

1           BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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3           CITIZENS OPPOSED TO ADDITIONAL

4           LANDFILLS and HARVEY C. PITT,

5           Individually and as a member of

6           CITIZENS OPPOSED TO ADDITIONAL LANDFILLS,

7                           Petitioners,

8                           vs.

  No. PCB 97-233

9           GREATER EGYPT REGIONAL

10          ENVIRONMENTAL COMPLEX a/k/a

11          GERE PROPERTIES, INC. and the

12          PERRY COUNTY BOARD OF COMMISSIONERS,

13                           Respondents.

14

15                           Proceedings held on August 28th, 1997 at

16          9:30 a.m., at the Du Quoin City Hall, 28 South

17          Washington Street, Du Quoin, Illinois, before the

18          Honorable Michael L. Wallace, Hearing Officer.

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21                           Reported by: Darlene M. Niemeyer, CSR, RPR

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A P P E A R A N C E S

BY: Kenneth Bleyer, Esq.  
608 South Park Avenue  
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On behalf of the Petitioners.

BY: Jerry B. Smith, Esq.  
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On behalf of Gere Properties, Inc.

HINSHAW & CULBERTSON  
BY: Charles E. Helsten, Esq.  
100 Park Avenue  
Rockford, Illinois 61105  
On behalf of Perry County  
Board of Commissioners.

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P R O C E E D I N G S

(August 28, 1997; 9:30 a.m.)

HEARING OFFICER WALLACE: Pursuant to the direction of the Illinois Pollution Control Board I now call Docket PCB 97-233. This is the matter of the Citizens Opposed to Additional Landfills and Harvey C. Pitt, versus the Greater Egypt Regional Environmental Complex a/k/a Gere Properties, Inc. and the Perry County Board of Commissioners for and on behalf of the County of Perry.

May I have appearances for the record, please. For the Petitioners?

MR. BLEYER: Yes, my name is Ken Bleyer, B-L-E-Y-E-R. My address is 608 South Park Avenue in Herrin, Illinois, 62948.

HEARING OFFICER WALLACE: Thank you. For the County?

MR. HELSTEN: Good morning, Mr. Wallace. Chuck Helsten on behalf of the Perry County Board of Commissioners, Perry County. My address is 100 Park Avenue, a different city than Mr. Bleyer though, the same street, different city. It is Rockford, Illinois, 61105.

MR. SMITH: My name is Jerry B. Smith,

1 P.O. Box 89, Du Quoin, Illinois. I represent Gere  
2 Properties, Inc., who is the applicant.

3 HEARING OFFICER WALLACE: Thank you. Let  
4 the record reflect that there are no other  
5 appearances at today's hearing.

6 This hearing was duly noticed in the "Du  
7 Quoin Evening Call," giving legal notice that the  
8 hearing would commence at 9:30 at the Du Quoin City  
9 Hall on today's date.

10 The purpose of this hearing is a  
11 Third-party Pollution Control Facility Review filed  
12 pursuant to the Environmental Protection Act. The  
13 general practice is to allow the parties to present  
14 testimony or evidence as they so are inclined, and  
15 to allow members of the public to give short  
16 statements for the record for the Board's  
17 consideration.

18 The briefing schedule has already been  
19 set at a prior hearing officer's order. So I  
20 believe that's all the preliminary comments I  
21 have.

22 Okay. Mr. Bleyer?

23 MR. BLEYER: Thank you, Mr. Hearing  
24 Officer and Counsel. Today I do not intend to call

1 any witnesses. I merely wish, at this point in  
2 time, to restate the basis of my objections.

3 First, I would make clear that I stand on  
4 the petition that has been filed that led to the  
5 calling of this hearing. In addition, I restate my  
6 objection, and it was previously of record, having  
7 to do with jurisdiction, which I only make that as  
8 a matter of record today. I know there will be no  
9 rulings on that at this point in time.

