BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

TIMBER CREEK HOMES, INC.	)	
	)	
Petitioner,	)	
	)	PCB No. 2014-099
v.	)	(Pollution Control Facility
	)	Siting Appeal)
VILLAGE OF ROUND LAKE PARK,	)	
ROUND LAKE PARK VILLAGE BOARD	)	
And GROOT INDUSTRIES, INC.	)	
	)	
Respondents.	)	

NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

Please take notice that on July 3, 2014 the undersigned caused to be filed electronically with the clerk of the Illinois Pollution Control Board **ROUND LAKE PARK AND ROUND LAKE PARK VILLAGE BOARD'S POST-HEARING BRIEF,** a copy of which is attached hereto.

Respectfully Submitted,

On behalf of Round Lake Park Village Board

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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Petitioner	)	
V.	)	
	)	No. PCB 2014-099
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	)	
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ROUND LAKE PARK VILLAGE BOARD'S POST-HEARING BRIEF

Now comes the Respondent, Round Lake Park Village Board ("RLP Village Board"), by its attorneys, the Law Offices of Rudolph F. Magna, and the Village of Round Lake Park (the pre-application entity of the Village of Round Lake Park, or its location, is referred to as "VRLP" and the post-application entity, with RLP Village Board excluded, is referred to as "RLP") by its attorney, the Sechen Law Group, and hereby submits their Post-Hearing Brief in support of the decision on December 12, 2013 to grant local siting approval on the application of Groot Industries, Inc. for a proposed solid waste transfer station ("Groot Application") to be located in Round Lake Park, Lake County, Illinois, and in support thereof, states as follows:

I. INTRODUCTION

In an appeal to the Pollution Control Board regarding a local siting decision, a Petitioner bears the burden of proof. 415 ILCS 5/40.1; 35 Ill.Adm.Code 107.504. In place of providing relevant facts that might meet its burden, Petitioner, Timber Creek Homes, Inc. ("TCH") concocts a convoluted conspiracy theory based on conclusions, mischaracterizations, and a collection of irrelevant events. TCH fails to present any factual evidence of bias or

predisposition, and its conspiracy theory is refuted by the overwhelming evidence of the RLP Village Board's conscientious attendance, attention to the evidence presented at the hearing, and honest deliberations to reach a decision.

As part of its argument, TCH argues that the existence of "voting blocs" on the RLP Village Board constitutes evidence that members of the RLP Village Board, who voted that Groot Industries, Inc. ("Groot") met the required criteria for local siting approval, were "predisposed in favor of the siting application." TCH specifically targets Trustee Jean McCue ("McCue") with its allegations of "predisposition" in favor of the Groot Application.

The RLP Village Board is a political body comprised of elected officeholders. As with many political bodies, the RLP Village Board is comprised of people who often disagree politically. TCH attempts to exploit this disagreement on various issues between RLP Village Board members to create a "predisposition" or "preconception" regarding the approval of Groot's proposed Solid Waste Transfer Station ("Transfer Station").

TCH cites the deposition testimony of RLP Village Board Trustee Candace Kenyon ("Kenyon") in support of its theory that certain RLP Village Board Trustees were predisposed in favor of the Groot Application. Kenyon identifies herself, and RLP Village Board Trustee Patricia Williams, as being on the opposite side of RLP Village Board Trustees Bob Cerretti, Jean McCue, and Donna Wagner on many issues that come before the RLP Village Board. (see Kenyon Tr. 38:16-39:6)

Yet in deposition, Kenyon disagreed with TCH's conspiracy theory, and made it clear that she saw no evidence that RLP Village Board Trustees had predetermined or prejudged the Groot Application:

"88:1 (Rick Porter) Q. You saw no evidence whatsoever that
88:2 anybody on that board that voted made a
88:3 pre-adjudication of how they were going to vote;
88:4 right?
88:5 (Kenyon) A. Right, I saw no indication."
(Kenyon Tr. 88:1-88:5)

Kenyon specifically did not see any evidence that McCue failed to keep an open mind in evaluating whether the Groot Application met the required critieria. Kenyon further testified in deposition:

"81:15 (Rick Porter) Q. Do you have any reason to believe
81:16 that Mayor McCune [sic] or any other of the village
81:17 board members failed to keep an open mind?
81:20 (Candace Kenyon) A. No, not even Mayor McCue. You said
81:21 McCune."
(Kenyon Tr. 81:15-88:21)

As shown above, Kenyon is a political opponent to those trustees who voted that Groot met its burden as to the required criteria for local siting approval. Further, Kenyon also voted against the Groot Application. (C04524) Yet Kenyon, the only supposed witness for TCH's conspiracy theory of predisposition in favor of Groot, does not agree with TCH's allegations that McCue, or any other RLP Village Board member, was biased, predisposed, or had a preconception about the Groot Application.

Larry Cohn, President of TCH, ("Cohn") attended the local siting hearings on behalf of TCH along with his attorney. (Cohn Tr. 45:7-45:11) Despite TCH's allegations that the RLP Village Board was predisposed in favor of Groot, Cohn himself testified in deposition that he did not personally know of any evidence of that supposed predisposition, outside what his attorneys told him:

"46:9 (Rick Porter) Q. Are you aware of any evidence,
46:10 record, document, which would in any way suggest that

> 46:11 the board members had their mind made made up before the
> 46:13 application, was even filed?
>
> * * *
>
> 48:6 MR. BLAZER: And, again, anything outside the
> 48:7 scope of communications you may have had with your
> 48:8 attorneys.
> 48:9 BY THE WITNESS:
> 48:10 (Cohn) A. Nothing outside of the scope of
> 48:11 communications with my attorneys."
> (Cohn Tr. 46:9-46-11)

Cohn, President of Petitioner TCH, knows of no evidence of predisposition on the part of RLP Village Board, other than what his attorneys concocted.

Despite TCH's intense scrutiny of the actions of the RLP Village Board, TCH could not produce a single statement, writing, document, or any other form of communication from any member of the RLP Village Board expressing support for or approval of the Groot Application before hearing all of the evidence at the local siting hearing.

II. THE RLP VILLAGE BOARD WAS UNBIASED AND FAIRLY CONSIDERED THE EVIDENCE PRESENTED IN THE LOCAL SITING HEARING

TCH improperly cites a Pollution Control Board ("PCB") order in this case [*Timber Creek Homes, Inc. v. Village of Round Lake Park*, 2014 WL 1350986, PCB 14-99, Slip Op. Cite at 3 (April 3, 2014)], which was a PCB order limiting TCH's discovery requests, in an attempt to persuade the PCB that mere evidence of pre-filing contacts between members of the RLP Village Board and Groot is a basis for the PCB to find that the RLP Village Board was predisposed in favor of Groot. Thereafter, TCH proceeded to list a series of contacts that McCue and members of the RLP Village Board had with Groot. None of those listed contacts occurred after the filing of the Groot Application, and many have nothing to do with the proposed Transfer Station.

The members of a siting authority are presumed to have made their decisions in a fair and objective manner. *Peoria Disposal Co. v. Illinois Pollution Control Bd.,* 385 Ill.App.3d 781, 797,

324 Ill.Dec. 674, 689, 896 N.E.2d 460, 475 (3rd Dist. 2008); *Land and Lakes Co. v. Illinois Pollution Control Bd*, 319 Ill.App.3d 41, 50, 252 Ill.Dec. 614, 621, 743 N.E.2d 188, 195 (3rd Dist. 2000); *Stop the Mega-Dump v. County Bd. of De Kalb County*, 2012 IL App (2d) 110579, 365 Ill.Dec. 920, 932, 979 N.E.2d 524, 536 (2nd Dist. 2012).

Further, the law in Illinois is clear that mere existence of pre-filing contacts does not establish bias or prejudgment, but rather that TCH must identify evidence showing that the RLP Village Board is actually biased. The Second District Appellate Court in the case of *Stop the Mega-Dump v. County Bd. of De Kalb County* held:

> "In *Land & Lakes*, the appellate court considered the impact of prefiling contacts on the fairness of a siting hearing. The court determined that ***certain prefiling contacts did not demonstrate that the siting authority had prejudged the application***, and therefore the court rejected the argument that the siting authority had "forfeited its neutrality." *Land & Lakes*, 319 Ill.App.3d at 50, 252 Ill.Dec. 614, 743 N.E.2d 188. While prefiling contacts are not *ex parte* communications, they might support a claim of fundamental unfairness if they are evidence of prejudgment. An objector demonstrates prejudice from an *ex parte* communication by establishing that the contact hindered the preparation of its case against the proposal. *Southwest Energy Corp. v. Pollution Control Board*, 275 Ill.App.3d 84, 93, 211 Ill.Dec. 401, 655 N.E.2d 304 (1995). ***In contrast, an objector accusing the siting authority of prejudgment must identify specific evidence showing that members of the siting authority were actually biased***."

Land and Lakes Co. v. Illinois Pollution Control Bd, 319 Ill.App.3d 41, 50, 252 Ill.Dec. 614, 621, 743 N.E.2d 188, 195 (3rd Dist. 2000); *Stop the Mega-Dump v. County Bd. of De Kalb County*, 2012 IL App (2d) 110579, 365 Ill.Dec. 920, 932, 979 N.E.2d 524, 536 (2nd Dist. 2012) (***Emphasis*** supplied)

The Court in *Stop the Mega-Dump* further held that until an applicant seeking local siting approval filed its application, members of the local siting authority were legislators, rather than adjudicators, and there were no "parties" to a "proceeding" entitled to notice and participation. The local siting authority assumes its adjudicative role only after an applicant initiates the siting proceedings by filing the application. See *Stop the Mega-Dump v. County Bd. of De Kalb County*, 365 Ill.Dec. at 932, 979 N.E.2d at 536.

TCH fails to identify any specific evidence showing that members of the RLP Village Board were actually biased. Instead, TCH chooses to rely on the mere existence of pre-filing contacts and on misrepresenting the nature of the cross examination of the Attorney representing RLP during the local siting hearing, an attorney with which the RLP Village Board did not have contact after the filing of the Groot Application. Even where the RLP Village Board granted approvals to Groot on unrelated matters, TCH makes no attempt to show that such approvals were improper. TCH only alleges that such approvals existed. And in an attempt to exaggerate the number of relevant contacts, TCH improperly mixes pre-filing contacts that have nothing to do with the Transfer Station with those contacts that are related to the Transfer Station. The contacts not related to the Transfer Station are not relevant and should be disregarded.

TCH does focus a great deal of its attention, and its arguments upon a Host Agreement with Groot for the Transfer Station, that the RLP Village Board negotiated and approved, and the host fees that the Host Agreement provides. TCH argues that the RLP Village Board prejudged the Groot Application in light of financial considerations, focusing on the RLP Village Board's consideration of a Host Agreement and host fees before the filing of the Groot Application.

However, statements by members of a siting authority that a pollution control facility could provide economic benefit to a community do not indicate prejudgment of adjudicative facts. "Revenue or other financial considerations are irrelevant to a prejudgment inquiry because neither the local siting authority nor its members will realize and enjoy the additional potential revenue or pecuniary benefit. It is the community at large that stands to gain or lose from the local siting authority approving or disapproving the site." *Woodsmoke Resorts, Inc. v. City of Marseilles*, 174 Ill.App.3d 906, 909, 124 Ill.Dec. 454, 455, 529 N.E.2d 274, 275 (3rd Dist. 1988); *Stop the Mega-Dump v. County Bd. of De Kalb County*, 365 Ill.Dec. at 935, 979 N.E.2d at 539.

