

CONSOLIDATED HEARINGS BOARD

IN THE MATTER OF Sections 2 and 3 and 6 (3) of the Consolidated Hearings Act, 1981, S.O. 1981, c.20;

— and —

IN THE MATTER OF Section 12(2) of the Environmental Assessment Act, R.S.O. 1980, c.140;

— and —

IN THE MATTER OF Sections 30, 35 and 38 of the Environmental Protection Act, R.S.O. 1980, c.141, as amended;

— and —

IN THE MATTER OF Sections 24 and 61 (2) of the Ontario Water Resources Act, R.S.O. 1980, c.361, as amended;

— and —

IN THE MATTER OF Section 28 (3) of, and Regulation 164 under, the Conservation Authorities Act, R.S.O. 1980, c.85, as amended;

— and —

IN THE MATTER OF Section 40(12) of the Planning Act, S.O. 1983, c.1, as amended; In connection with site plan control of the sanitary landfill site;

— and —

IN THE MATTER OF Section 22(1) of the Planning Act, 1983 in connection with a referral to this Board by the Honourable Bernard Grandmaitre, Minister of Municipal Affairs, on a request by the Regional Municipality of Halton to amend the Official Plan for the Town of Milton to redesignate a parcel of land comprising Part Lots 3 and 4, Concession 2 N.S. in the Town of Milton from "Agriculture" and "Conservation and Hazard Lands" to permit the construction, operation and maintenance of a landfill site, Minister's File No. 24-OP-0208-A01;

— and —

IN THE MATTER OF Section 34(11) of the Planning Act, 1983 in connection with an appeal to this Board by the Regional Municipality of Halton for an order directing an amendment to By-law 61-85 of the Town of Milton to rezone the lands situated at Lot 3 and part of Lot 4, Concession 2 N.S., in the Town of Milton from "Agriculture" to permit a regional sanitary landfill site and ancillary uses;

— and —

IN THE MATTER OF Section 15(1) of the Planning Act, R.S.O. 1980 ch.379 in connection with a referral by the Honourable Claude F. Bennett, Minister of Housing on a request by Tremaine Briannia Citizen's Group for consideration of part of the Official Plan for the Halton Planning Area with respect to Sections 1 to 5 inclusive, 7, 9 and 10 of Part III D3 Solid Waste Management, Minister's File No. OPC-0026;

— and —

IN THE MATTER OF Section 54 of the Ontario Municipal Board Act, R.S.O. 1980, c.347 as amended in connection with an application by the Regional Municipality of Halton for an order approving:

- a) the acquisition of land for the construction, operation and maintenance of a sanitary landfill site to contain 7.96 million cubic metres of waste in the Regional Municipality of Halton and to do so by one of two alternative methods as follows:

- (i) landfilling at the site referred to in Halton's Environmental Assessment as Site F in the City of Burlington;
- (ii) landfilling at the site commonly referred to in Halton's Environmental Assessment as Site D in the Town of Milton

at an estimated cost of \$12,775,000.00, and the borrowing of money by way of temporary advances not exceeding in the aggregate such estimated cost pending the sale of debentures, and

- (b) the issuance of necessary debentures to a maximum of \$12,775,000.00 for a term not to exceed fifteen years;

— and —

IN THE MATTER OF Section 193(5) and Paragraph 84 of Section 210 of the Municipal Act, R.S.O. 1980, c.302, as amended;

— and —

IN THE MATTER OF Sections 6, 7 and 8 of the Expropriations Act, R.S.O. 1980, c.148;

— and —

IN THE MATTER OF an undertaking of the Regional Municipality of Halton to provide facilities for the purpose of receiving, dumping and disposing of waste as required by section 137 of the REGIONAL MUNICIPALITY OF HALTON ACT, R.S.O. 1980, c.436, as amended, by acquiring the land for, constructing, operating and maintaining a landfill to contain 7.96 million cubic metres of waste in the Regional Municipality of Halton.

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ARGUMENT BY MR. GARROD

45605



THE CONSOLIDATED HEARINGS BOARD

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2 Consolidated Hearings Act, 1981, S.O. 1981, c. 20;
3 - and -
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5 Assessment Act, R.S.O. 1980, c.140;
6 - and -
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8 Environmental Protection Act, R.S.O. 1980, c.141, as
9 amended;
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11 IN THE MATTER OF Sections 24 and 61(2) of the Ontario
12 Water Resources Act, R.S.O. 1980, c.361, as amended;
13 - and -
14 IN THE MATTER OF Section 28(3) of, and Regulation 164
15 under, the Conservation Authorities Act, R.S.O. 1980,
16 c.85, as amended;
17 - and -
18 IN THE MATTER OF Section 40(12) of the Planning Act,
19 S.O. 1983, c.1, as amended; in connection with site
20 plan control of the sanitary landfill site;
21 - and -
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23 1983 in connection with a referral to this Board by the
24 Honourable Bernard Grandmaitre, Minister of Municipal
25 Affairs, on a request by the Regional Municipality of
Halton to amend the Official Plan for the Town of
Milton to redesignate a parcel of land comprising Part
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an amendment to By-law 61-85 of the Town of Milton to
rezone the lands situated at Lot 3 and part of Lot 4,
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site and ancillary uses;
- and -
IN THE MATTER OF Section 15(1) of the Planning Act,
R.S.O. 1980 ch.379 in connection with a referral by the
Honourable Claude F. Bennett, Minister of Housing on a
request by Tremaine Britannia Citizen's Group for
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Halton planning Area with respect to Sections 1 to 5
inclusive, 7, 9 and 10 of Part III D3 Solid Waste
Management, Minister's File No. OPC-0026;



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IN THE MATTER OF Section 64 of the Ontario Municipal Board Act, R.S.O. 1980, c.347, as amended in connection with an application by the Regional Municipality of Halton for an order approving:

(a) The acquisition of land for the construction, operation and maintenance of a sanitary landfill site to contain 7.96 million cubic metres of waste in the Regional Municipality of Halton and to do so by one of two alternative methods as follows:

(i) landfilling at the site referred to in Halton's Environmental Assessment as Site F in the City of Burlington;

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BEFORE: H. H. Lancaster, Q.C. - Chairman

Dr. D.J. Kingham - Member



Hearing conducted at The Oakville
Granary Commercial Centre, 105 Robinson
Street, Oakville, Ontario, on
October 24, 1988

VOLUME 184

APPEARANCES:

T.R. Lederer and H.D. Hodgson	for the Regional Municipality of Halton (Proponent)
J.R. Tidball	for the Ministry of the Environment
T. Vigod J.F. Castrilli	for the West Burlington Citizens Group
D. Estrin, F.E. Leitch and H. Dahme	for the Corporation of the Town of Milton
S.R. Garrod and A. Nurvo	for the Milton Area Citizens Coalition and several affected Milton area landowners
R.B. Tuer, Q.C. E.A. Cronk and F. Perrier	for National Sewer Pipe Limited
L.F. Longo	for Azova Investments Limited
M.J. McQuaid, Q.C. and C.J. Tzekas	for the City of Burlington
C. Mansfield	for the Ministry of Natural Resources
P. Renaud	for Cumis Limited



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APPEARANCES (Cont'd):

1		
2	C. Stevenson	for Framgard Holdings,
3	P. Hancock	Fosseri Investments
4		Limited, Seriphos
5		Investments Limited and
6		Topic Investments
7		
8	J.H. Olah	for the Halton Region
9		Conservation Authority
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Per: C. F. Nethercut, C.V.R



1 ---Upon commencing at 9:30 a.m.

2 MR. LANCASTER: Good morning, thank you,
3 please be seated. Mr. Leitch and Mr. Estrin, did you
4 have any further submissions regarding the conditions
5 you had mentioned on Friday?

6 MR. ESTRIN: No, Mr. Chairman, but
7 there is one matter I may still want to bring to your
8 attention, the number of wells as summarized on the
9 other exhibit to which I referred you on Friday,
10 whether it was corrected in the transcript or not, and
11 I haven't had a chance to check but if I find it has, I
12 will advise you.

13 MR. LANCASTER: Fine.

14 DR. KINGHAM: Will Mr. Lederer be here
15 today?

16 MR. HODGSON: No, Dr. Kingham.

17 MR. LANCASTER: Mr. Garrod, you expect
18 to be the full day, do you?

19 MR. GARROD: I would expect so, yes.

20 DR. KINGHAM: Ms. Cronk, how long do
21 you think you will be with your argument?

22 MS. CRONK: Mr. Griffiths and I will be
23 the better part of two days.

24 MR. LANCASTER: The reason I ask is
25 because we have decided we won't sit on Monday to



1 assist Mr. Garrod who has the problem with Monday, but
2 I think we can still finish next week without any
3 problem, or we should be able to. Mr. Garrod.

4 ARGUMENT BY MR. GARROD:

5 Thank you, Mr. Chairman.

6 I intend to highlight what I believe to
7 be the key aspects of this case and present you with
8 those aspects from a perspective that I believe is
9 unique to my clients in this case. I don't intend to
10 review the evidence of all of the witnesses you have
11 heard, but I will be making references to selected
12 passages from the transcripts and I have already
13 distributed to my friends and the Board a list of those
14 transcripts I will probably be referring to. Those
15 relate primarily to witnesses I called on behalf of my
16 clients, or cross-examinations I conducted of other
17 parties' witnesses.

18 Mr. Chairman, when this hearing began
19 you may recall that I filed with the Board, and I don't
20 believe it was marked as an exhibit, the list of the
21 clients I represent here, and just to refresh your
22 memory I act for two groups and several individuals,
23 and the groups I act for are, firstly, the Milton Area
24 Citizens Coalition which itself is made up of three
25 subgroups and those three subgroups are the Boyne



1 Britannia Citizens Group, which is essentially a group
2 of ratepayers who live in closest vicinity to Site D,
3 the second subgroup is the Tremaine Britannia Citizens
4 Group which is a group which has been in existence for
5 a long time and is predominantly made up of concerned
6 ratepayers who live in the vicinity further from Site D
7 and closer towards what is now known as Site E, or
8 which was originally known as Site F. That group
9 formed originally in response to that earlier
10 application. The third subgroup of the coalition is
11 the Site D Farmers Group and that group is made up of
12 the farmers who farm on and around Site D. There is
13 some overlap between all of these groups, but they are
14 all distinct groups.

15 The second main group that I act for
16 here is the Halton Federation of Agriculture, and you
17 may recall during my evidence I called Mr. Norm Biggar
18 as a witness and Mr. Biggar is the President of the
19 Federation and I filed at that time a resolution of the
20 federation outlining their position and authorizing
21 Mr. Biggar to speak on behalf of the Federation and
22 authorizing myself to act on their behalf.

23 In addition to these two groups, I have
24 individual retainers from the following property owners
25 because of their special interest relating to the



1 potential expropriation of their property, and those
2 individuals are Wat and Doreen Martin, Thomas and Mary
3 Jean Martin, Michael and Cindy Reed and Walter and Amy
4 Tomosky. The Tomosky property is one of the ones that
5 would be expropriated only in part according to the
6 Region's proposal.

7 Until recently I also acted for the
8 Rudolph Verres' estate, but I have been recently
9 informed that the estate no longer has a property
10 interest at Site D and therefore I am no longer acting
11 on behalf of the estate, but that was one of the
12 clients I listed at the beginning of the hearing.

13 Mr. Chairman, throughout this hearing on
14 occasion, particularly when we have been discussing
15 procedural matters, I have made the point that the
16 Board must keep in mind that this is not a lease inter-
17 parties, this is not, if you like, a dispute between
18 individual parties, and therefore for the purposes of
19 those procedural decisions, the Board must keep in mind
20 this proceeding is in the larger public interest, but I
21 would like to make it clear that that does not imply
22 that there are not very important private interests at
23 stake in this hearing.

24 From a substantive point of view,
25 Mr. Chairman, you must recognize that you are being



1 asked to make decisions that have enormous implications
2 for the private rights of some of my clients who live
3 and own property at Site D. In fact, Mr. Chairman and
4 Dr. Kingham, of all the parties here only myself and
5 Ms. Cronk represent parties that have private property
6 rights that will be or could be affected by your
7 decision and every other lawyer here, every other party
8 here, is funded, if you like, by sources other than --
9 for legal fees out of their own pockets.

10 While the object of this hearing is to
11 ensure that the necessary public interest is met, it is
12 in my submission, a fundamental principle of our
13 society that the public interest should be satisfied in
14 the manner that is least disruptive to private
15 interests where that can be accomplished.

16 It is in my submission clear in this
17 case that the Region's need for a new landfill site and
18 which is necessary and in the public interest can be
19 satisfied without disrupting my clients private rights
20 in any way.

21 In fact, Mr. Chairman, you have what I
22 suggest is a very unusual situation here, in that the
23 property owners at both sites, D and F, are agreed as
24 to the best location for the landfill site and, in that
25 respect, you can satisfy the necessary public interest



1 without any disruption to private property interests of
2 the people who own the properties that we have been
3 calling Site D and Site F.

4 What that means, Mr. Chairman, in my
5 submission is that my individual clients have a unique
6 position in this hearing. They are the only parties
7 represented before you who could be expropriated
8 against their will as a result of your decision. It is
9 entirely within this Board's power to determine whether
10 these people will be able to continue their lives in
11 their chosen locations or whether they will be forced
12 to leave their homes and leave their properties and re-
13 establish their lives elsewhere. In my submission, Mr.
14 Chairman, this is an extraordinary power in our
15 society.

16 In 1968 the Royal Commission of Inquiry
17 into Civil Rights, chaired by the former Justice of the
18 Supreme Court of Ontario, reported in the introduction
19 to the section of the Commission's report dealing with
20 expropriations as follows, and this is commonly known
21 as the MacRuer Report, and I think is quite widely
22 known, quoting at page 960:

23 "We have said that the mere existence of
24 the power to expropriate property is in
25 itself an encroachment on the rights of



1 an individual in the sense that the
2 security of his rights to property have
3 been diminished."

4 And then continuing:

5 "There is general agreement that the
6 existence and the exercise of this power
7 in actual cases constitutes an invasion
8 of civil rights in our current legal
9 system. Notwithstanding this, the power
10 conferred and exercised in proper
11 cases..."

12 and I underline those words, "in proper cases":

13 "...and according to proper principles
14 is necessary in the public interest.
15 This was emphasized repeatedly in many
16 submissions received by this
17 Commission."

18 Mr. Chairman and Dr. Kingham, we take for granted in
19 our society that limits are placed on government powers
20 in order to protect individual rights. Expropriation
21 is a necessary exception to that general rule and in
22 our society individual property ownership conveys the
23 right to exclude all others and enjoy, exclusive, quiet
24 use and enjoyment of one's home and property.

25 This is a principle that has evolved



1 since the earliest days of our legal system founded in
2 the British common law. Property ownership has been
3 the basis for these fundamental rights. Our legal
4 system protects such rights from infringement by other
5 individuals or by the government with the limited
6 necessary exception of the power of expropriation.

7 The fact that the expropriation power
8 exists at all is a recognition that there are times
9 when the necessary public interest, the necessary
10 public good must be allowed to override these private
11 property interests. It is the exception to the rule
12 and it is an exceptional power granted by statute to
13 public authorities to exercise, where necessary, to
14 carry out their statutory objectives. Expropriation
15 has been characterized here as a social impact and I
16 think that there is little doubt that it is in fact a
17 social impact, and I will be making submissions to you
18 later that it is a severe social impact.

19 However, unlike most of the other social
20 impacts that have been considered here, the
21 displacement of individuals and families from their
22 homes and properties against their will is an impact
23 which is certain to occur. It is a direct, tangible,
24 objective impact that will have not only immediate
25 impacts on those individuals, but lingering after-



1 effects on them and their lives that we are not in a
2 position to predict.

3 Most other social impacts that you have
4 heard about in this hearing are impacts that have a
5 certain probability associated with it, and I will be
6 going into this in more detail later on, but that
7 probability diminishes, in my submission, with the
8 distance one is from the site, and not only does the
9 probability of that impact diminish, but the intensity
10 of that impact diminishes with that distance. Unlike
11 all of those others, expropriation of these people has
12 a probability of one and an intensity that is 100 per
13 cent. It is in my submission for all of these reasons
14 that expropriation is strictly governed by statute. As
15 a society and as individuals within that society we
16 value our rights of property ownership very highly. We
17 value very highly the right not to be unnecessarily
18 displaced from our property against our will.

19 While other aspects that you must
20 consider in your overall decision may be the subject of
21 government policy, such as the preservation of
22 foodlands or the utilization of mineral resources, the
23 expropriation of peoples' property against their will
24 is the only impact, the only one that has been
25 recognized as sufficiently important in our society to



1 warrant specific legislative protections to ensure
2 against the unnecessary or unfair, or unsound exercise
3 of this extraordinary power.

4 It is my submission to you that this
5 represents a policy decision by our society, by our
6 government, by ourselves, that this is an extremely
7 important consideration that must be given considerable
8 weight in any decision of this sort.

9 Mr. Leitch pointed out in his
10 submissions to you that you should try and make the
11 various pieces of legislation that are before you fit
12 together, the applications under the various pieces of
13 legislation. I agree with Mr. Leitch that it is not a
14 situation where one piece of legislation has supremacy
15 over the others. You must try to fit together these
16 pieces of legislation in a way to avoid conflict
17 between them, where that can reasonably be done. Just
18 as Mr. Leitch explained how the Planning Act and the
19 Environmental Assessment Act are to dovetail and that
20 the Planning Act considerations do not just flow from a
21 decision under the Environmental Assessment Act but
22 must be an integral part of it, so must, in my
23 submission, your consideration of the Expropriations
24 Act application to expropriate my clients at Site D.
25 That consideration must as well be made to fit into



1 your balancing and consideration of the factors and it
2 is not a result that simply flows from your decision,
3 in my submission.

4 I think the same is true, Mr. Chairman
5 and Dr. Kingham, for the Environmental Protection Act
6 and I will be making some later submissions with regard
7 to that when I come to that point in my argument. With
8 respect to the Expropriations Act it is my submission
9 that an integral part of your decision must be whether
10 or not it is fair, sound and reasonably necessary to
11 expropriate my clients against their will. That is the
12 statutory test that is found in section 7(5) of the
13 Expropriations Act and the words used are whether it is
14 "fair, sound and reasonably necessary." In my
15 submission this statutory test places these two sites
16 before you very differently.

17 No one at Site F need be expropriated
18 against their will. Because of section 7(5) of the
19 Expropriations Act you are, in my submission,
20 immediately directed to Site F unless there is a sound
21 reason why it is fair and reasonably necessary to use
22 Site D. To put that submission another way,
23 Mr. Chairman, I believe that there is a statutory
24 presumption favouring the approval of Site F.
25 Certainly that presumption could be rebutted in the



1 event there was evidence to show that Site F could not
2 be used and that it was fair, sound and reasonably
3 necessary to use Site D. In the absence of such
4 rebutting evidence, I believe that the presumption
5 directs you to Site F.

6 In this case I submit there is no such
7 reason. There is no such evidence that would rebut
8 that presumption. In fact, the evidence clearly
9 prefers Site F as I will be referring to later. But,
10 Mr. Chairman, even in a case where the sites were
11 otherwise equal, it is my submission that the
12 presumption would direct you to Site F, and in fact
13 even if it was a case where a site such as Site F had
14 certain disadvantages to the point of being perhaps
15 less preferred, it is my submission to you that unless
16 it was reasonably necessary to use Site D as an
17 alternative site, then you would still be directed by
18 section 7(5) of the Expropriations Act to select a site
19 where no one would be expropriated against their will.

20 Don't think we are in a situation,
21 Mr. Chairman and Dr. Kingham, where you are just being
22 asked to precisely weigh the balance between these two
23 sites. It is my submission that that balance is tipped
24 in favour of approving Site F because of the statutory
25 presumption, and there would have to be a substantial



1 reason and not just some minor preference for Site D
2 and there would have to be a substantial reason that
3 would make it fair, sound and reasonably necessary to
4 use Site D. It is not just, in my submission, a
5 weighing and determining that one is favoured over the
6 other by a slim margin.

7 Incorporating the Expropriations Act
8 into your decision, in my submission -- and that means
9 incorporating this statutory test in section 7(5) of
10 the Act into your decision -- is essential, and, it is
11 my submission, that the Region and its consultants have
12 not done so in a manner that gives appropriate weight
13 to this factor. There is no doubt that it was
14 considered as a subfactor by Dr. Schiff in her work,
15 but it is my submission that the importance of this
16 factor was not given the weight that our society, our
17 legislation and our government have indicated that it
18 deserves.

19 This brings me, Mr. Chairman, to a
20 consideration of the evaluation criteria which have
21 been used and discussed here at some considerable
22 length. I think that we are all in a position where we
23 recognize that there are no criteria provided by the
24 Environmental Assessment Act or any other statute which
25 must be used to carry out an environmental assessment



1 such as the site selection exercise and comparative
2 analysis the Region has carried out here.

3 There is nothing in the Act which tells
4 us, for example, that public health and safety, natural
5 environment, social environment and so on must be used
6 or that they must be used in any particular prescribed
7 set of priorities. Those are judgments and decisions
8 that must be made by the study team as it formulates
9 its environmental assessment, and those are judgments
10 and decisions that ultimately must be considered by you
11 to determine whether or not they reflect the balances
12 and priorities that our society has established.

13 When Halton embarked on this exercise in
14 1983 or '84, there were obviously few ground rules and
15 I think many people would say there are still fewer or
16 still no more than there were then, but it is clear, I
17 think, Mr. Chairman, that this case will establish, if
18 not a binding precedent, certainly guidelines that will
19 be used by future proponents, people in our position,
20 as guidance as to how to conduct these environmental
21 assessments.

22 The Environmental Assessment Act is
23 vague in this respect and there are some sections which
24 one could draw some guidance from. Section 2 gives the
25 purpose of the Act and says it is:



1 "...the betterment of the people of the
2 whole or any part of Ontario by
3 providing for the protection,
4 conservation and wise management in
5 Ontario of the environment."

6 Some people might view that as rather anthropocentric
7 view of the world, but the reality is that the statute
8 talks in terms of the betterment of the people of
9 Ontario by providing for the protection, conservation
10 and wise management of the environment.

11 The Act provides a scheme which, as we
12 all know, sets out essentially a planning process that
13 is to be followed and for those reasons I say it is
14 essentially a planning piece of legislation designed to
15 ensure that environmental considerations are
16 comprehensively considered in the decision. When we
17 turn to the definition of environment, as we all know,
18 it is a broad definition and incorporates among other
19 things, man as part of the environment and also social,
20 economic and cultural conditions and the built
21 environment. But, no order of priority, in my
22 submission, can be drawn from either the purpose or the
23 definition of environment in the Act, and no specific
24 factors in fact can be drawn from the Act. So, it is
25 in this context that the Region and its consultants



1 evolved the scheme that has been presented here as
2 finally shown in the revised comparative analysis,
3 Exhibit H-14, and to refresh your memory, and I am not
4 sure it is necessary, but the factors used were
5 -- or the categories used were public health and
6 safety, natural environment made up of agriculture and
7 biophysical, social environment, cultural environment
8 and finally economics and engineering, and that was the
9 order of priority to which the regional consultants --
10 that was the priority the regional consultants assigned
11 to these categories.

12 It is my submission, Mr. Chairman, that
13 the framework developed by the Region's consultants is
14 simply one way that the available information may be
15 organized for comparative purposes. There is no magic
16 to it and there is no necessary reason why the
17 priorities are assigned in that way.

18 In my submission, the priorities that
19 should be assigned to categories, or individual factors
20 for that matter within those categories, is a question
21 of values and ultimately must be a question in my
22 submission of societal values. The question that must
23 be answered is what factors do we as a society value
24 most highly? What considerations should outweigh what
25 other considerations, and how should this be



1 determined?

2 As I am going to be indicating later in
3 my argument, Mr. Chairman, I think that the best we can
4 do in these kind of circumstances is to establish at
5 the beginning of a study a preliminary priority ranking
6 and that I believe the regional consultants did. It is
7 only when we really look at the details, the evidence
8 within these various categories and factors, that we
9 are really in a position to determine whether or not in
10 the end result for the purposes of your decision, that
11 one factor should be given priority over another. I
12 will come back to that in more detail, but before I get
13 to that, I think it is useful to remember how the
14 categories of the various evaluation factors evolved in
15 this process and how the priorities that the regional
16 consultants assigned to them evolved. You may recall
17 that I reviewed this at considerable length during my
18 cross-examination of Mr. Walker, and the topic goes on
19 for about 100 pages in volume 62 from page 14358 to
20 14454, and I don't intend to read you all of that, you
21 would probably be relieved to know, but, in my
22 submission, there are a number of key points which
23 emerge when one reviews the evolution of these factors
24 and priorities and I would like to outline those for
25 you and then I would like to make some reference to



1 some specific passages within those 100 pages.