10 Again, we object on the basis of  
11 jurisdiction because of the fact that a certain  
12 landowner, the evidence disclosed, was not given  
13 adequate notice. I realize the Pollution Control  
14 Board entertained this particular issue previously  
15 and determined that based upon a decision of the  
16 appellate court that Mr. Smith's review of the  
17 assessor's records constituted a valid search and  
18 gave him sufficient notice as to who to notify.

19 I would contend that that is an incorrect  
20 reading of the case just opposed with these  
21 particular facts in light of the fact that the  
22 assessor's records that Mr. Smith's used were not  
23 the most current set of assessor's records. So for  
24 that reason we intend to continue to pursue the

1 jurisdiction issue and reinstate that at this  
2 time.

3 In addition, we also wish to raise again  
4 our objection as to the fundamental fairness of the  
5 proceedings that we have had thus far in light of  
6 the fact that there were ex parte communications  
7 between, at a minimum, the Gere attorney and the  
8 County's attorney, which was a direct violation of  
9 the no ex parte communication order entered with  
10 both of those attorneys present but, nevertheless,  
11 was flagrantly violated.

12 As a result of those communications  
13 between those attorneys, there were noted  
14 modifications in the decision that was reached by  
15 the County Board. Those modifications were in line  
16 with the communications between these attorneys  
17 which was to the exclusion of the public, to me,  
18 and to the client that I represent.

19 We do not feel that the proceeding that  
20 we previously had on the remand of this particular  
21 petition and application constituted a full  
22 disclosure of the communications in the exact form  
23 that they occurred between the parties. I would  
24 suggest that the record is not complete on that for

1 a variety of reasons.

2 First, the only persons that were asked  
3 at the hearing below whether or not they had, in  
4 fact, engaged in these communications were Mr.  
5 Stanton, who was the State's Attorney, and Mr.  
6 Alvis (spelled phonetically) who is the applicant  
7 himself. But we know, based upon the record that  
8 has already been made, that Mr. Smith was involved  
9 in these communications but he never testified.

10 We also know that the Board Members had  
11 some involvement based upon testimony prior to the  
12 last hearing but yet they never testified. I would  
13 submit that those persons should have been called  
14 and those persons should have testified to make  
15 this record complete. As it is now, I do not  
16 believe that the Pollution Control Board's order  
17 has been met either in the spirit it was written in  
18 nor in the literal interpretation of it.

19 Apart from the fundamental fairness  
20 issue, I believe that the Petitioner has done a  
21 more than adequate job raising suspicion as to  
22 whether or not the manifest weight of the evidence  
23 would support the conclusions reached by the County  
24 Board with respect to Parts 1 through 9 of Section

1 39.2 (a) of the Act.

2           The reason I state this point is because  
3 of the testimony that was offered at the hearing  
4 below this one at which time engineers who were  
5 hired by my client came forth and testified that  
6 this may or may not be a good site, but certainly  
7 at the present time there was insufficient  
8 information, even for persons of their credentials,  
9 to ascertain whether or not this site would be safe  
10 and usable for the purposes that are alleged in the  
11 application itself.

12           Having stated this, I would also point  
13 out that the County's own engineer that was hired  
14 to review this particular application submitted a  
15 report in writing, and that particular report made  
16 it vividly clear that he and his firm was not  
17 convinced that the County had sufficient  
18 information, based upon the application put to it,  
19 in order to ascertain that the site was, indeed, of  
20 a quality and nature to pass the test imposed under  
21 39.2 (a), Sections 1 through 9.

22           So, therefore, in conclusion, the  
23 Petitioners and I would ask that the Pollution  
24 Control Board either remand this case back or



1 dismiss the application based upon the  
2 jurisdictional defect in this case, the failure to  
3 comply with the remand order, at least in the  
4 fullest way possible.

5           Finally, because of the proof that exists  
6 that Section 39.2 (a), Sections 1 through 9, the  
7 applicable parts, were not indeed satisfied with  
8 the manifest weight of the evidence supporting the  
9 decision reached by the County Board. Thank you.

