

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

FOX MORaine, 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 Answers to Deposition Questions**, 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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**YORKVILLE'S RESPONSE TO FOX MORaine'S  
MOTION TO COMPEL ANSWERS TO DEPOSITION QUESTIONS**

Fox Moraine, dissatisfied with the Yorkville City Council's determination that it failed to meet most of the statutory criteria for siting a landfill, now wants to delve beyond the Council's written resolution and voluminous transcripts and evidence and into the minds of the individual Council members who voted. Essentially, Fox Moraine wants to ask Council members to explain their beliefs about the facts and whether Fox Moraine met its burden of proof with respect to each individual statutory criterion, as well as about the written decision the Council issued. These questions not only seek information irrelevant to the issues before the Board, but they also ignore the Appellate Court's and the Board's consistent refusals to subject landfill application decision-makers, who act in a quasi-adjudicatory role when voting on a siting application, to such irrelevant and invasive questions.

**I. BACKGROUND**

Over 24 days and approximately 125 hours, Yorkville's City Council heard evidence relating to Fox Moraine's landfill application. The Council then met to deliberate on whether to grant or deny Fox Moraine's application on May 23, 2007. At the conclusion of their deliberations that day, the Council voted to have a resolution consistent with its deliberations

drafted for its vote the next day. (Transcript of May 23, 2007 Public Meeting at 111:16-113:2, attached as Exhibit A.)<sup>1</sup> The next day, by a 7-1 vote, the Council adopted the resolution denying the application.

In denying the application, the Council found that Fox Moraine had not met criteria (i), (ii), (iii), (v), (vi), (viii) and (ix). That same day, Yorkville's mayor and deputy clerk signed the final resolution memorializing the Council's decision. Fox Moraine appealed to the Board and now grasps at straws to undermine the Council's decision, seeking to question Council members about their thoughts about the evidence and their votes.

**II. FOX MORAINÉ'S MOTION SHOULD BE DENIED BECAUSE FOX MORAINÉ IS SEEKING INFORMATION IRRELEVANT TO THESE PROCEEDINGS.**

As its first basis for suggesting that questioning the Council members is proper, Fox Moraine implies that there is a possibility that the Council's decision may not have complied with statutory requirements, but its suggestions are both legally and factually unfounded. Fox Moraine suggests that the Council did not—but was required to—deliberate on each criterion set forth in 415 ILCS 5/39.2(a) prior to voting. Moreover, Fox Moraine suggests that the Council should have had the final written decision in front of it before voting on the application. But Fox Moraine, which is represented by counsel experienced in landfill proceedings, cites no case law in support of its suggestions, because there is none. In fact, all of the case law dealing with these issues rejects Fox Moraine's position.

It is beyond dispute that a Council need not discuss each criterion separately or conduct any debate, much less have the final written product in-hand before it votes. The Appellate Court and the Board have consistently so held. *See, e.g., Peoria Disposal Co. v. Peoria County*

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<sup>1</sup> By citing to the transcript of the City Council's deliberations, Yorkville in no way concedes that the Council's deliberations are at all relevant to the matters before the Board. It does so only to inform the Hearing Officer and the Board as to what took place and show why the deliberations are irrelevant.

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*Bd.*, PCB No. 06-184, 2007 Ill. ENV LEXIS 250, at \*35 (June 21, 2007) (finding that county's procedure of orally voting on application and months later adopting the transcript of that vote as its "meeting minutes" complied with requirement for written decision); *Slates v. Illinois Landfills, Inc.*, PCB No. 93-106, 1993 Ill. ENV LEXIS 956, at \*40 (Sept. 23, 1993) (affirming Council's rejection of siting application over petitioner's claims that final written decision was not created until after vote and Council had not discussed each statutory criterion); *see also Clutts v. Beasley*, 185 Ill. App. 3d 543, 545 (5<sup>th</sup> Dist. 1989) ("We hold that so long as the decision is in writing, and a record has been made showing the basis for the decision, neither a detailed statement finding specific facts, nor a detailed explanation of the relationship between the facts, the criteria, and the conclusions is necessary, and the decision can be framed in the language of the criteria set out in the statute.").

