any other Waste Management witness about
13 archaeology at that hearing?

14 A. The report wasn't submitted. There was no
15 archaeologist to question.

16 Q. Okay. And you attempted to question somebody --

17 A. I attempted to question --

18 Q. -- at that hearing?

19 A. Yes. I attempted to question Mr. Schanuel
20 because he was the person certified as the expert on
21 incompatibility.

22 MR. MORRISON: And the transcript shows the result of
23 your effort or what happened when you attempted to question
24 Mr. Schanuel. Madam Hearing Officer, what I would like to do

1 at this time is renew my offer to introduce into evidence ABC
2 11, the notes of Dr. John Kelly. Mr. Papa elicited a ton of
3 testimony about those notes, and in particular he asked Ms.
4 Andria a question, "Well, isn't the issue of Dr. Kelly's
5 notes going to be mooted by what Dr. Kelly submitted in
6 comment? The issue about fundamental fairness, is that all
7 moot because Dr. Kelly submitted these comments anyway?" And
8 the only which the Board is going to be able to determine
9 whether that issue is moot or not is to have those notes of
10 Dr. Kelly before it.

11 HEARING OFFICER WEBB: Would the Respondents like to
12 comment?

13 MR. MORAN: The testimony that counsel just alluded to
14 does not in any way address the fundamental question basis
15 for the objection, which was this information is submitted in
16 an effort to address an issue substantively, which was not in
17 any way relevant or pertinent to this proceeding. It's
18 offered to provide substantive evidence on what is allegedly
19 a relevant matter. So, it still has not addressed the
20 question of whether or not you can now attempt to submit it
21 at this hearing substantive evidence going to allegedly one
22 of the criteria. So, I don't think anything's been
23 established that would warrant a change in your ruling to
24 allow this as an offer of proof and nothing more.

1 MR. PAPA: If I might also add, Your Honor, as far as
2 the City's concerned, this document has not been sufficiently
3 authenticated to say who was authored by. Dr. Kelly's name
4 appears nowhere on this. There's no date as to when this was
5 prepared, who prepared it. It's extremely prejudicial I
6 think to try to use this at this stage of the proceedings,
7 particularly if -- And I think I've gotten confused myself on
8 it in a way. I'm not sure if this document was prepared
9 before the hearing or after the hearing, whether this is part
10 of the notes that Miss Andria was talking about that she was
11 going to use for cross examination or whether it wasn't. At
12 one point I thought it was, but another point of her
13 testimony I thought she indicated this was not part of what
14 she was going to use for cross examination. To that extent,
15 it wouldn't be relevant to something that she said she was
16 going to introduce at the hearing. If, in fact, this is
17 something authored by Dr. Kelly after the hearing, we have a
18 document that we know he authored after the hearing that is
19 certainly been accepted by the City and was considered by the
20 City. If he had chosen to include other information within
21 that document, there's no question it would have been made a
22 part of this record, but for whatever reason, the opponents
23 in this case chose not to introduce it at a time when it was
24 appropriate to introduce it. And that puts us at a very

1 great disadvantage, I'm afraid.

2 HEARING OFFICER WEBB: Well, I think I am going to
3 maintain its status as an offer of proof because it's not in
4 the record, and I don't think the Board necessarily needs
5 this document to evaluate the testimony elicited by the City,
6 but I will present it to the Board so they will have it, and
7 they can make a different determination if they need to. Do
8 you have any further Re-Direct?

9 MR. MORRISON: I don't, Madam Hearing Officer.

10 HEARING OFFICER WEBB: Do the Respondents have any
11 further questions for this witness?

12 MR. MORAN: Yes, I would have further questions, but I
13 would ask that we break for just a few moments.

14 HEARING OFFICER WEBB: Okay. We're going to take a
15 five-minute break. We'll go off the record.

16

17 (A brief recess off the record.)

18

19 HEARING OFFICER WEBB: Okay. We are back on the record
20 with additional questions from Mr. Moran.

21 MR. MORAN: Thank you, Ms. Hearing Officer.

22

23 R E C R O S S E X A M I N A T I O N

24 by Mr. Donald J. Moran:

1 Q. Miss Andria, I believe you indicated that you did
2 receive a copy of the siting application from Ms. Livingston
3 sometime shortly after it was filed; is that correct?

