

**Electronic Filing - Received, Clerk's Office, October 7, 2008**

**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 October 7, 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 Reply in Support of Its Motion in Limine # 2**, 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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**BEFORE THE  
ILLINOIS POLLUTION CONTROL BOARD**

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

**YORKVILLE'S REPLY IN SUPPORT OF ITS MOTION *IN LIMINE* NO. 2**

This Board has repeatedly and unequivocally held that, when a local siting authority hears testimony, considers evidence and renders a decision on an application for local siting approval, it sits as an adjudicatory body, not a legislative one. Like judges, local siting authorities are entitled to protect their deliberative processes from discovery on appeal. Without even addressing this Board's many decisions on this issue, Fox Moraine LCC ("Fox Moraine") asks this Board to reverse itself. This Board should decline Fox Moraine's request.

**I. THE DELIBERATIVE PROCESS PRIVILEGE PROTECTS THE YORKVILLE CITY COUNCIL MEMBERS' MENTAL PROCESSES.**

The Appellate Court and the Board have held consistently and without exception that City Council members sit in an adjudicatory capacity when ruling on a local siting application. *Southwest Energy Corp. v. Pollution Control Bd.*, 275 Ill. App. 3d 84, 90-91 (4<sup>th</sup> Dist. 1995); *Land and Lakes Co. v. Pollution Control Bd.*, 245 Ill. App. 3d 631, 638 (3<sup>rd</sup> Dist. 1993); *Waste Mgmt. of Ill., Inc. v. Kankakee City Bd.*, PCB No. 04-186, 2008 Ill. ENV. LEXIS 14, at \*67-\*68 (Jan. 24, 2008).

Just as the mental processes of judge cannot be subjected to cross-examination during discovery or trial, so the integrity of the administrative process must be equally respected. *DiMaggio v. Solid Waste Agency of Northern Cook County*, PCB 89-138, 1989 Ill. ENV. LEXIS 86 at \*13 (Oct. 27, 1989) (citations omitted); *see also 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.”)

Fox Moraine ignores the precedent this Board has firmly established and repeatedly affirmed over the past decade and relies instead on *People ex Rel. Birkett v. City of Chicago*, 184 Ill. 2d 521 (1998). *Birkett* examined whether a legislative privilege existed, not a judicial one. As such, it has no application here. Instead, *Thomas v. Page*, 361 Ill. App. 3d 484 (2<sup>nd</sup> Dist. 2005) is on point and supplies the relevant law. In *Thomas*, the Second District affirmed that a judicial deliberative process privilege does exist in Illinois.

The existence of a deliberative process privilege in the local siting context is well-settled and is not controversial. Just as disappointed litigants cannot cross-examine judges on appeal, disappointed applicants cannot cross-examine members of the local siting authority before this Board.

**II. NO EXCEPTIONS TO THE DELIBERATIVE PROCESS PRIVILEGE EXIST IN THIS CASE.**

Under the law as established by the Appellate Court and the Board, the Yorkville City Council members are presumed to have acted impartially. This presumption cannot be overcome absent a strong showing of bias, prejudice or impartiality. *Waste Mgmt.*, PCB No. 04-186, 2008 Ill. ENV LEXIS 14, at \*57. (“The presumption of impartiality of the actions of a public

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official will be overcome only where it is shown by clear and convincing evidence that the official has an unalterably closed mind in certain matters.”); *West Suburban Recycling & Energy Center, L.P.*, PCB Nos. 95-119, 95-125, 1996 Ill. ENV LEXIS 718, at \*14 (“In fact, before an inquiry into an administrator’s mental processes can begin, if contemporaneous formal findings exist, there must be a strong showing of bad faith or improper behavior.”); *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 . . . 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.”) Thus, without first showing strong evidence of bias or prejudice, Fox Moraine may not ask whether the Council members reviewed the record, understood the Council’s quasi-judicial role in the proceedings, what evidence they reviewed, or why they voted in a particular way. *City of Rockford v. County of Winnebago*, 186 Ill. App. 3d 303, 313 (2<sup>nd</sup> Dist. 1989).

In this case, the Yorkville City Council members deliberated in public on two nights, before they voted. They gave the reasons for their decisions, as is required under the Environmental Protection Act. 415 ILCS 5/39.2(e). Further, the Council Members’ statements demonstrate unequivocally that their decisions were based on the evidence introduced at the hearing, rather than on any pre-existing bias or prejudice. (*See, e.g.*, Tr. of May 24, 2007 Hearing: 7:1-18, attached as Exh. A; Spears Dep. 31:10-16, 93:19-20, attached as Exh. B.)

Fox Moraine asserts that issues surrounding the April 2007 election created bias, but the precise nature of Fox Moraine’s argument is difficult to understand. Fox Moraine appears to claim that the April 2007 elections were hotly contested and the then-pending landfill siting proceeding was an issue of intense importance to the voters, which atmosphere somehow

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intimidated the Council Members, causing them to prejudge the application or otherwise become biased against Fox Moraine.

But it was Fox Moraine, not the City Council, who created the controversy. Fox Moraine chose to file its landfill siting application four months before municipal elections. As is their right under the Constitution and laws of the United States, the voters of Yorkville raised their voices both in support of and against the landfill. They wrote letters to the editor and put up signs. If there was a “hostile atmosphere” that aroused feelings against Fox Moraine and the landfill, it could have been avoided if Fox Moraine had filed its application ahead of the election campaign, as one of Fox Moraine’s principals stated it could have done. Or Fox Moraine could have waited until after the election to file its application. (Hamman Dep. 8:20-10:15, attached as Exhibit C.)

The City Council members did not create and did not exacerbate the public outcry. They were each given a card with a pre-printed statement explaining that they could not discuss the subject of the landfill with voters. (Exh. B, Spears Dep. 21:1-4, 50:2-11.) They also testified under oath that they did not run on an anti-landfill ticket. (Exh. B, Spears Dep. 31:7-13; Burd Dep. 9:4-22, attached as Exhibit D; Plocher Dep. 29:3-23, attached as Exhibit E.) The only statements attributed to any of the City Council members regarding the landfill are those appearing in the *Aurora Beacon News* on April 15, 2007. The statements themselves are innocuous and hypothetical. Moreover, they are expressly protected by the Illinois Pollution Control Act and the United States Constitution. 415 ILCS 5/39.2(d); U.S. Const. Amend. I; *see also* 5 U.S.C. § 7223.

The fact that the landfill application may have been an issue in the election is Fox Moraine’s fault, not the City Council’s. The City Council members were the victims of the

election controversy, not its progenitors. The few constitutionally-protected statements made by City Council members do not raise to the level of a "strong showing of prejudgment or bias."

**III. THE CITY COUNCIL DID NOT WAIVE ITS DELIBERATIVE PROCESS PRIVILEGE.**

Without citing any authority, Fox Moraine claims that, by citing the grounds for their votes on the record, the City Council members waived their deliberative process privilege. This argument is without merit for several reasons.

First, the Environmental Protection Act requires local siting authorities to state the reasons for their decisions. For Fox Moraine to suggest that following the law amounts to a waiver of privilege is inane.