Nor is the Council required to vote on each individual criterion separately. *See, e.g., Rockford v. Winnebago County Bd.*, PCB No. 88-107, 1988 Ill. ENV LEXIS 128, at \*12-13 (Nov. 17, 1988) ("It is the totality of the Winnebago County decision on all six criteria that is under review, and not the votes of the individual county board members on individual criteria."), *aff'd Rockford v. County of Winnebago*, 186 Ill. App. 3d 303 (2<sup>nd</sup> Dist. 1989). Instead, the decision-making body may take a single vote that incorporates its decision on each of the statutory criteria. 1988 Ill. ENV LEXIS 128, at \*13. Because the Board reviews only the Council's ultimate decision on all of the criteria rather than votes on each individual criterion, Fox Moraine's motion to compel should be denied. *See also Waste Mgmt. v. Pollution Control Bd.*, 175 Ill. App. 3d 1023, 1044 (2<sup>nd</sup> Dist. 1988) ("there is no requirement that the [county board] conduct any debate as long as they have had an opportunity to review the record prior to voting."); *E & E Hauling, Inc. v. Pollution Control Bd.*, 116 Ill. App. 3d 586, 577-78 (2<sup>nd</sup> Dist.

1983) (decision-making body "need only indicate which of the criteria, in its view, have or have not been met, and this will be sufficient if the record supports these conclusions so that an adequate review of the County Board's decision may be made.")

**III. FOX MORAINE'S MOTION SHOULD ALSO BE DENIED BECAUSE ITS INTENDED QUESTIONS VIOLATE THE SANCTITY OF THE COUNCIL'S DELIBERATIONS.**

Flouting the Appellate Court's and the Board's long-settled rulings against inquiring into a governing body's deliberative process, Fox Moraine nonetheless seeks information underlying the Council's deliberations and decision on Fox Moraine's application. The Appellate Court and the Board have consistently held that a governing board deciding whether to grant or deny a siting application acts in an adjudicatory capacity. *Southwest Energy Corp. v. Pollution Control Bd.*, 275 Ill. App. 3d 84, 90-91 (4<sup>th</sup> Dist. 1995) ("a local siting proceeding more closely resembles an adjudicatory proceeding than a legislative one"); *Land and Lakes Co. v. Pollution Control Bd.*, 245 Ill. App. 3d 631, 638 (3<sup>rd</sup> Dist. 1993); *Waste Mgmt. v. Kankakee Cty. Bd.*, PCB No. 04-186, 2008 Ill. ENV LEXIS 14, at \*67-68 (Jan. 24, 2008) ("It is a well-established principle that the local siting authority's role in the siting approval process is both quasi-legislative and quasi-adjudicative.").

Because of the governing board's adjudicatory function, the Court and the Board have consistently refused to allow questioning into the thought processes of either the decisionmaking body as a whole or individual decisionmakers. *See, e.g., Waste Mgmt.*, 2008 Ill. ENV LEXIS 14, at \*\* 67-68 ("The Board has consistently held that decisionmakers are entitled to protection of their internal thought processes in their adjudicative roles."); *Rochelle Waste Disposal v. City of Rochelle*, PCB 03-218, 2004 Ill. Env. LEXIS 231 at \*\* 42-43 (April 15, 2004) ("the integrity of the decision making process requires that the mental processes of decision-makers be safeguarded, and that a strong showing of bad faith or improper behavior is required before any

inquiry into the decision making process can be made.”); *West Suburban Recycling and Energy Ctr., v. Illinois EPA*, PCB Nos. 95-119, 95-125, 1996 Ill. ENV LEXIS 718, at \*13 (Oct. 17, 1996) (“The Board, and courts in general, have consistently held that the mind of the decisionmaker may only be invaded under very special circumstances.”); *Village of LaGrange v. McCook Cogeneration Station, L.L.C.*, No. PCB 96-41, 1995 Ill. ENV LEXIS 1118, at \*30-31 (Dec. 7, 1995) (“The Board has previously noted the wealth of case law establishing that before an inquiry can be made into the decisionmaker's mental processes when a contemporaneous formal finding exists, there must be a strong showing of bad faith or improper behavior.”); *DiMaggio*, PCB No. 89-138, 1990 Ill. ENV LEXIS 251, at \*8 (“In their adjudicatory role, the decisionmakers are entitled to protection of their internal thought processes.”); *Winnebago County Bd.*, PCB No. 88-107, 1988 Ill. ENV LEXIS 128, at \*10-11 (“It is therefore not permissible for this Board to inquire into how the administrative decisionmaker dealt with the record in deriving his or her final determination—so long as there was a fair and adequate opportunity for Rockford to present testimony and evidence into that record.”); *E & E Hauling*, 116 Ill. App. 3d at 577 (“nothing in the statute would require a detailed examination of each bit of evidence or a thorough going exposition of the County Board's mental processes.”). *DiMaggio*, PCB No. 89-138, 1989 Ill. ENV LEXIS 86, at \*13 (Like judges, the decision-makers' mental processes should be protected to uphold the sanctity of the landfill siting process. “Such an examination of a judge would be destructive of judicial responsibility. . . . Just as a judge cannot be subjected to such a scrutiny, so the integrity of the administrative process must be equally respected.”)

