

ILLINOIS POLLUTION CONTROL BOARD
MARCH 11, 2020

JAMES FISER,)	
)	
Complainant,)	
)	
vs)	PCB 18-84
)	Citizens
JAMES L. MEADOR and HENRY'S)	Enforcement -
DOUBLE K, LLC,)	Noise
)	
Respondents.)	

REPORT OF THE PROCEEDINGS held in the above entitled cause before Hearing Officer Bradley Halloran, called by the Illinois Pollution Control Board, taken by Steven Brickey, RMR, for the State of Illinois, 101 North Main Street, Mount Carroll, Illinois, on the 11th day of March, 2020, commencing at the hour of 9:55 a.m.

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17 REPORTED BY:

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16
17
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19
20
21
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23
24

I N D E X

THE WITNESS: ROBERT SISLER

PAGE

Direct Examination by Mr. Brown..... 10

Cross-Examination by Mr. Cox..... 14

THE WITNESS: MARK CHAPMAN

PAGE

Direct Examination by Mr. Brown..... 17

Cross-Examination by Mr. Cox..... 22

THE WITNESS: DENNIS ASAY

PAGE

Direct Examination by Mr. Brown..... 23

Cross-Examination by Mr. Cox..... 28

THE WITNESS: JAMES FISER

PAGE

Direct Examination by Mr. Brown..... 33

Cross-Examination by Mr. Cox..... 62

THE WITNESS: CHERYL FISER

PAGE

Direct Examination by Mr. Brown..... 64

1	THE WITNESS: PAM HEISLER	
2		PAGE
3	Direct Examination by Mr. Cox.....	71
4	Cross-Examination by Mr. Brown.....	74
5		
6	THE WITNESS: ELIZABETH HARTMAN	
7		PAGE
8	Direct Examination by Mr. Cox.....	77
9	Cross-Examination by Mr. Brown.....	79
10		
11	THE WITNESS: BONNIE HAAS	
12		PAGE
13	Direct Examination by Mr. Cox.....	80
14	Cross-Examination by Mr. Brown.....	83
15		
16	THE WITNESS: LAWRENCE HAAS	
17		PAGE
18	Direct Examination by Mr. Cox.....	85
19	Cross-Examination by Mr. Brown.....	86
20		
21	THE WITNESS: RICHARD FREY	
22		PAGE
23	Direct Examination by Mr. Cox.....	87
24	Cross-Examination by Mr. Brown.....	89

1 THE WITNESS: JAMES MEADOR

	PAGE
2	
3 Direct Examination by Mr. Cox.....	90
4 Cross-Examination by Mr. Brown.....	103

5
6
7 E X H I B I T S

8
9 Marked for
10 Identification

11 Complainant Exhibit No. 1	35
12 Complainant Exhibit No. 2	36
13 Complainant Exhibit No. 3	43
14 Complainant Exhibit No. 4	49
15 Complainant Exhibit No. 5	52
16 Respondent Exhibit No. 1	98
17 Respondent Exhibit No. 2	107

1 HEARING OFFICER HALLORAN: Good
2 morning, everyone. My name is Brad Halloran. I'm
3 a Hearing Officer with the Illinois Pollution
4 Control Board. I'm also assigned to this case.
5 It's entitled James Fiser, complainant, versus
6 James L. Meador and Henry's Double K, LLC,
7 respondents. It's docketed as PCB 18-84. It's a
8 citizen enforcement noise case.

9 Today is March 11th, 2020. It
10 is approximately 10:00 a.m. The case was noticed
11 up properly. The hearing will be conducted
12 pursuant to Section's 101 and 103 of the Board's
13 procedural rules.

14 In a nutshell, the complaint --
15 complainant alleges that respondent violated the
16 Board's noise regulations by emitting disrupting
17 sounds from their bar and restaurant located at
18 834 South Jackson Street in Mount Carroll, Carroll
19 County. I'm here to rule on any evidentiary
20 matters and whatever was admitted as evidence and
21 I will take the transcript back, any exhibits, and
22 I will take it back to the four members of the
23 Board and they will decide.

24 I'm pleased to state that we

1 have our chief environmentalist scientist with us
2 Anand Rao.

3 MR. RAO: Hello.

4 HEARING OFFICER HALLORAN: And, with
5 that said, Mr. Brown, would you like to introduce
6 yourself?

7 MR. BROWN: Yes. I am Craig Brown
8 and I represent the Fiser's in this matter.

9 HEARING OFFICER HALLORAN: Mr. Cox?

10 MR. COX: Steve Cox and I represent
11 respondents.

12 HEARING OFFICER HALLORAN: Okay.
13 Thank you. It's my understanding that the
14 complainant and the respondents' attorneys will
15 give a brief opening. So, Mr. Brown, you're up.

16 MR. BROWN: Yes, Mr. Halloran. I
17 plan on presenting evidence basically to go to the
18 heart of the matter which is a number of people
19 who have been at the Fiser residence when live
20 music has been playing at Henry's Double K. So
21 that they can report as to, in particular, how
22 loud it is inside the Fiser residence with doors
23 and windows closed. That, in fact, you can hear
24 the music clearly. That Henry's Double K is more

1 than a football field away from the Fiser
2 residence. It's in the neighborhood of 325 feet.

3 And, in fact, even with that
4 distance and with the house completely shut the
5 Fiser's can clearly hear the music and, of course,
6 the bass and drum level vibrates, thumps, right
7 through your chest essentially.

8 So all of my witnesses are
9 basically here to testify to that and then on top
10 of that we will just get into a few -- I will play
11 some CD's for you that were recorded inside the
12 house and we will get into some collateral matters
13 like zoning and whatnot, but for the most part
14 we'll be sticking with the actual interference
15 with the enjoyment of the Fiser residence.

16 HEARING OFFICER HALLORAN: Thank
17 you, Mr. Brown. Mr. Cox?

18 MR. COX: Thank you. The response
19 is that the respondent believes that the evidence
20 will show there is no objective evidence of
21 violation of the -- of the Pollution Control
22 Board's noise regulations. We -- I do not believe
23 we're going to see measurements which are going to
24 comply with the measurement requirements set forth

1 in the regulations. So we're left with this
2 notion of unreasonable interference in terms of
3 the definition of noise pollution.

4 What respondent will offer for
5 evidence is testimony of surrounding landowners
6 who will state that they live in closer proximity
7 than Mr. Fiser and it does not interfere with
8 their use or enjoyment of the property, that it is
9 an establishment which is run pursuant to the
10 proper licensing within a commercial district in
11 the Village of Mount Carroll and within the
12 regulations of the Village of Mount Carroll.

13 So the -- the idea that there is
14 an unreasonable interference with somebody's use
15 and enjoyment of the property I think we'll be
16 able to defeat that argument.

17 HEARING OFFICER HALLORAN: Thank
18 you, Mr. Cox. Mr. Brown, your witness.

19 MR. BROWN: Thank you, Mr. Halloran.
20 I would call Bob Sisler to that chair right there,
21 please.

22 MR. SISLER: Oh, man.

23 MR. BROWN: Take your time, sir.

24 HEARING OFFICER HALLORAN: If you

1 just have a seat and Mr. Brickey will swear you in
2 after you raise your right hand, please.

3 WHEREUPON:

4 ROBERT SISLER

5 called as a witness herein, having been first duly
6 sworn, deposeth and saith as follows:

7 HEARING OFFICER HALLORAN: You may
8 proceed, Mr. Brown.

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

10 BY MR. BROWN:

11 Q. Mr. Sisler, state your name and
12 spell your last name, please.

13 A. Robert E. Sisler, S-I-S-L-E-R.

14 Q. Okay. And where do you live?

15 A. I live at 127 West Benton Street in
16 Mount Carroll.

17 Q. And how long have you lived here?

18 A. I'm 77 years old. I have lived here
19 about 70 years.

20 Q. Okay. And what is your occupation?

21 A. I'm a retired federal worker.

22 Q. Okay. And what is your relationship
23 with Jim and Cheryl Fiser?

24 A. I became acquainted with the Fiser's

1 when I was on the City Council and this issue came
2 up of the noise in probably 2014, I think, and I
3 have met with them.

4 Q. But there is no special
5 relationship --

6 A. No.

7 Q. -- that would cause you to be biased
8 one way or the other?

9 A. No, we are diametrically opposed
10 politically.

11 Q. Okay. Have you had occasion to be
12 present at the Fiser residence when live music --

13 A. Yes, I have.

14 Q. -- was being played at Henry's?

15 And about how many times have --

16 A. I think I was there about five
17 times.

18 Q. And on those occasions, was the
19 music being played inside of Henry's Double K or
20 outside?

21 A. Both.

22 Q. Both. Okay. And describe both of
23 those situations. Describe your personal
24 experience. Where were you? Were you inside the

1 **residence, outside the residence, tell me about**
2 **those experiences.**

3 A. I had -- I was in both situations
4 where I was inside listening and outside listening
5 and, of course, being inside it was a little more
6 diminished, but when you were outside, even on the
7 other side of it, on the southside of their house,
8 the noise was quite deafening.

9 Q. So when you say the southside, so
10 you would be on the --

11 A. Opposite side.

12 Q. -- opposite side of Henry's Double K
13 at the Fiser residence, but still outdoors --

14 A. Yes.

15 Q. -- and still clearly hear the music?

16 A. Yes.

17 Q. And what was it like inside the
18 residence?

19 A. It was -- it was loud. Not as loud,
20 but plenty loud that that's all you could
21 concentrate on was where is all this music coming
22 from.

23 Q. Okay. And were the windows and
24 doors closed at the Fiser residence?

1 A. The windows were closed.

2 Q. Okay. And was -- was this also the
3 case when the music was played entirely within
4 Henry's Double K? In other words, we're not
5 talking about the outdoor --

6 A. Right. When the music was played
7 inside, it wasn't as loud.

8 Q. It wasn't as loud inside --

9 A. No.

10 Q. -- but you could --

11 A. I could still hear it like it was
12 right next door and it was right next door with
13 the -- with the valley between them being the
14 avenue in which the sound traveled uninterrupted.

15 Q. How often do bands play there, to
16 your knowledge?

17 A. I don't patronize the place. So I
18 really don't know how often they play there, but
19 in the summer they play I would estimate it's
20 probably three weekends out of the month.

21 Q. How late do they play?

22 A. Well, they've played on several
23 occasions when I was there it was 11:00.

24 Q. Have you ever known them to play

1 later than 11:00?

2 A. No, I don't think I have ever been
3 there after that time.

4 Q. Have you had occasion to firsthand
5 observe the effects this music has had on the
6 Fiser's, meaning health effect, mental effect,
7 have you observed it?

8 A. Well, what my observation was that
9 they were irritated, but as far as physically I
10 don't know about that.

11 Q. Would -- would you personally be
12 able to live in that house with the music playing?

13 A. No. No.

14 MR. BROWN: I have no more questions
15 of this witness.

16 HEARING OFFICER HALLORAN: Thank
17 you. Mr. Cox?

18 MR. COX: Just a couple real quick
19 questions.

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

21 BY MR. COX:

22 Q. Mr. Sisler, you state that you were
23 at the Fiser's residence and listened and heard
24 music.

1 **Do you remember the dates that**
2 **you were at the residence?**

3 A. I know the timeframe, but I don't
4 specifically have the dates.

5 **Q. What was the timeframe?**

6 A. In 2014 and early 2015.

7 **Q. Okay. So your -- your experience**
8 **that you related to Mr. Brown reflects the time**
9 **period between 2014 and 2015?**

10 A. Yes. In fact, I don't know if I
11 should volunteer information, but I have notes
12 that I have taken from council meetings where the
13 issue of the noise came up.

14 **Q. And the issue did come up at the**
15 **village council, is that correct?**

16 A. Yes, frequently.

17 **Q. But that -- again, that was during**
18 **2014 and 2015, that's correct?**

19 A. Right, and then I got off the
20 council.

21 **Q. Okay. Who -- who raised the issue**
22 **at council?**

23 A. It would come up at the ordinance --
24 ordinance committee meetings, the police meetings

1 and the general meeting and then, of course, when
2 they had the general audience participation
3 Mr. Fiser would bring it up himself.

4 **Q. So, effectively, the complaints and**
5 **the issue of the noise was actually brought up by**
6 **Mr. Fiser, that's how it got to the council?**

7 A. Yes.

8 **Q. Okay.**

9 A. The council -- can I -- can I
10 interject a thought?

11 **Q. Sure. I won't cut you off.**

12 A. As I went through my notes, the most
13 telltale note that I recorded happened on August
14 27th when we were discussing enforcing the noise
15 ordinance. I made a motion to enforce the noise
16 ordinance. It died for lack of a second
17 indicating to me that only one out of six of the
18 council members really were concerned about it.

19 **Q. Okay.**

20 MR. COX: Okay. Thank you. Nothing
21 further.

22 HEARING OFFICER HALLORAN:

23 Mr. Brown?

24 MR. BROWN: Nothing further.

1 HEARING OFFICER HALLORAN: You may
2 step down.

3 THE WITNESS: Thank you.

4 MR. BROWN: I would call
5 Mark Chapman to the stand, please.

6 HEARING OFFICER HALLORAN: You can
7 have a seat and raise your right hand and the
8 court reporter will swear you in, please.

9 WHEREUPON:

10 MARK CHAPMAN

11 called as a witness herein, having been first duly
12 sworn, deposeeth and saith as follows:

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

14 BY MR. BROWN:

15 Q. And, Mr. Chapman, please state your
16 name and spell your last name, please.

17 A. Mark Chapman, C-H-A-P-M-A-N.

18 Q. And where do you live?

19 A. Lena, Illinois.

20 Q. And if you don't mind saying how old
21 are you?

22 A. I'm 62.

23 Q. What is your occupation?

24 A. Retired welder, factory worker.

1 **Q. What is your relationship with Jim**
2 **and Cheryl Fiser?**

3 A. We ride trikes together, general
4 friend.

5 **Q. Have you always lived in -- how**
6 **long -- have you ever lived in Mount Carroll?**

7 A. No.

8 **Q. So is the only reason you come to**
9 **Mount Carroll to see the Fiser's?**

10 A. Yes.

11 **Q. Have you had occasion to be at the**
12 **Fiser residence when live music was being played**
13 **at Henry's Double K?**

14 A. Yes, every -- quite a few weekends,
15 you know, I'd come down, we'd ride and there was
16 one weekend I stayed overnight because we had a
17 trike ride at the state park the next day. So we
18 wanted to leave early. So I figured -- because
19 I'm an hour drive to here. So I stayed overnight
20 that night.

21 **Q. And can you give me the rough**
22 **timeframe that these visits --**

23 A. It was in August -- usually through
24 the summer months August, early September --

1 Q. Which year?

2 A. -- July. It was in '15.

3 Q. '15. Have you been here since for
4 that?

5 A. Yes. Yes.

6 Q. So you've been to the Fiser's?

7 A. Quite a few times riding, you know.

8 Q. Were you here in 2019?

9 A. Yes.

10 Q. Okay. When you were here, did you
11 hear music played within Henry's Double K? In
12 other words, it was inside music, not outside
13 music?

14 A. Yeah, it was inside. I've heard
15 them both, you know, outside and inside.

16 Q. Okay. And where were you at the
17 Fiser residence when you were listening?

18 A. Inside their living room.

19 Q. Okay. And were the doors and
20 windows closed?

21 A. Yes, sir.

22 Q. Can you describe for the board
23 what -- what was -- how loud was it? What was
24 your experience like?

1 A. You could hear the music. The bass
2 was definitely driving because bass is
3 non-directional. It will drive through brick,
4 wood. It don't matter. But you can feel the
5 thumping pretty good.

6 **Q. Could you tell what songs were**
7 **played?**

8 A. Yeah -- yeah, there's -- yeah. Yes.
9 I mean, as far as vocals I couldn't determine, you
10 know, what was being said, but you could hear it.
11 It was mainly a lot of the bass and stuff --

12 **Q. Okay.**

13 A. -- you know.

14 **Q. Okay. So --**

15 A. Especially the night I stayed
16 overnight. That was, you know, when I really
17 heard it a lot.

18 **Q. How -- how -- how late has the music**
19 **gone at Henry's Double K?**

20 A. I think that night was, like,
21 midnight --

22 **Q. Okay.**

23 A. -- in that area, you know. Because
24 everybody was kind of PO'd in the house, you know,

1 because it was so late at night and, to me, I
2 mean, it don't matter. I'm used to it.

3 Q. Fair enough. Could you -- you
4 described everybody there as PO'd, are you
5 referring to the Fiser's?

6 A. Yes.

7 Q. And do you have any further
8 description? I mean, what did you personally
9 experience them going through?

10 A. Just, you know, not being able to
11 sleep, you know, staying awake all night and that
12 was the main thing.

13 Q. Okay. And did you at any point walk
14 around the outside of the house in -- and hear the
15 music?

16 A. Yeah, earlier that night we was
17 outside, you know.

18 Q. Describe that.

19 A. It was like a band playing next
20 door. I mean, it was, you know --

21 Q. Would you agree you're more than a
22 football field away from Henry's Double K?

23 A. Oh, yeah. Yeah.

24 Q. It's like 325 feet or something?

1 A. Oh, yes.

2 Q. **And across an open field?**

3 A. Yeah.

4 Q. **Okay.**

5 MR. BROWN: I have no more questions
6 of this witness.

7 HEARING OFFICER HALLORAN: Thank
8 you, Mr. Brown. Mr. Cox?

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

10 BY MR. COX:

11 Q. **Mr. Chapman, just to clarify**
12 **timeframes, the one night you testified that you**
13 **were there until midnight, that was in 2015 --**

14 A. Yes.

15 Q. **-- that you stayed over?**

16 MR. COX: Nothing further.

17 MR. BROWN: Nothing further.

18 HEARING OFFICER HALLORAN: Thank
19 you. Mr. Chapman, you may step down. Thank you.

20 MR. BROWN: Judge, I would call, and
21 I always get this name wrong, but Dennis Asay --

22 MR. ASAY: Correct.

23 MR. BROWN: -- Dennis Asay to the
24 stand, please.

1 WHEREUPON:

2 DENNIS ASAY

3 called as a witness herein, having been first duly
4 sworn, deposeseth and saith as follows:

5 DIRECT EXAMINATION

6 BY MR. BROWN:

7 Q. Mr. Asay, please state your name and
8 spell your last name, please.

9 A. Dennis Asay, A-S-A-Y.

10 Q. And where do you live?

11 A. I live in Mount Carroll.

12 Q. And if you don't mind, what is your
13 age?

14 A. Sixty-four years.

15 Q. And what is your occupation?

16 A. I work for the police department for
17 the City of Mount Carroll as a patrolman.

18 Q. Okay. And how long have you had
19 that occupation?

20 A. Probably about 38 years.

21 Q. All here in Mount Carroll?

22 A. Yes.

23 Q. And what is your relationship with
24 Jim and Cheryl Fiser?

1 A. They're residents of the City of
2 Mount Carroll and they have called numerous times
3 complaining about the noise at Henry's.

4 **Q. And can you just give me an estimate**
5 **of how many times you personally responded to**
6 **those complaints?**

7 A. Just purely an estimate probably
8 upwards of ten, maybe a dozen times.

9 **Q. Okay. And from the point of view of**
10 **enforcing a city noise ordinance, how did you go**
11 **about that?**

12 A. We're supposed to -- basically, if
13 we have a complaint, if we feel it's a justifiable
14 complaint, we go to the other party and inform
15 them of it and try to work it out without any
16 citation if it's possible.

17 **Q. And if you can't work it out, what**
18 **determines whether you would issue a citation or**
19 **not?**

20 A. If the complainant continues to call
21 and they're still, in our opinion, in violation,
22 then a city ordinance would be issued.

23 **Q. And what -- what would constitute an**
24 **ordinance violation in Mount Carroll?**

1 A. For a noise ordinance violation?

2 **Q. Yes.**

3 A. If we have a complainant that so
4 states, you know, that it's bothering him, we just
5 go ahead and follow through with it.

6 **Q. Was there ever a time that you felt**
7 **like you should issue a violation to Mr. Meador?**

8 A. During this process, our city
9 ordinance violation for noise was expanded to
10 include decibel readings.

11 **Q. Okay.**

12 A. And during this process, there was
13 one occasion where the decibel reading did exceed
14 the limit as outlined in the city ordinance and at
15 that time there was a city ordinance violation
16 issued to Henry's.

17 **Q. And where were you located when you**
18 **took that decibel reading?**

19 A. On the south -- actually, it would
20 have been the northwest corner of the Fiser's
21 residence.

22 **Q. On the outside of the house?**

23 A. Yes.

24 **Q. And was the music at Henry's Double**

1 **K played inside the building or outside the**
2 **building?**

3 A. I believe, at that time, it was
4 outside, but I'm not a hundred percent sure, but I
5 believe it was.

6 **Q. And did you have occasion to be at**
7 **the Fiser residence when music was being played**
8 **inside?**

9 A. Yes.

10 **Q. And was it clearly discernable from**
11 **the Fiser property?**

12 A. The big thing that I was taking out
13 being inside the property was the bass. You could
14 hear the music, but the bass is what I could --
15 what I could hear the most.

16 **Q. And did you ever have occasion to go**
17 **inside the Fiser property?**

18 A. That was -- I was referring to
19 inside the property.

20 **Q. Okay. So you were inside --**

21 A. Yes.

22 **Q. -- when the bass was particularly**
23 **prominent?**

24 A. Yes.

1 **Q. Okay. And were the windows and**
2 **doors closed?**

3 A. The windows and doors were closed,
4 yes.

5 **Q. And how often -- do you know**
6 **approximately how often live music is played at**
7 **Henry's Double K?**

8 A. I'm not for sure. Henry usually
9 tried to do it a couple of times a month. Maybe
10 there were months he didn't do it at all. I think
11 it just depended on when he had a band available
12 and when he wanted to do it.

13 **Q. Okay. And how late would the bands**
14 **play?**

15 A. I believe with my recollection they
16 would play up until close to closing time, which
17 is close to 1:00.

18 **Q. Okay. So -- so there would be live**
19 **music all the way up to or close to 1:00?**

20 A. That's my understanding or
21 recollection, yes.

22 **Q. Okay. Did you -- did you have**
23 **occasion to directly observe the effect this was**
24 **having on the Fiser's?**

1 A. They were -- they were upset.

2 **Q. Okay.**

3 A. You know, that's pretty much all I
4 could say. They wouldn't continue to keep calling
5 if they weren't upset about it.

6 **Q. All right.**

7 MR. BROWN: One moment, please.

8 Nothing further for this witness.

9 HEARING OFFICER HALLORAN: Thank
10 you, Mr. Brown. Mr. Cox?

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

12 BY MR. COX:

13 **Q. Mr. Asay, just a couple of**
14 **questions.**

15 During the timeframe that you
16 **stated you received ten, maybe a dozen**
17 **complaints --**

18 A. My estimate, sir.

19 **Q. Understood. And by the same --**
20 **during that same general timeframe, did anybody**
21 **else call in a noise complaint?**

22 A. No one.

23 **Q. So only -- only the Fiser's had**
24 **called in a noise complaint during that time?**

1 A. That's correct, to my knowledge.

2 Q. Understood. And there was one
3 violation that you issued a citation based on the
4 village ordinance, is that correct?

5 A. That's correct.

6 Q. And that was based upon readings you
7 took using a decibel meter?

8 A. Yes, the city's decibel meter.

9 Q. Do you remember what time that was
10 roughly; early evening, late evening?

11 A. I'm going to say it was later in the
12 evening, but to be honest with you I cannot tell
13 you.

14 Q. Fair enough. And was the -- was the
15 level which you found a violation, was that a peak
16 level, was that a sustained level or a long period
17 of time?