2 In my submission the key points that
3 emerge from this is that firstly it was, or there were
4 a large number of opportunities that were provided to
5 members of the public to review draft reports, to
6 comment on those draft reports, including draft reports
7 which included proposed evaluation factors, and there
8 were a large number of opportunities for individual
9 members of the public who perceived themselves to be
10 potentially affected to indicate the priorities that
11 they believe should be assigned to these categories.
12 That is the first point that I think emerges, there
13 were a large number of opportunities for the public to
14 make submissions on this topic, and I think that that
15 is important because I think that that gives us a
16 greater degree of comfort in relying, at least to some
17 extent, on the results that come from that public
18 participation program. It was, in my submission, a
19 comprehensive public participation program that
20 collected a large amount of useful information.

21 The second point which I think emerges
22 from this is that, and I suppose this is actually a
23 sub-part of the first one, but there were a large
24 number of opportunities provided for everyone to make
25 written submissions to the consultants in addition to



1 the oral submissions that I have been speaking about.

2 Thirdly, it is clear that the study team
3 led by Mr. Walker initially proposed evaluation factors
4 at the very early stages of the study, and these were
5 reviewed by the public and by the study team and
6 evolved as each stage progressed. That evolution was
7 based in part on the results of public comment and, in
8 part, on the judgment of the members of the study team.

9 Fourthly, and I think that this picks up
10 the point where most of my cross-examination focused
11 with Mr. Walker, but at the beginning of the site
12 selection process, and I say the site selection process
13 as distinct from the whole environmental assessment
14 process, and that is the beginning of Stage 2B, but at
15 the beginning of 2B the proposed evaluation criteria
16 were listed and were listed in the following order of
17 priority; firstly, public health and safety, secondly
18 the natural environment and the social environment
19 equal in second priority. That is found at page 14371
20 in the transcript. The third priority were cultural
21 factors and the fourth were costs and engineering.

22 Now, there are a number of places
23 throughout the reports, and I reviewed them with
24 Mr. Walker in cross-examination, where that priority
25 was established at the very beginning of Stage 2B. It



1 is clear, I think, when you review my cross-examination
2 that the social environment category was subsequently
3 lowered in priority to third place for the purposes of
4 the Stage 2C analysis and the subsequent analysis and,
5 in fact, it has been carried forward to this day.

6 The basis for that demotion was the
7 study team's interpretation of the data, the input that
8 it received from the public through its comprehensive
9 public participation program. It is my submission that
10 firstly it was not a reasonable interpretation of that
11 data to lower the priority to be given to the category
12 of social environment. If anything, the data indicates
13 that social factors should have been elevated to second
14 priority and not demoted to third. There is certainly,
15 in my submission, no support for the position that the
16 category should be demoted and I will be reviewing that
17 data with you in a moment.

18 My second submission that comes out of
19 these points is that even within the category of social
20 environment, the forced expropriation of people against
21 their will must be considered to be the most important
22 factor followed, in my submission, by disruption to
23 off-site residence in close proximity to the site.

24 There are a number of other factors
25 which were considered in the social environment



1 category including emotional and other impacts and, in
2 my submission, Mr. Chairman, all of those pale in
3 significance to the factors of dislocation, forced
4 expropriation and disruption of people in close
5 proximity to the site. Let me just briefly take a
6 moment to flesh out some of the details that emerged
7 from my cross-examination of Mr. Walker on these topics
8 and which I think support the submissions I have just
9 made to you.

10 First of all, you will recall the draft
11 2B work plan, and this was before 2B was even
12 commenced, but a work plan was circulated to the public
13 for comment. That was in November of 1983 and in
14 January of 1984 that work plan was finalized as Exhibit
15 H-58, in the same way essentially as the original draft
16 work plan. There were three comments only received
17 from the public between those two dates, and that is
18 found at page 14372, and those three comments are now
19 found filed in Exhibit H-59 at pages 70 and 71. I
20 think a reasonable interpretation of them is that those
21 comments supported the ordering that was proposed and
22 that is at that time that social and natural
23 environment were second priority.

24 At that point in the work plan the
25 consultants then finalized the priorities in that same



1 order for use during the 2B stage. The results of the
2 2B stage are then reported in Exhibit H-11, and at
3 pages 7, 8 and 9 the evaluation criteria were reported
4 still in that same priority. Public comments were
5 elicited on the draft of that report, the draft of
6 Exhibit H-11, and those public comments are found in
7 Exhibit H-54, and the reference for that is at page
8 14376.

9 To quote Mr. Walker at page 14378,
10 Mr. Walker said:

11 "At this point in time ..."

12 This was meaning the finalization, if you like, of the
13 results of 2B:

14 "...we were trying to get a reading as
15 to whether the evaluation factors were
16 still valid in peoples' minds and in
17 agencies' minds..."

18 For that purpose they held information centres and gave
19 opportunities to the public to comment in writing and
20 Mr. Walker says at that same page that that was done to
21 set the stage for the criteria that would be used in
22 Stage 2C.

23 Following that, I discussed with
24 Mr. Walker at some length the results of those
25 workshops and information centres and in brief summary



1 I think it emerges that these were held in March of
2 1984, that there were some 700 people who made
3 submissions, that questionnaires were distributed and
4 results were summarized and they received 223 completed
5 questionnaires and 95 letters. Of those
6 questionnaires, 32 were from Burlington, 77 were from
7 Oakville, 104 were from Milton and 10 were from other
8 parts of the Region, or perhaps from outside the
9 Region, I am not sure.

10 You may recall, Dr. Kingham, that I made
11 some computations on this data which I put to
12 Mr. Walker and this was filed with the Board as Exhibit
13 MR-334 and in that exhibit I developed some weighted
14 totals of the data and that is explained at page 14,385
15 of the transcript.

16 My questions of Mr. Walker were really
17 how to derive from this data the information about what
18 peoples' preferences really were. You may recall
19 Mr. Walker's explanation at 14387 which was that he
20 only counted the first place votes that any particular
21 criteria received. The seven different factors that
22 were ranked at that time, and the public was asked to
23 put a vote, if you like, beside them all, 1, 2, 3, 4,
24 5, 6, 7, and all of those results are tabulated and are
25 contained in Exhibit MR-334 as I had said.



1 In my submission, and I don't think I
2 can go through this in detail, but I would ask you to
3 read my cross-examination of Mr. Walker. Mr. Walker's
4 analysis of the data was overly simplistic and not a
5 credible analysis in my submission. When one does
6 approach the data by considering something like
7 weighted totals as I did in Exhibit MR-334, or even if
8 one takes the approach of counting the total number of
9 first and second place votes that social impact
10 received, it is my submission that it is clear that
11 social impact on the results of this information were
12 of second priority to the people who were surveyed.

13 At page 14392 Mr. Walker said:

14 "We put social environment third at
15 Stage 2C on the basis of the types of
16 results we got here."

17 This was also confirmed in his report, and that
18 reference is found at page 14433, line 20 to 14435 at
19 line 3. Mr. Walker makes it very clear that it was
20 this data that they relied on in demoting social impact
21 factors to third place when they had previously been
22 proposing it as tied for second. In my submission, any
23 reasonable interpretation of the data makes it clear
24 that if any change in the priority was to occur as a
25 result of this information, the social factors should



1 have been raised to second priority.

2 DR. KINGHAM: Can I back you up on that
3 point for just a minute? You have given us the figures
4 for the number of responses received from the different
5 communities, but could I have those again to put them
6 on MR-334?

7 MR. GARROD: This is found at page
8 14380 in volume 62 and my notes indicate there were 32
9 received from Burlington, 77 from Oakville, 104 from
10 Milton and 10 from other places.

11 DR. KINGHAM: Those are the numbers
12 that went into MR-334, have I got that correct?

13 MR. GARROD: Yes, Mr. Chairman.

14 DR. KINGHAM: Thank you.

15 MR. GARROD: That is my understanding
16 at least and I think that that would be confirmed if
17 you reviewed the transcript. I think it is interesting
18 to note, Mr. Chairman, first as I have already
19 indicated, that with a weighted total approach such as
20 I have used which in my submission is a reasonable
21 approach, or if one took the approach that if one could
22 analogize to a political convention of dropping off the
23 first place finisher, if you like, each time and re-
24 voting for all of the others, I think it is clear from
25 the data that social environment would have come



1 second. Now, I say that because Mr. Walker's approach
2 completely ignored the fact that social impact received
3 the second highest number of votes as the most
4 important factor, and his basis for determining it was
5 by simply looking at how many people voted for it as
6 the second place factor and totally ignoring the fact
7 that a large number of people had thought that not only
8 that it should be second, but in fact it should be
9 first.

10 You may recall, Mr. Chairman, I also
11 broke out in Exhibit MR-334 some kind of attempt to
12 figure out how the rankings varied between the three
13 communities, between Oakville, Burlington and Milton,
14 and I quite frankly don't know if this has any
15 scientific validity or not, but the conclusions which
16 are clear from the exercise which I did if you review
17 the transcript, is that it was only the Burlington
18 votes that resulted, even if you use Mr. Walker's
19 simplistic analysis, it was only the Burlington votes
20 that resulted in social impact being given a lower
21 priority, even under his simplistic analysis, and both
22 Oakville and Milton, even by Mr. Walker's analysis,
23 ranked social factors and agricultural factors ahead of
24 biophysical. The Burlington ranking put biophysical
25 ahead of social and put cultural ahead of agricultural.



1 The other thing that emerges from this,
2 Mr. Chairman, and what I think does emerge, very
3 clearly in my submission, is that public health and
4 safety was the No. 1 concern of everybody and costs and
5 engineering was the lowest priority of everyone and
6 that data, however you interpret it, is very clear and,
7 as Mr. Walker and I discussed, there is perhaps some
8 room for different interpretations in the intervening
9 categories, although it is my submission that the
10 reasonable interpretation is that the social
11 environment factors were second priority in the
12 public's mind.

13 The other input I reviewed with Mr.
14 Walker in addition to these questionnaires was the
15 written input he received from the public during that
16 same phase, and that is summarized in H-54 on Table 3
17 at page 10 of the appendix to H-54, and I reviewed that
18 with Mr. Walker in that same 100 pages of the
19 transcript, particularly volume 62 from page 14406 to
20 414.

21 In my submission what emerges from that
22 is that there were a large number of comments that the
23 study team distilled from the letters it received, and
24 the overwhelming priority factor that emerged from that
25 was again public health and safety, but the conclusion



1 was also reached, and on this occasion not only by
2 myself but by Dr. Schiff of the study team who reviewed
3 that data at page 14414, that out of all of these
4 written submissions the conclusion was drawn that the
5 public considers social impacts as the second most
6 important group of factors in site selection.

7 That was again, Mr. Chairman, in my
8 submission, where everyone in the Region had an equal
9 opportunity to write to the study team, there were
10 plenty of opportunities, the letters were taken and
11 there was some trouble taken by the study team to
12 analyze the information and the conclusion was reached
13 by Dr. Schiff that the results of that information told
14 them that the public considered social impact as the
15 second most important group of factors in site
16 selection. The main aspects of that that emerged from
17 those pages of the transcript is that the need to
18 isolate a site from population and the protection of
19 property values from depreciation were two of the most
20 commonly referenced concerns of the public,
21 Mr. Chairman.

22 Now, I reviewed with Mr. Walker the fact
23 that there were relatively few people from Burlington
24 who expressed concerns about those topics as compared
25 to the number of people who expressed concerns about



1 those topics from Oakville and Milton, and I suggested
2 to Mr. Walker that one might draw from that the
3 inference that even though there is a site in
4 Burlington, the people who responded did not -- the
5 people who responded did already perceive that the
6 existing site was reasonably well isolated from the
7 population, and was not having a significant impact on
8 property values since those factors were not emphasized
9 by the Burlington respondents.

10 I think the relevance of all of this,
11 Mr. Chairman, really boils down to the fact that the
12 study team made it very clear and Mr. Walker made it
13 very clear in his evidence and in my cross-examination
14 that this was the information they relied on to demote
15 the priority of social impact. I am not saying, and I
16 am not trying to suggest that the study team is not
17 entitled to exercise its own judgment as to what
18 priority should be assigned, they did that in the
19 initial proposal, but when they determined to elicit
20 public input, it seemed to me, and if they were going
21 to make changes in priorities on the basis of that,
22 then the data has to be analyzed in a reasonable
23 fashion and it is my submission that there is no
24 support for the demotion taken as a result of the input
25 that was received. I suppose this brings me back to



1 the opening submission I made to you about
2 expropriation.

3 DR. KINGHAM: I wonder if before you go
4 back to that, if you are going to leave MR-334 for the
5 time being I want to make sure I understand what you
6 are saying about relative order and relative importance
7 and I would like to understand that in the context of
8 the absolute numbers of respondents.

9 You did an exercise for us of weighting
10 the totals in MR-334, but, as you pointed out, the
11 number of respondents in the different areas varies by
12 a factor of three, approximately being 32 in the
13 Burlington area and 104 in the Milton area and that has
14 its influences, as you have drawn our attention to it,
15 in the ranking of the factors on page 8 of MR-334 being
16 for Site D public health and safety first and, as you
17 pointed out, social impact second, but the numbers
18 between social impact and impact on agriculture are
19 fairly close in that category, even though in absolute
20 numbers the social impact one is greater; whereas when
21 one looks at the Burlington case the difference between
22 the weighted totals is greater, although it is a small
23 number in total because there were fewer respondents.

24 Is it your argument to us that it is the
25 absolute number as weighted at the end of the day we



1 voting mentality related to a NIMBY concern, a not in
2 my backyard concern, and if you have a larger number of
3 respondents who say something in a certain direction in
4 one area, does that mean that public opinion is that
5 way or just that there has been more to respond in that
6 area and the wider question, the interests of the
7 public of the Region as a whole or the province as a
8 whole, might be reflected by the balance of responses
9 in the entire area? I wanted to know because you did
10 make quite a point of which should rank first, social
11 versus biophysical, and I wondered if you had taken
12 into consideration as you made that argument the
13 differences in numbers and what that might tell us as a
14 Board about the attitudes of respondents?

15 MR. GARROD: I think you have to
16 consider both quite frankly. I think you have to
17 consider not only the absolute numbers of respondents
18 but the relative weight that was given by those. I
19 think you can draw information from both because, as I
20 put to Mr. Walker, everyone in the Region had the same
21 opportunity to have input and everybody, although there
22 were more people who came and gave their views from
23 Milton and Oakville than Burlington, Burlington people
24 certainly had the same opportunity.

25 DR. KINGHAM: Yes.



1 MR. GARROD: I think to be fair also,
2 if you look at page 14403, and I am not suggesting you
3 need to now, but later you will see that I raised with
4 Mr. Walker one of the difficulties with dealing with
5 this kind of data which is simply as you suggested,
6 people are to some extent trying to respond in the way
7 that they think will give them a favourable outcome and
8 also -- but also they are responding in a way, in my
9 submission, and it is reflected in the transcript at
10 the same page as well, they are responding on the basis
11 of what is important to them. I think there is an
12 element of people trying to, if you like, manipulate
13 the results of the outcome to be a favourable one, but
14 I think there are a large number of people and I think
15 it is reasonable for you to presume there are a large
16 number of people who are genuinely responding to what
17 they think is important to them and their values.

18 DR. KINGHAM: I think we are sensitive
19 to that and to the limitations of the data as well.

20 MR. GARROD: So, tying this together,
21 Mr. Chairman and Dr. Kingham with my earlier
22 submissions, it is my submission that these data
23 together with the importance that we as a society place
24 on protecting people from the serious social impact of
25 an unnecessary or unfair or unsound expropriation, it



1 is my submission that direct social impacts such as
2 expropriation of people against their will, such as the
3 severe visual impacts which, in my submission, will
4 occur at Site D by the complete loss of view for the
5 people on First Line, such as the inevitable nuisances
6 that will occur to people very close to a site, and I
7 will coming back to that point, such as the serious
8 property devaluations Mr. Watson talked about in his
9 evidence which will occur within a primary impact zone;
10 those types of social impacts should be, and in my
11 submission must be given higher priority in your
12 decision than the Region gave them, and in fact, in my
13 submission, should be the highest priority after public
14 health and safety.

15 If there is another argument for why
16 social impact considerations should be ranked second
17 after public health and safety, and this was advanced
18 by Mr. Kentridge in his evidence. He argued that the
19 biophysical and agricultural factors should not have
20 been combined together into the natural environment
21 category and that the probable result of splitting that
22 category into two subfactors would be to reduce the
23 overall importance of that category to allow the social
24 to emerge, if you like, as the second more important
25 one. That is a rather technical analysis of it



1 perhaps, but he explained his rationale for that in
2 volume 97, and perhaps I could briefly read you a
3 couple of pages from that which explains the rationale
4 that he used and this is starting at page 23180 about
5 line 10, and this is in the middle of his evidence in
6 chief, where Mr. Kentridge says:

7 "The other area I have looked into was
8 the evaluation factors used by Walker
9 Wright Young and the Region. The order
10 of priority that they have used, of
11 course, and it is well known is public
12 health and safety first, natural
13 environment second, social third,
14 cultural environment fourth, engineering
15 and operations and costs fifth and
16 sixth. I looked at the background
17 reports and I also heard Mr. Wright..."

18 I believe he met Mr. Walker there:

19 "...give a little bit of testimony. It
20 shows to me there was an overwhelming
21 priority of the persons and of those
22 whose opinion was solicited agreed that
23 health should be the first priority.
24 So, then we see public health and safety
25 as the overwhelming priority. Similarly



1 engineering and costs seems to be the
2 overwhelming lowest priority. The
3 middle ground encompassed these others,
4 social, cultural and natural
5 environments. I feel that the ranking
6 was less clear. Now, natural
7 environment, as defined by Walker Wright
8 Young, really consists of two factors
9 and their sub-factors. It is
10 biophysical and agricultural. I have
11 spelled out on page 8 the factors and
12 the sub-factors. My view in looking at
13 this is as a result of combining the two
14 factors of agriculture and biophysical
15 and then saying natural environment.
16 You start to get a trade-off between
17 them. What we are finding in this
18 trade-off in trying to reach a decision
19 is that environmentally sensitive areas
20 which are biophysical are being traded
21 off in direct competition with
22 agriculture. So, we are getting a
23 valued sort of decision between
24 competing land uses into a single
25 evaluation factor. I feel that such a



1 forced decision is avoidable at this
2 stage by evaluating the factors
3 independently. There are two things
4 that happened here and I would like to
5 tell you why I think it is better to
6 evaluate them independently, Mr.
7 Chairman. I am sure it has been said
8 before but it is simply my view and my
9 view in previous work that I have done
10 that agriculture is not part of natural
11 environment. In fact even the Concise
12 Oxford Dictionary under its many
13 definitions of natural, one of them is
14 uncultivated. I go so far as to say in
15 my view agriculture is the antithesis of
16 natural environment. So, I think by
17 separating them you are still going to
18 look at the two parts but what you will
19 do is not try and have some forced
20 trade-off to say which is more important
21 within one factor and it becomes easier,
22 you compare the biophysical with the two
23 and you decide that. The agricultural
24 and then you decide on the road where
25 does this fit in the totality of the



1 factors that Walker Wright Young say are
2 go from public health down to costs.
3 Would biophysical now become second or
4 will it become the third or will
5 agricultural become the third and you
6 can see where it is, the importance of
7 things. So, one of the things I think
8 would occur, Mr. Chairman, is the
9 following. In all probability if you
10 look at biophysical and agricultural
11 separately they each become less
12 important than lumping them together.
13 In my view, it is not improbable that
14 because the total of their marks, so to
15 say, is less when they are
16 disaggregated, it may be that neither
17 biophysical or agriculture would now
18 rank second. What you may find as a
19 result of this is a re-ranking
20 occurring. I suspect what would happen
21 is the social would become second and
22 then we would most likely find
23 biophysical and agricultural somewhere
24 in the rest of the matter."

25 He goes on to say that this is not in his view a



1 critical matter in this particular case because of the
2 marked differences he saw between the two sites and he
3 says that in the following paragraph, but he didn't in
4 his analysis place an awful lot of weight on exactly
5 where the priorities were to be assigned but, Mr.
6 Chairman, if Mr. Kentridge's view is not shared by
7 others here or not shared by the Board, then it is my
8 submission that the priorities do become important and
9 social should be given greater weighting than the
10 others.

11 As I mentioned before I got into this
12 discussion, I have spent some time trying to wrestle
13 with the idea of how you should be ranking all these
14 various things, and I reached the conclusion that it is
15 a bit of an arbitrary exercise to do it in the
16 abstract. Although I have been talking in the abstract
17 up to this point in time, I think an abstract kind of
18 analysis leads us to a reasonable conclusion that
19 social impacts should be second. I think it is only
20 when you start looking at each of these factors and the
21 evidence within each of these factors as both sites,
22 that you are really in a position at the end of the day
23 to say that this factor is more important than some
24 other factor.

25 The reason I say that is because until



1 you know the real result that will result -- the real
2 effects that will result from your decision within any
3 particular factor, it is really difficult to give or
4 make a decision whether in an abstract sense one type
5 of factor should overweigh another and perhaps my
6 position will be more clear when I come back to
7 discussing the details of the various subfactors.

8 I guess what I am saying is that I think
9 as a first stage it is reasonable to construct a
10 preliminary set of priorities and in this case in my
11 submission the Region did a reasonable job except for,
12 I think, a de-emphasis on social impacts and then as we
13 get into it, I think at the end of the day you can't be
14 bound by the decisions and the priorities -- the
15 judgments made at the early stage of the process and
16 once all the information is all in I think it is open
17 to you and proper for you to re-order those priorities
18 in accordance with the evidence and that is what I am
19 going to be suggesting to you.

20 I now want to turn, Mr. Chairman, to a
21 consideration of the evidence you have heard in this
22 case as it relates to the various topics within these
23 evaluation factors, and I am going to do this in the
24 order that I submit you should consider them in terms
25 of priority, and that would mean firstly public health



1 and safety. It is my submission that Site F is to be
2 preferred for landfilling in this category. The
3 category has been dominated by hydrogeologic and
4 hydrologic considerations throughout this hearing and
5 other considerations relate to traffic safety, bird
6 hazards to aircraft and vermin causing disease. I
7 intend to deal with the briefer factors first and then
8 turn to the lengthy topic.

9 Firstly on traffic safety, the Region's
10 position is that there is no compelling reason to
11 prefer one site over the other from the point of view
12 of safety and we took no issue with the expert evidence
13 in this regard. My clients' evidence is that traffic
14 is a concern with respect to safety and the nuisance
15 aspects on Highway 25 and interfere with agricultural
16 equipment moving on those roads, and you heard similar
17 concerns from Burlington residents about the North
18 Service Road, and with the exception that I don't
19 believe anyone was moving agricultural equipment on
20 that road. I will be making further reference to this
21 evidence when I talk about social and agricultural
22 impacts, but I do not believe it has been a major
23 public health or safety issue at either site at this
24 hearing.

25 Secondly is the bird hazards to



1 aircraft. I did not, Mr. Chairman, attend for this
2 evidence called on behalf of the Town of Milton and I
3 did not in fact attend for any of the Town of Milton's
4 case and I make no submissions to the Board with
5 respect to the extent of the risk that may be caused to
6 airplanes and to people in those planes using the
7 Burlington Air Park. However, to the extent it is
8 useful to you it is my submission that to the extent
9 that any risk exists, if there is a risk, and if you
10 conclude there is a risk, it seems to me that it is
11 preferable to avoid that risk all other things being
12 equal.

13 More importantly, in my submission,
14 another airstrip exists closer to Site D than the
15 Burlington Air Park and which has largely been ignored
16 in the discussion of bird hazards, and this is the
17 airstrip owned by Mr. and Mrs. Chaput on First Line,
18 more or less directly across from Wat Martin's
19 property. Mr. Chaput, you will recall, is the Air
20 Canada pilot and has two private aircraft which he
21 keeps at his property and uses for recreational
22 purposes and also his friends fly in and out of that
23 strip.

24 I will be speaking more of
25 Mr. and Mrs. Chaput when I speak of the social impact



1 factor, but let me say that it is my submission that
2 there has been no proposal by the Region to expropriate
3 either their property or their right to use their
4 property as an airstrip. That use has been established
5 since before the Chaput's bought their property and was
6 a major factor in their decision to buy that property.
7 That was long before Site D was conceived. They and
8 their friends use that airstrip and it is perpendicular
9 to First Line and it necessitates either landings or
10 take-offs over Site D, depending on the prevailing
11 winds, and no one from the Region has presented any
12 analysis on the impact of this site on the use of that
13 strip from a public health and safety point of view.