Nor is Fox Moraine allowed to ask any Council Member about what parts of the record he or she read or how the Member used the record. The Appellate Court and the Board have

consistently held that fundamental fairness requires only that the record be available to the decisionmaking body, and the landfill applicant is not entitled to know what the decisionmakers considered or even if they reviewed the record. *See, e.g., City of Rockford v. County of Winnebago*, 186 Ill. App. 3d 303, 313 (2<sup>nd</sup> Dist. 1989) ("the only statutory requirement concerning the decision of the county board is that its decision be in writing and specify the reason for the decision. . . . Whether the board members availed themselves of the opportunity to review the record is not an issue relevant to this case, as there is no such requirement that they do so."); *Waste Mgmt. v. Pollution Control Bd.*, 175 Ill. App. 3d 1023, 1044 (2<sup>nd</sup> Dist. 1988) (where applicant contended that the county board did not have adequate time or opportunity to consider the record before its vote, Appellate Court held "fundamental fairness in this context does not require the full county board to debate the hearing committee's recommendation so long as the record is made available for review by the entire county board. . . . [and] there is no requirement that the [county board] conduct any debate as long as they have had an opportunity to review the record prior to voting."); *Rockford v. Winnebago County Bd.*, PCB No. 88-107, 1988 Ill. ENV LEXIS 128, at \*10-11 (Nov. 17, 1988) (forbidding applicant from questioning board members about how much preparation they did for deliberation, because it is "not permissible for this Board to inquire into how the administrative decisionmaker dealt with the record in deriving his or her final determination—so long as there was a fair and adequate opportunity for Rockford to present testimony and evidence into that record."), *aff'd County of Winnebago*, 186 Ill. App. 3d 303 (2<sup>nd</sup> Dist. 1989); *Slates v. Ill. Landfills, Inc.*, PCB No. 93-106, 1998 Ill. ENV LEXIS 956, at \*40 (Sept. 23, 1993) ("[T]here is no requirement that the local decisionmaker conduct any debate as long as they have had an opportunity to review the record prior to voting.").



Without mentioning this Board's extensive precedent, Fox Moraine relies on an Illinois Supreme Court case regarding whether a deliberative process privilege exists covering intra-agency communications. *People ex rel. Birkett v. City of Chi.*, 184 Ill. 2d 521 (1998). *Birkett* does not at all address the adjudicatory roles of a county board or municipality deciding a landfill application. Fox Moraine apparently seizes on *Birkett* because the Supreme Court used the term "deliberative process privilege," albeit in an entirely different, unrelated, and irrelevant context. Fox Moraine merely cites the case, but does not even attempt to explain how *Birkett* applies here. It is also noteworthy that even though the *Birkett* decision was issued 10 years ago, it has not been cited by the Board or the Appellate Court at all in any landfill or sec. 39.2 case.

In *Birkett*, the court refused to recognize a deliberative privilege that would cover the City of Chicago's claim of privilege for "all 'deliberative' communications regarding any proposed expansion or alteration to the [O'Hare] airport layout plan, no matter how trivial or routine." *Id.* at 532-33. Fox Moraine's request, however, far differs in kind from that in *Birkett*. The discovery request in *Birkett* asked for documents and communications relating to applications for airport modifications and plans or discussions regarding future airport plans. *Id.* at 523-24. Here, the Fox Moraine has pointedly asked not for documents or communications but to examine individual Council members **about their thought processes and beliefs relating to the Council's vote**. Unlike the *Birkett* discovery requests, Fox Moraine seeks to invade the Council members' heads to find out what facts they thought were established and whether the written decision is exactly what they expected.

