

ILLINOIS POLLUTION CONTROL BOARD  
April 21, 2009

FOX MORaine, L.L.C., )  
 )  
 Petitioner, )  
 )  
 vs )  
 )  
 UNITED CITY OF YORKVILLE, )  
 CITY COUNCIL, )  
 )  
 Respondent, )  
 )  
 KENDALL COUNTY, )  
 )  
 )  
 Intervenor. )

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STATE OF ILLINOIS  
Pollution Control Board  
PCB 07-146  
(Pollution  
Control Facility  
Siting Appeal)

REPORT OF PROCEEDINGS at the hearing of the  
above-entitled cause before Bradley P. Halloran,  
Hearing Officer, taken before Rebecca A. Graziano,  
Certified Shorthand Reporter within and for the  
County of Cook and State of Illinois, at the United  
City of Yorkville Public Library, Yorkville,  
Illinois, commencing at the hour of 9:00 a.m. on the  
21st day of April, A.D., 2009.

A P P E A R A N C E S

ILLINOIS POLLUTION CONTROL BOARD:

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BY: MR. JIM MCCLUSKEY

Appeared on behalf of the Intervenor.

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1 MR. HALLORAN: We're on the record.  
2 Good morning, everyone. My name is Bradley  
3 Halloran. First off, I want to thank Yorkville for  
4 accommodating this hearing with their nice  
5 facilities.

6 In any event, I'm a hearing  
7 officer with the Illinois Pollution Control Board,  
8 and I'm also assigned to this case entitled Fox  
9 Moraine, L.L.C., petitioner, versus United City of  
10 Yorkville, City Council, the respondent, and Kendall  
11 County, the intervenor. It's docketed with the  
12 Board as PCB 7-146.

13 In this case, Yorkville denied  
14 petitioner's application to site a pollution control  
15 facility in Yorkville. Petitioner, Fox Moraine,  
16 appeals on the grounds that Yorkville's decision was  
17 fundamentally unfair, and the findings on criteria  
18 one, two, three, five, six, seven and nine were  
19 against the manifest weight of evidence.

20 Today is April 21st, approximately  
21 9:00 a.m. This hearing has been scheduled and  
22 noticed according to the Illinois Pollution Control  
23 Board's rules and procedures and the Environmental  
24 Protection Act. It will be conducted according to

1 procedural rules found at Sections 107 and 101 of  
2 the Board's procedural rules.

3 As I stated off the record before,  
4 we do welcome public statements, oral statements,  
5 public comments, and I will discuss a little bit  
6 about that later. But my intention is after the  
7 first break, we can talk more about it. If someone  
8 wants to come up here and give a statement, they may  
9 do so.

10 Before I begin, again, I would  
11 like to talk just a moment about the Board's hearing  
12 process. I think the majority of the people here  
13 know and are already familiar with that process. I  
14 will not be making the ultimate decision in the  
15 case, rather it's up to the Pollution Control Board.

16 The Board is made up of five  
17 members. They'll review the record, the transcript,  
18 and then decide the case. They will also review any  
19 post hearing briefs that are filed. My job is to  
20 rule on any evidentiary matters here, and then  
21 ensure that the hearing goes orderly, and that a  
22 clear record is developed so that the Board can have  
23 all of the proper information before deciding the  
24 case. Again, after the hearing, the parties will

1 have an opportunity to file post hearing briefs, and  
2 I believe we have an amicus brief coming in. These,  
3 too, will be considered by the Board.

4 And we do have a couple  
5 preliminary matters, as I promised, I think,  
6 yesterday at the telephone status conference.  
7 Yorkville filed a couple of motion in limines,  
8 specifically motion in limine five, six, and seven.  
9 I reviewed Fox Moraine's responses, and regarding  
10 motions -- excuse  
11 me -- Yorkville's motion number six, they contend  
12 that Fox Moraine intends to use mere snippets, as  
13 they say, of the minutes, transcripts, and video  
14 recordings. My ruling is that, you know, they're  
15 allowed to do so, but Fox Moraine must present all  
16 of it or nothing. We may have to revisit that  
17 later, but that's my ruling on motion in limine 6.

18 Motion in limine 7, it says Fox  
19 Moraine has listed as exhibits all pleadings from  
20 two other Pollution Control Board cases and three  
21 lawsuits, and they ask that the pleadings identified  
22 by Fox Moraine have no relevance to this appeal. My  
23 ruling is that I agree, the pleadings have no  
24 relevance. I can't take administrative notice of

1 those. However, I can take administrative notice of  
2 the Board's opinions and rulings. So we may have to  
3 cross that bridge again if it arises.

4 Yorkville's motion in limine  
5 number five, in summary, they ask the hearing  
6 officer to exclude any and all arguments,  
7 statements, questions, testimony, or evidence of any  
8 kind from petitioner, Fox Moraine, and its counsel,  
9 and from any other party or fact witness involving  
10 speculation or opinions regarding the beliefs or  
11 mental states of other persons, and it goes on. My  
12 holding is that, again, Fox Moraine, as addressed in  
13 a couple of my previous hearing officer orders,  
14 cannot invade the decision maker's thought process.  
15 However, the witness can give his personal  
16 observations, but it can't be conjecture or  
17 speculation or guessing. So again, I'm sure we'll  
18 revisit this as well.

19 With that said, I guess at this  
20 point, Fox Moraine will do some introduction, and  
21 then we'll get right into opening statements unless  
22 other issues arise. Mr. Mueller?

23 MR. MUELLER: George Mueller, Mueller  
24 Anderson, Ottawa, Illinois, for Fox Moraine

1 Landfill, Inc.

2 MR. HALLORAN: You can remain seated,  
3 Mr. Porter.

4 MR. PORTER: I'm sorry. Good morning.  
5 Rick Porter on behalf of Fox Moraine, as well, and  
6 Chuck Helston is also from my firm representing  
7 them, and to my left is Charlie Murphy, the manager  
8 of the client.

9 MR. HALLORAN: Mr. Dombrowski?

10 MR. DOMBROWSKI: Good morning, Mr.  
11 Hearing Officer. Leo Dombrowski of the firm  
12 Wildman, Harrold, Allen and Dixon on behalf of the  
13 United City of Yorkville.

14 MR. HOPP: Anthony Hopp, H-o-p-p, also  
15 from Wildman, Harrold, Allen, and Dixon on behalf of  
16 the United City of Yorkville. With us today are  
17 Mayor Burd and Alderman Spears.

18 MR. HALLORAN: Thank you.  
19 Mr. McCluskey, the intervenor?

20 MR. MCCLUSKEY: Yes. Jim McCluskey,  
21 M-c capital C-l-u-s-k-e-y from Momkus McCluskey in  
22 Lisle. We're representing the county of Kendall.

23 MR. HALLORAN: Thank you, sir. Fox  
24 Moraine can give an opening if they so chose.



1 MR. MUELLER: Your Honor, we would  
2 move to exclude witnesses.

3 MR. DOMBROWSKI: Mr. Hearing Officer,  
4 they're parties to this matter. They have an  
5 absolute right to be here.

6 MR. HALLORAN: Mr. McCluskey?

7 MR. MCCLUSKEY: No objection. I have  
8 no comment on that.

9 MR. HALLORAN: Mr. Mueller's motion is  
10 granted. The witnesses are to be excused.

11 MR. DOMBROWSKI: That would include  
12 Mr. Murphy as well.

13 MR. MUELLER: Mr. Murphy is our  
14 designated party representative, just like -- I  
15 presume Mayor Burd can sit in, because -- if she's  
16 their representative. Mr. Murphy would be our  
17 representative. Each side is entitled to one, is my  
18 understanding.

19 MR. HALLORAN: I think I've read that  
20 somewhere before. Mr. Dombrowski?

21 MR. DOMBROWSKI: Well, I'd just like  
22 to say, again, what I just said. The alderman and  
23 the mayor, they're named parties to the case. Any  
24 party has an absolute right to be at the hearing,

1 and there's no rule that limits it to just one.

2 MR. HALLORAN: Just to one --

3 MR. DOMBROWSKI: Just one

4 representative --

5 MR. HALLORAN: -- principal or  
6 manager?

7 MR. DOMBROWSKI: -- on behalf of the  
8 party.

9 MR. HALLORAN: I respectfully  
10 disagree. If you -- if you want, the mayor, Ms.  
11 Burd, can remain, and Mr. Murphy. The rest of the  
12 witnesses can be excluded.

13 MR. HOPP: Thank you, your Honor.

14 MR. HALLORAN: Thank you.

15 MR. DOMBROWSKI: Can you give us one  
16 moment?

17 MR. HALLORAN: Yes. Take your time.

18 MR. DOMBROWSKI: Thank you, sir.

19 MR. HALLORAN: Oh, you're welcome, Mr.  
20 Hopp. Fox?

21 MR. PORTER: Thank you, Mr. Halloran,  
22 and I apologize to the audience for having to see my  
23 back.

24 Good morning. My name is Rick

1 Porter, and I am one of the attorneys representing  
2 the applicant in this appeal. The applicant, Fox  
3 Moraine, L.L.C., has filed this action in request to  
4 review of the decision of the United City of  
5 Yorkville, dated May 24th, 2007. We believe the  
6 evidence in this case will show a multitude of  
7 problems with the manner in with the Yorkville City  
8 Council handled this matter.

9 I would like to refer to our  
10 petition for review and briefly summarize these  
11 problems for you. We will present evidence that the  
12 proceedings of the Yorkville City Council, including  
13 the public hearing, post hearing procedures, and  
14 decision-making process, as well as the action of  
15 the Yorkville City Counsel taken on May 24th, 2007,  
16 were not fundamentally fair.

17 We will show that the Yorkville  
18 city council failed to comply with its own local  
19 pollution control facility siting ordinance, and we  
20 will show that multiple members of the Yorkville  
21 city council were biased against Fox Moraine, L.L.C.  
22 and prejudged the application.

23 Further, multiple members of the  
24 Yorkville city council had disqualifying conflicts

1 of interest. The action of the Yorkville city  
2 council is not based upon the evidence, and rather,  
3 at best, was based upon matters outside the record,  
4 including ex parte contacts by signing opponents,  
5 and so-called independent research by several  
6 counsel members.

7 Furthermore, the Yorkville city  
8 council disregarded the recommendation for approval  
9 of the hearing office and its own technical staff,  
10 and adopted findings, which were a direct conflict  
11 of the findings of its technical staff -- of its  
12 technical and professional staff.

13 Objectors to the application,  
14 including but not limited to, participants of  
15 Kendall County and Friends of Greater Yorkville  
16 engaged -- well, I need to back up. Objectors of  
17 the application, including greater Yorkville,  
18 engaged in prejudicial ex parte contacts with  
19 members of the Yorkville city council. Yorkville  
20 city council applied a fundamentally unfair and  
21 incorrect burden of proof.

22 The mayor of Yorkville, although  
23 not voting on the application, campaigned for office  
24 on the basis of opposing the application, and

1 spearheaded a movement to defeat the application.  
2 Her opposition of the application was for political  
3 gain and not related to the evidence.

4           Ultimately, it will be clear that  
5 the decision of the city council was based upon  
6 promises made and political considerations related  
7 to the municipal election, which took place while  
8 the public hearings on the application were in  
9 progress, rather than the evidence of the case.

10           The evidence will show the fate of  
11 this hearing of the siting proposal was cast before  
12 the application was ever filed. To borrow a term  
13 used by one of the most strident and active  
14 objectors to this landfill, the proposal was a dead  
15 man walking due to bias and prejudgement before the  
16 evidence was ever in.

17           The evidence will show that  
18 proceedings related to the proposed landfill, but  
19 legally separate from the siting process, will allow  
20 it to become an open, uncontrolled forum for the  
21 opposition group. The evidence will show, from this  
22 point forward, a relationship of sorts developed,  
23 that being those opposed to the landfill, and Rose  
24 Spears and Ms. Valerie Burd, two city aldermen, who

1 decided to use opposition of the landfill as a  
2 spring board to election, one for the position of  
3 the mayor of the city of Yorkville.

4           The evidence will show that,  
5 again, from early on and long before the siting  
6 application was ever filed, and meetings of the city  
7 council, which either indirectly involved the  
8 landfill proposal or did not involve the landfill  
9 proposal at all, opponents were allowed an open,  
10 uncontrolled forum using tactics that, at the end of  
11 the day, one council member indicated were  
12 despicable.

13           The evidence will also show,  
14 rather than attempting to limit the discussion of  
15 the landfill proposal to its proper place, that  
16 being the landfill siting area, Alderman Spears and  
17 Alderman Burd openly encouraged these outrageous  
18 comments and this outrageous behavior, behavior that  
19 became so bad that at one meeting in February  
20 of 2007, the mayor was prompted to summon the police  
21 to remove from the primary land the opponents.

22           The evidence will show that this  
23 pattern of threats and intimidation continued  
24 unchecked, and caused at least one alderman to

1 complain to the city police department and file a  
2 police report. The evidence will show that he was  
3 not alone in his fate, and that at least several  
4 other alderman and the mayor as well indicated they  
5 received threatening and intimidating phone calls at  
6 their personal residences. Again, all part of a  
7 pattern of behavior that, at the end of the day, one  
8 of the alderman indicated it had -- and we will  
9 quote -- "reduced grown men to children."

10 The evidence will show that  
11 involved in and actually encouraged by the conduct  
12 of the objectors and the principal group, FOGY, an  
13 acronym for an organization called Friends of  
14 Greater Yorkville, an anti-landfill organization and  
15 an anti-landfill slate of candidates, came together.

16 The evidence will show that the  
17 mayor's own campaign committee included several  
18 primary leaders and organizers of FOGY, as well as  
19 several of the most vocal opponents of the landfill  
20 proposal. In fact, one of the more active members  
21 of Valerie Burd's campaign committee and Mr. Plocher  
22 was vehemently opposed to the landfill and ran for  
23 alderman, and ultimately was elected. In addition,  
24 one of the additional officers of FOGY, a gentlemen

1 by the name of Wall Werderich, was active in Valerie  
2 Burd's campaign and was also elected.

3 The evidence will later show that  
4 he, as well as Ms. Burd, Ms. Spears, Mr. Plocher,  
5 and Ms. Sutcliff were irrevocably opposed to the  
6 landfill before they were ever elected, and made  
7 their anti-landfill views plainly known before the  
8 election had ever taken place or the siting hearings  
9 had even taken place.

10 The evidence will show a very  
11 deliberate and complex web of affiliations between  
12 all candidates for city council who held  
13 anti-landfill views. The evidence will also show  
14 that this pattern of loud, aggressive, boisterous,  
15 and belligerent behavior continued throughout the  
16 landfill siting hearing, all which served to further  
17 intimidate the sitting alderman.

18 The evidence will also show that  
19 prior to the landfill siting hearing even ending,  
20 and prior to having the opportunity to ever consider  
21 the record as a whole, in an unabashed and  
22 unqualified fashion, the anti-landfill slate of  
23 candidates made their views known the Sunday before  
24 the election. They made their anti-landfill



1 sentiments known in an article about the campaign,  
2 which appeared in the Aurora Beacon News on April  
3 15th. Here are some of the comments:

4 Valerie Burd commented, quote, "Is  
5 there such a safe thing -- is there such a thing as  
6 a safe, state compliant landfill? I don't know if  
7 that's an oxymoron." Walter Werderich said, again,  
8 before his election and before the hearings, quote,  
9 "I don't think that a landfill is a good thing for  
10 Yorkville." Joe Plocher said, before the election  
11 and before the conclusion of the hearings, "I don't  
12 think there's anything -- I don't think there is any  
13 such thing as a safe state compliant landfill."

14 Robyn Sutcliff commented, "It would be a negative  
15 addition to the city. I have no question about  
16 that." And finally, Rose Ann Spears said, "If it  
17 had nothing surrounding it for acres, and if it was  
18 proven to be safe as far as leakage, and it would  
19 have no impact on traffic, that would be a perfect  
20 scenario."

21 These comments made it clear that  
22 each of these candidates had no intention whatsoever  
23 of considering the record that had been assembled,  
24 but rather -- or the proposed hearing comments that

1 were yet to come, but rather, each were sending a  
2 clear message to anti-landfill constituents that "If  
3 you vote for me, I guarantee I will vote against  
4 this landfill."

5 As a matter of fact, Ms. Robyn  
6 Sutcliff actually published a web page and campaign  
7 materials that explicitly stated that very thing,  
8 that all that one simply needed to do to defeat the  
9 landfill was vote for her.

10 The evidence will also show that  
11 after the election, Mayor-elect Burd moved swiftly  
12 and decisively to kill any slim hopes that the  
13 applicant may have had of approval, rather than  
14 waiting for the report and recommendations from its  
15 own city staff and its own independent counsel, Mr.  
16 Dirk Price, a Harvard Law School graduate with many  
17 years of landfill experience. And rather than  
18 waiting for the report and recommendations and the  
19 findings of fact of Mr. Larry Clark, an independent  
20 hearing officer of over 30 years of experience and  
21 30 siting hearings, and had, in fact, participated  
22 in the process from day one, the mayor moved quickly  
23 to find new legal counsel, attorneys strange and  
24 different to the process, and to the alderman who

1 had heard the evidence.

2           You may ask why would Mayor Burd  
3 abandon the attorneys who they retained to expert on  
4 bias, guidance, and direction, experts that they had  
5 seen through the evidence signing process? The  
6 evidence will show why. The evidence will show that  
7 Ms. Burd's intention was to obtain counsel and meet  
8 with her in secret outside and without the knowledge  
9 of any other alderman or any other city council some  
10 scant ten days after her election, to immediately  
11 and summarily negate the siting process that had  
12 just spanned the past six months, and to start to  
13 immediately sabotage the proposal, no matter what  
14 the cost no matter what the risks.

15           The evidence in this regard will  
16 show that without any inkling of knowledge of or  
17 consent by city counsel, Ms. Burd met at length with  
18 the attorneys from the Wildman and Harrold firm,  
19 who, by their descriptions contained in their own  
20 invoices to the city, undertook immediate research  
21 in ways to defeat -- not objectively consider --  
22 this proposal.

23           In short, the evidence will show  
24 that the emphasis of the newly-elected city council

1 and mayor was to do whatever it could to set the  
2 stage for denial of this application. In fact, the  
3 evidence will show that more money was poured into  
4 attorneys' fees in the first 30 days after the  
5 election to defeat this proposal than had been  
6 incurred from Price and Clark in the entire signing  
7 process that it just ended.

8           The evidence will also show that  
9 Valerie Burd, not even yet sworn in as mayor,  
10 presided over the incurring of close to \$100,000 in  
11 attorneys' fees in a period of less than 30 days by  
12 firms she admits had no existing attorney-client  
13 relationship with the city, a one-month expenditure  
14 of outside professional services that has not been  
15 rivaled or come close to either before or since.

16           The evidence will also show the  
17 two critical reports, that of the city's own  
18 independent city staff, as well as the report  
19 recommendations and proposed findings of the hearing  
20 officer, and again, a hearing officer with over 30  
21 years of siting experience, was literally given to  
22 the counsel only minutes before deliberation started  
23 on May 23rd, 2007.

24           The evidence will show that a

1 request was made by several of the alderman for a  
2 reasonable amount of time in which to digest the  
3 additional material, rather than vote on it the very  
4 next day as demanded by the mayor. Subtracting time  
5 for sleep, work, and attention and to other normal  
6 and necessarily family affairs, the counsel had less  
7 than eight hours to review, analyze and weigh a  
8 significant amount of additional material in excess  
9 of 1,400 pages.

10 The evidence will show that  
11 counsel members were clearly frustrated,  
12 disoriented, and confused during their  
13 deliberations. The evidence will also show a sense  
14 of alienation and resentment with the fact Mr. Clark  
15 or Mr. Price were not present to help guide the city  
16 council in a decision-making process.

17 The evidence will also show  
18 attempts by Alderman Spears to alienate the city  
19 council from these two individuals by referring to  
20 them as a tight-knit group that travels the landfill  
21 circuit from community to community, thereby  
22 unjustifiably aligning these two professionals with  
23 a distinguished career of service.

24 The evidence will also show, in

1 turn, that this led to a decision that reflects the  
2 council did not know what they were deciding on, or  
3 how they were deciding it.

4 The evidence will bear out several  
5 other important points. The transcript of the  
6 proceedings shows that important questions and  
7 important issues raised by a member of the city  
8 council during the course of deliberations could not  
9 or would not be answered. The transcript of the  
10 proceeding also shows abject and total confusion  
11 over the form of the resolution that would be  
12 adopted. In fact, one councilman even asking if the  
13 resolution was for denial with conditions relating  
14 to approval.

15 The record of those proceedings  
16 shows that nothing was decided by the city council,  
17 but, in fact, cart blanche latitude was simply given  
18 to the attorneys retained by newly-elected Mayor  
19 Burd to craft whatever decision they thought should  
20 be crafted. The record of May 23rd and May 24th  
21 show legitimate questions and legitimate inquiries  
22 by counsel being cut off summarily by Mayor Burd,  
23 who, again, had made promises to keep an agenda, and  
24 she was going to finish that agenda.

1                   The evidence will show that  
2    24 minutes into the second night of deliberation on  
3    May 24th, 2007, and for the balance of that meeting,  
4    that it was -- that the counsel centered its  
5    discussion, not on the reasons for denial of the  
6    application, but rather discussion of conditions to  
7    be attached in the approval, which might result if  
8    their decision of denial was reversed, and which of  
9    these were, as Mayor Burd put it, legal and illegal.

10                   The evidence will show a mayor  
11   hellbent on voicing a vote of the council for the  
12   council members. First, they had been afforded  
13   adequate time to review the record, most notably the  
14   reports of Mr. Price and Mr. Clark, which  
15   recommended approval of the application, and seconds  
16   before they had their questions concerning both of  
17   those recommendations for approval answered or even  
18   addressed.

19                   Rather, the evidence will show the  
20   mayor was bent on reaching a denial only one or  
21   two days after the public comment period had ended,  
22   not attempting to afford adequate time of the city  
23   council to evaluate the record as a whole. The  
24   transcripts of the proceedings held on both May

1 23rd, and more notably on May 24th, show a city  
2 council which was confused and disoriented, and  
3 pointedly apologetic about the decision it was about  
4 to make.

5           The evidence will show that there  
6 was simply no vote as to the specific criteria of  
7 Section 39.2. One of the aldermen even  
8 characterized the purported deliberations as a  
9 circus, a circus that led to a vague, ambiguous and  
10 unsupportable decision, a decision that contained  
11 inherent and significant contradictions, a decision  
12 which a transcript of the proceedings show that city  
13 council itself expressed a civil doubt that could  
14 ever be upheld in an appeal.

15           Upon receipt of this evidence, it  
16 will be absolutely clear that the proceedings were  
17 fundamentally unfair. Further, the record at the  
18 39.2B hearing will prove that the decision of the  
19 city council was against the manifest weight of the  
20 evidence, and should be reversed in the siting  
21 application allowed.

22           MR. HALLORAN: Thank you, Mr. Porter.  
23 Mr. Dombrowski?

24           MR. DOMBROWSKI: Thank you, Mr.



1 Hearing Officer. I believe the evidence will show  
2 nothing of the kind. The evidence will show Fox  
3 Moraine received a full and fair hearing. The  
4 evidence will also show that Fox Moraine had a full  
5 and complete opportunity to present evidence in  
6 support of this landfill application.

7 This hearing went on for 23 or 24  
8 different -- 24 different days. Fox Moraine put on  
9 six, eight, nine witnesses. They had plenty of  
10 opportunity, which they have admitted, to do  
11 everything that they thought proper to support their  
12 application, and the evidence will show that they  
13 did -- that the hearing that they did receive was  
14 fundamentally fair, that the alderman, the city  
15 council, and the mayor were not biased against the  
16 application, that they did not prejudge anything.  
17 There may have been some ex parte contacts, which  
18 are certainly not unexpected in a situation like  
19 this, but the evidence will show that if there were  
20 any ex parte communications, that it did not at all  
21 taint the process.

22 The evidence will also show that  
23 Fox Moraine filed its application on December 1st,  
24 2006, knowing that elections would be held

1 approximately four, four and a half months later.  
2 Evidence will show that Fox Moraine could have filed  
3 its application at a different date, but chose to do  
4 so, knowing that the landfill would be an issue in  
5 the campaign, and possibly a very controversial  
6 issue. And apparently, Fox Moraine's big gripe here  
7 is that the citizens of Yorkville exercised their  
8 first amendment rights to express their opinions to  
9 their elected officials, and to petition their  
10 elected officials and make themselves known and  
11 heard. That seems to be Fox Moraine's chief  
12 complaint here.

13 Now, in his opening statement,  
14 Mr. Porter talked a lot about the deliberations on  
15 May 23rd and 24th, and Mr. Hearing Officer, I'd just  
16 like to read a sentence from your October 30, 2008,  
17 order on the motions to compel that each side filed.  
18 Your statement was, "The Courts have been clear that  
19 nothing in Section 39.2 requires a detailed  
20 examination of each bit of evidence for a thorough  
21 going exposition of the decision makers' mental  
22 processes." Apparently, Fox Moraine intends to  
23 violate the hearing officer's order on what is  
24 permitted questioning and what is un-permitted

1 questioning.

2 Mr. Porter also mentioned that  
3 it's Fox Moraine's belief that the city council did  
4 not give due diligence to the hearing officer's  
5 report, nor to a second report that was filed by  
6 Mr. Dirk Price. However, as we all know, the  
7 Illinois Environmental Protection Act entrusts the  
8 Yorkville city council with the decision as to  
9 whether to vote up or down on Fox Moraine's landfill  
10 application. It is not the hearing officer or  
11 Mr. Price who had the final say on that decision.

12 So in sum, the evidence will show  
13 that Fox Moraine received every bit of due process  
14 that they were entitled to, and that the process was  
15 lengthy, the process was detailed, the process was  
16 fundamentally fair, and that Fox Moraine petition's  
17 should be denied because there was no bias. There  
18 was absolutely nothing that tainted the process or  
19 the ultimate decision of the Yorkville city council.

20 MR. HALLORAN: Thank you,  
21 Mr. Dombrowski. Mr. McCluskey, you are a party. Do  
22 you need a table, or do you feel comfortable back  
23 there?

24 MR. MCCLUSKEY: No, I'm fine. I'm

1 fine.

2 MR. HALLORAN: Okay. Would you like  
3 to give an opening?

4 MR. MCCLUSKEY: No.

5 MR. HALLORAN: Okay.

6 MR. MCCLUSKEY: We have stipulated  
7 that we will not present any evidence here, but that  
8 the record will -- the record will be in evidence  
9 and there will be no witnesses by Kendall County.

10 MR. HALLORAN: Okay. Thank you, sir.  
11 Fox Moraine, first witness, please?

12 MR. MUELLER: Mr. Halloran, I would  
13 like to offer some exhibits into evidence initially.  
14 I would like to offer as petitioner's -- or Fox  
15 Moraine Exhibit No. 1 the planned -- Yorkville  
16 planning commission transcript of September 25th,  
17 2006. This was a document furnished to us in  
18 electronic form in discovery in this matter. Let me  
19 run through all of these, because the objections, if  
20 there are any, will be the same, I think.

21 MR. HOPP: Mr. Halloran, I believe  
22 that's accurate. Let's run through them all. We'll  
23 handle our objections.

24 MR. HALLORAN: Okay.

1 MR. MUELLER: Fox Moraine Exhibit No.  
2 2 would be the minutes of the city council meeting  
3 of the city of Yorkville of September 26th, 2006.

4 MR. HALLORAN: I'm sorry. Is that  
5 October 26th?

6 MR. MUELLER: September 26th, 2006.

7 MR. HALLORAN: Okay. Thank you.

8 MR. MUELLER: That also was provided  
9 to us in electronic form by the city. Exhibits --  
10 Exhibit 3 would be the amendments to the city  
11 council meeting of October 10th, 2006. This was  
12 transcribed by a court reporter at Fox Moraine's  
13 request from a video of the meeting presented to us.  
14 The parties, I believe, have stipulated that there  
15 is no need to call the court reporter with regard to  
16 the accuracy of the transcript, but that in any  
17 event of a conflict between her transcript and the  
18 videotape, which was provided by the city, the video  
19 would control.

20 Mr. Halloran, I only have one copy  
21 of the video that was provided, and I have asked the  
22 city to provide me an additional copy that can be  
23 submitted to the Board. There's apparently a  
24 proprietary software program that prevents easy

1 reproduction of the video that I was furnished, and  
2 they indicated they actually had some of the same  
3 difficulties.

4 So the video on number three was  
5 provided by the city -- by the city. We had it  
6 transcribed by a certified shorthand reporter, and  
7 she is incidentally also the person that sat for a  
8 number of the depositions that were taken in this  
9 matter.

10 Exhibit 4 is the transcript of  
11 October 24th, 2006, to the city council meeting.  
12 Same description as Exhibit 3, we had the video, and  
13 then asked a court reporter to type a transcript  
14 from that.

15 Exhibit No. 5 is the city council  
16 meeting of October 30th, 2006. We had -- again, we  
17 got the video from the city, and had a court  
18 reporter transcribe from that video.

19 Exhibit No. 6 is the transcript of  
20 the city council meeting of November 13th, 2006.  
21 Once again, the city provided a video of the  
22 meeting. We had the transcript made from the video.

23 Exhibit No. 7 is the meeting of --  
24 meeting transcript of November 14th, 2006. Once

1 again, the city provided us a  
2 transcript -- or a video of the meeting. We had it  
3 transcribed.

4 Fox Moraine Exhibit No. 8 is the  
5 transcript of the city council meeting of November  
6 30th, 2006. Again, the city provided the videotape  
7 on disc. We had a transcript made from the video.

8 Fox Moraine Exhibit No. 9 is the  
9 transcript of the city council meeting of  
10 January 23rd, 2007. That one is like one and two,  
11 in that the transcript itself was provided to us by  
12 the city in discovery in this matter.

13 The relevance of all of these are  
14 that they are public documents -- or public records,  
15 records of public meetings. They contain numerous  
16 admissions against interest by various city council  
17 members. We're offering them in their entirety,  
18 Mr. Halloran, consistent with your ruling that it  
19 should be all or nothing. The parties are each free  
20 to emphasize whatever portions of those meetings  
21 they can that's irrelevant and important.

22 Additionally, these meetings all  
23 deal with the subject of the annexation of the  
24 subject property, execution of a host agreement

1 between Fox Moraine and the city, consideration of  
2 whether that host agreement was fair and should be  
3 renegotiated, vacating a road that bisected the  
4 landfill property, and which was a condition of the  
5 annexation agreement that was executed between the  
6 parties, subsequent reannexation of the property,  
7 and all of the general matters that were  
8 prerequisites to filing a landfill application and  
9 conducting a landfill hearing.

10 The transcripts make it clear that  
11 as early as the first meeting, September 25th,  
12 members of the public were advising the city council  
13 that the purpose of the annexation was to facilitate  
14 development of a landfill, and therefore denial of  
15 the annexation would stop the landfill process in  
16 its tracks. So this was all related to the landfill  
17 application, which was subsequently filed.

18 Land and lakes, decided by the  
19 Board and the third district appellate court, is  
20 clear that you can look at evidence of bias and  
21 prejudgement prior to the filing of an application  
22 when it's clearly linked to the subject matter of  
23 the application.

24 So I think these are obviously



1 relevant and probative, to the extent that we have  
2 city council members, and in some cases, members of  
3 the public who were subsequently elected to the city  
4 council, expressing strong sentiments against  
5 annexation, against a host agreement between Fox  
6 Moraine and the city, against Fox Moraine, accusing  
7 Fox Moraine of breach of contract, and the like.  
8 Those are very powerful statements of prejudgement  
9 and bias, and, as such, should be received by the  
10 Board.

11 MR. HALLORAN: Thank you, Mr. Mueller.  
12 Mr. Hopp?

13 MR. HOPP: Your Honor, we do object on  
14 two grounds. Number one, hearsay. Mr. Mueller has  
15 identified possibly several hearsay exceptions, but  
16 what we have here is a stack, eight, ten inches high  
17 of transcripts complete with hearsay. We've got no  
18 designations of precisely which statements he  
19 intends to try to introduce or rely on, so no  
20 foundation has been made for hearsay objections for  
21 the particular statements. All we know is there's a  
22 lot of hearsay in these documents. So there's -- we  
23 do have a hearsay objection. We don't believe that  
24 Fox Moraine has met its burden to prove that the

1 exceptions apply.

2 Second, relevance, your Honor.  
3 These documents are all dated. These hearings all  
4 occurred prior to filing of the landfill siting  
5 application. None of these are hearing transcripts  
6 on the landfill siting application. They are on  
7 completely separate city matters, things that were  
8 brought before the city on different issues.

9 So they have no relevance to the  
10 landfill siting application, cannot be used in this  
11 process to prove prejudgment of that application,  
12 because the evidence on the application came in  
13 after the land application was filed, and that was  
14 filed in December of 2008. All of these are dated  
15 previous to that. I'm sorry, 2006. Forgive me.

16 MR. HALLORAN: Mr. Mueller, any  
17 further argument?

18 MR. MUELLER: Very briefly. I agree  
19 with Mr. Hopp that the transcripts contain a lot of  
20 hearsay, and they are not offered for the truth of  
21 the matters asserted by individuals who are quoted  
22 in the transcript. For example, there are lots of  
23 members of the public who repeatedly said things to  
24 the effect of, "All landfills leak and they will

1     poison and kill all the children in the community,"  
2     and obviously we don't believe that those statements  
3     are true, and so we are not offering the transcripts  
4     for the truth of the matters asserted therein.

5                     However, they are relevant, and  
6     they do contain statements by people to be called as  
7     witnesses herein. They also provide the Board a  
8     wonderful opportunity to examine the circus  
9     atmosphere and see for itself what things were like  
10    and how hostile the environment was for the  
11    petitioner prior to the actual landfill's beginning.  
12    So we're offering them for what occurred at the  
13    meetings, not for the truth of every statement made  
14    at every meeting by every speaker.

15                    Secondly, as to the time element,  
16    number one, the January 23rd transcript of 2007  
17    actually postdates the filing of the application in  
18    that the city and Fox Moraine were still discussing  
19    vacating Sleepy Hollow Road, which bisects the  
20    proposed landfill. They were still discussing  
21    annexation of the property. They were still  
22    discussing the host agreement, which some city  
23    council members were very dissatisfied with. All of  
24    that is evidence of bias against the applicant.

1                   Additionally, these are very close  
2     in time, in terms of approximate time to the filing  
3     of the application. The earliest one predates the  
4     filing of the application by barely over two months,  
5     and based upon Land and Lakes and other precedents,  
6     I think that they're clearly not barred because they  
7     didn't postdate the filing of the applications.

8                   MR. HALLORAN: Mr. Hopp, anything  
9     further?

10                  MR. HOPP: Just, your Honor, we have  
11     had some examples of potential non-hearsay  
12     statements. The petitioner has not offered  
13     particular statements. We don't have an opportunity  
14     to object on a statement-by-statement basis. All  
15     he's asking is that these documents be admitted  
16     en masse, and we think he hasn't met his burden.

17                  MR. HALLORAN: Mr. McCluskey,  
18     anything?

19                  MR. MCCLUSKEY: We have no comment.

20                  MR. HALLORAN: Okay. Thanks. You  
21     know what, I'm going to -- I'm going to allow Fox  
22     Moraine's Exhibit No. 1, 2, 3, 4, 5, 6, 7, 8 and 9  
23     into evidence over Yorkville's objection. I do find  
24     it possibly relevant. I think it may assist the

1 Board in reaching its decision, and, as Mr. Mueller  
2 said, the exhibits are not offered for the proof of  
3 the matter asserted. So with that said, I do admit  
4 those nine exhibits.

5 MR. MUELLER: Mr. Halloran, we should  
6 probably revisit before the end of the hearing the  
7 issue of how we'll provide a copy of the videotapes  
8 that accompanies, I think, six of these nine  
9 transcripts, and we'll try to work that out with the  
10 city.

11 As Exhibit No. 10, Mr. Halloran,  
12 we would offer the complete court filing in Kendall  
13 County, case number 07 OV 43, entitled the United  
14 City of Yorkville versus Donald Hammon.

15 MR. HALLORAN: Mr. Mueller, which  
16 one -- what was that?

17 MR. MUELLER: That is Fox Moraine  
18 Exhibit Number 10.

19 MR. HALLORAN: Okay. And that is the  
20 Court file?

21 MR. MUELLER: The entire circuit court  
22 file of the proceedings in that case.

23 MR. DOMBROWSKI: That's also the  
24 subject of one of our motions in limine. I believe

1 it was number six that Mr. Halloran has granted.

2 MR. HALLORAN: Yeah. Well, what's in  
3 the file?

4 MR. MUELLER: This was an ordinance  
5 violation case filed -- brought by the City against  
6 Mr. Hammond, who was the majority owner of Fox  
7 Moraine landfill. It demonstrates the hostility of  
8 the city toward him, the bias of the city toward  
9 him, and we believe it is relevant to show an  
10 ongoing pattern of hostile conduct by Mayor Burd  
11 towards Fox Moraine, and toward all of its  
12 principles.

13 MR. HALLORAN: Didn't I rule, though,  
14 that --

15 MR. DOMBROWSKI: Yes, you have.

16 MR. HALLORAN: -- I could take  
17 administrative notice of the Board rulings and  
18 orders and, obviously, the circuit court's board's  
19 -- circuit court's ruling and orders. But I will  
20 not accept the pleadings.

21 MR. MUELLER: In that case, your  
22 Honor, I guess I'm offering it by way of offer of  
23 proof.

24 MR. HOPP: Objection, for the same

1 reasons set out in our motions in limine, your  
2 Honor. This postdates the hearing -- postdates the  
3 decision on the denial and hearsay, all of the  
4 reasons set forth in our --

5 MR. HALLORAN: Okay. Well, I will  
6 accept it as an offer of proof, because again, this  
7 is a time-sensitive matter. If I Board -- if I  
8 exclude it entirely, the Board may say, "Hey, we  
9 want to take a look at it." So we're right back  
10 where we were, and we got a decision deadline. So I  
11 will take plaintiff's -- Petitioner's Exhibit No. 10  
12 as an offer of proof. And Mr. Mueller, could you  
13 identify that again, please? It's the complete  
14 court file of the Yorkville --

15 MR. MUELLER: It is the complete court  
16 file in Kendall County, circuit court case number 07  
17 OV 43, United City of Yorkville versus Donald  
18 Hammond.

19 MR. HALLORAN: Okay.

20 MR. MUELLER: And then as Fox Moraine  
21 Exhibit No. 11, we would, in light of your Honor's  
22 ruling, by way of offer of proof, submit the  
23 complete court file in the case of United City of  
24 Yorkville versus Fox Moraine L.L.C., Kendall County

1 circuit court number 08 L 68, and my reasoning on  
2 that is exactly the same as on the other -- you  
3 apparently already ruled, so no further argument is  
4 necessary.

5 MR. HOPP: For the record, your Honor,  
6 same objection.

7 MR. HALLORAN: Same objection. I will  
8 accept Petitioner's Exhibit No. 11 as an offer of  
9 proof, but I do want to let the Board take note of  
10 my prior ruling.

11 MR. MUELLER: Mr. Halloran, we would  
12 also ask the Board to take judicial notice of the  
13 pleadings and its rulings in PCB case number 07-95,  
14 and 0 -- I guess it's 08-95 and 08-96. And since  
15 they're part of, you know, the Board's records, I  
16 think that we can just request them to take judicial  
17 notice of those cases --

18 MR. HALLORAN: But the --

19 MR. MUELLER: -- and the rulings  
20 there. I'm not sure that your order on the motion  
21 in limine goes into whether they can consider the  
22 pleadings as well as their orders.

23 MR. HALLORAN: Again, I'll say no --  
24 I'm not accepting the pleadings. But I will take



1     them in a certain notice of the rulings and orders  
2     of the Board itself.