14 Mr. Chaput believes that the risk would
15 be so great that the strip would essentially be
16 unusable. He would not use it and would not want his
17 friends using it and he would not live there. That was
18 his evidence. In my submission Site D, or you should
19 conclude that Site D would impose a risk to safety on
20 the users of this strip to the extent that the use of
21 this airstrip would have to be abandoned. There is no
22 equivalent safety risk which would be caused at Site F
23 which would require any person to modify their
24 behaviour in any way.

25 Mr. Chairman and Dr. Kingham, it doesn't



1 in my submission answer this problem by saying that the
2 use of the strip can be stopped and then there is no
3 public health and safety risk. The same could be said
4 of the use of the Burlington Air Park or the use of
5 roads, or the use of one's well, or any other use that
6 is established in an area that is put at a health and
7 safety risk by a proposal.

8 It is my submission that this is a use
9 that is threatened by the proposed use and that the
10 continued use in the normal fashion would result in
11 safety risks to the users of that strip and, for those
12 reasons, there is a major preference to landfill at
13 Site F relating to this factor. Obviously ultimately
14 you have to weigh the importance of that factor in the
15 overall analysis, but in my submission there is a major
16 preference from the public health and safety point of
17 view in terms of bird hazards to aircraft and the
18 people using those aircraft under this factor.

19 With respect to health risks from
20 vermin, my submission is one you will hear from me
21 repeatedly in my argument, particularly when I talk
22 about social impacts, and that is to the extent that
23 vermin will escape from the landfill site and cause
24 harm or present risks to adjacent people or animals,
25 the risk is greater and the potential harm is more



1 unacceptable the closer you are to the site; the closer
2 the surrounding residents, the closer the surrounding
3 uses.

4 I think an additional factor to consider
5 is that certain agricultural uses are sensitive to that
6 kind of problem and the dairy farm that Mr. and Mrs.
7 Winter operate on the south boundary of Site D, the
8 beef operation the Gillies run across the road on
9 Highway 25 and the crops grown in the vicinity of the
10 area; these are uses that are potentially sensitive to
11 disease carrying vermin. To the extent that that risk
12 exists, and I make no submissions to you about that, it
13 is obviously common sense that it is preferable to go
14 to a site that is more isolated from those uses. The
15 results of that may be health and safety impacts or the
16 results may be merely economic impacts or some other
17 nuisance type impacts, but the further away the better.
18 I think that that is a simple proposition.

19 This brings me to the topic of the
20 hydrogeology/hydrology factor and these factors are
21 interrelated and can be summarized as follows in my
22 submission. There will be no public health or safety
23 risk at Site F relating to groundwater or surface water
24 if the conceptual engineering design proposed for Site
25 F as modified performs as predicted by the Region's



1 witnesses. In my submission a suitable conceptual
2 design has been presented at this hearing and properly
3 defended by the Region before the Board to enable the
4 Board to direct the Director to issue a Certificate to
5 reflect that concept, subject to the final design
6 details being developed by the proponent. As
7 Mr. Tidball noted, this is the normal order in these
8 hearings.

9 In addition, the Board has the evidence
10 of the consultants for the City of Burlington that
11 there will be no public health and safety risk at Site
12 F, even in a worst case and where leachate escapes the
13 site and ends up in the shale underneath Aldershot. I
14 believe that this was also confirmed by Mr. Bowen. The
15 situation at Site D is different, in my submission.
16 The best that the Region has at Site D is that the
17 Region's hydrogeologist believes that it can be made to
18 be acceptable with an appropriate conceptual design,
19 but, in my submission, you do not have sufficient
20 detail regarding what would be the appropriate
21 conceptual design for Site D to direct the Director to
22 issue a Certificate, and I will come back to this
23 argument and I wish to develop it at some length.

24 We called no evidence in these areas,
25 Mr. Chairman and Dr. Kingham, we had no hydrogeologist



1 in fact assisting us in this case, other than to
2 establish that my clients use and rely on groundwater
3 and surface water in the vicinity of the site. They
4 use it for their drinking water and for their
5 agricultural purposes. There are ponds, there are
6 shallow wells. Those are used for crops, they are used
7 for stock watering, they are used for drinking and
8 domestic purposes.

9 You may recall that I filed with the
10 Board the new well drilled for the Winter's farm just
11 south of the site, and in the evidence that my client
12 gave it is my submission that the water quality was
13 consistently referred to by my clients as good, very
14 good, hard, but good quality and quantity and they
15 drink it and it is a source they rely on for their
16 domestic/agricultural drinking water purposes. It is
17 my submission that whatever the chemical analyses may
18 show as measured against the criteria of the Ministry
19 of the Environment, this is a groundwater resource, and
20 it is not only a potential resource but an actively
21 used resource and one relied upon by these people for
22 100 per cent of their water needs.

23 In my submission, even if the Board had
24 an approveable conceptual design before it for Site D,
25 and even if that conceptual design demonstrated that



1 Site D would have no off-site impacts, I believe that
2 there is a strong rationale for preferring Site F. If
3 engineering systems fail and planned contingencies were
4 not sufficient, my client's wells at Site D will become
5 contaminated and that evidence in my submission is
6 clear.

7 At Site F even a worst case scenario
8 does not represent a risk to public health and safety
9 and for that I would refer the Board to my cross-
10 examination of Mr. Crutcher, and I will be turning to
11 that in a few minutes.

12 I think it is clear, Mr. Chairman and
13 Dr. Kingham, that landfill design and hydrogeology are
14 not exact sciences. If we have learned anything about
15 those two topics in this hearing, I submit that we have
16 learned that. They are predictive and they do their
17 best, but they are not exact sciences. In my
18 submission there is a lot of common sense underlying a
19 philosophy of assuming that the worst can occur and
20 avoiding it if that is possible. In most landfill
21 cases we are forced into situations where we have to
22 rely on an engineering system to protect public health
23 and safety the way the Region says we have to at Site
24 D. But, where we have a choice and one site does not
25 represent a risk, even if the experts are wrong, that



1 site should and must be preferred in my submission by
2 any prudent person.

3 That evidence has been reinforced here
4 by a number of witnesses, or I shouldn't say evidence,
5 but that position has been reinforced by the evidence
6 of a number of witnesses. Perhaps I should put it that
7 way. First of all there was my cross-examination of
8 Mr. Hiraishi, the designer of the original engineering
9 concept at both sites and in volume 48 I would like to
10 read you several pages starting at page 10966. I
11 talked with Mr. Hiraishi about the design of landfill
12 sites for the purposes of dealing with leachate and the
13 factors that he would consider, but starting at line 20
14 at page 10966:

15 "Q. Considering the leachate collection
16 and treatment for a moment. Firstly,
17 would you agree with me that Site D is
18 anticipated to -- that it will generate
19 more leachate and more leachate faster
20 than Site F will? Perhaps I could refer
21 you to the graph on page 54 of your
22 report of H-41, which shows the graph of
23 estimated leachate production rates at
24 Site D and we compare this to the graph
25 which is found in H-42B, if you have



1

that handy?

2

A. Yes.

3

Q. That is an appendix, Mr. Chairman,

4

to the text of 42B and it is the second

5

last page. Would you agree with me, Mr.

6

Hiraishi, that Site D is anticipated it

7

will peak -- peak leachate production on

8

Site D will be in the order of 400

9

litres per minute?

10

A. Yes.

11

Q. That will occur in the order of

12

something like 18 to 20 years time?

13

A. In that range, yes.

14

Q. If we look at the graph for Site F

15

the peak is approximately 300 litres a

16

minute at its maximum and that also will

17

occur in about the same timeframe?

18

A. Yes.

19

Q. If we look at the graph for Site D,

20

300 litres a minute which is the peak at

21

Site F, will be reached after only about

22

12 to 14 years?

23

A. Yes.

24

Q. So that if we wanted to consider in

25

terms of how fast it takes to get to



1 300, Site D reaches that level faster
2 than Site F will?

3 A. Yes.

4 Q. And then goes on to produce even
5 more?

6 A. Yes.

7 Q. So in terms of handling leachate,
8 you have additional quantities at Site D
9 in the order of, I suggest to you, in
10 the order of about 25 per cent at peak
11 production?

12 A. Yes, I agree with you,
13 Mr. Garrod. I have never attempted to
14 try and relate and compare Site F and
15 Site D in those terms, but you are
16 correct in what you are saying.

17 Q. I appreciate that. This leachate
18 production must be managed, am I
19 correct?

20 A. Absolutely.

21 Q. And Site F I suggest to you is that
22 that management problem is a very
23 straightforward simple engineering
24 solution?

25 A. Very straightforward and



1 essentially, without any undue
2 difficulties that I would imagine.

3 Q. I suggest that in fact it really
4 couldn't be any easier?

5 A. If the sewer was located right on-
6 site it would be perhaps a little
7 easier. Downstream improvements being
8 made it might be easier still. The fact
9 of the matter is that most landfills are
10 located far enough away from municipal
11 services that makes that kind of service
12 a little difficult in this case."

13 I think there should be a period after difficulty, but,
14 however:

15 "...in this case. On Site F the
16 services are located relatively close
17 by.

18 Q. It not only avoids whatever
19 difficulties or hazards that might be
20 associated in trucking leachate, but I
21 suggest to you it is also a substantial
22 cost saving?

23 A. Yes, there would be a cost saving.

24 Q. Would you agree with me that from
25 an engineering perspective, that the



1 design that you are proposing at Site F
2 is not a particularly difficult or
3 challenging engineering problem?

4 A. I think there will be some
5 challenges, yes, particularly with
6 respect to the excavation, development
7 of the base cells, filling up the
8 valleys and those areas are of concern
9 as far as my engineering.

10 Q. I suggest to you though, Mr.
11 Hiraishi, that those concerns are really
12 cost concerns rather than engineering
13 concerns. There is nothing inherently
14 difficult from an engineering
15 perspective about filling up the valley?

16 A. That would be true.

17 Q. We are not trying to put me on the
18 moon here, are we?

19 A. It is not as precise, no, as
20 sophisticated, no."

21 Mr. Hodgson interjects that it doesn't take as long and
22 Mr. Lancaster inquires whether that site is included
23 and then I go on:

24 "Q. So, Mr. Hiraishi, when we compare
25 engineering systems, here, do you agree



1 with me that what we are really talking
2 about is not whether there is some
3 inherent engineering difficulty in
4 constructing a landfill site at either
5 site, it is really a question of
6 additional cost to carry out the job?
7 A. I believe that would be true, yes.
8 Q. It is not, I suggest to you, from
9 an engineering point of view, aside from
10 cost, any reason to differentiate
11 between sites?
12 A. I suppose that the difficulties
13 that you refer to can all be related to
14 the costs and in that sense I would
15 agree with you.
16 Q. The cost is related, I suggest to
17 you, essentially to the fact that at
18 Site F you have to move a little more
19 dirt around?
20 A. We have to move a little more dirt
21 around and there are some marginally
22 greater operating costs because of the
23 doubling handling of shale and excavated
24 materials we have to carry out, but,
25 yes.



- 1 Q. These are not engineering problems
2 that somehow make Site F inherently more
3 risky?
4 A. That is correct.
5 Q. In fact, I suggest to you, that at
6 Site F, because hydrogeologists have
7 indicated that there is a natural
8 capability for attenuation to back up
9 your engineering system, I suggest to
10 you that should give you as an engineer,
11 a greater level of confidence?
12 A. That would be true, yes.
13 Q. Do you agree with me that
14 inevitably in the world of engineering,
15 engineering systems can fail and do
16 fail?
17 A. We like to think not but you are
18 probably right.
19 Q. I am probably right?
20 A. Yes.
21 Q. So whether we design an engineering
22 system at Site F or at Site D, a prudent
23 engineer considers what are the
24 implications in the event of a failure;
25 is that not fair?



1

A. Yes.

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Q. I suggest to you that for that reason you must draw a level of comfort from the fact that there is a natural backup system at Site F to backup your engineering system in the event that it fails. Do you draw comfort from that?

A. Nothing much comforts me these days, Mr. Garrod, but if you were to place it in the context that the leachate collection system and the disposal of that leachate is contingent upon the proper handling of the leachate at Site D; whereas at Site F you can virtually forget about it once the system is in place. I don't consider contingencies and/or backups to that system to be part of an essential element in the engineering. As you suggest there might be some comfort in that.

Q. I suggest that you, as an engineer, should also or could also draw comfort from the fact that there are no persons dependent upon down-gradient



1 groundwater?

2 A. Absolutely.

3 Q. I suggest to you that for those
4 reasons as an engineer, from a design
5 point of view you must prefer Site F to
6 Site D?

7 A. From a design point of view I have
8 to answer that either one or the other
9 will work. If you are asking me about
10 specific advantages and disadvantages,
11 one of the primary ones still remains
12 the leachate disposal, the collection
13 system and disposal and for that F is
14 more preferable.

15 Q. F is more preferable?

16 A. Yes."

17 Mr. Chairman, this would be a convenient place if you
18 wanted to break.

19 MR. LANCASTER: Yes, we will adjourn
20 for 15 minutes.

21 ---Recess

22 MR. LANCASTER: Thank you, please be
23 seated.

24 MS. CRONK: Sorry, Mr. Chairman.

25 MR. HODGSON: I apologize.



1 MR. LANCASTER: Mr. Garrod.

2 MR. GARROD: Thank you, Mr. Chairman.

3 I was just making the point that a prudent engineer
4 considers the implications of failure of a system and
5 in my submission that is the approach that the Board
6 should take in analyzing the possible risks at Sites D
7 and F.

8 Mr. Kentridge in his evidence also
9 considered this to be a prudent approach and his
10 evidence in this regard is in volume 97 at page 23184
11 to page 23188, and I would like to read you the
12 comments Mr. Kentridge had in this regard, starting on
13 page 23184 at line 8, Mr. Kentridge said:

14 "If I could, on page 11 I would just
15 like to talk about what I found out
16 about public health and safety. The
17 report shows a high concern for public
18 health and safety. I agree with this in
19 previous work I have done for OWMC, it
20 is top priority as well and I agree with
21 that priority. Public health and safety
22 should be the first concern. Public
23 safety can be put at risk through many
24 pathways. Water, gas, soil migration of
25 contaminants, all areas where you can



1 have a potential risk to the public. I
2 have said water is one of the most
3 important and direct ways of affecting
4 local residents. I will quote:

5 'Where groundwater is the source of
6 residents' drinking water or is the
7 water supply for feeding livestock or
8 watering crops, any potential effect...'

9 As a result of run-off seepages, et
10 cetera, is obviously of substantial
11 concern. I think it is important to
12 look at this when you weigh public
13 health and safety and you use this risk
14 analysis approach to say what happens in
15 a calamity. That should be our real
16 concern. If we are not worried about a
17 calamity, then I think a lot of the work
18 we are doing in environmental assessment
19 becomes extremely easy. We just say we
20 engineer everything and nothing fails
21 and we don't worry about a calamity. I
22 don't really buy that approach that you
23 engineer everything and nothing fails,
24 because in my experience of things that
25 man makes, there is only thing I have



1 ever come across that doesn't fail, so I
2 understand it, and that is a Maytag
3 washing machine. Everything else, as I
4 understand and see..."

5 and Mr. Lancaster says "Don't you believe it." But Mr.
6 Kentridge goes on to say:

7 "It is a prudent thing to presume, what
8 happens in the case of failure? What we
9 see, of course, is at Site F there are
10 no on-site residence nor are there any
11 downgradient property residents who are
12 dependent on groundwater supply. As I
13 understand it, the City of Burlington's
14 piped water is available to all
15 residents and there is no anticipated
16 drinking water impact on residents in
17 the event of seepage and drainage. So,
18 as I can see this, I certainly take the
19 words of the engineers that it is going
20 to be extremely well engineered, that
21 they are going to try and avoid any
22 possible danger of a collapse at any
23 time of the system, but nevertheless, if
24 this happens for some forecast, where is
25 there likely to be danger. We can see



1 it would not occur at D. In contrast
2 all the water supplies are on D."

3 And I interject and say:

4 "Q. I am sorry, you said D?

5 A. ...F. In contrast all the water
6 supplies around D are from individual
7 wells. Ground and surface water is used
8 in surrounding areas for agricultural
9 purposes. So any seepage or design
10 failure at D would have a major impact
11 on the ability for the farm community to
12 operate. I would like to just think
13 about what would happen at D if there
14 was a failure. The first thing is, of
15 course, you would say what about is
16 (sic) we somehow bring water down and
17 pipe water down some extensive length,
18 extremely expensively. The first
19 question is: even if you could bring
20 that amount of water down by piped
21 supply, is that adequate for not only
22 the residents but for a total farm
23 operation. I think it is extremely
24 unlikely. The other thing that would
25 happen, of course, when you get that



1 amount of water coming down, in my view,
2 is that there would be pressure to start
3 urbanizing an area because anyone who is
4 in sort of the development industry or
5 looking at development, part of
6 urbanization and the opportunity to
7 urbanize goes towards the end of a pipe.
8 That's what a lot of engineers say.
9 They often say you planners are all up
10 in the air, planning is really at the
11 end of a pipe. You can get water and
12 sewers and then you can plan. I am a
13 firm believer that if water came out
14 here you would start to see quite a lot
15 of pressure for development. Once there
16 is a pressure of course then you start
17 to say where do sewers go in and you
18 have to worry about enormous expenses.
19 I think it would not just dislocate
20 these farmers, but it could change, even
21 if there was a thought of bringing down
22 water, the whole planning approach to
23 this area that has been spelled out in
24 the policy documents. So, my
25 conclusion is that where agriculture is



1 the economic livelihood of the area, the
2 potential impact of the landfill,
3 failure would be much higher. I have
4 spelled this out at page 12 in a very
5 simple table. I have said, looking down
6 at D and F just to compare now, I have
7 said groundwater wells are the drinking
8 supply of local residents for D. In F
9 as I have mentioned, it is serviced or
10 serviceable, and there is a downstream
11 reliance on D for crop operations,
12 gardening, et cetera, and on F there is
13 no downstream reliance. In D failure
14 would contaminant and in F it would not
15 contaminate. So, if containment fails
16 this goes to the first priority, public
17 health and safety, in my view there
18 would be a substantially greater impact
19 on D than on F. I think this is a very
20 important factor to consider."

21 Mr. Chairman, in my submission that approach is just
22 simply common sense. Everybody recognizes that we all
23 do the best we can do to engineer, to provide
24 contingencies, to avoid calamity, as Mr. Kentridge puts
25 it. But, having done all of that, it is my submission



1 it is a reasonable and prudent approach in evaluating
2 sites to see what happens if we have done it wrong?
3 What happens if our predictions aren't quite right?
4 What happens if things don't quite perform the way we
5 hope they will?

6 In my submission when you analyze these
7 sites in this way, the preference for Site F is clear.

8 Mr. Feenstra in his reply evidence -- at
9 the conclusion of his evidence in chief said in volume
10 70 that Site F is definitely preferable to Site D for
11 landfill in the Region of Halton. That was the emphasis
12 that he placed on it in his oral evidence.

13 Mr. Feenstra in his reply evidence also raised
14 concerns that there was a reasonable possibility that
15 there is significant fracturing of the unweathered
16 upper till at Site D and much attention focused on this
17 hypothesis at the conclusion of the hearing and this,
18 Mr. Chairman, I submit, leads to the argument I will be
19 developing in a moment, that you do not have before you
20 an appropriate conceptual design for Site D that is
21 approveable.

22 However, in my submission, the outcome
23 of this case does not turn on whether or not you accept
24 Mr. Feenstra's hypothesis, or whether in fact you can
25 conclude you have an appropriate conceptual design



1 before you at Site D. It is my submission that even if
2 both of these sites were approveable, and even if both
3 were considered acceptable from the hydrogeological
4 point of view, the result of the other factors in this
5 case makes Site F a clear choice, and I will be
6 developing my argument on those other factors following
7 this discussion of hydrogeology.

8 Notwithstanding that position,
9 Mr. Chairman, it is my position that this Board should
10 accept the hypothesis advanced by Mr. Feenstra and
11 conclude that Site D would not be hydrogeologically
12 suitable for landfill with Mr. Hiraishi's proposed
13 conceptual design. To do otherwise would be to gamble
14 with public health and safety in the face of the
15 proponent's own evidence of what is necessary at the
16 site. I think, Mr. Chairman, it is significant that
17 this is not someone in opposition to the site raising
18 concerns that the Board might conclude are unfounded or
19 can be discounted. This is the Region's own
20 hydrogeologist, the Region's own application which it
21 is putting before you. The Region's own witness is
22 telling you that their original conceptual design for
23 Site D is deficient and inadequate.

24 No evidence was called by any other
25 party to oppose that evidence and any party was free,



1 Mr. Chairman, to bring a motion before you to call
2 evidence or for permission to call evidence to
3 contradict that point and no one even asked for the
4 right to call evidence to rebut that point.

5 Mr. Feenstra was cross-examined about
6 the support for his hypothesis and the difference
7 between the Sarnia tills and the Site D tills and so on
8 at great length. In my submission it is clear from his
9 answers that all of the matters, all of the substantive
10 matters that were put to him in cross-examination, were
11 carefully considered and evaluated by Mr. Feenstra
12 prior to him giving his evidence when he formulated his
13 hypothesis. I would like to read an extract from
14 volume 175 at page 43666. This is at the conclusion of
15 Mr. Feenstra's cross-examination by all of the various
16 parties and in response to some questions from the
17 Board, starting at line 3, Dr. Kingham asks Mr.
18 Feenstra:

19 "The final question I have for you,
20 Mr. Feenstra, has to do with what, for a
21 lack of a better name, I would call the
22 Eureka Syndrome. We heard in the last
23 few days a lot of reference to papers
24 holding various views about fracturing
25 of clay. Papers produced presumably so



1

certainly examined.

2

DR. KINGHAM: Before you spoke to

3

Mr. Hodgson?

4

THE WITNESS: That was actually a prior
exhibit. That was put to me last year.

5

6

DR. KINGHAM: Yes, quite right.

7

THE WITNESS: I can't recall whether
there was another document related to
fracturing that has been presented to me
in the last few days during cross-
examination. There have actually been
some other papers that I have also
looked at with regard to, basically the
question of whether fractures can even
exist within clay type materials at a
significant depth.

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DR. KINGHAM: What I am trying to get
at is that you had a paper presented to
you which in and of itself made sense to
you, obviously, you presented it to
Mr. Hodgson. It was another
individual's thesis project. It
expounded upon ideas that individual had
and findings that individual had. You
explained to us it was your thesis to

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1 submission the only prudent course for the Board is to
2 accept it. In fact, Mr. Chairman and Dr. Kingham, I
3 don't believe that there is any evidence upon which the
4 Board could reasonable found a decision to reject this
5 hypothesis.

6 Mr. Feenstra outlined from a
7 hydrogeological point of view some design options that
8 he believed were necessary to respond to this
9 situation, assuming his hypothesis was suggested.
10 Mr. Hodgson in his argument suggested a variation in
11 the sense that he asked his Board to accept the
12 hypothesis but to allow for a testing program to occur
13 during the construction of the site.

14 In my submission, Mr. Chairman and
15 Dr. Kingham, that is simply unacceptable for several
16 reasons. Firstly, Mr. Feenstra himself in his reply
17 evidence rejected the notion that a testing program was
18 a worthwhile exercise. His evidence, in my submission,
19 was very clear, that not only would investigations have
20 to be extensive, but also they would likely not be
21 conclusive of the issue.

22 So, for Mr. Hodgson to now suggest that
23 there is some worthwhile reason for conducting these
24 investigations, rather than simply designing according
25 to the assumption the way Mr. Feenstra suggested in my



1 submission is without basis and his own witness'
2 evidence. You cannot disprove a hypothesis of this
3 type easily. The site must be designed properly and
4 too much is at stake in my submission.

5 The second reason why I think
6 Mr. Hodgson's suggested approach is inappropriate is
7 not only because it is contrary to his own witness'
8 evidence about the utility of that approach, but we are
9 now no longer talking, Mr. Chairman, in my submission,
10 about gathering information for the purposes of
11 finalizing the details for a final design for Site D.
12 In my submission we are talking about a whole new
13 design concept for Site D from that which was
14 originally proposed. Mr. Feenstra is not a landfill
15 designer. Mr. Feenstra is not an engineer.
16 Mr. Feenstra is a hydrogeologist and a hydrogeochemist.
17 He has outlined from his perspective the types of
18 design options that he might recommend to a landfill
19 designer to overcome the hydrogeological difficulty he
20 sees at Site D, but that is not a conceptual
21 engineering design in my submission.

22 There has not been a conceptual
23 engineering design presented by the Region in response
24 to their own evidence. No design engineer was called
25 by the Region to present and defend a new design



1 concept and all we have, in my submission, is
2 Mr. Feenstra's notions of what the design concept might
3 be like.