4 A. I did receive a siting application. I think it
5 was from Miss Livingston. I don't remember when I received
6 it.

7 Q. Are you aware that the application was filed on
8 September 22nd of 2006?

9 A. I'm aware that it was filed counting back
10 180 days or something I think.

11 MEMBER OF THE PUBLIC: Speak up, please.

12 A. That could be right. I'm not sure of the date it
13 was filed. I'm sure you have the right date.

14

15 BY MR. MORAN:

16 Q. You aren't denying it was filed on September
17 22nd, 2006; are you?

18 A. No, I'm not.

19 Q. How did you pick up a copy of the application?

20 A. I don't remember.

21 Q. You don't remember picking it up at Ms.
22 Livingston's office?

23 A. That could very well be. I don't remember.

24 Q. And you picked it up three days of its filing?

1 A. I don't remember.

2 Q. And you indicated that Ms. Livingston had
3 provided you with other documents relating to archaeological
4 issues; is that correct?

5 A. I think they were given to me by Mr. Durako.

6 Q. I'm sorry. Mr. Durako gave them to you
7 personally; is that what you're saying; that's your
8 recollection?

9 A. I believe so.

10 Q. Okay. And when did you receive those documents?
11 Sometime before December 21st --

12 A. Correct.

13 Q. -- 2006? And it was a number of weeks before
14 December 21st, 2006?

15 A. A number?

16 Q. At least three or four weeks before?

17 A. I don't know that it was that long, but it was
18 not the week before, but a couple weeks because I gave them
19 to Dr. Kelly.

20 Q. So, it would be accurate to say that you've been
21 in Ms. Livingston's office on occasions prior to
22 December 21st?

23 A. Correct.

24 Q. Do you have Ms. Livingston's phone number at her

1 office?

2 A. Yes.

3 Q. Do you have her cell phone number, as well?

4 A. Probably.

5 Q. When you were unable to reach Mr. Papa on
6 December 15th and you had ask that he call you back, did you
7 ever attempt to call Ms. Livingston?

8 A. I don't believe so.

9 Q. In fact, did you ever attempt to reach or call
10 Ms. Livingston at any point between December 15th and
11 December 21st of 2006?

12 A. I don't remember.

13 Q. I believe you indicated that at this point, you
14 don't know whether or not you left a telephone number with
15 the person that you spoke to on December 15th from the City
16 of Madison or from John Papa's office; correct?

17 A. I'm saying that when I called, I identified
18 myself, the purpose for which I was calling, and I would
19 assume that I left a number -- a phone number.

20 Q. But you sitting here today, you don't know
21 whether you left a phone number; would that be accurate?

22 A. It's accurate that I'm not positive, but it's
23 consistent that I would because that's what I would do.

24 Q. Now, you were asked a question on examination by

1 Mr. Papa as to whether you were contending that part of the
2 reason you are arguing that this process was fundamentally
3 unfair, is that you were not allowed to introduce evidence at
4 this siting hearing. Did I hear that correctly?

5 A. When I -- The first thing that I tried to submit
6 into evidence, you objected, and you said that it had to have
7 been submitted according to Ordinance 1670, that it had to be
8 pre-filed five days before or whatever words you used with
9 the ordinance.

10 Q. And is that the basis on which you're now
11 contending that part of this process was fundamentally
12 unfair, the fact that you offered a document that was
13 initially refused admission for the reasons you indicated?

14 A. Am I saying -- I guess I don't understand. I
15 really do have trouble with your questions, Mr. Moran.

16 Q. I'm sorry. I'll try to rephrase it. I don't
17 mean to be unclear. You said that you're claiming the
18 process was unfair because you were not allowed to present
19 evidence; is that correct or not correct?

20 A. It's partially correct.

21 Q. Because I didn't see in your Petition For Review
22 any claim that the fundamental unfairness you're alleging
23 here was based on the fact that you were not allowed to
24 present evidence; would that be accurate; it's not in this

1 Petition?

2 A. I'm not sure. I thought that there was something
3 about the way the conduct of the hearing.

4 Q. But now I'm just focusing on what you said here
5 today, that your contention is that because you were not
6 allowed to present evidence, the hearing was fundamentally
7 unfair; is that correct?