TCH also argues that the fact that RLP Village Board had granted Groot's prior zoning requests constituted evidence of predisposition. However, a local siting authority's mere approval of zoning requests is not evidence of predisposition, nor does it disqualify that local siting authority from considering an application for local siting approval. *Woodsmoke Resorts, Inc. v. City of Marseilles*, 174 Ill.App.3d at 910, 124 Ill.Dec. at 456, 529 N.E.2d at 276. In *Woodsmoke Resorts*, the City of Marseilles had granted a petition for annexation of property filed with the City by Metropolitan Waste, Inc. and Spicer, Inc., two companies that thereafter requested local siting approval from the City of Marsailles. The Third District Appellate Court held that, despite the action of the City to annex the property, there was no reason why the board of the City of Marsailles could not impartially review an application for local siting authority. See *Woodsmoke Resorts, Inc. v. City of Marseilles,* 174 Ill.App.3d at 910, 124 Ill.Dec. at 457, 529 N.E.2d at 277.

By the above, it is clear that the mere approval of Groot's zoning requests or host agreements providing for host fees are not a basis for TCH's allegations against the RLP Village Board of predetermination or predisposition.

A. RLP Village Board's Decision To Approve the Siting Application Was Made After Hearing All of the Admitted Evidence at the Local Siting Hearing.

Given TCH's lack of direct evidence of any bias or predisposition, TCH bolsters its lack of relevant evidence by mixing a variety of random facts, that have nothing to do with the siting of the Waste Transfer Station, with contacts that Groot had with the RLP Village Board pertaining to the Transfer Station. This shotgun approach throws out a large number of random allegations, hoping one or a few will stick. The effect of this tactic is also to increase the pure number of contacts between Groot and the RLP Village Board in an attempt to create the appearance of smoke where no fire exists.

In its Post-Hearing Brief, TCH identifies the following contacts between the RLP Village Board and Groot that pertain to a proposed Truck Terminal or a C&D facility, and have nothing to do with the proposed Transfer Station:

1. Groot made a public presentation on February 16, 2013 where it revealed that:

a. Groot identified a property on the "northwest corner" of "Porter and 120" as a site for a "possible C&D (Construction and Demolition) recycling facility." (page 4 of TCH Brief)

b. Groot identified the "Stock Lumber Yard property (40 S. Porter) as possible regional hauling yard." (page 4 of TCH Brief)

c. Groot moved forward with purchase and plans for the Groot North Hauling Yard. (page 4 of TCH Brief)

d. "Meanwhile, gave a presentation to Village of Round Lake Park Development Committee in September 2008 (attended by SWALCO and the Lake County Board Member for this District) that included conceptual plans for other two properties." (page 4 of TCH Brief)

2. That summary of the February 2013 presentation "intertwined plans for all of its activities in VRLP" with a Transfer Station, and that "Those plans included a truck maintenance and office facility (the "Truck Terminal") and a construction and demolition debris recycling facility (the "C&D Facility")." (page 4 of TCH Brief)

3. "Groot began focusing specifically on the Transfer Station effort once it acquired the Truck Terminal property in November 2009 and received the zoning approval from the Village Board for that facility." (page 4 of TCH Brief)

4. Groot purchased "the property for the C&D Facility," in addition to the Transfer Station, "on April 29, 2010, for $2,750,000." (page 5 of TCH Brief)

5. On August 11, 2009, Brandsma made a "presentation to the Village Board. This presentation related specifically to its plans for the Truck Terminal. Brandsma stated that Groot had entered into a contract to purchase the property that would become the Truck Terminal, but that the purchase was conditioned on obtaining the appropriate zoning approvals from VRLP." (page 5 of TCH Brief)

6. That on December 13, 2011, Mayor McCue, discussed negotiation strategy regarding a proposed Host Agreement for Groot's C&D facility, and asked the RLP Village Board whether it wanted to accept an amount of host fee for that Host Agreement, or take a tougher stand. (page 5 of TCH Brief)

TCH's mere identification of the above irrelevant contacts do not in any way show bias on the part of the RLP Village Board. TCH provides no evidence that any of the non-Transfer Station approvals listed above, that were given to Groot, were illegal or improper, or were granted as some type of favor to Groot. In fact, the identification many of the above irrelevant contacts pertain to proper legal requests for legislative action (such as zoning requests) or other approvals from the Village, which the Village cannot deny unless it has a proper legal reason for the denial. TCH provides no proper legal reason for the RLP Village Board to deny any such request.

Nor has TCH provided any evidence that Groot received any benefit from the negotiations for host fees for the Groot C&D facility. If anything, the record shows that the RLP

Village Board had extensive negotiations for the C&D facility, and sought to get as large of a host fee as possible from Groot, which is hardly a benefit to Groot.

TCH's above identification of pre-filing contacts between Groot and the RLP Village Board have nothing to do with the proposed Transfer Station. TCH's identification of pre-filing contacts between Groot and the RLP Village Board are irrelevant to this case, and should be disregarded in its entirety.

On page 5 of TCH's Brief, TCH alleges that a contract to purchase the Truck Terminal property was conditioned on obtaining the appropriate zoning approvals from VRLP. TCH claims, on the basis of Brandsma testimony in deposition, that once the Truck Terminal was approved, Groot's purchase of the Transfer Station property was made unconditional. TCH cites a deposition designation of Lee Brandsma ("Brandsma") as the basis for its claim and cites no other evidence in its Post-Hearing Brief.

However, a review of the TCH deposition designation of Brandsma (TCH Exhibit 73, Brandsma Tr. 55-59), provides no specific designation that provides any Brandsma testimony that the Truck Terminal purchase was conditioned on obtaining zoning approvals, and the contract for the transfer station was unconditional. Instead, TCH's designation (TCH Exhibit 73, Brandsma Tr. 55-59) shows, at best, that Brandsma was confused with TCH's questioning:

On TCH Exhibit 73, Brandsma Tr. 55:23-57:22, the **TCH's Attorney asked:** "A contract (with Stock Lumber) was signed predicated upon certain things. Is that accurate?" (Brandsma Tr. 55:23-55:1) **Brandsma responded:** "Predicated upon certain – I don't understand what certain things means." (Brandsma Tr. 56:5-56:6) **TCH's Attorney asked:** "Okay. You'll see further down in the paragraph your attorney Matt Heinke, H-e-i-n-k-e, explained the zoning issues and other concerns that Groot may have. Do you see that?" (Brandsma 56:7-56:10) **Brandsma responded:** "Correct. I do." (Brandsma Tr. 56:11) **TCH's Attorney asked:** "All right. You had a specific recollection before, and it may have been from a text you received, that your contract for the purchase of the two other properties, the transfer station and the C & D, was dated April 29, 2010; is that correct?" (Brandsma Tr. 57:2-57:6) **Brandsma responded:** "Correct." (Brandsma Tr. 57:7) **TCH's attorney asked:** "Were there any conditions imposed on your obligation to close on the purchase of those two properties?" (Brandsma Tr. 57:15-

57:17) **Brandsma responded:** "I don't recall." (Brandsma Tr. 57:22) Thereafter, TCH's Attorney's asked: "Were there any permitting or zoning issues that were set forth as conditions for your purchase of the C&D and transfer station?" (Brandsma Tr. 57:15-57:17) **Brandsma responded:** "I don't recall." (Brandsma Tr. 57:21)

Even if Groot entered into a real estate contract for the Truck Terminal conditioned upon zoning approval, and entered into a separate contract that did not have any conditions for the purchase of the Transfer Station Property, such business decision cannot be evidence of bias on the part of the RLP Village Board, who has no control over how Groot chooses to contract for the purchase of property. Further, any evidence of Groot's intent from its business decision to enter into contracts for purchase of real estate is speculative at best, given that there are many reasons that one contract could have a condition for zoning approval, and one contract would not. One plausible explanation is that the contemplated use for one property required that Groot obtain the zoning relief of a conditional use permit, and the contemplated use for the other property could require no such zoning relief. Further, obtaining zoning relief is a relatively quick process of a few months, whereas, obtaining a permit for a solid waste transfer station could take years, and a property owner may not agree to have the property under contract for that period of time, conditioned upon a purchase obtaining a permit for a solid waste transfer station. Regardless of the above, TCH Post-Hearing Brief cites no evidence for its claim that the real estate contract for one property was subject to a condition, and the other was not, nor does any such evidence constitute evidence of bias by the RLP Village Board.

TCH's identification of Groot's pre-filing contacts with the RLP Village Board regarding the Transfer Station contain no evidence of bias. The fact that these pre-filing contacts occurred, are not, in and of itself, evidence of bias. TCH identifies the following pre-filing contacts and other events regarding the Transfer Station as evidence of bias (TCH's identifications of contacts and events noted in *italics* and RLP Village Board's response is noted in regular font):

1. *McCue and Brandsma meeting for the first time in September 2008 regarding Groot's interest "in putting a Transfer Station in our town*." (page 3 of TCH Brief) The mere simple meeting between McCue and Brandsma is not evidence of bias on the part of RLP Village Board.

2. *Groot making its first formal presentation to the Village Board regarding bringing a transfer station to VRLP two weeks later.* (page 3 of TCH Brief) Groot's mere presentation to the RLP Village Board is not evidence of bias on the part of RLP Village Board.

3. *Shaw Environmental ("Shaw") acting on Groot's behalf with respect to the issue of finding a location, finding, and then getting a permit for a Transfer Station in VRLP.* (page 3 of TCH Brief) The act of Shaw in searching for a location and a permit for a Transfer Station in VRLP is not evidence of bias on the part of RLP Village Board.

4. *In a public informational meeting on February 16, 2013 located at Park School in Round Lake, Illinois (there are four (4) Round Lake area Villages: Village of Round Lake, Village of Round Lake Beach, Village of Round Lake Heights, and Village of Round Lake Park – this meeting did not take place in Round Lake Park), Groot stating that it began looking for a Transfer Station site in the area starting in 2007, and that it identified properties in Round Lake Park on the Northeast corner of Porter and 120 as a possible site.* (page 4 of TCH Brief) None of Groot's above actions in looking for a possible site for a Transfer Station is evidence of bias on the part of the RLP Village Board.

5. *At the same public informational meeting, Groot stating that it "presented and discussed Groot's intentions in this industrial subdivision beyond the hauling yard, received interest, so moved to purchase property.* (page 4 of TCH Brief) Again, the fact that Groot conducted presentations is not evidence of bias on the part of the RLP Village Board. TCH

includes the "interested" reaction of the attendees at this presentation in its Post-Hearing Brief in hopes of imputing a positive bias on the part of the RLP Village Board. However, Dictionary.com provides one definition of "interest" as "1. The feeling of a person whose attention, concern, or curiosity is particularly engaged by something: *She has great interest in the poetry of Donne*." (See Dictionary.com. *Dictionary.com Unabridged*. Random House, Inc. http://dictionary.reference.com/browse/ (accessed: July 02, 2014) Nothing in Groot's use of the word "interest" denotes an expression of a positive feeling on the part of RLP Village Board about a possible Transfer Station, but instead, is used to describe curiosity. Curiosity is not bias.

