

ILLINOIS POLLUTION CONTROL BOARD

October 3, 2024

AMERICAN DISPOSAL SERVICES, INC.)	
d/b/a REPUBLIC SERVICES OF)	
BLOOMINGTON,)	
)	
Petitioner,)	PCB 24-65
)	(Third-Party Pollution Control Facility
v.)	Siting Appeal)
)	
McLEAN COUNTY, ILLINOIS; McLEAN)	
COUNTY BOARD; and LAKESHORE)	
RECYCLING SYSTEMS, LLC,)	
)	
Respondents.)	

SCOTT B. SIEVERS, LUCAS J. HALL, AND CLAIRE D. MEYER, OF BROWN, HAY & STEPHENS, LLP, APPEARED ON BEHALF OF THE PETITIONER;

TAYLOR A. WILLIAMS, OF THE OFFICE OF THE McLEAN COUNTY STATE'S ATTORNEY, APPEARED ON BEHALF OF RESPONDENTS McLEAN COUNTY AND THE McLEAN COUNTY BOARD;

DMITRY SHIFRIN, STACY J. STOTTS, OF POLSINELLI PC, AND SARA L. CHAMBERLAIN, OF THOMPSON COBURN LLP, APPEARED ON BEHALF OF RESPONDENT LAKESHORE RECYCLING SYSTEMS, LLC.

OPINION AND ORDER OF THE BOARD (by M.D. Mankowski):

On March 21, 2024, Republic Services, Inc. (Republic) timely filed a petition (Pet.) asking the Board to review a February 15, 2024 decision of the McLean County Board. *See* 415 ILCS 5/40.1(b) (2022); 35 Ill. Adm. Code 101.300(b), 101.1020, 107.204. The McLean County Board (County Board) granted with conditions an application by Lakeshore Recycling Systems, LLC (LRS) to approve the site of a pollution control facility at 2020 Bunn Street in unincorporated McLean County.

Below, the Board first provides the procedural history, factual background, and legal background. Next, the Board summarizes the parties' arguments on the issue. Then, the Board reviews the applicable legal background and proceeds to its discussion of the issue. The Board concludes the opinion and order with its determination on this pollution control facility siting appeal.

PROCEDURAL HISTORY

On March 21, 2024, Republic filed a petition for review of a decision by the County Board granting conditional site location approval to LRS for a proposed municipal solid waste transfer station. With the Petition, Republic filed Findings of Fact and Conditions of Approval by the McLean County Board (Pet. Exh. A). In an order dated April 4, 2024, the Board accepted the petition for hearing and directed the County Board to file the entire record of its proceedings within 21 days.

On April 15, 2024, LRS waived the July 19, 2024, decision deadline until September 19, 2024.

On April 23, 2024, McLean County filed the record on appeal. On May 13, 2024, McLean County filed a revised record (C-1 – C-1827) that included color copies of photographs that were black and white in the original record.

On June 10, 2024, the hearing officer scheduled a hearing on July 29, 2024, in Bloomington, to continue if necessary on July 30, 2024.

On July 15, 2024, Republic filed a motion for extension of time to serve written discovery. On July 16, 2024, McLean County, the County Board, and LRS (collectively Respondents) filed a response opposing Republic's motion. On July 16, 2024, the Board's hearing officer denied Republic's motion.

On July 18, 2024, Republic filed a motion to correct a misnomer in party identification, arguing its party name should be American Disposal Services, Inc. d/b/a Republic Services of Bloomington. The Board grants the unopposed motion and revises the caption beginning with today's order.

On July 18, 2024, Respondents filed a motion for sanctions arguing Republic had not responded to Respondents' discovery requests pursuant to the agreed discovery schedule. On July 19, 2024, Republic filed a certificate of service for the discovery documents requested by Respondents. Also on July 19, 2024, Republic filed a response opposing the Respondents' motion for sanctions. On July 25, 2024, the Board's hearing officer issued an order denying Respondents' request to bar Republic from offering evidence not part of the filed record.

On July 23, 2024, Republic filed five Rule 237(b) Notices to Appear for Rebecca McNeill, Susan Schafer, Connie Clifford, Mark Bounds, and Joshua Schuster. On July 24, 2024, the County Board filed a motion to strike or quash Republic's Rule 237(b) Notices to Appear. On July 25, 2024, Republic filed a response to the County Board's motion to strike or quash. In an order on July 24, 2024, the Board's hearing officer denied the County Board's motion to strike or quash Republic's Rule 237(b) Notices.