8 A. I think that that's part of the fundamental
9 unfairness.

10 Q. And is the evidence that you were not allowed to
11 present the exhibit you offered during the hearings that was
12 initially refused admission by the hearing officer?

13 A. Is that the only thing? No.

14 Q. Is that one of the things that supports an
15 argument that the fundamental unfairness in this proceeding
16 was that you were not allowed to present evidence?

17 A. That's one of the things.

18 Q. And that exhibit, in fact, was admitted at the
19 hearing on Friday, on the 22nd; wasn't it? It was initially
20 refused, but then it was admitted on Friday; wasn't it?

21 A. Would you remind me what that document was?

22 Q. Well, you're the one who identified the document.
23 You identified a document you initially submitted or offered,
24 and it was refused admission; did you not?

1 A. I originally offered a document to question, and
2 it was refused, and if this is the document about -- from
3 Rachel's about the cancer deaths near sites, then I don't
4 think that was admitted into evidence.

5 Q. And it was not admitted because you were unable
6 to provide the additional information necessary to provide
7 the submission of that exhibit; is that correct?

8 A. No, it was not included -- it was not admitted
9 into evidence because I didn't put the rule -- I didn't have
10 it pre-submitted. At the end, it was offered to be added, as
11 were some brochures I think, but I needed to do something,
12 and I wasn't sure, but it was like it was over. I mean, it
13 was like there was I think a gratuitous gesture.

14 Q. But you didn't provide the additional
15 information; did you?

16 A. Well, I did not --

17 Q. Is that correct?

18 A. -- provide the information. I'm not really sure
19 what you were wanting, and I don't think that it would have
20 any import because I wasn't able to use the document in my
21 questioning.

22 Q. So, is that the document that you are claiming
23 you were unable to present which is part of the reason for
24 your claim the hearing is fundamentally unfair?

1 A. Was that one of the documents?

2 Q. Yes.

3 A. Yes.

4 Q. Were there any other documents or any other
5 evidence that you were not allowed to present at the hearing?

6 A. At the hearing with respect to that I tried to
7 introduce something? I'm not sure.

8 Q. So, as you sit here today, you cannot recall any
9 other evidence you sought to offer that was refused; is that
10 correct?

11 A. That may be the case. I'm not positive.

12 Q. I'm only asking as you sit here today right now.
13 You don't recall any other evidence that you sought to offer
14 that was refused admission in the siting hearing; is that
15 correct?

16 A. During the hearing itself, is that what you're
17 asking?

18 Q. Yes.

19 A. Okay. Yes. I have no -- I can't bring anything
20 to mind right now. I can't exclude that there wasn't. I'm
21 not sure.

22 MR. MORAN: Thank you. Nothing further.

23 HEARING OFFICER WEBB: Thank you. Mr. Papa?

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R E C R O S S E X A M I N A T I O N

by Mr. John Papa:

Q. Just to make sure that we're clear, was the article that you're making reference to this Rachel's publication article entitled "Landfills are dangerous," September 24, 1998?

A. It's very possible.

MR. PAPA: This is a document that counsel has marked as ABC No. 1, with today's date, as Petitioner's list of exhibits. If I might approach, Madam.

HEARING OFFICER WEBB: Yes.

BY MR. PAPA:

Q. You've testified, Miss Andria, that you don't believe it was ultimately admitted. Let me show you the front page of that article and point out the entry made by the hearing officer saying that this document was, in fact, admitted into the record on December 23rd, 2006. Does that refresh your recollection as to whether it was submitted?

A. It was submitted on Saturday.

Q. Well, I'm sorry. I'm looking up side down. Perhaps that says 22nd.

A. I know it was at the very end if it was admitted. I don't remember that it was admitted because I said I

1 thought that Mr. Moran had some sort of proviso that if only
2 I did something, that it would be admitted, but, as I said,
3 it was at the end, and it was kind of confusing to me what
4 was going on.

5 MR. PAPA: Okay. That's all, Your Honor.

6 HEARING OFFICER WEBB: Thank you. Mr. Morrison?

7 MR. MORRISON: Nothing on Re-Direct.

8 HEARING OFFICER WEBB: So, there's no further questions
9 for this witness?

10 (No response.)