6. *Groot hosting an open house in May 2010 (attended by SWALCO and County representatives) where a plan for a Transfer Station in the industrial subdivision was presented again.* (page 4 of TCH Brief) Nothing about Groot hosting an open house or presenting plans for a transfer station is evidence of bias on the part of the RLP Village Board.

7. *Brandsma "got the ball rolling" with that Transfer Station."* (page 4 of TCH Brief) Nothing about Brandsma getting "the ball rolling" is evidence of bias on the part of the RLP Village Board.

8. *Brandsma having a "grand plan" "for the Transfer Station as part of "Groot's intertwined plans for all of its activities in VRLP."* (page 4 of TCH Brief) Brandsma never said that Groot had a "grand plan" "for the Transfer Station as part of Groot's intertwined plans for all of its activities in VRLP." In fact, Brandsma, in his deposition, said that his initial search for a truck maintenance facility had nothing to do with him finding a site for a Transfer Station (Brandsma 11:6-11:20):

> "11:6 (Brandsma) A. And I found a for sale sign outside of a
> 11:7 facility that I immediately thought might meet my
> 11:8 requirements for a maintenance facility of the right
> 11:9 size and in the right location, which is the center

11:10 of Lake County, that looked like it might be
11:11 appropriate.
11:12 (Mike Blazer) Q. And that was for your office and truck
11:13 maintenance facility?
11:14 (Brandsma) A. Correct.
11:15 (Mike Blazer) Q. That was the former Stock Lumber
11:16 property?
11:17 (Brandsma) A. Correct.
11:18 (Mike Blazer) Q. How does that relate to you finding a
11:19 site for a transfer station?
11:20 (Brandsma) A. At the time it did not."

9. *Groot beginning to focus specifically on the Transfer Station effort once it acquired the Truck Terminal Property in November 2009 and received the zoning approval from the Village Board for that facility*. (page 4 of TCH Brief) Nothing about Groot's focus is evidence of bias on the part of the RLP Village Board. Further, TCH does not provide any evidence that the zoning approval was improper, or that the RLP Village Board had a legal basis to deny zoning approval for the Truck Terminal.

10. *Groot purchasing the property for the Transfer Station, in addition to the C&D Facility, on April 29, 2010, for $2,750,000.* (page 5 of TCH Brief) The purchase of property for a proposed Transfer Station is not evidence of bias on the part of the RLP Village Board.

11. *Groot's purchase of the Transfer Station Property confirming its recognition that, once the Truck Terminal had been approved, it had a clear road ahead for approval of the Transfer Station.* (page 5 of TCH Brief) TCH presents no evidence that Groot's purchase of the Transfer Station was in any way tied to zoning approval of a Truck Terminal, to which Groot was legally entitled.

12. *McCue discussing with the RLP Village Board, on December 13, 2011, possible positions to take on the negotiations regarding the unrelated C&D Facility Host Agreement, and discussing the possibility of having the C&D Facility in the town and to "deal with the next*

step." (Page 5 and 6 of TCH Brief) TCH jumps the shark, and assumes that McCue's "deal with the next step" comment pertained to the solid waste Transfer Station, even though the context of the comment in the Village minutes shows that the entire discussion pertained to the C&D facility, and the development of that facility. TCH gives no basis as to its conclusion that McCue's comment recorded in the December 13, 2011 minutes has anything to do with the solid waste Transfer Station. (see the RLP Village Board Meeting Minutes dated December 13, 2011

13. *The comment of Groot's Attorney recorded in the RLP Village Board minutes of October 9, 2012 that, "in order to get things done in a timely fashion and make this a reality by next operating season, they did need to get approval of the host agreement" for the Transfer Station.* (Page 6 of TCH Brief) Comments from Groot's Attorney cannot be evidence of bias on the part of the RLP Village Board.

14. *The RLP Village Board discussion about the Host Agreement for the Transfer Station on October 9, 2012, and that the entire RLP Village Board was polled, and that the consensus was that they "did not want to push too far and end up losing everything."* (Page 6 of TCH Brief) The minutes of the October 9, 2012 RLP Village Board meeting reflects that Kenyon attended the meeting. Further, the above minutes reflect that the entire RLP Village Board was polled and all of the RLP Village Board, including Kenyon, supported the strategy of "not pushing too far and end up losing everything." Kenyon later voted against the Groot Application. Statements regarding economic benefit to the community do not indicate prejudgment or predisposition. See ***Woodsmoke Resorts, Inc. v. City of Marseilles,*** 174 Ill.App.3d 906, 909, 124 Ill.Dec. 454, 455, 529 N.E.2d 274, 275 (3rd Dist. 1988); ***Stop the Mega-Dump v. County Bd. of De Kalb County,*** 365 Ill.Dec. at 935, 979 N.E.2d at 539.

15. *The VRLP's adoption of a local solid waste management plan.* (Page 7 of TCH Brief) However, despite all of the space in TCH Post-Hearing Brief devoted to the VRLP's adoption of a local solid waste management plan ("local plan"), TCH fails to list one difference between the local plan and the Lake County solid waste plan ("SWALCO plan") developed by the Solid Waste Agency of Lake County ("SWALCO"), or how Groot might benefit from the adoption of the local plan. In fact, there is no significant difference between the local plan and the SWALCO Plan, other than the SWALCO plan requires Groot to negotiate a host agreement with Lake County and SWALCO (See C01934), and the local plan (C02458-C02470) does not. As noted in the Groot Application, "The Village of Round Lake Park's Solid Waste Management Plan, developed and adopted subsequent to the most recent update of the Lake County Plan, was prepared using the Lake County 2009 Plan Update as guidance, and as such, is consistent in all material aspects as well with the Lake County Solid Waste Management Plan." (C00680) TCH never refuted this statement of similarity in Groot's Application at any time during the local siting hearing or during the hearing before the Illinois Pollution Control Board.

Further, TCH ignores the fact that the RLP Village Board repealed the local plan, and readopted the SWALCO plan prior to the hearing on Groot's Application. (C02491-C02494)

From comparing the SWALCO plan and the local plan, it is clear that the purpose of the local plan was based on a dispute between SWALCO and Lake County, and VRLP over the host fees that would be provided in a Host Agreement. After the dispute was resolved, and Lake County and SWALCO entered into a Host Agreement with Groot on April 9, 2013 (C00786), the Village of Round Lake Park repealed the local plan and readopted the SWALCO plan.

As stated before, "Revenue or other financial considerations are irrelevant to a prejudgment inquiry." *Woodsmoke Resorts, Inc. v. City of Marseilles*, 174 Ill.App.3d 906, 909,

124 Ill.Dec. 454, 455, 529 N.E.2d 274, 275 (3rd Dist. 1988); *Stop the Mega-Dump v. County Bd. of De Kalb County*, 365 Ill.Dec. at 935, 979 N.E.2d at 539.

16. *Groot Industries providing residential "contracted collection services within the northern portion of the Village."* (Page 7 of TCH Brief) TCH fails to allege any improper or illegal conduct on the part of the VRLP or Groot, and as such, Groot providing residential collection services to the northern portion of VRLP is not evidence of bias on the part of RLP Village Board. Awarding a contract for residential collection services is a legitimate role of the RLP Village Board and is not evidence of bias.

17. *TCH makes a vague allegation that an Attorney for Groot made "substantial revisions to the Siting Ordinance."* (Page 8 of TCH Brief) Given the conclusory allegation of "substantial revisions to the Siting Ordinance," it should follow that TCH would be able to provide at least one example of a revision that benefited Groot in any way. Yet, TCH's Post Hearing Brief is silent as to any revision made to the Siting Ordinance that would benefit Groot. TCH presents no evidence of any changes to the Siting Ordinance purportedly suggested by an Attorney for Groot, which was of any of any significance.

18. *McCue exchanging a series of communications with a Shaw employee to clear up confusion regarding what a Transfer Station is.* (Page 8 of TCH Brief) The email exchange with the Shaw employee is reflected TCH Exhibit 31, and page 14 makes it clear that it was the Mayors of Round Lake and Hainesville that were interested in a presentation about Transfer Stations. McCue wanted the same presentation for VRLP Residents. Requesting an informational presentation on the basis of the requests of neighboring Mayors, and to answer questions from VRLP residents is not evidence of bias on the part of the RLP Village Board.

19. *The TCH allegation that RLP's Counsel, Glenn Sechen ("Sechen"), "indicated that VRLP had already determined that it was "prudent" to site a transfer station, and was proceeding jointly with Groot for approval of that transfer station. (C03214, and C03219-C03220) TCH further allegation that "Sechen further acknowledged that VRLP and Groot had found it necessary to site a transfer station for their own business reasons." Thereafter, TCH accuses VRLP of "proceeding jointly with Groot – in effect as an undisclosed co-applicant for siting of the transfer station, and alleges that this is further evidence of RLP Village Board's predisposition.* (Page 9 of TCH Brief)

TCH's above allegation is a complete fabrication. C03214, and C03219-C03220 contain no such statements of "co-application" by Sechen. They contain cross-examination of TCH Needs witness, John W. Thorsen ("Thorsen"), featuring hypothetical questions regarding the need for waste transfer station. At no time during the questioning did Sechen blurt out that Groot was a co-applicant with VRLP. In fact, at no time during the questioning does Sechen use the term "co-applicant." The term was invented by TCH's attorney, Michael Blazer, and not used by Sechen.

The following exchange occurred at the subject waste transfer station hearing on September 25, 2013:

"MR. BLAZER: If Mr. Sechen is now saying that the Village and Groot have already decided to site this transfer station, then he had raised a dramatically different issue in this case.
MR. SECHEN: That is not what I said.
THE HEARING OFFICER: Let me respond, especially, because I heard - - I did not hear that they had decided. I heard that "if they decide," that was the statement, that was the question I'm ruling on. And if they decide that it's necessary, the question is, if they decide it's necessary, do you disagree with them? That's what I heard, and

21 that's the question that I think is prudent - -
22 proper. Now you almost got me saying prudent.
23 That's the proper question."
(See C03221, 9/25/2013 Hearing Transcript - 105:9 through 105:23)

The hearing officer in the siting hearing further noted:

8 I have seen Mr. Sechen make statements or
9 questions based on ifs, on assumptions, if
10 something were to occur, then what. I haven't
11 heard him say anything that something is a given to
12 occur that this Village Board, whatever decisions
13 they're going to make…

(See C03227, 9/25/2013 Hearing Transcript - 121:8 through 121:13)

This is the question posed by Sechen, referred to by the hearing officer:

12 BY MR. SECHEN
13 Q. Okay. Not the same question, Mr. Thorsen,
14 do you take issue with the Village of Round Lake
15 Park and its hauler finding it necessary, if they
16 do, to site a transfer station for whatever
17 business reasons they may have?
(See C03220, 9/25/2013 Hearing Transcript - 104:12 through 104:17)

Further, any claim that Sechen's cross examination of Thorsen constitutes evidence of bias on the part of RLP Village Board is ridiculous on its face. Absent from the record, and TCH's Post-Hearing Brief, is any evidence of post filing contract between the Board and Sechen. The RLP Village Board and RLP, represented by Sechen, were clearly split into two separately functioning entities, the Village and the Village Board.