On July 29, 2024, the hearing took place as scheduled, and the Board received the transcript (Tr.) on August 1, 2024. During the hearing, the Board's hearing officer admitted into evidence the following exhibits:

Pet. Exh. 1	Parcel Control Change (Aug. 17, 2023)
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Pet. Exh.2	Respondent County Board's Responses and Objection to Petitioner's Interrogatories
Pet. Ex. 3A	Emails
Pet. Exh. 4	Trustee's Deed (recorded Nov. 24, 2009)
Pet. Exh. 5	Special Warranty Deed (recorded Nov. 9, 2023)
Pet. Exh. 6	Trustee's Deed (recorded Feb. 4, 2022)
Pet. Exh. 7	Offer of Proof: McLean County Parcel Search
Pet. Exh. 9	Andrews Engineering Facility Location Map
Pet. Exh. 13	McLean County Real Estate Tax bill
Resp. Exh. 14	Assessment Plat (recorded Aug. 17, 2023)
Resp. Exh. 15	Legal Description Facility Site
Resp. Exh. 16	Preliminary Plan HDI Subdivision
Resp. Exh. 17	Direct Testimony of Catherine Metsker with exhibits (July 22, 2024)
Resp. Exh. 18	Declaration of Richard Guerard with exhibits

On August 6, 2024, LRS filed a waiver of decision deadline to October 3, 2024.

On August 20, 2024, Republic filed its post hearing brief (Pet. Brief). On September 3, 2024, Respondents filed their post hearing brief (Resp. Brief).

RELEVANT FACTUAL BACKGROUND

On August 18, 2023, LRS applied to McLean County for local siting approval of a new municipal waste transfer station on a property it owns in unincorporated McLean County. Pet. Exh. A at 1. LRS currently operates approximately twenty-two municipal solid waste transfer stations and/or C&D recycling and transfer facilities in Illinois, Indiana, Wisconsin, Michigan, and Wisconsin. C-9. LRS operates additional facilities in Illinois: a non-hazardous solid waste landfill in Atkinson, and single-stream sorting facilities in Forest View and Chicago. *Id.*

The proposed waste transfer station will accept loads of municipal solid waste from collection vehicles and consolidate it into larger loads for transport to permitted landfills. C-9. The proposed waste transfer station will also be designed to accept single-stream recyclables from collection vehicles and consolidate them into larger loads for transport to a material recovery facility. *Id.* The station is designed to accommodate daily throughput of 400 tons per day, depending on seasonal fluctuations. C-10. The station is projected to be operational in 2025 and have an operational life of at least twenty years. *Id.* The station will only accept waste allowed by the Illinois Environmental Protection Agency (IEPA), and no disposal will occur at the site. *Id.* The Henson Recycling Campus (HRC) is a 42-acre site comprised of a general construction or demolition debris recycling facility, a woody waste mulching and recycling operation, a concrete recycling operation, and a concrete batch plant that is operated by Roanoke Concrete Products. *Id.*

The proposed station will be approximately 3.09 acres and part of the existing 42-acre HRC. C-10. The Property Identification Number (PIN¹) for the Proposed Facility Parcel is 21-15-151-022 (Proposed Facility Parcel). C-1781. Also relevant to the appeal are two parcels with PIN No. 21-15-152-010 (Original Parcel) and 21-15-151-018. Pet. Hearing Exh. 1. In McLean County, it is the Assessor's Office that assigns a PIN to a property. *See* C-902 at 35:21-22, *see also* PCB Tr. at 134:3-6.

On February 1, 2023, the County's Zoning Department received a preliminary plan for a subdivision of the Original Parcel. Resp. Exh. 16. The preliminary subdivision plan was approved by the County Board on February 16, 2023. C-130. On August 14, 2023, an Assessment Plat was completed. C-239. On August 17, 2023, the County Recorder of Deeds recorded the Assessment Plat. C-238. Also on August 17, 2023, a Parcel Control Change Request was submitted to the County Supervisor of Assessments. Pet. Exh. 1. A Parcel Control Change Request form is used by the County Supervisor of Assessments to track changes in parcels, including combining or dividing parcels. PCB Tr. 80:19-81:18. The Parcel Control Change Request form notes the request was mapped on August 21, 2023, entered into Devnet and scanned on January 18, 2024. *Id.* Devnet is an internal system used by the county treasurer, assessor, and clerk's office to track parcels, including tax information. PCB Tr. 21:16-18, 84:7-10.

The Original Parcel and parcel 018 were to be retired on December 31, 2023, and split into three different parcels with PINs; 21-15-151-021, 21-15-151-023, and the Proposed Facility Parcel. Pet. Hearing Exh. 1; *see also* Pet. Exh. 2 at 4. The HRC would consist of parcels 021, 023, and the Proposed Facility Parcel. Pet. Hearing Exh. 1.

Directly west of the HRC, across Bunn Street, is a manufactured home park consisting of three parcels, including Parcel No. 21-16-276-003 (Parcel 003). *See* C-48; *see also* Pet. Exh. 4 at 2. On November 24, 2009, the manufactured home park, including Parcel 003, was transferred by deed to James A. Moore and Marion Moore, as Trustees of The Moore Living Trust (Moore Trustees). *Id.* at 1-4. On November 9, 2023, the Moore Trustees transferred the properties by deed to Hilltop MH, LLC. *See* Pet. Exh. 5.

