2015 IL App (2d) 140909-U
No. 2-14-0909
Order filed September 9, 2015

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

TIMBER CREEK HOMES, INC.,	)	Petition for Review of the Order of the Illinois Pollution Control Board.
Petitioner-Appellant,	)	
v.	)	No. PCB 14-99
ILLINOIS POLLUTION CONTROL BOARD; VILLAGE OF ROUND LAKE PARK; VILLAGE BOARD OF ROUND LAKE PARK; and GROOT INDUSTRIES, INC.,	)	
Respondents-Appellees.	)	

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Schostok and Justice Spence concurred in the judgment.

ORDER

¶ 1 *Held*: TCH did not forfeit the issue of fundamental fairness; the PCB's determination that the Village Board's procedure was fundamentally fair was not clearly erroneous; and the PCB's decision affirming the Village Board's grant of siting approval for Groot's waste transfer station was not against the manifest weight of the evidence.

¶ 2 This is a direct administrative review from a decision of the Illinois Pollution Control Board (PCB) affirming the siting of a waste transfer station in the Village of Round Lake Park, Illinois (Village). We affirm.

¶ 3 I. BACKGROUND

¶ 4 On June 21, 2013, Groot Industries, Inc. (Groot), a solid waste management services provider, filed an application with the Village for approval of a waste transfer station to be located on approximately 3.9 acres at the intersection of state Route 120 and Porter Drive. That site was Groot's existing Lake County headquarters. At a waste transfer station, waste collection trucks, known as packer trucks, dump their contents onto a "tipping" floor. Then the waste is loaded onto larger trucks and is hauled to a distant landfill. Groot's proposed waste transfer station would be a moderately-sized facility that would process 750 tons of solid municipal waste per day. The concrete and steel building would be 27,800 square feet.

¶ 5 Timber Creek Homes, Inc. (TCH) owns and operates a mobile home community that is just over 1,000 feet west of the proposed transfer station. TCH, which opposed Groot's application, participated in the hearing before the Village Board of Round Lake Park (Village Board). The Village of Round Lake (Round Lake) also appeared as an objector, and the Solid Waste Agency of Lake County (Lake County or County) represented the County's interest in seeing that its solid waste management plan was followed. Members of the public were invited to the hearing and submitted questions and comments.

¶ 6 On December 12, 2013, the Village Board approved Groot's application with conditions. In its petition for a hearing before the PCB, TCH argued that the Village Board's proceedings were fundamentally unfair under the Illinois Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (West 2012), and also argued that the Village Board's decision to grant siting approval was against the manifest weight of the evidence. TCH makes the same arguments in this appeal.

¶ 7 A. The Statutory Siting Process

¶ 8 Under the Act, a waste transfer station is a "pollution control facility." 415 ILCS

5/3.330(a) (West 2012). Section 39.2(a) of the Act requires that an applicant seeking siting approval for a pollution control facility provide evidence demonstrating that it meets the nine criteria listed therein. 415 ILCS 5/39.2(a) (West 2012). In this appeal, five of the criteria are at issue: (i) the facility is necessary to accommodate the waste needs of the area it is intended to serve; (ii) the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected; (iii) the facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property; (vi) the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows; and (viii) if the facility is to be located in a county where the county board has adopted a solid waste management plan, the facility is consistent with that plan. 415 ILCS 5/39.2(a) (West 2012).

¶ 9 Because the proposed waste transfer station was to be located in the Village, the Village Board was the siting authority. 415 ILCS 5/39(c) (West 2012). The siting authority must hold at least one public hearing concerning the application for a pollution control facility. 415 ILCS 5/39.2(d) (West 2012). The siting authority's decision must be in writing and must specify the reasons for the decision. 415 ILCS 5/39.2(e) (West 2012). In granting approval, the siting authority can impose such conditions as may be reasonable and necessary to accomplish the statutory purposes set forth in section 39.2(a), but such conditions cannot be inconsistent with regulations promulgated by the PCB. 415 ILCS 5/39.2(e) (West 2012).

¶ 10 If the siting authority approves the application, a third party that participated in the public hearing may petition the PCB for a hearing to contest that approval. 415 ILCS 5/40.1(b) (West 2012). Unless the PCB determines that the petition is duplicative or frivolous, or that the petitioner is located so as not to be affected by the proposed facility, the PCB hears the petition

in accordance with section 40.1(a) and its rules governing denial appeals. 415 ILCS 5/40.1(b) (West 2012). The petitioner has the burden of proof. 415 ILCS 5/40.1(b) (West 2012). The PCB considers the decision of the siting authority and the fundamental fairness of the siting authority's procedures. 415 ILCS 5/40.1(a) (West 2012). Hearings before the PCB are based exclusively on the record made before the siting authority, except that evidence may be introduced on the issue of the fundamental fairness of the siting authority's procedures, where such evidence lies outside the record. *Stop the Mega-Dump v. the County Board of DeKalb County*, 2012 IL App (2d) 110579, ¶ 11.