18 A. I felt it was sustained enough that
19 I would write a violation on it.

20 Q. Okay. Okay. And I'm -- I'm
21 paraphrasing your testimony here. So tell me if I
22 get this wrong.

23 A. That's fine.

24 Q. But the position that -- that law

1 enforcement takes is if there is a complaint and
2 it is persistent and we measure something that we
3 feel is in excess, we're going to write the ticket
4 and that goes to the state's attorney and they can
5 figure out what --

6 A. That's what our courts are for, sir.

7 Q. Well said. Okay. To the extent you
8 know, Mr. Asay, the -- so you measured music on a
9 night that there was outside --

10 A. I believe --

11 Q. -- outside noise?

12 A. I believe it was outside, but I'm
13 not -- again, this has been a little while ago.

14 Q. Fair enough. There -- is there a
15 village ordinance that actually requires outdoor
16 music to cease entirely at 11:00 p.m.?

17 A. I believe there was, yes.

18 Q. Okay. To your knowledge, was the
19 violation which was issued, was there a -- was
20 there a finding one way or the other?

21 A. I was informed by my chief of police
22 that after the city attorney reviewed the
23 ordinance he felt it would not stand up in court
24 and I believe the ticket was dropped.

1 Q. Okay. Thank you.

2 MR. COX: Nothing further.

3 HEARING OFFICER HALLORAN: Thank
4 you. Mr. Brown?

5 MR. BROWN: Nothing further.

6 HEARING OFFICER HALLORAN: Mr. Rao?

7 MR. RAO: I thought of one question.
8 Good morning and welcome.

9 THE WITNESS: Thank you.

10 MR. RAO: You talked a little bit
11 about the village ordinance and I was curious if
12 you know what the limit -- decibel limit is in
13 that ordinance?

14 THE WITNESS: I'm sure somebody was
15 going to ask. It was either 60 or 70 decibels is
16 what the village ordinance what they had adopted.

17 MR. RAO: Okay.

18 THE WITNESS: At that time, it
19 exceeded the limit by two decibels is all.

20 MR. RAO: Okay. Thank you.

21 HEARING OFFICER HALLORAN: Thank
22 you. Any further questions?

23 MR. BROWN: No.

24 MR. RAO: Just for the attorney if

1 it's possible to introduce that ordinance into the
2 record it would be helpful to the board to see
3 what that limit is.

4 MR. BROWN: Okay. I don't have it
5 handy.

6 MR. RAO: Not here. You can submit
7 it later.

8 MR. BROWN: You're okay with me
9 electronically submitting it with my exhibits?

10 HEARING OFFICER HALLORAN: Yes.

11 MR. BROWN: I will do so. It
12 doesn't matter what you know it is. It matters
13 that they have it.

14 HEARING OFFICER HALLORAN: Thank
15 you, officer.

16 MR. BROWN: So I have a witness with
17 car trouble and one who is at a bankruptcy
18 hearing. So I'm going to go out of order and I'm
19 going to call Jim Fiser to the stand, please.

20 HEARING OFFICER HALLORAN:
21 Mr. Fiser? Raise your hand. Mr. Brickey will
22 swear you in.

23
24

1 WHEREUPON:

2 JAMES FISER

3 called as a witness herein, having been first duly
4 sworn, deposeseth and saith as follows:

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

6 BY MR. BROWN:

7 Q. Mr. Fiser, relax and take your time
8 to the best of your ability.

9 A. Okay.

10 Q. Please state your name and spell
11 your last name, please.

12 A. Jim Fiser, F-I-S-E-R.

13 Q. And where do you live?

14 A. 842 South Jackson, Mount Carroll,
15 Illinois.

16 Q. And how long have you lived there?

17 A. I have been there about 18 years.

18 Q. And --

19 MS. FISER: Fifteen.

20 MR. BROWN: Please don't help.

21 BY MR. BROWN:

22 Q. And you've been at that exact
23 address all of those years?

24 A. Yes, sir.

1 Q. And when you purchased your home,
2 was Henry's Double K in existence?

3 A. No, sir.

4 Q. How was -- was there any business
5 there?

6 A. No, sir.

7 Q. But the building was there?

8 A. Yes.

9 Q. Okay. So it was abandoned or
10 unused?

11 A. Yes.

12 Q. For how many years did it sit unused
13 while you lived there before Henry's Double K
14 moved in?

15 A. I think it was about four years,
16 does that sound -- well, I'm not really sure, but
17 I know it was -- let's see. I would say about
18 five years, four or five years.

19 Q. Is it possible --

20 A. To the best of my knowledge.

21 Q. Is it possible Henry's began their
22 business in 2013?

23 A. Yes. Yeah, I would say that.

24 Q. And beginning in 2013, how long

1 after they moved in did you -- did they start
2 playing live, amplified music?

3 A. Well, they -- they worked on the
4 place for a while. I would say about six months
5 later. Maybe three months later. Something like
6 that. Six months probably. Maybe not that long.

7 Q. Did it immediately become a problem
8 for you?

9 A. Yes, it did. Yes.

10 Q. So even in the earliest stages you
11 could hear the music inside your house?

12 A. Yes, sir.

13 Q. Okay. I'm going to show you two
14 exhibits. I'm going to make 1 and 2 together
15 because they go together. The zoning map and an
16 overhead view so you can line them up.

17 (Document marked as Complainant
18 Exhibit No. 1 for
19 identification.)

20 BY MR. BROWN:

21 Q. Exhibit 1 is a zoning map completely
22 blank of Mount Carroll, Illinois. The second
23 would be a GIS photograph of your property and
24 Henry's property.

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(Document marked as Complainant
Exhibit No. 2 for
identification.)

BY THE WITNESS:

A. Yes, sir.

BY MR. BROWN:

Q. Okay. And does -- does the yellow
box on the -- Exhibit 2, does that accurately
depict where you live?

A. Well, it's a little -- my property
goes a little bit further than that tree line. It
doesn't go right in that yellow area.

Q. But your house is within that yellow
area?

A. Yes.

Q. Describe for the Board what -- what
is to your south?

A. To my south is another house, a
neighbor lives there and that's pretty much it
except for the highway. Behind my house is Shaw's
Grocery store is back there on I guess that would
be the south -- southeast, you know, of me.

Q. Okay. And it sits on the main
highway?

1 A. Yes. Yes, sir.

2 Q. Okay. And then what is to your
3 north?

4 A. My north is Henry's.

5 Q. Is there anything between you and
6 Henry's?

7 A. No, sir.

8 Q. Well, is there a great big
9 undeveloped field between you and Henry's?

10 A. Yes, sir.

11 Q. And how -- when you purchased your
12 house, how did you believe it was zoned?

13 A. Residential.

14 Q. Okay. So when you look at the
15 zoning map, which is Exhibit 1, can you point out
16 to the Administrative Law Judge where
17 approximately you are on that map?

18 A. Let me see here. I need to see
19 where everything is at. Right here, sir. Do you
20 want me to show it to you?

21 MR. BROWN: Mr. Halloran.

22 THE WITNESS: Right in here.

23 Because this is Henry's over here.

24 HEARING OFFICER HALLORAN: What I'm

1 going to do is the witness is pointing at the
2 location and I'm just going to mark an X on this.

3 This signifies what, sir?

4 THE WITNESS: That's my house and
5 the neighbor's house.

6 HEARING OFFICER HALLORAN: Okay.
7 Thank you.

8 BY MR. BROWN:

9 Q. It is -- so that box that appears to
10 be commercially zoned --

11 A. This one here? I don't --

12 Q. This box that appears to be
13 commercially zoned, does it include your residence
14 or not?

15 A. I don't think so because I bought
16 it -- you know, it's hard to tell where the line
17 is, but I don't think it does because it's -- it
18 says ag in there and on this map it says
19 agriculture, limited agricultural, and it would be
20 in that box, yeah.

21 Q. So because you're near the grocery
22 store and the way they drew the box, it is
23 possible that the city would consider you in the
24 commercial zoning even though you're sitting with

1 **another residential house?**

2 A. I don't think so.

3 Q. You think you're -- you think you're
4 **residential?**

5 A. They told me at one time I was
6 residential. I went to the tax office and they
7 said it was residential.

8 Q. Is everything to your north between
9 **you and Henry's residential?**

10 A. According to this, yeah.
11 Residential.

12 Q. And everything behind you to your
13 **east is agricultural, correct?**

14 A. Yes, sir.

15 Q. Okay. And the other residential
16 **house immediately to your south, is it also**
17 **occupied by normal residences?**

18 A. Yes.

19 Q. Have there ever been businesses in
20 **your house or that house?**

21 A. Not to my knowledge.

22 Q. Okay. Was there ever different
23 **buildings where your property is or your next door**
24 **neighbor is?**

1 A. Not to my knowledge.

2 Q. Okay. Since 2013, how often have
3 you -- have they been playing live music at
4 Henry's Double K?

5 A. From when?

6 Q. From 2013 when they moved in to
7 today, how often have they been playing live
8 bands?

9 A. About once a week now. It was once
10 every couple of weeks.

11 Q. And over this period of time, have
12 you for the most part kept careful notes of the
13 bands?

14 A. Yes, sir.

15 Q. Okay. And what percentage of the
16 time that he's had live music there has it been
17 outdoors versus indoors?

18 A. Mainly, it's indoors. Probably, I
19 don't know, maybe ten times outdoors. Maybe. You
20 know what I mean.

21 Q. Ten times in the last seven years,
22 is that what you're saying?

23 A. I can't really say. I would say a
24 few more than that, but not a whole lot outdoors.

1 **Q. And how -- how many would you say --**
2 **how many times has it been indoors?**

3 A. All the other times, you know,
4 indoors.

5 **Q. And all the other times would be 50**
6 **times, 100 times?**

7 A. Well, since that date to present, he
8 plays about every week now.

9 **Q. So once a weekend, is that what**
10 **you're saying?**

11 A. Yeah.

12 **Q. Okay. Is there a difference between**
13 **bands --**

14 A. Yes.

15 **Q. -- in terms of how loud they are in**
16 **your house?**

17 A. Yes, sir.

18 **Q. So give me an idea of the range.**

19 A. Well, some of the bands like -- can
20 I name them?

21 **Q. Sure.**

22 A. Route 38, Cal Stage, there was
23 another one, Bushville is sometimes loud and
24 sometimes they're quieter and louder, but Route 38

1 and Cal Stage are very loud and, you know, I can
2 hear them. They haven't been over there for a
3 while, but some bands are a lot louder than the
4 others.

5 Lately, it's kind of quieted
6 down a little bit. He's had some inside stuff and
7 it's been pretty quiet, but some of these bands --
8 especially the ones with the big drums. They just
9 boom, boom, boom, boom.

10 **Q. Okay. And during the times you're**
11 **speaking of, are you inside your house with the**
12 **doors and windows closed?**

13 A. Yes, sir.

14 **Q. And how late at night does this**
15 **music go?**

16 A. Well, he used -- one night it went
17 until 1:30 in the morning and then it usually goes
18 now until about -- I would say about 12:30,
19 quarter to 1:00. It varies, but usually it's --
20 usually he goes to about 12:30.

21 **Q. Okay. Does it -- does it affect**
22 **your ability to sleep?**

23 A. Yes, sir, I have a heart problem and
24 I have a note from my doctor even that it affects

1 my sleep very much and even now I have a hard time
2 sleeping, but, anyway, that doesn't help it any.

3 Q. Does it affect normal activities
4 like watching television?

5 A. Yes.

6 Q. What else does it -- what other
7 effects does it have?

8 A. We sleep -- we have a little sun
9 room on our house and at first -- well, we still
10 do when it's loud, but I sleep on the floor and my
11 wife sleeps on the couch. We bought an air
12 mattress of course, but we have to sleep in
13 another room to go to sleep. It affects us very
14 much, yes.

15 Q. I'm going to go ahead and hope the
16 technological part of this show works. I'm going
17 to hand you what I'm going to call Exhibit 3. I
18 will let Mr. Cox see it first.

19 (Document marked as Complainant
20 Exhibit No. 3 for
21 identification.)

22 MR. COX: Okay.

23 HEARING OFFICER HALLORAN:

24 Mr. Brown, what exhibit was marked on by myself?

1 Exhibit 1?

2 MR. BROWN: Exhibit 1.

3 BY THE WITNESS:

4 A. Yeah, this is Route 38. That was
5 taken from my bedroom window.

6 BY MR. BROWN:

7 Q. How -- when was it taken? Give me a
8 date.

9 A. Oh, God. 11/10/18.

10 Q. So November 10th of --

11 A. '18.

12 Q. -- 2018?

13 A. Right.

14 Q. And this is vital. Explain how you
15 recorded it and with what?

16 A. I have a little -- one of these
17 recorders you use in a meeting. I was going to
18 bring it. That speaker is about as big around as
19 the end of your pencil, like microphones, and it's
20 got a chip in it and you can record. It's, like,
21 used in an office for a recording like that. So I
22 put it in my bedroom window and recorded the stuff
23 and it's all dated, you know.

24 Q. So when you say you put it in the

1 **window, is the window closed or is the window**
2 **open?**

3 A. Most of the time the window -- the
4 screen is there. Okay. It's between the window
5 and the screen, but it's right there in our
6 bedroom.

7 **Q. I don't think that answered the**
8 **question.**

9 **Is the window open or closed**
10 **when you make the recording?**

11 A. Some are closed and some are open.

12 **Q. The one --**

13 A. That one there is closed.

14 **Q. So the window is closed for this**
15 **recording?**

16 A. Right.

17 MR. COX: If I may, I think by way
18 of objection, but more by way of clarification
19 just in terms of foundational basis here if I can
20 just ask a couple of questions regarding the
21 recording equipment before we -- I'm not objecting
22 to the introduction of the actual piece. I just
23 want to make sure we're clear on foundation.

24 MR. BROWN: I'm just hoping it

1 plays, but go ahead.

2 MR. COX: Mr. Fiser, do you know
3 what the gain settings were on the microphone you
4 used?

5 THE WITNESS: No, sir, I don't.
6 It's just a microphone. It's a Panasonic, I
7 believe.

8 MR. COX: Standard condenser
9 microphone?

10 THE WITNESS: Yes.

11 MR. COX: Was it like something our
12 court reporter is using here?

13 THE WITNESS: I don't -- yes, but
14 it's a lot smaller than that.

15 MR. COX: Similar in nature to the
16 handheld -- handheld recorder?

17 THE WITNESS: Yes.

18 MR. COX: And the recordings you
19 made, you made these recordings that we're about
20 to hear yourself?

21 THE WITNESS: Mm-hmm.

22 MR. COX: And has any modification
23 been made at all to the recording --

24 THE WITNESS: No, sir.

1 MR. COX: -- since you recorded it?

2 Okay. Thank you.

3 HEARING OFFICER HALLORAN: Thank
4 you, Mr. Cox.

5 MR. BROWN: I'm going to go ahead.
6 It appears it wants to play.

7 (Whereupon, an audio was
8 played.)

9 BY MR. BROWN:

10 Q. So you can clearly hear the thumping
11 of drums --

12 A. Yes, sir.

13 Q. -- is that coming through Henry's
14 Double K?

15 A. Yes, sir.

16 Q. You can clearly hear somebody
17 singing, that, too, is coming from Henry's?

18 A. Some of them, yes, I can hear them
19 singing. I can't hear it from here, but I can
20 hear -- most of them I can hear singing and tell
21 you the songs and everything else.

22 Q. Okay. And, again, you believe this
23 was with the window closed?

24 A. The screen -- it was between the

1 window and the screen, that one was.

2 **Q. There's a big difference between**
3 **whether the window is open and you're playing it**
4 **through a screen or whether the window is closed.**
5 **I need to be sure which one --**

6 A. The window is closed and listening
7 through a screen. In other words, it's closed,
8 the tape is sitting here and the screen is here.
9 Now, some of them were done with a camera below my
10 bedroom window, but I don't think any of these
11 are. They're all recordings.

12 **Q. Okay. All right. I'm not going to**
13 **just keep playing that. It goes for some time.**
14 **But I would like to give a few other examples.**
15 **That was Exhibit 3.**

16 HEARING OFFICER HALLORAN: Did we
17 ever establish whether the window was open or
18 closed?

19 MR. BROWN: One second, please. So
20 that particular window is through a screen. It is
21 not on the inside part of the window. He is
22 putting it in between the window and the screen.
23 Therefore, the window is not blocking the noise.

24 HEARING OFFICER HALLORAN: Thank

1 you.

2 MR. BROWN: I'm going to move to
3 Exhibit 4.

4 MR. COX: Okay.

5 (Document marked as Complainant
6 Exhibit No. 4 for
7 identification.)

8 BY MR. BROWN:

9 Q. Can you identify Exhibit 4,
10 Mr. Fiser?

11 A. Yeah, that's Bushville Band. They
12 were -- they're sometimes quite loud. I believe
13 this one was recorded with the window closed. I'm
14 not real sure. I would have to hear it to tell
15 you.

16 Q. Can you tell me what date it
17 played -- they played?

18 A. Yeah, it was 5/27/18 and 5/27/18.
19 Yes, it's both 5/27/18.

20 Q. So you -- you did two different
21 recordings on one CD?

22 A. Yes, sometimes the recording only
23 goes so long.

24 Q. Okay.

1 MR. COX: Craig, can we just
2 stipulate to the same foundational elements that I
3 established with Mr. Fiser as to the last
4 recording are verified for each of the recordings
5 moving forward unless otherwise stated?

6 MR. BROWN: Meaning his recording
7 instrument?

8 MR. COX: Yes. I don't want to keep
9 interrupting.

10 MR. BROWN: Ms. Fiser, if you
11 recorded any of these differently, you need to say
12 it. Otherwise, we're going to assume what Mr. Cox
13 established is true each and every time.

14 BY THE WITNESS:

15 A. Well, one was inside the house with
16 the window closed because I remember my wife
17 saying on it this is -- one of them she says,
18 "Another night and I can't get any sleep" and that
19 was inside the house.

20 BY MR. BROWN:

21 **Q. But I think more importantly Mr. Cox**
22 **wants to establish what recording device you used.**

23 A. It was a Panasonic. I was going to
24 bring it. It's about half this size. Okay. It's

1 got little bitty microphones on it.

2 MR. COX: Understood.

3 (Whereupon, an audio was
4 played.)

5 BY THE WITNESS:

6 A. Yeah.

7 BY MR. COX:

8 Q. Do you think the window -- do you
9 believe --

10 A. I think that's through the screen, I
11 think.

12 Q. That's through the screen?

13 A. Yes.

14 Q. So your window is up or --

15 A. It's closed.

16 Q. The recording device is on the
17 outside part of the window?

18 A. Right.

19 Q. And you would agree there you can
20 hear the guitar --

21 A. Yes.

22 Q. -- the drums --

23 A. Yes.

24 Q. -- the bass, the vocals?

1 A. Yes.

2 Q. And that's all from 325 feet away --

3 A. Right.

4 Q. -- inside your house?

5 A. Right. Yes, sir.

6 Q. Moving to Exhibit 5 and I will not
7 wear us out with these. Once we get the idea,
8 we'll get the idea.

9 (Document marked as Complainant
10 Exhibit No. 5 for
11 identification.)

12 BY MR. BROWN:

13 Q. Can you please identify what I've
14 handed you?

15 A. Yes, it's a CD from 2/23/19 and it's
16 very loud.

17 Q. Do you know what band?

18 A. I have a record of it at home, but I
19 don't know offhand what band it was.

20 Q. Okay. When I play it, I want you to
21 be able to identify for me whether this was inside
22 the window or outside the window.

23 A. Okay.

24 Q. And I don't care about the screen at

1 all.

2 A. Okay.

3 Q. Again, if the recording device or
4 anything you did was different than what Mr. Cox
5 asked you about, you need to say so.

6 A. No.

7 Q. This one uses a different medium.

8 A. That's with the screen.

9 Q. So that's through the screen?

10 A. Yes.

11 Q. And this is approximately one year
12 ago in the winter 2019?

13 A. Yes.

14 Q. Can you describe for the Board how
15 much of a difference it makes when you close that
16 window?

17 A. Well, it makes the sound, I guess, I
18 would say crisper or not -- not as -- you know,
19 the wind and stuff has a lot to do with that. If
20 I close the window, I can still usually hear what
21 they're singing and if -- I have a TV in the
22 bedroom and a TV in the living and I can hear it
23 over both TV's unless I turn it up quite loud,
24 then I can still hear it and when this happens to

1 you you pick up on this more because you're
2 sitting there and boom, boom, boom, boom. You
3 know what I mean? So it just gravitates, maybe
4 that's the wrong word to use, and I can't sleep.
5 Like I said, we have to sleep in another room.

6 **Q. So you're saying with all the**
7 **windows closed and the doors closed and the TV --**
8 **two TV's turned up you can still hear it?**

9 A. Yes. Yes, we can.

10 **Q. What effect does the wind have?**

11 A. The wind will cause depending on
12 what direction it is blowing, I think, maybe I'm
13 wrong, it will carry the sound waves more.
14 Usually the wind here is out of the west, but
15 sometimes it will be out of the north and it's
16 probably a little bit greater -- the coolness
17 affects it, how cold it is. The decibels are
18 higher when it is cold. So the wind does have an
19 effect. You will get a whistling or rough sound
20 to it, you know. I mean, it's more of a shhhh,
21 you know, when the wind is blowing hard and it's
22 raining sometimes. That makes a difference, too.

23 **Q. What -- do you have occasion to**
24 **listen to the music outside your house?**

1 A. Well, when I'm outside sometimes,
2 yeah. I usually go outside and -- I put some
3 trees in and new windows to try to block it some.
4 I put divider trees. Sometimes I will go out
5 there and hear it and, yeah, I hear it --

6 **Q. So I want to elaborate a bit. You**
7 **put trees, I'm assuming, on your north property**
8 **line --**

9 A. Yes.

10 **Q. -- so it would be between you and**
11 **Henry's Double K?**

12 A. Yes, sir.

13 **Q. What kind of trees?**

14 A. Arborvitae I think they call them.
15 They're like a fern that comes up like this.
16 They're supposed to block noise.

17 **Q. So they're dense?**

18 A. Yes.

19 **Q. Did somebody recommend those trees**
20 **as sound dampening trees?**

21 A. Yes, Spangler Nursery down in
22 Morrison.

23 **Q. Are you -- are you getting the**
24 **desired effect as these trees mature?**

1 A. No. Well, they're growing, but they
2 need to mature more. That was my mistake that I
3 got them -- I got the biggest ones I could get and
4 I put them in and then I put new windows in and
5 tried to help out there, you know.

6 **Q. Have you ever -- did you ever just**
7 **try to work this out with Mr. Meador?**

8 A. Yes, I did try to work it out with
9 him and he kind -- he told me at one time how
10 about if I open a pig farm over there. You won't
11 like it. And he told me and my wife to have --
12 you know, when it's loud just have sex. He -- I
13 said to him -- I said how about we settle on --
14 how about if I call you and tell you if it's loud
15 and you turn it down?

16 Well, that worked about three
17 weeks and about the fourth week I called him and
18 his bartender answered, oh, it's the complainer,
19 which the mayor has a word for me here in Mount
20 Carroll. He calls me the complainer because I'm
21 trying to get some sleep, but, anyway, I called
22 him up and he said, "It's getting a little loud?"
23 I said, "Yeah." And he says, "Well, I ain't doing
24 nothing about it. So if you don't like it,

1 insulate your house," click.

2 Q. And do you have a sense of how many
3 times you've called the police and attempted to
4 get them to help?

5 A. I think it was up in the 30 times
6 probably.

7 Q. And do you still try that or have
8 you stopped?

9 A. No, it didn't do any good. I mean,
10 since they made the decibel level at 70 decibels,
11 it doesn't get that high. So he is under that all
12 the time and, you know, so what's the use of
13 calling? I'm not saying they won't do their job.
14 I'm just saying I think the -- I've even went to
15 the -- try to get to the zoning board, I went to
16 the mayor and I said, "I'd like to see the zoning
17 officer" and he said, "No, you don't see the
18 zoning officer. I'll see him if you want
19 something," which I know that's, excuse me, BS,
20 but I did what he said.

21 Q. I don't want you to speculate. I'm
22 going to ask you if you know why the city is
23 reluctant to enforce their ordinance against
24 Mr. Meador?