3                     MR. MUELLER:   Mr. Halloran, would you  
4     like these exhibits up by you now?

5                     MR. HALLORAN:   I don't need them.

6                     MR. MUELLER:   I'll give them to you at  
7     the break.

8                     MR. HALLORAN:   Mr. Hopp?

9                     MR. HOPP:   We'd like to -- well, first  
10    of all, we object on the same basis as before, and  
11    understand the Court's ruling that it takes judicial  
12    notice of rulings but not of pleadings, for the same  
13    reasons we've objected previously.  And with that, I  
14    mean, we certainly object to even the acceptance as  
15    an offer of proof, but understand the hearing  
16    officer's rule.

17                    MR. HALLORAN:   Okay.  As far as  
18    Petitioner's Exhibit No. 12, I will take  
19    administrative notice again of the Board's rulings  
20    and orders, however, and I will take the proceedings  
21    as an offer of proof, as previously ruled.

22                    MR. MUELLER:   Thank you, Mr. Halloran.

23                    MR. HALLORAN:   Thank you.  First  
24    witness?

1 MR. MUELLER: We're ready to call Rose  
2 Ann Spears.

3 MR. HOPP: She's outside.

4 MR. HALLORAN: Okay. Thank you, Mr.  
5 Hopp.

6 Ms. Spears, just raise your right  
7 hand and the court reporter will swear you in.

8 (Witness sworn.)

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

10 BY MR. MUELLER:

11 Q. State your full name, please.

12 A. Rose Ann Spears.

13 Q. Ms. Spears, you are an alderman for  
14 the city of Yorkville?

15 A. Correct.

16 Q. And how long have you been an  
17 alderman?

18 A. I think I'm going on my thirteenth  
19 year.

20 Q. And when were you most recently  
21 reelected?

22 A. Two years ago.

23 Q. So you were up for election in the  
24 winter of 2006 and seven, and were elected in April

1 of 2007. Is that correct?

2 A. That's correct.

3 Q. And you were then, obviously, on the  
4 Board -- or the council on September 26th, 2006,  
5 right?

6 A. That's correct.

7 Q. Do you remember a meeting at the -- I  
8 believe it is the senior citizens center next door,  
9 or the community center -- on September 26th, 2006,  
10 to consider the issue of the annexation of the Fox  
11 Moraine property, the execution of a host agreement,  
12 the execution of an annexation agreement, and  
13 adoption of an amended pollution control facility  
14 siting ordinance?

15 MR. HOPP: Hearing Officer, if I may,  
16 I'd like to renew my objection on the grounds of  
17 relevance. All of these questions have to do with  
18 the conduct that occurred and hearings that occurred  
19 prior to the filing of the siting application.

20 MR. HALLORAN: Okay. And as case law  
21 says, we can -- the Board can take a look at any  
22 kind of evidence that's relevant to a possible  
23 fundamental and fairness argument. Your objection  
24 is so noted, Mr. Hopp.

1 MR. HOPP: Thank you, your Honor.

2 MR. HALLORAN: You may proceed,

3 Mr. Mueller.

4 THE WITNESS: To be honest, I don't  
5 recall that meeting exactly.

6 BY MR. MUELLER:

7 Q. You don't remember being at that  
8 meeting?

9 A. Not that particular -- not -- no.

10 Q. Do you remember voting on the  
11 annexation resolution?

12 A. Yes, I did.

13 Q. And you voted no on that resolution,  
14 correct?

15 A. That's correct.

16 Q. Do you remember voting on the host  
17 agreement that was presented between Fox Moraine and  
18 the city of Yorkville?

19 A. Not clearly.

20 Q. Do you remember that there was a large  
21 crowd at that meeting?

22 A. Not specifically that meeting.

23 Q. Do you remember that the sentiment of  
24 the crowd at that meeting was that opposition to the

1 annexation and defeating the annexation would  
2 prevent a landfill from ever being sited?

3 A. I would be speculating on the crowd's  
4 mood and why they were there.

5 Q. All right. Well, you don't remember  
6 an expression, for example, from George Gilson  
7 stating, "We don't want this annexation, and we  
8 don't want the landfill, and that's only reason for  
9 this annexation?"

10 MR. HOPP: Objection, your Honor.  
11 Hearsay.

12 MR. MUELLER: I'm just asking if she  
13 remembers hearing it.

14 MR. HALLORAN: Objection overruled.

15 THE WITNESS: I don't remember  
16 specific conversations. That was two or three years  
17 ago.

18 BY MR. MUELLER:

19 Q. And you do remember that you voted no  
20 on the annexation, correct?

21 A. Yes, I did.

22 Q. You understood at that time that if an  
23 annexation didn't happen, then there couldn't be a  
24 landfill application in the city of Yorkville,

1 correct?

2 MR. HOPP: Objection, Hearing Officer.  
3 This invades the deliberative process of the city  
4 council.

5 MR. MUELLER: Prior to deliberations  
6 on the siting application.

7 MR. HOPP: Still, the deliberative  
8 process privilege applies throughout. There's no  
9 start date or end date to the deliberative process.

10 MR. HALLORAN: Could you read the  
11 question back?

12 (Whereupon, the record was read as  
13 requested.)

14 MR. HALLORAN: I'm going to sustain  
15 Mr. Hopp's objection. You're touching into the  
16 mental processes, again, as a decision maker.

17 MR. PORTER: Mr. Halloran, if I may,  
18 we have a brief in an argument regarding the  
19 deliberative process objection, and the ruling that  
20 arises out of the fact that we're going to be making  
21 and presenting evidence in bad faith. And so at the  
22 present time, I'm going to provide a voir dire or an  
23 offer of proof concerning the bad faith that will be  
24 presented here, and hence, delving into the mental

1 impressions, even under your ruling is more than  
2 appropriate. And so I need to make that record and  
3 present that motion. And since this is the first  
4 time we bumped into the issue, it's the appropriate  
5 time to do it.

6 MR. HOPP: Hearing officer, this is  
7 the first time that we've heard there's evidence of  
8 bad faith. It was raised -- this is completely  
9 briefed. You've previously indicated that you saw  
10 no evidence of bad faith. This is -- the  
11 opportunity to present this motion has long passed,  
12 and we object based on surprise and, you know, out  
13 of bounds. It's outside --

14 MR. HALLORAN: You know, I've set  
15 probably three different cutoff dates for prehearing  
16 motions.

17 MR. PORTER: Well, this is not a  
18 prehearing motion, Mr. Halloran. This is a hearing  
19 motion. This is the first time the objection has  
20 been sustained at the hearing, and as we understand  
21 your ruling, the ruling was very clear that you  
22 would not entertain deliberative process unless  
23 there was evidence in bad faith.

24 We are going to be presenting

1 evidence in bad faith, and this pleading does that.  
2 It provides all of the evidentiary support necessary  
3 to come to a conclusion of bad faith, and I would  
4 like an opportunity to present it.

5 MR. DOMBROWSKI: One additional thing,  
6 Mr. Halloran, if I may. Mr. Porter, at the Kankakee  
7 county hearing where you were the hearing officer,  
8 argued that there should be no offers of proof on  
9 the deliberative process privilege --

10 MR. PORTER: Your Honor -- I'm sorry,  
11 Mr. Halloran. If we're getting into presenting  
12 it --

13 MR. HALLORAN: Let Mr. Dombrowski  
14 finish, Mr. Porter, please.

15 MR. PORTER: It seems he's already --

16 MR. HALLORAN: We're not starting off  
17 too well here.

18 MR. PORTER: It sounds like he's  
19 already --

20 MR. HALLORAN: Okay. Mr. Dombrowski?

21 MR. DOMBROWSKI: Mr. Porter objected  
22 to what he's essentially trying to do here at that  
23 previous landfill hearing. You agreed with him. We  
24 have transcripts from that hearing if you'd like to



1 see those, and the ruling in that matter was that  
2 there would be no offers of proof on the  
3 deliberative process privilege, because the offer of  
4 proof delves into and violates the privilege that  
5 attaches to the city council's deliberations. So  
6 there were no offers of proof on that issue during  
7 those two days of that hearing.

8 That same ruling, that same logic,  
9 in conclusion, should apply here. There's nothing  
10 to delve into. You, Mr. Hearing Officer, have  
11 already ruled on this, and have said that Fox  
12 Moraine may not delve into this issue, and they're  
13 trying to get around your rulings by claiming they  
14 can do it in an offer of proof.

15 MR. HALLORAN: Again, as I stated to  
16 Mr. Porter before, I'm not too happy about this  
17 latest development. However -- and again, I believe  
18 my ruling was correct back then that they cannot  
19 delve into it. I didn't allow it. But again, I  
20 always have that backup as an offer of proof.  
21 Because again, it's a time-sensitive matter. If the  
22 Board rules against me or rules for Mr. Porter, then  
23 we're right back here and we're up against the clock  
24 if Fox Moraine doesn't file a waiver. So my back is

1 up against the wall. Mr. Hopp, do you have  
2 something?

3 MR. HOPP: Your Honor, just further on  
4 the timing, all of the matters that are raised in  
5 this offer of proof in this brief have been  
6 available to Fox Moraine since before the last  
7 deadline. This is all based on hearing transcripts  
8 that things that happened over two years ago.

9 MR. HALLORAN: Yeah. I totally agree  
10 with Yorkville, and I want the record to reflect  
11 that, and the Board to take a look at it, that --  
12 I'm not going to say it's somewhat of an ambush.  
13 But this should have been brought up way before,  
14 addressed. And again, I agree -- this is at a  
15 hearing, but, you know, it should have been raised  
16 before. You know, I like to -- you know, my  
17 hearings like to go smooth, and this is a surprise.  
18 But whatever the reason, I will accept a small  
19 window of an offer of proof. How long, Mr. Porter,  
20 do you think this questioning will go on?

21 MR. PORTER: Well, there are several  
22 ways I can -- one, there is an offer of proof that's  
23 been handed to you concerning the bad faith, and --  
24 Mr. Halloran, there's actually two issues. Number

1 one, would be -- you have already ruled that if  
2 there's evidence of bad faith, then the evidence as  
3 to deliberative process comes in not as an offer of  
4 proof. You can get into it. And in this case,  
5 there is, indeed, bad faith.

6 I got to tell you, this is  
7 completely different than the Kankakee County case  
8 that I was involved in, as were you. In Kankakee  
9 County, remember that Mr. Moran, Waste Management  
10 wanted to conduct discovery in questioning regarding  
11 the county board, which had been explicitly directed  
12 and instructed to disregard any material received  
13 outside of the hearing process. We don't have that  
14 evidence here. As a matter of fact, we have  
15 evidence that there are several board members that  
16 got elected and never received that instruction at  
17 all.

18 They had also been -- there was  
19 evidence admitted at the Kankakee hearing that each  
20 of those people made efforts whenever they were  
21 contacted by members of the public to tell them  
22 that, indeed, they could not consider evidence  
23 outside the record, and that those people should  
24 come and testify at the hearing. That is not at all

1 what has happened here.

2 To the contrary, we have county  
3 board members that solicited and accepted testimony  
4 outside of the hearing from members of the public  
5 and voiced their opinions while they were running  
6 for office against the landfill itself. We have at  
7 least three members, Mr. Plocher, Ms. Sutcliff, Mr.  
8 Werderich, who received no instructions to limit  
9 their decision to the evidence.

10 You'll see we have attached here  
11 the various areas of bad faith as broken out by the  
12 specific board members. First is Ms. Spears, who  
13 refused to sign a resolution that we've attached to  
14 keep an open mind, and to not make a decision or  
15 otherwise form any conclusion until all the  
16 evidence, testimony or public comment, either oral  
17 or written had been submitted. She refused to do  
18 that, explicitly refused to keep an open mind and  
19 limit her decision to the record. That's completely  
20 and diametrically opposed to in the Kankakee County  
21 case.

22 Therefore, in this case, it's  
23 obvious that we need to get into the mental  
24 impressions. At a minimum, it should be allowed as

1 an offer of proof. And therefore, when something  
2 like this comes, we should be given the opportunity  
3 to ask the question if it's sustained as an offer of  
4 proof.

5                   Following on Ms. Spears, two days  
6 before the election and a month before the vote and  
7 before the record was closed, she stated in a  
8 newspaper article that there should be nothing  
9 surrounding the landfill for acres, and it should  
10 have no impact on traffic. Those are not the  
11 criteria, and this is clear evidence of a  
12 misunderstanding of what was required and a  
13 pre-adjudication of the merits.

14                   Ms. Spears voted on her own motion  
15 to disqualify for bias, which was filed by the  
16 applicant here. Which, again, is obvious evidence  
17 of pre-adjudication and bias. She also urged the  
18 city council to just thumb through the hearing  
19 officer and the city attorney reports as well as the  
20 1,400 pages of material submitted by the applicant  
21 in the days shortly before the alleged deliberative  
22 hearing took place. She invited and directed the  
23 city council members to just ignore, essentially,  
24 what had been submitted by its own applicants -- or

1 by its own experts.

2                   Finally, there was evidence that  
3 Ms. Spears was the hero of the objectors, which is  
4 attached as Exhibit E to our pleading, when it was  
5 reported by Ms. Sutcliff, who was later voted on to  
6 the city council, that every time Ms. Spears spoke  
7 at the annexation hearing, that Mr. Mueller is now  
8 -- I'm sorry -- Mr. Mueller is now questioning,  
9 every time Ms. Spears spoke, there was applause, and  
10 she was identified as the hero of the phony  
11 organization.

12                   As to Mr. Plocher, whom we'll  
13 also -- there was evidence of that city council  
14 having bad faith -- Mr. Plocher was a member of  
15 FOGY, the primary opposition group. He served on  
16 Ms. Burd's campaign and committee with  
17 Mr. Werderich, Mr. Milliron, and Mr. Parish, all of  
18 whom were objectors and, in some or another, at one  
19 time associated with FOGY.

20                   Mr. Plocher took money from the  
21 primary objectors for his campaign. Mr. Plocher  
22 said before election and the vote that he did not  
23 think there was any such thing as a safe landfill.  
24 Mr. Plocher admitted at a deposition that he ran

1 with a slate of candidates, all of who --

2 MR. HALLORAN: Mr. Porter, are you  
3 just reading this verbatim or what?

4 MR. PORTER: No.

5 MR. HALLORAN: It's -- I mean, I've  
6 made my ruling. I'll accept it as an offer of  
7 proof. However, I think we should have crossed this  
8 -- taken up this issue long before today regarding  
9 your intent to do an offer of proof to this extent.

10 MR. PORTER: Let me highlight one  
11 other thing before you make your final ruling as to  
12 offer of proof. Ms. Sutcliff made it absolutely  
13 clear, as I referenced in the opening -- and that's  
14 attached -- that if you wanted to have the landfill  
15 denied, all you had to do was vote for her. If ever  
16 there is evidence of bad faith, it is there. And we  
17 can't get any clearer than bad faith when there is  
18 written statements made that, "All you have to do is  
19 vote for me, and I'll override the landfill." And  
20 those statements are made before the hearing is even  
21 concluded. It just doesn't get any clearer than  
22 that.

23 And so we are in the unusual  
24 circumstance, Mr. Halloran, where we have clear

1 evidence of bad faith. That's why I'm here,  
2 unfortunately, having to make this motion one more  
3 time. Because while I appreciate that you're going  
4 to allow us to ask these questions as offers of  
5 proof, it honestly needs to be admitted as direct  
6 evidence, and we need to be allowed to ask questions  
7 regarding deliberative process in light of these  
8 unbelievable statements made before the hearing  
9 process was concluded. Thank you.

10 MR. HALLORAN: Any final --

11 MR. HOPP: Yes. Just -- we'd like to  
12 renew all of our previous objections, in particular,  
13 surprise. And I understand the hearing officer's  
14 position with respect to the Board, but I believe  
15 the hearing officer to be on solid ground given all  
16 of the prehearing deadlines, given the fact that all  
17 the information that Mr. Porter just raised is all  
18 over two years old, and clearly ignored the  
19 prehearing deadlines in this case. There's  
20 absolutely no reason that this should be brought up  
21 now.

22 MR. HALLORAN: Again, I agree with  
23 Mr. Hopp. I'm not going to admit it as direct  
24 evidence. Again, I'm under time constraints. I



1 will accept it as an offer of proof, and allow some  
2 questioning therein as an offer of proof. I will  
3 mark it as Hearing Officer Exhibit 1, offer of  
4 proof, and the exhibits -- is it A through M, as in  
5 man -- attached.

6 MR. HOPP: Your Honor, though, if I  
7 may address the substance of the offer of proof with  
8 respect to Alderman Spears. All we have on Alderman  
9 Spears is one statement that she refused to sign a  
10 city council ordinance saying that they agreed to  
11 keep an open mind. That's not evidence that  
12 Alderman Spears refused to keep an open mind. It's  
13 evidence that she refused to sign some sort of put  
14 up ordinance that someone was grandstanding and put  
15 in front of her. So that's all that is.

16 The rest of the things Mr. Porter  
17 has just introduced or attempted to introduce are  
18 things that other people said about Ms. Spears. So  
19 therefore, there really is no evidence that Ms.  
20 Spears refused to keep an open mind. There's no  
21 evidence of bad faith on behalf of Alderman Spears.

22 MR. HALLORAN: I agree, and I suspect  
23 the Board will agree with you, and the appellate and  
24 Illinois Supreme Court as well. But at this

1     juncture, I'll allow it in as an offer of proof, and  
2     the questioning --

3                     MR. HOPP:   May I ask about the scope  
4     of questioning then?   What's permissible?

5                     MR. HALLORAN:   Well, I guess  
6     anything -- anything he's asking about the --  
7     delving into the mental processes of the decision  
8     maker as an offer of proof.   I mean, I'm not going  
9     to jump around and say this is an offer of proof,  
10    this isn't.   It's too confusing for the Board.   As I  
11    stated earlier, I have to try to make a clear record  
12    for the Board to follow and decide.   So I'm not sure  
13    how Fox Moraine is going to handle this.

14                    MR. PORTER:   Mr. Halloran, the only  
15    thing I would ask is that when those questions arise  
16    and an objection be made, we don't have to make a  
17    record every time if this is now an offer of proof  
18    or it's not.   But at least we at least need to know  
19    what they're considering to be deliberative process.  
20    It's going to come in and give us an opportunity to  
21    argue that this is not deliberative process.   I  
22    mean, if we get  
23    into -- there could be a variety of things.   I can't  
24    just leave it open ended.   There could be a brief

1 argument that this isn't deliberative of process.  
2 They need to make an objection --

3 MR. HOPP: Well, your Honor, now we're  
4 in the position of having to guess at what's part of  
5 their offer of proof and what isn't. Again, that  
6 puts the burden on us in a completely and unfair  
7 way. If they want to structure their examination so  
8 that the offer of proof goes out all at once, then  
9 we can have an objection.

10 MR. HALLORAN: I agree. I agree. I  
11 got to make it concise and clear. I mean, I can't  
12 be jumping around, and then you're asking a question  
13 that I've already ruled. You know, you can't.  
14 That's direct evidence, and that puts Yorkville, you  
15 know, on the defensive. And I don't see how that  
16 can happen. Can you get all your questions, your  
17 deliberative process questions in that I already  
18 ruled you couldn't get in?

19 MR. MUELLER: Mr. Halloran, the  
20 problem, then, that we have is there are some things  
21 that the city is going to think are deliberative  
22 process, and we don't, that we clearly think they're  
23 not. And we don't intend to ask people why they  
24 voted on the landfill application, but as an

1 example, the record of the May 23rd and May 24th  
2 proceedings is pretty clear that the -- a number of  
3 alderman did not know what criteria they were voting  
4 on. Asking them what criteria they consider to be  
5 met and unmet, we don't think is a deliberative  
6 process. That's asking them if they even knew what  
7 was in front of them.

8 MR. HALLORAN: I think I even ruled on  
9 that, didn't I, previously?

10 MR. DOMBROWSKI: You did, right.

11 MR. HALLORAN: And you -- I know you  
12 don't think it's a deliberative process, but I've  
13 already ruled against you.

14 MR. DOMBROWSKI: And Mr. Halloran --

15 MR. HALLORAN: And so there's my  
16 ruling.

17 MR. DOMBROWSKI: The ruling in the  
18 case laws say that the city council need to produce  
19 a written statement, a written resolution of their  
20 vote, which they did. There is nothing further  
21 required.

22 MR. HALLORAN: I think you mentioned  
23 that on opening.

24 MR. HOPP: That doesn't get to the

1 issue of bad faith. That's a completely separate  
2 issue. So now we're confusing apples and oranges,  
3 and they're trying to put the burden on Yorkville.  
4 If this is a problem. It's a problem that Fox  
5 Moraine has created, and it's a problem that Fox  
6 Moraine has to fix. They need to structure their  
7 examination so that they can make an offer of proof.  
8 If they can't, then we object to this, because they  
9 cannot put the burden on the city of Yorkville and  
10 filter it through their examination.

11 MR. HALLORAN: I agree. I've already  
12 ruled. So if you can -- if you can filter through  
13 your offer of proofs and make it in a somewhat  
14 succinct order, then so be it. But we can't be  
15 jumping around. I've already ruled on this, and I  
16 don't like the surprise at all.

17 MR. PORTER: So we're clear,  
18 Mr. Halloran, what we've handed up to you is an  
19 offer of proof.

20 MR. HALLORAN: Yes. And the  
21 attachments are, as well.

22 MR. HOPP: Correct.

23 MR. PORTER: There may, indeed, be  
24 questions that we will pose during an examination of

1 each and every witness that will also turn as an  
2 offer of proof. And so that we're also clear on  
3 Mr. Halloran's issue, there are issues, for example,  
4 the -- whether or not -- what you intended to vote.  
5 Not how you voted, but did you intend to vote no as  
6 to criteria one. We know Mr. Munns had told us he  
7 thought criteria one was met, and yet signed a  
8 resolution that shows that criteria number one was  
9 not met.

10 What that means is the process  
11 that was employed resulted in requiring unanimous  
12 decisions as to each and every criteria. Because if  
13 one board member thought that one criteria wasn't  
14 met -- for example, let's say Ms. Spears thought  
15 criteria one was not met, but another board member  
16 thought criterion two was not met, those board  
17 members signed a general resolution saying that the  
18 matter was denied.

19 The problem is we are entitled,  
20 under 39.2E, to have decisions of the county board  
21 or governing body to be in writing specifying the  
22 reasons for the decision, such reasons to be in  
23 conformance with subsection A. Subsection A is  
24 denying criterion. They had to make a finding as to

1 each criterion. The law is absolutely clear under  
2 39.2E that they do so. I'm not asking them why they  
3 voted the way they did. I just want to know how  
4 they voted. We don't have a record to show --

5 MR. HALLORAN: Well, you can say  
6 how -- yeah. You can ask how they voted, but their  
7 intentions, no. Then we're back into the mental  
8 process.

9 MR. PORTER: Okay. So how did you  
10 vote on criterion one is going to be allowed?

11 MR. HOPP: No. I'm sorry.

12 MR. HALLORAN: That's public -- that's  
13 public record.

14 MR. MUELLER: Isn't that --

15 MR. PORTER: That's what we're trying  
16 to --

17 MR. HALLORAN: That's -- isn't that --

18 MR. HOPP: The ordinance is a public  
19 record, the deliberations are public record, your  
20 Honor, and everything else is mental impression. So  
21 now they want to filter through again and say, "Did  
22 you really mean this, did you really mean that."

23 MR. HALLORAN: Well, a yes or no is  
24 not a mental impression. I mean, that's a fact

1 that's on paper.

2 MR. DOMBROWSKI: Right. But it's the  
3 way the resolution is worded. Mr. Porter is  
4 misrepresenting the case law and also  
5 misrepresenting your ruling. They are not entitled  
6 to a city council vote by each member going through  
7 criterion one through criterion ten. The way the  
8 city council drafted their resolution was the way  
9 they drafted it, and they voted up or down on the  
10 whole package, and they voted against it seven to  
11 one. They're not entitled to --

12 MR. HALLORAN: I agree.

13 MR. HOPP: They are --

14 MR. DOMBROWSKI: They are not entitled  
15 to ask each member how they voted on each particular  
16 criterion.

17 MR. PORTER: Mr. Halloran --

18 MR. DOMBROWSKI: That's not what the  
19 case law says, and the case law is clear.

20 MR. PORTER: What case law is he  
21 talking about? There's no --

22 MR. HALLORAN: You know, I agree  
23 with Mr. Porter. I've made my ruling. I'm getting  
24 tired of this.



1 MR. PORTER: Well, one more time.

2 MR. HALLORAN: Let's go off the  
3 record.

4 (Whereupon, a discussion was had  
5 off the record.)

6 MR. HALLORAN: Okay. We're back on  
7 the record. Thank you, Counsel. Mr. Dombrowski  
8 wants me to qualify my statement regarding  
9 Mr. Porter. I think I previously said I agree with  
10 Mr. Porter that he's allowed to ask how he vote --  
11 how did the decision maker vote, yes or no. I was  
12 under the assumption that was on record, but my  
13 understanding it was just one complete package. And  
14 so I withdraw my approval of Mr. Porter's argument.

15 Mr. Mueller has offered to try to  
16 summarize, or put in some kind of capsule form, all  
17 the offer of proofs, so it's -- so the record is  
18 clear and complete for the Board. And I appreciate  
19 that, Mr. Mueller. Mr. Porter?

20 MR. PORTER: And one other thing you  
21 said, I think, off the record was that how someone  
22 intended to vote as to a specific criteria could  
23 only come in as an offer of proof. Is that correct?

24 MR. HALLORAN: That's correct.

1 MR. PORTER: Thank you.

2 MR. HALLORAN: Thank you.

3 MR. MUELLER: All right. Let's do  
4 this.

5 BY MR. MUELLER:

6 Q. Ms. Spears, I think the question I  
7 asked you was: Did you understand that by voting no  
8 on annexation and no on approval of the annexation  
9 agreement on September 26th, 2006, if those were  
10 defeated, a landfill application could not be filed  
11 with the city?

12 MR. HOPP: For the record, Mr.  
13 Halloran, not to belabor this, we are now in the  
14 offer of proof?

15 MR. HALLORAN: That is correct.

16 MR. HOPP: Thank you.

17 MR. HALLORAN: We are in an offer of  
18 proof. You may answer, Ms. Spears.

19 THE WITNESS: Okay. The reason why I  
20 voted against the annexation agreement was because  
21 it did not follow procedures. They called a special  
22 meeting for it, and this is totally against what our  
23 counsel has done previously. Therefore, I voted  
24 against the agreement. It had nothing to do with

1 voting against bringing the landfill in.

2 BY MR. MUELLER:

3 Q. Now, but you -- my question is: Did  
4 you understand that if the annexation didn't happen,  
5 a landfill application couldn't be filed?

6 MR. HOPP: Objection. Asked and  
7 answered.

8 MR. MUELLER: She was unresponsive.

9 MR. HALLORAN: Overruled.

10 THE WITNESS: Do I answer this?

11 MR. HALLORAN: Yes, please.

12 THE WITNESS: Okay. I wasn't looking  
13 that far in advance. I was looking on following the  
14 law as following the procedures that are established  
15 by our city.

16 BY MR. MUELLER:

17 Q. Let's go back for a second. You  
18 indicated you didn't remember whether you voted yes  
19 or no on the host agreement, correct?

20 A. That is correct.

21 Q. Do you remember your deposition being  
22 taken on June 6th of -- June 4th, 2008, in this  
23 matter?

24 A. Yes.

1 MR. MUELLER: Do we have an extra copy  
2 of Ms. Spears' deposition transcript? Oh, I've got  
3 one for you. Leave to approach the witness,  
4 Mr. Halloran?

5 MR. HALLORAN: Oh, sure, Mr. Mueller.

6 MR. MUELLER: Thank you.

7 BY MR. MUELLER:

8 Q. Rose, I'm going to hand you what is a  
9 copy of the transcript of your discovery deposition.  
10 The -- there's some confusing page numbers on here.  
11 The page numbers at control are the ones on the top  
12 right, as you'll see, that are -- do you understand  
13 what I'm talking about?

14 A. Mm-hmm.

15 Q. Okay. I would ask you to turn to  
16 Page 53 of that deposition.

17 A. Okay.

18 Q. And do you see at Line 15 you were  
19 asked a question, "Did you also vote on the host  
20 agreement," and your answer was, "Yes, I did."

21 A. Yes.

22 Q. And actually, the question was, "Did  
23 you also vote no on the host agreement," and your  
24 answer was, "Yes, I did."

1           A.       Oh, yes.  Now I'm aware of what we're  
2 talking about.

3           Q.       And so that refreshes your  
4 recollection?

5           A.       Yes.

6           Q.       Did you understand that if there was  
7 no host agreement between Fox Moraine and the city  
8 there could be no landfill application?

9           A.       Well, as I stated here, if I may  
10 quote, the reason why I voted against the --

11                   MR. MUELLER:  Mr. Halloran, I'd ask  
12 that she answer the question as to what she  
13 understood.  It's a yes or a no question.

14                   MR. HOPP:  Mr. Halloran, she's  
15 entitled to explain her answer.

16                   MR. HALLORAN:  I agree.  Sustained.

17                   THE WITNESS:  Thank you.

18                   MR. HALLORAN:  Or you may explain your  
19 answer.

20                   THE WITNESS:  The reason why I voted  
21 against the host agreement was vacating Sleepy  
22 Hollow Road.  We had no public hearing on that,  
23 which I believe is state statute, and we had no --  
24 just a public hearing.  We had no information that

1 we should have been vacating Sleepy Hollow Road, and  
2 that was all part of a host agreement, and I don't  
3 believe it belonged in a host agreement.

4 MR. HALLORAN: Again, this is an offer  
5 of proof?

6 MR. MUELLER: Yes.

7 BY MR. MUELLER:

8 Q. And you also understood that Sleepy  
9 Hollow Road was going to bisect or run right through  
10 the middle of the proposed landfill, didn't you?

11 A. I'm not quite sure if we understood  
12 that at that time.

13 Q. You knew it was on the landfill  
14 property, right?

15 A. I knew it was near the landfill  
16 property.

17 Q. Did you understand that if there -- if  
18 Sleepy Hollow Road wasn't vacated, there could be no  
19 landfill?

20 A. At that time, it wasn't my concern.  
21 My concern was Sleepy Hollow Road did not have a  
22 public hearing, and I had to stick with that.

23 Q. And wasn't it, in fact, your state of  
24 belief that the annexation agreement was illegal?

1 A. That's correct.

2 Q. And did you also feel that if the  
3 annexation agreement was illegal, whatever came  
4 afterwards would also be illegal?

5 A. I did state that.

6 Q. Now, let's move ahead to the Beacon  
7 News article --

8 MR. HALLORAN: This is still under an  
9 offer of proof?

10 MR. MUELLER: Yes.

11 MR. HALLORAN: Thank you, Mr. Mueller.

12 MR. MUELLER: That's why I'm skipping  
13 around.

14 MR. HALLORAN: All right. I really  
15 appreciate it.

16 MR. MUELLER: And I got a whole bunch  
17 for her that don't deal with this stuff, so maybe we  
18 can get all of this out of the way.

19 BY MR. MUELLER:

20 Q. Ms. Spears, do you remember being  
21 asked by Heather Gillers shortly before -- who is a  
22 reporter for the Beacon News -- shortly before the  
23 election to answer the question, "Would a state --  
24 would a safe state compliant landfill be a positive,

1 negative, or neutral addition to Yorkville?"

2 A. I believe she did try to interview me,  
3 but her -- actually her articles are not accurate.

4 Q. Well, let's get into that, if we can.

5 MR. MUELLER: Our next exhibit is 12,  
6 I believe.

7 MR. DOMBROWSKI: I believe it's 13.

8 MR. HALLORAN: Yeah, 13.

9 BY MR. MUELLER:

10 Q. I think you indicated you were  
11 misquoted in the newspaper?

12 A. I believe I was. That does not sound  
13 like something I would've said.

14 Q. Then I'm going to get away from that  
15 as part of the offer of proof and revisit it outside  
16 the offer of proof.

17 It was your opinion, was it not,  
18 that any impact on traffic whatsoever would be  
19 sufficient to cause a no vote on criterion six,  
20 wasn't it?

21 A. Based on the information presented  
22 during the hearings, yes.

23 Q. You understood the criterion in the  
24 statute calls for minimizing the impact on traffic



1 flows, right?

2 A. Yes.

3 Q. However, it was your belief that any  
4 negative impact would be improper, and sufficient to  
5 defeat the criterion, right?

6 A. Well, that would be your opinion.  
7 That wasn't mine.

8 Q. Well --

9 MR. HOPP: Mr. Halloran, while we're  
10 waiting, I understand that we are inside the offer  
11 of proof, but I don't understand how any of this  
12 voting up or down on the criterion implicates bad  
13 faith or is any way connected with the proposed  
14 offer of that faith that we saw earlier today.

15 MR. HALLORAN: Your statement is noted  
16 in the record. Thanks.

17 BY MR. MUELLER:

18 Q. Do you remember your deposition being  
19 taken on June 4th, 2008?

20 A. Yes, I do.

21 Q. Could you turn to Page 46 of that  
22 deposition? Do you see on Line 3 you were asked,  
23 "Now, you voted no on all nine criteria, didn't  
24 you?"

1           A.       You know, I'm not quite sure if I  
2 voted on all nine.

3           Q.       Well, do you see you were asked that  
4 question?

5           A.       Yes, it's there.

6           Q.       And what was your answer?

7           A.       I said I did.

8           Q.       And then you were asked, starting at  
9 page -- at Line 23 -- no. Let's move on to Page 63  
10 of the deposition.

11                   MR. DOMBROWSKI: Excuse me. Was that  
12 53, George?

13                   MR. MUELLER: 63.

14 BY MR. MUELLER:

15           Q.       Do you see -- do you have that, Rose?

16           A.       I do.

17           Q.       Do you see on Line 4 you were asked,  
18 "Given your admitted belief that the amount of  
19 traffic on Route 47 was already unacceptable, is  
20 that a fair statement," referring to -- from the  
21 previous page, any additional traffic on Route 47  
22 being unacceptable?

23                   MR. HOPP: Objection. I don't believe  
24 this is proper impeachment.

1 MR. MUELLER: Let me then move to  
2 Line 8. I'll rephrase.

3 MR. HALLORAN: Thank you, Mr. Mueller.

4 BY MR. MUELLER:

5 Q. Do you see being asked, "Okay. Was it  
6 then your belief that any traffic on that roadway  
7 would be unacceptable?"

8 A. Based on the evidence that was  
9 presented, yes.

10 Q. Well, do you see being asked that  
11 question?

12 A. I see it.

13 MR. HOPP: Again, I'll object.  
14 Improper impeachment.

15 MR. HALLORAN: I'll allow it.

16 BY MR. MUELLER:

17 Q. And was your answer, "I would have to  
18 agree, because I vote against new development coming  
19 in until their infrastructure?"

20 A. I think our cousin, as a whole, does.

21 Q. Was that your answer, ma'am?

22 A. That's my answer. It's printed.

23 MR. MUELLER: I think that actually  
24 concludes my offer of proof issues with Ms. Spears.

1                   MR. HALLORAN: Thank you, Mr. Mueller.  
2 I appreciate your effort.

3 BY MR. MUELLER:

4                   Q.       Historically, Ms. Spears, isn't it  
5 true that you're opposed to any new development that  
6 involved the use of Route 47 until the road was  
7 widened and approved?

8                   MR. HOPP: Objection. Deliberative  
9 process.

10                  MR. MUELLER: It goes to other matters  
11 that she's voted on.

12                  MR. HOPP: Again, deliberative  
13 process, how she --

14                  MR. MUELLER: It goes to her voting  
15 record.

16                  MR. HOPP: How she feels -- are you  
17 asking whether she's voted or the reason for her  
18 vote? That's --

19                  MR. HALLORAN: I don't think he asked  
20 for the reason.

21                  MR. HOPP: I'm sorry.

22                  MR. MUELLER: Let me rephrase it.

23 BY MR. MUELLER:

24                  Q.       Isn't it true that you were opposed,

1 in the past as an alderman, to any new development  
2 that involved the use of Route 47 until the road was  
3 widened and improved?

4 A. That's correct.

5 MR. HOPP: I object, your Honor. He  
6 said opposed, not voted against. So the question is  
7 whether she was opposed mentally, as opposed to  
8 whether she opposed and voted against development.

9 MR. HALLORAN: Can you be more  
10 specific, Mr. Mueller?

11 MR. HOPP: It gets into a reason.

12 MR. MUELLER: Well, the reason I use  
13 that word is because that's what we used in her  
14 deposition, Mr. Halloran. So if you want to make it  
15 as an offer of proof -- it deals with previous  
16 non-landfill related matters.

17 MR. HALLORAN: Yeah.

18 MR. MUELLER: So how can it be  
19 deliberative?

20 MR. HALLORAN: I mean, it could get  
21 into deliberative situations.

22 MR. MUELLER: I'm going to move right  
23 on after she answers the question.

24 MR. HALLORAN: All right. I'll allow

1 it.

2 BY MR. MUELLER:

3 Q. And your answer is no, correct?

4 A. Would you repeat the question?

5 Q. In the past, were you opposed to any  
6 new development that involved the use of Route 47  
7 until that road was widened and improved?

8 A. I actually did not vote against any  
9 development, new development.

10 Q. All right. Would you turn to Page 66  
11 of your deposition? Do you remember your discovery  
12 deposition being taken on June 4th, 2008?

13 A. Okay.

14 Q. All right. And do you see being  
15 asked --

16 A. What line?

17 Q. Starting at Line 4, "I am  
18 understanding it was your position at that time --  
19 and may still be -- that you're opposed to any new  
20 development that involved the use of Route 47 until  
21 that road was widened and improved."

22 Were you asked that question?

23 A. Yes, I was.

24 Q. And was your answer yes?

1           A.       Well, I responded incorrectly, because  
2 I have checked my voting records.

3           Q.       Was your answer yes, Ms. Spears?

4           A.       It was yes on here.

5           Q.       Ms. Spears, did you receive any  
6 e-mails regarding this landfill proposal?

7           A.       Yes, I did.

8           Q.       And you previously testified, I  
9 believe, that you could not remember how many you  
10 received?

11          A.       That's correct.

12          Q.       In fact, you testified that you didn't  
13 know whether it was one or 1,000. Isn't that right?

14          A.       I believe I said that was quite a  
15 span, and I could not give you even a close number.

16          Q.       And, in fact, you said you didn't know  
17 whether it was one or 1,000, right?

18          A.       That is correct.

19          Q.       And did you receive any letters in  
20 connection with public sentiments about this  
21 proposed landfill?

22          A.       We received four letters at the city  
23 that was addressed to the mayor, as well as every  
24 member of the city council, that our city clerk had

1 to copy and distribute to each of us.

2 Q. And, again, with regard to letters  
3 that you received, you don't remember how many you  
4 received, right?

5 A. No.

6 Q. And you said you didn't know whether  
7 you received one or 1,000. Isn't that true?

8 A. I didn't know we had to count them.  
9 That is absolutely true.

10 Q. And you also indicated you received  
11 some personal communications from citizens regarding  
12 the landfill proposal, right?

13 A. I had some people that attempted to  
14 speak on it, and I had a card that was laminated so  
15 we could use it forever that attorney Price gave to  
16 us, and I would present that card to the  
17 individuals.

18 Q. All right. And you didn't remember  
19 whether you received one or 1,000 such personal  
20 communications. Isn't that right?

21 A. That's correct.

22 Q. Now, did you have some campaign  
23 literature when you were running for reelection?

24 A. No, I did not.



1 Q. With regard to the meetings that you  
2 attended of the city council in the  
3 September/October/November time period, all the way  
4 through the January 23rd, 2007, meeting, did you  
5 ever have any concern about the demeanor and conduct  
6 of landfill opponents at any of those meetings?