¶ 11 B. The Hearing Before the Village Board

¶ 12 For nine days, between September 17, 2013, and October 2, 2013, the Village Board conducted a hearing on Groot's application. While the application and the witnesses addressed all nine statutory criteria, we confine our discussion to the five criteria at issue in this appeal. We will supplement the facts as necessary in our analysis.

¶ 13 1. Criterion (i) The Facility is Necessary to Accommodate the Waste Needs of the Area

¶ 14 Christina Siebert, an experienced solid waste planner, testified on Groot's behalf that the waste transfer station was necessary to accommodate Lake County's waste needs. Siebert testified that Lake County was served by two in-county landfills with a combined capacity of only 12 years. According to Siebert, Lake County needed the waste transfer station to be running before the landfills' closures to minimize service disruption and cost increases.

¶ 15 John Thorsen, a regional planning expert and registered engineer with 40 years' experience, testified on behalf of TCH. He was retained to review the "needs" section of Groot's application and to determine whether there was a need for a waste transfer station in Lake County "at this point in time." He testified that "need" is based on the amount of capacity left in

the in-county landfills and the amount of waste projected to be generated. According to Thorsen, Lake County's landfills would have capacity until 2027. He opined that Groot's proposed waste transfer station was not necessary "at this time."

¶ 16 2. Criterion (ii) The Public Health, Safety, and Welfare Will Be Protected

¶ 17 Devin Moose, a civil engineer who oversaw the assembly of Groot's application, testified that using concrete and steel for the building would minimize its visibility and would suppress noise within the building. The building would have 16-feet high walls that are 18 inches thick and of low permeability. The tipping floor would be thick reinforced concrete. The building would be equipped with air vents and skylights. According to Moose, the air exhausted from the building need not be filtered. The facility was designed as a drive-through. Moose explained that one door opens, the packer truck drives in, tips its waste, and drives out, minimizing the waste transfer station's impact on the community. Moose testified that the facility was designed to meet residential setback standards established by the Act, as well as to minimize litter, odor, pests, and dust. The facility would be able to operate 24 hours per day, if necessary. However, most of the time it would operate from 4 a.m. to 8 p.m. on weekdays and from 4 a.m. to noon on Saturdays. Most of the waste would arrive between 8 a.m. and 3 p.m.

¶ 18 Charles M. McGinley testified for TCH. He is a chemical engineer licensed in Minnesota. He specializes in the field of air quality, air toxics, and odor. He testified solely as an expert on odor. Asked to render an opinion on the effectiveness of Groot's odor control measures, McGinley opined that the proposed design and operation of the facility would not prevent garbage odors from escaping into the community. He had experienced odors traveling downwind from waste transfer stations that ventilated unfiltered air. On cross-examination, McGinley testified that he did not determine the predominant wind directions at the proposed

site, nor did he determine whether any particular residence would be subjected to odors from the site.

¶ 19 3(a). Criterion (iii) The Facility Is Located to Minimize Incompatibility With the Surrounding Area

¶ 20 J. Christopher Lannert, an urban planner and landscape architect, testified on Groot's behalf. In order to evaluate whether the proposed waste transfer station would minimize incompatibility with the surrounding area, he studied aerial photographs, plans, and zoning ordinances. Then he drove around the area to verify the information he obtained from the documents. Next, he prepared a 3-D model of the facility. He testified that Groot would be able to protect the facility's boundaries, because it owned the adjacent properties and would be in control of how those properties were used. Lannert opined that the facility was located so as to minimize its incompatibility with the character of the surrounding area. The bases of his opinion were that the site was located in an industrial district within the Village; the major land use area was open space, which the facility would not alter; there was no residential property within 1,000 feet of the site; and the facility would be buffered on all sides by other structures, a woodland, and growth along roadways.

¶ 21 Michael S. MaRous, a real estate appraiser, testified for TCH. He testified that TCH's land use was "residential" while Groot's use would be "heavy industrial." In MaRous's experience, it was not common for a heavy industrial use to be located within a half mile of a residential use. In response to a hypothetical question posed by counsel for TCH, he opined that the waste transfer station's impact on the character of the surrounding area would be negative, given that it could operate 24 hours per day, 7 days per week, with the doors open for 20 hours per day. MaRous also testified that Lannert did not consider the impact of heavy truck traffic,

and the noise and smell associated with it, that the waste transfer station would generate.