11 HEARING OFFICER WEBB: Okay.

12 MR. MORAN: Give me one second.

13 HEARING OFFICER WEBB: I'm sorry. Hang on.

14 MR. MORAN: I need to have a moment. I need to get a
15 transcript. Miss Hearing Officer, if I might approach the
16 witness.

17 HEARING OFFICER WEBB: Yes.

18

19 S E C O N D R E C R O S S E X A M I N A T I O N

20 by Mr. Donald J. Moran:

21 Q. What I'm going to be referring to is Volume Two
22 of the transcript of the public hearing from the hearing that
23 took place on December 22nd of 2006 before Hearing Officer
24 Daniel R. Schattnik. Ms. Andria, let me direct your

1 attention to Page 380 of the transcript, as I indicated,
2 dated December 22nd, 2006, Volume Two, and ask you if you can
3 read to yourself beginning on Page 380 the colloquy between
4 you and me ending on Page 384 with the hearing officer's
5 statement regarding your Exhibit 1.

6 (Mr. Moran hands document to witness.)

7 A. Yes.

8 Q. Is the discussion on Pages 380 to 384 of this
9 transcript a description of the exhibit that you were
10 referring to earlier as having been offered by you but
11 refused admission?

12 A. I believe so.

13 Q. Could you read for us out loud the hearing
14 officer's statement on Page 384 beginning at line 10 with
15 respect to whether that exhibit was admitted or not?

16 A. It says, "The Exhibit identified as Andria 1 is
17 now admitted without objection."

18 MR. MORAN: Thank you, Miss Andria. I have nothing
19 further.

20 HEARING OFFICER WEBB: Mr. Morrison?

21 MR. MORRISON: Nothing for Re-Direct.

22 HEARING OFFICER WEBB: Mr. Papa?

23 MR. PAPA: Nothing further.

24 HEARING OFFICER WEBB: Thank you, Miss Andria.

1 Mr. Morrison, do you have any further witnesses that you
2 would like to call.

3 MR. MORRISON: No further witnesses to call, just
4 exhibits to offer.

5 HEARING OFFICER WEBB: All right. Let's talk about the
6 exhibits.

7 MR. MORRISON: Madam Hearing Officer and counsel, I put
8 together this packet of exhibits that everybody has a copy
9 now. Exhibits ABC 1 through ABC 7, this is just an attempt
10 to collect into one plate exhibits that were offered and
11 admitted at least according to something that already appears
12 in the administrative record, and in particular at Page C2219
13 of the record, there is an Appendix II, list of exhibits
14 offered and admitted on behalf of opponent to the
15 application, which, actually, I was assuming that the City of
16 Madison had prepared that, but I don't know that. In any
17 case, ABC 1 through ABC 7 are duplicates of documents that
18 already appear in the record. The number -- The page number
19 of these documents are on the right-hand side.

20 ABC No. 8 is a group exhibit, and it's collective pages
21 from Waste Management's application for siting approval.
22 When you look at the pages that all of you have, there is no
23 record number. There is no "C" and then digits on any of
24 these pages, and that is because my copy of the records that

1 I got from the City is in electronic form. I have it here on
2 this flash drive that I'm holding up. I don't know what the
3 Hearing Officer has, but when I need to reference the maps
4 from my electronic copy, there's really no detail. It's kind
5 of a big black blotch and gray blotch, and for that reason
6 what I've done is gone to an actual hard copy of the
7 application from Waste Management, and I've photocopied --
8 made a color copy of pages from that application and then put
9 in the corresponding page number from the record that would
10 be there if I actually printed something out from my flash
11 drive. With that said, I'm not faulting the City personally
12 for giving me something electronically. I know Miss Andria
13 is going to kill for me getting electronic rather than a
14 paper copy. I actually appreciate the electronic copy. I
15 just can't see these diagrams.

16 ABC 9 is something different entirely. These are pages
17 from a different file, from the Milam landfill vertical
18 expansion. The cover pages Illinois Pollution Board
19 certifying that these pages came from that file. These pages
20 are offered to show that the landfill is incompatible with
21 surrounding uses because they show that the applicants once
22 before represented a buffer was to have been a buffer to the
23 north of Cahokia canal, and the landfill has now jumped over
24 the buffer.