Further, the reasons the City Council gave are proof of the absence of prejudgment or bias, and the deliberative process privilege can only be invaded by a strong showing of bias. Here again, the dots do not connect.

Finally, it is not unusual for a judge to give reasons supporting a particular decision. Courts issue written opinions every day. Judges announce the reasons for their decisions from the bench. No one has ever seriously suggested that, by explaining his or her reasoning, a judge waives the deliberative process privilege. The same is true for a City Council sitting in an adjudicatory capacity.

**IV. THE CITY COUNCIL MEMBERS DID NOT IGNORE THE RECORD.**

In an apparent attempt to mislead the Hearing Officer and the Board, Fox Moraine claims that the City Council did not review the record before voting. The City Council members, even those were elected on April 17, 2007, repeatedly reminded Fox Moraine that they sat through approximately 140 hours of testimony and reviewed a mountain of exhibits. (Exh. F at 20:5-7, 25:22-26:2, 98:23-99:1, 101:11-20; Exh. A at 30:24-31:2.) As the City Council members

participated in creating the record, they did not have to re-review it in order to render an impartial decision, nor were they required to. (“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.”); *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 decision maker 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 (“[N]othing 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.”).

**V. CONCLUSION**

The Board should grant Yorkville’s Motion *in Limine* No. 2. The Appellate Court and the Board have repeatedly held that a local siting authority sits in an adjudicatory capacity. As such, its members’ mental processes are protected by the judicial deliberative process privilege. Fox Moraine has failed to make a strong showing that City Council members were biased against the siting application or that they prejudged its outcome. Moreover, Council Members’ statements of reasons for their decisions were in accordance with the Environmental Protection

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Act. Those statements made clear that their decisions were based on an extensive record of testimony and exhibits. Thus, Council Members' mental processes are fully privileged.

Respectfully submitted,

**THE UNITED CITY OF YORKVILLE**

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

Dated: October 7, 2008

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**EXHIBIT A**

UNITED CITY OF YORKVILLE, ILLINOIS

SPECIAL MEETING OF THE  
CITY COUNCIL

REPORT OF PROCEEDINGS taken at the  
meeting of the City Council for the United City of  
Yorkville, taken on May 24, 2007, at the hour of  
7:00 p.m., before Lynette J. Neal, C.S.R., at the  
Beecher Center, Yorkville, Illinois.



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1 somebody else who is not using their 20?

2 MAYOR BURD: No.

3 MR. GOLINSKI: I only have about six or  
4 seven minutes, so if she allows it, I will give  
07:09PM 5 you the rest of mine.

6 MAYOR BURD: No.

7 MR. GOLINSKI: Since I didn't get the  
8 opportunity last night with all the newly  
9 presented information, I want to take this  
07:09PM 10 opportunity to say a couple of words regarding my  
11 thoughts regarding this application.

12 First off, since I have the  
13 opportunity, I would like to thank all of the  
14 residents of our community for their involvement  
07:10PM 15 in this process. It has been very time-consuming  
16 and difficult on all of us. We have spent many  
17 hours away from our families and the things that  
18 we enjoy doing to deal with this issue.

19 For me this has never been a city  
07:10PM 20 versus county issue. We are all members of the  
21 same community. Just for the record, I would like  
22 to preface my vote with the fact that I have  
23 reviewed the application in its entirety. I have  
24 reviewed all the submitted evidence, and I have

1 sat through every minute of sworn testimony. I  
2 have kept an open mind throughout these  
3 proceedings and there is no doubt in my mind that  
4 I have dealt with this process in fundamental  
07:10PM 5 fairness to all parties involved.

6 The only reason I'm saying this is  
7 because no matter the outcome of our vote, I know  
8 the decision will be appealed. Whatever governing  
9 body reviews these proceedings, whether it be the  
07:10PM 10 Pollution Control Board, the Appellate Court, or  
11 even the Illinois Supreme Court, I want them to  
12 know that my decisions were based solely on the  
13 evidence presented in the application and sworn  
14 testimony presented in these hearings. My  
07:11PM 15 decisions have been made solely on the facts. I  
16 have never showed a predetermined bias for or  
17 against the applicant. The rationale behind my  
18 vote has been well thought out and well  
19 researched.

07:11PM 20 As hard as this process has been to  
21 keep my opinion to myself, I have never done  
22 anything through my words or actions to jeopardize  
23 my vote. Whether or not this means anything in  
24 this hearing process is yet to be seen. With all

1 two additional conditions. The first one being  
2 that the height of the landfill be reduced to 50  
3 feet, and the second one being that the owner and  
4 the operator of the landfill be completely and  
07:39PM 5 accurately identified pursuant to Criteria 9.  
6 That would be all of them. That's it.

7 MAYOR BURD: Okay.

8 MR. PLOCHER: I also have two additional  
9 that I would like to see on there. I would like  
07:39PM 10 to see a \$10 million a year flat fee instead of  
11 tipping fees, and also I would like to see all  
12 monitoring wells installed before opening the  
13 operation, considering at 25 years before all of  
14 them will end I will be a senior citizen.

07:40PM 15 MAYOR BURD: Okay. Who would like to  
16 speak next? Alderman Munns?

17 MR. MUNNS: I have one additional and I  
18 will read the things now so we don't have to do it  
19 later.

07:40PM 20 Yes. As far as Criterion 2, I  
21 notice a couple of places in the resolution, the  
22 proposed resolutions, about not doing this until  
23 the Prairie Parkway and Eldemain Road bridges  
24 going over -- over Eldemain Road over the river.

1 I would like to put a condition that, you know,  
2 before truck traffic goes down Eldemain and  
3 Route 34 between Cannonball and Eldemain, that --  
4 if there is any other better ways to go, because  
07:40PM 5 with the Menards truck traffic there is just way  
6 too much truck traffic going through that  
7 intersection already.

8 I have a quick little statement.  
9 Again, this isn't new information about the  
07:41PM 10 criterion. This is about the whole process. The  
11 landfill siting process composes a very complex  
12 situation due to its multi-faceted character.  
13 Landfill siting permitting and appropriateness are  
14 the most contentious part of the solid waste  
07:41PM 15 problem in our country today. The procedure of  
16 the siting process must therefore include  
17 qualified scientists coming from different fields  
18 such as geology, engineering, planners, etcetera.  
19 All evidence from this field must be compiled and  
07:41PM 20 evaluated in order to make a proper decision and  
21 that's what they are asking us to do.

22 Many communities have faced extreme  
23 political conflicts centered on who should make  
24 the decision. It is widely accepted that in every

1 decision-making process the extracted results are  
2 characterized by the stakeholders' objectivity.

3           The real question is who should be  
4 stakeholders in Kendall County. The most common  
07:41PM 5 type of siting process is to decide, announce, and  
6 defend a model which hasn't been accepted easily  
7 by interested parties and local citizens have  
8 demanded to be included in the process to have a  
9 more comprehensive strategy. And, after all, we  
07:42PM 10 are all citizens of Yorkville and have the same  
11 vested interest to site it or not.