7 A. I had more concern with attorneys.

8 Q. And didn't city council members Jim  
9 Bock and also Paul James tell you that they received  
10 threats from members of the community regarding  
11 their perceived position in favor of a landfill  
12 application?

13 MR. HOPP: Objection. Hearsay.

14 MR. HALLORAN: Mr. Mueller?

15 MR. MUELLER: I think she's a city  
16 council member, and the rules of the PCB allow you  
17 to be liberal in the admission of evidence if it's  
18 at all reliable. Since I'm asking her about  
19 something she heard from other city council members,  
20 I think it's appropriate.

21 MR. HALLORAN: I would agree. I think  
22 it could be relevant. I think prudent people --

23 MR. HOPP: If I could just be heard on  
24 one point?

1 MR. HALLORAN: Sure.

2 MR. HOPP: The two aldermen he just  
3 mentioned were not sitting at the time of the final  
4 vote on the landfill siting application. So I  
5 object on the grounds of relevance.

6 MR. MUELLER: They were sitting at the  
7 time that the hearings were going on.

8 MR. HOPP: They did not vote.

9 MR. HALLORAN: I'll allow the  
10 question. Ms. Spears, if you can answer.

11 THE WITNESS: Okay. Mr. Bock did say  
12 -- actually it was during one of our breaks.  
13 Mr. Bock was laughing about receiving a call, and it  
14 was at 2:00 or 4:00 in the morning. I don't know  
15 what the call was about. He just said that they got  
16 a call at 2:00 or 4:00, and it upset his wife  
17 because she has family out of town, and one family  
18 member, I believe, was ill, and that was a concern  
19 to her.

20 BY MR. MUELLER:

21 Q. And Mr. James also indicated to you  
22 that he had received threatening calls?

23 A. They were talking among themselves and  
24 laughing, so I can't recall Mr. James.

1 Q. Do you remember being asked, "Did any  
2 other city council members tell you that -- this is  
3 Page 6 -- Page 87 of your deposition, ma'am.

4 A. Okay.

5 Q. "Did any other city council members  
6 tell you that he or she had received threatening  
7 phone calls," and your answer was yes?

8 A. What line are you on, please?

9 Q. That would be line 14.

10 A. Yes. And that's when I mentioned Jim  
11 Bock.

12 Q. And did you also mention that in line  
13 22, "I believe it was also Paul James?"

14 A. And that was questionable. I said I  
15 believe.

16 Q. So your belief is questionable is what  
17 you're saying?

18 A. Believing that it was Paul James, is  
19 what I'm saying.

20 MR. HOPP: If I may, improper  
21 impeachment, your Honor.

22 MR. HALLORAN: Sustained.

23 BY MR. MUELLER:

24 Q. Now, Valerie Burd was an alderman at

1 the time of the annexation and the actual landfill  
2 hearings, correct?

3 A. That's correct.

4 Q. And she was then elected mayor on  
5 April 17th, correct?

6 A. That's correct.

7 Q. And there was a slate of candidates  
8 that ran with her. Isn't that correct?

9 A. That's correct.

10 Q. And those included Arden Plocher,  
11 Robyn Sutcliff, and Walter Werderich. Isn't that  
12 right?

13 A. I believe that was correct.

14 Q. Do you remember being at the city  
15 council meeting of October 24th, 2006?

16 A. Could you give me some information on  
17 that?

18 Q. I'm asking if you remember being at  
19 that meeting.

20 A. I can't remember any specific meeting,  
21 no, especially three years ago.

22 Q. Let me show you a copy --

23 A. Is this it here?

24 Q. -- of the transcript of that meeting.

1           A.       Where was it held?

2                   MR. HOPP:  Your Honor -- I'm sorry.  
3       Hearing Officer, we renew our objection on  
4       impeaching the witness with a document which is part  
5       of an offer of proof.  If I remember correctly, the  
6       -- unless I misremembered, the transcripts are part  
7       of an offer of proof as well.

8                   MR. MUELLER:  Well, the transcripts  
9       were admitted in evidence.

10                  MR. HALLORAN:  Yeah.

11                  MR. HOPP:  I withdraw the objection.

12                  MR. HALLORAN:  Okay.  Thank you.  
13       Okay.  Was this Exhibit 12?

14                  MR. MUELLER:  Exhibit 4.

15                  MR. HALLORAN:  Four.  Okay yes.

16                  MR. MUELLER:  Fox Moraine Exhibit  
17       No. 4, which is the transcript of October 24th,  
18       2006.

19       BY MR. MUELLER:

20                  Q.       I'd ask you to turn to Page 64 of that  
21       transcript.  Do you remember being at that meeting  
22       now?

23                  A.       Not clearly, no.

24                  Q.       Can I direct your attention to the

1 bottom of that page, Line 24? You were quoted as  
2 saying, "We were presenting a host agreement," and  
3 then it goes on to Page 25, "I am not an attorney.  
4 I have never reviewed a host agreement. I have been  
5 reassured that our legal counsel both have reviewed  
6 this. It was a good agreement. Again, I have never  
7 seen one until I did attend a county meeting, and I  
8 saw the comparison, and I just would like to say I  
9 have concerns as well."

10 Do you remember saying that?

11 A. I do.

12 Q. And this relates to the fact that  
13 around the time that the city approved Fox Moraine's  
14 host agreement, the county approved a host agreement  
15 with Waste Management, and Kendall Land and Cattle  
16 Company, correct?

17 A. I believe that would be correct.

18 Q. And the county was claiming --

19 MR. HOPP: Relevance, your Honor, to  
20 the other host agreement.

21 MR. HALLORAN: Mr. Mueller?

22 MR. MUELLER: Pardon me? What was the  
23 objection?

24 MR. HOPP: Relevance.

1 MR. MUELLER: This is background.  
2 Just preliminary.

3 MR. HALLORAN: Okay. Overruled.

4 BY MR. MUELLER:

5 Q. And the county was claiming that their  
6 host agreement was superior in terms of protections  
7 offered to the host municipality than the one  
8 executed by Fox Moraine in the city. Isn't that  
9 true?

10 A. I can't say with --

11 Q. Well, isn't that what your statement  
12 meant here, is you had concerns about the fact that  
13 you thought the city didn't get the best possible  
14 host agreement?

15 MR. HOPP: Now we're vague.

16 MR. HALLORAN: Mr. Mueller?

17 MR. MUELLER: This is a statement that  
18 she's making that I'm trying to have her explain.

19 MR. HALLORAN: Well, your -- I'd  
20 ask -- the objection is sustained.

21 MR. PORTER: Mr. Halloran, the door is  
22 open in the hallway where the witnesses are sitting.  
23 Do you mind if we close it?

24 MR. HALLORAN: Do you hear a noise?

1 MR. PORTER: No. I believe they can  
2 hear what we're saying.

3 MR. HALLORAN: It's fine with me. Oh,  
4 you mean the witnesses?

5 MR. PORTER: Correct.

6 MR. HALLORAN: Oh, I'm sorry. I  
7 thought it was administrative personnel.

8 BY MR. MUELLER:

9 Q. If I could have you turn to Page 135  
10 of the transcript that you're holding -- and you  
11 probably want to turn -- look at your statement  
12 starting at Line 19 -- and going on to Page 186,  
13 does that refresh your recollection about what was  
14 occurring at that time?

15 MR. HOPP: Objection, your Honor.  
16 There's been no testimony that her recollection  
17 needed to be refreshed. There's no question  
18 pending.

19 MR. HALLORAN: Overruled.

20 THE WITNESS: If I may, I'd like to go  
21 back to 184 and read the whole --

22 BY MR. MUELLER:

23 Q. Go ahead.

24 MR. HALLORAN: Mr. Porter, is there a



1 light on in there? I didn't realize that's where  
2 they are.

3 MR. PORTER: I think they're further  
4 away to that area. I'll go look in.

5 MR. HALLORAN: That's okay. It's like  
6 they're being punished.

7 THE WITNESS: Okay.

8 BY MR. MUELLER:

9 Q. The -- you recall now being part of  
10 the discussion regarding possible lawsuits involving  
11 the city council's initial failure to vacate Sleepy  
12 Hollow Road, don't you?

13 A. Yes, I do.

14 Q. And on the one hand, there was a  
15 perception that Fox Moraine might sue the city for  
16 breach of the annexation agreement, correct?

17 MR. HOPP: Objection to perception.  
18 Your Honor, I'm not sure who's perception he's  
19 asking about.

20 MR. MUELLER: I'm just trying to  
21 provide some preliminary context.

22 MR. HOPP: Same objection.

23 MR. MUELLER: The witness gets it.

24 MR. HOPP: So what?

1 MR. HALLORAN: Could you rephrase the  
2 question, Mr. Mueller?

3 BY MR. MUELLER:

4 Q. All right. The two possible lawsuits  
5 -- you remember what the two possible lawsuits are,  
6 don't you?

7 A. Having us sued because we did not  
8 follow the state statute procedures and vacating  
9 Sleepy Hollow Road.

10 Q. That was one. That was what some  
11 members of the public were threatening, right?

12 A. No. I don't think they were  
13 threatening that.

14 Q. And then there was also a possibility  
15 that Fox Moraine might sue because you weren't  
16 vacating the road, right?

17 A. I don't believe that was my thoughts.

18 Q. Well, on the bottom of Page 185, do  
19 you remember -- starting at Page 19, do you remember  
20 saying, "I just would like to add one thing. What  
21 I'm hearing here is regardless we are going to have  
22 a lawsuit against us. The petitioner may sue us or  
23 other people may sue us. I would take the chance of  
24 having, if we were so threatened, the petitioner sue

1 us, because clearly, I don't think this would stand  
2 up in court. Because again, it's against state  
3 statutes. So if we have a choice of two lawsuits,  
4 why don't we take what the best alternative is?  
5 Vote no. Protect our city."

6 Did you say that?

7 A. I did.

8 Q. And that vote no referred to vacating  
9 Sleepy Hollow Road, right?

10 A. That's correct.

11 Q. And you felt that voting no on that  
12 would be protective of the city?

13 MR. HOPP: Objection. Deliberative  
14 process.

15 MR. MUELLER: Withdrawn.

16 MR. HALLORAN: Sustained.

17 BY MR. MUELLER:

18 Q. Did you ever talk to the county  
19 attorneys about the annexation and host agreement  
20 issues?

21 A. No, I did not.

22 Q. And did you state, on at least one  
23 occasion, that Fox Moraine had performed a breach of  
24 contract with the annexation agreement?

1 A. And where do we have that?

2 Q. I'm just asking you if you recall ever  
3 stating that.

4 A. I don't recall.

5 Q. If I can retrieve that transcript,  
6 Rose, I'll give you another one, January 23rd, 2007.  
7 Do you remember being at that meeting? And this  
8 would be --

9 A. Not particularly.

10 Q. -- Fox Moraine Exhibit No. 9.

11 A. Okay.

12 MR. HOPP: Are we done with four for  
13 now?

14 BY MR. MUELLER:

15 Q. Directing your attention to Page 114,  
16 and spilling on -- you made a statement starting at  
17 the bottom of Page 114 --

18 MR. HOPP: Objection, your Honor.

19 Again, there's no issue of refreshing recollection.  
20 There's no impeachment going on here.

21 MR. MUELLER: I'm refreshing her  
22 recollection if she says she remembers making the  
23 statement.

24 MR. HOPP: She actually said she

1 didn't remember being at the meeting. So there's no  
2 statement to be refreshed or not refreshed, unless  
3 I'm misunderstanding what he's doing.

4 MR. HALLORAN: Mr. Mueller, just  
5 rephrase it, please.

6 BY MR. MUELLER:

7 Q. All right. Do you remember being at  
8 the January 23rd meeting that dealt with the  
9 reannexation of the Fox Moraine property?

10 A. Yes.

11 Q. All right. And do you remember  
12 stating at that meeting in reference to Fox Moraine,  
13 "They performed a breach of contract with this  
14 annexation agreement?"

15 A. Yes.

16 Q. That's all I actually have on that  
17 transcript.

18 A. Do you want this back?

19 Q. Please. Do you remember being  
20 presented on April 3rd with a resolution that  
21 essentially said that the city council members would  
22 vote fairly?

23 A. Is that when they had the camera crew  
24 and everything in our meeting?

1 Q. Yes.

2 A. I do remember that.

3 Q. And you refused to sign that  
4 resolution?

5 A. The reason why I refused is the  
6 counsel was -- some members were grandstanding, and  
7 didn't want to be a part of that. I took this very  
8 seriously. It wasn't a joke to me.

9 Q. Let me show you, Ms. Spears, what I've  
10 marked as Fox Moraine Exhibit No. 14. It purports  
11 to be an article from the Kendall County record.

12 MR. HOPP: Objection, your Honor.  
13 This is hearsay. We object to any newspaper  
14 articles being admitted as evidence in this hearing.

15 MR. MUELLER: Well, that -- I think  
16 that the newspaper article, to the extent that it  
17 contains a statement of the resolution, I can ask  
18 her whether that's an accurate version of the  
19 resolution as she recalls.

20 MR. HALLORAN: Is it -- is it her  
21 statement?

22 MR. MUELLER: It publishes the entire  
23 resolution in the article, Mr. Halloran.

24 MR. HOPP: It's the resolution she

1 refused to adopt.

2 MR. MUELLER: Right. We at least want  
3 to know what it is she refused to sign.

4 MR. HOPP: Not from a newspaper  
5 article. I object.

6 MR. MUELLER: She can answer whether  
7 it looks like a correct copy of the resolution, I  
8 think. And if it is, I believe the Board would want  
9 you to be liberal in admitting it.

10 MR. HOPP: Same objection.

11 MR. HALLORAN: You know, it is a  
12 newspaper article. I will go ahead and take it as  
13 an offer of proof, but you can proceed with your  
14 question.

15 MR. MUELLER: Let me hand the hearing  
16 officer an extra copy and one for counsel.

17 BY MR. MUELLER:

18 Q. Ms. Spears, this is an article, the  
19 headline of which is, "Burd Spears Won't Sign  
20 Statement on Landfill." It purports to be from the  
21 Kendall County record dated May -- or April 5th,  
22 2007.

23 Do you remember ever seeing this  
24 article?

1 A. Yes, I believe I did see the article.

2 Q. And --

3 MR. HOPP: For the record, this  
4 question we are in the offer of proof at this point?

5 MR. HALLORAN: That's correct.

6 BY MR. MUELLER:

7 Q. The article, in fact, contains a  
8 statement of a resolution that you've admitted you  
9 refuse to sign, correct?

10 MR. HALLORAN: I mean, if she -- let's  
11 stop for a minute. If she can prove that up, then  
12 I'll do away with the offer of proof. I mean, if  
13 she verifies that statement.

14 MR. HOPP: The question is whether she  
15 can verify that this is, in fact, the statement  
16 that's reprinted in the newspaper.

17 MR. HALLORAN: Correct.

18 THE WITNESS: I really can't verify  
19 whether this is my exact statement or not.

20 BY MR. MUELLER:

21 Q. Did you ever call anyone -- what  
22 statement are you referring to, the one that was  
23 attributed to you?

24 A. Right.



1 Q. And can you read that for us?

2 MR. HOPP: I'll object. She just said  
3 that she doesn't know that it's accurate.

4 MR. HALLORAN: Well, I don't even know  
5 what statement it is. So it might help if she does  
6 read it.

7 THE WITNESS: Okay. Are you talking  
8 about the third paragraph down?

9 BY MR. MUELLER:

10 Q. Yes.

11 A. Okay. Since I voted against the  
12 annexation, they knew I wasn't going to sign it.  
13 "Rose wasn't going to sign it."

14 Q. That's actually a statement attributed  
15 to Alderman Burd, isn't it? That's not a statement  
16 by you?

17 A. Okay. Where is mine?

18 Q. Well, I don't think there is one by  
19 you. What I'm asking you is --

20 MR. HOPP: I object, your Honor.

21 MR. HALLORAN: Yeah. You know --  
22 yeah. I thought she had stated something in here.

23 MR. MUELLER: Well, I thought -- she  
24 said she stated something, but that's not why I'm

1 asking her about the article.

2 BY MR. MUELLER:

3 Q. Do you remember what the resolution  
4 said?

5 A. To be honest with you, I did not read  
6 the resolution. Like I said, it was grandstanding.  
7 It was Alderman Besco, a gentleman there that had a  
8 camera lens this big that was snapping pictures  
9 throughout our counsel meeting, disrupting the  
10 entire meeting, and I did not want any part of the  
11 games, the publicity, the grandstanding. So right  
12 after our meeting, I got up and I walked out.

13 Q. So you never even looked at the  
14 resolution that you were being asked to sign?

15 A. No, I did not.

16 Q. So you would not know whether the  
17 resolution is reported in this article as an  
18 accurate copy, would you?

19 A. This is what they explained,  
20 obviously, at the counsel meeting, and I didn't want  
21 any part of it.

22 Q. That would conclude that offer of  
23 proof.

24 Now, Ms. Spears, let me hand you

1 what's previously been marked as Fox Moraine Exhibit  
2 No. 13, which is the copy of the front page and the  
3 second page of the Beacon News from April 15th,  
4 2007.

5 MR. HOPP: Same objection, your Honor.  
6 Hearsay.

7 MR. MUELLER: Let me -- before he  
8 makes the objection, your Honor --

9 MR. HALLORAN: Well, he already did.

10 MR. MUELLER: You're right. Well,  
11 this contains an alleged statement to which I just  
12 want to ask her about her statement.

13 MR. HALLORAN: It's an alleged  
14 statement by Ms. Spears?

15 MR. MUELLER: Yes.

16 MR. HALLORAN: Okay. You may proceed.

17 BY MR. MUELLER:

18 Q. Have you seen that article before?

19 A. Yes, I believe he did show it to me.

20 Q. And the reporter indicates that she  
21 asked all of the -- this is two days before the  
22 election, correct?

23 A. I don't know.

24 Q. The reporter indicates that she asked

1 all of the people running for office to answer the  
2 question, "Would a safe state compliant landfill be  
3 a positive, negative, or neutral addition to  
4 Yorkville," and was your answer, as reported, "If it  
5 had nothing surrounding it for acres, and if it was  
6 proven to be safe as far as leakage, and if it would  
7 have no impact on traffic, that would be a perfect  
8 scenario."

9 A. I'm sorry. Did you have a question?

10 Q. Yeah. Was that your answer?

11 MR. HALLORAN: That was --

12 BY MR. MUELLER:

13 Q. Did you say that to the newspaper?

14 You're, by the way, on the second page of the  
15 article.

16 A. Yes, I am.

17 Q. Did you --

18 A. First --

19 Q. Did you say that?

20 A. I don't believe I -- that doesn't  
21 sound like me, "If it had nothing surrounding it for  
22 acres," and Heather did have a reputation of  
23 misquoting people, and that's why I believe we  
24 called it the Be Confused News.

1 Q. The fact is you had a subscription to  
2 the Beacon News, correct?

3 A. I believe I did, and I believe it was  
4 canceled.

5 Q. At the time, you had a subscription,  
6 right?

7 A. I don't know when I canceled it. I  
8 may have. I don't know.

9 Q. And you also never called Heather  
10 Gillers to complain about being misquoted, did you?

11 A. I have to tell you, I had previous  
12 experience with Ms. Gillers, and I've also called  
13 her editor, and there was no retraction of --

14 Q. Did you -- did you call Heather  
15 Gillers or her editor about being misquoted on  
16 April 15th?

17 A. Why waste my time? Nothing is ever  
18 done, no.

19 Q. So the answer is no. Is that right?

20 A. That's correct.

21 Q. Do you remember being present on May  
22 23rd and May 24th, 2008 -- or 2007 -- excuse me --  
23 when the landfill application was being deliberated  
24 and voted on by the city council?

1 A. I'm certain I was there.

2 Q. All right. And let me give you a copy  
3 of the transcript of those proceedings.

4 MR. MUELLER: And Mr. Halloran, these  
5 are not exhibits, but have been appended to our  
6 petition for review, so they are a part of the PCB  
7 record.

8 MR. HALLORAN: Okay. Her -- your  
9 Exhibit 13 you offered, have you offered that yet,  
10 or what's going on with that, before I get too far?

11 MR. MUELLER: We will not offer it at  
12 this point.

13 MR. HALLORAN: Okay. Thanks.

14 MR. MUELLER: We're going to revisit  
15 it with other witnesses.

16 MR. HALLORAN: Okay. I'm sorry,  
17 Mr. Mueller. It's part of the record as attached to  
18 your --

19 MR. MUELLER: It's attached to the  
20 petition for review initially filed with the  
21 Board --

22 MR. HALLORAN: The first --

23 MR. MUELLER: -- in this matter. The  
24 transcripts of May 23rd and 24th.

1 MR. HALLORAN: Okay.

2 MR. MUELLER: 2007.

3 BY MR. MUELLER:

4 Q. Now, Ms. Spears, the transcript of May  
5 23rd are the minis that have four to a page, and the  
6 transcripts of May 24th are the ones that are full  
7 pages, just to help you find appropriate pages.

8 And first of all, on May 23rd, do  
9 you remember voting on a motion to disqualify you?

10 A. I don't remember that I specifically  
11 voted on it. I was rather shocked.

12 Q. Well, that was a motion actually made  
13 at the beginning of the landfill hearings of March,  
14 wasn't it?

15 A. I remember that clearly, yes.

16 Q. And if I can direct you to Page 13 of  
17 that May 23rd transcript?

18 A. Yes.

19 Q. All right. Do you remember at the  
20 bottom of that page voting aye on a motion to deny  
21 disqualification?

22 A. Also on Line 14, I would like to point  
23 out that, "I want to vote against any rules or any  
24 landfill rules, and I allow to vote on this to

1 remove myself. Okay. Thank you." I questioned  
2 whether I can vote on that.

3 Q. And then you voted aye. Isn't that  
4 correct?

5 A. I believe we got a response from Dirk  
6 Price, a nod of the head.

7 Q. So you voted aye. Is that right?

8 A. That's correct, on my attorney's  
9 recommendation.

10 Q. Actually, Dirk Price wasn't at that  
11 meeting, was he?

12 A. Well, I'm not quite sure what  
13 attorney, but I certainly wouldn't do that on my  
14 own.

15 Q. Mr. Roth was at that meeting, right?

16 A. I don't know. Is it listed here?

17 Q. I'm just asking if you remember who  
18 was there.

19 A. No, I don't. We did have attorneys  
20 there, though, that I relied on. It does say  
21 Mr. Roth on the next section.

22 Q. Mr. Roth, in fact, gave the opening  
23 statement, didn't he?

24 A. Yes, on Page 4.



1 Q. And do you remember stating that one  
2 of the reasons that you believed that Fox Moraine  
3 had moved to disqualify you is that they knew your  
4 track record for researching?

5 A. For taking good notes, researching my  
6 notes, yes.

7 Q. You did use the word researching,  
8 correct?

9 A. And I was referring to the notes that  
10 I took.

11 Q. Now, directing your attention to the  
12 transcript of May 24th, you indicated previously  
13 that you had no problem with the way anybody, except  
14 the lawyers, conducted themselves, right?

15 A. Could we have a page, please?

16 Q. Well, I'm not asking you about a page  
17 yet. You previously indicated you had no problem  
18 with the way anyone conducted themselves during the  
19 hearing except the lawyers.

20 A. I don't know.

21 Q. You don't know whether you indicated  
22 that?

23 A. I can't -- I don't know where it is in  
24 here.

1 Q. Let me ask you this, Ms. Spears:  
2 Thinking back to the hearings, did you have any  
3 difficulty with the landfill opponent being unruly  
4 and disruptive during those hearings?

5 A. For the opponent for the -- no.

6 Q. If I could direct you to Page 20 of  
7 May 24th -- this is the one where they're the full  
8 page transcripts. Do you remember -- do you see  
9 your statement starting at Line 4?

10 A. Okay.

11 Q. And do you remember saying, starting  
12 at Line 8, "There were. It did get pretty dirty.  
13 It got dirty among the aldermen as well?"

14 A. And then I went on to say --

15 Q. I'm just asking you if you remember  
16 saying that, ma'am.

17 A. We were taking a --

18 Q. I'm asking you if you remember saying  
19 it.

20 A. No, I don't.

21 Q. Now, you proposed some additional  
22 conditions that night, didn't you, on May 24th?

23 A. I asked if that were allowed.

24 Q. Did you propose some additional

1 conditions?

2 A. Well, I'd have to read on.

3 Q. You don't remember whether you did or  
4 not?

5 A. You know, you're asking me things that  
6 happened two years ago. I need to read this as well  
7 as you do.

8 Q. I'm asking you if you remember  
9 proposing additional conditions.

10 A. There doesn't appear to be any  
11 document in here.

12 Q. All right. Turn to Page 26 of May  
13 24th. Does that refresh your recollection as to  
14 proposing a condition, starting at Line 4, "Oh, yes.  
15 Also, we would like to limit the service area, and  
16 we would like to limit it to Kendall County."

17 Did you propose that?

18 A. I believe I did mention that, in  
19 reading this.

20 Q. All right. And turning to Line 11 of  
21 the same page, did you also propose, "I would like  
22 to see the design include two layers of HDPE in the  
23 entire -- the entire liner system?"

24 A. And that was based on the evidence

1 presented, that's correct.

2 Q. Well, there was never any evidence  
3 presented about double composite liner systems, were  
4 there?

5 A. Yes, there was.

6 Q. Okay. And do you remember, at the  
7 bottom of that page, Page 23, proposing, "Proper  
8 tanks would be included in this design, and they  
9 would be the welded steel tanks built AWWAD-100 or  
10 the API 650 standard?"

11 A. And that was from a PowerPoint  
12 presentation.

13 Q. Whose PowerPoint presentation?

14 A. I don't remember. It was in my notes.

15 Q. So you believe that that was in the  
16 record?

17 A. I believe it was. It was presented to  
18 us.

19 Q. Now, have you ever seen resolution  
20 number 2007-36, which is the denial of siting  
21 application resolution?

22 A. Do you have a copy of that? -

23 Q. I'm just asking if you ever saw it.

24 A. I don't know. I may have.

1 Q. Well, did you vote on a resolution  
2 that night?

3 A. You know, in 12 years I voted on many  
4 resolutions. If you could be more specific, it  
5 would be considerably helpful.

6 Q. We're looking for a clean copy of the  
7 resolution, Ms. Spears.

8 MR. HALLORAN: This is the copy,  
9 Mr. Mueller, attached to the first  
10 deposition -- or the original petition?

11 MR. PORTER: Yes.

12 MR. MUELLER: Right.

13 MR. HALLORAN: I have a clean copy.  
14 I'm looking at it here. You can take a look.

15 MR. MUELLER: Can we use yours?

16 MR. HALLORAN: Sure. 2007-36?

17 MR. MUELLER: Right.

18 MR. HALLORAN: This is December 1st,  
19 2006.

20 MR. MUELLER: I'd just like the  
21 witness to take a look at the resolution.

22 BY MR. MUELLER:

23 Q. Ms. Spears, you've been handed a copy  
24 of what the hearing officer was kind enough to lend

1 us of resolution number 2007-36. Do you have that  
2 in front of you?

3 A. I do.

4 Q. What is the title?

5 A. Denial of siting application from Fox  
6 Moraine, L.L.C., for proposed landfill in the United  
7 City of Yorkville.

8 Q. And have you ever seen that resolution  
9 before?

10 A. Along with two other resolutions that  
11 were presented to us at the same time.

12 Q. Well, so I take it then that's a yes,  
13 you've seen this resolution before?

14 A. As well as an approval and as well as  
15 an approval with conditions.

16 MR. PORTER: Mr. Halloran, can we show  
17 that she nodded her head?

18 MR. HALLORAN: Ms. Spears, yes or no?

19 THE WITNESS: Yes, I have seen it.

20 MR. HALLORAN: Okay. Thank you.

21

22 BY MR. MUELLER:

23 Q. And when did you see this resolution  
24 the first time?

1 A. I believe it's dated May 24th.

2 Q. All right. Do you believe that's when  
3 you saw this exact resolution?

4 A. I would assume that's when it was  
5 dated, correct.

6 Q. Well, I'm asking you not to assume,  
7 but if that's when you believe you actually saw it.

8 A. Typically that is when our documents  
9 are signed, so I would say yes.

10 Q. Not typically, ma'am. Do you remember  
11 seeing this resolution, this specific resolution  
12 with that language on May 24th?

13 A. I can't answer that.

14 Q. Okay. Let's look at the first page  
15 here, and if you go down the "Whereas is," about  
16 two-thirds of the way down the page, you'll see,  
17 "Whereas a city council has received and reviewed a  
18 report from counsel for the city staff regarding the  
19 application."

20 Do you see that?

21 A. Yes.

22 Q. And then the next whereas is, "The  
23 city council has received and reviewed the hearing  
24 officer's report and recommendations regarding the

1 application."

2 Do you see that?

3 A. Correct.

4 Q. Now, both of those reports recommended  
5 approval with conditions, didn't they?

6 MR. HOPP: Objection, your Honor. Now  
7 it's hearsay and we are getting into deliberative  
8 process.

9 MR. MUELLER: I'm asking what the  
10 reports recommended. The resolution makes reference  
11 to them.

12 MR. HOPP: It doesn't say what --

13 MR. MUELLER: And, in fact, the  
14 resolution depends on the reports ultimately.

15 MR. HALLORAN: What page are we on,  
16 Mr. Mueller?

17 MR. MUELLER: Page 1 of the  
18 resolution.

19 MR. HOPP: He's asking what the report  
20 said, and he's offering for the truth of the matter  
21 asserted, your Honor.

22 MR. DOMBROWSKI: He's also getting  
23 into the evidence that was induced in the 24 days of  
24 hearings. And as the city has pointed out before,



1 all the city is required to do under the statute is  
2 produce a written decision, which is what they did.

3 MR. HALLORAN: Could you read the  
4 question back, please?

5 (Whereupon, the record was read as  
6 requested.)

7 MR. MUELLER: Mr. Halloran, I'll just  
8 state one more thing. On the second page of the  
9 resolution, the Price report is referred to as  
10 Exhibit B, and the Clark report is referred to as  
11 Exhibit C. They're part of the official written  
12 decision.

13 MR. HALLORAN: I'll overrule the  
14 objection.

15 MR. HOPP: That doesn't affect the  
16 questioning.

17 MR. HALLORAN: Ms. Spears, you can  
18 answer if you're able.

19 THE WITNESS: I am not able to.

20

21

22

23

24

1 BY MR. MUELLER:

2 Q. Okay. Did you receive any other  
3 reports besides the Clark and the Price reports?

4 A. I can't recall.

5 Q. If I could direct you to the third  
6 page of this resolution, and you'll see that it  
7 includes a number of -- actually starting on the  
8 second page -- a number of additional conditions,  
9 correct?

10 A. Yes, uh-huh.

11 Q. And one of those conditions is  
12 condition number 0. Do you see that?

13 A. Yes.

14 Q. What does that one say?

15 A. "All aboveground storage tanks shall  
16 meet AWWD-100 or API 650 standards."

17 Q. And, in fact, that's the exact  
18 condition that you proposed on that night, isn't it?

19 A. I think we read that.

20 Q. So the answer is yes, you proposed it  
21 that night?

22 A. Yes, I proposed it that night.

23 Q. So does that lead you to believe that  
24 maybe this resolution was actually prepared after

1 the 24th to incorporate conditions that were  
2 proposed by aldermen that night?

3 MR. HOPP: Objection. Asked and  
4 answered. It further gets into the deliberative  
5 process.

6 MR. MUELLER: She said she didn't know  
7 when the resolution was proposed. She wasn't sure.

8 MR. HALLORAN: I agree. Ms. Spears,  
9 can you answer that, please?

10 THE WITNESS: I'm not quite sure if we  
11 had discussed this previously with our attorneys,  
12 and then they prepared the document. We had many  
13 meetings with our attorneys. I cannot be specific.

14 BY MR. MUELLER:

15 Q. When did you have these many meetings  
16 with your attorneys?

17 A. Do you want specific dates?

18 Q. Yeah. Give me any date that you met  
19 with an attorney --

20 A. I can't give you a date.

21 Q. -- and discussed it.

22 A. We can check the minutes.

23 Q. Well, let me ask you this: Were there  
24 any meetings with any of your attorneys that were

1 not open meetings?

2 A. No. They were all open meetings.

3 Q. So there would be minutes or  
4 transcripts of all the meetings you had with your  
5 attorneys?

6 A. That's correct.

7 Q. Now, you also proposed on May 24th the  
8 condition of limiting the service area to Kendall  
9 County only, correct?

10 A. I believe that was in the other  
11 transcript.

12 Q. And also you did propose that  
13 condition, right?

14 A. Yes.

15 Q. And that one does not appear on this  
16 list of special conditions, does it?

17 A. No, it's not on here.

18 Q. Can you explain to me why one of the  
19 conditions that you proposed was included in this  
20 resolution, and another one that you proposed at the  
21 same time was not included?

22 MR. HOPP: Objection. Deliberative  
23 process.

24 MR. HALLORAN: Yeah. I agree.

1 Sustained.

2 MR. MUELLER: Well, I'm asking if  
3 she -- Mr. Halloran, if I may, I'm asking if she  
4 shows why one was in the resolution and why the  
5 other one wasn't.

6 MR. HOPP: She can't --

7 MR. MUELLER: She knows or she  
8 doesn't.

9 MR. HOPP: She can't answer without --

10 MR. MUELLER: It doesn't go to her  
11 thought process at all.

12 MR. HALLORAN: It could.

13 MR. HOPP: In that case --

14 MR. HALLORAN: It could. Sustained.

15 MR. MUELLER: Well, just as an offer  
16 of proof, I'd like to ask that one question.

17 MR. HALLORAN: As an offer of proof,  
18 Ms. Spears, you may answer if you're able.

19 THE WITNESS: Would you repeat the  
20 question, please?

21 BY MR. MUELLER:

22 Q. Can you explain to us why, when you  
23 proposed two conditions simultaneously on May 24th,  
24 one of them, the spec for the aboveground tanks, was

1 included in the resolution and the other one  
2 limiting the service area was not included in the  
3 resolution?

4 A. I believe my intent was to just  
5 include the ones that were the most important.

6 Q. You didn't draft this resolution, did  
7 you?

8 A. No.

9 Q. Did you have any conversations with  
10 any attorneys about what to put in the resolution  
11 that are not part of the record?

12 MR. HOPP: Objection. Attorney-client  
13 privilege.

14 MR. HALLORAN: Mr. Mueller?

15 MR. MUELLER: I'm asking her if she  
16 directed counsel as to the contents of the  
17 resolution outside of the record.

18 MR. HOPP: That's a different  
19 question.

20 MR. HALLORAN: Yeah. That's --

21 MR. HOPP: It's a different question.  
22 It's still attorney-client privilege what she  
23 directed her attorneys to do.

24 MR. MUELLER: I'm not asking her what

1 she said. I just want to know if she had authorized  
2 conversations with counsel about what should be in  
3 this resolution. Because she has represented that  
4 the entire record is contained in that transcript,  
5 and if there is some other dealings that took place  
6 in deliberations that took place off the record, we  
7 at least ought to be entitled to know that.

8 MR. HALLORAN: Okay. Well, one of the  
9 questions was, "Did you direct your attorney to do  
10 such and such," and then when you were explaining,  
11 you said, "Did you have any off-the-record  
12 discussions with your attorney," which is a little  
13 different, and it's a simple yes or no.

14 BY MR. MUELLER:

15 Q. Did you have any off the record  
16 discussions --

17 MR. PORTER: Let me interrupt for a  
18 moment. Are we out of the offer of proof?

19 MR. HALLORAN: Yes, we're out of the  
20 offer of proof.

21 BY MR. MUELLER:

22 Q. Did you have any off-the-record  
23 discussions with your attorneys about what should be  
24 in the resolution?

1 A. No.

2 MR. HOPP: Objection.

3 MR. MUELLER: She's answered it.

4 MR. HOPP: It's fine.

5 MR. HALLORAN: Yeah. That wasn't the  
6 question that I envisioned as an offer of proof.  
7 Your one question, when you were explaining it,  
8 stopped at -- maybe I cut you off I don't know --  
9 "Did you have any off-the-record discussions with  
10 your attorney," and then you just added this last  
11 little bit. So I'm going to take her answer in  
12 question -- your question as an offer of proof.

13 MR. MUELLER: I'm just about done,  
14 Mr. Halloran.

15 MR. HALLORAN: Yeah. Because I think  
16 we all need a break or we might take an early lunch,  
17 depending on how much cross we have, if any.

18 BY MR. MUELLER:

19 Q. Did you state, Ms. Spears, on May 23rd  
20 that criterion one wasn't met because the EPA  
21 reports indicated that there was a landfill capacity  
22 of 15 years left in the state of Illinois?

23 MR. HOPP: Objection, your Honor.  
24 Deliberative process and the record speaks for



1     itself.

2                   MR. HALLORAN:  Yeah.  What are you  
3     reading from, Mr. Mueller?

4                   MR. MUELLER:  I'm not reading from  
5     anything.  I'm just remembering that she said that.  
6     I'm asking if she recalls saying that.

7                   MR. HALLORAN:  Objection is sustained.

8     BY MR. MUELLER:

9                   Q.     If I direct you to Page 34 of the May  
10    23rd transcript --

11                   MR. HOPP:  Same objection, your Honor.

12                   MR. MUELLER:  This is not deliberative  
13    process, Mr. Halloran.  This is regarding  
14    considering evidence outside the record, and my  
15    question to the witness is, "Did you state on May  
16    23rd on the record?"  My findings, the applicant  
17    failed to meet criterion one due to EPA records,  
18    indicating there is adequate land availability for  
19    at least nine to 15 years.

20                   MR. HOPP:  Same objection, your Honor.

21                   MR. HALLORAN:  And she's just  
22    confirming what she said in the May 24th transcript.  
23    I think she can answer.  And, Mr. Mueller, I didn't  
24    say it was outside the scope or involving mental

1 processes. In fact, I didn't even rule on it at  
2 that point.

3 MR. MUELLER: It's actually May 23rd,  
4 Mr. Halloran.

5 MR. HALLORAN: May 23rd.

6 MR. MUELLER: I don't want to confuse  
7 the witness.

8 MR. HALLORAN: You may answer.

9 THE WITNESS: Again, that was based on  
10 information that was presented to us during the  
11 hearings.

12 BY MR. MUELLER:

13 Q. And, in fact, isn't it true that EPA  
14 records regarding landfill capacity were never  
15 admitted into evidence?

16 A. I believe it was in a PowerPoint  
17 presentation as well.

18 Q. Do you remember whose PowerPoint  
19 presentation?

20 A. No, I do not.

21 Q. And you also don't remember what  
22 PowerPoint presentation you got the spec from for  
23 the steel tanks. Is that correct?

24 A. That is correct.

1 Q. Do you remember stating also on May  
2 23rd that vinyl chloride found in several landfills  
3 has no safe level for humans? That would be  
4 Page 45.

5 A. Again, this was from testimony  
6 presented at the hearings.

7 Q. Whose testimony? So you did make the  
8 statement?

9 A. It's in here that I made it.

10 Q. Well, do you know whose testimony that  
11 was?

12 A. No idea.

13 Q. And by the way, the PowerPoints that  
14 you're alleging that contained some of this  
15 information, they were PowerPoints at the landfill  
16 hearings?

