

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PROTECT WEST CHICAGO, )

Petitioner, )

v. )

CITY OF WEST CHICAGO, WEST )

CHICAGO CITY COUNCIL, and )

LAKESHORE RECYCLING SYSTEMS, )

LLC, )

Respondents )

PEOPLE OPPOSING DUPAGE )

ENVIRONMENTAL RACISM, )

Petitioner, )

v. )

CITY OF WEST CHICAGO and )

LAKESHORE RECYCLING SYSTEMS, )

Respondents. )

PCB No: 2023-107  
(Pollution Control Facility Siting Appeal)

PCB No: 2023-109  
(Third-Party Pollution Control Facility  
Siting Appeal)

**NOTICE OF FILING**

To: **See Attached Service List**

PLEASE TAKE NOTICE that on September 14, 2023, Protect West Chicago electronically filed with the Illinois Pollution Control Board, 60 E. Van Buren Street, Suite 630, Chicago, IL 60605, an original of the attached: **Notice of Supplemental Information Provided to the Office of Illinois Attorney General's Public Access Counselor**, copies of which are attached and served upon you.

Dated: September 14, 2023

Respectfully Submitted,



\_\_\_\_\_  
Ricardo Meza  
Attorney for Protect West Chicago

Ricardo Meza  
Meza Law  
542 S. Dearborn, 10<sup>th</sup> Floor  
Chicago, IL 60605  
(312) 802-0336  
[rmeza@meza.law](mailto:rmeza@meza.law)

**CERTIFICATE OF SERVICE**

I, Ricardo Meza, an attorney, certify that I have served the attached: **Notice of Supplemental Information Provided to the Office of Illinois Attorney General's Public Access Counselor**, on the below-named parties (Service List) by delivering the document to them via electronic mail on September 14, 2023 and via the PCB's Clerk's Office electronic filing system.



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Ricardo Meza

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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PROTECT WEST CHICAGO,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB No: <u>2023-107</u>
	)	(Pollution Control Facility Siting Appeal)
	)	
CITY OF WEST CHICAGO, WEST	)	
CHICAGO CITY COUNCIL, and	)	
LAKESHORE RECYCLING SYSTEMS,	)	
LLC,	)	
Respondents	)	
	)	
-----	)	
PEOPLE OPPOSING DUPAGE	)	
ENVIRONMENTAL RACISM,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB No: <u>2023-109</u>
	)	(Third-Party Pollution Control Facility
CITY OF WEST CHICAGO and	)	Siting Appeal)
LAKESHORE RECYCLING SYSTEMS,	)	
	)	
Respondents.	)	

**PROTECT WEST CHICAGO’S NOTICE OF SUPPLEMENTAL  
INFORMATION PROVIDED TO THE OFFICE OF ILLINOIS  
ATTORNEY GENERAL’S PUBLIC ACCESS COUNSELOR**

NOW COMES the Petitioner, Protect West Chicago, (“PWC”), by and through its attorneys, Meza Law, and submits its Notice of Supplemental Information Provided to the Office of Illinois Attorney General’s Public Access Counselor, and states as follows:

- 1) In discovery in this matter, PWC sought to obtain copies of proceedings that occurred in closed session before the City of West Chicago on February 27, 2023.
- 2) On June 12, 2023, the Illinois Pollution Control ruled that “while PWC may have an argument regarding the conduct and content of the closed meeting, this is not the forum for that

argument. The provisions of OMA are enforceable through the circuit court and the Public Access Counselor (5 ILCS 120/3, 3.5 (2022)).”

3) In light of the June 12, 2023 ruling, on July 7, 2023, PWC sought review by the Illinois Attorney General’s Public Access Counselor of potential Open Meetings Violations by the City of West Chicago and the City of West Chicago’s City Council, a copy of which has been previously produced to all counsel and to the Illinois Pollution Control Board.

4) On September 14, 2023, PWC provided the Illinois Attorney General’s Public Access Counselor additional information and documents to consider as part of PWC’s initial Public Access Counselor request, a copy of which is attached hereto as **Exhibit A**.

5) As set forth in **Exhibit A**, PWC also informed the Illinois Attorney General’s Public Access Counselor that a public hearing on this matter has been scheduled for September 28, 2023 and respectfully requested a determination by that date.

Dated: September 14, 2023

Respectfully Submitted,



Ricardo Meza  
Attorney for Protect West Chicago

Ricardo Meza  
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542 S. Dearborn, 10<sup>th</sup> Floor  
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(312) 802-0336  
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# Exhibit A



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Chicago, IL 60605  
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[www.meza.law](http://www.meza.law)

Via Electronic Mail

September 14, 2023

Ricardo Meza\*  
[rmeza@meza.law](mailto:rmeza@meza.law)

\*Licensed in Illinois & Texas

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Public Access Bureau  
Office of the Attorney General  
500 South Second Street  
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**Re: Supplemental Information - West Chicago Open Meetings Act Violation**

Dear Ms. Dunham:

On behalf of Protect West Chicago, I wanted to provide the Office of Illinois Attorney General additional information (facts) relating to our July 7, 2023 request for a Public Access Counselor Opinion. In our prior request, we provided facts we believe support the conclusion that the City of West Chicago was not authorized to proceed to closed session on February 27, 2023 under any exception set forth in the Open Meetings Act, including in 5 ILCS 120/2 (C)(4), which states as follows:

*Evidence or testimony presented in open hearing or in closed hearing where specifically authorized by law, to a quasi-adjudicative body, as defined in this Act, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning. 5 ILCS 120/2 (C) (4).*

As set forth in our prior Public Access Counselor request, the official minutes of the West Chicago City Council meeting held on February 28, 2023, at 6:00 p.m. reveal that two Alderman objected to Lakeshore Recycling's application for a waste transfer station.<sup>1</sup> Yet, despite this fact, the final West Chicago Ordinance approving the Waste Transfer Station Application, which was approved less than five minutes later, made no mention of their comments or determinative reasoning. **See Exhibit 2.**

After PWC submitted its initial Public Access Counselor Request, we received additional documents and also received the transcript of the deposition of West Chicago Mayor Ruben Pineda and the transcript of West Chicago Alderman Lori Chassee. We would respectfully ask the Illinois Attorney General to consider the following additional three documents in relation to our request

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<sup>1</sup> "Alderman Beifuss stated that the applicant has not met criteria #1, 2 or 8," and "Alderman Garling expressed that he feels that Criteria #1 and 3 have not been met." See Official West Chicago City Council Minutes of February 27 and 28, 2023. **See Exhibit 1.**

for an opinion, the attached document labeled at PWC-806; the deposition transcript of Mayor Pineda; and, the deposition transcript of West Chicago Alderman Lori Chassee.

We believe the above documents further support our conclusion that the City of West Chicago was not authorized to proceed to closed session on February 27, 2023 under any exception set forth in the Open Meetings Act because the Ordinance [drafted by West Chicago's Special Counsel Dennis Walsh] is not "a written decision setting forth its determinative reasoning."

**PWC's Additional Supporting Facts:**

On August 1, 2023, PWC received a document revealing that on February 28, 2023 at 12:16 p.m., City of West Chicago's City Manager (Michael Guttman) sent West Chicago Alderman a proposed Ordinance – which Ordinance was later approved in its entity and without changes later that evening at West Chicago's 6:00 p.m. City Council meeting. **See Exhibit 3 (PWC-806)**. The Ordinance had been drafted entirely by West Chicago Special Counsel Dennis Walsh sometime before February 28, 2023 at 12:16 p.m. and thus could not include any of the determinative reasoning expressed by West Chicago Alderman about their objections to the Application expressed at West Chicago's 6:00 p.m. City Council meeting held on February 28, 2023.

In his deposition, Mayor Ruben Pineda testified that the matter [in relation to Lakeshore's Application for a Waste Transfer Station] would be discussed by the City Council on February 27, 2023 with a decision scheduled to be made on February 28, 2023. **See Exhibit 4 (Pineda Tr. 50-51)**. However, PWC learned that at least one West Chicago Alderman, namely Alderman Lori Chassee, testified that she had not seen the Ordinance before she voted on it. **See Exhibit 5 (Chassee Tr. 38, L. 21-23)**. At her deposition, Alderman Chassee testified that at the February 28, 2023 Open Meeting, she publicly stated that "per direction of law, we needed to vote in favor of this based on criteria and evidence presented not on individual opinions." **Id at. Tr. 33, L. 17-19**. In response to questions about why this information or reasoning was not in the final Ordinance, Alderman Chassee stated that "Alderman comments are generally not included in our ordinance." **Id at. Tr. 34, L. 7-8**. Alderman Chassee also testified that at the same February 28, 2023 open meeting, she had stated, "we were charged with following the criteria provided by law *as directed by our attorneys* who had explained the criteria, and that it was – we needed to follow the evidence and the criteria or we could be held to a liability if we base things on our own opinions." **Id at. Tr. 34, L. 22-24 & 35, L. 1-3**. Again, none of this determinative reasoning was included in the final West Chicago Ordinance and thus West Chicago has yet to make "available for public inspection a written decision setting forth its determinative reasoning," thus the February 27, 2023 proceedings that occurred in closed session should be made available under the Illinois Opens Meetings Act because there is no exemption that applies.

Finally, as noted in my earlier email, the Illinois Pollution Control Board has set this matter for a public hearing on September 28, 2023 and thus PWC would greatly appreciate an opinion on its request prior to that date.

Sincerely,



Ricardo Meza

# Exhibit 1

CITY OF  
**WEST CHICAGO**

WHERE HISTORY & PROGRESS MEET

**CITY COUNCIL SPECIAL MEETING  
MONDAY, FEBRUARY 27-28, 2023 - 6:00 P.M.  
475 MAIN STREET, WEST CHICAGO, ILLINOIS**

**AGENDA**

February 27, 2023 Agenda

1. **Call to Order**
2. **Pledge of Allegiance to the Flag**
3. **Roll Call and Establishment of a Quorum**
4. **Executive Session (Roll Call Vote)**
  - a. **5 ILCS 120/2 (C) (4) – Evidence or testimony presented in open hearing or in closed hearing where specifically authorized by law, to a quasi adjudicative body, as defined in this Act, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning**
5. **Roll Call to Return to Open Session**
6. **Continue the Meeting to February 28, 2023 at 6:00 p.m. at Community High School**

February 28, 2023 Agenda Continued

7. **Call to Order**
8. **Roll Call and Establishment of a Quorum**
9. **Adoption of an Ordinance relating to the APPLICATION FOR LOCAL SITING APPROVAL FOR LAKESHORE RECYCLING SYSTEMS, LLC, FOR THE WEST DUPAGE RECYCLING AND TRANSFER STATION, 1655 POWIS ROAD, WEST CHICAGO.**
10. **Public Participation (three minutes per speaker)**
11. **Adjournment**



These minutes were approved at the 3/20/23 City Council meeting with no changes  
CITY OF WEST CHICAGO – 475 Main Street  
CITY COUNCIL MINUTES  
Special Meeting  
February 27-28, 2023

The Special City Council meeting of February 27-28, 2023, was held partly remote (via Zoom) and partly in person.

**1. Call to Order.** Mayor Ruben Pineda (in person) called the meeting to order at 6:00 p.m. on February 27, 2023. The Mayor said that he determined that fully in person meetings are not practical and prudent at this time.

**2. Pledge of Allegiance.** Alderman Morano led all in the Pledge of Allegiance.

**3. Roll Call and Establishment of a Quorum.**

Roll call found Lori Chassee, James E. Beifuss, Jr., Jayme Sheahan, Rebecca Stout, Melissa Birch Ferguson, Jeanne Short, Sandy Dimas, Christine Dettmann, Heather Brown, Matthew Garling, Joseph C. Morano, John E. Jakabcsin, Alton Hallett, and Christopher Swiatek present. Aldermen Brown and Garling were present via Zoom. The Mayor announced a quorum.

Also in attendance were City Administrator Michael Guttman and Special Legal Counsel Dennis Walsh and Dan Bourgault from Klein, Thorpe & Jenkins, and Derke Price, from AnceL Glink.

**4. Executive Session (Roll Call Vote).**

a. **5 ILCS 120/2 (C) (4)** – Evidence or testimony presented in open hearing or in closed hearing where specifically authorized by law, to a quasi adjudicative body, as defined in this Act, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning.

At 7:03 p.m., Alderman Swiatek made a motion, seconded by Alderman Chassee, to go into Executive Session.

Voting Aye by Roll Call Vote: Chassee, Beifuss, Stout, Birch Ferguson, Short, Dimas, Dettmann, Morano, Garling, Sheahan, Hallett, Brown, Jakabcsin and Swiatek. Motion carried.

**5. Roll Call to Return to Open Session.** At 8:50 p.m., Alderman Dimas made a motion, seconded by Alderman Birch Ferguson, to return to Open Session.

Voting Aye by Roll Call Vote: Chassee, Beifuss, Stout, Birch Ferguson, Short, Dimas, Dettmann, Morano, Garling, Sheahan, Hallett, Brown, Jakabcsin and Swiatek. Motion carried.

**6. Continue to February 28, 2023 at 6:00 p.m. at Community High School.** Alderman Chassee made a motion, seconded by Alderman Short, to continue the meeting to February 28, 2023 at Community High School.

Voting Aye by Roll Call Vote: Chassee, Beifuss, Stout, Birch Ferguson, Short, Dimas, Dettmann, Morano, Garling, Sheahan, Hallett, Brown, Jakabcsin and Swiatek. Motion carried.

**February 28, 2023 Agenda Continued**

The Special City Council meeting of February 28, 2023, was held partly remote (via Zoom) and partly in person.

**7. Call to Order.** Mayor Ruben Pineda (in person) called the meeting to order at 6:00 p.m. on February 28, 2023. The Mayor said that he determined that fully in person meetings are not practical and prudent at this time.

**8. Roll Call and Establishment of a Quorum**

Roll call found Lori Chassee, James E. Beifuss, Jr., Jayme Sheahan, Rebecca Stout, Melissa Birch Ferguson, Jeanne Short, Sandy Dimas, Christine Dettmann, Heather Brown, Matthew Garling, Joseph C. Morano, John E. Jakabcsin, Alton Hallett, and Christopher Swiatek present. Aldermen Chassee and Garling were present via Zoom. The Mayor announced a quorum.

Also in attendance were Director of Community Development Tom Dabareiner, City Administrator Michael Guttman and Special Legal Counsel Dennis Walsh.

**9. Adoption of an Ordinance relating to the APPLICATION FOR LOCAL SITING APPROVAL FOR LAKESHORE RECYLING SYSTEMS, LLC, FOR THE WEST DUPAGE RECYCLING AND TRANSFER STATION, 1655 POWIS ROAD, WEST CHICAGO.**

City of West Chicago  
Regular City Council Meeting  
February 27-28, 2023  
Page 2

Alderman Dimas made a motion, seconded by Alderman Swiatek, to approve Ordinance No. 23-O-0006 approving the siting application for Lakeshore Recycling Systems.

Alderman Beifuss stated that the applicant has not met Criteria #1, 2 or 8. Alderman Garling expressed that he feels that Criteria #1 and 3 have not been met. Alderman Chassee conveyed that she believes the applicant has met all of the Siting Criteria.

Voting Aye by Roll Call Vote: Chassee, Stout, Birch Ferguson, Short, Dimas, Dettmann, Morano, Sheahan, Hallett, Brown, and Swiatek. Alderman Beifuss, Garling and Jakabcsin voted Nay. Motion carried.

**10. Public Participation (three minutes per speaker)**

None

**11. Adjournment**

At 6:05 p.m., Alderman Stout made a motion, seconded by Alderman Dimas, to adjourn the meeting. All Aldermen voted aye by Roll Call Vote.

Respectfully submitted,

Michael Guttman  
City Administrator

# Exhibit 2



Electronic Filing: Received, Clerk's Office 09/14/2023

Electronic Filing: Received, Clerk's Office 04/19/2023 C006039

**CITY OF WEST CHICAGO**

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**ORDINANCE NO. 23-O-0006**

**AN ORDINANCE CONDITIONALLY APPROVING THE APPLICATION FOR  
LOCAL SITING APPROVAL OF LAKESHORE RECYCLING SYSTEMS, LLC  
FOR WEST DUPAGE RECYCLING AND TRANSFER STATION**

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**ADOPTED BY THE  
CITY COUNCIL  
OF THE  
CITY OF WEST CHICAGO  
February 28, 2023**

Published in pamphlet form by the authority of the City Council of the City of West Chicago,  
DuPage County, Illinois, on the 1<sup>st</sup> day of March, 2023.

the siting application, notifications, hearings, exhibits, public comment and the record, which includes the following determinations, subject to the decision of this City Council:

1. The Applicant complied with all pre-filing notice requirements of Section 39.2(b) of the Act and the pre-hearing notice requirements of Section 39.2(c) of the Act;
2. The City has jurisdiction to consider the Application;
3. Section 5/22.14 of the Act does not bar this proposed Facility;
4. The siting proceedings herein, both procedurally and substantively, complied with the requirements of fundamental fairness;
5. The Applicant has demonstrated that the proposed Facility meets Criterion 1: "the facility is necessary to accommodate the waste needs of the area it is intended to serve....;"
6. The Applicant has not demonstrated that the proposed Facility meets Criterion 2; however, with the imposition of and compliance with the special conditions provided below, the proposed Facility meets Criterion 2: "the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;"
7. The Applicant has demonstrated that the proposed Facility meets Criterion 3: "the facility is so located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property;"
8. The Applicant has demonstrated that the proposed Facility meets Criterion 4: "for a facility other than a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100 year floodplain or the site is flood-proofed";
9. The Applicant has not demonstrated that the proposed Facility meets Criterion 5; however, with the imposition of and compliance with the special conditions provided below, the proposed Facility meets Criterion 5: "the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents;"
10. The Applicant has demonstrated that the proposed Facility meets Criterion 6: "the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows;"
11. The Applicant demonstrated that the facility will not be accepting hazardous waste and therefore demonstrated that Criterion 7 is not applicable;
12. The Applicant has demonstrated that the proposed Facility meets Criterion 8: "...where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan ...;"

**BE IT FURTHER RESOLVED**, that the City Council of the City of West Chicago has jurisdiction and hereby determines that Lakeshore Recycling Systems, LLC. has satisfied the applicable criteria, subject to the special conditions provided below; and

**BE IT FURTHER RESOLVED**, that the City Council of the City of West Chicago conditionally approves the request of Lakeshore Recycling Systems, LLC. for site approval of its proposed municipal solid waste transfer station, provided that the special conditions are not inconsistent with regulations of the Pollution Control Board or the terms of any development or operating permits approved by the Illinois Environmental Protection Agency.

**SECTION 1:** The preceding "Whereas" clauses are hereby incorporated into this Ordinance as if they were fully set forth herein.

**SECTION 2:** The City Council of the City of West Chicago denies Protect West Chicago's Motion to Dismiss the Application for lack of jurisdiction due to fatal defects in the notice required by 415 ILCS 5/39.2(b) and due to the restrictions of 415 ILCS 5/22.14 concerning the setback from property zoned primarily for residential uses and finds that it has jurisdiction to consider the application.

**SECTION 3:** The City Council of the City of West Chicago hereby adopt the Report of Hearing Officer Recommended Findings of Fact and Recommended Conditions of Approval and Proposed Findings of Fact and Conclusions of Law in its entirety, as attached hereto as Exhibit A and incorporated as if fully set forth herein, and by so doing, the City Council of the City of West Chicago expressly adopts, in expansion of, but not in limitation of the foregoing, the introduction, all findings of fact, all conclusions of law, citations, recommendations, analysis, references and incorporations made in the Report of Hearing Officer Recommended Findings of Fact and Recommended Conditions of Approval and Proposed Findings of Fact and Conclusions of Law as its own to the same extent as though fully set forth herein. The City Council of the City of West Chicago further find, in expansion of, but not in limitation of the foregoing, that it has proper jurisdiction to hear the Application, that all notices required by law were duly given, that the procedures outlined in Section 39.2 and the Siting Ordinance were duly followed, and such procedures were fundamentally fair to the Applicant, all parties, and all participants involved.

**SECTION 4:** Based on the Application, expert testimony and record, we find the following:

The determination of Criterion 2 is primarily a matter of assessing the credibility of expert witnesses. *Fairview Area Citizens Taskforce v. Illinois Pollution Control Board*, 198 Ill.App.3d 541, 552, 555 N.E.2d 1178, 1185 (3d Dist. 1990); *CDT Landfill Corp. v. City of Joliet*, 1998 WL 112497 (Ill. Pollution Control Board). In the City Council's opinion, Mr. Hock's testimony was the more thorough and credible testimony on this issue. Accordingly, we find that the Applicant has met its burden of proof as to Criterion 2 of Section 39.2, the Transfer Station Facility is designed, located and proposed to be operated so that the public health, safety and welfare will be protected, provided that the Applicant operates the Facility in accordance with the following special conditions:



closure of the Facility. Facility features (e.g., berms, buffer areas, paving, grade reduction), best available technology (e.g., mufflers, machinery enclosures, sound absorbent materials, odor neutralizing systems, air filtering systems, misting systems), and building features (e.g., enclosed structures, building orientation) shall be among the measures to be considered to achieve compliance.

- g) The Facility shall be designed and constructed to prevent litter and other debris from leaving the Facility property. Facility features (e.g., windbreaks, fencing, netting, etc.) shall be among the measures considered to ensure that the debris does not become wind strewn and that no other provisions of the Act are violated.
- h) No regulated air emissions shall occur from these facilities, except as authorized by a permit from the Illinois Environmental Protection Agency (IEPA) Bureau of Air (BOA). No process discharge to Waters of the State or to a sanitary sewer shall occur from these facilities, except as authorized by a permit from the IEPA Bureau of Water (BOW).
- i) The Facility shall be designed and constructed with a water supply of adequate volume, pressure, and in locations sufficient for cleaning, firefighting, personal sanitary facilities, and as otherwise necessary to satisfy operating requirements (e.g., dust suppression, wheel washing) and the contingency plan.
- j) The Facility shall be designed and constructed with exterior and interior lighting for roadways, and waste handling areas adequate to perform safely and effectively all necessary activities.
- k) The Facility shall be designed and constructed with truck wheel curbs, guard rails, bumpers, posts or equivalents to prevent backing into fuel storage tanks, equipment, and other structures.
- l) The Facility shall be designed and constructed with adequate shelter, sanitary facilities, and emergency communications for employees.
- m) The Facility operator shall install fences and gates, as necessary, to limit entry. Except during operating hours, the gates shall be securely locked to prevent unauthorized entry.
- n) The Facility may receive general construction and demolition debris at the site Monday through Saturday, 24 hours a day. The Facility shall be closed on Sunday and the six major federal holidays (New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day). When the Facility is operated before sunrise or after sunset, adequate lighting shall be provided. If it is required for the Facility to be open beyond normal operating hours to respond to emergency situations, a written record of the date, time and reason the Facility was open shall be maintained in Facility operating records. The IEPA's Regional Office and the county authority responsible for inspection of the Facility, per a delegation agreement with the IEPA, must be notified and must grant approval each day that the operating hours need to be extended. No later than 10:00 a.m. of the first operating day after the operating hours have been extended, the Applicant shall send a written report by email to the City Administrator, which describes the length of the extension of the operating hours and the reason for the extension.
- o) The Facility may receive and transfer MSW, hydro excavation waste and SSR from 4:00 a.m. to 12:00 a.m. Monday through Friday and from 4:00 a.m. to 12:00 p.m. on Saturday, with no operation on Sunday or the six major federal holidays (New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day), provided that on the Saturday following a major federal holiday, regular business hours

- bb) The operator shall use load tickets to control the site activities and comply with the tagging and record keeping procedures. These load tickets shall identify the source of the C&D material delivered to the site. The operator shall use these tickets to identify the location in the yard or in the covered dumpsters and the length of time stored at the site to achieve compliance.
- cc) The operator is prohibited from receiving hazardous and asbestos containing materials.
- dd) The operator may separate clean concrete and clean soil from the general construction or demolition debris as recyclable materials for use in construction. The operator is permitted to store recyclable concrete and clean soil for a maximum period of 3 months.
- ee) The operator may store the steel separated from concrete or other construction or demolition debris for a maximum period of 6 months. After six months, the steel must be sent offsite for disposal or recycling.
- ff) The operator shall ensure that site surface drainage, during development, during operation and after the site is closed, shall be such that no adverse effects are encountered by adjacent property owners.
- gg) The best available technology (mufflers, berms and other sound shielding devices) shall be employed to minimize equipment noise impacts on property adjacent to the site during both development, operation and during any applicable post-closure care period.
- hh) Management of Unauthorized Waste by the operator
  - i. Landscape waste found to be mixed with general construction and demolition debris shall be removed the same day and transported to a facility that is operating in accordance with the Illinois Environmental Protection Act (Act), Title V, Sections 21 and 39 (415 ILCS 5/21 and 39).
  - ii. Lead-acid batteries mixed with general construction and demolition debris shall be removed the same day and transported either to a drop-off center handling such waste, or to a lead-acid battery retailer.
  - iii. Special wastes including hazardous waste, non-hazardous special waste, and potentially infectious medical waste mixed with general construction and demolition debris shall be containerized separately and removed from the property no later than five hours after receipt by a licensed special waste hauler. Special wastes shall be transported to a licensed special waste management facility that has obtained authorization to accept such waste. The operator shall maintain a contract with haulers so that the immediate removal is ensured. The operator shall develop an emergency response/action plan for such occurrences.
  - iv. Asbestos debris from general construction and demolition debris shall be managed in accordance with the National Emission Standards for Hazardous Air Pollutants (NESHAPS) regulations.
  - v. Tires found to be mixed with general construction and demolition debris shall be removed and managed in accordance with Section 55 of the Act [415 ILCS 5/55].
  - vi. White good components mixed with general construction and demolition debris shall be removed and managed in accordance with Section 22.28 of the Act [415 ILCS 5/22.28].
  - vii. No person may knowingly mix liquid used oil with general construction and demolition debris.
  - viii. After the unauthorized waste has been removed from the Facility, a thorough cleanup of the affected area shall be made according to the type of unauthorized waste



9. The Applicant shall control litter by discharging and loading all waste within the enclosed portion of the Transfer Facility. After unloading, any remaining loose waste shall be removed or contained in the vehicle prior to exiting the site. The Applicant shall use its best efforts to assure that vehicles, hauling waste to or removing waste from the Transfer Facility, shall be suitably covered to prevent waste from leaving the vehicles. A fence to aid in the interception of any blowing litter shall surround the Transfer Facility. The Applicant shall diligently patrol the Subject Property during hours of operation to collect any litter. At a minimum the Applicant shall diligently patrol and remove litter from: the Subject Property; all property owned or controlled by the Applicant; and, before 10:00 a.m. each operating day, Powis Road between Hawthorne Lane and Route 64 (North Avenue) as well as Powis Court. In addition, the Applicant shall, at a minimum, patrol and remove litter from private property within 500 feet of the aforesaid public streets and corresponding rights-of-way with the written permission of the owner of said properties, which permission the Applicant shall diligently attempt to obtain. The Applicant shall provide the City of West Chicago the names, addresses, telephone numbers and email addresses of such owners granting permission. The Applicant shall also post on the company's website the name and email address of an employee of the company to whom any owner of property along Powis Court or Powis Road between Route 64 (North Avenue) and Hawthorne Lane may report litter from the Facility or trucks using the Facility, in which case the Applicant shall remove the litter with the written permission of the owner within two hours of receiving notification of the litter concern. Upon written request, logs showing the private owner, the property address for the request for litter removal, the time such was received and the time the concern was abated shall be available to the City and provided within one business day. Also, the Applicant shall diligently seek the written approval of the DuPage County Forest Preserve District to remove litter, which is visible from Route 64 (North Avenue), from the portion of the Pratts Wayne Woods Forest Preserve that is located within the City of West Chicago. If permission is granted, litter removal from the Forest Preserve shall occur not less than monthly; the City shall be provided written notice of each occurrence within one business day of such being completed.

10. The Applicant shall provide a street sweeper to remove mud and dust tracked onto hard surfaces inside and outside the Transfer Facility, on property owned or controlled by the Applicant as well as Powis Court and Powis Road between Hawthorne Lane and Route 64 (North Avenue) on an as needed basis, but not less frequently than daily.

11. The Applicant shall retain a pest control service on an on-going basis to address the potential for infestation by rodents and other vectors. Such service shall inspect the Transfer Facility on an as needed, but no less than monthly, basis.

12. Transfer trailers entering and exiting the Subject Property shall use only the following roads: Powis Road (between the Facility entrance and Route 64 (North Avenue)), Route 64 (North Avenue), Kirk Road and Interstate 88. Except for waste collection trucks servicing property within the City of West Chicago, waste collection trucks entering and exiting the Subject Property shall use only the following streets within the City and no others: Powis Road south of Route 64, Route 64 (North Avenue), Route 38, and Kress Road. The Applicant shall have installed within City right-of-way to the satisfaction of the City, license plate readers in each of the following locations: Hawthorne Lane between Route 59 and Powis Road; Smith Road between Powis Road and Route 64; and Powis Road between Smith Road and Route 64. The license plate readers shall provide remote access to the City of West Chicago to be used for any lawful purpose. The specific make and model of license plate readers and the specific locations for installation of the license plate readers shall be subject to the written approval/direction of the West Chicago Police Chief, and may be relocated for operational need



2. Upon receiving final, non-appealable siting approval pursuant to 415 ILCS 5/39.2 to construct and operate the Facility, and upon receiving an IEPA development permit, LRS shall, prior to commencing operation of the waste transfer Facility, 1) execute and grant to the DuPage Airport Authority ("DAA") a new aviation easement, which is Exhibit A to the Agreement Between the DuPage Airport Authority, Oscar (IL) LLC, and Lakeshore Recycling Systems, LLC, dated January 19, 2022 ("Airport Agreement"), 2) LRS shall reduce the roof height of its existing transfer building so as to stay below all critical elevations in the new aviation easement, and 3) LRS shall not allow any penetrations whatsoever to the new aviation easement.

3. The Applicant shall control litter by discharging and loading all waste within the enclosed portion of the Transfer Facility. After unloading, any remaining loose waste shall be removed or contained in the vehicle prior to exiting the site. The Applicant shall use its best efforts to assure that vehicles, hauling waste to or removing waste from the Transfer Facility, shall be suitably covered to prevent waste from leaving the vehicles. A fence to aid in the interception of any blowing litter shall surround the Transfer Facility. The Applicant shall diligently patrol the Subject Property during hours of operation to collect any litter. At a minimum the Applicant shall diligently patrol and remove litter from: the Subject Property; all property owned or controlled by the Applicant; and, before 10:00 a.m. each operating day, Powis Road between Hawthorne Lane and Route 64 (North Avenue) as well as Powis Court. In addition, the Applicant shall, at a minimum, patrol and remove litter from private property within 500 feet of the aforesaid public streets and corresponding rights-of-way with the written permission of the owner of said properties, which permission the Applicant shall diligently attempt to obtain. The Applicant shall provide the City of West Chicago the names, addresses, telephone numbers and email addresses of such owners granting permission. The Applicant shall also post on the company's website the name and email address of an employee of the company to whom any owner of property along Powis Court or Powis Road between Route 64 (North Avenue) and Hawthorne Lane may report litter from the Facility or trucks using the Facility, in which case the Applicant shall remove the litter with the written permission of the owner within two hours of receiving notification of the litter concern. Upon written request, logs showing the private owner, the property address for the request for litter removal, the time such was received and the time the concern was abated shall be available to the City and provided within one business day. Also, the Applicant shall diligently seek the written approval of the DuPage County Forest Preserve District to remove litter, which is visible from Route 64 (North Avenue), from the portion of the Pratts Wayne Woods Forest Preserve that is located within the City of West Chicago. If permission is granted, litter removal from the Forest Preserve shall occur not less than monthly; the City shall be provided written notice of each occurrence within one business day of such being completed.

4. The Applicant shall provide a street sweeper to remove mud and dust tracked onto hard surfaces inside and outside the Transfer Facility, on property owned or controlled by the Applicant as well as Powis Court and Powis Road between Hawthorne Lane and Route 64 (North Avenue) on an as needed basis, but not less frequently than daily.

5. The Applicant shall retain a pest control service on an on-going basis to address the potential for infestation by rodents and other vectors. Such service shall inspect the Transfer Facility on an as needed, but no less than monthly, basis.

6. Trucks transporting hydro excavation waste shall be water-tight. Dump style trucks transporting solidified hydro excavation waste shall include liners that are sufficient to prevent leakage onto roads and other surfaces.

**STATE OF ILLINOIS  
CITY OF WEST CHICAGO  
BEFORE THE CORPORATE AUTHORITIES**

*In Re:*

**APPLICATION OF  
LAKESHORE RECYCLING SYSTEMS, LLC  
FOR SITING APPROVAL UNDER 415 ILCS 5/39.2  
OF A NEW POLLUTION CONTROL FACILITY**

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**REPORT OF HEARING OFFICER  
RECOMMENDED FINDINGS OF FACT AND  
RECOMMENDED CONDITIONS OF APPROVAL**

**INTRODUCTION**

Lakeshore Recycling Systems, LLC (“Applicant”) has applied for local siting approval of a new municipal waste transfer station on its property at 1655 Powis Road, West Chicago, Illinois. The Applicant owns the real property (the “Property”) upon which the proposed pollution control facility (“Facility”) is to be located. The Property is located within the corporate limits of the City. The Application was filed on September 16, 2022. The City is to render a decision on the Application in accordance with the criteria and procedures set forth in Section 39.2 of the Illinois Environmental Protection Act (415 ILCS 5/39.2) (the “Act”) and its own Code of Ordinances establishing rules and procedures for pollution control facility siting. Among the procedures set forth in the Act and the Code of Ordinances is the requirement that the City conduct a public hearing on the Application, accept public comment, and make a formal decision on the Application within 180 days of the date of filing (March 15, 2023). The City opened the public hearing on January 3, 2023.



16 through (and including) February 18, 2023. "Comment" is distinguished from "testimony" in that "comment" is not provided under oath and is not subject to cross examination and therefore entitled to less weight than testimony.

I declared the hearing closed on January 19, 2023. In accordance with the Act, written comment was then received by the City for an additional 30 days (i.e., through 11:59:59 p.m. CDST on February 18, 2023, including any written comment post-marked on or before February 18, 2023). Substantial public comment was received in support of the Application; and there was public comment filed from various residents and PODER opposing the application. Notably, public comment was also offered after the close of the hearing by the Applicant including a letter from the Canadian National Railway. As indicated above, public comment is entitled to less weight because it is not subject to being tested by the opportunity for cross examination. I have not relied upon the public comment filed by the Applicant in reaching my findings of fact or conclusions of law.

I received proposed conditions of approval from City Staff; I received argument in favor of siting approval and proposed findings of fact and law from the Applicant; I received argument in opposition to siting approval as well as proposed findings of fact and conclusions of law from PWC; and argument in opposition to approval as well as proposed findings of fact, conclusions of law, and alternatively proposed special conditions from PODER.

#### **RECOMMENDED ACTIONS**

It is my recommendation that the City Council vote separately on the three propositions:

- 1) Whether to grant PWC's motion to dismiss for failure to effectuate proper notice under Section 39.2(b).

*Control Board*, 166 Ill.App 3<sup>rd</sup> 778 (5<sup>th</sup> Dist. 1998). However, as *Daubs* indicates, perfection in providing the Notice is not the standard.