12           The entire process is really unfair  
13 to counties and municipalities. We are, for the  
14 most part, average citizens with expertise in  
07:42PM 15 other areas than geology and traffic. Ask me  
16 about my main business or the sports I officiate  
17 and I will give you definitive opinions, very  
18 confident and correct opinions, and argue them  
19 with anybody.

07:42PM 20           I believe right is right and wrong  
21 is wrong, but in this case I'm just making the  
22 best decision with what I have to work with, which  
23 is a layman's knowledge of some very technical  
24 subject matter. After reading thousands of pages

1 of dry, boring material and listening to hundreds  
2 of hours of testimony, we must make a decision  
3 that will effect many people today and in the  
4 future. If we don't do the process correctly,  
07:42PM 5 IEPA or other entities can trump us and allow  
6 these many hours of agonizing over this issue to  
7 be a moot point.

8 It seemed ludicrous too that the  
9 person with the most experience in landfill  
07:42PM 10 hearings, over 30 sitings as testified, isn't here  
11 to give his opinion orally. We should have been  
12 afforded the same privilege but written statements  
13 do not hold the same emotion as speaking, and I  
14 would have liked to hear it coming from the  
07:43PM 15 people, not just reading a piece of paper where  
16 you can't read in an emotion.

17 We have varying opinions from  
18 several high-priced attorneys who are being paid  
19 by the petitioner, and I don't think that makes  
07:43PM 20 sense, which the whole process really didn't make  
21 sense so I guess that shouldn't surprise me.

22 And my final thought is that after  
23 this is done, hopefully we can all act civilly  
24 toward one another, because I have no hard



**EXHIBIT B**

00001

1                   BEFORE THE  
2                   ILLINOIS POLLUTION CONTROL BOARD

3                   FOX MORAINE, LLC,            )  
4                                    )  
5                   Petitioner,        )  
6                                    )  
7                   vs.                    ) No. PCB 07-146  
8                                    )  
9                   UNITED CITY OF YORKVILLE,    )  
10                   CITY COUNCIL,                )  
11                                    )  
12                   Respondent.        )

13                   DISCOVERY DEPOSITION OF  
14                   ROSE ANN SPEARS

15                   June 4, 2008  
16                   5:30 P.M.

17                   Called as a witness by the Petitioner  
18                   herein, pursuant to the provisions of the Code of  
19                   Civil Procedure of the State of Illinois and the  
20                   Rules of the Supreme Court thereof pertaining to the  
21                   taking of depositions for the purpose of discovery,  
22                   before CHRISTINA M. CULOTTA, C.S.R., License  
23                   #084-003299, qualified and commissioned for the  
24                   State of Illinois, taken at 800 Game Farm Road,  
25                   Yorkville, Illinois.

00020

1 other documents that would be responsive to the  
2 rider?

3 A That's correct.

4 Q Do you know whether there was action taken  
5 by the City Council to retain the Wildman firm  
6 before April 27, 2007?

7 A I really can't recall.

8 Q All right. The, the invoice from the  
9 Wildman firm indicates that on April 28th there was  
10 some work performed to determine what may be  
11 considered improper contacts.

12 What is your understanding of  
13 improper contacts?

14 MR. HOPP: I am going to object to the extent  
15 that that would impinge on attorney/client  
16 privilege; but to the extent that you can answer  
17 that question without revealing any attorney/client  
18 privilege, go ahead and answer the question.

19 THE WITNESS: Can you repeat your question?

20 BY MR. MUELLER:

21 Q What is your understanding of the term of  
22 improper contacts in a landfill siting context?

23 A Improper contacts?

24 Q Yes.

00021

1 A Mr. Price gave us a little card and  
2 indicated that we could not speak about the landfill  
3 to basically anybody imaginable, including family  
4 members.

5 Q Did you ever give any direction to the  
6 Wildman firm or any of its members with regard to  
7 the type of legal work they should be pursuing as  
8 evidenced in this invoice?

9 A No. I did not give any direction.

10 Q All right. Did you attend any meetings  
11 ever at the Wildman firm?

12 A No. I did not.

13 Q And were you the person that chose them  
14 specifically to be the City's legal representative?

15 A I would just like to clarify that any  
16 decision made based on the City Council is a  
17 majority of eight elected officials. So did I  
18 personally select them? I could not personally  
19 select anything, any firm. I cannot personally make  
20 any ruling on anything. It's collectively. It's  
21 the majority of the Council.

22 Q All right. And, Rose, our problem is that  
23 we have searched the minutes of the City Council and  
24 cannot find any motions ever retaining the Wildman

00031

1 A Oh, no. They did not.

2 Q Did anyone from FOGY, or anyone else for  
3 that matter, ever indicate to you that their support  
4 or non-support in your reelection campaign was  
5 contingent upon your landfill position?

6 A No.

7 Q Would it be fair to say that you ran for  
8 reelection on an anti-landfill platform?

9 A Oh, certainly not.

10 Q Did you in your campaign ever express an  
11 opinion as to whether or not Yorkville should have a  
12 landfill?

13 A No. I did not.

14 Q Were you endorsed by the FOGY group to  
15 your knowledge?

16 A Not to my knowledge.

17 Q Did you have a web site during your  
18 reelection campaign?

19 A No. I did not.

20 Q Did you have any MySpace presence or any  
21 other kind of --

22 A No. I did not.

23 Q -- Internet presence?

24 A No.

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1 A No. I do not.

2 Q Did you receive any personal  
3 communications, meaning face-to-face, from anyone  
4 urging you to vote no or expressing opposition?

5 A I believe we all did; and that's why we  
6 had that preprinted card that we could, that  
7 Mr. Price gave to each one of us indicating -- I  
8 mean, people did, even at the hearings came up to us  
9 and would start discussing it and we would just give  
10 them the card or repeat what was on the card, that  
11 we were not allowed to disclose it, or discuss it.

12 Q What was the total number of e-mails that  
13 you believe you received from the landfill  
14 opponents?

15 A I couldn't even begin to guess. I'm  
16 sorry.

17 Q Would it be more than 100?

18 A That would be assuming and guessing. I --

19 Q Would it be more than ten?

20 A Again, that's an assumption at this time.  
21 I really don't know.

22 Q So you don't know whether it was one or a  
23 thousand?

24 A That's correct.

00093

1 Q Did you know any names?

2 A There is a George Gilson that I believe

3 was very strong because he had most of the

4 information and he would speak the loudest and carry

5 the biggest sign.

6 Q And did you see Mr. Gilson speak with any

7 City Council member outside of the hearing?

8 A No. I did not.

9 Q Are you aware that Mr. Gilson spoke to

10 City Council members outside of the hearing?

11 A No. I am not.

12 Q Which City Council members ran on an

13 anti-landfill platform?

14 A I don't believe any of them did.

15 Q Upon what do you base that?

16 A Pardon me?

17 Q Upon what do you base that belief?

18 A On the information that Mr. Price gave us

19 that we were supposed to be non-bias; and I believe

20 most, or all, were non-bias.