This distinction is critical. The Appellate Court has held, *Birkett* notwithstanding, that judicial officers are entitled to a deliberative process privilege. *Thomas v. Page*, 361 Ill. App. 3d 484, 491 (2<sup>nd</sup> Dist. 2005) (Fox Moraine does not cite *Thomas* even though the *Thomas* court's

holding is crucial to this discussion). In *Thomas*, the court distinguished judicial functions from executive functions and noted that "[i]t is well-settled that a judge may not be asked to testify as to his or her mental impressions or processes in reaching a judicial decision." *Id.* at 488. The Appellate Court also rejected the argument that recognizing or creating a privilege should be left to the legislature. *Id.* at 491.

Like judges, the Council Members were performing an adjudicative function when they voted on Fox Moraine's application, and questions into their cognitive decisionmaking should be forbidden for the same reasons that forbid evidence of a judge's mental processes. Fox Moraine's proposed questions are akin to asking one member of a three-judge panel whether he or she agrees with the entirety of the written opinion one of the three judges has authored, or even asking one member of the Board what facts he or she felt were established about the proceedings below and whether the Board's written decision properly memorializes the Board's deliberations. After all, Fox Moraine here seeks to ask about the mental processes of the Council members—what they thought, believed, and expected during and after their vote on Fox Moraine's application—and it has no case or Board decision that would support compelling a Council Member to answer such questions.<sup>2</sup>

#### **IV. CONCLUSION**

Fox Moraine asks the Board to compel individual Council members to answer questions about which facts they felt were established in the lengthy hearing process and whether the final

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<sup>2</sup> Questioning regarding a Council Member's deliberative mental processes should be barred for an additional reason: Section 40.1(a) prohibits the Board from considering "new or additional evidence in support of or in opposition to any finding, order, determination or decision of the appropriate county board or governing body of the municipality." 415 ILCS 5/40.1(a). Because it is so prohibited by the Act, the Board may not, for example, "reweigh the evidence or make new credibility determinations." *McLean County Disposal v. County of McLean*, 207 Ill. App. 3d 477, 480 (4<sup>th</sup> Dist. 1991).

written decision was what they expected. Not only are the answers to these questions irrelevant to the Board's role in this appeal, but the questions themselves seek information about the mental processes of the individual members of the adjudicative Council, a type of inquiry the Appellate Court and the Board have repeatedly rejected, consistent with Illinois law. Accordingly, the Council requests that the Hearing Officer deny Fox Moraine's Motion to Compel Answers to Deposition Questions.

Respectfully submitted,

UNITED CITY OF YORKVILLE, CITY  
COUNCIL

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

1 UNITED CITY OF YORKVILLE, ILLINOIS  
 2  
 3  
 4 SPECIAL MEETING OF  
 5 THE CITY COUNCIL  
 6  
 7 REPORT OF PROCEEDINGS had and testimony  
 8 taken at the hearing taken on May 23, 2007, at  
 9 the hour of 7:00 p.m., before Christine M.  
 10 Vitosh, C.S.R., at the Grande Reserve Elementary  
 11 School, Yorkville, Illinois.  
 12  
 13  
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1 (WHEREUPON, the  
 2 proceedings were  
 3 resumed as follows:)  
 4 MAYOR BURD: Calling the meeting to  
 5 order, would you please rise for the pledge?  
 6 (Pledge of  
 7 Allegiance)  
 8 MAYOR BURD: Roll call by the clerk,  
 9 please.  
 10 MS. PICKERING: Leslie.  
 11 ALDERMAN LESLIE: Here.  
 12 MS. PICKERING: Werderich.  
 13 ALDERMAN WERDERICH: Here.  
 14 MS. PICKERING: Golinski.  
 15 ALDERMAN GOLINSKI: Here.  
 16 MS. PICKERING: Plocher.  
 17 ALDERMAN PLOCHER: Here.  
 18 MS. PICKERING: Munns.  
 19 (No Response)  
 20 MS. PICKERING: Sutcliff.  
 21 ALDERMAN SUTCLIFF: Here.  
 22 MS. PICKERING: Besco.  
 23 ALDERMAN BESCO: Here.  
 24 MS. PICKERING: Spears.