Section 39.2(b) requires, in relevant part, that the applicant shall cause written notice of its request for site approval “to be served either in person or by registered mail, return receipt requested, on the owners of all property within the subject area not solely owned by the applicant, and on the owners of all property within 250 feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of the County in which such facility is to be located...”). PWC has challenged whether the Applicant fulfilled this requirement with respect to the railroad property putatively owned by the Elgin, Joliet and Eastern Railway.

The evidence concerning the authentic tax records of DuPage County is as follows:

The records placed in evidence by PWC indicate that the owners of the railroad properties within 250 feet of the Facility are, for one parcel, the Union Pacific Railroad Company and, variously and alternatively for the second parcel, the “Elgin, Joliet & Eastern Railway,” and/or the “Wisconsin Central, Ltd. (EJ&E Line) Company.”

The DuPage County, Illinois 2022 Real Estate Tax Assessment Parcels Map placed in evidence by the Applicant indicates that the second parcel is owned by the “Canadian National Railway.”

It is not disputed that the Applicant caused written notice of its request for site approval to be served by registered mail return receipt requested upon the Union Pacific Railroad Company. It is also not disputed that the Applicant did not cause notice of its request for site approval to be served on the Elgin, Joliet & Eastern Railway or on the Wisconsin Central, Ltd.

dwelling....” It is undisputed that no dwelling is within 1000 feet of the proposed Facility. However, the railroad properties are zoned ER-1 in the City and are located within 1000 feet of the proposed Facility. It is not disputed that property zoned “ER-1” in the City of West Chicago is property zoned primarily for residential uses. PWC’s Motion to Dismiss asserts that Section 5/22.14 bars the Applicant from proceeding with this proposed Facility.

The Applicant argues that the size and the active use of the railroad properties make residential development of the parcels in compliance with ER-1 requirements improbable (and therefore the set-back requirement a nullity with respect to the railroad properties). The Applicant has submitted the testimony of John Hock and the August 23, 2022 letter of Tom Dabareiner, City Community Development Director and Zoning Administrator for the City of West Chicago, to support a finding that, due to the requirements of the ER-1 zoning (minimum lot area, minimum lot width, minimum setbacks, physical features of the property, the lack of access) it is not reasonably possible to develop the railroad properties for residential uses.

Conversely, PWC called Joe Abel, a planning expert, who testified that the Application does not meet the setback requirements of Section 5/22.14. He further testified that if the railroad properties at issue were abandoned by the railroads, and if the railroad properties were then assembled with other adjacent properties, and if those assembled properties were then rezoned to a residential zoning district, then the railroad properties could be put to residential uses.

No evidence was introduced that the conditions recited by Joe Abel as preconditions to residential use of the railroad properties are probable--or even potentially contemplated--for the foreseeable future.

I further find that the Applicant complied with all notice requirements of Section 39.2(c) concerning the notice requirements prior to the hearing on the Application. No objections were filed concerning compliance with Section 39.2(c).

Likewise, no objections were filed concerning compliance with the City Code of Ordinances. I find that the Applicant complied with all requirements of the City of West Chicago.

Accordingly, I find that the City has jurisdiction to consider the statutory criteria of Section 39.2.

#### **SECTION 39.2 CRITERIA**

These proceedings are governed by Section 39.2 of the Environmental Protection Act (“the Act”), 415 ILCS 5/39.2, which sets forth the exclusive siting procedures for pollution control facilities in Illinois. Section 40.1 of the Act and case law require that siting proceedings and the decision making be conducted in accordance with the requirements of fundamental fairness. The application (or request) must contain sufficient details of the proposed facility demonstrating that it satisfies each of the nine criteria by a preponderance of the evidence. *Land & Lakes Co. v. Illinois Pollution Control Board*, 319 Ill.App.3d 41, 743 N.E.2d 188, 191 (3d Dist. 2000.) If the applicant fails to establish any one of the criteria, the application should be denied. *Waste Management v. Pollution Control Board*, 175 Ill.App.3d 1023, 520 N.E.2d 682, 689 (2d Dist. 1988).

The Act requires that the Applicant for local siting approval prove compliance with each of nine different criteria (or alternatively demonstrate that they do not apply) and local siting approval shall be granted if the proposed facility meets each of those criteria. As a matter of



PWC and PODER both focused on the available transfer station disposal capacity for the area to be served (including facilities outside of, but still serving, the area intended to be served) and they argue that the existing excess capacity—which is not contested by the Applicant—means that the proposed Facility is not necessary and therefore does not satisfy Criterion 1.

However, in *Will County v. Village of Rockdale*, 2018 IL. App (3d) 160463, 121 N.E.2d 468, 484 (3d Dist. 2018), our Appellate Court held that Criterion 1 is not determined exclusively by reference to capacity analysis. Indeed, in *Rockdale*, the applicant submitted no capacity analysis at all. Instead, the Appellate Court agreed with Village and the Applicant that the “waste needs of the area” could include other factors such as improving competition, benefits through the host agreements, operational concerns and hours, and positive environmental impacts.

In this case, the Applicant called John Hock from Civil and Environmental Consultants, Inc. to testify on this criterion. Mr. Hock acknowledged the existing available capacity at other transfer stations but testified that the need for this Facility is found in the need to increase competition in the hauling market (through further vertical integration of disposal from curb-to-transfer station-to landfill, this facility will increase competition for the hauling of waste in the area); in reduced environmental impacts (less diesel exhaust as a result of shorter travel distances); in increased recycling; in the meeting the need for the handling of hydro-wastes; and in operational benefits (hours of operation). Cross-examination focused on the available capacity and questioned the competitive impacts but did not overcome the substantive proof on the benefits to which Mr. Hock testified.

PODER focused on the premise that there are positive environmental impacts, arguing just the opposite that the added operations at this Property will necessarily increase diesel

Mr. Hock testified that the Application met the location standards (wetlands, archeological sites, threatened species, wild and scenic rivers and the airport). PWC questioned Mr. Hock extensively on airport safety related issues and particularly operations in the Runway Protection Zone. The record also contains a letter from the DuPage Airport Authority in which LRS agreed to comply with several conditions and actions required of LRS by the Airport Authority to safeguard airport operations. Imposition and compliance with these conditions are essential to a finding that Criterion 2 can be satisfied. With the imposition of the conditions set forth in that letter, the Airport Authority concluded that proposed Facility did not pose a threat to the safety of the Airport. No expert testimony was introduced that challenged that determination by the Airport Authority.

Mr. Hock also described the proposed site plan and the proposed operations. The Facility as proposed will handle a maximum of 1950 tons of material per day composed of 650 tons of municipal solid waste, 300 tons per day of hydro-excavation waste, 750 tons per day of construction or demolition debris (for which the site is already permitted), and 250 tons per day of single-stream recyclables.

Mr. Hock testified as to the fact that the transfer building will be a "fully enclosed" facility (which is an important requirement to protect the airport) and testified as to the truck movements on site, the number and function of "spotters," the operation of the entrance doors, the movements and operations of the transfer trailers, and the movements and operations of the front-loaders on the tipping floor. Mr. Hock testified as to the anticipated sources of business and the equipment that is anticipated to be used by LRS to bring that equipment to the Facility. Mr. Hock described the stormwater management plan for the proposed facility and testified that

The application, modeling evidence, and testimony - with the special conditions in place -- demonstrated that the Facility could safely handle the proposed maximum tonnages per day.

The special conditions are appended to the Proposed Findings of Fact and Conclusions of Law.

**3. *The Facility is located so as to minimize incompatibility  
With the Character of the Surrounding Area and to Minimize the Effect  
On the Value of Surrounding Property.***

This Criterion is contested by PWC and PODER. I find that Criterion 3 is satisfied.

The Application sets out the land uses in the vicinity and manner in which the proposed Facility relates to the character of the area. Applicant called Dale Kleszynski, a licensed Illinois real estate appraiser and member of the Appraisal Institute. He testified to the historical use of the subject property and surrounding area--which includes current and historical uses related to the management and disposal of waste—and characterized the area as “industrial in character.” The area is also segregated from other uses, especially residential uses.

In addition to concluding that the location minimizes incompatibility with uses in the surrounding area, Mr. Kleszynski also concluded that the Facility is located to minimize the effect on the value of surrounding property. Mr. Kleszynski submitted a highest and best use analysis of the subject property for purposes of analyzing impact on the values of surrounding property. He opined that this highest and best use analysis is related to the statutory siting criterion in that highest and best use of property is the use which would, by definition, minimize any deleterious effect on the values of the surrounding property. After reviewing the traditional criteria used to analyze highest and best use, he testified that development as a solid waste transfer station would fit within the highest and best use of the property.

In rebuttal, PWC called Kurt Kielisch who rendered the opinion that the highest and best use analysis employed by Mr. Kleszynski did not accurately determine the effect the Facility



5. ***The Plan of Operations for the Facility is designed to Minimize the Danger to the surrounding Area from Fire, Spills and Other Operational Accidents.***

I find that the Applicant demonstrated that the Facility meets Criterion 5 but I also find that the testimony of Mr. Hock, under cross examination, and the testimony of Colin Hale concerning existing litter problems with the current operations at the Property all support the imposition of and compliance with special conditions to further improve the Plan of Operations and minimize dangers to the surrounding area. In particular, I find that the testimony concerning where, when and how transfer trailers will be tarped and the handling of hydro-wastes will be improved to further minimize the danger to the surrounding area from litter or spills by the imposition of special conditions. No formal challenge to this Criterion has been filed.

6. ***The Traffic Patterns to and from the Facility Are So Designed as to Minimize the impact on Existing Traffic Flow.***

I find that the Applicant demonstrated that the proposed Facility meets Criterion 6.

The Applicant called Michael Werthmann, a registered professional engineer and certified professional traffic operations engineer, with more than 25 years of traffic engineering experience for both the private and public sectors. Mr. Werthmann testified that he used standard methodology used by transportation planning officials. Mr. Werthmann testified he studied traffic volumes, distributions and movements at the site entrance and the potentially affected intersections. He described the local roadway system and detailed present and future improvements on that system. He testified that the location, existing operations, and proposed route for the transfer trailers all minimized the impact on existing traffic flows. No challenge to this Criterion has been filed; however, both the City and PODER proposed a special condition concerning the traffic routes and



Plan. Lardner did acknowledge that the County's Plan does call for more transfer stations, more recycling, and more competition.

I find the PCB decision in *Rockdale* is again instructive. As in this case, both the PCB (and the court) in *Rockdale* found that the very existence of a secondary host agreement approved by the County weighs heavily in favor of a finding that Facility is consistent with the County's plan (as it is the County's plan to interpret and administer). Because the County approved the secondary host agreement for this Facility, I find the proposal to be consistent with the County's plan.

**9. Recharge Area**

Per the Application and the testimony of John Hock, the Facility is not located in a regulated recharge area. This Criterion is therefore not applicable and therefore deemed satisfied. No challenge to this Criterion has been filed.

**10. Consideration of Previous Operating Experience**

The Act permits the Corporate Authorities to consider the previous operating experience of an applicant. Specifically, the Act permits the City to consider the "past record of convictions or admissions of violations of the Applicant...". Here, the record contains no past convictions of violations by LRS nor admissions of violations by LRS, which favors approval of the Application.

PWC did enter videos showing actual operations at different LRS facility and PODER called witnesses about the current operations at the Property raising litter and air quality concerns and that testimony serves as the basis for the imposition of some special conditions, but that testimony did include any evidence of any actual violations of the regulatory standards and

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. On September 16, 2022, Lakeshore Recycling Systems, LLC (“Applicant”) applied to the City of West Chicago (“City”) for local siting approval of a new municipal waste transfer station on its 27.66 acre parcel of real estate at 1655 Powis Road, West Chicago, Illinois, 60185 (as legally described in the application and hereafter referred to as the “Property”).
2. The Applicant owns the Property upon which the proposed pollution control facility (“Facility”) is to be located.
3. The Property is located within the corporate limits of the City, is the subject of a Host Community Benefit Agreement between the Applicant and the City, and the City has jurisdiction to consider the Application.
4. The public hearing on the application was opened on January 3, 2023.
5. The hearing closed on January 19, 2023.
6. In accordance with the Act, written comment was then received by the Office of the City Manager acting as City Clerk for and additional 30 days after the close of the Hearing (i.e., through 11:59:59 p.m. CDST on February 20, 2023, including any written comment post-marked on or before February 18, 2023).
7. Concerning the pre-filing notice requirements of Section 39.2(b) (which states, in relevant part, that the applicant shall cause written notice of its request for site approval “to be served either in person or by registered mail, return receipt requested, on the owners of all property within the subject area not solely owned by the applicant, and on the owners of all property within 250 feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of the County in which such facility is to be located...”):
  - A) with respect to all properties within 250 feet of the proposed facility, other than railroad properties, the applicant caused written notice of its request for site approval to be served by registered mail return receipt requested upon all such owners;
  - B) with respect to the railroad properties within 250 feet of the proposed facility, the owners as appears from authentic—and in some cases conflicting--tax records of DuPage County, are the Union Pacific Railroad Company and, variously and alternatively, the Elgin, Joliet & Eastern Railway, the Wisconsin Central, Ltd. (EJ&E Line) Company, and, per the DuPage County, Illinois 2022 Real Estate Tax Assessment Parcels Map, the Canadian National Railway;
  - C) the Applicant caused written notice of its request for site approval to be served by registered mail return receipt requested upon the Union Pacific Railroad Company;
  - D) the Applicant did not cause notice of its request for site approval to be served on the Elgin, Joliet & Eastern Railway;
  - E) the Elgin, Joliet & Eastern Railway was merged into the Wisconsin Central, Ltd. in December of 2012;



the Pre-Filing Notice in these proceedings be made available in a language other than English and no case has applied language access requirements to a Section 39.2 Siting Hearing nor the Section 39.2 filings.

B) PWC and PODER interposed objections to the lack of a Spanish-language translator for the hearing proceedings; however, neither the Act itself does nor any other statute or case requires that Language Access Services be made available for a Section 39.2 Siting Hearing (compare 725 ILCS 140/1 requiring such services in the criminal law context).

C) PWC and PODER filed objections to the exclusion of proffered evidence concerning “environmental justice related issues;” however, the State of Illinois has not amended the Environmental Protection Act to add “environmental justice related issues” to the Section 39.2 criteria and neither the Pollution Control Board nor any Court has held that “environmental justice related issues” is now a part of any criterion under Section 39.2.

D) In the absence of a defined statutory criteria concerning “environmental justice related issues,” testimony proffered about such issues is not relevant to the siting decision.

11. Based on the understanding of Criterion 1 as articulated by the Pollution Control Board and affirmed by the Illinois Appellate Court for the Third District in *Will County v. Village of Rockdale*, 121 N.E.3d 468 (3d Dist. 2018), the Applicant demonstrated that the proposed Facility meets Criterion 1: “the facility is necessary to accommodate the waste needs of the area it is intended to serve....”

12. The Applicant did not demonstrate that the Facility--as proposed in the Application--meets Criterion 2; however, with the imposition of the special conditions proposed by City Staff (and compliance therewith by the Applicant) which are attached hereto as Exhibit A, the proposed Facility does meet Criterion 2: “the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;”

13. The Applicant demonstrated that the proposed Facility meets Criterion 3: “the facility is so located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property;”

14. The Applicant demonstrated that the proposed Facility meets Criterion 4; “for a facility other than a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100 year floodplain or the site is flood-proofed;”

15. The Applicant did not demonstrate—as proposed in the Application--that the Facility meets Criterion 5; however, with the imposition of the special conditions proposed by City Staff (and compliance therewith by the Applicant) which are attached hereto as Exhibit A, the proposed Facility does meet Criterion 5: “the plan of operations for the is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents;”

16. The Applicant demonstrated that the proposed Facility meets Criterion 6: “the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows;



**EXHIBIT A**

**Special Conditions**

1. The maximum tonnage per day that may be received by the facility shall not exceed 1,950 tons per day, of which up to 650 tons per day may be municipal solid waste (MSW), up to 300 tons per day may be hydro excavation waste, up to 750 tons per day may be construction and demolition debris (C&D) and up to 250 tons per day may be single stream recyclables (SSR).
2. The Applicant shall keep the truck doors to the transfer facility closed, except for emergencies and to allow trucks to enter and exit the facility, during regular business hours. The doors shall be equipped with sensors such that they will open and close automatically as vehicles enter and exit the transfer building. Alternatively, an employee may open and close the doors when trucks access and exit the transfer facility.
3. The push walls in the transfer facility shall be designed to ensure to the satisfaction of the City that there will be no buildup of waste behind the walls which could result in fire, odor, or harborage for vectors. In addition, the Applicant shall provide a certification from a licensed structural engineer that the push walls will be capable of withstanding impact from waste loading equipment at 5 mph without shearing the beams or compromising the integrity of the building's walls.
4. All transfer vehicles utilizing the facility shall be equipped with auto tarping systems, and all loaded transfer trailers shall be tarped inside of the transfer building prior to exit.
5. The Applicant shall continue to operate the C&D recycling portions of the facility in accordance with the requirements of 415 ILCS 5/22.38 for so long as the current permit (2015-124-OP) remains in effect. If the current permit (2015-124-OP) is discontinued, replaced or terminated, the following conditions, as modified, shall remain in effect:
  - *The facility shall be designed and constructed with roads and traffic flow patterns adequate for the volume, type and weight of traffic using the facility including, but not limited to hauling vehicles, emergency vehicles, and on-site equipment. Sufficient area shall be maintained to minimize traffic congestion, provide for safe operation, and allow for queuing of waste hauling vehicles.*
  - *The operator shall provide adequate parking for all vehicles and equipment used at the facility and as necessary for queued hauling vehicles.*
  - *Roadways and parking areas on the facility premises shall be designed and constructed for use in all weather, considering the volume, type and weight of traffic and equipment at the facility.*
  - *The facility shall be designed and constructed so that site surface drainage will be diverted around or away from the recycling and waste transfer areas. Surface drainage shall be designed and controlled so that adjacent property owners encounter no adverse effects during development, operation and after closure of the facility.*
  - *Run-off from roadways and parking areas shall be controlled using storm sewers or shall be compatible with natural drainage for the site. Best management practices (e.g., design features, operating procedures, maintenance procedures, prohibition of certain practices and treatment)*



*operation on Sunday or the six major federal holidays (New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day), provided that on the Saturday following a major federal holiday, regular business hours may be extended to 12:00 a.m. If it is required for the facility to be open beyond normal operating hours to respond to emergency situations, a written record of the date, time and reason the facility was open shall be maintained in facility operating records. The City of West Chicago must be notified by email to the City Administrator each day that the operating hours need to be extended. The IEPA's Regional Office and the county authority responsible for inspection of the facility, per a delegation agreement with the IEPA, must be notified and must grant approval each day that the operating hours need to be extended.*

- *Fire safety equipment (fire extinguishers) shall be maintained in accordance with recommended practice.*
- *Non-recyclable waste may be kept temporarily in covered containers or transfer trailers for no more than 24 hours (except on weekends and holidays), provided that loaded or partially loaded trailers intended to be stored overnight or that will not be picked up and transported the same operating day are stored indoors and suitably covered.*
- *Piles of general construction or demolition debris shall be covered or wetted to prevent air-borne dust.*
- *The facility shall be designed and constructed to prevent unauthorized access to recycling areas, storage areas for unauthorized wastes, salvaged and recycled materials, and staging areas where loaded site equipment or vehicles may be parked. Facility features such as fences and gates shall be provided.*
- *Waste handling areas shall be designed and constructed to prevent exposure of wastes and recyclable materials to run-off and flooding.*
- *The sorting areas shall be properly graded and compacted to prevent ponding from forming leachate during storms.*
- *Records shall be maintained on-site at the facility office for each operating day. The operator shall record operating hours, load ticket information, load inspections, daily processing time, volume processed per day, transfer load out and waste disposition details.*
- *The operator shall, within 48 hours of receipt of the general construction or demolition debris at the facility, sort the general construction or demolition debris. The operator shall separate the recyclable general construction or demolition debris from nonrecyclable general construction or demolition debris and dispose of the non-recyclable general construction or demolition debris, in accordance with Section 22.38(b)(1) of the Act.*
- *The operator must place wood, tires, and other unacceptable materials in covered dumpsters or vehicles adequate to prevent the release of leachate.*
- *All non-recyclable general construction or demolition debris, and unacceptable material shall be moved to the waste transfer facility on the same day it is received, and disposal of such material shall be handled in accordance with all applicable federal, State, and local requirements and with these conditions.*
- *The operator shall transport all non-putrescible recyclable general construction or demolition debris for recycling or disposal within 6 months of its receipt at the facility, in accordance with Section 22.38(b)(4) of the Act.*

- o *No person may knowingly mix liquid used oil with general construction and demolition debris.*
- o *After the unauthorized waste has been removed from the facility, a thorough cleanup of the affected area shall be made according to the type of unauthorized waste managed. Records shall be kept for three years and will be made available to the IEPA upon request. In addition, the Applicant shall provide an annual written report to the City of West Chicago not later than January 31 of each year, which report shall: list the types, quantities and dates of receipt of all unauthorized waste; the generators of such waste; and the sites to which the wastes were delivered for disposal, processing or handling.*
- o *The following wastes shall not be accepted at the facility:*
  - *Hazardous substances (as defined by Section 3.215 of the Illinois Environmental Protection Act);*
  - *Hazardous waste (as defined by Section 3.220 of the Illinois Environmental Protection Act);*
  - *Potentially infectious medical wastes (as defined by the Illinois Environmental Protection Act in Section 3.84);*
  - *Universal waste (as defined by Title 35 of the Illinois Administrative Code Part 733 including batteries, pesticides, mercury-containing equipment and lamps);*
  - *Regulated asbestos containing materials;*
  - *Polychlorinated biphenyl wastes;*
  - *Used motor oil;*
  - *Source, special or by-product nuclear materials;*
  - *Radioactive wastes (both high and low level);*
  - *Sludge;*
  - *White goods (incidental white goods received at the proposed transfer station will be segregated and stored for pickup by an off-site recycler);*
  - *Lead-acid automotive batteries (incidental automotive batteries received at the transfer station will be segregated and stored for pickup by an off-site recycler);*
  - *Used tires (incidental tires received at the transfer station will be segregated and stored for pickup by an off-site recycler); and*
  - *Landscape waste.*
- *Special wastes generated at the site for disposal, storage, incineration or further treatment elsewhere shall be transported by the operator to the receiving facility utilizing the IEPA's Special Waste Authorization system and manifest system.*

6. Upon receiving final, non-appealable siting approval pursuant to 415 ILCS 5/39.2 to construct and operate the West DuPage RTS, and upon receiving an IEPA development permit, LRS shall, prior to commencing operation of the waste transfer facility, 1) execute and grant to the DuPage Airport Authority ("DAA") a new avigation easement, which is Exhibit A to the Agreement Between the DuPage Airport Authority, Oscar (IL) LLC, and Lakeshore Recycling Systems, LLC, dated January 19, 2022 ("Airport Agreement"), 2) LRS shall reduce the roof height of its existing transfer building so as to stay below all critical elevations in the new avigation easement, and 3) LRS shall not allow any penetrations whatsoever to the new avigation easement.



12. Transfer trailers entering and exiting the Subject Property shall use only the following roads: Powis Road (between the facility entrance and Route 64 (North Avenue), Route 64 (North Avenue), Kirk Road and Interstate 88. Except for waste collection trucks servicing property within the City of West Chicago, waste collection trucks entering and exiting the Subject Property shall use only the following streets within the City and no others: Powis Road south of Route 64, Route 64 (North Avenue), Route 38, and Kress Road. The Applicant shall have installed within City right-of-way to the satisfaction of the City, license plate readers in each of the following locations: Hawthorne Lane between Route 59 and Powis Road; Smith Road between Powis Road and Route 64; and Powis Road between Smith Road and Route 64. The license plate readers shall provide remote access to the City of West Chicago to be used for any lawful purpose. The specific make and model of license plate readers and the specific locations for installation of the license plate readers shall be subject to the written approval/direction of the West Chicago Police Chief, and may be relocated for operational need at the expense of the City; the initial and any annual costs associated with the license plate readers shall be at the Applicant's sole cost and expense. The Applicant shall be responsible for maintaining and, if necessary, replacing the license plate readers when in disrepair or at the end of their useful lives as determined by the City through documentation from the vendor. The Applicant shall also provide a set of certified portable scales to the City at its sole cost and expense, which thereafter shall be maintained and replaced by the City.

13. Trucks transporting hydro excavation waste shall be water-tight. Dump style trucks transporting solidified hydro excavation waste shall include liners that are sufficient to prevent leakage onto roads and other surfaces.

14. All incoming hydro-excavation waste loads shall be accompanied by a completed/signed manifest and shall be pre-approved using a waste profile sheet and other supporting documentation as necessary. These materials shall be reviewed to verify that the waste is non-hazardous as defined in Title 35 Illinois Administrative Code Part 722.111. Pre-approved waste streams and such profile packets shall be kept on file at the facility, shall accurately characterize the accepted material, and may not be more than one year old.

15. The facility shall be maintained with a negative pressure condition such that the ventilation system provides a minimum of 6 air changes per hour. The facility design shall include an ozone system to treat the ventilation air prior to exhaust. The facility shall also be equipped with a misting system that will assist in mitigation of dust and odors above the tipping floor.

16. The facility shall otherwise be constructed and operated in substantial conformance with the plans and operating procedures specified in the siting application.

17. Approval is further conditioned upon compliance with all terms of the Host Community Benefit Agreement between the City of West Chicago and Lakeshore Recycling Systems, LLC, dated April 1, 2019; the Secondary Host Community Benefit Agreement between DuPage County and Lakeshore Recycling Systems, LLC, dated March 10, 2020; and the Airport Agreement.

# Exhibit 3



FW: Ordinance



Michael Guttman <MGuttman@westchicago.org>

To: Michael Guttman  
Cc: Dennis G. Walsh

[Reply](#) [Reply All](#) [Forward](#)

Tue 2/28/2023 12:16 PM

Ordinance approving the application for Local Siting Approval with Exhibit A.pdf  
16 MB

Attached please find the Ordinance for tonight's meeting.



**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE CONDITIONALLY APPROVING THE APPLICATION FOR LOCAL SITING APPROVAL OF LAKESHORE RECYCLING SYSTEMS, LLC FOR WEST DUPAGE RECYCLING AND TRANSFER STATION**

**WHEREAS**, on September 16, 2022, Lakeshore Recycling Systems, LLC. (“Applicant”) filed an application with the City of West Chicago for siting approval of a new pollution control facility within West Chicago, Illinois, for the development of a new transfer station as defined by Section 3.500 of the Illinois Environmental Protection Act located at 1655 Powis Road (“the Facility”), pursuant to Section 39.2 of the Illinois Environmental Protection Act (415 ILCS 5/39.2) (“Act”); and

**WHEREAS**, the waste accepted for transfer will be general municipal solid waste, hydro excavation waste, recyclables and construction or demolition debris generated by residential, commercial and industrial sources; and

**WHEREAS**, the proposed Facility falls within the definition of a “pollution control facility” under the Illinois Environmental Protection Act and, as such, requires site location approval by the municipality in which the proposed Facility will be located pursuant to 415 ILCS 5/39.2; and

**WHEREAS**, the City of West Chicago, DuPage County, Illinois, is the municipality in which the proposed Facility will be located if approved and Article VII of the City of West Chicago’s Code of Ordinances (the “Siting Ordinance”) enacted by the City Council of the City of West Chicago, establishes a procedure for pollution control facility site approval in the City of West Chicago, DuPage County, Illinois; and

**WHEREAS**, following notice, the City of West Chicago held public hearings on January 3, 2023, January 4, 2023, January 5, 2023, January 10, 2023, January 12, 2023, January 16, 2023, and January 19, 2023, pursuant to the Act and West Chicago’s Siting Ordinance; and

**WHEREAS**, the Applicant, Protect West Chicago, People Opposing DuPage Environmental Racism and the City of West Chicago staff are parties that appeared at the public hearings. Protect West Chicago by and through counsel moved to dismiss the application asserting that the City of West Chicago lacked jurisdiction due to fatal defects in the pre-filing notice required by 415 ILCS 5/39.2, and argued that since the application fails to comply with the 1,000 foot set-back requirement of 415 ILCS 5/22.14 concerning the setback from property zoned primarily for residential uses, the siting approval must be denied. The Applicant filed a response in opposition to the Motion to Dismiss and a memorandum explaining why the 1,000 foot residential setback does not apply to this Facility due to impossibility.

**WHEREAS**, the Hearing Officer appointed to preside over the public hearing has made his report and recommendation regarding the Motion to Dismiss the residential setback issue and regarding conditional siting approval to the City Council of the City of West Chicago, based upon

the siting application, notifications, hearings, exhibits, public comment and the record, which includes the following determinations, subject to the decision of this City Council:

1. The Applicant complied with all pre-filing notice requirements of Section 39.2(b) of the Act and the pre-hearing notice requirements of Section 39.2(c) of the Act;
2. The City has jurisdiction to consider the Application;
3. Section 5/22.14 of the Act does not bar this proposed Facility;
4. The siting proceedings herein, both procedurally and substantively, complied with the requirements of fundamental fairness;
5. The Applicant has demonstrated that the proposed Facility meets Criterion 1: “the facility is necessary to accommodate the waste needs of the area it is intended to serve....;”
6. The Applicant has not demonstrated that the proposed Facility meets Criterion 2; however, with the imposition of and compliance with the special conditions provided below, the proposed Facility meets Criterion 2: “the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;”
7. The Applicant has demonstrated that the proposed Facility meets Criterion 3: “the facility is so located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property;”
8. The Applicant has demonstrated that the proposed Facility meets Criterion 4: “for a facility other than a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100 year floodplain or the site is flood-proofed”;
9. The Applicant has not demonstrated that the proposed Facility meets Criterion 5; however, with the imposition of and compliance with the special conditions provided below, the proposed Facility meets Criterion 5: “the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents;”
10. The Applicant has demonstrated that the proposed Facility meets Criterion 6: “the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows;”
11. The Applicant demonstrated that the facility will not be accepting hazardous waste and therefore demonstrated that Criterion 7 is not applicable;
12. The Applicant has demonstrated that the proposed Facility meets Criterion 8: “...where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan ....;”

13. The Applicant demonstrated that the Facility is not located within a regulated recharge area and therefore Criterion 9 is not applicable;

14. The Applicant's operating history demonstrates that the Applicant is qualified to operate the Facility safely and properly and provides no basis to deny the Application;

15. The proposed Facility, when developed and operated in compliance with the special conditions, is consistent with all appropriate and relevant location standards, including airport setback requirements, wetlands standards, seismic impact zone standards, and residential setback requirements; and

16. The Applicant has agreed to comply and approval is conditioned upon compliance with all terms of the Host Community Benefit Agreement between the City of West Chicago and Lakeshore Recycling Systems, LLC, dated April 1, 2019; the Secondary Host Community Benefit Agreement between DuPage County and Lakeshore Recycling Systems, LLC, dated March 10, 2020; and the Airport Agreement.

**WHEREAS**, the City Council of the City of West Chicago met on February 27, 2023 to deliberate, and to review and consider the hearing record in light of each of the Criterion established for consideration of siting of pollution control facilities in Section 39.2, and to the extent applicable, the provisions of the Siting Ordinance; and

**WHEREAS**, Section 39.2 allows the City Council of the City of West Chicago, in granting siting approval, to impose such conditions as may be reasonable and necessary to accomplish the purposes of Section 39.2 and as are not inconsistent with Illinois Pollution Control Board regulations; and

**WHEREAS**, during the above deliberations, the City Council of the City of West Chicago found that the Applicant complied with all the pre-filing notice requirements of Section 39.2(b) of the Act, and the pre-hearing notice requirements of Section 39.2(c) of the Act and that the City of West Chicago has jurisdiction to consider the application and found further that the Applicant met Criterion (1), (3), (4), (6), (7), (8) and (9) of Section 39.2 without conditions, and that the Applicant met Criterion (2) and (5) of Section 39.2 subject to the special conditions provided below; and

**WHEREAS**, after careful review and consideration, the City Council of the City of West Chicago desire to adopt the Hearing Officer's Findings as the basis of their decision as to a whether the Applicant met the Criterion under Section 39.2.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WEST CHICAGO, DU PAGE COUNTY, ILLINOIS**, pursuant to its home rule powers as provided by Article VII, Section 6 of the Illinois Constitution and the authority under Section 39.2 of the Illinois Environmental Protection Act (415 ILCS 5/39.2), that the Report of Hearing Officer Recommended Findings of Fact and Recommended Conditions of Approval, attached hereto as Exhibit A, is adopted by the City Council of the City of West Chicago.

**BE IT FURTHER RESOLVED**, that the City Council of the City of West Chicago has jurisdiction and hereby determines that Lakeshore Recycling Systems, LLC. has satisfied the applicable criteria, subject to the special conditions provided below; and

**BE IT FURTHER RESOLVED**, that the City Council of the City of West Chicago conditionally approves the request of Lakeshore Recycling Systems, LLC. for site approval of its proposed municipal solid waste transfer station, provided that the special conditions are not inconsistent with regulations of the Pollution Control Board or the terms of any development or operating permits approved by the Illinois Environmental Protection Agency.

**SECTION 1:** The preceding “Whereas” clauses are hereby incorporated into this Ordinance as if they were fully set forth herein.

**SECTION 2:** The City Council of the City of West Chicago denies Protect West Chicago’s Motion to Dismiss the Application for lack of jurisdiction due to fatal defects in the notice required by 415 ILCS 5/39.2(b) and due to the restrictions of 415 ILCS 5/22.14 concerning the setback from property zoned primarily for residential uses and finds that it has jurisdiction to consider the application.

**SECTION 3:** The City Council of the City of West Chicago hereby adopt the Report of Hearing Officer Recommended Findings of Fact and Recommended Conditions of Approval and Proposed Findings of Fact and Conclusions of Law in its entirety, as attached hereto as Exhibit A and incorporated as if fully set forth herein, and by so doing, the City Council of the City of West Chicago expressly adopts, in expansion of, but not in limitation of the foregoing, the introduction, all findings of fact, all conclusions of law, citations, recommendations, analysis, references and incorporations made in the Report of Hearing Officer Recommended Findings of Fact and Recommended Conditions of Approval and Proposed Findings of Fact and Conclusions of Law as its own to the same extent as though fully set forth herein. The City Council of the City of West Chicago further find, in expansion of, but not in limitation of the foregoing, that it has proper jurisdiction to hear the Application, that all notices required by law were duly given, that the procedures outlined in Section 39.2 and the Siting Ordinance were duly followed, and such procedures were fundamentally fair to the Applicant, all parties, and all participants involved.