21 Q Were you -- well, strike that.

22 Was there any discussions that you

23 were privy to about filibustering during the

24 hearings in order to effectuate the change in the

**EXHIBIT C**



<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p style="text-align: center;">BEFORE THE ILLINOIS POLLUTION CONTROL BOARD</p> <p>FOX MORaine, LLC, ) Petitioner, ) vs. ) No. PCB 07 146 UNITED CITY OF YORKVILLE, CITY ) COUNCIL, ) Respondent. )</p> <p>The discovery deposition of DON HAMMAN, taken in the above-entitled cause, before JENNIFER CAMPBELL, a notary public of Kendall County, Illinois, on the 30th day of September, 2008 at 2:30 p.m., at 800 Game Farm Road, Yorkville, Illinois, pursuant to Notice.</p> <p>Reported by: Jennifer Campbell, CSR, RPR License No.: 084-003282</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p style="text-align: center;">INDEX</p> <p>WITNESS EXAMINATION</p> <p>DON HAMMAN</p> <p>By Mr. Dombrowski P. 4</p> <p>By Mr. Blazer P. 42</p> <p style="text-align: center;">EXHIBITS</p> <p>NUMBER MARKED FOR ID</p> <p>Yorkville Deposition Exhibit</p> <p>No. 1 - 2 P. 5</p> <p>(Retained by Mr. Dombrowski.)</p>
1	3
<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p>APPEARANCES:</p> <p>MUELLER ANDERSON, P.C., by</p> <p>MR. GEORGE MUELLER</p> <p>609 Etna Road</p> <p>Ottawa, Illinois 61350</p> <p>(815) 431-1500</p> <p>Representing the Petitioner;</p> <p>WILDMAN HARROLD ALLEN &amp; DIXON, LLP, by</p> <p>MR. LEO P. DOMBROWSKI</p> <p>225 West Wacker Drive</p> <p>Chicago, Illinois 60606</p> <p>(312) 201-2562</p> <p>Representing the Respondent;</p> <p>JEEP &amp; BLAZER, by</p> <p>MR. MICHAEL S. BLAZER</p> <p>24 North Hillside Avenue</p> <p>Suite A</p> <p>Hillside, Illinois 60162</p> <p>Representing the Kendall County.</p> <p>ALSO PRESENT:</p> <p>Mr. Charles J. Murphy, Fox Valley Consulting Services, Inc.</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p>(Witness duly sworn.)</p> <p>MR. DOMBROWSKI: Mr. Hamman, my name is Leo Dombrowski. I represent the City of Yorkville in this landfill appeal. I'm going to be asking you some questions today. You understand that we have a court reporter here to record everything that you and I say?</p> <p>THE WITNESS: I do.</p> <p>MR. DOMBROWSKI: And that if you'd let me finish my question before you start your answer, and I won't step on your answer, so that we get a clear record. All right?</p> <p>THE WITNESS: Okay.</p> <p>DON HAMMAN,</p> <p>called as a witness herein, having been first duly sworn, was examined and testified as follows:</p> <p style="text-align: center;">EXAMINATION</p> <p>BY MR. DOMBROWSKI:</p> <p>Q. Are you on any drugs or medications or anything that you think might interfere with your ability to answer my questions today?</p> <p>A. No.</p> <p>Q. Let me show you what we have marked as Yorkville Deposition Exhibit No. 6.</p>
2	4

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1 And one other thing, if there's a question  
2 that you don't understand, please ask me to  
3 rephrase it, otherwise, I'll assume you have  
4 understood the question. Fair enough?  
5 A. Um-hum.  
6 Q. And you'll also have to answer out loud.  
7 Mr. Hamman?  
8 A. Yes.  
9 Q. You'll have to answer out loud so --  
10 A. Repeat the question.  
11 Q. If you don't understand a question I pose  
12 to you, please let me know, I'll rephrase it,  
13 otherwise, I'll assume that you've understood the  
14 question. Fair enough?  
15 A. Yes.  
16 Q. Have you seen this exhibit before?  
17 A. No.  
18 Q. This is the notice of your deposition  
19 today. You say you have not seen this before. No  
20 one gave this to you?  
21 A. Not to my recollection.  
22 Q. Did you bring any documents with you  
23 today?  
24 A. No, I did not.

1 Q. Is it fair for me to assume that you have  
2 no additional documents to produce in this case  
3 other than what Fox Moraine has already given us?  
4 A. That is correct.  
5 Q. And are you represented by counsel today?  
6 A. Yes.  
7 Q. And that is Mr. Mueller here?  
8 A. That's correct.  
9 Q. What did you do to prepare for today's  
10 deposition?  
11 A. Drove here.  
12 Q. Other than that?  
13 A. That's it.  
14 Q. Did you speak with Mr. Mueller at all  
15 about today's deposition?  
16 A. I did not.  
17 Q. Did you look at any documents?  
18 A. No, I did not.  
19 Q. Where do you live, sir?  
20 A. 13351 B Faxon Road, Plano, Illinois 60545.  
21 Q. And what's your relationship to Fox  
22 Moraine, LLC?  
23 A. I'm one of the owners.  
24 Q. Are you the main owner of the LLC?

1 A. My family, yes.  
2 Q. So you mean not just you, but other people  
3 as well?  
4 A. My wife and my sons.  
5 Q. Are you the managing member of the LLC?  
6 A. Yes.  
7 Q. And what are your roles and duties as the  
8 managing member of the LLC?  
9 A. My role was to procure a management team.  
10 That's the extent of it.  
11 Q. Is it fair to say that you're the main guy  
12 at Fox Moraine, LLC?  
13 A. One of the main guys.  
14 Q. Who are the other main guys?  
15 A. Lee Brandsma and John Garrity. They're  
16 49-percent owners.  
17 Q. And you own 51 percent?  
18 A. Correct. My family.  
19 Q. You with your family you say own  
20 51 percent?  
21 A. Um-hum.  
22 Q. That's a yes?  
23 A. Yes.  
24 Q. How did you decide to submit the

1 application to the City of Yorkville to site the  
2 proposed landfill?  
3 MR. MUELLER: I'm going to object to the form  
4 of the question. Pretty vague.  
5 What do you mean by how did you decide?  
6 BY MR. DOMBROWSKI:  
7 Q. All right. Fair enough.  
8 At some point, you decided to submit an  
9 application to the City of Yorkville for the  
10 landfill; correct?  
11 A. Yes.  
12 Q. And when did you make that decision?  
13 A. Sometime after we decided to go forward  
14 with the -- a landfill.  
15 Q. And when was that, approximately?  
16 A. Maybe September, October. I don't recall  
17 the exact date.  
18 Q. Of 2006?  
19 A. Yes.  
20 Q. Now, when you filed the application on  
21 December 1, 2006, did you know that the City of  
22 Yorkville would be holding elections in April 2007?  
23 A. Yes.  
24 Q. Why did you decide to file the application