1 PRESENT:  
 2 MAYOR VALERIE BURD,  
 3 MR. JASON LESLIE, Alderman,  
 4 MR. WALLY WERDERICH, Alderman,  
 5 MR. ARDEN "JOE" PLOCHER, Alderman,  
 6 MR. GARY GOLINSKI, Alderman,  
 7 MR. MARTY MUNNS, Alderman,  
 8 MS. ROBYN SUTCLIFF, Alderman,  
 9 MR. JOSEPH BESCO, Alderman,  
 10 MS. ROSE SPEARS, Alderman,  
 11 MR. PAUL JAMES, Alderman,  
 12 MR. JOHN CROIS, City Administrator,  
 13 MS. LISA PICKERING, City Clerk.  
 14  
 15 ALSO PRESENT:  
 16 WILDMAN, HARROLD, ALLEN & DIXON  
 17 2300 Cabot Drive, Suite 455  
 18 Lisle, Illinois 60532  
 19 (630) 955-6594  
 20 BY: MR. MICHAEL M. ROTH,  
 21 appeared on behalf of the United  
 22 City of Yorkville.  
 23  
 24

1 ALDERMAN SPEARS: Here.  
 2 MS. PICKERING: Burd.  
 3 MAYOR BURD: Here.  
 4 (Enter Alderman  
 5 Munns)  
 6 MAYOR BURD: We have a quorum.  
 7 ALDERMAN MUNNS: Here.  
 8 MAYOR BURD: Would the city attorney  
 9 please introduce this case?  
 10 MR. ROTH: This is a special meeting  
 11 of the City Council of the United City of  
 12 Yorkville, Illinois, called for the sole purpose  
 13 of consideration of an application filed by Fox  
 14 Moraine, LLC, for a landfill siting approval  
 15 pursuant to 415 Illinois Compiled Statutes  
 16 Chapter 39.2 of the City of Yorkville.  
 17 Notice of tonight's meeting has  
 18 been given as required by law. By way of  
 19 background, on December 1st of 2006, Fox Moraine,  
 20 LLC, filed an application with the City for  
 21 siting approval of a solid waste landfill upon a  
 22 443-acre parcel of property located generally at  
 23 Route 71, four miles west of the intersection of  
 24 Route 71 and 47.

1 that area a 109-foot edifice suddenly showing up  
 2 in the vicinity.  
 3           It's going to be viewed from  
 4 anywhere, and this is supposed to be the gateway  
 5 to our community. It was said over and over  
 6 again that this is the gateway, and if the  
 7 Prairie Parkway does come through, this will be  
 8 adjacent to the Prairie Parkway, and I don't -- I  
 9 don't see that as something that I think we  
 10 anticipated for our gateway.

11           And, of course, like everybody  
 12 else said, the traffic patterns, we all know what  
 13 the traffic in Yorkville is like, we -- we all  
 14 know this, this is not something that had to even  
 15 be testified to, but it was over and over, and we  
 16 know how long we have been waiting for Route 47  
 17 to be widened and we know right now, like  
 18 Alderman Spears has shared with us, that this is  
 19 a very bad situation, and it seemed like the  
 20 applicant's comments were that -- his expert's  
 21 comments were that it's that bad, so what, I  
 22 mean, there you go, it's bad and so what  
 23 difference does it make to add a few more trucks  
 24 to a bad situation.

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1 controlling interest in what's going on.  
 2           We don't know what their  
 3 financial capabilities are, if they could even  
 4 meet the criteria that they are offering to the  
 5 property owners to solve problems. We don't know  
 6 what could happen. And so that one bothers me.  
 7 There is no way that we can even analyze that  
 8 company because it has no record.

9           So those are just my thoughts  
 10 on it, and I'd like to thank the Aldermen who did  
 11 the research, and like usual, Alderman Spears,  
 12 you did a great job, so thank you very much.

13           Is there anybody else who would  
 14 like to add more thoughts tonight?

15           (No Response)

16           MAYOR BURD: Well, I would like to  
 17 move -- I'd like to ask one of the Aldermen to  
 18 move to direct our attorney to prepare a  
 19 resolution consistent with tonight's  
 20 deliberations for consideration and decision at  
 21 tomorrow night's meeting.