4 What Mr. Hodgson is suggesting, in fact
5 indeed what Mr. Tidball is suggesting, in my
6 submission, is nothing more than a design-as-you-go
7 kind of approach. In my submission, Mr. Chairman and
8 Dr. Kingham, we have not all spent the last year and a
9 half at this hearing analyzing the proposals for these
10 two sites so the Region can obtain an approval and then
11 go out and investigate Site D, decide what conceptual
12 design is appropriate, develop that conceptual design
13 and then develop a final design. There are stages in
14 this kind of proceeding and the Region, in my
15 submission, and Mr. Tidball in his suggestions, in my
16 submission, are putting those stages in the wrong
17 order.

18 If that was the only standard of proof
19 that the proponent had to meet in these kinds of
20 proceedings, Mr. Chairman and Dr. Kingham, we could
21 have finished this hearing a long time ago. Indeed,
22 there would be little substance in my submission to any
23 hearing under Part V of the Environmental Protection
24 Act. The Region's conclusion on Site D is simply that
25 Site D can be made to be suitable with an appropriate



1 decision, you do not have to make a fine distinction
2 because as I will be indicating in my submission, the
3 Region's own evidence is absolutely clear that what is
4 before you or the conceptual design originally put
5 before you has been completely repudiated and it is
6 clear you have heard nothing subsequent from a design
7 engineer. I don't know where the fine line is, because
8 I will be coming back to this and it is clearly my
9 position that the purposes of these hearings is for the
10 proponent to present and defend a conceptual design and
11 it is a valid part of this process for that conceptual
12 design to be modified as a result of the evidence that
13 is heard at these hearings. Indeed that is the very
14 purpose of it.

15 However, there reaches a point where you
16 are no longer modifying a conceptual design which was
17 previously advanced, you are repudiating the conceptual
18 design and, in that circumstance, it is incumbent upon
19 the proponent to introduce evidence to support a new
20 conceptual design, and I say the Region has not done
21 that at Site D.

22 I have quite a number of submissions on
23 this point, Mr. Chairman and Dr. Kingham, and I would
24 certainly invite you to ask me questions about this
25 because I think it is a fundamental principle which is



1 of importance not only at this hearing but at
2 subsequent hearings, and it is an issue that is
3 wrestled with in Part V hearings under the
4 Environmental Protection Act.

5 In my submission if what the Region has
6 done here is acceptable to the Board as a conceptual
7 design, then any future Part V application hearing
8 would require nothing more than a hydrogeologist to
9 stand up and say "In my opinion, this site can be
10 designed by the introduction of certain kinds of
11 engineering systems" and that is all that a proponent
12 would be required to do. In my submission that it
13 simply insufficient and it would undermine the purpose
14 of these hearings, the role of the Board and the rights
15 that people such as my clients have in these kinds of
16 proceedings.

17 In my submission Mr. Hodgson's position
18 is really little more than saying "Trust us, give us
19 the approval, give us the Part V approval, and we will
20 go out and gather the necessary information to
21 determine what design is necessary."

22 In my submission, Mr. Tidball's
23 alternative is in essence asking you for the same
24 thing, to trust not the Region in that case but the
25 Ministry.



1 Mr. Chairman, it may be that some people
2 might want to argue that the appropriate way for these
3 approvals to be granted is through the Director of
4 Environmental Approvals in consultation with the
5 applicant behind the closed doors of the Ministry and
6 between the engineers, but that is not the scheme that
7 our Legislature has established for these types of
8 approvals in my submission. My clients can certainly,
9 and I think the evidence is clear on this, be put at
10 risk by the decisions that are made in developing this
11 conceptual design.

12 I would like to refer the Board to
13 Exhibit H-312 if you have that, it would be of
14 assistance.

15 MR. HODGSON: 312?

16 MR. GARROD: Yes, the memo to Cam
17 Watson from Mr. Hiraishi. Mr. Chairman, this is a memo
18 to Mr. Cam Watson from Mr. Hiraishi who was the
19 designer, as you know, of the conceptual designs at
20 both sites and back in November of 1987. This is in my
21 submission the only evidence that the Board has about
22 what would be required for the conceptual design of
23 Site D in the face of the type of conclusions that the
24 Region's hydrogeologist is now asking the Board to
25 accept. Mr. Hiraishi in this memo was asked to provide



1 some liner costs for Site D and he did that, but before
2 he did that, he was very reluctant to provide those
3 costs, and he set out the reasons for that reluctance
4 in the first two pages of this exhibit.

5 In my submission, Mr. Chairman, these
6 two pages are fatal to the Region's position that a
7 liner at Site D would simply be a minor modification to
8 the conceptual design that has been proposed. This memo
9 by the Region's own landfill designer and talking about
10 his own conceptual design for Site D, in my submission,
11 leads to the conclusion that there has been a complete
12 repudiation of the concept that the Region was putting
13 forward and defending through Mr. Hiraishi's evidence.
14 Mr. Hiraishi was not called in reply. Mr. Hiraishi, in
15 my submission, based on this memo would have had to
16 take the position that a liner at Site D would be a
17 fundamental contravention of his original design
18 concept.

19 I would like to refer the Board briefly
20 to some of the passages on these two pages of Exhibit
21 H-312. In the first paragraph Mr. Hiraishi states:

22 "Your request for liner costs at Site D
23 was discussed with Mr. Al Sobanski in
24 terms of impact on the hydrogeology and
25 the design and operations. As conveyed



1 to you over the telephone, the
2 possibility of lining Site D is not as
3 straightforward as that provided for
4 Site F. There are major differences
5 that will need to be addressed."

6 And then in the third paragraph he says:

7 "As you are aware, the basis for Site D
8 design and operations is premised on the
9 concept of a hydraulic trap. The trap
10 is intended to capture all of the
11 leachate produced at the site in
12 addition to some ground water resulting
13 from creating a discharge condition. A
14 liner, in effect, would contravene the
15 basic underlying philosophy used to
16 develop the design and operations
17 concepts."

18 There is the word "concept", Dr. Kingham. He goes on
19 to say:

20 "With a liner, there will no longer be a
21 need for a hydraulic trap..."

22 That is the original design concept, the hydraulic
23 trap, and he is saying with a liner there would no
24 longer be a need for a hydraulic trap:

25 "...which in term will impact on the



1 base contour design, leachate collection
2 system and the final contour design. In
3 addition, hydrogeologic assessment will
4 need to be made in terms of the
5 effectiveness of a liner and the impact
6 on surrounding water users. Our
7 analysis, as contained in the reports,
8 is that a liner is not required and has
9 not shown to be necessary. Moreover, we
10 have not established all of the
11 potential impacts arising from the
12 installation of a liner at Site D from a
13 hydrogeologic and design and operations
14 perspectives. In short, we anticipate
15 that a liner requirement will entirely
16 alter the design and operations from
17 that given in our previous submissions.
18 Some of those changes will include:
19 - raising of base contours
20 - reassessment and likely reduction of
21 fill areas
22 - reduction in excess cover material
23 balance
24 - use of permanent berms for cover
25 material needs



- 1 - reassessment of leachate collection
- 2 system
- 3 - higher final contours
- 4 - reassessment of fill direction and
- 5 cell development

6 We can provide cost estimates for a
7 liner at Site D only on the basis that
8 minimum changes are made to the design
9 and operations as given previously. On
10 this unlikely assumption, we provide the
11 following..."

12 Mr. Chairman and Dr. Kingham, if this is not a complete
13 repudiation of the original design and if a liner is
14 indeed required at Site D, what Mr. Hiraishi is telling
15 us in this memo is that he must start over and that the
16 basic underlying philosophy of the design of Site D is
17 undermined and that there are a lot of questions that
18 he would want answers to in order to do a design. You
19 have heard nothing in response to the changed
20 hydrogeological position of the Region to show us how
21 that concept or how that design concept would work.

22 In my submission you can get a sense of
23 what makes up a conceptual design by looking at the
24 documents the Region originally filed here for the
25 design and operation of these two sites. They put into



1 evidence a conceptual design for both sites and neither
2 of those design reports is a final design. The final
3 design would only be developed following a hearing,
4 following an approval under Part V and subject to the
5 applicant submitting the design, final design,
6 specifications to the Director and obtaining the
7 Director's approval of those. It is then a final
8 design in my submission. What we have here is so far
9 removed from a conceptual design in my submission that
10 you don't have to make the fine distinction that Dr.
11 Kingham was asking about and I agree with you, there is
12 a grey area between a conceptual design being modified
13 and a conceptual design being completely repudiated.

14 In this case I don't think we have that
15 grey area and the only design evidence you have got
16 from the Region's design engineer is that it is a whole
17 new ballgame if you put a liner at Site D.

18 It would be in my submission -- we have
19 had these hearings under Part V of the Environmental
20 Protection Act now for at least ten years that I have
21 been involved in these, or nine years. It would be in
22 my submission a very bad precedent for this Board to
23 say that the level of detail that the Region has
24 presented on the design of Site D is an acceptable
25 level of detail for a proponent. In my submission it



1 would undermine the very purpose of these hearings, it
2 would undermine the important role of the Board and it
3 would undermine the rights of the Legislature as given
4 to clients, to people in the position of my clients to
5 ask questions and challenge the engineering concepts
6 that are put forward by a proponent for the design and
7 approval of a site.

8 If Part V hearings are not about a
9 conceptual design, then there is very little left for
10 them to be about and you can imagine, Mr. Chairman and
11 Dr. Kingham, if the Region's evidence about the
12 hydrogeology of Site D had been originally the evidence
13 Mr. Feenstra gave in his reply case, we would have seen
14 a very different conceptual design developed and
15 proposed by the Region of Halton.

16 Mr. Chairman and Dr. Kingham, I think
17 there is an analogy that is useful here and I often
18 hesitate to argue by analogy because I have often
19 argued in the past that it is not a particularly useful
20 approach, but I have given some thought to this over
21 the weekend and I think there is an analogy that the
22 Ontario Municipal Board uses and that is useful and
23 which provides a parallel type of process, and I
24 commend it to you and that is the process that takes
25 place under the Planning Act with respect to Ontario



1 Municipal Board approval of plans of subdivision. Mr.
2 Chairman, you would be familiar with this and, Dr.
3 Kingham, I don't know if you are or not, but I commend
4 it to you as an approach that is suitable by analogy in
5 this kind of situation. Boards are always faced with
6 the dilemma of how much detail is enough in any
7 particular case. With respect to plans of subdivision
8 the Ontario Municipal Board holds public hearings and
9 approves what are known as draft plans of subdivision,
10 and these draft plans are what the proponent proposes,
11 they show the road layout and the lot layout and the
12 parks and so on. They are, if you like, the concept of
13 the subdivision.

14 During the course of review and prior to
15 the hearing and during the hearing itself, they may be
16 redlined and that is they may be amended; the lot
17 boundaries may be slightly adjusted and the road
18 alignments may be modified and so on in accordance with
19 comments received, or in accordance with evidence that
20 is heard. Assuming the Ontario Municipal Board finds
21 it appropriate, the draft plan is then given what is
22 known as draft plan approval as modified according to
23 the redlining, and I call it redlining because it is
24 usually done with red pens.

25 Following that, the plan is then



1 finalized once it receives draft plan approval and the
2 detailed surveying is conducted, the necessary minor
3 changes in detail are made and the draft plan as
4 approved and the final plan as drawn following the
5 surveying are compared internally within the Ministry
6 to determine whether or not the final plan is in
7 conformity with the draft plan as approved. There is
8 no further right to a public hearing over the final
9 plan, and that is done by the staff in the Ministry and
10 then the plan may be registered.

11 In my submission that is a useful
12 analogy here. The conceptual designs presented by Trow
13 through Mr. Hiraishi for both sites are analogous, in
14 my submission, to a draft plan of submission and at
15 Site F that conceptual design has been shown by the
16 Region's evidence and by others to be in need of some
17 redlining, if you like, some modification and it needs,
18 according to Mr. Feenstra, a deeper perimeter drain and
19 perhaps some purge wells and all of that was discussed
20 by Mr. Feenstra.

21 But, there is no fundamental repudiation
22 by the Region of that design concept. At Site D,
23 however, the proponent in my submission through
24 Mr. Feenstra's evidence has said that the original
25 concept advanced by Trow, the draft plan if you like,



1 is inappropriate and inadequate. The Ministry in fact
2 through its conditions now says that a liner is
3 necessary at Site D. The only design evidence you have
4 from the Region's designer, Mr. Hiraishi, through
5 Exhibit 312 is that a liner at Site D is a fundamental
6 change in the underlying philosophy and would require
7 an entirely new design at Site D. To quote him he
8 says:

9 "A liner, in effect, would contravene
10 the basic underlying philosophy used to
11 develop the design and operations
12 concepts." at Site D.

13 And again to quote him he says a liner:

14 "... will entirely alter the design and
15 operations from that given in our
16 previous submissions."

17 I don't think it can be any clearer than that.

18 The original concept proposed by Mr.
19 Hiraishi has simply had the basis for it cut out
20 completely. It would be equivalent to the proponent's
21 planner and engineer in an Ontario Municipal Board
22 hearing on a plan of subdivision coming in in reply at
23 the end of the hearing and saying to the Board that the
24 draft plan they had proposed was inadequate and
25 insufficient and the basic philosophy used to develop



1 the plan was wrong and they hadn't assessed all the
2 implications of the new layout.

3 Mr. Hodgson's position in that
4 hypothetical hearing would be he would stand up for the
5 proponent and say to the Board, by analogy again,
6 Mr. Chairman, "Trust us. We are capable and if you
7 give us the necessary draft plan approval we will go
8 out and investigate these matters and create a new
9 draft plan and submit it to the Ministry staff for
10 their approval and ultimately we will develop a final
11 plan that can be registered." Mr. Chairman, that is
12 the position that I think the analogy has asked you to
13 do here with a Part V approval before you.

14 Mr. Tidball's position would be "Let's
15 redraw the draft plan in final argument and ignore the
16 fact that the proponent's own designers have raised
17 substantial uncertainties about the implications for
18 the plan. The Board should approve it anyway." and
19 Mr. Tidball submits in his conditions design parameters
20 for that purpose.

21 In my position, or my position in this
22 -- or my position would be, I suppose, in that
23 hypothetical Ontario Municipal Board hearing, that the
24 Board should do exactly, that this Board would do
25 exactly what I say the Ontario Municipal Board would do



1 if faced with that kind of a hearing. They would say
2 to a proponent, in my submission, you have effectively
3 withdrawn your application for draft plan approval. In
4 my submission the Board would not engage in an exercise
5 of drawing up a draft plan for the proponent. They
6 would tell the proponent to go away and come back when
7 and if they had a draft plan they were prepared to
8 present and call evidence to defend.

9 In my submission, the process used by
10 the Ontario Municipal Board in the approval of draft
11 plans of subdivision works very well, and, Mr.
12 Chairman, you would be familiar with that system. Dr.
13 Kingham, as I have said, I commend it to you. It
14 allows for the concepts to be adequately reviewed at a
15 hearing and for the details to be left to the
16 technicians. That is what these hearings should be
17 about.

18 Now, I would like to draw the Board's
19 attention to a decision of the Divisional Court which
20 may be of some assistance. This is a case I have put
21 before you of the Township of Sydenham and the City of
22 Owen Sound decided by the court in 1982 and I actually
23 argued this application for the Township of Sydenham.
24 This case arose out of what was the first lengthy
25 hearing held in Ontario on the suitability of a



1 landfill site, a hearing lasting 51 days in the City of
2 Owen Sound.

3 The original application at the hearing
4 was for a number of cells in a landfill site, and that
5 was later amended so that the approval was only sought
6 by the City of Owen Sound for cell No. 1 and the result
7 in the end was a much smaller site than the application
8 which had originally been put forward.

9 The Township's position in this case
10 before the Court was in essence that section 37 of the
11 Environmental Protection Act, and if you turn to page
12 486, you will see section 37 of the Environmental
13 Protection Act as set out towards the bottom of the
14 page and that is:

15 "37. An applicant for a certificate of
16 approval shall submit to the Director
17 plans and specifications of the work to
18 be undertaken together with such other
19 information as the Director may
20 require."

21 Then the position of the Township is summarized by the
22 Court at the bottom of page 485, the very last two
23 sentences and going on to 486:

24 "In its second submission, the applicant
25 states that Owen Sound has not to this



1 date provided the detailed plans and
2 specifications, contemplated by the
3 E.P.A.,..."

4 and then refers to section 37:

5 "...in order that meaningful discussion
6 and input can be made at a public
7 hearing by the Board or a public hearing
8 conducted by the Director. The missing
9 detailed plans and specifications
10 required by the E.P.A., it is argued,
11 are those described in the certificates
12 of approval, particularly under
13 conditions 2 and 3."

14 And if I could ask you to flip back two pages in the
15 decision you will see conditions 2 and 3 from the
16 certificate are set out there and when you look at
17 condition 2, and this is at page 484, you will see the
18 conditions was in essence that:

19 "No wastes are to be placed at the site
20 until a satisfactory final site
21 development plan and operating program
22 are submitted to the Director..."

23 and so on and are approved, as is, as Mr. Tidball has
24 said to you, now the standard procedure, or now the
25 standard order he would be asking the Board to make.



1 In this case in essence the Township was arguing that
2 those final site development plans and operating
3 program should have also been before the Board for its
4 consideration and the Board -- the Court rejected that
5 argument and that would be equivalent here, in my
6 submission, to someone arguing that you must have
7 before you the final plans and specifications that will
8 be submitted to and ultimately approved by the
9 Director. As Mr. Tidball has said, that is now
10 standard practice and is consistent with the ruling in
11 this case of the Township of Sydenham and Owen Sound.

12 An attempt was made in this case,
13 Mr. Chairman, the case before you, the Township of
14 Sydenham and Owen Sound, to also argue on behalf of the
15 Township that a proper conceptual design was not even
16 before the Board. Owen Sound disagreed with that
17 position, and you will see at page 483, down by the
18 letter g in the middle of the sentence:

19 "It is submitted by the applicants that
20 either the Board or the Director must
21 have before it an appropriate design
22 backed by detailed plans and
23 specifications before a meaningful
24 public hearing can take place.

25 Owen Sound disagrees with this



1 position. It states that detailed
2 conceptual plans of leachate treatment,
3 collection and control were presented to
4 the Board."

5 In that case there was a dispute as to whether or not
6 there was a proper conceptual design before the Board.
7 In my submission there is no doubt that a conceptual
8 design -- it was necessary for a conceptual design to
9 be before the Board and it was just an argument about
10 whether in fact there was one in that case, but the
11 Court was not in a very good position to determine that
12 question and they deal with it at page 486 at roughly
13 letter c where they say:

14 "There was no transcript of the
15 evidence.."

16 and they mean before the Court:

17 "There was no transcript of the evidence
18 heard by either the Board or the O.M.B."

19 In that case there were two hearings because there was
20 no Consolidated Hearings Act in force at that time:

21 "A lengthy report by the Board was filed
22 with the Director, and together with a
23 number of exhibits and affidavits formed
24 the record before this Court. It is not
25 possible for this Court to ascertain



1 with precision the evidence and issues
2 before the Board and the Director.
3 There is nothing in the argument or the
4 record that would lead me to conclude
5 that the Board or the Director dealt
6 unfairly with the applicant."

7 In this case, it is my submission, that you are in a
8 position to evaluate the evidence about the adequacy of
9 the conceptual design that is before you. The Court
10 unfortunately in my submission in that case was not in
11 that position and, in my submission, it is clear on the
12 evidence that the only conceptual design presented by
13 the Region has been repudiated by their subsequent
14 hydrogeological evidence that the design evidence in
15 Exhibit 312 makes it clear that a new conceptual design
16 is required and none has been presented to you by any
17 qualified design engineer.

18 In my submission this Divisional Court
19 case which is before you stands for the proposition
20 that you can approve Site F subject to the final plans
21 and specifications being left to the Director, and it
22 does not assist you directly with respect to my
23 argument about Site D because the Court was unable to
24 determine whether in fact a proper conceptual design
25 was before the Board in that case or not.



1 Mr. Chairman, I am not aware of any
2 other cases that would even be close to this issue.
3 Mr. Estrin reminds me that there has been an amendment
4 to the Environmental Protection Act this last June
5 which now gives the power of approval, if you like,
6 directly to the Environmental Assessment Board rather
7 than to the Director as was the situation at the time
8 this case was argued. I haven't quite frankly given
9 any thought to whether or not that puts this Board in a
10 different position, but my initial submission would be
11 that I don't believe that it would. I don't think that
12 that change in the legislation today makes any
13 difference to the submissions I have just made to you.

14 I am moving on, Mr. Chairman, and with
15 respect to Site F it is my position that the conceptual
16 design that has been put before you needs to be
17 modified in the way that Mr. Feenstra has suggested,
18 but that this is not a fundamental repudiation. There
19 have been at times concerns raised about the efficiency
20 of the perimeter drain and the purge wells if those are
21 necessary at Site F. It is clear, I believe, that the
22 intent of that modification would be, according to
23 Mr. Feenstra's evidence, to capture essentially all of
24 that leachate by that perimeter drain and to the extent
25 there may be any doubt about the precise efficiency



1 that will be achieved by this facility at Site F; in my
2 submission, the very same uncertainty must exist, only
3 more so at Site D and at Site D the efficiency of any
4 purge wells that may be a necessary part of the design
5 have graver implications and that question is of much
6 greater importance at Site D because of the immediate
7 implications for public health and safety.

8 If Site F is not approveable for the
9 reason that there may be some concern about the design
10 efficiencies of these perimeter drains and purge wells
11 at Site F -- and I anticipate in some respects an
12 argument I may hear from the Burlington interests in
13 this regard -- it is clear in my submission that Site D
14 would not be approveable for the very same reason. In
15 fact, at Site D the evidence on the reasonable use
16 guidelines would suggest that the efficiency of any
17 such systems at Site D must be 100 per cent in order
18 that no infringement of the Ministry reasonable use
19 guidelines would occur.

20 My position on that point, just to
21 reiterate, is that the evidence is clear that either a
22 perimeter drain or purge wells as a modification of the
23 conceptual design at Site F can and will accomplish the
24 desired objective.

25 Now, the City of Burlington called the



1 only evidence that substantially differed from the
2 Region's position that Site F was suitable for
3 landfilling without a liner, and that evidence was
4 given by Mr. Petrie and Mr. Crutcher of CRA, and I
5 don't intend to cover the same ground Mr. Hodgson
6 covered, but I would like to review my own cross-
7 examination of those witnesses with the Board.

8 In my submission the Board should not
9 accept their evidence as a credible, objective,
10 scientific review of the data at either Site D or Site
11 F. My submission is that the approach that CRA brought
12 to analyzing the data at Site F was fundamentally
13 different from their approach at Site D and that in
14 both cases a pre-determined hypothesis was used as the
15 basis for drawing conclusions about the validity of the
16 data. In my submission there was an element of circular
17 reasoning in the conclusions that were drawn by CRA,
18 and I will be referring to certain aspects of the
19 evidence to support that statement.

20 It is further my submission that their
21 conclusions were internally inconsistent with respect
22 to Site F, inconsistent with the empirical data of the
23 leachate delineation studies that had been conducted at
24 the sites, that their analysis at Site D was not at all
25 conservative in many respects and that their analysis



1 attempted to draw what I submit were artificial
2 distinctions between Site F and the two adjoining
3 sites, the Burlington landfill site and the closed
4 Bayview site. In my submission their argument for a
5 liner at Site F can best be understood as being
6 necessary for strategic reasons in terms of the case
7 that the City of Burlington was constructing in this
8 hearing and not for hydrogeological reasons or for
9 public health and safety reasons, in my submission.
10 Those are the conclusions that the Board should draw
11 from the evidence given by CRA.

12 I cross-examined Mr. Petrie and
13 Mr. Crutcher in volume 120, starting at page 29019 and
14 unlike most of my friends I conducted my cross-
15 examination in one day. I first reviewed with
16 Mr. Petrie the position that he was in when he was
17 given this brief, when he was given this assignment and
18 that goes on for a number of pages, basically from page
19 29019 to 29031, and I don't want to read you that, but,
20 in my submission, what comes out of that is that Mr.
21 Petrie was at that time, when he took on the assignment
22 in January of 1985, Mr. Petrie was a hydrogeologist
23 with relatively little experience regarding
24 landfilling.

25 He had, in my submission, no substantial



1 experience regarding contaminant hydrogeology or
2 hydrogeochemistry. His career prior to joining CRA was
3 essentially as a mining geologist and involved in the
4 development of water supplies in a number of settings.
5 This was up until 1982 when he enrolled at the
6 University of Waterloo in their Master's program in
7 hydrogeology. He told me that that program at Waterloo
8 was his first detailed exposure to landfilling and
9 contaminant hydrogeology.