What the record does show is that RLP's cross examination of Thorsen focused on Thorsen's opinion regarding the interplay between the various components of the cost of

disposal, and his use of the terms "business decisions" and the "prudence" involved in making the determination of when a siting application should be filed in light of the Needs criterion.[1]

TCH ridiculously attempts to twist Sechen's hypothetical questions, which were replete with the use of "of" and "if," into some type of evidence co-application, and bias or predetermination on the part of the RLP Village Board. *Eg.* Record C03221 (transcript page 105), C03237 (transcript page 121). A fair reading of the record demonstrates the frivolous nature of TCH's claim.

TCH alleges that the report and testimony of Dale Kleszynski ("Kleszynski") constitutes "further complicity" of VRLP with Groot.

The record shows that Kleszynski, has taught most every course offered by the Appraisal Institute and also teaches for the Appraisal Foundation. Included among the courses he teaches are ethics and the Uniform Standards for Appraisal Practice ("USPAP") which together embody the ethics requirements of his profession. (C3742.010 - 3742.011; PCB Hearing 6-2-14 Tr. 158)

Kleszynski is also a member of the committee which deals with changes to the USPAP. (PCB Hearing 6-2-14 Tr. 159 – 161). Accordingly, Kleszynski is extremely familiar with the ethics requirements of his profession. At the Board Hearing on June 2, 2014 Kleszybnski testified that during the entire pendency of this matter he, at no time, violated any ethical requirement. *Id.* TCH failed to provide any evidence that contradicts Kleszynski's solid

[1] Performing a Section 39.2 Needs analysis was not within the scope of work TCH gave Mr. Thorsen. C03195, C03205 – 06. He only looked at need for the next 12 years. C03176, 3194 – 95. That witness simply disagreed with the timing of the filing of an application of this Application for the siting of a transfer station concluding only that he believes that there will be sufficient landfill capacity until 2027 later acknowledging that there are a lot of "business decisions" involved in the determination of when to file but adding that, despite ongoing development, he didn't believe that it was "prudent" to file when you are confident that the applicable setback requirements can still be met. C03196, C-3198 – 3201.

testimony that he followed all ethical requirements of his profession. Accordingly, Kleszynski's testimony that he did NOT violate ANY ethical requirement is unrebutted and uncontradicted.

In its Post-Hearing Brief, TCH quotes portions of its cross examination of Kleszynski at the siting hearing, during which time TCH questioned Kleszynkski regarding appraiser ethics. (Page 10 of TCH Brief) Kleszynski responded that he was quite familiar with each of the ethical requirements. (C03742.064 – C03742.065).

TCH points out, as if this were some type of admission of wrongdoing, that "Kleszynski admitted that it was a violation of the USPAP code of ethics for him to advocate any particular position." However, a review of the record shows that Kleszynski never admitted to violating any ethics rules, but rather he expressly denied any violation. (PCB Hearing 6-2-14 Tr. 160 – 161)

However, despite evidence to the contrary, TCH still maintains its pathetic allegation that "Kleszynski sought to misrepresent the fact that he had been directed by VRLP, as Groot's undisclosed co-applicant, acting through Sechen, to generate an "independent" statement supporting Groot's position." Given the lack of direct evidence of any violation of the USPAP code of ethics, and the lack of any evidence that Kleszynski advocated any position, TCH seeks to string together unrelated events such as emails to create a baseless cloud of suspicion over Kleszynski. However, TCH's frivolous allegations pale in comparison to an examination as to what Kleszynski did at the local siting hearing.

At the local siting hearing, Kleszynski reviewed the report of Mr. Poletti, Groots appraiser, and examined the methodology he used. Kleszyinski concluded that the methodology was correct, and double-checked the data utilized by Poletti and found to be valid. With good data and the correct methodology, Kleszynski reached his own conclusion consistent with that of

Poletti.[2] (C03742.019 – C03742.32). With correct a correct equation (methodology), simply plugging data should always give a consistent result.

With no success challenging either the methodology or the data, TCH is left with its strategy of manufacturing conspiracies and baseless charges of unethical conduct, charges concerning which TCH aggressively cross examined Kleszynksi at the siting hearing and a charge which was available for determination by the RLP Village Board.

TCH's Brief relies on its extensive cross examination of Mr. Kleszynski at the siting hearings to cast aspersions of misconduct in a cheap attempt to make Mr. Kleszynski's testimony a fundamental fairness issue. (C03742.64 – C03742.70) However, in reality, it is no more than an attempt to have the Board improperly reweigh the credibility of Mr. Kleszynski's testimony – credibility already subject to determination by the Village Board. Accordingly, the Board should refuse TCH's invitation to reweigh this testimony.

TCH Exhibit 33 was NOT admitted into evidence at the PCB hearing, but was accepted as an offer of proof. TCH argues that any objection to Exhibit 33 has been waived, because Dale Kleszynski was asked questions about it at the Board's hearing. However, the authority cited by TCH is simply inapplicable, not only because Exibit 33 was taken as an offer of proof, but because the questions asked of Dale Kleszynski were a formal counter or rebuttal offer of proof itself, and accepted by Hearing Officer Halloran as such. While it is well accepted that a party cannot complain of evidence it introduces, the testimony at issue was NOT evidence as it was accepted only as a rebuttal or counter offer of proof. (PCB Hearing 6-2-14 Tr. 152 – 155, 164). Accordingly should the Board overrule Hearing Officer Halloran and consider Exhibit 33, the

[2] TCH's appraiser, Ma Rous, did not do an analysis. He simply criticized what Poletti did. *See generally,* C01507-C01524, C03371-C03490 , C03680-C03706

Board could also, if it chose, also consider Mr. Kleszynski's testimony. Thus, RLP and RLP Village Board moves to strike the portions of TCHs' brief dealing with Exhibit 33.

If the Hearing Officer Halloran's ruling not admitting Exhibit 33 into evidence is overruled, the PCB should consider that Exhibit 33 is an email from Sechen to Kleszynski, who was also retained on another, but unrelated case, by the law firm representing the objector, the Village of Round Lake ("Tressler Firm"). The email string was initiated at the request of the Tressler Firm regarding scheduling. The Tressler Firm had retained, but never called to testify at the local siting hearing, yet another appraiser, Patty McGarr. Exhibit 33 is dated September 22, 2013, well after the filing of the application, subsequent to the pre hearing conference and on the eve of the commencement of the siting hearing.

If there are four (4) appraisers in the siting case and Kleszynski's opinions is in accord with Groot's appraiser, the Tressler Firm will have the right to cross examine Kleszynski. Accordingly, the Tressler firm is in fact on the other side at least one side of the case, at least on the appraisal issues

TCH Exhibit 58 was NOT admitted into evidence at the PCB hearing, but was accepted as an offer of proof. TCH Exhibit 58 is a January 13, 2013 email from Sechen to RLP Village Board Attorney Peter Karlovics ("Karlovics") stating that Sechen, "found the guy I was looking for …. Dale (Kleszynski) is really good and he knows how to testify" is evidence." If the Hearing Officer Halloran's ruling not admitting Exhibit 58 into evidence is overruled, the PCB should consider that there is no evidence that either the email or its contents were shared with the Village Board by Karlovics. In testimony before the PCB Hearing, Kleszynski explained that the fact that he knows how to testify is based upon the fact that he is the author or co-author of

several professional publications, including on how to be and prepare for being an expert witness. (PCB Hearing 6-2-14 Tr. 166-167).

B. The Decision To Approve the Siting Application Was Made After Hearing All of the Admitted Evidence at the Local Siting Hearing.

Stop the Mega-Dump holds that "[a]ny inferences that potentially could be drawn about possible bias or predisposition from various comments made at various times by [Village] Board members are more than negated by their sworn testimony." *Stop the Mega-Dump v. County Bd. of De Kalb County,* 2012 IL App (2d) 110579, 365 Ill.Dec. at 934, 979 N.E.2d at 538. Further, a local siting authority is not held to the same standard of impartiality as a judge. *Southwest Energy Corp.*, 275 Ill.App.3d 84, 91, 211 Ill.Dec. 401, 406, 655 N.E.2d 304, 309 (4th Dist. 1995); *Land and Lakes Co. v. Illinois Pollution Control Bd*, 319 Ill.App.3d 41, 50, 252 Ill.Dec. 614, 621, 743 N.E.2d 188, 195 (3rd Dist. 2000) Whether siting proceedings were fundamentally fair is a mixed question of law and fact, and thus "clearly erroneous" standard. *Peoria Disposal Co. v. Illinois Pollution Control Board*, 385 Ill.App.3d 781, 796, 896 N.E.2d 460 (2008). A siting authority's role in the siting-approval process is both quasi-legislative and quasi-adjudicative. *Land & Lakes,* 319 Ill.App.3d at 47, 252 Ill.Dec. 614, 743 N.E.2d 188. Recognizing this dual role, courts have interpreted the applicant's right to fundamental fairness as incorporating minimal standards of procedural due process, including the opportunity to be heard, the right to cross-examine adverse witnesses, and impartial rulings on the evidence. *Id.* at 47–48, 252 Ill.Dec. 614, 743 N.E.2d 188. The members of a siting authority are presumed to have made their decisions in a fair and objective manner. *Peoria Disposal,* 385 Ill.App.3d at 797, 324 Ill.Dec. 674, 896 N.E.2d 460. This presumption is not overcome merely because a decision-maker has previously taken a public position or expressed strong views on a related issue. 415 ILCS 5/39.2(d); *Peoria Disposal,* 385 Ill.App.3d at 797–98, 324 Ill.Dec. 674,

896 N.E.2d 460. To show bias or prejudice in a siting proceeding, the petitioner must show that a disinterested observer might conclude that the siting authority, or its members, had prejudged the facts or law of the case. *Id.* at 798, 324 Ill.Dec. 674, 896 N.E.2d 460.

Despite TCH's intense scrutiny of the actions of the RLP Village Board, TCH could not produce a single statement, writing, document, or any other form of communication from any member of the RLP Village Board expressing support for the Groot Application before hearing all of the evidence at the local siting hearing.