17 A. That's correct.

18 Q. So they'd be in the record?

19 A. That's correct.

20 Q. Would it surprise you to learn that  
21 those references were not in the record?

22 MR. HOPP: Objection. Improper  
23 impeachment.

24 MR. HALLORAN: I agree. Sustained.

1 BY MR. MUELLER:

2 Q. Did you run on an anti-landfill  
3 platform?

4 A. No, I did not.

5 Q. Do you remember -- if I can direct  
6 your attention to Page 111 of the May 23rd  
7 transcript?

8 A. Okay.

9 Q. Do you see there where Alderman Burd  
10 thanks you for doing the research for your  
11 presentation?

12 A. What line would that be?

13 Q. Oh, that would be starting on Line 9.

14 A. She was referring to my research and  
15 my notes and the documentation that we were  
16 presented.

17 Q. You didn't correct her regarding her  
18 use of the word research, did you?

19 A. I didn't think it would come to that.

20 MR. MUELLER: I don't have anymore  
21 questions.

22 MR. HALLORAN: Thank you, Mr. Mueller.

23 And, I guess, for the record, I should clarify that  
24 the parties are sharing their witnesses, and I think

1 it was represented that there probably won't be any  
2 objection to beyond the scope.

3 But Mr. Dombrowski and Mr. Hopp,  
4 do you want to take a break now? Do you think your  
5 questioning will be long?

6 MR. HOPP: About five or ten minutes.

7 MR. HALLORAN: That's fine. Go ahead.

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

9 BY MR. HOPP:

10 Q. Ms. Spears, you talked earlier to  
11 Mr. Mueller about some communications outside the  
12 hearing process. Do you know who Mr. Don Hammond  
13 is?

14 A. Yes, I do.

15 Q. Who is Mr. Don Hammond?

16 A. He is the gentlemen that was  
17 presenting the Fox Moraine landfill hearing for the  
18 landfill.

19 Q. Is it your understanding that he is  
20 one of the principals for Fox Moraine?

21 A. He is one of the principles.

22 Q. Did Mr. Hammond ever approach you  
23 during the landfill siting hearings to talk to you  
24 off the record?

1           A.       Yes, he did at the Beacher Building.  
2       I don't remember the exact date, unfortunately.  But  
3       at the Beacher Building during the break, he came up  
4       to me because individuals were reporting -- they  
5       were giving testimony on the depreciation of land  
6       surrounding the landfills, and came up to me and  
7       asked if I would -- if he could take me to, I  
8       believe, Will County, and it was a landfill that he  
9       was involved in, and he indicated that the homes  
10      were half a million dollars to \$1 million homes  
11      surrounding the area, and I told him I could not do  
12      that, it would be illegal, and he, kind of, shrugged  
13      his shoulders and laughed and said, "I promise we  
14      won't be talking about the landfill."

15           Q.       So he offered to take you somewhere?

16           A.       He did.

17           Q.       And you refused?

18           A.       I refused.

19           Q.       Let's talk about before the landfill  
20      siting application was filed.  Were you ever invited  
21      to a meeting, which you may have previously called a  
22      two-on-two meeting, with Mr. Charlie Murphy?

23           A.       It was the last week in August --

24           Q.       Let's back up.  First of all, do you

1 remember being invited to a meeting?

2 A. Yes, I do.

3 Q. And do you remember who -- do you know  
4 Charlie Murphy? Do you know who he is?

5 A. I do now.

6 Q. Is he here?

7 A. Yes, he's right there.

8 Q. Okay. And what is your understanding  
9 of what Mr. Murphy's job is or was back in 2006?

10 A. He was -- we were told he was a  
11 consultant.

12 Q. For whom?

13 A. For John Hammond. Well, no. I think  
14 he just said a developer. I'm sorry.

15 Q. Okay.

16 A. No names were mentioned.

17 Q. All right. Now, let's go back to the  
18 meeting. You said sometime in August you were  
19 invited to a meeting. Is that right?

20 A. The last week in August, I received a  
21 memorandum from our city attorney, John Wyath  
22 (phonetic), and it was addressed to the city council  
23 as well as Mayor Prohaska (phonetic), and had  
24 indicated that they would like to meet with us to

1 discuss a development, and they did mention a  
2 landfill in there, and they also said that they  
3 wanted to meet with us by ward, which would mean two  
4 individuals representing the ward.

5 Q. So did you go to a meeting then with  
6 Mr. Murphy and someone else?

7 A. Yeah. Jim -- I don't remember his  
8 last name -- Burns or something.

9 Q. So there were two Fox Moraine people  
10 at the meeting?

11 A. Correct.

12 Q. And then two others. You and who  
13 else?

14 A. I believe it was Alderman Besco.

15 Q. Okay. Now, what occurred --

16 MR. PORTER: Mr. Halloran, I object to  
17 relevancy. This is pre-application.

18 MR. HOPP: This goes to opportunity to  
19 present, your Honor. This is a prehearing meeting  
20 in which the application was explained, and the  
21 alderman briefed on what was going to be presented.  
22 It goes to all of the bias issues that they've just  
23 raised.

24 MR. HALLORAN: Overruled. Quid pro



1 quo.

2 BY MR. HOPP:

3 Q. So tell me what happened at the  
4 meeting, Alderman Spears.

5 A. Mr. Murphy presented a very pretty  
6 sketch of a landscaped area with a road in front of  
7 it. There was nothing in there about a landfill or  
8 a hole or whatever, and he was presenting us that  
9 and just saying what a wonderful thing that this  
10 could be for Yorkville.

11 Q. Okay.

12 A. And I just took it all in. I had no  
13 idea what we were really discussing.

14 Q. Did Mr. Murphy ever try to contact you  
15 then after the meeting?

16 A. Oh, yes, he did shortly after the  
17 meeting. It was a weekday, I believe, at the  
18 beginning of the week that we met, and when I  
19 arrived home -- I work full-time -- there was a  
20 message on my answering machine, "Hi, this is  
21 Charlie Murphy. I would like to speak with you --  
22 or first he asked if I had any questions, and if so,  
23 please feel free to contact him, and he gave me a  
24 phone number, and I did not contact him.

1                   And then I had a second call over  
2 the weekend, the same weekend, and again, "This is  
3 Charlie Murphy. If you have any questions regarding  
4 our presentation, please call me. I'd be more than  
5 happy to speak with you," and he left me another  
6 phone number, and I'm not sure if it was his cell at  
7 that time.

8                   Q.       Okay.

9                   A.       On Sunday, I received a third call  
10 from Mr. Murphy, and again, he asked that I call him  
11 if I had any questions and he would like to discuss  
12 it in further detail.

13                  Q.       Did you ever call Mr. Murphy back?

14                  A.       No, I did not.

15                  Q.       Now, was this common for you to be  
16 called into these two-on-two meetings with  
17 developers?

18                  A.       That was the first time. I've never  
19 been called in on a development meeting.

20                  Q.       Okay. Before or since?

21                  A.       Before or since.

22                  Q.       Now, let's change subjects a little  
23 bit. At some point during the siting process, were  
24 you given a card with some sort of preprinted

1 statement on it?

2 A. Yes, from attorney Price.

3 Q. And can you tell me, just in general,  
4 what that card said?

5 A. We were to present that to individuals  
6 saying that we were not allowed to discuss anything  
7 about the hearings, and that we were basically  
8 judges and we could not discuss that with the  
9 general public, and our vote would be based on what  
10 we have heard during the hearings.

11 MR. HOPP: Hearing Officer, permission  
12 to approach? I'll show this to opposing counsel  
13 first.

14 MR. HALLORAN: Sure. Is that the  
15 Mr. Price, the Harvard Law School graduate you're  
16 talking about?

17 MR. MUELLER: Pretty card.

18 MR. HALLORAN: That's fine.

19 BY MR. HOPP:

20 Q. Alderman Spears, I'm handing you what  
21 we've marked as Yorkville Exhibit 1. Can you  
22 identify that document for me?

23 A. Yes, I could. This is the card that I  
24 carried around for months.

1 Q. You did, in fact, carry it with you in  
2 your purse or on your body?

3 A. Oh, it's in my purse at all times.

4 Q. And did you ever use that card?

5 A. Yes, I did.

6 Q. For what?

7 A. If somebody approached me and wanted  
8 to give me an opinion on the landfill, I would just  
9 hand this to them and say, "I'm sorry. I'm not  
10 allowed to discuss this with you. I am acting as  
11 judge."

12 Q. And for the record, can you read  
13 what's on the card?

14 A. Certainly. It says, "From the desk of  
15 the mayor and city council of the United City of  
16 Yorkville elected officials welcome your input.  
17 Thank you for your interest in the application and  
18 public hearing process concerning the landfill. My  
19 assigned role as a judge in this matter prevents me  
20 from discussing it with you further. I offer this  
21 card to help explain why.

22 An application to the site, a  
23 landfill, has been delivered to the United City of  
24 Yorkville. This begins a process that includes

1 examination of the application, formal public  
2 hearings, and ultimately a decision by the city  
3 council as to whether the application meets the  
4 standards set by the state of Illinois for a  
5 landfill.

6           The state of Illinois has put me  
7 in the position of a judge, and the state commands  
8 me to base my findings on the evidence presented  
9 through that process. I am also commanded, like a  
10 jury, not to discuss the matter outside of the  
11 process in order to prevent any unfairness to anyone  
12 involved.

13           I hope that you understand this  
14 and will participate in a way that suits you best.  
15 You may attain an electronic version available on CD  
16 from City Hall at 800 Game Farm Road between the  
17 hours of 8:00 and 4:30, Monday through Friday, or  
18 you can review the entire application or portions of  
19 it on the city's website at [www.yorkville.il.us](http://www.yorkville.il.us).  
20 The city clerks's office can also guide you.

21           We anticipate that the formal  
22 public hearings will begin in March 2007. Those  
23 hearings will be well publicized and are open to the  
24 public. You are invited to attend and participate.

1 The city's pollution control facility siting  
2 ordinance, also available from the clerk and on the  
3 website, contains the details of how you may comment  
4 on the application, participate in the hearing, or  
5 otherwise provide information or comments as part of  
6 the application process.

7                   Again, I am sorry that I cannot  
8 discuss this matter with you, but all other city  
9 business would be fair game. The United City of  
10 Yorkville."

11           Q.       Now, you testified earlier that you  
12 did, in fact, use that card. Is that correct?

13           A.       Oh, I did. It's a little bent, even  
14 though it's laminated.

15           Q.       And this is your copy that you gave  
16 me?

17           A.       Yes, it is.

18           Q.       And you've kept that since?

19           A.       I have kept that.

20                   MR. HOPP: First of all, Hearing  
21 Officer, I'd like to move Yorkville Exhibit 1 into  
22 evidence.

23                   MR. HALLORAN: Any objection?

24                   MR. MUELLER: Other than the witness

1 did not disclose this in discovery and it's a  
2 surprise to us how she located it now.

3 MR. DOMBROWSKI: It's on our witness  
4 list, Mr. Hearing Officer. Ms. Spears also  
5 discussed it extensively in her deposition.

6 MR. PORTER: Wherein she indicated she  
7 had no further copies and it was not produced to us.

8 THE WITNESS: They didn't ask for  
9 this.

10 MR. HALLORAN: That's fine.

11 MR. DOMBROWSKI: It's on the exhibit  
12 list.

13 MR. HALLORAN: Why wasn't it turned  
14 over in discovery?

15 MR. DOMBROWSKI: I don't know if it  
16 was an oversight or what, but -- or it couldn't be  
17 located at that time, but it  
18 was -- as I said, it was clearly identified by the  
19 alderman at her deposition, and we also then  
20 included it on our exhibit list.

21 MR. HALLORAN: And your objection is  
22 you -- Fox Moraine, they didn't follow up on it?

23 MR. MUELLER: Well, we've never seen  
24 it before.

1 MR. PORTER: We had a production  
2 request out there. They never produced it, and the  
3 witness told us she didn't have a copy.

4 MR. HALLORAN: Yes. That's my  
5 recollection, an oversight or whatever. But I'll  
6 accept it as an offer of proof. The Board can hear  
7 the arguments that are on the transcript.

8 MR. HOPP: Thank you.

9 MR. HALLORAN: Thank you.

10 MR. PORTER: What did we mark that as?  
11 I'm sorry.

12 MR. HOPP: Yorkville Exhibit 1.

13 MR. HALLORAN: Exhibit 1.

14 BY MR. HOPP:

15 Q. Are you the only alderperson or  
16 alderwoman, alderman who got a copy of that card?

17 A. Oh, no. Everybody did.

18 Q. Do you know that? Did you see them  
19 hand it out?

20 A. We were presented these, I think,  
21 during -- well, I'm sure during one of our meetings.

22 Q. Okay. Now, let's move on. Robyn  
23 Sutcliff is one of the people who ran for alderman  
24 at some point in early 2007. Is that right?



1 A. That's correct.

2 Q. During the time -- or around the time  
3 that Alderman Sutcliff was running, did you have a  
4 discussion with Alderman Sutcliff about what was on  
5 that card?

6 A. I did.

7 Q. And what did you say to Alderman  
8 Sutcliff?

9 A. I told Alderman Sutcliff that she  
10 could not make any comments whatsoever regarding the  
11 landfill, because if she were elected she would be a  
12 judge.

13 Q. All right. Let's talk about this  
14 issue of research. Mr. Mueller was over this a  
15 couple of times with you. You did a few times, in  
16 your previous public statements, use the term  
17 research. Is that right?

18 A. That's correct.

19 Q. During the landfill siting process,  
20 did you do any outside research? And by that I mean  
21 on the internet, in the library, looking for other  
22 outside materials related to the landfill or the  
23 landfill siting process?

24 MR. PORTER: Well, I'm going to

1 object. If we're not going to get into deliberative  
2 process, they can't get into deliberative process.

3 MR. HOPP: The question is whether she  
4 had -- she conducted outside research in the sense  
5 she accused her of that. She's got to be able to  
6 answer that question, and I'm happy to do it as an  
7 offer of proof to the extent that the issue is  
8 raised in their statements. In fact, it's part of  
9 their issue regarding alleged bias and bad faith.

10 MR. HALLORAN: Yeah. I'm allowing it  
11 in as an offer of proof. You may answer, Ms.  
12 Spears.

13 THE WITNESS: No, I did no research on  
14 my answer.

15 BY MR. HOPP:

16 Q. When you said research, what did you  
17 mean?

18 A. Researching all the documents that  
19 were presented to us. We had also PowerPoint  
20 printouts. We had various documents that were  
21 presented during the hearings and my own notes. I  
22 took six legal sized line pads of notes.

23 MR. HALLORAN: And as an aside, I  
24 remember Ms. Spears testifying that earlier when

1 Mr. Mueller was questioning her.

2 MR. HOPP: Thank you.

3 BY MR. HOPP:

4 Q. You did say that there were Power  
5 Points presented during the hearings, correct?

6 A. That's correct.

7 Q. And you watched those?

8 A. I did.

9 Q. And took notes?

10 A. That's correct.

11 Q. And so what people were saying during  
12 the PowerPoint, that might be in your notes as well?

13 A. That's correct.

14 Q. So even if some -- some particular  
15 term or word or code didn't actually appear in the  
16 PowerPoint slides, if it was stated, you might have  
17 written it down. Is that correct?

18 A. That's correct. I --

19 MR. PORTER: Mr. Halloran, I assume --

20 MR. HALLORAN: Excuse me.

21 THE WITNESS: Sorry.

22 MR. PORTER: I assume we're still on  
23 the offer of proof. If we are, I'm not going to  
24 make this objection. If we're not, these are

1 extremely --

2 MR. HOPP: In the offer of proof on  
3 research, your Honor.

4 MR. HALLORAN: I'm sorry?

5 MR. HOPP: In the offer of proof on  
6 the research issue.

7 MR. PORTER: Okay. I'll withdraw the  
8 objection.

9 MR. HALLORAN: Thank you, Mr. Porter.  
10 Ms. Spears?

11 THE WITNESS: During the PowerPoint  
12 presentations, just to clarify, they would have one  
13 line in -- under each photo or whatever, if it was a  
14 graph or a chart, and then the presenter -- the  
15 person that was presenting the testimony, would have  
16 further discussion, because what they were saying  
17 could not possibly be on -- under a little -- there  
18 was no room. So I was taking notes on what they  
19 were saying as well.

20 MR. HOPP: Nothing further, your  
21 Honor.

22 MR. HALLORAN: Thank you, Mr. Hopp.  
23 Mr. Porter and Mr. Mueller?

24 MR. MUELLER: I just have a couple

1 clarifying.

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

3 BY MR. MUELLER:

4 Q. The meetings that you had or the  
5 meeting you had with Mr. Murphy happened in the  
6 summer of 2006?

7 A. The end of August, correct.

8 Q. So it would be about a month before  
9 the September 25th and 26th initial annexation  
10 meetings, right?

11 A. If that was the date, right.

12 Q. And that means you knew when the  
13 annexation and host agreement issues came before the  
14 city council that the purpose of those annexations  
15 and host agreement was to ultimately site a  
16 landfill?

17 MR. HOPP: Objection. Deliberative  
18 process.

19 MR. HALLORAN: Could you read the  
20 question back again, please?

21 (Whereupon, the record was read as  
22 requested.)

23 MR. HOPP: That's to what she knew.

24 MR. MUELLER: It's close to the

1 context. Not what she intended, but her actual  
2 knowledge was an annexation of the landfills.

3 MR. HALLORAN: I agree. Objection  
4 overruled. You may answer, Ms. Spears, if you're  
5 able.

6 THE WITNESS: I believe we were also  
7 invited to a second meeting to discuss what  
8 Mr. Murphy and Jim spoke to us on, and this was an  
9 invitation by our city attorney, and I did not  
10 attend it.

11 BY MR. MUELLER:

12 Q. But my question, though, is at the  
13 city council meetings in -- on September 24th and  
14 26th, by that point, you already knew that  
15 annexation was to start the process that would end  
16 in the landfill if everything went right for Fox  
17 Moraine, right?

18 A. Not definitely, no.

19 Q. And you did not approve of the meeting  
20 with Mr. Murphy, did you?

21 A. Upon leaving, no, I did not.

22 Q. Now, is there a reason that with  
23 regard to calls you received from Mr. Murphy, you  
24 could recall that there were precisely three of

1     them, which you never returned, but with regard to  
2     calls from landfill opponents, you don't remember  
3     whether you got one or 1,000?

4                     MR. HOPP:  Objection.  Argumentative.

5                     MR. HALLORAN:  She can answer if she's  
6     able.  Overruled.

7                     THE WITNESS:  Well, I think Mr. Murphy  
8     had a specific intent when he was calling me, and  
9     after leaving that meeting, I did not think that  
10    that was above board, meeting with two of us at one  
11    time.  And again, as I stated, I have never met with  
12    a developer on any issue regarding the city.  So it  
13    was a red flag to me.

14                    MR. MUELLER:  That's all.  Thank you.

15                    MR. HALLORAN:  Thank you.  Yorkville?

16                    MR. HOPP:  No recross.

17                    MR. HALLORAN:  All right.  Thanks.

18    You may step down, Ms. Spears.  You held your  
19    ground.

20                    THE WITNESS:  Thank you.

21                    MR. HALLORAN:  You know, it's almost  
22    11:40, but I promised the public that if you wanted  
23    to come up here and make a statement or comment, you  
24    may do so now, or we can get to it right after

1 lunch. We'll probably take about an hour lunch.  
2 Anybody want to go before lunch and state their  
3 peace?

4 Yes, sir you can come up here.  
5 When you get up here, I'll explain a little more to  
6 you. You can make a public comment, and you're not  
7 subject to cross -- you won't be sworn in -- or if  
8 you want to make an oral statement, you'll be sworn  
9 in and subject to cross and the Board will weigh it  
10 accordingly. So do you want to be sworn in or just  
11 make a comment?

12 MR. HYINK: I'll make a comment.

13 MR. HALLORAN: Okay. Thank you.  
14 State your name.

15 MR. HYINK: My name is Darryl Hyink.

16 MR. HALLORAN: Spell your last name,  
17 please.

18 MR. HYINK: H-y-i-n-k.

19 MR. HALLORAN: Thank you.

20 MR. HYINK: And I did present a  
21 PowerPoint presentation at the hearing, and I  
22 attended almost all of them, and I want to make a  
23 comment that a lot of the information we've talked  
24 about today is in my PowerPoint, and it's part of



1 the public record.

2 As well, as we sit here at this  
3 meeting together, the whole demeanor of it is rather  
4 quiet, it's not a chaotic meeting. It's a very  
5 controlled environment. People are listening, and  
6 this is the environment that I experienced while I  
7 was at all the meetings, and they were very  
8 structured. We had time to make our points. When  
9 Fox Moraine did their testimony, we were able to  
10 submit our written questions, which they responded  
11 to.

12 So I just wanted that information  
13 to be, you know, explained, as well as that I do  
14 have a PowerPoint presentation that was referred to.  
15 I still have it. It's in the record. It covers the  
16 items that Mr. Mueller questioned about.

17 MR. HALLORAN: Thank you, sir. I  
18 appreciate it. Have a great lunch. Anyone else?

19 MR. KNIPPEN: Are we going to get an  
20 opportunity after lunch again?

21 MR. HALLORAN: Sure, sure. You know,  
22 we can start right off so you don't have to wait  
23 anymore. All right. Let's -- what do you think, an  
24 hour? Okay. We'll be back here, say, 12:45. Thank

1 you.

2 (Whereupon, a break was taken,  
3 after which the following  
4 proceedings were had.)

5 MR. HALLORAN: Okay. We're back on  
6 the record. It's approximately 12:50, and we have  
7 some other housekeeping matters to get to before.  
8 Any member of the public who wishes to make a  
9 statement, they may. But Mr. McCluskey, you have a  
10 stipulation you wanted to present?

11 MR. MCCLUSKEY: Yes, your Honor. This  
12 is a stipulation between Fox Moraine, L.L.C. and the  
13 County of Kendall. I don't know if counsel has had  
14 an opportunity to review it, but I would present it  
15 to you.

16 Basically, what we're doing is  
17 anything that was said in the Section 39 hearing  
18 would be incorporated into the 40 hearing without  
19 having -- for the County of Kendall without the  
20 necessity of bringing any live witnesses, and that  
21 any arguments would be by written submissions post  
22 hearing. That's a summary of what the stipulation  
23 is, and Fox Valley Moraine, L.L.C., has agreed to  
24 not call any witnesses from Kendall County.

1 MR. PORTER: That's correct. We've  
2 executed that.

3 MR. MCCLUSKEY: Thank you. I  
4 appreciate it.

5 MR. HALLORAN: Okay. Is there any  
6 objection on behalf of Yorkville?

7 MR. DOMBROWSKI: No, there is not.

8 MR. HALLORAN: Okay. Thanks.

9 MR. MCCLUSKEY: Thank you,  
10 Mr. Halloran.

11 MR. HALLORAN: Thank you, Mr.  
12 McCluskey. I'll mark this as Kendall County  
13 Exhibit 1.

14 MR. MCCLUSKEY: Very good. Thank you.

15 MR. HALLORAN: Before I forget, are  
16 the parties' witnesses excluded, or is anybody --

17 MR. HOPP: I just excluded the last  
18 one, your Honor.

19 MR. HALLORAN: Oh, okay. Thank you.

20 MR. HOPP: Other than Mr. Parish,  
21 there are no witnesses. Mr. Parish is here and he  
22 will be a witness, but it's all right for him to sit  
23 through public comment.

24 MR. HALLORAN: Do we need to shut this

1 door here.

2 MR. PORTER: I think he's being called  
3 next. I don't think anybody's out there.

4 MR. HALLORAN: All right. At this  
5 time, any members of the public wish to come up and  
6 say their peace before we proceed? And if not at  
7 this time, then at the next break. Okay. Yes, sir.  
8 Would you care to give an oral statement or a public  
9 comment, sir?

10 MR. KNIPPEN: A public comment.

11 MR. HALLORAN: Okay. Thank you. Just  
12 state your name.

13 MR. PORTER: Mr. Halloran, is  
14 Mr. Parish supposed to step out during the public  
15 comment or not? I guess I haven't addressed that  
16 particular issue before.

17 MR. HALLORAN: No, he can stay. It's  
18 just public comment. He can stay. Thank you. I'm  
19 sorry. Go ahead.

20 MR. KNIPPEN: That's quite all right.  
21 Jim Knippn, K-n-i-p-p-n, 2150 West Manchester Road,  
22 Wheaton, Illinois. I am an attorney, and I  
23 represent the citizens group, Friends of Greater  
24 Yorkville, and I am requesting the need to make a

1 public comment at this point with regard to an issue  
2 that has been dealt with in somewhat of a cursory  
3 fashion.

4 At this point, I am not here to  
5 discuss the underlying factual issues associated  
6 with the siting. I believe that will be adequately  
7 addressed by Yorkville's attorneys in this case.  
8 But I think in its deliberations in this matter, the  
9 Pollution Control Board should consider an issue  
10 which has not been fully and narrowly addressed by  
11 the Pollution Control Board or by the courts, as far  
12 as I can ascertain, and I think the focusing in this  
13 issue in the context of the law is an important,  
14 perhaps, next step in the processes associated with  
15 these hearings.

16 To briefly set a basis for that  
17 comment, I'd like to read just one quick segment of  
18 the case of Town and Country Utilities versus the  
19 Illinois Pollution Control Board, 225 Illinois  
20 Second 103. And in that case the Illinois Supreme  
21 Court states as follows: The Pollution Control  
22 Board must consider all of that criteria, although a  
23 negative decision as to one of the criteria is  
24 sufficient to defeat an application for site

1 approval of a pollution control facility.

2 In the context of some of the  
3 issues that have been raised in fundamental fairness  
4 in this case, that statement of law, I believe, is  
5 extremely important. Because what it does is it  
6 sets up the following issue -- and Mr. Dombrowski  
7 touched upon this in his opening statements -- and  
8 it deals with core constitutional rights, and this  
9 is the question that I would ask the Pollution  
10 Control Board to consider in its deliberations in  
11 this case.

12 The issue is this: Where, in  
13 evidence in a siting hearing record, is it  
14 sufficient to defeat by any single criteria a siting  
15 application whether evidence of citizens in a  
16 community's exercise of core constitutional rights  
17 in opposing a landfill siting is sufficient to  
18 create the fundamental fairness required to set  
19 aside the siting determination.

20 We all know, as attorneys, that  
21 the paramount law of the land is the Constitution.  
22 It will control, and it will govern over all other  
23 laws subject to reasonable rules and regulations. I  
24 see no evidence in this case that any members of

1 FOGY committed a crime in terms of disorderly  
2 conduct, in terms of intimidation. None of the  
3 criteria of that is satisfied, which could make  
4 their rights to exercise their free speech subject  
5 to question. In this particular case, it does not  
6 exist.

7                   So when we balance the fundamental  
8 rights of their ability to speak at an annexation  
9 hearing, which is distinct from the siting hearing  
10 -- and that's extremely important, because under  
11 Illinois law for municipalities, it's one of the  
12 rare remaining circumstances in which municipalities  
13 have almost total discretion to either accept or  
14 reject an annexation. And where that annexation  
15 petition is actually filed in this case by the  
16 petitioner's, they, by the very filing of the  
17 annexation petition, have subjected themselves to  
18 public comment guaranteed by statute, and therefore  
19 guaranteed constitutionally.

20                   I've heard comments that, perhaps,  
21 at the annexation hearing there were things that  
22 were said by the public that were loud, boisterous,  
23 and hostile. Well, the constitution protects loud,  
24 boisterous, and hostile statements. If a hostile

1 statement is, "If you don't vote this way with  
2 regard to the annexation, then we are going to put  
3 you out of office," and you say that's hostile,  
4 that's protected by the first amendment of the  
5 Constitution of the United States and the  
6 protections provided under free speech under the  
7 Illinois Constitution.

8 Loud and boisterous may be  
9 uncomfortable for some people, but as long as they  
10 are committed within the context of political --  
11 guaranteed political core statements, they are  
12 protected. And I think that that's what the  
13 evidence in this case will show.

14 And what I am suggesting by this  
15 public comment is because the evidence in this case  
16 in this record will support the conclusion that at  
17 least as to one of the siting criteria the denial  
18 was correct, all of the sideshow associated with who  
19 did what to whom and how horrible it was when they  
20 were doing it really melds into something that is  
21 irrelevant and immaterial in the final determination  
22 of the Pollution Control Board.

23 And as a consequence, as the PCB  
24 looks at this record, considers this, I would ask



1     them to consider the fact that the core  
2     constitutional principles that the legislature  
3     anticipated when it passed this statute -- because  
4     it provided for the municipal body to act as a  
5     hearing body quasi-judicial. And when you go over  
6     that legislative proceeding, legislative as well, it  
7     was fully anticipated at the time that the people  
8     who are able to speak. The people who are able to  
9     address the issues. And that's precisely what the  
10    citizens of this community did.

11                   And I would just ask that that  
12    question be asked and analyzed, and of course we  
13    will address that in much further detail in our  
14    amicus brief, which we would like to thank you for  
15    permitting us to file.

16                   MR. HALLORAN: Thank you.

17                   MR. KNIPPEN: I have no further  
18    comments.

19                   MR. HALLORAN: Thank you, sir. And  
20    again, I do have to set a briefing schedule, and I  
21    will set a briefing schedule for any public comment  
22    as well. So if you don't speak today, you can  
23    submit it to the Board at that time. Mr. Porter?

24                   MR. PORTER: We would call Mr. Ronald

1 Parish.

2 MR. HALLORAN: Mr. Parish, just have a  
3 seat and Rebecca will swear you in.

4 (Witness sworn.)

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

6 BY MR. PORTER:

7 Q. Please state your full name for the  
8 record.

9 A. Ron Parish.

10 Q. And your address?

11 A. 11571 Route 71.

12 Q. And how are you employed?

13 A. I'm retired and a consultant.

14 Q. A consultant for what?

15 A. The food industry.

16 Q. You were named as an officer of an  
17 organization known as FOGY. Is that correct?

18 A. Yes, I was.

19 Q. And you went to the first meeting of  
20 FOGY. Is that right?

21 A. I don't know whether you would call it  
22 the first meeting of FOGY or not, because I don't  
23 know when FOGY was actually organized.

24 Q. You do know that FOGY's charter

1 members were George Wilson, Todd Milliron, Wally  
2 Werderich and yourself. Is that correct?

3 A. I do now. I didn't know that.

4 Q. And you went to the first meeting --  
5 as far as you know, you were at the first meeting of  
6 those gentlemen. Is that right?

7 A. Yes.

8 Q. And you donated funds to that  
9 organization. Is that correct?

10 A. No, sir, I did not.

11 Q. Isn't it true that you donated at  
12 least \$100 to FOGY?

13 A. No. I donated it to the raffle, and  
14 then I let FOGY keep it, but I didn't make a  
15 donation directly to them.

16 Q. Okay. It was a raffle sponsored by  
17 FOGY?

18 A. Right.

19 Q. A fundraiser for FOGY?

20 A. Yes.

21 Q. All right. Now, you also donated  
22 certain funds to some candidates that were running  
23 for office in 2007. Is that correct?

24 A. Yes, I did.

1 Q. And in particular, you donated funds  
2 to Wally Werderich. Is that right?

3 A. Yes, I did.

4 Q. You gave a donation to Mr. Werderich  
5 because you wanted someone to run against something  
6 that everybody said was a done deal. Is that right?

7 A. Well, I guess you could say that. I  
8 wanted someone to run different, because the people  
9 that were in there already -- had already made up  
10 their mind. It was already a done deal, according  
11 to them. That's what they told me. The mayor came  
12 to my house and told me that.

13 Q. And you had heard Mr. Werderich speak  
14 out against the landfill. Is that right?

15 A. No, I had not. I had heard him make a  
16 comment in one of the meetings against the  
17 annexation.

18 Q. And you understand the annexation to  
19 be in relation to the proposed landfill. Is that  
20 correct?

21 A. I understood that after the meeting.  
22 I don't know whether he said that before or after,  
23 but sometime during that, that did come up.

24 Q. And it was subsequent to that that you

1       donated to his campaign. Is that right?

2             A.       Yes, it was.

3             Q.       You also gave money to Mr. Plocher in  
4 regard to his campaign. Is that correct?

5             A.       Yes, I did.

6             Q.       And were they running as republicans  
7 or democrats?

8             A.       Well, I guess they were running as  
9 independents, because it was not supposed to be  
10 democratic and republican. - I'm a republican. If  
11 you cut me, I would bleed that way. But I did not  
12 like anybody that was in office, and I didn't care  
13 who was running against them. I didn't like the  
14 ones that were in there. They were already a done  
15 deal, and they said I was not a part of Yorkville,  
16 and it kind of upset me. My address is Yorkville.

17            Q.       You also gave donations to Ms. Burd.  
18 Is that correct.

19            A.       Yes, I did.

20            Q.       And she was actually a democrat. Is  
21 that right?

22            A.       I think she is. She ran as an  
23 independent.

24            Q.       And Ms. Burd did not share your

1 diehard convictions regarding certain issues. Is  
2 that correct?

3 A. On pro abortion we don't share the  
4 shame views, but that wasn't really a factor. I  
5 don't think she's going to make any decisions.

6 Q. And indeed, not only did you donate to  
7 her, you voted?

8 A. I don't get to vote.

9 Q. Well, strike that. You helped place  
10 Valerie Burd's campaign signs about town. Is that  
11 correct?

12 A. No, sir, I did not. I placed one  
13 sign. If you say that's campaign signs as plural,  
14 it was one.

15 Q. When you placed that sign for Ms.  
16 Burd, you noticed that it was in close proximity to  
17 some other candidates. Is that right?

18 A. No, I didn't.

19 Q. Isn't it true that you saw around town  
20 Ms. Burd's signs often posted next to Mr. Plocher's,  
21 Mr. Werderich's and Ms. Sutcliff?

22 A. No, I did not.

23 Q. Is it true you saw all of those  
24 candidates' signs often posted nearby the

1 landfill -- no landfill signs?

2 A. No, I did not. I do not travel any of  
3 those roads. I travel 71. 71 is county. My wife's  
4 business is in the county. We drive straight down  
5 71, and I've seen many landfill signs. There is no  
6 political signs.

7 Q. You donated close to a couple thousand  
8 dollars to the Burd campaign. Is that right?

9 A. If you count the plane tickets and  
10 everything, yes.

11 Q. Are you aware that your donations to  
12 the Burd campaign are not reflected in any public  
13 disclosure?

14 MR. DOMBROWSKI: Objection.  
15 Foundation. How would he know?

16 MR. PORTER: I asked if he was aware.

17 MR. HALLORAN: If he can answer, he  
18 may. Overruled.

19 BY MR. PORTER:

20 Q. You can answer if you know.

21 A. It doesn't -- I don't know.

22 Q. You do know that FOGY was formed to  
23 oppose the landfill. Is that correct?

24 A. FOGY was -- one of the first meetings

1 I was at, it was set up to oppose the annexation and  
2 several other things that was happening. I know you  
3 keep bringing this back to the landfill, but I was  
4 against the water tower, I was against the  
5 commercial property that was going to be on 71, I  
6 was against the houses that were going to be built  
7 in the corridor, and I was also against the pond  
8 that was going to be built next to my house because  
9 I have a grandson.

10 Now, you can narrate that down to  
11 landfill, but it's not just landfill, because  
12 landfill was the last of it. We were talking about  
13 the others a long time before.

14 Q. Well, isn't it true that you  
15 ultimately resigned from FOGY because of some of the  
16 radical tactics that were being employed?

17 A. It wasn't radical tactics. It was --  
18 the people had disagreements, and I just don't like  
19 going into the agreements. It wasn't radical  
20 tactics.

21 MR. PORTER: Okay. I have nothing  
22 further.

23 MR. HALLORAN: Thank you, Mr. Porter.  
24 Mr. Dombrowski?



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

2 BY MR. DOMBROWSKI:

3 Q. Mr. Parish, how long were you an  
4 officer of FOGY?

5 A. A couple weeks, I guess. Maybe three  
6 weeks.

7 Q. Did you volunteer to be an officer of  
8 FOGY?

9 A. I had no objections to it. I was  
10 called -- they called my wife at home, and asked if  
11 I would, and I think my wife said yes, and I went  
12 over there, yes.

13 Q. And all you attended was one meeting  
14 of FOGY, correct?

15 A. I attended two meetings with FOGY.  
16 Now, when you say -- two of their official meetings  
17 is what I attended, yes.

18 Q. Okay.

19 A. I don't know whether they were even  
20 official meetings, because I don't know when they  
21 became FOGY.

22 Q. Did you attend any informational  
23 meetings put on by Fox Moraine?

24 A. Yes, I did.

1 Q. How many did you attend?

2 A. Three. Well, you know, I don't know  
3 who put them on, so I don't want to make a bad  
4 statement. Two of them they put on, I know, at the  
5 Beacher Center, and then the one that was held at  
6 the high school, I don't know who put it on.

7 Q. The two that were held at the Beacher  
8 Center, when were those?

9 A. I do not recollect the dates. I'm  
10 sure you all have them. They were somewhere -- I  
11 really don't know the dates. I'm 66 years old. I  
12 don't know what I had for breakfast two days ago.

13 Q. And what happened at those meetings?

14 A. Actually, the first meeting we started  
15 to talk about what was good or bad and what they  
16 were saying, and then the second meeting I was told  
17 that I should shut up or I could get hurt. And when  
18 somebody tells me that, I pretty much -- that's it  
19 for me. I left. I don't know what happened after  
20 that.

21 Q. All right. Let's back up a little.  
22 The purpose of these meetings -- well, first off,  
23 who appeared on behalf of Fox Moraine at these two  
24 informational meetings?

1           A.       Again, I do not know Devin's last  
2 name.

3           Q.       Is it Moose, by the way?

4           A.       Moose, Devin Moose. And then he had a  
5 young gentlemen with him, and Charlie was there, you  
6 came in later at the first one.

7           Q.       And you're pointing to Mr. Murphy  
8 here?

9           A.       Yes, uh-huh.

10          Q.       And Mr. Moose and Mr. Murphy talked  
11 about the proposed Fox Moraine landfill. Is that  
12 correct?

13          A.       Actually, Mr. Moose did. I talked to  
14 Mr. Murphy in private over at the side of the first  
15 meeting.

16          Q.       And did you speak at the -- at either  
17 of these meetings?

18          A.       Yes, I did.

19          Q.       And at one of these meetings, did  
20 Mr. Moose talk to you?

21                   MR. PORTER: I'm going to object to  
22 the relevancy, Mr. Halloran.

23                   MR. DOMBROWSKI: It'll become --  
24 relevance will become clear very quickly.

1 MR. PORTER: As far as I know, we're  
2 not in any lawsuit against Mr. Moose. There isn't  
3 any claims against Mr. Moose. If this relates to  
4 what I believe it relates to, it has absolutely no  
5 relevancy whatsoever whether or not the city council  
6 was biased against my client. So if this is  
7 strictly somehow an effort to impeach or affect  
8 one's perception of Mr. Moose, that would be beyond  
9 the scope of a fundamental fairness hearing. What's  
10 the relevancy?

11 MR. DOMBROWSKI: Mr. Halloran, Fox  
12 Moraine's whole point here is that they did not get  
13 a fair shake in the hearing process. Mr. Parish is  
14 telling us about meetings that they put on, and if  
15 Fox Moraine, through its representatives, provoked  
16 some of the hostility that they are complaining  
17 about, then it's certainly very relevant to this  
18 fundamental fairness proceeding.

19 MR. HALLORAN: Yeah. I think you can  
20 continue for now. Objection overruled.

21 BY MR. DOMBROWSKI:

22 Q. At either of these two informational  
23 meetings, did Mr. Moose say anything to you?

24 A. Yes, he did.

1 MR. PORTER: I'm going to object to  
2 that. Why would a private conversation between  
3 Mr. Moose and this individual result in a  
4 provocation of public hostility towards Fox Moraine?

5 MR. HALLORAN: I don't know. Maybe he  
6 can connect it up.

7 MR. PORTER: Well, before we prejudice  
8 the record with what it is I think he's going to get  
9 into, I would like to have an explanation of that.

