

BEFORE THE VILLAGE BOARD
OF THE VILLAGE OF ROUND LAKE PARK
SITTING AS A POLLUTION CONTROL FACILITY
SITING AUTHORITY

IN RE: APPLICATION FOR LOCAL SITING)
APPROVAL FOR GROOT INDUSTRIES)03-01
LAKE TRANSFER STATION,)

Transcript of proceedings at the hearing
of the above-entitled cause on the 1st day of
October, 2013, at the hour of 3:00 p.m.

(Proceedings concluded at 4:30 p.m.)

REPORTED BY: SHELLY S. RUBAS

CERTIFIED SHORTHAND REPORTER LICENSE NO.: 084-4298

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1 APPEARANCES:

2

3

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MR. PHILLIP A. LUETKEHANS

4

The Hearing Officer;

5

MUELLER, ANDERSON & ASSOCIATES
MR. GEORGE MUELLER

6

On behalf of Groot Industries;

7

THE LAW OFFICES OF RUDOLPH F. MAGNA
MR. PETER S. KARLOVICS

8

On behalf of Board of Trustees of the
Village of Round Lake Park;

9

THE SECHEN LAW GROUP, P.C.

10

MR. GLENN C. SECHEN

On behalf of Village of Round Lake Park;

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TRESSLER, LLP.

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MR. STEPHEN T. GROSSMARK

On behalf of Village of Round Lake;

13

JEEP & BLAZER, L.L.C.

14

MR. MICHAEL S. BLAZER

On behalf of Timber Creek Homes, Inc.;

15

MR. LARRY M. CLARK

16

On behalf of The Solid Waste Agency of
Lake County, Illinois.

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I N D E X

WITNESS	EXAMINATION
MICHAEL S. MAROUS	
By Mr. Sechen (Cross)	4
By Mr. Blazer (Redirect)	27
By Mr. Mueller (Cross)	29

E X H I B I T S

NUMBER	IDENTIFICATION
Groot Exhibit No.	
11A	31

(Exhibits not attached - retained by the
Hearing Officer.)

1 (Whereupon, the witness was
2 duly sworn.)

3 THE HEARING OFFICER: We will reconvene.

4 Mr. Grossmark, do you have
5 cross-examination of this witness?

15:11:10

6 MR. GROSSMARK: No.

7 THE HEARING OFFICER: Mr. Clark?

8 MR. CLARK: No.

9 THE HEARING OFFICER: Mr. Sechen?

10 MR. SECHEN: Yes.

15:11:18

11 THE HEARING OFFICER: Please proceed.

12 MICHAEL S. MAROUS,
13 called as a witness herein, having been previously
14 duly sworn, was examined and testified as follows:

15 CROSS-EXAMINATION

16 BY MR. SECHEN:

17 Q. Mr. MaRous, you keep mentioning or you
18 have mentioned several times smell; is that
19 correct?

20 A. Yes.

15:11:26

21 Q. And I assume we consider that to be the
22 same thing as odor?

23 A. Correct.

24 Q. Now, you know that Mr. Blazer produced the

4

1 so-called odor witness expert by the name of
2 Mr. McGinley?

3 MR. BLAZE: Object to the form of the question,
4 mischaracterization.

5 THE HEARING OFFICER: We will strike the word
6 "so-called," but you may proceed.

15:11:54

7 MR. BLAZER: Counsel is --

8 THE HEARING OFFICER: You may proceed with the
9 answer, Mr. MaRous.

10 MR. SECHEN: I am not making any determination.

15:11:59

11 MR. BLAZER: No. Your client is. It's
12 obvious.

13 THE WITNESS: I'm aware that he had an expert
14 in regard to odor, yes.

15 BY MR. SECHEN:

16 Q. Are you aware that Mr. McGinley testified
17 that he could not say that there will be any
18 perceptible odor at the Timber Creek facility?

19 MR. BLAZER: Objection, assumes facts not in
20 evidence.

15:12:27

21 MR. SECHEN: He said that.

22 THE HEARING OFFICER: He asked if he was aware,
23 so you may answer. Objection overruled.

24 THE WITNESS: I am not aware of any of his

5

1 testimony.

2 BY MR. SECHEN:

3 Q. Does that change your view if he did say
4 that?

5 MR. BLAZER: Objection, speculation, improper
6 hypothetical.

7 THE HEARING OFFICER: Objection overruled.

8 THE WITNESS: If there were no potential odor
9 issue, that would be of benefit, yes.

10 BY MR. SECHEN:

11 Q. Are you aware that Mr. McGinley also said
12 he could not say that there would be any
13 perceptible odor at the industrial property between
14 the transfer station site and the nearest point in
15 Timber Creek either?

16 MR. BLAZER: Objection. He has already
17 testified he is not aware of what Mr. McGinley
18 testified to.

19 THE HEARING OFFICER: Objection sustained.

20 BY MR. SECHEN:

21 Q. Well, if you were to learn that there were
22 no perceptible odors at the industrial property
23 between the transfer station facility and the
24 nearest point in Timber Creek, would that affect

15:12:38

15:12:54

15:13:07

6

1 your opinion?

2 A. It would be a positive, yes.

3 Q. Well, is it accurate, Mr. MaRous -- and
4 you'll have to excuse me if I stand up. I still
5 have a hard time sitting while I'm asking
6 questions.

15:13:46

7 A. Not a problem.

8 Q. It's for convenience.

9 Are you aware, Mr. MaRous, that in the
10 1,038 feet between the Groot transfer station site
11 and the nearest point at Timber Creek, there is to
12 be built a construction and demolition debris
13 recycling facility sometimes referred to an eco
14 park or eco campus?

15:14:00

15 A. I'm aware that's planned, yes.

15:14:21

16 Q. Does that impact your views in any way?

17 A. I considered it as consistent with these
18 other industrial uses and I was somewhat neutral on
19 that proposed development.

20 Q. Well, do you have any idea what kind of
21 trucks will be utilized at that facility, the C and
22 D facility, if I can refer to it as that?

15:14:45

23 A. I have not seen any studies or specifics
24 on that, no.

7

1 Q. Are you aware that Mr. Blazer was involved
2 in the hearings on that facility?

3 MR. BLAZER: Excuse me? C and D facility? I
4 wasn't involved in that.

5 THE HEARING OFFICER: Okay. Let's -- is there
6 an objection? 15:15:10

7 MR. BLAZER: No, neither one of us was
8 involved.

9 THE HEARING OFFICER: Wait a second. Speak to
10 me only. Speak to me. 15:15:17

11 Is there an objection, Mr. Blazer?

12 MR. BLAZER: There is. Assumes facts --

13 MR. SECHEN: I'll withdraw the question.

14 THE HEARING OFFICER: Okay.

15 BY MR. SECHEN: 15:15:25

16 Q. Did you attempt to determine how many
17 vehicles would be entering and leaving the facility
18 in the course of an hour or in the course of a day
19 or in the course of any other unit of time?

20 A. I did not see any traffic studies that
21 would reflect that proposed information, no. 15:15:36

22 Q. And you didn't attempt to find any, did
23 you?

24 A. Researched -- general research, but no

1 specific, correct.

2 Q. And you didn't make any investigation
3 either into the types of trucks that would be
4 entering and leaving that facility, did you?