1 in December with elections four months or so in the  
2 offing?  
3 A. I have no idea why I have a managing  
4 partner group that chose to go forward. I don't  
5 micromanage my projects.  
6 Q. But you were under no deadline or  
7 anything, I understand, that made you file it by  
8 December 1st, '06; correct?  
9 A. What do you mean a deadline?  
10 Q. Any legal deadline?  
11 A. Not to my knowledge.  
12 Q. So you could have filed the application  
13 before December 2006; correct?  
14 A. I'm not aware of the environmental laws.  
15 Q. I'm saying, apart from any environmental  
16 laws, you could have filed the application with the  
17 City before December of -- before December of 2006;  
18 correct?  
19 A. I'm not sure.  
20 Q. What would have prevented you from filing  
21 it any earlier, if anything?  
22 A. Don't know.  
23 Q. So as you sit here, nothing that you know  
24 of that would have prevented Fox Moraine, LLC from

9

1 filing its landfill application earlier than  
2 December of 2006; correct?  
3 A. Repeat the question.  
4 MR. DOMBROWSKI: Read that back if you would,  
5 please.  
6 (Record read as requested.)  
7 MR. MUELLER: If you know.  
8 THE WITNESS: I don't know.  
9 BY MR. DOMBROWSKI:  
10 Q. Nothing that you know of; correct?  
11 A. Not that I know.  
12 Q. Anything that would have prevented Fox  
13 Moraine, LLC from filing the application later than  
14 December 2006?  
15 A. Nothing that I know of.  
16 Q. Did you assist in preparing Fox Moraine's  
17 interrogatory answers?  
18 A. No, I did not.  
19 Q. Did you assist in preparing Fox Moraine's  
20 responses to the document requests?  
21 A. No, I did not.  
22 Q. Were they ever shown to you?  
23 A. No.  
24 Q. You've never read them?

10

1 A. I have never read them.  
2 I have complete faith in my management  
3 team.  
4 Q. Are you aware, Mr. Hamman, that part of  
5 this landfill appeal -- strike that.  
6 In this landfill appeal, you're aware that  
7 Fox Moraine is claiming that the City Council was  
8 biased against it. You understand that?  
9 A. Repeat the question again.  
10 MR. DOMBROWSKI: Read that back, please.  
11 (Record read as requested.)  
12 THE WITNESS: Yes, I do.  
13 BY MR. DOMBROWSKI:  
14 Q. And who on the City Council are you  
15 claiming was biased against Fox Moraine?  
16 A. Valerie Burd, Rose Spears.  
17 Q. Anyone else?  
18 A. No.  
19 Q. You're not claiming that Mr. Werderich was  
20 biased?  
21 MR. MUELLER: Are you asking for his personal  
22 knowledge or personal claims? Because, in that  
23 case, they're irrelevant.  
24 MR. DOMBROWSKI: I'm asking him as a

11

1 representative of Fox Moraine.  
2 MR. MUELLER: He's already testified that as a  
3 representative of Fox Moraine he doesn't  
4 micromanage and delegates those calls to his  
5 management team. You're welcome to ask him about  
6 his personal knowledge or beliefs.  
7 THE WITNESS: Could I ask a question?  
8 MR. DOMBROWSKI: Sure.  
9 MR. MUELLER: Sure.  
10 THE WITNESS: When you said Wally Werderich,  
11 are you talking about the newly board or the old  
12 board?  
13 BY MR. DOMBROWSKI:  
14 Q. I'm talking about the eight aldermen who  
15 voted on the application in May 2007.  
16 A. Well, in that case, Mr. Wally Werderich,  
17 he was biased as well.  
18 Q. All right. Let me show you what we've  
19 marked as Deposition Exhibit No. 7, which is Fox  
20 Moraine's second amended petition for review, and  
21 attached to that is the City's resolution denying  
22 the landfill application which has a list of the  
23 aldermen who voted. Do you see that there?  
24 A. Yes.

12

1 Q. All right. So you've mentioned three of  
2 the nine people?  
3 A. Well, in looking at this, it refreshes my  
4 memory. Robyn Sutcliff, Wally Werderich, Joe  
5 Plocher, as I recall there was a news article two  
6 or three days prior to their -- the election, and  
7 both of them based the landfill as part of their  
8 election platform, they were against it. I believe  
9 it was in the Aurora Beacon News, if I recall  
10 correctly.  
11 Q. And you saw that article when it appeared  
12 the Sunday before the elections?  
13 A. We get the Beacon News delivered daily,  
14 yes.  
15 Q. Okay. So you would have read that article  
16 that day?  
17 A. Oh, most definitely.  
18 Q. Did you tell anyone on your management  
19 team or landfill team what you thought of the  
20 article?  
21 A. I would have probably called, but I don't  
22 recall if I did or not. Every time there was a  
23 news article in either the Aurora Beacon News, I  
24 would call Charles Murphy or Jim Burnham and tell

1 them about these articles. I don't recall if I did  
2 on that particular one, because they don't get the  
3 subscription, the daily one, like I do.  
4 Q. You recall calling either Mr. Murphy or  
5 Burnham about this April 15th article?  
6 A. I would have alerted them to it.  
7 Q. And what would you have told them?  
8 A. Take a look at this, what their platform  
9 is. It was anti-landfill.  
10 Q. And you say that you also called them  
11 regarding other articles that -- in which you  
12 thought indicated some bias by the City against Fox  
13 Moraine?  
14 A. Yes.  
15 Q. Can you recall how many other articles  
16 there would have been?  
17 A. There would have been letters to the city  
18 editor, et cetera, you know, by the various people,  
19 um-hum.  
20 Q. Anyone else on that list who you claim was  
21 biased against the City?  
22 A. Just those four.  
23 Q. Okay. Well, you mentioned five, Burd,  
24 Spears, Werderich, Sutcliff, and Plocher?

1 A. Burd is not on here.  
2 Q. Well, she signed it?  
3 A. Well, but you pointed to this. She's not  
4 there.  
5 Q. If I misspoke or if I didn't mention it, I  
6 misspoke. I meant to say the eight aldermen plus  
7 the mayor.  
8 A. Okay. It would be the mayor as well.  
9 Q. All right. When did you first think that  
10 Mr. Werderich was biased against Fox Moraine?  
11 A. In seeing him around town, at functions,  
12 he had the no-landfill buttons on him.  
13 Q. And when did you see him wearing  
14 no-landfill buttons?  
15 A. At the meetings that I attended, the  
16 hearings. I attended some of the hearings at the  
17 high school. He had the buttons on.  
18 Q. Now, were these the annexation hearings  
19 you're talking about?  
20 A. No. No-landfill.  
21 Q. So these were the landfill hearings that  
22 took place in March and April of 2007?  
23 A. Yes.  
24 Q. Something else that indicated to you

1 Mr. Werderich was biased against Fox Moraine?  
2 A. That's it.  
3 Q. So when you saw him wearing these buttons  
4 in March and April of 2007, I assume you shared  
5 that with your landfill team?  
6 A. No. Everybody could see it. I didn't  
7 share it with anybody.  
8 Q. Well, did you point out to Mr. Murphy or  
9 Mr. Burnham or anyone else that Mr. Werderich was  
10 wearing these buttons?  
11 A. I did not.  
12 Q. But you say you, yourself, certainly were  
13 of the belief in March and April of 2007 that  
14 Mr. Werderich was biased against the landfill;  
15 correct?  
16 A. Repeat the question.  
17 MR. DOMBROWSKI: Read that back, if you would,  
18 please.  
19 (Record read as requested.)  
20 THE WITNESS: Yes.  
21 BY MR. DOMBROWSKI:  
22 Q. How about Robyn Sutcliff, why do you say  
23 she was biased against the landfill?  
24 A. She was wearing the buttons as well.