10 MR. MUELLER: It's also hearsay, Mr.  
11 Halloran.

12 MR. DOMBROWSKI: Well, it's a party  
13 admission. Mr. Moose was an advocate for Fox  
14 Moraine, and it's also not hearsay, because it's not  
15 offered for the truth of the matter. It's offered  
16 for the effect on the person who heard it, and also  
17 what the declarant said. It's not a hearsay  
18 statement.

19 MR. PORTER: Mr. Moose was not an  
20 employee of Fox Moraine. He was a consultant, and  
21 it in no way can be an admission against my client.

22 MR. HALLORAN: He's an agent?

23 MR. DOMBROWSKI: He's an agent, yes.

24 MR. PORTER: He was a consultant.

1 MR. DOMBROWSKI: He was one of the  
2 main landfill engineers for Fox Moraine.

3 MR. HALLORAN: Objection overruled.  
4 You can continue, but --

5 BY MR. DOMBROWSKI:

6 Q. What did Mr. Moose say to you, sir?

7 A. Well, it was just the second meeting.  
8 First of all -- and I want to say this because  
9 Charlie was very nice to me in the meeting -- but  
10 Mr. Moose, in the second meeting we went into, he  
11 came over and told me -- when I first walked in, he  
12 said, "You're not going to say anything." He said,  
13 "You can get hurt if you say anything. Just listen  
14 to what I'm telling you," and I went down to the  
15 front, and something was said. I stood up to make a  
16 statement, and he said he was not going to let me  
17 talk, and I got mad, and I left, and I don't know  
18 what was said after that.

19 Q. Now, where was Mr. Moose when he made  
20 this statement?

21 A. Standing at the front door of the  
22 building.

23 Q. Were other people around?

24 A. At that time, no, just myself and

1 Mr. Moose and the young gentlemen may have been  
2 there.

3 MR. PORTER: Again, I move that the  
4 entire testimony be stricken and then removed from  
5 the record. It did not do at all what counsel said.  
6 It was a private conversation between these two and  
7 nobody else was around.

8 MR. DOMBROWSKI: Well, it's a  
9 statement by someone acting on behalf of Fox  
10 Moraine, attempting to influence the process and  
11 attempting to silence people who are speaking out  
12 against the landfill. It's certainly relevant and a  
13 proper avenue of questioning.

14 MR. HALLORAN: Well, it's relevant to  
15 a point if you can wrap it up, Mr. Dombrowski.  
16 Objection overruled.

17 BY MR. DOMBROWSKI:

18 Q. So he threatened -- he essentially  
19 threatened you with harm if you continued to speak?

20 A. Yes.

21 Q. And the other meeting that you  
22 mentioned at the high school, you attended that as  
23 well?

24 A. Yes, I did.

1 Q. Did Mr. Moose speak to you at all at  
2 that meeting?

3 A. He spoke to me when I was leaving. He  
4 spoke to me in front of Dave Runtle (phonetic), who  
5 is a member of the Harvest Church, and he had come  
6 over to me and said I was a radical and wouldn't  
7 live very long with my comments, and then he  
8 screamed radical right when I was walking out. You  
9 can have 100 people that can qualify for that.

10 Q. Let me ask you one other thing,  
11 Mr. Parish.

12 A. You know, and I should have -- and I  
13 got to go back. It was kind of childish on the  
14 whole thing. Really, a person should listen to a  
15 person. And I don't know -- Devin Moose is the only  
16 person that conducted himself that way.

17 Q. Let me ask you one other thing about  
18 Mr. Moose. In this appeal, he has accused you of  
19 calling him a child molester. Have you ever called  
20 Mr. Moose a child molester?

21 A. No, I have not called him a child  
22 molester.

23 Q. Anything that you said in one of these  
24 meetings that Mr. Moose may have construed in that



1 way?

2 A. Yes. I said that in one of the  
3 meetings -- we were talking about being truthful,  
4 and I said, "If you just tell -- the truth is all I  
5 want to hear." He told me he had never heard of his  
6 entire life of a landfill ever leaking, and I said,  
7 "If you've never heard of a landfill leaking,  
8 there's no reason for me to be listening to you, and  
9 I don't trust you even enough to take my daughter to  
10 school." I don't have a daughter, first of all. My  
11 daughter died when she was a baby. But the whole  
12 fact was I was telling him on trust.

13 If you're going to trust somebody  
14 -- and I tried to trust everybody on Fox Moraine's  
15 side. If they said something, I wanted it to be a  
16 fact. But if you start saying that you've never  
17 heard of a landfill that's ever leaked, then I would  
18 say you just absolutely challenged somebody's  
19 integrity when you say that.

20 Q. And finally, one other thing, did you  
21 write any letters to the newspaper during this time  
22 period?

23 A. Yes, I did. After that meeting, I  
24 walked out, and -- because one of my brothers in the

1 church had come to my house, and it embarrassed me  
2 that he would think I was going to be attacked  
3 because of what I had said. I wrote a letter to the  
4 paper and said that because I wanted Yorkville to  
5 get along, I wanted to see that every phase of  
6 Yorkville was in an order to help the town grow, not  
7 to cause arguments or discontent, and that I was not  
8 going to have anything else to do with it, and that  
9 was it, and that was what was in the letter. I  
10 showed the letter to Mr. Don Hammond and I showed it  
11 to Charlie Murphy in a restaurant the day before I  
12 turned it into a newspaper.

13 Q. Did the newspaper publish that?

14 A. Yes, they did.

15 Q. So after this last meeting where  
16 Mr. Moose threatened you with physical harm, did you  
17 attend anymore meetings?

18 A. I never attended another meeting.

19 Q. Thank you, Mr. Parish.

20 MR. DOMBROWSKI: I have nothing  
21 further.

22 MR. PORTER: I have one followup.

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

24 BY MR. PORTER:

1 Q. Isn't it true that what Mr. Moose  
2 actually said was he had never heard of a subtitle D  
3 landfill leaking?

4 A. No, it's not true. He said he never  
5 heard of a landfill -- I don't know what a subtitle  
6 D is. I'm sure it's because it's got the liner or  
7 something in it that's different. But, you know,  
8 he's probably never heard of a landfill leaking at  
9 my house either because I don't have one. But we  
10 were talking landfills, and I don't know what the  
11 difference is, you do.

12 MR. PORTER: Nothing further.

13 MR. HALLORAN: Thank you, Mr. Porter.  
14 Any followup?

15 MR. DOMBROWSKI: None.

16 MR. HALLORAN: Thank you, Mr. Parish.

17 MR. DOMBROWSKI: Can we go off the  
18 record for a second?

19 (Whereupon, a discussion was had  
20 off the record.)

21 MR. HALLORAN: All right. We're back  
22 on the record. Mr. Mueller, Mr. Porter, your  
23 witness?

24 MR. MUELLER: We'll call Mayor Burd.

1 MR. HALLORAN: Thank you. Good  
2 afternoon, Ms. Burd. Raise your right hand and  
3 Rebecca will swear you in.

4 (Witness sworn.)

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

6 BY MR. MUELLER:

7 Q. State your full name, please?

8 A. Valerie Leigh Burd.

9 Q. And Ms. Burd, you are the mayor of  
10 Yorkville?

11 A. Yes, I am.

12 Q. When were you elected?

13 A. April 2007.

14 Q. That election was on April 17th?

15 A. Yes.

16 Q. When were you sworn in?

17 A. May 8th, 2007.

18 Q. And before that, were you an alderman?

19 A. Yes, I was.

20 Q. For how long a period of time?

21 A. Nine years.

22 Q. So you were an alderman during the  
23 annexation and host agreement proceedings and during  
24 the bulk of the actual landfill hearings?

1 A. Yes.

2 Q. And then you presided over the city  
3 council on May 23rd and 24th, 2007, when they  
4 deliberated and voted?

5 A. Yes.

6 Q. Now, it's your position that you have  
7 never made a public statement prior to May 24th  
8 indicating opposition of landfill. Is that correct?

9 MR. HOPP: Objection, your Honor.  
10 This is impeachment.

11 MR. HALLORAN: Mr. Mueller?

12 MR. MUELLER: What was the objection?

13 MR. HOPP: It sounded like it's  
14 impeachment. I mean, you're asking about a prior  
15 statement.

16 MR. MUELLER: I'm asking if she ever  
17 made a public statement prior to May 23rd or 24th  
18 opposed to the landfill.

19 MR. HALLORAN: Okay. That's an okay  
20 question.

21 MR. HOPP: That's a different  
22 question. Go ahead.

23 THE WITNESS: Not as far as I recall.

24 BY MR. MUELLER:

1 Q. And opposition to the landfill was not  
2 one of your campaign platforms, was it?

3 A. No, it wasn't.

4 Q. Do you know whether you were perceived  
5 by members of the community as being anti-landfill  
6 during your campaign against Mayor Prohaska?

7 MR. HOPP: Objection as to what the  
8 members of the community perceived.

9 MR. MUELLER: I asked her what she  
10 knows.

11 MR. HALLORAN: Excuse me. Rebecca,  
12 could you read the question back, please, of Mr.  
13 Mueller?

14 (Whereupon, the record was read as  
15 requested.)

16 MR. HALLORAN: She can answer if she's  
17 able.

18 THE WITNESS: No, I don't know what  
19 the public perceived, especially since I was never  
20 discussing the landfill with anyone, so I wouldn't  
21 know what they thought.

22 BY MR. MUELLER:

23 Q. Now, you did vote against annexation,  
24 correct?

1           A.       I believe so. I can't -- I haven't  
2 reviewed this lately, but yes.

3           Q.       You voted against the host agreement  
4 with Fox Moraine on September 26th, 2006, didn't  
5 you?

6           A.       I believe that's true.

7           Q.       And you voted against the annexation  
8 agreement with Fox Moraine on September 26th, 2006,  
9 didn't you?

10          A.       That could be true, yes.

11          Q.       And you also then voted against the  
12 vacation of Sleepy Hollow Road. Is that right?

13          A.       Yes.

14          Q.       And you understood that Sleepy Hollow  
15 Road was going to run through the proposed landfill  
16 property?

17          A.       Yes.

18          Q.       And you also knew that annexation was  
19 a prerequisite to Fox Moraine filing a landfill  
20 siting application?

21                   MR. HOPP: Objection. Deliberative  
22 process.

23                   MR. MUELLER: She was not one of the  
24 decision makers in this case. She did not vote. It

1 doesn't apply to her.

2 MR. HOPP: She apparently voted on the  
3 annexation, which she's established that's still  
4 covered by the deliberative process.

5 MR. HALLORAN: Mr. Mueller?

6 MR. MUELLER: I'm just -- you let Rose  
7 Spears answer the same question, which is did they  
8 have knowledge at the time of the annexation that  
9 the purpose of it was to facilitate a landfill  
10 siting application.

11 MR. HOPP: I believe that was an offer  
12 of --

13 MR. HALLORAN: I think I sustained the  
14 objection. I can't be certain. I remember the  
15 question to Ms. Spears.

16 MR. MUELLER: Then let me make an  
17 additional argument. Ms. Burd did not vote on the  
18 application on May 24th. Therefore, she is not one  
19 of the decision makers. The deliberative process  
20 privilege does not apply to her. It is the theory  
21 of Fox Moraine that Ms. Burd was at the very center  
22 of a movement and, in fact, a conspiracy to  
23 undermine and defeat this application. It is always  
24 appropriate to prove conspiracies and motive by



1 circumstantial evidence, and her actions in other  
2 areas are circumstances that support an inference  
3 that Fox Moraine's conclusion about her is right.  
4 Therefore, the evidence is competent and relevant,  
5 and she does not enjoy any privilege.

6 MR. HOPP: Mr. Halloran, if I may, the  
7 objection is not competency or relevance. We may  
8 get to that. The objection is privilege. The  
9 ability to prove something by circumstantial  
10 evidence doesn't make the question appropriate. The  
11 question invades the deliberative process privilege  
12 and is inappropriate.

13 MR. HALLORAN: Isn't Mr. Mueller  
14 correct when he says as far as the invasion of  
15 deliberative process it's regarding the application,  
16 not prior decisions on other annexations or  
17 applications?

18 MR. HOPP: Well, it certainly can. I  
19 believe that it can affect -- it can apply to other  
20 decisions. It depends on how the counsel is  
21 sitting. And so I believe it at least covers the  
22 siting application hearing, and also covers all this  
23 other stuff, which they are not claiming is related.  
24 So it's all a piece, at least in terms of --

1                   MR. HALLORAN: But it's not, I guess,  
2 the ultimate issue. So I'm going to allow the  
3 question. The mayor may answer if she's able.  
4 Objection overruled.

5                   THE WITNESS: Could you restate it,  
6 please?

7 BY MR. MUELLER:

8                   Q. Did you know at the time that you  
9 voted on the annexation, the host agreement, and the  
10 annexation agreement -- you voted no on all of  
11 them -- that those matters were necessary in order  
12 for Fox Moraine to be able to file a siting  
13 application?

14                  A. They were necessary in order for them  
15 to file a siting application, no.

16                  Q. In order for them to get a landfill.  
17 How's that?

18                  A. In order for them to get a landfill  
19 they were necessary. No, I did not know that.

20                  Q. You didn't know there was any  
21 connection between the annexation and the landfill?

22                  A. Actually, we were told over and over  
23 that the two had nothing to do with each other, and  
24 we should just look at it as an annexation based on

1 the law. So that's the way I looked at it.

2 Q. Well, you, in fact, met with  
3 Mr. Murphy before the September 26th meeting where  
4 he told you that Fox Moraine intended to annex his  
5 property into the city of Yorkville so they could  
6 file a landfill siting application with the city,  
7 didn't you?

8 A. I don't recall that. I recall meeting  
9 with him. I don't recall his specific words to me.

10 Q. And you remember on January 23rd,  
11 2007, at the reannexation hearing and meeting,  
12 passing out information that you had gathered to  
13 other council members as to why Fox Moraine had  
14 breached the annexation agreement?

15 A. No, I don't remember that.

16 Q. Let me show you the transcript of that  
17 meeting and perhaps it will refresh your  
18 recollection.

19 MR. HOPP: Which exhibit is it,  
20 George?

21 MR. MUELLER: It's January 23rd, which  
22 I believe is number nine.

23 BY MR. MUELLER:

24 Q. If I may, if I can direct your

1 attention to Page 120 of that transcript. Do you  
2 have that?

3 A. Yes.

4 Q. Do you see at the bottom, starting on  
5 Line 21, where you said, "Just real quickly, I would  
6 like to pass out some substantiated information on  
7 why the annexation agreement could be seen as being  
8 breached, some legal precedent supporting Alderman  
9 Spears' position, and why we should have the ability  
10 to renegotiate."

11 Do you see that?

12 A. Yes.

13 Q. Do you recall now making that  
14 statement?

15 A. No.

16 Q. That doesn't refresh your  
17 recollection?

18 A. No.

19 Q. What is it that you wanted to  
20 renegotiate at that time?

21 A. I don't recall.

22 Q. Weren't you wanting to renegotiate the  
23 host agreement because you felt it wasn't as  
24 favorable as what the county had gotten from Waste

1 Management?

2 A. I don't recall.

3 Q. Did you have a campaign committee --  
4 and I'm done with that transcript.

5 A. Okay.

6 Q. So I can take it back?

7 A. Sorry.

8 Q. I don't have anymore questions on it.  
9 Let me back up. When did you decide to run for  
10 mayor?

11 A. In the fall of 2006. Summer -- late  
12 summer 2006.

13 Q. So by the time that the annexation  
14 meetings came around in September, you were already  
15 a candidate for mayor?

16 A. Yes.

17 Q. Did you have a campaign committee?

18 A. Yes, I did.

19 Q. And who was on that committee?

20 A. Wally Werderich was on it, the  
21 Parishes, Todd Milliron, Dan Nicholson. That's the  
22 main people I can remember.

23 Q. Anybody else?

24 A. There were people coming and going,

1 but those were probably the core people that came  
2 over every week.

3 Q. Were you aware that Todd Milliron was  
4 a landfill opponent?

5 A. Was I aware of it, no.

6 Q. Were you aware that Ronald Parish, who  
7 just testified, was a landfill opponent?

8 A. No.

9 Q. He was described, in fact, by  
10 Mr. Dombrowski not ten minutes ago as speaking out  
11 against the landfill at the meeting at the high  
12 school, which was a city sponsored meeting. That  
13 didn't cause you to become aware that he was a  
14 landfill opponent?

15 A. I don't recall when he said what. So  
16 no, we didn't -- like I said, we never discussed it  
17 personally.

18 Q. You never listened to what he had to  
19 say at meetings?

20 A. I did listen to him, you know, during  
21 the meetings when he spoke out against annexation,  
22 but I -- I did not discuss it with him personally.

23 Q. You never heard him speak out against  
24 the landfill?

1 A. I don't recall.

2 Q. And you also never heard Todd Milliron  
3 speak out against the landfill at any city council  
4 meetings?

5 A. I don't recall who said what when.

6 Q. Well, at any meeting did you ever hear  
7 Todd Milliron speak out against the landfill?

8 A. I heard him speak out very  
9 passionately about issues, but if it was about the  
10 annexation, if it was about Sleepy Hollow Road, at  
11 this time I can't tell you exactly what he said.

12 Q. My question is: Did you ever hear  
13 Todd Milliron, at any city council meeting, speak  
14 out against the landfill?

15 A. I don't recall.

16 MR. HOPP: Objection. Asked and  
17 answered.

18 MR. MUELLER: She's answered.

19 MR. HALLORAN: Overruled.

20 BY MR. MUELLER:

21 Q. And you never became aware that he was  
22 against the landfill?

23 A. We never discussed it.

24 Q. I'm asking you if you ever became

1 aware that he was opposed to the landfill.

2 A. I can't comment. I don't recall what  
3 he said.

4 MR. MUELLER: Mr. Halloran, I'd ask  
5 you to direct the witness to answer the question. I  
6 think she's being intentionally evasive.

7 MR. HALLORAN: I think that's either a  
8 yes or no, Mayor Burd, what Mr. Mueller was asking.  
9 If you could ask the question one more time and see  
10 what happens.

11 BY MR. MUELLER:

12 Q. Were you ever aware that Todd Milliron  
13 was an opponent of the landfill?

14 A. I don't know what to say to that. I  
15 don't -- no, I'm not aware of it.

16 Q. And Mr. Milliron was on your campaign  
17 committee, right?

18 A. Yes, he was.

19 Q. Mr. Parish was on your campaign  
20 committee?

21 A. Yes.

22 Q. Now, was -- did you know that  
23 Mr. Parish was involved with FOGY?

24 A. No. I didn't know specifically he was



1 involved with it.

2 Q. Did you know that Mr. Werderich was  
3 one of the founding members of FOGY?

4 A. No, I didn't know he was a founding  
5 member.

6 Q. Did you know that Mr. Werderich was a  
7 member of FOGY?

8 A. I was aware that he was involved with  
9 it, because when he came to my committee meeting, we  
10 talked about -- he said he was going to resign  
11 because he was coming over to help with my campaign.  
12 We had talked about that wasn't a good thing to be  
13 involved in any other outside --

14 Q. I'm sorry. I didn't mean to interrupt  
15 you. Your campaign committee continued on  
16 throughout the campaign up until your election on  
17 April 17th, did it not?

18 A. Yes. It did, yes.

19 Q. Which is actually beyond the date when  
20 the evidence in the Fox Moraine hearing was closed,  
21 isn't that right?

22 A. I don't know.

23 Q. I take that back. It was about at the  
24 end of the evidence of the landfill area, wasn't it?

1 A. I don't remember the date.

2 Q. I bet you probably can remember  
3 exactly how many phone calls you've had from Charlie  
4 Murphy, though, right?

5 A. No, I don't. I'm sorry.

6 Q. Now, was Mr. Milliron ever disruptive  
7 at any city council meetings?

8 A. I know he was at one after I became  
9 mayor.

10 Q. Now, even before that time, wasn't he  
11 frequently disruptive?

12 A. I don't recall.

13 Q. Hasn't he been asked to -- or  
14 threatened with being asked to leave city council  
15 meetings on a number of occasions?

16 A. I am only -- I can only testify to the  
17 one time as mayor when he was removed during a city  
18 council meeting that I'm aware of.

19 Q. Ma'am, let me hand you a copy of your  
20 discovery deposition, if I may?

21 MR. HALLORAN: If you could keep your  
22 voice up, Mayor, that would be great.

23 THE WITNESS: I'm sorry.

24 BY MR. MUELLER:

1 Q. Do you remember your discovery  
2 deposition being taken in this case on June 18th,  
3 2008?

4 A. Yes, I do.

5 Q. And if I could direct you to  
6 Page 60 -- make it Page 89 of that deposition.  
7 Well, actually let's make it page 90.

8 A. Okay.

9 Q. Do you remember being asked this  
10 question: "Do you remember if Mr. Milliron was ever  
11 threatened to be removed from a city council meeting  
12 during the annexation and landfill hearing and  
13 decision process," and you're giving this answer:  
14 "I don't specifically remember the timeframe. I  
15 know he has been threatened periodically. There was  
16 more than one time, but I don't remember the exact  
17 time."

18 Did you give that -- do you  
19 remember giving that answer?

20 A. Yes.

21 Q. And also, did it embarrass you that a  
22 member of your campaign committee was being  
23 threatened with eviction of city council meetings  
24 when you were running for mayor?

1 A. Do you want me to answer that again?

2 Q. I'm just asking you. Did it embarrass  
3 you that he was being threatened with eviction?

4 A. No.

5 Q. And also, were the opposition groups  
6 and their members somewhat disruptive at the city  
7 council meetings dealing with annexation and the  
8 like, were they disruptive?

9 A. I -- yes. You could say they were  
10 disruptive, interrupting some of the discussion.

11 Q. Would you say Mr. Milliron was one of  
12 the most disruptive members of the opposition  
13 groups?

14 A. I can't say that he was affiliated  
15 with any group, so I don't know. He was disruptive.  
16 He spoke out a lot.

17 Q. Mr. Plocher was on your campaign  
18 committee, too, wasn't he?

19 A. He showed up fairly often, but not all  
20 the time.

21 Q. Have you previously characterized him  
22 as being on your campaign committee?

23 A. Yes.

24 Q. And did you know whether he was a

1 landfill opponent?

2 A. No, I did not.

3 Q. Did you ever know that he was a  
4 landfill opponent before he voted no on May 24th?

5 A. No. We hadn't discussed it.

6 Q. Well, I'm not asking if you discussed  
7 it.

8 A. No.

9 Q. I'm asking if you knew that he was a  
10 landfill opponent.

11 A. No.

12 Q. One of the landfill opponents was  
13 represented by attorney Dan Kramer, correct?

14 A. I don't have any knowledge of that. I  
15 don't know.

16 Q. Do you remember Dan Kramer appearing  
17 at the landfill hearings on behalf of one of the  
18 objectors?

19 A. No, I don't.

20 Q. Mr. Kramer is your -- has been your  
21 family attorney for a number of years?

22 A. Yes.

23 Q. Now, did you have any campaign  
24 literature?

1 A. Yes, I did.

2 Q. Did you produce any of that in  
3 response to our production request in this case?

4 A. I think I did. It's been awhile. I  
5 think I did.

6 Q. If we can tell you that we don't have  
7 any, would that surprise you?

8 A. I'm -- if you asked for the campaign  
9 literature, I would've turned it over. I didn't get  
10 a request for that. I think I got a request for  
11 something that -- anything that had to do with the  
12 landfill.

13 Q. You don't believe that there was a  
14 request for campaign literature?

15 A. I don't -- I didn't get it. If I got  
16 it, I would've turned it over. I don't think I got  
17 it.

18 Q. You did have campaign signs also?

19 A. Yes.

20 Q. And did some of those signs get placed  
21 in close proximity with anti-landfill signs?

22 A. I did place the signs. I'm not sure  
23 where they were placed.

24 Q. Did you notice that some of your signs

1 were in close proximity to anti-landfill signs?

2 A. Did I personally notice them, yes.

3 Q. Did you do anything about it?

4 A. No, I did not.

5 Q. Those anti-landfill signs right  
6 outside the entrance to the library this morning,  
7 did you see that?

8 A. Yes, I did.

9 Q. That's on city property, isn't it?

10 A. I know -- well, I didn't notice it  
11 when I came in, but I noticed it when I went out for  
12 lunch. You're talking about the one at the end of  
13 the driveway?

14 Q. Yes.

15 A. Yes.

16 Q. Is that on city property?

17 A. I would think it's in the right of  
18 way.

19 Q. Have you done anything to cause its  
20 removal?

21 A. Not yet, but I was thinking about it.

22 Q. Now, at one point in time, Dirk Price  
23 was the special city attorney dealing with  
24 environmental matters, including this landfill,

1 correct?

2 A. Yes.

3 Q. And did you, at some point, form the  
4 opinion that he had a bias in favor of Fox Moraine?

5 A. I questioned him to that effect, but I  
6 hadn't definitely determined any way, either way.

7 Q. Well --

8 A. I had some concerns.

9 Q. You had some concerns about that?

10 A. Yeah.

11 Q. And, in fact, isn't it true that  
12 Mr. Price had recommended to the city that they  
13 should vacate Sleepy Hollow Road in compliance with  
14 their obligation under the annexation agreement with  
15 Fox Moraine, and you felt he was browbeating you?

16 A. That was an executive session. That's  
17 correct. He was actually yelling at me. He didn't  
18 recommend it, he was yelling.

19 Q. Now, you did not accept campaign  
20 contributions from any waste haulers or utilities  
21 associated with disposal or hauling. Is that  
22 correct?

23 A. That's the standard I set -- I told  
24 the members of my committee, yes.



1 Q. You, however, did accept campaign  
2 contributions for members of FOGY, didn't you?

3 A. No, I did not.

4 Q. Well, Mr. Parish gave you campaign  
5 contributions, didn't he?

6 A. I don't remember him giving us cash  
7 contributions. I'd have to look at the, you know --  
8 no.

9 Q. Mr. Parish donated two roundtrip  
10 airline tickets to anywhere in the United States to  
11 you for use in a raffle?

12 A. A raffle, yes.

13 Q. Didn't he?

14 A. Yes, he did.

15 Q. And he also gave you other  
16 contributions?

17 A. What actually happened was we had  
18 several parties where people could come, and for \$20  
19 we had get-togethers, and they could give these  
20 donations, and whoever showed up there showed up  
21 there. We didn't keep any, kind of, door count on  
22 who they were or what they -- what their  
23 affiliations were. They were just residents who  
24 could come in and donate. But anybody who gave

1 bigger amounts, we tried to keep it in line.

2 Q. So did you know that you had an  
3 obligation to report campaign contributions?

4 A. Yes.

5 Q. What was the threshold amount of  
6 contributions that you had to report?

7 A. I think it was \$300.

8 Q. Well, in fact, let me show you what  
9 I've marked as Fox Moraine Exhibit No. 14.

10 MR. HOPP: Your Honor, now I want to  
11 object to the grounds of relevance. She's testified  
12 about Mr. Parish's contributions, she's testified  
13 about what she knows about the contributions. The  
14 rest of it --

15 MR. HALLORAN: I'm not sure what  
16 he's -- Exhibit No. 14 is, but it may bolster his  
17 line of questioning.

18 MR. PORTER: It should be marked 15,  
19 by the way.

20 MR. HOPP: It should be 15.

21 MR. HALLORAN: Fifteen. Okay.

22 MR. MUELLER: My apologies.

23 MR. HALLORAN: Thank you.

24 MR. HOPP: We object, your Honor.

1 MR. MUELLER: Let me give an extra  
2 copy to the hearing officer, also. And if I may  
3 have that one back, Mayor, and I'll remark the  
4 number.

5 BY MR. MUELLER:

6 Q. Do you recognize that document?

7 A. Yes, I do.

8 Q. Is that a copy of your campaign  
9 contribution report filed with the Illinois State  
10 Board of Elections on August 21st, 2007, for the  
11 period January 1, 2007, through June 30th?

12 A. Yes.

13 Q. And does that -- anywhere on there  
14 show a contribution from Ron Parish?

15 MR. HOPP: Objection. Relevance.

16 MR. HALLORAN: Overruled. She may  
17 answer if she's able.

18 THE WITNESS: These are cash  
19 contributions, according to my understanding. There  
20 is a spot for in-kind contributions, but this is  
21 cash. This is a section that's just for cash, is  
22 the way I understand it.

23 BY MR. MUELLER:

24 Q. Why don't you look at the second page?

1 A. Yes.

2 Q. Those are in-kind contributions there,  
3 right?

4 A. Yes.

5 Q. Is Ron Parish listed as a contributor?

6 A. No, he isn't.

7 Q. Now, on March 29th of 2007, some two  
8 and a half weeks before the election, did you  
9 release certain previously confidential city memos  
10 regarding the annexation?

11 A. Yes.

12 Q. And you gave those to Heather Gillers  
13 from the Beacon, correct?

14 A. Yes, I did.

15 Q. She was the reporter?

16 A. Yes.

17 Q. You also gave copies to Todd Milliron,  
18 didn't you?

19 A. No, I did not.

20 Q. Well, didn't Todd Milliron then read  
21 from those memos into the record at the landfill  
22 hearing?

23 A. I don't remember if he did or not, but  
24 I did not give him copies of those.

1 Q. How did he get in the possession of  
2 them?

3 A. I don't know.

4 Q. There was an article about your  
5 release of the city's strategy memos on annexation  
6 of the landfill in the Kendall County record by Tony  
7 Scott on March 29th. Did you ever see that article?

8 A. I don't recall specifically.

9 Q. Well, did you ever state that you were  
10 not opposed to the landfill, but you were opposed to  
11 the way it was handled?

12 A. That sounds like something I would  
13 say, yes.

14 Q. Did you also say, "If I had known  
15 everything at the beginning, I would've been against  
16 it, she said of the process for approving the host  
17 agreement?"

18 A. That sounds like something I would  
19 say, yes.

20 Q. And did you also indicate that you  
21 learned that you had been improperly advised that  
22 you couldn't talk about this process?

23 A. Yes.

24 Q. And that deals with the card that Ms.

1 Spears identified this morning, that had been given  
2 to you by Mr. Price, the Harvard Law School  
3 graduate, right?

4 A. Yes. Well, I'm not sure if he's the  
5 one that gave it to us, but yes.

6 Q. And you actually began to question the  
7 process after you were told the statutes  
8 contradicted what was on the card, right?

9 A. The problem is it's some years ago. I  
10 can't remember what motivated any of this. No, I  
11 can't.

12 Q. The memos, by the way, that you  
13 released had been written by Mr. Wyath, the city  
14 attorney, sometime in the spring of 2006. Isn't  
15 that correct?

16 A. Yes.

17 Q. And they dealt with the strategy for  
18 annexing a number of properties in order to  
19 facilitate Fox Moraine getting city jurisdiction for  
20 their landfill application?

21 A. Yes.

22 Q. There was then a resolution presented  
23 on, I believe, April 3rd at the city council asking  
24 everyone to keep an open mind and to act civilly

1 toward each other. You refused to sign that  
2 resolution, didn't you?

3 A. That's incorrect. Number one, it  
4 wasn't a resolution, and number two, it wasn't  
5 presented during the meeting, and number three, it  
6 was a campaign PR strategy by the former mayor, and  
7 it was used in his public relations campaign for  
8 office. There's an add that he subsequently ran  
9 with him in it, and his supporters with this  
10 document, and the reason I had nothing to do with it  
11 is because we were not supposed to be talking about  
12 the landfill at that time.

13 Q. Now, is there anything in the  
14 statement -- it's not a resolution, call it a  
15 statement. Is there anything in the statement that  
16 you disagreed with?

17 A. No. It was -- it was just not a time  
18 to be discussing it.

19 Q. So you didn't sign the statement. Is  
20 that right?

21 A. That's correct.

22 Q. Did you ever see the front page  
23 article in the Sunday Beacon News of April 15th,  
24 2007, quoting all of the city council candidates on

1 their landfill positions?

2 A. Yes, I did.

3 Q. And did you, in fact, in response to  
4 the question of, "Would a safe state compliant  
5 landfill with a positive negative -- positive  
6 neutral -- let's do it again. Did you, in response,  
7 to the reporter's question of, "Would a safe, state  
8 compliant landfill be a positive, negative, or  
9 neutral addition to Yorkville," state, "Is there  
10 such a thing as a safe state compliant landfill? I  
11 don't know if that's an oxymoron."

12 A. Yes, I said that.

13 Q. Now, we already covered that on  
14 April 17th, you won the election for mayor, but you  
15 weren't sworn in until May 8th, correct?

16 A. Correct.

17 Q. Did you meet with representatives of  
18 the Wildman law firm before May 8th?

19 A. Yes, I did.

20 Q. And did you retain the services of the  
21 Wildman law firm or any of its attorneys prior to  
22 May 8th?

23 A. No, I couldn't. What I did do was, as  
24 all mayors do when they are in the transition time,



1 meet with different legal firms to see which one I  
2 would be appointing, and go through the interview  
3 process, and I did that also with other people who I  
4 would be appointing to see who I would want on my  
5 staff. And this is a common practice, and I did  
6 notify them after meeting with several law firms  
7 that I found the qualifications to be very high, and  
8 that I would want to appoint them on May 8th so that  
9 they were notified that that was my intention.

10 Q. All right. Let me show you, Mayor,  
11 what's been market as FM Exhibit No. 16.

12 MR. HOPP: Your Honor, FM Exhibit No.  
13 16 is a Wildman Harrold Allen and Dixon invoice for  
14 legal services. We have repeatedly objected to the  
15 introduction of this evidence in this process, and I  
16 want to repeat all of those objections right now  
17 very briefly.

18 This is a privileged document,  
19 indicating the relationship between the law firm and  
20 its client. It was inadvertently produced, and was  
21 requested to be returned. It was and was not, and  
22 as I said, we renew all of our longstanding prior  
23 objections.

24 MR. MUELLER: Mr. Halloran, we don't

1 need to belabor this. This has been the subject of  
2 extensive pleadings before the Board and yourself,  
3 and you denied the motion in limine to keep this  
4 out, as you denied the motion to return the document  
5 previously.

6 MR. HALLORAN: Yeah. That's what I  
7 recall. I was just trying to find the order, but I  
8 agree. Objection overruled.

9 MR. HOPP: I'm sorry. What's the  
10 exhibit number?

11 MR. MUELLER: Sixteen.

12 MR. HALLORAN: Sixteen.

13 BY MR. MUELLER:

14 Q. Ms. Burd, have you ever seen  
15 Exhibit 16 before?

16 A. Yes, I have.

17 Q. That is the Wildman invoice dated June  
18 15th, 2007, correct?

19 A. Correct.

20 Q. What is the total of the charges on  
21 that invoice?

22 MR. HOPP: Objection. Relevance.

23 MR. MUELLER: Well, this goes -- I'll  
24 tie it up in a second. It goes to a course of

1 conduct by the mayor in terms of changing attorneys  
2 without authorization from the city, and engaging  
3 them to do extensive work for the purpose of getting  
4 a report recommending denial of the application.

5 MR. HALLORAN: Yeah. I --

6 MR. MUELLER: Plus, it's all been  
7 argued previously.

8 MR. HALLORAN: I think -- the  
9 objection is overruled. She can answer if she's  
10 able.

11 THE WITNESS: Okay. It says  
12 \$96,119.73.

13 BY MR. MUELLER:

14 Q. And that's for approximately one month  
15 of work, correct?

16 A. Well, it looks like it starts in  
17 April.

18 Q. All right. And it ends at the end of  
19 May, correct, 5/29?

20 A. Correct.

21 Q. All right. Now, Ms. Burd, the first  
22 entry on that invoice is on April 27th, 2007, with  
23 the initials AGH, which I believe is Anthony Hopp,  
24 who's in the room here today. Is that correct?

1 A. That's correct.

2 Q. Did you direct him to do any work on  
3 that day?

4 A. No, I did not.

5 Q. Had you hired the Wildman firm at that  
6 point?

7 A. I think I've already answered that  
8 question.

9 Q. So --

10 A. No.

11 Q. They had not been engaged?

12 A. They were engaged on May 8th when the  
13 city council approved my appointment.

14 Q. All right. We'll get to that in a  
15 second. And had you given them any direction before  
16 May 8th as to what the scope of their work was going  
17 to be?

18 A. As I did with all the law firms that I  
19 met with and interviewed, we discussed things that  
20 were going on in the city at the time, different  
21 issues, annexation issues, development issues, how  
22 we handled those, and we discussed that we were in  
23 the middle of a landfill hearing, so that was  
24 mentioned.

1 Q. Well, what direction did you give them  
2 with regard to the landfill area?

3 MR. HOPP: Objection.

4 THE WITNESS: I didn't give them  
5 direction. I already said that.

6 MR. HALLORAN: I'm sorry, Mr. Hopp.

7 MR. HOPP: Withdrawn, your Honor.

8 MR. HALLORAN: Okay. Thank you.

9 BY MR. MUELLER:

10 Q. You did not, prior to May 8th,  
11 describe the scope of work that you wanted in  
12 connection with the landfill?

13 A. Scope of work?

14 Q. Yeah, what you wanted them to do with  
15 regard to the landfill matter, since you already had  
16 Mr. Price who was the special counsel on that  
17 subject.

18 A. Mr. Price represented the way the  
19 former city attorney, Mr. Wyath explained it to me.  
20 Mr. Price only represented the staff. He did not  
21 represent the corporate authorities. That's why  
22 Mr. Wyath was the only one who was allowed to sit at  
23 a table with us, and Mr. Wyath's term of office  
24 ended with the former mayor on May 8th, so he was

1 gone. He was gone no matter what. According to  
2 municipal law, the state statutes, Mr. Wyath's term  
3 of office was over.

4 Q. Now, this invoice doesn't appear to  
5 contain any charges for matters such as annexation  
6 and other developments, as you said you discussed in  
7 your scope of work. It appears to have only  
8 landfill related charges. Is that correct?

9 A. That's correct.

10 Q. Did you ever tell the Wildman firm to  
11 segregate landfill-related charges for this period  
12 from other charges?

13 A. At that time, no. We had not  
14 discussed that.

15 Q. Did the Wildman firm do any work for  
16 you before May 8th, other than landfill-related  
17 work?

18 MR. HOPP: Objection. Misstates her  
19 prior testimony. She's already stated the Wildman  
20 firm did not do any work for her. Misstating prior  
21 testimony.

22 MR. HALLORAN: Mr. Mueller?

23 MR. MUELLER: I don't think it  
24 misstates the testimony at all. I think it's cross

1 -- this is a hostile witness. I'm entitled to have  
2 some --

3 MR. HALLORAN: I don't think she's  
4 hostile. Maybe adverse.

5 MR. MUELLER: Adverse. Hostile in a  
6 legal term, Mr. Halloran.

7 MR. HALLORAN: I'm sorry?

8 MR. MUELLER: Hostile in a legal  
9 sense.

10 MR. HALLORAN: Well, adverse in a  
11 Board procedural sense.

12 MR. MUELLER: Okay. Let me try to  
13 rephrase.

14 MR. HALLORAN: Thank you.

15 BY MR. MUELLER:

16 Q. Do you know if the Wildman firm  
17 performed any work on other city legal matters not  
18 related to the landfill prior to May 9th?

19 A. Right as I sit here, no. I don't know  
20 that, because I haven't reviewed their bills.

21 Q. All right. And would it be fair to  
22 say that in this case there were actually nine time  
23 entries prior to May 9th involving three different  
24 attorneys and one paralegal, two of those attorneys

1 being Leo Dombrowski and Anthony Hopp?

2 A. Yes, I count nine.

3 Q. And one of those was a charge on  
4 April 30th, 2007, over a week before you were sworn  
5 in, for a meeting with the mayor and city  
6 administrator. Do you see that?