1 A. Because it's money-making. It's
2 making money for them. They're a small town.
3 They need the money. And the mayor came over one
4 day and he said -- I said to him -- he says,
5 "Yeah." I said, "I know it's making money for the
6 city and you don't want to do anything" and he
7 said, "Not in Mount Carroll." Well, nothings
8 changed. So, I mean, that's basically what I feel
9 it is. I'm one citizen and, you know. That's
10 what I feel about it.

11 **Q. And if Mr. Cox will let this**
12 **question go, I'm never allowed to do this in**
13 **court, but I'm going to try this. This is your**
14 **one day in front of the Illinois Pollution Control**
15 **Board.**

16 **Is there anything else that you**
17 **need to say?**

18 A. Well, I can say a lot. I went to
19 City Hall a lot. They told me that they were
20 going to fix it for me and what it used to be was
21 if it was loud, too disturbing, call the police,
22 they will go over there and tell them to quiet
23 down and if they don't, they will shut it down.

24 When I started going down there

1 and complaining, they said, "We're going to change
2 that." So they made the rule 70 decibels and
3 there's no time limit on it. In other words, if
4 he wants to go to 4:00 in the morning, he can go.
5 So that's the reason I think that they did it is
6 because right here and I'm just -- I'm one guy,
7 but why should I suffer on the backs of the other
8 people?

9 Another thing I went up -- I
10 went up when the bands was playing, I went up
11 behind Henry's and did a trip up there and it's
12 not loud. Then I took some pictures the other day
13 and I'm sorry I forgot --

14 Q. Mr. Fiser, just to be clear --

15 A. Sure.

16 Q. -- to Mr. Halloran.

17 You went to the opposite side of
18 Henry's Double K, to the northside --

19 A. Yes.

20 Q. -- opposite your land?

21 A. Yes.

22 Q. And to listen to the bands?

23 A. Yes, sir.

24 Q. And what did you observe?

1 A. It wasn't very loud at all and then
2 I went up there the other day and I took some
3 pictures. I'm sorry I didn't bring them, but as
4 you come up it's on the road Dewhurst. It comes
5 around. There is a big garage there. I think --
6 I can't -- the red house owns that garage. So
7 that blocks that.

8 On the other side of that house,
9 the way the land is up here and the windows are
10 facing down in the ground and they're at a
11 45-degree angle, in other words, they're like this
12 and the ground is here. So I can see where the
13 sound goes down into the ground. I went on up on
14 by Mr. Frey's house and took some pictures. Well,
15 here is Henry's down here and here he is way up
16 here and there's no windows facing him on the back
17 wall there.

18 **Q. Is Mr. Frey's house also to the**
19 **north of the Henry's property?**

20 A. It would be on the northside, but it
21 would be more east.

22 **Q. Okay.**

23 A. So, anyway, I took pictures of all
24 this stuff and I was going to bring it to you.

1 **Q. Mr. Fiser, just to be clear, these**
2 **houses are much closer to Henry's Double K than**
3 **you are?**

4 A. Yes, sir, they are.

5 **Q. So they're literally neighbors --**

6 A. Right.

7 **Q. -- whereas you have this great big**
8 **field?**

9 A. Right.

10 **Q. And their level of sound is much**
11 **lower than yours?**

12 A. Yes, sir.

13 **Q. Okay.**

14 A. That's what I've heard.

15 **Q. Okay.**

16 A. And I couldn't hear anything up
17 there really, but another thing my house where it
18 sits is kind of like an amphitheater. I don't
19 know if that sounds right or not. My house sits
20 here, big hole, sits right up here and my house is
21 the same height as his. So the noise goes, I
22 feel --

23 MR. BROWN: I have no more questions
24 of this witness.

1 HEARING OFFICER HALLORAN: All
2 right. Before Mr. Cox begins, do we need more
3 folding chairs? Okay. Thanks.

4 For the record, there's about --
5 it looks like about 30 members of the public here.
6 Mr. Cox, you may proceed.

7 MR. COX: Thank you.

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

9 BY MR. COX:

10 Q. Just a few quick questions,
11 Mr. Fiser.

12 Since you've moved into your
13 home, it sounds like you've lived there about 18
14 years, have you received any notice of any zoning
15 change --

16 A. No.

17 Q. -- or ordinance -- either for an
18 adjacent property or for your own property?

19 A. No, sir.

20 Q. Okay. It sounds like an odd
21 question. Do you ever go see live music?

22 A. Yeah.

23 Q. How often do you do that?

24 A. Well, I've gotten older. I don't go

1 very often. Probably maybe four years ago or
2 something and I didn't go to see it. They just
3 had a band there when I got there. I didn't go to
4 see it.

5 **Q. So you wouldn't have any basis for**
6 **determining whether the bands that play at Henry's**
7 **are louder or not louder or the same sound as**
8 **other bands that play?**

9 A. Well, I've been down to -- I was
10 down to Poopy's and them bands are louder, but
11 they're outside and he's in an industrial area.
12 He is not in a residential area.

13 **Q. And that's --**

14 A. He put on -- he -- excuse me. He
15 quits at 11:00 or 12:00.

16 **Q. That's a different type of -- that's**
17 **a much different type of venue with a much louder**
18 **sound amplification system, correct?**

19 A. I couldn't say. I don't know what
20 is inside Henry's.

21 **Q. Okay.**

22 MR. COX: No further questions.

23 HEARING OFFICER HALLORAN: Thank
24 you. Mr. Brown?

1 MR. BROWN: No questions.

2 HEARING OFFICER HALLORAN:

3 Mr. Fiser, you may step down. Thank you.

4 MR. BROWN: I would call Cheryl --
5 leave those with Mr. Halloran, please.

6 I would call Cheryl Fiser to the
7 stand, please.

8 HEARING OFFICER HALLORAN: Raise
9 your right hand. Mr. Brickey will swear you in,
10 please.

11 WHEREUPON:

12 CHERYL FISER

13 called as a witness herein, having been first duly
14 sworn, deposeth and saith as follows:

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

16 BY MR. BROWN:

17 Q. Mrs. Fiser, state your name and
18 spell your last name, please.

19 A. Cheryl A. Fiser, F-I-S-E-R.

20 Q. And where do you live?

21 A. 842 South Jackson, Mount Carroll.

22 Q. Are you married to Jim Fiser?

23 A. Yes, I am.

24 Q. How long have you been married to

1 him?

2 A. Almost 15 years.

3 Q. And how long have you lived on
4 Jackson Street?

5 A. Fifteen years in July.

6 Q. And do you recall how long you lived
7 there before Henry's Double K came?

8 A. We moved there on July 5th. So he
9 started on the 13th. Excuse me. 2013. So about
10 eight years.

11 Q. You moved in in 2005?

12 A. Yes.

13 Q. Okay. Because you said July 5th and
14 I knew that's not what you meant.

15 A. I'm sorry. I meant 2005.

16 Q. So for eight years this wasn't an
17 issue?

18 A. No.

19 Q. And beginning in 2013, it was?

20 A. Correct.

21 Q. So you were here to hear -- in the
22 interest of time, you were here to hear all the
23 questions I asked your husband and all of his
24 answers, correct?

1 A. Yes.

2 Q. Did you agree with each and every
3 one of his answers?

4 A. Yes.

5 Q. A few specific questions directed at
6 you. Because this issue with the screen and the
7 window, how much difference does it make if the
8 window is closed all the way versus not?

9 A. Some. Some. Not much.

10 Q. Okay.

11 A. I mean, we replaced outside windows,
12 we didn't replace inside windows and it's an old
13 home.

14 Q. Okay. And do you agree with the
15 statement that with all the windows and doors
16 closed and both TV's on that you can still clearly
17 hear the music?

18 A. Yes. Yes, I do.

19 Q. Okay. And specific to you, what are
20 the health and mental effects that -- that this
21 has on you?

22 A. Oh, boy. My husband is smiling.
23 It's just tortious. You know, we certainly don't
24 want to close down any business that is beneficial

1 to the town, but it's also like why should we be
2 sleeping on the floor, leaving our home so a
3 businessman can make money? That just doesn't
4 seem right.

5 **Q. So do you have issues sleeping?**

6 A. Yes, I do. I take sleeping pills
7 now.

8 **Q. When you know that a weekend is**
9 **coming where there's going to be a band or two,**
10 **does that affect plans?**

11 A. Yes.

12 **Q. Tell me how.**

13 A. Well, for one thing, we could
14 never -- say my daughter was going to come over
15 with her children, we would never say, "Come on
16 over" because if there's a band playing, it's
17 going to be an awful visit. So those things.

18 **Q. Okay.**

19 A. And we better stay home and record
20 it because the city is not paying attention.

21 **Q. Do you feel there is more you can do**
22 **to alleviate this problem yourself?**

23 A. No, I don't know what it would be.
24 We've tried everything.

1 Q. When you purchased the house, do you
2 also believe that you were zoned residential?

3 A. Absolutely.

4 Q. And are you aware of any other use
5 of your house or the house next door other than as
6 a residence?

7 A. No.

8 MR. BROWN: No more questions of
9 this witness.

10 HEARING OFFICER HALLORAN: Thank
11 you, Mr. Brown. Mr. Cox?

12 MR. COX: No questions.

13 HEARING OFFICER HALLORAN: Thank
14 you. You may step down, Ms. Fiser.

15 THE WITNESS: Can I add something?
16 We were talking about when they wrote that ticket.
17 When Dennis wrote that ticket, it was outside. It
18 was -- I want to say it was Blue Room they were
19 playing and it was really, really, really loud
20 when he decided to issue a citation.

21 MR. BROWN: Okay. Thank you for
22 that clarification.

23 Okay. Mr. Halloran, I am out of
24 witnesses. If my one shows up from Rockford with

1 the car trouble, I would just simply reserve the
2 right to use him in rebuttal if necessary, but for
3 now my case in chief is complaint.

4 HEARING OFFICER HALLORAN: Terrific.
5 Thank you, Mr. Brown. Mr. Cox, do you want to
6 take a brief break before you start?

7 MR. COX: Certainly, if that's --

8 HEARING OFFICER HALLORAN: Yeah,
9 we'll take five minutes. Off the record. Thank
10 you.

11 (Whereupon, a break was taken
12 after which the following
13 proceedings were had.)

14 HEARING OFFICER HALLORAN: We're
15 back on the record. I think Mr. Brown would like
16 to offer some exhibits into evidence. Mr. Brown,
17 after reconsidering, I think we'll just have --
18 like you did, I thought it was two No. 1's, but
19 Exhibit 1 and Exhibit 2 if you can just identify
20 them, please.

21 MR. BROWN: Okay. So, Mr. Halloran,
22 I would offer Exhibit 1 which is a zoning map of
23 Mount Carroll, Illinois, then Exhibit 2 which is a
24 GIS overhead photo of the same exact area or the

1 area in question I should say, which is
2 Mr. Fiser's residence and then Henry's Double K
3 and then Exhibit's 3 -- 3, 4, 5 are the recordings
4 that I played of the band music and I would offer
5 all five into evidence, please.

6 HEARING OFFICER HALLORAN: Thank
7 you. Mr. Cox?

8 MR. COX: Thank you. No objection.

9 HEARING OFFICER HALLORAN: Thank
10 you. So admitted. Complainant's Exhibit's 1, 2,
11 3, 4 and 5 are admitted. Mr. Cox, your case in
12 chief, please. Thank you.

13 MR. COX: Thank you. I'd like to
14 first call Pam Heisler.

15 HEARING OFFICER HALLORAN: Good
16 morning. Raise your right hand. The court
17 reporter will swear you in.

18 WHEREUPON:

19 PAM HEISLER
20 called as a witness herein, having been first duly
21 sworn, deposeth and saith as follows:

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

23 BY MR. COX:

24 Q. Good morning, Ms. Heisler. Thanks

1 **for coming. Can you state your full name for the**
2 **record, please.**

3 A. Pam Heisler.

4 Q. **And what is your address?**

5 A. 307 Sunny Street, Mount Carroll.

6 Q. **And that is, as I understand it,**
7 **just right -- right up the street from Henry's**
8 **Double K?**

9 A. I'm right -- yeah, behind there.
10 Right -- our properties meet.

11 Q. **Okay. About how -- how far is your**
12 **house from Henry's structure?**

13 A. Just the parking lot, whatever that
14 parking lot is.

15 Q. **So a stone's throw?**

16 A. Yeah. Yeah, it's just a parking lot
17 between us.

18 Q. **How long have -- how long have you**
19 **lived at that residence?**

20 A. I have been there since '04.

21 Q. **So you've been there since Henry's**
22 **started up?**

23 A. Oh, yeah. Yes.

24 Q. **You're aware that Henry's has live**

1 music?

2 A. Yes.

3 Q. And I believe you've been here for
4 most of the proceedings, if not all?

5 A. Right.

6 Q. You heard Mr. Fiser's testimony that
7 music is played approximately once per week, is
8 that fairly accurate?

9 A. Possibly, yeah. Yes. Maybe less
10 depending.

11 Q. Is that mostly indoors?

12 A. Mostly, yes.

13 Q. Okay. Specifically for the last
14 year or two, has there been outdoor -- any outdoor
15 music?

16 A. Not that I'm aware of. I mean,
17 there could be, but I might not catch it all the
18 time.

19 Q. Okay. And what is -- getting to the
20 point of why we're all here. As a neighbor,
21 when -- when music is played at Henry's Double K,
22 first of all, can you hear that from your
23 residence?

24 A. I can hear some, but it's not as

1 loud as what I heard here today. I don't hear
2 that.

3 Q. This might sound like an odd
4 question, but do you have to try to hear it?

5 A. Sometimes if I go out in the back
6 deck to leave the dog out or something I can hear
7 it, but other than that inside, no.

8 Q. Okay. And does it interfere with
9 your enjoyment of your property in any way?

10 A. Oh, no, not at all.

11 Q. Okay. Do you frequent Henry's
12 Double K as a customer?

13 A. I've been there before, yes.

14 Q. To your knowledge, have the sound
15 levels at your residence ever been offensive or,
16 in your opinion, dangerous to you?

17 A. Oh, no. Not at all.

18 Q. So they -- they rise above the
19 background noise on some occasions, but not enough
20 to bother you?

21 A. No, not at all. My bedroom window
22 is right there and I can sleep through it. I
23 don't have any problems. No issues.

24 Q. Okay. Again, you're directly

1 adjacent --

2 A. Directly.

3 Q. -- to Henry's property?

4 MR. COX: Nothing further of this
5 witness.

6 HEARING OFFICER HALLORAN: Thank
7 you. Mr. Brown, cross?

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

9 BY MR. BROWN:

10 Q. Ms. Heisler, you are north of
11 Henry's?

12 A. I am east of Henry's parking lot.

13 Q. If I could, I'm going to refer to
14 Exhibit 2. So Henry's is here and Mr. Fiser is
15 here, where are you?

16 A. I'm right -- this is the parking
17 lot. I'm right in here.

18 Q. So you're -- you're east?

19 A. Mm-hmm.

20 Q. So have you ever experienced the
21 sound of the music coming out of Henry's Double K
22 from the Fiser residence?

23 A. No.

24 Q. You have not?

1 A. No, I have never heard it from their
2 place.

3 MR. BROWN: Okay. No more
4 questions.

5 HEARING OFFICER HALLORAN: Thank
6 you.

7 MR. COX: Before I wrap up from an
8 evidentiary standpoint, most of the witnesses
9 you'll be hearing from today have also executed
10 affidavits previously. I think Mr. Brown and I
11 had discussed the admission of those affidavits.

12 MR. BROWN: Yes.

13 MR. COX: Would you like each
14 witness to identify the affidavit or can I simply
15 submit those in a batch?

16 MR. BROWN: You can submit them in a
17 batch. I mean, as long as the understanding is
18 their location is on the other side of Henry's.

19 MR. COX: Sure. Sure.

20 MR. BROWN: Okay. Yeah, Mr. Cox has
21 affidavits from a number of people on the other
22 side of Henry's that will all basically state what
23 Ms. Heisler just said, that they don't hear.

24 HEARING OFFICER HALLORAN: You may

1 proceed, Mr. Cox.

2 MR. COX: Thank you. And I will
3 have -- the affidavits were taken simply for the
4 sake of if somebody became unavailable at the time
5 of the hearing. So I think for the record -- for
6 the purpose of maintaining the record, I would
7 like to submit the affidavits, but obviously
8 in-person testimony is better. So we will try to
9 present that.

10 HEARING OFFICER HALLORAN: Thank
11 you.

12 MR. COX: Almost all but one case.

13 HEARING OFFICER HALLORAN: Okay.
14 Thank you. Are we finished with this witness?

15 MR. COX: I am.

16 MR. BROWN: Yes.

17 HEARING OFFICER HALLORAN: You may
18 step down. Thank you so much.

19 MR. COX: I'll call Elizabeth
20 Hartman.

21 HEARING OFFICER HALLORAN: Raise
22 your right hand. The court reporter will swear
23 you in.

24

1 WHEREUPON:

2 ELIZABETH HARTMAN

3 called as a witness herein, having been first duly
4 sworn, deposeseth and saith as follows:

5 DIRECT EXAMINATION

6 BY MR. COX:

7 Q. Ms. Hartman, good morning. Thanks
8 for coming. Can you state your full name for the
9 record, please.

10 A. My what?

11 Q. Your full name for the record,
12 please.

13 A. Elizabeth Ann Hartman.

14 Q. Okay. And do you live at 309 Sunny
15 Street?

16 A. Yes.

17 Q. In Mount Carroll?

18 A. Yes.

19 Q. Are you familiar with Henry's Double
20 K --

21 A. Yes.

22 Q. -- the establishment? And you live
23 just down the road from Henry's, right?

24 A. I think up the road.

1 Q. Up the road?

2 A. Whatever.

3 Q. How many houses between you and
4 Henry's?

5 A. One.

6 Q. One. So you're just on the other
7 side of Ms. Heisler?

8 A. Yes.

9 Q. Have you been present on your
10 property when Henry's Double K is playing live
11 music? Have you heard live music from Henry's at
12 your house?

13 A. Some, yeah.

14 Q. Okay.

15 A. But only if I'm outdoors.

16 Q. Okay. So when there is live music,
17 you don't hear it indoors at your home?

18 A. No, I don't.

19 Q. Okay. So with that -- with that
20 comment, it's never interfered with your use of
21 the property, you've never noticed that --

22 A. No.

23 Q. The -- the sound levels you have
24 never observed them to be offensive or dangerous?

1 A. No.

2 Q. Do you frequent Henry's Double K as
3 a patron, do you have dinner there?

4 A. Yes.

5 Q. Okay. Is Henry's a good thing or
6 bad thing for the community as a whole?

7 A. I think it's a good thing.

8 MR. COX: No further questions.

9 HEARING OFFICER HALLORAN: Thank
10 you. Mr. Brown?

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

12 BY MR. BROWN:

13 Q. Mrs. Hartman, you live east of
14 Henry's where Ms. Heisler lives, correct?

15 A. Yes.

16 Q. Okay. And have you had occasion to
17 listen to the live music from Henry's from the
18 Fiser property?

19 A. I've heard some, like I said, when
20 I'm outdoors.

21 Q. No, have you -- have you ever been
22 at the Fiser's property when the music is playing
23 at Henry's?

24 A. I don't think so.

1 **Q. Okay.**

2 A. I can't remember.

3 MR. COX: No more questions.

4 HEARING OFFICER HALLORAN: Thank
5 you, Mr. Brown. Mr. Cox?

6 MR. COX: No further questions.

7 HEARING OFFICER HALLORAN: You may
8 step down. Thank you so much. Watch the cord,
9 please.

10 MR. COX: I'll call Bonnie Haas.

11 HEARING OFFICER HALLORAN: Raise
12 your right hand, please.

13 WHEREUPON:

14 BONNIE HAAS
15 called as a witness herein, having been first duly
16 sworn, deposeth and saith as follows:

17 HEARING OFFICER HALLORAN: Thank
18 you.

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

20 BY MR. COX:

21 **Q. Ms. Haas, good morning. Thank you**
22 **for coming.**

23 **Could you state your full name**
24 **for the record, please.**

1 A. Bonnie Haas.

2 Q. Okay. And you reside at, I'm sorry,
3 826 Dewhurst --

4 A. Yes.

5 Q. -- in Mount Carroll? About how far
6 is that from Henry's Double K?

7 A. The street -- the street is between
8 me and the parking lot.

9 Q. Okay. So you're -- you're across --
10 you're across the street from the west from
11 Henry's Double K.

12 Do you know approximately how
13 far you are from the actual building, your house?

14 A. Maybe a thousand feet.

15 Q. Okay. Mr. Meador just advised me
16 that his parking lot is about 140 feet, would that
17 be 140 feet plus the street, would that be an
18 accurate representation of the distance?

19 A. Yes.

20 Q. Okay. Okay. But you're -- for the
21 record, you're directly adjacent from --

22 A. Yes.

23 Q. -- from Henry's Double K's parking
24 lot, is that correct?

1 A. Yes.

2 Q. How long have you lived at that
3 address?

4 A. Since 1957.

5 Q. Okay. Has -- have you observed any
6 live music at Henry's Double K either in person or
7 from your residence? Have you noticed --

8 A. I have never had any problem, no.

9 Q. Okay. You've led me to my next
10 question.

11 You've never noticed any of the
12 music performances to be offensive or dangerous in
13 terms of sound levels at your property?

14 A. I have never had any problem, no.

15 Q. Can you hear them indoors?

16 A. Pardon?

17 Q. Can you hear any of the performances
18 indoors?

19 A. You can hear it, yes, but it's no
20 problem.

21 Q. So is your property actually located
22 south and west --

23 A. Yes.

24 Q. -- of Henry's?

1 A. It's directly across the street.

2 Q. I'm sorry. Correction. North and
3 west?

4 A. Yes.

5 Q. Okay. So Henry's is to the south of
6 you?

7 A. Yes.

8 Q. I just wanted to clarify that.

9 MR. COX: No further questions.

10 HEARING OFFICER HALLORAN: Thank
11 you, Mr. Cox. Mr. Brown?

12 MR. BROWN: Yes, if I can refer to
13 Exhibit 2 again.

14 HEARING OFFICER HALLORAN: You may.

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

16 BY MR. BROWN:

17 Q. Will you -- this is Henry's, this is
18 the Fiser residence to the south and the grocery
19 store, can you point to where you are? This is
20 Henry's. I think you testified to being somewhere
21 over here except --

22 A. We're right across the street from
23 Henry's.

24 Q. Meaning which street?

1 A. Dewhurst. 826 Dewhurst.

2 Q. I know. I heard that, but I don't
3 know where Dewhurst is. I'm not from here.

4 A. I can't tell by the map.

5 Q. Clearly, there is no house to the
6 south. So I'm trying to figure out which house is
7 yours and there isn't anything to the northwest.

8 A. Where is the parking lot?

9 Q. The parking lot appears to be right
10 here. There also appears to be parking right
11 here.

12 A. I would be right across the street.

13 Q. Like here? Because there is nothing
14 across this street and there is nothing across
15 that street.

16 A. Yes.

17 Q. So you're up here to the north?

18 A. Mm-hmm.

19 Q. Okay. And have you ever been at the
20 Fiser residence when live music has been played?

21 A. No.

22 MR. COX: Okay. No more questions.

23 HEARING OFFICER HALLORAN: Thank
24 you, Mr. Brown. Mr. Cox?

1 MR. COX: Nothing further.

2 HEARING OFFICER HALLORAN: Thank
3 you. Watch the cord, please.

4 MR. COX: At this point, we call
5 Lawrence Haas.

6 HEARING OFFICER HALLORAN: Raise
7 your right hand, please.

8 WHEREUPON:

9 LAWRENCE HAAS
10 called as a witness herein, having been first duly
11 sworn, deposeth and saith as follows:

12 D I R E C T E X A M I N A T I O N
13 BY MR. COX:

14 Q. Mr. Haas, good morning. You were
15 present as your wife just gave testimony, did you
16 hear what she had to say?

17 A. Partially.

18 Q. Partially. This is a case about
19 noise and we have noise in the background making
20 it hard to understand. So I apologize.

21 Just stepping through you reside
22 also at 826 Dewhurst in Mount Carroll?

23 A. Yes.

24 Q. And that property is situated

1 directly across Dewhurst Street to the north from
2 Henry's Double K?