5 A. Without a specific plan, I could not do
6 it, correct.

7 Q. Are you aware that there were hearings on
8 that facility?

9 A. I understand that there was something with
10 hearings and an entitlement process, but I don't
11 know specifics.

12 Q. And you didn't attempt to access any of
13 the documents or transcripts involved in that
14 hearing or those hearings, did you?

15 A. No.

16 Q. Do you have any idea in your own mind as
17 you stand here today, whether vehicles similar in
18 description to those utilizing the transfer
19 facility would be utilizing the C and D facility?

20 A. Without the scope of the project, that
21 would be pure speculation. There is nothing that I
22 recall that was referred to in either the Lannert
23 or the Poletti reports on that which was really the
24 scope of my investigation was to comment on those

15:16:00

15:16:12

15:16:22

15:16:47

9

1 reports.

2 Q. And you didn't attempt to obtain any data
3 on that, did you?

4 I'm sorry?

5 A. I thought I had answered that question
6 four times, but the answer is the same as I said
7 before, no, I did not.

15:17:13

8 Q. And despite not having made any
9 investigation on your own, you still stand by your
10 criticism of Lannert and Mr. Poletti's report?

15:17:31

11 MR. BLAZER: Object to the form of the
12 question.

13 THE HEARING OFFICER: Objection overruled.

14 THE WITNESS: The Poletti and Lannert reports
15 didn't refer to this proposed facility, so that
16 really doesn't change my opinion.

15:17:46

17 BY MR. SECHEN:

18 Q. But it does exist and you know it exists,
19 right?

20 MR. BLAZER: Object to the form of the
21 question.

15:17:56

22 THE HEARING OFFICER: Objection sustained.

23 BY MR. SECHEN:

24 Q. Well, you are aware of that C and D

10

1 facility, aren't you?

2 MR. BLAZER: Objection, asked and answered.

3 THE HEARING OFFICER: It's foundation for the
4 next question. Overruled.

5 BY MR. SECHEN:

6 Q. Are you aware of the C and D facility?

7 A. I'm aware of the proposed C and D
8 facility, yes.

9 Q. Now, you mentioned a wall that was
10 constructed between or near Groot North near the
11 Timber Creek facility?

15:18:30

12 A. Correct.

13 Q. You referred to it as the visual wall; is
14 that correct?

15 A. I don't recall specifics, but it's a
16 visual and a sound wall, yes.

15:18:47

17 Q. Do you have any knowledge, sir, as you
18 stand here today what impact, if any, that wall
19 would have on any of the impacts you envision
20 coming from the transfer station facility?

15:19:04

21 A. You mean the existing wall that's up?

22 Q. Yes, sir.

23 A. It would help block any noise and visual
24 aspects of Timber Creek to the proposed --

11

1 Q. Now, in addition to the trucks utilizing
2 the C and D facility, there are trucks also that
3 utilize the Groot North facility; is that correct?

4 A. Yes.

5 Q. Do you have any idea, sir, how many trucks
6 utilize Groot North facility?

15:19:47

7 A. I think it depends on the day, but I don't
8 know the average, but it's a fairly active
9 facility.

10 Q. Yet it's your view that the trucks
11 utilizing the transfer facility will have an impact
12 negatively on Timber Creek and not the trucks from
13 Groot North?

15:20:01

14 A. The trucks from Groot North are already
15 there. It's an approved facility, it's an active
16 facility. This is a proposed facility of the KLA
17 plan called for approximately 140 some large trucks
18 a day.

15:20:23

19 Q. With respect to the trucks entering the
20 C and D facility and leaving that facility, those
21 trucks, sir, do they impact Timber Creek?

15:20:46

22 MR. BLAZER: Objection, assumes facts not in
23 evidence specifically that that operation is
24 currently in existence. And it's also beyond the

12

1 scope. He's already made it clear that he doesn't
2 know anything about that C and D facility because
3 it wasn't discussed in either of the reports that
4 he's reviewed.

5 MR. SECHEN: He knows it exists. He knows the
6 use of the vehicles.

15:21:12

7 MR. BLAZER: He would be the only one that
8 knows it exists because it doesn't exist yet.

9 THE HEARING OFFICER: Objection overruled.

10 BY MR. SECHEN:

11 Q. Can you answer the question or would you
12 like me restate it?

13 A. Please restate it.

14 Q. Are you telling us, sir, that the trucks
15 utilizing the C and D facility, that will utilize
16 the C and D facility will have no impact on the
17 Timber Creek facility?

15:21:32

18 A. I haven't done any study, rendered any
19 opinions in regard to those proposed trucks.

20 Q. But you say there are impacts from the
21 other side of Porter Drive from the transfer
22 facility trucks that will impact Timber Creek;
23 isn't that correct?

15:21:50

24 MR. BLAZER: Objection, asked and answered.

13

1 THE HEARING OFFICER: Objection overruled.

2 THE WITNESS: As described, it was a
3 consideration in my analysis in reviewing the
4 report.

5 BY MR. SECHEN:

6 Q. Did you look or attempt to find any data
7 with respect to noise generated by such trucks, any
8 of the trucks?

9 A. I did not review any sound study, no.

10 Q. And you didn't --

15:22:37

11 A. But I've --

12 Q. And you didn't look for one either?

13 MR. BLAZER: I don't think he was done
14 answering the question, Mr. Hearing Officer.

15 THE WITNESS: Well, as a matter of course, as a
16 property owner, as an appraiser in the development
17 world, I am aware of the noise generated from
18 trucks, from trucks turning from back up beepers.
19 It's something that you hear on a fairly regular
20 basis, but I did not review a study.

15:22:46

15:23:04

21 BY MR. SECHEN:

22 Q. Well, are you talking about trucks from
23 back up beepers at the C and D facility in the
24 future?

14

1 MR. BLAZER: Objection.

2 BY MR. SECHEN:

3 Q. Are you talking about noise from back up
4 beepers at the Groot North facility?

5 MR. BLAZER: Objection.

15:23:22

6 THE WITNESS: Which --

7 THE HEARING OFFICER: Objection sustained.

8 BY MR. SECHEN:

9 Q. Well, which trucks are you talking about
10 utilizing which facility when you referred to back
11 up beepers?

15:23:27

12 A. My reference has to do with the proposed
13 facility, 140 some trucks a day.

14 Q. There is no way you can separate the
15 impacts of that, is there?

15:23:43

16 MR. BLAZER: Object to the form of the
17 question.

18 THE HEARING OFFICER: Objection sustained. I
19 don't understand the question.

20 BY MR. SECHEN:

15:23:52

21 Q. Can you separate -- are you telling us,
22 sir, that you can separate impacts from the
23 vehicles utilizing any of these three facilities?

24 A. Again, I am not a sound engineer, but you

15

1 are introducing 140 plus large vehicles a day into
2 this area that were not there before. You are
3 talking about another proposed facility that hasn't
4 been built and I haven't seen the specifics about.

5 Q. Well, the important part is you didn't
6 look for the specifics, did you?

15:24:29

7 MR. BLAZER: Objection, argumentative.

8 THE HEARING OFFICER: Sustained.

9 BY MR. SECHEN:

10 Q. 120 is the truck route; is that correct?

15:24:41

11 A. Yes.

12 Q. Do the trucks utilizing 120 negatively
13 impact Timber Creek?

14 A. They are allowed on the truck route.

15 That's a fact already in place. It's a state
16 route. The answer is no.

15:25:00

17 Q. The answer is no. Thank you.

18 You mentioned comprehensive plans and you
19 criticized Mr. Lannert for not investigating the
20 comprehensive plans; is that correct?