**SECTION 4:** Based on the Application, expert testimony and record, we find the following:

The determination of Criterion 2 is primarily a matter of assessing the credibility of expert witnesses. *Fairview Area Citizens Taskforce v. Illinois Pollution Control Board*, 198 Ill.App.3d 541, 552, 555 N.E.2d 1178, 1185 (3d Dist. 1990); *CDT Landfill Corp. v. City of Joliet*, 1998 WL 112497 (Ill. Pollution Control Board). In the City Council’s opinion, Mr. Hock’s testimony was the more thorough and credible testimony on this issue. Accordingly, we find that the Applicant has met its burden of proof as to Criterion 2 of Section 39.2, the Transfer Station Facility is designed, located and proposed to be operated so that the public health, safety and welfare will be protected, provided that the Applicant operates the Facility in accordance with the following special conditions:

1. The maximum tonnage per day that may be received by the Facility shall not exceed 1,950 tons per day, of which up to 650 tons per day may be municipal solid waste (MSW), up to 300 tons per day may be hydro excavation waste, up to 750 tons per day may be construction and demolition debris (C&D) and up to 250 tons per day may be single stream recyclables (SSR).
2. The Applicant shall keep the truck doors to the transfer Facility closed, except for emergencies and to allow trucks to enter and exit the Facility, during regular business hours. The doors shall be equipped with sensors such that they will open and close automatically as vehicles enter and exit the transfer building. Alternatively, an employee may open and close the doors when trucks access and exit the transfer Facility.
3. The push walls in the transfer Facility shall be designed to ensure to the satisfaction of the City that there will be no buildup of waste behind the walls which could result in fire, odor, or harborage for vectors. In addition, the Applicant shall provide a certification from a licensed structural engineer that the push walls will be capable of withstanding impact from waste loading equipment at 5 mph without shearing the beams or compromising the integrity of the building's walls.
4. All transfer vehicles utilizing the Facility shall be equipped with auto tarping systems, and all loaded transfer trailers shall be tarped inside of the transfer building prior to exit.
5. The Applicant shall continue to operate the C&D recycling portions of the Facility in accordance with the requirements of 415 ILCS 5/22.38 for so long as the current permit (2015-124-OP) remains in effect. If the current permit (2015-124-OP) is discontinued, replaced or terminated, the following conditions, as modified, shall remain in effect:
  - a) The Facility shall be designed and constructed with roads and traffic flow patterns adequate for the volume, type and weight of traffic using the Facility including, but not limited to hauling vehicles, emergency vehicles, and on-site equipment. Sufficient area shall be maintained to minimize traffic congestion, provide for safe operation, and allow for queuing of waste hauling vehicles.
  - b) The operator shall provide adequate parking for all vehicles and equipment used at the Facility and as necessary for queued hauling vehicles.
  - c) Roadways and parking areas on the Facility premises shall be designed and constructed for use in all weather, considering the volume, type and weight of traffic and equipment at the Facility.
  - d) The Facility shall be designed and constructed so that site surface drainage will be diverted around or away from the recycling and waste transfer areas. Surface drainage shall be designed and controlled so that adjacent property owners encounter no adverse effects during development, operation and after closure of the Facility.
  - e) Run-off from roadways and parking areas shall be controlled using storm sewers or shall be compatible with natural drainage for the site. Best management practices (e.g., design features, operating procedures, maintenance procedures, prohibition of certain practices and treatment) shall be used to ensure that run-off from these areas does not carry wastes, debris or constituents thereof, fuel, oil or other residues to soil, surface water or groundwater.
  - f) The Facility, including, but not limited to, all structures, roads, parking and recycling areas, shall be designed and constructed to prevent malodors, noise, vibrations, dust and exhaust from creating a nuisance or health hazard during development, operation and

closure of the Facility. Facility features (e.g., berms, buffer areas, paving, grade reduction), best available technology (e.g., mufflers, machinery enclosures, sound absorbent materials, odor neutralizing systems, air filtering systems, misting systems), and building features (e.g., enclosed structures, building orientation) shall be among the measures to be considered to achieve compliance.

- g) The Facility shall be designed and constructed to prevent litter and other debris from leaving the Facility property. Facility features (e.g., windbreaks, fencing, netting, etc.) shall be among the measures considered to ensure that the debris does not become wind strewn and that no other provisions of the Act are violated.
- h) No regulated air emissions shall occur from these facilities, except as authorized by a permit from the Illinois Environmental Protection Agency (IEPA) Bureau of Air (BOA). No process discharge to Waters of the State or to a sanitary sewer shall occur from these facilities, except as authorized by a permit from the IEPA Bureau of Water (BOW).
- i) The Facility shall be designed and constructed with a water supply of adequate volume, pressure, and in locations sufficient for cleaning, firefighting, personal sanitary facilities, and as otherwise necessary to satisfy operating requirements (e.g., dust suppression, wheel washing) and the contingency plan.
- j) The Facility shall be designed and constructed with exterior and interior lighting for roadways, and waste handling areas adequate to perform safely and effectively all necessary activities.
- k) The Facility shall be designed and constructed with truck wheel curbs, guard rails, bumpers, posts or equivalents to prevent backing into fuel storage tanks, equipment, and other structures.
- l) The Facility shall be designed and constructed with adequate shelter, sanitary facilities, and emergency communications for employees.
- m) The Facility operator shall install fences and gates, as necessary, to limit entry. Except during operating hours, the gates shall be securely locked to prevent unauthorized entry.
- n) The Facility may receive general construction and demolition debris at the site Monday through Saturday, 24 hours a day. The Facility shall be closed on Sunday and the six major federal holidays (New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day). When the Facility is operated before sunrise or after sunset, adequate lighting shall be provided. If it is required for the Facility to be open beyond normal operating hours to respond to emergency situations, a written record of the date, time and reason the Facility was open shall be maintained in Facility operating records. The IEPA's Regional Office and the county authority responsible for inspection of the Facility, per a delegation agreement with the IEPA, must be notified and must grant approval each day that the operating hours need to be extended. No later than 10:00 a.m. of the first operating day after the operating hours have been extended, the Applicant shall send a written report by email to the City Administrator, which describes the length of the extension of the operating hours and the reason for the extension.
- o) The Facility may receive and transfer MSW, hydro excavation waste and SSR from 4:00 a.m. to 12:00 a.m. Monday through Friday and from 4:00 a.m. to 12:00 p.m. on Saturday, with no operation on Sunday or the six major federal holidays (New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day), provided that on the Saturday following a major federal holiday, regular business hours

may be extended to 12:00 a.m. If it is required for the Facility to be open beyond normal operating hours to respond to emergency situations, a written record of the date, time and reason the Facility was open shall be maintained in Facility operating records. The City of West Chicago must be notified by email to the City Administrator each day that the operating hours need to be extended. The IEPA's Regional Office and the county authority responsible for inspection of the Facility, per a delegation agreement with the IEPA, must be notified and must grant approval each day that the operating hours need to be extended.

- p) Fire safety equipment (fire extinguishers) shall be maintained in accordance with recommended practice.
- q) Non-recyclable waste may be kept temporarily in covered containers or transfer trailers for no more than 24 hours (except on weekends and holidays), provided that loaded or partially loaded trailers intended to be stored overnight or that will not be picked up and transported the same operating day are stored indoors and suitably covered.
- r) Piles of general construction or demolition debris shall be covered or wetted to prevent air-borne dust.
- s) The Facility shall be designed and constructed to prevent unauthorized access to recycling areas, storage areas for unauthorized wastes, salvaged and recycled materials, and staging areas where loaded site equipment or vehicles may be parked. Facility features such as fences and gates shall be provided.
- t) Waste handling areas shall be designed and constructed to prevent exposure of wastes and recyclable materials to run-off and flooding.
- u) The sorting areas shall be properly graded and compacted to prevent ponding from forming leachate during storms.
- v) Records shall be maintained on-site at the Facility office for each operating day. The operator shall record operating hours, load ticket information, load inspections, daily processing time, volume processed per day, transfer load out and waste disposition details.
- w) The operator shall, within 48 hours of receipt of the general construction or demolition debris at the Facility, sort the general construction or demolition debris. The operator shall separate the recyclable general construction or demolition debris from nonrecyclable general construction or demolition debris and dispose of the non-recyclable general construction or demolition debris, in accordance with Section 22.38(b)(1) of the Act.
- x) The operator must place wood, tires, and other unacceptable materials in covered dumpsters or vehicles adequate to prevent the release of leachate.
- y) All non-recyclable general construction or demolition debris, and unacceptable material shall be moved to the waste transfer Facility on the same day it is received, and disposal of such material shall be handled in accordance with all applicable federal, State, and local requirements and with these conditions.
- z) The operator shall transport all non-putrescible recyclable general construction or demolition debris for recycling or disposal within 6 months of its receipt at the Facility, in accordance with Section 22.38(b)(4) of the Act.
- aa) In accordance with Section 22.38(b)(6) of the Act, the operator shall employ tagging and record keeping procedures to identify the source and transporter of C&D material accepted by the Facility.



- bb) The operator shall use load tickets to control the site activities and comply with the tagging and record keeping procedures. These load tickets shall identify the source of the C&D material delivered to the site. The operator shall use these tickets to identify the location in the yard or in the covered dumpsters and the length of time stored at the site to achieve compliance.
- cc) The operator is prohibited from receiving hazardous and asbestos containing materials.
- dd) The operator may separate clean concrete and clean soil from the general construction or demolition debris as recyclable materials for use in construction. The operator is permitted to store recyclable concrete and clean soil for a maximum period of 3 months.
- ee) The operator may store the steel separated from concrete or other construction or demolition debris for a maximum period of 6 months. After six months, the steel must be sent offsite for disposal or recycling.
- ff) The operator shall ensure that site surface drainage, during development, during operation and after the site is closed, shall be such that no adverse effects are encountered by adjacent property owners.
- gg) The best available technology (mufflers, berms and other sound shielding devices) shall be employed to minimize equipment noise impacts on property adjacent to the site during both development, operation and during any applicable post-closure care period.
- hh) Management of Unauthorized Waste by the operator
  - i. Landscape waste found to be mixed with general construction and demolition debris shall be removed the same day and transported to a facility that is operating in accordance with the Illinois Environmental Protection Act (Act), Title V, Sections 21 and 39 (415 ILCS 5/21 and 39).
  - ii. Lead-acid batteries mixed with general construction and demolition debris shall be removed the same day and transported either to a drop-off center handling such waste, or to a lead-acid battery retailer.
  - iii. Special wastes including hazardous waste, non-hazardous special waste, and potentially infectious medical waste mixed with general construction and demolition debris shall be containerized separately and removed from the property no later than five hours after receipt by a licensed special waste hauler. Special wastes shall be transported to a licensed special waste management facility that has obtained authorization to accept such waste. The operator shall maintain a contract with haulers so that the immediate removal is ensured. The operator shall develop an emergency response/action plan for such occurrences.
  - iv. Asbestos debris from general construction and demolition debris shall be managed in accordance with the National Emission Standards for Hazardous Air Pollutants (NESHAPS) regulations.
  - v. Tires found to be mixed with general construction and demolition debris shall be removed and managed in accordance with Section 55 of the Act [415 ILCS 5/55].
  - vi. White good components mixed with general construction and demolition debris shall be removed and managed in accordance with Section 22.28 of the Act [415 ILCS 5/22.28].
  - vii. No person may knowingly mix liquid used oil with general construction and demolition debris.
  - viii. After the unauthorized waste has been removed from the Facility, a thorough cleanup of the affected area shall be made according to the type of unauthorized waste

managed. Records shall be kept for three years and will be made available to the IEPA upon request. In addition, the Applicant shall provide an annual written report to the City of West Chicago not later than January 31 of each year, which report shall: list the types, quantities and dates of receipt of all unauthorized waste; the generators of such waste; and the sites to which the wastes were delivered for disposal, processing or handling.

- ix. The following wastes shall not be accepted at the Facility:
- Hazardous substances (as defined by Section 3.215 of the Illinois Environmental Protection Act);
  - Hazardous waste (as defined by Section 3.220 of the Illinois Environmental Protection Act);
  - Potentially infectious medical wastes (as defined by the Illinois Environmental Protection Act in Section 3.84);
  - Universal waste (as defined by Title 35 of the Illinois Administrative Code Part 733 including batteries, pesticides, mercury-containing equipment and lamps);
  - Regulated asbestos containing materials;
  - Polychlorinated biphenyl wastes;
  - Used motor oil;
  - Source, special or by-product nuclear materials;
  - Radioactive wastes (both high and low level);
  - Sludge;
  - White goods (incidental white goods received at the proposed transfer station will be segregated and stored for pickup by an off-site recycler);
  - Lead-acid automotive batteries (incidental automotive batteries received at the transfer station will be segregated and stored for pickup by an off-site recycler);
  - Used tires (incidental tires received at the transfer station will be segregated and stored for pickup by an off-site recycler); and
  - Landscape waste.
- ii) Special wastes generated at the site for disposal, storage, incineration or further treatment elsewhere shall be transported by the operator to the receiving facility utilizing the IEPA's Special Waste Authorization system and manifest system.

6. Upon receiving final, non-appealable siting approval pursuant to 415 ILCS 5/39.2 to construct and operate the Facility, and upon receiving an IEPA development permit, LRS shall, prior to commencing operation of the waste transfer Facility, 1) execute and grant to the DuPage Airport Authority ("DAA") a new avigation easement, which is Exhibit A to the Agreement Between the DuPage Airport Authority, Oscar (IL) LLC, and Lakeshore Recycling Systems, LLC, dated January 19, 2022 ("Airport Agreement"), 2) LRS shall reduce the roof height of its existing transfer building so as to stay below all critical elevations in the new avigation easement, and 3) LRS shall not allow any penetrations whatsoever to the new avigation easement.

7. All improvements installed on and offsite by the Applicant shall be funded by and solely at the expense of the Applicant.

8. The tipping floor of the waste transfer building shall be cleaned and free of waste at the end of each operating day. Except as set forth in Condition 5, no waste or other material shall be left on the floor inside the transfer building or outside the transfer building overnight or when the Facility is not operating.

9. The Applicant shall control litter by discharging and loading all waste within the enclosed portion of the Transfer Facility. After unloading, any remaining loose waste shall be removed or contained in the vehicle prior to exiting the site. The Applicant shall use its best efforts to assure that vehicles, hauling waste to or removing waste from the Transfer Facility, shall be suitably covered to prevent waste from leaving the vehicles. A fence to aid in the interception of any blowing litter shall surround the Transfer Facility. The Applicant shall diligently patrol the Subject Property during hours of operation to collect any litter. At a minimum the Applicant shall diligently patrol and remove litter from: the Subject Property; all property owned or controlled by the Applicant; and, before 10:00 a.m. each operating day, Powis Road between Hawthorne Lane and Route 64 (North Avenue) as well as Powis Court. In addition, the Applicant shall, at a minimum, patrol and remove litter from private property within 500 feet of the aforesaid public streets and corresponding rights-of-way with the written permission of the owner of said properties, which permission the Applicant shall diligently attempt to obtain. The Applicant shall provide the City of West Chicago the names, addresses, telephone numbers and email addresses of such owners granting permission. The Applicant shall also post on the company's website the name and email address of an employee of the company to whom any owner of property along Powis Court or Powis Road between Route 64 (North Avenue) and Hawthorne Lane may report litter from the Facility or trucks using the Facility, in which case the Applicant shall remove the litter with the written permission of the owner within two hours of receiving notification of the litter concern. Upon written request, logs showing the private owner, the property address for the request for litter removal, the time such was received and the time the concern was abated shall be available to the City and provided within one business day. Also, the Applicant shall diligently seek the written approval of the DuPage County Forest Preserve District to remove litter, which is visible from Route 64 (North Avenue), from the portion of the Pratts Wayne Woods Forest Preserve that is located within the City of West Chicago. If permission is granted, litter removal from the Forest Preserve shall occur not less than monthly; the City shall be provided written notice of each occurrence within one business day of such being completed.

10. The Applicant shall provide a street sweeper to remove mud and dust tracked onto hard surfaces inside and outside the Transfer Facility, on property owned or controlled by the Applicant as well as Powis Court and Powis Road between Hawthorne Lane and Route 64 (North Avenue) on an as needed basis, but not less frequently than daily.

11. The Applicant shall retain a pest control service on an on-going basis to address the potential for infestation by rodents and other vectors. Such service shall inspect the Transfer Facility on an as needed, but no less than monthly, basis.

12. Transfer trailers entering and exiting the Subject Property shall use only the following roads: Powis Road (between the Facility entrance and Route 64 (North Avenue)), Route 64 (North Avenue), Kirk Road and Interstate 88. Except for waste collection trucks servicing property within the City of West Chicago, waste collection trucks entering and exiting the Subject Property shall use only the following streets within the City and no others: Powis Road south of Route 64, Route 64 (North Avenue), Route 38, and Kress Road. The Applicant shall have installed within City right-of-way to the satisfaction of the City, license plate readers in each of the following locations: Hawthorne Lane between Route 59 and Powis Road; Smith Road between Powis Road and Route 64; and Powis Road between Smith Road and Route 64. The license plate readers shall provide remote access to the City of West Chicago to be used for any lawful purpose. The specific make and model of license plate readers and the specific locations for installation of the license plate readers shall be subject to the written approval/direction of the West Chicago Police Chief, and may be relocated for operational need

at the expense of the City; the initial and any annual costs associated with the license plate readers shall be at the Applicant's sole cost and expense. The Applicant shall be responsible for maintaining and, if necessary, replacing the license plate readers when in disrepair or at the end of their useful lives as determined by the City through documentation from the vendor. The Applicant shall also provide a set of certified portable scales to the City at its sole cost and expense, which thereafter shall be maintained and replaced by the City.

13. Trucks transporting hydro excavation waste shall be water-tight. Dump style trucks transporting solidified hydro excavation waste shall include liners that are sufficient to prevent leakage onto roads and other surfaces.

14. All incoming hydro excavation waste loads shall be accompanied by a completed/signed manifest and shall be pre-approved using a waste profile sheet and other supporting documentation as necessary. These materials shall be reviewed to verify that the waste is nonhazardous as defined in Title 35 Illinois Administrative Code Part 722.111. Pre-approved waste streams and such profile packets shall be kept on file at the Facility, shall accurately characterize the accepted material, and may not be more than one year old.

15. The Facility shall be maintained with a negative pressure condition such that the ventilation system provides a minimum of 6 air changes per hour. The Facility design shall include an ozone system to treat the ventilation air prior to exhaust. The Facility shall also be equipped with a misting system that will assist in mitigation of dust and odors above the tipping floor.

16. The Facility shall otherwise be constructed and operated in substantial conformance with the plans and operating procedures specified in the siting application.

17. Approval is further conditioned upon compliance with all terms of the Host Community Benefit Agreement between the City of West Chicago and Lakeshore Recycling Systems, LLC, dated April 1, 2019; the Secondary Host Community Benefit Agreement between DuPage County and Lakeshore Recycling Systems, LLC, dated March 10, 2020; and the Airport Agreement.

**SECTION 5:** To meet Criterion 5, the Applicant must show that there is a plan of operation designed to minimize the danger. As in any industrial setting, the potential exists for harm both to the environment and the residents. *Industrial Fuels & Resources v. Illinois Pollution Control Board*, 227 Ill.App.3d 533, 547, 592 N.E.2d 148, 157-58 (1<sup>st</sup> Dist. 1992). The key to this criterion is minimization. *Id.*, citing *Wabash and Lawrence Counties Taxpayers and Water Drinkers Assoc.*, 198 Ill.App.3d 388, 394, 555 N.E.2d 1081, 1086 (5<sup>th</sup> Dist. 1990). “There is no requirement that the applicant guarantee no accidents will occur, for it is virtually impossible to eliminate all problems. *Id.* Guaranteeing an accident-proof facility is not required.” *Industrial Fuel*, 227 Ill.App.3d at 547, 592 N.E.2d at 157-58. As such, the City Council of the City of West Chicago find that the Applicant has met its burden of proof as to Criterion 5 of Section 39.2, provided that the Applicant operates the Facility in accordance with the following special conditions:

1. All transfer vehicles utilizing the Facility shall be equipped with auto tarping systems, and all loaded transfer trailers shall be tarped inside of the transfer building prior to exit.



2. Upon receiving final, non-appealable siting approval pursuant to 415 ILCS 5/39.2 to construct and operate the Facility, and upon receiving an IEPA development permit, LRS shall, prior to commencing operation of the waste transfer Facility, 1) execute and grant to the DuPage Airport Authority ("DAA") a new avigation easement, which is Exhibit A to the Agreement Between the DuPage Airport Authority, Oscar (IL) LLC, and Lakeshore Recycling Systems, LLC, dated January 19, 2022 ("Airport Agreement"), 2) LRS shall reduce the roof height of its existing transfer building so as to stay below all critical elevations in the new avigation easement, and 3) LRS shall not allow any penetrations whatsoever to the new avigation easement.

3. The Applicant shall control litter by discharging and loading all waste within the enclosed portion of the Transfer Facility. After unloading, any remaining loose waste shall be removed or contained in the vehicle prior to exiting the site. The Applicant shall use its best efforts to assure that vehicles, hauling waste to or removing waste from the Transfer Facility, shall be suitably covered to prevent waste from leaving the vehicles. A fence to aid in the interception of any blowing litter shall surround the Transfer Facility. The Applicant shall diligently patrol the Subject Property during hours of operation to collect any litter. At a minimum the Applicant shall diligently patrol and remove litter from: the Subject Property; all property owned or controlled by the Applicant; and, before 10:00 a.m. each operating day, Powis Road between Hawthorne Lane and Route 64 (North Avenue) as well as Powis Court. In addition, the Applicant shall, at a minimum, patrol and remove litter from private property within 500 feet of the aforesaid public streets and corresponding rights-of-way with the written permission of the owner of said properties, which permission the Applicant shall diligently attempt to obtain. The Applicant shall provide the City of West Chicago the names, addresses, telephone numbers and email addresses of such owners granting permission. The Applicant shall also post on the company's website the name and email address of an employee of the company to whom any owner of property along Powis Court or Powis Road between Route 64 (North Avenue) and Hawthorne Lane may report litter from the Facility or trucks using the Facility, in which case the Applicant shall remove the litter with the written permission of the owner within two hours of receiving notification of the litter concern. Upon written request, logs showing the private owner, the property address for the request for litter removal, the time such was received and the time the concern was abated shall be available to the City and provided within one business day. Also, the Applicant shall diligently seek the written approval of the DuPage County Forest Preserve District to remove litter, which is visible from Route 64 (North Avenue), from the portion of the Pratts Wayne Woods Forest Preserve that is located within the City of West Chicago. If permission is granted, litter removal from the Forest Preserve shall occur not less than monthly; the City shall be provided written notice of each occurrence within one business day of such being completed.

4. The Applicant shall provide a street sweeper to remove mud and dust tracked onto hard surfaces inside and outside the Transfer Facility, on property owned or controlled by the Applicant as well as Powis Court and Powis Road between Hawthorne Lane and Route 64 (North Avenue) on an as needed basis, but not less frequently than daily.

5. The Applicant shall retain a pest control service on an on-going basis to address the potential for infestation by rodents and other vectors. Such service shall inspect the Transfer Facility on an as needed, but no less than monthly, basis.

6. Trucks transporting hydro excavation waste shall be water-tight. Dump style trucks transporting solidified hydro excavation waste shall include liners that are sufficient to prevent leakage onto roads and other surfaces.

7. The Facility shall be maintained with a negative pressure condition such that the ventilation system provides a minimum of 6 air changes per hour. The Facility design shall include an ozone system to treat the ventilation air prior to exhaust. The Facility shall also be equipped with a misting system that will assist in mitigation of dust and odors above the tipping floor.

8. The Facility shall otherwise be constructed and operated in substantial conformance with the plans and operating procedures specified in the siting application.

**SECTION 6:** That all ordinances or parts of ordinances conflicting with any of the provisions of this Ordinance shall be and the same is hereby repealed.

**SECTION 7:** That the Executive Assistant is hereby directed to publish this Ordinance in pamphlet form.

**SECTION 8:** That this Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Alderman Beifuss	_____	Alderman Chassee	_____
Alderman Sheahan	_____	Alderman Brown	_____
Alderman Hallett	_____	Alderman Dettmann	_____
Alderman Birch-Ferguson	_____	Alderman Dimas	_____
Alderman Swiatek	_____	Alderman Garling	_____
Alderman Stout	_____	Alderman Short	_____
Alderman Jakabcsin	_____	Alderman Morano	_____

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Mayor Ruben Pineda

ATTEST:

\_\_\_\_\_  
Executive Assistant

PUBLISHED: \_\_\_\_\_

**STATE OF ILLINOIS  
CITY OF WEST CHICAGO  
BEFORE THE CORPORATE AUTHORITIES**

***In Re:***

**APPLICATION OF  
LAKESHORE RECYCLING SYSTEMS, LLC  
FOR SITING APPROVAL UNDER 415 ILCS 5/39.2  
OF A NEW POLLUTION CONTROL FACILITY**

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**REPORT OF HEARING OFFICER  
RECOMMENDED FINDINGS OF FACT AND  
RECOMMENDED CONDITIONS OF APPROVAL**

**INTRODUCTION**

Lakeshore Recycling Systems, LLC (“Applicant”) has applied for local siting approval of a new municipal waste transfer station on its property at 1655 Powis Road, West Chicago, Illinois. The Applicant owns the real property (the “Property”) upon which the proposed pollution control facility (“Facility”) is to be located. The Property is located within the corporate limits of the City. The Application was filed on September 16, 2022. The City is to render a decision on the Application in accordance with the criteria and procedures set forth in Section 39.2 of the Illinois Environmental Protection Act (415 ILCS 5/39.2) (the “Act”) and its own Code of Ordinances establishing rules and procedures for pollution control facility siting. Among the procedures set forth in the Act and the Code of Ordinances is the requirement that the City conduct a public hearing on the Application, accept public comment, and make a formal decision on the Application within 180 days of the date of filing (March 15, 2023). The City opened the public hearing on January 3, 2023.

In accordance with the procedures and other terms and provisions of the Act and the Code of Ordinances, I reviewed the Application and initial filings. The following parties appeared at the Hearing by and through counsel:

The Applicant (“LRS”), represented by George Mueller;

Protect West Chicago (“PWC”) represented by Ricardo Meza and Phil Luetkehans;

“P.O.D.E.R.” represented by Robert A. Weinstock;

The City of West Chicago Staff (“City”), represented by Gerald Callaghan; and

The City of West Chicago Corporate Authorities (“Council”), represented by its corporate counsel, Dennis Walsh.

During the hearing, I admitted the Application, the Host Agreement, and testimony and exhibits from witnesses called by the Applicant in support of the Application. I also admitted exhibits and testimony from witnesses called by PWC and PODER in opposition to the Application. I also ruled some proffers of proof by PWC and PODER on “environmental justice related issues” to be irrelevant; an offer of proof on those issues was entered into the record. Further, PODER presented witnesses that testified as to their observations at the existing facility; however, I ruled that they were not experts and that they lacked a proper foundation for some of their offered testimony.

As discussed below, PWC filed a Motion to Dismiss the Application for Lack of Jurisdiction due to fatal defects in the Notice required by 415 ILCS 5/39.2(b) and due to the restrictions of 415 ILCS 5/22.14 concerning the setback from property zoned primarily for residential uses. The Applicant filed Responses in opposition to the Motion.

In addition to evidence and testimony, oral public comment was received throughout the hearing proceedings and written public comment has been received by the City from September



16 through (and including) February 18, 2023. “Comment” is distinguished from “testimony” in that “comment” is not provided under oath and is not subject to cross examination and therefore entitled to less weight than testimony.

I declared the hearing closed on January 19, 2023. In accordance with the Act, written comment was then received by the City for an additional 30 days (i.e., through 11:59:59 p.m. CDST on February 18, 2023, including any written comment post-marked on or before February 18, 2023). Substantial public comment was received in support of the Application; and there was public comment filed from various residents and PODER opposing the application. Notably, public comment was also offered after the close of the hearing by the Applicant including a letter from the Canadian National Railway. As indicated above, public comment is entitled to less weight because it is not subject to being tested by the opportunity for cross examination. I have not relied upon the public comment filed by the Applicant in reaching my findings of fact or conclusions of law.

I received proposed conditions of approval from City Staff; I received argument in favor of siting approval and proposed findings of fact and law from the Applicant; I received argument in opposition to siting approval as well as proposed findings of fact and conclusions of law from PWC; and argument in opposition to approval as well as proposed findings of fact, conclusions of law, and alternatively proposed special conditions from PODER.

### **RECOMMENDED ACTIONS**

It is my recommendation that the City Council vote separately on the three propositions:

1) Whether to grant PWC’s motion to dismiss for failure to effectuate proper notice under Section 39.2(b).

2) Whether to grant PWC's motion to dismiss claiming the Facility violates the 1,000 foot setback under Section 22.14.

3) Whether the Proposed Facility (with any special conditions imposed by the City Council) satisfies the siting criteria of Section 39.2.

For the reasons set forth below, my recommendation to the City is to deny the Motion to Dismiss under Section 39.2(b).

For the reasons set forth below, my recommendation to the City is to deny the Motion to Dismiss under Section 5/22.14.

For the reasons set forth below, my recommendation to the City is to impose Special Conditions (appended to my proposed Findings of Fact and Conclusions of Law) and with those Special Conditions approve the Application as satisfying the siting criteria of Section 39.2. More specifically, I find that the application as filed, and the testimony concerning the application as filed, did not establish that the proposed Facility satisfies all of the criteria for local siting approval set forth in Section 39.2 of the Act; however, I further find that, with the imposition of special conditions (and compliance by the Applicant with those conditions), the proposed Facility does satisfy all of the criteria for local siting approval.

### **MOTION TO DISMISS**

#### **Motion to Dismiss Under Section 39.2(b)**

Whether the applicant provided proper notice under section 39.2(b) of the Act is a threshold question in the pollution control siting. *Maggio v. Pollution Control Board*, 2014 IL App (2d) 130260, ¶ 15. Compliance with the pre-filing Notice requirements of Section 39.2 is jurisdictional and substantial compliance is not sufficient. See, *Daubs Landfill v. Pollution*

*Control Board*, 166 Ill.App 3<sup>rd</sup> 778 (5<sup>th</sup> Dist. 1998). However, as *Daubs* indicates, perfection in providing the Notice is not the standard.

Section 39.2(b) requires, in relevant part, that the applicant shall cause written notice of its request for site approval “to be served either in person or by registered mail, return receipt requested, on the owners of all property within the subject area not solely owned by the applicant, and on the owners of all property within 250 feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of the County in which such facility is to be located...”). PWC has challenged whether the Applicant fulfilled this requirement with respect to the railroad property putatively owned by the Elgin, Joliet and Eastern Railway.

The evidence concerning the authentic tax records of DuPage County is as follows:

The records placed in evidence by PWC indicate that the owners of the railroad properties within 250 feet of the Facility are, for one parcel, the Union Pacific Railroad Company and, variously and alternatively for the second parcel, the “Elgin, Joliet & Eastern Railway,” and/or the “Wisconsin Central, Ltd. (EJ&E Line) Company.”

The DuPage County, Illinois 2022 Real Estate Tax Assessment Parcels Map placed in evidence by the Applicant indicates that the second parcel is owned by the “Canadian National Railway.”

It is not disputed that the Applicant caused written notice of its request for site approval to be served by registered mail return receipt requested upon the Union Pacific Railroad Company. It is also not disputed that the Applicant did not cause notice of its request for site approval to be served on the Elgin, Joliet & Eastern Railway or on the Wisconsin Central, Ltd.

The publicly available information – of which I take judicial notice – is that the Elgin, Joliet & Eastern Railway was merged into the Wisconsin Central, Ltd. in December of 2012 and, further, that the Wisconsin Central, Ltd. is wholly owned by the Canadian National Railway.

It is not disputed that the Applicant did not serve the Canadian National Railway by personal service nor by registered mail return receipt requested. Instead, the Applicant caused written notice of the Applicant's request for site approval to be delivered via paid courier to the Canadian National Railway at the corporate offices of the Canadian National Railway in Montreal, Quebec, Canada, and that the Applicant's courier secured the signature of a representative of the Canadian National Railway documenting that delivery.

After reviewing the briefing concerning "service" under Illinois law filed by both PWC and the Applicant, I find that the Applicant's use of a paid courier to deliver written notice of the Applicant's request, where the paid courier documented the delivery, was sufficient to satisfy the requirements of Section 39.2(b) of the Act and that strict compliance with the requirements of formal service is not required as a matter of law where, as here, actual notice has been documented. See, e.g., *Waste Management of Illinois v. Illinois Pollution Control Board*, 365 Ill.App.3d 229 (3d Dist. 2005) (difference in delivery method not of "pivotal importance" when delivery method documents that the addressee received the letter); see also, *Olin Corp. v. Bowling*, 95 Ill.App.3d 1113, 1116-17 (5<sup>th</sup> Dist. 1981)).

#### **Motion to Dismiss Under Section 5/22.14**

Section 415 ILCS 5/22.14 states, in relevant part, that "no person may establish any pollution control facility for use as a garbage transfer station, which is located less than 1000 feet from the nearest property zoned for primarily residential uses or within 1000 feet of any



dwelling...” It is undisputed that no dwelling is within 1000 feet of the proposed Facility. However, the railroad properties are zoned ER-1 in the City and are located within 1000 feet of the proposed Facility. It is not disputed that property zoned “ER-1” in the City of West Chicago is property zoned primarily for residential uses. PWC’s Motion to Dismiss asserts that Section 5/22.14 bars the Applicant from proceeding with this proposed Facility.

The Applicant argues that the size and the active use of the railroad properties make residential development of the parcels in compliance with ER-1 requirements improbable (and therefore the set-back requirement a nullity with respect to the railroad properties). The Applicant has submitted the testimony of John Hock and the August 23, 2022 letter of Tom Dabareiner, City Community Development Director and Zoning Administrator for the City of West Chicago, to support a finding that, due to the requirements of the ER-1 zoning (minimum lot area, minimum lot width, minimum setbacks, physical features of the property, the lack of access) it is not reasonably possible to develop the railroad properties for residential uses.

Conversely, PWC called Joe Abel, a planning expert, who testified that the Application does not meet the setback requirements of Section 5/22.14. He further testified that if the railroad properties at issue were abandoned by the railroads, and if the railroad properties were then assembled with other adjacent properties, and if those assembled properties were then rezoned to a residential zoning district, then the railroad properties could be put to residential uses.

No evidence was introduced that the conditions recited by Joe Abel as preconditions to residential use of the railroad properties are probable--or even potentially contemplated--for the foreseeable future.

The statutory language of Section 22.14 protects any existing dwelling within 1,000 feet of the facility (regardless of underlying zoning for that dwelling) and properties for which there is a reasonable expectation of future residential use and dwellings based initially upon the zoning designation. The PCB has taken a pragmatic approach to enforcement of Section 22.14. Where actual residential use of property (even though it is zoned for residential uses and even though homes exist on the properties) is not reasonably probable, Section 22.14 will not bar the facility. Although not a binding opinion, the Appellate Court agreed with the PCB's interpretation of Section 22.14 in *Roxana Landfill, Inc. v. Illinois Pollution Control Board*, 2016 WL 4005892, (Ill. App. 5 Dist. 2016).

Here, the proposed facility is not within 1,000 feet of any existing dwelling nor within 1,000 feet of any property zoned for residential use where such actual residential use is reasonably probable in the foreseeable future. Based upon the PCB's decision (ultimately affirmed in *Roxana*), Section 22.14 does not prohibit the siting of the facility in this case nor make the proposed facility incompatible with the character of the area.

#### **JURISDICTION**

The record, the statutes, and the case law discussed above establish that the Applicant owns the real property upon which the proposed pollution control facility will be located and that the property and the Facility are wholly located within the City of West Chicago. I have discussed the requirements of 415 ILCS 5/39.2(b) above and, over the objections and motions of PWC and PODER, found that the Applicant fulfilled these requirements. I have also discussed the application of Section 5/22.14 and found that in this case, Section 5/22.14 does not bar the proposed Facility.

I further find that the Applicant complied with all notice requirements of Section 39.2(c) concerning the notice requirements prior to the hearing on the Application. No objections were filed concerning compliance with Section 39.2(c).

Likewise, no objections were filed concerning compliance with the City Code of Ordinances. I find that the Applicant complied with all requirements of the City of West Chicago.

Accordingly, I find that the City has jurisdiction to consider the statutory criteria of Section 39.2.