**EXHIBIT D**

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BEFORE THE ILLINOIS  
POLLUTION CONTROL BOARD

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5 FOX MORaine, LLC, )

)

6 Petitioner, )

vs. ) PCB No. 07-146

7 )

UNITED CITY OF YORKVILLE, )

8 CITY COUNCIL, )

)

9 Respondent. )

10

11 Discovery deposition of VALERIE BURD, called as

12 a witness herein, pursuant to the applicable

13 provisions of the Code of Civil Procedure of the

14 State of Illinois and the rules of the Supreme

15 Court thereof, before Belinda A. Harr, CSR No.

16 84-003215, taken on June 18, 2008, at 1:30 p.m. at

17 800 Game Farm Road, Yorkville, Illinois.

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1 any landfill should be sited by the City of

2 Yorkville?

3 A. No, I did not.

4 Q. All right. Is it fair to

5 characterize one of your campaign platforms in the

6 campaign for mayor as having been an anti-landfill

7 platform?

8 A. No, it is not fair.

9 Q. You do not believe that you ran as

10 an anti-landfill candidate?

11 A. I did not run as an anti-landfill

12 candidate.

13 Q. Was the City's position with respect

14 to a landfill in your opinion an issue in your

15 campaign against Art Prochaska?

16 A. The City had no position.

17 Q. Well, your position versus Mayor

18 Prochaska's position. Do you believe that the

19 siting of a landfill was an issue in that

20 campaign?

21 A. No. We -- I did not discuss it as

22 an issue.

23 Q. Did you form a campaign committee

**EXHIBIT E**



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1

BEFORE THE ILLINOIS  
POLLUTION CONTROL BOARD

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5 FOX MORaine, LLC, )

)

6 Petitioner, )

vs. ) PCB No. 07-146

7 )

UNITED CITY OF YORKVILLE, )

8 CITY COUNCIL, )

)

9 Respondent. )

10

11 Discovery deposition of ARDEN JOSEPH PLOCHER,

12 called as a witness herein, pursuant to the

13 applicable provisions of the Code of Civil

14 Procedure of the State of Illinois and the rules

15 of the Supreme Court thereof, before Belinda A.

16 Harr, CSR No. 84-003215, taken on June 18, 2008,

17 at 4:00 p.m. at 800 Game Farm Road, Yorkville,

18 Illinois.

19

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1 a slate for election to the City Council?

2 A. Yes.

3 Q. Who were the members of the slate?

4 A. In general, me, Robin, Rose, Val,  
5 and Wally.

6 Q. Rose was a member of that slate?

7 A. I believe so, yes.

8 Q. Did the group of you coordinate your  
9 campaign activities in any way?

10 A. Like when we would meet together --

11 Q. Yes.

12 A. -- people together?

13 Q. Yes.

14 A. We tried to.

15 Q. Did the slate have a position on the  
16 landfill siting?

17 A. Not that I'm aware of.

18 Q. It did not have an anti-landfill  
19 platform?

20 A. No.

21 MR. HOPP: I'm sorry, was that, no, it did

22 not?

23 THE WITNESS: No, it did not.

**EXHIBIT F**

UNITED CITY OF YORKVILLE, ILLINOIS

SPECIAL MEETING OF  
THE CITY COUNCIL

REPORT OF PROCEEDINGS had and testimony  
taken at the hearing taken on May 23, 2007, at  
the hour of 7:00 p.m., before Christine M.  
Vitosh, C.S.R., at the Grande Reserve Elementary  
School, Yorkville, Illinois.



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1 We would spend time, each  
 2 alderman would get an opportunity to discuss, if  
 3 you want tonight, you can just discuss your own  
 4 opinions on your 140 hours of testimony that you  
 5 heard, the public comment that you read during  
 6 the last 30 days that's been on the website and  
 7 then tomorrow we can add to the discussion of  
 8 anything you can get out of the documents that  
 9 were submitted on the 22nd, if you want to do  
 10 that, but I leave it up to you. It's -- it's now  
 11 in the City Council's hands, it's no longer a  
 12 public hearing. We are under the City Council  
 13 rules, so it's at your pleasure. You are the  
 14 aldermen, what do you want to do?

15 ALDERMAN SPEARS: Your Honor, I  
 16 would like to suggest that we do continue and  
 17 have our discussion this evening and if we do  
 18 have -- there is no way I am going to be able to  
 19 read that document from time to time I get home  
 20 until five o'clock in the morning when I have to  
 21 wake up for work. There is absolutely no way I  
 22 can do that. Evelyn Wood cannot accomplish that.  
 23 I'm sorry.

24 You know, and I just feel that

17

1 see what you intend, but there is -- there is  
 2 different ways of doing this.

3 If it's clear, if we get clear  
 4 direction I think from the debate, we would come  
 5 back with a single resolution; however, we can  
 6 certainly come back with a resolution that  
 7 anticipates approval, in other words, all of the  
 8 siting criteria is satisfied; that answers  
 9 approval with conditions; or that anticipates  
 10 denial. We can -- We can do all three, and it  
 11 would not be an enormous burden to do that.

12 ALDERMAN MUNNS: You mean all three  
 13 ordinances we are to vote on?

14 MR. ROTH: The only -- the only  
 15 issue that's difficult I think is we have to  
 16 listen to what you're going to say, hear what --  
 17 siting standards.

18 If you were to find, for  
 19 example, that certain sitings were not satisfied,  
 20 then -- if we find -- if we hear that the Council  
 21 finds that the siting standards would be  
 22 satisfied if certain conditions were adopted,  
 23 then our resolution would say that. We have to  
 24 hear what you have to say in order to do that,

19

1 this Council sat through all these hearings, I've  
 2 got just notebooks full of notes that I have  
 3 taken. I feel that I am not biased, I did take  
 4 thorough notes, and, again, I think that I was  
 5 asked to be removed at the beginning just because  
 6 they know my track record and taking notes and  
 7 researching, and I feel I am totally prepared to  
 8 rule on this.

9 MAYOR BURD: Okay. Any other  
 10 comments?

11 ALDERMAN MUNNS: I have a question.  
 12 When we get an ordinance from the city attorney,  
 13 is it going to be one consensus recommendation?  
 14 I mean, what are -- a couple of people say well,  
 15 I would approve it with these 39 conditions and  
 16 half say this, half say no.

17 I mean, are we just going to  
 18 come up to one consensus? And what if we don't  
 19 have a consensus, are you just going to make an  
 20 ordinance to vote on yes or no?

21 MR. ROTH: Our intention was to  
 22 listen to your comments and develop a resolution  
 23 that embodied your decision based upon what the  
 24 deliberations would be, so we have to listen to

18

1 obviously.