15:25:30

21 A. Yes.

22 Q. Have you ever seen property that is
23 eventually developed in a manner that is not
24 consistent with the comprehensive plan that had

16

1 governed that property or any of the plans that had
2 governed that property?

3 MR. BLAZER: Objection to the form of the
4 question.

5 THE HEARING OFFICER: I will sustain the form
6 objection.

15:25:53

7 Please reask the question.

8 BY MR. SECHEN:

9 Q. Have you ever seen property developed in a
10 manner that was inconsistent with the comprehensive
11 plan on a property?

15:25:59

12 A. Yes.

13 Q. Happens all the time, doesn't it?

14 A. I wouldn't characterize all the time, but
15 it happens. Comprehensive plan is a guide. It's
16 not a zoning ordinance. Zoning ordinance dictates
17 development. Comprehensive plan is a guide.

15:26:09

18 Q. Okay. Well, are you aware that 55 percent
19 of the property within 1,000 feet of the Groot
20 facility is zoned for industrial p12urpose?

15:26:29

21 A. That sounds about right. I don't know the
22 exact percentage, but that's possible.

23 Q. And at a half mile, that percentage is
24 34 percent?

17

1 A. Again, I haven't memorized it, but that's
2 possible.

3 Q. And within a mile, it's 12 percent?

4 A. I haven't checked the percentages, so I
5 can't give you -- I can't give you an answer to
6 those kinds of specifics.

15:26:58

7 Q. Did you review Mr. Lannert's transcript?

8 A. No.

9 Q. So you wouldn't know -- strike that.

10 Have you heard about anything that
11 Mr. Lannert testified to? Have you been told?

15:27:10

12 A. Very generically.

13 Q. And they didn't tell you, whoever told
14 you, no one told you about this in terms of zoning
15 percentages of industrial?

15:27:26

16 A. No.

17 Q. Does it surprise you to learn there's a
18 PowerPoint presentation that covers that?

19 A. If I don't know, anything might surprise
20 me, so that is just pure speculation. I don't
21 know. I wasn't there.

15:27:38

22 Q. With respect to residential uses, are you
23 aware that there are no residential uses within
24 1,000 feet?

18

1 A. 1,038 or 1,000 there are none, that is
2 correct.

3 Q. Within a half mile, that is 19 percent?

4 A. Very possible.

5 Q. And within a mile, it's 37 percent?

15:28:14

6 A. Again, you are throwing out percentages
7 that do not seem to be unreasonable, but I have not
8 -- I can't testify to the validity of those.

9 Q. So then as you move closer to the
10 facility, the proposed transfer station facility,
11 the area becomes more and more industrial, doesn't
12 it?

15:28:30

13 A. If you are referring to a mile on in, I
14 would agree with you.

15 Q. Now, with respect to the case studies that
16 Mr. Lannert -- strike that -- Mr. Poletti
17 performed, you criticized Mr. Poletti's study of
18 the DuKane facility, didn't you?

15:28:49

19 A. I commented.

20 MR. BLAZER: Objection, assumes facts not in
21 evidence.

15:29:21

22 MR. SECHEN: Well --

23 THE HEARING OFFICER: Do you want to restate
24 the question or --

19

1 MR. SECHEN: I will restate the question.

2 BY MR. SECHEN:

3 Q. Are you aware of Mr. McCann's report
4 regarding the DuKane facility?

5 A. I am aware that Mr. McCann did a report
6 for that facility many, many years ago.

15:29:42

7 Q. And you criticized the size of the
8 targeted control areas in that report?

9 A. In which report?

10 Q. The McCann report which was referenced in
11 the Poletti report.

15:30:03

12 MR. BLAZER: Objection, misstates the evidence.

13 THE WITNESS: I --

14 THE HEARING OFFICER: The objection is
15 overruled. You may look at the report and he may
16 respond how he feels is appropriate.

15:30:31

17 MR. BLAZER: Page 8, middle of the page.

18 THE WITNESS: I don't see any issues or comment
19 as to size, so I'm not sure what your question
20 means.

15:30:46

21 BY MR. SECHEN:

22 Q. Well, do you have any criticism of the
23 targeted control areas in that report?

24 MR. BLAZER: Objection, foundation.

20

1 THE HEARING OFFICER: Objection overruled.

2 THE WITNESS: I really gave no validity to the
3 McCann report. It was just cited as a reference
4 that Poletti uses, so I really have no other
5 opinions in regard to it. That wasn't what I
6 analyzed.

15:31:08

7 BY MR. SECHEN:

8 Q. Was Mr. Poletti correct in utilizing that
9 report?

10 A. It's fine to refer to other people's work.
11 I'm not sure what reliance he had on this report,
12 so you really would have to ask him. I don't know.

15:31:19

13 Q. If you don't have a criticism of that,
14 let's move on to the Glenview case study.

15 A. He didn't do it. Poletti didn't do a case
16 study of the McCann report for the record.

15:31:53

17 Q. Of Glenview.

18 A. Right.

19 Q. That is where I'm going. Glenview.

20 Now, can you tell us what a rank

15:32:08

21 regression analysis is?

22 A. A what?

23 Q. A rank regression analysis?

24 A. R-a-n-k?

21

1 Q. Yes, sir.

2 A. I can't define it. I think it just
3 basically as it sounds, it ranks the value of the
4 data, but I am not an expert in defining a
5 regression analysis.

15:32:36

6 Q. Are rank regression analyses preferred
7 when making the type of analyses that Mr. Poletti
8 made?

9 A. They can be.

10 Q. Well, can you explain to us what a rank
11 regression analysis is then?

15:32:52

12 A. Well, it's basically compiling data and
13 giving it certain value based on the quality of the
14 data.

15 Q. So you assign certain value to the data
16 yourself?

15:33:10

17 A. That's correct.

18 Q. Whereas what Mr. Poletti did is he just
19 took the data and let the computer do the analysis?

20 A. I would assume that he did some of his own
21 analysis. It's based on the data that you put into
22 it.

15:33:28

23 Q. Well, when you --

24 A. I can't --

22

1 Q. Go ahead. I don't want to cut you off.

2 A. I can't answer that. That is really a
3 question for Mr. Poletti and not for me.

4 Q. You mentioned that the differences between
5 the properties at the Glenview facility made
6 Mr. Poletti's analysis unreliable?

15:33:56

7 A. The multiple points that I made in regard
8 to the data and the selection of data and the
9 knowledge of the impacts of value in my opinion
10 created issues with his conclusions, yes.

15:34:25

11 Q. Did you take any data and try to run a
12 similar analyses utilizing the data in a manner
13 that you deemed to be appropriate?

14 A. As I explained on the previous cross,
15 because of the issues with the floodplain, with the
16 well and septic, with the market conditions, I
17 didn't feel it was appropriate. And the answer is
18 no, I did not independently do my own value impact
19 report as I've been discussing for about three
20 hours.

15:34:46

15:35:07

21 Q. And likewise, you did no independent
22 evaluation of any of the data concerning the Elburn
23 facility, did you?

24 A. Same answer as before, correct.

23

1 Q. Yet you criticize what Mr. Poletti did by
2 simply saying you disagree with it, but you have
3 done nothing yourself, have you?