#### **SECTION 39.2 CRITERIA**

These proceedings are governed by Section 39.2 of the Environmental Protection Act (“the Act”), 415 ILCS 5/39.2, which sets forth the exclusive siting procedures for pollution control facilities in Illinois. Section 40.1 of the Act and case law require that siting proceedings and the decision making be conducted in accordance with the requirements of fundamental fairness. The application (or request) must contain sufficient details of the proposed facility demonstrating that it satisfies each of the nine criteria by a preponderance of the evidence. *Land & Lakes Co. v. Illinois Pollution Control Board*, 319 Ill.App.3d 41, 743 N.E.2d 188, 191 (3d Dist. 2000.) If the applicant fails to establish any one of the criteria, the application should be denied. *Waste Management v. Pollution Control Board*, 175 Ill.App.3d 1023, 520 N.E.2d 682, 689 (2d Dist. 1988).

The Act requires that the Applicant for local siting approval prove compliance with each of nine different criteria (or alternatively demonstrate that they do not apply) and local siting approval shall be granted if the proposed facility meets each of those criteria. As a matter of

law, once an applicant makes a *prima facie* case on a criterion, the burden of proof shifts to the opponents to rebut the applicant's case. *People v. Nuccio*, 43 Ill.2d 375, 253 N.E. 2d 353 (1969). In order to rule against an applicant on any criterion, the decision maker (the City Council in this case) must find competent rebuttal or impeachment evidence in the record. *Industrial Fuels and Resources v. Illinois Pollution Control Board*, 227 Ill.App.3d 553, 592 N.E. 2d 148 (1st Dist. 1992).

The Applicant called expert witnesses to offer evidence as to the statutory siting criteria. Counsel for PWC and PODER, as well as counsel for the City Staff, cross-examined the witnesses. PWC and PODER also called witnesses in rebuttal. The basis and rationale for my findings on each criterion is set forth below.

**1. *The Facility is necessary to accommodate the waste needs of the area it is intended to serve.***

This Criterion is contested by PWC and PODER. I find that Criterion 1 is satisfied.

Criterion 1 has been the subject of litigation and the Courts have provided guidance as to its requirements. For example, to prove criterion 1, the courts have previously held the Applicant must show that the proposed Facility is reasonably required by the waste needs of the service area, taking into consideration the waste production of the area and the waste disposal capacity available to it. *Waste Management of Illinois, Inc. v. Pollution Control Board*, 175 Ill.App.3d 1023, 1031, 530 N.E.2d 682, 689 (2d Dist. 1988). Although a petitioner need not show absolute necessity, it must demonstrate that the new facility would be expedient as well as reasonably convenient. *Waste Management of Illinois, Inc. v. Pollution Control Board*, 234 Ill.App.3d 65, 69, 600 N.E.2d 55, 57 (1<sup>st</sup> Dist. 1992). The petition must show that the landfill is reasonably required by the waste needs of the area it is intended to serve, including the area's waste production and disposal capabilities. *Id.*



PWC and PODER both focused on the available transfer station disposal capacity for the area to be served (including facilities outside of, but still serving, the area intended to be served) and they argue that the existing excess capacity—which is not contested by the Applicant—means that the proposed Facility is not necessary and therefore does not satisfy Criterion 1.

However, in *Will County v. Village of Rockdale*, 2018 IL. App (3d) 160463, 121 N.E.2d 468, 484 (3d Dist. 2018), our Appellate Court held that Criterion 1 is not determined exclusively by reference to capacity analysis. Indeed, in *Rockdale*, the applicant submitted no capacity analysis at all. Instead, the Appellate Court agreed with Village and the Applicant that the “waste needs of the area” could include other factors such as improving competition, benefits through the host agreements, operational concerns and hours, and positive environmental impacts.

In this case, the Applicant called John Hock from Civil and Environmental Consultants, Inc. to testify on this criterion. Mr. Hock acknowledged the existing available capacity at other transfer stations but testified that the need for this Facility is found in the need to increase competition in the hauling market (through further vertical integration of disposal from curb-to-transfer station-to landfill, this facility will increase competition for the hauling of waste in the area); in reduced environmental impacts (less diesel exhaust as a result of shorter travel distances); in increased recycling; in the meeting the need for the handling of hydro-wastes; and in operational benefits (hours of operation). Cross-examination focused on the available capacity and questioned the competitive impacts but did not overcome the substantive proof on the benefits to which Mr. Hock testified.

PODER focused on the premise that there are positive environmental impacts, arguing just the opposite that the added operations at this Property will necessarily increase diesel

emissions in the community. But PODER has offered no competent evidence to contradict the demonstrated savings in overall emissions as testified to by the Applicant concerning hauling and disposal activities presently (i.e., before siting) and the amount of reduced emissions from the availability of this transfer station. Moreover, a premise of PODER's analysis is that there would be no other new industrial uses of the Applicant's property of any kind that would involve diesel engines. No evidence was offered to support the validity of such a premise.

PWC called John Lardner. Mr. Lardner focused on the available capacity at transfer stations in and around the area. But Mr. Lardner also admitted that Criterion 1 now considers environmental factors, impacts on competition, and operational concerns--and Mr. Lardner further admitted that he has so opined in other siting proceedings—although he did not consider competitive or environmental matters in reaching his conclusions in this case. Mr. Lardner further admitted that there is a need for a transfer station to handle hydro-excavation waste.

**2. *The Facility is so designed, located, and proposed to be Operated that the Public Health, Safety and Welfare will be Protected.***

This Criterion is contested by PWC and PODER. I find that Criterion 2 is satisfied through the imposition of--and compliance by the Applicant with--special conditions.

Like Criterion 1, Criterion 2 has been the subject of litigation and guidance is available from the Courts. To prove criterion 2, the Applicant must demonstrate that the proposed Facility is designed, located and proposed to be operated to protect the public health, safety and welfare. 415 ILCS 5/39.2 (a) (ii). This includes a demonstration that the facility is not flawed from a public safety standpoint and that its proposed operations are neither substandard nor unacceptably risky. Industrial Fuels and Resources, Inc. v. Illinois Pollution Control Board, 227 Ill.App.3rd 533, 592 N.E.2d. 148, 157 (1st Dist. 1992).

Mr. Hock testified that the Application met the location standards (wetlands, archeological sites, threatened species, wild and scenic rivers and the airport). PWC questioned Mr. Hock extensively on airport safety related issues and particularly operations in the Runway Protection Zone. The record also contains a letter from the DuPage Airport Authority in which LRS agreed to comply with several conditions and actions required of LRS by the Airport Authority to safeguard airport operations. Imposition and compliance with these conditions are essential to a finding that Criterion 2 can be satisfied. With the imposition of the conditions set forth in that letter, the Airport Authority concluded that proposed Facility did not pose a threat to the safety of the Airport. No expert testimony was introduced that challenged that determination by the Airport Authority.

Mr. Hock also described the proposed site plan and the proposed operations. The Facility as proposed will handle a maximum of 1950 tons of material per day composed of 650 tons of municipal solid waste, 300 tons per day of hydro-excavation waste, 750 tons per day of construction or demolition debris (for which the site is already permitted), and 250 tons per day of single-stream recyclables.

Mr. Hock testified as to the fact that the transfer building will be a “fully enclosed” facility (which is an important requirement to protect the airport) and testified as to the truck movements on site, the number and function of “spotters,” the operation of the entrance doors, the movements and operations of the transfer trailers, and the movements and operations of the front-loaders on the tipping floor. Mr. Hock testified as to the anticipated sources of business and the equipment that is anticipated to be used by LRS to bring that equipment to the Facility. Mr. Hock described the stormwater management plan for the proposed facility and testified that

the stormwater management has been approved by DuPage County and the City. There was no substantive challenge to the stormwater management plan in place.

PWC challenged whether the Facility, as proposed, was “fully enclosed” and entered videos of a different LRS facility in the record to challenge the Applicant on whether the facility would, in practice, actually operate as described. Mr. Hock responded that timing and operational differences shown in the video is a consequence of the different sources of material (and equipment bringing that material) from that which is anticipated at the Facility.

PWC also raised issues concerning litter control and tarping of the trailers, as well as the speed and the efficiency of the movements of the front loaders as used in Mr. Hock’s modeling and calculations. Based on an early pre-filing review of the design performed by the City’s engineering consultant, PWC (and subsequently the City Staff) also raised questions about the design of the building, push walls and other structural elements. Under PWC’s cross examination, and then again under cross examination by City Staff, Mr. Hock admitted that the imposition of certain special conditions would improve the Facility and add protections for public health, welfare and safety.

PODER called Steve DeLaRosa who raised concerns about employee safety and, particularly, the proposed use of ozone by the Applicant. There was no evidence, however, that what the Applicant was proposing did not comply with the applicable OSHA regulations.

PODER also inquired into the potential use of exclusively electric powered vehicles. The evidence, however, is that currently the technology does not exist to require the Applicant to use an exclusively electric-powered fleet of vehicles or equipment.



The application, modeling evidence, and testimony – with the special conditions in place -- demonstrated that the Facility could safely handle the proposed maximum tonnages per day.

The special conditions are appended to the Proposed Findings of Fact and Conclusions of Law.

**3. *The Facility is located so as to minimize incompatibility  
With the Character of the Surrounding Area and to Minimize the Effect  
On the Value of Surrounding Property.***

This Criterion is contested by PWC and PODER. I find that Criterion 3 is satisfied.

The Application sets out the land uses in the vicinity and manner in which the proposed Facility relates to the character of the area. Applicant called Dale Kleszynski, a licensed Illinois real estate appraiser and member of the Appraisal Institute. He testified to the historical use of the subject property and surrounding area--which includes current and historical uses related to the management and disposal of waste—and characterized the area as “industrial in character.” The area is also segregated from other uses, especially residential uses.

In addition to concluding that the location minimizes incompatibility with uses in the surrounding area, Mr. Kleszynski also concluded that the Facility is located to minimize the effect on the value of surrounding property. Mr. Kleszynski submitted a highest and best use analysis of the subject property for purposes of analyzing impact on the values of surrounding property. He opined that this highest and best use analysis is related to the statutory siting criterion in that highest and best use of property is the use which would, by definition, minimize any deleterious effect on the values of the surrounding property. After reviewing the traditional criteria used to analyze highest and best use, he testified that development as a solid waste transfer station would fit within the highest and best use of the property.

In rebuttal, PWC called Kurt Kielisch who rendered the opinion that the highest and best use analysis employed by Mr. Kleszynski did not accurately determine the effect the Facility

would have on surrounding property values. Mr. Kielisch is not a licensed Illinois appraiser, has never previously testified in a Section 39.2 siting hearing, and further testified that he is not knowledgeable about the siting process. He testified that a matched pairs analysis (rather than a highest and best use analysis) should be used to determine “the least intrusive use of the property” and whether the proposed use would have “positive impact on the surrounding property values.” He further admitted that such an analysis of sales would not be possible here due to the 20-year existence of the nearby Groot transfer station.

Because of his lack of familiarity with the actual siting criterion, the testimony of Mr. Kielisch was of no probative value. Criterion 3 requires an analysis as to whether the location minimizes incompatibility with the character of the surrounding area and minimizes the (obviously assumed negative) impact on property values--not (as he opined) whether the proposed use has a positive impact. The analysis relevant to Criterion 3 is simply not that to which Mr. Kielisch testified (he also offered no opinion on the character of the uses in the area). Contrary to Mr. Kielisch’s opinion, the use of the highest-and-best use methodology as an analytical tool for determining the magnitude of potential impact of the proposed facility on surrounding property values has been recognized by the PCB as an appropriate methodology for expert opinions concerning Criterion 3.

***4. The Facility is located outside the Boundary of the 100 Year Floodplain.***

I find that the Applicant demonstrated that the Facility meets Criterion 4.

The testimony and other evidence entered in the Record at the Hearing supports the finding that the Facility meets this Criterion. No challenge to this Criterion has been filed.

**5. *The Plan of Operations for the Facility is designed to Minimize the Danger to the surrounding Area from Fire, Spills and Other Operational Accidents.***

I find that the Applicant demonstrated that the Facility meets Criterion 5 but I also find that the testimony of Mr. Hock, under cross examination, and the testimony of Colin Hale concerning existing litter problems with the current operations at the Property all support the imposition of and compliance with special conditions to further improve the Plan of Operations and minimize dangers to the surrounding area. In particular, I find that the testimony concerning where, when and how transfer trailers will be tarped and the handling of hydro-wastes will be improved to further minimize the danger to the surrounding area from litter or spills by the imposition of special conditions. No formal challenge to this Criterion has been filed.

**6. *The Traffic Patterns to and from the Facility Are So Designed as to Minimize the impact on Existing Traffic Flow.***

I find that the Applicant demonstrated that the proposed Facility meets Criterion 6.

The Applicant called Michael Werthmann, a registered professional engineer and certified professional traffic operations engineer, with more than 25 years of traffic engineering experience for both the private and public sectors. Mr. Werthmann testified that he used standard methodology used by transportation planning officials. Mr. Werthmann testified he studied traffic volumes, distributions and movements at the site entrance and the potentially affected intersections. He described the local roadway system and detailed present and future improvements on that system. He testified that the location, existing operations, and proposed route for the transfer trailers all minimized the impact on existing traffic flows. No challenge to this Criterion has been filed; however, both the City and PODER proposed a special condition concerning the traffic routes and

such is included in the Special Conditions appended to the Findings of Fact and Conclusions of Law.

**7. *Hazardous Waste Emergency Plan***

Per the Application and the Testimony of John Hock, the Facility will not be treating, storing or disposing of Hazardous Waste. This Criterion is therefore not applicable and therefore deemed satisfied. No challenge to this Criterion has been filed.

**8. *If the Facility is to be Located in a County Where The County Board has adopted a Solid Waste Management Plan Consistent With The Planning Requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, The Facility is Consistent with that Plan.***

This Criterion is contested by PWC and PODER. I find that Criterion 8 is satisfied.

John Hock reviewed the contents of the DuPage County Solid Waste Management Plan from its adoption to its most recent update. He reviewed the provisions concerning pollution control facilities in that plan including the recognized need for additional transfer stations, additional recycling and additional competition. On cross-examination by PWC, Mr. Hock agreed that the 2007 Plan Update recommended that an additional transfer station should be located in the “southern portion” of the County and that West Chicago is not in the southern portion of the County. However, he further testified that such a recommendation concerning the location of additional transfer stations did not appear in subsequent plan updates.

Mr. Hock also testified as to the secondary host agreement executed between LRS and DuPage County in which the County stated the proposed Facility appears to be consistent with the County’s plan. PWC’s witness, John Lardner, testified that “appears to be consistent” is not the same as “is consistent” and opined that the Facility is in fact not consistent with the County’s



Plan. Tardner did acknowledge that the County's Plan does call for more transfer stations, more recycling, and more competition.

I find the PCB decision in *Rockdale* is again instructive. As in this case, both the PCB (and the court) in *Rockdale* found that the very existence of a secondary host agreement approved by the County weighs heavily in favor of a finding that Facility is consistent with the County's plan (as it is the County's plan to interpret and administer). Because the County approved the secondary host agreement for this Facility, I find the proposal to be consistent with the County's plan.

**9. Recharge Area**

Per the Application and the testimony of John Hock, the Facility is not located in a regulated recharge area. This Criterion is therefore not applicable and therefore deemed satisfied. No challenge to this Criterion has been filed.

**10. Consideration of Previous Operating Experience**

The Act permits the Corporate Authorities to consider the previous operating experience of an applicant. Specifically, the Act permits the City to consider the "past record of convictions or admissions of violations of the Applicant...". Here, the record contains no past convictions of violations by LRS nor admissions of violations by LRS, which favors approval of the Application.

PWC did enter videos showing actual operations at different LRS facility and PODER called witnesses about the current operations at the Property raising litter and air quality concerns and that testimony serves as the basis for the imposition of some special conditions, but that testimony did include any evidence of any actual violations of the regulatory standards and

therefore is not a sufficient basis to find the proposed Facility does not satisfy the criteria of Section 39.2.

### **PUBLIC COMMENTS**

In addition to the public comment (oral and written) received during the Hearing, the City Clerk received written public comments after the hearing closed. The public comment supporting the Application focused on the benefits that the Facility would bring to the City. PODER, the Applicant, and persons associated with both also filed comment after the hearing closed. I found that the public comment, while important to understand the context of the application, was not focused on the statutory criteria in a relevant and “probative” way or, alternatively, lacked sufficient evidence about the sources cited (i.e., an evidentiary foundation) as required by the statute and case law and therefore the comment, neither singly nor collectively, caused any change in how I weighed the evidence received from the Application, the admitted exhibits, and the admitted testimony.

### **PROPOSED FINDINGS OF FACT**

My proposed findings of fact are attached.

Respectfully submitted,



Derke J. Price

Ancel Glink, PC  
140 South Dearborn, 6<sup>th</sup> Floor  
Chicago, Illinois 60603

4828-0676-7394, v. 1

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. On September 16, 2022, Lakeshore Recycling Systems, LLC (“Applicant”) applied to the City of West Chicago (“City”) for local siting approval of a new municipal waste transfer station on its 27.66 acre parcel of real estate at 1655 Powis Road, West Chicago, Illinois, 60185 (as legally described in the application and hereafter referred to as the “Property”).
2. The Applicant owns the Property upon which the proposed pollution control facility (“Facility”) is to be located.
3. The Property is located within the corporate limits of the City, is the subject of a Host Community Benefit Agreement between the Applicant and the City, and the City has jurisdiction to consider the Application.
4. The public hearing on the application was opened on January 3, 2023.
5. The hearing closed on January 19, 2023.
6. In accordance with the Act, written comment was then received by the Office of the City Manager acting as City Clerk for and additional 30 days after the close of the Hearing (i.e., through 11:59:59 p.m. CDST on February 20, 2023, including any written comment post-marked on or before February 18, 2023).
7. Concerning the pre-filing notice requirements of Section 39.2(b) (which states, in relevant part, that the applicant shall cause written notice of its request for site approval “to be served either in person or by registered mail, return receipt requested, on the owners of all property within the subject area not solely owned by the applicant, and on the owners of all property within 250 feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of the County in which such facility is to be located...”):
  - A) with respect to all properties within 250 feet of the proposed facility, other than railroad properties, the applicant caused written notice of its request for site approval to be served by registered mail return receipt requested upon all such owners;
  - B) with respect to the railroad properties within 250 feet of the proposed facility, the owners as appears from authentic—and in some cases conflicting--tax records of DuPage County, are the Union Pacific Railroad Company and, variously and alternatively, the Elgin, Joliet & Eastern Railway, the Wisconsin Central, Ltd. (EJ&E Line) Company, and, per the DuPage County, Illinois 2022 Real Estate Tax Assessment Parcels Map, the Canadian National Railway;
  - C) the Applicant caused written notice of its request for site approval to be served by registered mail return receipt requested upon the Union Pacific Railroad Company;
  - D) the Applicant did not cause notice of its request for site approval to be served on the Elgin, Joliet & Eastern Railway;
  - E) the Elgin, Joliet & Eastern Railway was merged into the Wisconsin Central, Ltd. in December of 2012;

F) the Applicant did not cause notice of its request for site approval to be served on the Wisconsin Central, Ltd.;

G) the Wisconsin Central, Ltd. is a wholly owned subsidiary of the Canadian National Railway;

H) the Applicant caused written notice of the Applicant's request for site approval to be delivered via paid courier to the Canadian National Railway at the corporate offices of the Canadian National Railway in Montreal, Quebec, Canada;

I) the Applicant's courier secured the signature of a representative of the Canadian National Railway for that delivery;

J) the Applicant's use of the paid courier to deliver written notice of the Applicant's request, together with the documentation from the courier of that delivery, is sufficient to effectuate delivery of the request for site approval to the ultimate corporate parent/owner of the railroad property (not owned by the Union Pacific Railroad) and thereby satisfy the requirements of Section 39.2(b) of the Act.

8. Concerning 415 ILCS 5/22.14 (which states, in relevant part, that "no person may establish any pollution control facility for use as a garbage transfer station, which is located less than 1000 feet from the nearest property zoned for primarily residential uses or within 1000 feet of any dwelling"):

A) no dwelling is within 1000 feet of the proposed facility;

B) the railroad properties are zoned ER-1 in the City and are located within 1000 feet of the proposed facility;

C) property zoned "ER-1" in the City of West Chicago is property zoned primarily for residential uses;

D) the size and the active use of the railroad properties make residential development of the parcels in compliance with ER-1 requirements improbable as a practical and pragmatic matter (see August 23, 2022 letter of Tom Dabareiner, City Community Development Director and Zoning Administrator);

E) in applying Section 22.14 restrictions, the Pollution Control Board (and at least one Appellate Court) has interpreted and enforced Section 22.14 so as to protect actual residences or properties where residential development is probable (at least as an initial matter of zoning) (see, *Roxana Landfill, Inc. v. Illinois Pollution Control Board*, 2016 WL 4005892, (Ill. App. 5 Dist. 2016) (a Rule 23 opinion affirming the PCB which allowed siting even though actual housing structures and residentially zoned properties were within 1,000 feet of the facility because the residential properties were now vacant and deed restrictions against residential use had been recorded against the properties, making actual residential use improbable, though not impossible);

F) Accordingly, Section 22.14 does not bar this proposed facility.

9. The Applicant complied with all pre-filing notice requirements of Section 39.2(c) of the Act.

10. The siting proceedings herein, both procedurally and substantively, complied with the requirements of fundamental fairness:

A) PWC and PODER interposed an objection to the failure to make the Pre-Filing Notice available on the City's website in Spanish; however, the Act itself does not require that



the Pre-Filing Notice in these proceedings be made available in a language other than English and no case has applied language access requirements to a Section 39.2 Siting Hearing nor the Section 39.2 filings.

B) PWC and PODER interposed objections to the lack of a Spanish-language translator for the hearing proceedings; however, neither the Act itself does nor any other statute or case requires that Language Access Services be made available for a Section 39.2 Siting Hearing (compare 725 ILCS 140/1 requiring such services in the criminal law context).

C) PWC and PODER filed objections to the exclusion of proffered evidence concerning “environmental justice related issues;” however, the State of Illinois has not amended the Environmental Protection Act to add “environmental justice related issues” to the Section 39.2 criteria and neither the Pollution Control Board nor any Court has held that “environmental justice related issues” is now a part of any criterion under Section 39.2.

D) In the absence of a defined statutory criteria concerning “environmental justice related issues,” testimony proffered about such issues is not relevant to the siting decision.

11. Based on the understanding of Criterion 1 as articulated by the Pollution Control Board and affirmed by the Illinois Appellate Court for the Third District in *Will County v. Village of Rockdale*, 121 N.E.3d 468 (3d Dist. 2018), the Applicant demonstrated that the proposed Facility meets Criterion 1: “the facility is necessary to accommodate the waste needs of the area it is intended to serve....”

12. The Applicant did not demonstrate that the Facility--as proposed in the Application--meets Criterion 2; however, with the imposition of the special conditions proposed by City Staff (and compliance therewith by the Applicant) which are attached hereto as Exhibit A, the proposed Facility does meet Criterion 2: “the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;”

13. The Applicant demonstrated that the proposed Facility meets Criterion 3: “the facility is so located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property;”

14. The Applicant demonstrated that the proposed Facility meets Criterion 4: “for a facility other than a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100 year floodplain or the site is flood-proofed;”


15. The Applicant did not demonstrate—as proposed in the Application--that the Facility meets Criterion 5; however, with the imposition of the special conditions proposed by City Staff (and compliance therewith by the Applicant) which are attached hereto as Exhibit A, the proposed Facility does meet Criterion 5: “the plan of operations for the is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents;”

16. The Applicant demonstrated that the proposed Facility meets Criterion 6: “the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows;

17. The Applicant demonstrated that the facility will not be accepting hazardous waste and therefore demonstrated that Criterion 7 is not applicable.
18. Based on the analysis of Criterion 8 as articulated by the Pollution Control Board and affirmed by the Illinois Appellate Court for the Third District in *Will County v. Village of Rockdale*, 121 N.E.3d 468 (3d Dist. 2018), the Applicant demonstrated that the proposed Facility meets Criterion 8: "...where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan; ..."
19. The Applicant demonstrated that the facility is not located within a regulated recharge area and therefore Criterion 9 is not applicable.
20. The Applicant's operating history demonstrates that the Applicant is qualified to operate the Facility safely and properly and provides no basis to deny the Application.
21. The proposed Facility, when developed and operated in compliance with the special conditions, is consistent with all appropriate and relevant location standards, including airport setback requirements, wetlands standards, seismic impact zone standards, and residential setback requirements.
22. The Applicant has agreed to comply and approval is conditioned upon compliance with all terms of the Host Community Benefit Agreement between the City of West Chicago and Lakeshore Recycling Systems, LLC, dated April 1, 2019; the Secondary Host Community Benefit Agreement between DuPage County and Lakeshore Recycling Systems, LLC, dated March 10, 2020; and the Airport Agreement.

With the imposition of and compliance by the Applicant with the Special Conditions set forth above, the evidence demonstrates that the Application complies with each of the nine siting criteria in Sec. 39.2(a) of the Act and therefore the City should grant siting approval.

Respectfully submitted,



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Derke J. Price

**EXHIBIT A**

**Special Conditions**

1. The maximum tonnage per day that may be received by the facility shall not exceed 1,950 tons per day, of which up to 650 tons per day may be municipal solid waste (MSW), up to 300 tons per day may be hydro excavation waste, up to 750 tons per day may be construction and demolition debris (C&D) and up to 250 tons per day may be single stream recyclables (SSR).
2. The Applicant shall keep the truck doors to the transfer facility closed, except for emergencies and to allow trucks to enter and exit the facility, during regular business hours. The doors shall be equipped with sensors such that they will open and close automatically as vehicles enter and exit the transfer building. Alternatively, an employee may open and close the doors when trucks access and exit the transfer facility.
3. The push walls in the transfer facility shall be designed to ensure to the satisfaction of the City that there will be no buildup of waste behind the walls which could result in fire, odor, or harborage for vectors. In addition, the Applicant shall provide a certification from a licensed structural engineer that the push walls will be capable of withstanding impact from waste loading equipment at 5 mph without shearing the beams or compromising the integrity of the building's walls.
4. All transfer vehicles utilizing the facility shall be equipped with auto tarping systems, and all loaded transfer trailers shall be tarped inside of the transfer building prior to exit.
5. The Applicant shall continue to operate the C&D recycling portions of the facility in accordance with the requirements of 415 ILCS 5/22.38 for so long as the current permit (2015-124-OP) remains in effect. If the current permit (2015-124-OP) is discontinued, replaced or terminated, the following conditions, as modified, shall remain in effect:
  - *The facility shall be designed and constructed with roads and traffic flow patterns adequate for the volume, type and weight of traffic using the facility including, but not limited to hauling vehicles, emergency vehicles, and on-site equipment. Sufficient area shall be maintained to minimize traffic congestion, provide for safe operation, and allow for queuing of waste hauling vehicles.*
  - *The operator shall provide adequate parking for all vehicles and equipment used at the facility and as necessary for queued hauling vehicles.*
  - *Roadways and parking areas on the facility premises shall be designed and constructed for use in all weather, considering the volume, type and weight of traffic and equipment at the facility.*
  - *The facility shall be designed and constructed so that site surface drainage will be diverted around or away from the recycling and waste transfer areas. Surface drainage shall be designed and controlled so that adjacent property owners encounter no adverse effects during development, operation and after closure of the facility.*
  - *Run-off from roadways and parking areas shall be controlled using storm sewers or shall be compatible with natural drainage for the site. Best management practices (e.g., design features, operating procedures, maintenance procedures, prohibition of certain practices and treatment)*



*shall be used to ensure that run-off from these areas does not carry wastes, debris or constituents thereof, fuel, oil or other residues to soil, surface water or groundwater.*

- *The facility, including, but not limited to, all structures, roads, parking and recycling areas, shall be designed and constructed to prevent malodors, noise, vibrations, dust and exhaust from creating a nuisance or health hazard during development, operation and closure of the facility. Facility features (e.g., berms, buffer areas, paving, grade reduction), best available technology (e.g., mufflers, machinery enclosures, sound absorbent materials, odor neutralizing systems, air filtering systems, misting systems), and building features (e.g., enclosed structures, building orientation) shall be among the measures to be considered to achieve compliance.*
- *The facility shall be designed and constructed to prevent litter and other debris from leaving the facility property. Facility features (e.g., windbreaks, fencing, netting, etc.) shall be among the measures considered to ensure that the debris does not become wind strewn and that no other provisions of the Act are violated.*
- *No regulated air emissions shall occur from these facilities, except as authorized by a permit from the Illinois Environmental Protection Agency (IEPA) Bureau of Air (BOA). No process discharge to Waters of the State or to a sanitary sewer shall occur from these facilities, except as authorized by a permit from the IEPA Bureau of Water (BOW).*
- *The facility shall be designed and constructed with a water supply of adequate volume, pressure, and in locations sufficient for cleaning, firefighting, personal sanitary facilities, and as otherwise necessary to satisfy operating requirements (e.g., dust suppression, wheel washing) and the contingency plan.*
- *The facility shall be designed and constructed with exterior and interior lighting for roadways, and waste handling areas adequate to perform safely and effectively all necessary activities.*
- *The facility shall be designed and constructed with truck wheel curbs, guard rails, bumpers, posts or equivalents to prevent backing into fuel storage tanks, equipment, and other structures.*
- *The facility shall be designed and constructed with adequate shelter, sanitary facilities, and emergency communications for employees.*
- *The facility operator shall install fences and gates, as necessary, to limit entry. Except during operating hours, the gates shall be securely locked to prevent unauthorized entry.*
- *The facility may receive general construction and demolition debris at the site Monday through Saturday, 24 hours a day. The facility shall be closed on Sunday and the six major federal holidays (New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day). When the facility is operated before sunrise or after sunset, adequate lighting shall be provided. If it is required for the facility to be open beyond normal operating hours to respond to emergency situations, a written record of the date, time and reason the facility was open shall be maintained in facility operating records. The IEPA's Regional Office and the county authority responsible for inspection of the facility, per a delegation agreement with the IEPA, must be notified and must grant approval each day that the operating hours need to be extended. No later than 10:00 a.m. of the first operating day after the operating hours have been extended, the Applicant shall send a written report by email to the City Administrator, which describes the length of the extension of the operating hours and the reason for the extension.*
- *The facility may receive and transfer MSW, hydro excavation waste and SSR from 4:00 a.m. to 12:00 a.m. Monday through Friday and from 4:00 a.m. to 12:00 p.m. on Saturday, with no*



*operation on Sunday or the six major federal holidays (New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day), provided that on the Saturday following a major federal holiday, regular business hours may be extended to 12:00 a.m. If it is required for the facility to be open beyond normal operating hours to respond to emergency situations, a written record of the date, time and reason the facility was open shall be maintained in facility operating records. The City of West Chicago must be notified by email to the City Administrator each day that the operating hours need to be extended. The IEPA's Regional Office and the county authority responsible for inspection of the facility, per a delegation agreement with the IEPA, must be notified and must grant approval each day that the operating hours need to be extended.*

- *Fire safety equipment (fire extinguishers) shall be maintained in accordance with recommended practice.*
- *Non-recyclable waste may be kept temporarily in covered containers or transfer trailers for no more than 24 hours (except on weekends and holidays), provided that loaded or partially loaded trailers intended to be stored overnight or that will not be picked up and transported the same operating day are stored indoors and suitably covered.*
- *Piles of general construction or demolition debris shall be covered or wetted to prevent air-borne dust.*
- *The facility shall be designed and constructed to prevent unauthorized access to recycling areas, storage areas for unauthorized wastes, salvaged and recycled materials, and staging areas where loaded site equipment or vehicles may be parked. Facility features such as fences and gates shall be provided.*
- *Waste handling areas shall be designed and constructed to prevent exposure of wastes and recyclable materials to run-off and flooding.*
- *The sorting areas shall be properly graded and compacted to prevent ponding from forming leachate during storms.*
- *Records shall be maintained on-site at the facility office for each operating day. The operator shall record operating hours, load ticket information, load inspections, daily processing time, volume processed per day, transfer load out and waste disposition details.*
- *The operator shall, within 48 hours of receipt of the general construction or demolition debris at the facility, sort the general construction or demolition debris. The operator shall separate the recyclable general construction or demolition debris from nonrecyclable general construction or demolition debris and dispose of the non-recyclable general construction or demolition debris, in accordance with Section 22.38(b)(1) of the Act.*
- *The operator must place wood, tires, and other unacceptable materials in covered dumpsters or vehicles adequate to prevent the release of leachate.*
- *All non-recyclable general construction or demolition debris, and unacceptable material shall be moved to the waste transfer facility on the same day it is received, and disposal of such material shall be handled in accordance with all applicable federal, State, and local requirements and with these conditions.*
- *The operator shall transport all non-putrescible recyclable general construction or demolition debris for recycling or disposal within 6 months of its receipt at the facility, in accordance with Section 22.38(b)(4) of the Act.*

## Electronic Filing: Received, Clerk's Office 09/14/2023

- *In accordance with Section 22.38(b)(6) of the Act, the operator shall employ tagging and record keeping procedures to identify the source and transporter of C&D material accepted by the facility.*
- *The operator shall use load tickets to control the site activities and comply with the tagging and record keeping procedures. These load tickets shall identify the source of the C&D material delivered to the site. The operator shall use these tickets to identify the location in the yard or in the covered dumpsters and the length of time stored at the site to achieve compliance.*
- *The operator is prohibited from receiving hazardous and asbestos containing materials.*
- *The operator may separate clean concrete and clean soil from the general construction or demolition debris as recyclable materials for use in construction. The operator is permitted to store recyclable concrete and clean soil for a maximum period of 3 months.*
- *The operator may store the steel separated from concrete or other construction or demolition debris for a maximum period of 6 months. After six months, the steel must be sent offsite for disposal or recycling.*
- *The operator shall ensure that site surface drainage, during development, during operation and after the site is closed, shall be such that no adverse effects are encountered by adjacent property owners.*
- *The best available technology (mufflers, berms and other sound shielding devices) shall be employed to minimize equipment noise impacts on property adjacent to the site during both development, operation and during any applicable post-closure care period.*
- *Management of Unauthorized Waste by the operator*
  - *Landscape waste found to be mixed with general construction and demolition debris shall be removed the same day and transported to a facility that is operating in accordance with the Illinois Environmental Protection Act (Act), Title V, Sections 21 and 39 (415 ILCS 5/21 and 39).*
  - *Lead-acid batteries mixed with general construction and demolition debris shall be removed the same day and transported either to a drop-off center handling such waste, or to a lead-acid battery retailer.*
  - *Special wastes including hazardous waste, non-hazardous special waste, and potentially infectious medical waste mixed with general construction and demolition debris shall be containerized separately and removed from the property no later than five hours after receipt by a licensed special waste hauler. Special wastes shall be transported to a licensed special waste management facility that has obtained authorization to accept such waste. The operator shall maintain a contract with haulers so that the immediate removal is ensured. The operator shall develop an emergency response/action plan for such occurrences.*
  - *Asbestos debris from general construction and demolition debris shall be managed in accordance with the National Emission Standards for Hazardous Air Pollutants (NESHAPS) regulations.*
  - *Tires found to be mixed with general construction and demolition debris shall be removed and managed in accordance with Section 55 of the Act [415 ILCS 5/55].*
  - *White good components mixed with general construction and demolition debris shall be removed and managed in accordance with Section 22.28 of the Act [ 415 LCS 5/22.28].*

- *No person may knowingly mix liquid used oil with general construction and demolition debris.*
- *After the unauthorized waste has been removed from the facility, a thorough cleanup of the affected area shall be made according to the type of unauthorized waste managed. Records shall be kept for three years and will be made available to the IEPA upon request. In addition, the Applicant shall provide an annual written report to the City of West Chicago not later than January 31 of each year, which report shall: list the types, quantities and dates of receipt of all unauthorized waste; the generators of such waste; and the sites to which the wastes were delivered for disposal, processing or handling.*
- *The following wastes shall not be accepted at the facility:*
  - *Hazardous substances (as defined by Section 3.215 of the Illinois Environmental Protection Act);*
  - *Hazardous waste (as defined by Section 3.220 of the Illinois Environmental Protection Act);*
  - *Potentially infectious medical wastes (as defined by the Illinois Environmental Protection Act in Section 3.84);*
  - *Universal waste (as defined by Title 35 of the Illinois Administrative Code Part 733 including batteries, pesticides, mercury-containing equipment and lamps);*
  - *Regulated asbestos containing materials;*
  - *Polychlorinated biphenyl wastes;*
  - *Used motor oil;*
  - *Source, special or by-product nuclear materials;*
  - *Radioactive wastes (both high and low level);*
  - *Sludge;*
  - *White goods (incidental white goods received at the proposed transfer station will be segregated and stored for pickup by an off-site recycler);*
  - *Lead-acid automotive batteries (incidental automotive batteries received at the transfer station will be segregated and stored for pickup by an off-site recycler);*
  - *Used tires (incidental tires received at the transfer station will be segregated and stored for pickup by an off-site recycler); and*
  - *Landscape waste.*
- *Special wastes generated at the site for disposal, storage, incineration or further treatment elsewhere shall be transported by the operator to the receiving facility utilizing the IEPA's Special Waste Authorization system and manifest system.*

6. Upon receiving final, non-appealable siting approval pursuant to 415 ILCS 5/39.2 to construct and operate the West DuPage RTS, and upon receiving an IEPA development permit, LRS shall, prior to commencing operation of the waste transfer facility, 1) execute and grant to the DuPage Airport Authority ("DAA") a new avigation easement, which is Exhibit A to the Agreement Between the DuPage Airport Authority, Oscar (IL) LLC, and Lakeshore Recycling Systems, LLC, dated January 19, 2022 ("Airport Agreement"), 2) LRS shall reduce the roof height of its existing transfer building so as to stay below all critical elevations in the new avigation easement, and 3) LRS shall not allow any penetrations whatsoever to the new avigation easement.