7 A. Yes, I do.

8 Q. It was a five-hour charge. Who was  
9 the city administrator that attended that meeting  
10 with you?

11 A. I know this is going to upset you, but  
12 I don't even remember that meeting, and I wasn't the  
13 mayor then.

14 Q. Do you believe that that meeting  
15 occurred with Mr. Prohaska?

16 A. I don't know. I don't remember.

17 Q. Did you meet with the Wildman firm  
18 prior to May 8th for a five-hour period?

19 A. I don't recall. I know I met with  
20 them on several times. We met -- I don't remember  
21 the length of time we met, and I don't remember the  
22 specific dates.

23 Q. Who was the city administrator on  
24 April 30th, 2007?



1 A. Oh, I don't remember his name.

2 Q. Was John Croy still the city  
3 administrator?

4 A. Yes, he was. I'm sorry.

5 Q. Okay.

6 A. That's who it was.

7 Q. So to cut this a little bit short,  
8 it's your position that none of these efforts  
9 reflected by the nine time entries before May 9th  
10 were solicited or ever authorized by you?

11 A. No, they were not, and I'd like to add  
12 that the state's attorney was also handed this case,  
13 and he could find nothing that documented those  
14 claims.

15 Q. Well, the state's attorney  
16 investigated that in terms of potential criminal  
17 liability by yourself, right?

18 A. For ethics, yes.

19 Q. And what you're saying is you did not  
20 get charged?

21 A. What I'm saying is he could find  
22 nothing that could substantiate those claims.

23 Q. Substantiate what?

24 A. Any claim that I had hired them

1 before -- there was nothing -- there was no money  
2 given to them, there was nothing written, there was  
3 nothing beyond me saying to them that, "On May 8th I  
4 will appoint you," and from what I understand,  
5 subsequently after this came out -- I talked to  
6 several other mayors, and this is -- this is what  
7 they all do. They tell the law -- they meet with  
8 law firms, they interview them, and when their term  
9 begins, they appoint them, and I assume that they  
10 want to get up to par before they walk out the door  
11 of the day that they are going to assume the city  
12 work. So I don't think this is anything unusual.  
13 But that was not authorized by me, and I think they  
14 fully understood that.

15 Q. Well, in fact, they were paid for that  
16 work eventually, weren't they?

17 A. By the city council, yes, they were.

18 Q. At that point, the city council that  
19 you were the mayor of, right?

20 A. Absolutely.

21 Q. And if you look at the entry of April  
22 29th from Mr. Hopp for 4.5 hours, what is that  
23 entry?

24 A. What is that entry?

1 Q. Yes.

2 A. Do you want me to read it?

3 Q. Yes, the description.

4 A. "View objections to landfill siting  
5 petition, and exhibit submitted and supportive  
6 objections. Review legal research."

7 Q. Why was -- or did you ever instruct  
8 Mr. Hopp to pay particular attention to objections?

9 A. Am I supposed to -- no. But I think  
10 that would be attorney-client, no?

11 Q. I mean, that's the first evidence they  
12 reviewed was objection evidence, isn't it?

13 A. I don't know.

14 MR. HOPP: Objection. Asks for  
15 speculation.

16 THE WITNESS: How would I know?

17 MR. HALLORAN: I'm sorry --

18 BY MR. MUELLER:

19 Q. Based on --

20 MR. HALLORAN: Excuse me, Mr. Mueller.

21 MR. HOPP: Objection. Calls for  
22 speculation as to the first evidence that anybody  
23 reviewed.

24 MR. HALLORAN: Well, she said she

1 didn't know, so it wouldn't be speculation.

2 Objection sustained.

3 BY MR. MUELLER:

4 Q. The city, by the way, is suing Fox  
5 Moraine to get this bill paid, isn't it?

6 A. Yes. This bill, no. Actually, from  
7 what I understand, it was more than just this bill.

8 Q. Well, this bill among others?

9 A. Yes.

10 Q. So you believe even though the Wildman  
11 firm was not engaged for over \$10,000 worth of these  
12 services, that the city has a right to be repaid for  
13 them by Fox Moraine?

14 A. I don't think I should be discussing  
15 the city's legal position in a lawsuit with you.  
16 That doesn't seem appropriate to me.

17 MR. MUELLER: Mr. Halloran, the city  
18 filed a lawsuit against Fox Moraine. I'd ask that  
19 the witness be instructed to answer the question.

20 MR. HOPP: Mr. Halloran, I would  
21 object. He's just asked for her belief on a legal  
22 matter. I think it's privileged and an entirely  
23 inappropriate question and he knows it.

24 MR. HALLORAN: You know, I think -- I

1 think she can answer it if she's able to answer  
2 Mr. Mueller's question. I assume Mr. Mueller is  
3 going to tie this up in a hurry.

4 MR. MUELLER: Yes.

5 MR. HALLORAN: Mayor?

6 THE WITNESS: So I have to answer  
7 whether or not I believe that they should pay this  
8 bill?

9 MR. HALLORAN: Yeah. Just -- yeah.  
10 Whatever --

11 THE WITNESS: Even though he's suing  
12 them for the money?

13 MR. HALLORAN: Yeah. That was  
14 Mr. Mueller's question.

15 THE WITNESS: Okay. Honestly, I think  
16 you have a case that -- for this one week -- I want  
17 to know where the rest of the money is, because you  
18 haven't paid anything from the time I was sworn in  
19 as mayor or the week before. So I think I'd like to  
20 know where the rest of the money is.

21 BY MR. MUELLER:

22 Q. Fair answer. We're going to get to  
23 that in a second. Now, I want to just ask you about  
24 one more entry on here, and that is the entry of May

1 7th on the second page by Mr. Roth for .70 hours.

2 A. May 7th?

3 Q. Yes. That's, "Work on strategies  
4 concerning finality of decision."

5 MR. HALLORAN: I don't see May 7th.

6 THE WITNESS: It's not on here.

7 MR. MUELLER: Excuse me, May 8th.

8 MR. HALLORAN: May 8th.

9 BY MR. MUELLER:

10 Q. Second entry from the top, "Work on  
11 strategies concerning finality of decisions,  
12 disconnection of territory, and development of  
13 city's decision." Do you see that?

14 A. Yes.

15 Q. Now, you understand, don't you, Mayor,  
16 that disconnection only becomes possible if there is  
17 no landfill, right?

18 A. No. I don't understand that.

19 Q. Well, in fact, didn't Fox Moraine seek  
20 disconnection from the city after the landfill  
21 application was denied?

22 A. Yes, they did.

23 Q. And the city, at that point, opposed  
24 disconnection?

1           A.       Yes.

2           Q.       But if a landfill had been sited,  
3 there would be no point in even thinking about  
4 disconnection. Isn't that true?

5           A.       I don't know what the point is for Fox  
6 Moraine. As far as I'm concerned, they could've  
7 tried to disconnect the landfill and go into the  
8 county. I don't know. I don't know what their  
9 reasoning is.

10          Q.       Now, you believe the Wildman firm was  
11 hired to do all of this work on May 8th, correct?

12          A.       I believe -- I'm sorry. I don't know  
13 what you're talking about here.

14          Q.       Well, you said that the work before  
15 May 8th wasn't authorized. After May 8th, it was  
16 authorized, because then the city had appointed the  
17 Wildman firm, correct?

18          A.       The city -- I appointed Mike Roth to  
19 be the city attorney, and he was affiliated with  
20 them at that time, so he designated them to do the  
21 other work, which is what actually happened.

22          Q.       Let me show you, Mayor, what I've  
23 marked as Fox Moraine Exhibit 17 -- what I've marked  
24 as Fox Moraine Exhibit 17, if I may, and I've got

1 one for Mr. Halloran.

2 MR. HALLORAN: Thank you, sir.

3 MR. MUELLER: And one for counsel.

4 BY MR. MUELLER:

5 Q. And I'll ask you if that is a true and  
6 correct copy of the minutes of the May 8th, 2007,  
7 city council meeting?

8 A. It looks to be.

9 Q. All right. And if you turn to the  
10 third page of those minutes, under mayor's report,  
11 do you have that?

12 A. Okay.

13 Q. That section from there to the bottom  
14 of the page deals with the appointment of Mike Roth  
15 as the interim city attorney, correct?

16 A. Yes.

17 Q. Mike Roth was a member of the Wildman  
18 firm at that time?

19 A. That's correct.

20 Q. And didn't Mr. Roth explain prior to  
21 his appointment as reflected in the minutes that the  
22 proposal is for a fixed number of hours, totaling  
23 for a fixed number of hours starting at 50 hours per  
24 month for a fixed fee?



1 A. That's correct.

2 Q. And that's what the appointment was  
3 for, correct?

4 A. The thing is, the appointment is not  
5 tied to the contract. The appointment is for the  
6 person specifically, and then if you -- that  
7 changes, and it's fluctuated with other attorneys  
8 that have previously come in.

9 Q. Well, I think my question at that  
10 point is the appointment, as approved by the city  
11 council on May 8th, was to Mike Roth for a maximum  
12 of 50 hours per month for a fixed fee?

13 A. That's what I thought you were saying.  
14 And no, the appointment was for Mike Roth to be --  
15 and that I had worked out with him that it would be  
16 apparently 50 hours a month for X amount of dollars.

17 Q. What was the X amount of dollars, by  
18 the way?

19 A. I don't remember.

20 Q. And is there any action in --  
21 reflected in the city council minutes appointing the  
22 Wildman firm generally, or appointing Mike Roth or  
23 anyone else from the Wildman firm for more than  
24 50 hours per month?

1           A.       Is there any -- no. No, the  
2 appointment was for him to be the city attorney.

3           Q.       Right. And it was explained to the  
4 city council before they voted that that would be  
5 for a fixed fee for 50 hours per month, right?

6           A.       What was explained to the city  
7 attorney was that --

8           Q.       No, what was explained to the city  
9 council. That's what I'm asking.

10           MR. HOPP: She's trying to answer the  
11 question.

12           THE WITNESS: You're correct. I made  
13 a mistake there. What was explained to the city  
14 council, as I explained it to them, was I was going  
15 to appoint Mr. Roth from Wildman Harrold, and that  
16 for the city business that we were conducted for him  
17 to come to our meetings so many times a month. At  
18 that time, I think we had four meetings a month, and  
19 then one meeting for one of our committee meetings.  
20 That was for a fixed fee, but that was not -- it was  
21 not intended to mean that he couldn't go to anything  
22 else or if we needed him for anything else that's  
23 all we could pay for.

24                       That's what I want to clarify

1 here, because the way you're wording it makes it  
2 sound like I could only have him work 50 hours, and  
3 we could only spend X amount of dollars, and that  
4 was not the appointment. That was what he would be  
5 paid for the four meetings a month, plus one  
6 committee meeting that was -- because if you look at  
7 the previous city attorneys' fees, we also have  
8 passed through development projects that the city  
9 attorney would be paid for by the developers. So  
10 that would've totally hobbled the city attorney so  
11 he couldn't have done anything else. So what you're  
12 implying is -- no, that's not -- they were not tied  
13 together.

14 MR. MUELLER: I'm not implying  
15 anything. I'm asking questions.

16 BY MR. MUELLER:

17 Q. And I guess my next question, then,  
18 is: So this appointment, as reflected in the city  
19 council minutes in front of you, is just an  
20 appointment to do the normal routine city attorney  
21 business for 50 hours per month?

22 A. What it -- what it says is for the  
23 routine city business he would charge -- he would  
24 work 50 hours a month on that for a fixed fee.

1 Anything else was going to be billed at a -- at  
2 the -- the firm.

3 Q. Well, there is nothing else reflected  
4 in these minutes, is there?

5 A. No. We only discussed -- we only  
6 discussed our regular business.

7 Q. So the city council never approved the  
8 appointment of the Wildman firm to do anything other  
9 than the normal city business at 50 hours per month,  
10 did they?

11 MR. HOPP: Objection.

12 MR. HALLORAN: I'm sorry?

13 MR. HOPP: She's already answered this  
14 question three times.

15 MR. HALLORAN: I agree. Objection  
16 sustained.

17 BY MR. MUELLER:

18 Q. Can you find -- can you reference me  
19 to any city record evidencing appointment of the  
20 Wildman firm to do either any landfill work, or to  
21 do work in excess of 50 hours per month?

22 MR. HOPP: Same objection.

23 MR. MUELLER: It's a different  
24 question, I think, Mr. Halloran.

1 MR. HOPP: Same objection.

2 MR. HALLORAN: If she can point to it  
3 in the minutes, fine. But Mr. Mueller, let's cease  
4 this line of questioning after this.

5 MR. MUELLER: Actually, I'm done.

6 BY MR. MUELLER:

7 Q. So I just want to know if -- is that  
8 correct?

9 A. It's not in this -- it's not in these  
10 minutes, but there were subsequent records where  
11 city council members commented on Wildman and  
12 Harrold's performance, and there were subsequent --  
13 especially after Mike Roth separated from their  
14 firm, we entered into an agreement where they would  
15 continue to show that the city council was totally  
16 aware that they were doing our -- they handled the  
17 landfill appeals process and all of that. So they  
18 were totally aware that they were handling this part  
19 of our city.

20 Q. I understand about awareness. My  
21 question was: Can you point me to a motion or  
22 resolution of proving them in any record?

23 A. The firm itself, no. The  
24 representative from the firm, yes. That's the way

1 the municipal law is set up. You don't appoint the  
2 firm, you appoint the person.

3 Could I clarify that a little bit  
4 more too?

5 MR. MUELLER: There's no question  
6 pending.

7 MR. HALLORAN: I'll let you clarify,  
8 it, Mayor.

9 THE WITNESS: Okay. With our current  
10 city attorney, we have a city attorney who  
11 designates a litigator who has never been appointed  
12 by the city council to be the litigator, but the  
13 city attorney has, under our understanding of the  
14 process, the right to reach out and get help from  
15 whoever that city attorney thinks is appropriate to  
16 help them with the cases.

17 So they hire -- they reach out to  
18 somebody to help us with employee relations. They  
19 reach out to somebody to help us with litigation.  
20 That's constant, and we never approve those people.

21 MR. HALLORAN: Thank you, Ms. Burd.

22 BY MR. MUELLER:

23 Q. Now, do you remember reading a  
24 newspaper article from the Beacon authored by

1 Heather Gillers on May 19th, 2007, with the  
2 headline, "Yorkville Ex Mayor Flips on Landfill?"

3 A. I remember that headline, yes.

4 Q. You were quoted in the article a  
5 number of times, so I just wonder if you'd read it.  
6 People tend to usually read stuff that they're  
7 quoted in, right?

8 A. There's so many articles, though. I  
9 remember the headline, though, so I probably read  
10 it.

11 Q. Ms. Gillers, in one paragraph, refers  
12 to you as, "Burd, who has long criticized the  
13 landfill plan." Is that an accurate  
14 characterization by her?

15 A. No, and I've been concerned about that  
16 kind of -- as Alderman Spears said, the newspapers  
17 tend to lump things -- they're looking for a quick  
18 description instead of really going into the issue.

19 Q. Did you call Ms. Gillers and ask her  
20 for a retraction of that characterization?

21 A. That specific one, probably not.

22 Q. Now, on May 23rd, the city council met  
23 to deliberate on the landfill application, correct?

24 A. I believe so, yes.

1 Q. All right. Let me hand you a copy of  
2 the transcript from May 23rd.

3 MR. MUELLER: And actually,  
4 Mr. Halloran, even though it's already part of the  
5 record, for ease of citation, we're going to move to  
6 admit another copy as Fox Moraine Exhibit Number 18.

7 MR. HALLORAN: Okay. What is it  
8 again, Mr. Mueller?

9 MR. MUELLER: FM18.

10 MR. HALLORAN: I mean the document  
11 itself. Is that the minutes of the --

12 MR. MUELLER: It is the transcript of  
13 May 23rd and 24th, 2008, which was sent to us by the  
14 city as part of the written decision, and appended  
15 to our petition to review. So the only reason I'm  
16 re-offering it is for ease of citation and briefing.

17 MR. HALLORAN: Thanks. Any objection?

18 MR. HOPP: No objection, your Honor.

19 MR. HALLORAN: Okay. Exhibit 18 is  
20 entered.

21 MR. HOPP: So this is 18?

22 MR. HALLORAN: Eighteen.

23 MR. HOPP: And that's both days, one  
24 exhibit?



1 MR. MUELLER: Yes.

2 BY MR. MUELLER:

3 Q. Ms. Burd, as I told Ms. Spears, May  
4 23rd is the mini transcript with four pages per  
5 page, and May 24th is the full size.

6 Directing your attention to  
7 Page 21 on May 23rd, do you see your statement on --  
8 starting on Line 10?

9 A. Tell me again how this is --

10 Q. All right. The small print pages, the  
11 one where there's four to a page, that's the May  
12 23rd one.

13 A. Okay.

14 Q. The full size 12 point print is the  
15 May 24th transcript.

16 A. So which one did you want me to look  
17 at, the small?

18 MR. MUELLER: And actually Mr. Porter  
19 has a wonderful suggestion.

20 MR. PORTER: I'd suggest we bust them  
21 out and have one be 17 and one be 18 or whatever  
22 number.

23 MR. MUELLER: Eighteen and 19.

24 MR. PORTER: Eighteen and 19.

1 THE WITNESS: So what page did you  
2 want me to look at?

3 MR. HALLORAN: So 18 would be May  
4 23rd?

5 MR. MUELLER: Yeah, and 19 would be --

6 MR. PORTER: May I approach the  
7 witness and facilitate that?

8 MR. HALLORAN: Yes, you may.

9 MR. PORTER: So I'm handing 18, which  
10 is May 23rd, to the witness, and 19, which is May  
11 24th, to the witness.

12 BY MR. MUELLER:

13 Q. Are you on Page 21? That's the top  
14 left page. Number 21 is in the top right corner of  
15 the page, but it's the top left page. You'll see  
16 the pages are numbered individually at the bottom  
17 right of each one. I'm talking about right here.

18 Okay. Do you see your comment  
19 starting at Line 10 where --

20 A. Yes.

21 Q. -- you say, "Yes, it does change  
22 everything. The hearing officer is no longer in  
23 charge. That's why he's not needed tonight. It's  
24 back under the mayor, and the mayor is the one who

1 is back and running the meeting."

2 A. Yes.

3 Q. And the mayor obviously was yourself  
4 at that time?

5 A. Yes.

6 Q. The hearing officer was Larry Price,  
7 correct -- or Larry Clark?

8 A. Yes.

9 Q. Was Mr. Clark invited to the May 23rd  
10 meeting?

11 A. I don't know.

12 Q. Was he told to stay home?

13 A. No, I don't think so.

14 Q. What direction was he given by you  
15 regarding whether or not to attend May 23rd?

16 A. I don't remember giving him any  
17 direction. I just -- we were convening a regular  
18 city council meeting.

19 Q. Did you give any direction to your  
20 attorneys as to Mr. Clark's attendance?

21 MR. HOPP: Objection. Privileged.

22 MR. MUELLER: I think her direction is  
23 not privileged if it goes to the issue of attendance  
24 of a material person.

1 MR. HALLORAN: I'm sorry. Could you  
2 read Mr. Mueller's question back, please?

3 (Whereupon, the record was read as  
4 requested.)

5 MR. HALLORAN: Yeah, I think she can  
6 answer that. Objection overruled, but we can't go  
7 any further than that, Mr. Mueller.

8 MR. MUELLER: I understand.

9 MR. HALLORAN: Go ahead.

10 THE WITNESS: I don't recall having  
11 any discussions on it at all.

12 BY MR. MUELLER:

13 Q. What about Mr. Price? Was he invited  
14 to the meeting on May 23rd?

15 A. I don't recall. I didn't invite  
16 anybody. It was a regular city council meeting.

17 Q. Was Mr. Price specifically told not to  
18 come?

19 A. Not that I recall.

20 Q. Now, Mr. Price had submitted a report  
21 on behalf of the city staff recommending approval  
22 with conditions, didn't he?

23 A. Yes.

24 Q. And Mr. Clark, the hearing officer,

1 likewise submitted a report on behalf of the hearing  
2 officer recommending approval with conditions. Is  
3 that right?

4 A. Yes.

5 Q. Was there a third report submitted by  
6 the Wildman firm?

7 MR. HOPP: Objection. Privileged.

8 MR. MUELLER: I'm just asking if there  
9 was a report.

10 MR. HALLORAN: I think he can ask  
11 that, but I'm going to make a ruling --

12 MR. HOPP: You did, your Honor.

13 MR. MUELLER: The ruling was you  
14 weren't going to make him produce it.

15 MR. HALLORAN: Right. You can ask the  
16 question, Mr. Mueller. Ms. Burd may answer.

17 THE WITNESS: I don't recall  
18 specifically. I'm sure there was. I would hope  
19 there was.

20 BY MR. MUELLER:

21 Q. And I'm going to ask, then, did that  
22 report recommend denial --

23 MR. HOPP: Objection.

24 MR. MUELLER: I've asked it as an

1 offer of proof. I don't even want to argue it.

2 MR. HOPP: Your Honor, I would -- as  
3 this is legally privileged, and there is absolutely  
4 no objection to this legal privilege, I would object  
5 to the offer of proof, and --

6 MR. HALLORAN: I agree with you  
7 totally, Mr. Hopp. And you can't even do  
8 it -- I'm not going to let you do it as an offer of  
9 proof, Mr. Mueller.

10 MR. MUELLER: Just for the record,  
11 then -- I don't want to argue with you,  
12 Mr. Halloran, but to the extent that the report was  
13 considered by decision makers in their decision, I  
14 respectfully take issue with your ruling.

15 MR. HALLORAN: Okay.

16 BY MR. MUELLER:

17 Q. Now, on May 24th, Ms. Burd, were there  
18 resolutions brought to the meeting by your  
19 attorneys?

20 A. Yes, there were.

21 Q. How many resolutions?

22 A. Three.

23 Q. And --

24 MR. HALLORAN: Mr. Mueller, if I may

1 stop you for a minute, I know you take objection --  
2 respectfully object to my ruling, and I still can't  
3 find the order it was in, but I don't think you  
4 appealed my ruling back then, correct? Or am I --

5 MR. MUELLER: We did not appeal it  
6 directly to the Board.

7 MR. HALLORAN: Okay. I just want to  
8 make sure that -- I'm not being, you know,  
9 sarcastic. I just wanted to make sure that --

10 MR. MUELLER: No. We thought we'd let  
11 the whole thing go with the case.

12 MR. HALLORAN: Okay. Thank you, sir.

13 BY MR. MUELLER:

14 Q. Ms. Burd, let me show you a copy of  
15 resolution 2007-36, if I may. Is that the  
16 resolution denying the siting application?

17 A. That's what it says, yes.

18 Q. And that's the final resolution,  
19 correct?

20 A. It appears to be.

21 Q. All right. You were here for the  
22 testimony of Rose Spears, right?   

23 A. Yes.

24 Q. So let's just try to provide some

1 context for what occurred. Is it correct that the  
2 alderman, on April 24th, started to orally add  
3 conditions in the event that the Pollution Control  
4 Board reversed the denial?

5 MR. DOMBROWSKI: We object,  
6 Mr. Halloran. The case law is clear that the only  
7 requirement is that the city council produce a  
8 written decision, which it did. This line of  
9 questioning also -- even though Mayor Burd did not  
10 vote on the application, intrudes on the  
11 deliberative process to others.

12 MR. HALLORAN: Mr. Mueller?

13 MR. MUELLER: How can she know what  
14 others deliberative processes were? Secondly, I'm  
15 just trying to understand -- and the question is  
16 really preliminary -- of what this resolution 07-36  
17 represents, because it appears to us, from the  
18 record, that it was something produced several days  
19 after the meeting, and I think the witness may  
20 readily admit that, if given the chance.

21 MR. DOMBROWSKI: But still, the line  
22 of questioning is irrelevant, and not proper to this  
23 proceeding. They -- the city council voted on the  
24 landfill application, voted to deny it, and produced



1 a written decision, and that's all they're required  
2 to do.

3 MR. MUELLER: Okay. Could you read  
4 back Mr. Mueller's question? Sorry.

5 (Whereupon, the record was read as  
6 requested.)

7 MR. HALLORAN: Yeah. I'm going to  
8 sustain the objection. I mean, the document speaks  
9 for itself. Any further than that, I think you're  
10 right into the invasion of the mental processes.

11 MR. MUELLER: I'd like to do this as  
12 an offer of proof, and it doesn't go to legal  
13 privilege. I think this is part of the same bad  
14 faith that we've been talking about.

15 MR. HALLORAN: That's fair enough, and  
16 I understand Yorkville would sustain -- or repeat  
17 their objection. I'll let it in as an offer of  
18 proof. Go ahead, Mr. Mueller. Thank you.

19 BY MR. MUELLER:

20 Q. Go ahead and answer the question if  
21 you can, Mayor.

22 A. Yes. As far as I know, they did start  
23 adding conditions.

24 Q. And isn't it true that what then

1 happened was after the meeting was over, your  
2 attorneys went and created a new resolution that  
3 incorporated some, but not all, of the verbal  
4 conditions that were added by the alderman on the  
5 24th?

6 A. They created the resolution based on  
7 the direction of the city council, and also based on  
8 the direction not to add anything that might be  
9 illegal.

10 Q. And that direction came from you,  
11 correct, not to add anything that might be illegal?

12 A. Well, that's the standard we always --  
13 yeah. That's the direction I always give.

14 Q. Okay.

15 MR. HALLORAN: And -- okay. We were  
16 still on an offer of proof?

17 MR. MUELLER: Right, and we still are.

18 MR. HALLORAN: Okay.

19 BY MR. MUELLER:

20 Q. And just to wrap this up, then, real  
21 quickly, the resolution numbered 07-36 was not the  
22 document in front of the city council on the night  
23 of May 24th. Is that right?

24 A. Actually, it's my belief that it

1 would've been, because it would've -- at the end of  
2 their deliberation, it would've been the document  
3 that they came up with with one final run through by  
4 this -- the attorneys to make sure there was nothing  
5 illegal. So they are the ones who created it, and  
6 at the end of the day, the ones that they voted on  
7 would've included these, as far as I understand it.

8 Q. Well, they were adding conditions on  
9 the 24th, which was, like, a 20-minute meeting,  
10 weren't they? That's when Rose Spears added her  
11 condition of the specification for the aboveground  
12 storage tanks, which appears in this resolution as  
13 item number N.

14 A. Right. That's what I said, during the  
15 city council meeting. What they call that is an  
16 amended resolution, and so after debate and after  
17 input from the city council, they amended the  
18 resolution to include all of these things.

19 MR. HALLORAN: Mr. Mueller, were you  
20 referring to O?

21 MR. MUELLER: O. Excuse me.

22 MR. HALLORAN: Okay. Thank you.

23 BY MR. MUELLER:

24 Q. And the -- but the actual final

1 resolution wasn't typed until a couple days later,  
2 or are you saying what we're actually seeing here is  
3 07-36 was fully in front of the city council when  
4 they voted?

5 A. What they would've had was the  
6 basic -- and then they added to it, and then the  
7 clerk would've read it back to them with these  
8 particulars as amended, and that's what they  
9 would've voted on.

10 So they would start out -- this is  
11 the way they always do things: They start out with  
12 the basic resolution. If there is a motion to  
13 amend, then they add on to it. The clerk reads it  
14 back, and then they vote on what they've created.

15 Q. And that would all be reflected in the  
16 minutes of May 24th, correct?

17 A. Yes. Yes, sir.

18 Q. And if it's not reflected in those  
19 minutes, then it didn't happen, right?

20 A. Well, the minutes are the official  
21 minutes, so things happen that aren't reflected in  
22 the minutes, because the minutes are often just a  
23 generalization of what occurred.

24 Q. Well, it would all be reflected in the

1 transcript of May 24th then, wouldn't it?

2 A. It should be, yes.

3 Q. And if it's not reflected there, it  
4 didn't happen?

5 A. That's correct.

6 Q. Can I -- and this is still part of the  
7 offer of proof -- take you back to the Wildman  
8 invoice for a second?

9 A. Yes.

10 Q. All right. If you go to the fifth  
11 page of that invoice, do you see a charge from May  
12 25th for several revisions to draft a resolution  
13 from Anthony Hopp?

14 A. Mm-hmm.

15 Q. And also a similar charge on the same  
16 day for revise city council resolution from Leo  
17 Dombrowski?

18 A. Mm-hmm.

19 MR. PORTER: Were those both yeses?

20 THE WITNESS: Yes, I'm sorry.

21 BY MR. MUELLER:

22 Q. And that's the day after the vote,  
23 correct?

24 A. On the 25th?

1 Q. Yes.

2 A. Yes.

3 Q. And then you see, as late as May 29th,  
4 a charge for Mike Roth for one half hour for a  
5 conference with Mr. Olsen regarding resolution  
6 revisions?

7 A. I see that, yes.

8 Q. Is it still your belief that the  
9 resolution number 07-36 was in front of the city  
10 council members in its current form at the time they  
11 voted on May 24th?

12 A. I would think it would have to be in  
13 the hands of the clerk, not the -- not in front of  
14 each alderman, because the clerk reads back to them  
15 what they wanted included.

16 Q. All right. Just one final question --  
17 or two questions actually.

18 MR. HALLORAN: Still under an offer of  
19 proof?

20 MR. MUELLER: Yes.

21 BY MR. MUELLER:

22 Q. Who decided which oral conditions that  
23 were proposed by various council members on May 24th  
24 were going to be added in and which ones were going

1 to be left out?

2 A. Who decided? I would think it  
3 would've been -- well, it would be the attorneys  
4 saying whether or not they were legal. That's the  
5 only ones that should've been left out were if they  
6 were illegal.

7 Q. And was that decision ever approved by  
8 a vote of the city council?

9 A. No, I don't believe it was.

10 Q. That concludes the offer of proof.

11 Now, Ms. Burd, on May 23rd, you  
12 did give your personal opinion about the  
13 application, didn't you?

14 A. In what way?

15 Q. Well, didn't you indicate that you  
16 thought criteria three, six, eight and ten had not  
17 been met?

18 MR. HOPP: Objection. Deliberative  
19 process.

20 MR. MUELLER: She was not a decision  
21 maker. She's trying to influence the decision  
22 makers, and that goes to --

23 MR. DOMBROWSKI: She couldn't have  
24 been a decision maker, because if the vote had been

1 four to four, she would've been a decision maker.

2 MR. HALLORAN: Yeah, I agree. I think  
3 you've jumped the line, Mr. Mueller, if you will.

4 MR. MUELLER: Well, actually I'm  
5 asking her what she said. I'm not going into the  
6 process. I just want to get into what she said,  
7 Mr. Halloran.

8 MR. HOPP: The record is clear.

9 MR. HALLORAN: Yeah. No, sustained.

10 BY MR. MUELLER:

11 Q. If I can direct you to Page 111 of the  
12 May 23rd transcript, do you have that?

13 A. Yes.

14 Q. Let me back up for one second. I  
15 apologize. Let's go to Page 107.

16 A. Excuse me. Could I ask a question?

17 Q. Sure.

18 A. This is the meeting of the 23rd?

19 Q. Yes.

20 A. Well, based on the page you just sent  
21 me to, it says that -- see, I'll be honest, my  
22 recollections aren't concrete. But this says that I  
23 would like to move that we direct our attorneys to a  
24 resolution consistent with tonight's deliberations



1 for consideration.

2 So it sounds like, based on what  
3 you just directed me to, that I asked the attorneys  
4 to incorporate whatever it was that the alderman had  
5 brought forth that day, and stick it into the  
6 resolution to change the one they originally brought  
7 in. So it sounds like it did incorporate --

8 Q. Well, there was more that happened on  
9 the 24th, correct?

10 A. Yeah, but it sounds like this was a  
11 living document that was being changed by the  
12 attorneys as we moved along, and they were  
13 incorporating with --

14 Q. Let's go to Page 107 and 108, if we  
15 may?

16 A. Okay.

17 Q. Directing you to the bottom of  
18 Page 107, Line 23, and then starting at the top of  
19 Page 108, did you state that it, "Made we wonder  
20 about the credibility of the applicant's experts?"

21 MR. HOPP: Objection, your Honor.  
22 Deliberative process. The record speaks for itself.

23 MR. HALLORAN: Well, you know, if the  
24 record speaks for itself, I mean, I think you can

1 ask it.

2 MR. HOPP: Well, it's --

3 MR. HALLORAN: I mean, if it's -- if  
4 it's on the record, then yeah.

5 MR. HOPP: It's repetitive. I mean,  
6 he's now asking --

7 MR. HALLORAN: Well, it's  
8 repetitive --

9 MR. HOPP: Any questions based on this  
10 I'm objecting to.

11 MR. HALLORAN: I agree. I agree.

12 BY MR. MUELLER:

13 Q. Well, if the record speaks for itself,  
14 then let me ask this: Was your purpose in stating  
15 that to undermine the credibility of the applicants'  
16 experts in the minds of the city council members?

17 MR. HOPP: Objection. Deliberative  
18 process.

19 MR. HALLORAN: I agree. Sustained.

20 MR. MUELLER: And I need to do that as  
21 an offer of proof, and then I think we'll be done.

22 MR. HALLORAN: I know there's an  
23 objection from Yorkville.

24 MR. HOPP: There's an objection.

1 MR. HALLORAN: Yeah. I'll allow -- I  
2 sustain the objection. I'll allow it in as an offer  
3 of proof.

4 BY MR. MUELLER:

5 Q. As an offer of proof, was your purpose  
6 in questioning the credibility the applicants'  
7 experts to undermine the strength of their case in  
8 the eyes of the other council members?

9 A. I have no conscious thought of doing  
10 that. When I read through this here -- apparently I  
11 even asked if I should comment, and our city  
12 attorney, Mr. Roth, said yes, I should go ahead and  
13 comment. So I was just stating my opinion.

14 Q. Do you still have your campaign  
15 materials, by the way?

16 A. I think so. I have some at home, yes.

17 Q. Where are they physically located at?

18 A. If I have them they'd be in my house  
19 in my filing cabinet.

20 Q. And you'd be willing to produce them  
21 if the hearing officer ordered that?

22 A. Absolutely.

23 Q. Were they generated on a computer or  
24 in some other fashion?

1           A.           One of them was printed up  
2 professionally. Some of the other ones, post cards,  
3 that kind of thing, were printed up professionally.  
4 Some of them were done off of my home computer.

5                   MR. DOMBROWSKI: Mr. Hearing Officer,  
6 I'd like to interject, for the record, they have  
7 never asked for general campaign materials. They  
8 have asked for things related to landfill  
9 application. Things related to the application --  
10 landfill application were all produced. If they  
11 didn't get something that they didn't ask for, they  
12 should have asked for it.

13                   MR. HOPP: And further --

14                   MR. HALLORAN: Is that true,  
15 Mr. Mueller?

16                   MR. MUELLER: I don't have my  
17 discovery response in front of me. My file is about  
18 six boxes worth. So I can't tell you whether it was  
19 or not, but I don't think it's too late if it's not  
20 burdensome to make a supplemental request for  
21 campaign materials. I mean, Robyn Sutcliff provided  
22 them and apparently thought that they were within  
23 the scope of the original request.

24                   MR. DOMBROWSKI: Robyn Sutcliff

1 provided them because the word landfill appears in a  
2 couple places in Robyn Sutcliff's document  
3 protection. That's why those were provided.  
4 Mr. Mueller received our documents probably a year  
5 and a half ago. They never asked for any general  
6 campaign literature, therefore no general campaign  
7 literature was produced. And for him to make a  
8 supplemental document request on the first day of  
9 the hearing is simply improper.

10 MR. MUELLER: You know -- and I guess  
11 my point is: How do we know that they didn't deal  
12 with the subject of this hearing unless we see them?

13 MR. HOPP: We have the same problem  
14 with any document in the world, your Honor.

15 MR. HALLORAN: Well, my interaction  
16 would be this: I would -- I'm not making a ruling  
17 as to the admissibility or the inadmissibility, but  
18 I would ask Ms. Burd if you could locate the  
19 literature that Mr. Mueller has been talking about,  
20 and I'll take a look at it, and we can make a ruling  
21 tomorrow. And it looks like we'll be here until  
22 Thursday, if need be.

23 MR. MUELLER: That's all I have.  
24 Thank you.

1 MR. HALLORAN: Thank you, Mr. Mueller.  
2 Mr. Dombrowski, Mr. Hopp?

3 MR. HOPP: Your Honor, this may take a  
4 few minutes. Can I suggest a five-minute break?

5 MR. HALLORAN: Sure. Ten. Thank you.

6 (Whereupon, a break was taken,  
7 after which the following  
8 proceedings were had.)

9 MR. HALLORAN: Mr. Hopp?

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

11 BY MR. HOPP:

12 Q. Mayor Burd, let's start with a very  
13 brief discussion of the July 15th, 2007, invoice  
14 from the Wildman Harrold law firm. Was that invoice  
15 eventually presented to the city council for  
16 approval?

17 A. Yes, it was.

18 Q. And was it approved by the city  
19 council?

20 A. Yes.

21 Q. Subsequent to the date that's on it,  
22 June 15th?

23 A. Yes. It was in August, I think, yeah.

24 Q. Let's talk about Fox Moraine. You

1 said Fox Moraine has not paid some invoices. Do you  
2 remember that testimony?

3 A. Yes.

4 Q. Is it accurate that Fox Moraine hasn't  
5 paid any invoices for any work on the siting  
6 application after the day you were elected?

7 A. Yes, that's correct.

8 Q. And that's what you're currently suing  
9 for?

10 A. Yes.

11 Q. All right. Now, you did campaign for  
12 mayor in 2007. Is that right?

13 A. Yes.

14 Q. And during the siting application and  
15 during your campaign, were you actually given a card  
16 by Dirk Price, similar to or identical to the one  
17 that Rose Spears read into the record?

18 A. I was given a card, yes.

19 Q. Was it the same card?

20 A. Yes.

21 Q. Containing the same statements?

22 A. Yes.

23 Q. Did you run on an anti-landfill  
24 campaign platform?

1 A. No, I did not.

2 Q. Did you ever put your yard signs next  
3 to any anti-landfill signs?

4 A. No.

5 Q. Did you discuss the landfill at all  
6 during the campaign in any of your campaign  
7 appearances?

8 A. No, I did not. In fact, if somebody  
9 tried to broach that subject, I always said, "I  
10 can't discuss that, I'm sorry," and some of them got  
11 angry.

12 Q. Fair enough. Let's talk about -- a  
13 little bit about Rose Spears and the issue of  
14 research. Are you aware of Rose Spears ever doing  
15 any research outside the record as it was presented  
16 at the landfill siting hearings?

17 A. No, I'm not.

18 Q. Mr. Mueller used the term disruptive a  
19 couple of times to talk about some of the landfill  
20 hearings. Do you remember that?

21 A. Yes.

22 Q. Do you -- let's back up a little.  
23 You've been mayor now for two years?

24 A. Mm-hmm.



1 Q. And previously, you'd been an alderman  
2 for how many years?

3 A. Nine.

4 Q. And you probably attended dozens of  
5 city council meetings and other types of meetings  
6 for the city. Is that right?

7 A. Yes.

8 Q. Do meetings sometimes get boisterous?

9 A. Often.

10 Q. Were the landfill siting hearings any  
11 more boisterous or disruptive than hearings on any  
12 other subject that comes before the city?

13 A. I think -- I think they were in with  
14 all of the ones that are like that. There are quite  
15 a few we don't have anybody show up, but there are  
16 certain issues that people get excited about, you  
17 know, when you're raising their taxes, you know, dog  
18 ordinances, things that affect them directly. It  
19 was pretty much what we're used to.

20 Q. So it's not unusual for people to come  
21 to city council meetings and speak their minds on  
22 issues?

23 A. No. We just had one on a wind energy  
24 ordinance that we had people come and speak for two

1 hours on.

2 Q. Sometimes they raise their voice?

3 A. Yes.

4 Q. Does that bother you?

5 A. They call us crazy, they talk about  
6 our egos. You know, they attack us personally, but  
7 that -- that's normal.