4 MR. BLAZER: Objection, argumentative, asked
5 and answered. 15:35:33

6 THE HEARING OFFICER: Sustained.

7 BY MR. SECHEN:

8 Q. Well, having done nothing yourself --

9 MR. BLAZER: Object to the form of the
10 question. 15:35:42

11 THE HEARING OFFICER: Finish the question.

12 BY MR. SECHEN:

13 Q. Well, having done nothing yourself to show
14 a different result than Mr. Poletti obtained, you
15 still feel it appropriate to criticize 15:35:51

16 Mr. Poletti's report?

17 MR. BLAZER: Object to the form of the
18 question.

19 THE HEARING OFFICER: Objection overruled.

20 THE WITNESS: I looked at the value provided, I 15:36:01
21 looked at the impacts and the selection of the
22 target and control areas and what it reflected and
23 based on that, I provided my opinions. I did not
24 do an independent value impact report just so we

24

1 are understood.

2 BY MR. SECHEN:

3 Q. So you've done nothing that shows that the
4 actual results would be different than what
5 Mr. Poletti found if you were to use other data
6 organized the way you deem appropriate?

15:36:37

7 MR. BLAZER: Objection, asked and answered.

8 THE HEARING OFFICER: Overruled.

9 THE WITNESS: I did not do a value impact
10 report. I reviewed the Poletti report, looked at
11 the data, looked at the control areas, looked at
12 the impacts, and provided my conclusions. Again, I
13 did not do a value impact report, but I can answer
14 it again if you want to ask it a few more times.

15:36:54

15 BY MR. SECHEN:

16 Q. No. I don't know that answering that
17 question again would do any good because you're
18 going to hopefully give the same answer.

19 But what I would like to know is having
20 done nothing --

15:37:23

21 MR. BLAZER: Objection. Move to strike.

22 BY MR. SECHEN:

23 Q. -- do you still feel it appropriate to
24 criticize what Professor Poletti did?

25

1 THE HEARING OFFICER: Objection sustained.

2 Restate your question. Ask a question.

3 BY MR. SECHEN:

4 Q. Having done nothing, as you've just
5 mentioned or having done only what you've
6 mentioned, you still feel it appropriate to persist
7 in your criticism of the Poletti report?

15:37:37

8 MR. BLAZER: Objection, asked and answered and
9 mischaracterizes the testimony.

10 THE HEARING OFFICER: Objection overruled.

15:37:53

11 THE WITNESS: Based on reviewing all the
12 documents, visiting the site, taking into
13 consideration the potential impacts of the proposed
14 development, looking at the data provided in the
15 Poletti report, my conclusions remain the same.

15:38:07

16 BY MR. SECHEN:

17 Q. If we can just shorten this up, you did no
18 independent analyses for any of these case studies,
19 did you?

20 MR. BLAZER: Objection, asked and answered.

15:38:25

21 THE HEARING OFFICER: Sustained.

22 BY MR. SECHEN:

23 Q. Did you do any independent analyses in
24 excess of what you've testified to here today?

26

1 MR. BLAZER: Objection, asked and answered.

2 THE HEARING OFFICER: Overruled.

3 THE WITNESS: Besides what I've testified to in
4 my report, that is what I did.

5 MR. SECHEN: Can I have one second, please?

15:38:52

6 THE HEARING OFFICER: Sure.

7 BY MR. SECHEN:

8 Q. If I just take a step backwards to the
9 impacts that you see coming from the transfer
10 station facility due to open doors.

15:39:19

11 Do you know of your own knowledge of any
12 -- strike that.

13 MR. SECHEN: I withdraw the question. No
14 further questions.

15 THE HEARING OFFICER: Mr. Blazer, any redirect?

15:39:41

16 MR. BLAZER: Just a couple.

17 THE HEARING OFFICER. Please proceed.

18 REDIRECT EXAMINATION

19 BY MR. BLAZER:

20 Q. Just a couple quick questions, Mr. MaRous,
21 about some of Mr. Mueller's secret information.

15:39:54

22 Do you remember he suggested to you, it
23 was more of a suggestion, he represented to you
24 that there is no such thing as a McCook landfill?

27

1 A. Yes, I do. Specifically with the McCook
2 address.

3 Q. And are you familiar with the McCook
4 landfill owned and formerly operated by American
5 Grading Company?

15:40:27

6 A. Yes.

7 Q. And are you familiar with the fact that
8 the McCook landfill owned and formerly operated by
9 the American Grading Company was recently involved
10 in litigation in connection with its gas collection
11 system?

15:40:38

12 A. I read about it. I have no other specific
13 familiarity with it other than that.

14 Q. And that is the McCook landfill that you
15 described previously that you were involved with?

15:40:48

16 A. Yes. I believe it's not in McCook, but
17 one of the adjoining town with a different address.

18 Q. Is it Lyons?

19 A. That is very possible.

20 Q. And then Mr. Mueller also made certain
21 representations to you regarding quarry operations
22 in and around the Bluff City transfer station area.

15:40:59

23 Do you remember those representations?

24 A. Yes.

28

1 Q. And have you heard of a company called
2 Bluff City Materials, a sand and gravel operation,
3 with locations in Elgin, Bartlett, and South Elgin?

4 A. Yes.

5 MR. BLAZER: I have no further questions. 15:41:27

6 THE HEARING OFFICER: Mr. Mueller, anything?

7 Before Mr. Mueller --

8 MR. MUELLER: Just one mere --

9 THE HEARING OFFICER: Just real quick.

10 Just for the record, Brian Smith is not 15:41:54
11 here, so that is why I did not ask if he had any
12 questions. Please proceed, Mr. Mueller.

13 CROSS-EXAMINATION

14 BY MR. MUELLER:

15 Q. Mr. MaRous, do you know whether or not the 15:42:04
16 Lyons landfill is a municipal solid waste landfill
17 or some other type of facility?

18 A. I do not recall the specifics.

19 MR. MUELLER: That's all.

20 THE HEARING OFFICER: Mr. Grossmark? 15:42:27

21 MR. GROSSMARK: No.

22 THE HEARING OFFICER: Mr. Clark?

23 MR. CLARK: No.

24 THE HEARING OFFICER: Mr. Sechen?

29

1 MR. SECHEN: No.

2 THE HEARING OFFICER: Mr. Blazer?

3 MR. BLAZER: Thank you, Mr. Hearing Officer.

4 I will move for the admission of TCH 7,
5 the resume. 15:42:48

6 THE HEARING OFFICER: Any objection?

7 MR. SECHEN: No objection.

8 MR. MUELLER: No objection.

9 THE HEARING OFFICER: TCH Exhibit 7 will be
10 admitted without objection. 15:43:03

11 MR. BLAZER: Move for the admission of TCH
12 Exhibit 8, his report.

13 THE HEARING OFFICER: Any objection?

14 MR. SECHEN: No objection.

15 THE HEARING OFFICER: TCH Exhibit 8 will also
16 be moved in without objection. 15:43:14

17 While we are -- I think that was your last
18 witness, Mr. Blazer. Are there any other exhibits
19 that you wish to move for admission into evidence?

20 MR. BLAZER: I do have two. Can we take a few
21 minutes to collect that? 15:43:27

22 THE HEARING OFFICER: Yes. Absolutely.

23 You know what? While we are doing that,
24 Mr. Mueller and Mr. Moose, one of the things we

30

1 talked about yesterday was submitting a new
2 Applicant Exhibit 11 or Groot Exhibit 11.