7. All improvements installed on and offsite by the Applicant shall be funded by and solely at the expense of the Applicant.
8. The tipping floor of the waste transfer building shall be cleaned and free of waste at the end of each operating day. Except as set forth in Condition 5, no waste or other material shall be left on the floor inside the transfer building or outside the transfer building overnight or when the facility is not operating.
9. The Applicant shall control litter by discharging and loading all waste within the enclosed portion of the Transfer Facility. After unloading, any remaining loose waste shall be removed or contained in the vehicle prior to exiting the site. The Applicant shall use its best efforts to assure that vehicles, hauling waste to or removing waste from the Transfer Facility, shall be suitably covered to prevent waste from leaving the vehicles. A fence to aid in the interception of any blowing litter shall surround the Transfer Facility. The Applicant shall diligently patrol the Subject Property during hours of operation to collect any litter. At a minimum the Applicant shall diligently patrol and remove litter from: the Subject Property; all property owned or controlled by the Applicant; and, before 10:00 a.m. each operating day, Powis Road between Hawthorne Lane and Route 64 (North Avenue) as well as Powis Court . In addition, the Applicant shall, at a minimum, patrol and remove litter from private property within 500 feet of the aforesaid public streets and corresponding rights-of-way with the written permission of the owner of said properties, which permission the Applicant shall diligently attempt to obtain. The Applicant shall provide the City of West Chicago the names, addresses, telephone numbers and email addresses of such owners granting permission. The Applicant shall also post on the company's website the name and email address of an employee of the company to whom any owner of property along Powis Court or Powis Road between Route 64 (North Avenue) and Hawthorne Lane may report litter from the facility or trucks using the facility, in which case the Applicant shall remove the litter with the written permission of the owner within two hours of receiving notification of the litter concern. Upon written request, logs showing the private owner, the property address for the request for litter removal, the time such was received and the time the concern was abated shall be available to the City and provided within one business day. Also, the Applicant shall diligently seek the written approval of the DuPage County Forest Preserve District to remove litter, which is visible from Route 64 (North Avenue), from the portion of the Pratts Wayne Woods Forest Preserve that is located within the City of West Chicago. If permission is granted, litter removal from the Forest Preserve shall occur not less than monthly; the City shall be provided written notice of each occurrence within one business day of such being completed.
10. The Applicant shall provide a street sweeper to remove mud and dust tracked onto hard surfaces inside and outside the Transfer Facility, on property owned or controlled by the Applicant as well as well Powis Court and Powis Road between Hawthorne Lane and Route 64 (North Avenue) on an as needed basis, but not less frequently than daily.
11. The Applicant shall retain a pest control service on an on-going basis to address the potential for infestation by rodents and other vectors. Such service shall inspect the Transfer Facility on an as needed, but no less than monthly, basis.



12. Transfer trailers entering and exiting the Subject Property shall use only the following roads: Powis Road (between the facility entrance and Route 64 (North Avenue), Route 64 (North Avenue), Kirk Road and Interstate 88. Except for waste collection trucks servicing property within the City of West Chicago, waste collection trucks entering and exiting the Subject Property shall use only the following streets within the City and no others: Powis Road south of Route 64, Route 64 (North Avenue), Route 38, and Kress Road. The Applicant shall have installed within City right-of-way to the satisfaction of the City, license plate readers in each of the following locations: Hawthorne Lane between Route 59 and Powis Road; Smith Road between Powis Road and Route 64; and Powis Road between Smith Road and Route 64. The license plate readers shall provide remote access to the City of West Chicago to be used for any lawful purpose. The specific make and model of license plate readers and the specific locations for installation of the license plate readers shall be subject to the written approval/direction of the West Chicago Police Chief, and may be relocated for operational need at the expense of the City; the initial and any annual costs associated with the license plate readers shall be at the Applicant's sole cost and expense. The Applicant shall be responsible for maintaining and, if necessary, replacing the license plate readers when in disrepair or at the end of their useful lives as determined by the City through documentation from the vendor. The Applicant shall also provide a set of certified portable scales to the City at its sole cost and expense, which thereafter shall be maintained and replaced by the City.

13. Trucks transporting hydro excavation waste shall be water-tight. Dump style trucks transporting solidified hydro excavation waste shall include liners that are sufficient to prevent leakage onto roads and other surfaces.

14. All incoming hydro-excavation waste loads shall be accompanied by a completed/signed manifest and shall be pre-approved using a waste profile sheet and other supporting documentation as necessary. These materials shall be reviewed to verify that the waste is non-hazardous as defined in Title 35 Illinois Administrative Code Part 722.111. Pre-approved waste streams and such profile packets shall be kept on file at the facility, shall accurately characterize the accepted material, and may not be more than one year old.

15. The facility shall be maintained with a negative pressure condition such that the ventilation system provides a minimum of 6 air changes per hour. The facility design shall include an ozone system to treat the ventilation air prior to exhaust. The facility shall also be equipped with a misting system that will assist in mitigation of dust and odors above the tipping floor.

16. The facility shall otherwise be constructed and operated in substantial conformance with the plans and operating procedures specified in the siting application.

17. Approval is further conditioned upon compliance with all terms of the Host Community Benefit Agreement between the City of West Chicago and Lakeshore Recycling Systems, LLC, dated April 1, 2019; the Secondary Host Community Benefit Agreement between DuPage County and Lakeshore Recycling Systems, LLC, dated March 10, 2020; and the Airport Agreement.

# Exhibit 4



Page 2

1 The discovery deposition of  
 2 MAYOR RUBEN PINEDA, taken under oath on  
 3 July 6, 2023, at the hour of 4:00 p.m., at City  
 4 Hall Building, 475 Main Street, West Chicago,  
 5 Illinois, pursuant to the Rules of the Supreme  
 6 Court of Illinois and the Illinois Code of Civil  
 7 Procedure, before Deborah A. Duffy, CSR, RPR,  
 8 pursuant to notice.  
 9  
 10 APPEARANCES:  
 11  
 12 MEZA LAW  
 BY: Mr. Ricardo Meza  
 13 542 S. Dearborn  
 Chicago, Illinois 60605  
 14 312-802-0336  
 rmeza@meza.law  
 15  
 appeared on behalf of the Plaintiffs;  
 16  
 17  
 KLEIN, THORPE & JENKINS, LTD.  
 18 BY: Mr. Dennis G. Walsh  
 15010 S. Ravinia Ave.  
 19 Orland Park, Illinois 60462-5353  
 708-349-3888  
 20 dgwalsh@ktjlaw.com  
 21 appeared on behalf of the Defendant,  
 West Chicago;  
 22  
 23  
 24

Page 3

1  
 2 MUELLER AND ANDERSON  
 BY: Mr. George Mueller  
 1S123 Gardener Way  
 3 Winfield, Illinois 60190  
 (815) 431-1500  
 4 george@muelleranderson.com  
 5 Appeared on behalf of the Defendant,  
 Lakeshore Recycling;  
 6  
 7  
 MR. ROBERT W. WEINSTOCK  
 8 Director, Environmental Advocacy Center  
 Northwestern Pritzker School of Law  
 9 375 E. Chicago Avenue  
 Chicago, Illinois 60611  
 10 robert.weinstock@law.northwestern.edu  
 11 Appeared telephonically.  
 12  
 13  
 14 \* \* \* \* \*  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24 Reported by: Deborah A. Duffy CSR, RPR  
 License No.: 084-002516

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1 (Witness sworn.)  
 2 MAYOR RUBEN PINEDA,  
 3 called as a witness herein, having been first  
 4 duly sworn, was examined and testified as follows:  
 5 MR. MEZA: We are here in the matter of Protect  
 6 West Chicago vs. City of West Chicago, West Chicago  
 7 City Council, Lakeshore Recycling Systems, which is  
 8 PCB 23-107, which has been consolidated with People  
 9 Opposing DuPage Environmental Racism against City of  
 10 West Chicago and Lakeshore, which is PCB 23-109,  
 11 and maybe what we should do for the record.  
 12 I don't know if anyone else is  
 13 going to ask any questions, but this is Ricardo  
 14 Meza. If we can announce appearances.  
 15 MR. MUELLER: George Mueller for Lakeshore  
 16 Recycling Services.  
 17 I don't plan on asking any questions,  
 18 but we will see what comes up at the deposition.  
 19 MR. WALSH: Dennis Walsh representing the City  
 20 of West Chicago.  
 21 MR. MEZA: And Mr. Pineda was sworn in.  
 22 EXAMINATION  
 23 BY MR. PINEDA  
 24



Page 6

1 Q. Do you want me to call you Mayor or  
2 Ruben?  
3 A. I only make my wife call me Mayor.  
4 Q. So does that mean Mr. Pineda?  
5 A. Ruben is fine.  
6 Q. Okay. Because we have a court reporter  
7 here, I just want to make sure we try to verbalize  
8 all the responses, which means no nods of heads, no  
9 uh-huh, that sort of stuff. Is that okay? Do  
10 you understand?  
11 A. Yes.  
12 Q. Have you ever been deposed before?  
13 A. No, sir.  
14 Q. Okay. So the other thing I think is  
15 important, and I think you are probably going to be  
16 able abide by this because of the city council  
17 meetings, but allowing one person to speak and then  
18 when they finish, that way there is a clean record  
19 and the court reporter does not have an issue  
20 transcribing anything.  
21 Is that fine?  
22 A. That is fine.  
23 Q. If you don't understand the question,  
24 just say I don't understand the question, and I

Page 7

1 will rephrase it. Otherwise, I will assume you  
2 understand the question and I will accept whatever  
3 answer you provide.  
4 Does that make sense?  
5 A. Yes.  
6 Q. You've already stated your name and I  
7 assume you live in West Chicago?  
8 A. Yes.  
9 Q. Are you currently the mayor of West  
10 Chicago?  
11 A. Yes.  
12 Q. Is that a paid position?  
13 A. Yes.  
14 Q. What do you get paid?  
15 A. 15,00 a year -- well, 12,000 with 3,000  
16 stipend.  
17 Q. How long have you been the mayor of West  
18 Chicago?  
19 A. Eleven years in April.  
20 Q. Okay. And before you were the mayor,  
21 did you also serve on the West Chicago City  
22 Council?  
23 A. Yes, for 14 years.  
24 Q. So when did you start serving on the

Page 8

1 West Chicago City Council, what year about?  
2 A. From 1998.  
3 Q. Okay. And is that a paid position too  
4 or not?  
5 A. Yes, that was a paid position.  
6 Q. Okay. Do you know what the current  
7 Latino population in West Chicago is?  
8 A. It is roughly about 52 percent.  
9 Q. And do you know what percent of that  
10 population is considered limited English  
11 proficient?  
12 A. I do not.  
13 Q. Have you ever taken any steps to find  
14 out?  
15 A. I have not.  
16 Q. Do you know what limited in English  
17 proficiency means?  
18 A. I would be guessing.  
19 Q. What would your best guess be?  
20 MR. WALSH: Objection. You're asking him to  
21 speculate. He's not here to speculate. He's here  
22 to provide facts.  
23 BY MR. MEZA:  
24 Q. What is your best understanding of what

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1 limited english proficiency means?  
2 A. If our population can understand  
3 english.  
4 Q. Okay. Now, you were -- in the year of  
5 2003, you were an alderman; is that right?  
6 A. Yes.  
7 Q. Now in 2003 there was an application to  
8 build a second waste transfer station near West  
9 Chicago; is that correct?  
10 A. I don't recall that.  
11 Q. Okay. All right. Let's mark these.  
12 (Exhibit M1 was marked for  
13 identification.)  
14 BY MR. MEZA:  
15 Q. This is marked as M1, 2003 ordinance.  
16 Can you take a look at it and see if you voted on  
17 this ordinance in April, 2003?  
18 A. Yes.  
19 MR. WALSH: It is a resolution for the record.  
20 MR. MEZA: I'm sorry. Resolution.  
21 THE WITNESS: It was unanimous, and if I was  
22 there I did vote on it.  
23 BY MR. MEZA:  
24 Q. Do you have any recollection as to

Page 10

1 whether or not you voted in support of this  
2 resolution which was opposing a second transfer  
3 station along Polish Road. If you don't remember,  
4 that is fine. You can say that.  
5 A. I don't remember. It was -- I don't  
6 think.  
7 Q. Mayor, do you have any recollection of  
8 you opposing, as an alderman, a second waste  
9 transfer station on Powis Road or not, in 2003?  
10 A. It was not well accepted.  
11 Q. Right. I'm asking you though, about  
12 your personal --  
13 A. Back then that was a long time ago. I  
14 don't recall, but, yes. I, you know, there was a  
15 lot of conversation at the time.  
16 I don't recall what those  
17 conversations were about opposing or approving that  
18 transfer station.  
19 Q. Yes. And I wasn't asking about your  
20 knowledge, whether or not you personally, as an  
21 alderman opposed a transfer station on Powis Road.  
22 If you don't remember that is fine.  
23 A. I don't remember.  
24 Q. Do you remember whether or not the City

Page 11

1 of West Chicago had retained attorneys to represent  
2 and fight the second waste transfer station in  
3 2003?  
4 A. I don't recall attorneys.  
5 Q. Have you ever heard of the law firm of  
6 Dickson Bond?  
7 A. Yes.  
8 MR. MEZA: Let me show you what we will mark  
9 as M2.  
10 (Exhibit M2 was marked for  
11 identification.)  
12 BY MR. MEZA:  
13 Q. Mr. Mayor, I'm showing you what is  
14 marked as M2. This is proposed findings of fact  
15 and conclusions of law submitted by the law firm of  
16 Dickinson and Bond or Bond Dickinson, on behalf of  
17 the City of Chicago.  
18 Do you know if that law firm had  
19 authority to speak on behalf of the City of West  
20 Chicago in 2003?  
21 A. I don't know how long Bond and Dickinson  
22 has been our attorneys.  
23 Q. Right. But the question is do you know  
24 if they had authority in 2003, to submit proposed

Page 12

1 findings of fact and conclusions of law on behalf  
2 of the City of West Chicago; yes or no?  
3 A. If they were our attorneys then, I would  
4 say yes.  
5 Q. Okay. Let me direct your attention to  
6 page 12 of this document. And in particular,  
7 number -- Paragraph 108. And I will just read  
8 that. It says, "The Hispanic population of West  
9 Chicago is 48.6 percent of the total while it is  
10 only 9.96 percent of the service area."  
11 Do you see that?  
12 A. Yes.  
13 Q. Do you know what that sentence means or  
14 not?  
15 A. That was the percentage of the Hispanic  
16 population back then.  
17 Q. And do you know what the 9.96 percent  
18 means?  
19 A. I would guess it is the service area  
20 that this transfer station would be serving.  
21 Q. Right. So, the City of West Chicago was  
22 saying that the population -- the Latino  
23 population, Hispanic West Chicago was 48 percent,  
24 but the service area for the waste transfer station

Page 13

1 in that areas was only 9.96 percent; is that  
2 correct?  
3 A. That is what it states here, yes.  
4 Q. In other words, they were kind of saying  
5 it is not fair because you are putting in a  
6 community that has a large percentage of Hispanics;  
7 is that correct?  
8 MR. MUELLER: I'm going to object to your  
9 interpreting what they are saying. I don't see  
10 where it says it is not fair.  
11 BY MR. MEZA:  
12 Q. Okay. Did you think it was fair to the  
13 Hispanic community?  
14 A. I don't know what this --  
15 MR. WALSH: First of all, he didn't author  
16 this. And you're asking him to interpret what the  
17 words mean --  
18 MR. MEZA: No. I'm asking him if he thought,  
19 regardless what was written, whether or not this  
20 was fair to the Hispanic community. Yes or no.  
21 MR. MUELLER: I'm going to object again  
22 because the witness barely remembers these events.  
23 MR. MEZA: That is fine. If he doesn't  
24 remember, he can say that.

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1 THE WITNESS: I don't remember.  
2 BY MR. MEZA:  
3 Q. Okay. Do you remember if it was the  
4 position of West Chicago that a second waste  
5 transfer station would be a burden on the Hispanic  
6 community?  
7 A. I don't remember.  
8 Q. Can you turn to Page 14 and look at  
9 Paragraph 15? It says "The facility will burden  
10 Hispanic Americans."  
11 Do you see that?  
12 A. Okay.  
13 Q. Does that refresh your recollection as  
14 to whether or not West Chicago thought a second  
15 facility on Powis Road would burden Hispanic  
16 Americans?  
17 A. No, because this was in 2003, so I  
18 don't.  
19 Q. You don't what?  
20 A. I don't recall this document.  
21 Q. Right. But does that statement on  
22 Paragraph 15 refresh your recollection as to the  
23 position of West Chicago, that a second waste  
24 transfer station would burden Hispanic Americans?

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1 Does it refresh it? If it doesn't you can say it  
2 does not?  
3 A. No, it doesn't.  
4 Q. Sitting here today, do you think that a  
5 second waste transfer station would burden  
6 Hispanic Americans in West Chicago?  
7 MR. MUELLER: We are talking today, right  
8 counsel?  
9 MR. MEZA: Yes.  
10 THE WITNESS: No.  
11 BY MR. MEZA:  
12 Q. You don't think so?  
13 A. No.  
14 Q. So it would burden them in 2003, but not  
15 today?  
16 MR. WALSH: That is not what he testified to.  
17 MR. MEZA: All right. Let's go on. Let's  
18 jump to 2019. Let's mark that one M3.  
19 (Exhibit M3 was marked for  
20 identification.)  
21 BY MR. MEZA:  
22 Q. So M3 is the April 1st, 2019 host  
23 agreement; is that correct?  
24 A. Yes.

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1 Q. You signed this document as the mayor;  
2 is that correct?  
3 A. Correct.  
4 Q. Now, when you signed the host agreement  
5 in April 2019, does that mean that the City of West  
6 Chicago had agreed that it would approve a second  
7 waste transfer station?  
8 A. No.  
9 Q. Are you aware whether or not in April of  
10 2019, any one on the City Council had already  
11 decided on whether or not they would approve a  
12 second waste transfer station?  
13 A. I have no knowledge of that.  
14 Q. Had you made a decision in April of 2019  
15 that you would approve a second waste station?  
16 A. No. There was nothing in front of me.  
17 Q. Okay. In April of 2019, were you in  
18 favor of a second waste transfer station?  
19 A. I owe -- again, there was nothing in  
20 front of me. So I didn't even think twice about  
21 it. No.  
22 Q. Did you think at all about the benefits  
23 of a second waste transfer station for the City of  
24 West Chicago in 2019?

Page 17

1 A. Well, I don't remember -- well, it was  
2 2019, so yes, there are benefits for the City of  
3 West Chicago.  
4 Q. Right. And the benefits are set forth  
5 -- some of the benefits are set forth in the host  
6 agreement, correct?  
7 A. I'd have to read it again.  
8 Q. You did read it before you signed it  
9 though, correct?  
10 A. Sure.  
11 Q. Would you accept as true, the fact that  
12 some information about the City receiving a certain  
13 amount of money for garbage that would be left  
14 there and transferred, based on tonnage, would go  
15 to the City of West Chicago? Would you agree with  
16 that?  
17 A. Yes.  
18 Q. So, did you, or anyone you know on the  
19 City Council, make a calculation as to how much  
20 money the City would receive from having a second  
21 waste transfer station?  
22 A. We wouldn't know that because we  
23 wouldn't know how much tonnage had come to West  
24 Chicago.

Page 18

1 Q. So it sounds like no, you didn't try to  
2 make an estimation?  
3 A. No.  
4 Q. Did you have any idea how much money the  
5 City of West Chicago could make off of a second  
6 waste transfer station?  
7 A. That was all speculative. I mean you  
8 don't know until the transfer station comes in and  
9 amount of tonnage comes in, so you wouldn't know.  
10 Q. Now let's move on to 2020.  
11 Now, in 2020 you became aware  
12 that there were people that were opposing the  
13 second waste transfer station; is that correct?  
14 A. Yes.  
15 Q. When did you first become aware that  
16 people were opposing the second waste transfer  
17 station?  
18 A. I can't recall that.  
19 Q. How did you become aware that people  
20 were opposing the second waste transfer station?  
21 A. Information that was coming to my home,  
22 Information that was being posted on social media.  
23 Q. Okay. When you say information coming  
24 to your home, tell me what you recall that

Page 19

1 information being?  
2 A. It was just information of what a second  
3 transfer station would bring to West Chicago.  
4 Q. And do you remember whether or not that  
5 information was in support of a second waste  
6 transportation -- waste transfer station or against  
7 it?  
8 A. The material that came to my home was  
9 against it.  
10 Q. Okay. Was it mailed to your home or -  
11 A. Yes. Mailed.  
12 Q. Was it a letter?  
13 A. It was a postcard.  
14 Q. Okay. Were you able to tell who that  
15 post card was from?  
16 A. Yes, he signed it.  
17 Q. Who was that?  
18 A. Nick Dzierzanowski.  
19 Q. I will spell Nick's last name,  
20 D-Z-I-E-R-Z-A-N-O-W-S-K-I. Nicholas Dzierzanowski.  
21 Does that sound right?  
22 A. Sure.  
23 Q. We have to make sure we have a clear  
24 record.

Page 20

1 So Nick was against a second  
2 waste transfer station; is that correct?  
3 A. Per the post card, yes.  
4 Q. And then you said social media also.  
5 Tell me what you mean about that. What social  
6 media?  
7 A. Facebook.  
8 Q. Are you on Facebook?  
9 A. I am, but I don't do anything except  
10 share West Chicago information.  
11 Q. Okay. So do you have like an official  
12 Mayoral Facebook account or personal account?  
13 A. No. It is a personal account.  
14 Q. And then you share information about  
15 West Chicago?  
16 A. Yes.  
17 Q. And as a result of you sharing  
18 information about West Chicago, you receive  
19 information about West Chicago; is that correct?  
20 A. From my department and my police  
21 department, yes. That is the information.  
22 It is all the stuff that is  
23 posted on our website.  
24 Q. All right. But what information did you

Page 21

1 see on your Facebook that was in opposition to the  
2 second waste transfer station that you recall?  
3 A. It was basically the same information  
4 that came on the post card.  
5 Q. Okay. And were you able to tell whether  
6 or not that was also Mr. Nick?  
7 A. No.  
8 Q. Okay. Do you recall who it was?  
9 A. I'm guessing Protect West Chicago.  
10 Q. Was it all in English or any of it in  
11 Spanish?  
12 A. I think both.  
13 Q. Were there ever individuals who would  
14 post information on Facebook that you received that  
15 was opposing a second station?  
16 A. I just read what was posted.  
17 Q. Okay. Did you see whether or not any of  
18 the people were Hispanic or Latino-sounding last  
19 names or surnames?  
20 A. Yes.  
21 Q. Did you see any of those?  
22 A. I don't recall. I mean I barely -- I  
23 breeze over the names.  
24 Q. Okay. Okay. Now, you were having



<p style="text-align: right;">Page 22</p> <p>1 conversations in May of 2020 with other alderman 2 about the opposition to the second waste transfer 3 station, weren't you? 4 A. I don't -- I would say no. We weren't 5 talking about as alderman and as the mayor. There 6 was nothing in front of us to talk about. 7 Q. But you did -- you were aware that 8 alderman -- other alderman -- well, let me ask you 9 this. 10 Did you ever receive any e-mails 11 from any citizens on your official e-mail at West 12 Chicago opposing this? 13 A. I don't recall. 14 Q. Do you recall other aldermen receiving 15 e-mails opposing it? 16 A. I would not know that. 17 Q. Okay. In May of 2020, Noreen 18 L-I-G-I-N-O, dash, K-U-B-I-N-S-K-I, was an 19 alderman; is that correct? 20 A. Yes. 21 Q. Do you recall in May -- on May 1st, 22 2020, asking her to share her response to other 23 residents, other or residents in the 7th Ward? 24 A. No.</p>	<p style="text-align: right;">Page 24</p> <p>1 what she wrote in this e-mail, and which you were 2 copied, was false? 3 A. No. I mean it is here. 4 Q. Okay. So does that refresh your 5 recollection as to whether or not you asked at 6 least one alderman to share her response to 7 residents who had sent her an e-mail from this 8 Protect West Chicago website? 9 A. I don't recall asking her to share it, 10 no. 11 Q. Do you have any idea why you would care 12 about having to respond to e-mails? 13 MR. WALSH: Objection. You are asking him to 14 speculate on something he doesn't recall happening. 15 BY MR. MEZA: 16 Q. You can answer it if you recall. 17 A. If I recall? 18 Q. Yes. 19 A. No. I don't recall. 20 Q. Okay. Do you recall going onto the 21 Protect West Chicago website ever? 22 A. No. 23 Q. You never went on the website? 24 A. No. I did not.</p>
<p style="text-align: right;">Page 23</p> <p>1 MR. MEZA: What number are we on, number 4. 2 THE COURT REPORTER: Yes. 3 (Exhibit M4 was marked for 4 identification.) 5 BY MR. MEZA: 6 Q. Now I want to -- this is an e-mail from 7 Noreen Kubinski to a number of people, that you 8 were cc'd, including Mr. Guttman. Do you see that? 9 A. Yes. 10 Q. Now, among other things it says, I hope 11 you and family are all doing well. Mayor Paneda, 12 asked that I share with you my response to 13 Residents Ward 7, the e-mail with council, with the 14 standard group e-mail template from the Protect 15 West Chicago website. 16 Do you see that? 17 A. Yes. 18 Q. Did you in fact ask Noreen Kubinski to 19 share her response to residents who had e-mailed 20 her with the standard group e-mail template from 21 the Protect West Chicago website? 22 A. I don't recall asking her to do this, 23 no. 24 Q. Do you have any reason to think that</p>	<p style="text-align: right;">Page 25</p> <p>1 Q. Okay. Let's mark this M5. 2 (Exhibit M5 was marked for 3 identification.) 4 BY MR. MEZA: 5 Q. This is another e-mail from Noreen 6 Kubinski on May 26, in which she forwarded to you 7 and Mr. Guttman regarding information related to? 8 MR. WALSH: It is a series of e-mails with 9 different dates. 10 BY MR. MEZA: 11 Q. Yes, I'm asking if you remember, Mayor, 12 receiving this e-mail or not. 13 MR. WALSH: Which one? There are a number of 14 e-mails here. 15 MR. MEZA: Right. 16 BY MR. MEZA: 17 Q. This was an e-mail forwarded to you that 18 included this entire chain. 19 Do you remember this at all -- 20 receiving this at all? 21 A. I don't remember receiving this. 22 Q. Okay. Do you know that -- do you know 23 if when you receive e-mails, do you read them at 24 all?</p>

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1 A. Yes, I do.  
2 Q. Do you remember whether or not you read  
3 this e-mail?  
4 A. If I was cc'd on it, I read this e-mail.  
5 Q. Okay. Thank you.  
6 Now, did you have conversations  
7 with third parties about your position with regard  
8 to the second waste transfer station in 2020?  
9 A. No.  
10 Q. Had you formed a position with regard to  
11 the second waste transfer station in November 2020?  
12 MR. MUELLER: I'm going to object at this  
13 point just for the record.  
14 First of all, the Mayor is not a  
15 decider.  
16 Secondly, the statute is clear  
17 that even deciders can have opinions prior to a  
18 citing hearing.  
19 With that, I want that to be  
20 shown as ongoing objection to this line of  
21 questioning.  
22 I won't interrupt the  
23 questioning any further.  
24 MR. MEZA: Okay.

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1 BY MR. MEZA:  
2 Q. And you heard what Mr. Mueller said; is  
3 that correct?  
4 A. Yes.  
5 Q. But the law says you could have had an  
6 opinion; is that correct?  
7 A. Yes.  
8 Q. Did you have an opinion in November of  
9 2020?  
10 A. There was nothing to have an opinion on.  
11 I had nothing in front of me. There was no  
12 application.  
13 Q. Okay.  
14 MR. MEZA: Let's mark this as M6.  
15 (Exhibit M6 was marked for  
16 identification.)  
17 BY MR. MEZA:  
18 Q. So this is also an e-mail that was  
19 forwarded to you by Noreen Lingino-Kubinski. You  
20 have read this one also; is that correct?  
21 A. Yes.  
22 Q. Now, it says that you had been advised  
23 right underneath the November 19th, "our attorney  
24 has advised that the elected appointed officials

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1 did not respond to the correspondence. Do you see  
2 that?  
3 A. Yes.  
4 Q. Now, when you were directing your  
5 attention to November of 2020 or October 2020,  
6 November 2020, you were still on Facebook at that  
7 time; is that correct?  
8 A. I'm sure I was.  
9 Q. When you say social media, are you just  
10 talking about Facebook?  
11 A. No. Just Facebook.  
12 Q. Just Facebook. Okay.  
13 Did you come across any  
14 information from a local pastor called  
15 Father Josh Ebner?  
16 A. Yes.  
17 Q. And Father Josh Ebner posted something  
18 on social media; is that correct?  
19 A. Yes.  
20 Q. He had posted something that was in  
21 opposition to the second waste transfer station; is  
22 that correct?  
23 A. It was the information that was on the  
24 social media.

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1 Q. Right. But whatever it was that he  
2 posted, he was opposing the second waste transfer  
3 station; is that correct?  
4 A. Yes.  
5 Q. And what exactly did he say about the  
6 second waste transfer station?  
7 A. He didn't comment on it. He just shared  
8 it.  
9 Q. Right. And what was it that he shared?  
10 A. The data that Protect West Chicago was  
11 posting.  
12 Q. So you thought that that information was  
13 biased; wasn't it?  
14 A. No.  
15 Q. You didn't think it was biased?  
16 A. I believe that you should know -- you  
17 should get all the facts and there was no facts to  
18 get, before you post something.  
19 Q. So you didn't think whatever he was  
20 posting was biased; is that correct?  
21 A. I guess to him, yes, it was biased.  
22 Q. But was it biased to you?  
23 A. Again, I just commented that and said  
24 get all the facts before you post something like

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1 this.  
2 Q. Okay. Whatever he was saying, was it  
3 misleading in your opinion?  
4 A. That is hard to answer because there  
5 were no facts. There was nothing -- there was no  
6 application, so it is hard to say. It was  
7 misleading.  
8 Q. Did you think that whatever he was  
9 saying, he was using to promote or publicize a  
10 particular cause or point of view?  
11 A. I think it was a personal opinion.  
12 Q. What was his personal opinion?  
13 A. That he was against the transfer  
14 station.  
15 Q. Do you think it was wrong for him to  
16 have has personal opinion to be against the waste  
17 transfer station?  
18 A. No.  
19 Q. Okay. Yet you called that -- you told  
20 him that he was pushing propaganda, didn't you?  
21 A. My definition of propaganda is have the  
22 facts before you push the information.  
23  
24

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1 (Exhibit M7 was marked for  
2 identification.)  
3 BY MR. MEZA:  
4 Q. Let me show you what has been marked as  
5 M7. It is the dictionary definition of propaganda.  
6 "Information, especially of a  
7 biased or misleading nature, used to promote or  
8 publicize a political cause or point of view."  
9 Do you think that is what he was  
10 doing?  
11 MR. WALSH: He just gave you his definition of  
12 propaganda.  
13 BY MR. MEZA:  
14 Q. I'm asking him if he thought he was  
15 doing that. If he didn't, then he can say he  
16 wasn't.  
17 A. It says or misleading nature. Yes, he  
18 was misleading.  
19 Q. Right. You thought he was promoting  
20 misleading information?  
21 A. I thought he was promoting information  
22 not based on facts.  
23 Q. Right. And how did you arrive at that  
24 decision?

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1 A. Because nobody had facts.  
2 Q. Okay. You didn't have facts either,  
3 right?  
4 A. I didn't have any facts, no.  
5 Q. Right. But you texted him, and you told  
6 him that he was pushing propaganda, didn't you?  
7 A. Yes.  
8 MR. MEZA: So, this is M8.  
9 (Exhibit M8 was marked for  
10 identification.  
11 BY MR. MEZA:  
12 Q. So this is the text that you sent  
13 Father Josh on November 14th, 2020, at 7:39 AM; is  
14 that correct?  
15 A. Yes.  
16 Q. And you wrote, "we need to talk next  
17 week. You're pushing propaganda. Please get all  
18 information prior to posting on social media.  
19 Thanks in advance."  
20 Is that correct?  
21 A. Yes.  
22 Q. When you say get information, what were  
23 you referring to?  
24 A. Any information. There was no

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1 information.  
2 Q. So, despite the fact that there was no  
3 information, you thought he was misleading others;  
4 is that correct?  
5 A. I said misleading, yes.  
6 Q. Yes. That is what you thought he was  
7 doing, right?  
8 A. I thought he was -- yes, he is  
9 misleading.  
10 Q. And you wanted to have a meeting with  
11 him the following week; is that correct?  
12 A. I just said let's talk, but I didn't  
13 call him.  
14 Q. You never spoke to him?  
15 A. No.  
16 Q. After you sent him this text, did you  
17 ever see Father Josh post anything on social media  
18 that you thought was propaganda?  
19 A. I don't recall.  
20 Q. How much money does the City of West  
21 Chicago provide Saint Andrews, which is the church  
22 that Father Josh was the priest for?  
23 A. I don't think West Chicago gives any  
24 money to any of our faith businesses.