TCH's lack of evidence of predisposition contrasts with the wealth of evidence that RLP Village Board members were unbiased and fairly considered the admitted evidence presented by the parties at the local siting hearing. Members of the Village Board demonstrated their intent to base their decision on the evidence provided at the siting hearing by their continuous attendance at the hearings. Attending the September 20, 2013 session of the local siting hearing ("hearing session") were Mayor Linda Lucassen, Trustee Jean McCue, Trustee Candace Kenyon (See 9*/20/2013 Hearing Transcript 3:3-8, Record of Proceedings C02533);* attending the September 23, 2013 hearing session were Mayor Linda Lucassen, Trustee Jean McCue, Trustee Bob Cerretti, and Trustee Donna Wagner, and Trustee Candace Kenyon; (9*/23/2013 Hearing Transcript 4:21-24, Record of Proceedings C02575) and (*9*/23/2013 Hearing Transcript 28:14-15, Record of Proceedings C02599);* attending the September 24, 2013 hearing session were Mayor Linda Lucassen, Trustee Jean McCue, and Trustee Donna Wagner *(*9*/24/2013 Hearing Transcript 6:6-7, Record of Proceedings C02882); (*9*/24/2013 Hearing Transcript 2:2-6, Record of Proceedings C03508);* attending the September 25, 2013 hearing session were Mayor Linda Lucassen, Trustee Jean McCue, Trustee Donna Wagner, Trustee Bob Cerretti and Clerk Eggert *(*9*/25/2013 Hearing Transcript 2:22-24, Record of Proceedings C03116.006); (*9*/25/2013*

*Hearing Transcript 3:9-11, Record of Proceedings C03258);*attending the September 26, 2013 hearing session were Trustee Jean McCue, Trustee Donna Wagner, and Trustee Bob Cerretti *(9/26/2013 Hearing Transcript 2:20-14, Record of Proceedings C03263); (9/26/2013 Hearing Transcript 3:8-11, Record of Proceedings C03354);* attending the September 30, 2013 hearing session were Trustee Jean McCue, Trustee Donna Wagner, Trustee Bob Cerretti, Trustee Patricia Williams, and Trustee RaeAnne McCarty *(9/30/2013 Hearing Transcript 4:13-16, Record of Proceedings C03257.004); (9/30/2013 Hearing Transcript 7:17-22, Record of Proceedings C03257.152);* attending the October 1, 2013 hearing session were Mayor Linda Lucassen, Trustee Jean McCue, Trustee Donna Wagner, and Trustee Bob Cerretti *(10/1/2013 Hearing Transcript 2:20-24, Record of Proceedings C03359);* attending the October 2, 2013 hearing session were Mayor Linda Lucassen, Trustee Jean McCue, Trustee Bob Cerretti, and Trustee Candace Kenyon *(10/2/2013 Hearing Transcript 3:15-18, Record of Proceedings C03742.003); (10/2/2013 Hearing Transcript 53:15-16, Record of Proceedings C03795); (10/2/2013 Hearing Transcript 58:5-7, Record of Proceedings C03800).*

As the Hearing Officer Luetkehans noted at the end of the hearing:

"…And finally, I do wish to really thank the Village Board. We have had a large number of the Village Board members here on a daily basis. I don't think we have ever had less than two or three at some very - - not the easiest times for everyone to show up. You have been very attentive and I think all parties I think mentioned it in their closings and they are all very true, the attentiveness of this Village Board has been exemplary and you should be proud of yourselves and the people who you represent should be proud of yourselves as well…" *(See Statement of Hearing Officer Philip Luetkehans, 10/3/2013 Hearing Transcript 115:21-24 and 116:1-8, Record of Proceedings C03857-C03858)*

Also, the Mayor and Members of the RLP Village Board were very attentive to the testimony during the local siting hearing, and they asked their attorney, Karlovics, to request copies of the exhibits from the parties so that they could review them. (9*/25/2013 Hearing Transcript 6:2-13, Record of Proceedings C03116.6)*

Interestingly enough, the Trustee most vilified by TCH as being the most predisposed in favor of Groot, Trustee McCue, had the best attendance record at the hearings of any RLP Village Board member.

Further, Mayor Linda Lucassen gave sworn testimony under oath in a deposition that she waited to receive all the evidence before making a decision on the Groot Application, and did not make up her mind before the hearing commenced. (Lucassen Tr. 52:4-52:15) Trustee Donna Wagner gave sworn testimony under oath in a deposition that she limited her decision on the Groot Application only to the evidence that was admitted in the record, and remained unbiased until she heard all the evidence. (Wagner Tr. 51:21-51:23 and 52:3 to 52:9) Trustee Jean McCue gave sworn testimony under oath in a deposition that she kept an open mind on the Groot Application, that she attended every one of the hearings, that she did not walk into the hearing on the Groot Application with any preconceived notions as to how she would ultimately vote, and that she based her decision on the Groot Application on the record of the hearings. (McCue Tr. 115:1-115:20) For McCue, Lucassen, and Wagner, from the above sworn testimony, any inferences that potentially could be drawn about possible bias or predisposition from the innuendos, conspiracy theories, or accusations of TCH in this case are more than negated by the sworn testimony given above in deposition.

Finally, the record reflects a conscientious deliberation process, where the RLP Village Board met, discussed the evidence and the witnesses, and made their determination upon the

testimony provided in the local siting hearing, and developed their own independent list of conditions. (See the Deliberations that took place on December 11, 2013 and December 13, 2013; C03875-C04047)

C. In Their Deliberations, The RLP Village Board Did Assess The Credibility of Witnesses And Was Within Their Right to Adopt The Proposed Finding of Fact of the Hearing Officer.

The local siting authority is permitted to adopt a finding of fact prepared by another person, even an applicant or a siting approval opponent, without depriving any party of fundamental fairness. *Land and Lakes Co. v. Illinois Pollution Control Bd*, 319 Ill.App.3d 41, 50, 252 Ill.Dec. 614, 621, 743 N.E.2d 188, 195 (3rd Dist. 2000) In this case, the RLP Village Board adopted the findings of fact of a neutral party, the Hearing Officer for the local siting hearing, Phil Luetkehans ("Hearing Officer"). In doing so, the RLP Village Board adopted his findings of fact, but developed its own list of conditions. (C03875-C04047)

TCH claims that the RLP Village Board did not make a determination of credibility of the witnesses. (Page 11 of TCH Brief) However, in adopting the Hearing Officer's proposed findings of fact by majority vote, the RLP Village Board did, in fact, adopt the determinations of credibility of the Hearing Officer, which were contained in that proposed finding of fact. Further, it is impossible to determine the facts in this case without determining the credibility of the witnesses. TCH uses the most tortured of all logic to concede that the RLP Village Board may legally adopt a proposed finding of fact as the finding of fact of the RLP Village Board, but not have the authority to adopt the determination of credibility contained within that proposed finding of fact. TCH fails to cite any authority for this novel theory.

The RLP Village Board not only adopted the Hearing Officer's determination of the credibility of the witnesses, but it also debated the credibility of witness during its deliberations

(Discussion of credibility of Siebert v. Thorsen - C03897-C03913; Discussion of credibility of McGinley C03918-C03920; Discussion of credibility of MaRous v. Poletti C03976-C03979) Further, the Resolution No. 13-09, A RESOLUTION ADOPTING THE DECISION OF THE CORPORATE AUTHORITIES OF THE VILLAGE OF ROUND LAKE PARK ON THE APPLICATION FOR LOCAL SITING APPROVAL FOR GROOT INDUSTRIES LAKE TRANSFER STATION, as adopted by the RLP Village Board, has a statement in its Whereas Clauses that the testimony of all the witnesses was considered, and specifically adopted the Hearing Officer's findings, which contains a determination of credibility of the witnesses.

III. RLP VILLAGE BOARD'S FINDINGS REGARDING CRITERIA 1, 2, 3, 6 AND 8 WERE SUPPORTED BY THE MANIFEST WEIGHT OF THE EVIDENCE

The standard of review applicable to this matter is the Manifest Weight of the Evidence. *McLean County Disposal, Inc. v. County of McLean*, 207 Ill.App.3d 352, 566 N.E.2d 26, 152 Ill.Dec. 498 (4th Dist. 1991), *Sierra Club v. City of Wood River*, PCB 95-174 (October 5, 1995). In this case, the admission into evidence of the Application by itself is sufficient for the Village Board to reasonably find as it did. TCH's case is marked by stunningly short (typically about 5 page) reports by its witness who did not render complete or even valid opinions, did not hold up on cross examination and, in one case, added to statutory criteria on the witness stand. Many of TCH's manifest weight issues cannot be raised under that rubric.

The manifest weight standard is probably the most common standard of review. It is applied in review of everything from jury verdicts to administrative decisions. It has been held that under the manifest weight standard the reviewing body "... [M]ust view evidence introduced at trial and inferences drawn therefrom in the aspect most favorable to the prevailing party below." *Sorenson v Fio Rito*, 90 Ill.App.3d 368, 413 N.E.2d 47, 45 Ill.Dec.714 (1st Dist. 1980) citing *Fetterman v Production Steel Co.*, 4 Ill.App.2d403, 124 N.E.2d 637 (1954). The manifest

weight standard is violated only where the decision below is palpably erroneous, wholly unwarranted, clearly the result of passion or prejudice, or appears to be arbitrary, unreasonable, and not based upon the evidence. *Christian County Landfill, Inc., v Christian County Board*, PCB 89-92 (October 18, 1989). Where the evidence is conflicting, the Board cannot reverse merely because the lower tribunal could have drawn different inferences or credits one group of witnesses and does not credit the other. *Sierra Club v. City of Wood River,* PCB 95-175 (October 5, 1995). An opposite conclusion must be clearly evident, plain and indisputable. *Malavolti v. Meridian Trucking Co., Inc.*, 69 Ill.App.3d 336, 387 N.E.2d 426, 433, 25 Ill.Dec. 770, 777 (3rd Dist.1979), See also, *City of Freeport v. Illinois State Labor Relations Board*, 169 Ill.App.3d 151, 523 N.E.2d 214, 216, 119 Ill.Dec. 746, 748 (2nd Dist 1988). The mere fact that an opposite conclusion is reasonable or that the reviewing court might have ruled differently will not justify reversal. The reviewing body may not substitute its judgment. *Golab v. Illinois Department of Employment Security*, 281 Ill.App.3d 108, 112, 666 N.E.2d 347, 350, 216 Ill.Dec. 897, 900 (4th Dist. 1996). If the record contains evidence supporting the administrative agency's decision, the decision should be affirmed. *Golab v. Illinois Department of Employment Security*, 281 Ill.App.3d 108, 112, 666 N.E.2d 347, 350, 216 Ill.Dec. 897, 900 (4th Dist. 1996), *Discovery South Group, Ltd., v. PCB*, 275 Ill.App.3d 547, 552, 656 N.E.2d 51, 55, 211 Ill.Dec. 859, 863 (1st Dist 1995), *Fairview Area Citizens Taskforce v. Village of Fairview*, PCB 89-33 (June 22, 1989), *Christian County Landfill, Inc., v Christian County Board*, PCB 89-92 (October 18, 1989).

This Board has stated:

"The Board will not disturb a local siting authority's decision regarding the applicant's compliance with the statutory siting criteria unless the decision is contrary to the manifest weight of the evidence. See Concerned Adjoining Owners, 288 Ill. App. 3d at 576, 680 N.E.2d at 818; see also Land and Lakes, 319 Ill. App. 3d at 53, 743 N.E.2d at 197. "That a different conclusion

may be reasonable is insufficient; the opposite conclusion must be clearly evident, plain or indisputable." Concerned Adjoining Owners, 288 Ill. App. 3d at 576, 680 N.E.2d at 818, quoting Turlek v. PCB, 274 Ill. App. 3d 244, 249, 653 N.E.2d 1288, 1292 (1st Dist. 1995). The Board may not reweigh the evidence on the siting criteria to substitute its judgment for that of the local siting authority. See FACT, 198 Ill. App. 3d 541, 550, 555 N.E.2d 1178, 1184 (3d Dist. 1990); Waste Management of Illinois, Inc. v. PCB, 187 Ill. App. 3d 79, 81-82, 543 N.E.2d 505, 507 (2nd Dist. 1989); Tate v. PCB, 188 Ill. App. 3d 994, 1022, 544 N.E.2d 1176, 1195 (4th Dist. 1989). "[T]he manifest weight of the evidence standard is to be applied to each and every criteria on review." See Concerned Adjoining Owners, 288 Ill. App. 3d at 576, 680 N.E.2d at 818.