10           HEARING OFFICER WALLACE: Mr. Helsten?

11           MR. HELSTEN: Thank you, Mr. Wallace. I  
12 will address primarily Mr. Bleyer's statements  
13 concerning the fundamental fairness aspects of this  
14 hearing.

15           Mr. Bleyer, both in his petition and  
16 today, states, without particularity, something  
17 more should have been done on the remand hearing as  
18 far as fleshing out or flushing out, however you  
19 want to put it, these supposed ex parte contacts  
20 between the County and Gere. Quite frankly, I  
21 don't know what more we could have done at the  
22 April hearing than was done, and I will explain to  
23 you why we did what we did in following the  
24 Pollution Control Board order, what I call the

1 substantive order of December 5th, 1996.

2           There was a subsequent order, as you  
3 know, Mr. Hearing Officer, in January. I believe  
4 it was January 23rd, 1997, which states on its face  
5 that it vacates the prior order. I think it  
6 vacates it procedurally but not substantively.  
7 That's why I will refer back to the substantive  
8 mandate, the December 5th, 1996 order.

9           That order contains, I believe, my review  
10 last night indicated six pages of decision on the  
11 issue of fundamental fairness. All eight  
12 references within those six pages to the ex parte  
13 contact issue were to the issue of contacts between  
14 the County's attorney and Gere's attorney because,  
15 let's face it, that was the new novel twist of this  
16 case.

17           Mr. Bleyer made some new law. He took  
18 Land Comp and took it one step further. None of us  
19 that practice in this area thought, in our wildest  
20 dreams, and I am being very candid here, that  
21 contacts between an attorney hired for a siting  
22 authority and an applicant would be considered to  
23 be ex parte contacts. That's what you hire an  
24 attorney for.

1                    Obviously, in its wisdom and based upon  
2 the legitimate concerns, the Pollution Control  
3 Board, the Board saw differently. We analyzed and  
4 scrutinized both the December 5th order and the  
5 January 23rd order in detail many times to  
6 determine what needed to be done to comply with the  
7 order. It was clear, in our opinion, the thrust of  
8 the order because, as I said, Mr. Wallace, of eight  
9 references in less than five pages to the issue of  
10 contacts between attorneys, what the Board wanted  
11 to know is what were the contacts between the  
12 County and the applicant's attorney.

13                    I don't think, since we did not have  
14 subpoena power under the siting, the local siting  
15 ordinance, that I could subpoena or compel Mr.  
16 Smith to testify. That leaves me with the only  
17 other avenue of fleshing this matter out, which is  
18 to call Mr. Stanton, the ex State's Attorney, to  
19 testify as to every contact he had with Mr. Smith,  
20 which is as good, in my opinion, as calling Mr.  
21 Smith. He is a former elected official. He is an  
22 Officer of the Court. He is under oath.

23                    We put him on the stand, and in detailed  
24 chronological fashion went through each contact

1 that he had with Mr. Smith from the time of the  
2 closing of the evidentiary record through the  
3 closing of the public comment period 30 days later  
4 and even up and to the vote which the Board  
5 subsequently took on what I call the remand of this  
6 application, what I call the second vote.

7 I think it was clear by that record that  
8 the contacts that Mr. Smith and Mr. Stanton had  
9 were purely non substantive. They were simply on  
10 timing issues, Mr. Smith asking Mr. Stanton when  
11 are you going to rule, can you give us any  
12 indication, will there be conditions.

13 Now, admittedly, and this is why, I  
14 think, Mr. Bleyer's clients can't have it both  
15 ways. On the one hand they say, well, you didn't  
16 put on enough. But on the other hand, they say,  
17 oh, in the stuff you put on it shows that there was  
18 a denial of fundamental fairness and ex parte  
19 contacts.

20 There were contacts between the  
21 applicant's engineer and Mr. Stanton, but it is  
22 also clear, and this is why I think we sustained  
23 our burden and there is no fundamental fairness  
24 problem in this case, it is also clear that the

1 suggested conditions that Mr. Stanton received from  
2 Mr. Andrews, which was the consultant for Gere,  
3 were not passed on to the Board.