10 He told me that his project at Waterloo
11 was his first experience trying to understand a till
12 environment in Ontario, and in September of 1984 at the
13 completion of his academic work, he began working for
14 CRA and four months later in January of 1985 he was
15 given this project. He told me that when he started
16 work on the file he knew the City of Burlington's
17 position, that they did not want landfilling at Site F.
18 He was also aware when he took on the project of
19 Mr. Crutcher's position, his supervisor, that a liner
20 was needed at Site F. In my submission a conclusion
21 was reached by CRA very early on in this proceeding,
22 and Mr. Crutcher gave his evidence on this, that the
23 site needed a liner and in my submission this
24 conclusion influenced the way the subsequent data was
25 interpreted at Site F.



1 Following my discussion of Mr. Petrie's
2 experience with him, I turned to the question of
3 scientific method. You may recall that,
4 Mr. Chairman and Dr. Kingham. The proposition I put to
5 Mr. Petrie was that one should not use one's hypothesis
6 for the purposes of interpreting the data that is then
7 used to support the hypothesis, and there is a lengthy
8 exchange -- and not that lengthy -- but from page 2935
9 to 2939 and I mean 29035 to 29039 which I had with
10 Mr. Petrie and, in my submission, it is clear that that
11 is exactly what Mr. Petrie was doing at both of these
12 sites. He started with an interpretation -- he started
13 with rather an hypothesis that Site F was complex and
14 difficult to understand and unpredictable. He started
15 with the hypothesis that Site D was predictable from
16 place to place and easily understandable. He then
17 looked at all of the data and every place in my
18 submission where he found an anomaly in the data at
19 Site F he emphasized it because it was consistent with
20 his hypothesis that this site was difficult to
21 understand and unpredictable from place to place, and
22 every place where he found an anomaly in the data on
23 Site D, he discounted that anomaly on the basis that
24 the site was predictable from place to place and
25 therefore the data point was not a reliable one.



1 In my submission if you start off with
2 that kind of an approach in looking at two sites, it is
3 a self-fulfilling prophecy. You can't help but
4 conclude that the data supports your hypothesis at Site
5 F, that it is complex and unpredictable, and you can't
6 help but conclude that the data supports your
7 hypothesis that Site D is predictable. I examined with
8 Mr. Petrie on page 29041 some of these points starting
9 there and Mr. Petrie's explanation to me for the reason
10 why all of the monitoring wells south of both sites at
11 Burlington -- meaning the Burlington site and the
12 Bayview site, but Mr. Petrie's explanation for the
13 reason why all of those monitoring wells had not
14 detected a substantial leachate plume is that there may
15 be some small scale local complexities that have
16 resulted in all of the monitors missing the leachate.
17 That was page 29041 from lines 13 to 19.

18 However, when I asked him about the
19 question of infiltration or exfiltration at the
20 Burlington site, he agreed with me that in order to
21 have 50 to 100 millimetres of exfiltration leaving the
22 bottom of the site and by-passing the perimeter drains,
23 it was necessary to conceptualize the base of the
24 Burlington landfill site as massively fractured and it
25 was necessary to assume zero runoff of any



1 precipitation falling on the site and it was necessary
2 to assume that everything that infiltrates the shale
3 would miss the collection system and exfiltrate from
4 the system. That is found at page 29074 from line 1 to
5 page 29077, line 5, and I would just like to read you
6 that in volume 121. I am sorry, it is in volume 120,
7 and starting at 29074 where I asked Mr. Petrie at line
8 1:

9 "Q. Mr. Petrie, if we were to assume
10 that the infiltration into the
11 Burlington landfill site is 50 to 100
12 millimeters per year, we would have to
13 be assuming a number of things about
14 these calculations we have just gone
15 through. We would have to assume, first
16 of all, that virtually all of the water
17 that did not evapotranspire went into
18 the landfill site, is that correct?

19 A. I am sorry, could you start that
20 again? I missed the gist of your
21 question.

22 Q. If we wanted to try to understand
23 how we could get an exfiltration rate at
24 Burlington... of 50 to 100 millimetres
25 per year we would have to assume a



1 number of things about the water balance
2 we have just discussed?

3 A. Correct.

4 Q. One of the things we would have to
5 assume is that there was essentially
6 zero runoff?

7 A. Looking at the numbers you have
8 before you, if you reduce the runoff to
9 zero, then as you indicated you would
10 have 72 millimetres exfiltrating to the
11 shale.

12 Q. We would have to assume that of the
13 zero runoff, and if we assumed zero
14 runoff, the balance going into the
15 landfill completely misses the
16 collection system and all goes out the
17 bottom?

18 A. Yes.

19 Q. If we are going to put another 72
20 millimetres into the top we must also
21 get it past the collectors and out the
22 bottom?

23 A. Well, at the southern part or
24 portion of the site the collectors are
25 not in the landfill but around the



1

periphery.

2

Q. You must get it down through the bottom before it can flow towards the collectors?

3

4

5

A. Correct.

6

7

Q. We would have to have a vertical hydraulic permeability greater than the horizontal one along the base of the landfill in order for the water to want to go down deep rather than run horizontally?

8

9

10

11

12

A. It very much depends on the fracture geometry and the head within the system. You have a driving force, you are pushing more water in and because you are not running it off you will have higher leachate mounding and there will be a change in the head distribution beneath the landfill, and so the driving force would change.

13

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21

Q. We would have to have a massive fracturing at the base of that landfill site?

22

23

24

A. You would have to have significant fracturing, yes, or significant contrast

25



1 in permeability.

2 Q. Which means massive fracturing?

3 A. Yes.

4 Q. If we had massive fracturing of the
5 upper part of the base of that landfill
6 site, it would be very likely that that
7 would extend off-site and south of that
8 site; wouldn't it?

9 A. Perhaps.

10 Q. Mr. Petrie, if we were going to
11 make an assumption that the base of the
12 Burlington landfill site was massively
13 fractured...

14 A. That is your assumption.

15 Q. You have told me that that is an
16 assumption we have to make in order to
17 get all of these 72 millimetres of water
18 exfiltrating from the site?

19 A. For the water balance we had before
20 us, yes.

21 Q. Does it seem unreasonable to you to
22 assume that if that was the case that
23 the upper shale south of the Burlington
24 site would also be massively fractured?

25 A. It would be consistent to expect



1 more fracturing there if you were going
2 to have massive fracturing at the base
3 of the landfill, yes.

4 Q. If that was the case we could find
5 that contaminant plume with the monitors
6 that Gartner Lee have put there,
7 couldn't we?

8 A. Perhaps, but then the other
9 question that comes to mind when I look
10 at this is where do the other 253
11 millimetres per year go prior to the
12 installation of this peripheral
13 collection system."

14 And so on, and then we take a break.

15 In my submission, Mr. Chairman, it is
16 self-evident that you cannot have an interpretation
17 that says at one point we have massive fracturing and
18 massive exfiltration and at the same time we are unable
19 to detect a leachate plume because of small scale
20 irregularities that mean that all the monitors are
21 missing that plume. Mr. Hodgson demonstrated that
22 point with calculations and to me, Mr. Chairman, it is
23 self-evident. Mr. Petrie's two conclusions were in my
24 submission completely self-contradictory and also in my
25 submission they are inconsistent with what we know



1 about infiltration and exfiltration at the Burlington
2 site.

3 On that latter point, there is
4 information in the Gartner Lee monitoring report,
5 Exhibit 625 I think it is, that I discussed with Mr.
6 Petrie in a lengthy series of questions between page
7 29051 and 29073, and this is again in volume 120. I
8 tried to understand with Mr. Petrie the infiltration
9 into a landfill site on a seasonal basis, you will
10 remember, Mr. Chairman. This was some time ago now,
11 but I was trying to understand with Mr. Petrie what
12 proportion of the precipitation after evapo-
13 transpiration would infiltrate into the landfill site,
14 versus the proportion that would run off the site.

15 You may recall I went through a lengthy
16 series of questions with Mr. Petrie about this, because
17 the Gartner Lee report had identified a total of 72
18 millimetres per annum and that was a combination of
19 runoff and exfiltration, and Gartner Lee was not able
20 to indicate what proportion of that was runoff and what
21 proportion was exfiltration. Mr. Petrie's opinion on
22 what would probably happen to that water over the
23 various seasons of the year is found at page 29063.

24 If you could turn to page 29063
25 Mr. Petrie concluded after some lengthy questioning,



1 starting at line 6 where I put the question to him:

2 "Q. So we have then, if we can
3 summarize, we would probably have more
4 than half of it running off in January,
5 February and March?

6 A. Yes.

7 Q. We have probably less than half of
8 it running off in April and May?

9 A. Yes.

10 Q. We would probably have all of it
11 evapotranspiring in the summer months?

12 A. Probably.

13 Q. And then in the fall it sort of
14 happens in reverse again?

15 A. Correct. "

16 That is Mr. Petrie's best evidence on how the
17 relationship between runoff and exfiltration would vary
18 over the year. When you look at Exhibit 625, as I
19 subsequently did with Mr. Petrie at page 11 of that
20 exhibit, you see that the total that Gartner Lee found
21 from their water budget of runoff plus the leakage to
22 shale was a total of the 72 millimetres.

23 It is my submission that if Mr. Petrie
24 is correct in the seasonal analysis that he told me,
25 then, first of all, the worst case at Burlington is



1 that 72 millimetres go into the ground. That is the
2 absolute worst case, that we have no runoff at all.
3 But, according to Mr. Petrie's evidence we can
4 reasonably expect that runoff events would be
5 substantial and I went through an exercise with him of
6 assuming that he was right and that probably that more
7 than half of it would run off in January, February and
8 March, and he agreed that according to Gartner Lee's
9 numbers that would mean a total of 71 millimetres per
10 year and that left only one millimetre a year to escape
11 into the shale, and that is found at pages 29067 to
12 29068.

13 Mr. Petrie went on to suggest that the
14 collection system at Burlington may be collecting
15 groundwater flowing into the site in some fashion and
16 that this might distort those numbers and I explored
17 that possibility with him. He first of all admitted to
18 me at page 29070 that he had not evaluated that at
19 great depth and he concludes at page 29071 the
20 following, starting at line 6 where I ask him:

21 "Q. What we have here is quite a unique
22 situation (at the Burlington site) where
23 we have a landfill site and a collection
24 system where we know that what is being
25 collected is coming only from what comes



1 down through the cover of this landfill
2 and not in through the sides."

3 and Mr. Petrie says:

4 "A. That is probably a fair
5 representation."

6 You may recall, Mr. Chairman and Dr. Kingham, the
7 preamble to that was I took Mr. Petrie to a map that
8 showed us very clearly that because the creek is
9 encircling the site to the north and west there
10 would be no groundwater coming into the site from those
11 directions and the Gartner Lee results indicated that
12 groundwater flow directions were towards the south and
13 east and so there was no substantial groundwater coming
14 into the site from those directions either. This is
15 quite a unique situation in the respect that the
16 groundwater flow directions are quite strongly
17 delineated because of the slope of the land.

18 MR. LANCASTER: Mr. Garrod, it is
19 approaching a quarter to one.

20 MR. GARROD: Yes, Mr. Chairman, and if
21 I could have one minute then it would be a convenient
22 place to break.

23 My submissions in summary on that point
24 are simply as follows; firstly, Mr. Petrie relied
25 heavily in his evidence in my submission on his



1 conclusion that 50 to 100 millimetres per year would
2 exfiltrate from Site F in terms of the case that was
3 being made for a liner. He had obviously not analyzed
4 the information that was available in Exhibit 625 in
5 terms of the water balance at the Burlington landfill
6 site before I took him to it.

7 That information, in my submission and
8 in my cross-examination of Mr. Petrie, shows that a
9 reasonable worst case of 72 millimetres would occur at
10 Burlington assuming no runoff and all missing the
11 collectors and massive fracturing at the base. The
12 runoff, however, according to Mr. Petrie's opinion,
13 would be relatively substantial, at least in certain
14 seasons of the year, and Mr. Petrie's own estimates
15 would in fact account for all of it, and that, in my
16 submission, supports the view advanced by Mr. Feenstra
17 that exfiltration past the collectors at either the
18 Burlington site or at Site F would be minimal.

19 This would be a convenient place to
20 break, Mr. Chairman.

21 MR. LANCASTER: Thank you. We will
22 adjourn until two o'clock.

23 ---Luncheon adjournment at 12:42 p.m.

24 ---Upon resuming at 2:00 p.m.

25 MR. LANCASTER: Please be seated.



1 MR. GARROD: Mr. Chairman, I had
2 finished I believe my references to volume 120 and in
3 volume 121, and this was the following day, I discussed
4 with Mr. Petrie ...

5 MR. HODGSON: The second day of your one
6 day cross-examination?

7 MR. GARROD: Yes, the last half of the
8 first day and the first half of the second day. I am
9 sorry, I seem to be having difficulty with my throat.
10 In volume 121 I discussed with Mr. Petrie the spatial
11 extrapolation of his conclusion that a layer of shale
12 with a permeability of 2×10^{-4} existed at Site F and
13 south of Site F and he agreed with me that it was
14 reasonable to extrapolate this conclusion to the
15 Bayview site, to the area south of the Bayview site and
16 into Aldershot. That is at page 29155, but he
17 initially wanted to stop his extrapolation at the
18 property boundary line between Site F and the
19 Burlington site on the west side of Site F, and I
20 explored the reasons for this with Mr. Petrie from page
21 29156 at line 16 to page 29161, and I would like to --
22 I am not going to read this excerpt, but starting at
23 line 16 on 29156 and going over several pages I
24 reviewed with Mr. Petrie the fact that the data that
25 was available from packer tests at both Site F and Site



1 D, the geometric mean of that data gave essentially the
2 same geometric mean for permeability at both sites and
3 that the data from -- that was from 14 results at Site
4 F and 11 results at the Burlington site, and with
5 respect to Hvorslev results I reviewed that in that
6 same excerpt and out of a total of 39 Hvorslev tests at
7 Site F and 23 at the Burlington site the geometric mean
8 of that data for Site F was 5×10^{-6} and at Burlington
9 1×10^{-6} , a difference of about one-half of an order of
10 magnitude, and Mr. Petrie agreed with me that given
11 that Trow was deliberately trying to test the more
12 permeable zones, it was not surprising that the
13 geometric mean for that data was a half an order of
14 magnitude higher than that found at the Burlington
15 site.

16
17 Mr. Petrie eventually agreed with me at
18 page 29161 that it was reasonable to extrapolate his
19 interpretation across the Burlington site as well as
20 the other areas he had previously indicated, although
21 he would have had a larger measure of comfort in doing
22 so if pumping test data had existed at the Burlington
23 site. You will recall there is no pumping test data at
24 the Burlington site, although PW-2, the pumping well at
25 Site F, in my submission is relatively close to the
boundary between the Burlington site and Site F.



1
2 At page 29165 I concluded this line of
3 questioning Mr. Petrie at line 9 to line 20 on page 165
4 with the following series of questions and answers:

5 "Q. So do you agree with me then that
6 not only do we have essentially the same
7 hydrogeological environment at all three
8 sites, but we also have small-scale
9 local anomalies at all three sites?

10 A. That is a reasonable conclusion,
11 yes.

12 Q. We therefore have at all three
13 sites I put to you essentially the same
14 hydrogeological environment?

15 A. Essentially we have a similar
16 hydrogeologic environment at all three
17 sites."

18 That of course is meaning the existing Burlington site,
19 the closed Bayview site and the proposed Site F. In my
20 submission, based on what we know about the past track
21 records of these two sites, and based on the conclusion
22 that we have essentially the same hydrogeological
23 environment at all three sites, and including the
24 existence of small scale local anomalies at all three
25 sites; it is my submission that there is no basis for
assuming or concluding that Site F will cause any



1 difficulties in terms of being a landfill site. In
2 fact it is my submission that with its additional
3 design features over and above those features included
4 in the design of the Burlington site and the Bayview
5 site, Site F will be superior to those sites and in
6 particular will be superior to the Burlington site
7 which in my submission itself has not caused any
8 problem.
9

10 Turning to the analysis that CRA
11 undertook of Site D, it is my submission that a
12 different mind set was brought to this review.
13 Mr. Petrie agreed with me at the following page from
14 the one I was just referring to at 29166, actually
15 starting at the bottom of the previous page, the last
16 line, I asked Mr. Petrie:

17 "Q. Am I correct that your hypothesis
18 here is that Site D is not complex but
19 is a predictable site?

20 A. It is not complex and one can make
21 predictions regarding Site D, yes."

22 I then took Mr. Petrie to a series of interpretations
23 he had made about Site D and I am going to refer the
24 Board to a number of them. It is my submission with
25 respect to these that Mr. Petrie's willingness to
discount anomalous data at Site D and extrapolate



1 generalities across the site was completely contrary to
2 his approach at Site F where anomalous data points were
3 accorded significance and extrapolations of
4 generalities were only reluctantly made.
5

6 The first interpretation I discussed
7 with Mr. Petrie in this regard is at page 29169 to page
8 29172, and while there is not a specific extract I want
9 to read to you, in my submission, what emerges is that
10 Mr. Petrie did not use the results of the pump test
11 that showed a response through the lower till at Site D
12 because, in his words, he evaluated the data and
13 rejected it and at Site F you will recall he used pump
14 tests everywhere at Site F as the best evidence of
15 permeability through units, notwithstanding the fact
16 that he rejected this data at Site D.

17 The second interpretation relates to
18 Mr. Petrie's rejection of the evidence in the Comcor
19 well, OW-3, which indicated that the upper till
20 contained evidence of weathering and fracturing to 9.5
21 metres in depth, the entire depth of the unweathered
22 till in that location. This excerpt I would like to
23 refer the Board to is starting at page 29173, line 1,
24 and I am quoting from line 2, Mr. Petrie's report which
25 I think was Exhibit 618 at page 25 and it said:

"It is to be noted that the borehole log



1 for CC-OW-3 indicates that the upper
2 till at this point contains evidence of
3 weathering and fracturing to a depth of
4 approximately 9.5 m, the total depth of
5 this borehole. Elsewhere on Site D, the
6 occurrence of weathering and fracturing
7 is limited to the upper 4 m or so. This
8 borehole CC-OW-3 is inconsistent with
9 the remaining boreholes and not
10 considered by CRA as representative of
11 the weathered upper till."
12

13 In my submission if you read the rest of that page and
14 the next page down to about line 18, it is clear that
15 Mr. Petrie discounted this data because of his
16 hypothesis that the site should be predictable from
17 place to place, and since this data was not in
18 accordance with other data found on the site, it was
19 for that reason, rejected.

20 Mr. Petrie also discounted anomalous
21 gradients at Site D and starting at page 29174 there is
22 an excerpt starting at line 19:

23 "Q. If we could also turn to the
24 discussion of some of the gradient
25 information you found at Site D at page
85 if you would. There you will see a



1

figure C2.4b.

2

A. I do.

3

4

Q. The hydrogeologic cross-section B-B' and on this is plotted some piezometric data, some elevations for April, 1986 at each of the piezometers?

5

6

7

A. Correct.

8

9

10

Q. If we look for the moment at HC3-86, the third installation from the left, do you see that?

11

12

A. I do.

13

Q. In this installation we see a water level at the top piezometer of 182.29?

14

15

A. We do.

16

17

Q. And at the third piezometer from the top of 181.74, do you see that?

18

19

A. Yes.

20

21

Q. Between those two piezometers we see an elevation of 180.74 which is lower than both of those?

22

A. Correct, it is.

23

24

Q. What that tells us when we review this data is that there are gradients down from the first to the second

25

piezometer and up from the third to the



1

second piezometer?

2

A. Down from the top to the next one
and up from the third, yes.

3

4

5

Q. This would give us if we plotted it
on a hydraulic head profile, the kind of
zig-zag pattern such as the ones you
presented on page 34 of your Site F
report?

6

7

8

9

10

A. I don't recall the page number but,
yes, it would give a zig-zag.

11

12

Q. This as you interpret it at Site F
means there is a component of lateral
flow in the vicinity of piezometer No.
2; am I correct?

13

14

15

16

A. If you were to extrapolate that
interpretation from one site to another,
that would be correct.

17

18

19

20

Q. Right. That would therefore mean
that there was water flowing through the
middle of the upper till in the vicinity
of HC3-86?

21

22

23

A. If you were to take it solely on
that pressure head data then, yes, you
could interpret that.

24

25

Q. You didn't do that, did you?



1

A. I did not.

2

3

Q. You rejected that data because of
your hypothesis that the site was
predictable?

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A. Not on the grounds it was
predictable but on the grounds that when
I observed the well log for this
installation 3-86, we have thick red-
brown stony till, and I don't know if we
have the grain size from this portion of
the borehole and we could check that.
Again I am noting we have 29 boreholes
on and adjacent to the site for which
there is in my mind a uniformity of data
such that I find it easier to dismiss
anomalies and for making a direct
comparison to Site F, I don't know where
the fractures are, I don't know where
the flowpaths are and I must place
greater reliance on the hydraulic head
data. At Site D, given that we have a
stratigraphic definition which I am in
general agreement with, I am more
comfortable defining the flowpaths based
on the hydrostratigraphy and noting



1 where the hydraulic head data appears to
2 be anomalous.

3 Q. You rejected this information on
4 the basis that you considered it an
5 anomaly and it didn't fit the pattern
6 you expected to see at Site D?

7 A. That is correct."

8 Mr. Chairman, you will recall Mr. Petrie's evidence in
9 my submission and Mr. Petrie emphasized at Site D
10 anomalous gradients and he spent some time in his Site
11 F report talking about these zig-zag graphs that were
12 found in the data south of the Bayview site. In my
13 submission this is not a consistent approach from one
14 site to the next. Mr. Hodgson says I said he
15 emphasized anomalous gradients at Site D and I meant to
16 say F, if I did say D. Those were the zig-zag
17 patterns based on, I think, Miss Hewetson's data south
18 of the Bayview site.

19 The fourth interpretation I took
20 Mr. Petrie to was an illustration on a cross-section
21 that he drew which showed information differently at
22 two different locations, even though he considered
23 neither to be representative of Site D. This is in an
24 excerpt from 29181 on for about two pages and in this
25 situation in my submission Mr. Petrie illustrated on



1 the cross-section that was in his report, the borehole
2 evidence that tended to show no weathering of the upper
3 till at one end of the cross-section and did not show
4 evidence that I have just previously reviewed that
5 tended to show weathering throughout the unweathered
6 till, neither of which he considered representative but
7 his cross-section nevertheless showed the one that
8 would tend to show the upper till to be unweathered,
9 and that excerpt is at those pages, and again I don't
10 believe there is a lot of point in me reviewing that
11 with you. I think that that point was clear.
12

13 The fifth interpretation that I took Mr.
14 Petrie to was the fact that he had interpreted the
15 existence of vermiculite in one sample of the weathered
16 till at Site D and he had interpreted that existence in
17 that one sample to support an argument that Trow's
18 permeability value for the weathered till at Site D was
19 conservative.
20

21 Starting at page 184 in the same volume,
22 the question is:
23

24 "Q. I wonder if I could turn briefly to
25 page 36 of your report and here you have
a discussion of the properties of the
weathered upper till and in the top
paragraph am I correct that the fact



1 that vermiculite was found in one sample
2 from the weathered till is used by you
3 to support an argument that Trow's K
4 value for the weathered till is
5 conservative?
6

7 A. There are only three clay
8 mineralogy analyses done, one of which
9 was from the weathered till and given
10 that there was one analysis from the
11 weathered till, and given that Trow have
12 questioned the incidence of fracturing I
13 have noted that the chemistry or the
14 mineralogy they provide indicates that
15 they have swelling clays in it. Trow
16 also referenced I believe Maurice
17 Dusseault's work which is indicated on
18 page 35, Dusseault 1985, questioning the
19 significance of these fractures and I
20 noted that they have swelling clays and
21 other researchers have indicated the
22 presence of swelling clays appears to
23 seal fractures such that they are not of
24 hydraulic significance. You are quite
25 correct, I make (sic) the one analysis
provided and make some conclusions from



1 that.

2 Q. By implication you extrapolate
3 those conclusions across the entire
4 weathered till at Site D?

5 A. By implication, I do."

6 The last point -- the second last point I took
7 Mr. Petrie to was the fact he had extrapolated the
8 laboratory test data from his fresh triaxial test of
9 the unweathered till for one sample near Highway 25
10 across the entire site. I dealt with this at some
11 length with Mr. Petrie from page 29187 to 29191, and in
12 summary of that, Mr. Chairman and Dr. Kingham, I
13 believe it is clear that the grain size information
14 that was available on all of the other samples of the
15 weathered till at the site shows that the sample that
16 was subjected to the triaxial test had a different make
17 up from the other samples on Site D. It was much more
18 clayey, if I can put it in those terms, much less
19 characterized by silt, sand and gravel.

20 This was also taken from a location
21 which is I think, according to Mr. Petrie's estimate,
22 in the order of 600 to 700 metres from the closest
23 place where waste would be deposited at Site D and in
24 fact was extrapolated not only to that location but
25 across the entire extent of Site D, which is a total of



1 something in the order of a kilometre or a kilometre
2 and a half across the farthest reaches of Site D. In
3 my submission Mr. Petrie made this extrapolation
4 without any reluctance as indicated in that excerpt of
5 the transcript.

