

**BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD**

FOX MORaine, LLC)	
)	
Petitioner,)	
)	
v.)	PCB 07- 146
)	
UNITED CITY OF YORKVILLE,)	
CITY COUNCIL)	
)	
Respondent.)	

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on this 24th day of September, 2008, George Mueller, one of the attorneys for Petitioner, Fox Moraine, LLC, filed via electronic filing of the attached **Motion to Compel Disclosure of Roth Report** with the Clerk of the Illinois Pollution Control Board, a copy of which is herewith served upon you.

Respectfully submitted,

FOX MORaine, LLC

By: /s/ George Mueller
One of its Attorneys

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Electronic Filing - Received, Clerk's Office, September 24, 2008

Fox Moraine, LLC v. United City of Yorkville
PCB No. 07-146

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CERTIFICATE OF SERVICE

I, Sharon Twardowski, a non-attorney, certify that I served a copy of the foregoing **Notice of Filing** and **Motion to Compel the Disclosure of Roth Report** to the Hearing Officer and all Counsel of Record listed on the attached Service list, by sending it via Electronic Mail on September 24, 2008, before 5:00 p.m.

/s/ Sharon Twardowski

- [x] Under penalties as provides by law pursuant to ILL. REV. STAT. CHAP. 110-SEC 1-109, I certify that the statements set forth Herein are true and correct

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MOTION TO COMPEL DISCLOSURE OF ROTH REPORT

NOW COMES Fox Moraine Landfill, LLC hereinafter (“Fox Moraine”), by its attorneys, George Mueller and Charles Helsten and moves for disclosure by the City of Yorkville of the Michael Roth report submitted to City Council members on May 23, 2007, and in support thereof state as follows:

1. The public hearings before the Yorkville City Council on Fox Moraine’s siting application commenced on March 7, 2007 and continued for many days until ending on April 23, 2007. While said hearings were occurring there was a municipal election on April 17, 2006, in which three new city council members and a new mayor were elected. These individuals were sworn in on May 8, 2006, at which time a new city attorney, Michael Roth was hired by the city council. An invoice from Michael Roth’s law firm at that time, Wildman, Harrold, Allen and Dixon, attached hereto as Exhibit A, indicates however that various members of that firm were performing legal services for the City related to the landfill siting application as early as April 27, 2007.

2. On May 23, 2007, the city council began public deliberations on the siting application. May 23, 2007, was also the last day of the thirty day post hearing public comment period, and on that day, Fox Moraine filed supplemental materials with the City, the hearing officer, Larry Clark filed a report containing his findings and recommendations and the city expert technical staff filed a report authored by attorney Derke Price with its findings and recommendations. Both the Clark report and the Price report are referenced in the City’s final resolution and part of the record herein.

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3. That it appears from the transcript of the proceedings of May 23, 2007, that the new city attorney Michael Roth also filed a report with his findings and recommendations on that date. See pages 10 and 11 of the May 23, 2007, transcript attached hereto as Exhibit B.

4. At his discovery deposition on September 19, 2008, former Yorkville Alderman Wally Werderich admitted that there was a supplemental filing by Roth on or about May 23, 2007. Werderich however refused to answer questions about the subject and even the general contents of this submittal including whether or not it contained a discussion of the evidence. See Werderich Deposition Excerpt attached hereto as Exhibit C.

5. The Roth report is not part of the record filed by the City of Yorkville with this Board.

6. There is no privilege applicable to the Roth report any more that there would have been a privilege applicable to the report authored by attorney Derke Price, which report was received by the city council, allegedly considered by them and made part of the record. Fox Moraine as a matter of fundamental fairness is entitled to know all of the materials considered by the city council in making its decision.

WHEREFORE, Fox Moraine Landfill prays for an order compelling the City of Yorkville to disclose the Roth report submitted to the city council members on May 23, 2007.

Respectfully submitted,
FOX MORaine, LLC

By: /s/ George Mueller
One of its attorneys

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1 meeting isn't here to present this?
 2 MR. ROTH: It's the hearing
 3 officer's decision. I don't know.
 4 ALDERMAN MUNNS: I mean, we hired
 5 him and we paid him 40, \$50,000, and he didn't
 6 show up and submits, you know, 50 pages at 4:30
 7 on the day of the hearing, you know, it's kind of
 8 hard to read through everything he's put in
 9 there.