¶ 22 3(b). Criterion (iii) The Facility Is Located to Minimize the Effect on Surrounding Property Values

¶ 23 Peter J. Poletti, a real estate appraiser and a township assessor, was retained by Groot to opine on whether the location of the waste transfer station would minimize the effect on surrounding property values. Poletti testified that the operative term was "minimize," because the legislature made the assumption that there would be some effect on the value of the surrounding property. To do his analysis, Poletti took into account the land uses surrounding the site and Groot's design for the proposed waste transfer station. He also made a visual inspection of the site and reviewed the literature on waste transfer stations. Poletti testified that he looked at sales around existing transfer stations to determine if there was an impact on property values. He concluded that there was no evidence that the operation of waste transfer stations impairs development in the immediate area or that they have a measurable effect on property values. Poletti opined that, considering Groot's design and the buffering of the proposed waste transfer station, it minimized the impact on surrounding property values.

¶ 24 Dale Kleszynski is a real estate appraiser whom the Village hired to establish whether Poletti's opinion was credible. Kleszynski first reviewed Poletti's and Lannert's reports, and then he visited the site. He also visited other working waste transfer stations that Poletti noted in his report. Kleszynski concluded from doing his own analysis that Poletti's data and methodology were accurate. He opined that Groot's proposed waste transfer station would have no effect on the surrounding property values.

¶ 25 MaRous, TCH's expert, criticized Poletti's methodology and data and opined that the proposed waste transfer station would negatively impact surrounding property values. MaRous

did not do an independent study.

¶ 26 4. Criterion (vi) Traffic Patterns Are Designed to Minimize Impact on Existing Traffic Flows

¶ 27 Michael Werthmann, a registered professional engineer and a certified professional traffic operations engineer, testified for Groot. He described the proposed roadway improvements. Route 120 would be widened to provide turn lanes onto Porter Drive so slow-turning vehicles could move out of the way of regular traffic. Also, Porter Drive would be widened to enhance its capacity. Another improvement would increase the radiuses at the intersection of Route 120 and Porter Drive to better accommodate turning truck traffic. According to Werthmann, Groot's ownership of all of the properties immediately adjacent to the proposed transfer station would help to minimize the traffic impact. He opined that the traffic patterns to and from the facility were designed to minimize the impact on existing flows. Moose also testified that Groot's on-site traffic flow patterns were designed to promote safe traffic flow.

¶ 28 Brent Coulter, TCH's expert, disagreed with Werthmann. Coulter is a registered professional engineer and a professional traffic operations engineer. In his opinion, Groot had not demonstrated that the traffic "patterns or impact" had been minimized. He concurred with some, but not all, of Werthmann's recommended changes to the intersection of Route 120 and Porter Drive. Assuming that the waste would be hauled west to the Winnebago landfill, Coulter opined that Werthmann's plan called for trucks to travel over arterial roads that were not designated truck routes. Coulter concluded that there was not enough information in Werthmann's report to be able to say that his plan would minimize the impact on existing traffic flows.

¶ 29 5. Criterion (viii) The Facility Is Consistent With the County's Solid Waste

Management Plan

¶ 30 Moose was the only witness who testified about this criterion. He opined that the proposed waste transfer station was consistent with Lake County's solid waste management plan. He explained that the County adopted the plan in 1989 and has updated it every five years. Realizing the short life of its two landfills, the County agreed to consider alternative options, including waste transfer stations. As far as timing, the County desired to have new facilities in place prior to the landfills' closing. The County also made recommendations for eventual waste transfer stations, including: size; incorporation of green, sustainable building principles; accommodation of landscape and recyclable waste; minimization of emissions; host agreements with local siting authorities; and a life-cycle analysis. Moose testified that Groot's proposed waste transfer station met each of those recommendations.

¶ 31 C. The Village Board's Resolution

¶ 32 On December 12, 2013, the Village Board approved a resolution granting Groot's application. The Village Board found that Groot satisfied certain of the criteria without conditions and certain of the criteria with conditions, which were spelled out in the resolution. The Village Board also adopted the hearing officer's findings of fact and conclusions of law.

¶ 33 On criterion (i), necessity, the hearing officer found both experts credible, but he noted that only Siebert conducted an independent analysis of underlying generation and disposal rates in the County. The hearing officer also noted that Thorsen disputed only the timing of the need. Based on the "entirety" of the record, the hearing officer found that there was a need for the facility.