On July 25, 2023, LRS sent via registered mail, return receipt requested, pre-filing notice of its intent to file a siting application with McLean County to: Representative Keith P. Sommer; Representative Dan Caulkins; Senator Sally J. Turner; City of Bloomington; McLean Commercial Corp.; First Financial Bank Land Trust, Trust 5392; Kipp Connour; TKNTK, LLC; Marigold Properties, LLC; Joseph R. Bierbaum; Bradford Supply Co. attn: Jan Waggy; Norfolk & Western Railway; Norfolk Southern Corp.; Consolidated Rail Corp.; Raymond Fairchild Jr.; BCA LLC; McLean Commercial Corp. c/o Brent Alsman; Rock Rose Properties LLC c/o Brent Alsman; Rick Kessinger; Potini Group LLC; A & M Heartland Properties LLC; Leman Investments LLC; BT Land Trust; Advance Trading Inc; Christopher & Elisa Shanks; White Property Development LLC; Nord Enterprises; David Capodice; Citizens First Bank; Bellas Landscaping; Robert A. Briggs; John Shank; Gizhoski Properties LLC; Exchangeright Net

¹ A PIN is used to give a parcel a unique identifier that is typically used for tax purposes. PCB Tr. at 107-108.

Leased Portfolio 11 DST c/o Exchangeright Real Estate LLC; Mcjewels LLC; Onprop LLC c/o Brent Alzman; Space Worx LLC; Oreilly Auto Parts; Srilath A. Potini; HOS II, LLC c/o Stark Management; John W. Davis; BT Land Trust c/o Veta Rodgers; HFV Investment LLC; and McLean County Trustee. C-857 – C-879. At the time the notices were sent the manufactured home park, including Parcel 003, was owned by the Moore Trustees who did not receive service. *See* Pet. Exh. 4 & 5, *see also* C-857 – C-879.

On August 18, 2023, LRS submitted its application to the County via personal delivery. C-1. The application addressed nine statutory siting criteria for site approval. C-14 – C-856. LRS published notice of its intent to file an application for the site on July 31, 2023, in *The Pantagraph*. C-881 – C-844.

Public hearing on the application began November 29, 2023, and closed on November 30, 2023. C-893 – C1046. After the hearing, the County opened a written public comment period that closed on January 2, 2024. C-1017 at 377. On January 5, 2024, Republic and LRS each submitted proposed findings of fact and conclusions of law. C-1054 – C-1098. On January 10, 2024, County Board hearing officer Derke Price submitted his report, recommended findings of fact, and recommended conditions of approval. C-1099 – C-1117. On January 29, 2024, the County Board Pollution Control Site Hearing Committee met and recommended the adoption of findings of fact and approval of the application. C-1770 – C-1772. On February 15, 2024, the County Board met, held a public meeting, and voted to approve the LRS application subject to certain conditions set forth in the County Board’s findings of fact and conditions of approval. C-1773 – C-1779.

Board Hearing

The Board’s hearing officer set a hearing for July 29, 2024. Notice of the Board hearing was published in *The Pantagraph* on June 16, 2024. The Board hearing was held as scheduled on July 29, 2024, in Bloomington. The Board received the hearing transcript (PCB Tr.) on August 1, 2024.

Six witnesses testified at the Board hearing: Markus Bounds, the program administrator for the McLean County recording office; Rebecca McNeil, the McLean County treasurer and county collector; Joshua Schuster, the GIS specialist for the McLean County Supervisor of Assessments office; Susan Schafer, a McLean County Board member; David Brown, a land surveyor with Lewis Yockey and Brown Consulting Engineers; and Catherine Metsker, Chair of the McLean County Board.

LEGAL BACKGROUND

Statutory Authority

Section 39 of the Act details the requirements and procedures for issuance of permits. 415 ILCS 5/39. Section 39.2 of the Act sets forth requirements for local siting review for pollution control facilities. 415 ILCS 5/39.2. Section 39.2(a) states in part, “[a]n applicant for

local siting approval shall submit sufficient details describing the proposed facility and evidence to demonstrate compliance . . .”. 415 ILCS 5/39.2(a).

Section 39.2(b) of the Act describes the requirements for pre-filing notice of a siting application and provides in its entirety that,

[n]o later than 14 days before the date on which the county board or governing body of the municipality receives a request for site approval, the applicant shall cause written notice of such request 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 all 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; provided, that the number of all feet occupied by all public roads, streets, alleys and other public ways shall be excluded in computing the 250 feet requirement; provided further, that in no event shall this requirement exceed 400 feet, including public streets, alleys and other public ways.

Such written notice shall also be served upon members of the General Assembly from the legislative district in which the proposed facility is located and shall be published in a newspaper of general circulation published in the county in which the site is located.

Such notice shall state the name and address of the applicant, the location of the proposed site, the nature and size of the development, the nature of the activity proposed, the probable life of the proposed activity, the date when the request for site approval will be submitted, and a description of the right of persons to comment on such request as hereafter provided. 415 ILCS 5/39.2(b) (2022).