2 ALDERMAN MUNNS: Okay. And then my  
 3 other -- my last question would be let's just say  
 4 an example on Criterion 1, I'm not saying what  
 5 Criterion 1 is, all my notes I took in 140 hours  
 6 or 110 hours or whatever I made of those hours,  
 7 let's say my decision was to go one way, but then  
 8 I read your comments, Derke Price's and Larry  
 9 Clark's comments, and it changes my criteria, so  
 10 tonight it might be no, and then if I read your  
 11 expert opinion, then it convinces me that they  
 12 met it, then what happens?

13 MR. ROTH: Well, my understanding is  
 14 you're going to come back tomorrow and deliberate  
 15 further, we'll hear that, because you'll have  
 16 until tomorrow -- unfortunately only one day --  
 17 but you'll have until tomorrow to still develop  
 18 that opinion.

19 ALDERMAN MUNNS: And then --  
 20 actually this is my last last question -- what if  
 21 we don't finish deliberating in the two days?

22 MR. ROTH: The only legal  
 23 requirement is that a decision be made by the  
 24 29th.

20

1 MAYOR BURD: Was that motion  
 2 seconded to suspend the rules? Did I have a --  
 3 ALDERMAN MUNNS: Second.  
 4 MAYOR BURD: Okay. Can we have a  
 5 roll call vote on that one?  
 6 ALDERMAN SPEARS: Could we have  
 7 discussion?  
 8 MAYOR BURD: Discussion, sure.  
 9 ALDERMAN SPEARS: Does it have to be  
 10 limited to ten minutes per person?  
 11 MAYOR BURD: How long do you want to  
 12 be here?  
 13 ALDERMAN SPEARS: I'll be here as  
 14 long as it takes. After sitting here as many  
 15 hours as I have, I would like to maybe take  
 16 longer than ten minutes if possible.  
 17 ALDERMAN MUNNS: This is our -- this  
 18 is not a City Council, so --  
 19 MAYOR BURD: Yes, it is. Yes, it  
 20 is. Does anybody want to go beyond ten minutes  
 21 each?  
 22 ALDERMAN MUNNS: I agree with  
 23 Alderman Spears, that if we sat here for 140  
 24 hours, to limit us to ten minutes now, I mean,

25

1 MS. PICKERING: Golinski.  
 2 ALDERMAN GOLINSKI: Aye.  
 3 MS. PICKERING: Werderich.  
 4 ALDERMAN WERDERICH: Nay.  
 5 ALDERMAN MUNNS: Nay.  
 6 MS. PICKERING: Plocher.  
 7 ALDERMAN PLOCHER: Nay.  
 8 MS. PICKERING: Spears.  
 9 ALDERMAN SPEARS: Nay.  
 10 MAYOR BURD: Can I entertain another  
 11 motion then?  
 12 ALDERMAN SPEARS: I would like to  
 13 make a motion that we limit our -- each alderman  
 14 to speak 20 minutes.  
 15 ALDERMAN MUNNS: Seccnd.  
 16 MAYOR BURD: Any discussion?  
 17 (No response)  
 18 MAYOR BURD: Okay. Roll call vote,  
 19 please.  
 20 MS. PICKERING: Besco.  
 21 ALDERMAN BESCO: Nay.  
 22 MS. PICKERING: Leslie,  
 23 ALDERMAN LESLIE: Aye.  
 24 MS. PICKERING: Golinski.

27

1 that -- I would -- I don't know if I'm going to  
 2 be more than ten. If someone does, more power to  
 3 them.  
 4 MAYOR BURD: Well, pick a number.  
 5 We have to -- we have rules that we have to  
 6 follow, and follow.  
 7 ALDERMAN GOLINSKI: Suspend the  
 8 rules.  
 9 MAYOR BURD: No, that wouldn't be  
 10 good.  
 11 ALDERMAN SPEARS: I would recommend  
 12 20 minutes, and if we go under, God bless us all.  
 13 MAYOR BURD: Okay. So we will take  
 14 a vote on the original --  
 15 ALDERMAN PLOCHER: Are we voting for  
 16 the ten minutes or the 20 minutes is this?  
 17 MAYOR BURD: No, motion on the floor  
 18 is for the ten minute.  
 19 MS. PICKERING: Sutcliff.  
 20 ALDERMAN SUTCLIFF: Nay.  
 21 MS. PICKERING: Besco.  
 22 ALDERMAN BESCO: Aye.  
 23 MS. PICKERING: Leslie.  
 24 ALDERMAN LESLIE: Nay,

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1 ALDERMAN GOLINSKI: Aye.  
 2 MS. PICKERING: Werderich.  
 3 ALDERMAN WERDERICH: Aye.  
 4 MS. PICKERING: Munns.  
 5 ALDERMAN MUNNS: Aye.  
 6 MS. PICKERING: Plocher.  
 7 ALDERMAN PLOCHER: Aye.  
 8 MS. PICKERING: Spears.  
 9 ALDERMAN SPEARS: Aye.  
 10 MS. PICKERING: Sutcliff.  
 11 ALDERMAN SUTCLIFF: Aye.  
 12 MAYOR BURD: All right. Then you  
 13 each have 20 minutes and then a two-minute  
 14 rebuttal, so we will start with Alderman  
 15 Werderich.  
 16 ALDERMAN WERDERICH: Actually if I  
 17 could pass and make a comment at a later time, I  
 18 would appreciate that.  
 19 MAYOR BURD: I don't believe our  
 20 rules allow you to do that. You can't pass and  
 21 get the time back according to our rules.  
 22 ALDERMAN WERDERICH: I'd like to  
 23 make a motion then at this point that we waive  
 24 the rules in order of comment given by the City

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1 deliberate on what we all kind of -- because  
2 it's -- you know, it's within the same ballpark I  
3 think, we're here and that there is a lot of  
4 traffic in Yorkville and there is a lot of, you  
5 know, traffic going through downtown, what does  
6 that all that mean. Could we discuss it? That's  
7 what deliberation is, correct?

8 MAYOR BURD: Yes.

9 ALDERMAN MUNNS: So do we go each  
10 criteria by one or whoever wants to pick one,  
11 that --

12 MAYOR BURD: You have a certain time  
13 limit to discuss whatever you want.

14 ALDERMAN MUNNS: But that's not  
15 deliberations, right? That's what I thought  
16 deliberations is, we discuss it like at a  
17 Committee of the Whole.

18 MAYOR BURD: No, this is --

19 ALDERMAN MUNNS: That's not  
20 deliberations?

21 MAYOR BURD: This is like at a  
22 regular City Council meeting and you can pick  
23 anything anybody says and have an opportunity to  
24 give your opinion of it if it's different from

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1 (Applause)

2 MAYOR BURD: -- of information.

3 Excuse me, please. Please don't --

4 ALDERMAN MUNNS: It's like a circus.

5 This is not deliberations.

6 MAYOR BURD: Please, let's not clap.

7 But you need to have, after all of this time,  
8 some idea of hopefully an opinion, and supplement  
9 it with the input from -- that you received  
10 today, but I would hope that you are not at the  
11 point where you're totally unresolved about the  
12 issues and you are waiting to be directed by our  
13 experts.

