

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ROXANA LANDFILL, INC.)
)
 Petitioner,)
)
 v.)
)
 VILLAGE BOARD OF THE VILLAGE OF)
 CASEYVILLE, ILLINOIS; VILLAGE OF)
 CASEYVILLE, ILLINOIS; and)
 CASEYVILLE TRANSFER STATION, L.L.C.)
)
 Respondents.)

No. PCB 15-65
 (Third Party Pollution Control
 Facility Siting Appeal)

VILLAGE OF FAIRMONT CITY, ILLINOIS,)
)
 Petitioner,)
)
 v.)
)
 VILLAGE OF CASEYVILLE, ILLINOIS BOARD)
 OF TRUSTEES and CASEYVILLE TRANSFER)
 STATION, L.L.C.)
)
 Respondents.)

No. PCB 15-69
 (Third Party Pollution Control
 Facility Siting Appeal)
 (Consolidated)

REPLY TO ROXANA LANDFILL, INC.'S MOTION FOR PROTECTIVE ORDER

NOW COME, Respondents', Village of Caseyville, Illinois and Village Board of the Village of Caseyville, by and through their attorney and for their Reply to Roxana Landfill, Inc.'s Motion for Protective Order, states as follows:

1. Roxana Landfill, Inc. cites Dumke v. City of Chicago, 373 Ill.Dec. 804, 810 (1st Dist. 2013), for the proposition, "Illinois Courts have held that the deliberative process privilege can be waived." First, Dumke did not involve the deliberative process privilege. Rather, Dumke involved an exemption to the Illinois Freedom of Information Act for pre-decisional documents. It is interesting that Roxana Landfill, Inc. cited the Dumke case because even if the Dumke case were applicable, it would support the conclusion that Trustee Davis and Trustee Abernathy could

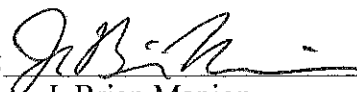
not waive the deliberative process privilege. Dumke held that only the head of a public body could waive an exemption to FOIA. *Id.* at 807-08. Applying this rational to the facts of this case, only the president of the board of trustees of the Village of Caseyville, Leonard Black, could waive the deliberative process privilege for the Caseyville Village Board. This rational is sound. If any individual member of a political body could waive the deliberative process privilege, then any lone dissenting member of the political body could stifle the body's ability to conduct a fully and frank deliberation on a matter.

2. Fox Moraine, LLC v. United City of Yorkville, 2011 IL App (2d) 100017, ¶ 73 (2nd Dist. 2011), was directly on point and held that comments made by aldermen speak for themselves and do not require further inquiry.

3. The Village Board of the Village of Caseyville joins in the Motion for Protective Order. It is also further anticipated that Trustee Abernathy and Trustee Davis will both individually assert the deliberative process privilege.

Respectfully Submitted,

WEILMUNSTER LAW GROUP, P.C.

BY: 
J. Brian Manion
IL No. 06283445

3201 West Main Street
Belleville, IL 62226
(618) 257-2222 – phone
(618) 257-2030 – fax

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause by enclosing same in an envelope addressed to such attorneys at their business address as disclosed by the pleadings of record herein, with postage fully prepaid, and by depositing said envelope in a U.S. Post Office Mail Box in Belleville, Illinois, on the 21st day of October, 2014.

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 N. Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274

Donald J. Moran
Pedersen & Houpt
161 N. Clark Street
Suite 2700
Chicago, IL 60601

Jennifer J. Sackett Pohlenz
Clark Hill PLC
150 N. Michigan Avenue
Suite 2700
Chicago, IL 60601

Penni S. Livingston
Livingston Law Firm
5701 Perrin Road
Fairview Heights, IL 62208

Robert J. Sprague
Sprague & Urbana
26 E. Washington Street
Belleville, Illinois 62220