4           Mr. Stanton said I insulated the Board  
5 from those communications. What Mr. Stanton did,  
6 and I think properly so and intuitively, was sent  
7 those on to the County's experts, which Mr. Bleyer  
8 just, I think, I guess dignified by saying, gee,  
9 look at the County's own engineers. They had  
10 concerns about this landfill.

11           So, again, you can't have it both ways.  
12 If they are good for the criticisms that the  
13 County's engineers and consultants, oversight  
14 consultants, are good when they make criticisms of  
15 the application, likewise, they have to be good, I  
16 think, when the applicant's engineer submits  
17 conditions. We send them on to them. We let the  
18 technical experts tell us what to do.

19           As you know, Mr. Wallace, a County Board  
20 is not made up of technical experts. There are no  
21 geologists or hydrogeologists or geotechnical  
22 experts in most cases and doctorates in chemistry  
23 and environmental science sitting on these boards.  
24 That's why Mr. Stanton, as he explained in the

1 hearing, said I sent all of this on to our  
2 consultants.

3 I asked him specifically was the Board  
4 aware of your conversations with Mr. Andrews. No,  
5 I sent that stuff on directly to our consultants.  
6 So we think that the contacts between Mr. Stanton  
7 and Mr. Smith, as indicated in the transcript which  
8 this Board will review, the April 23rd hearing,  
9 show that they were non substantive contacts.

10 Now, what else could we have done? The  
11 only other type of contacts were -- possible  
12 contacts then were between -- oh, if I could back  
13 up. I also asked Mr. Stanton, I said, as the  
14 attorney for the County Board, as the person that  
15 was really supervising and presiding over this, are  
16 you aware of any other contacts between County  
17 Board Members and the applicant, the applicant's  
18 attorneys, or the applicant's engineers. The  
19 question and answer in the record was, no, I am  
20 not.

21 Again, I don't think I can call -- there  
22 is no authority for me to call the applicant's  
23 attorney and put him on the stand. That was the  
24 best way and the only way, under the law, that we

1 had available to comply with the Board's order. I  
2 think we fully complied with it. But as a back up,  
3 since Mr. Alvis was here, that day I elected, and I  
4 am giving you my stream of consciousness, I said,  
5 well, I can cover the other issue about other  
6 potential contacts between the applicant and the  
7 County Board.

8           Mr. Alvis, as was indicated during the  
9 hearing, is the sole shareholder, the president,  
10 the CEO of the applicant. He is the person, as was  
11 established in the brief amount of testimony, that  
12 was in charge of this operation. I put him under  
13 oath and said, okay, now, did you have any contacts  
14 with the County Board Members or anybody else in  
15 your organization have any contacts with the County  
16 Board Members. He said, no.

17           I think that fully complies with the  
18 Pollution Control Board's order and shows that  
19 there were no contacts that denied the objectors  
20 group here or Mr. Pitt fundamental fairness. I  
21 suppose if we want to put a rest to the entire  
22 matter we -- Mr. Smith can get up and make a  
23 professional statement that over and above what was  
24 testified to at the April 23rd, 1997 hearing that

1 he had no further contacts and that puts the end to  
2 that.

3           This is sort of -- again, Mr. Bleyer made  
4 new law. What he is trying to do is the old story  
5 about Marilyn Monroe, where in the black evening  
6 gown, where people have always said, well, gee, we  
7 wish we could see her without that on. Most people  
8 said, no, there is more mystery, there is more  
9 intrigue when you are left to your imagination as  
10 to what is underneath there.

11           It is the same thing here. Mr. Bleyer,  
12 very cleverly, is using the Marilyn Monroe  
13 Doctrine, which is I don't want to really know  
14 everything that is there. I just want to  
15 criticize. This is very ingenious. This is a good  
16 objector's tactic. All I want to do is criticize  
17 and raise questions and intrigue and speculation  
18 about things which I think are unanswered. I don't  
19 want to know what happened. I would rather raise  
20 intrigue, innuendo, doubt, those kinds of things,  
21 in the hopes that the Board will again remand this  
22 matter.