3 A. Right across from the parking lot.

4 Q. Okay. And has live music performed
5 at Henry's Double K ever interfered with your use
6 of your property?

7 A. No.

8 Q. Okay. Have you ever, in your
9 opinion, observed the sound levels to be offensive
10 or dangerous?

11 A. The sound level?

12 Q. Yes.

13 A. Not since Henry has owned it.

14 MR. COX: Okay. Nothing further.

15 HEARING OFFICER HALLORAN: Thank
16 you. Mr. Brown?

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

18 BY MR. BROWN:

19 Q. Mr. Haas, have you ever been at the
20 Fiser residence when live music was being played
21 at Henry's Double K?

22 A. I was never there.

23 MR. BROWN: No more questions.

24 Thank you.

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

3 MR. COX: We call Richard Frey.

4 WHEREUPON:

5 RICHARD FREY
6 called as a witness herein, having been first duly
7 sworn, deposeth and saith as follows:

8 D I R E C T E X A M I N A T I O N
9 BY MR. COX:

10 Q. Mr. Frey, good morning. Can you
11 state your full name for the record.

12 A. Richard Frey, F-R-E-Y.

13 Q. And you reside at 310 Sunny Street
14 in Mount Carroll?

15 A. Yes.

16 Q. And how is that situated in relation
17 to Henry's Double K?

18 A. It's northeast.

19 Q. About how far do you think?

20 A. From his backdoor, probably 100
21 yards.

22 Q. Okay. Have you ever heard live
23 music played at Henry's Double K from your house?

24 A. Yeah.

1 Q. Have the sound levels ever been
2 offensive or dangerous, in your opinion?

3 A. No.

4 Q. Have they -- has that music ever
5 interfered with your use of your property?

6 A. The only thing, and I told Henry and
7 he took care of it, it was the bass. One night we
8 had bass that was just pounding.

9 Q. It was on -- that was on a
10 particular night?

11 A. Yeah.

12 Q. Just a particularly loud band?

13 A. In the beginning.

14 Q. Okay. And when you made a
15 complaint, then Mr. Meador addressed that?

16 A. Yes.

17 Q. Okay. And after -- after it was
18 addressed -- by being addressed, I mean he told
19 the band to turn it down, right, as far as you
20 know?

21 A. Henry did.

22 Q. Okay. He did, in fact, turn it
23 down?

24 A. Yeah.

1 **Q. Okay. And, at that point, it did**
2 **not bother you?**

3 A. (Nod.)

4 THE COURT REPORTER: No answer.

5 HEARING OFFICER HALLORAN: Was that
6 a yes or no? You have to answer for the court
7 reporter.

8 THE WITNESS: It didn't bother me.

9 HEARING OFFICER HALLORAN: Thank
10 you.

11 MR. COX: I have no further
12 questions.

13 HEARING OFFICER HALLORAN:
14 Mr. Brown?

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

16 BY MR. BROWN:

17 **Q. Mr. Frey, is either Ms. Heisler or**
18 **Ms. Hartman's house between you and Henry's?**

19 A. Well, they're across the road from
20 me.

21 **Q. You're further from Henry's than**
22 **either of them, correct?**

23 A. Yes and no. I've got two
24 properties. One is closer than Ms. Hartman's.

1 **Q. Okay. Have you ever had occasion to**
2 **be at the Fiser residence during the playing --**

3 A. No.

4 **Q. -- of live music?**

5 A. No, I have not.

6 MR. BROWN: No more questions.

7 HEARING OFFICER HALLORAN: You may
8 step down, sir. Thank you.

9 MR. COX: We call James Meador.

10 HEARING OFFICER HALLORAN:

11 Mr. Meador.

12 WHEREUPON:

13 JAMES MEADOR

14 called as a witness herein, having been first duly
15 sworn, deposeth and saith as follows:

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

17 BY MR. COX:

18 **Q. Good morning, Mr. Meador. Can you**
19 **state your full name for the record, please.**

20 A. James Meador.

21 **Q. Okay. And to clarify middle name**
22 **Henry, is that right?**

23 A. My middle name is legally Leroy. My
24 nickname is Henry.

1 **Q. And you're the proprietor of Henry's**
2 **Double K?**

3 A. My wife and I, yes.

4 **Q. And how long have you operated that**
5 **business?**

6 A. We purchased the property in 2012
7 and we opened up in May of 2013.

8 **Q. Okay. And tell me a little bit**
9 **about your venue.**

10 A. We opened up the bar part in 2013,
11 we bought the contents of a restaurant downtown.
12 We opened up the food part in 2014. We host a lot
13 of -- we do weddings and recent times we've just
14 done two funeral luncheons, a retirement party, we
15 do fundraisers for the rotary, we just did a
16 Lion's Club Christmas party, we do have live
17 music, we have a lot of acoustic shows downstairs.
18 I do have live bands.

19 **Q. Okay. Before we get into the music,**
20 **tell me a little bit about the -- the -- the event**
21 **center nature of your -- of your property.**

22 So you -- are there any other
23 **venues really in Mount Carroll which serve the**
24 **purpose that Henry's Double K does in terms of**

1 **family gatherings and that sort of thing?**

2 A. It's pretty hard to duplicate what
3 we do as far as the food. We have the in-house
4 food, it doesn't have to be catered in. We have
5 the space. You know, we can -- we can have up to
6 175 people upstairs for weddings or gatherings.
7 We're handicap accessible, you know, upstairs. We
8 have a nice parking lot. So it's, you know,
9 relatively safe for people to come and go.

10 Q. Okay. And you do have live music.
11 I believe your testimony was that live music is
12 generally weekly, is that generally accurate?

13 A. Yes, we have, like, on Thursday
14 nights lately we've had -- it's basically an open
15 mic. It's called The Show Ups and people from the
16 area come in and play guitar in the bar.

17 Q. Okay. So Thursday nights you'll
18 have a small -- small performance, can you
19 describe the type of amplification that is
20 typically used there? I should clarify.

21 You don't have in-house sound,
22 is that correct?

23 A. No.

24 Q. So this is -- any sound

1 **amplification is from --**

2 A. Yes.

3 Q. -- the performers bringing their own
4 **amplification in?**

5 A. It's brought in.

6 Q. Okay. So Thursday nights, again,
7 **can you describe what the average person will**
8 **bring in there?**

9 A. Usually, one person brings a sound
10 system and it's like one of those stand up Bose.
11 I don't know, you know, the specifications, but
12 that's normally what they use.

13 Q. When I think of what you're
14 **describing, I think of a guy sitting on a stool**
15 **playing a guitar, is that right?**

16 A. Yes, there would be anywhere from
17 one to maybe five and they alternate.

18 Q. **With a single speaker amplification?**

19 A. Yes.

20 Q. **And that's typically an amplified**
21 **speaker, is that correct?**

22 A. Correct.

23 Q. **Not separate amplification. So on**
24 **Friday or Saturday nights, sometimes you'll have**

1 **larger bands?**

2 A. Yes.

3 **Q. And tell me a little bit about**
4 **those, the types of bands that you bring in.**

5 A. It's usually country, maybe a little
6 bit of classic rock.

7 **Q. Okay.**

8 A. A lot of -- a lot of our music has
9 really gravitated to the one or two guitar
10 players, but on occasion we do have anywhere from
11 a four to six-piece band upstairs.

12 **Q. Okay. Are those -- those events**
13 **generally well-attended?**

14 A. For the most part.

15 **Q. Okay. And, again, regardless of the**
16 **size of the band, they bring their own**
17 **amplification?**

18 A. Yes.

19 **Q. In your estimation, have -- has the**
20 **frequency of performances increased or decreased**
21 **over the last four or five years?**

22 A. The band I've -- I've added more of
23 the guitar type performances and really dialed
24 back on the bands in particular.

1 Q. And per your observation, is the
2 sound level typically lower with a smaller --
3 smaller group?

4 A. Much, much lower, yes.

5 Q. Does that have anything to do with
6 the drums and the larger -- large band?

7 A. Most of the shows that I have now
8 don't have a drum.

9 Q. That's exactly where I was going
10 with that.

11 So most of the performances you
12 have are string instruments and vocals?

13 A. Harmonica.

14 Q. Okay. But typically not the drums
15 which -- which are the most problematic from a
16 noise standpoint?

17 A. Yes.

18 Q. I may have asked this already, but
19 how long have you been operating at that location?

20 A. We opened for business in May of
21 2013.

22 Q. Okay. Since May of '13, and not
23 counting Mr. Fiser, how many complaints have you
24 had about sound amplification from surrounding

1 **owners or anybody else for that matter?**

2 A. Other than Mr. Frey on one occasion,
3 I haven't had anybody complain at all.

4 **Q. So you do actually recall Mr. Frey**
5 **stepping in and complaining?**

6 A. He mentioned to me, you know, he
7 thought the bass he could hear it from his house
8 and I shut the backdoor. Somebody opened up -- we
9 have double doors and I shut the door.

10 **Q. Okay. And as an owner, do you take**
11 **steps to try to minimize the -- the -- the sound**
12 **impact on your neighbors?**

13 A. Yeah.

14 **Q. Okay. Can you describe that a**
15 **little bit to me?**

16 A. I ask if -- if I'm feeling it's
17 getting too loud, I ask the band to turn the
18 volume down and I will walk the perimeter of my
19 property different times throughout the night, you
20 know, the back side of the property, I will walk
21 clear up to the Fiser's property right in front of
22 their house and listen for myself to make sure.
23 I've called the police and have them do readings
24 just to make sure I was okay.

1 Q. Okay. And -- okay. In terms of the
2 physical structure, do you have -- do you have
3 shutters or dormers that you close when there is
4 performers?

5 A. The windows to the south on the
6 upper level I have wooden dormers inside that I
7 keep shut for not only sound, but for the heating
8 and air conditioning it's, you know, a great
9 savings to keep them closed.

10 Q. Sure. Sure. So I asked previously
11 about complaints from persons other than
12 Mr. Fiser.

13 How many complaints have you had
14 from Mr. Fiser?

15 A. I have never kept track.

16 Q. More than ten?

17 A. He's probably called me I can
18 recollect maybe three times.

19 Q. Called you directly?

20 A. Yes, three or four times possibly.

21 Q. Okay. And how many complaints have
22 been filed with the police department or other law
23 enforcement?

24 A. I never really kept track or count

1 on how many times.

2 **Q. Okay. I think we heard testimony**
3 **from Officer Asay that that might have been up to**
4 **30 times, would that --**

5 A. That could be so, yes.

6 **Q. You don't have any direct knowledge?**

7 A. No.

8 MR. COX: How are we numbering
9 exhibits? Do we want to do these linearly or do
10 you want this as Respondent's Exhibit 1?

11 HEARING OFFICER HALLORAN: Yeah, why
12 don't we start with Respondent's No. 1.

13 MR. COX: I'm going to show you -- I
14 have a copy for Mr. Brown as well.

15 BY MR. COX:

16 **Q. So you're looking at a map there, is**
17 **that -- does that appear to show your -- your**
18 **property?**

19 A. Yes.

20 (Document marked as Respondent's
21 Exhibit No. 1 for
22 identification.)

23 BY MR. COX:

24 **Q. And, specifically, what you have**

1 there is a map and you have a certification there,
2 is that correct? And the certification is from
3 the city clerk?

4 A. Yes.

5 Q. Was that issued at your request? In
6 other words, did you go down to the zoning office
7 and ask for that?

8 A. I have asked for, yes, a zoning map.

9 Q. And what your -- what I have
10 identified there as Exhibit 1, that is what you
11 received in response to that request?

12 A. Yes.

13 Q. And that consists of a crimp sealed
14 certification and colored map?

15 A. Yes.

16 Q. And just for the record, can you
17 read that certification into the record out loud,
18 please.

19 A. Read the whole entire contents?

20 Q. Well, just the paragraph where --

21 A. "I, Julie A. Cuckler, do hereby
22 certify that I am the city clerk of Mount Carroll,
23 Illinois and keeper of records of said City of
24 Mount Carroll, Illinois and that the foregoing is

1 a true and correct copy of the City of Mount
2 Carroll, Carroll County, Illinois zoning map as
3 published by the City Council of the City of Mount
4 Carroll, Illinois in February 2008 and placed on
5 file dated this 28th day of February 2019 by Julie
6 Cuckler."

7 Q. Referring to -- referring to the map
8 that is Page 2 there, you identify your property
9 and the property where Henry's Double K sits is
10 indicated in yellow and that's designated as C2,
11 correct?

12 A. Yes.

13 Q. And that's -- that's commercial
14 zoning --

15 A. Yes.

16 Q. -- is that accurate? And then
17 directly to the south of that there is property
18 which is zoned residential?

19 A. Yes.

20 Q. Do you own that?

21 A. Yes, I do.

22 Q. That's the open field which we've
23 heard referred to many times?

24 A. Yes.

1 Q. And then the property to the south
2 there directly is Mr. Fiser's residence, is that
3 correct?

4 A. That's correct.

5 Q. Is that also zoned C2?

6 A. Yes, it is.

7 Q. As is the other property to the
8 south of there and the other property to the east
9 of there?

10 A. May I comment?

11 Q. Sure.

12 A. Straight south the next house is
13 Jeff Hensel's and that's C2 and then the property
14 where Shaw's Grocery store sits on is straight
15 south and that's also C2.

16 Q. Okay. So the only -- the only
17 property to the south of you which is zoned R is
18 your open field?

19 A. Correct.

20 Q. And would you describe the nature of
21 that corner where you're situated as commercial in
22 nature?

23 A. Yes.

24 Q. To your knowledge, has zoning ever

1 **been changed in that area? Have you ever received**
2 **notice of a zoning change or have you ever**
3 **requested a zoning change?**

4 A. No.

5 **Q. Do you have a liquor license with**
6 **the Village of Mount Carroll?**

7 A. Yes.

8 **Q. Do you pay sales tax?**

9 A. Yes.

10 **Q. How many -- how many patrons do you**
11 **believe you have on an average -- in an average**
12 **week?**

13 A. Oh, goodness.

14 **Q. I realize that's going to fluctuate.**

15 A. Yeah, that's pretty tough.

16 **Q. Can you give me a range.**

17 A. I'd say on average maybe 275
18 throughout the week.

19 **Q. Throughout the week. And those are**
20 **people who come in and eat and drink?**

21 A. Yes.

22 **Q. How would you describe your**
23 **relationship with Mr. Fiser over the years?**

24 A. Well, I don't know where to start.

1 Would you like me to start from the beginning?

2 Q. More just a general friendly,
3 adversarial?

4 A. I guess I wanted to start out
5 friendly and I guess I would say on my side it's
6 been friendly.

7 Q. Okay. Do you believe Mr. Fiser
8 views you in that same vein?

9 A. I don't believe so.

10 MR. COX: No further questions.

11 HEARING OFFICER HALLORAN: Thank
12 you, Mr. Cox. Mr. Brown, cross?

13 C R O S S E X A M I N A T I O N
14 BY MR. BROWN:

15 Q. Mr. Meador, just a few quick
16 questions here. When you walked the perimeter of
17 your property when there's a live band playing
18 inside and I'm talking about the Friday, Saturday
19 night, four to six-piece amplified band, when
20 you're on the southside of your own property, and
21 I'm not talking about the field but your actual
22 Henry's Double K property, what does it sound
23 like?

24 A. Probably at the greatest maybe a

1 radio in the far distance is how I would describe
2 it.

3 Q. Yet it's louder than that at the
4 Fiser residence a hundred yards or more away, how
5 is that?

6 A. I can't explain that.

7 Q. I want to refer to both Exhibit 1
8 and 2 -- Petitioner's Exhibit 1 and Respondent's
9 Exhibit 1, if I could. You have a map that was
10 presented to you by the city which you've
11 testified about, correct?

12 A. Yes.

13 Q. And you aren't an expert in zoning,
14 correct?

15 A. No.

16 Q. And this is the official zoning map
17 of Mount Carroll and the question that -- the area
18 in question is this box right here. So you're --

19 MR. COX: Just an objection to the
20 form of the question. As to the official zoning
21 map, I believe that the certification states that
22 that is the official zoning map. So what is
23 presented in Plaintiff's 1 is a map and I think
24 can be presented as --

1 MR. BROWN: Julie Cuckler is not
2 here so you can have your official one and I will
3 have my official one.

4 MR. COX: Yes. Yes.

5 HEARING OFFICER HALLORAN: For the
6 record, let's make it clear. Mr. Brown has called
7 it petitioner's exhibit. Mr. Cox has called it
8 something else. It's the complainant's.

9 MR. COX: Sorry. I'm sorry.

10 HEARING OFFICER HALLORAN: But it's
11 the complainant's exhibit.

12 BY MR. BROWN:

13 Q. So you would be that commercially --
14 Henry's Double K is that sliver right there?

15 A. All right.

16 Q. And this would be that area with the
17 grocery store and the Fiser's and the Hensel's,
18 can you explain to me why this is a rectangle and
19 this isn't?

20 A. Why there is this little deviation
21 right here?

22 Q. Yes.

23 A. I can't explain that.

24 Q. Can you tell me how the Fiser's

1 **house was zoned in 2005 when they bought it?**

2 A. No.

3 MR. BROWN: I have no more
4 questions.

5 HEARING OFFICER HALLORAN: Thank
6 you. Again, for the record, for clarification,
7 we're comparing -- Mr. Meador is comparing
8 Petitioner's Exhibit 1 with Respondent's
9 Exhibit -- is that 1, Mr. Cox?

10 MR. COX: Yes.

11 HEARING OFFICER HALLORAN: Exhibit
12 1. Yes, thank you.

13 MR. COX: Nothing further.

14 MR. BROWN: Okay.

15 HEARING OFFICER HALLORAN: That's
16 it. You may step down, sir. Thank you.

17 MR. COX: Nothing further to offer.
18 I would, though -- we do have the affidavits which
19 we previously provided Mr. Brown. We'll mark
20 those as Group Exhibit 2.

21 MR. BROWN: Please. Are they mostly
22 all the same people that testified today?

23 MR. COX: All but two.

24 MR. BROWN: Okay.

1 MR. COX: There is Bill Walters and
2 Carol Frey. There's affidavits for both of them.
3 They did not testify, but they are the original
4 notarized.

5 MR. BROWN: They're on your witness
6 list. So no problem.

7 HEARING OFFICER HALLORAN: If you
8 can just read those into the record, Mr. Cox.
9 Thank you.

10 (Document marked as Respondent's
11 Exhibit No. 2 for
12 identification.)

13 MR. COX: Certainly. So
14 Respondent's Group Exhibit 2 consists of the
15 affidavit of Carol Frey, affidavit of Bill
16 Walters, affidavit of Richard Frey --

17 HEARING OFFICER HALLORAN: Slow down
18 for --

19 THE COURT REPORTER: It's all right.

20 MR. COX: Affidavit of Lawrence
21 Haas, affidavit of Bonnie Haas, affidavit of Pam
22 Heisler and the affidavit of Elizabeth Hartman.

23 HEARING OFFICER HALLORAN: Okay.
24 And then we have Respondent's Exhibit -- is this 1

1 and 2 here?

2 MR. COX: Just Respondent's Exhibit
3 1 would consist of two pages. Should I label
4 these as Pages 1/2 and 2/2?

5 HEARING OFFICER HALLORAN: Yes. All
6 right. And you're going to offer those?

7 MR. COX: Yes, I would offer them.

8 HEARING OFFICER HALLORAN:
9 Mr. Brown?

10 MR. BROWN: No objection.

11 HEARING OFFICER HALLORAN: Thank
12 you. So admitted. Any rebuttal, Mr. Brown?

13 MR. BROWN: No.

14 HEARING OFFICER HALLORAN: Let's go
15 off the record for a minute to talk about any
16 closing and post-hearing briefing schedule. Thank
17 you.

18 (Whereupon, a break was taken
19 after which the following
20 proceedings were had.)

21 HEARING OFFICER HALLORAN: Okay.
22 We're back on the record. Mr. Brown wants to give
23 a short closing. Mr. Cox may, but what we have
24 done is set the post-hearing briefing schedule.

1 We have complainant's brief due on April 14th,
2 respondent's response due on April 30th,
3 Mr. Brown's reply due on May 14th and I'm going to
4 set public comment, it's written public comment,
5 and you can file them with the Board for April --
6 let's go April 9th public comment. I think that's
7 it. So, Mr. Brown, closing, please.

8 MR. BROWN: Thank you, Mr. Halloran.
9 You were nice enough to share with us a case
10 probably a year ago it was Manarchy versus Gotham
11 Nightclub, PCB 95-73. The similarities between
12 that case and this one are almost overwhelming.
13 You have a nightclub situation with live amplified
14 music, you have a couple of different residents
15 who were similarly situated that have trouble
16 sleeping and get various health problems and are
17 really struggling with the music being played not
18 only how loud it is, but how late it's played and
19 interestingly enough both of the complainants are
20 in commercially zoned areas, although they are,
21 you know, clearly in a residential environment
22 which is allowed under that zoning. They are both
23 zoned commercial.

24 So I don't think this case

1 particularly turns on the outcome of that or
2 shouldn't, but ultimately I think we have
3 demonstrated fairly clearly that the Fiser's have
4 dealt with a consistent and very loud intrusion
5 that has caused an unreasonable interference with
6 their -- with their property and with their
7 residence and, you know, enjoyment thereof and
8 while I do understand that people that are
9 situated in different places around Henry's Double
10 K aren't experiencing this, and we really don't
11 dispute that, I don't even see how that matters.

12 The Fiser's are experiencing it
13 and it could very well be because they're at the
14 level of the second floor of Henry's Double K. I
15 somewhat think that was confirmed with the
16 evidence I got from Mr. Meador when he walks
17 around to the south and is below that second
18 floor.

19 I think it's unreasonable and I
20 would ask that the Illinois Pollution Control
21 Board issue a cease and desist order at least with
22 respect to a certain time of night where it has to
23 stop. Thank you.

24 HEARING OFFICER HALLORAN: Thank

1 you, Mr. Brown. Mr. Cox?

2 MR. COX: Just very briefly. I
3 think the testimony that we heard today was that
4 Mr. and Mrs. Fiser are very much bothered by the
5 sound coming from Henry's Double K. I don't doubt
6 that. I don't have any questions that they're
7 bothered by it.

8 The question is whether a
9 reasonable person would be bothered by that and I
10 think the testimony that we heard today is that
11 the surrounding neighbors don't have an issue with
12 it, nobody has complained. We heard that
13 Mr. Fiser has filed somewhere in the area of 30
14 complaints with the police department and they
15 have come out and investigated and they found no
16 problem except on one occasion where something was
17 issued and the state's attorney didn't feel he had
18 enough to prosecute on.

19 So while this may be bothersome
20 to Mr. Fiser, it's not Mr. Fiser's sensibility
21 that the Pollution Control Board should be
22 concerned about. It should be that of a
23 reasonable person. And not only reasonable
24 person, but a reasonable person situated in this

1 neighborhood. This neighborhood is commercial in
2 nature. The only residential property here to the
3 south as shown and we can -- Mr. Brown and I
4 disagree about the zoning map, but I would submit
5 there is only one certified map submitted and all
6 the property in this area is commercial safe for
7 an open field that never got rezoned and
8 Mr. Meador owns it anyway.

9 So we have nobody complaining
10 there is a commercial business being operated in a
11 commercial area. We have heard nothing which says
12 that the sound is unreasonable for that situation.
13 We heard some recordings, but I'm sure the Board
14 can figure out for themselves that the -- the
15 background noise, the hiss is evidence enough to
16 show what the amplification level was on that
17 microphone. So, again, while the sound may have
18 been audible, that does not mean it's
19 unreasonable.

20 So, you know, case in point, I'm
21 making noise right now and perhaps some would feel
22 that I'm being unreasonable. Currently, I don't
23 believe that the volume level is and that's really
24 what we're looking at again. So it's not

1 individual sensibilities. It is the sensibilities
2 of a reasonable person and I believe that
3 Mr. Meador's establishment plays well within the
4 bounds. The testimony shows that Mr. Meador's
5 facility runs well within the bounds of
6 reasonableness given the community norm and
7 proximity to other residences.