(Applause)

10 MR. ROTH: I think it's the hearing
 11 officer's decision not to come. I can tell you
 12 that the purpose of the hearing is to -- is for
 13 deliberation by the City Council, it is not for
 14 interaction with the audience or others, but as
 15 to the hearing officer's non-attendance, I can't
 16 speak to that.

17 ALDERMAN MUNNS: Not interaction
 18 between us and Mr. Clark, but, again, if he gives
 19 us 50 pages of his recommendations, but not --
 20 but doesn't sit here and deliberate with us --
 21 because I thought that's what we were supposed to
 22 do and I thought we were supposed to deliberate
 23 the criterion.

9

1 three of you could be saying sited, not sited,
 2 but basically, again, I've got to decide
 3 basically what I took in on all those hearings,
 4 my notes, and not your notes, and not Derke
 5 Price's notes, why did we pay Derke Price and
 6 Larry Clark \$50,000 apiece to throw in comments
 7 at the last moment that aren't going to be
 8 considered?

(Applause)

9 ALDERMAN MUNNS: I don't know if you
 10 can answer that, I'm just throwing it out there.

11 ALDERMAN GOLINSKI: I've got to
 12 agree with Alderman Munns. Since Friday there's
 13 been a thousand pages of information filed. I
 14 don't know how we are expected to process that
 15 and deliberate in any manner today.

16 MAYOR BURD: We have a motion on the
 17 floor that has to do with whether or not the
 18 annexation -- that we are going to approve or
 19 dismiss the matter of the annexation.

20 Does anybody want to speak to
 21 that issue? Do you have any -- concerns about
 22 voting on that issue?

(No Response)

24

11

1 MR. ROTH: Well, you are. You are.
 2 He's not to deliberate. He was to make findings
 3 and recommendations --

4 ALDERMAN MUNNS: Right.

5 MR. ROTH: -- which he's done.

6 ALDERMAN MUNNS: But we are supposed
 7 to take his criterion that he put in into
 8 account.

9 MR. ROTH: Yes, you are.

10 ALDERMAN MUNNS: So if I got here at
 11 6:55, how am I supposed to really read through
 12 his stuff. So basically you're saying that Derke
 13 Price's and your stuff and Clark's and this book
 14 here is not going to be considered in my thought
 15 process because I just got them. Is that what
 16 you're saying? I want to know what the process
 17 is, whether it's right or wrong.

18 MR. ROTH: I am saying it's
 19 problematic, the fact we didn't get the hearing
 20 officer's findings and recommendations until
 21 today is certainly a problem. It's been very
 22 difficult for us to assimilate the information as
 23 it is for you.

24 ALDERMAN MUNNS: Because all of

10

1 MAYOR BURD: Then we will proceed
 2 with a roll call on that issue.

3 MR. ROTH: Just to restate the
 4 motion, I had recommended that a motion be made
 5 to deny Kendall County's motion to dismiss for
 6 lack of jurisdiction. I believe a motion was
 7 made and seconded.

8 MS. PICKERING: Munns.

9 ALDERMAN MUNNS: Aye.

10 MS. PICKERING: Plocher.

11 ALDERMAN PLOCHER: Aye.

12 MS. PICKERING: Spears.

13 ALDERMAN SPEARS: Aye.

14 MS. PICKERING: Sutcliff.

15 ALDERMAN SUTCLIFF: Aye.

16 MS. PICKERING: Besco.

17 ALDERMAN BESCO: Point of

18 clarification. Are we voting in favor to dismiss
 19 it or aye in favor --

20 MR. ROTH: Aye in favor of denying
 21 the motion to dismiss these proceedings.

22 ALDERMAN BESCO: Aye. Thank you.

23 MS. PICKERING: Leslie.

24 ALDERMAN LESLIE: Aye.

12

WERDERICH EXERPT

Q All right. There, there is an inference, Wally, in these transcripts that there was also a report or recommendations from Mike Roth. Do you remember whether you received anything like that that day?

A We did receive some information from, from our attorney. Yes.

...

MR. MUELLER: My question is, did the document contain a discussion of the evidence from the landfill hearing.

MR. DOMBROWSKI: I am instructing him not to answer.

Pp 58, 61