23           On the issue of conditions, I think when  
24 you lay, Mr. Wallace, the record in the underlying



1 hearing on top of the record of the April 23rd  
2 hearing, which also went into how the conditions  
3 were arrived at, because the Board indicated to us  
4 that they wanted us to go through how each of the  
5 additional conditions were arrived at, and Mr.  
6 Stanton went through that.

7           We traced the genesis of those ideas and  
8 they were not based upon ex parte contacts with the  
9 applicant. They were based upon other  
10 considerations. A Board Member, for example -- one  
11 Board Member said, I want this in there. The  
12 County's expert said, put this in there. So I  
13 think we have laid that issue to rest that the  
14 conditions were not based upon ex parte contacts  
15 between the County and the applicant which was the  
16 thrust. That's really the gravamen, I think, of  
17 the Board's concern, as indicated in the order of  
18 December 5th.

19           However, as the Board says in that very  
20 order, even if the conditions were influenced by  
21 these type of ex parte communications, they will  
22 only be set aside and this proceeding will only be  
23 set aside if the conditions developed substantially  
24 prejudice any party involved here. I don't know

1 how they could substantially prejudice the  
2 objectors and the adjoining landowners when if you  
3 look at those conditions they are actually  
4 supplements to the conditions that the applicant  
5 proposed to put on this facility when it -- when  
6 the hearing on the application originally took  
7 place. These are more stringent conditions.

8           When I first became involved in this case  
9 on remand to the present date, I still am at a loss  
10 to figure out how, when you add additional, more  
11 stringent conditions as to health, safety and  
12 welfare, that prejudices anybody. If anything,  
13 that enhances the health, safety and welfare  
14 safeguards that were placed on this application and  
15 on the applicant's proposal.

16           So even if we get to the issue of -- even  
17 if there is an answer of yes on the issue of, well,  
18 yes, there were ex parte contacts and they may have  
19 influenced the special conditions, you don't get  
20 over the next hurdle, I don't believe, which is  
21 were those -- do those conditions materially  
22 prejudice or substantially impact in a negative  
23 manner any of the parties here. The only parties  
24 that they impact are the applicants, because they

1 put a more onerous burden than originally  
2 prescribed for the landfill.

3           Again, I only wanted to focus on the  
4 fundamental fairness issue, Mr. Wallace. We took  
5 the Board's order seriously. We looked at it many  
6 times. That's why we even asked for the -- filed  
7 the motion for clarification so that we were  
8 exactly sure what the Board wanted us to do. We  
9 fulfilled that mandate. We did everything that --  
10 oh, one other point.

11           Mr. Bleyer says the Board Members were  
12 not put on the stand. The Board Members were not  
13 put on the stand because, again, that's a catch  
14 22. You are damned if you do, and you are damned  
15 if you don't. Here is what I mean by that. Number  
16 one, it was not necessary because Mr. Bleyer had  
17 already taken depositions which were the basis of  
18 his petition for the remand the first time around,  
19 which fleshed out what conversations the Board  
20 Members had. So there is no need to duplicate  
21 that.

22           Number two, had I put them on, I know  
23 what Mr. Bleyer's next argument would have been.  
24 As an objector's attorney it would have been, well,

1 you know why they voted the way they did and  
2 approved this, they were mad at me because I put  
3 them on the stand and I put them through  
4 cross-examination in the April hearing, and this  
5 hearing is fundamentally unfair because it was  
6 based upon their anger, based upon their emotions  
7 and they were reacting. It was based upon their  
8 emotions. I had to avoid that. Besides the fact  
9 there was no need to put them on when Mr. Bleyer  
10 did a very thorough, a very competent job of asking  
11 them questions about the nature of their contacts  
12 were when he took their depositions to form the  
13 basis of this remand. So there was no need to  
14 duplicate.