6 The final point on this point I want to
7 make, Mr. Chairman, is that in my submission, the
8 interpretation that CRA put on the upper granular unit
9 at Site D was not in any way conservative. Mr. Estrin
10 reviewed some of this material during his submissions
11 to you and my cross-examination of Mr. Petrie on this
12 point is found from page 29191 to page 29202.

13 It is my submission that what happened
14 -- that Mr. Petrie first of all believed that the best
15 interpretation of the data at Site D was that the upper
16 granular unit was in fact, or it consisted of a number
17 of lenticular-shaped bodies which were hydraulically
18 independent, and that was graphically depicted in his
19 Exhibit 618 at Figure C.2.2 and discussed at pages 80
20 and 81 of his report.

21 I confirmed that in my cross-examination
22 with Mr. Petrie at 29191 at line 18 where I asked:

23 "Q. Am I correct that your
24 interpretation is that there are in fact
25 two separate upper granular units?



1

A. If we refer to the figure which we show, and I neglected to mention the small third portion away down on the southeastern corner of the site, but beneath the landfilled areas I believe there are two portions to that unit, yes.

2

3

4

5

6

7

8

9

Q. In fact there are two separate units?

10

11

A. They are both called upper granular unit.

12

13

Q. But you are interpreting them as two different units?

14

15

A. Physically separated portions of strata.

16

17

Q. Hydraulically separated?

18

A. Correct."

19

20

21

22

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24

25

And then I ask him to number those as units 1, 2 and 3 on that and then skipping over to page 29196, a series of questions about what information we had about upper granular unit No. 1 which is the one that underlies First Line and which is the one which likely intercepts the wells that my clients have in the overburden material to the west of First Line. Mr. Estrin reviewed this and in my submission it is clear there is



1 no pumping test data for that unit and there are no
2 piezometers screened in that upper granular unit as
3 defined by Mr. Petrie. There are no Hvorslev tests in
4 that upper granular unit. There are no packer tests in
5 the upper granular unit. There is no gradient
6 information about that upper granular unit, and there
7 is no information of the lateral extent of that upper
8 granular unit to the west, and I put it to
9 Mr. Petrie that it could represent part of a larger
10 overburden aquifer which is more extensive off-site and
11 intercepts Site D only in part, and his answer at line
12 11 of page 29197 was that it could.

13 I also pointed out to Mr. Petrie that
14 this was also in the location, the same general
15 location as the Comcor borehole which indicated
16 evidence of weathering and fracturing all the way
17 through the unweathered till. Mr. Chairman, Mr. Petrie
18 gave an interpretation of that upper granular unit at
19 Site D which in his best evidence indicated that there
20 were at least two completely independent, hydraulically
21 independent units. For the purposes of calculating the
22 potential off-site contamination, he combined those
23 units in order to gain information about that unit and
24 with the information he knew a pumping test would be
25 conducted in a unit which he considers to be completely



1 hydraulically unconnected.

2
3 In my submission, particularly in light
4 of the state of the evidence that now exists at Site D,
5 we do not have any hydrogeological information about
6 the unit that underlies the First Line side of Site D.
7 If Mr. Petrie's interpretation is correct, there is no
8 hydrogeological information upon which any conclusions
9 can be drawn about the possible efficiency of purge
10 wells in that unit. That is the unit that would have
11 to be purged according to Mr. Feenstra's evidence.

12 Whether Mr. Petrie is correct or is not
13 correct on that, Mr. Chairman, is something that you
14 will have to determine obviously. But, in any event,
15 the interpretation that Mr. Petrie and CRA put on that
16 in my submission cannot be considered conservative.
17 There is no information in making an interpretation
18 which gives you information about a unit that you have
19 none about; it is not a conservative interpretation.

20 Let me turn now to the case that CRA
21 attempted to make for the liner at Site F.

22 DR. KINGHAM: I wonder if before you do
23 that a small point for Mr. Hodgson's benefit actually.
24 You referred a few minutes ago to the re-definition of
25 the groundwater flow in the vicinity of HC3-86 and that
was the so-called anomalous borehole I think.



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MR. GARROD: The gradient data.

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DR. KINGHAM: And according to the transcript that is to be found in Exhibit MR-695 which is supposed to be a modified Figure C.2.4.6 from B-617. B-617 doesn't have any C two figures and 618 has a Figure C.2.4b and I suspect this exhibit which changes the groundwater flow must be a panel and it must relate to B-618 and to figures C.2.4b. Could you check that over the break so we have that right?

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MR. GARROD: I am certain you are right that it refers to 618 rather than 617. I don't recall if it is a panel or one of the small exhibits in one of those envelopes but we can check that. It was certainly one of Mr. Petrie's cross-sections that he made some drawings on at my request.

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Turning to the case that CRA advanced for the liner at Site F, first of all, Mr. Chairman, as you note Mr. Hodgson covered this material in his submissions and I don't intend to review that, but I would like to focus briefly on my cross-examination of Mr. Crutcher on this point.

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I had considerable difficulty making myself understood to Mr. Crutcher and many of my questions took a long time to result in an answer so it is quite difficult to read you excerpts from the



1 transcript, but I asked Mr. Crutcher initially, and
2 this is in the same volume, whether the situation at
3 the existing Bayview site, the situation as it exists
4 today now that the remedial works are in place,
5 represent a threat to public health and safety in
6 Aldershot. The question was first asked at page 29207
7 and was asked again, by my count, 16 times over to page
8 29214 where I finally received a direct answer from Mr.
9 Crutcher, that there was no significant risk in any
10 sense of the word. Mr. Chairman and Dr. Kingham, it is
11 my submission that Mr. Crutcher was not a co-operative
12 witness when it came to conceding points that were
13 contrary to the case he was attempting to make. I
14 found it difficult to put my questions in the a way
15 that Mr. Crutcher could understand.
16

17 My submission to you regarding the
18 existing surface water quality in the vicinity of Site
19 F is that the existing water quality in the area is
20 dominated by the influence of Highway 403 and other
21 normal urban activities in that area, and I reviewed
22 that data with Mr. Crutcher at page 29214 about the
23 types of impacts that a normal urban environment can
24 have on surface water.

25 It is my submission that it is evident
from a review of that information that sources such as



1 road salting and oil and grease and gasoline and so on
2 that might drip off of cars or otherwise be in an urban
3 environment are potential and actual sources of
4 contamination to urban surface water that exceed by
5 many orders of magnitude even the very worse case that
6 could be imagined for landfill leachate escaping
7 through the ground and subsequently surfacing from Site
8 F.
9

10 I would refer the Board to a passage on
11 page 29217 to 29222 where I discussed this with Mr.
12 Crutcher in the context of information that was
13 available from monitoring work done by Gartner Lee.
14 Then, at page -- starting at page 29224 and over to
15 29225 Mr. Crutcher agreed with me that this was a
16 normal part of the urban environment, starting at line
17 8:
18

19 "Q. Do you consider the salting of
20 roads in an urban environment to be an
21 unacceptable risk to public health and
22 safety for people who live in that urban
23 environment?
24

25 A. I guess you have to offset that
against the risks of driving on unsalted
roads. It depends upon how you look at
it.



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Q. What is your opinion and is it acceptable or an unacceptable risk?

A. If you take the total risk into perspective I think you have to view that the direct risk to humans dealing with traffic accidents is higher than the contamination if you look at it from that perspective. Obviously if you could minimize that risk in some fashion, then it would be desirable not to salt the road if it does contaminate the watercourses.

Q. Would you agree it is part of the normal urban environment that people accept when they live in an urban environment?

A. Yes, I do.

Q. Do you think that the oil and gas and grease that would drip off cars onto roads in an urban area, onto parking lots and driveways, does that represent an unacceptable risk to public health and safety to those persons in that urban environment do you think?

A. I don't know what you mean by



1 'unacceptable risk'. Again we should be
2 minimizing that as best we can and, yes,
3 it happens and you do the best you can
4 and at all points contamination is a
5 significant problem and you do your best
6 to control it.

7 Q. It's part of the normal urban
8 environment?

9 A. It's part of any environment where
10 there are cars."

11 Really on this point I think it is my submission that
12 we cannot -- that the contaminants into the environment
13 have to be put into perspective. We cannot expect to
14 live in an absolutely pristine environment,
15 particularly in an urban environment. There are
16 already existing sources of contamination in the
17 vicinity in terms of groundwater that would dwarf by
18 many orders of magnitude any conceivable degree of
19 contamination that may be added by any surface
20 contamination of Site F if the worst case happened.

21 It is not a case here where we are
22 saying that it doesn't matter, you can pollute it
23 because it is already contaminated; but I am saying
24 that if you take our best efforts and you make our best
25 efforts and design it according to the best efforts,



1 what is the worst that can happen if we are wrong? The
2 worst that can happen if we are wrong, in my
3 submission, is an almost immeasurable increase to the
4 types of contaminants that are normally found on a
5 regular basis in this environment in any event from
6 sources unrelated to the landfill site and in my
7 submission they are not at all significant from the
8 point of view of the decision that you have to make.
9

10 I went through a series of questions
11 with Mr. Crutcher to try and understand the nature of
12 the public health and safety risk that might exist at
13 present and I already went through where he agreed the
14 Bayview site situation does not present an unacceptable
15 risk to public health and safety and to the people of
16 Burlington.

17 I took Mr. Crutcher to the existing
18 Burlington landfill and he agreed with the same
19 proposition. I asked him whether the existing
20 contamination or the existing quality of the
21 groundwater in the shale under Aldershot was a risk to
22 public health and safety as there are already high
23 levels of what would be considered contaminants in that
24 water, and he agreed with me that that was not a risk
25 to people. He agreed that the users of the Bayview
Park were not at risk.



1 I then asked him directly after circling
2 Site F about all of those factors, I asked him whether
3 Site F represented a public health and safety risk and
4 I first asked that at page 29229 and that continued for
5 many, many pages to this exchange at 29244, starting at
6 line 3, and I would like to read a couple of pages here
7 and this was from 29244 line 3:

8 "Q. Do you agree with me,
9 Mr. Crutcher, that this till under
10 Aldershot is a blanket of protection
11 that would make it inconceivable that
12 any trace contaminants that might find
13 their way under Aldershot into the shale
14 could ever get up to the surface in
15 Aldershot?

16 A. You are making a fairly broad
17 assumption that that till is uniform and
18 of equal thickness across or of some
19 thickness across and there are no
20 erosional channels, that the overlying
21 sand and gravel has not intersected the
22 shale at some location. On that basis,
23 which are rather broad assumptions, but
24 under that basis it helps preclude any
25 contamination coming to the surface.



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Q. Where the till exists it will preclude contamination coming to the surface?

A. It helps and the contamination in some form will get there, but it will be very low.

Q. It's already very low in the shale under Aldershot and that was our worst case we were discussing. It's very low under Aldershot and it's going to be, I put it to you, essentially absent?

A. I suspect that you may not be able to detect it, yes.

Q. And you agree with me that if I do as a molecule of toluene or as an ion of chloride somehow manage to make it to the surface of Aldershot, what I will find when I get there is a lot of other ions of chloride or molecules of toluene or other phenolics that have found a lot easier route to get there than I did, and that was falling off a car or being thrown onto a road by a road salting truck?

A. There are other sources of



1

contamination.

2

3

Q. They will dwarf me and my
colleagues by many orders of magnitude?

4

5

A. It depends upon the location, but I
would suspect there are other sources of
contamination which will be prevalent.

6

7

8

Q. So, Mr. Crutcher, coming back to my
original question at Site F, you would

9

10

agree that landfilling at Site F will
not from a technical point of view

11

12

represent any risk that is of any
significance to public health and safety
of the people in Aldershot?

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A. As I indicated it is a cumulative
effect and the intent is to control
contamination as best you can. If you
have the opportunity to do that I
believe you should do it.

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Q. The amount that will be contributed
by Site F to public health and safety
risk in Aldershot is completely and
utterly insignificant,

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Mr. Crutcher, do you agree?

25

A. I don't know how you determine that
but I believe it will be low as a total.



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Q. I suggest, Mr. Crutcher, that it is for all intents and purposes in the real world zero, do you agree?

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A. No. There is a significant amount of contamination if you back-calculate to the leachate egress from the site and there is an unknown amount of attenuation and dilution and those contaminants are getting into the environment and their ultimate discharge is quite unknown. I will agree that it will be low in relation to other sources, but its actual quantity I do not know."

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There are a number of other passages, but in my submission there is no health and safety risk at Site F and there is no meaningful addition of any loading to the environment of contaminants. There is only the social and psychological impacts and the emotional impacts of the people in Aldershot who believe they may be impacted by this.

23

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In my submission this argument for social and psychological impacts belongs more properly in the discussion of social impacts. I discussed this with Mr. Crutcher for many more pages, from 29248 to



1
2 29260 and concluding with a passage I would like to
3 read to you from page 29260, and that starts at line
4 11:

5 "Q. I am saying let's assume you are
6 right and your worst fears are true and
7 there are some isolated cracks that
8 convey some of this diluted and
9 attenuated leachate under the shale at
10 Aldershot?

11 A. Yes. Then I believe you should be
12 collecting that leachate through a
13 contingency system of purge wells or
14 whatever system you decide to use.

15 Q. We are agreed we should do
16 everything we can under this site...

17 A. Yes.

18 Q. ...to control it and you have now
19 failed on everything?

20 A. If you have failed on everything, I
21 don't believe there would be a direct
22 impact.

23 Q. So what we are left with is a
24 balancing of the social and
25 psychological impacts that that would
have on people against the cost of



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putting in your liner?

A. To some degree, yes.

Q. There is nothing else we are left with, Mr. Crutcher?

A. There are still the unknowns and whether in fact all our assumptions are correct and whether we do or do not have -- whether Mr. Sobanski is correct and we have discharge directly south of 403, and whether that discharge is of any significance. All of those questions to my mind have not really been answered and I have passed the opinion that I do not think we will have a significant direct effect."

In my submission all that is left on that issue is to evaluate the concern of Aldershot residents in the category of social impact and balance those with the social impacts at Site D.

For that purpose I would now like to turn from the category of public health and safety to the category of social impacts and for the reasons I explained in my opening, I submit that this should be your second priority concern.

Social impacts, Mr. Chairman, are



1 difficult to quantify, but in my submission that in no
2 way diminishes from the importance of social impacts in
3 decisions of the type that this Board must make. The
4 best evidence of social impact in my submission that
5 this or any other Board of this type can receive is
6 evidence from the people who will be directly affected.
7 There is a role for a social impact assessment in my
8 submission by someone who is able to present
9 information to you to categorize and profile the
10 existing social environment in the vicinity of a
11 proposal, but people are not rocks. People are not
12 plants or soils or rocks, and they can speak for
13 themselves.

14 This evidence need not be filtered
15 through an expert. The Board is entitled to and in
16 fact has at some considerable length heard evidence
17 from people around both sites directly. In my
18 submission the Board is able to assess the credibility
19 and the validity of the concerns that are presented to
20 it, and give weight to the various concerns that it has
21 heard.

22 The Region addressed the assessment of
23 social impacts through the work of Dr. Schiff and
24 Dr. Schiff's work has some limitation which I will be
25 referring to, but subject to those limitations it is my



1 submission that Dr. Schiff's Stage 2C report was and
2 remains a valid exercise for the purpose for which it
3 was intended, and that was, in my submission, at that
4 stage a comparison among six sites. It was designed in
5 my submission to make some relatively coarse judgments
6 between the social impacts that would result at the
7 various six sites under consideration at that time and
8 to rank those sites in accordance with that evaluation.
9

10 Dr. Schiff did not do a technical level
11 study the way that certain other witnesses did, but she
12 did update certain data for inclusion in the
13 comparative analysis, H-14. In my submission this work
14 remained at what I call the count-heads-level of
15 analysis in the sense that she essentially inventoried
16 the existing social environment within the study areas
17 she defined. She categorized these things and broke
18 them down into a number of factors and she did indicate
19 which factors and categories were of more importance to
20 her than others, but she never actually attempted to
21 present detailed information to the Board about the
22 individual people living around either site, and that,
23 in my submission, is entirely appropriate and I don't
24 mean that as a criticism.

25 I think it would be unreasonable to
expect a person doing the kind of job that



1 Dr. Schiff was asked to do to present that kind of
2 level of detail. It was appropriate at the level of
3 detail she did her work, it was appropriate for the
4 work she was asked to do, and I think it is appropriate
5 for what a proponent should be asked to do in these
6 kinds of proceedings.
7

8 Nevertheless, the Board can and in my
9 submission must go beyond that kind of level of
10 counting heads, if you like, because we are not simply
11 dealing with statistics, we are dealing with social
12 impacts and that means that differential people in
13 different circumstances would suffer those impacts
14 differently, and while it may not be reasonable to
15 expect a proponent to be able to catalogue all of that
16 and present it through an expert witness at a hearing,
17 it remains, in my submission, very relevant evidence
18 for your consideration.

19 We are dealing with individual people
20 and their lives, their hopes, their dreams and their
21 aspirations and no one, in my submission, can present
22 that to you but those individuals themselves.

23 Now, I will come back, Mr. Chairman, to
24 refer you to the evidence you heard from people on Site
25 D and in the vicinity of both sites, but first let me
briefly review Dr. Schiff's work.



1 In Dr. Schiff's Stage 2C study, it
2 remains the only balanced comparative work that was
3 done and that was presented to you regarding social
4 impact in the sense that both Sites D and F were
5 evaluated on an equivalent level of detail. You will
6 recall there was work done for my clients by
7 Mr. John Kauffman and that work was designed to
8 summarize the greater level of detail that we intended
9 to put before you through our individual witnesses.
10 His report in my submission summarizes that greater
11 level of detail regarding Site D as objectively as is
12 reasonably possible for an expert to do and I would
13 invite you to review that, because I believe it is an
14 objective summary of the concerns of the people around
15 Site D, and without a filtering and without an
16 interpretation being placed on it.

17 Mr. Kauffman did not do an equivalent
18 presentation for the people within the study area he
19 identified around Site F. It was anticipated you would
20 receive similar detail regarding those closest to Site
21 F from Burlington or the West Burlington Citizens
22 Group, but in my submission except for the individual
23 witnesses who appeared before you, you did not receive
24 the same kind of detailed presentation such as the one
25 Mr. Kauffman did for Site D and you did not receive



1 that about Site F. Mr. Lang, in my submission, did not
2 engage in that kind of exercise and Mr. Lang did not
3 attempt to comprehensively summarize the concerns of
4 people living in the vicinity of Site F.
5

6 So, consequently, Dr. Schiff, in my
7 submission, working in a new and difficult area did a
8 reasonable job of the work she undertook at the 2C
9 level. It is my submission that the biggest flaw in
10 her work is that she did not distinguish sufficiently
11 between sites where people would be displaced and sites
12 such as F where no one would be displaced against their
13 will. You will recall that both sites D and F were
14 ranked low in terms of this factor of displacement, and
15 this is the case, notwithstanding the fact that by
16 Dr. Schiff's data there would be nobody displaced at
17 Site F, and I believe it was 10 people would be
18 displaced from Site D.

19 You may recall that I drew a flip chart
20 I asked Dr. Schiff about and which was marked as
21 Exhibit MR-150 and on this flip chart I summarized the
22 data from her report relating to two factors and the
23 first column being the number of people on-site, and
24 the second being the number of households on-site for
25 the six sites analyzed at the first stage of the work.

I put the proposition to Dr. Schiff that



1 the data grouped itself naturally into three categories
2 that I believed should have been identified as high,
3 medium and low, and I think in my cross-examination
4 with her I even put it as far as saying that it should
5 be high, medium and nil in the sense that there was
6 nobody being displaced, either a number of people or
7 number of households at Site F, and the other data does
8 group itself quite naturally and it is an artificial
9 boundary line to draw as she did in her analysis a line
10 at the value of 10.7 to distinguish between medium and
11 low data, medium and low impact in this regard, and
12 putting Site D and in fact Site E, as well, into the
13 same category as Site F.

14 In my submission that was a major
15 deficiency in her work and a reasonable way of grouping
16 this data would be to see that Sites A, D and E were
17 essentially in the same kind of category and, there is,
18 in my submission, a quantum difference between
19 displacing no people and displacing even one household
20 from a site.

21 Mr. Lang's evidence in my submission is
22 without any substantial value to this Board. It
23 neither provides objective detail regarding the social
24 environment that exists around Site F as Mr. Kauffman
25 did for Site D, nor does it do a comparative analysis



1 of the two sites as Dr. Schiff did. Mr. Lang's main
2 point appeared to be that one had to consider peoples'
3 perceptions as a social impact and Dr. Schiff had not
4 given sufficient weight to these at Site F by being as
5 objective, scientific and rational in her approach as
6 she was, standards that I have always understood an
7 expert witness should strive to achieve.
8

9 In any event, Mr. Lang agreed with me
10 that if one were to include such considerations as
11 perceptions in an evaluation of social impacts at Site
12 F, one would have to include them for every site
13 including Site D, and since there was no comparative
14 information or even comprehensive information at Site
15 F, and you will remember Mr. Lang never professed to
16 have carried out a comprehensive social impact
17 assessment even at Site F; that that simply could not
18 be done in this case for those reasons.

19 The Board in my submission has all the
20 evidence it needs to make a determination of social
21 impacts at both sites from the work of Dr. Schiff and
22 the contribution of Mr. Kauffman and from the
23 individual witnesses who testified before you from the
24 vicinity of both sites.

25 In my submission when you look at all of
that evidence as a whole, the result is overwhelming



1 that there is a major difference between Sites F and D
2 in the social environment category. Mr. MacNaughton
3 for the City of Burlington agreed that there was a
4 major difference in favour of landfilling at Site F
5 under that category and he went on to say that the
6 categories of social, natural and cultural all
7 cancelled themselves out and that cost should be the
8 basis for this decision.
9

10 It is my submission to you on that that
11 that -- there was no basis for assuming that the
12 factors all cancel each other out. Each of those
13 factors must be looked at and evaluated. You don't
14 just write them off. As I will be urging you in the
15 course of my argument, I believe there is no more basis
16 for drawing the conclusion that those categories cancel
17 each other out than for any other combination of
18 categories. I believe that it should be viewed as
19 nothing more than, if you like, a sleight of hand to
20 make those categories disappear so that costs would be
21 the determining factor.

22 So, this brings me to a consideration of
23 what are the social impacts which would occur at Sites
24 F and D? First in approaching that question, I believe
25 the Board should distinguish between the impacts that
are certain to occur and those impacts which are



1 probabilities or possibilities or indeed even unfounded
2 perceptions.
3

4 The range of probabilities in my
5 submission ranges from one in the case of those that
6 are certain to occur to zero in the sense that an
7 unfounded perception is not going to occur other than
8 in a person's own mind. People who live on-site, as I
9 said earlier, will have a probability of one as they
10 are certain to be impacted. People who live in close
11 proximity to a site have a very high probability and,
12 as I said earlier, a probability of a relatively high
13 impact in comparison to those who live further away who
14 have a lower probability of impact and a lower impact.

15 Mr. Kauffman's report which was marked
16 as Exhibit 580 provides, in my submission, a convenient
17 summary of the situation within the study areas used by
18 Mr. Kentridge and himself at Sites D and F, and those
19 study areas were explained by Mr. Kentridge in his
20 evidence which I would like to refer you to. I will
21 just take this exhibit down.

22 Mr. Kentridge and Mr. Kauffman used the
23 same study area for their work and in fact I had
24 originally intended to call them as a panel of evidence
25 and you will recall that because of some scheduling
difficulties Mr. Kentridge had, I had to call him first



1 and Mr. Kauffman last and therefore that intention was
2 not realized, but they worked together as they both
3 indicated and developed this study area jointly.
4

5 The study area in the evidence of
6 Mr. Kentridge at page 23175, and this is in volume -- a
7 good question. What volume is this? Oh, it is volume
8 97, at 23175, where Mr. Kentridge explains the basis
9 for the study area he and Mr. Kauffman developed, and
10 he does this starting a line 6:

11 "Our study area, as I have said on page
12 3, Mr. Chairman, is related to the
13 people we believe are most likely to
14 experience significant direct impacts
15 from the proposed landfill."

16 I think that that is an important phrase "the study
17 area is related to the people that they believe are
18 most likely to experience significant direct impacts
19 from the proposed landfill." Obviously it is necessary
20 to draw boundaries somewhere, Mr. Chairman, and it is
21 my submission to you that this rationale is the best
22 rationale that has been put before you for how to draw
23 a study area boundary.

24 In his report Mr. Kauffman -- I am
25 sorry, Mr. Kentridge expanded on the rationale for that
study area and this is Mr. Kentridge's report, Exhibit



1 546, and on pages 3, 4 and 5 of his report, he explains
2 the rationale for his and Mr. Kauffman's study areas
3 and says:

4 "Our study areas are defined to include
5 those persons who would be likely to
6 experience significant direct impacts
7 from the proposed landfill. To define
8 these areas, several criteria were used:
9 1, properties which directly abut or are
10 separated by only one roadway..."