8 HEARING OFFICER HALLORAN: Thank
9 you, Mr. Cox. Did you want to say something?

10 MR. BROWN: Can I add one quick
11 thing that is important? This was an ordinance
12 violation that was dismissed by the city attorney
13 who serves at the pleasure of the mayor. The
14 state's attorney, which is an elected official,
15 was never involved. So I just need to make sure
16 that fact is clarified because that was not
17 correct.

18 HEARING OFFICER HALLORAN: Any
19 response, Mr. Cox?

20 MR. COX: No. Correction --
21 correction accepted.

22 HEARING OFFICER HALLORAN: Thanks.
23 You know, before I go off the record, I drove 140
24 miles out here. I just want to make sure, does

1 anybody have public comment before we close the
2 record? You can just step up and say something.

3 MR. BRASHAW: I do. I do.

4 HEARING OFFICER HALLORAN: Terrific,
5 sir. Would you step up and give the court
6 reporter -- we don't have to swear you in. Just
7 give the court reporter your name.

8 MR. BRASHAW: I'm not really --

9 THE COURT REPORTER: Your name.

10 MR. BRASHAW: What's that?

11 THE COURT REPORTER: Your name.

12 MR. BRASHAW: Ron Brashaw.

13 THE COURT REPORTER: Spelling.

14 MR. BRASHAW: B-R-A-S-H-A-W. I'm
15 not happy being up here, I don't want to be up
16 here, but I have an opinion. I know Jim Fiser for
17 many years. We got to be friends and then him and
18 his wife drove me away as being friends because of
19 this being bombarded with Henry. All we heard was
20 Henry. All we heard was Henry. I don't know
21 Henry that well. But I think I know right from
22 wrong.

23 One summer night my wife and I
24 were walking the dogs. We have four boxers. We

1 went down to listen to the music at Henry's and we
2 walked up by Jim Fiser's house with our butts up
3 against his wall listening to the music. It is
4 not nothing like what you heard over here. What
5 you heard over here the acoustics are bad. It
6 makes it sound louder than it is.

7 I know Jim for a long time, but
8 unfortunately he drove me away because we got
9 tired of hearing about Henry, Henry, Henry at our
10 meetings. One afternoon Jim was at my house and
11 Dave Cutler wrote an article in the paper about
12 Jim that Jim did not like and Jim told me
13 "Whenever I ride my motorcycle by his house, I rev
14 up the motor." So there is a little bit of
15 vindictiveness here.

16 That's about basically what I
17 want to say and I don't like saying this, it hurts
18 me to say this, but sometimes you people just have
19 to step up and say something and that's just my
20 point. I think -- I just don't think it's that
21 bad. We stood up against the house, my wife and
22 I. So for whatever it's worth that's my opinion.
23 If Jim and Cheryl hate me from now on, so be it,
24 but I have an opinion and that's my opinion.

1 HEARING OFFICER HALLORAN: Thank
2 you, sir. You're on record and the Board will
3 take a look at it. Thank you. Yes, sir. You may
4 step up. It's just comment. We don't have to
5 swear you in.

6 MR. RISKO: My name is Mike Risko.

7 THE COURT REPORTER: Spelling.

8 MR. RISKO: R-I-S-K-O. I was an
9 alderman on the City Council at the time this was
10 all going on and I'm still an alderman. Mr. Fiser
11 came and complained about the noise. We listened.
12 Henry was doing a great thing for the community,
13 but all the alderman put themselves in a position
14 one person is bothered by this, what would we do
15 if that was us living in that house?

16 And we said we want to take the
17 reasonable man approach. We asked first that
18 Mr. Fiser and Mr. Meador get together to try to
19 work it out. That didn't go so well. Mr. Fiser
20 kept coming back and still complaining. After a
21 period of time, Henry stopped playing music
22 outside and it was louder outside, but not
23 unreasonable in our opinion, but Mr. Fiser kept
24 coming back to complain. We did a lot of research

1 on noise pollution.

2 We changed the ordinance. Let
3 me read it to you. I have copies here if you all
4 want them. The ordinance is "loud, disturbing and
5 unnecessary noises. The creating of any
6 unreasonable, loud, disturbing and unnecessary
7 noise within the city limits is prohibited. And
8 then loud speakers or amplifiers. The
9 unreasonable use of any amplifier or loud speakers
10 in the course of any public address."

11 That's what we had on the books.
12 It wasn't working. What is unreasonable? We had
13 to quantify it, not make it subjective. We got a
14 decibel meter. We changed the ordinance. We
15 repealed that section about unreasonable noise and
16 added "Amplified sound, sound emitting from the
17 source located within the corporate limits of the
18 City of Mount Carroll shall not exceed 70 decibels
19 at the property line of the source of the
20 amplified sound. No amplified sound emanating
21 from a source outside a structure shall be allowed
22 after 11:00 p.m. Exception if there is an event
23 sponsored by a non-profit organization or benefits
24 to permit -- to a permit issued by the city

1 clerk."

2 So we're trying. And we kept
3 getting complaints. We kept sending policemen
4 over. You heard Mr. Asay comment. He was called
5 many times. Many other officers were over and
6 they didn't feel it was loud enough on the decibel
7 meter that they had. Mr. Fiser kept coming and
8 complaining and when one of the alderman,
9 Mr. Sisler, said he tried to introduce some
10 changes no one seconded it because it was an
11 unreasonable request.

12 I just want to say the city has
13 been beat up a little bit here, but we have tried
14 to accommodate Mr. Fiser's situation and we think
15 Henry is doing a great job here and no one else is
16 complaining and I think it's an unwarranted
17 complaint. So, anyway, do you want these copies?

18 HEARING OFFICER HALLORAN: You know,
19 I can take them as public comment. Your surname
20 again, your last name?

21 THE WITNESS: Risko, R-I-S-K-O.

22 HEARING OFFICER HALLORAN: And the
23 Board will give it its proper weight, but I can
24 bring them back -- bring them back home.

1 THE WITNESS: It's copies of them.

2 HEARING OFFICER HALLORAN: Thank
3 you.

4 MR. COX: Are those all copies?

5 MR. BROWN: Are those copies of the
6 same thing, Mr. Halloran?

7 HEARING OFFICER HALLORAN: Yes.
8 Yes. So it's just one here Mr. Risko, one copy?

9 MR. RISKO: Yes, all of those are
10 copies of the ordinance. They're all the same.

11 MR. BROWN: Let me look if they're
12 correct. That will save me getting it to you. Do
13 you want to look at it? Here.

14 MR. COX: Sure.

15 MR. BROWN: I'm going to have to
16 submit this later. I need to go actually pull the
17 books and make sure it's right.

18 HEARING OFFICER HALLORAN: Okay. I
19 am going to take it as public comment.

20 MR. BROWN: I understand.

21 HEARING OFFICER HALLORAN: You can
22 argue. Thank you, Mr. Brown. Again, before we
23 close, I just want to let the attorneys know that
24 we talked about this off the record as far as

1 being electronically filed, the exhibits that are
2 submitted, and if you have a problem with that
3 call me and we'll figure something out, but it
4 looks like March 17th. Anybody else like to give
5 public comment?

6 MR. SISLER: Yes, I'd like to. Can
7 I do it from here? Everybody can hear me.

8 THE COURT REPORTER: No.

9 HEARING OFFICER HALLORAN: The court
10 reporter may not. It echoes. As long as it's
11 relevant, sir. You don't have to get sworn in.

12 MR. SISLER: Robert Sisler. I think
13 Alderman Risko mischaracterized my comment on the
14 City Council's reaction to my motion to enforce
15 the noise ordinance. My comment was that I made
16 the motion and received no second which told me
17 that nothing -- none of the other five council
18 members were concerned about the noise at all.
19 Plus I made the observation that most of the --
20 this lawyer's witnesses couldn't hear him, asked
21 them questions. That's it.

22 HEARING OFFICER HALLORAN: Okay.
23 Thank you, sir. Anyone else? Yes, sir.

24 MR. PURLEE: David Purlee,

1 P-U-R-L-E-E. I just want to comment on the
2 hearings, not so much the argument, but I'm
3 disappointed that the State of Illinois would
4 spend time and resources on coming to hear an
5 argument that I believe has been decided in the
6 circuit court. Is that true, Henry?

7 MR. BROWN: That's false.

8 MR. PURLEE: Okay.

9 MR. BROWN: The circuit court
10 actually kicked it back to the Illinois Pollution
11 Control Board.

12 MR. PURLEE: I'm disappointed in the
13 system that keeps batting this ball back and forth
14 rather than someone making a decision. That is
15 all.

16 HEARING OFFICER HALLORAN: Thank
17 you, sir. Okay. Anyone else? Just step right
18 up.

19 THE WITNESS: State your name and
20 spell it for the court reporter, please.

21 MR. WHITEBREAD: Gary Whitebread
22 just like it's in the store. Whitebread.

23 HEARING OFFICER HALLORAN: You can
24 have a seat if you'd like.

1 MR. WHITEBREAD: I live
2 approximately -- well, I've just moved, but I
3 lived approximately about maybe 1,500 feet or
4 yards from Henry Meador. Our town has -- once a
5 year has a Mayfest and they have music all weekend
6 and I can sit out in my backyard and I can hear
7 that music all the time.

8 If I sat out in my backyard when
9 Henry had music, either outside or inside, I could
10 never hear it. Never. I know I'm not as close as
11 these people, but I could never hear it. I lived
12 between two grain elevators that in the fall all
13 they do is drive the corn. That's a constant
14 noise all night long. I lived there. I got used
15 to the noise. You go to sleep. And the 70
16 decibels they're talking about that's a flushing
17 toilet.

18 HEARING OFFICER HALLORAN: Thank
19 you, sir. Anyone else? Yes, sir. For public
20 comment, just state your name and spell it.

21 MR. FISHER: Gene Fisher,
22 F-I-S-H-E-R. I'm a sound guy. I have been for 48
23 years. I ran sound for a few of the bands that
24 have played at Henry's and I know Jim and I have a

1 sound company in Rockford. We do about 450 events
2 a year and we get called in to consult on issues
3 kind of like this sometimes over in Rockford and I
4 was actually here to testify for Jim, not against
5 Henry or anything like that. Just because I think
6 I know part of what the problem is and I'm not
7 positive and it would take somebody above my pay
8 grade to know for sure, but I'll be willing to bet
9 you that the glass that is facing Jim's house from
10 Henry's is parallel with the glass that is on the,
11 what would it be, northside of Jim's house.

12 So what happens there is just
13 like a speaker because we did this with Second
14 Cousins in Loves Park and it was almost four
15 blocks away and the people's dishes were vibrating
16 in their house and when the state's attorney said
17 that I said that's crazy. It's mathematically
18 impossible just like everybody here said Jim is
19 being too sensitive or whatever. My guess would
20 be because I went in that lady's house in
21 Machesney Park or Loves Park across from Second
22 Cousins and her dishes were vibrating and it was
23 physically impossible.

24 You can go look up all the

1 physics laws and everything and it was being
2 transferred because the buildings were absolutely
3 parallel. So I just -- I got here late so I don't
4 think I got to testify, but I figured it seems
5 like there's a solution here beyond what is going
6 on here and that would be to just block the area
7 of travel between the two buildings and that's
8 what is happening and I'd be willing to bet you if
9 people went in his house on a Friday night, they'd
10 say, "Oh, gee. I don't think I can sleep."

11 Now, I've ran sound in this and
12 I went there when Bo played there two weekends ago
13 and it was 90 db in his building and in his
14 parking lot it was almost immeasurable it was so
15 quiet and I went up in Jim's yard, he didn't know
16 I was going there, and it was almost immeasurable
17 in his yard. So it almost has to be a
18 transmission issue, not an acoustical issue.
19 That's all I've got to say.

20 HEARING OFFICER HALLORAN: Thank
21 you, sir. I appreciate it. Anyone else? Yes,
22 sir. I think you've been up here before. State
23 your name and spell it for Mr. Brickey.

24 MR. HAAS: Lawrence Haas, 826

1 Dewhurst.

2 HEARING OFFICER HALLORAN: You may
3 go ahead, sir.

4 MR. HAAS: I came home one time and
5 I turned at the grocery store to go up Jackson
6 Street and here comes a woman running down the
7 driveway. I didn't know who it was or anything,
8 but she looked like it was an emergency. So I was
9 past the driveway and I looked back and she was
10 standing out on the street and I went on down to
11 the next driveway and turned around and went back
12 because I thought it was a bad emergency.

13 When I got back, there was a
14 woman there standing there and she said that they
15 needed help and I said, "Well, what's the
16 problem?" And this woman told me -- she said,
17 "We're trying to put a piece of furniture in the
18 back of this car up here and we need help."

19 Well, I thought what kind of an
20 emergency is that? And I got out and by the time
21 I got up to the car the lady that was trying to
22 get the furniture in the car had already got it
23 in. So I went back to my car and went on home.
24 And I never knew who the people was until they

1 come up for this deal here.

2 I have lived 62 years in my
3 house and I come home one time when I saw the
4 dormitory was on fire I called the fire
5 department. When the fire department comes, I
6 went over and the students had carried a bunch of
7 wood up on top of the dormitory chimney and roof
8 and had started it on fire and I walked over and
9 the fire department come and they was blaming me
10 for calling the fire department.

11 Well, I turned around and looked
12 around and the assistant fire chief then he shut
13 the fire department down and said, "This fire
14 should have been called in." He said he drove by
15 and he said it definitely should have been called
16 in and there was one episode after another that
17 was done over there and when this man took over
18 Henry's he cleaned it up and he's got things in
19 order and I will tell you if he's doing something
20 wrong, I wish somebody would prove it to me and
21 there is no reason why he should be penalized for
22 the job he's doing over there now and I guess I've
23 said enough. Thank you.

24 HEARING OFFICER HALLORAN: Thank

1 you, sir. I appreciate it. Yes, sir?

2 MR. SHAW: I'd like to comment.

3 HEARING OFFICER HALLORAN: Just
4 state your name and spell it for the court
5 reporter, please. You can have a seat. I'm
6 sorry.

7 MR. SHAW: Tom Shaw, 302 Alma, Mount
8 Carroll. I've got a question that was never asked
9 and I'd like it answered.

10 How can anyone drive a very
11 noisy motorcycle for any length of time and still
12 complain about noise? Thank you.

13 HEARING OFFICER HALLORAN: Thank
14 you, sir. Anybody else?

15 All right. Seeing no hands, I'm
16 going to close this and thank you for everybody's
17 professionalism, civility and have a safe drive
18 home. Thank you.

19

20

21

22

23

24

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2
3 I, Steven Brickey, Certified Shorthand
4 Reporter, do hereby certify that I reported in
5 shorthand the proceedings had at the trial
6 aforesaid, and that the foregoing is a true,
7 complete and correct transcript of the proceedings
8 of said trial as appears from my stenographic
9 notes so taken and transcribed under my personal
10 direction.

11 Witness my official signature in and for
12 Cook County, Illinois, on this _____ day of
13 _____, A.D., 2020.

14
15
16
17
18 _____
19 STEVEN BRICKEY, CSR, RMR
20 8 West Monroe Street
21 Suite 2007
22 Chicago, Illinois 60603
23 Phone: (312) 419-9292
24 CSR No. 084-004675

A	107:21,21,22	answered 45:7 56:18 127:9	assume 50:12	63:3 67:9,16 70:4
A-S-A-Y 23:9	affidavits 75:10,11	answers 65:24 66:3	assuming 55:7	88:12,19 94:11,16
A.D 128:13	75:21 76:3,7	anybody 28:20	attempted 57:3	94:22 95:6 96:17
a.m 1:15 6:10	106:18 107:2	96:1,3 114:1	attention 67:20	103:17,19
abandoned 34:9	aforsaid 128:6	120:4 127:14	attorney 30:4,22	bands 13:15 27:13
ability 33:8 42:22	afternoon 115:10	anyway 43:2 56:21	31:24 111:17	40:8,13 41:13,19
able 9:16 14:12	ag 38:18	60:23 112:8	113:12,14 123:16	42:3,7 59:10,22
21:10 52:21	age 23:13	118:17	attorneys 7:14	63:6,8,10 91:18
absolutely 68:3	ago 30:13 53:12	apologize 85:20	119:23	94:1,4,24 122:23
124:2	63:1 109:10	appear 98:17	audible 112:18	bankruptcy 32:17
accepted 113:21	124:12	Appeared 2:5,10	audience 16:2	bar 6:17 91:10
accessible 92:7	agree 21:21 51:19	appears 38:9,12	audio 47:7 51:3	92:16
accommodate	66:2,14	47:6 84:9,10	August 16:13 18:23	bartender 56:18
118:14	agricultural 38:19	128:8	18:24	based 29:3,6
accurate 72:8	39:13	appreciate 124:21	available 27:11	basically 7:17 8:9
81:18 92:12	agriculture 38:19	127:1	avenue 13:14	24:12 58:8 75:22
100:16	ahead 25:5 43:15	approach 116:17	average 93:7	92:14 115:16
accurately 36:8	46:1 47:5 125:3	approximately 6:10	102:11,11,17	basis 45:19 63:5
acoustic 91:17	ain't 56:23	27:6 37:17 53:11	awake 21:11	bass 8:6 20:1,2,11
acoustical 124:18	air 43:11 97:8	72:7 81:12 122:2	aware 68:4 71:24	26:13,14,22 51:24
acoustics 115:5	alderman 116:9,10	122:3	72:16	88:7,8 96:7
acquainted 10:24	116:13 118:8	April 109:1,2,5,6	awful 67:17	batch 75:15,17
activities 43:3	120:13	Arborvitae 55:14		batting 121:13
actual 8:14 45:22	alleges 6:15	area 20:23 36:12,14	B	beat 118:13
81:13 103:21	alleviate 67:22	63:11,12 69:24	B 5:7	bedroom 44:5,22
add 68:15 113:10	allowed 58:12	70:1 92:16 102:1	B-R-A-S-H-A-W	45:6 48:10 53:22
added 94:22 117:16	109:22 117:21	104:17 105:16	114:14	73:21
address 33:23 71:4	Alma 127:7	111:13 112:6,11	back 6:21,22 36:21	began 34:21
82:3 117:10	alternate 93:17	124:6	60:16 69:15 73:5	beginning 34:24
addressed 88:15,18	amphitheater	areas 109:20	94:24 96:20	65:19 88:13 103:1
88:18	61:18	argue 119:22	108:22 116:20,24	begins 62:2
adjacent 62:18	amplification 63:18	argument 9:16	118:24,24 121:10	behalf 2:5,10
74:1 81:21	92:19 93:1,4,18	121:2,5	121:13 125:9,11	believe 8:22 26:3,5
Administrative	93:23 94:17 95:24	article 115:11	125:13,18,23	27:15 30:10,12,17
37:16	112:16	Asay 3:12 22:21,22	backdoor 87:20	30:24 37:12 46:7
admission 75:11	amplified 35:2	22:23 23:2,7,9	96:8	47:22 49:12 51:9
admitted 6:20	93:20 103:19	28:13 30:8 98:3	background 73:19	68:2 72:3 92:11
70:10,11 108:12	109:13 117:16,20	118:4	85:19 112:15	102:11 103:7,9
adopted 31:16	117:20	asked 53:5 65:23	backs 59:7	104:21 112:23
adversarial 103:3	amplifier 117:9	95:18 97:10 99:8	backyard 122:6,8	113:2 121:5
advised 81:15	amplifiers 117:8	116:17 120:20	bad 79:6 115:5,21	believes 8:19
affect 42:21 43:3	Anand 7:2	127:8	125:12	beneficial 66:24
67:10	angle 60:11	assigned 6:4	ball 121:13	benefits 117:23
affidavit 75:14	Ann 77:13	assistant 126:12	band 21:19 27:11	Benton 10:15
107:15,15,16,20	answer 89:4,6		49:11 52:17,19	best 33:8 34:20

bet 123:8 124:8 better 67:19 76:8 beyond 124:5 biased 11:7 big 26:12 37:8 42:8 44:18 48:2 60:5 61:7,20 biggest 56:3 Bill 107:1,15 bit 31:10 36:11 42:6 54:16 55:6 91:8,20 94:3,6 96:15 115:14 118:13 bitty 51:1 blaming 126:9 blank 35:22 block 55:3,16 124:6 blocking 48:23 blocks 60:7 123:15 blowing 54:12,21 Blue 68:18 Bo 124:12 board 1:1,12 6:4,23 19:22 32:2 36:16 53:14 57:15 58:15 109:5 110:21 111:21 112:13 116:2 118:23 121:11 128:1 Board's 6:12,16 8:22 Bob 9:20 bombarded 114:19 Bonnie 4:11 80:10 80:14 81:1 107:21 books 117:11 119:17 boom 42:9,9,9,9 54:2,2,2,2 Bose 93:10 bother 73:20 89:2,8 bothered 111:4,7,9 116:14 bothering 25:4	bothersome 111:19 bought 38:15 43:11 91:11 106:1 bounds 113:4,5 box 36:8 38:9,12,20 38:22 104:18 boxers 114:24 boy 66:22 Brad 6:2 Bradley 1:11 Brashaw 114:3,8 114:10,12,12,14 break 69:6,11 108:18 brick 20:3 Brickey 1:12 2:13 10:1 32:21 64:9 124:23 128:3,18 brief 7:15 69:6 109:1 briefing 108:16,24 briefly 111:2 bring 16:3 44:18 50:24 60:3,24 93:8 94:4,16 118:24,24 bringing 93:3 brings 93:9 brought 16:5 93:5 Brown 2:2,2 3:4,9 3:14,19,24 4:4,9 4:14,19,24 5:4 7:5 7:7,7,15,16 8:17 9:18,19,23 10:8 10:10 14:14 15:8 16:23,24 17:4,14 22:5,8,17,20,23 23:6 28:7,10 31:4 31:5,23 32:4,8,11 32:16 33:6,20,21 35:20 36:6 37:21 38:8 43:24 44:2,6 45:24 47:5,9 48:19 49:2,8 50:6 50:10,20 52:12	61:23 63:24 64:1 64:4,16 68:8,11 68:21 69:5,15,16 69:21 74:7,9 75:3 75:10,12,16,20 76:16 79:10,12 80:5 83:11,12,16 84:24 86:16,18,23 89:14,16 90:6 98:14 103:12,14 105:1,6,12 106:3 106:14,19,21,24 107:5 108:9,10,12 108:13,22 109:7,8 111:1 112:3 113:10 119:5,11 119:15,20,22 121:7,9 Brown's 109:3 BS 57:19 building 26:1,2 34:7 81:13 124:13 buildings 39:23 124:2,7 bunch 126:6 Bushville 41:23 49:11 business 34:4,22 66:24 91:5 95:20 112:10 businesses 39:19 businessman 67:3 butts 115:2 <hr/> C C 2:1 10:9 14:20 17:13 22:9 23:5 28:11 33:5 62:8 64:15 70:22 74:8 77:5 79:11 80:19 83:15 85:12 86:17 87:8 89:15 90:16 103:13 C-H-A-P-M-A-N 17:17	C2 100:10 101:5,13 101:15 Cal 41:22 42:1 call 9:20 17:4 22:20 24:20 28:21 32:19 43:17 55:14 56:14 58:21 64:4,6 70:14 76:19 80:10 85:4 87:3 90:9 120:3 called 1:11 10:5 17:11 23:3 24:2 28:24 33:3 56:17 56:21 57:3 64:13 70:20 77:3 80:15 85:10 87:6 90:14 92:15 96:23 97:17 97:19 105:6,7 118:4 123:2 126:4 126:14,15 calling 28:4 57:13 126:10 calls 56:20 camera 48:9 car 32:17 69:1 125:18,21,22,23 care 52:24 88:7 careful 40:12 Carol 107:2,15 carried 126:6 Carroll 1:14 6:18 6:18 9:11,12 10:16 18:6,9 23:11,17,21 24:2 24:24 33:14 35:22 56:20 58:7 64:21 69:23 71:5 77:17 81:5 85:22 87:14 91:23 99:22,24 100:2,2,4 102:6 104:17 117:18 127:8 carry 54:13 case 6:4,8,10 13:3 69:3 70:11 76:12	85:18 109:9,12,24 112:20 catch 72:17 catered 92:4 cause 1:10 11:7 54:11 caused 110:5 cbrown1@ameri... 2:4 CD 49:21 52:15 CD's 8:11 cease 30:16 110:21 center 91:21 certain 110:22 certainly 66:23 69:7 107:13 certification 99:1,2 99:14,17 104:21 certified 112:5 128:3 certify 99:22 128:4 chair 9:20 chairs 62:3 change 59:1 62:15 102:2,3 changed 58:8 102:1 117:2,14 changes 118:10 Chapman 3:7 17:5 17:10,15,17 22:11 22:19 Cheryl 3:22 10:23 18:2 23:24 64:4,6 64:12,19 115:23 chest 8:7 Chicago 128:20 chief 7:1 30:21 69:3 70:12 126:12 children 67:15 chimney 126:7 chip 44:20 Christmas 91:16 circuit 121:6,9 citation 24:16,18 29:3 68:20
---	--	---	--	---