It is for the local siting authority to weigh the evidence, assess witness credibility, and resolve conflicts in the evidence. See Concerned Adjoining Owners, 288 Ill. App. 3d at 576, 680 N.E.2d at 818; see also Land and Lakes, 319 Ill. App. 3d at 53, 743 N.E.2d at 197; FACT (3rd Dist. 1990), 198 Ill. App. 3d at 550, 555 N.E.2d at 1184; Tate, 188 Ill. App. 3d at 1022, 544 N.E.2d at 1195. Where there is conflicting evidence, the Board is not free to reverse merely because the local siting authority credits one group of witnesses and does not credit the other. See Waste Management, 187 Ill. App. 3d at 82, 543 N.E.2d 505, 507. "[M]erely because the [local siting authority] could have drawn different inferences and conclusions from conflicting testimony is not a basis for this Board to reverse the [local siting authority's] finding." File, 219 Ill. App. 3d at 905-906, 579 N.E.2d at 1235. *Stop the Mega Dump v DeKalb Cnty Bd*, PCB 10-103 (3-17-11), aff'd 2012 IL App (2d) 110579 (2nd Dist 2012)."

Parsed of intricate details and TCH's subjective views, TCH claims that Groot's Lake Transfer Station is not Needed [Criterion 1], that it is not consistent with the County Plan [Criterion 8]. TCH further claims that Criterion 2 has not been met in that the Lake Transfer Station is not so designed, located and proposed to be operated that the public health, safety and welfare will be protected. In addition, TCH argues that Criterion 3 relating to the minimization of the effect on the value of surrounding property has not been met.

CRITERION I WHETHER THE FACILITY IS NECESSARY TO ACCOMMODATE THE WASTE NEEDS OF THE AREA IT IS INTENDED TO SERVE

The Board has addressed Need numerous times in the past. After careful review of record in *Those Opposed to Area landfills (T.O.T.A.L.), v. City of Salem*, PCB 96-79-82 consolidated (March 7, 1996) the Board found that it was not clearly evident that the proposed expansions were unnecessary to accommodate the waste needs of the area intended to be served. There the Board summarized the law of Need.

Section 39.2(a)(1) of the Act provides that local siting approval

> shall only be granted if "the facility is necessary to accommodate the waste needs of the area it is intended to serve". In order to meet this statutory provision, an applicant for siting approval need not show absolute necessity. (Clutts v. Beasley (5th Dist. 1989), 133 Ill.Dec. 633, 541 N.E.2d 844, 846; A.R.F. Landfill v. Pollution Control Board (2d Dist. 1988), 528 N.E.2d 390, 396; Waste Management, Inc., 461 N.E.2d 542, 546.) The Third District has construed "necessary" as connoting a "degree of requirement or essentiality." (Id. at 546.) The Second District has adopted this construction [*54] of "necessary," with the additional requirement that the applicant demonstrate both an urgent need for and the reasonable convenience of, the new facility. (Waste Management, Inc., 530 N.E.2d 682, 689; A.R.F. Landfill, 528 N.E.2d 390, 396; Waste Management of Illinois, Inc. v. Pollution Control Board,(2d Dist. 1984), 79 Ill.Dec. 415, 463 N.E.2d 969, 976.) The First District has stated that these differing terms merely evince the use of different phraseology rather than advancing substantively different definitions of need. (*Industrial Fuels & Resources/Illinois, Inc. v. Pollution Control Board*, (1st Dist. 1992), 227 Ill.App.3d 533, 592 N.E.2d 148, 156.)

The evaluation of need does not involve the application of some arbitrary standard, but rather the consideration of relevant factors. *Waste Management v. Pollution Control Board*, 175 Ill.App.3d 1023, 530 N.E.2d 682, 125 Ill.Dec. 524 (1988). It is necessitated by the same desire to assure the continued ability to assure for the environmentally safe and cost effective disposal of municipal waste which run across the entire solid waste management infrastructure. See generally, *SPILL v. City of Madison*, PCB 96-91 (March 21, 1996), *Sierra Club v. City of Wood River*, PCB 95-175 (October 5, 1995), *Village of LaGrange v. McCook Cogeneration Station*, L.L.C., PCB 96-41 (December 7, 1995), *Waste Management v. PCB*, 234 Ill.App.3d 65, 600 N.E.2d 55 (1st Dist. 1992). Compare, *Citizens for a Better Environment v. Village of McCook*, PCB 92-198 (March 25, 1993), *Waste Management v. PCB*, 234 Ill.App.3d 65, 600 N.E.2d 55 (1st Dist. 1992), were the Village of Bensenville found a lack of need and *Turlek v. Village of Summit*, where the petitioners argued that the Village had failed to consider the impact of recycling and composting on need.

CHRISTINA SEIBERT:

Christina Seibert, an environmental scientist and solid waste planner with over 13 years of experience who has prepared or assisted in the preparation of solid waste needs assessments for 20 solid waste facilities in Illinois, testified that Criterion I has been met because the facility is necessary to accommodate the waste needs of the intended service area. (C03515) She has been an expert witness in eight (8) local siting hearings and worked on permit applications for more than ten (I0) transfer stations in Northern Illinois. (C03515) She has been a consultant to industry and government clients concerning the issue of solid waste management need. (C03515 – C03616) She performed a needs analysis evaluating trends in managing waste in the service area and in the Chicago metropolitan area comparing available transfer and disposal capacity with projected waste generation. (C03519) Ms. Seibert reviewed demographic projections, data concerning the trends in the waste disposal system, data concerning the landfill and transfer station capacity generally serving Lake County, and the projections for the waste requiring disposal for the service area. (C03519 – C03521)

Historically, Lake County has sent waste to Advanced Disposal's Zion Landfill, Waste Management's Countryside Landfill in Grayslake and Waste Management's Pheasant Run Landfill just outside of Kenosha, Wisconsin. (C03525 –C0 3528) Ms. Seibert explained that the Countryside Landfill will have less than five (5) years capacity remaining when the Lake Transfer Station begins operating. (C03526) The ADS Zion Landfill's capacity commitment to Lake County will expire in 2017 and that facility is projected to close within 12 years of the Lake Transfer Station opening. (C03526) Finally, the Pheasant Run Recycling and Disposal Facility in Wisconsin has dramatically increased its tipping fees making that facility economically infeasible for waste disposal. (C03542 – C03543)

Ms. Seibert examined the recent economic downturn and determined that it resulted in decreased waste generation which is likely to be reversed with a return to prosperity and noted that a recent 10% increase in waste intake at the Countryside Landfill may be a result of an improving economy. (C03538 – C03541) (Seibert 13-14) (App 1-18 to 20, C 00037 - C 00039)

Upon reviewing the appropriate data she observed that Lake County was expected to experience growth in population, the number of households, as well as employment, resulting in increased quantities of waste needing to be managed. (C03532 – C03533) With dwindling disposal capacity and an improving economy potentially driving up waste generation rates, the population in the Lake County Service Area is also expected to increase by about 1% per year from 2010 to 2040, creating a 36% increase in population in that time frame. Ms. Seibert testified that, waste flows can vary hourly, daily and on a seasonal basis and that, it is best to build transfer facilities to accommodate present and projected maximum peak flows. (C03532 – C03535) (Seibert 10) (App 1-14 to 15, C00033 - C00034) Lake County landfills will not provide the statutorily required twenty (20) years capacity and new landfills are being developed further away from the County, necessitating the use of transfer stations. (C03548)

Ms. Seibert testified that the Lake County Solid Waste Management Plan cited a need to develop new transfer stations, and that those facilities need to be developed prior to the closing of existing facilities. (C03529) Ms. Seibert informed the Village that there are no transfer stations currently operating in Lake County, which results in a transfer capacity deficit. (C03540)

Using the historical average rates from 1996 through 2011 the 2015 projected daily waste disposal need was 3,422 tons per day and by the year 2035 the projected waste disposal needs would be 4,191 tons per day. (C03535 – C03536) The Lake Transfer Station is designed to

accept approximately 750 tons per day. (C03540) It is clear that the service area is in need of between 3,550 tons per day and 4,191 tons per day of disposal capacity to meet the twenty (20) year disposal capacity needs. All of the landfill capacity servicing Lake County will be exhausted in approximately twelve (12) years of the Lake Transfer Station beginning its operation and could be much sooner than that. (C03526) Finally, the testimony of Ms. Seibert was that each of the regional landfills in the area have taken nine (9) years or more to develop and the planning for the Lake Transfer Station began in 2008 resulting in a development time frame of seven (7) years. (C03528 – C03531) In addition, there is a growing trend for landfills to be further and further away from the Chicago and the collar county area which creates a greater need for transfer station capacity. (C03548) Ms. Seibert opined that the Need Criterion has been met. (E.g. C01345).

JOHN W. THORSEN:

The only witness who testified concerning criterion on behalf of objectors was John W. Thorsen. Mr. Thorsen testified that he did one prior needs analysis. That was for the expansion of the ARF Landfill in the late 1980s. (tr 9-25-138 at 46)

Mr. Thorsen agrees that capacity could be depleted before or after 2027 but he isn't sure when a siting application should be filed for a transfer station, at the same time acknowledging that he could not know whether there would be any properties left meeting the Section 22.14 1000 foot setback requirement in the future. He noted that setbacks are not within the scope of his work. (C03197 –C03200) While a landfill could add capacity, Mr. Thorson admitted that it takes an average of nine (9) years or longer to site a landfill and seven (7) or eight (8) years to

site a transfer station. (C03173, C03175, C03182). That does not even count time to permit and construct either type of facility.

Ms. Seibert was the only expert who conducted an independent analysis of underlying generation and disposal rates in the service area. Mr. Thorsen admitted that he did not do a Section 39.2 needs analysis. (C032310) Mr. Thorsen did not dispute the fact that a need existed, he just disputed the timing of the need. (C03196) However, he admitted that the date when a petition should be filed was not in his "wheelhouse." (C031980)

Mr. Thorsen explained that his report, consisting of a few sentences more than 5 Pages was "fairly simple" and that need is based on the amount of capacity left in the in-county landfills and the amount of waste projected to be generated. (C03152) Mr. Thorson elaborated that he took the waste receipts, as opposed to projections, from the two landfills for 2010, 2011 and 2012 and averaged them out thereby showing that there was plenty of capacity to last to 2027. (C03152 – C03153), which does not account for an approving economy.

THE VILLAGE BOARD COULD HAVE REASONABLY FOUND AS IT DID:

Mr. Thorsen's short report is a mere back of the envelope calculation, which he admitted was not a complete 39.2 Needs analysis, and evidence which shows that it may take 7 years to site a single transfer station, with no guarantee of that time estimate and estimates regarding remaining capacity landfill. Ms. Seibert's broad experience and through analysis represents good planning and supports her opinion and by itself is sufficient for the Village Board to reasonably find as it did. Need is not limited to a simple mathematical calculation as TCH claims. No other conclusion is clearly evident, plain or indisputable.