Third Party Appeal

Section 40.1(b) of the Act (415 ILCS 5/40.1(b) (2022)) allows third parties to appeal a local government decision granting approval to site a pollution control facility if the third parties participated in the local government’s public hearing and are so located as to be affected by the proposed facility. *See* 415 ILCS 5/40.1(b) (2022); 35 Ill. Adm. Code 107.200(b). The petition for review must, among other things, specify the grounds for appeal and include a copy of the local government’s siting decision. *See* 35 Ill. Adm. Code 107.208. The third party must file the petition within 35 days after the local government approves siting. *See* 415 ILCS 5/40.1(b) (2022); 35 Ill. Adm. Code 107.204. Unless the Board determines that the third party’s petition is “duplicative or frivolous,” the Board will hear the petition. 415 ILCS 5/40.1(b) (2022); 35 Ill. Adm. Code 107.200(b).

Republic’s petition states that it participated in both days of the McLean County Board’s public hearing. Pet. at 2-3. The petition also states that, as “a waste disposal company that presently fully services the waste management needs of McLean County by picking up and hauling its waste, operating a waste transfer station, and hauling the waste to nearby landfills,” it is so located as to be affected by the proposed facility. *Id.* at 3. Republic specifies the grounds

for the appeal and includes a copy of the McLean County Board's siting decision. Republic filed its petition within 35 days after the McLean County Board approved siting, and on April 4, 2024, the Board found Republic's petition met the content requirements of 35 Ill. Adm. Code 107.208.

Standard of Review

Failure to meet the notice requirements of Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2022)) divests the County Board of jurisdiction to hear the matter. Ogle County Board v. PCB, 272 Ill. App. 3d 184, 649 N.E.2d 545 (2nd Dist. 1995). The law is well-settled that when reviewing a question of law, the reviewing court should use the *de novo* standard of review. See Panhandle Eastern Pipe Line Company v. IEPA, 314 Ill. App. 3d 296, 734 N.E.2d 18, 21 (4th Dist. 2000).

ISSUES

Republic makes four arguments as to why the County Board's decision should be overturned. First, Republic argues that LRS did not comply with the Section 39.2(b) notice requirements of the Act (415 ILCS 5/39.2(b) (2022)). Pet. at 3. Failure to meet the strict notice requirements of Section 39.2(b) of the Act divests the County Board of jurisdiction to hear the matter. City of Kankakee v. County of Kankakee, County Board of Kankakee, and Waste Management of Illinois, Inc., PCB 03-125 at 6 (Aug. 7, 2003), citing Browning Ferris Industries of Illinois v. IPCB, 162 Ill. App. 3d 801, 805, 516 N.E.2d 804, 807 (5th Dist. 1987); Ogle County Board v. PCB, 272 Ill. App. 3d 184, 649 N.E.2d 545 (2nd Dist. 1995) (Ogle County). A jurisdictional defect is dispositive of a case *ab initio*. Illinois Power Co. v. PCB, 137 Ill. App. 3d 449, 484 N.E.2d 898 (4th Dist. 1985); Kane County Defenders, Inc. v. PCB, 139 Ill. App. 3d 588, 487 N.E.2d 743 (2nd Dist. 1985). Therefore, if Republic prevails on the issue of failure to properly notice one or more of the property owners it is required to serve, the remaining issues are mooted. See City of Kankakee at 6.

Next, Republic argues that the waste transfer station is positioned less than 1,000 feet from a property primarily zoned for residential uses in violation of Section 22.14 of the Act (415 ILCS 5/22.14 (2022)). Pet. at 4.

Republic's third argument is that the proceedings leading to the County Board's decision to grant the siting approval were fundamentally unfair. Pet. at 5.

The last argument by Republic is that LRS failed to show the proposed facility would comply with Criteria (i), (ii), (iii), and (ix) of Section 39.2 of the Act. 415 ILCS 5/39.2 (a)(i, ii, iii, ix) (2022).

DISCUSSION

Below the Board summarizes the parties' arguments on the jurisdictional issue of whether LRS complied with the service requirements of 39.2(b). The Board's determination analyzes the law and reviews the relevant arguments of the parties. The Board then makes its finding that LRS failed to properly serve all required parties under Section 39.2(b). Failing to properly serve all necessary parties under Section 39.2(b) is a threshold issue that denies the County Board

jurisdiction. This is a dispositive issue in this case and therefore the Board does not make any determinations on the other issues raised by the parties.