citizen 6:8 58:9	collateral 8:12	109:19	copies 117:3 118:17	Cox 2:6,7 3:5,10,15
Citizens 1:5	colored 99:14	complained 111:12	119:1,4,5,10	3:20 4:3,8,13,18
city 11:1 23:17 24:1	come 15:14,23 18:8	116:11	copy 98:14 100:1	4:23 5:3 7:9,10,10
24:10,22 25:8,14	18:15 60:4 67:14	complainer 56:18	119:8	8:17,18 9:18
25:15 30:22 38:23	67:15 92:9,16	56:20	cord 80:8 85:3	14:17,18,21 16:20
57:22 58:6,19	102:20 111:15	complaining 24:3	corn 122:13	22:8,10,16 28:10
67:20 99:3,22,23	126:1,3,9	59:1 96:5 112:9	corner 25:20	28:12 31:2 43:18
100:1,3,3 104:10	comes 55:15 60:4	116:20 118:8,16	101:21	43:22 45:17 46:2
113:12 116:9	125:6 126:5	complaint 6:14	corporate 117:17	46:8,11,15,18,22
117:7,18,24	coming 12:21 47:13	24:13,14 28:21,24	correct 15:15,18	47:1,4 49:4 50:1,8
118:12 120:14	47:17 67:9 71:1	30:1 69:3 88:15	22:22 29:1,4,5	50:12,21 51:2,7
city's 29:8	74:21 77:8 80:22	118:17	39:13 63:18 65:20	53:4 58:11 62:2,6
civility 127:17	111:5 116:20,24	complaints 16:4	65:24 79:14 81:24	62:7,9 63:22
clarification 45:18	118:7 121:4	24:6 28:17 95:23	89:22 92:22 93:21	68:11,12 69:5,7
68:22 106:6	commencing 1:15	97:11,13,21	93:22 99:2 100:1	70:7,8,11,13,23
clarified 113:16	comment 78:20	111:14 118:3	100:11 101:3,4,19	74:4 75:7,13,19
clarify 22:11 83:8	101:10 109:4,4,6	complete 128:7	104:11,14 113:17	75:20 76:1,2,12
90:21 92:20	114:1 116:4 118:4	completely 8:4	119:12 128:7	76:15,19 77:6
classic 94:6	118:19 119:19	35:21	correction 83:2	79:8 80:3,5,6,10
cleaned 126:18	120:5,13,15 121:1	comply 8:24	113:20,21	80:20 83:9,11
clear 45:23 59:14	122:20 127:2	concentrate 12:21	couch 43:11	84:22,24 85:1,4
61:1 96:21 105:6	commercial 9:10	concerned 16:18	council 11:1 15:12	85:13 86:14 87:3
clearly 7:24 8:5	38:24 100:13	111:22 120:18	15:15,20,22 16:6	87:9 89:11 90:9
12:15 26:10 47:10	101:21 109:23	condenser 46:8	16:9,18 100:3	90:17 98:8,13,15
47:16 66:16 84:5	112:1,6,10,11	conditioning 97:8	116:9 120:17	98:23 103:10,12
109:21 110:3	commercially	conducted 6:11	Council's 120:14	104:19 105:4,7,9
clerk 99:3,22 118:1	38:10,13 105:13	confirmed 110:15	count 97:24	106:9,10,13,17,23
click 57:1	109:20	consider 38:23	counting 95:23	107:1,8,13,20
close 27:16,17,19	committee 15:24	consist 108:3	country 94:5	108:2,7,23 111:1
53:15,20 66:24	community 79:6	consistent 110:4	County 6:19 100:2	111:2 113:9,19,20
97:3 114:1 119:23	113:6 116:12	consists 99:13	128:12	119:4,14
122:10 127:16	company 123:1	107:14	couple 14:18 27:9	Craig 2:2,2 7:7
closed 7:23 12:24	comparing 106:7,7	constant 122:13	28:13 40:10 45:20	50:1
13:1 19:20 27:2,3	complain 96:3	constitute 24:23	109:14	crazy 123:17
42:12 45:1,9,11	116:24 127:12	consult 123:2	course 8:5 12:5	creating 117:5
45:13,14 47:23	complainant 1:4	contents 91:11	16:1 43:12 117:10	crimp 99:13
48:4,6,7,18 49:13	2:5 5:11,12,13,14	99:19	court 17:8 30:23	crisper 53:18
50:16 51:15 54:7	5:15 6:5,15 7:14	continue 28:4	46:12 58:13 70:16	cross 74:7 103:12
54:7 66:8,16 97:9	24:20 25:3 35:17	continues 24:20	76:22 89:4,6	Cross-Examinati...
closer 9:6 61:2	36:1 43:19 49:5	Control 1:1,12 6:4	107:19 114:5,7,9	3:5,10,15,20 4:4,9
89:24	52:9	8:21 58:14 110:20	114:11,13 116:7	4:14,19,24 5:4
closing 27:16	complainant's	111:21 121:11	120:8,9 121:6,9	CSR 2:13,14
108:16,23 109:7	70:10 105:8,11	128:1	121:20 127:4	128:18,21
Club 91:16	109:1	Cook 128:12	courts 30:6	Cuckler 99:21
cold 54:17,18	complainants	coolness 54:16	Cousins 123:14,22	100:6 105:1

curious 31:11	definition 9:3	66:7	96:9	duplicate 92:2
Currently 112:22	demonstrated	different 39:22	doors 7:22 12:24	
customer 73:12	110:3	49:20 53:4,7	19:19 27:2,3	<hr/> E <hr/>
cut 16:11	Dennis 3:12 22:21	63:16,17 96:19	42:12 54:7 66:15	E 2:1,1 3:1 5:7 10:9
Cutler 115:11	22:23 23:2,9	109:14 110:9	96:9	10:9,13 14:20
<hr/> D <hr/>	68:17	differently 50:11	dormers 97:3,6	17:13,13 22:9
D 3:1 10:9 17:13	dense 55:17	diminished 12:6	dormitory 126:4,7	23:5,5 28:11 33:5
23:5 33:5 64:15	department 23:16	dinner 79:3	double 1:6 6:6 7:20	33:5 62:8 64:15
70:22 77:5 80:19	97:22 111:14	direct 3:4,9,14,19	7:24 11:19 12:12	64:15 70:22,22
85:12 87:8 90:16	126:5,5,9,10,13	3:24 4:3,8,13,18	13:4 18:13 19:11	74:8 77:5,5 79:11
dampening 55:20	depended 27:11	4:23 5:3 98:6	20:19 21:22 25:24	80:19,19 83:15
dangerous 73:16	depending 54:11	directed 66:5	27:7 34:2,13 40:4	85:12,12 86:17
78:24 82:12 86:10	72:10	direction 54:12	47:14 55:11 59:18	87:8,8 89:15
88:2	depict 36:9	128:10	61:2 65:7 70:2	90:16,16 103:13
date 41:7 44:8	deposeth 10:6	directly 27:23	71:8 72:21 73:12	earlier 21:16
49:16	17:12 23:4 33:4	73:24 74:2 81:21	74:21 77:19 78:10	earliest 35:10
dated 44:23 100:5	64:14 70:21 77:4	83:1 86:1 97:19	79:2 81:6,11,23	early 15:6 18:18,24
dates 15:1,4	80:16 85:11 87:7	100:17 101:2	82:6 86:2,5,21	29:10
daughter 67:14	90:15	disagree 112:4	87:17,23 91:2,24	east 39:13 60:21
Dave 115:11	describe 11:22,23	disappointed 121:3	96:9 100:9 103:22	74:12,18 79:13
David 120:24	19:22 21:18 36:16	121:12	105:14 110:9,14	101:8
day 1:14 18:17 58:4	53:14 92:19 93:7	discernable 26:10	111:5	eat 102:20
58:14 59:12 60:2	96:14 101:20	discussed 75:11	doubt 111:5	echoes 120:10
100:5 128:12	102:22 104:1	discussing 16:14	downstairs 91:17	effect 14:6,6 27:23
db 124:13	described 21:4	dishes 123:15,22	downtown 91:11	54:10,19 55:24
deafening 12:8	describing 93:14	dismissed 113:12	dozen 24:8 28:16	effectively 16:4
deal 126:1	description 21:8	dispute 110:11	drew 38:22	effects 14:5 43:7
dealt 110:4	designated 100:10	disrupting 6:16	drink 102:20	66:20
decibel 25:10,13,18	desired 55:24	distance 8:4 81:18	drive 18:19 20:3	eight 65:10,16
29:7,8 31:12	desist 110:21	104:1	122:13 127:10,17	either 31:15 62:17
57:10 117:14	determine 20:9	district 9:10	driveway 125:7,9	82:6 89:17,22
118:6	determines 24:18	disturbing 58:21	125:11	122:9
decibels 31:15,19	determining 63:6	117:4,6	driving 20:2	elaborate 55:6
54:17 57:10 59:2	deviation 105:20	divider 55:4	dropped 30:24	elected 113:14
117:18 122:16	device 50:22 51:16	docketed 6:7	drove 113:23	electronically 32:9
decide 6:23	53:3	doctor 42:24	114:18 115:8	120:1
decided 68:20	Dewhurst 60:4	Document 35:17	126:14	elements 50:2
121:5	81:3 84:1,1,3	36:1 43:19 49:5	drum 8:6 95:8	elevators 122:12
decision 121:14	85:22 86:1 125:1	52:9 98:20 107:10	drums 42:8 47:11	Elizabeth 4:6 76:19
deck 73:6	DIAGONAL 2:3	dog 73:6	51:22 95:6,14	77:2,13 107:22
decreased 94:20	dialed 94:23	dogs 114:24	due 109:1,2,3	emanating 117:20
defeat 9:16	diametrically 11:9	doing 56:23 116:12	duly 10:5 17:11	emergency 125:8
definitely 20:2	died 16:16	118:15 126:19,22	23:3 33:3 64:13	125:12,20
126:15	difference 41:12	door 13:12,12	70:20 77:3 80:15	emitting 6:16
	48:2 53:15 54:22	21:20 39:23 68:5	85:10 87:6 90:14	117:16

enforce 16:15 57:23 120:14	4:13,18,23 5:3	F-R-E-Y 87:12	fire 126:4,4,5,8,9 126:10,12,13,13	flushing 122:16
enforcement 1:6 6:8 30:1 97:23	examples 48:14	facility 113:5	first 10:5 17:11	folding 62:3
enforcing 16:14 24:10	exceed 25:13 117:18	facing 60:10,16 123:9	23:3 33:3 43:9,18	follow 25:5
enjoyment 8:15 9:8 9:15 73:9 110:7	exceeded 31:19	fact 7:23 8:3 15:10 88:22 113:16	64:13 70:14,20	following 69:12 108:19
entire 99:19	Exception 117:22	factory 17:24	72:22 77:3 80:15	follows 10:6 17:12 23:4 33:4 64:14 70:21 77:4 80:16 85:11 87:7 90:15
entirely 13:3 30:16	excess 30:3	Fair 21:3 29:14 30:14	85:10 87:6 90:14 116:17	food 91:12 92:3,4
entitled 1:10 6:5	excuse 57:19 63:14 65:9	fairly 72:8 110:3	firsthand 14:4	football 8:1 21:22
environment 109:21	executed 75:9	fall 122:12	Fiser 1:3 3:17,22 6:5 7:19,22 8:1,15 9:7 10:23 11:12 12:13,24 16:3,6 18:2,12 19:17 23:24 26:7,11,17 32:19,21 33:2,7 33:12,19 46:2 49:10 50:3,10 59:14 61:1 62:11 64:3,6,12,17,19 64:22 68:14 74:14 74:22 79:18 83:18 84:20 86:20 90:2 95:23 97:12,14 102:23 103:7 104:4 111:4,13,20 114:16 116:10,18 116:19,23 118:7	foregoing 99:24 128:6
environmentalist 7:1	exhibit 5:11,12,13 5:14,15,16,17 35:18,21 36:2,8 37:15 43:17,20,24 44:1,2 48:15 49:3 49:6,9 52:6,10 69:19,19,22,23 74:14 83:13 98:10 98:21 99:10 104:7 104:8,9 105:7,11 106:8,9,11,20 107:11,14,24 108:2	false 121:7	64:3,6,12,17,19 64:22 68:14 74:14 74:22 79:18 83:18 84:20 86:20 90:2 95:23 97:12,14 102:23 103:7 104:4 111:4,13,20 114:16 116:10,18 116:19,23 118:7	forgot 59:13
establish 48:17 50:22	Exhibit's 70:3,10	familiar 77:19	Fiser's 7:8 8:5 10:24 14:6,23 18:9 19:6 21:5 25:20 27:24 28:23 70:2 72:6 79:22 96:21 101:2 105:17,24 110:3 110:12 111:20 115:2 118:14	form 104:20
established 50:3,13	exhibits 6:21 32:9 35:14 69:16 98:9 120:1	family 92:1	104:4 111:4,13,20 114:16 116:10,18 116:19,23 118:7	forth 8:24 121:13
establishment 9:9 77:22 113:3	existence 34:2	far 14:9 20:9 71:11 81:5,13 87:19 88:19 92:3 104:1 119:24	Fisher 122:21,21	forward 50:5
estimate 13:19 24:4 24:7 28:18	expanded 25:9	farm 56:10	five 11:16 34:18,18 69:9 70:5 93:17 94:21 120:17	found 29:15 111:15
estimation 94:19	experience 11:24 15:7 19:24 21:9	February 100:4,5	fix 58:20	foundation 45:23
evening 29:10,10 29:12	experienced 74:20	federal 10:21	floor 43:10 67:2 110:14,18	foundational 45:19 50:2
event 91:20 117:22	experiences 12:2 110:10,12	feel 20:4 24:13 30:3 58:8,10 61:22 67:21 111:17 112:21 118:6	fluctuate 102:14	four 6:22 34:15,18 63:1 94:11,21 97:20 103:19 114:24 123:14
events 94:12 123:1	experiencing 110:10,12	feeling 96:16		fourth 56:17
everybody 20:24 21:4 120:7 123:18	expert 104:13	feet 8:2 21:24 52:2 81:14,16,17 122:3		Freeport 2:8
everybody's 127:16	explain 44:14 104:6 105:18,23	felt 25:6 29:18 30:23		frequency 94:20
evidence 6:20 7:17 8:19,20 9:5 69:16 70:5 110:16 112:15	extent 30:7	fern 55:15		frequent 73:11 79:2
evidentiary 6:19 75:8	<hr/> F <hr/>	field 8:1 21:22 22:2 37:9 61:8 100:22 101:18 103:21 112:7		frequently 15:16
exact 33:22 69:24	F-I-S-E-R 33:12 64:19	Fifteen 33:19 65:5		Frey 4:21 87:3,5,10 87:12 89:17 96:2 96:4 107:2,15,16
exactly 95:9	F-I-S-H-E-R 122:22	figure 30:5 84:6 112:14 120:3		Frey's 60:14,18
Examination 3:4,9 3:14,19,24 4:3,8		figured 18:18 124:4		Friday 93:24 103:18 124:9

<p>furniture 125:17,22 further 16:21,24 21:7 22:16,17 28:8 31:2,5,22 36:11 63:22 74:4 79:8 80:6 83:9 85:1 86:14 89:11 89:21 103:10 106:13,17</p> <hr/> <p style="text-align: center;">G</p> <p>gain 46:3 Galena 2:3 garage 60:5,6 Gary 121:21 gatherings 92:1,6 gee 124:10 Gene 122:21 general 16:1,2 18:3 28:20 103:2 generally 92:12,12 94:13 getting 55:23 56:22 72:19 96:17 118:3 119:12 GIS 35:23 69:24 give 7:15 18:21 24:4 41:18 44:7 48:14 102:16 108:22 114:5,7 118:23 120:4 given 113:6 glass 123:9,10 go 7:17 24:10,14 25:5 26:16 32:18 35:15 36:12 42:15 43:13,15 46:1 47:5 55:2,4 58:12 58:22 59:4,4 62:21,24 63:2,3 73:5 92:9 99:6 108:14 109:6 113:23 116:19 119:16 122:15 123:24 125:3,5</p>	<p>God 44:9 goes 30:4 36:11 42:17,20 48:13 49:23 60:13 61:21 going 8:23,23 21:9 29:11 30:3 31:15 32:18,19 35:13,14 38:1,2 43:15,16 43:17 44:17 47:5 48:12 49:2 50:12 50:23 57:22 58:13 58:20,24 59:1 60:24 67:9,14,17 74:13 95:9 98:13 102:14 108:6 109:3 116:10 119:15,19 124:5 124:16 127:16 good 6:1 20:5 31:8 57:9 70:15,24 77:7 79:5,7 80:21 85:14 87:10 90:18 goodness 102:13 Gotham 109:10 gotten 62:24 grade 123:8 grain 122:12 gravitated 94:9 gravitates 54:3 great 37:8 61:7 97:8 116:12 118:15 greater 54:16 greatest 103:24 grocery 36:21 38:21 83:18 101:14 105:17 125:5 ground 60:10,12,13 group 95:3 106:20 107:14 growing 56:1 guess 36:21 53:17 103:4,5 123:19 126:22</p>	<p>guitar 51:20 92:16 93:15 94:9,23 guy 59:6 93:14 122:22</p> <hr/> <p style="text-align: center;">H</p> <p>H 5:7 Haas 4:11,16 80:10 80:14,21 81:1 85:5,9,14 86:19 107:21,21 124:24 124:24 125:4 half 50:24 Hall 58:19 Halloran 1:11 6:1,2 7:4,9,12,16 8:16 9:17,19,24 10:7 14:16 16:22 17:1 17:6 22:7,18 28:9 31:3,6,21 32:10 32:14,20 37:21,24 38:6 43:23 47:3 48:16,24 59:16 62:1 63:23 64:2,5 64:8 68:10,13,23 69:4,8,14,21 70:6 70:9,15 74:6 75:5 75:24 76:10,13,17 76:21 79:9 80:4,7 80:11,17 83:10,14 84:23 85:2,6 86:15 87:1 89:5,9 89:13 90:7,10 98:11 103:11 105:5,10 106:5,11 106:15 107:7,17 107:23 108:5,8,11 108:14,21 109:8 110:24 113:8,18 113:22 114:4 116:1 118:18,22 119:2,6,7,18,21 120:9,22 121:16 121:23 122:18 124:20 125:2</p>	<p>126:24 127:3,13 hand 10:2 17:7 32:21 43:17 64:9 70:16 76:22 80:12 85:7 handed 52:14 handheld 46:16,16 handicap 92:7 hands 127:15 handy 32:5 happened 16:13 happening 124:8 happens 53:24 123:12 happy 114:15 hard 38:16 43:1 54:21 85:20 92:2 Harmonica 95:13 Hartman 4:6 76:20 77:2,7,13 79:13 107:22 Hartman's 89:18 89:24 hate 115:23 health 14:6 66:20 109:16 hear 7:23 8:5 12:15 13:11 19:11 20:1 20:10 21:14 26:14 26:15 35:11 42:2 46:20 47:10,16,18 47:19,20,20 49:14 51:20 53:20,22,24 54:8 55:5,5 61:16 65:21,22 66:17 72:22,24 73:1,4,6 75:23 78:17 82:15 82:17,19 85:16 96:7 120:7,20 121:4 122:6,10,11 heard 14:23 19:14 20:17 61:14 72:6 73:1 75:1 78:11 79:19 84:2 87:22 98:2 100:23 111:3</p>	<p>111:10,12 112:11 112:13 114:19,20 115:4,5 118:4 hearing 1:10 6:1,3 6:11 7:4,9,12 8:16 9:17,24 10:7 14:16 16:22 17:1 17:6 22:7,18 28:9 31:3,6,21 32:10 32:14,18,20 37:24 38:6 43:23 47:3 48:16,24 62:1 63:23 64:2,8 68:10,13 69:4,8 69:14 70:6,9,15 74:6 75:5,9,24 76:5,10,13,17,21 79:9 80:4,7,11,17 83:10,14 84:23 85:2,6 86:15 87:1 89:5,9,13 90:7,10 98:11 103:11 105:5,10 106:5,11 106:15 107:7,17 107:23 108:5,8,11 108:14,21 110:24 113:8,18,22 114:4 115:9 116:1 118:18,22 119:2,7 119:18,21 120:9 120:22 121:16,23 122:18 124:20 125:2 126:24 127:3,13 hearings 121:2 heart 7:18 42:23 heating 97:7 height 61:21 Heisler 4:1 70:14 70:19,24 71:3 74:10 75:23 78:7 79:14 89:17 107:22 held 1:9 Hello 7:3</p>
--	--	--	--	--