11 And there are a number of properties that directly abut
12 Site D and some that are on the opposite side of First
13 Line and some on the opposite side of Highway 25:

14 "...2, properties within 500 metres of
15 the proposed fill area or within 500
16 metres of associated landfill
17 activities;

18 3, minor adjustments were made where
19 considered appropriate to avoid
20 arbitrary exclusions."

21 I think it is clear that you can't just draw a line and
22 totally ignore what might be just on the other side of
23 that line. Mr. Kentridge goes on to say:

24 "The Ontario Ministry of the Environment
25 guidelines for land use on or near



1 landfills or dumps, #07-07-01... states:
2 'MOE considers the most significant
3 adverse environmental effects to be
4 normally to be within 500 metres of the
5 perimeter of the fill area'. In the
6 case of Site F, the study area has been
7 extended to the north."
8

9 Looking at Site F for a moment, the air photo on the
10 easel, you will see what has been drawn in the red line
11 is the 500 metre line, if you like, from the fill area
12 and Mr. Kentridge is saying in the case of Site F the
13 study area has been extended to the north to include
14 four residences beyond 500 metres since they are part
15 of a cluster of six houses, two of which are just
16 within 500 metres of the fill area.

17 The study area when you look at the air
18 photos, Exhibits 548 and 547, you should not be viewing
19 the study area as the red line, the red line is merely
20 one of those criteria and the red dots which are on
21 there show the sort of minor adjustments that were made
22 to include those residences. At Site D the study area
23 has been extended to the east to include houses
24 fronting on Highway 25 which are considered to be
25 likely to experience direct impacts. These houses will
experience certain traffic and other landfill impacts



1 associated with the location of the site entrance on
2 the Highway 25 frontage.

3
4 In addition, these properties would
5 experience the direct visual impact of having a
6 substantial part of their present view of the Niagara
7 Escarpment and the horizon blocked if a landfill is
8 constructed at Site D. Property owners on-site and
9 those within these study areas will likely receive the
10 most direct and significant impact in the event that
11 Site D or F is selected. People living more removed
12 from either site can be expected to experience less
13 impact or indirect impact only.

14 Mr. Chairman, it is obvious that you can
15 never draw a line beyond which there will be no impacts
16 unless the line is to be absurdly large. It is
17 obvious, I submit, also that you cannot draw a boundary
18 that will capture impacts such as emotional concerns of
19 people. You heard evidence from people at both sites,
20 and I did not call as witnesses in my case, but on the
21 public evening sessions witnesses from some distance
22 from Site D came and presented their concerns to you.
23 Witnesses from Site F as far as 3, 4 kilometres away
24 came and presented their concerns, not only at the
25 public sessions but called here by Ms. Vigod as her
witnesses.



1 In my submission if you are expected to
2 take into account in a substantial way, if you are
3 expected to give substantial weight to emotional
4 concerns of people who are several kilometres from the
5 site, this would be an unworkable way of proceeding.

6 Mr. Chairman, the urban area of Milton
7 is about 3 kilometres from Site D. If peoples'
8 emotional concerns 3 or 4 kilometres from a site are of
9 substantial relevance to a hearing of this sort, that
10 would invite me as counsel to encourage people from
11 that distance to come here as witnesses to express
12 their concerns to you about Site D.

13 It was my judgment, Mr. Chairman, that
14 that would not be of substantial use in your
15 deliberations.

16 So, with respect to the study area which
17 Mr. Kentridge and Mr. Kauffman identified, it is my
18 submission that these are logical, rationally based,
19 they are generally consistent with the statement found
20 in the Ministry Land Use Guidelines about the area
21 within which -- I can't remember the language now, but
22 where most of the direct impacts are anticipated to
23 occur and, I submit, these study areas are generally
24 consistent with the evidence of every technical and
25 planning witness you have heard about where the most



1 significant direct impacts would occur. So, my final
2 submission with regard to the study areas is that they
3 are consistent with common sense.
4

5 As I said, Mr. Kauffman's report,
6 Exhibit 580, contains a convenient summary of the
7 people who presently live and work within the study
8 area at Site D, and if I could just read to you from
9 page 6 of his report he discusses first of all the on-
10 site properties and there is a Table No. 1 which he
11 presents and summarizes the data but he says:

12 "Table 1 presents the data gathered
13 concerning Site D on-site properties.
14 This shows that there are up to five
15 dwelling units which may have to be
16 acquired, two with heritage
17 significance..."

18 and those are the Reed residence and the Tomosky
19 residence if that entire property is indeed acquired:

20 "...including the recently completed T
21 and M. J. Martin residence and the
22 Tomosky residence, if it is decided to
23 acquire all of this property. Up to 10
24 adults and 3 children would be
25 dislocated by these property
acquisitions. In addition, three



1 business and one airstrip associated
2 with these properties would have to be
3 relocated..."

4 the business being Mr. Wat Martin's business and the
5 business run by Mrs. Reed, dog grooming and breeding,
6 and the business run by the Newman's at the southeast
7 corner at the site where there is a garden centre
8 there, and he says:

9 "In addition, three business and one
10 airstrip associated with these
11 properties have to be relocated if this
12 were possible in all cases and up to
13 nine properties could go out of
14 agriculture production depending upon
15 the extent and success of
16 rehabilitation."

17 That is all summarized in Table 1 of his report, and he
18 goes on to say "Abutting properties." There are within
19 the area used by Mr. Kentridge and Mr. Kauffman, 22
20 households, and this is off-site, but 22 households, 64
21 inhabitants, including 42 adults and 22 children, three
22 additional businesses, three owner occupied farms,
23 seven other agricultural properties, and one other
24 private airstrip, all within the area Mr. Kauffman and
25 Mr. Kentridge identified.



In comparison, the study area at Site F, on-site, Mr. Kauffman identified there would be the loss of use of one virtually inactive shale quarry. There is no person who lives on-site. Adjacent and in the study area at Site F there are six dwellings, two just within the 500 metre line, and four which were added to avoid arbitrary exclusions.

Mr. Chairman, there was a lot debate about whether or not Dr. Schiff should have extended her study area boundary into Aldershot. In my submission to you, it is simply this; you could draw a line down there, but if you wanted to do an analysis of whether or not those people had any substantial impact you would have to get engaged in an exercise of probabilities I suggest to you, and of diminishing magnitude of impacts and at some point you reach the point where the probability of impact and the extent of that impact is so slight that to extend the boundary beyond that is really not of great assistance to you. There is an agricultural operation in the Site F area, and that is the farm operated by Mr. Elstone, and you heard his evidence, he operates a sheep grazing farm at his home and farm and his home also in his mind, and I think also in anybody's view of his evidence, also has some historical significance.



1 Mr. Kauffman's report also documents in
2 section 5 of his report, and I don't intend to read
3 this to you, but in pages 15 to 18, information about
4 those people who would be expropriated, or who would be
5 likely to face significant direct impacts as
6 identified. Their particular circumstances are
7 described by Mr. Kauffman as objectively as a
8 consultant can do and my instructions to Mr. Kauffman
9 were to not interpret or generalize this information
10 and he did not, in my submission, do so in his evidence
11 in the way Mr. Lang attempted to do so by generalizing
12 the results of the key informants he interviewed to the
13 community at large.

14 I believe, Mr. Chairman, that virtually
15 all of the witnesses whose information Mr. Kauffman
16 summarized testified before this Board and Mr. Lang
17 took surveys of a handful of key informants, most of
18 whom did not testify here to my recollection, and he
19 attempted to extrapolate conclusions he drew from those
20 people to generalize about the communities of Aldershot
21 and Forestvale and that is simply not a useful
22 exercise.

23 I would like to turn now to a review of
24 the evidence presented to you by the people who will be
25 most directly affected at Site D should your decision



1 be that that is a necessary place to put this landfill
2 site.

3
4 Mr. Estrin is telling me it is time for
5 a break, as I don't have a watch.

6 MR. LANCASTER: It probably is. It is
7 going on twenty after three, so it is probably a good
8 place.

9 MR. GARROD: It is evident to me that I
10 am not going to finish today and no one is sorrier for
11 that than me. I will finish tomorrow morning at some
12 point.

13 MR. LANCASTER: All right, we will
14 break for ten minutes.

15 ---Recess

16 MR. LANCASTER: Please be seated.

17 MR. GARROD: During the break,
18 Mr. Hodgson and I tried to sort out that question you
19 had, Dr. Kingham, about the exhibit and we determined
20 that the exhibit list should be corrected so that the
21 reference to Exhibit MR-695 should refer to Figure
22 C.2.4b rather than 6b as in Bob, and it is from Exhibit
23 B-618 rather than 617.

24 We tried to find the exhibit and have
25 been unsuccessful. In fact Mr. Hodgson doesn't think
any of the acetate overheads that were marked as



1 exhibits from that exhibit are here and he has
2 speculated that perhaps the witness took them with him,
3 or they have otherwise evaporated.

4 DR. KINGHAM: It is worth a check and
5 if Mr. McQuaid can do that, I guess they were his
6 witnesses' exhibits, but we made some additions to our
7 copy of Figure C.2.4b as we went along and I suspect
8 those are the alterations are the ones that would show
9 up on that exhibit.

10 MR. GARROD: Mr. Tzekas has something
11 or has a photocopy of what looks like Mr. Petrie's
12 writing with MR-695 and I suspect that this is a
13 photocopy of that exhibit. If it is of assistance,
14 what it shows, and I can show the Board, but it shows
15 an arrow upward from the third piezometer to the second
16 and then a downward arrow from the first to the second
17 and two arrows horizontally out from the second
18 piezometer.

19 DR. KINGHAM: Perhaps you could just
20 make a copy for us and we can just add it to our books.

21 MR. GARROD: Mr. Chairman, I now want
22 to turn to a review of the evidence given by my clients
23 on and around Site D and I would like to start with a
24 review of my clients who would be expropriated in the
25 event that Site D is selected.



1 The first witness I called, and this
2 evidence by the way is found in volumes 99 and into
3 volume 100 and the first witness was Mr. and Mrs. Wat
4 Martin who, as you recall, own 50 acres off Site D and
5 have the airstrip and they have owned that property and
6 have lived there for 23 years at the time of their
7 evidence, and now I suspect 24 years. They have a
8 home, a garage, a workshop which is 70 feet by 42 feet,
9 it is heated, insulated and plastered, and a hanger for
10 their aircraft 40 feet by 56 feet. The property,
11 except for the residential area and where the buildings
12 and the airstrip are, is used for agricultural purposes
13 and is rented to Mr. Bousefield who grows grains, corn
14 and hay. The photographs on the right-hand side of the
15 easel, Exhibit 549, are the photographs of Mr. and Mrs.
16 Martin's home and the buildings associated with the
17 aircraft restoration business and a number of
18 photographs inside the buildings and of the aircraft
19 that Mr. Martin works on.
20

21 When Mr. and Mrs. Martin bought this
22 property 24 years ago, they were looking for a property
23 with special characteristics. I would like to read an
24 excerpt from volume 99 at page 23662 starting at line 9
25 where Mr. Martin explains the characteristics they were
looking for:



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"Q. Mr. Martin, you indicated you have lived here for twenty-three years. Can you explain what you were looking for when you bought the property?

A. We were looking for an area that was slightly isolated from neighbours. It had to be flat, there had to be no obstructions in the immediate area such as power lines or other obstacles. Of course it had to be for sale. At that time it was not against the zoning regulations in that area.

Q. Why were you looking for a property with those kinds of characteristics?

A. To establish a small, two small landing strips and workshop and a home.

Q. What is the business that you are involved in that all of these photographs and buildings relate to?

A. I am involved in the business of rebuilding and repairing antique aircraft.

Q. How long have you been in that business?

A. I have been doing it ever since we



1

moved there at this site and I have been
working with aircraft in general since
January 1st, 1940.

2

3

4

Q. How old are you now?

5

6

A. Sixty-three.

7

8

Q. What would be your intention as far
as the continuation of this business?

9

10

A. I would like to continue on for
another twelve years.

11

12

Q. Do you consider that you are able
to do that?

13

14

15

A. Yes, I hold a class 1 medical from
the Department of Transport and I am in
good health and I see no reason not to
continue."

16

17

18

19

I would like to also review a passage with you from
page 679 -- 23669 over to page 670 where Mr. Martin
explains the water supply:

20

21

"Q. I wonder if you can explain, of
course your water supply?

22

23

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A. We have a drilled well. It goes
down 76 feet. It is a good supply of
water. The water rises up in the casing
within 25 feet of the ground level. The
water is hard, but we are accustomed to



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that. The supply is quite adequate, we
never run short."

And then he says it is located in the driveway -- I am
sorry -- that is not the passage I intended to read,
but the one on the next page, 670 at line 19:

"Q. As far as relocating your business,
Mr. Martin, have you made any
investigations about being able to
locate in any other places, for example
at other airports?

A. Yes, I have. I contacted the
manager of the Brampton airport, and
Brampton airport is a private airport
owned by the Brampton Flying Club. They
said they would not, they would not be
agreeable to me establishing a business
there..."

I seem to be having some difficulty because I seem to
have crossed up my references to the transcript pages.
I made an error when I started and I think I had better
start over again.

I was asking Mr. Martin to explain the
nature of his business and back at page 663, if I could
ask your indulgence to turn back to 23663 at line 18:

"Q. Can you explain for the Board the



1 nature of the work you do and the
2 clientele that you service?

3 A. Well, what I do is do complete
4 rebuilding of antique aircraft. It
5 includes woodwork, dope and fabric work,
6 a certain amount of metal work,
7 painting, everything else combined with
8 that. The clientele is quite varied.
9 One client flew his aircraft up from
10 Texas, southern Texas and left it with
11 me for a year to rebuild. I have
12 rebuilt aircraft for airline pilots and
13 private owners. I rebuilt one aircraft
14 for the National Aviation Museum in
15 Rockcliffe and they are now negotiating
16 with me to rebuild another one, a World
17 War I aeroplane."
18

19 I go on to discuss whether he flies these aircraft
20 himself and he does and then I show him the letter from
21 the National Museums of Canada signed by the Curator of
22 the National Museum, of the Aviation Museum and I asked
23 Mr. Martin to identify that. You will recall I made an
24 exhibit, 550, the letter from Mr. Shortt and if I could
25 refer to the last page of that letter, page 2,
Mr. Short from the National Aviation Museum says:



1 "People with Mr. Martin's talents and
2 set-up are rare in Canada. The Museum
3 has only ever used one other outside
4 expert for restoration purposes and this
5 person operates only as a hobby not a
6 business. I am unaware of any other
7 person in Canada other than Mr. Wat
8 Martin who restores and conserves
9 antique aircraft as a business. The
10 only others that I am aware of do this
11 as a hobby. The closure of Mr. Martin's
12 vintage aircraft restoration and
13 conservation business would be a serious
14 loss to the historic heritage aircraft
15 community in Canada, and to our work at
16 the National Aviation Museum."

17 Following the introduction of that exhibit,
18 Mr. Chairman, I pursued further with Mr. Martin
19 what it would mean for him to be expropriated from this
20 property, and that evidence was given at 23667 at the
21 very bottom of the page where I asked him:

22 "Q. Can you explain please, in terms of
23 first of all the business, what it would
24 mean for you to be expropriated from
25 this property?



1 A. Well, it would be a very great
2 upheaval. It would be very difficult to
3 find another location suitable for this
4 type of a business. As I indicated, we
5 need a flat level area. The place has
6 to be available for sale of course, and
7 as I indicated before, it has to be free
8 of obstructions and you wouldn't want
9 neighbours right on top of you. Another
10 problem would be finding a place with
11 the correct zoning and trying to comply
12 with the Food Land Guidelines. I made a
13 couple of comments on this too. The
14 other point is that where we live now,
15 we are just a few minutes from Milton
16 and 40 minutes from Toronto. It is a
17 very convenient location for our
18 business and us personally. To have to
19 move at this stage of my life would
20 probably take two or three years to get
21 settled in somewhere else if we could
22 find a place. A friend of mine has been
23 looking for a similar site to mine and
24 he wants to locate it within 45 miles of
25 Toronto International Airport. I have



1

helped him look for a site and there is
nothing available in that area. We have
searched from the air and from the
ground. To re-establish myself in this
business somewhere else, I would have to
move at least 50 miles from where we are
now.

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Q. Is there a particular size of
property you require for your business?

10

11

A. I would need a minimum of 50 acres.

12

Q. Why is that?

13

A. To lay down the two runways, you
need the 50 acres.

14

15

Q. Why is it important for you to be
close to the airport, the international
airport?

17

18

A. My source of supply there for
materials and so on at Toronto
International or nearby there."

19

20

21

And then over the page on line 19, 23670, I asked the
question:

22

23

"Q. As far as relocating your business,
Mr. Martin, have you made any
investigations about being able to
locate in any other places, for example

24

25



1 at other airports?
2

3 A. Yes, I have. I contacted the
4 manager of the Brampton airport, and
5 Brampton airport is a private airport
6 owned by the Brampton Flying Club. They
7 said they would not, it would not be
8 agreeable to me establishing a business
9 there as it is a non-profit organization
10 there, so I could not move my business
11 there. I contacted Mr. Kovachek at the
12 Burlington Airport and he wasn't
13 agreeable to moving the business there.
14 I spoke to people at Guelph, I wasn't
15 able to see the owner, he was in
16 Florida, down south, but I spoke to the
17 other people running it and the problem
18 there is there is no room available and
19 they have run out of room for any other
20 buildings. There is no rental space
21 available. To re-establish my business
22 I would have to find another site
23 similar to what I have now.

24 Q. What would be involved in
25 relocating and setting up the kind of
situation that you have presently set



1 up?

2
3 A. For me it would be a horrendous
4 job. I have all my machinery, equipment
5 there. Piles of spare parts up in the
6 attics of both buildings and the attic
7 of the garage. It would be very
8 upsetting. I just couldn't continue on
9 in business while I was moving or
10 anything like that.

11 Q. Can you tell me, Mr. Martin, I
12 would like you to assume for the moment
13 that all of the financial concerns with
14 respect to relocating would be resolved?

15 A. Yes. I think if we had to go the
16 Region would probably be fair with us,
17 but it is not a matter of money, it is
18 just the total upheaval of our lives. I
19 have two brothers and a sister who live
20 in this area, a lot of nieces and
21 nephews and my life-long friends all
22 live in the nearby area."

23 And then I turned to Mrs. Martin and say:

24 "Q. Mrs. Martin, I understand you grew
25 up in the Region of Halton?

A. Yes, I was born and raised on a



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farm in Halton and I really enjoy the country. I have just lived all my life in the vicinity.

Q. Do you have family and friends in the area?

A. Yes, I do. Some of my relatives are not living around this immediate area now, my brother's up north, my sister is over in Goderich."

And then I asked her:

"Q. Can you explain for the Board what it would mean for you personally if you were forced out of your home?

A. Well, I do enjoy it there and I have beautiful scenery all around and I do enjoy watching the wildlife. I have a beautiful view over the escarpment. I don't know, I just enjoy country living. I don't want to go to a subdivision or an apartment, I just don't like that type of living. It would be a terrible disaster for us to have to get out of there. It would be hard to find another place to match what we have got there now.



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Q. Did you raise your family in that house?

A. Yes, and that's another thing. We have spent the better part of our lives together there, raising our two boys. You know, it has got very pleasant, fond memories for us because we worked hard there. We didn't hire too much help, we did a lot of the work ourselves. Wat was a carpenter some years ago, so a good deal of the work we did on the property we have done ourselves."

Skipping over to 23675, Mr. Chairman, at line 5 I asked Mr. Martin to summarize:

"Q. I wonder, Mr. Martin if you could summarize for us to just indicate to the Board what you have been going through for the last number of years and what the location of the landfill at Site D would mean for you for the future?

A. We have been under a lot of strain for quite a number of years now. Halton region started looking in that area for a site, it must be probably twelve years ago, I couldn't say exactly. We were



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involved in that for quite a number of years. We called it the old Site F, it was at Britannia Road and Tremaine Road. It was a bit of a worry to us. That went on for a number of years before it was dropped. The next thing we knew, the OWMC came in and they picked eight sites in the province. One site included our property. We had quite a concern there for a year or so, and a lot of meetings and fund raising and one thing and another to fight that. In the meantime this latest thing came up, possibly, I forget, three years ago and it has been quite a concern. It is not so much the concern as the uncertainty. We don't know how long we will be there or whether we will have to go or whether we will stay there. Over a period of time it really gets you down; it is a strain.

Q. What would it mean for the future of your business if you had to move?

A. It would be very difficult. I don't know whether I could start up



1 again or not. I want to, I would hope
2 to, but it would be very difficult. I
3 wouldn't be happy sitting around doing
4 nothing. The thing I want to do most is
5 what I am doing now. I started working
6 when I was 14 years old and I have
7 worked hard all my life to get to this
8 position I am in now. I think it would
9 be a shame to lose it."

10
11 Skipping over to page 23679 where I ask at the bottom
12 of the page at line 24 -- I am sorry, this is
13 Mr. Lancaster asking Mr. Martin:

14 "Anything else you would like to say,
15 Mr. Martin?"

16 And Mr. Martin says:

17 "I would just like to emphasize we are
18 very settled there. We had expected to
19 be there for the rest of our lives which
20 hopefully will be a few years more. It
21 would be very upsetting to have to move.
22 It is not as if we lived in a
23 subdivision and were just moving to
24 another house; it's a different
25 situation altogether. We would be
completely uprooted and life would never



1 be the same I don't think for us."

2 Mr. Chairman, in this situation I think it is clear
3 that we have two aspects to the dislocation of
4 Mr. and Mrs. Martin; not only the personal disruption
5 that people who are long-time residents of the property
6 and a home would understandably face, but there is also
7 a substantial business disruption here.

8 This has significance not only for
9 Mr. and Mrs. Martin in terms of their financial
10 viability for the next number of years, but also, in my
11 submission, it has some larger significance for the
12 antique aircraft community of Canada.

13 The significance of Mr. Martin's antique
14 aircraft restoration and repair business was emphasized
15 not only by the letter from the National Aviation
16 Museum, but also by three subsequent witnesses who I
17 called, the first being Captain Douglas Anderson who
18 you may recall owns a 1937 Stinson Reliant and in his
19 words it takes specialized treatment to look after it.
20 In his evidence he probably could only get this kind of
21 work done in the United States if he didn't have Mr.
22 Martin to do it for him. His letter is filed as
23 Exhibit 551, and he says at page 23681 starting at line
24 18:
25

"If he wasn't available in the area, I



1 don't know where I would get my work
2 done. I have been in aviation for
3 something like forty-five years or so.
4 I am an aeronautical engineer, but that
5 doesn't encompass the work. I am (an)
6 airline pilot with Air Canada. I don't
7 have any expertise in looking after an
8 airplane of this type. I am trying to
9 learn and I've learned an awful lot from
10 Mr. Martin. He is the only one, in my
11 view, that can do this work. I feel
12 very strongly that if he was moved out
13 of the area, it would be such a long
14 time for him to get re-established, that
15 I probably would have to take my
16 airplane to the United States to have
17 the work done. There would be
18 complications as far as licencing goes,
19 it is a different administration."
20

21 This evidence was also emphasized by Mr. Walter Davies,
22 and he testified starting at page 23683 and he said he
23 is a client of Mr. Martin and has been for a long time,
24 in excess of 10 or 12 years, and I asked him at that
25 page:

"Q. Why is it that you are involved



1

with Mr. Martin's business?

2

3

A. Mr. Martin carries on a business

4

which is very, very specialized. I

5

happen to be the owner of some antique

6

aircraft.

7

Q. What aircraft do you own?

8

A. I own a Stomp, which is a Belgian

9

aircraft. It is quite unusual and I own

10

a J-4, which is another antique American

11

aircraft and I also from time to time

12

have other aircraft at my place."

13

He lives close to Alliston and I asked him:

14

"Q. What does Mr. Martin do for you?

15

A. Well, he is the source of many

16

things. His whole operation is geared

17

towards maintenance and restoration of

18

antique aircraft. Over the years he has

19

specialized in this type of work. There

20

is in Canada really nobody who could

21

actually do the type of work he does.