Notice Requirements of Section 39.2(b)

Republic's Arguments

Republic argues that LRS failed to send proper notice of the application to the owner of a residentially zoned manufactured home community immediately to the west of Bunn Street and north of Hamilton Road. Pet. at 3. Republic contends that Section 39.2(b) requires applicants to send notice to owners of property 250 feet in each direction from the lot line, as designated by current authentic tax documents, of the proposed property. Pet. Brief at 4. Republic points to testimony of Joshua Schuster, the GIS specialist for the McLean County Supervisor of Assessments, who testified that a Parcel Control Change Request for the property shows that three new lots, including the new Proposed Facility Parcel, would be created upon the retirement of two other parcels, including the Original Parcel. *Id.* at 6, *citing* PCB Tr. 84:16-85:18. Schuster testified that he mapped the Parcel Control Change Request on August 21, 2023. Pet. Brief at 7, *citing* PCB Tr. 82:23-83:5. That change would not have shown up in Devnet, the internal system used by the county treasurer, assessor, and clerk's office, until January 18, 2024. Pet. Brief at 7, *citing* PCB Tr. 84:7-10.

Republic continues, arguing that in August 2023, the three proposed parcels did not exist. Pet. Brief at 6-7, *citing* PCB Tr. 69:20-70:4. Republic cites the testimony of Rebecca McNeil, the McLean County Treasurer/Collector's, which states that the three proposed parcels would not come into existence until January 1, 2024. Pet. Brief at 7, *citing* PCB Tr. 70:5-13. Republic further states that the only record of the Proposed Facility Parcel was an Assessment Plat and Plat of Survey, neither of which create a final plat, or process according to the authentic tax records. Pet. Brief at 11.

According to the McLean County Recorder's Office, on August 18, 2023, the manufactured home community was owned by the Moore Trustees. Pet. Brief at 5. Republic continues, stating that based on the August 18, 2023, authentic McLean County tax records, the residentially zoned manufactured home community was adjacent to the lot on which the facility was to be located. Pet. at 4.

Additionally, Republic argues these tax records show that the width of Bunn Street is the only thing separating the manufactured homes and the proposed facility. Pet. at 4. Republic also notes that "the number of all feet occupied by public roads" is excluded when making the 250 feet calculation required in Section 39.2(b) of the Act. *Id.* Republic also adds that the entrance to the proposed facility is on Bunn Street. Pet. Brief at 4, *citing* C-16.

To counter an argument Respondents raised during hearing, Republic argues that "[w]hether the 'authentic tax records' are used as the boundary for the lot line or only for determining the appropriate owners renders the same result under the Act". Pet. Brief at 12. Republic contends that when determining who is entitled to notice under the Act, the boundary for measuring purposes is "determined by the authentic tax records of the County, not some

future, unfinalized parcel.” *Id.* at 9. Further, Republic cites testimony of McLean County Recording Program Administrator, Markus Bounds, stating that, to be considered a “lot,” a section of land would have to be assigned its own personal identification number. *Id.* at 12, *citing* PCB Tr. at 50:9-19. Republic also cites to a letter from the McLean County Health Department, which stated that the application did not provide enough information to show a lot exists. Pet. Brief at 12.

Additionally, Republic cites Land and Lakes, et al. v. Vill. of Romeoville, in which the Board stated, “the subject property for notice purposes is the property (or properties), as *legally recorded*, that encompassed the regional pollution control facility.” Pet. Brief at 13, *citing* Land and Lakes, et al. v. Village of Romeoville, PCB 91-7. Republic asserts that “when a parcel is not further divided, the boundary for determining the lot line is the boundary of the larger existing parcel, rather than just the boundary of the proposed facility itself.” Pet. Brief at 13, *citing* Env’t Control Sys., Inc. v. Long, 301 Ill. App. 3d 612, 623 (5th Dist. 1998). Also in that case, the Board looked to the authentic tax records and assessor’s map in the record when looking to the proper lot lines. *Id.*

Republic notes that Richard Guerard, who was counsel for LRS at the time the application was filed, confused the assignment of a PIN held for future use of the Proposed Facility Parcel with the actual data in the assessor’s record at the time of the application. Pet. Brief at 14, *see also* C-901 at 29:6-11. Republic states that Guerard admitted at the November 29, 2023, public hearing that the final plat had not been recorded yet. *Id.* at 30:10-13. It is Republic’s position that, although “LRS had recorded documents to signal its intent to subdivide the Original Parcel, no subdivision had occurred at the time of the Application’s filing.” Pet. Brief at 14.

Based on the mailing list and Registered Mail Receipts within the record, the Moore Trustees were not notified of the pending application. Pet. Brief at 5. Without proper notice, a threshold issue, Republic argues the County Board did not have jurisdiction to decide the waste transfer station application. Pet. at 4.

Respondents’ Arguments

Respondents contend that LRS did adequately provide notice to property owners located within 250 feet as required by Section 39.2(b) of the Act. Resp. Brief at 8. Respondents argue that LRS defined the subject property as a 3.09-acre site in its Notice of Intent and Application through legal and metes and bounds descriptions. *Id. citing* C-9 – C-10, C-859 – C-860. Respondents also argue that specific boundaries or lot lines of the subject property were determined according to a survey and were depicted on a Plat of Survey, Assessment Plat, and a Preliminary Plan of Subdivision. Resp. Brief at 8-9, *citing* C-105, C-239, C-220 – C-225.