<p>help 33:20 43:2 56:5 57:4 125:15 125:18 helpful 32:2 Henry 27:8 86:13 88:6,21 90:22,24 114:19,20,20,21 115:9,9,9 116:12 116:21 118:15 121:6 122:4,9 123:5 Henry's 1:6 6:6 7:20,24 11:14,19 12:12 13:4 18:13 19:11 20:19 21:22 24:3 25:16,24 27:7 34:2,13,21 35:24 37:4,6,9,23 39:9 40:4 47:13 47:17 55:11 59:11 59:18 60:15,19 61:2 63:6,20 65:7 70:2 71:7,12,21 71:24 72:21 73:11 74:3,11,12,14,21 75:18,22 77:19,23 78:4,10,11 79:2,5 79:14,17,23 81:6 81:11,23 82:6,24 83:5,17,20,23 86:2,5,21 87:17 87:23 89:18,21 91:1,24 100:9 103:22 105:14 110:9,14 111:5 115:1 122:24 123:10 126:18 Hensel's 101:13 105:17 high 57:11 higher 54:18 highway 36:20,24 hiss 112:15 hole 61:20 home 34:1 52:18</p>	<p>62:13 66:13 67:2 67:19 78:17 118:24 125:4,23 126:3 127:18 honest 29:12 hope 43:15 hoping 45:24 host 91:12 hour 1:15 18:19 house 8:4,12 12:7 14:12 20:24 21:14 25:22 35:11 36:13 36:18,20 37:12 38:4,5 39:1,16,20 39:20 41:16 42:11 43:9 50:15,19 52:4 54:24 57:1 60:6,8,14,18 61:17,19,20 68:1 68:5,5 71:12 78:12 81:13 84:5 84:6 87:23 89:18 96:7,22 101:12 106:1 115:2,10,13 115:21 116:15 123:9,11,16,20 124:9 126:3 houses 61:2 78:3 hundred 26:4 104:4 hurts 115:17 husband 65:23 66:22</p> <hr/> <p style="text-align: center;">I</p> <p>idea 9:13 41:18 52:7,8 identification 5:9 35:19 36:3 43:21 49:7 52:11 98:22 107:12 identified 99:10 identify 49:9 52:13 52:21 69:19 75:14 100:8</p>	<p>Illinois 1:1,11,13 1:14 2:3,8 6:3 17:19 33:15 35:22 58:14 69:23 99:23 99:24 100:2,4 110:20 121:3,10 128:1,12,20 immeasurable 124:14,16 immediately 35:7 39:16 impact 96:12 important 113:11 importantly 50:21 impossible 123:18 123:23 in-house 92:3,21 in-person 76:8 include 25:10 38:13 increased 94:20 indicated 100:10 indicating 16:17 individual 113:1 indoors 40:17,18 41:2,4 72:11 78:17 82:15,18 industrial 63:11 inform 24:14 information 15:11 informed 30:21 inside 7:22 8:11 11:19,24 12:4,5 12:17 13:7,8 19:12,14,15,18 26:1,8,13,17,19 26:20 35:11 42:6 42:11 48:21 50:15 50:19 52:4,21 63:20 66:12 73:7 97:6 103:18 122:9 instrument 50:7 instruments 95:12 insulate 57:1 interest 65:22 interestingly</p>	<p>109:19 interfere 9:7 73:8 interfered 78:20 86:5 88:5 interference 8:14 9:2,14 110:5 interject 16:10 interrupting 50:9 introduce 7:5 32:1 118:9 introduction 45:22 intrusion 110:4 investigated 111:15 involved 113:15 irritated 14:9 issue 11:1 15:13,14 15:21 16:5 24:18 25:7 65:17 66:6 68:20 110:21 111:11 124:18,18 issued 24:22 25:16 29:3 30:19 99:5 111:17 117:24 issues 67:5 73:23 123:2</p> <hr/> <p style="text-align: center;">J</p> <p>J 2:13 Jackson 6:18 33:14 64:21 65:4 125:5 James 1:3,6 3:17 5:1 6:5,6 33:2 90:9,13,20 Jeff 101:13 Jim 10:23 18:1 23:24 32:19 33:12 64:22 114:16 115:2,7,10,12,12 115:12,23 122:24 123:4,18 Jim's 123:9,11 124:15 job 57:13 118:15 126:22 Judge 22:20 37:16</p>	<p>Julie 99:21 100:5 105:1 July 19:2 65:5,8,13 justifiable 24:13</p> <hr/> <p style="text-align: center;">K</p> <p>K 1:6 6:6 7:20,24 11:19 12:12 13:4 18:13 19:11 20:19 21:22 26:1 27:7 34:2,13 40:4 47:14 55:11 59:18 61:2 65:7 70:2 71:8 72:21 73:12 74:21 77:20 78:10 79:2 81:6,11 82:6 86:2,5,21 87:17 87:23 91:2,24 100:9 103:22 105:14 110:10,14 111:5 K's 81:23 keep 28:4 48:13 50:8 97:7,9 keeper 99:23 keeps 121:13 kept 40:12 97:15 97:24 116:20,23 118:2,3,7 kicked 121:10 kind 20:24 42:5 55:13 56:9 61:18 123:3 125:19 knew 65:14 125:24 know 13:18 14:10 15:3,10 18:15 19:7,15 20:10,13 20:16,23,24 21:10 21:11,17,20 25:4 27:5 28:3 30:8 31:12 32:12 34:17 36:22 38:16 40:19 40:20 41:3 42:1 44:23 46:2 52:17 52:19 53:18 54:3</p>
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54:20,21 56:5,12 57:12,19,22 58:5 58:9 61:19 63:19 66:23 67:8,23 81:12 84:2,3 88:20 92:5,7,8 93:11,11 96:6,20 97:8 102:24 109:21 110:7 112:20 113:23 114:16,20,21 115:7 118:18 119:23 122:10,24 123:6,8 124:15 125:7 knowledge 13:16 29:1 30:18 34:20 39:21 40:1 73:14 98:6 101:24 known 13:24	leaving 67:2 led 82:9 left 9:1 legally 90:23 Lena 17:19 length 127:11 Leroy 90:23 let's 34:17 105:6 108:14 109:6 level 8:6 29:15,16 29:16 57:10 61:10 86:11 95:2 97:6 110:14 112:16,23 levels 73:15 78:23 82:13 86:9 88:1 license 2:14 102:5 licensing 9:10 limit 25:14 31:12 31:12,19 32:3 59:3 limited 38:19 limits 117:7,17 line 35:16 36:11 38:16 55:8 117:19 linearly 98:9 Lion's 91:16 liquor 102:5 list 107:6 listen 54:24 59:22 79:17 96:22 115:1 listened 14:23 116:11 listening 12:4,4 19:17 48:6 115:3 literally 61:5 little 12:5 30:13 31:10 36:10,11 42:6 43:8 44:16 51:1 54:16 56:22 91:8,20 94:3,5 96:15 105:20 115:14 118:13 live 7:19 9:6 10:14 10:15 11:12 14:12 17:18 18:12 23:10	23:11 27:6,18 33:13 35:2 36:9 40:3,7,16 62:21 64:20 71:24 77:14 77:22 78:10,11,16 79:13,17 82:6 84:20 86:4,20 87:22 90:4 91:16 91:18 92:10,11 103:17 109:13 122:1 lived 10:17,18 18:5 18:6 33:16 34:13 62:13 65:3,6 71:19 82:2 122:3 122:11,14 126:2 lives 36:19 79:14 living 19:18 53:22 116:15 LLC 1:6 2:6 6:6 located 6:17 25:17 82:21 117:17 location 38:2 75:18 95:19 long 10:17 18:6 23:18 29:16 33:16 34:24 35:6 49:23 64:24 65:3,6 71:18,18 75:17 82:2 91:4 95:19 115:7 120:10 122:14 look 37:14 116:3 119:11,13 123:24 looked 125:8,9 126:11 looking 98:16 112:24 looks 62:5 120:4 lot 20:11,17 40:24 42:3 46:14 53:19 58:18,19 71:13,14 71:16 74:12,17 81:8,16,24 84:8,9 86:3 91:12,17	92:8 94:8,8 116:24 124:14 loud 7:22 12:19,19 12:20 13:7,8 19:23 41:15,23 42:1 43:10 49:12 52:16 53:23 56:12 56:14,22 58:21 59:12 60:1 68:19 73:1 88:12 96:17 99:17 109:18 110:4 117:4,6,8,9 118:6 louder 41:24 42:3 63:7,7,10,17 104:3 115:6 116:22 Loves 123:14,21 lower 61:11 95:2,4 luncheons 91:14	112:4,5 March 1:1,14 6:9 120:4 mark 3:7 17:5,10 17:17 38:2 106:19 marked 5:9 35:17 36:1 43:19,24 49:5 52:9 98:20 107:10 married 64:22,24 mathematically 123:17 matter 7:8,18 20:4 21:2 32:12 96:1 matters 6:20 8:12 32:12 110:11 mattress 43:12 mature 55:24 56:2 Mayfest 122:5 mayor 56:19 57:16 58:3 113:13 Meador 1:6 5:1 6:6 25:7 56:7 57:24 81:15 88:15 90:9 90:11,13,18,20 103:15 106:7 110:16 112:8 116:18 122:4 Meador's 113:3,4 mean 20:9 21:2,8 21:20 40:20 54:3 54:20 57:9 58:8 66:11 72:16 75:17 88:18 112:18 meaning 14:6 50:6 83:24 meant 65:14,15 measure 30:2 measured 30:8 measurement 8:24 measurements 8:23 medium 53:7 meet 71:10 meeting 16:1 44:17 meetings 15:12,24	
<hr/> L <hr/> L 1:6 6:6 label 108:3 lack 16:16 lady 125:21 lady's 123:20 land 59:20 60:9 landowners 9:5 large 95:6 larger 94:1 95:6 late 13:21 20:18 21:1 27:13 29:10 42:14 109:18 124:3 lately 42:5 92:14 law 2:2 29:24 37:16 97:22 Lawrence 4:16 85:5,9 107:20 124:24 laws 124:1 lawyer's 120:20 leave 18:18 64:5 73:6					
			<hr/> M <hr/> M 10:9 14:20 17:13 22:9 23:5 28:11 33:5 62:8 64:15 70:22 74:8 77:5 79:11 80:19 83:15 85:12 86:17 87:8 89:15 90:16 103:13 Machesney 123:21 main 1:13 21:12 36:23 maintaining 76:6 making 58:2,5 85:19 112:21 121:14 man 9:22 116:17 126:17 Manarchy 109:10 map 35:15,21 37:15,17 38:18 69:22 84:4 98:16 99:1,8,14 100:2,7 104:9,16,21,22,23		

15:24 115:10 members 6:22 16:18 62:5 120:18 mental 14:6 66:20 mentioned 96:6 met 11:3 meter 29:7,8 117:14 118:7 mic 92:15 microphone 46:3,6 46:9 112:17 microphones 44:19 51:1 middle 90:21,23 midnight 20:21 22:13 Mike 116:6 miles 113:24 mind 17:20 23:12 minimize 96:11 minute 108:15 minutes 69:9 mischaracterized 120:13 mistake 56:2 Mm-hmm 46:21 74:19 84:18 modification 46:22 moment 28:7 money 58:2,3,5 67:3 money-making 58:1 Monroe 128:19 month 13:20 27:9 months 18:24 27:10 35:4,5,6 morning 6:2 31:8 42:17 59:4 70:16 70:24 77:7 80:21 85:14 87:10 90:18 Morrison 55:22 motion 16:15 120:14,16 motor 115:14	motorcycle 115:13 127:11 Mount 1:14 6:18 9:11,12 10:16 18:6,9 23:11,17 23:21 24:2,24 33:14 35:22 56:19 58:7 64:21 69:23 71:5 77:17 81:5 85:22 87:14 91:23 99:22,24 100:1,3 102:6 104:17 117:18 127:7 move 49:2 moved 34:14 35:1 40:6 62:12 65:8 65:11 122:2 moving 50:5 52:6 music 7:20,24 8:5 11:12,19 12:15,21 13:3,6 14:5,12,24 18:12 19:11,12,13 20:1,18 21:15 25:24 26:7,14 27:6,19 30:8,16 35:2,11 40:3,16 42:15 54:24 62:21 66:17 70:4 72:1,7 72:15,21 74:21 78:11,11,16 79:17 79:22 82:6,12 84:20 86:4,20 87:23 88:4 90:4 91:17,19 92:10,11 94:8 109:14,17 115:1,3 116:21 122:5,7,9	77:5,5 79:11,11 80:19,19 83:15,15 85:12,12 86:17,17 87:8,8 89:15,15 90:16,16 103:13 103:13 name 6:2 10:11,12 17:16,16 22:21 23:7,8 33:10,11 41:20 64:17,18 71:1 77:8,11 80:23 87:11 90:19 90:21,23 114:7,9 114:11 116:6 118:20 121:19 122:20 124:23 127:4 nature 46:15 91:21 101:20,22 112:2 near 38:21 necessary 69:2 need 37:18 48:5 50:11 53:5 56:2 58:3,17 62:2 113:15 119:16 125:18 needed 125:15 neighbor 36:19 39:24 72:20 neighbor's 38:5 neighborhood 8:2 112:1,1 neighbors 61:5 96:12 111:11 never 58:12 67:14 67:15 75:1 78:20 78:21,24 82:8,11 82:14 86:22 97:15 97:24 112:7 113:15 122:10,10 122:11 125:24 127:8 new 55:3 56:4 nice 92:8 109:9 nickname 90:24	night 18:20 20:15 20:20 21:1,11,16 22:12 30:9 42:14 42:16 50:18 88:7 88:10 96:19 103:19 110:22 114:23 122:14 124:9 nightclub 109:11 109:13 nights 92:14,17 93:6,24 Nod 89:3 noise 1:6 6:8,16 8:22 9:3 11:2 12:8 15:13 16:5 16:14,15 24:3,10 25:1,9 28:21,24 30:11 48:23 55:16 61:21 73:19 85:19 85:19 95:16 112:15,21 116:11 117:1,7,15 120:15 120:18 122:14,15 127:12 noises 117:5 noisy 127:11 non-directional 20:3 non-profit 117:23 norm 113:6 normal 39:17 43:3 normally 93:12 north 1:13 37:3,4 39:8 54:15 55:7 60:19 74:10 83:2 84:17 86:1 northeast 87:18 northside 59:18 60:20 123:11 northwest 25:20 84:7 notarized 107:4 note 16:13 42:24 notes 15:11 16:12	40:12 128:9 nothings 58:7 notice 62:14 102:2 noticed 6:10 78:21 82:7,11 notion 9:2 November 44:10 number 7:18 75:21 numbering 98:8 numerous 24:2 Nursery 55:21 nutshell 6:14
			O	
				O 10:9 14:20,20 17:13 22:9,9 23:5 28:11,11 33:5 62:8,8 64:15 70:22 74:8,8 77:5 79:11,11 80:19 83:15,15 85:12 86:17,17 87:8 89:15,15 90:16 103:13,13 objecting 45:21 objection 45:18 70:8 104:19 108:10 objective 8:20 observation 14:8 95:1 120:19 observe 14:5 27:23 59:24 observed 14:7 78:24 82:5 86:9 obviously 76:7 occasion 11:11 14:4 18:11 25:13 26:6 26:16 27:23 54:23 79:16 90:1 94:10 96:2 111:16 occasions 11:18 13:23 73:19 occupation 10:20 17:23 23:15,19

occupied 39:17	113:14 128:11	108:21 119:18	outside 11:20 12:1	84:10 86:3 92:8
odd 62:20 73:3	oh 9:22 21:23 22:1	120:22 121:8,17	12:4,6 19:12,15	124:14
offensive 73:15	44:9 56:18 66:22	old 10:18 17:20	21:14,17 25:22	part 8:13 40:12
78:24 82:12 86:9	71:23 73:10,17	66:12	26:1,4 30:9,11,12	43:16 48:21 51:17
88:2	102:13 124:10	older 62:24	51:17 52:22 54:24	91:10,12 94:14
offer 9:4 69:16,22	okay 7:12 10:14,20	once 40:9,9 41:9	55:1,2 63:11	123:6
70:4 106:17 108:6	10:22 11:11,22	52:7 72:7 122:4	66:11 68:17	Partially 85:17,18
108:7	12:23 13:2 15:7	ones 42:8 56:3	116:22,22 117:21	participation 16:2
offhand 52:19	15:21 16:8,19,20	open 22:2 45:2,9,11	122:9	particular 7:21
office 39:6 44:21	19:10,16,19 20:12	48:3,17 56:10	overhead 35:16	48:20 88:10 94:24
99:6	20:14,22 21:13	92:14 100:22	69:24	particularly 26:22
officer 1:10 6:1,3	22:4 23:18 24:9	101:18 112:7	overnight 18:16,19	88:12 110:1
7:4,9,12 8:16 9:17	25:11 26:20 27:1	opened 91:7,10,12	20:16	party 24:14 91:14
9:24 10:7 14:16	27:13,18,22 28:2	95:20 96:8	overwhelming	91:16
16:22 17:1,6 22:7	29:20,20 30:7,18	opening 7:15	109:12	patrolman 23:17
22:18 28:9 31:3,6	31:1,17,20 32:4,8	operated 91:4	owned 86:13	patron 79:3
31:21 32:10,14,15	33:9 34:9 35:13	112:10	owner 96:10	patronize 13:17
32:20 37:24 38:6	36:7,23 37:2,14	operating 95:19	owners 96:1	patrons 102:10
43:23 47:3 48:16	38:6 39:15,22	opinion 24:21	owns 60:6 112:8	pay 102:8 123:7
48:24 57:17,18	40:2,15 41:12	73:16 86:9 88:2		paying 67:20
62:1 63:23 64:2,8	42:10,21 43:22	114:16 115:22,24	P	PCB 1:5 6:7 109:11
68:10,13 69:4,8	45:4 47:2,22	115:24 116:23	P 2:1,1	peak 29:15
69:14 70:6,9,15	48:12 49:4,24	opposed 11:9	P-U-R-L-E-E	penalized 126:21
74:6 75:5,24	50:24 52:20,23	opposite 12:11,12	121:1	pencil 44:19
76:10,13,17,21	53:2 60:22 61:13	59:17,20	p.m 30:16 117:22	people 7:18 59:8
79:9 80:4,7,11,17	61:15 62:3,20	order 32:18 110:21	Page 3:3,8,13,18,23	75:21 92:6,9,15
83:10,14 84:23	63:21 65:13 66:10	126:19	4:2,7,12,17,22 5:2	102:20 106:22
85:2,6 86:15 87:1	66:14,19 67:18	ordinance 15:23,24	100:8	110:8 115:18
89:5,9,13 90:7,10	68:21,23 69:21	16:15,16 24:10,22	pages 108:3,4	122:11 124:9
98:3,11 103:11	71:11 72:13,19	24:24 25:1,9,14	Pam 4:1 70:14,19	125:24
105:5,10 106:5,11	73:8,11,24 75:3	25:15 29:4 30:15	71:3 107:21	people's 123:15
106:15 107:7,17	75:20 76:13 77:14	30:23 31:11,13,16	Panasonic 46:6	percent 26:4
107:23 108:5,8,11	78:14,16,19 79:5	32:1 57:23 62:17	50:23	percentage 40:15
108:14,21 110:24	79:16 80:1 81:2,9	113:11 117:2,4,14	paper 115:11	performance 92:18
113:8,18,22 114:4	81:15,20,20 82:5	119:10 120:15	paragraph 99:20	performances
116:1 118:18,22	82:9 83:5 84:19	organization	parallel 123:10	82:12,17 94:20,23
119:2,7,18,21	84:22 86:4,8,14	117:23	124:3	95:11
120:9,22 121:16	87:22 88:14,17,22	original 107:3	paraphrasing	performed 86:4
121:23 122:18	89:1 90:1,21 91:8	outcome 110:1	29:21	performers 93:3
124:20 125:2	91:19 92:10,17	outdoor 13:5 30:15	Pardon 82:16	97:4
126:24 127:3,13	93:6 94:7,12,15	72:14,14	park 18:17 123:14	perimeter 96:18
officers 118:5	95:14,22 96:10,14	outdoors 12:13	123:21,21	103:16
OFFICES 2:2	96:24 97:1,1,21	40:17,19,24 78:15	parking 71:13,14	period 15:9 29:16
official 104:16,20	98:2 101:16 103:7	79:20	71:16 74:12,16	40:11 116:21
104:22 105:2,3	106:14,24 107:23	outlined 25:14	81:8,16,23 84:8,9	permit 117:24,24

persistent 30:2	playing 7:20 14:12	possible 24:16 32:1	property 9:8,15	73:4 82:10 104:17
person 82:6 93:7,9	21:19 35:2 40:3,7	34:19,21 38:23	26:11,13,17,19	104:18,20 111:8
111:9,23,24,24	48:3,13 59:10	possibly 72:9 97:20	35:23,24 36:10	127:8
113:2 116:14	67:16 68:19 78:10	post-hearing	39:23 55:7 60:19	questions 14:14,19
personal 11:23	79:22 90:2 93:15	108:16,24	62:18,18 73:9	22:5 28:14 31:22
128:9	103:17 116:21	pounding 88:8	74:3 78:10,21	45:20 61:23 62:10
personally 14:11	plays 41:8 46:1	present 11:12 41:7	79:18,22 82:13,21	63:22 64:1 65:23
21:8 24:5	113:3	76:9 78:9 85:15	85:24 86:6 88:5	66:5 68:8,12 75:4
persons 97:11	please 9:21 10:2,12	presented 104:10	91:6,21 96:19,20	79:8 80:3,6 83:9
petitioner's 104:8	17:5,8,15,16	104:23,24	96:21 98:18 100:8	84:22 86:23 89:12
105:7 106:8	22:24 23:7,8 28:7	presenting 7:17	100:9,17 101:1,7	90:6 103:10,16
Phone 128:20	32:19 33:10,11,20	pretty 20:5 28:3	101:8,13,17	106:4 111:6
photo 69:24	48:19 52:13 64:5	36:19 42:7 92:2	103:17,20,22	120:21
photograph 35:23	64:7,10,18 69:20	102:15	110:6 112:2,6	quick 14:18 62:10
physical 97:2	70:5,12 71:2 77:9	previously 75:10	117:19	103:15 113:10
physically 14:9	77:12 80:9,12,24	97:10 106:19	proprietor 91:1	quiet 42:7 58:22
123:23	85:3,7 90:19	probably 11:2	prosecute 111:18	124:15
physics 124:1	99:18 106:21	13:20 23:20 24:7	prove 126:20	quieted 42:5
pick 54:1	109:7 121:20	35:6 40:18 54:16	provided 106:19	quieter 41:24
pictures 59:12 60:3	127:5	57:6 63:1 87:20	proximity 9:6	quite 12:8 18:14
60:14,23	pleased 6:24	97:17 103:24	113:7	19:7 49:12 53:23
piece 45:22 125:17	pleasure 113:13	109:10	public 62:5 109:4,4	quits 63:15
pig 56:10	plenty 12:20	problem 35:7 42:23	109:6 114:1	
pill 67:6	plus 81:17 120:19	67:22 82:8,14,20	117:10 118:19	R
place 13:17 35:4	PO'd 20:24 21:4	107:6 111:16	119:19 120:5	R 2:1 10:9 14:20
75:2	point 21:13 24:9	120:2 123:6	122:19	17:13 22:9 23:5
placed 100:4	37:15 72:20 83:19	125:16	published 100:3	28:11 33:5 62:8
places 110:9	85:4 89:1 112:20	problematic 95:15	pull 119:16	64:15 70:22 74:8
Plaintiff's 104:23	115:20	problems 73:23	purchased 34:1	77:5 79:11 80:19
plan 7:17	pointing 38:1	109:16	37:11 68:1 91:6	83:15 85:12 86:17
plans 67:10	police 15:24 23:16	procedural 6:13	purely 24:7	87:8 89:15 90:16
play 8:10 13:15,18	30:21 57:3 58:21	proceed 10:8 62:6	Purlee 120:24,24	101:17 103:13
13:19,21,24 27:14	96:23 97:22	76:1	121:8,12	R-I-S-K-O 116:8
27:16 47:6 52:20	111:14	proceedings 1:9	purpose 76:6 91:24	118:21
63:6,8 92:16	policemen 118:3	69:13 72:4 108:20	pursuant 6:12 9:9	radio 104:1
played 11:14,19	politically 11:10	128:5,7	put 44:22,24 55:2,4	raining 54:22
13:3,6,22 18:12	pollution 1:1,11 6:3	process 25:8,12	55:7 56:4,4 63:14	raise 10:2 17:7
19:11 20:7 26:1,7	8:21 9:3 58:14	professionalism	116:13 125:17	32:21 64:8 70:16
27:6 47:8 49:17	110:20 111:21	127:17	putting 48:22	76:21 80:11 85:6
49:17 51:4 70:4	117:1 121:10	prohibited 117:7		raised 15:21
72:7,21 84:20	128:1	prominent 26:23	Q	ran 122:23 124:11
86:20 87:23	Poopy's 63:10	proper 9:10 118:23	quantify 117:13	range 41:18 102:16
109:17,18 122:24	position 29:24	properly 6:11	quarter 42:19	Rao 7:2,3 31:6,7,10
124:12	116:13	properties 71:10	question 31:7 45:8	31:17,20,24 32:6
players 94:10	positive 123:7	89:24	58:12 62:21 70:1	reaction 120:14