8 Q. Does that affect the way you do your  
9 job as mayor?

10 A. No.

11 Q. Did it ever affect the way you did  
12 your job as an alderman?

13 A. No.

14 Q. Mr. Mueller asked you about a sign  
15 that apparently is somewhere outside the hearing  
16 room here today. Did you put that sign up?

17 A. No. I was surprised to see it there.

18 Q. Did you recommend that anybody put it  
19 up?

20 A. No. It wasn't there when I came in,  
21 no.

22 Q. You spoke a little earlier during some  
23 of your testimony about process, and you talked  
24 about the annexation process. Is process something

1 that's important to you in terms of city government?

2 A. It's very important to me, and it's  
3 one of the reasons why I liked Wildman Harrold as a  
4 firm. I was looking for somebody who would really  
5 be sticklers with the legal process. It was mainly  
6 my contention with the former administration and the  
7 former city attorney. I want everything to be done  
8 legally and by the statutes, and I'm probably very  
9 much a stick in the mud when it comes to that kind  
10 of thing. So I think that probably is the most  
11 important thing to me.

12 Q. Well, let's talk about the annexation  
13 process. Did you have some issues -- did you have  
14 some issues with the way that the annexation process  
15 was handled?

16 A. I had issues with the way the process  
17 was handled, how quickly it was done. These  
18 meetings that we had that circumvented the Open  
19 Meetings Act -- we actually had one session where  
20 something was done in violation of the Open Meetings  
21 Act, and the city of Yorkville was sited for that,  
22 so we had to revote because it was an improper vote.

23 There were just several issues  
24 like that that I was very upset with, and when I

1 would try to voice these concerns to the former  
2 mayor and the other officials involved, they just,  
3 you know, didn't want to discuss it.

4 Q. Let's talk a little bit about the  
5 statement that Mr. Mueller talked about. This is  
6 the one that shows up in the newspaper article, the  
7 statement that the aldermen were asked to sign at  
8 some meeting of the city council. Do you remember  
9 that discussion?

10 A. Yes.

11 Q. All right. Was that statement offered  
12 at a city council meeting or a meeting of the  
13 committee of the whole?

14 A. Actually, it wasn't at either. It was  
15 after the committee of the whole meeting. It was  
16 something presented by Mr. Besco.

17 Q. All right. And it's been called -- at  
18 various points during the day here, it's been called  
19 a resolution. Was it a resolution?

20 A. No, it was not.

21 Q. What do you mean by that? Why was it  
22 not a city council resolution?

23 A. Well, a resolution would've had to be  
24 presented during a regular meeting of the city

1 council. And the aldermen never signs resolutions,  
2 the mayor signs the resolution. It was not an  
3 official document of the city. It was a campaign --  
4 piece of campaign propoganda that was done after the  
5 meeting by the former mayor, and I think he even  
6 commented on it in a paper, that it was PR for him  
7 and his supporters, and it was used in his own  
8 advertising for his campaign. So obviously I  
9 wouldn't want to be in his campaign literature.

10 Q. Okay. You were running against him at  
11 the time?

12 A. Yes. I didn't want to endorse him.

13 MR. HOPP: That's all I have,  
14 Mr. Halloran.

15 MR. HALLORAN: Thank you.

16 Mr. Mueller?

17 MR. MUELLER: Nothing further.

18 MR. HALLORAN: All right. Thank you,  
19 Mayor. You may step down. And I think you still --  
20 you may be called as a rebuttal. Who knows. I'm  
21 sorry, you're not excluded. What I did mess up on  
22 is Mr. Parish was still in the room after he  
23 testified, which could be -- he could be called as a  
24 rebuttal. But I promised him -- he wants to make a

1 public comment now, and I think he has to leave and  
2 he's in the other room.

3 Does anyone else want to give a  
4 public comment or a public statement after  
5 Mr. Parish? I don't see any hands.

6 Hi, Mr. Parish. I just want to  
7 preface it that you were supposed to leave the room  
8 after you testified.

9 MR. PARISH: I know.

10 MR. HALLORAN: I just want to -- based  
11 on the record -- excuse me, sir -- just based on the  
12 record. So you may still be called as a rebuttal.  
13 We don't know. So I would ask you to confine your  
14 comments to other areas, other than Mayor Burd's  
15 testimony that you just heard.

16 MR. PARISH: Okay.

17 MR. HALLORAN: Okay. So would you  
18 like to give an oral statement or a public comment?

19 MR. PARISH: You know, when you say  
20 that -- and I did listen to Mayor Burd's statement,  
21 but I would like to make it about me, though, and  
22 what we were doing.

23 MR. HALLORAN: Okay. That's fine.  
24 But do you want to get sworn in and then you're

1 subject to cross?

2 MR. PARISH: It would be fine -- well,  
3 it doesn't make any difference.

4 MR. HALLORAN: It's your call. You  
5 can stand up there and state your peace --

6 MR. PARISH: I'll make the statement,  
7 and if somebody wants to ask me about it that's  
8 fine.

9 MR. HALLORAN: So you don't want to  
10 get sworn in?

11 MR. PARISH: No, I won't be sworn.

12 MR. HALLORAN: Okay. You can step up.

13 MR. PARISH: And the only thing I  
14 wanted to say was --

15 MR. HALLORAN: And you're Robert  
16 Parish?

17 MR. PARISH: Ron Parish.

18 MR. HALLORAN: Ron Parish.

19 MR. PARISH: Yorkville is our home  
20 town, and we were interested in Yorkville being the  
21 type of city that would be conducive for people to  
22 live and raise their children.

23 I was concerned -- I have a  
24 property on the river, as well as a property on 71.

1 I was concerned about the dam products, I was  
2 concerned about the water towers that were going to  
3 be built, I was concerned about the pond that was  
4 going to be put in my backyard -- because my  
5 grandson at the time was only ten years old -- I was  
6 concerned about the traffic that was going to be on  
7 Highway 71, and I was concerned about many, many  
8 other things than the landfill, even though it has  
9 been condensed down to just the landfill.

10 And our past mayor did not listen  
11 to anything that anybody had to say, and thank  
12 goodness that we do have Valerie Burd as a mayor,  
13 because she does listen. I have not asked Valerie  
14 to do anything for me since she's come into office,  
15 because they are running an open government, and  
16 they're treating the business the way it should be  
17 treated.

18 If you could've been in our town  
19 before, we didn't have a say. I was told I was not  
20 a member of the city. My wife was born in this town  
21 and lived there -- we're not a citizen here. I was  
22 told I didn't have any comment, and I was told by  
23 the mayor and three of the counselmen that it was a  
24 done deal I shouldn't even ask anything about it,



1 anything. And it wasn't just the landfill, it was I  
2 shouldn't ask about the water tower, I shouldn't ask  
3 about the pond, I shouldn't ask about the dam  
4 because it had nothing to do with us.

5 And I just wanted to say thank  
6 goodness that we do have Valerie as a mayor, and we  
7 do have an open government now. And it's not just  
8 the one issue. You can twist it to what you want  
9 the issue to be. I supported Valerie Burd because I  
10 totally disliked the other mayor, and I supported  
11 the other candidates that I supported because I  
12 totally disliked the other candidates because they  
13 were out for themselves what they could do, and they  
14 did not listen to anybody from the county. And  
15 that's it.

16 MR. HALLORAN: All right. Thank you,  
17 Mr. Parish. Appreciate it.

18 MR. PARISH: Thank you.

19 MR. HALLORAN: All right. Mr. Mueller  
20 and Mr. Porter?

21 MR. PORTER: We're going to call Robyn  
22 Sutcliff.

23 MR. HALLORAN: We can go off the  
24 record.

1 (Whereupon, a discussion was had  
2 off the record.)

3 (Witness sworn.)

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

5 BY MR. PORTER:

6 Q. State your name for the record,  
7 please?

8 A. Robyn Sutcliff.

9 Q. And how are you employed?

10 A. I am a substitute teacher with Kendall  
11 County Cooperative, and an alderman with the city of  
12 Yorkville.

13 Q. And when were you elected alderman of  
14 the city of Yorkville?

15 A. May of 2007.

16 Q. And you started your campaign in 2006.  
17 Is that correct?

18 A. Yes.

19 Q. And before you started that  
20 campaign -- strike that.

21 About the same time you started  
22 that campaign, you started attending board meetings.

23 Is that right?

24 A. Yes.

1 MR. HALLORAN: Speak up, please.

2 THE WITNESS: I'm sorry. Yes.

3 BY MR. HALLORAN:

4 Q. I actually misspoke. You started  
5 attending the city council meetings at that time.  
6 Is that correct?

7 A. Yes.

8 Q. You also published a web page  
9 summarizing and commenting on the meetings. Is that  
10 right?

11 A. Yes.

12 Q. And what was the name of that web  
13 page?

14 A. Third Ward Advisor.

15 Q. Okay.

16 A. Dot com.

17 Q. I'm going to hand you several  
18 documents here. It's going to take me a moment.  
19 I've handed you a set of exhibits marked FM20  
20 through 23. Is that correct?

21 A. Yes.

22 Q. And those are copies of the web pages  
23 that you produced to my client. Is that right?

24 A. Possibly some of these may be.

1 Q. Let me ask it this way --

2 A. Okay.

3 Q. What are FM20 through 23?

4 A. Some of this material may have been on  
5 my website, and some of it may have been drafts. I  
6 pulled everything from my computer that met the  
7 requirements.

8 Q. All of this is material that you  
9 personally drafted that relates to the landfill  
10 while you were campaigning. Is that correct?

11 A. These are the -- all the information I  
12 could find that met the criteria, yes.

13 Q. Okay. And are those true and accurate  
14 copies of that material?

15 A. Yes.

16 Q. Now, what was the purpose behind --  
17 well, strike that.

18 Isn't it true that the purpose  
19 behind drafting this material was to facilitate your  
20 election to the city council?

21 A. Ultimately, yes.

22 Q. And isn't it true -- well, strike  
23 that.

24 Did you make any comments

1 concerning the propriety of siting the landfill in  
2 these web pages?

3 A. Could you rephrase that, please?

4 Q. Well, did you draft these documents in  
5 order to summarize certain meetings that were  
6 happening at city council?

7 A. Yes.

8 Q. And in those summaries, did you make  
9 any statements, either in favor or against the  
10 proposed landfill?

11 MR. DOMBROWSKI: I'll object to the  
12 question. The documents say whatever they say. If  
13 he'd like to ask her about a particular statement, I  
14 think that's fine. But twisting this into something  
15 else, I think, is improper.

16 MR. HALLORAN: Well, you know, I --  
17 overruled. If Mr. Porter could direct her attention  
18 to where he's leading here.

19 MR. PORTER: Well, the reason I asked  
20 it the way I did, Mr. Halloran, is I've asked it  
21 that way before.

22 BY MR. PORTER: -

23 Q. Is it safe to say that there was  
24 commentary contained on that website against the

1 proposed landfill?

2 MR. DOMBROWSKI: I'll object to the  
3 question. That mischaracterizes the documents.

4 MR. HALLORAN: You know, overruled.  
5 She can answer if she's able.

6 THE WITNESS: If there are -- from my  
7 recollection, if there's information on here with  
8 some kind of decision on it, it is not from me.  
9 It's not a quote from me. I had quotes from other  
10 people that may be construed that way, but they  
11 weren't from me. I was reporting on events that I  
12 attended. So I don't want that to appear to be my  
13 opinion.

14 BY MR. PORTER:

15 Q. Okay. Let's take a look at some of  
16 the specific web pages. Isn't it true that at FM20  
17 you explicitly indicated that there were, at the  
18 top, "50 concerned citizens gathered at the steps of  
19 city hall armed with signs and concern for the  
20 future of their community?"

21 A. Yes.

22 Q. Those 50 concerned citizens you're  
23 talking about were armed with signs that said no  
24 landfill. Is that correct?

1 MR. HALLORAN: Is that a yes or no?

2 I'm sorry.

3 THE WITNESS: It doesn't say that  
4 exactly. It's paraphrasing. So could you say that  
5 again? I'm sorry.

6 BY MR. PORTER:

7 Q. Isn't it true that the 50 concerned  
8 citizens you were referring to of being armed with  
9 signs were holding signs that said no landfill?

10 A. Some of them said that.

11 Q. Well, isn't it true that you reported,  
12 "A standing room only crowd proudly displayed the no  
13 landfill signs?"

14 A. Yes, it does say that.

15 Q. All right. So your comments that they  
16 were armed with signs and concern for the future and  
17 that they were proudly displayed, aren't those,  
18 indeed, comments in support of the position that  
19 they were espousing?

20 A. Those particular people, right. There  
21 were people there without signs. There were people  
22 that had different signs. There were a lot of  
23 different people there, and there may have been  
24 people there in support of it. I don't know. I

1 didn't speak to them all, it's just what I saw.

2 Q. Okay. Isn't it true that your web  
3 page gave explicit direction to the readers to  
4 FOGY's website? And again, I'm referring now to  
5 exhibit FM20.

6 A. Yes.

7 Q. And at any time, did you give any  
8 direction as to how one could contact the applicant?

9 A. Not that I recall.

10 Q. You certainly provided no web address  
11 or e-mail addresses for the applicant, did you?

12 A. No.

13 Q. Your web page mentions that -- well,  
14 strike that.

15 You commented on some statements  
16 of Mayor Prohaska, is that correct, at FM20?

17 A. FM20, yes.

18 Q. And in particular, you mentioned that  
19 it was your interpretation of a comment that he made  
20 that, "Regardless of what the people want, there may  
21 be a dump here anyway." Did you make that statement  
22 in your web page?

23 A. Yes.

24 Q. And you made that statement because



1 you were wanting to make sure the reader viewed  
2 Mayor Prohaska's comments in a bad light. Isn't  
3 that correct?

4 A. Well, I -- I think those comments  
5 stand on their own. But I was making a comment,  
6 yes, on it myself.

7 Q. And you would agree that the comments  
8 that you were making were anti-landfill. Isn't that  
9 right?

10 A. No.

11 Q. You did direct the reader to contact  
12 the current alderman to let them know how you'd like  
13 them to represent you in this important upcoming  
14 vote. Isn't that correct?

15 A. Yes.

16 Q. And your intent there, again, was to  
17 be sure the readers voiced their opinion against the  
18 landfill. Isn't that right?

19 A. No.

20 Q. Now, at that meeting that you were  
21 attending, which was the -- is that the January 3rd,  
22 2007, meeting? I'm sorry, January 2nd, 2007,  
23 meeting.

24 A. I don't -- I don't see a date on here.

1 If you could direct me --

2 Q. If you'll take a look at FM21, and --

3 A. Okay.

4 Q. -- in particular, if you want to take  
5 a look at the second page of that, where you, again,  
6 talk about Mayor Prohaska's statements, I think  
7 you'll see that these are two machinations of your  
8 summary and comments of the same meeting. Is that  
9 correct, FM21 and FM20?

10 MR. DOMBROWSKI: Object to the form.

11 What's a machination?

12 MR. PORTER: What I'm reading. I will  
13 rephrase, though.

14 BY MR. PORTER:

15 Q. Isn't it true that FM20 and FM21 are  
16 referring to the same meeting?

17 A. It appears so, yes.

18 Q. And that meeting was January 2nd,  
19 2007. Is that right?

20 A. That's what I see here, yes.

21 Q. And you would agree that the comments  
22 that were being made at that meeting related  
23 primarily and boisterously about the landfill or  
24 proposal for a landfill. Is that correct?

1 A. The comments from the meeting?

2 Q. The comments from the public at that  
3 meeting.

4 A. From the public. That was most of the  
5 public comment, yes.

6 Q. But that meeting was actually supposed  
7 to be about annexation. Isn't that right?

8 MR. DOMBROWSKI: I'll object to the  
9 form. Foundation.

10 BY MR. PORTER:

11 Q. If you know?

12 MR. HALLORAN: Mr. Porter, can you  
13 rephrase, please?

14 BY MR. PORTER:

15 Q. If you know, wasn't it -- well, strike  
16 that.

17 You reviewed the agenda for that  
18 meeting when you attended it, didn't you?

19 A. No.

20 Q. Did you know that that meeting was  
21 supposed to be concerning the proposed annexation of  
22 the property as opposed to the siting for the  
23 property for a landfill purpose?

24 A. I don't know -- I don't recall if I

1 knew that at that time.

2 Q. Do you know that now?

3 A. Yes.

4 Q. Well, so you're testifying you were  
5 unaware at the -- at the time you sat at the meeting  
6 that the purpose of the meeting was annexation. Is  
7 that correct?

8 A. You asked me if I knew that before the  
9 meeting. At the meeting, it was stated that this  
10 was about the annexation. That's most likely when I  
11 learned about it, but I can't say when I learned  
12 about it.

13 Q. Okay. And at that meeting that was  
14 supposed to be about annexation, the vast majority  
15 of comments that were allowed and entertained from  
16 the public were about proposed -- or a possibly  
17 proposed landfill. Is that right?

18 A. I believe so, yes.

19 Q. You mentioned in both FM20 and FM21  
20 that an attorney for the applicant was laughing at  
21 Rose Spears. Do you recall that?

22 A. Can you point -- direct me to where  
23 that is?

24 Q. Well, first I'm asking if you recall

1 that.

2 A. Vaguely.

3 Q. I'll try to find the exact text here.  
4 I'm going to withdraw that until I can figure out  
5 where that was.

6 You believe that the city council  
7 was trying to push through the annexation. Is that  
8 right?

9 A. That's what I read in the paper.

10 Q. Well, and that was also your opinion.  
11 Isn't that correct?

12 A. That's where my opinion came from,  
13 yes.

14 Q. And ultimately, your web page had  
15 some -- at FM21, some text concerning what is next.  
16 Is that correct?

17 A. Do you know where that's at? Oh, what  
18 is next?

19 Q. It's marked YOR61, bottom of the  
20 page --

21 A. I see it now.

22 Q. -- of FM21.

23 A. I see that now. And what do you want  
24 to know about that?

1 Q. Your web page contained some language  
2 entitled, "What is next." Is that right?

3 A. Yes.

4 Q. And in that publication, you stated as  
5 follows: "I'm asking you to take action. If you  
6 want to stop the landfill, you can do several simple  
7 things to make a difference."

8 Did you write that?

9 A. Yes.

10 Q. You then went on to say, "Vote for new  
11 leadership by voting for Robyn Sutcliff on  
12 April 17th, 2007. I will vote against the  
13 annexation of a landfill property." Isn't that  
14 right?

15 A. Yes.

16 Q. You also indicated, "At your  
17 convenience, you should contact your alderman.  
18 Encourage them to vote against the annexation  
19 landfill property." Is that correct?

20 A. Yes.

21 MR. PORTER: I move for admission of  
22 FM20 and 21.

23 MR. DOMBROWSKI: No objection.

24 MR. HALLORAN: Okay. No objection.

1 Petitioner's Exhibit 20 and 21 are admitted. I  
2 think that's the first time we got along.

3 BY MR. PORTER:

4 Q. Now, in FM20 and 21, you never  
5 commented or posted or wrote about any positive  
6 comments concerning the landfill. Is that right?

7 A. Not that I recall.

8 Q. You also reported at FM20 and 21, and  
9 in particular FM20 -- I'm sorry. Look at 21 on page  
10 YOR60 -- that Rose Spears was obviously against the  
11 landfill. Is that right?

12 MR. DOMBROWSKI: I'll object to the  
13 form. It mischaracterizes the document.

14 MR. PORTER: I'm not asking her to  
15 characterize it.

16 MR. HALLORAN: I'm sorry. Rebecca,  
17 could you read that question back?

18 (Whereupon, the record was read as  
19 requested.)

20 BY MR. PORTER:

21 Q. I'll make it simple and withdraw it.

22 Isn't it true that when you attend  
23 the meeting on January 2nd, 2007, you understood  
24 that Rose Spears was against the landfill?

1 MR. DOMBROWSKI: I'll object to the  
2 form. It calls for speculation.

3 MR. HALLORAN: She can answer if -- if  
4 you can answer, you may do so.

5 THE WITNESS: No.

6 BY MR. PORTER:

7 Q. Isn't it true that you reported that  
8 the no landfill sign -- "People applauded on cue  
9 when their hero, Rose Spears, poked holes in Fox  
10 Moraine's threatening statements?"

11 A. That's what I wrote, yes.

12 Q. And how exactly did you come to the  
13 conclusion that Rose Spears was the hero of the no  
14 landfill people?

15 MR. DOMBROWSKI: I'll object to the  
16 form. It mischaracterizes her testimony and the  
17 document.

18 MR. HALLORAN: How so?

19 MR. DOMBROWSKI: It doesn't say  
20 anything that Rose Spears, in the document, is  
21 anti-landfill.

22 MR. PORTER: That's not what I asked.

23 MR. HALLORAN: Yeah. You don't --  
24 miss Sutcliff, you can answer if you know.



1 Objection overruled.

2 THE WITNESS: Can -- I'm sorry. Can  
3 you state that again?

4 BY MR. PORTER:

5 Q. How exactly did you come to the  
6 conclusion that Rose Spears was the hero of the no  
7 landfill people?

8 A. As I recall, when Rose spoke, a lot of  
9 people cheered.

10 Q. Now, when you were campaigning --  
11 well, strike that.

12 Before I go there, FM22 and FM23  
13 are also copies of documents that you authored and  
14 posted. Is that correct?

15 A. I authored them.

16 Q. And you posted them on your website  
17 for people to review. Is that right?

18 A. Well, some of my drafts did not make  
19 it to the website, so these came off my computer.  
20 My website is no longer in service, so I couldn't  
21 say specifically which ones made it to the website.  
22 But that was the intent of writing them.

23 Q. Okay. Are those true and accurate  
24 copies of the documents that you authored?

1           A.       They appear to be, yes.

2                   MR. PORTER:   I move for admission of  
3   22 and 23.

4                   MR. HALLORAN:   Mr. Dombrowski?

5                   MR. DOMBROWSKI:   The trend continues.  
6   No objection, Mr. Halloran.

7                   MR. HALLORAN:   Thank you.   And I  
8   retract my -- getting along, because it was just in  
9   the last couple exhibits before that.   It was  
10  supposed to be funny, but it's not.

11                               In any event, Petitioner's  
12  Exhibit 22 and 23 are admitted without objection.

13  BY MR. PORTER:

14           Q.       Now, when you were campaigning, at no  
15  time did you ever tell anyone that you could not  
16  speak about the landfill.   Is that correct?

17           A.       No, no.

18           Q.       My statement was correct?

19           A.       Not the way I heard it, so could you  
20  say it again?

21           Q.       While you were campaigning for  
22  election, you never told the public that you were  
23  campaigning so that you could not speak about the  
24  landfill project.   Is that right?

1           A.       I told the public I was not able to  
2 speak about the landfill.

3           Q.       Now, you and I have met before. Is  
4 that correct?

5           A.       Yes.

6           Q.       And as a matter of fact, I took your  
7 deposition. Is that right?

8           A.       Yes.

9           Q.       And your deposition happened awhile  
10 back. Is that right?

11          A.       Yes.

12          Q.       And as a matter of fact, would you  
13 agree your recollection was probably fresher when  
14 you gave your deposition than it is several months  
15 later today?

16          A.       It was three weeks ago, but yes.

17          Q.       And at that time, at Page 32, Line 7,  
18 isn't it true that I asked you, "At any time, did  
19 you tell the public while campaigning that you would  
20 not be approached about the landfill," to which you  
21 responded no?

22                   MR. DOMBROWSKI: What line are you at,  
23 Mr. Porter?

24                   MR. PORTER: Page 32, Line 7.

1 THE WITNESS: I --

2 MR. DOMBROWSKI: Well, this is  
3 improper impeachment. In the deposition, Mr. Porter  
4 used the word approachable. I think his question  
5 was much different than that.

6 MR. HALLORAN: That was my  
7 recollection as well.

8 BY MR. PORTER:

9 Q. Did you ever tell anyone that you  
10 would not be approachable concerning the landfill  
11 while campaigning?

12 MR. DOMBROWSKI: Object to the form of  
13 the question. Vague.

14 MR. HALLORAN: She can answer. Do you  
15 know what that means, Ms. Sutcliff? Can you  
16 rephrase, Mr. Porter, please?

17 THE WITNESS: No, no, I'm sorry.  
18 Approachable is --

19 BY MR. PORTER:

20 Q. Did you tell people you couldn't talk  
21 to them about the landfill while campaigning?

22 A. Yes.

23 Q. At any time in your campaigning, were  
24 you ever informed that members of city council were

1 not supposed to be communicating with members of the  
2 public?

3 A. Yes.

4 Q. And who told you that?

5 A. I believe it was Alderman Spears.

6 Q. Okay. So while you were campaigning,  
7 you knew that you were not supposed to be giving  
8 your position regarding the landfill. Is that  
9 right?

10 A. No.

11 Q. You just understood that you weren't  
12 supposed to learn or hear of what the public's  
13 position was. Is that correct?

14 A. No.

15 Q. Okay. So while you were campaigning,  
16 you believed it was perfectly appropriate to be  
17 voicing your opinions about the landfill, right?

18 MR. DOMBROWSKI: I'll object. It's  
19 been asked and answered.

20 MR. HALLORAN: I'm confused. She can  
21 answer it.

22 THE WITNESS: I am too.

23 MR. HALLORAN: Overruled. Yeah, I can  
24 tell. But can you answer Mr. Porter's question? Do

1 you need him to repeat it slower?

2 THE WITNESS: I don't want to -- he  
3 asked me several questions that are just worded just  
4 a little bit different. And my statement is that at  
5 some point, Alderman Spears approached me and said  
6 it would not  
7 be -- I should not, probably, talk about the  
8 landfill. At that point, I stopped. I scrubbed my  
9 website. I didn't distribute my newsletter.

10 BY MR. PORTER:

11 Q. Okay.

12 A. Is that clear?

13 Q. Let me show you what's been marked as  
14 FM25. Isn't it true that that was the brochure that  
15 you handed out to over 200 households while  
16 campaigning?

17 A. No.

18 Q. Okay. What's wrong with my statement?

19 A. This was my January newsletter. I had  
20 three of them. I probably handed it out for a few  
21 weeks before I was informed that I shouldn't speak  
22 about the landfill. At that point, I created a new  
23 newsletter and this one was discarded.

24 Q. You don't deny that you distributed

1 this newsletter. Is that correct?

2 A. No. I mean yes. I mean no.

3 Q. Did you distribute this newsletter?

4 A. Yes, briefly.

5 Q. Okay. And isn't it true that this  
6 newsletter explicitly provides that, "If you want to  
7 stop the landfill, you can do several simple things  
8 to make a difference. Vote for new leadership by  
9 voting for Robyn Sutcliff on April 17, 2007."

10 A. I will vote against the annexation of  
11 the landfill property, yes.

12 Q. Was what I read contained in the  
13 newsletter?

14 A. Yes.

15 Q. And isn't it true, then, that while  
16 you were campaigning, you had already made up your  
17 mind to vote against the landfill?

18 A. No.

19 Q. You indeed did vote against the  
20 landfill. Is that correct?

21 A. Yes.

22 Q. You lived up to this campaign promise.  
23 Is that right?

24 MR. DOMBROWSKI: I'll object to the

1 form of the question. It mischaracterizes her  
2 testimony. The document doesn't say she's going to  
3 vote against the landfill.

4 MR. HALLORAN: Sustained.

5 BY MR. PORTER:

6 Q. The document provides you can do  
7 several different things to stop the landfill,  
8 right?

9 A. Yes.

10 Q. And one of those things is to vote for  
11 you, correct?

12 MR. DOMBROWSKI: It's been asked and  
13 answered. The document reads as it reads.

14 MR. HALLORAN: You may answer if  
15 you're able.

16 THE WITNESS: What was the question?

17 BY MR. PORTER:

18 Q. And one of those things is to vote for  
19 you, correct?

20 A. The whole question, please?

21 Q. That was the whole question.

22 A. And it's a fragment. What was the  
23 beginning of that?

24 Q. It may be a sentence fragment, but it



1 was the whole question.

2 MR. DOMBROWSKI: Well, then I'll  
3 object.

4 MR. HALLORAN: It wasn't the whole  
5 sentence. There was a bit before that.

6 MR. PORTER: Well, she's already  
7 answered that. I will do it again.

8 BY MR. PORTER:

9 Q. Isn't it true that you authored the  
10 following: "If you want to stop the landfill, you  
11 can do several simple things," correct?

12 A. Yes.

13 Q. And one of those simple things was to  
14 vote for you, right?

15 MR. DOMBROWSKI: This has been asked  
16 and answered.

17 MR. HALLORAN: No. I haven't heard  
18 it, because there's a lot of objections and a lot of  
19 confusion.

20 THE WITNESS: That's what it says,  
21 yes.

22 BY MR. PORTER:

23 Q. Now, you also spoke at a Taylor Street  
24 Pizza while campaigning. Is that correct?

1 A. Yes.

2 Q. And you raised money at that location.  
3 Is that right?

4 A. Yes.

5 Q. And at that time, you spoke about your  
6 opposition to the landfill. Isn't that right?

7 A. I don't believe so.

8 Q. Who spoke there with you?

9 A. No one.

10 Q. And isn't it true that at that  
11 location, you received contributions from members of  
12 FOGY?

13 A. I'm not certain of that.

14 Q. Now, your husband also drafted a  
15 correspondence concerning this matter. Isn't that  
16 correct?

17 A. Yes.

18 Q. Let me show you what's been marked as  
19 FM24. Is that a true and accurate copy of the  
20 correspondence that your husband drafted?

21 MR. DOMBROWSKI: I'll object. This is  
22 irrelevant. This is not a statement of the alderman  
23 -- for Ms. Sutcliff when she was running for office.  
24 This is something that purports to be a statement

1 from her husband.

2 MR. HALLORAN: Well, I mean, if she  
3 can answer yes or no, that's fine. But how far are  
4 we going to delve into this?

5 MR. PORTER: Just three questions.

6 MR. HALLORAN: Mr. Porter --

7 MR. PORTER: Two or three questions.

8 MR. HALLORAN: Okay.

9 THE WITNESS: The question was?

10 MR. PORTER: I have to have it read  
11 back. I'm sorry.

12 MR. HALLORAN: Could you read the  
13 question?

14 (Whereupon, the record was read as  
15 requested.)

16 THE WITNESS: Yes.

17 BY MR. PORTER:

18 Q. And you, indeed, saw this  
19 correspondence before it was drafted -- before it  
20 was published in the paper. Is that correct?

21 A. I don't recall if I saw it prior to  
22 publication.

23 Q. And this publication was in support  
24 of, "Valerie Burd's blowing the whistle on the

1 mayor's underhanded, backroom plan to create a  
2 corridor of the development to the proposed landfill  
3 site." Is that right?

4 MR. DOMBROWSKI: I'll object again on  
5 relevance grounds. This is not something authored  
6 by Ms. Sutcliff. This is from her husband.

7 MR. HALLORAN: Yeah. I agree. I  
8 agree, Mr. Porter.

9 BY MR. PORTER:

10 Q. Did you ever direct your husband not  
11 to publish this letter?

12 A. No.

13 Q. This letter was published while you  
14 were running for office. Is that correct?

15 MR. DOMBROWSKI: Same objections.

16 MR. HALLORAN: Sustained.

17 MR. PORTER: In case I have not done  
18 so, I want to move for admission of FM23 and 24.

19 MR. HALLORAN: Twenty-three and 24 or  
20 25?

21 MR. PORTER: I'm sorry. Twenty-four  
22 and 25.

23 MR. DOMBROWSKI: Well, we have no  
24 objections to 25. We do have objections, as stated,

1 to 24. It's hearsay and it's irrelevant.

2 MR. HALLORAN: Yeah. Petitioner's  
3 Exhibit 24 I'll take as an offer of proof. I will  
4 not take it into evidence.

5 BY MR. PORTER:

6 Q. Now, you received substantial  
7 materials on the evening of May 23rd. Is that  
8 correct?

9 A. Yes.

10 Q. And isn't it true that those materials  
11 included the city consultant's reports from Dirk  
12 Price and the hearing officers report from  
13 Mr. Clark?

14 MR. DOMBROWSKI: I'll object to the  
15 question, Mr. Hearing Officer. The case law says  
16 that the -- materials such as this -- and I believe  
17 he's going to get into the post hearing comments  
18 submitted by Fox Moraine. The requirement is only  
19 they be provided to the city council, not that the  
20 city council go through them.

21 MR. HALLORAN: Rebecca, could you read  
22 the question back, please?

23 (Whereupon, the record was read as  
24 requested.)

1 MR. DOMBROWSKI: I don't have an  
2 objection to what they received or if they received.

3 MR. HALLORAN: Okay.

4 THE WITNESS: It was two years ago. I  
5 don't really recall.

6 MR. HALLORAN: Okay.

7 THE WITNESS: Honestly.

8 MR. HALLORAN: Thank you.

9 BY MR. PORTER:

10 Q. Do you also know that there were about  
11 1,400 pages of material that were submitted from the  
12 applicant that evening?

13 A. I don't recall.

14 Q. And isn't it true that the  
15 resolution -- or the resolution that was ultimately  
16 voted upon was presented to you the very next  
17 evening?

18 A. I don't recall. I wasn't -- I didn't  
19 review any of that. It's two years ago. I don't  
20 remember.

21 Q. Now, when you were drafting your web  
22 page about stopping the landfill, what independent  
23 research had you done concerning the landfill at  
24 that time?

1           A.       None.

2           Q.       So why is it that before you had ever  
3 attended any hearing you had come to the conclusion  
4 that the landfill should be stopped?

5                   MR. DOMBROWSKI: I'll object to the  
6 question. It mischaracterizes the document. It's  
7 not what she stated.

8                   MR. HALLORAN: Mr. Porter?

9                   MR. PORTER: I don't agree. She  
10 indicated -- she indicated that if, indeed, one  
11 wanted to stop the landfill, all they had to do was  
12 vote for her. So now my question is: Why it is  
13 that she wanted to stop the landfill?

14                   MR. HALLORAN: I'll agree. I'll allow  
15 it.

16                   THE WITNESS: Okay. Why did I  
17 write -- okay. What's the question?

18 BY MR. PORTER:

19           Q.       If you did no independent research,  
20 why is it that you campaigned on a premise that,  
21 "Vote for me, and you can stop the landfill?"

22           A.       I was uninformed, I believe, at the  
23 time.

24           Q.       But nonetheless, you came to that

1 judgment that the landfill should be stopped,  
2 correct?

3 MR. DOMBROWSKI: I'll object to the  
4 question. It mischaracterizes her testimony.

5 MR. HALLORAN: Sustained.

6 THE WITNESS: This is what I wrote,  
7 yeah.

8 BY MR. PORTER:

9 Q. You would agree that you had already  
10 reached a judgment that the landfill should be  
11 stopped as of the date that you wrote that  
12 publication. Is that correct?

13 MR. DOMBROWSKI: I'll object. It's  
14 been asked and answered.

15 MR. HALLORAN: Well --

16 MR. PORTER: That's the heart of the  
17 issue. I'm asking about --

18 MR. HALLORAN: And I'm not sure it's  
19 been asked and answered between the objections and  
20 the unresponsiveness of the witness, and among other  
21 things. Could  
22 you -- can you answer the question, and then --

23 THE WITNESS: Can I answer the  
24 question --



1 MR. HALLORAN: That Mr. Porter just  
2 posed.

3 THE WITNESS: -- why I wrote this?  
4 Did I have --

5 MR. HALLORAN: The question, Mr.  
6 Porter --

7 MR. PORTER: I would ask that it be  
8 read back.

9 MR. HALLORAN: Okay. Rebecca, can you  
10 read it back?

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

13 MR. DOMBROWSKI: Same objections.

14 MR. HALLORAN: Overruled.

15 THE WITNESS: No.

16 BY MR. PORTER:

17 Q. Your husband, in the letter which has  
18 not been admitted, but has been entered --

19 MR. PORTER: I'll have to do this as  
20 an offer of proof, Mr. Halloran, since this document  
21 is not admitted. So this question is an offer of  
22 proof.

23 MR. HALLORAN: This is 25 -- 24?

24 MR. PORTER: Twenty-four.

1 BY MR. PORTER:

2 Q. In the correspondence drafted by your  
3 husband, he indicates that, "It has been well  
4 documented that landfills reduce the air quality  
5 around them, but the political tactics by the mayor  
6 and his dumpling gang has caused a premature  
7 extension on our city."

8 Did you rely upon statements made  
9 by your husband about the effects of the landfill  
10 and coming to your conclusions by running for office  
11 that the landfill should be stopped?

12 MR. DOMBROWSKI: We were now in an  
13 offer of proof, correct?

14 MR. HALLORAN: We're in an offer of  
15 proof, yeah.

16 MR. PORTER: It's still in an offer of  
17 proof.

18 THE WITNESS: No.

19 MR. PORTER: Nothing further.

20 MR. HALLORAN: Thank you.

21 Mr. Dombrowski?

22 MR. DOMBROWSKI: Thank you, Mr.  
23 Hearing Officer.

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

1 BY MR. DOMBROWSKI:

2 Q. Alderman, why did you decide to run  
3 for office?

4 A. Well, I've been a resident of the city  
5 for 13 years, probably, and I've been in Kendall  
6 County my entire life and seen a lot of change  
7 happen, and I didn't like the direction I saw of the  
8 growth and the quality of the growth of the city,  
9 and that's what probably got me the most upset. I  
10 actually decided I could make a difference if I  
11 joined the political side of it.

12 Q. And had you ever held office before?

13 A. No.

14 Q. And in January of 2007, did you have  
15 any concerns about the annexation process?

16 A. I'm sorry. What date?

17 Q. As of January of 2007.

18 A. Yes, I did. It was a 17-day  
19 annexation. It was not enough time to review -- to  
20 review such an important, you know, procedure to add  
21 to the city. That doesn't seem like enough time to  
22 review it.

23 Q. Now earlier you mentioned that you  
24 scrubbed your website at some point. Do you recall

1 that?

2 A. Yes.

3 Q. When did you start your website?

4 A. In January, I believe. Early January  
5 of '07.

6 Q. And when did you last update it?

7 A. Before the election was the last time  
8 it was updated, which was April of '07.

9 Q. And what do you mean when you said  
10 that at some point you had scrubbed your website?

11 A. I took anything off of there that  
12 would reference the landfill or reference an  
13 annexation related to this property.

14 Q. And why did you do that?

15 A. It was a recommendation of an alderman  
16 at the time.

17 Q. That was Alderman Spears?

18 A. Yes, mm-hmm.

19 Q. But you still continued your website,  
20 correct?

21 A. Yes.

22 Q. And you put up other materials related  
23 to your campaign after that?

24 A. Yes. My campaign -- and I attended

1 all city council meetings, and I did a narrative of  
2 every campaign -- of every council meeting, so the  
3 public could know what happened at council meetings.

4 Q. Did you run out of slate with other  
5 candidates?

6 A. No.

7 Q. You were not in a group of any other  
8 candidates running for office?

9 A. No. I didn't know any of the  
10 candidates or the alderman.

11 Q. So if anyone has testified or  
12 suggested that you were part of a slate of  
13 candidates, that would be incorrect?

14 A. That's true, yes. It's true that it's  
15 incorrect, yes.

16 MR. DOMBROWSKI: I have nothing  
17 further. Thank you.

18 MR. HALLORAN: Thank you,  
19 Mr. Dombrowski. Mr. Porter?

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

21 BY MR. PORTER:

22 Q. Isn't it true that you gave an  
23 interview shortly before April 15, 2007, to Heather  
24 Gillers?

1           A.       Yes.

2                   MR. DOMBROWSKI: I'll object. This is  
3 beyond the scope of my questions.

4                   MR. HALLORAN: Mr. Porter?

5                   MR. PORTER: I don't believe it is. I  
6 think he's opened the door to some discussion  
7 concerning the statements that she's made.  
8 Regardless, I'd ask for some leeway to bring it up  
9 again.