Respondents argue they identified owners of properties within 250 feet of the proposed site using authentic tax records. Resp. Brief at 9, *citing* LRS Exh. 18 at ¶¶ 14-15. LRS mapped the 250 feet from surveyed boundaries of the proposed site using a radius map and confirmed the distances using field surveys. *Id.* Respondents also argue that LRS satisfied the 250 feet

statutory requirement by serving written notice on owners of properties located within 400 feet and as far as 500 feet of the Proposed Facility Parcel. *Id.*

Respondents contend the manufactured home community is not located within 1,000 feet of the proposed facility. Resp. Brief at 9, *citing* PCB Tr. 106:1-14, 146:5-18, & Pet. Exh. 9. It is undisputed, Respondents contend, that LRS served written notice by registered mail, return receipts requested, on all owners within 250 feet of the surveyed boundaries of the proposed 3.09-acre facility site. Resp. Brief at 9.

Respondents argue that Section 39.2(b) does not require the subject property be identified as a separate, taxable parcel, or require the lot lines to appear on a final plat or subdivision. Resp. Brief at 9. Instead, Respondents argue that tax records are one of several ways to identify lot lines. *Id.* Countering Republic's argument, Respondents contend that Section 39.2(b) requires "authentic tax records" to be used to determine the owners to whom notice must be provided, not to define the boundaries or lot lines of the subject property. *Id.*

Respondents state the term "lot" is not defined in the statute and argue that, when a term is not defined, the legislature intends the term to have its ordinary and popularly understood meaning. Resp. Brief at 11, *citing* Landis v. Marc Realty, L.L.C., 919 N.E.2d 300, 304 (Ill. 2009). Respondents also cite Webster's Dictionary and Black's Law Dictionary for their respective definitions of "lot". Resp. Brief at 11.

Respondents contend the Proposed Facility Parcel was given its own separate PIN, even though it is not required to have it for this application. Resp. Brief at 12, *citing* Resp. Exh. 18 at 2, 4 & Pet. Exh. 1. Further, they state that the Proposed Facility Parcel is a defined portion of land whose location and boundaries are clearly ascertainable, and LRS used those lot lines to determine which properties were to receive written notices. Resp. Brief at 12.

Respondents continue, arguing that the Proposed Facility Parcel was not required to have been separately assessed taxes, or to appear on a Final Plat of Subdivision to create a new lot or delineate lot lines of the Proposed Facility Parcel. Resp. Brief at 12. Respondents use the testimony of Mr. Bounds to argue that property owners may choose to subdivide their property into smaller lots or parcels, and that multiple different lots can be part of one single parcel and under one PIN. *Id.* at 13, *citing* PCB Tr. 47:24-48:4, and 49:15-50:3. Mr. Bounds stated the best way to determine actual boundaries is to perform a survey. *Id.* at PCB Tr. 51:6-13. Taking this into account, Respondents argue they fulfilled the requirement by surveying specific boundaries of the Proposed Facility Parcel and recorded a map and separate legal description with the county. *Id.*, *citing* PCB Tr. 133:8-23, 135:18-136:2, 137:7-10, & LRS Exh. 14.

Respondents argue that an assigned PIN is immaterial to defining the bounds of the subject property, rather, it is the property description contained in LRS's application and notices of intent that matter. Resp. Brief at 13-14. Respondents contend treating the original parcel as the subject property is incorrect because LRS only sought siting approval for the 3.09-acre Proposed Facility Parcel. *Id.* Respondents argue City of Des Plaines v. SWANCC is instructive on this point. *Id.* at 14, *citing* PCB 92-127, slip op. at 1993 (May 20, 1993).

Next, Respondents attempt to distinguish Environmental Control Systems, Inc. v. Long (ECS), 301 Ill.App.3d (5th Dist. 1998) from the case at issue. Resp. Brief at 14. Respondents contend the key issue in ECS was whether the Section 39.2(b) notice distance should be calculated from the facility or the subject property. *Id.*

Respondents distinguish their case from ECS by stating in the application and notice that LRS only listed the 3.09-acre parcel as the “subject property” for which it seeks siting approval. Resp. Brief at 16. Respondents continue, arguing that the 3.09-acre Proposed Facility Parcel is distinct from the larger HRC parcel, with a separate legal description, Assessment Plat, assigned PIN, and Preliminary Plan HDI Subdivision. *Id.* Respondents admit that subdivided parcels would not have been assessed taxes until 2024 but argue that assignment of a separate tax ID or assessment of taxes is not a statutory prerequisite in Section 39.2(b). *Id. citing* 35 ILCS 200/9-65.

Respondents argue that the legislature did not explicitly require lot lines of a subject property be determined according to authentic tax records. Resp. at 16-17. Therefore, Respondents argue LRS properly provided notice to all property owners within 250 feet of the lot lines of the subject property, the 3.09 acre parcel. *Id.* at 17.