3 Has that been done or should we look for
4 that tomorrow?

5 MR. MUELLER: We've got it.

15:43:51

6 THE HEARING OFFICER: We are going to call it
7 Exhibit 11A. Is that acceptable to everyone? At
8 least calling it. I know you haven't moved for its
9 admission yet.

10 (Whereupon, Groot Deposition
11 Exhibit No. 11A was marked for
12 identification.)

13 THE HEARING OFFICER: I was looking through my
14 notes this morning and I think we may have some
15 exhibits labeled Groot exhibits or Applicant's.
16 Just for the record, Groot and Applicant's are the
17 same.

15:45:31

18 Is there any objection to new Groot
19 Exhibit 11A?

20 MR. BLAZER: No objection.

15:45:43

21 THE HEARING OFFICER: Groot Exhibit 11A will be
22 admitted without objection.

23 Let us know when you're ready, Mr. Blazer.

24 MR. BLAZER: I'm ready.

31

1 THE HEARING OFFICER: Please proceed.

2 MR. BLAZER: Most of these were exhibits that
3 were actually addressed in testimony last week. I
4 think principally by Ms. Siebert. The first one
5 -- and actually also by Mr. Moose.

15:46:31

6 The first one is TCH Exhibit 10. That is
7 the Groot Industry's Lake Transfer Station energy
8 and emissions life cycle assessment.

9 THE HEARING OFFICER: Is there any objection?

10 MR. MUELLER: No.

15:46:42

11 THE HEARING OFFICER: Hearing no objection, TCH
12 Exhibit 10 is admitted without objection.

13 MR. BLAZER: The next one is Exhibit 27, the
14 2009 solid Waste Management plan update for Lake
15 County, Illinois.

15:47:05

16 THE HEARING OFFICER: Any objection?

17 MR. MUELLER: No.

18 THE HEARING OFFICER: TCH Exhibit 27 will be
19 admitted without objection.

20 MR. BLAZER: The next one is TCH Exhibit 28.
21 That is the February 16, 2013, Groot public
22 informational meeting presentation.

15:47:15

23 THE HEARING OFFICER: Any objection?

24 MR. MUELLER: No.

32

1 THE HEARING OFFICER: TCH Exhibit 28 will be
2 admitted without objection.

3 MR. BLAZER: The next one is 34, TCH 34A that
4 is excerpts from the Veolia Zion expansion
5 application.

15:47:48

6 THE HEARING OFFICER: Any objection?

7 MR. BLAZER: And just for the record,
8 Ms. Siebert already testified to the specific
9 sections of that exhibit that I am proposing to put
10 into evidence, so the actual statements are already
11 in the record.

15:48:03

12 MR. MUELLER: In that case, the exhibit is
13 redundant.

14 THE HEARING OFFICER: Response?

15 MR. BLAZER: Well, particularly because it's a
16 transcript and not the document itself, I think the
17 Village Board, although I think they have it
18 anyway, but they are entitled to see the document
19 from whence the testimony came. It's not
20 redundant.

15:48:12

15:48:27

21 THE HEARING OFFICER: TCH 34 will be admitted
22 over objection.

23 MR. MUELLER: That is 34A.

24 THE HEARING OFFICER: 34A. I apologize

33

1 MR. BLAZER: And just for the record, 34 was
2 the whole application --

3 THE HEARING OFFICER: Right.

4 MR. BLAZER: -- or as much of the application
5 as was available on SWALCO's web site.

15:48:41

6 THE HEARING OFFICER: Correct.

7 MR. BLAZER: And finally -- well, not finally.
8 One more after this.

9 38C are three pages from the Winnebago
10 landfill expansion site application.

15:48:59

11 THE HEARING OFFICER: Any objection?

12 MR. MUELLER: No.

13 THE HEARING OFFICER: TCH Exhibit 38C will be
14 admitted without objection.

15 MR. BLAZER: And then my last one, Mr. Hearing
16 Officer, and I renumbered it after you mentioned a
17 duplication of one of our Exhibit numbers, TCH
18 Exhibit 50 is Mr. Mueller's brief in the matter to
19 the pollution control board in the matter of
20 Residents against a polluted environment vs. County
21 of LaSalle in which he stated that the testimony of
22 Devin Moose --

15:49:22

15:49:46

23 THE HEARING OFFICER: I am aware of what he
24 stated.

34

1 Mr. Mueller?

2 MR. MUELLER: I believe you sustained
3 objections to questions regarding that and for the
4 same reasons, we would object to the exhibit.

5 MR. BLAZER: May I be heard, please?

15:50:07

6 THE HEARING OFFICER: Yes, you may.

7 MR. BLAZER: All right. What we discussed last
8 week when we discussed this exhibit was Rule 608 of
9 the Illinois Rules of Evidence which provides that
10 the credibility of a witness may be intact or
11 supported by evidence in the form of opinion or
12 reputation, but subject to these limitations. The
13 evidence may refer only to character of
14 truthfulness or untruthfulness. The statements in
15 Mr. Mueller's brief are specifically that.

15:50:20

15:50:33

16 And I think it goes further in terms of
17 -- because there were statements last week, not by
18 Mr. Mueller, but by Mr. Helsten that this document
19 was merely signed by Mr. Mueller, that it wasn't
20 verified, it wasn't certified, and it wasn't sworn
21 to. So there are four things I need to cite to the
22 Hearing Officer.

15:50:50

23 The first three are provisions of the
24 Illinois Code of Professional Responsibility, the

35

1 rules that govern the conduct of attorneys in this
2 state. The first is Rule 3.1. A lawyer shall not
3 bring or defend a proceeding or assert or
4 controvert an issue therein unless there is a basis
5 of law and fact for doing so that is not frivolous.

15:51:14

6 Number two, Rule 3.3, candor towards the
7 tribunal. A lawyer shall not knowingly make a
8 false statement of fact or law to a tribunal or
9 fail to correct a false statement of material fact
10 previously made to the tribunal by the lawyer.

15:51:35

11 Third, Rule 4.1. In the course of
12 representing a client, a lawyer shall not knowingly
13 make a false statement of material fact or law to a
14 third person.

15 And finally, Rule 137 of the Illinois
16 Supreme Court rules addressing the signing of
17 pleadings, motions, and other documents by
18 attorneys. The signature of an attorney or party
19 constitutes a certificate by him that he has read
20 the pleading, motion, or other document and to the
21 best of his knowledge, information, and belief and
22 reasonable inquiry, it is well grounded in fact and
23 is warranted by existing law.

15:51:47

15:52:04

24 So we have two possibilities here, Mr.

36

1 Hearing Officer. Either Mr. Moose is, in fact, a
2 liar without credibility or Mr. Mueller violated
3 three provisions of the Illinois Code of
4 Professional Responsibility and Supreme Court
5 Rule 137.

15:52:32

6 THE HEARING OFFICER: Mr. Mueller? Just for
7 the record, we are talking about federal rule of
8 evidence 608, correct?

9 MR. BLAZER: Illinois rule of evidence 608.

10 THE HEARING OFFICER: Is there a difference?

15:52:42

11 And I apologize. I should know that, but if
12 someone wants to provide me a copy of the rule in
13 its entirety, I'll look at that.