22

He has facilities there which are

23

unusual as well. He has to work on

24

restoring and repairing these old

25

aircraft and not only wood and metal, he

works on the engines as well. His



1 building encompasses not only a hanger
2 area where he basically works, he has
3 his paint shop, a very specialized area
4 of the building, it has to be properly
5 ventilated and he has an engine shop,
6 which is spotlessly clean where engine
7 work is carried out. He has his
8 woodworking shop where woodworking is
9 done and as you can all appreciate, it
10 is very dusty. All of these areas have
11 to be separate. I have watched over the
12 years and he has slowly built those
13 various areas within his building and
14 they are all unique and almost mandatory
15 for the type of work he does. Obviously
16 to replace a building like this is just
17 about impossible. It is built up over a
18 series, a number of years of personal
19 work.
20

21 Q. What is Mr. Martin's reputation in
22 the antique aircraft community?

23 A. It is absolutely tops. He is
24 recognized throughout Canada and I might
25 say throughout North America.

Q. If Mr. Martin's facility wasn't



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available for you and other people in your position, where would you get this kind of work done?

A. I think it is obvious to most people that at the moment we don't really know."

The evidence was also confirmed by Mr. Les Hems, H-e-m-s, who gave his evidence starting at page 23685 and Mr. Hems also indicates he is an owner of an antique aircraft, a co-owner of a DeHaviland Tiger Moth built in 1942, and he says at page 686 that he has known Mr. Martin probably well over ten years, had a slightly closer relationship within the last eight years since the acquisition of the Tiger Moth a few years ago and is quite close now:

"Q. What does Mr. Martin do for you?

A. These aircraft require, besides major work, they require an annual licence renewal, which Mr. Martin has been doing for us.

Q. Is Mr. Martin licensed to do those?

A. Yes, he is.

Q. Does that mean you take your aircraft to him each year?

A. That is correct.



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Q. Can you describe how important it is to you that Mr. Martin's operation continues?

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A. Well, as Mr. Davies stated just before me, right now I don't know where else we could take these particular airplane types and have the work done at all. If someone else were to do it, I don't know how comfortable I would feel about it because of the expertise and the knowledge that Mr. Martin has. It is something that can only be gained by experience. You can't read about it out of books and go ahead and do it, you have to have the experience with these old airplanes."

18

19

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22

Mr. Chairman and Dr. Kingham, it is my submission that there would be very grave consequences, not only for Mr. and Mrs. Martin, but for the antique aircraft community in Canada for you to decide that they need to be expropriated.

23

24

25

Now, there are other people on-site who would also be expropriated from their homes and properties if you decide to approve Site D and I intend to review their situations with you.



1 the elected representatives of the community. The
2 alternative site is considered by the Ontario Ministry
3 of the Environment to be acceptable under the
4 Environmental Protection Act and under the
5 Environmental Assessment Act.
6

7 Mr. Tidball's submissions in paragraph
8 13 and paragraph 47 make it very clear that it is the
9 Ministry's position that the alternative Site F is
10 approveable under both of those pieces of legislation
11 and that a Certificate of Approval can be issued for
12 Site F in the normal course. There is, in my
13 submission, in light of all of this evidence and in
14 light of the positions that I have just reviewed with
15 you, no fair, sound and necessary reason why
16 Mr. and Mrs. Martin and my other clients on-site must
17 be put out of their homes. I will now be asking you as
18 I review the rest of the evidence this afternoon and
19 tomorrow to keep that question foremost in your mind
20 when you consider the various advantages and dis-
21 advantages of the site.

22 It is my submission to you as you
23 reflect on the evidence before you in this case and
24 write your decision, you should be asking yourself that
25 question; what is it, is there any reason that it is
necessary to expropriate these people that Site F



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he has in the way of buildings or other investments related to that business?

A. No, sir, I don't.

Q. Have you ever visited his business?

A. No.

Q. Do you have any understanding of what particular difficulties he may have in relocating that type of business?

A. No, sir, I don't.

Q. That is not something you took into account to date in giving your opinion?

A. No."

Mr. Chairman, in my submission Mr. Walker gave Regional Council and this Board his opinion regarding the degree of preference that existed between these two sites with very little understanding of the extent and nature of Mr. Martin's operation. According to his evidence he had no understanding at the time of the buildings or investments Mr. Martin had on his property, and no understanding of the particular difficulties Mr. Martin might face if forced to relocate. That is not something, according to Mr. Walker's evidence, that he took into account in making his recommendations.

It is in my submission something that this Board should give considerable weight to in making



1 its decision. It would be in my submission an
2 unacceptable social impact when Site F is available and
3 suitable.

4 Let me briefly review with you the
5 evidence give to you by my other on-site clients.
6 Before you on the easel are two other panels of
7 photographs, Exhibits MR-552 and MR-555. With the
8 exception of the top half of MR-555, the other
9 photographs relate to my on-site clients. The bottom
10 half of 555 shows the Tomosky residence, the residence
11 that Mrs. Tomosky in her evidence spoke so passionately
12 about in her review of their work that they had put
13 into the home. That series of photographs also shows
14 the back of the house, the windows that would overlook
15 Site D and two views at the very bottom of that exhibit
16 that the Tomosky's presently have from their home
17 looking out across the flat farmlands towards the
18 Niagara Escarpment. That would be eliminated by a
19 landfill at Site D.

20 Exhibit 552, the top four photographs
21 relate to the new home that was recently being
22 constructed by Tom and Mary Jean Martin and I will be
23 reviewing their evidence with you shortly and the
24 bottom four photographs on the exhibit show the century
25 farmhouse which formerly belonged to the Ford farm and



1 which is now the home of Michael and Cindy Reed and
2 their business.

3 Mr. and Mrs. Reed testified with their
4 young son Lucas and their evidence is found in volume
5 99 at page 23668. They own one and a quarter acres
6 containing the old Ford farmhouse which is a century
7 farmhouse and identified by the Region as being a
8 heritage structure. They bought that property in
9 December of 1985 and moved in in March of 1986, just
10 after the conclusion of the Stage 2C work of the Region
11 that had identified Site F as the preferred site for
12 the next landfill.

13 In Mrs. Reed's words, starting at page
14 23689, I asked her starting at line 4:

15 "Q. What was the extent of your
16 knowledge at the time that you bought
17 that property about the proposal that is
18 being discussed at this hearing?

19 A. Not very much. The only thing, our
20 understanding was that with the little
21 bit of information that we had heard by
22 way of the paper or neighbours or
23 whatever it was, that the site was going
24 to Burlington, that Burlington was
25 chosen as the best site. That, we



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thought, was the end of it. We don't usually read the paper and we don't watch any TV, so we weren't aware of anything. That was the end of that and we thought that we were safe."

I then asked her about the particular reasons why they brought this property and her answer:

"A. There were a lot of reasons; one of the reasons was it was close to town and that is very important for my business, clients, they will only drive so far and we needed more space because of all my dogs and my show dogs. We wanted to, we had been saving all our lives since we first got married and had been working quite hard all our lives, so that we could afford to buy a century home, that was very important to us, that it be a century home, over a hundred years old. It had to be a home that wasn't modernized to a point, that hadn't been through ten families that had all done their own thing to it. We wanted to restore it to its natural state and we wanted to put that kind of time and



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effort into it. We wanted the house to display some of our antiques that we have collected along the years."

In my submission, Mr. Chairman, a review of Mrs. Reed's evidence reveals someone who cares very deeply about this house, that she and her husband are carefully restoring I would like to read two passages starting at page 23691 at the beginning of the page:

"Q. When you say this, Mrs. Reed, you have to identify the photograph so that when we read the transcript it will make some sense to us?

A. In the bottom corner..."

and she is referring to Exhibit MR-552:

"...that is a picture of our house, looking at it from the south end. It is not shown on this picture, the shutters, there are shutters for every single window including the top window, where the coloured glass is, but they have all been taken down, they are all presently being stripped, the paint has been stripped off, they have been taken apart and put back together, one by one. My husband is doing that. They will be put



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back up in the spring. Another thing that is evident around each window, you can only see it if you come up close. Each window has been, the paint has been stripped off by hand around the outside. They have all be (sic) recaulked. That took ninety one-pound bags of putty. The painting, that has all been done and because of the time of year, the flowers are not evident in the garden and there are flowers in that garden that cannot be gotten today. I have had people stop on the road and ask if they could have some because they can't get them. Mrs. Ford, who was the previous owner, was a horticulturalist and a lot of the flowers that she got for this property were certain strains and prize-winning species and kinds she had got from the different auctions, flower auctions and shows. The top picture --

Q. The top left?

A. The top picture, that is a picture of the front of our house looking from the east. Because of the winter door on



1 the front door here, you cannot see the
2 ruby glass and the cobalt blue glass
3 which is also in the door itself. That
4 is the original glass. Upstairs is the
5 green and yellow-coloured glass and it
6 is textured. It is not evident here but
7 it is textured glass. That is something
8 that we felt was very special about our
9 house. This funny looking piece of
10 equipment in the front here is a natural
11 antique, I guess it is a plough of some
12 sort that they used to use in the days
13 when they had to use cattle or horses to
14 do the fields. That is what they used
15 and that is what is out front there.
16 The whole property has been fenced
17 except for this one side, which we had
18 intended to do this spring. We fenced
19 that all ourselves. The roof, it is a
20 new roof on there. We have replaced the
21 roof, any parts that needed doing."

22 and so on.

23
24 Now, the second passage I would like to
25 read to you starts at page 694, line 6 and Mrs. Reed is
describing the picture showing the interior of their



1 home, and it is not on this panel, but a separate
2 exhibit, Exhibit MR-553:

3 "That picture, that room that you see in
4 the picture, it is approximately 400
5 square feet altogether. All the wood,
6 it doesn't show all the wood, it shows
7 part of the wood that we have stripped
8 off by hand ourselves and we have worked
9 on that every day since we moved in. We
10 have restored it to the natural wood
11 grain and that includes both sides of
12 the doors, the wainscotting going all
13 the way around the room and there are
14 beams running across the top of the
15 ceiling that are all hand hewn. It
16 doesn't show the cabinets and what is
17 not evident is I also have done
18 stencilling around the perimeter of the
19 room, all the edges, and that has all
20 been done by hand. I have a picture of
21 the completion. This room, as you can
22 see, it is only half done, but I have a
23 picture of it now that it is completely
24 finished, if you would like to see it."

25
Mr. and Mrs. Reed care deeply about this house and have



1 put a lot of personal effort and work into it since
2 they have acquired it. It is a heritage structure and
3 worthy of that kind of attention and, in my submission,
4 it will best remain in their hands, but the Region's
5 proposal, while it would not knock down this house, it
6 is to use this house as part as the works office or
7 some other related use for the landfill site, and it is
8 my submission that that would lead simply to a
9 deterioration of this house over time.
10

11 Mrs. Reed also runs a dog grooming and
12 breeding business and she indicated she deals with
13 approximately four to ten dogs a day and that this
14 location is important to her business. She says at
15 page 695, line 12:

16 "The location is critical because people
17 do have to drive. In the wintertime it
18 is particularly important. Nobody wants
19 to drive a way out to the boonies in the
20 middle of nowhere to get their dogs
21 groomed, so I had to have a location
22 that was large enough for our personal
23 purposes but was not too far away from
24 town for people to come and have their
25 animals groomed. We are four minutes
from town now."



1 She talks about the impact it would have on her
2 business if she had to move her business following on
3 that page and she says near the bottom:

4 "We are only a few minutes from the QEW
5 and 401 I do have clients that come in
6 from all surrounding areas. It is just,
7 it is very, very important when I did
8 move, I did lose some of my clients and
9 it took me a good year to build up that
10 clientele back to normal again because I
11 had to lose some from moving just four
12 minutes out of town. I would hate to
13 think what would happen if I had to go
14 somewhere else. I probably could lose
15 my business and I have been working now
16 on that business for six years
17 altogether and it has been very
18 successful for me."

19 You will recall, Mr. Chairman and Dr. Kingham, Mrs.
20 Reed's dogs have been very successful in shows
21 throughout North America and she talks about that at
22 some considerable length in her evidence. She had the
23 top champion Brussels Griffon dog in North America and
24 she displayed photograph albums of her dogs' awards and
25 ribbons over the years with considerable pride.



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Plains Road. Cindy grew up at 1043
Maplehurst Avenue. I lived here for
eighteen years. Cindy grew up on
Maplehurst Avenue just a block from
where I grew up. For two years we lived
in the apartments that were talked about
over here in Harvard Square on the 11th
floor. We had what would be a view, we
were on the side that had a clear view
of the dump, which was not visible
really to the naked eye. If you had
binoculars you could make it out, but we
lived there for two years.

Q. What two years was that?

A. '78 to 80.

Q. You also have relatives who live in
the area now?

A. Yes, we do. Cindy's grandmother
lives at 513 Enfield, which is
approximately right around here, just
south of the train tracks. She would be
one of the closest people to the dump.

Q. Have you been to that property?

A. Oh yes, quite often.

Q. What is your view of the visibility



1
2 Now, Mrs. Reed concludes her evidence
3 with a statement at page 23706, where I asked her at
4 line 13:

5 "Q. I wonder if you could just conclude
6 by telling the Board what it would mean
7 to you in terms of personally and to
8 your businesses to be forced to move
9 from this location?

10 (MRS. REED:) A. It would be a
11 disaster. When you say, work towards a
12 goal all your life and you made certain
13 sacrifices as young people, we were
14 married at 16 and 18. Where we are
15 living now, that is our dream place, so
16 what can I say, it would be the worst
17 thing.

18 Q. Mr. Reed, do you have anything to
19 add?

20 MR. REED: A. My feelings are the same
21 as Cindy's. We worked very hard on this
22 place and we put our heart and an awful
23 lot of hard work into this house. We
24 have sacrificed an awful lot whereas our
25 friends were going to parties and that
when we were like 20 years old, we were



1 working towards our future and we are
2 much further ahead of them now after
3 doing these things. It is very
4 difficult to think of giving this all
5 up. As for Lucas too, he is quite happy
6 where we live, he enjoys country life
7 and he gets picked up right at the front
8 door by the school bus and it is just
9 great, you know. We have good
10 neighbours and we are very satisfied
11 where we are. We have friends in the
12 city of Milton and all around us. That
13 is just the way it is."
14

15 I asked Mr. Walker his understanding of the nature of
16 the operations that Mrs. Reed carried on at this
17 property, and this is again in volume 61 at page 14231,
18 starting at line 15:

19 "Q. ...you also didn't indicate at this
20 stage, although I understand you do now
21 understand that there is also a business
22 being carried out by Mrs. Reed in the
23 house that has been known as the Ford
24 farm?

25 A. Yes, down in this part
(indicating).



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Q. The lot toward the bottom?

A. The lower left-hand or southwest corner of the candidate site.

Q. And Mr. and Mrs. Reed live in what is now a century home?

A. That is correct.

Q. Have you any understanding of the nature of the business carried out on that property?

A. I believe it is an antique business. If you want it precisely, I can get it as I have it.

Q. That's fine but I just wanted to get some appreciation of your understanding of the activities on-site. Are you aware that there is a dog breeding and dog grooming business being carried out there?

A. Yes, just to the north of there.

Q. To the north?

A. It's to the north of the Reed farm, I think.

Q. Mr. Walker, it is in fact the Reed business, if you will permit me. You are aware there is a dog grooming and



1 breeding business on-site?

2 A. Yes.

3 Q. Have you any understanding of what
4 particular difficulties may be
5 associated with the relocation of that
6 kind of business?

7 A. No, I don't.

8 Q. That would be something you haven't
9 taken into account in giving your
10 opinion so far?

11 A. That is correct."

12 In my submission, Mr. Chairman, again that is something
13 that this Board should give consideration to. In my
14 submission the particular circumstances of the people
15 on-site are matters that are of relevance in
16 determining the impacts that they will experience. Mr.
17 Walker, in my submission, did not have a complete
18 understanding, certainly not as complete an
19 understanding as you have about those special impacts
20 and he didn't take that into account in giving his
21 opinion about the degree of preference that exists
22 between these two sites. It is my submission that the
23 Board certainly should, and for those reasons, find
24 that the degree of preference between these two sites
25 is greater than that found by Mr. Walker.



1 Mr. and Mrs. Tomosky have 28-1/2 acres
2 rented for agricultural purposes by Mr. and Mrs. Gilles
3 who farm across the road. They have lived there for 20
4 years, since 1968, and their house was built in 1837.
5 Mr. and Mrs. Tomosky bought their home as a retirement
6 home and Mrs. Tomosky in her evidence described how
7 they painstakingly restored it to its present
8 condition. Mrs. Gilles, you may recall in her
9 evidence, described the terrible state of rundown
10 condition that that home was in prior to the
11 Tomosky's buying it. I think she talked about blood on
12 the walls and motorcycle gangs who had lived in it. I
13 think there was something in the order of one dozen
14 different residents over the course of a few years.

15 Mr. and Mrs. Tomosky painstakingly
16 restored that home to its former splendour.
17 Mrs. Tomosky described it in her evidence in some
18 considerable detail, some of the special features of
19 the home which they personally restored and which meant
20 a considerable amount to her. This was originally the
21 home of the first Sheriff of Halton County and they
22 described what it would mean to them if a landfill went
23 to Site D starting at page 23728, and this is again in
24 volume 99, starting at line 9, I asked Mrs. Tomosky, or
25 both of them:



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"Q. I wonder Mr. and Mrs. Tomosky, if you can describe what it would mean to your life if the landfill is put at Site D? What your concerns would be?

MRS. TOMOSKY: A. Well, Walt is 70 and I turned 65 this year. This is what we worked for and as Walter said, we both grew up in Toronto and our dream was to have an old house and live in the country and have a few animals. I don't aspire much in life, only to live there, that's all I wanted. We talked about houses, the houses on Highway 25 and our area are not houses, they are homes. If you live in a subdivision and someone tells you you have to move, you can go two streets over and buy a house almost similar to the one that you've sold. If we leave this property, there isn't another one like it."

Over at page 23729 starting at about line 13, I say:

"Q. If the landfill is placed behind your property, would you want to stay there?

A. We couldn't stay there. We



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wouldn't be able to drink the water.

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You couldn't sit outside because of the
smell and the vermin and we have, we do

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have some geese that are pets and some

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ducks. Then we would have to put out

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poison for the vermin and that would

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probably kill our pets. So, it would be
impossible to live there.

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Q. Mr. Tomosky, do you have anything

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to add in terms of the things that would
be undesirable?

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MR. TOMOSKY: A. Outside of the fact

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that I couldn't live anywhere else, I

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mean we did move from Toronto for the

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express purpose of living out our lives

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here. We spent all our time and energy

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working on this house. If we have to

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move, where would we go? How would we

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get a place like this somewhere else

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with all the access, the highways and

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the roads and everything, all the

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conveniences we have right there. You

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just can't move it.

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Q. Why would you find it difficult to

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stay there if the landfill was behind



1 the property?

2 A. Well, there would be a large change
3 in the environment first of all. The
4 noise, whatever would happen with the
5 landfill, the paper, the water, and
6 well, we would have a difficult time
7 living there."
8

9 Mr. Chairman, I think it is clear from Mr. and Mrs.
10 Tomosky's evidence that they do not want to move and
11 neither do they want to stay if the landfill is placed
12 behind them. Their view of the escarpment would be
13 obliterated and their property is very flat and has
14 unobstructed views at present.

15 Mr. Chairman and Dr. Kingham,
16 Mrs. Tomosky is not well and I have not sought specific
17 instructions from them regarding their preference if
18 you decide that Site D must be approved. I have not
19 sought specific instructions on whether they want to be
20 totally expropriated or partially expropriated. Every
21 time I raise that question, or have done so in the past
22 with Mrs. Tomosky, she couldn't give me an answer. I
23 think it is fair to say that they find both prospects
24 equally distressing. They have worked for 20 years to
25 make their home there and they want to live out their
lives there. They don't want to do so downgradient



1 from a landfill site.

2
3 Mr. Chairman, you and Dr. Kingham, if
4 you determine it is necessary to put a landfill at Site
5 D, I am asking you that they be given the choice to
6 decide whether the taking should be partial or total at
7 a later point in time and, more importantly,
8 Mr. Chairman and Dr. Kingham, I am asking you to find
9 that there is no reason why Mr. and Mrs. Tomosky need
10 be forced to make such a decision. I ask you to
11 conclude there is no public interest reason why their
12 lives should be so disrupted and no good reason to
13 force them to such a choice.

14 Mr. and Mrs. Thomas Martin live beside
15 the Reed home and the photo on Exhibit 552 is of their
16 home. They moved there in November of 1987 and bought
17 the property in August of 1986 and they described the
18 extent of their knowledge and understanding as follows.

19 Mr. Chairman, if I could just finish
20 with these witnesses then we could break with your
21 permission?

22 MR. LANCASTER: Certainly.

23 MR. GARROD: Starting at line 8 of page
24 734:

25 "Q. Can you explain the extent of your
knowledge and understanding about the



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proposed landfill site at the time that you made your purchase?

A. We have been in Milton, Mary Jean's parents have lived in Milton and I lived in Burlington previous to that. Mary Jean's parents are still farming over in Georgetown. I have lived half my life in the Milton area. I think hearsay about the dumps has been around for a long time. If you live in the area, you had to hear something about it. I did know there was something proposed for the area. We discussed this at length before we put the offer in for the property. We also knew through some of the media -- I don't remember the paper exactly -- but on the front of this paper, Burlington, the site had been chosen as the proposed site. It was on that premise we discussed our option of building the home there, or whether to look elsewhere. We did look elsewhere for a number of years and came down to this as being ideal for us, location-wise and landscaping. I have a business



1 in Milton, a family business we've run
2 for the last eleven years. Its
3 proximity for me is of more concern
4 because we start at 6:00 in the morning
5 and finish at 9:00 at night. Mary Jean
6 is a nurse in the Toronto General
7 Hospital in the labour and delivery
8 ward. The location played a big part in
9 this as well."

10 They have built a very substantial home and have put a
11 lot of themselves into it. You may recall their
12 evidence where they talked at great detail about the
13 work that has been put into this home. They have roots
14 in the community and they want to stay there.

15 Mrs. Martin expressed her feelings in this regard at
16 page 23739 at lines 12 to 21:

17 "Q. What does it mean to you,
18 Mrs. Martin?

19 MRS. MARTIN: A. We have been together
20 ten years, and we have worked hard for
21 what we have. We saved for a long time
22 before we decided that we wanted to
23 build our dream home. Everything that
24 both of us individually ever wanted in a
25 home we banded together, collected



1 pictures for ideas, thoughts and dreams
2 down on paper and had somebody design
3 them for us. That is what we've done.
4 We don't want to lose it."
5

6 Mr. and Mrs. Martin are in a different situation, Mr.
7 Chairman and Dr. Kingham, in the sense that they built
8 their house while this hearing continued. Mr. Martin
9 explained their decision and feelings as follows at
10 page 23744, starting at line 7 to 22 where in response
11 to a question from you, Dr. Kingham, where you asked:

12 "DR. KINGHAM: You knew the property you
13 were interested in at that time or you
14 planned to make a substantial investment
15 in, was one of the other sites that was
16 very seriously considered?

17 MR. MARTIN: Again we looked at a lot of
18 other properties that really didn't get
19 us in the area. I talked to a real
20 estate agent and there is no land
21 available in the Milton area right now,
22 because it has been bought up by so many
23 people. We spoke a long time before we
24 started building. The biggest thing
25 again, I felt, was to look at a site
that was already in operation versus a



1 site that had people and homes and
2 already had the roots. I did not feel
3 that it was against us to go and put
4 that kind of money in that property,
5 judging by how many people had invested
6 their lives in that area. The gut
7 feeling is what I went on."

8
9 Mr. Chairman, if there was a necessary reason in the
10 public interest why Mr. and Mrs. Thomas and Mary Jean
11 Martin should have their home expropriated from them, I
12 suppose it could be argued that they gambled and they
13 lost, but the fact is that they live there, it is their
14 home, they put a lot into designing it and building it.
15 They put their hearts and souls into a building that is
16 in a community that means a lot to them. They don't
17 want to lose it. In my submission, Mr. Chairman, there
18 is no good reason in the public interest why it should
19 be necessary that they do.

20 I think this would be a convenient place
21 to break as I am about to turn to reviewing the
22 evidence of the people in closest proximity to Site D
23 and I expect I will finish my argument prior to lunch
24 tomorrow, although unfortunately I have obviously
25 underestimated the length of time it would take.

DR. KINGHAM: Were you representing



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Mr. and Mrs. Thomas Martin since the beginning of the hearing?

MR. GARROD: I was.

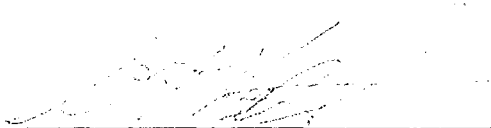
DR. KINGHAM: And before the beginning of this hearing?

MR. GARROD: I would have to check the date of my retainer. They were the last on-site clients who retained me and to my recollection it was right around the beginning of the hearing that I was retained. I could check the date.

DR. KINGHAM: That's all right.

MR. LANCASTER: We will adjourn until 9:30 tomorrow morning.
---Adjournment at 4:37 p.m.

CERTIFIED CORRECT:


C. F. Nethercut, C.V.R.

(Page 45850 follows)