Board Determination

The issue of whether proper notice to landowners was provided under Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2022)) is a threshold issue in a pollution control siting appeal to the Board. If proper notice procedures were not followed, then the County Board lacked jurisdiction to hear the siting appeal. The following discussion analyzes the law and reviews the relevant arguments of the parties. The Board then makes findings based on the analysis and review.

The plain language of Section 39.2(b) in part requires:

No later than 14 days before the date on which the county board or governing body of the municipality receives a request for site approval, the applicant shall cause written notice of such request 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; provided, that the number of all feet occupied by all public roads, streets, alleys and other public ways shall be excluded in computing the 250 feet requirement; provided further, that in no event shall this requirement exceed 400 feet, including public streets, alleys and other public ways. 415 ILCS 5/39.2(b) (2022) (emphasis added).

The legislature set forth detailed steps an applicant must take to sufficiently provide notice. To adequately effectuate service under Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2022)) an applicant must follow three distinct elements. First, the authentic tax records of the county must be used to determine property owners to serve notice. Second, the property owners who own property within 250 feet of the lot line of the subject property must be notified. Third,

service on those neighboring property owners must be performed by personal service or by using registered mail, return receipt requested. The Board today applies the plain language of the statute to determine whether LRS properly served all required parties.

The Board finds that, based on authentic tax records, the Original Parcel is the subject property from which LRS was required to measure 250 feet. The Board also finds that the manufactured home park is within 250 feet of the lot line of the subject property and therefore LRS should have served proper notice of the application to the Moore Trustees fourteen days prior to submitting it.

Respondents contend the subject property, as referred to in Section 39.2(b), was “defined” by LRS in its Notice of Intent and Application as a 3.09-acre site, the Proposed Facility Parcel, within the large HRC property, which is referred to as the “Original Parcel” in this order. Resp. Brief at 8-9. The Board finds that an applicant cannot themselves “define” or decide what the subject property is under Section 39.2(b), and instead must look to the authentic tax records of the county where the facility is located. In determining this, the Board looks to the plain language of Section 39.2(b). “. . .[O]n 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 located. . . .” 415 ILCS 5/39.2(b) (2022). The Board is not convinced that this section of Section 39.2(b) solely informs the applicant of where to look for the names of said owners. The Board interprets Section 39.2(b) as requiring applicants look to the authentic tax records when determining 250-foot radius from the lot line of the subject property, as well as the names of the owners within that radius. Indeed, the appellate court has supported reading Section 39.2(b) in this manner. *See, Env’t Control Sys., Inc. v. Long* 301 Ill. App. 3d 612, 623 (5th Dist. 1998).

Respondents argue the lot line of the subject property, from which the 250-foot notice requirement should be measured, is from the 3.09-acre Proposed Facility Parcel. Resp. Brief at 8-9. Respondents argue the lot line was surveyed and depicted on a Plat of Survey (C-105), Assessment Plat (C-239), and a Preliminary Plan of Subdivision (C-220 through C-225). The Board acknowledges that the Plat of Survey was created on September 9, 2022. However, there is nothing in the record suggesting the Plat of Survey is an authentic tax record, or if it even would have been recorded. The Preliminary Plan of Subdivision was approved by the County Board on February 16, 2023. C-220. On the Preliminary Plan of Subdivision, the County Board noted that further compliance was required by the subdivider, and required a Final Plat be submitted for consideration by the County Board. *Id.* The Board finds the Preliminary Plan of Subdivision is, as the name suggests, a preliminary step in the subdivision process that could change, and even if it does not change, requires further steps to finalize. PCB Tr. 149:1-12. LRS sent notices of intent to the neighbors of the 3.09 acre parcel on July 25, 2023. At that time, McLean County had not taken final action to subdivide the property. The record does not show when or if McLean County approved the Final Plat.

The Board notes that LRS filed its application on August 18, 2023. Any required notice under Section 39.2(b) was required to be sent no later than August 4, 2023. Therefore, any documentation completed or recorded as part of the County’s authentic tax records after August 4, 2023, should not be considered when analyzing where the proper lot line is, in terms of

Section 39.2(b)'s notice requirements. The Assessment Plat was completed by Mr. Brown, a surveyor, on August 14, 2023. LRS could not have relied on this or any other documents created after August 4, 2023, when determining which owners required notice of the application, because the required notice had already been required to be served.

The Parcel Control Change Request form was completed on August 17, 2023, mapped on August 21, 2023, and not entered into Devnet until January 18, 2024. Pet. Exh. 1. All of these dates are after the required notice deadline. The Devnet entry occurred after the public hearing on the application.