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1 Q. They don't give any resources at all?  
2 A. I don't think we do. I know the county  
3 does, but I don't think West Chicago -- no. I  
4 don't think so.  
5 Q. Do you know what the largest Latino  
6 population church is in West Chicago?  
7 A. I do not know.  
8 Q. So would it surprise you that it would  
9 be Saint Andrews?  
10 MR. WALSH: This is irrelevant, but go ahead  
11 and answer.  
12 THE WITNESS: I wouldn't say Saint Andrews. I  
13 would say Saint Mary's.  
14 Q. Okay. But Saint Mary's never posted  
15 anything about --  
16 A. No. Not that I know.  
17 Q. And you never texted that priest  
18 anything, did you?  
19 A. I didn't have to.  
20 Q. He never pushed any propaganda?  
21 A. I don't know.  
22 Q. Now in 2020, 2019, and 2020, you were  
23 aware that Lakeshore was going to submit an  
24 application for a second waste transfer station,

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1 correct?  
2 A. There was talk, yes.  
3 Q. Well, you entered into a post agreement,  
4 didn't you?  
5 A. Yes.  
6 Q. Didn't you also enter into an agreement  
7 where the City hired an expert to help the City?  
8 A. Yes.  
9 Q. That was Atpim, A-T-P-I-M; is that  
10 correct?  
11 A. I don't know. I guess.  
12 Q. You don't remember the name of the  
13 contractor that West Chicago hired to help them  
14 review the application?  
15 A. I don't recall.  
16 Q. Did you know they did hire somebody?  
17 A. Yes.  
18 Q. Did you know they hired attorneys also?  
19 A. Yes.  
20 MR. MUELLER: Let me interpose an objection  
21 here. Atpim changed their name more often than  
22 some people change clothes, so I think -- I don't  
23 know if it is actually a fair answer. I don't know  
24 if it was Atpim in 2020. It could have been CV or

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1 CVI.  
2 BY MR. MEZA:  
3 Q. Do you have any recollection of the city  
4 hiring any experts to help them?  
5 A. Yes. To help -- well, we needed to get  
6 information, yes.  
7 Q. So it might have been Atpim or it might  
8 have been some other name Mr. Mueller said?  
9 MR. WALSH: He doesn't recall, Counsel. That  
10 is all.  
11 BY MR. MEZA:  
12 Q. Now, do you know what the role of the  
13 City of West Chicago's staff was in relation to the  
14 application for Lakeshore recycling in 2019 or  
15 2020?  
16 MR. MUELLER: Objection. There was --  
17 THE WITNESS: There was no application.  
18 MR. MUELLER: I will withdraw the objection.  
19 I think the Mayor understands the question.  
20 MR. MEZA: Okay.  
21 THE COURT REPORTER: I didn't hear an  
22 answer.  
23 THE WITNESS: The answer was, there was no  
24 application.

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1 BY MR. MEZA:  
2 Q. Do you know what the role was regarding  
3 any proposed application?  
4 A. There was no discussion. I mean there  
5 was no application in front of us, so there was no  
6 discussion about an application.  
7 Q. But there was discussions between West  
8 Chicago staff and Lakeshore Recycling experts,  
9 weren't there?  
10 A. I don't know.  
11 Q. Okay. So do you know whether or not,  
12 you as the mayor, or any city official authorized  
13 any employees to be communicating with Lakeshore  
14 Recycling's staff prior to the submission of any  
15 application?  
16 A. I don't know that.  
17 Q. Okay. But you know now that they did,  
18 right?  
19 A. I don't know what the conversations were  
20 or anything because I have a city administrator.  
21 So, no. I don't know.  
22 Q. Okay. Do you know if the city  
23 administrator authorized his staff to work with  
24 Lakeshore Recycling?



<p style="text-align: right;">Page 38</p> <p>1 A. I don't know. 2 MR. MEZA: Is this number 9? 3 THE COURT REPORTER: Yes. 4 (Exhibit M9 was marked for 5 identification.) 6 BY MR. MEZA: 7 Q. So what has been marked as M9 is a 8 letter dated 2019. Do you see that? 9 A. Yes. 10 Q. Were you aware that the city staff, and 11 in particular, Tom D-A-B-A-R-E-I-N-E-R. Can you 12 pronounce his name? 13 A. Dabareiner. 14 Q. Were you aware that he was preparing 15 letters on behalf of Lakeshore Recycling? 16 A. I was made aware of this later. 17 Q. Okay. So not -- you were not aware of 18 that in 2019? 19 A. No. 20 MR. MEZA: This will be number 10. 21 (Exhibit M10 was marked for 22 identification.) 23 BY MR. MEZA: 24 Q. Now, this letter. This is an e-mail</p>	<p style="text-align: right;">Page 40</p> <p>1 correct? 2 A. Yes. 3 Q. And that was submitted, I believe, 4 September 16th of 2022; is that correct? 5 A. I don't remember the date. 6 Q. Okay. Whatever the date was, it is in 7 the record. So if it is not September 16th, I 8 think the notice may have been September 16th, and 9 it was filed, but whatever. But anyway, the 10 application submitted by Lakeshore Recycling, that 11 was pretty voluminous; is that correct? 12 A. Yes. 13 Q. But I mean it was over 2000 pages, 14 maybe? 15 A. I'd be guessing. I don't remember. 16 Q. But you read the whole thing, didn't 17 you? 18 A. No. I do not. 19 Q. Which part of it did you not read? 20 A. I was getting reports from staff. 21 Q. Okay. Did you look at the exhibit? 22 A. Yes. 23 Q. Did you notice that, in fact, the -- 24 letter with the red line edits was included in the</p>
<p style="text-align: right;">Page 39</p> <p>1 chain between John Hock, H-O-C-K at Lakeshore 2 Recycling and Tom D, because I don't know how to 3 mispronounce his last name? 4 A. Dabareiner. 5 Q. I assume -- have you seen this e-mail 6 before? 7 A. No. 8 Q. Okay. Take a look at the last page. 9 The last page has got a letter with some red lines. 10 You're familiar with redlining a letter; is that 11 correct? 12 A. Yes. 13 Q. That means you send somebody a word 14 document and they can track their changes and the 15 their changes will be in red and it may be struck 16 out; is that correct? 17 A. Yes. 18 Q. So, were you aware that a West Chicago 19 staffer named Tom received a redline letter? 20 A. No. 21 Q. And made the changes? 22 A. No. 23 Q. Now you did review the final application 24 that was submitted by Lakeshore Recycling; is that</p>	<p style="text-align: right;">Page 41</p> <p>1 final application? 2 A. I don't recall. 3 MR. MEZA: So this should be what number. 4 THE COURT REPORTER: M11. 5 (Exhibit M11 was marked for 6 identification.) 7 BY MR. MEZA: 8 Q. Take a look at M11. 9 Now, you saw this letter in the 10 Lakeshore Recycling application; is that correct? 11 A. I don't recall. 12 Q. Well, you and the City Council members 13 received all of the applications and exhibits that 14 were introduced at the hearing; is that correct? 15 A. Yes. 16 Q. And do you know why you received that 17 information? 18 A. It is the application. 19 Q. I know, but do you know the purpose for 20 which you were given the application and for which 21 you were given transcripts of all of the hearings? 22 Do you know what the reason was? 23 A. So you know everything that's involved 24 in the application.</p>

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1 Q. Right. And you are aware that you were  
2 supposed to vote on whether or not you thought, as  
3 a city council, that Lakeshore Recycling systems  
4 application met all line criteria of the Illinois  
5 Protection Act; is that correct?  
6 MR. MUELLER: I'm going to object. He was not  
7 required to vote. You are putting him in the seat  
8 of city council member.  
9 THE WITNESS: You said you vote. So, yes, I  
10 knew once the application was filed they were going  
11 to come in front of the city council.  
12 BY MR. MEZA:  
13 Q. Right. And you knew the city council  
14 was required to read all the documents and read the  
15 transcripts in order to determine whether or not  
16 the nine criteria were met; is that correct?  
17 MR. MUELLER: I'm going to object. There is  
18 no statutory requirement that they read every  
19 page.  
20 BY MR. MEZA:  
21 Q. Okay. Are you aware of that,  
22 Mr. Pineada, Mayor, that there is no requirement  
23 that you had to read anything?  
24 MR. WALSH: That is not what he said.

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1 MR. MEZA: Well, that is --  
2 MR. WALSH: The point is you are putting --  
3 you are suggesting that he has a legal obligation  
4 to read every word in the application or the  
5 transcripts, and the law doesn't require it.  
6 BY MR. MEZA:  
7 Q. Okay. Did you read the application; yes  
8 or no?  
9 A. The majority of it, yes.  
10 Q. Did you read the transcript; yes or no?  
11 A. I read the majority of it, yes.  
12 Q. Well, there is a difference between the  
13 application and the hearing transcripts?  
14 A. I was at the testimony; 24 hours of it.  
15 Q. Right. So -- and when you -- were there  
16 other of -- so you were aware that this letter was  
17 discussed at the hearing; is that correct?  
18 A. I don't recall. I don't recall if it  
19 was discussed at the meeting, but -- yes, I don't  
20 recall.  
21 Q. Do you recall whether or not all the  
22 information in the application was considered by  
23 the city council, as a whole, in order to determine  
24 whether or not Lakeshore Recycling met the

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1 criteria?  
2 A. Yes. I mean yes.  
3 Q. Okay. And I believe, if you know, that  
4 you don't vote unless there is a tie; is that  
5 correct?  
6 A. Correct.  
7 Q. So you didn't have to vote because there  
8 was no tie in regards to the ordinance, correct?  
9 A. Correct.  
10 Q. But you didn't know there was going to  
11 be a tie or not before the vote did you?  
12 A. I did not.  
13 Q. Okay. Now with regard to M11, did you  
14 know that there was going to be a dispute as to  
15 whether or not certain provisions of the Illinois  
16 Protection Act, in particular, 415 ILCS5/22.1A was  
17 going to be in dispute?  
18 MR. WALSH: Hold on. Hold on. At what point  
19 are we talking about? You're asking at what point  
20 in time?  
21 MR. MEZA: Sure, that is fair.  
22 BY MR. MEZA:  
23 Q. At the time you were meeting as a city  
24 council to vote on the ordinance to either approve

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1 the application or not approve it, did you know  
2 that there was a dispute with regard to whether or  
3 not the application met that provision of the  
4 statute?  
5 MR. WALSH: If you remember.  
6 THE WITNESS: I don't remember.  
7 MR. Meza: Okay.  
8 BY MR. MEZA:  
9 Q. But with regard to M11, is it my  
10 understanding that you, in fact, did consider this  
11 letter as part of the application package in  
12 arriving at your own decision?  
13 MR. WALSH: Objection to the form of the  
14 question as to what your understanding is.  
15 MR. MEZA: Let me back up.  
16 BY MR. MEZA:  
17 Q. Did you vote in favor of the application  
18 or not?  
19 A. No.  
20 Q. No? You didn't vote at all?  
21 A. I did not vote.  
22 Q. All right. You did not vote, but you  
23 did sign that it had been approved; is that  
24 correct?

<p style="text-align: right;">Page 46</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Was there any discussion to not</p> <p>3 consider this letter as part of the application at</p> <p>4 all?</p> <p>5 A. No there was no discussion.</p> <p>6 Q. Okay.</p> <p>7 MR. MEZA: Let's mark this M12.</p> <p>8 (Exhibit M12 was marked for</p> <p>9 identification.)</p> <p>10 BY MR. MEZA:</p> <p>11 Q. And while you were looking at M12,</p> <p>12 Mayor, do you know if West Chicago has an ordinance</p> <p>13 relating to pollution control facility procedures?</p> <p>14 A. I don't know.</p> <p>15 Q. So looking at M12, you don't -- are you</p> <p>16 saying you don't know that the City of West Chicago</p> <p>17 has an ordinance relating to pollution control site</p> <p>18 procedures?</p> <p>19 A. There is a lot of ordinances.</p> <p>20 Q. So is that a yes or no?</p> <p>21 A. I don't know.</p> <p>22 Q. Can you turn to the second page and let</p> <p>23 me direct you to Section 14-93, all the way at the</p> <p>24 bottom, number 4.</p>	<p style="text-align: right;">Page 48</p> <p>1 update that is the city administrator sends to West</p> <p>2 Chicago officials. Is that correct or not?</p> <p>3 A. Yes.</p> <p>4 Q. And do you receive these when</p> <p>5 Mr. Guttman sends them out?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. This one is dated December 4th,</p> <p>8 2022. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Now, let me direct your attention where</p> <p>11 it says City's role and transfer review process.</p> <p>12 Do you see that?</p> <p>13 A. Yes. The review time, yes.</p> <p>14 Q. It says "this document has been</p> <p>15 translated into Spanish and posted to the City's</p> <p>16 website." Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Isn't it true that you thought or the</p> <p>19 City of West Chicago thought it was important to</p> <p>20 translate the City's role in the transfer review in</p> <p>21 Spanish and posts it to the City's website?</p> <p>22 A. Yes.</p> <p>23 Q. In fact, the City's website today has a</p> <p>24 tab on the top right that states English or</p>
<p style="text-align: right;">Page 47</p> <p>1 Do you see that, where it says</p> <p>2 the application was contained?</p> <p>3 A. Yes.</p> <p>4 Q. The last sentence says the applicant</p> <p>5 remains solely responsible to demonstrate that the</p> <p>6 location of approval criteria are all met.</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Is the City of West Chicago the</p> <p>10 applicant?</p> <p>11 A. No.</p> <p>12 Q. Is Tom Dabareiner, the applicant?</p> <p>13 A. No.</p> <p>14 Q. But you did consider M11 or the city</p> <p>15 council did consider that in its deliberations,</p> <p>16 didn't it?</p> <p>17 A. I don't understand the question.</p> <p>18 Q. Let me show you what we will mark as</p> <p>19 M13.</p> <p>20 (Exhibit M13 was marked for</p> <p>21 identification.)</p> <p>22 BY MR. MEZA:</p> <p>23 Q. Now, M13 is an e-mail from Mr. Guttman,</p> <p>24 to Mr. Guttman, and it seems like it is a weekly</p>	<p style="text-align: right;">Page 49</p> <p>1 Espanol; is that right?</p> <p>2 A. Yes.</p> <p>3 Q. And when you tab the Spanish tab, you</p> <p>4 can see that near all of the information has been</p> <p>5 translated in Spanish; is that correct, on your</p> <p>6 website; is that right?</p> <p>7 A. I haven't clicked that tab.</p> <p>8 Q. Would it surprise you when you click</p> <p>9 that tab, a lot of the information was in Spanish?</p> <p>10 A. It is translated in Spanish.</p> <p>11 Q. And that is because the City of West</p> <p>12 Chicago thinks it is important to provide the</p> <p>13 information to 52 percent of its Spanish</p> <p>14 population; is that correct?</p> <p>15 A. Yes.</p> <p>16 Q. How much of the information, including</p> <p>17 the application is translated into Spanish?</p> <p>18 MR. WALSH: Objection. It is irrelevant and</p> <p>19 that issue has already been ruled on. Don't answer</p> <p>20 the question.</p> <p>21 MR. MEZA: I don't think that has been ruled</p> <p>22 on.</p> <p>23 MR. WALSH: It has. My interrogatory</p> <p>24 objection is in line with that line of questioning.</p>

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1 We are not going to get into the  
2 issue of translating the application or having  
3 translated the public hearing, because that has  
4 been ruled on.  
5 MR. MEZA: Mark this as M14.  
6 (Exhibit M14 was marked for  
7 identification.)  
8 BY MR. MEZA:  
9 Q. All right. Now M14 is another update  
10 from Mr. Guttman to City Council, dated  
11 January 29th, 2023; is that correct?  
12 A. Yes.  
13 Q. Now, the first entry talks about waste  
14 transfer station hearings. Do you see that?  
15 A. Yes.  
16 Q. The last sentence states "the matter  
17 will be discussed by the City Council on  
18 February 27th, with a decision scheduled to be made  
19 on February 28th." Is that correct?  
20 A. Yes.  
21 Q. So is that information correct, that is,  
22 that the waste, the Lakeshore Recycling application  
23 for a second waste transfer station is to be  
24 discussed by City Council on the 27th, and a

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1 decision was to be made on the 28th?  
2 A. Yes.  
3 Q. Is that what happened?  
4 A. Yes.  
5 Q. How do you know that?  
6 A. I was there.  
7 Q. So the decision as to whether or not to  
8 prove it or not, was made on the 28th?  
9 A. Why yes. It was a public meeting.  
10 Q. Okay.  
11 MR. MEZA: Mark this as M15.  
12 (Exhibit M15 was marked for  
13 identification.)  
14 BY MR. MEZA:  
15 Q. Now, this is another Michael Guttman  
16 update.  
17 This one is dated February 26th,  
18 2023, at 7:03 AM. And it states "waste transfer  
19 station citing -- waste transfer station citing  
20 process. Doug Price, the hearing officer will be  
21 joining tomorrow's meeting to answer any questions.  
22 There will be police present both inside and  
23 outside the building.  
24 So Mr. Guttman is talking about

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1 tomorrow's meeting, meaning the February 27th City  
2 Council Meeting; is that correct?  
3 A. Yes.  
4 Q. And what he is basically telling the  
5 City Council members and yourself, is that the  
6 hearing officer will be there at the hearing or at  
7 that meeting, and will be available to answer  
8 questions; is that correct?  
9 A. Yes.  
10 Q. Was Mr. Price at the meeting on February  
11 27th?  
12 A. I can't discuss the 27th meeting.  
13 MR. WALSH: You can say --  
14 MR. MEZA: You can say whether or not he was  
15 there.  
16 THE WITNESS: Yes.  
17 BY MR. MEZA:  
18 Q. Was he asked questions?  
19 A. I don't recall.  
20 Q. Do you recall him speaking at all?  
21 A. I would guess, yes.  
22 Q. Do you recall him answering any  
23 questions?  
24 A. I don't recall if there were questions

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1 asked, so, no, I don't remember.  
2 Q. So you don't remember whether or not he  
3 gave a presentation or whether he just answered  
4 questions?  
5 A. I know he was there if there was going  
6 to be questions, but I don't recall the questions.  
7 Q. Right. M15 tells us he is going to be  
8 there, right?  
9 A. Yes.  
10 Q. And that was February of this year, you  
11 remember him being there, right?  
12 A. Yes.  
13 Q. You just don't remember him answering  
14 questions or whether he gave a statement or  
15 presentation?  
16 A. I don't recall.  
17 Q. Do you recall how long the meeting was?  
18 A. Probably two, two and-a-half hours.  
19 Q. Now, after that meeting, the 27th of  
20 February 2023 -- well, let me ask you this.  
21 The City Council went into  
22 closed session to discuss the application; is that  
23 correct?  
24 A. Yes.

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1 Q. And then they were in closed session  
2 for, you said about two hours or so?  
3 A. Yes.  
4 Q. But I think the minutes might reflect.  
5 Let's --  
6 A. Does it tell you when we went in and  
7 when we came out, adjourned?  
8 MR. MEZA: So this will be number -- what  
9 number is this?  
10 THE COURT REPORTER: 16.  
11 (Exhibit M16 was marked for  
12 identification.)  
13 BY MR. MEZA:  
14 Q. So before I ask you questions about M16,  
15 go ahead and take a look at it. Do you need to a  
16 to take a break, Mayor?  
17 A. I'm good.  
18 Q. You're good? Okay.  
19 A. I see the time we went in and out.  
20 Q. So you went in at 7:03 and came out  
21 about 8:50. So it was about two hours?  
22 A. Yes.  
23 Q. Okay. So I'm looking at M16, and I'm  
24 looking at the second page, which is the minutes

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1 that were approved at the 320, City Council meeting  
2 were no changes, which is the second page.  
3 Do you see that?  
4 A. Yes.  
5 Q. Okay. I'll direct your attention to  
6 number 4, it says, "Executive Session Roll Call."  
7 You cite a section to the  
8 Illinois Code codified compiled statutes 12/2. Is  
9 this the reason why you went into executive  
10 session?  
11 MR. WALSH: What are you looking at, Counsel?  
12 MR. MEZA: Number 4.  
13 BY MR. MEZA:  
14 Q. Is this the basis for which you went  
15 into closed session?  
16 A. Yes.  
17 Q. Because Mayor, you've been a mayor  
18 for --  
19 A. Eleven years.  
20 Q. You have been Alderman for --  
21 A. Fourteen.  
22 Q. So you know public meetings have to be  
23 open under the Open Meetings Act; right?  
24 A. It depends on what we are going to be

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1 discussing.  
2 Q. Right. But meetings generally have to  
3 be open unless there is a specific exemption that  
4 allows you to go into closed session?  
5 A. Yes.  
6 Q. And those exemptions are set forth in  
7 state law, right?  
8 A. Yes.  
9 Q. And those include litigation or  
10 personnel matters. This is one of the exceptions,  
11 right?  
12 A. Yes.  
13 Q. And this is the exception that the City  
14 Council was using to go into closed session,  
15 correct?  
16 A. Yes.  
17 Q. That is to consider evidence or  
18 testimony that was presented in open hearing or in  
19 a closed hearing provided that the body prepares  
20 and makes available for public inspection, and  
21 written decision setting forth its determinative  
22 reasoning.  
23 Did I read that correctly?  
24 MR. WALSH: He is asking you --

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1 MR. MEZA: Did I read is that correctly?  
2 THE WITNESS: Yes.  
3 BY MR. MEZA:  
4 Q. Do you understand what that means? That  
5 means you can go under closed session, provided  
6 that the body, meaning the City Council provides,  
7 prepares and makes available, a written decision  
8 setting forth its determinative reasoning.  
9 So did the City Council do that?  
10 A. I don't know what I can discuss as far  
11 as executive session, closed session.  
12 Q. No, no. Did you issue a written  
13 decision setting forth your reasoning. Yes or no?  
14 MR. WALSH: Do you know? Do you know the  
15 answer?  
16 MR. MEZA: If you don't know, just say you  
17 don't know.  
18 THE WITNESS: I don't know the answer.  
19 BY MR. MEZA:  
20 Q. That is fine. Now let's go to the next  
21 date, February 28th, 2023. Do you see it says  
22 agenda continued?  
23 A. Yes.  
24 Q. Okay. This was the one that was held at



<p style="text-align: right;">Page 58</p> <p>1 one of the local high schools; is that correct?                  2 A. Yes.                  3 Q. And this meeting started at 6:00 PM,                  4 correct?                  5 A. Yes.                  6 Q. Now let's go to the next page, which is                  7 page C006006. And what time did this meeting                  8 adjourn?                  9 A. 6:05.                  10 Q. So this open meeting lasted five                  11 minutes; is that correct?                  12 A. Yes.                  13 Q. And you were at that meeting; is that                  14 correct?                  15 A. Yes.                  16 Q. I was at that meeting too. Do you                  17 remember seeing me there?                  18 A. Yes.                  19 Q. Now, at that meeting, there was a roll                  20 call that was made where you call everybody's name                  21 and they said if they are present or not, right?                  22 A. Yes.                  23 Q. And that happened and that is indicated                  24 here, right?</p>	<p style="text-align: right;">Page 60</p> <p>1 A. Yes.                  2 Q. You remember that, right?                  3 A. Yes.                  4 Q. And then Alderman Beifuss said -- you                  5 went around kind of a table and asked if anybody                  6 wanted to speak?                  7 A. Yes.                  8 Q. And Alderman B-E-F-I-F-U-S-S, said he                  9 didn't think criteria one, two, or eight were met;                  10 is that correct?                  11 A. Yes.                  12 Q. Did you ask him why he thought it wasn't                  13 met?                  14 A. No.                  15 Q. Did you care why he thought it wasn't                  16 met?                  17 A. Yes.                  18 Q. Well, why didn't you ask him?                  19 A. At that time he was -- he asked to make                  20 his comments. I didn't ask him why these issues                  21 didn't meet criteria.                  22 Q. Okay. So you didn't think it was                  23 important why he didn't think criteria 8 were met?                  24 MR. WALSH: Are you talking about at the</p>
<p style="text-align: right;">Page 59</p> <p>1 A. Yes.                  2 Q. And all of these people listed on the                  3 roll call; Lori Chasse, James Beifuss, etc. They                  4 were all present; is that correct?                  5 A. One, two, three. No this is for --                  6 Q. February 28th. Look on number 8. It                  7 should be on 6005.                  8 A. Okay.                  9 Q. Roll call and establishment of a quorum.                  10 A. Yes, they were present.                  11 Q. Okay. And, in fact, you indicated that                  12 amount Alderman Chasse --                  13 A. Chasse.                  14 Q. C-H-A-S-S-E, were present via Zoom; is                  15 that correct?                  16 A. Yes.                  17 Q. Okay. And then Tom was there, Tom                  18 Dabareiner, and Mr. Guttman and your attorney,                  19 Dennis Walsh; is that correct?                  20 A. Yes.                  21 Q. Now turn to page 6006, the next page.                  22 Now, there was a motion to approve Ordinance                  23 23-00006, which is to approve the citing                  24 application; is that correct?</p>	<p style="text-align: right;">Page 61</p> <p>1 February 28th --                  2 MR. MEZA: Yes. At the five-minute meeting.                  3 MR. WALSH: Yes.                  4 THE WITNESS: I think he gave his explanation.                  5 I didn't have to ask him.                  6 BY MR. MEZA:                  7 Q. Okay. So he gave you -- he gave the                  8 reasoning why he didn't think criteria one, two,                  9 and three were met at this meeting?                  10 A. From what I remember.                  11 Q. What about Alderman Garling? He                  12 expressed he didn't think criteria one and three                  13 had been met; is that correct?                  14 A. Correct.                  15 Q. Do you know why he didn't believe that                  16 was met?                  17 A. I think he stated why he didn't think                  18 that was met.                  19 Q. Again, all within this five-minute                  20 meeting, correct?                  21 A. Yes.                  22 Q. And Alderman Chasse?                  23 A. Chasse.                  24 Q. Chasse. I'm sorry.</p>

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1 Do you remember she spoke for  
2 awhile?  
3 A. I don't remember -- yes, she did speak.  
4 Q. You recall her saying that she was  
5 voting in favor of it because of two attorneys, and  
6 the financial risk to the City?  
7 A. I don't think she said that, but I don't  
8 know.  
9 Q. Do you have any recollection either way?  
10 A. It states right here that she feels the  
11 criteria --  
12 Q. Right. But that is not all she said,  
13 was it?  
14 A. I don't recall.  
15 Q. Okay. But you don't recall financial  
16 risk --  
17 MR. WALSH: He answered that question twice  
18 now.  
19 THE WITNESS: I don't recall.  
20 BY MR. MEZA:  
21 Q. And so was the decision -- was the  
22 decision -- were the reasons that Alderman Beifuss  
23 and Alderman Garling objected -- let me rephrase  
24 it.

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1 Were the reasons why Alderman  
2 Garling did not think the application met criteria  
3 one, two, and three included in the ordinance?  
4 A. I don't understand the question.  
5 Q. Okay. On February 28th there was a  
6 five-minute meeting, correct?  
7 A. Yes.  
8 Q. Okay. You asked the alderman if they  
9 had anything to say, right?  
10 A. Yes.  
11 Q. Two alderman said they didn't think  
12 certain criteria were met, correct?  
13 A. Yes.  
14 Q. One of them was Beifuss, correct?  
15 A. Yes.  
16 Q. He said he didn't think criteria one,  
17 two, or eight were met, correct?  
18 A. Correct.  
19 Q. You said he gave a reason at the  
20 meeting, didn't you?  
21 A. I said I didn't recall.  
22 Q. Do you recall whether or not he gave a  
23 reason?  
24 A. I don't recall, but, you know -- I don't

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1 recall.  
2 Q. Okay. Do you know why he opposed one,  
3 two, or eight?  
4 A. I do not.  
5 Q. Do you know if the reasons why he  
6 opposed one, two, or eight were in any written  
7 decision setting forth its determinative reason?  
8 A. I guess I don't understand that question  
9 either.  
10 Q. Okay. So the Open Meeting Act allows  
11 the city council to go into closed session for  
12 certain reasons. You understand that, right?  
13 A. Yes.  
14 Q. One of the reasons is if they want to  
15 consider evidence or testimony in an open court?  
16 A. Yes.  
17 Q. That is what you were doing on  
18 February 27th?  
19 A. Well, it stated here on a 5 ILCS,120/2.  
20 Q. Right. You were considering evidence or  
21 testimony that was presented at the citing  
22 application hearings, weren't you?  
23 A. Yes.  
24 Q. Right.

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1 And you are allowed to do that  
2 in closed sessions so long as you make available a  
3 written decision setting forth your determinative  
4 reasoning; is that correct?  
5 A. Yes.  
6 Q. Okay. Did the ordinance that was passed  
7 include the determinative reasoning as to why  
8 Alderman Beifuss believed that criteria one, two  
9 and eight wasn't met?  
10 MR. MUELLER: I'm going to object. He has  
11 testified twice he doesn't know.  
12 MR. WALSH: Correct.  
13 MR. MUELLER: And there is no requirement that  
14 ordinances contained reasoning opposed to the  
15 ordinance.  
16 MR. MEZA: Right. This isn't about the  
17 ordinance. This is about what you did in closed  
18 session was consistent with the Open Meetings Act.  
19 Do you know whether or not it was.  
20 MR. WALSH: Objection to the relevancy of that  
21 in the same hearing application process.  
22 If you think that there was some  
23 violation of the Open Meetings Act, it is a  
24 different matter altogether, Counsel.

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1 He said he doesn't remember what  
2 they said or why they said it, and there was an  
3 ordinance passed. Whether or not there is  
4 something there, it speaks for itself.  
5 BY MR. MEZA:  
6 Q. Do you know when the ordinance was  
7 drafted?  
8 A. No.  
9 MR. MEZA: What number are we on?  
10 THE COURT REPORTER: Number 17.  
11 (Exhibit M17 was marked for  
12 identification.)  
13 BY MR. MEZA:  
14 Q. Now, Mayor, do you know what  
15 interrogatories are?  
16 A. I'm sorry?  
17 Q. Do you know what interrogatories are?  
18 A. No.  
19 Q. Do you know interrogatories are written  
20 questions that are asked from one party to another,  
21 and then they are answered under oath by a  
22 representative?  
23 A. Okay.  
24 Q. What has been marked as M17 are written

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1 questions that Protect West Chicago issued the City  
2 of West Chicago, which West Chicago answered  
3 through its city administrator, Michael Guttman.  
4 Have you seen these before?  
5 A. These?  
6 Q. Yes. Interrogatories.  
7 A. Yes.  
8 Q. Okay. And I don't mean to go backwards,  
9 but I do need to go backwards.  
10 Can you go back to M16, which is  
11 the ordinance, and turn to page 6052?  
12 The numbers are on the top  
13 right. 6052 is the signature page for the  
14 ordinance; is that correct?  
15 A. Yes.  
16 Q. So was this signed on February 28th,  
17 2023?  
18 A. Yes.  
19 Q. Was that signed right after the city  
20 council meeting?  
21 A. Yes.  
22 Q. When did you receive a copy of this  
23 ordinance?  
24 A. I don't recall.

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1 Q. Do you recall receiving it on the 27th  
2 or the 28th?  
3 A. I'm guessing we received it the 28th.  
4 Q. And did you or any city council members  
5 make any edits or changes to the ordinance?  
6 A. No.  
7 Q. So, do you know when it was drafted?  
8 A. I don't know.  
9 Q. Let's go to M17, and go to question 5.  
10 It is asking to identify the persons who drafted  
11 or otherwise participated in the formation of West  
12 Chicago City Ordinance 23-0006, and the dates he or  
13 she drafted it, and the answer is "special counsel  
14 Dennis Walsh was the only person who drafted the  
15 ordinance."  
16 MR. WALSH: Page 6.  
17 MR. MEZA: Page 6. Sorry. Top of page 6.  
18 BY MR. MEZA:  
19 Q. The ordinance was sent to City  
20 Administrator Michael Guttman on February 28th.  
21 And the next question, the answer says, after  
22 receiving the draft, Mr. Guttman made some  
23 formatting changes only and assigned a number.  
24 Do you know about what time you

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1 received the ordinance from either your counsel or  
2 Mr. Guttman?  
3 A. No.  
4 MR. WALSH: Do you need a break or are you  
5 okay?  
6 THE WITNESS: No. I'm good.  
7 BY MR. MEZA:  
8 Q. So the ordinance, which starts on page  
9 6039, 23-0006.  
10 MR. WALSH: Back on M16.  
11 MR. MEZA: Yes.  
12 MR. WALSH: What is the number?  
13 MR. MEZA: 6039. Top right number.  
14 BY MR. MEZA:  
15 Q. The first page of that ordinance,  
16 23-006?  
17 A. Okay.  
18 Q. So that was actually prepared by Special  
19 Counsel Walsh at the direction of the city council;  
20 is that correct?  
21 A. Yes.  
22 Q. And then he drafted it and he provided  
23 it to Mr. Guttman on the 28th; is that correct?  
24 A. Yes. As stated, yes.