1 There is no ABC 10. The list of exhibits refers to
2 Exhibit 10, but there is no corresponding 10.

3 Those are the extent of the Exhibits, with the exception
4 of 11.

5 HEARING OFFICER WEBB: So, ABC Exhibit 1 through 8 are
6 already in the administrative record that's been filed with
7 the Pollution Control Board; is that correct?

8 MR. MORAN: Yes, but as Andria exhibits.

9 THE WITNESS: As what? Pardon me.

10 MR. MORAN: They were presented at the siting hearing as
11 Andria Exhibits, not ABC. So, just to avoid any confusion,
12 the numbers are the same, but at the siting hearing, they're
13 identified as Andria Exhibits, not ABC. Here they're
14 identified as ABC, but I believe they are the same
15 documents --

16 MR. MORRISON: They are.

17 MR. MORAN: -- at least 1 through 7.

18 HEARING OFFICER WEBB: And then 8, what about 8?

19 MR. MORAN: 8, As Mr. Morrison pointed out, are pages
20 from the siting application. So, those would also already be
21 in the record. Certainly we could identify them as ABC 8,
22 although they're already in the record as part of the siting
23 application.

24 HEARING OFFICER WEBB: Do you know whether the Board had

1 the same problem Mr. Morrison had? And I haven't looked at
2 my copies of the photos yet. Would you object to me taking
3 these photos just because they appear to be of good quality?
4 I'm not implying that what you filed with the Court wasn't,
5 but I just don't know. So, I don't know if there's any
6 objection to taking any of these.

7 MR. MORRISON: And, actually, Madam Hearing Officer,
8 what I propose to leave --

9 HEARING OFFICER WEBB: The original --

10 MR. MORRISON: These are color copies instead of just
11 the black and white.

12 HEARING OFFICER WEBB: I mean, the Board may well have
13 perfectly good quality copies. If there's no objection, I'll
14 take them.

15 MR. MORAN: This is only with regard to what's been
16 identified as ABC 8?

17 HEARING OFFICER WEBB: Yes.

18 MR. MORAN: We would have no objection to you taking
19 these pages identified as Group ABC 8.

20 HEARING OFFICER WEBB: Okay. So, I'd admit them as
21 Exhibits. We obviously do not have to call them Exhibits
22 because they're already in the record, but we can do that
23 just to highlight them so the Board doesn't have to look
24 through the whole record to find them.

1 1 through 8, is there any objection to also for the same
2 purpose admitting these Exhibits as ABC -- And I don't think
3 we actually referred to any of these during the hearing; did
4 we? So, it really doesn't matter if we call them ABC
5 Exhibits or Andria Exhibits; is that correct? Is there any
6 reason you want to move these as Exhibits rather than just
7 having them referred to as the Andria Exhibits in the
8 administrative record?

9 MR. MORRISON: Oh, I think I see.

10 HEARING OFFICER WEBB: I mean, if you're going to make
11 arguments in your post hearing brief, can you just refer to
12 them as how they're labeled in the administrative record
13 that's currently on file, or is there some reason that you
14 would like to do it this way?

15 MR. MORRISON: And my only concern is that if there is
16 the same difficulty when either you or a member of the Board
17 is looking at a particular Exhibit and has the same
18 difficulty, for example, when looking at a location map of
19 what is where on the location map, if you and the Board just
20 have black and whites or something electronically, I suppose
21 it would be good to also then refer to this as ABC 8 so that
22 somebody actually knows there is a better copy that somebody
23 can go to. That's the only reason, the only justification I
24 have for separately calling these.

1 HEARING OFFICER WEBB: I see your point.

2 MR. MORAN: The only confusion is going to be you have
3 Andria 1's and ABC 1's. Somebody reviewing the record is
4 going to be wondering, "Are these exactly the same Exhibits?"
5 It seems to me it makes more sense from an ease of
6 administrative review standpoint that we simply leave them as
7 Andria 1, 2, 3, 4, 5, 6, 7 as they were identified in the
8 administrative record. As you pointed out, we haven't used
9 them here. So, it would seem to me the better way to
10 approach is to leave them as Andria 1, 2, 3, 4, 5, 6, 7 for
11 facilitating appropriate review by the Pollution Control
12 Board.