15 We think, Mr. Wallace, that we have  
16 complied to the extent allowed under the law, to  
17 the extent that we could call parties, we have  
18 answered every issue. The other bugaboo that --  
19 and, again, Mr. Bleyer seized on emantra (spelled  
20 phonetically) and run with it on behalf of his  
21 clients were Mr. Karnes' statement that conditions  
22 were asked for and conditions were met. The last  
23 thing I would say is that Mr. Bleyer put a real  
24 spin on something, took an innocent statement and

1 put a real spin on it and implied that those  
2 conditions are the special conditions to siting.

3 I would ask the Board to carefully review  
4 the testimony in the record, both in the underlying  
5 hearing, Mr. Bleyer's depositions, and in the  
6 supplemental hearing on April 23rd, because when  
7 read carefully it is clear what Mr. Karnes was  
8 referring to. The conditions he was referring to  
9 were in the host agreement. That was negotiation  
10 of the host agreement between the Board and the  
11 applicant. They had nothing to do with the  
12 conditions that were imposed upon siting. That's  
13 apples and oranges. That is a separate issue.

14 The issue of the host agreement is what  
15 benefits in the event siting is going to be  
16 granted, would be afforded to the County. That was  
17 a separate issue but, again, Mr. Bleyer, being the  
18 good advocate he was, saw the word conditions, and  
19 said, I can put a spin on that. I can say that  
20 those conversations related to the special  
21 conditions which were attached to the application.

22 Again, I think a close reading, and I  
23 would respectfully request and commend the Board to  
24 a close reading of the transcript of the original

1 hearing and Mr. Bleyer's depositions of the Board  
2 Members and the supplemental siting hearing on  
3 April 23rd that will show that the statement  
4 conditions asked for and conditions met refer to  
5 the host agreement and had nothing to do with the  
6 conditions based upon siting. The conditions  
7 placed upon siting are not tainted and they, in  
8 fact, enhance and not detract from health, safety  
9 and welfare safeguards at this site. Thank you.

10 HEARING OFFICER WALLACE: Mr. Smith?

11 MR. SMITH: Thank you, Mr. Wallace. I  
12 think it is ironic, when I read the Board's remand  
13 order addressing the issue of where did these  
14 conditions come from and why were they put in the  
15 resolution by the County Board, because those  
16 conditions were established by the Board really to  
17 appease the issues and questions and complaints  
18 that were raised by Cole and by Mr. Walker.

19 It was a good faith effort on the part of  
20 the County Board to satisfy and address the  
21 complaints concerning drainage, flooding,  
22 etcetera. Then for the Board to think that myself,  
23 the applicant, negotiated those conditions or  
24 somehow suggested them to the County Board or

1 somehow proposed them is ridiculous.

2 I totally support Mr. Stanton's testimony  
3 concerning ex parte contacts between him and me.  
4 There were none concerning conditions. The minor  
5 contacts we had concerned when are you going to  
6 make a decision, when is this going to happen.  
7 Because time went on and on. Unbeknownst to us it  
8 was taking more time because they were developing  
9 these conditions with their experts.

10 I think it is -- as far as me and Mr.  
11 Stanton negotiating conditions, that never  
12 occurred. As far as me discussing conditions with  
13 him, it never occurred. Keep in mind he  
14 testified. I am an active attorney in Perry  
15 County. He was State's Attorney. I saw David  
16 Stanton probably four or five times a week at the  
17 courthouse on other cases and other hearings. We  
18 discussed a lot of things, but we never, never  
19 discussed that.

20 It is hard not to have ex parte contacts  
21 in a county of our size when the two attorneys  
22 involved one is an active, practicing attorney in  
23 private practice and the other is a State's  
24 Attorney. I thought David Stanton handled that

1 very well because, yes, we see each other all the  
2 time. But never, never was there any contact  
3 between myself and the County Board, between myself  
4 and Mr. Stanton, concerning conditions or putting  
5 those conditions on.

