



**BEFORE THE  
ILLINOIS POLLUTION CONTROL BOARD**

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

**FOX MORaine'S REPLY TO YORKVILLE'S RESPONSE TO FOX MORaine'S  
MOTION TO COMPEL PRODUCTION OF TRANSCRIPTS AND VIDEOS**

**NOW COMES** Fox Moraine, LLC by its attorneys, Charles Helsten and George Mueller, and for its reply to Yorkville's Response to Fox Moraine's Motion to Compel Production of Transcripts and Videos (incorrectly designated by Yorkville as documents and video), states as follows:

1. Yorkville grossly misstates the thrust of Fox Moraine's motion. Yorkville's response in Paragraph 3 suggests that Fox Moraine's allegations are that some portions of some meetings were not transcribed, that two videos of meetings are not available and that some of the transcripts Fox Moraine received were simply not what it expected. This completely misstates the production request at issue, and the motion with regard to Yorkville's wrongful failure to comply with the same. Exhibit D attached to Fox Moraine's motion is the key exhibit. This demonstrates that videos for four (4) City Council or Plan Commission meetings (9/25/06, 10/17/06, 2/6/07 and 2/13/07) were missing. For all of these meetings, except for the Plan Commission meeting of September 25, 2006, the transcripts were also missing. In addition, transcripts were missing for another six (6) meetings for which videos had at least been produced.

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2. Yorkville's response suggested that three (3) of the missing transcripts had previously been produced, but those transcripts were for public hearings unrelated to Fox Moraine matters. However, it is not that these transcripts were not what Fox Moraine "expected", it is that these transcripts were not responsive to the production request made.

3. Yorkville asserts in Paragraph 4 of its response that, "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." Since all city council meetings are public meetings (with the limited exception of executive sessions), Yorkville has then admitted Fox Moraine's point. Fox Moraine continues to seek transcripts of all the public city council meetings during the period for which they were requested, and, in light of Yorkville's admission, there is no excuse for failure to produce the same.

4. The City offers as a partial excuse that it has produced thousands of pages of material. However, the production of some material, no matter how voluminous that production, does not justify the failure to produce other available and relevant material. Substantial compliance ought not to be the standard when full compliance is easily attainable.

5. The footnoted item on page 2 of Yorkville's' response, suggesting that Fox Moraine has an "alternate source" for transcripts of meetings, deserves some comment. That "alternate source" is the City of Yorkville's website, where transcripts of the public hearings conducted before city council meetings (but not the public meetings themselves) are attached to the minutes of the city council meetings. These public

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hearings are obviously different than the meetings themselves, but for three (3) of the public meetings, Yorkville has nonetheless attempted to substitute minutes of the brief public hearings as being responsive.

6. Yorkville incorrectly responds that there are videos missing for only two (2) meetings. In fact, there are videos missing for four (4) meetings. Bart Olson's affidavit indicating that there are no invoices for videotaping the meetings of September 25, 2006 and February 13, 2007, is effectively an admission that there are invoices for the two (2) other missing meetings, October 17, 2006 and February 6, 2007. Yorkville has provided no explanation as to why these videos are missing and why they have not been produced. Since transcripts of the meetings for these dates have not also been produced, these become critically important meetings. In addition, Yorkville's response on September 28, 2008, in Mr. Hopp's letter to attorney Mueller: 1) provides no support for the allegation that the October 17, 2006 meeting was not videotaped, and 2) does not even allege that the February 6, 2007 meeting was not videotaped. (see Ex. E)

7. Minutes of the February 6, 2007 meeting of the committee of the whole of the city council indicate that the mayor reported on annexation and zoning of the Fox Moraine parcel, with the following being the relevant portion of the minutes of that meeting. "This is a reconsideration of the annexation. The vacation of the road should be taken out of the agreement and not postponed. The annexation and zoning of the property without the vacating of the road will move on to city council for consideration." Discussion regarding this item was lengthy and heated. Attendees at the meeting included the leadership of FOGY, aldermanic candidate, Robyn Sutcliffe, and Atty. Michael Blazer on behalf of Kendall County. Fox Moraine has alleged that the conduct

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and content of meetings such as this are a major reason why it was unable to later receive a fundamentally fair decision on the Siting Application, in that meetings like this helped contribute to the predisposition and bias which caused city council members to make a political rather than an adjudicatory decision on the Application. Similarly, the October 17, 2006 meeting of the committee of the whole contained extensive discussion of the issue of whether Sleepy Hollow Road should be vacated. The annexation agreement previously entered into between Fox Moraine and Yorkville required Yorkville to vacate the portion of Sleepy Hollow road that ran through the proposed landfill site, and landfill opponents, including Aldermen Burd and Spears, quickly seized upon this as a way of possibly preventing the landfill application from even being filed.

8. Yorkville's response suggests without directly saying that the materials requested are of marginal relevance. If that is true, then it becomes even more difficult to understand why the City of Yorkville would have actually billed Fox Moraine for the services of Marlys Young, who is apparently the minute taker at city council meetings. Obviously the fact that the City thought that Ms. Young's services were reimbursable under the Host Agreement validates the fact that the date for which her services were billed, concerned itself almost exclusively with matters related to the Fox Moraine landfill proposal.

For the foregoing reasons, Fox Moraine respectfully asks that the Motion to Compel Production of Transcripts and Videos be granted.

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Dated: October 7, 2008

Respectfully submitted,

On behalf of FOX MORaine, LLC

/s/ George Mueller

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One of Its Attorneys

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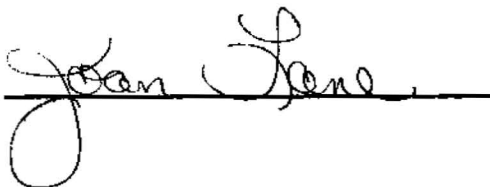
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**AFFIDAVIT OF SERVICE**

The undersigned, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, hereby under penalty of perjury under the laws of the United States of America, certifies that on October 7, 2008, she served a copy of the foregoing upon:

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