

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

FOX MORAINÉ, LLC)	
)	
Petitioner,)	
)	
v.)	PCB No. 07-146
)	(Pollution Control Facility Siting
)	Appeal)
UNITED CITY OF YORKVILLE, CITY)	
COUNCIL)	
)	
Respondent.)	

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on September 29, 2008, Leo P. Dombrowski, one of the attorneys for Respondent, United City of Yorkville, filed via electronic filing the attached **United City of Yorkville's Response to Fox Moraine's Motion to Compel Production of Documents and Video**, with the Clerk of the Illinois Pollution Control Board, a copy of which is herewith served upon you.

Respectfully submitted,

UNITED CITY OF YORKVILLE

By: /s/ Leo P. Dombrowski
One of their Attorneys

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Electronic Filing - Received, Clerk's Office, September 29, 2008
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**BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD**

FOX MORaine, LLC)
)
) Petitioner,)
) PCB No. 07-146
) v.)
)
 UNITED CITY OF YORKVILLE, CITY)
 COUNCIL)
)
) Respondent.)

**YORKVILLE'S RESPONSE TO FOX MORaine'S
MOTION TO COMPEL PRODUCTION OF
DOCUMENTS AND VIDEO**

Respondent, the United City of Yorkville ("Yorkville") responds to Fox Moraine Landfill LLC's ("Fox Moraine") Motion to Compel Production of Transcripts and Videos as follows:

1. Fox Moraine's Second Request for Production of Documents was both overly-broad and needlessly cumbersome. Fox Moraine asked for all videotapes and transcripts of all City Council, Committee, Board or agency meetings between September 1, 2006 (three months before Fox Moraine filed its landfill application) and June 1, 2007 (several days after the decision on the application). All of these materials were public records and could have been obtained through a Freedom of Information Request. Fox Moraine refused to submit a Freedom of Information Request, however, and instead demanded that Yorkville produce the requested materials through counsel.

2. In response to Fox Moraine's Second Requests for Production, Yorkville produced over six thousand three hundred pages of documents and ninety video disks containing hundreds of hours of footage. Yorkville has fully complied with Fox Moraine's Second Request.

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No responsive materials have been withheld. (See copies of Yorkville's transmittal letters, attached as Exhibits A and B)

3. Fox Moraine's Motion to Compel focuses on a tiny percentage of the information it requested and essentially complains about three things:

- (a) Some portions of some meetings were not transcribed, and some of the transcripts Fox Moraine received were not what it expected.
- (b) Two videos are not available.
- (c) An invoice allegedly indicates that a transcript was prepared but was not produced.

Individually, none of these issues is terribly significant. Taken together, they amount to little more than nit-picking. None has any merit.

4. Only the public meeting portions of each City Council or Committee meeting is attended by a court reporter. The reporter prepares transcripts for those public sessions. The remaining portions of the meetings are not public, and minutes of those portions of the meetings are prepared, but not transcripts. For example, Exhibit H to Fox Moraine's motion contains the minutes from a City Council meeting on February 13, 2007. The minutes clearly state that the public hearing portion of the meeting covered only a re-zoning application from Rush-Copley Hospital. Yorkville produced the transcript for this portion of the meeting bearing Bates number UCYFM 005278-5308. An unnumbered copy of that transcript is also attached to Fox Moraine's motion.¹

5. Fox Moraine's Second Request for Production sought transcripts and videos, not meeting minutes. Because Fox Moraine did not request minutes, Yorkville did not produce

¹ Fox Moraine's motion attaches copies of transcripts that do not bear the Bates numbers Yorkville gave them when Yorkville produced them. Clearly, Fox Moraine has a source for these transcripts other than Yorkville. If the transcripts Fox Moraine seeks existed, Fox Moraine should have been able to get them through this second source.

them. All minutes, agendas and meeting packets for Yorkville City government meetings are available on the City's website, however, at www.yorkville.il.us.gov-mtgs-minutes.cfm.

6. The minutes in Fox Moraine's possession (and posted on the City's website) clearly explain which portions of the meetings were transcribed by a court reporter and which were not. The minutes even provide the court reporter's name. On information and belief, Fox Moraine has contacted the court reporter to ask for the transcripts Fox Moraine believes are missing. Yorkville has produced all of the existing transcripts. Nothing has been withheld.

7. While Yorkville videotapes many, many meetings, it does not videotape all of them. Two of the videos Fox Moraine requested do not exist, and to the best of Yorkville's knowledge have never existed. (See the Affidavit of Bart Olson, attached as Exhibit C.) It is not clear why the videos were not made, but it is clear that Yorkville has not withheld any existing videotapes.

8. Finally, Fox Moraine complains that it was billed for court reporting services, but did not receive transcripts for some sessions. Fox Moraine is mistaken. The invoices of which Fox Moraine complain are from Marlys Young. Marlys Young is a stenographer, not a court reporter. She prepares minutes, not transcripts. (Olson Aff., at ¶ 4.)

9. None of Fox Moraine's complaints, therefore, is legitimate. Each of the issues addressed in Fox Moraine's motion could have easily been resolved by a close reading of the publicly-available meeting minutes and/or with a telephone call to Yorkville's counsel.

10. Viewed in this context, Fox Moraine's accusation that Yorkville's representations regarding these materials were "wrongful and ingenuous [sic]" is as disturbing as it is ungrammatical. Fox Moraine demands sanctions based on nothing more than its own misunderstanding, and failure to follow up.