14 MR. BLAZER: There is a slight semantic
15 difference. In Illinois unfortunately, in its
16 infinite wisdom didn't adopt the federal rules
17 verbatim, but there are slight differences. The
18 provision that I read to you is from the Illinois
19 rule. The federal rule actually just uses more
20 words to come to the same conclusion.

15:52:52

15:53:05

21 THE HEARING OFFICER: Mr. Mueller?

22 MR. MUELLER: Couple things. Number one,
23 evidence of character, which is reputation
24 evidence, is different than an allegation that a

37

1 specific statement was truthful or untruthful. It
2 has to be an allegation with regard to reputation
3 for truthfulness or character of truthfulness.

4 Moreover, though, it has to be
5 evidentiary. The point that Mr. Blazer misses in
6 his argument is that all of the things he cites go
7 to evidentiary matters and not to argument and
8 advocacy.

15:53:41

9 Argument can be anything that rationally
10 can flow or be made an inference from statements.
11 Now, it goes without saying that as the advocate
12 for a citizen's group opposing a project that
13 Mr. Moose testified from or testified on, I looked
14 for inferences that could be drawn from the
15 testimony and was free to argue those inferences.
16 The brief itself, though, is argument.

15:54:08

17 Had I testified, that would be different.
18 Had I asserted something as a fact as opposed to
19 argument and if it had related to reputation for
20 veracity, that might be different. But that didn't
21 occur. This was nothing, but argument and in that
22 regard, I might add, it was argument that was
23 rejected by both the pollution control board and
24 the appellate court as my client lost at both of

15:54:31

15:54:53

1 those tribunals.

2 MR. BLAZER: May I respond briefly, Mr. Hearing
3 Officer?

4 THE HEARING OFFICER: Sure.

5 MR. BLAZER: First of all, Mr. Mueller seems to
6 be unfamiliar with Rule 608 of the Illinois rules
7 of evidence which addresses either opinion or
8 reputation, not just reputation.

15:55:22

9 The statements in his brief are not
10 statements of opinion. They are statements of fact
11 that Mr. Moose is a liar whose testimony is
12 entitled to no weight. He said that three
13 different times in this pleading.

15:55:37

14 And as far as his assessment of his
15 obligations as the signer of a pleading, as you
16 well know under these three provisions of the Code
17 of Professional Responsibility and Supreme Court
18 Rule 137, the Supreme Court does not differentiate
19 between the type of document that is signed. If a
20 lawyer signs a document like this, he had better
21 have a good basis for doing it or else he is in
22 violation of each one of these provision.

15:55:51

23 So he is now trying to backtrack and
24 undermine things which clearly he intended to say

15:56:09

39

1 when he wrote them and clearly were within the
2 province of what is now Rule 608 of the Illinois
3 rules of evidence and the Illinois Code of
4 Professional Responsibility and Rule 137 of the
5 Illinois Supreme Court rules.

15:56:35

6 THE HEARING OFFICER: First of all, since we
7 are not going by the rules of evidence, I am not
8 sure if it's federal rules that apply or the state
9 rule. I now have the state rule in front of me as
10 well as the federal rule.

15:56:49

11 First of all, I would note that this
12 statement by or what I would consider argument by
13 Mr. Mueller is over 16 years old and occurring
14 probably in a hearing that occurred close to
15 17 years ago at this point now. The item that is
16 asking to be introduced is a brief, not testimony.
17 It is argument.

15:57:07

18 That argument, while it may imply certain
19 factual beliefs by Mr. Mueller, is not fact, is not
20 submitted under oath, as we would talk about -- and
21 I think we are talk about evidence of character
22 witnesses, at least as I am familiar with that
23 under the federal rules of evidence which has
24 somewhat been adopted by the Illinois rules.

15:57:31

40

1 At this point, I am going to sustain the
2 objection and will not be admitting TCH Exhibit 50.

3 MR. BLAZER: I would request, Mr. Hearing
4 Officer, in the context of an offer of proof, that
5 I be entitled to submit it for purposes of the
6 record.

15:58:04

7 THE HEARING OFFICER: Absolutely.

8 MR. BLAZER: Given your ruling, however, I will
9 not give it to the Village Board.

10 THE HEARING OFFICER: Great. Thank you.

15:58:15

11 And as far as today, we are almost at
12 4:00 o'clock -- I have it. I just renumbered it.
13 If that is acceptable to you, I just renumbered it.

14 MR. BLAZER: Sure.

15 THE HEARING OFFICER: As far as today,
16 4:00 o'clock is public comment?

15:58:36

17 MR. KARLOVICS: Sorry?

18 THE HEARING OFFICER: 4:00 o'clock for public
19 comment?

20 MR. KARLOVICS: 4:00 o'clock.

15:58:44

21 THE HEARING OFFICER: So we are two minutes
22 away from that.

23 While we have those two minutes, let's
24 work out what we are doing the rest of the day

41

1 today as well as tomorrow.

2 Before I try and decide whether we are
3 going forward with Mr. Kleszynski and what we're
4 doing there, let me ask. One thing I asked
5 everybody to be ready with today is the
6 approximate, and I understand it's approximate,
7 amount of time that you intend or you believe you
8 need for closing argument.

15:59:07

9 I will start with you, Mr. Mueller, since
10 your client is the applicant.

15:59:21

11 MR. MUELLER: Frankly, we would prefer not to
12 give oral closing argument because it's redundant
13 with the written findings that we are going to
14 submit, but to the extent that any of the other
15 parties would like to do so, we can do our argument
16 in five to ten minutes.

15:59:35

17 THE HEARING OFFICER: We have kind of gone
18 through this. Mr. Blazer has requested oral
19 argument in closing. I am not going to deny anyone
20 that if they want it.

15:59:47

21 So, Mr. Blazer?

22 MR. BLAZER: 20 to 30 minutes.

23 THE HEARING OFFICER: Mr. Grossmark?

24 MR. GROSSMARK: I will have no closing argument

42

1 at this time.

2 THE HEARING OFFICER: You mean tomorrow as
3 well.

4 MR. GROSSMARK: No oral closing argument.

5 THE HEARING OFFICER: I just wanted to make
6 sure you weren't going to make a different answer
7 tomorrow.

16:00:14

8 Mr. Clark?

9 MR. CLARK: I am anticipating not, but if I
10 have any, it will be less than three minutes.

16:00:23

11 THE HEARING OFFICER: Mr. Sechen?

12 MR. SECHEN: Ten minutes tops.

13 THE HEARING OFFICER: Mr. Blazer, I see you
14 standing.

15 MR. BLAZER: Just a quick question. I don't
16 recall. Are we scheduled for public comment
17 tomorrow?

16:00:35

18 MR. KARLOVICS: We haven't scheduled it yet.

19 THE HEARING OFFICER: We will be having public
20 comment tomorrow at some point. I will probably at
21 this point ask at the beginning and the end just to
22 make sure.

16:00:45

23 Okay. Before we proceed with that
24 information, is there anyone here for public

43

1 comment this afternoon? It being 4:00 o'clock and
2 no one is stepping up for public comment, we will
3 proceed and figure out where we go from here.

4 Mr. Blazer, you have rested, correct, or
5 are you resting at this point?

16:01:16

6 MR. BLAZER: We do now officially rest.

7 THE HEARING OFFICER: Sorry. Not to put words
8 in your mouth.

9 MR. BLAZER: That's okay.

10 THE HEARING OFFICER: Mr. Sechen --
11 Mr. Grossmark or Mr. Clark, do you have any
12 witnesses you would like to present?