Further, the McLean County Health Department (Health Department), as part of a preliminary review of the application stated it reviewed LRS's description in Section 2.2 of the application, the Preliminary Plan for HDI Subdivision, the Assessment Plat, and the Plat of Survey. C-1215. The Health Department stated it was "generally supportive of the transfer station" but had questions regarding Criterion 2 of the application. *Id.* The Health Department further stated that the application implies the Proposed Facility Parcel exists, when it does not. *Id.* The Health Department recommended the approval be contingent on completing the subdivision. *Id.* This memorandum was filed with McLean County on November 16, 2023. *Id.* The Health Department also issued a memorandum after final review on December 28, 2023. C-1047. The Health Department was still "generally supportive" of the transfer station, but again questioned whether the Proposed Facility Parcel legally existed. *Id.* Because of this, the final review memorandum found the Proposed Facility Parcel was not eligible for a private sewage disposal construction permit, and again recommended the siting approval be contingent on the completed subdivision. *Id.* Special Condition 1 of the County Board's Findings of Fact and Conditions of Approval also requires the Respondent to prepare an acceptable final plat of subdivision and to record it before receiving any construction permit, which calls into doubt whether the Proposed Facility Parcel existed at the time that notice was required.

Further, the Board finds that Respondents misinterpret the holding in Env't Control Sys., Inc. v. Long (ECS). In ECS, the appellate court effectively affirmed the Board's decision by finding that the term "lot line" in Section 39.2(b) refers to the property perimeter set by the authentic tax records, rather than an arbitrary line determined by the applicant. 301 Ill. App. 3d 612, 623 (5th Dist. 1998). ECS is a malpractice case that is partially related to the Board's Section 39.2(b) notice decision, and the Fifth District Appellate Court addressed whether ECS would have been successful on appeal on the "lot line" issue. *Id.* The Appellate Court held,

"[t]he language of the statute requires notification of owners of land within 250 feet of the lot line...The record reflects that the lot lines at issue are detailed on the authentic tax records and assessor's map. The lines on the map and tax records coincide with parcel five. The parcel is not further divided. The RPCF [regional pollution control facility] is located within a section of parcel five...As the PCB stated in its decision, the statute calls for notification to owners of land within 250 feet of the lot line-- 'not 250 feet from some other point within the lot lines.'... We conclude that lot line refers to the greater parcel line, and not simply the RPCF line. To conclude otherwise could result in abuse, with property owners in close proximity to a proposed RPCF not receiving notification

because the applicant owns enough land surrounding the proposed RPCF to negate the 250-foot rule.” *Id.*

The Board acknowledges Respondents’ argument that ECS is distinct from the current case because there were no other lot lines to support a subdivision presented during the ECS case but is not persuaded that any authentic tax documents showing the establishment of the 3.09 acre site were presented in this case that pre-dated the notice deadline of August 4, 2023. *See* Resp. Brief at 15. The Board today, as in ECS, looks to the authentic tax records that existed at the time of the notice deadline to determine the boundaries of the subject property. *See also* Madison County Conservation Alliance, et al. v. Madison County and Env’tl. Control Sys., Inc., PCB 90-239 (April 11, 1991).

Respondents cite City of Des Plaines v. SWANCC, to argue the Board should look to the area for which LRS was seeking siting approval, rather than the entire property as a whole. Resp. Brief at 14, *citing* City of Des Plaines v. SWANCC (SWANCC), PCB 92-127 (May 20, 1993). The Board is not persuaded by this argument. SWANCC was a question of law regarding Section 22.14 of the Act, not Section 39.2(b). The language of Section 22.14 states in part “[n]o 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”. 415 ILCS 5/22.14(a). Conversely, Section 39.2(a) explicitly requires notice be sent to “owners of all property within 250 feet in each direction of the lot line...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”. 415 ILCS 39.2(b) (2022). Unlike Section 39.2(b), the legislature did not include the term “lot line” or reference “authentic tax records” in Section 22.14 of the Act as an explicit instruction for determining distances. For this reason, the Board distinguishes the legal arguments held in SWANCC from the case at hand.

The Board is not finding an applicant must have had been issued a tax assessment or to have paid taxes on a parcel prior to it being recognizable as an authentic tax record for purposes of Section 39.2(b). Rather, the Board finds that the parcel must exist in the authentic tax records at the time the required notice under Section 39.2(b) is due.

CONCLUSION

The issue of whether proper notice to landowners was provided under Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2022)) is a threshold issue. Failure to provide notice under Section 39.2 of the Act divests the County Board of jurisdiction in this waste transfer station siting appeal. After a careful examination of the record and the arguments presented by the parties, for the above reasons the Board finds that proper notice was not provided to the Moore Trustees, the owner of the property with PIN 21-16-276-003, and the Board vacates the decision of the County Board for lack of jurisdiction.

Since the Board has found that the County Board lacked jurisdiction to review the siting application, the Board need not address the remaining issues regarding the 1,000 foot setback, fundamental fairness, and the criteria raised by the parties.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

The Board vacates the McLean County Board February 15, 2024 decision granting an application for siting of a new waste transfer station owned and operated by Lakeshore Recycling Systems, LLC.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2022); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702. Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

Names and Addresses for Receiving Service of Any Petition for Review Filed with the Appellate Court	
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I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on October 3, 2024, by a vote of 4-0.



Don A. Brown, Clerk
 Illinois Pollution Control Board