read 99:17,19 107:8 117:3	47:1 49:13 50:11	116:7 120:8,10 121:20 127:5 128:4	respondents' 7:14	120:12
reading 25:13,18	recorder 46:16		response 8:18	rock 94:6
readings 25:10	recorders 44:17		99:11 109:2	Rockford 68:24
29:6 96:23	recording 44:21	represent 7:8,10	113:19	123:1,3
real 14:18 49:14	45:10,15,21 46:23	representation	restaurant 6:17	Ron 114:12
realize 102:14	49:22 50:4,6,22	81:18	91:11	roof 126:7
really 13:18 16:18	51:16 53:3	request 99:5,11	retired 10:21 17:24	room 19:18 43:9,13
20:16 34:16 40:23	recordings 46:18	118:11	retirement 91:14	54:5 68:18
61:17 68:19,19,19	46:19 48:11 49:21	requested 102:3	rev 115:13	rotary 91:15
91:23 94:9,23	50:4 70:3 112:13	requirements 8:24	reviewed 30:22	rough 18:21 54:19
97:24 109:17	records 99:23	requires 30:15	rezoned 112:7	roughly 29:10
110:10 112:23	rectangle 105:18	research 116:24	Richard 4:21 87:3	Route 41:22,24
114:8	red 60:6	reserve 69:1	87:5,12 107:16	44:4
reason 18:8 59:5	refer 74:13 83:12	reside 81:2 85:21	ride 18:3,15,17	rule 6:19 59:2
126:21	104:7	87:13	115:13	rules 6:13
reasonable 111:9	referred 100:23	residence 7:19,22	riding 19:7	run 9:9
111:23,23,24	referring 21:5	8:2,15 11:12 12:1	right 8:6 9:20 10:2	running 125:6
113:2 116:17	26:18 100:7,7	12:1,13,18,24	13:6,12,12 15:19	runs 113:5
reasonableness	reflects 15:8	14:23 15:2 18:12	17:7 28:6 36:12	
113:6	regarding 45:20	19:17 25:21 26:7	37:19,22 44:13	S
rebuttal 69:2	regardless 94:15	38:13 68:6 70:2	45:5,16 48:12	S 2:1 5:7 14:20,20
108:12	regulations 6:16	71:19 72:23 73:15	51:18 52:3,5 59:6	22:9,9 28:11,11
recall 65:6 96:4	8:22 9:1,12	74:22 82:7 83:18	61:6,9,19,20 62:2	62:8,8 74:8,8
received 28:16	related 15:8	84:20 86:20 90:2	64:9 67:4 69:2	79:11,11 83:15,15
62:14 99:11 102:1	relation 87:16	101:2 104:4 110:7	70:16 71:7,7,9,10	86:17,17 89:15,15
120:16	relationship 10:22	residences 39:17	72:5 73:22 74:16	103:13,13
recollect 97:18	11:5 18:1 23:23	113:7	74:17 76:22 77:23	S-I-S-L-E-R 10:13
recollection 27:15	102:23	residential 37:13	80:12 83:22 84:9	safe 92:9 112:6
27:21	relatively 92:9	39:1,4,6,7,9,11,15	84:10,12 85:7	127:17
recommend 55:19	relax 33:7	63:12 68:2 100:18	86:3 88:19 90:22	saith 10:6 17:12
reconsidering	relevant 120:11	109:21 112:2	93:15 96:21	23:4 33:4 64:14
69:17	reluctant 57:23	residents 24:1	104:18 105:14,15	70:21 77:4 80:16
record 32:2 44:20	remember 15:1	109:14	105:21 107:19	85:11 87:7 90:15
52:18 62:4 67:19	29:9 50:16 80:2	resources 121:4	108:6 112:21	sake 76:4
69:9,15 71:2 76:5	repealed 117:15	respect 110:22	114:21 119:17	sales 102:8
76:6 77:9,11	replace 66:12	responded 24:5	121:17 127:15	sat 122:8
80:24 81:21 87:11	replaced 66:11	respondent 5:16,17	rise 73:18	Saturday 93:24
90:19 99:16,17	reply 109:3	6:15 8:19 9:4	Risko 116:6,6,8	103:18
105:6 106:6 107:8	report 1:9 7:21	respondent's 98:10	118:21 119:8,9	save 119:12
108:15,22 113:23	reported 2:12	98:12,20 104:8	120:13	savings 97:9
114:2 116:2	128:4	106:8 107:10,14	RMR 1:12 2:13	saw 126:3
119:24	reporter 17:8 46:12	107:24 108:2	128:18	saying 17:20 40:22
recorded 8:11	70:17 76:22 89:4	109:2	road 60:4 77:23,24	41:10 50:17 54:6
16:13 44:15,22	89:7 107:19 114:6	respondents 1:7	78:1 89:19	57:13,14 115:17
	114:7,9,11,13	2:10 6:7 7:11	Robert 3:2 10:4,13	says 38:18,18 50:17

56:23 58:4 112:11 schedule 108:16,24 scientist 7:1 screen 45:4,5 47:24 48:1,4,7,8,20,22 51:10,12 52:24 53:8,9 66:6 sealed 99:13 seat 10:1 17:7 121:24 127:5 second 16:16 35:22 48:19 110:14,17 120:16 123:13,21 seconded 118:10 section 117:15 Section's 6:12 see 8:23 18:9 32:2 34:17 37:18,18 43:18 57:16,17,18 60:12 62:21 63:2 63:4 110:11 Seeing 127:15 sending 118:3 sense 57:2 sensibilities 113:1,1 sensibility 111:20 sensitive 123:19 separate 93:23 September 18:24 serve 91:23 serves 113:13 set 8:24 108:24 109:4 settings 46:3 settle 56:13 seven 40:21 sex 56:12 share 109:9 Shaw 127:2,7,7 Shaw's 36:20 101:14 shhhh 54:20 SHOCKEY 2:6 short 108:23 shorthand 128:3,5	show 8:20 35:13 37:20 43:16 92:15 98:13,17 112:16 shown 112:3 shows 68:24 91:17 95:7 113:4 shut 8:4 58:23 96:8 96:9 97:7 126:12 shutters 97:3 side 12:7,11,12 59:17 60:8 75:18 75:22 78:7 96:20 103:5 signature 128:11 signifies 38:3 Similar 46:15 similarities 109:11 similarly 109:15 simply 69:1 75:14 76:3 singing 47:17,19,20 53:21 single 93:18 sir 9:23 19:21 28:18 30:6 33:24 34:3,6 35:12 36:5 37:1,7 37:10,19 38:3 39:14 40:14 41:17 42:13,23 46:5,24 47:12,15 52:5 55:12 59:23 61:4 61:12 62:19 87:2 90:8 106:16 114:5 116:2,3 120:11,23 120:23 121:17 122:19,19 124:21 124:22 125:3 127:1,1,14 Sisler 3:2 9:20,22 10:4,11,13 14:22 118:9 120:6,12,12 sit 34:12 122:6 sits 36:23 61:18,19 61:20 100:9 101:14	sitting 38:24 48:8 54:2 93:14 situated 85:24 87:16 101:21 109:15 110:9 111:24 situation 109:13 112:12 118:14 situations 11:23 12:3 six 16:17 35:4,6 six-piece 94:11 103:19 Sixty-four 23:14 size 50:24 94:16 sleep 21:11 42:22 43:1,8,10,12,13 50:18 54:4,5 56:21 73:22 122:15 124:10 sleeping 43:2 67:2 67:5,6 109:16 sleeps 43:11 sliver 105:14 Slow 107:17 small 58:2 92:18,18 smaller 46:14 95:2 95:3 smiling 66:22 solution 124:5 somebody 31:14 47:16 55:19 76:4 96:8 123:7 126:20 somebody's 9:14 somewhat 110:15 songs 20:6 47:21 sorry 59:13 60:3 65:15 81:2 83:2 105:9,9 127:6 sort 92:1 sound 13:14 34:16 53:17 54:13,19 55:20 60:13 61:10 63:7,18 73:3,14 74:21 78:23 82:13	86:9,11 88:1 92:21,24 93:9 95:2,24 96:11 97:7 103:22 111:5 112:12,17 115:6 117:16,16,20,20 122:22,23 123:1 124:11 sounds 6:17 61:19 62:13,20 source 117:17,19 117:21 south 6:18 25:19 33:14 36:17,18,22 39:16 64:21 82:22 83:5,18 84:6 97:5 100:17 101:1,8,12 101:15,17 110:17 112:3 southeast 36:22 southside 12:7,9 103:20 space 92:5 Spangler 55:21 speaker 44:18 93:18,21 123:13 speakers 117:8,9 speaking 42:11 special 11:4 specific 66:5,19 specifically 15:4 72:13 98:24 specifications 93:11 speculate 57:21 spell 10:12 17:16 23:8 33:10 64:18 121:20 122:20 124:23 127:4 Spelling 114:13 116:7 spend 121:4 sponsored 117:23 Stage 41:22 42:1 stages 35:10	stand 17:5 22:24 30:23 32:19 64:7 93:10 Standard 46:8 standing 125:10,14 standpoint 75:8 95:16 start 35:1 69:6 98:12 102:24 103:1,4 started 58:24 65:9 71:22 126:8 state 1:13 6:24 9:6 10:11 14:22 17:15 18:17 23:7 33:10 64:17 71:1 75:22 77:8 80:23 87:11 90:19 121:3,19 122:20 124:22 127:4 state's 30:4 111:17 113:14 123:16 stated 28:16 50:5 statement 66:15 states 25:4 104:21 stay 67:19 stayed 18:16,19 20:15 22:15 staying 21:11 stenographic 128:8 step 17:2 22:19 64:3 68:14 76:18 80:8 87:2 90:8 106:16 114:2,5 115:19 116:4 121:17 Stephenson 2:7 stepping 85:21 96:5 steps 96:11 Steve 7:10 steve@shockeya... 2:9 Steven 1:12 2:7,13 128:3,18 sticking 8:14
---	--	---	---	---

stipulate 50:2	49:14 59:15 75:19	tape 48:8	120:23 121:16	time 9:23 14:3 15:8
stone's 71:15	75:19 96:22,24	tax 39:6 102:8	122:18 124:20	25:6,15 26:3
stood 115:21	97:10,10 101:11	technological 43:16	126:23,24 127:12	27:16 28:24 29:9
stool 93:14	112:13 113:15,24	television 43:4	127:13,16,18	29:17 31:18 33:7
stop 110:23	119:14,17 123:8	tell 12:1 20:6 29:12	Thanks 62:3 70:24	39:5 40:11,16
stopped 57:8	surname 118:19	29:21 38:16 47:20	77:7 113:22	43:1 45:3 48:13
116:21	surrounding 9:5	49:14,16 56:14	thereof 110:7	50:13 56:9 57:12
store 36:21 38:22	95:24 111:11	58:22 67:12 84:4	they'd 124:9	59:3 65:22 72:18
83:19 101:14	sustained 29:16,18	91:8,20 94:3	thing 21:12 26:12	76:4 110:22 115:7
105:17 121:22	swear 10:1 17:8	105:24 126:19	59:9 61:17 67:13	116:9,21 121:4
125:5	32:22 64:9 70:17	telltale 16:13	79:5,6,7 88:6 92:1	122:7 125:4,20
straight 101:12,14	76:22 114:6 116:5	ten 24:8 28:16	113:11 116:12	126:3 127:11
street 1:13 2:3,7	sworn 10:6 17:12	40:19,21 97:16	119:6	timeframe 15:3,5
6:18 10:15 65:4	23:4 33:4 64:14	terms 9:2 41:15	things 67:17 126:18	18:22 28:15,20
71:5,7 77:15 81:7	70:21 77:4 80:16	45:19 82:13 91:24	think 9:15 11:2,16	timeframes 22:12
81:7,10,17 83:1	85:11 87:7 90:15	97:1	14:2 20:20 27:10	times 11:15,17 19:7
83:22,24 84:12,14	120:11	Terrific 69:4 114:4	34:15 38:15,17	24:2,5,8 27:9
84:15 86:1 87:13	system 63:18 93:10	testified 22:12	39:2,3,3 45:7,17	40:19,21 41:2,3,5
125:6,10 128:19	121:13	83:20 104:11	48:10 50:21 51:8	41:6,6 42:10 57:3
string 95:12		106:22	51:10,11 54:12	57:5 91:13 96:19
structure 71:12	T	testify 8:9 107:3	55:14 57:5,14	97:18,20 98:1,4
97:2 117:21	T 5:7 10:9,9 14:20	123:4 124:4	59:5 60:5 69:15	100:23 118:5
struggling 109:17	17:13,13 22:9	testimony 9:5	69:17 75:10 76:5	tired 115:9
students 126:6	23:5,5 28:11 33:5	29:21 72:6 76:8	77:24 79:7,24	today 6:9 40:7 73:1
stuff 20:11 42:6	33:5 62:8 64:15	85:15 92:11 98:2	83:20 87:19 93:13	75:9 106:22 111:3
44:22 53:19 60:24	64:15 70:22,22	111:3,10 113:4	93:14 98:2 104:23	111:10
subjective 117:13	74:8 77:5,5 79:11	thank 7:13 8:16,18	109:6,24 110:2,15	toilet 122:17
submit 32:6 75:15	80:19,19 83:15	9:17,19 14:16	110:19 111:3,10	told 39:5 56:9,11
75:16 76:7 112:4	85:12,12 86:17	16:20 17:3 22:7	114:21 115:20,20	58:19 88:6,18
119:16	87:8,8 89:15	22:18,19 28:9	118:14,16 120:12	115:12 120:16
submitted 112:5	90:16,16 103:13	31:1,3,9,20,21	123:5 124:4,10,22	125:16
120:2	take 6:21,22 9:23	32:14 38:7 47:2,3	thought 16:10 31:7	Tom 127:7
submitting 32:9	33:7 67:6 69:6,9	48:24 62:7 63:23	69:18 96:7 125:12	top 8:9 126:7
suffer 59:7	96:10 116:3,16	64:3 68:10,13,21	125:19	tortious 66:23
Suite 2:8 128:19	118:19 119:19	69:5,9 70:6,8,9,12	thousand 81:14	tough 102:15
summer 13:19	123:7	70:13 74:6 75:5	three 13:20 35:5	town 58:2 67:1
18:24 114:23	taken 1:12 15:12	76:2,10,14,18	56:16 97:18,20	122:4
sun 43:8	44:5,7 69:11 76:3	79:9 80:4,8,17,21	throw 71:15	track 97:15,24
Sunny 71:5 77:14	108:18 128:9	83:10 84:23 85:2	thumping 20:5	transcribed 128:9
87:13	takes 30:1	86:15,24 87:2	47:10	transcript 6:21
supposed 24:12	talk 108:15	89:9 90:8 103:11	thumps 8:6	128:7
55:16	talked 31:10	106:5,12,16 107:9	Thursday 92:13,17	transferred 124:2
sure 16:11 26:4	119:24	108:11,16 109:8	93:6	transmission
27:8 31:14 34:16	talking 13:5 68:16	110:23,24 113:8	ticket 30:3,24	124:18
41:21 45:23 48:5	103:18,21 122:16	116:1,3 119:2,22	68:16,17	travel 124:7

traveled 13:14	119:20	66:8 109:10	83:8 103:4	115:1 123:20
tree 36:11	understanding	vibrates 8:6	wants 47:6 50:22	124:9,12,15
trees 55:3,4,7,13,19	7:13 27:20 75:17	vibrating 123:15	59:4 108:22	125:10,11,23,23
55:20,24	Understood 28:19	123:22	wasn't 13:7,8 60:1	126:6
trial 128:5,8	29:2 51:2	view 24:9 35:16	65:16 117:12	weren't 28:5
tried 27:9 56:5	undeveloped 37:9	views 103:8	Watch 80:8 85:3	west 2:7 10:15
67:24 118:9,13	unfortunately	village 9:11,12	watching 43:4	54:14 81:10 82:22
trike 18:17	115:8	15:15 29:4 30:15	waves 54:13	83:3 128:19
trikes 18:3	uninterrupted	31:11,16 102:6	way 11:8 27:19	whatnot 8:13
trip 59:11	13:14	vindictiveness	30:20 38:22 45:17	whistling 54:19
trouble 32:17 69:1	unnecessary 117:5	115:15	45:18 60:9,15	Whitebread 121:21
109:15	117:6	violated 6:15	66:8 73:9	121:21,22 122:1
true 50:13 100:1	unreasonable 9:2	violation 8:21	we'll 8:14 9:15 52:8	wife 43:11 50:16
121:6 128:6	9:14 110:5,19	24:21,24 25:1,7,9	69:9,17 106:19	56:11 85:15 91:3
try 24:15 55:3 56:7	112:12,19,22	25:15 29:3,15,19	120:3	114:18,23 115:21
56:8 57:7,15	116:23 117:6,9,12	30:19 113:12	we're 8:23 9:1 13:4	willing 123:8 124:8
58:13 73:4 76:8	117:15 118:11	visit 67:17	24:12 30:3 45:23	wind 53:19 54:10
96:11 116:18	unused 34:10,12	visits 18:22	46:19 50:12 59:1	54:11,14,18,21
trying 56:21 84:6	unwarranted	vital 44:14	69:14 72:20 83:22	window 44:5,22
118:2 125:17,21	118:16	vocals 20:9 51:24	92:7 106:7 108:22	45:1,1,1,3,4,9,14
turn 53:23 56:15	upper 97:6	95:12	112:24 118:2	47:23 48:1,3,4,6
88:19,22 96:17	Ups 92:15	volume 96:18	125:17	48:10,17,20,21,22
turned 54:8 125:5	upset 28:1,5	112:23	we've 67:24 91:13	48:23 49:13 50:16
125:11 126:11	upstairs 92:6,7	volunteer 15:11	92:14 100:22	51:8,14,17 52:22
turns 110:1	94:11	vs 1:5	wear 52:7	52:22 53:16,20
TV 53:21,22 54:7	upwards 24:8		weddings 91:13	66:7,8 73:21
TV's 53:23 54:8	use 9:8,14 44:17	W	92:6	windows 7:23
66:16	54:4 57:12 68:4	walk 21:13 96:18	week 40:9 41:8	12:23 13:1 19:20
two 31:19 35:13	69:2 78:20 86:5	96:20	56:17 72:7 102:12	27:1,3 42:12 54:7
49:20 54:8 67:9	88:5 93:12 117:9	walked 103:16	102:18,19	55:3 56:4 60:9,16
69:18 72:14 89:23	uses 53:7	115:2 126:8	weekend 18:16	66:11,12,15 97:5
91:14 94:9 106:23	usually 18:23 27:8	walking 114:24	41:9 67:8 122:5	winter 53:12
108:3 122:12	42:17,19,20 53:20	walks 110:16	weekends 13:20	wish 126:20
124:7,12	54:14 55:2 93:9	wall 60:17 115:3	18:14 124:12	witness 3:2,7,12,17
type 63:16,17 92:19	94:5	Walters 107:1,16	weekly 92:12	3:22 4:1,6,11,16
94:23	V	want 37:20 45:23	weeks 40:10 56:17	4:21 5:1 9:18
types 94:4	valley 13:13	50:8 52:20 55:6	weight 118:23	10:5 14:15 17:3
typically 92:20	varies 42:19	57:18,21 58:6	welcome 31:8	17:11 22:6 23:3
93:20 95:2,14	various 109:16	66:24 68:18 69:5	welder 17:24	28:8 31:9,14,18
U	vein 103:8	98:9,10 104:7	well-attended	32:16 33:3 36:4
ultimately 110:2	venue 63:17 91:9	113:9,24 114:15	94:13	37:22 38:1,4 44:3
unavailable 76:4	venues 91:23	115:17 116:16	went 16:12 39:6	46:5,10,13,17,21
understand 71:6	verified 50:4	117:4 118:12,17	42:16 57:14,15	46:24 50:14 51:5
85:20 110:8	versus 6:5 40:17	119:13,23 121:1	58:18 59:9,10,10	61:24 64:13 68:9
		wanted 18:18 27:12	59:17 60:2,13	68:15 70:20 74:5

75:14 76:14 77:3 80:15 85:10 87:6 89:8 90:14 107:5 118:21 119:1 121:19 128:11 witnesses 8:8 68:24 75:8 120:20 woman 125:6,14,16 wood 20:4 126:7 wooden 97:6 word 54:4 56:19 words 13:4 19:12 48:7 59:3 60:11 99:6 work 23:16 24:15 24:17 56:7,8 116:19 worked 35:3 56:16 worker 10:21 17:24 working 117:12 works 43:16 worth 115:22 wouldn't 28:4 63:5 wrap 75:7 write 29:19 30:3 written 109:4 wrong 22:21 29:22 54:4,13 114:22 126:20 wrote 68:16,17 115:11	yards 87:21 104:4 122:4 yeah 19:14 20:8,8,8 21:16,23,23 22:3 34:23 38:20 39:10 41:11 44:4 49:11 49:18 51:6 55:2,5 56:23 58:5 62:22 69:8 71:9,16,16 71:23 72:9 75:20 78:13 87:24 88:11 88:24 96:13 98:11 102:15 year 19:1 53:11 72:14 109:10 122:5 123:2 years 10:18,19 23:14,20 33:17,23 34:12,15,18,18 40:21 62:14 63:1 65:2,5,10,16 94:21 102:23 114:17 122:23 126:2 yellow 36:7,12,13 100:10	<hr/> 1 <hr/> 1 5:11,16 35:14,18 35:21 37:15 44:1 44:2 69:19,22 70:10 98:10,12,21 99:10 104:7,8,9 104:23 106:8,9,12 107:24 108:3 1's 69:18 1,500 122:3 1/2 2:3 108:4 1:00 27:17,19 42:19 1:30 42:17 10 3:4 10:00 6:10 100 41:6 87:20 101 1:13 2:8 6:12 103 5:4 6:12 107 5:17 10th 44:10 11 1:1 11/10/18 44:9 11:00 13:23 14:1 30:16 63:15 117:22 11th 1:14 6:9 12:00 63:15 12:30 42:18,20 127 10:15 13 95:22 13th 65:9 14 3:5 140 81:16,17 113:23 14th 109:1,3 15 19:2,3 65:2 17 3:9 175 92:6 17th 120:4 18 33:17 44:11 62:13 18-84 1:5 6:7 1957 82:4	2 5:12,17 35:14 36:2,8 69:19,23 70:10 74:14 83:13 100:8 104:8 106:20 107:11,14 108:1 2/2 108:4 2/23/19 52:15 2005 65:11,15 106:1 2007 128:19 2008 100:4 2012 91:6 2013 34:22,24 40:2 40:6 65:9,19 91:7 91:10 95:21 2014 11:2 15:6,9,18 91:12 2015 15:6,9,18 22:13 2018 44:12 2019 19:8 53:12 100:5 2020 1:1,15 6:9 128:13 208 2:7 22 3:10 23 3:14 230 2:3 235-2507 2:9 275 102:17 27th 16:14 28 3:15 28th 100:5	312 128:20 325 8:2 21:24 52:2 33 3:19 35 5:11 36 5:12 38 23:20 41:22,24 44:4
<hr/> X <hr/> X 3:1 5:7 10:9 14:20 17:13 22:9 23:5 28:11 33:5 38:2 62:8 64:15 70:22 74:8 77:5 79:11 80:19 83:15 85:12 86:17 87:8 89:15 90:16 103:13	<hr/> Z <hr/> zoned 37:12 38:10 38:13 68:2 100:18 101:5,17 106:1 109:20,23 zoning 8:13 35:15 35:21 37:15 38:24 57:15,16,18 62:14 69:22 99:6,8 100:2,14 101:24 102:2,3 104:13,16 104:20,22 109:22 112:4	<hr/> 2 <hr/> 2	<hr/> 3 <hr/> 3 5:13 43:17,20 48:15 70:3,3,11 30 57:5 62:5 98:4 111:13 302 127:7 307 71:5 309 77:14 30th 109:2 310 87:13	<hr/> 4 <hr/> 4 5:14 49:3,6,9 70:3 70:11 4:00 59:4 419-9292 128:20 43 5:13 45-degree 60:11 450 123:1 48 122:22 49 5:14
<hr/> Y <hr/> yard 124:15,17	<hr/> 0 <hr/> 04 71:20 084-004675 2:14 128:21	<hr/> 3 <hr/> 3	<hr/> 5 <hr/> 5 5:15 52:6,10 70:3 70:11 5/27/18 49:18,18,19 50 41:5 52 5:15 5th 65:8,13	
		<hr/> 2 <hr/> 2	<hr/> 6 <hr/> 60 31:15 60603 128:20 61032 2:8 61036 2:3 62 3:20 17:22 126:2 64 3:24	
		<hr/> 3 <hr/> 3	<hr/> 7 <hr/> 70 10:19 31:15 57:10 59:2 117:18 122:15 71 4:3 74 4:4 77 4:8 10:18 777-8180 2:4 79 4:9	
		<hr/> 2 <hr/> 2	<hr/> 8 <hr/> 8	

8 128:19
80 4:13
815 2:4,9
826 81:3 84:1 85:22
124:24
83 4:14
834 6:18
842 33:14 64:21
85 4:18
86 4:19
87 4:23
89 4:24

9

9:55 1:15
90 5:3 124:13
95-73 109:11
98 5:16
9th 109:6