16:01:25

13 MR. GROSSMARK: No.

14 MR. CLARK: No.

15 THE HEARING OFFICER: Mr. Sechen?

16:01:35

16 MR. SECHEN: I would like to present
17 Mr. Kleszynski.

18 THE HEARING OFFICER: Okay. I am aware from
19 yesterday that there will be objection to that.

20 Are you -- how long -- we have until
21 5:00 o'clock and honestly, I think I said we should
22 -- us going -- coming back here at 7:30 to go for
23 an hour and a half and still not be completed
24 tonight is not really worth it. Especially when it

16:01:47

44

1 looks like if we start tomorrow by noon, we will be
2 done by 5:00 given what I think the brevity of the
3 closing argument that I think people are
4 suggesting.

5 So my preference is to start with
6 Mr. Kleszynski at noon and we will talk about that
7 before we leave here today for sure.

8 Does anybody have an objection to that
9 process if we proceed with Mr. Kleszynski?

10 MR. BLAZER: No objection.

11 MR. MUELLER: We would much prefer to try to
12 get this hearing over tonight. I think
13 Mr. Kleszynski is going to be a short witness with
14 minimal cross.

15 MR. BLAZER: I can assure you it will be a long
16 witness with extensive cross.

17 THE HEARING OFFICER: I'll be honest, I have
18 never seen an appraiser go short on
19 cross-examination and --

20 MR. MUELLER: Mr. Poletti --

21 THE HEARING OFFICER: Your cross-examination
22 alone of Mr. MaRous was at least an hour and a half
23 or longer. I am not going to -- I am not trying to
24 state that you didn't deserve it, but all I am

16:02:23

16:02:41

16:02:51

16:03:01

45

1 saying is it's not going to be quite that simple.

2 So let's deal first of all with the issue
3 of Mr. Mr. Kleszynski is going to be allowed to
4 testify. And maybe I should start with the
5 objection that I know is coming from Mr. Blazer
6 from yesterday.

16:03:33

7 MR. BLAZER: As soon as I grab my notes,
8 Mr. Hearing Officer.

9 THE HEARING OFFICER: Okay.

10 MR. BLAZER: Mr. Hearing Officer, as you know,
11 Mr. Sechen circulated both the fact that he
12 intended to call Mr. Kleszynski and
13 Mr. Kleszynski's report for the very first time
14 this past Sunday afternoon, September 29th.

16:03:50

15 We've looked at the report and first and
16 foremost, the cover letter itself to Mr. Sechen or
17 to the village in care of Mr. Sechen is dated
18 September 10. The report indicated that it was
19 prepared actually sometime prior to that. But even
20 if we use September 10 as the milepost, the village
21 as a party was required to produce both a list of
22 its witnesses and any exhibits that it intended to
23 utilize in the case by September 12th.

16:04:04

16:04:24

24 Now, some may think this is somewhat of

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1 the pot calling the kettle black because yesterday
2 you allowed me or you accepted my profer into
3 evidence of two exhibits, the two MSW Management
4 articles that we sought to introduce into the
5 record late.

16:05:01

6 The significant difference is, as I
7 indicated on the record yesterday, we first learned
8 of those two exhibits this past Friday and as soon
9 as I learned of their existence, I immediately
10 circulated them to everyone involved in this case.

16:05:12

11 Mr. Sechen has had this report and
12 knowledge of Mr. Kleszynski or of his intent to
13 call Mr. Kleszynski as a witness since at the very
14 latest, September 10, three weeks ago. He kept it
15 in his back pocket until Sunday.

16:05:30

16 So first and foremost, as you asked of me
17 yesterday, I would request that you ask of
18 Mr. Sechen what the good cause is to explain why he
19 sat on this for three weeks, didn't disclose it
20 until Sunday.

16:05:44

21 THE HEARING OFFICER: Mr. Sechen, your
22 response?

23 MR. SECHEN: Brief response. The ordinance
24 does not speak in terms of the village in terms of

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1 production of documents, witnesses, exhibits,
2 et cetera. However, anticipating that you would
3 probably like it produced, I produced it Sunday. I
4 produced it Sunday because it is a schedule -- to
5 aid the scheduling of Mr. Kleszynski's testimony.

16:06:18

6 In the ideal world, there would be an
7 addendum to that report which summarizes
8 Mr. MaRous's report and Mr. MaRous's testimony.
9 However, if we were to schedule that, that would
10 have to be like next week because Mr. MaRous just
11 got done testifying.

16:06:39

12 Accordingly, missed the opportunity to put
13 it in the addendum to the report, but I am not
14 representing that I am not going to ask some
15 questions about Mr. MaRous's report or Mr. MaRous's
16 testimony. Simply put, it's simpler and shorter to
17 do it this way.

16:06:52

18 THE HEARING OFFICER: Well, I am not -- when
19 you respond to -- Mr. Blazer, I am going to give
20 you the opportunity to respond.

16:07:11

21 As far as the issue of the addendum or
22 additional testimony, I am not going to deal with
23 that until it may or may not occur. With the rest
24 of the argument, you may respond.

48

1 MR. BLAZER: 160.06-G12, if the village is not
2 the applicant, the village shall be deemed a party.

3 THE HEARING OFFICER: Okay.

4 MR. BLAZER: And what you've heard is now I
5 have confirmation of what we suspected which beyond 16:07:36
6 the argument that is being conducted now is
7 probably the most direct evidence of predisposition
8 that we have seen --

9 THE HEARING OFFICER: Let's stay away from
10 predisposition at this point. You will get the 16:07:50
11 chance to argue that, but it doesn't go to this
12 motion.

13 MR. BLAZER: I understand. But what you have
14 heard is Mr. Sechen did, in fact, sit on this
15 report for at least three weeks if not longer 16:08:02
16 without disclosing it to anyone, well, at least not
17 to this participant. I don't know whether or not
18 he disclosed it to -- well, I'm assuming it was
19 disclosed to the village since it was directed
20 towards the village. 16:08:16

21 MR. KARLOVICS: I am going to object. There is
22 no evidence that this has been disclosed in any
23 way, shape, or form to the members of the Village
24 Board.

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1 MR. BLAZER: Well, all I can suggest there is
2 the cover letter that indicates that it is going to
3 the Village of Round Lake Park in care of
4 Mr. Sechen.

5 So either he disclosed it to the Village
6 Board or he failed to disclose it to his own client
7 as well. Either way what you have --

16:08:33

8 MR. KARLOVICS: His client is not the Village
9 Board. That is my client. His client is not --

10 MR. BLAZER: I apologize. And I know it's a
11 hot button issue for you, Peter, but --

16:08:47

12 THE HEARING OFFICER: Please proceed.

13 MR. BLAZER: In any event, what you have not
14 heard is any cause, good or otherwise, for
15 Mr. Sechen's failure to disclose this three weeks
16 ago other than he simply decided not to.

16:08:56

17 MR. SECHEN: That's not exactly true.

18 THE HEARING OFFICER: Mr. Sechen?

19 MR. SECHEN: The intent to call Mr. Kleszynski
20 wasn't formed until Mr. MaRous testifying. It is
21 -- this report is born in nature of rebuttal,
22 another review of Mr. MaRous's testimony than it is
23 Mr. Poletti. If this were directed more directly
24 at Mr. Poletti, it would be done in a different

16:09:12

1 way, but that is not the case.