6 We would have been more than happy not to  
7 have any conditions. The conditions, as Mr.  
8 Helsten testified, were restrictions on us. If and  
9 when the landfill is constructed it will cost us  
10 thousands of dollars, but the County Board did it  
11 in good faith to make sure that the landfill was  
12 constructed in a safe manner to satisfy the  
13 complaints of Gere and Mr. Walker. Thank you.

14 HEARING OFFICER WALLACE: Mr. Bleyer, do  
15 you care to say anything further?

16 MR. BLEYER: No, I said all I need to  
17 say.

18 HEARING OFFICER WALLACE: Okay. Just a  
19 couple of questions.

20 On the jurisdiction issue you raised, Mr.  
21 Bleyer, does that relate to -- you mentioned an  
22 appellate court case. I am not sure which one you  
23 were referring to.

24 MR. BLEYER: There is a case involved, I



1 believe, that was cited and discussed in the  
2 previous hearings. I believe it is the Bishop  
3 case.

4 HEARING OFFICER WALLACE: Okay.

5 MR. BLEYER: You might take a look. It  
6 has been referenced before.

7 HEARING OFFICER WALLACE: Okay. I follow  
8 what you were saying now. The jurisdiction issue  
9 is the relevance of notice to which individual or  
10 individuals?

11 MR. BLEYER: It is a lady who is -- it is  
12 Mr. Walker's sister. Mary Jane Hudson is her  
13 name. The issue is preserved, but I just wanted to  
14 make sure that everybody understood it hasn't died  
15 a death yet. It is still with us.

16 HEARING OFFICER WALLACE: All right.  
17 Then on what is commonly referred to as the siting  
18 criteria, are you objecting to the manifest weight  
19 of the evidence on all nine criteria?

20 MR. BLEYER: Well, not exactly. See, I  
21 contend that three of those don't have any  
22 application in this proceeding whatsoever, even  
23 though the County Board made a determination that  
24 three of them apply. I raised that before, and the

1 Pollution Control Board didn't agree with me.

2 I know there has been some -- this has  
3 been bantered back and forth in front of the Board  
4 before. Perhaps the good rule of thumb would be go  
5 ahead and make a determination as to those three  
6 criteria. I understand why they did what they did,  
7 but I still contend if you look at it, it doesn't  
8 make any sense.

9 How can you say that there is evidence to  
10 suggest that this application complies with the  
11 requirements of a regulated recharge zone when they  
12 don't have that contained in the application.  
13 There is absolutely nothing in the application to  
14 suggest that. I understand that it is difficult to  
15 suggest that there is no -- there is no non  
16 applicable box under the statute to mark, and I  
17 realize why the Board did what it did. I am  
18 referring to the County Board.

19 I still contend and I intend to argue  
20 that you simply cannot mark those boxes yes, albeit  
21 I know that puts a person in a difficult situation,  
22 but you can't mark them yes when the reality of the  
23 record and the facts are such that it can't be  
24 true. There is nothing in there on that or for

1 that matter, having to do with a solid waste  
2 disposal plan or having to do with hazardous  
3 waste.

4           So for these reasons those criteria  
5 should not have been marked yes, but they were  
6 marked yes. Now, as for the others, it is my  
7 contention that based upon the evidence submitted  
8 in writing by the County's own engineer and based  
9 upon the evidence that was put on in the form of  
10 written documentary evidence as well as the  
11 testimony at the proceeding below that the manifest  
12 weight of the evidence does not support the  
13 County's conclusion in the siting decision.

14           HEARING OFFICER WALLACE: All right.

15           MR. BLEYER: I hope I didn't confuse  
16 you.

17           HEARING OFFICER WALLACE: No, I follow  
18 you. I just wanted to make that clear. It puts a  
19 different light on what the Board has to put in its  
20 order. I wanted to try to clarify that so the  
21 Board would be aware of that. All right. Thank  
22 you.