CRITERION 2 THE FACILITY IS SO DESIGNED, LOCATED AND PROPOSED TO BE OPERATED THAT THE PUBLIC HEALTH, SAFETY AND WELFARE WILL BE PROTECTED

TCH improperly uses argument regarding manifest weight and Criterion 2 to challenge credibility regarding odor again attacking the veracity of Groot's engineer, Devin Moose. (Pages 23-27 of TCH Brief) Manifest weight, however, does not concern credibility issues. Moose is a licensed professional engineer and the director of Shaw Environmental, a CB&I company. He received his engineering degree from the University of Missouri – Rolla special in civil and geotechnical engineering and has been practicing in the solid waste field for 30 years. He has extensive design experience in transfer stations and several have won awards. The Lake Transfer Station incorporates all of the amenities, design features and safeguards of the rest of his recent designs. (C02612 – C02624) In reality, Mr. Moose is the only expert to offer a full and complete opinion on Criterion 2, opining that it is his professional opinion that the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected. (C01308, C02639-40)

Mr. Moose testified that the Applicant can comply with the requirement that there be no noticeable odor at the facility boundary. (C02637 – C02638); (TR 9-23-13A at 66-67) (App. Appendix C.1, para 11c, C 00759) (App. Appendix C.2, para 11c, C 00797) Mr. Moose opined Criteron 2 has been complied with. E.g. C 01308

CHARLES MCGINLEY:

TCH limits its argument to odor issues and relies on the testimony of Charles McGinley, a chemical engineer, who limits his practice to odor. Mr. McGinley did not offer a complete opinion and analysis on Criterion 2. (See generally C03357.009 – C03357.180) He did not even have an opinion regarding whether there will be an odor violation or even ANY PERCEPTIBLE ODOR at TCH. (C03357.128) He has no opinion regarding odors escaping from the subject transfer station, merely that the facility will not "prevent" odor. (C03357.139)

Accordingly, the Village Board could have reasonably found that Criterion 2 had been met in accord. Certainly, no other conclusion is clearly evident, plain or indisputable.

CRITERION 3 THE FACILITY IS LOCATED SO AS TO MINIMIZE IMCOMPATIBILITY WITH THE CHARACTER OF THE SURROUNDING AREA AND TO MINIMIZE THE EFFECT ON THE VALUE OF THE SURROUNDING PROPERTY

Criterion 3 contains two parts. The first is a land planning issue, compatibility. The Second deals with property value. Accordingly J. Christopher Lannert, Groot's land planner, addressed the first part of Criterion 3 and Groot's appraiser Professor Peter Poletti addressed minimization of the effect on the value of surrounding property. Two other appraisers testified. Dale Kleszynski was called by RLP. Michael Marous testified on behalf of TCH

Despite TCH's argument regarding credibility, the Village Board could reasonably have found as it did, that Criteron 3 is satisfied.

CHRISTOPHER LANNERT - MINIMIZATION OF INCOMPATIBILITY:

J. Christopher Lannert is an urban planner and landscape architect. He is the president of the Lannert Group which provides planning services. Mr. Lannert and his firm have won the American Planning Association Award for the master planning done in New Lenox. He is a member of the American Society of Landscape Architects, the American Planning Association and a past board member and president of the Landscape Architecture Foundation. Mr. Lannert is also a past board member and chairman of the State of Illinois Department of Professional Regulations and past president elect for the Illinois Chapter of the American Society of Landscape Architects. Mr. Lannert has provided testimony in 60 solid waste related projects. (Lannert 2)

Mr. Lannert began his testimony by describing the methodology that he utilized in his evaluation. He obtained an aerial photograph and located the site and area features, gathered

regional documents and maps, reviewed zoning ordinances, verified zoning and reviewed the comprehensive plans of Grayslake, Hainesville, Round Lake and Round Lake Park.

Mr. Lannert conducted a field investigation and prepared 3D models to illustrate the views of the proposed facility and prepared the report which appears in the Application. (C02890 – C02891), (Lannert 4) (App. 3.1-4, C 00092) He utilized his site location map to point out the subject site, and the significant landholdings of the Applicant including Groot North, which extends North beyond the 1000 foot setback noted by the red and white dashed circular line on slide 4, the Eco Campus and the property being acquired by Groot located adjacent and to the East of the subject site and extending North to almost the 1000 foot setback line. Mr. Lannert agreed that those Groot holdings are significant in minimizing impacts. (C02892 – C02893), (Lannert 5) (App. 3.1-5 to 7, C 00093 - 00095)

Mr. Lannert proceeded to discuss both land use and zoning in the area of the subject site utilizing his PowerPoint slides. The bottom line is that we see that the total industrially zoned property on both sides of Route 120 within 1000 feet amounts to 55% of the land area. Within one half mile industrially zoned land is 34% and within one mile industrially zoned land makes up 12% of the land area. Accordingly, as one moves toward the proposed Lake Transfer Station the industrially zoned land area jumps from 34% at one half mile to 55% within 1,000 feet and much of that is or will be owned by the Applicant. C 02893 – 2595, C 02898 – 2904, (Lannert 5-10) (App. 3.1-9 to 10, C 00097 - 00098)

The Eco Campus, while zoned industrial and moving toward construction it is currently vacant. Likewise the property which the Applicant bought at auction to the East of the subject site is vacant. None of that property counts toward land "use" as it is vacant. Accordingly, the

current industrial land use within 1,000 feet of the subject property is just 25%.[3] (C02901 – C02903), (Lannert 6) (App. 3.1-6 to 7, C 00094 - 00095) As Mr. Lannert testified at page 28 of the transcript, the fact that industrial zoning jumps to 55% within 1,000 feet of the subject property tells Mr. Lannert is that as one moves closer the area becomes more within the control of the Round Lake Park Village Board and that subject property and the property in the area thereof has been appropriately zoned by the Village Board for industrial uses. (C02902 – C02904), Emphasis added) (Lannert 5, 7-10) (App. 3.1-7 to 10, C 00095 - 00098)

Mr. Lannert explained how natural vegetation, topography, buildings, railroad tracks and roadways naturally buffers the subject site and serves to help minimize any incompatibility that may exist. He noted that the subject site cannot really be seen from North of the tracks. (C02906 – C02914), (Lannert 11-12) (App. 3.1-7 to 8, (C00095 - 00096) Mr. Lannert, however, did not leave buffering to nature. He developed a landscape plan which includes berms, a knee wall along the South side of the property along Route 120, and vegetation to further buffer the subject site. (C02914 – C02925), Lannert 13) (App. 3.1-10 to 12, (C00098 – C00100) Mr. Lannert rendered his professional opinion that the facility is located so as to minimize the incompatibility with the character of the surrounding area and, therefore satisfies the first part of Criterion 3, based on the character of the immediate area having been defined by industrial uses over the past years.

PETER POLETTI - MINIMIZATION ON THE EFFECT ON THE VALUE OF THE SURROUNDING PROPERTY

Peter J. Poletti testified to the remainder of Criterion 3. At the request of the Applicant, he conducted a study of the proposed facility and examined its potential impacts on property

[3] TCH Homes trailer park is used for residential purposes but it is zoned industrial. While outside of Mr. Lannert's testimony, one could even argue that TCH Homes will one day become an industrial use simply through market forces. The Village Board may have already seen market forces result in similar changes in land use, though likely on a much smaller scale.

values. Poletti concluded that the proposed Groot Industries Lake Transfer Station is located so as to minimize the effect on the value of surrounding property. (Poletti 3)

Peter J. Poletti has been awarded Bachelor's, Master's and Doctorate degrees. He has taught at the University of Missouri at St. Louis, teaches appraisal courses for the Appraisal Institute, He has been the elected township appraiser in Collinsville Township, Madison County, Illinois since 1977. (C02910 – C02913), (Poletti 2) (App. 3.2-33, C 00145)

Poletti has been a Real Estate Appraiser for over 34 years and has participated in 30 solid waste related hearings. He is being awarded the MAI designation and being a previous certified instructor of the Appraisal Institute and a Certified Illinois Assessing Officer.

Professor Poletti's study included case studies, visiting and reviewing and analyzing property sales in the areas surrounding the SWANCC's Glenview Transfer Station (operated by Groot), the Elburn Transfer Station and the Bluff City Transfer Station. C 02910 – 2922, (Poletti 2-9) (App. 3.2-16 to 3.2-29, C 00128 - 00141)

CASE STUDIES

Poletti's case studies of the Glenview Transfer Station, the Elburn Transfer Station and the Bluff City Transfer Station compare the sale prices of similar properties between target and control areas in the vicinity. The target area is the surrounding area in proximity to the transfer station. The control area is distant enough from the transfer station that property values would not be expected to be affected. Other variables in homes are compared such as size, the bedrooms, basement, brick versus frame construction and garage. (C02927 – C02928)

Poletti used multiple regression modeling of the sales data for the target and control areas. This method isolates the effect on value of discrete property characteristics in the target and control areas and helps eliminate subjectivity. C 03083, 3104

For all of the transfer stations studied, Elburn, Glenview and Bluff City, Poletti's analysis shows that there is no statistical difference between homes sold in the target areas (located closer to the transfer stations) and the homes sold in the control areas (located in areas more removed from the transfer stations).

Of particular note is Poletti's case study of the larger but otherwise similar Glenview Transfer Station which was also designed by Mr. Moose. As noted by Lannert and Poletti, the area close to the Glenview Transfer Station, which began operations in 1994, is seeing redevelopment with older homes being torn down and very large more expensive homes replacing them. (C01327 – C01329, C02927 – C02928, C03074 – C03089), (Poletti 11-19) (App. 3.2-16 to 29, C 00128 - 00141)

Professor Poletti offered his expert opinion that the proposed Lake Transfer Station is located to minimize the effect on the value of surrounding property. Some of the bases of his opinion are the proposed transfer station design, features and operating procedures. Further, Poletti's case studies of the three similar operating transfer stations show no statistical difference in sales properties for properties located near those facilities and those some distance away. (C03088 – C03089), (Poletti 20) (App. 3.2-3 to 4, C 00113 - 00114)

MICHAEL S. MAROUS

TCH called Michael S. Marous to testify. Marous is the president and owner of Marous and Company, a full service real estate appraisal firm for the past 33 years. (C03371) He has a Bachelor from the University of Illinois. Marous has been a full time appraiser since 1976. (C03371) (TCH Exhibit 7)

Marous prepared a report. (TCH Exhibit 8 (C01507 – C01523) While not a land planner, Marous extensively criticized the work done by Lannert and likewise that of Poletti.