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1 Q. And the city council voted and put their  
 2 signature on it?  
 3 A. Yes.  
 4 Q. So the city council had actually made  
 5 their decision on the 27th, didn't they?  
 6 A. There was no vote taken, so I don't  
 7 know.  
 8 Q. Right. But the decision of what would  
 9 be included in the ordinance and all the delivered  
 10 process, and all the information, had been decided  
 11 on February 27th, right?  
 12 A. We did not change the ordinance on the  
 13 27th.  
 14 Q. Right. You saw it for the first time on  
 15 the 28th, right?  
 16 A. Right.  
 17 Q. And it was approving the citing  
 18 application, wasn't it?  
 19 A. Yes. Well, I don't know that because we  
 20 -- there was no roll.  
 21 Q. But the ordinance was drafted approving  
 22 it. It didn't have a section at the last page of  
 23 the ordinance that says therefore the following  
 24 vote to approve the above language and the

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1 following vote to not approve it.  
 2 I mean it was all drafted  
 3 already. It says we approve it with special  
 4 conditions.  
 5 A. And this needs a vote.  
 6 Q. Right. But the language and everything  
 7 was prepared on the 27th?  
 8 A. I would say it was the 28th.  
 9 Q. Okay.  
 10 MR. MEZA: Can we take five minutes.  
 11 MR. WALSH: Sure.  
 12 (Recess.)  
 13 MR. MEZA: All right. We are back on the  
 14 record. It is about 5:50.  
 15 Mayor, I don't have any further  
 16 questions. Your attorney has the right to redirect  
 17 if he wants.  
 18 Mr. George, do you have any  
 19 questions?  
 20 MR. MUELLER: The answer is no. I think some  
 21 things are just best left unsaid.  
 22 MR. WALSH: I have a no questions of the  
 23 Mayor.  
 24 MR. MEZA: It is up to you. You could have

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1 the deposition finished by the this good court  
 2 reporter, and assume she is going to transcribe  
 3 everything correctly or you can review it.  
 4 MR. WALSH: We are going reserve our right to  
 5 review it.  
 6 MR. MEZA: I don't need it expedited. Just  
 7 regular.  
 8 THE COURT REPORTER: Mr. Walsh, would you like  
 9 to order a copy of the transcript.  
 10 MR. WALSH: Yes, I will order it.  
 11 FURTHER DEPONENT SAITH NAUGHT.  
 12 (Proceedings concluded at 5:50  
 13 PM)  
 14  
 15  
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 21  
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 23  
 24

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1 STATE OF ILLINOIS )  
 ) SS:  
 2 COUNTY OF COOK )  
 3 I, Deborah A. Duffy, CSR, RPR, do hereby  
 4 certify that Mayor Ruben Pineda was duly sworn by  
 5 me to testify the whole truth, and that the  
 6 foregoing deposition was recorded stenographically  
 7 by me and was reduced to computerized transcript  
 8 under my direction, and that the said deposition  
 9 constitutes a true record of the testimony given by  
 10 said witness.  
 11 I further certify that the reading and  
 12 signing of the deposition was not waived, and that  
 13 the deposition was submitted to Dennis Walsh,  
 14 defendant's counsel, for signature. Pursuant to  
 15 Rule 30(e) of the Federal Rules of Procedure, if  
 16 deponent does not appear or read and sign the  
 17 deposition within 30 days, the deposition may be  
 18 used as fully as though signed, and this  
 19 certificate will then evidence such failure to  
 20 appear as the reason for signature not being  
 21 obtained.  
 22 I further certify that I am not a relative or  
 23 employee or attorney or counsel of any of the  
 24 parties, or a relative or employee of such attorney  
 or counsel, or financially interested directly or  
 indirectly in this action.  
 IN WITNESS WHEREOF, I have hereunto set my  
 hand this 17th day of July, A.D. 2023.  
 \_\_\_\_\_  
 Deborah A. Duffy  
 Deborah A. Duffy, CSR, RPR  
 Illinois CSR License 084-002516

Page 74

1 Veritext Legal Solutions  
 2 1100 Superior Ave  
 3 Suite 1820  
 4 Cleveland, Ohio 44114  
 5 Phone: 216-523-1313  
 6  
 7 July 20, 2023  
 8  
 9 To: Mr. Walsh  
 10  
 11 Case Name: Protect West Chicago v. City Of West Chicago, Et Al.  
 12  
 13 Veritext Reference Number: 5997249  
 14  
 15 Witness: Mayor Ruben Pineda Deposition Date: 7/6/2023  
 16  
 17 Dear Sir:  
 18 Enclosed please find a deposition transcript. Please have the witness  
 19 review the transcript and note any changes or corrections on the  
 20 included errata sheet, indicating the page, line number, change, and  
 21 the reason for the change. Have the witness' signature notarized and  
 22 forward the completed page(s) back to us at the Production address  
 23 shown  
 24 above, or email to production-midwest@veritext.com.  
 25  
 26 If the errata is not returned within thirty days of your receipt of  
 27 this letter, the reading and signing will be deemed waived.  
 28  
 29 Sincerely,  
 30  
 31 Production Department  
 32  
 33  
 34 NO NOTARY REQUIRED IN CA

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1 DEPOSITION REVIEW  
 2 CERTIFICATION OF WITNESS  
 3  
 4 ASSIGNMENT REFERENCE NO: 5997249  
 5 CASE NAME: Protect West Chicago v. City Of West Chicago, Et  
 6 Al.  
 7 DATE OF DEPOSITION: 7/6/2023  
 8 WITNESS' NAME: Mayor Ruben Pineda  
 9 In accordance with the Rules of Civil  
 10 Procedure, I have read the entire transcript of  
 11 my testimony or it has been read to me.  
 12 I have made no changes to the testimony  
 13 as transcribed by the court reporter.  
 14  
 15 Date \_\_\_\_\_  
 16 Mayor Ruben Pineda  
 17 Sworn to and subscribed before me, a  
 18 Notary Public in and for the State and County,  
 19 the referenced witness did personally appear  
 20 and acknowledge that:  
 21 They have read the transcript;  
 22 They signed the foregoing Sworn  
 23 Statement; and  
 24 Their execution of this Statement is of  
 25 their free act and deed.  
 26  
 27 I have affixed my name and official seal  
 28 this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
 29 \_\_\_\_\_  
 30 Notary Public  
 31 \_\_\_\_\_  
 32 Commission Expiration Date  
 33  
 34  
 35

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1 DEPOSITION REVIEW  
 2 CERTIFICATION OF WITNESS  
 3  
 4 ASSIGNMENT REFERENCE NO: 5997249  
 5 CASE NAME: Protect West Chicago v. City Of West Chicago, Et  
 6 Al.  
 7 DATE OF DEPOSITION: 7/6/2023  
 8 WITNESS' NAME: Mayor Ruben Pineda  
 9 In accordance with the Rules of Civil  
 10 Procedure, I have read the entire transcript of  
 11 my testimony or it has been read to me.  
 12 I have listed my changes on the attached  
 13 Errata Sheet, listing page and line numbers as  
 14 well as the reason(s) for the change(s).  
 15 I request that these changes be entered  
 16 as part of the record of my testimony.  
 17  
 18 I have executed the Errata Sheet, as well  
 19 as this Certificate, and request and authorize  
 20 that both be appended to the transcript of my  
 21 testimony and be incorporated therein.  
 22 \_\_\_\_\_  
 23 Date Mayor Ruben Pineda  
 24 Sworn to and subscribed before me, a  
 25 Notary Public in and for the State and County,  
 26 the referenced witness did personally appear  
 27 and acknowledge that:  
 28 They have read the transcript;  
 29 They have listed all of their corrections  
 30 in the appended Errata Sheet;  
 31 They signed the foregoing Sworn  
 32 Statement; and  
 33 Their execution of this Statement is of  
 34 their free act and deed.  
 35 I have affixed my name and official seal  
 36 this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
 37 \_\_\_\_\_  
 38 Notary Public  
 39 \_\_\_\_\_  
 40 Commission Expiration Date

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1 ERRATA SHEET  
 2 VERITEXT LEGAL SOLUTIONS MIDWEST  
 3 ASSIGNMENT NO: 5997249  
 4 PAGE/LINE(S) / CHANGE /REASON  
 5 \_\_\_\_\_  
 6 \_\_\_\_\_  
 7 \_\_\_\_\_  
 8 \_\_\_\_\_  
 9 \_\_\_\_\_  
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 18 \_\_\_\_\_  
 19 \_\_\_\_\_  
 20 Date Mayor Ruben Pineda  
 21 SUBSCRIBED AND SWORN TO BEFORE ME THIS \_\_\_\_\_  
 22 DAY OF \_\_\_\_\_, 20\_\_\_\_ .  
 23 \_\_\_\_\_  
 24 Notary Public  
 25 \_\_\_\_\_  
 26 Commission Expiration Date



# Exhibit 5

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT - LAW DIVISION

PROTECT WEST CHICAGO, )  
) )  
Petitioners, )  
) )  
vs. ) PCB No. 23-107  
) )  
CITY OF WEST CHICAGO, WEST )  
CHICAGO CITY COUNCIL, and )  
LAKESHORE RECYCLING SYSTEMS, )  
LLC, )  
) )  
Respondents; )  
) )  
----- )  
PEOPLE OPPOSING DUPAGE )  
ENVIRONMENTAL RACISM, )  
) )  
Petitioner, )  
) )  
V. )  
) )  
CITY OF WEST CHICAGO and )  
LAKESHORE RECYCLING SYSTEMS, )  
) )  
Respondents. )

The discovery deposition of  
LORI CHASSEE, taken under oath on July 31, 2023, at  
the hour of 4:00 p.m., at City Hall Building, 475  
Main Street, West Chicago, Illinois, pursuant to  
the Rules of the Supreme Court of Illinois and the  
Illinois Code of Civil Procedure, before Deborah A.  
Duffy, CSR, RPR, pursuant to notice.

Page 2

1 APPEARANCES:  
 2 MEZA LAW  
 BY: Mr. Ricardo Meza  
 3 542 S. Dearborn  
 Chicago, Illinois 60605  
 4 312-802-0336  
 rmeza@meza.law  
 5  
 appeared on behalf of the Plaintiffs;  
 6  
 7 KLEIN, THORPE & JENKINS, LTD.  
 BY: Mr. Dennis G. Walsh  
 8 15010 S. Ravinia Ave.  
 Orland Park, Illinois 60462-5353  
 9 708-349-3888  
 dgwalsh@ktjlaw.com  
 10  
 appeared on behalf of the Defendant,  
 11 West Chicago;  
 12  
 MUELLER AND ANDERSON  
 13 BY: Mr. George Mueller  
 1S123 Gardener Way  
 14 Winfield, Illinois 60190  
 (815) 431-1500  
 15 george@muelleranderson.com  
 16 Appeared on behalf of the Defendant,  
 Lakeshore Recycling;  
 17  
 18 MR. ROBERT W. WEINSTOCK  
 19 Director, Environmental Advocacy Center  
 Northwestern Pritzker School of Law  
 20 375 E. Chicago Avenue  
 Chicago, Illinois 60611  
 21 robert.weinstock@law.northwestern.edu  
 22 Appeared telephonically.  
 23  
 24 \* \* \* \* \*

Page 4

1 (witness sworn.)  
 2 LORI CHASSEE  
 3 called as a witness herein, having been first  
 4 duly sworn, was examined and testified as follows:  
 5 EXAMINATION  
 6 BY MR. MEZA:  
 7 Q. Could you state your name for the  
 8 record?  
 9 A. Lori Chassee.  
 10 Q. Can you spell your last name for the  
 11 court reporter?  
 12 A. C-H-A-S-S-E-E.  
 13 Q. Miss Chassee, have you ever been deposed  
 14 before?  
 15 A. Yes, I have.  
 16 Q. Was that in relation to your previous  
 17 employer?  
 18 A. Yes.  
 19 Q. You've testified at trial before, right?  
 20 A. Yes.  
 21 Q. So you know that it helps to wait until  
 22 the question is complete to provide an answer, and  
 23 to provide an oral answer?  
 24 A. Yes.

Page 3

1 INDEX  
 2 WITNESS  
 3 LORI CHASSEE  
 4 EXAMINATION PAGE  
 5 BY MR. RICARDO MEZA 4  
 6  
 7 EXHIBITS MARKED FOR IDENTIFICATION  
 8 EXHIBIT PAGE  
 9 EXHIBIT 1 57  
 EXHIBIT 2 62  
 10  
 11  
 12  
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Page 5

1 Q. Good.  
 2 If you have any questions about the  
 3 question I ask you, you don't understand it, just  
 4 say you don't understand it.  
 5 A. Yes, sir, I will.  
 6 Q. Okay. Now, you've lived in West Chicago  
 7 for about 34 years; is that correct?  
 8 A. 37.  
 9 Q. And are you an elected official?  
 10 A. Yes, I am.  
 11 Q. What is your position?  
 12 A. Alderman for the First Ward.  
 13 Q. And we are actually sitting in the First  
 14 Ward; is that right?  
 15 A. Correct.  
 16 Q. Do they refer to them at councilman too  
 17 or not?  
 18 A. Alderman.  
 19 Q. What are your duties and  
 20 responsibilities as an Alderman?  
 21 A. To be a liaison with the community, to  
 22 the City and its services and to provide policy  
 23 direction to city staff.  
 24 Q. And before I forget, I think your

Page 6

1 counsel already told you who I was, Ricardo Meza.  
2 I represent Protect West Chicago.  
3 A. No, he did not, but nice to meet you.  
4 Q. I don't think we've met before?  
5 A. That is correct.  
6 Q. Is the Alderman position a volunteer  
7 position?  
8 A. There is a small stipend for official  
9 meetings, but, yes.  
10 Q. Okay. Do you have any full-time  
11 employment at this time?  
12 A. Yes.  
13 Q. Where do you work?  
14 A. Diocese of Joliet.  
15 Q. Any part-time work?  
16 A. I should correct that. That is  
17 part-time unless it is busy.  
18 Q. Okay. Is that the only part-time work  
19 you have then, or full-time, slash part time?  
20 A. Yes.  
21 Q. And what is your educational background?  
22 A. I have a degree in criminology from the  
23 University of Albuquerque in New Mexico.  
24 Q. Now I saw that you have a clip on

Page 7

1 YouTube from Legal Women Voters. Are you familiar  
2 with that?  
3 A. Yes.  
4 Q. You said -- I think it was about two  
5 years ago --  
6 A. It was during the pandemic when they  
7 were not having meetings in person.  
8 Q. I think at that time you said you had  
9 been a resident of West Chicago for 32 years, but  
10 maybe it was wrong.  
11 A. I have to think. It could be wrong.  
12 Q. In the video you said that you -- you  
13 said to the perspective voters that you do your  
14 homework and research every issue that comes before  
15 you; is that correct?  
16 A. I don't remember.  
17 Q. Do you do your homework as Alderman?  
18 A. Yes, I do.  
19 Q. Do you research every issue that comes  
20 before you?  
21 A. Yes, I do.  
22 Q. Do you look for the most current  
23 information that is available to you?  
24 A. Yes.

Page 8

1 Q. Do you reach out to residents and ask  
2 them questions?  
3 A. Yes.  
4 Q. And in the end, do you make every  
5 decision based on what you believe is the best  
6 interest of the City of Chicago?  
7 A. Yes.  
8 Q. Did you vote in favor of Ordinance  
9 23-0-006?  
10 A. I don't know.  
11 Q. Does that ordinance number trigger any  
12 memory as to what it is about?  
13 A. The ordinance number, no, sir.  
14 Q. Okay. Let me show you -- we have some  
15 previously marked exhibits.  
16 This one is previously marked M16.  
17 Can you take a look at maybe the third page in with  
18 the Bate number on the top right, C-006039. Do you  
19 see that?  
20 A. Yes.  
21 Q. Take a look at that. It is Ordinance  
22 23-0-0006.  
23 A. Yes.  
24 Q. Okay. Are you familiar with this

Page 9

1 ordinance?  
2 A. Yes.  
3 Q. Can you tell us what a waste transfer  
4 station is?  
5 A. A waste transfer station is a facility  
6 where curbside refuse is brought to a distribution  
7 point and reloaded, and sent to ultimate and final  
8 destinations.  
9 Q. Do you know how it is sent to ultimate  
10 final destinations?  
11 A. By truck.  
12 Q. Do you know what type of vehicle?  
13 A. No.  
14 Q. Do you know how many waste transfer  
15 stations there are in West Chicago?  
16 A. Yes.  
17 Q. How many?  
18 A. One.  
19 Q. Do you know what street it is located?  
20 A. Is it at the corner of Prowess and North  
21 Avenue.  
22 Q. Now you're aware in 2003 that West  
23 Chicago issued a resolution opposing the siting of  
24 a second waste transfer station on Prowess Road; is

Page 10

1 that correct?  
2 A. Correct.  
3 Q. Now, were you an Alderman at that time?  
4 A. Yes, I was.  
5 Q. And were you in opposition of that  
6 second waste transfer station or in support of it?  
7 A. I was in opposition.  
8 Q. Can you tell us why you opposed that?  
9 A. Because of the location of that  
10 particular facility.  
11 Q. And what was it about the location?  
12 A. The proximity to a newly developed  
13 residential area.  
14 Q. And do you know whether or not that  
15 proposed second waste transfer station was located  
16 in West Chicago or not?  
17 A. I believe that it is.  
18 Q. Okay. So other than the fact that it  
19 was located near a residential area, were there any  
20 other reasons why you opposed it?  
21 A. I don't recollect of all them, no.  
22 Q. But were there others?  
23 A. Likely.  
24 Q. Okay. And you don't remember any of

Page 11

1 them right now?  
2 A. No, sir.  
3 Q. Do you know what a host agreement is?  
4 A. Yes.  
5 Q. Can you tell us your understanding of  
6 what a host agreement is?  
7 A. My understanding is that a host  
8 agreement is an agreement between a municipality  
9 and a transfer station about operation, payment and  
10 general considerations.  
11 Q. Okay. And what is the purpose of having  
12 a host agreement?  
13 A. I don't know.  
14 Q. Okay. Do you know if it provides any  
15 compensation to the municipality who enters into  
16 it?  
17 A. Yes.  
18 Q. What sort of compensation is it?  
19 MR. WALSH: I'm going to object just for the  
20 record for a moment.  
21 If we are talking about a specific  
22 host agreement or are we talking about like  
23 generally host agreements in general, because you  
24 are asking her specific questions about host

Page 12

1 agreements.  
2 MR. MEZA: Sure. I can ask generally.  
3 BY MR. MEZA:  
4 Q. Do you know whether or not West Chicago  
5 entered into a host agreement with any business in  
6 the last five years?  
7 A. Yes.  
8 Q. Who did they enter into a host agreement  
9 with?  
10 A. Lakeshore Recycling.  
11 Q. What was the purpose of entering into  
12 that host agreement?  
13 A. To position the City should there be a  
14 future application and operation of another waste  
15 transfer station.  
16 Q. Do you know who negotiated that host  
17 agreement?  
18 A. No.  
19 Q. Okay. Did you if -- do you know how  
20 much West Chicago was going to receive in  
21 compensation under the host agreement?  
22 A. I don't recall.  
23 Q. Did you agree to the terms of the host  
24 agreement?

Page 13

1 A. Yes.  
2 Q. Do you know who George Mueller is?  
3 A. No.  
4 Q. Do you know why West Chicago entered  
5 into a host agreement with Lakeshore Recycling?  
6 A. To position ourselves should there be an  
7 application and operation of a transfer facility  
8 that the City would be inclusive in.  
9 Q. Okay. Did you understand that Lakeshore  
10 was intending to file an application for building  
11 a waste transfer station?  
12 A. I can't speak to their intention.  
13 Q. Wasn't that the purpose of entering into  
14 the host agreement?  
15 A. Yes.  
16 Q. So was it the intention of Lakeshore to  
17 build a second waste transfer station?  
18 MR. WALSH: Objection. She just told you she  
19 can't speculate what the intention was. She can  
20 only tell you what she knows.  
21 BY MR. MEZA:  
22 Q. Okay. Did you know based on the fact  
23 that West Chicago entered into a host agreement  
24 with them?



Page 14

1 A. No, I did not.  
2 Q. Have you ever heard of a company called  
3 Aptum?  
4 A. Aptum? No.  
5 Q. So did you ever authorize the West  
6 Chicago, as Alderman, to hire them?  
7 A. I don't recall.  
8 Q. So since you don't know who they are,  
9 you don't know what their role was; is that  
10 correct?  
11 A. I don't recall.  
12 Q. Did you know at one time what their role  
13 was?  
14 A. I don't recall.  
15 Q. Well, don't recall indicates you may  
16 have known in the past versus you just don't know.  
17 A. I don't recall because I don't want to  
18 say no and then you pull out a piece of paper and  
19 say here is their name on a document I read fifteen  
20 years ago. So I don't recall.  
21 Q. Okay. Do you know who Devan Lewis is?  
22 A. No.  
23 Q. Do you know if the City of West Chicago  
24 hired Aptum and Devan Lewis that would meet the

Page 15

1 requirements?  
2 A. No.  
3 Q. You don't know if they did or they did  
4 not?  
5 A. I do not know.  
6 Q. Okay. So they may have. You just don't  
7 know; is that correct?  
8 A. No. I do not believe the City hired  
9 anyone to help Lakeshore Recycling. I am unaware  
10 of that.  
11 Q. Okay. But you don't know what Aptum did  
12 or did not do during the course of Lakeshore's  
13 application for a waste transfer station; is that  
14 correct?  
15 A. That is correct.  
16 Q. Okay. Did you ever ask anybody whether  
17 or not the City of West Chicago hired anybody to  
18 help Lakeshore?  
19 A. No.  
20 Q. Are you aware whether or not the City of  
21 West Chicago held public meetings or hearings to  
22 consider Lakeshore's recycling application?  
23 A. Yes.  
24 Q. What were the dates of those public

Page 16

1 meetings?  
2 A. I don't remember the date.  
3 Q. Okay. Do you know how many public  
4 meetings there were?  
5 A. I don't remember the number.  
6 Q. Do you know how long they lasted?  
7 A. Several hours. I don't remember.  
8 Q. Do you know what was discussed at the  
9 public hearings?  
10 A. The application of Lakeshore Recycling.  
11 Q. And how do you know that?  
12 A. Because I read the transcripts.  
13 Q. Which transcript did you read?  
14 A. All of them.  
15 Q. How many pages were there they?  
16 A. Thousands.  
17 Q. Do you know where these public hearings  
18 were held?  
19 A. I believe some were held at Wheaton  
20 Christian Academy.  
21 Q. Did you attend any of them?  
22 A. No, I did not.  
23 Q. Why didn't you attend any of them?  
24 A. Because I knew the transcripts would be

Page 17

1 provided and I would be reviewing it that way.  
2 Q. Did you review all of the transcripts?  
3 A. Yes, I did.  
4 Q. Do you know whether any other Aldermen  
5 attended any of the public hearings?  
6 A. Yes.  
7 Q. How do you know that?  
8 A. One of the Aldermen indicated that he  
9 was going to go.  
10 Q. Do you know which one?  
11 A. Alderman Morano.  
12 Q. Anybody else?  
13 A. I don't know.  
14 Q. You don't know or you don't recall?  
15 A. I don't know.  
16 Q. When did you learn that Alderman Morano  
17 indicated he would attend?  
18 A. I don't remember.  
19 Q. Was it before they started, when they  
20 were already in progress?  
21 A. In progress.  
22 Q. Okay. Was it in person that he told you  
23 or over the phone?  
24 A. I don't know. It wasn't over the phone.

Page 18

1 Q. Okay. So it was in person?  
2 A. Yes.  
3 Q. Okay. Do you know what -- do you  
4 remember what he said?  
5 A. No.  
6 Q. Okay. Do you know why he told you that  
7 he was attending?  
8 A. My recollection is they announced the  
9 date at City Council meeting, general question is  
10 anyone attending, and I believe Mr. Morano said  
11 yes, he was going to attend.  
12 Q. Now, do you know whether Lakeshore  
13 submitted their application to build this second  
14 waste transfer station. It is called a citing  
15 application, were you aware of that?  
16 A. Yes.  
17 Q. When they submitted their citing  
18 application, do you know what requirements they  
19 were obligated to meet in order to receive approval  
20 from the City of West Chicago?  
21 A. I know there are requirements. I don't  
22 recall -- it was after the application was filed,  
23 the information was presented to us.  
24 Q. Okay. But do you recall what Lakeshore

Page 19

1 was required to comply with under the law in order  
2 to obtain approval from West Chicago?  
3 A. Can I recite them? No.  
4 Q. Okay. Do you recall any of them?  
5 A. Certainly, generally.  
6 Q. Okay. What do you recall?  
7 A. I don't want to misarticulate the nine  
8 criteria. I do recall there were nine that had to  
9 do with economic, impacts to the surrounding  
10 community -- or areas, not community, and some  
11 other things.  
12 Q. Okay. And you read the transcripts; is  
13 that correct?  
14 A. Yes.  
15 Q. And they discussed the criteria; is that  
16 correct?  
17 A. Yes.  
18 Q. And you said there were nine criteria;  
19 is that correct?  
20 A. Yes.  
21 Q. Do you know how many exhibits were  
22 introduced by Lakeshore in their citing  
23 application?  
24 A. No, I do not.

Page 20

1 Q. Did you read Lakeshore's citing  
2 application?  
3 A. Yes, I did.  
4 Q. The entire thing?  
5 A. Yes, I did.  
6 Q. Do you know how many pages it was?  
7 A. No, I don't remember.  
8 Q. Do you have any idea?  
9 A. Lengthy.  
10 Q. Okay. Can you give an estimate of how  
11 many pages?  
12 A. No, I cannot.  
13 Q. Would it surprise you to know that it  
14 was about 1,929 total pages?  
15 A. Would that surprise me?  
16 Q. Yes.  
17 A. No.  
18 Q. Okay. And can you describe some of the  
19 information that was contained in 1929 pages?  
20 A. No, I can't.  
21 Q. Can you describe the items that you  
22 reviewed prior to voting on M16?  
23 A. Can I describe them? Yes. I read the  
24 citing application. I read the transcripts of the

Page 21

1 hearing. I looked at the exhibits that were  
2 submitted, both with the application and at the  
3 hearings. We received some documents, and a  
4 summary from counsel and I looked at all of those  
5 documents.  
6 Q. Did you look at any of the filings that  
7 were made by the parties; legal filings?  
8 A. If they were made part of the  
9 transcript, yes. If they weren't, I don't recall.  
10 Q. Okay. Do you remember reading any  
11 filings that related to the notice that was  
12 provided to people who lived within 250 feet?  
13 A. Yes.  
14 Q. And who filed that?  
15 A. I don't know.  
16 Q. Do you recall any of the filings  
17 relating to the fact that the proposed waste  
18 transfer station was to be built within 1,000 feet  
19 of property that was zoned residential?  
20 A. Yes.  
21 Q. Do you know who filed that?  
22 A. No.  
23 Q. Okay. Do you know whether a decision  
24 was made by the hearing officer regarding the

Page 22

1 notice requirements?  
2 A. I don't recall.  
3 Q. Do you know whether the City Council  
4 made any decisions with regard to the notice  
5 requirements?  
6 A. I don't recall.  
7 Q. What about with regard to the 1,000-foot  
8 setback, residential setback provision?  
9 A. I don't recall.  
10 Q. Now, do you remember when you read the  
11 transcripts for the public hearings?  
12 A. The dates? No, sir.  
13 Q. Okay. And how did you receive the  
14 transcripts?  
15 A. There was a link provided, digitally, by  
16 the City.  
17 Q. Now did the City Council meet on  
18 February 27, 2023?  
19 A. I don't know.  
20 Q. Can you look at M6 and see if that  
21 refreshes your recollection -- M16, excuse me.  
22 A. Yes. On the 22nd, yes. The 27th, 28th  
23 if that is the one you're referring to? Yes.  
24 Q. So looking at M16, does that refresh

Page 23

1 your recollection that the City Council met for  
2 special meeting on February 27th?  
3 A. Yes.  
4 Q. Do you know what time you started the  
5 meeting?  
6 A. 6:00 p.m.  
7 Q. And do you know what time you went into  
8 closed session?  
9 A. No.  
10 Q. Do you know why you went into closed  
11 session?  
12 A. Do I remember which -- no, I do not.  
13 Q. Do you know whose idea it was to proceed  
14 to closed session?  
15 A. No, I do not.  
16 Q. Do you know the legal basis under which  
17 you wanted a closed session?  
18 A. No.  
19 Q. So since you don't know the legal basis,  
20 you don't know if the reason you went into closed  
21 session was in compliance with the Open Meeting  
22 Act; is that correct?  
23 A. I believe it was in compliance based on  
24 what was represented by the attorney prior to going

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1 into closed session. They always make the  
2 announcement.  
3 Q. Okay. But other than that  
4 representation, you don't have any independent  
5 knowledge or reason to believe that going into the  
6 closed session was appropriate for City Council; is  
7 that right?  
8 MR. WALSH: Objection to that question. To  
9 the extent you can answer it, go ahead.  
10 Actually, read back the question,  
11 please.  
12 (Requested testimony read.)  
13 THE WITNESS: In terms of the document you  
14 provided me? It does make reference to the code  
15 that was the basis for that movement to executive  
16 session.  
17 BY MR. MEZA:  
18 Q. And that is 5ILCS 120/2C4; is that  
19 correct?  
20 A. Correct.  
21 Q. And it states that evidence or testimony  
22 presented in open hearing or a closed hearing or  
23 specifically authorized by law, quasi adjudicated  
24 body, as defined in this Act, provided the body

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1 prepares and makes available for public inspection  
2 and written decision sent for alternative reason;  
3 is that correct?  
4 A. Yes.  
5 Q. Now, when you were in closed session did  
6 anybody make a presentation to you in closed  
7 session?  
8 A. My understanding is closed session, I am  
9 not to discuss --  
10 Q. I'm not asking you to discuss what was  
11 said. I'm asking whether a presentation was made.  
12 A. I don't remember. There was discussion.  
13 That is what I remember.  
14 Q. Okay. But was there any sort of written  
15 presentation given to the members of the City  
16 Council that day?  
17 A. I don't recall.  
18 Q. Did you ask any questions?  
19 A. Yes.  
20 Q. Were those questions answered?  
21 A. Yes.  
22 Q. Okay. Who answered your questions?  
23 A. Combination of city attorney, Michael  
24 Gutman, the city administrator. I don't remember.

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1 Q. Do you know a person by the name of  
2 Derke Price?  
3 A. I don't remember.  
4 Q. Have you ever heard the term hearing  
5 officer.  
6 A. I'm sorry, who?  
7 Q. The term hearing officer?  
8 A. I guess I should have read all this  
9 before I came in, huh? No, I don't remember.  
10 Q. Okay. So what did you do to prepare for  
11 today's deposition?  
12 A. For today?  
13 Q. Yes.  
14 A. I came home from my vacation to be here  
15 this morning. That is what I did.  
16 Q. Okay. Did you read any of the material  
17 prior to this morning then?  
18 A. No.  
19 Q. And --  
20 MR. WALSH: You mean in preparation for this  
21 deposition; is that correct?  
22 THE WITNESS: Thank you.  
23 MR. MEZA: Yes.  
24 THE WITNESS: No, I did not.

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1 BY MR. MEZA:  
2 Q. Have you ever heard of the term hearing  
3 officer?  
4 A. Yes.  
5 Q. Okay. Was there a hearing officer?  
6 MR. WALSH: Where?  
7 BY MR. MEZA:  
8 Q. At the citing hearings?  
9 A. Yes.  
10 Q. And do you know who that was?  
11 A. I don't recall her name.  
12 Q. Okay. Was there a hearing officer at  
13 the closed session meeting?  
14 A. I don't remember who was present at the  
15 closed session hearings.  
16 Q. Okay. So does the name Derke Price ring  
17 a bell for you at all?  
18 A. No, it doesn't.  
19 Q. D-E-R-K-E, Price, P-R-I-C-E. But you  
20 did read the depositions; is that correct?  
21 A. Yes.  
22 Q. And you were aware that his name was  
23 referenced throughout the depositions --  
24 MR. WALSH: The depositions?

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1 MR. MEZA: I'm sorry. The hearing transcript.  
2 MR. WALSH: We will stipulate that the third  
3 party was the hearing officer, and we will agree he  
4 was in executive session if that is what you're  
5 looking for, counsel.  
6 MR. MEZA: Right.  
7 MR. WALSH: Okay. Let's move on.  
8 BY MR. MEZA:  
9 Q. Okay. Did you know why Derke Price was  
10 at the closed session?  
11 A. No, I don't.  
12 Q. Okay. Did he answer any questions or  
13 did he give a presentation?  
14 A. He answered questions. I don't  
15 recollect if there was a presentation.  
16 Q. Now after the City Council had gone into  
17 closed session on February 27th, did the City of  
18 West Chicago make available for public inspection,  
19 a written decision setting forth its determinative  
20 reasoning?  
21 A. There was no decision made at that  
22 meeting.  
23 Q. Now let's direct your attention to the  
24 next day, February 28th 2023, was there an open

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1 meeting of the City Council on that day?  
2 A. Yes.  
3 MR. WALSH: For the record, it was a  
4 continuation of the February 27th meeting.  
5 MR. MEZA: Okay.  
6 BY MR. MEZA:  
7 Q. Is that what you understood?  
8 A. Yes.  
9 Q. Okay. But this continuation of the  
10 meeting was in an open meeting; is that correct?  
11 A. Correct.  
12 Q. Do you know how long the February 28th,  
13 2023 meeting lasted?  
14 A. No, I do not.  
15 Q. Can you look at Exhibit M16, Page  
16 C-006006 -- actually, take a look at the previous  
17 page, C006005.  
18 Do you see that?  
19 A. Yes.  
20 Q. Special meeting minutes.  
21 Do you remember what time the  
22 meeting was called to order?  
23 A. The February 27th meeting?  
24 Q. 28th.

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1 A. 28th meeting? No, I do not. Let me  
2 look. I assume it is here somewhere. 6:00 PM.  
3 Q. Okay. And these are the official  
4 minutes that you and the Alderman approve after  
5 having the February 28th, 2023 meeting; is that  
6 correct?  
7 A. Yes.  
8 Q. You weren't their in person; is that  
9 correct?  
10 A. That is correct.  
11 Q. So the meeting started at 6 o'clock.  
12 Can you tell me what time the meeting adjourned?  
13 It is on the next page.  
14 A. 6:05 p.m.  
15 Q. So the open meeting lasted five minutes;  
16 is that correct?  
17 A. That is correct.  
18 Q. Now you were, I think I just asked you  
19 this. You were not there in person; is that  
20 correct?  
21 A. Correct.  
22 Q. At that meeting; do you recall that  
23 Alderman James, B-E-I-F-U-S-S, stated that he did  
24 not believe that Criteria 1 and 2 had been met?

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1 A. Yes.  
2 Q. Did he provide the reasons for that?  
3 A. Likely.  
4 Q. And do you recall what those reasons  
5 were?  
6 A. No.  
7 Q. Are those reasons set forth in Ordinance  
8 23-0-0006?  
9 A. I'm sorry. What are you asking me? If  
10 Mr. Buifuss comments are in the ordinance?  
11 Q. Yes. I asked you if Mr. Buifuss had  
12 stated that he believed that Criteria 1, 2 or 8 had  
13 not been met and you said yes; is that correct?  
14 A. That was his position, yes.  
15 Q. And then I asked you, did he provide  
16 reasons for that?  
17 A. Likely.  
18 Q. And are those reasons set forth in the  
19 Ordinance 23-0-006?  
20 A. I don't believe so, no. I would have to  
21 read the entire ordinance.  
22 Q. Well, you can go ahead and reason read  
23 it if you want.  
24 A. Okay. Yes.

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1 Q. Yes, what?  
2 A. Yes, the ordinance indicates initial had  
3 not demonstrated, but with the compliance of the  
4 special conditions provided that it would be  
5 Criteria 2.  
6 That is what I'm reading here. Are  
7 Alderman Buifuss comments included in here? No.  
8 Q. Yes. That was the question. Alderman  
9 Buifuss' comments as to why he did not think the  
10 applicant met Criteria 1, 2 or 8 included in the  
11 ordinance?  
12 A. No.  
13 Q. Now, Alderman Matthew Garland also  
14 stated he didn't believe Criteria 1 and 3 had been  
15 met; is that correct?  
16 A. Yes.  
17 Q. This is on February 28th, 2023, the  
18 5-minute meeting?  
19 A. Yes.  
20 Q. Do you recall whether or not he gave any  
21 reasons why he did not think it was met?  
22 A. I don't recall.  
23 Q. And, none of the -- if either Alderman  
24 Buifuss or Garland provided reasons, those are not

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1 included in the minutes, are they?  
2 MR. WALSH: Are you speaking of the minutes as  
3 part of that exhibit?  
4 MR. MEZA: Yes.  
5 THE WITNESS: No. The reasons are not listed  
6 in the Minutes.  
7 BY MR. MEZA:  
8 Q. Now did you state that you believe that  
9 the applicant met all the citing criteria?  
10 A. Yes, I did.  
11 Q. You also made additional statements;  
12 isn't that true?  
13 A. Yes.  
14 Q. What else did you say when you were on  
15 the phone?  
16 A. I couldn't recall to a direct quote, but  
17 what I indicated was that, per direction of law, we  
18 needed to vote in favor of this based on criteria  
19 and evidence presented not on individual opinions.  
20 Q. And did you say anything about placing  
21 the City or city officials at risk for being sued?  
22 A. I said it would hold us to a liability  
23 if we did not follow the criteria requirements as  
24 provided to us.