13 MR. MORRISON: And that makes sense for me. Then what's
14 labeled ABC 8, would that be Andria 8?

15 MR. MORAN: No, because there was no Andria 8. Only 1
16 through 7. They're on the application. It would be easier
17 to look at the application than -- If you want to call it ABC
18 A and introduce it here, then I don't have a strong objection
19 to it, but it would seem somewhat unnecessary.

20 HEARING OFFICER WEBB: Well, do we know what page of the
21 record it's on, by any chance?

22 MR. MORAN: It's identified here.

23 MR. MORRISON: On the list of exhibits.

24 HEARING OFFICER WEBB: Oh, I'm sorry. Okay. I see.

1 MR. MORAN: So, there are all record numbers or cites
2 for each of these pages.

3 HEARING OFFICER WEBB: I see.

4 MR. MORRISON: And for the sake of furthering the
5 discussion, I'd be happy to call ABC 1 through 7 Andria 1
6 through 7 if that's acceptable to the Hearing Officer, and
7 leaving ABC 8 as ABC 8.

8 HEARING OFFICER WEBB: That's acceptable to me. Is that
9 confusing to anybody else? I just don't want to confuse
10 anything.

11 MR. MORRISON: And I'll -- With everybody's leave, I'll
12 prepare a different list of exhibits.

13 MR. MORAN: I hate to suggest this, but to avoid any
14 confusion, I suppose if you're going to allow this be
15 identified as an ABC Exhibit, it ought to be ABC 1 to go
16 to --

17 HEARING OFFICER WEBB: We don't necessarily have to --
18 We don't have to include it. It doesn't really need to be an
19 Exhibit at all really because it's in administrative record.
20 So, I suppose from that standpoint, I can just -- I can take
21 it as an additional supplemental copy of pages whatever,
22 12,000 whatever pages it is in the record. We could do that
23 too.

24 MR. MORAN: That seems to be preferable.

1 MR. MORRISON: It does to me, also.

2 HEARING OFFICER WEBB: Why don't we do that? Exhibit 9
3 is -- Would you like to comment on Exhibit 9?

4 MR. MORAN: Yes. Exhibit ABC 9 consists of a letter
5 John Therriault to the Board, including various documents
6 from the prior siting application in Waste Management of
7 Illinois and Village of Fairmont City. It is intended to
8 present substantive evidence that addresses testimony and
9 evidence presented at the siting hearing, and as such clearly
10 should have been presented during the siting hearing. It has
11 no reference or relation to any fundamental fairness issue,
12 but indeed attempts to address the substantive criteria, and
13 as such we object to its submission against the City.

14 MR. PAPA: The City would join in the objection, and I
15 don't recall any reference to it being made during any
16 testimony today.

17 HEARING OFFICER WEBB: I guess I also don't quite see
18 the relevance of this document, and it seems like something
19 that if the Board was truly interested, they could review
20 this, but I'm not going admit this 9 as an Exhibit. And
21 there's no 10. And I think 11 -- But I will take it as an
22 offer of proof if you'd like.

23 MR. MORRISON: I appreciate that. Thanks.

24 HEARING OFFICER WEBB: Was that a "yes"?

1 MR. MORRISON: Yes, an offer of proof.

2 HEARING OFFICER WEBB: Okay. So, that's 9 and 11, you'd
3 like to make an offer of proof? I think we already discussed
4 11.

5 (Mr. Morrison nods head.)

6 HEARING OFFICER WEBB: And 1 through 8 we decided were
7 already part of the record, but I will reference as such in
8 the hearing report. Okay. Does the Petitioner have anything
9 further for their case?

10 MR. MORRISON: That concludes the Petitioners' evidence.

11 HEARING OFFICER WEBB: Okay. Thank you. Would the
12 Respondents like to begin with their Exhibits or call your
13 first witness, or do you have any witnesses? I'm sorry.

14 MR. MORAN: Waste Management of Illinois has no
15 witnesses to present.

16 HEARING OFFICER WEBB: Okay.

17 MR. MORAN: It has a document that it would submit as
18 part of an offer of proof because we don't believe that it is
19 a relevant document, but given what was heard today and given
20 what was presented today, we would simply ask to submit this
21 document in a way as a response to the offer of proof made.
22 So, we would also ask that it be made part of an offer of
23 proof.