For example, Marous testified that both Lannert and Polletti's reports fail to demonstrate what they claim. (C03405 – C03406) Regarding Poletti's case studies of the three operating transfer stations, Marous criticized the comparable sales utilized, the size and location of the target and control areas utilized by Poletti and was incorrect when referred to what Poletti's case studies as being done by matched pair analysis, a term that no one, including Poletti used. (C03398 – 3404) (tr 10-1-13B at 41-47)

Marous did not testify or note in his report that he even visited any of Poletti's case study transfer stations. He admits that he did essentially nothing but offer criticism. (C03476) Mr. Marous could have redone Poletti's near far or target and control area analysis utilizing Poletti's data contained in the Application. He failed to do so. (C01499) (C03405 – C03406). Groot met its burden regarding Criterion 6.

DALE KLESZYNSKI

Kleszynski was called as an expert appraisal witness by the Village of Round Lake Park. Kleszynski received a Bachelor of Arts degree from Loyola University and has been awarded the MAI and SRA designations by the Appraisal Institute. He is currently a licensed appraiser in Illinois, Indiana and Michigan and has taught almost every course offered by the Appraisal Institute as well as being qualified to teach course work related to the Uniform Standards of Professional Appraisal Practice as well as professional ethics. (C03742.008 – C03742.010) (RLP Exhibit 1)

Kleszynski's assignment here was to act in the capacity as a review appraiser to review the work done by Poletti and perform a Standard 3 review under the Uniform Standards of Professional Appraisal Practice which is like a peer review but to a higher standard. (C03742.0 12 – C03742.0014) He prepared a report related to that assignment. (RLP Exhbit 2)

Kleszynski reviewed the Criterion 3 reports in the Application, drove to the subject site and the area thereof. (C03742.017 – C03742.018) (RLP Exhibit 2 at 6) Since Standard 3 requires a determination of whether what Poletti did was correct, he reviewed and spot checked the data and obtained and reviewed three reports referenced by Poletti and contacted three other MAI appraisers to obtain their opinions on the options available to solve the valuation issues. C 03742.021 – 3742.022 (RLP Exhibit 2 at 6-7)

Further, Kleszynski did an analysis of the case study data utilized by Poletti and verified the mathematical accuracy of what Poletti had done and whether Poletti's conclusions were supportable. (C03742.042 – C03742.043) (RLP Exhibit 2 at 6-9) RLP's appraiser even had Mr. Poletti's multiple regression analysis checked by a PHD at Texas A&M University. Mr. Poletti's multiple regression analysis was verified and found to be appropriate. (C03742.021 – C03742.037)

Kleszynski concluded that Dr. Poletti had applied the appropriate analytical techniques to determine that the Lake Transfer Station is located so as to minimize the effect on value of surrounding properties. Significantly, Kleszynski concluded that the Lake Transfer Station is located as to have no effect on surrounding property values. (C03742.031 – C03742.032) (tr 10-2-13A at 21-22) (RLP Exhibit 2 at 10) Further, Mr. Kleszynski concluded that Mr. Marous' report failed to meet relevant professional standards. (C03742.033 – C03742.035)

It is abundantly clear that the Village Board could have reasonably found, as it did, that Criterion 3 has been satisfied. No other conclusion is clearly evident, plain or indisputable.

CRITERION 6: THE TRAFFIC PATTERNS TO OR FROM THE FACILITY ARE SO DESIGNED AS TO MINIMIZE THE IMPACT ON EXISTING TRAFFIC FLOWS

TCH does not actually pose a manifest weight challenge regarding Criterion 6. The TCH caption refers only to Groot not meeting its burden regarding Criterion 6 which is not a manifest weight of the evidence issue. Regardless of the nature of TCH's complaint, TCH is wrong, as noted by the Appellate Court, Second District, in *Fox Moraine, LLC v. United City of Yorkville*, 2011 IL App. (2d) 100017, - 60 (2011) PLA Denied __Ill.2d__, 968 N.E.2d 81 (2012).

The courts have previously construed this criterion to require an applicant to show that it has minimized traffic impact -- not that it will eliminate any additional traffic impact. See, e.g., *Tate v. IPCB*, 188 Ill. App. 3d. 994, 544 N.E. 2d 1176, 1196 (4th Dist. 1989). The Board has also made it clear that Criterion 6 does not refer to or require an applicant to present a specific traffic plan; rather, the applicant must show that traffic patterns to or from the facility are so designed as to minimize the impact on the existing traffic flows. *CDT Landfill Corporation v. City of Joliet*, PCB 98-60 (March 5, 1998) (Slip. OP. at 50-52).

One of the problems with TCH's position is one unit of government in any manner approving or determining traffic patterns outside the roadway system in the immediate area of the facility. In the case of a transfer station, the routes of packer trucks to and from the facility are subject to change as a result of development and hauling contracts. As a result, the directional distribution of packer trucks on the roadway system will change. TCH's position would unduly complicate 39.2 facility sitings by necessitating the consideration of additional large portions of roadway in Criterion 6 analyses.

Virtually the entirety of Mr. Coulter's testimony concerned the route taken all the way to the Winnebago Landfill by transfer tractor trailers. Mr. Coulter went on and stated that if there is a possibility that other landfills could be used, the entire routing to each landfill MUST be set out in the Application and, apparently, approved by the Village Board. Apparently realizing that he

was creating an impossible task, when Mr. Coulter was asked about the possibility of using a dozen landfills, he made up – out of thin air – that only three or four that could accept the waste need be identified and complete routing being supplied. (C03324 – C03330) When asked where the limitation to three or four landfills was in Criterion 6, Mr. Coulter was forced to admit that there was no such language in Criterion 6. In other words he did just make up a limitation that is not in Criterion 6. (C03329 – C03330)

Mr. Coulter's conclusion that Groot has not satisfied Criterion 6 is based on the absence of routing information beyond the immediate vicinity of the proposed transfer station. Mr. Coulter offered no opinion nor did he provide any evaluation of his own. Mr. Coulter's report, consisting of a bit over four (4) type written pages (C01495 – C01499) and testimony are not credible on their face.

MICHAEL WERTHMANN:

Michael Werthrnann, a registered and certified Professional Traffic Engineer with 23 years of experience. (C03116.017) He performed a three phase traffic study. He first examined the existing physical characteristics of the nearby road system and then determined the type and volume of traffic to be generated by the Facility. (C03116.018 - C03116.019) He evaluated the nearby existing roadway network including Illinois Route 120 (a Class II Truck Route), Illinois Route 134, Hainesville Road, Cedar Lake Road, and Porter Drive. (C03116.028) Werthmann testified that he recommends several roadway improvements, including the widening of Route 120 to provide a separate left turn and right turn lane serving Porter Drive, and the widening of Porter Drive to provide separate left and right turn lanes serving Route 120. (C03116.023; C03116.013) Porter Drive will be completely resurfaced, and the improved intersection radii will accommodate turning transfer trailers. (C03116.023 – C03119.024)

Werthmann explained that peak traffic of the transfer station will occur outside of the critical commuter peak hours. (C03116.029 – C03116.030) Furthermore, there will be restrictions on truck traffic to minimize traffic flows, including directing transfer station trucks to use the Route 120/Porter Drive intersection when accessing the roadway system and prohibiting transfer station truck traffic from making a left tum from Porter Drive on to Illinois Route 120 between the hours of 7 a.m. and 9 a.m. and 3 p.m. to 5 p.m. (C03116.032 – C03116.033)

The Transfer Station is proposed to be located close to the existing Groot North facility, which further minimizes its impact on the area roadways. (C03116.030 – C03116.031) The existing Groot North facility is a storage and maintenance yard for approximately 65 to 70 vehicles. After their last stop of the day, Groot collection vehicles will only traverse Porter Drive to return to Groot North. (C03116.030 – C03116.031) Because of these efforts, there will be a negligible impact on the existing roadway system. (C03116.044) Accordingly, Mr. Werthmann opined, that the traffic patterns to and from the Facility were so designed as to minimize the impact on existing traffic flows thereby satisfying Criterion 6. (C03116.020) The Village Board could have reasonably found, as it did, that Criterion 6 has been satisfied.

CRITERION 8: CONSISTENCY WITH SOLID WASTE MANAGEMENT PLAN OF THE COUNTY IN WHICH THE FACILITY IS TO BE LOCATED

TCH claims that the Winnebago Landfill, one of the landfills likely to receive waste from the Lake Transfer Station, does not have a host agreement with Lake County, which in turn would require that the Winnebago County landfill pay Lake County a host fee and guarantee Lake County capacity in order to be consistent with the Lake County Solid Waste Management Plan. (C03123 – C03125)

It is not uncommon for some counties to utilize compliance with their solid waste management plans to force waste companies to enter into host agreements requiring the payment

of host fees. Those proposing the development of pollution control facilities in Illinois have been unwilling to litigate to an significant degree the legitimacy of plans requiring the negotiation of host agreements requiring the payment of money in the form of host fees. However, the facility in question is one that is located in another county. It may well have a host agreement and it may well pay host fees to Winnebago County, apparently not to Lake County.

Fortunately, a facility is consistent with a Solid Waste Management Plan so long as it is not in opposition of that plan. City of Geneva v. Waste Management, PCB No. 94-58 (July 21, 1994), reversed on other grounds in County of Kane v. PCB, 2-96-0652 and 2-96-0676 (consolidated) (2nd Dist., September 29, 1997). Consistency does not require that a Solid Waste Management Plan be followed to the letter. Cure v. BFI, PCB No. 96-238 (September 19, 1996). In this circumstance, the Winnebago Landfill does not have to forestall the development and pay to litigate the issue.

The Lake Transfer Station does have a host agreement with Lake County requiring the payment of host fees to Lake County. It is notable, however, that the repealed Village of Round Lake Park SWMP, in effect at the time the Application was filed, had no requirement for a disposal facility to provide capacity or enter into a host agreement or pay host fees to the Village but the Lake Transfer Station is consistent with that plan. Mr. Moose, who has 30 years of experience in all aspects of solid waste and solid waste planning opined that the proposed Lake Transfer Station is consistent with both Solid Waste Management Plans. C 03129 – 3132, C 03116.123, (Moose 8-3 to 8-5) (App 8-1) Accordingly, the Village Board could have reasonably concluded that Criterion 8 has been satisfied. No other conclusion is clearly evident, plain or indisputable.

IV. ADOPTION OF RESPONDENT GROOT INDUSTRIES POST-HEARING BRIEF

RLP and RLP Village Board hereby incorporate the Post-Hearing Brief of Respondent Groot Industries as their own, as if it were fully set forth herein.

CONCLUSION:

Despite the best efforts of TCH to create conspiracy theories, the grant of local siting approval by the Village Board of Round Lake Park must be affirmed. No violation of the principles of fundamental fairness have occurred and the decision of the Village Board is in accord with the manifest weight of the evidence.

WHEREFORE, Respondent Round Lake Park Village Board and Village of Round Lake Park respectfully requests that Petitioner's Petition for Review be denied and the Village Board's decision to grant siting approval be upheld.

Respectfully submitted,
Village of Round Lake Park
Respondent

By Glenn C. Sechen
One of Its Attorneys

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Respectfully Submitted,
Village Board of Round Lake Park,
Respondent

By: ***Peter S. Karlovics***
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AFFIDAVIT OF SERVICE

The undersigned certifies that on July 3, 2014 a copy of the foregoing **Notice of Filing** and **ROUND LAKE PARK AND ROUND LAKE PARK VILLAGE BOARD'S POST-HEARING BRIEF** was served upon the following:

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