11. Of course, Fox Moraine's demand for sanctions should be strenuously denied by the Hearing Officer, but further Yorkville requests that the Hearing Officer admonish Fox Moraine that additional baseless sanctions motions will not be tolerated.

WHEREFORE, the United City of Yorkville hereby requests that Fox Moraine's Motion to Compel and for Sanctions be denied and that Fox Moraine be admonished on the record to refrain from making further, baseless sanctions motions.

Respectfully submitted,

THE UNITED CITY OF YORKVILLE

By: /s/ Leo P. Dombrowski
One of its Attorneys

Dated: September 29, 2008

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EXHIBIT A

Electronic Filing - Received, Clerk's Office, September 29, 2008

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July 11, 2008

George Mueller, Esq.
Mueller Anderson P.C.
609 Etna Road
Ottawa, IL 61350

Re: *Fox Moraine, LLC v. United City of Yorkville*

Dear Mr. Mueller:

Further to my letter of June 6, 2008, and in response to Petitioner's Second Request to Produce, I enclose herewith a disk containing transcripts of meetings held by the United City of Yorkville between September 1, 2006 and June 1, 2007. This disk does not include transcripts of any of the landfill siting hearings, as you already have those, and they are outside the scope of the Second Request to Produce. United City of Yorkville has not withheld any meeting transcripts as privileged. The transcripts on the attached disk bear the bates range UCYFM000001 through UCYFM006342.

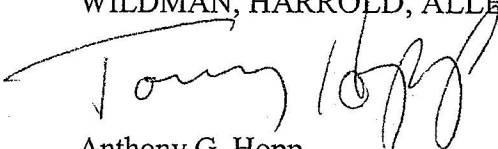
We continue to have technical difficulty reproducing DVDs of some meetings. We hope to have those difficulties worked out next week, and to produce the DVDs soon.

There is no charge for copying the attached disk. There may be a charge for copying the DVDs, but I will let you know.

Mr. Blazer has already informed me that he does not want copies of these materials.

Very truly yours,

WILDMAN, HARROLD, ALLEN & DIXON LLP


Anthony G. Hopp

AGH:kma
Enclosure

cc: Michael S. Blazer, e/o enc.
Charles Helston, w/o enc.

EXHIBIT B

Electronic Filing - Received, Clerk's Office, September 29, 2008

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August 14, 2008

VIA OVERNIGHT MAIL

George Mueller, Esq.
Mueller Anderson P.C.
609 Etna Road
Ottawa, IL 61350

Re: *Fox Moraine, LLC v. United City of Yorkville*

Dear George:

Enclosed please find copies of CDs which are responsive to Fox Moraine's Second Request for Production of Documents to the United City of Yorkville. There are ninety disks enclosed. Pursuant to Petitioner's Second Request, these disks contain the available video for meetings which occurred between September 1, 2006 and June 1, 2007.

Thank you for your patience in this matter. As we have previously discussed, technical difficulties prevented us from compiling a complete set of disks until this week.

By copy of this letter to Mike Blazer, I am confirming his oral instruction to me that he does not want a set of these disks.

Very truly yours,

WILDMAN, HARROLD, ALLEN & DIXON LLP

Anthony G. Hopp

AGH:kma
Enclosures
cc: Michael S. Blazer

EXHIBIT C

**BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD**

FOX MORaine, LLC)	
)	
Petitioner,)	
)	PCB No. 07-146
v.)	
)	
UNITED CITY OF YORKVILLE, CITY)	
COUNCIL)	
)	
Respondent.)	


AFFIDAVIT OF BARTHOLOMEW OLSON

I, Bartholomew Olson, hereby depose and state that, if called as a witness in this matter, I would testify as follows:

1. I am over 18 years of age, and I am competent to testify to the facts set forth in this affidavit.
2. I am employed by the United City of Yorkville ("Yorkville") as the Assistant City Administrator. I have personal knowledge of the matters set forth herein.
3. I have access to the books and records of Yorkville including invoices for video recording services. Yorkville's books and records do not contain invoices for videotaping services for the September 25, 2006 Plan Commission meeting or the February 13, 2007 City Council meeting. Invoices for videotaping services for Plan Commission and City Council meetings are maintained by Yorkville for a period of seven (7) years. Because the books and records of Yorkville do not contain invoices for videotaping the meetings of September 25, 2006 and February 13, 2007 are not in the City's records, it is my conclusion that these meetings were not videotaped.

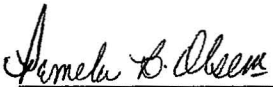
4. I am personally acquainted with Marlys Young, and I have personal knowledge of the services she performs for Yorkville. Marlys Young types minutes from City Council meetings. She does not provide court reporting services for the City and does not prepare transcripts of meetings.

FURTHER affiant sayeth not.

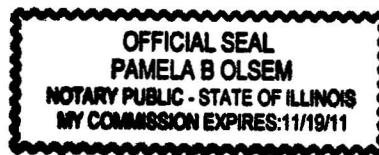


BARTHOLOMEW OLSON

SUBSCRIBED and SWORN
to before me this 29th day of
September, 2008.



Notary Public



CERTIFICATE OF SERVICE

I, Susan Hardt, a non-attorney, certify that I caused a copy of the foregoing **Notice of Filing and United City of Yorkville's Response to Fox Moraine's Motion to Compel Production of Documents and Video** to be served upon the Hearing Officer and all Counsel of Record listed on the attached Service list by sending it via Electronic Mail on September 29, 2008.

/s/ Susan Hardt

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