2 MR. BLAZER: Mr. --

3 MR. MUELLER: May I be heard on this?

4 THE HEARING OFFICER: Let Mr. Blazer go and
5 then Mr. Mueller.

16:09:47

6 MR. BLAZER: That is a fabrication. This
7 report doesn't mention MaRous' report, MaRous'
8 testimony. It couldn't mention MaRous's testimony
9 since it was written Sunday. But Mr. Sechen made
10 it very clear on Sunday when he circulated this
11 report that he intends to call Mr. Kleszynski.

16:09:57

12 So he has just fabricated two more things.
13 The bottom line again is you are not hearing any
14 explanation of why he didn't disclose this three
15 weeks ago other than he elected not to.

16:10:12

16 THE HEARING OFFICER: Mr. Mueller?

17 MR. MUELLER: The rules in the ordinance allow
18 for the Hearing Officer to waive any timeliness
19 objections. The ordinance ought to be liberally
20 construed. I've looked at the report. There are
21 no surprises in there. It's not a case of trial by
22 ambush.

16:10:33

23 I've been a hearing officer before as I
24 think I know Mr. Sechen has. I don't know about

51

1 Mr. Blazer. My guideline always was to err on the
2 side of inclusion and I think that the Hearing
3 Officer ought to do that in this case.

4 I'd also add that Mr. Blazer just called
5 Mr. Sechen a liar three times. Is there a basis
6 under --

16:11:04

7 THE HEARING OFFICER: We are not going to get
8 into that. We are not going to get into that.

9 Mr. Blazer, one last opportunity to
10 respond and I will rule.

16:11:17

11 MR. BLAZER: In response to what Mr. Mueller
12 just said, irrespective of his experience or lack
13 thereof as a hearing officer, the Village Board
14 obviously intended to mean something when they
15 required a showing of good cause. You certainly
16 have discretion here, I don't doubt that, I don't
17 dispute that. The ordinance specifically says
18 that.

16:11:29

19 But it also specifically says upon a
20 showing of good cause. And we are all -- well, I
21 am still waiting to hear Mr. Sechen's good cause.
22 We haven't heard it.

16:11:41

23 THE HEARING OFFICER: Here is where I am on
24 this issue. No one has clearly said this, but

52

1 while the village is a party, it's not a public
2 participant. It's some other definition of it, but
3 it does not fall under public participant. The
4 public participant language is what requires seven
5 days prior notice which is September 13 -- I don't
6 recall, maybe it's the 16th. I don't remember.

16:12:14

7 So at this point, I don't think that that
8 -- now, what the Village Board intended by this
9 ordinance, I have no idea nor do I think it's
10 proper to inquire on those types of things. The
11 ordinance is what it is and the board speaks as its
12 full membership and cannot speak by one as to what
13 the intent was. The only intent is what I see in
14 the ordinance. There is a distinction between
15 party and public participant.

16:12:33

16 So given the fact that there is no
17 requirement for the Village to pre-notice anything
18 in here, provide notice of anything and the
19 timeliness in G2 do not appear to apply to the
20 village, I don't know that I have an option other
21 than to allow Mr. Sechen to proceed with the
22 testimony.

16:12:47

16:13:09

23 And as I said yesterday, if Mr. Blazer
24 needs additional time to prepare his

53

1 cross-examination or any other party, I don't mean
2 to -- it's obviously Mr. Blazer that seems to be
3 the one most worried about this. If any party
4 needs additional time, I would take that into
5 account when we schedule the next couple of days.

16:13:37

6 MR. BLAZER: Mr. Hearing Officer, number one, I
7 am not worried about it and, number two, I am ready
8 to proceed with cross whenever he testifies.

9 THE HEARING OFFICER: So Mr. Kleszynski will be
10 allowed to testify. We will take any objections to
11 his testimony as they come. The notice issue at
12 this point has been resolved.

16:13:49

13 I really think the best way to handle the
14 next 24 hours is to recess today and start again
15 tomorrow at noon. And if it helps, Mr. Karlovics,
16 please remind me and we will ask for public comment
17 a number of times tomorrow, so that we can comply
18 with what the act requires.

16:14:10

19 It is now 4:15.

20 MR. KARLOVICS: Mr. Hearing Officer, if I may?

16:14:25

21 THE HEARING OFFICER: Yes, one second.

22 Is there anybody here who was not here at
23 4:00 o'clock and wishes to provide public comment
24 today?

54

1 Hearing none, Mr. Karlovics, please.

2 MR. KARLOVICS: I just spoke with the
3 management at the civic center and they informed me
4 that the facility is not going to be available
5 until next week. If we do not conclude tomorrow,
6 we will be required to --

16:14:48

7 THE HEARING OFFICER: My heart skipped for a
8 second.

9 MR. KARLOVICS: We have tomorrow.

10 THE HEARING OFFICER: Well, tomorrow as far as
11 I am concerned, we will go tomorrow until we are
12 done. There is no reason not to finish this
13 hearing tomorrow. If that means 10:00 o'clock at
14 night, we are going to finish this week. We are
15 going to finish tomorrow.

16:15:01

16:15:13

16 The logistics of the Village Board meeting
17 tonight and I think my other concern is throughout
18 this process, when I talk about the schedule on the
19 record, I advised that we were going to be done
20 today at 5:00. So I really am nervous about
21 telling the public that we are starting again at
22 7:30 when throughout this hearing, I have said we
23 are done at 5:00 today because of the Village Board
24 meeting.

16:15:29

1 We are going to end today. We are going
2 to start back tomorrow at noon and keep going until
3 we are done which my guess is going to be, you
4 know, before the 6:00 o'clock dinner hour. That
5 would be I think -- keep going as long as we can to
6 finish and not take a dinner break unless it looks
7 like we have no chance.

16:15:53

8 Given the schedule and given what the
9 attorneys have told me as far as time, I feel
10 fairly confident that we will finish this tomorrow
11 afternoon or early evening at the latest. Thank
12 you.

16:16:07

13 Is there anything further tonight.

14 MR. SECHEN: I would just like the record to
15 reflect that the report in question has not been
16 put up on the web site, has not been made available
17 to anybody that could possibly -- but they can now,
18 so I'd ask that be filed and placed on the web
19 site.

16:16:18

20 THE HEARING OFFICER: Yes. I would say to the
21 village clerk that this report can be placed on
22 line as well as SWALCO's web sites and I will say
23 that the cover letter that we all received, the
24 cover e-mail we received from Mr. Sechen on Sunday

16:16:37

56

1 specifically asked the village clerk and deputy
2 clerk not to place this matter on the public web
3 site until I allowed it.

4 Thank you. Have a nice evening. This
5 hearing is now in recess.

16:17:12

6 (Whereupon, further proceedings.
7 were adjourned to 10/2/13 to the
8 time of 12:00 o'clock p.m.)

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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF C O O K)

4
5 SHELLY S. RUBAS, being first duly sworn,
6 on oath says that she is a court reporter doing
7 business in the City of Chicago; and that she
8 reported in shorthand the proceedings of said
9 hearing, and that the foregoing is a true and
10 correct transcript of her shorthand notes so taken
11 as aforesaid, and contains the proceedings given at
12 said hearing.

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Certified Shorthand Reporter



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