24 HEARING OFFICER WEBB: Okay. What document is that?

1 MR. MORAN: It's a letter dated August 3rd, 2007 from
2 the Illinois Historic Preservation Agency addressed to
3 Mr. Keith McMullen, US Army Corps of Engineers, authored by a
4 Ms. Anne Haaker from the Illinois Historic Preservation
5 Agency in relation to the North Milam site.

6 HEARING OFFICER WEBB: And this relates to the testimony
7 that fell under the offer of proof offered by the Petitioner;
8 correct?

9 MR. MORAN: Yes.

10 HEARING OFFICER WEBB: Okay. Can I refer to this as WMI
11 1?

12 MR. MORAN: WMII 1?

13 HEARING OFFICER WEBB: Yes.

14 MR. MORAN: That would be fine.

15 HEARING OFFICER WEBB: Okay. Okay. Do you have
16 anything further, Mr. Moran?

17 MR. MORAN: Nothing further.

18 HEARING OFFICER WEBB: Okay. Mr. Papa, would you like
19 to call a witness?

20 MR. PAPA: No witnesses, Your Honor. We would move for
21 the admission of City of Madison's Exhibits 1 and 2.

22 HEARING OFFICER WEBB: I have 2 in front of me. 1 was
23 the old --

24 MR. PAPA: The Ordinance 1248.

1 HEARING OFFICER WEBB: Mr. Morrison, do you have an
2 objection to either of these Exhibits?

3 MR. MORRISON: No objection.

4 HEARING OFFICER WEBB: No objection. Then Exhibits 1
5 and 2 for the City of Madison are admitted. Do you have
6 anything further, Mr. Papa?

7 MR. PAPA: No, ma'am.

8 HEARING OFFICER WEBB: Okay. Is there anyone here who
9 would like to offer any public comments or testimony on
10 today's proceeding?

11 (No response.)

12 HEARING OFFICER WEBB: "No"? Okay. Before we hear any
13 closing arguments, let's go off the record to discuss the
14 briefing schedule.

15

16 (A brief discussion off the record.)

17

18 HEARING OFFICER WEBB: We've just had an off the record
19 discussion regarding post hearing briefs. The parties have
20 agreed to a briefing schedule as follows: The transcript of
21 these proceedings will be available from the Court Reporter
22 by August 28th and will be posted on the Board's web site.
23 Public comment headline is September 15th. Any public
24 comment must be filed in accordance with Section 101.628 of

1 the Board's procedural rules. The Petitioners' brief is due
2 by September 18th. Respondents' briefs are due by October
3 9th. The Petitioners' reply, if any, is due by October 12th.
4 The mailbox rule will not apply, although parties may file
5 electronically. Mr. Morrison, would you like to make any
6 closings statement?

7 MR. MORRISON: No, Madam Hearing Officer. I'll have our
8 closing argument set forth in our post hearing brief.

9 HEARING OFFICER WEBB: Thank you. Mr. Moran, would you
10 like to make a closing statement?

11 MR. MORAN: No, thank you. We'll submit it in the
12 argument brief.

13 HEARING OFFICER WEBB: Mr. Papa, would you like to make
14 a closing statement?

15 MR. PAPA: The City will waive, as well.

16 HEARING OFFICER WEBB: Okay. Thank you very much. If
17 there are no members of the public here who wish to offer any
18 testimony or comments, I will proceed to make a statement as
19 to the credibility of the witness testifying during this
20 hearing. Based on my legal judgment and experience, I find
21 the witness testifying to be credible. At this time, I will
22 conclude the proceedings. We stand adjourned. And I thank
23 you all for your participation.

24 * * * * *

1 STATE OF ILLINOIS)
)
2 COUNTY OF ST. CLAIR)
3

4 I, HOLLY A. McCULLOUGH, a Notary Public within and
5 for the County of St. Clair, State of Illinois, do HEREBY
6 CERTIFY that the foregoing record of hearing was made before
7 me on August 23, 2007, at the Madison County Administration
8 Building, County Board Room 203, 157 North Main Street,
9 Edwardsville, Illinois.

10 IN WITNESS WHEREOF, I have hereunto set my hand and
11 affixed my Notarial Seal the 24th day of August, 2007.

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HOLLY A. McCULLOUGH
Notary Public
CSR #084-004265
RPR #821968
CCR #1011