23           MR. BLEYER: Yes.

24           HEARING OFFICER WALLACE: Mr. Helsten,

1 anything further?

2 MR. HELSTEN: Nothing further.

3 HEARING OFFICER WALLACE: Mr. Smith?

4 MR. SMITH: No, sir.

5 HEARING OFFICER WALLACE: Are there any  
6 members of the audience that wish to make a  
7 statement for the record concerning this appeal?

8 MR. WALKER: Yes.

9 HEARING OFFICER WALLACE: Yes, sir.  
10 Would you state your name and address, please.

11 MR. WALKER: William Walker, Route 2, Box  
12 739, Du Quoin, Illinois, 62832.

13 I would like to say, too, that I feel  
14 that the jurisdictional issue is not met. My  
15 sister Mary Jane Hudson Summers received an  
16 official tax notice in July of 1995 and the list  
17 that they used here to notify people was not  
18 obtained until January of 1996. So I feel that she  
19 was not given due notice, having received her  
20 official tax notice at her current address six  
21 months before this list was made up.

22 Then, also, I would like to say that I  
23 believe the manifest weight of evidence is against  
24 this from the fact that there were four engineering

1 firms that have looked at this proposal and only  
2 one has said it was safe. The others say it is  
3 either questionable or not feasible at all. It  
4 seems that with 75 percent of the engineering firms  
5 against it would leave the manifest weight of  
6 evidence in the side of rejecting it. Thank you.

7 HEARING OFFICER WALLACE: All right.  
8 Thank you, Mr. Walker.

9 Does anyone else in the audience wish to  
10 make a statement for the record?

11 All right. Let the record reflect that  
12 no other members of the audience wish to make a  
13 statement in this proceeding today.

14 The briefing schedule that was set by my  
15 order of July 23rd, 1997, are there any problems  
16 with that at this point in time?

17 MR. BLEYER: I don't have any problem  
18 with it.

19 HEARING OFFICER WALLACE: All right. The  
20 applicant Gere has waived deadline to November 6,  
21 which is the Board meeting date. The Board  
22 requires that I give them 30 days leeway to  
23 consider and write their opinion. So the record is  
24 generally due 30 days prior to that last meeting

1 date. The last briefs are due in September 30th,  
2 so I suppose we could adjust things by a few days  
3 if that is necessary.

4 MR. HELSTEN: On behalf of the County, I  
5 think we are fine with the briefing schedule.

6 HEARING OFFICER WALLACE: All right.  
7 There were no witnesses today, so there is no  
8 credibility issues to be resolved. I don't believe  
9 there is anything further.

10 All right. Thank you. This hearing is  
11 closed.

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1 STATE OF ILLINOIS )  
 ) SS  
2 COUNTY OF MONTGOMERY)

3 C E R T I F I C A T E

4 I, DARLENE M. NIEMEYER, a Notary Public  
5 in and for the County of Montgomery, State of  
6 Illinois, DO HEREBY CERTIFY that the foregoing 30  
7 pages comprise a true, complete and correct  
8 transcript of the proceedings held on the 28th of  
9 August A.D., 1997, at 28 S. Washington, Du Quoin,  
10 Illinois, in the case of Citizens Opposed to  
11 Additional Landfills and Harvey C. Pitt,  
12 individually and as a member of Citizens Opposed to  
13 Additional Landfills v. Greater Egypt Regional  
14 Environmental Complex a/k/a Gere Properties, Inc.  
15 and the Perry County Board of Commissioners, in  
16 proceedings before the Honorable Michael Wallace,  
17 Hearing Officer, and recorded in machine shorthand  
18 by me.

19 IN WITNESS WHEREOF I have hereunto set my  
20 hand and affixed my Notarial Seal this 8th day of  
21 September A.D., 1997.

22  
23 Notary Public and  
24 Certified Shorthand Reporter and  
Registered Professional Reporter  
CSR License No. 084-003677  
My Commission Expires: 03-02-99