22           ALDERMAN WERDERICH: So moved.

23           ALDERMAN SPEARS: Second.

24           MAYOR BURD: Any discussion?

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1           I was very interested in the  
 2 creative discussion about the Criterion 8 and the  
 3 consistency with Kendall County's plan, how  
 4 they -- the applicant's experts discussed the  
 5 meaning of the word locate, but I think it's  
 6 fairly clear even before John Church testified  
 7 that we all know what locate means. They mean to  
 8 site it.

9           And I -- without getting into  
 10 that discussion about whether we agree with the  
 11 County's plan, I think all we have to do is  
 12 determine whether it's consistent with the plan  
 13 and leave it to the courts to decide if the  
 14 County has the right to make that consideration,  
 15 and I think it's very clear that as the County's  
 16 plan now as written, it does not meet that plan,  
 17 and I was -- I am very, very concerned about Fox  
 18 Valley Landfill Services, LLC, and how little we  
 19 know about it.

20           With Peoria Disposal Company  
 21 only having a 20 percent interest, no matter even  
 22 if they had a pristine service record, they would  
 23 not be able to guarantee the kind of service they  
 24 would be providing because they do not have

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1           (No response)

2           ALDERMAN WERDERICH: May I have  
 3 another 20 minutes? Just joking.

4           MAYOR BURD: Tomorrow night, yes.

5           (No Response)

6           MAYOR BURD: Okay. Roll call vote.

7           MS. PICKERING: Leslie.

8           ALDERMAN LESLIE: Aye.

9           MS. PICKERING: Golinski.

10           ALDERMAN GOLINSKI: Aye.

11           MS. PICKERING: Werderich.

12           ALDERMAN WERDERICH: Aye.

13           MS. PICKERING: Munns.

14           ALDERMAN MUNNS: Aye.

15           MS. PICKERING: Plocher.

16           ALDERMAN PLOCHER: Aye.

17           MS. PICKERING: Spears.

18           ALDERMAN SPEARS: Aye.

19           MS. PICKERING: Sutcliff.

20           ALDERMAN SUTCLIFF: Aye.

21           MS. PICKERING: Besco.

22           ALDERMAN BESCO: Aye.

23           MAYOR BURD: All right. Then we

24 will meet at the Beecher Center tomorrow night at

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1 seven o'clock to continue deliberations, and I  
 2 would entertain a motion to adjourn.  
 3 ALDERMAN LESLIE: So moved.  
 4 ALDERMAN SPEARS: Second.  
 5 MAYOR BURD: Any discussion?  
 6 (No Response)  
 7 MAYOR BURD: All in favor.  
 8 (A Chorus of Ayes)  
 9 MAYOR BURD: Anyone against? Nay?  
 10 (No Response)  
 11 MAYOR BURD: We are adjourned.  
 12 (WHEREUPON, the  
 13 proceedings were  
 14 continued to 7:00  
 15 p.m. on the 25th day  
 16 of May, 2007)

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1 In testimony whereof, I have  
 2 hereunto set my hand this *24th* day of  
 3 *May*, A.D., 2007.

4  
 5 *Christine M. Vitosh*

6 Christine M. Vitosh, CSR  
 7 CSR No. 084-002883

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1 STATE OF ILLINOIS }  
 2 COUNTY OF LASALLE } SS.

3  
 4 I, Christine M. Vitosh, a Certified  
 5 Shorthand Reporter, do hereby certify that I  
 6 reported in shorthand the proceedings had at the  
 7 hearing of the above-entitled cause and that the  
 8 foregoing Report of Proceedings, is a true,  
 9 correct, and complete transcript of my shorthand  
 10 notes so taken at the time and place aforesaid.

11 I further certify that I am neither  
 12 counsel for nor related to counsel for any of the  
 13 parties to this suit, nor am I in any way related  
 14 to any of the parties to this suit, nor am I in  
 15 any way interested in the outcome thereof.

16 I further certify that my  
 17 certificate annexed hereto applies to the  
 18 original transcript and copies thereof, signed  
 19 and certified under my hand only. I assume no  
 20 responsibility for the accuracy of any reproduced  
 21 copies not made under my control or direction.

**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 Answers to Deposition Questions** 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.