10                  MR. HALLORAN: I'll allow that.

11 BY MR. PORTER:

12                  Q.       And at that -- in that article, which  
13 has been marked as FM13, isn't it true that you told  
14 miss Gillers that, "A landfill would be a negative  
15 addition to the city. I have no question about  
16 that?"

17                  A.       That's what it says, yes.

18                  Q.       And that's what you told her, right?

19                  A.       I can't recall the exact words I said  
20 to her. We had an extensive conversation. It was  
21 two years ago.

22                  Q.       But you agree that you informed her  
23 that you were against the landfill coming. You  
24 thought it would be a bad addition to the city,

1 right?

2 A. I don't know that for sure.

3 Q. Did you tell her you thought it would  
4 be a positive addition to the city?

5 A. I don't recall.

6 Q. At any time, have you ever held the  
7 opinion that it would be a positive addition to the  
8 city?

9 A. There's positives and negatives to  
10 anything. It needs to be weighed.

11 Q. The purpose of making the statement to  
12 Ms. Gillers was to facilitate your campaign. Isn't  
13 that right?

14 MR. DOMBROWSKI: I'll object to the  
15 question. It mischaracterizes the testimony. She  
16 said she doesn't recall making the statement.

17 MR. HALLORAN: Yeah, I agree.

18 Sustained.

19 BY MR. PORTER:

20 Q. Well, the purpose of making a  
21 statement to Ms. Gillers was to facilitate your  
22 campaign, correct?

23 MR. DOMBROWSKI: I'll object to the  
24 question.

1 MR. HALLORAN: Sustained.

2 MR. DOMBROWSKI: What statement are we  
3 talking about?

4 MR. HALLORAN: Exactly. Mr.  
5 Dombrowski -- Mr. Porter, what statement?

6 MR. PORTER: The statement that  
7 appears in the April 15th newspaper article.

8 MR. DOMBROWSKI: Same objection. She  
9 said she doesn't recall making the statement.

10 MR. HALLORAN: I agree. Sustained.

11 BY MR. PORTER:

12 Q. Isn't it true that at your deposition,  
13 I asked you at Page 43, Line 20, "You knew that your  
14 statements would be put forth in the public sector.  
15 Is that correct," to which you responded, "Uh-huh."  
16 I said, "Yes?" You said, "Yes, I'm sorry." I then  
17 asked, "The purpose of making the statement was to  
18 facilitate your campaign, correct?" You responded  
19 yes.

20 Did you make those statements to  
21 me at your deposition?

22 A. Yes.

23 Q. And did you understand in the  
24 deposition I was asking about the statement of April



1 15th, 2007?

2 MR. DOMBROWSKI: Well, what statement  
3 are we referring to?

4 MR. PORTER: I just said.

5 MR. HALLORAN: The April 15th?

6 MR. PORTER: The statement that's  
7 contained in the article of April 15th, 2007.

8 THE WITNESS: Are you waiting for me?

9 MR. HALLORAN: Yeah.

10 THE WITNESS: I'm sorry.

11 MR. HALLORAN: You can answer if  
12 you're able.

13 THE WITNESS: I said that. I believe  
14 you're asking me the question differently than you  
15 asked it then. The questions prior are different.

16 BY MR. PORTER:

17 Q. At any time did you call Ms. Gillers  
18 and tell her you thought you'd been misquoted in any  
19 way?

20 A. No.

21 MR. PORTER: I have nothing further.

22 MR. HALLORAN: Thank you, Mr. Porter

23 Mr. Dombrowski?

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

1 BY MR. DOMBROWSKI:

2 Q. Just one question, Alderman. You  
3 understood that if you were elected you would be  
4 voting on the application, correct?

5 A. That's what I believed at the time I  
6 wrote this, yes.

7 Q. And what did you understand your role  
8 to be as a decision maker in the application?

9 A. I didn't really understand the process  
10 at the time, so I didn't know.

11 Q. What did you understand you were  
12 allowed to consider in making your vote on the  
13 application?

14 MR. PORTER: Well, I do not have an  
15 objection to this question, as long as we  
16 acknowledge it opens the door to me asking the same  
17 one.

18 MR. HALLORAN: I agree.

19 MR. DOMBROWSKI: I'll withdraw the  
20 question. Nothing further.

21 MR. HALLORAN: Okay. Thank you, Ms.  
22 Sutcliff. You may step down, Alderman.

23 THE WITNESS: Thank you.

24 MR. HALLORAN: And unfortunately, I

1 think you still have to leave the hearing room,  
2 because you may or may not be called back.

3 THE WITNESS: That's fine.

4 MR. HALLORAN: I'm sure you're looking  
5 forward to that.

6 THE WITNESS: Yes.

7 MR. HALLORAN: Thank you.

8 THE WITNESS: Thank you.

9 MR. HALLORAN: We can go off the  
10 record for a second.

11 (Whereupon, a discussion was had  
12 off the record.)

13 (Witness sworn.)

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

15 BY MR. MUELLER:

16 Q. Would you state your full name,  
17 please?

18 A. Walter George Werderich.

19 Q. Mr. Werderich, you are a member of the  
20 Yorkville city council?

21 A. Yes.

22 Q. When were you elected as an alderman?

23 A. I was elected in April of 2006.

24 Q. And when did you first announce your

1 candidacy to run for alderman?

2 A. I don't remember the exact date. I  
3 want to say it was -- I might be wrong on the date.  
4 I think I was elected in April of 2007 it was the  
5 end of 2006 when I announced my candidacy.

6 Q. And, in fact, didn't you announce your  
7 candidacy by the end of October of 2006?

8 A. It could've been around that date,  
9 yes.

10 Q. All right. Because we've got  
11 newspaper articles confirming your candidacy as  
12 early as November 2nd. Does that sound about right?

13 A. That sounds about right, yes.

14 Q. Now, what is FOGY?

15 A. It's an Illinois not for profit  
16 corporation.

17 Q. And the acronym means Friends of  
18 Greater Yorkville?

19 A. Yes.

20 Q. When was that formed?

21 A. I don't remember the exact date off  
22 the top of my head, but I do want to say it was at  
23 the beginning of 2007, end of 2006, somewhere in  
24 there.

1 Q. Okay. Well, actually it was formed in  
2 2006, wasn't it?

3 A. I just said I don't recall.

4 MR. HALLORAN: Could you keep your  
5 voice up?

6 THE WITNESS: I apologize.

7 BY MR. MUELLER:

8 Q. Mr. Werderich, you were one of the  
9 cofounders of Friends of Greater Yorkville, weren't  
10 you?

11 A. There was more than two founders.

12 Q. You were one of the cofounders?

13 A. I was one of the founders, yes. But  
14 there was more than two, if two is referring to  
15 cofounders -- or cofounders is referring to two.

16 Q. The other founders would've been  
17 George Gilson, Ron Parish and Tom Gillmore?

18 A. Yes.

19 Q. And the four of you then founded the  
20 group?

21 A. Yes.

22 Q. And that group was founded shortly  
23 after the annexation of the Fox Moraine property in  
24 the city of Yorkville, wasn't it?

1           A.       It was a couple of months afterward,  
2       yes.

3           Q.       Now, you attended the annexation  
4       public hearings, didn't you?

5           A.       I attended some of them.

6           Q.       All right. And you understood early  
7       on that the tone of the -- let me put this a  
8       different way. Would it be fair to characterize the  
9       bulk of the public comments made as being opposed to  
10      annexation?

11          A.       Opposed to annexation?

12          Q.       Yes.

13          A.       Yes.

14          Q.       And would it also be fair to  
15      characterize that a number of people who spoke  
16      against annexation specifically said, "The purpose  
17      of this annexation is to facilitate a landfill, and  
18      the way to stop the landfill is to not do the  
19      annexation?"

20          A.       Some of them did say that.

21          Q.       In fact, Mr. Gillson was very vehement  
22      about that point, wasn't he?

23          A.       Yes. If I recall correctly, yes.

24          Q.       He was one of your -- the four

1 cofounders?

2 A. That's correct.

3 Q. And you actually drafted the legal  
4 documents in order to make that a not for profit  
5 corporation, didn't you?

6 A. That's correct.

7 Q. And I take it you were not paid for  
8 that?

9 A. No.

10 Q. Do you know when you resigned from  
11 FOGY, if you ever did?

12 A. At the end of 2006.

13 Q. Let's go back for a second to the  
14 annexation process. You spoke out at some of those  
15 annexation hearings, didn't you?

16 A. I spoke at some of the annexation  
17 hearings, yes.

18 Q. You were still a citizen at that time  
19 and not an alderman, right?

20 A. That's correct.

21 Q. By the way, you are an attorney  
22 licensed to practice law in the state of Illinois,  
23 aren't you?

24 A. Yes.

1 Q. And where are you employed?

2 A. Right now?

3 Q. Yes.

4 A. Kane County, Illinois.

5 Q. Kane County what?

6 A. In Kane County.

7 Q. Okay. And when you spoke out against  
8 the annexation, you criticized the process the city  
9 was using, didn't you?

10 A. That was one of the things that I was  
11 critical of.

12 Q. And you also were critical of the  
13 timing of the annexation, weren't you?

14 A. That was one of the things that I made  
15 comment to, yes.

16 Q. Specifically that it was happening too  
17 fast, right?

18 A. No. There was other things, but that  
19 is one of the things that I did include in my  
20 statement.

21 Q. So you did say the annexation was  
22 happening too fast and that was disturbing to you?

23 A. I don't recall if I said that in any  
24 of my statements that I had made at any of the city



1 council meetings.

2 Q. You certainly said it in your  
3 discovery deposition, didn't you?

4 A. I did say that then, yes. But that  
5 wasn't the question.

6 Q. See, this is easy when -- you've read  
7 your deposition, right?

8 A. Yes.

9 Q. In the summer of 2007, about nine or  
10 ten months after the Fox Moraine annexation, the  
11 city annexed a parcel of property that actually  
12 connected to the Fox Moraine property and was owned  
13 by Virginia Wells. Do you recall that?

14 A. Yes.

15 Q. And that annexation also happened very  
16 quickly, didn't it?

17 A. Yes.

18 Q. And you didn't have a problem at the  
19 time of that one, did you?

20 A. No. I had voiced to certain members  
21 of the city council that I thought that that was  
22 happening relatively quickly, and that one of the  
23 things that I wanted to make sure of was that there  
24 was proper information that was disseminated to the

1 citizens of Yorkville, so that if anybody had any  
2 objections about that, that that information could  
3 be relayed to the members of the city council.

4 Q. Well, you remember being asked at your  
5 deposition, "Was there anything about the timing of  
6 the Wells annexation you objected to," and your  
7 answer was no.

8 MR. DOMBROWSKI: I'll object to the  
9 question. It's improper impeachment.

10 MR. MUELLER: We can get him a copy of  
11 his deposition, or I can just show him the page if  
12 he wants.

13 MR. HALLORAN: Sustained.

14 MR. DOMBROWSKI: That's not what I'm  
15 objecting to.

16 BY MR. MUELLER:

17 Q. We're going to hand you a copy of your  
18 discovery deposition taken on September 19th, 2008,  
19 and ask you to turn to Page 74. Directing your  
20 attention to Line 7, do you remember being asked,  
21 "Was there anything about the timing of the Wells  
22 annexation that you objected to?"

23 A. I think that my copy of the transcript  
24 may be paginated differently than yours.

1 Q. Well, if you look at the top right of  
2 the page, you'll figure it out. These are the page  
3 numbers here, not the bottom ones.

4 A. Okay. Line 7?

5 Q. Yeah.

6 A. Okay.

7 Q. It's there.

8 A. Okay.

9 Q. You were asked that question, correct?

10 A. Right. I didn't object to anything at  
11 that time on the record.

12 Q. And the annexation of the Wells  
13 property in 2007 made it legally more difficult for  
14 Fox Moraine to disconnect from the city of  
15 Yorkville, didn't it?

16 A. I don't know.

17 MR. DOMBROWSKI: I'll object to the  
18 question. It's irrelevant. This is beyond the time  
19 that the city council voted on the landfill  
20 application.

21 MR. MUELLER: Well, he said he didn't  
22 know. I think he's answered the question.

23 MR. HALLORAN: I'll allow it.

24 Overruled.

1 BY MR. MUELLER:

2 Q. And didn't you also express that -- in  
3 some of your public statements that you really  
4 didn't want the city to get involved in the landfill  
5 siting process, that you didn't think it was  
6 appropriate for them to be doing that?

7 A. I don't recall if I had said that at  
8 any of the public hearings. But I do know, just to  
9 clarify, that you and I discussed that at my  
10 deposition.

11 Q. And at that time, you indicated that  
12 you felt that during the annexation process that the  
13 city should not be dealing with the issue of the  
14 landfill?

15 A. There was -- yes.

16 Q. And did you also express a concern at  
17 that time that the city had not executed, as  
18 favorable, a host agreement with Fox Moraine as the  
19 county had with Waste Management?

20 A. I don't recall if I had said that at  
21 any of those hearings.

22 Q. That was, in fact, your belief,  
23 though, wasn't it?

24 A. I don't recall. Actually, just to

1 clarify the question, the first question was -- is  
2 that the host agreement wasn't favorable?

3 Q. That's correct.

4 A. And I had said that I don't recall if  
5 I made any statements. And then what was the  
6 followup question?

7 Q. But that was, in fact, your belief,  
8 that the city's host agreement wasn't as good as the  
9 county's?

10 A. Not necessarily. I think that there  
11 were different terms from both the county and the  
12 city in terms of the two host agreements that they  
13 were looking at. The terms were different, not  
14 necessarily making one better than the other.

15 Q. Now, at the meetings and hearings that  
16 you attended, you never saw anyone from the public  
17 acting inappropriately. Is that right?

18 A. In my opinion, no.

19 Q. No, that's not right, or no, they  
20 weren't acting inappropriately?

21 A. In my opinion, no one was acting  
22 inappropriately.

23 Q. And that would include Mr. Milliron,  
24 who had to be threatened with eviction from some of

1 the meetings?

2 MR. DOMBROWSKI: I'll object to the  
3 questions. Assumes facts not in evidence.

4 MR. MUELLER: We've already had  
5 testimony from the mayor that he was threatened with  
6 ejection a few times.

7 MR. DOMBROWSKI: She talked about  
8 times after she had been elected mayor.

9 MR. HALLORAN: I've heard testimony  
10 regarding -- is it Milliron?

11 MR. DOMBROWSKI: Yes.

12 MR. MUELLER: Yes.

13 MR. HALLORAN: -- being thrown out.

14 MR. DOMBROWSKI: After the mayor had  
15 been elected.

16 MR. MUELLER: That wasn't what she  
17 said in her deposition.

18 MR. HALLORAN: Well, we didn't broach  
19 that. Objection sustained.

20 BY MR. MUELLER:

21 Q. Todd Milliron is a friend of yours,  
22 right?

23 A. Yes.

24 Q. And he continues to be a friend of

1 yours?

2 A. Yes.

3 Q. He was a contributor to your campaign?

4 A. Not monetarily.

5 Q. He helped with time and effort though?

6 A. Yes.

7 Q. Do you remember an article about you  
8 with your picture in it in the Beacon on  
9 November 2nd, 2008, with the headline, "Yorkville  
10 Landfill Issue Fuels Bid for Office?"

11 A. I think I vaguely recall that, yes.  
12 But, I mean, I'm sure that I'll remember if you're  
13 asking followup questions.

14 Q. Well, that's the first time you ever  
15 ran for office, right?

16 A. Yes.

17 Q. So I'm going to guess that you  
18 probably read pretty carefully all articles that  
19 discussed your bid for that office?

20 A. You're right, Mr. Mueller. However,  
21 it was quite some time ago, so you'd have to -- I  
22 have to apologize if my recollection is not as good  
23 as you'd like it to be.

24 Q. And this one even has your picture in

1 it. So I'm guessing that your wife probably looked  
2 at this one, too, right?

3 A. I hope it's a good picture,  
4 Mr. Mueller.

5 Q. It's not bad, actually.

6 A. Great. Again, I apologize. I'm not  
7 trying to play any type of cat and mouse game here.  
8 There are a lot of documents that I may not recall,  
9 and I -- if that's the case, please present them to  
10 me.

11 Q. Mr. Werderich, you're fine.

12 A. Oh, okay.

13 Q. I just have a couple quick questions  
14 about this newspaper article.

15 A. Thank you.

16 Q. The article was written by the now  
17 famous Heather Gillers. You know her, I take it?

18 A. Yes.

19 Q. You've talked to her on a number of  
20 occasions both before and after you were elected,  
21 correct?

22 A. Yes.

23 Q. And if you go to the column  
24 immediately to the right of your picture, it talks



1 about your growing frustration over the city's  
2 handling of the plan to locate a landfill in  
3 Yorkville. Is that an accurate characterization of  
4 what you conveyed to Ms. Gillers?

5 A. Yes.

6 Q. And then in the next column, it says,  
7 "Werderich helped mobilize concerned citizens  
8 through a mass e-mail list and internet messaging  
9 board, and their vocal presence at city hall likely  
10 contributed to the city's decision to hold a  
11 question and answer session on the landfill this  
12 week."

13 Is that an accurate  
14 characterization of what you did, or did Ms. Gillers  
15 get it wrong?

16 A. An accurate representation of what I  
17 had did -- I guess that's some of what I did, yes.

18 Q. So she's not wrong in that statement?

19 A. No, she's not wrong.

20 Q. There was another article about all of  
21 the campaigns in the Beacon again on November 7th,  
22 just the following week, in which you are quoted by  
23 Heather Gillers as saying in regard to the entire  
24 landfill controversy, "I just think that they're not

1 listening to their constituents, Werderich said of  
2 the council's statement per treatment of the  
3 landfill issue."

4 Is that an accurate quote?

5 MR. DOMBROWSKI: I'll object to the  
6 question. Foundation. Quote about what?

7 MR. MUELLER: Well, the statement in  
8 its entirety, and I can show it to the witness.  
9 I'll mark it as an exhibit.

10 MR. HALLORAN: Yeah. I don't have a  
11 copy either.

12 MR. MUELLER: All right.

13 MR. HALLORAN: If you could pass them  
14 out like you did earlier. Thanks. Get Mr. Porter  
15 to get up and pass them out. He's younger.

16 MR. MUELLER: I need the exercise  
17 more. I've got one for myself, and one for the  
18 hearing officer or counsel. I'm short one.

19 MR. HALLORAN: Give it to counsel.  
20 I'll just --

21 MR. MUELLER: All right.

22 MR. DOMBROWSKI: Thank you.

23 BY MR. MUELLER:

24 Q. Mr. Werderich, I've handed you what's

1 marked as Exhibit Number 27, which is an article  
2 from the Beacon with the headline, "Landfill Deal  
3 May Be Key to Elections."

4 Did you ever see that article  
5 before?

6 A. Yes.

7 Q. And in the first column where it shows  
8 it is continued from Page A1, you'll see a break,  
9 and it starts with, "Aldermanic races." Do you see  
10 that?

11 A. Yes.

12 Q. And then it talks about two members of  
13 Friends of Greater Yorkville running for alderman,  
14 you and Alderman Plocher. Do you see that?

15 A. Yes.

16 Q. So at that point in time, you were  
17 still a member of FOGY, and you were also a  
18 candidate for alderman, correct?

19 A. When was this written?

20 Q. November 7th.

21 A. Yes, I do believe so.

22 Q. All right. And at the very bottom of  
23 that column, there's -- you are quoted as saying,  
24 quote, "I just think that they're not listening to

1 their constituents, unquote, Werderich said of the  
2 council's treatment of the landfill issue."

3 Is that an accurate quotation?

4 A. That quotation was taken as part of a  
5 larger statement, where I said I was objecting to  
6 the process of the way that the city was handling  
7 the landfill all together, and I felt that the  
8 politicians involved weren't listening to the  
9 concerns of their constituents, and that's one of  
10 the reasons why I ran.

11 Q. And the wishes of the constituents, by  
12 the way, as you observed them at these various  
13 meetings was overwhelmingly anti-landfill, wasn't  
14 it?

15 A. There was a lot of different opinions  
16 that were voiced.

17 Q. But it --

18 A. I mean, I can't attest to what each  
19 one of their opinions were. I can attest, however,  
20 that there were a lot of people there that did not  
21 want a landfill in Yorkville.

22 Q. I mean, to be fair, at some of these  
23 larger meetings, such as the one at the high school  
24 auditorium and at the junior high, the people that

1 made anti-landfill statements got loud applause, and  
2 people that said anything pro-landfill got the  
3 silent treatment, and basically there weren't very  
4 many of them. Isn't that true?

5 A. I don't think everybody got loud  
6 applause, but I would say that the people that said  
7 something for the landfill probably didn't get any  
8 applause. That's correct.

9 Q. And do you remember actually speaking  
10 at a meeting of the city on November 30th, 2006?

11 A. I don't recall the specific date or  
12 the time. But like I had said, there were a lot of  
13 meetings which I spoke at, and I may have done it at  
14 that time.

15 Q. Do you remember opining with regard to  
16 the landfill hearing process that, "It's not  
17 adversarial. The hearing process presents only one  
18 side of the story. That's the side of the people  
19 that want to put in the landfill."

20 A. I do recall saying that, yes. But  
21 that's not all of what I said. That's a portion of  
22 what I said.

23 Q. By the way, you were on Valerie Burd's  
24 campaign committee, weren't you?

1 A. Yes.

2 Q. Mr. Milliron was also?

3 A. No.

4 Q. Let me show you what I've marked as  
5 Fox Moraine Exhibit No. 28.

6 MR. HALLORAN: Thank you, sir.

7 BY MR. MUELLER:

8 Q. And I'll ask you if you can identify  
9 that.

10 A. Yes.

11 Q. What is that?

12 A. This is a palm card or election  
13 material that I handed out when I was running for  
14 office.

15 Q. And does that election material state,  
16 "Wally was the first to question the annexation of  
17 the landfill property?"

18 A. That's what it says, yes.

19 Q. You authorized this card?

20 A. Yes.

21 Q. And you obviously put it out there in  
22 the hope that it would help you get elected?

23 A. And that's a true statement.

24 Q. Do you remember being interviewed

1 shortly before the election again by Heather Gillers  
2 for her Sunday feature story on the Yorkville  
3 election?

4 A. I think I remember that, yes.

5 Q. And do you remember that Heather  
6 Gillers asked you, "Would a safe state compliant  
7 landfill be a positive, negative, or neutral  
8 addition to Yorkville," and your answer, as reported  
9 in the newspaper article, is, "I don't think that  
10 the landfill is a good thing for Yorkville."

11 A. That's how it was reported. However,  
12 that statement was taken out of context of a lot of  
13 different musings that I gave to Heather, both for  
14 and against the landfill at the time of the  
15 interview.

16 Q. Well, you did say that though?

17 A. I also --

18 Q. Did she misquote you or did you say  
19 it?

20 A. I also -- yes. She did not misquote  
21 me. However, that being said, I also said a lot of  
22 things that were favorable to the landfill at that  
23 time, which were not reported in that article.

24 Q. Did you call Heather Gillers to

1 complain about being taken out of context?

2 A. No, I didn't follow up with a phone  
3 call about being taken out of context.

4 Q. By the way, during your campaign, did  
5 you have a website?

6 A. Yes.

7 Q. And on that website, you had a link to  
8 the FOGY group?

9 A. I had a link to FOGY and I also had a  
10 link to GRUT (phonetic), among other links of  
11 various community interests at the time.

12 Q. Then --

13 A. And if I may add, there was a general  
14 links page, as you may find on any -- or on most  
15 informational websites. It had a lot of different  
16 links to hot button community issues. So that's why  
17 I included both of those, to get both sides of the  
18 story, I guess one would say.

19 Q. You were present when the city council  
20 voted on May 24th and deliberated on May 23rd, 2006,  
21 weren't you?

22 A. Yes.

23 Q. If Mr. Porter, would be kind enough to  
24 find the transcript of May 23rd, I have just a



1 couple of questions about it, and then I think we're  
2 going to be done.

3 Mr. Werderich, if I can direct  
4 your attention to the -- to Page 86 and 87. You  
5 were expressing your opinions on the landfill  
6 evidence, correct?

7 A. Would that be the 86th and 87th at the  
8 top, or the --

9 Q. Bottom of each page.

10 MR. DOMBROWSKI: And what is the  
11 question?

12 MR. MUELLER: The preliminary question  
13 is -- this represents a portion of your expression  
14 of your sentiments during the deliberations.

15 MR. DOMBROWSKI: I'll object. That  
16 invades the deliberative process privilege.

17 MR. MUELLER: It's preliminary.

18 MR. HALLORAN: Well, it still invades  
19 the process.

20 MR. DOMBROWSKI: It still invades the  
21 privilege.

22 MR. HALLORAN: Sustained.

23 BY MR. MUELLER:

24 Q. Were you talking? Was this you

1 talking here on these pages, Mr. Werderich?

2 A. If you could give me a moment. Do you  
3 have a notation as to where my testimony would  
4 begin?

5 Q. Actually, quite a ways back. How  
6 about on Page 62.

7 A. Sixty-two. I mean, without going  
8 through this line by line, I wouldn't have any  
9 reason to believe that you're not telling the truth  
10 there.

11 Q. Okay. My question is -- I just have a  
12 couple simple ones here.

13 A. Sure.

14 Q. At the bottom of Page 86, you make the  
15 statement, "According to hearing testimony and  
16 exhibits, there have been several citizen complaints  
17 regarding Hammond's composting operation." Hammond  
18 is the Don Hammond who owns the majority interest of  
19 Fox Moraine, correct?

20 A. I don't know who owns Fox Moraine.

21 Q. Then -- it is Donald Hammond, right,  
22 that you are referring to?

23 A. Yes.

24 Q. And then if we go to the top of

1 Page 87, you say, "Since it's been annexed to the  
2 city, it's also my understanding that there have  
3 been several complaints made to the city." Do you  
4 see that?

5 A. Yes.

6 Q. Did you make that statement?

7 MR. DOMBROWSKI: I'll object. This  
8 is -- again, it's invading the privilege.

9 MR. MUELLER: I'm just asking if he --

10 MR. HALLORAN: Well, it's part of the  
11 minutes. I mean, he's --

12 MR. DOMBROWSKI: Right, but it goes  
13 into the evidence that the city council members were  
14 presented at the hearings, and he's asking what the  
15 alderman considered.

16 MR. MUELLER: Well, I'm going to get  
17 to the privilege in my next question, so he's a  
18 little premature in his objection.

19 MR. HALLORAN: I agree. All  
20 Mr. Mueller is doing is asking the alderman to  
21 confirm what he said in the transcript. So  
22 objection overruled.

23 BY MR. MUELLER:

24 Q. Now, Mr. Werderich, did you think it

1 was appropriate to consider unsubstantiated citizen  
2 complaints that did not result in any notices or  
3 findings of violation in evaluating operator  
4 experience?

5 MR. DOMBROWSKI: I'll object. It  
6 invades the privilege.

7 MR. HALLORAN: Mr. Mueller.

8 MR. MUELLER: I think I don't need to  
9 make any other argument than what I've made before,  
10 assuming you'll sustain the objection. I'd ask  
11 leave to do it as an offer of proof.

12 MR. HALLORAN: Your assumption is  
13 correct. The objection is sustained. You may ask  
14 it in an offer of proof.

15 MR. MUELLER: If I can have the -- if  
16 I can ask Mr. Halloran to have the reporter read the  
17 question back.

18 MR. HALLORAN: Okay.

19 (Whereupon, the record was read as  
20 requested.)

21 THE WITNESS: I think that the  
22 complaint, coming from a citizen and it being  
23 unsubstantiated, was something that I took into  
24 terms when weighing the credibility, and the amount

1 of evidence that that should  
2 have -- or the amount of bearing that that would  
3 have on my final decision.

4 BY MR. MUELLER:

5 Q. You also -- and this is still part of  
6 the offer of proof -- understood that you were  
7 making statements to other city council members here  
8 who would have the opportunity to take what you said  
9 into account, didn't you?

10 A. Can you please repeat the question?

11 Q. Well, did you understand this  
12 deliberative process as one -- strike that.

13 When you made these statements,  
14 there were other city council members listening who  
15 had also made statements, right?

16 A. Yes. Some had made statements, and I  
17 think at that point some probably hadn't made  
18 statements. I don't recall where this is in the  
19 whole timing of when people were making statements.

20 Q. Fair enough. Now, if we move to the  
21 next page, 88?

22 MR. HALLORAN: Are we still going to  
23 be in the --

24 MR. MUELLER: This is still part of

1 his offer of proof, and it will be concluded  
2 shortly. It just deals with what's on this page.

3 BY MR. MUELLER:

4 Q. You make reference to the report of  
5 attorney Price, which is Dirk Price, the staff  
6 attorney, and the hearing officer, and you make  
7 reference to both of those reports being for  
8 approval with conditions, correct?

9 A. Yes.

10 Q. And then you go on to say, "What  
11 should be taken into consideration is the fact that  
12 the applicants must be -- the application must be  
13 judged on its face, not based upon the conditions  
14 which are suggested to be included by the -- by  
15 either Dirk Price or the hearing officer.  
16 Accordingly, when reading through this, please take  
17 that into consideration."

18 Did you say that?

19 A. Yes.

20 Q. Was it your intention to suggest to  
21 the rest of the city council that if they -- if the  
22 applicant could not meet the criteria without  
23 conditions, the application should be denied?

24 A. That's not what I was suggesting.

1 Q. And when you say please take that into  
2 consideration, who are you speaking to?

3 A. I do believe that I was speaking to  
4 city council at that point, or everyone who was in  
5 attendance.

6 Q. And was it your feeling that if the  
7 application --

8 MR. HALLORAN: We're still under the  
9 offer of proof?

10 MR. MUELLER: Yes. This is the last  
11 question.

12 BY MR. MUELLER:

13 Q. And was it your feeling that the  
14 application did not meet the criteria without  
15 conditions that should be denied?

16 A. I'm sorry. Can you restate the  
17 question?

18 Q. Was it your feeling that if the  
19 application did not meet the criteria without  
20 conditions it should be denied?

21 A. Not necessarily. I did not like the  
22 way that it was put together by -- or the opinion  
23 that Attorney Price or the hearing officer had put  
24 together in their reports at that time.

1 Q. That concludes the offer of proof.

2 Now, on May 24th, there was a  
3 resolution passed, wasn't there?

4 A. Yes.

5 Q. Do you know whether the resolution has  
6 been handed out as 2007-36 -- was actually the  
7 resolution -- the exact resolution verbatim that was  
8 adopted or in front of you that night?

9 A. I don't recall.

10 Q. Do you recall how many forms of  
11 resolutions were in front of you on May 24th?

12 A. I don't recall.

13 MR. MUELLER: One second,  
14 Mr. Halloran. We are done or very close to it.

15 MR. HALLORAN: Okay.

16 BY MR. MUELLER:

17 Q. You had no reason to doubt Larry  
18 Clark's competence, did you?

19 MR. DOMBROWSKI: I'll object to the  
20 question.

21 MR. HALLORAN: I'm sorry. Could you  
22 read the whole question back? -

23 (Whereupon, the record was read as  
24 requested.)



1 MR. DOMBROWSKI: Objection. That  
2 invades the privilege. Mr. Clark was a hearing  
3 officer. He submitted a report.

4 MR. HALLORAN: Yeah. I agree.  
5 Sustained.

6 MR. MUELLER: That's all I have,  
7 Mr. Werderich. Thank you.

8 MR. HALLORAN: Thank you  
9 Mr. Dombrowski, Mr. Hopp?

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

11 BY MR. DOMBROWSKI:

12 Q. A few quick things, Alderman.  
13 Mr. Hammond testified at his deposition that he saw  
14 you wearing an anti-landfill button at the landfill  
15 hearings. Did you -- did you ever wear an  
16 anti-landfill button at the hearings?

17 A. No.

18 Q. Did you see any other sitting aldermen  
19 or people running for office wearing anti-landfill  
20 buttons?

21 A. No.

22 MR. DOMBROWSKI: No further questions.

23 MR. HALLORAN: Thank you  
24 Mr. Dombrowski, Mr. Mueller?

1 MR. MUELLER: Mr. Halloran, I'd ask to  
2 reopen cross for one short series of maybe two or  
3 three questions. It would take about 30 seconds,  
4 pretty noncontroversial too.

5 MR. DOMBROWSKI: I'm sure it's beyond  
6 the scope of what I just asked.

7 MR. MUELLER: Yeah, it is. That's why  
8 I'm asking leave to reopen this.

9 MR. HALLORAN: I'll allow you a little  
10 leeway --

11 MR. MUELLER: Thank you.

12 MR. HALLORAN: -- over objection.

13 MR. MUELLER: Thank you.

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

15 BY MR. MUELLER:

16 Q. Mr. Werderich, were there fact sheets  
17 prepared by FOGY for dissemination of the public?

18 A. I don't know.

19 Q. Did you have any role in preparing any  
20 literature or fact sheets for FOGY?

21 A. No.

22 MR. MUELLER: That's all I have.

23 Thank you.

24 MR. HALLORAN: Thank you. All right

1 you may step down. Thank you.

2 THE WITNESS: Okay. Thank you.

3 MR. HALLORAN: Before we move any  
4 further, some housekeeping. Petitioners Exhibit 28,  
5 27, and 26, I'm not sure they were offered.

6 MR. HOPP: They were not moved.

7 MR. MUELLER: I don't think they have  
8 to be, because they were marked for use with the  
9 witness, and he didn't deny them, and my  
10 understanding is you're not going to admit newspaper  
11 articles as such.

12 MR. HOPP: Well, as long as they're  
13 not admitted into evidence, we have no objection  
14 with the use of them with the witness as they were  
15 used, other than the objections we stated. So as  
16 long as they're not part of the record from his  
17 hearing, that's fine.

18 MR. HALLORAN: Okay.

19 MR. MUELLER: Because we got the  
20 answers orally without having to --

21 MR. HALLORAN: Okay.

22 MR. MUELLER: -- you know, argue with  
23 him about whether he said it or not.

24 MR. HALLORAN: Well, some of them you

1 did.

2 MR. MUELLER: Well, can we review  
3 quickly -- I thought I got all three of them in.

4 MR. HALLORAN: Well, 26 -- number 26,  
5 Exhibit 26, you asked the witness his active  
6 representation of what he said, "Yes."

7 MR. MUELLER: Oh, 28 is campaign  
8 literature we moved that into evidence.

9 MR. HALLORAN: It was campaign  
10 literature. Twenty-seven was not accurate. It was  
11 not an accurate representation, and so I will accept  
12 Petitioner's Exhibit 27 as an offer of proof.

13 MR. MUELLER: Twenty-eight we would  
14 move into evidence. That's his campaign literature.

15 MR. HALLORAN: All right.  
16 Twenty-eight?

17 MR. DOMBROWSKI: No objections.

18 MR. HALLORAN: No objection.  
19 Admitted.

20 MR. PORTER: I'm sorry, Mr. Halloran,  
21 what was 25?

22 MR. HALLORAN: I haven't gotten there  
23 yet, Mr. Porter.

24 MR. DOMBROWSKI: Twenty-five was

1 Yorkville 0072, Sutcliff.

2 MR. HOPP: Third ward advisor.

3 MR. PORTER: That was already  
4 admitted.

5 MR. DOMBROWSKI: And what are we doing  
6 with 26?

7 MR. HALLORAN: I am -- I think that's  
8 my next topic. Twenty-six, it hasn't been offered,  
9 but based on the representation of the testimony  
10 with an accurate representation of what the alderman  
11 stated, and I -- you know, I don't know if  
12 Mr. Mueller --

13 MR. MUELLER: I'll withdraw 26.

14 MR. HALLORAN: Withdraw?

15 MR. MUELLER: Admit as an offer of  
16 proof. So it just supports that.

17 MR. HALLORAN: Okay. All right.

18 MR. HOPP: Mr. Halloran, just so we're  
19 clear, our objection isn't whether or not he  
20 affirmed or denied that he said certain things based  
21 on reviewing the article, it's the entirety of the  
22 article.

23 MR. HALLORAN: Right.

24 MR. HOPP: I think the rest of it

1 should go in.

2 MR. HALLORAN: Right. Just the part  
3 he verified?

4 MR. HOPP: Right.

5 MR. HALLORAN: Or she, be it the case.  
6 And then Mr. Mueller, you got some other things here  
7 I don't think you moved. The campaign disclosure,  
8 Exhibit 15.

9 MR. MUELLER: Please move that into  
10 evidence.

11 MR. HOPP: We object to relevance.

12 MR. HALLORAN: No. I mean, it is what  
13 it is. I'll allow it over objection. Sixteen, that  
14 was the invoice?

15 MR. MUELLER: Obviously we move that  
16 into the record.

17 MR. HOPP: Obviously we repeat our  
18 objection.

19 MR. HALLORAN: Okay. Objection  
20 overruled. Admitted. And Exhibit 17?

21 MR. MUELLER: Are the May 8th minutes.

22 MR. HALLORAN: Correct.

23 MR. MUELLER: We'd move those into  
24 evidence.

1 MR. HOPP: Object. Relevance.

2 MR. HALLORAN: Okay. Objection  
3 overruled. I'll admit Exhibit 17. All right. So  
4 what do you want to do? It's about 25 to 5:00.

5 MR. HOPP: Mr. Halloran, if I may on  
6 the subject of exhibits, we still have Yorkville 1,  
7 which was admitted as an offer of proof.

8 MR. HALLORAN: Oh, okay.

9 MR. HOPP: Just so we're clear, this  
10 is the card.

11 MR. HALLORAN: Thanks.

12 MR. HOPP: Alderman Plocher is here  
13 and ready to go and we'll stay a little late if need  
14 be.

15 MR. MUELLER: Frankly, I'd rather  
16 start him in the morning. We're not 100 percent  
17 ready on him.

18 MR. HALLORAN: Well, yeah. It's been  
19 a long day. And if it's okay with you, he can be up  
20 here at 9:00 a.m.

21 MR. HOPP: I'll talk to him. He  
22 works, but we'll do what we can. If not 9:00 a.m.,  
23 we'll get him sometime during the day. We know that  
24 we have Munns coming in at 10:00. So I'm not sure

1 who's first tomorrow. Can I go talk to him?

2 MR. HALLORAN: Sure, sure.

3 MR. HOPP: Let me just say, before I  
4 talk to him, is 9:00 a.m. okay? Can you start with  
5 him?

6 MR. MUELLER: Oh, yeah.

7 MR. HALLORAN: We can go off the  
8 record.

9 (Whereupon, a discussion was had  
10 off the record.)

11 MR. HALLORAN: We're back on the  
12 record. Anybody else from the public want to make a  
13 statement today or a comment? If not, you can sleep  
14 on it overnight, and you can come here tomorrow and  
15 make one if you so choose. All right. Doesn't look  
16 like anybody wants to.

17 We're going to adjourn the hearing  
18 for today, and we'll meet back tomorrow, April 22nd  
19 at 9:00 a.m. Thanks. Have a great night.

20 AND FURTHER DEPONENT SAITH NAUGHT...

21

22

23

24



1 STATE OF ILLINOIS )  
 ) SS  
2 COUNTY OF COOK )

3  
4

5 REBECCA A. GRAZIANO, being first  
6 duly sworn on oath says that she is a court reporter  
7 doing business in the City of Chicago; that she  
8 reported in shorthand the proceedings given at the  
9 taking of said hearing and that the foregoing is a  
10 true and correct transcript of her shorthand notes  
11 so taken as aforesaid and contains all the  
12 proceedings given at said hearing.

13  
14

15 *Rebecca Graziano*  
REBECCA A. GRAZIANO, CSR  
16 29 South LaSalle Street, Suite 850  
Chicago, Illinois 60603  
17 License No.: 084-004659

18

19 SUBSCRIBED AND SWORN TO  
before me this *30th* day  
20 of *April*, A.D., 2009.

21

*[Signature]*  
Notary Public

22



23

24

| A                     |                         |                         |                        |                         |
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