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1 Q. Okay. Now, are those -- is that  
2 reasoning that you discussed on February 28th, is  
3 that set forth in Ordinance 23-0-0006?  
4 A. No, sir.  
5 Q. Okay. Do you know why it wasn't  
6 included?  
7 A. Alderman comments are generally not  
8 included in our ordinances.  
9 Q. So the ordinance, in fact, isn't a  
10 written decision setting forth your determinative  
11 reason, is it?  
12 MR. WALSH: Objection. You're asking for a  
13 legal opinion, which she is not a lawyer.  
14 BY MR. MEZA:  
15 Q. Does Ordinance 23-0-0006 have any of the  
16 determinative reasoning that you considered in  
17 voting in favor of this ordinance?  
18 MR. WALSH: Objection to the extent you are  
19 asking for a new legal analysis --  
20 MR. MEZA: No. I'm asking you for a fact.  
21 MR. WALSH: You're asking her about the Open  
22 Meetings Act, and whether or not they complied with  
23 it based on your question. She is not a lawyer.  
24 MR. MEZA: She can answer the question. If

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1 she doesn't know, then that is fine.  
2 THE WITNESS: Can we go back to what the  
3 question to me is, please?  
4 BY MR. MEZA:  
5 Q. Sure. You made some statements on  
6 February 28th when you were on the phone. Do you  
7 remember that?  
8 A. Yes.  
9 Q. You made a number of statements  
10 regarding what the lawyers had said and risks; is  
11 that correct?  
12 MR. WALSH: No. Objection that is not what  
13 she said.  
14 MR. MEZA: Well, it is in the record, but  
15 okay.  
16 BY MR. MEZA:  
17 Q. What did you say on February 28th when  
18 you were on the phone?  
19 A. I don't recall my exact words.  
20 Q. What do you recall to the best of your  
21 recollection?  
22 A. That I said that we were charged with  
23 following the criteria provided by law as directed  
24 by our attorneys who had explained the criteria,

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1 and that it was -- we needed to follow the evidence  
2 and the criteria or we could be held to a liability  
3 if we base things on our own opinions.  
4 Q. Did you know that the City Council -- it  
5 was the role of the City Council to decide whether  
6 or not the criteria were met?  
7 A. I know that we had to review the  
8 evidence and make a determination, yes.  
9 Q. Right. But you knew that it was the  
10 role of the City Council to make that  
11 determination, not the role of the lawyers; is that  
12 correct?  
13 A. Based on the evidence that was presented  
14 at the hearings, yes.  
15 Q. Right. And you were told by the hearing  
16 officer, that in his opinion, the evidence was met;  
17 is that correct?  
18 A. Yes.  
19 Q. But you know that that was supposed to  
20 be your opinion, whether it was met; is that  
21 correct?  
22 MR. WALSH: Object to the form of the  
23 question, counsel.  
24 The hearing officer gave his

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1 written recommendation to the City Council and the  
2 City Council reviewed it and made a decision.  
3 BY MR. MEZA:  
4 Q. Is that what happened?  
5 A. Yes. It was one of the many documents  
6 we reviewed. No one document was the determining  
7 factor.  
8 Q. How many votes did you take in relation  
9 to Ordinance 23-0-0006?  
10 A. On the 28th?  
11 Q. Or the 27th.  
12 A. There were no votes in executive  
13 session. There was one vote on the 28th.  
14 Q. So you only took one vote; is that  
15 correct?  
16 A. That is correct.  
17 Q. Do you know when this ordinance was  
18 drafted, the date?  
19 A. No, I do not.  
20 Q. Do you know who drafted the ordinance?  
21 A. No, I do not.  
22 Q. When was the first time you saw the  
23 ordinance?  
24 A. When we received the packet for this

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1 meeting.  
2 Q. And that -- when you say this meeting,  
3 are you talking about February 27th or 28th  
4 meeting?  
5 A. 28th meeting.  
6 Q. And what time did you receive the packet  
7 for the 28th meeting?  
8 A. There were -- I don't recollect when we  
9 received it. There were ordinances prepared in  
10 both positions.  
11 Q. So you received two sets of ordinances?  
12 A. Now as I sit here, I don't recall if we  
13 received them or if we were told and then based on  
14 the vote they would send out the appropriate  
15 ordinance.  
16 I don't remember when we got it.  
17 I'd have to look at my computer.  
18 Q. But do you --  
19 A. I knew there were ordinances prepared in  
20 either alternative.  
21 Q. But you had not seen them before you  
22 voted?  
23 A. No.  
24 Q. So when you voted on February 28th, do

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1 you know what you were voting on?  
2 A. Yes.  
3 Q. What were you voting on?  
4 A. On three -- okay. That is what they  
5 did. It was yes or no on the approval. So if the  
6 vote had gone against, then the ordinance wasn't  
7 necessary, obviously.  
8 Q. Okay. So what does that mean?  
9 A. That means we went into the meeting. A  
10 motion was made. I don't recall by who. I'm sure  
11 I can find it.  
12 The motion was made on this  
13 ordinance and then the vote was yes or no.  
14 Q. When did you first see this ordinance?  
15 A. I don't remember.  
16 Q. Did you see it before you voted?  
17 A. I don't remember.  
18 Q. Did you receive an e-mail with a packet  
19 prior to 6:00 p.m. on February 28th, 2023?  
20 A. I don't remember.  
21 Again, I was not physically present  
22 nor was I home, so I don't know.  
23 Q. I understand. But you did have e-mail;  
24 right?

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1 A. I don't use my personal e-mail for City  
2 e-mails so, no. I did not have access to e-mail  
3 that day as I was not in the City of West Chicago.  
4 Q. Right. But my question is, if you would  
5 have received a packet prior to the meeting, you  
6 would have received it in your work e-mail; is that  
7 correct?  
8 A. Yes.  
9 Q. Do you remember -- looking at M16, which  
10 is the ordinance, do you remember reading that  
11 before you took a vote?  
12 A. I don't remember.  
13 Q. Do you understand what information is  
14 included in Ordinance 23-0-0006?  
15 MR. WALSH: I'm just going to object to the  
16 form of the question on what information is.  
17 There is a lot of information and  
18 it speaks for itself. So if you want to ask her a  
19 specific question about some section of it, maybe  
20 that makes sense.  
21 BY MR. MEZA:  
22 Q. Have you ever read this ordinance?  
23 A. Yes.  
24 Q. When did you first read the ordinance?

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1 A. I don't remember.  
2 Q. So you don't remember if you read it  
3 before you voted; is that correct?  
4 A. I don't remember.  
5 Q. Now, are you familiar with any of the  
6 ordinances in the City of West Chicago, code of  
7 ordinances?  
8 A. Yes.  
9 Q. Okay. Did you know that Article 7 of  
10 the City of West Chicago Code of Ordinances  
11 establishes a procedure for pollution control  
12 facility site approval in the City of West Chicago?  
13 A. I don't recall.  
14 Q. Can you look at Page C-006040? The  
15 number would be on the top right, 6040.  
16 A. Yes.  
17 Q. Top right where it says "Whereas the  
18 City of West Chicago is the municipality in which  
19 proposed facility is located, and if approved, in  
20 Article 7 of the City of West Chicago's Code of  
21 Ordinances City Council, establishes a procedure  
22 for pollution control facility site approval?  
23 A. Yes.  
24 Q. Did you know that when you voted to

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1 approve this ordinance that language is included in  
2 there?  
3 A. Yes.  
4 Q. Did you read that ordinance before you  
5 approved this ordinance?  
6 A. I don't recall. Clearly I don't recall.  
7 Q. But you do know that the City of West  
8 Chicago's Code of Ordinances establishes  
9 procedures?  
10 A. Yes.  
11 Q. And that the City Council is required to  
12 follow those procedures; is that correct?  
13 A. Yes.  
14 Q. And so was the applicant; is that  
15 correct?  
16 A. Yes.  
17 Q. And so are staff of the City Council; is  
18 that correct?  
19 A. Yes.  
20 Q. Or the City of West Chicago?  
21 A. Yes.  
22 Q. Now, did you know that Lakeshore did not  
23 meet criterion two of the procedures for pollution  
24 control site approval?

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1 MR. WALSH: Read back the question again,  
2 please.  
3 BY MR. MEZA:  
4 Q. Did you know that the applicant,  
5 Lakeshore, did not meet criterion two?  
6 A. Without the modifications, yes.  
7 Q. Right. When you talk about  
8 modifications, you're talking about the special  
9 conditions; is that correct?  
10 A. Yes.  
11 Q. In fact the City Council found, on Page  
12 6041 that the applicant has not demonstrated that  
13 the proposed facility meets criterion two; is that  
14 correct?  
15 A. Yes.  
16 Q. And you also knew that the applicant did  
17 not meet criterion five; is that correct?  
18 A. Yes.  
19 Q. But there is language here that states  
20 that with the imposition of and compliance with  
21 special conditions provided, the proposed facility  
22 meets criterion 2 and 5; is that correct?  
23 A. Yes.  
24 Q. Now, when you were in closed session,

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1 did you receive the hearing officer's findings  
2 facts and conclusions of law?  
3 A. Yes.  
4 Q. Did you read them?  
5 A. Yes.  
6 Q. Did you adopt all of the findings and  
7 recommendations?  
8 A. When?  
9 Q. Hum?  
10 A. When?  
11 Q. Ever?  
12 A. Such as are listed and addended to the  
13 ordinance, yes.  
14 Q. Okay. So the City Council adopted the  
15 hearing officer's findings; is that correct?  
16 A. Let me go back and find the page.  
17 Q. Sure. Go to Page 6042, the last  
18 whereas, right above "now therefore, whereas after  
19 careful consideration" --  
20 A. Yes.  
21 Q. So did the City Council adopt the  
22 hearing officer's findings?  
23 A. Yes.  
24 Q. The findings included recommendations,

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1 didn't it?  
2 A. Yes.  
3 Q. Did the City Council adopt the hearing  
4 officer's recommendations?  
5 A. Yes.  
6 Q. And how do you know that?  
7 A. Because addenda are here on the  
8 ordinance.  
9 Q. And when you say the addenda, are you  
10 talking about Exhibit A?  
11 A. (No response.)  
12 Q. Take a look at Page 6042.  
13 A. Yes.  
14 Q. So the page number is on the top right?  
15 A. Right.  
16 Q. Look at the last paragraph, which says  
17 "now therefore."  
18 A. Um-hum.  
19 Q. And go ahead and read it to yourself.  
20 I think there is reference to the  
21 hearing officer's recommended findings of fact, and  
22 approval attached as Exhibit A; is that correct?  
23 A. Yes, it is.  
24 Q. And the City Council adopted that; is

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1 that correct?  
2 A. Yes.  
3 Q. And then they attached it to this  
4 ordinance; is that correct?  
5 A. Yes.  
6 Q. But the City Council didn't follow all  
7 the recommended action, did it? Of the hearing  
8 officer?  
9 A. I don't know.  
10 Q. Well, did you read the recommended  
11 actions of the hearing officer?  
12 A. Yes.  
13 Q. Okay. And do you remember that he made  
14 a recommendation that the City Council make three  
15 separate votes?  
16 A. I don't recall.  
17 Q. Can you take a look at 6055? On the  
18 bottom it says recommended action. "It is my  
19 recommendation that City Council votes separately  
20 on the three propositions.  
21 One, whether to grant PWC's motion  
22 to dismiss for failure to present proper notice  
23 under section 302b. Two, whether to grant PWCs  
24 motion to dismiss for failure under Section 39.2B.

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1 Two, whether to grant PWC's motion to dismiss  
2 claiming the facility violates the 1000-foot  
3 setback under Section 22.14.  
4 Three, whether the proposed  
5 facility with any special conditions imposed by the  
6 City Council satisfies the citing for criteria  
7 Section 39.2."  
8 Did I read that correctly?  
9 A. Yes.  
10 Q. Now, the City Council adopted the  
11 findings and recommended conditions of the approval  
12 as attached in Exhibit A, didn't it?  
13 A. Yes.  
14 Q. Did the City Council vote separately on  
15 these propositions?  
16 A. I don't recall.  
17 Q. You testified earlier that there was  
18 only one vote on February 28th; is that correct?  
19 A. Yes.  
20 Q. You also testified that there were no  
21 votes on February 27th; is that correct?  
22 A. Yes.  
23 Q. Does that refresh your recollection as  
24 to whether or not there were three votes taken;

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1 either 27th, 28th or any other date?  
2 A. Yes.  
3 Q. And were there three votes taken?  
4 A. No.  
5 Q. Why not?  
6 A. I don't know.  
7 Q. Now, can you provide the name of any  
8 person who testified on behalf of Lakeshore during  
9 any of the hearings?  
10 A. No.  
11 Q. Do you know the name of any of the  
12 witnesses who testified for Lakeshore?  
13 A. No.  
14 Q. Can you tell us then, why the City --  
15 why you voted to find that the testimony of any of  
16 the witnesses were thorough and credible?  
17 A. In reading the transcripts, that is the  
18 determination that I came to.  
19 Do I recall the names as I sit here  
20 today? No, I don't.  
21 Q. Do you recall whether it was any  
22 witnesses for PWC or Poder, P-O-D-E-R, that you  
23 found thorough and credible?  
24 A. I don't know.

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1 Q. So you don't know the name of any of the  
2 witnesses for Lakeshore that you found thorough and  
3 credible?  
4 A. I do not recall.  
5 Q. Do you know whose decision it was to add  
6 a name in the ordinance?  
7 A. No.  
8 Q. Now, do you know what special conditions  
9 are?  
10 A. Generally, yes.  
11 Q. In reference to ordinance 23-0-0006?  
12 A. I don't know what you mean; do I know  
13 what special conditions are. I'm sorry.  
14 Q. Sure. So on page -- this is Exhibit M16  
15 again, 6041. The City Council stated that "the  
16 applicant has not demonstrated the proposed  
17 facility meets Criterion 2; however, with the  
18 imposition of and compliance with special  
19 conditions provided below, the proposed facility  
20 meets Criterion 2. Okay.  
21 Do you know what is being referred  
22 to as special conditions provided below?  
23 A. I want to make sure they are not  
24 addended here.

<p style="text-align: right;">Page 50</p> <p>1 Exhibit A includes the special 2 conditions. 3 Q. And what is your understanding of what 4 the special conditions are? 5 A. Would you like me to read them all? 6 Q. Just give me your understanding of what 7 they are. 8 MR. WALSH: Generally, what special conditions 9 are? 10 MR. MEZA: Yes. 11 BY MR. MEZA: 12 Q. What is your understanding of why they 13 are needed or what they are? 14 A. They were direction to garner compliance 15 to the criteria. That if these things were done 16 and met, then they would meet the criteria. 17 Q. And do you know why any of them were 18 imposed or required? 19 A. My understanding is that they were 20 criteria that would benefit the City in terms of 21 the operation of this particular location. 22 Q. So on Page 6041, it states "the 23 applicant has not demonstrated immediate Criteria 24 One; however, with the imposition of, in compliance</p>	<p style="text-align: right;">Page 52</p> <p>1 is? 2 A. Yes. 3 Q. Who is he? 4 A. He is our development director. 5 Q. Now I'm going to show you previously 6 marked exhibit -- 7 MR. WALSH: Do you need a break or are you 8 okay? 9 MR. MEZA: Yes, do you need a break. 10 THE WITNESS: I'm fine for the short term. I 11 had some surgery which makes my eye be wonky, so it 12 is hard for me to read. 13 MR. MEZA: All right. 14 BY MR. MEZA: 15 Q. I'm going to show you what has been 16 previously marked as Exhibit M9. Sorry. The M is 17 -- it is hard to read. 18 So take a look at the second page 19 of M9. It is a double-sided paper. Read that 20 letter. 21 Can you tell me if you've ever seen 22 this letter before? 23 A. I have not seen this letter before. 24 Q. Did the City Council of West Chicago</p>
<p style="text-align: right;">Page 51</p> <p>1 with special conditions, the proposed facility 2 meets Criterion Two. 3 A. Yes. 4 Q. So what is your understanding of what 5 that means? 6 A. What that means? 7 Q. Yes. 8 A. To me, if these conditions were met then 9 the criterion is met. 10 Q. Okay. And do you know that the hearing 11 officer received these proposed conditions from 12 city staff; City of West Chicago Staff that is. 13 A. Yes. 14 Q. Okay. Do you know why the City of West 15 Chicago Staff developed these proposed conditions? 16 A. No, I do not. 17 Q. Do you know who on the City of West 18 Chicago staff came up with these proposed special 19 conditions? 20 A. No. 21 Q. Did you think it was appropriate for 22 city staff to develop these special conditions? 23 A. In terms of providing direction, yes. 24 Q. Do you know who Tom D-A-B-A-R-E-I-N-E-R</p>	<p style="text-align: right;">Page 53</p> <p>1 authorize -- I'm going to say Tom D to prepare this 2 letter? 3 A. I don't recall. 4 Q. Let me show you what has been marked as 5 -- have you ever heard of the person named John 6 Hock? 7 A. The name is familiar, yes. 8 Q. And how is it familiar to you? 9 A. I believe I've heard it before or read 10 it before. 11 Q. Do you remember that John Hock was the 12 main witness that testified on behalf of Lakeshore 13 at the multiple public hearings? 14 A. Yes. 15 Q. Do you know who he represented? 16 A. He just said Lakeshore. 17 Q. But I'm asking you if you knew that. 18 A. As you say it, I recollect it now, yes. 19 I would not have drawn that name from my 20 independent memory. 21 Q. Okay. Do you know if Tom D was helping 22 Lakeshore submit and get its application approved? 23 A. I don't know that. 24 Q. So let me show you exhibit -- it is</p>



<p style="text-align: right;">Page 54</p> <p>1 marked 10, but it should be M10. 2           These are all from Mayor Pineda's 3 deposition. Are you familiar with the term used to 4 describe or make edits on a document called 5 redline? 6     A. Yes, I am. 7     Q. Okay. Can you look at what would be the 8 third page, which is a letter dated August 24th, 9 2022? Can you take a look at that and see whether 10 or not there were any redlines included there? 11    A. Yes, there are. 12    Q. Did you know that John Hock made edits 13 to a letter that was sent to Tom D at the City of 14 West Chicago? 15    A. No. 16    Q. Do you know whether or not Tom accepted 17 these edits? 18    A. I don't know. 19    Q. Let me show you what has been marked as 20 11. This would be M11, Mayor Pineda. Can you look 21 at the second page? Can you compare the second 22 page with the redline edits? 23           And does Exhibit M11 represent a 24 letter from the City of West Chicago under the</p>	<p style="text-align: right;">Page 56</p> <p>1     A. I did not know that. 2     Q. Looking at Exhibit 11, which is the 3 letter from Tom. Is it correct that in fact Tom 4 accepted all of the edits and updated it? 5     MR. WALSH: Same objection. She doesn't know 6 who made these edits at this point. 7           If you are asking her is 11 8 consistent with the redline version of 10, the 9 answer is obviously yes. But she is telling you 10 she doesn't know who made these edits. 11           You're suggesting Hock made them. 12 Maybe he did. Maybe he didn't. 13 BY MR. MEZA: 14    Q. Is that correct? Do you agree with your 15 attorney? 16    A. Yes, I do. 17    Q. So you don't know if somebody else 18 actually made these edits, and Hock just attached 19 them to his e-mail, right? 20    A. That is correct. 21    Q. Okay. Do you know who authorized Tom to 22 issue an August 24th, 2022 letter regarding 23 residential zoned property located at 1655 Prowess 24 Road, West Chicago?</p>
<p style="text-align: right;">Page 55</p> <p>1 signature of Tom D, that includes and accepts the 2 edits that were provided by Tom -- John Hock? 3     MR. WALSH: First of all, she said she didn't 4 know who made the edits. She said that, so if you 5 can clarify the question some other way, that would 6 be helpful. 7 BY MR. MEZA: 8     Q. Okay. Can you read Exhibit 10? 9     MR. WALSH: The third page. 10 BY MR. MEZA: 11    Q. Now, Exhibit 10, there is an e-mail from 12 John Hock dated August 24th, 11:12 AM to Tom 13 Dabriener? 14    A. Um-hum. 15    Q. And it says "Tom, per our discussion, 16 attached is a 2019 letter regarding the railroad 17 property that is directly east of the LRS facility 18 a 1655 Prowess Road. As discussed, we request that 19 the letter be updated to reference both at the 20 Union Railroad Company property and the Canadian 21 National Railroad property." 22           So, do you know whether or not John 23 Hock requested that the letter of Tom be updated 24 per the attachment? Did you know that?</p>	<p style="text-align: right;">Page 57</p> <p>1     A. No. 2     Q. Now you considered this as part of your 3 deliberations, didn't you? 4     A. Considered what? I'm sorry. 5     Q. This letter of August 24th. 6     A. I don't recall seeing this specific 7 letter. I do recall the testimony -- discussions 8 about the property, generally. 9     Q. Well, earlier you said you recall seeing 10 all the exhibits; is that correct? 11    A. Yes. 12    Q. Do you remember if this was part of the 13 exhibits, this letter? 14    A. I do not recall that specifically. 15    MR. MEZA: Could we mark this as LC1? 16           (Exhibit LC1 was marked for 17 identification.) 18    MR. MEZA: George and Rob, LC1 is the filing 19 with the Illinois Pollution Control Board that 20 Dennis made that list of certificate on appeal. 21 BY MR. MEZA: 22    Q. So let me show you LC1. 23           Take a look at that. And this is 24 the record on appeal, which includes an index of</p>

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1 proceedings, starting on Page 3.  
2 Have you ever seen this document  
3 before?  
4 A. No.  
5 Q. Can you take a look at the entire  
6 document and tell me whether or not the information  
7 contained in this exhibit is the information that  
8 you considered and reviewed and read prior to  
9 voting on Ordinance 23-0-0006?  
10 MR. MUELLER: You know, at this point I am  
11 going to interpose an objection.  
12 MR. MEZA: Why so late?  
13 MR. MUELLER: Better late than never.  
14 It is clear that we are not  
15 entitled to go into the thought processes of the  
16 witnesses, and I believe you are now invading the  
17 witness' thought processes.  
18 MR. MEZA: Okay.  
19 MR. MUELLER: You can't ask her why she voted  
20 a certain way.  
21 MR. MEZA: That was like twenty questions ago  
22 George, but okay.  
23 I asked her if she has seen the  
24 index to the record of proceedings.

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1 THE WITNESS: No, I have not seen this index.  
2 And no, I cannot say whether this index includes  
3 every document of the multiple thousands of pages I  
4 reviewed.  
5 BY MR. MEZA:  
6 Q. But you did review them all; is that  
7 correct?  
8 A. Yes, I did.  
9 Q. Can I direct your attention to Page 5?  
10 Take a look at Number 86 on Page 5.  
11 It says Appendix 2D2, letter from  
12 West Chicago.  
13 Do you see that?  
14 A. Yes, I do see that.  
15 Q. Go back to Exhibit 11, that is listed as  
16 Appendix 2-2D2 letter from West Chicago.  
17 Do you see that?  
18 A. Yes, I do.  
19 Q. So this is a letter that you reviewed  
20 prior to voting; is that correct?  
21 A. If these documents are accurate and it  
22 was in there, yes.  
23 Q. Okay. Do you know what? Do you know  
24 why the City staff developed proposed conditions

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1 for Lakeshore's approval?  
2 A. No.  
3 Q. And I think I asked you this, do you  
4 know who on City staff came up with the proposed  
5 conditions?  
6 A. No.  
7 Q. Now I'm going to show you what was  
8 previously marked as M12, which is Article 7,  
9 Pollution Control Facility Site Approval  
10 Procedures.  
11 I'll ask you to take a look at  
12 that, and is this the ordinance referred to in  
13 ordinance 23-0-0006 in the whereas as it relates to  
14 Section 7.  
15 A. That references Article 7?  
16 Q. Yes.  
17 A. Yes.  
18 Q. And I think you said you didn't recall  
19 if you read this ordinance before you voted on the  
20 23-06 ordinance; is that correct?  
21 A. I don't recall.  
22 Q. Now with regard to the pollution control  
23 facility, Lakeshore was considered the applicant;  
24 is that correct?

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1 A. Yes.  
2 Q. So was it your understanding that it was  
3 their responsibility to meet the criteria?  
4 A. Yes.  
5 Q. Take a look at Exhibit 12. And take a  
6 look at the second page of that where it says  
7 Section 14-93, "procedures for filing an  
8 application for approval pollution control  
9 facility."  
10 And take a look at Number 4, all  
11 the way on the bottom. The last sentence states  
12 "The applicant remains solely responsible to  
13 demonstrate the location, approval, criteria are  
14 all met"; is that correct?  
15 A. Yes.  
16 Q. And the applicant in this case is  
17 Lakeshore, correct?  
18 A. Yes.  
19 Q. So do you know why West Chicago staff  
20 developed special conditions and not Lakeshore?  
21 A. I don't know.  
22 MR. MUELLER: I'm going to object. That is  
23 argumentative, and specifications are authorized in  
24 39.2, which would supercede the local ordinance.

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1 BY MR. MEZA:  
2 Q. Now, were you aware that West Chicago  
3 residents were allowed to submit public comments  
4 after the public hearing?  
5 A. Yes.  
6 Q. Did you read any of the comments?  
7 A. Yes.  
8 Q. Did you recognize any of the names of  
9 the persons who resided in West Chicago who  
10 provided comments?  
11 A. Yes.  
12 Q. Do you recall any names?  
13 A. Yes.  
14 MR. MEZA: So this will be LC2.  
15 (Exhibit LC2 was marked for  
16 identification.)  
17 MR. MEZA: George, I think I sent you this via  
18 e-mail. Might have been misnumbered though.  
19 MR. MUELLER: Okay.  
20 MR. WALSH: It has three columns of names on  
21 it.  
22 George, just so you know what we  
23 are looking at.  
24 MR. MUELLER: All right.

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1 BY MR. MEZA:  
2 Q. Now, take a look at the names and tell  
3 me if you recognize any of the names of the people  
4 that provided comments.  
5 MR. WALSH: Well, first of all, there is no  
6 foundation for this that these are the people that  
7 provided comments, but she can answer if she  
8 recognizes any names on the list.  
9 MR. MEZA: And if you want to speed things up,  
10 Dennis, I can make a representation that these  
11 names were cut and pasted from the exhibit.  
12 MR. WALSH: That is fine.  
13 THE WITNESS: I recognize a number of the  
14 names.  
15 BY MR. MEZA:  
16 Q. Okay. Give me just one second. Hold  
17 on.  
18 Now, go back to LC1, Miss Chasse.  
19 Is that how you pronounce it, Chasse?  
20 A. Yes.  
21 Q. LC1, which is the record on appeal. And  
22 can you turn to Page 9? Starting on Number E, do  
23 you see written comment, and first one is Martin  
24 Avala, and second one is Jasper Ravino. Third one

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1 is Connie?  
2 A. Yes.  
3 Q. So these are numbered and it goes  
4 through page 10, 11, 12, 13. There is 164 names.  
5 Now there is not 164 names on LC2,  
6 because there are some duplicates, but you do  
7 recognize the names of some of the persons who  
8 provided comments; is that correct?  
9 A. Correct.  
10 Q. Do you know who Wendy Krisma is?  
11 A. Say it again.  
12 Q. Do you know who Wendy Krisma is?  
13 A. No.  
14 Q. Do you know who Janet Wolf is?  
15 A. No.  
16 Q. Do you know who Susan Lindquist is?  
17 A. No.  
18 Q. Do you have any independent recollection  
19 of how many of the 164 comments that were provided  
20 were in favor of the waste transfer station?  
21 A. No, I don't.  
22 Q. Would it surprise you to learn that only  
23 two people said they were in favor? There was one  
24 letter that was in support? Would that surprise

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1 you or not?  
2 A. Yes, it is would surprise me.  
3 Q. Did it surprise you when you were  
4 reading them that all of them were -- nearly --  
5 over 99 percent of them were in opposition?  
6 A. No.  
7 Q. It didn't surprise you?  
8 A. No.  
9 Q. Did you take that into consideration?  
10 A. I take all comments into consideration,  
11 yes. I don't think that you're right that there  
12 were only two people that spoke in favor.  
13 Q. Why do you say that?  
14 A. Because there are several names on this  
15 list, and this list that I know.  
16 Q. What would that person be?  
17 A. Barb Lymans.  
18 Q. What number is she?  
19 A. David Sabathny.  
20 Q. Okay.  
21 A. I don't know that there is a number. I  
22 saw her on this list somewhere. She is right  
23 there.  
24 Q. Hold on. Barb Lymans?

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1 A. Um-hum.  
 2 Q. She was one of them in support?  
 3 A. Yes.  
 4 Q. And who else?  
 5 A. David Sabathny?  
 6 Q. Where is he at?  
 7 A. I'm looking again. Oh, you just  
 8 referenced the letter to the editor. He was one  
 9 you have though, sorry. I thought I saw Juan  
 10 Chavez's name.  
 11 Q. Juan Chavez was in support?  
 12 A. Yes. You told me there were only two  
 13 people in support.  
 14 Q. Yes, those were the two. You picked  
 15 them both; Juan and Barbara. That is it.  
 16 A. Are these just people that did written?  
 17 Q. These are people who submitted public  
 18 written comments after the hearings.  
 19 A. Okay. I was also thinking of testimony,  
 20 so I apologize.  
 21 Q. Okay. So it doesn't surprise you that  
 22 only two people, and you know the two, Juan Chavez  
 23 and Barbara?  
 24 A. Well, you asked me whose names I

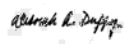
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1 recognize. So yes. I know those two names. I  
 2 recognize other names as well.  
 3 You didn't ask me to read all the  
 4 names I know.  
 5 A. Okay. Did you speak to any of the  
 6 residents about what your position was at any time?  
 7 A. No.  
 8 Q. And why not?  
 9 A. Because once the application was filed,  
 10 our instruction was that we had to wait a minute  
 11 for the hearings, etc., and not to predetermine a  
 12 decision.  
 13 A. So, yes, I did make comments to several  
 14 of my neighbors and referred them to the City's  
 15 website where the explanation of the application  
 16 was posted and the criteria.  
 17 MR. MEZA: Okay. Let's take a break because I  
 18 think I might be finished. I just need to review  
 19 some things here.  
 20 (Recess.)  
 21 MR. MEZA: Okay. We can go back on the  
 22 record. So, George, are you still there?  
 23 MR. MUELLER: Yes, I'm still here.  
 24 MR. MEZA: Okay, Rob. I don't have any

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1 further questions.  
 2 I assume you don't have any  
 3 questions.  
 4 MR. WALSH: I don't have any questions. We  
 5 will reserve signature. Thank you.  
 6 FURTHER DEPONENT SAITH NAUGHT  
 7 (Proceedings concluded at 10:30  
 8 a.m.)  
 9  
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1 STATE OF ILLINOIS )  
 ) SS:  
 2 COUNTY OF COOK )  
 3 I, Deborah A. Duffy CSR, RPR, do hereby  
 4 certify that LORI CHASSEE, was duly sworn by me to  
 5 testify the whole truth, and that the foregoing  
 6 deposition was recorded stenographically by me and  
 7 was reduced to computerized transcript under my  
 8 direction, and that the said deposition constitutes  
 9 a true record of the testimony given by said  
 10 witness.  
 11 I further certify that the reading and  
 12 signing of the deposition was not waived, and that  
 13 the deposition was submitted to DENNIS WALSH,  
 14 defendant's counsel, for signature. Pursuant to  
 15 Rule 30(e) of the Federal Rules of Procedure, if  
 16 deponent does not appear or read and sign the  
 17 deposition within 30 days, the deposition may be  
 18 used as fully as though signed, and this  
 19 certificate will then evidence such failure to  
 20 appear as the reason for signature not being  
 21 obtained.  
 22 I further certify that I am not a relative or  
 23 employee or attorney or counsel of any of the  
 24 parties, or a relative or employee of such attorney  
 or counsel, or financially interested directly or  
 indirectly in this action.  
 IN WITNESS WHEREOF, I have hereunto set my  
 hand this 16th day of August, A.D. 2023.  
  
 Deborah A. Duffy CSR, RPR  
 Illinois CSR License 084-002516

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1 Veritext Legal Solutions  
1100 Superior Ave  
2 Suite 1820  
3 Cleveland, Ohio 44114  
4 Phone: 216-523-1313

5 August 18, 2023

6 To: Mr. Walsh

7 Case Name: PWC v. City Of Chicago

8 Veritext Reference Number: 6013149

9 Witness: Lori Chassee Deposition Date: 7/31/2023

10 Dear Sir/Madam:

11 Enclosed please find a deposition transcript. Please have the witness

12 review the transcript and note any changes or corrections on the

13 included errata sheet, indicating the page, line number, change, and

14 the reason for the change. Have the witness' signature notarized and

15 forward the completed page(s) back to us at the Production address

16 shown

17 above, or email to production-midwest@veritext.com.

18

19 If the errata is not returned within 28 days of your receipt of

20 this letter, the reading and signing will be deemed waived.

21 Sincerely,

22 Production Department

23

24 NO NOTARY REQUIRED IN CA

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1 DEPOSITION REVIEW  
CERTIFICATION OF WITNESS

2

3 ASSIGNMENT REFERENCE NO: 6013149  
CASE NAME: PWC v. City Of Chicago  
DATE OF DEPOSITION: 7/31/2023  
WITNESS' NAME: Lori Chassee

4 In accordance with the Rules of Civil  
5 Procedure, I have read the entire transcript of  
6 my testimony or it has been read to me.

7 I have made no changes to the testimony  
8 as transcribed by the court reporter.

9 \_\_\_\_\_  
Date Lori Chassee

10 Sworn to and subscribed before me, a  
11 Notary Public in and for the State and County,  
the referenced witness did personally appear  
and acknowledge that:

12 They have read the transcript;  
13 They signed the foregoing Sworn  
Statement; and  
14 Their execution of this Statement is of  
their free act and deed.

15 I have affixed my name and official seal

16 this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

17 \_\_\_\_\_  
Notary Public

18 \_\_\_\_\_  
Commission Expiration Date

19

20

21

22

23

24

25

Page 72

1 DEPOSITION REVIEW  
CERTIFICATION OF WITNESS

2

3 ASSIGNMENT REFERENCE NO: 6013149  
CASE NAME: PWC v. City Of Chicago  
DATE OF DEPOSITION: 7/31/2023  
WITNESS' NAME: Lori Chassee

4 In accordance with the Rules of Civil  
5 Procedure, I have read the entire transcript of  
6 my testimony or it has been read to me.

7 I have listed my changes on the attached  
8 Errata Sheet, listing page and line numbers as  
well as the reason(s) for the change(s).

9 I request that these changes be entered  
10 as part of the record of my testimony.

11 I have executed the Errata Sheet, as well  
12 as this Certificate, and request and authorize  
that both be appended to the transcript of my  
13 testimony and be incorporated therein.

14 \_\_\_\_\_  
Date Lori Chassee

15 Sworn to and subscribed before me, a  
16 Notary Public in and for the State and County,  
the referenced witness did personally appear  
and acknowledge that:

17 They have read the transcript;  
18 They have listed all of their corrections  
in the appended Errata Sheet;  
19 They signed the foregoing Sworn  
Statement; and  
20 Their execution of this Statement is of  
their free act and deed.

21 I have affixed my name and official seal

22 this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

23 \_\_\_\_\_  
Notary Public

24 \_\_\_\_\_  
Commission Expiration Date

25

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1 ERRATA SHEET  
VERITEXT LEGAL SOLUTIONS MIDWEST

2 ASSIGNMENT NO: 6013149

3 PAGE/LINE(S) / CHANGE /REASON

4 \_\_\_\_\_

5 \_\_\_\_\_

6 \_\_\_\_\_

7 \_\_\_\_\_

8 \_\_\_\_\_

9 \_\_\_\_\_

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18 \_\_\_\_\_

19 \_\_\_\_\_

20 \_\_\_\_\_  
Date Lori Chassee

21 SUBSCRIBED AND SWORN TO BEFORE ME THIS \_\_\_\_\_

22 DAY OF \_\_\_\_\_, 20\_\_\_\_.

23 \_\_\_\_\_  
Notary Public

24 \_\_\_\_\_  
Commission Expiration Date

25