14 ALDERMAN MUNNS: I'm not saying I am  
15 waiting to be directed by anybody, but I'm saying  
16 we got a thousand pages of testimony we're  
17 supposed to take into our consideration. We need  
18 to read that first.

19 MAYOR BURD: Absolutely. Well, this  
20 is supplemental information that --

21 ALDERMAN MUNNS: As all the other  
22 information from residents and everything else  
23 that was submitted in paper, we have to read all  
24 of that.

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1 what they said, or if you want to add something  
2 to it or further the discussion, but --

3 ALDERMAN MUNNS: So then we're not  
4 deliberating, we're just --

5 MAYOR BURD: Well, you're  
6 deliberating, you are coming up with a decision.

7 You -- several of you haven't made a decision  
8 yet, several of the other aldermen appear to have  
9 already made a determination based on their own  
10 research and information they have gotten, so if  
11 you're still deliberating, then you have the  
12 opportunity to continue discussing it.

13 ALDERMAN MUNNS: Well, I mean, I  
14 want to read these 50 pages we got today because  
15 there might be something in there that would, you  
16 know, sway you one way or the other because  
17 supposedly those are the experts, right, you have  
18 people who have done this before. Like Larry  
19 Clark, 30 hearings, he's got 40 pages to read  
20 through of what he said.

21 MAYOR BURD: Well, the only thing I  
22 could say to you is is that you need to have a  
23 little confidence in your own opinions. You sat  
24 through 140 hours --

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1 MAYOR BURD: But you also realize  
2 that we have to come to a decision by May 29th.

3 ALDERMAN MUNNS: Right. That's six  
4 days from now.

5 MAYOR BURD: And --

6 ALDERMAN MUNNS: Do I have to decide  
7 tonight? I mean, there is six days.

8 MAYOR BURD: No, we don't have to  
9 decide tonight.

10 ALDERMAN MUNNS: You want to do this  
11 legally and you want to do --

12 MAYOR BURD: I know personally, I  
13 don't know about the rest of you, but I certainly  
14 don't want to hold this off until May 28th and we  
15 have lightning strike a couple of you or  
16 something and we don't get a vote. I really  
17 don't want to hold this off until the last  
18 minute, so --

19 ALDERMAN MUNNS: But we are voting  
20 on the 29th, right, you said?

21 MAYOR BURD: No. We are voting  
22 tomorrow night. The way it's set up, we are  
23 discussing tomorrow night and we will have a  
24 resolution come in tomorrow and you will have an

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1 opportunity to discuss the resolution that will  
2 be laid on the table and go forward with that,  
3 just like in a normal City Council meeting where  
4 you have resolutions to discuss and if you don't  
5 like one of the criteria that's discussed that's  
6 there, then you can discuss it, but that's the  
7 way we are moving forward, so then we get this  
8 done in a timely manner. There is no chance that  
9 something could happen --

10 ALDERMAN MUNNS: Then --

11 MAYOR BURD: -- one way or the  
12 other, but by this time after going through all  
13 of this hearing, 140 days of hearings and 30 days  
14 of collecting information, you've had an  
15 opportunity to listen to all of this, and I  
16 think -- I think that we really don't have too  
17 many surprises in what we have been presented by  
18 our expert counsel. I don't know if you are  
19 surprised by it, but I'm not, so I think we  
20 should be able to move forward.

21 ALDERMAN MUNNS: We said Tuesday we  
22 are meeting, Wednesday. Nobody said we were  
23 going to vote Thursday. Like Alderman Golinski  
24 said --

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1 judgment and thumb through this and come up with  
2 a solution, but we definitely aren't going to let  
3 them control the process, so --

4 ALDERMAN MUNNS: Then why did we pay  
5 them if we didn't need -- We shouldn't have paid  
6 them. Why was Mr. Price here?

7 MAYOR BURD: Well, you know, I  
8 wasn't in the majority, so you all have to  
9 discuss that, but --

10 ALDERMAN SPEARS: I'd like to state  
11 that the City didn't pay them, the applicant paid  
12 them, and I would also really, really --

13 MAYOR BURD: Please don't --

14 ALDERMAN SPEARS: I would be  
15 interested in joining this landfill circuit that  
16 travels from community to community because they  
17 are such a tight-knit group apparently, and they  
18 are moving on.

19 MAYOR BURD: Alderman Spears, we  
20 don't want to get into that, that's not under  
21 discussion tonight, please. Okay?

22 ALDERMAN MUNNS: I'd like to talk  
23 about the traffic criteria, and a couple times I  
24 read it here that from our experts -- and I don't

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1 MAYOR BURD: Absolutely.

2 ALDERMAN MUNNS: -- if we don't do  
3 this properly and we lose it on appeal, there's  
4 still going to be a landfill there, and we went  
5 through all this for nothing.

6 MAYOR BURD: That's true.

7 ALDERMAN MUNNS: So if we're going  
8 to vote no, we want to do it the right way.

9 MAYOR BURD: Absolutely. But like  
10 you said, we're going to have something drafted,  
11 you can read it over. I don't see any problem, I  
12 don't know if the attorney wants to discuss this,  
13 but --

14 ALDERMAN MUNNS: Well, if we could  
15 read this whole binder by tomorrow at eight  
16 o'clock, that's the question.

17 MAYOR BURD: Like I said, I don't  
18 know how fast you read, but they didn't have to  
19 wait until the 21st to send this to us either, so  
20 think about --

21 ALDERMAN MUNNS: Neither did  
22 Mr. Clark or Mr. Roth or Mr. Price.

23 MAYOR BURD: No, they didn't have to  
24 do that. So perhaps we can just use our own

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1 I know if it was from Attorneys Roth, Price or  
2 Clark, but one of them, two of them actually,  
3 said -- maybe all three did -- that when the  
4 Eldamain bridge gets done someday that they were  
5 recommending routing the traffic over the  
6 Eldamain bridge, and to me that would be, you  
7 know, kind of you are putting all this traffic on  
8 a nice quiet country road, so is that better or  
9 worse than going down Route 47?

10 I don't know if anybody else  
11 read that in there, but I know at least two of  
12 the three mentioned that. Any comments or no?

13 ALDERMAN SPEARS: I would like to  
14 comment on the traffic situation. First of all,  
15 that could be a good proposal, but would it be in  
16 our lifetime that that road would ever go  
17 through?

18 How long have we been waiting  
19 for Route 47 to be widened or just improved, any  
20 of the state roads?

21 And also at one time the  
22 Council considered sending -- or having Beecher  
23 Road go through across some residential areas and  
24 that was also proposed; that never materialized.

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**CERTIFICATE OF SERVICE**

I, Patti Racky, a non-attorney, certify that I caused a copy of the foregoing **Notice of Filing and United City of Yorkville's Reply in Support of Its Motion in Limine # 2** 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 October 7, 2008.

/s/ Patti Racki

- 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.

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