¶ 34 Criterion (ii) concerned the health, safety, and welfare ramifications of the facility. In the hearing officer's opinion, Moose's testimony was "more thorough and credible" than

McGinley's. The hearing officer found that the facility was designed, located, and proposed to be operated to protect the public health, safety, and welfare, but he recommended that certain conditions be attached.

¶ 35 Minimization of incompatibility was criterion (iii). The hearing officer found Lannert to be "highly credible" and also found that the facility was planned and designed in a manner reasonably feasible to minimize incompatibility. However, the hearing officer proposed certain conditions of operation. With respect to the facility's impact on surrounding property values, the hearing officer found all three appraisers to be "highly qualified" and credible. He gave the greatest weight to Poletti's testimony and the least weight to Kleszinski's. He found that Groot demonstrated that the facility had been located to minimize the effect on surrounding property values.

¶ 36 Criterion (vi) was the minimization of the impact on existing traffic flows. The hearing officer found that Coulter merely criticized Werthmann for not detailing every route to the Winnebago landfill. The hearing officer stated that it was unrealistic to ask the traffic engineers to provide every possible route to every possible landfill and that was not what the statute intended. He found that Groot met criterion (vi), but he proposed certain conditions.

¶ 37 Criterion (viii) was compatibility with the County's solid waste management plan. The hearing officer noted that Moose's testimony was unrebutted. He also noted that Lake County's plan suggested that transfer stations should be built in the County. Consequently, the hearing officer found that Groot's application was consistent with the County's solid waste management plan.

¶ 38 D. Proceedings Before the PCB

¶ 39 On January 10, 2014, TCH appealed to the PCB. It contended that the Village Board's

procedures were fundamentally unfair, because the Village colluded with Groot and prejudged the application. TCH also argued that the Village Board's decision on criteria (i), (ii), (iii), (vi), and (viii) was against the manifest weight of the evidence.

¶ 40 1. Fundamental Fairness

¶ 41 The issue of whether the Village had predetermined to grant Groot's application arose before the Village Board during the Village's cross-examination of Thorsen. The Village's attorney[1] asked Thorsen whether he took issue with the Village and Groot "finding it necessary, if they do" to site a transfer station. Lake County's attorney then stated: "I didn't know that the Village was an applicant in this case." That comment prompted TCH's attorney to say that, if the Village and Groot had already decided to site the transfer station, it raised a "dramatically different issue in this case." Then, in cross-examining Kleszynski, TCH's attorney attempted to establish that Kleszynski was hired by the Village to issue a report that agreed with Poletti, Groot's appraiser. Kleszynski denied that was the case.

¶ 42 The PCB limited TCH's discovery to the time between when the Village retained Kleszynski and December 12, 2013, the date that the Village Board granted Groot's application with conditions. Discovery was confined to the Village's dealings with Groot over the waste transfer station.

¶ 43 Documents produced in discovery showed that on October 16, 2012, the Village Board entered into a host agreement with Groot governing the Village's receipt of fees from the operation of the proposed waste transfer station. The host agreement recited in paragraph 12(a) that the Village, by entering into the agreement, had not predetermined whether it would approve a proposed waste transfer station.

[1] The Village and the Village Board were represented by different counsel.

¶ 44 Portions of discovery depositions and affidavits were entered into the record. Taken together, they paint a picture of Groot's history with the Village and its representatives. In 2008 and 2009, Lee Brandsma, Groot's chief executive officer, acquired on behalf of the company several properties that became the company's Lake County headquarters. At that time, Jean McCue was the mayor. Brandsma contacted her in September 2008 regarding Groot's desire to locate a waste transfer station within Groot's properties. Brandsma and McCue met, and at some point Moose made a presentation to the Village on Groot's behalf. Brandsma also met with the Village's attorney. McCue recalled reporting to the Village Board regarding those meetings. In 2013, following McCue's term as mayor, her successor, Linda Lucassen, appointed her as a trustee. After Groot filed its application, McCue had no further conversations with company representatives outside of the public hearing. She testified that she attended each day of the hearing, listened to all of the evidence, and did not have a preconceived idea of how she would vote. She testified that she kept an open mind and made her decision based upon the record.

¶ 45 Lucassen testified that the Village was "neither opposed [to] or for" Groot during the hearing. She testified: "We were there for the evidence." Following the hearing and deliberation, Lucassen voted in favor of siting the waste transfer station, because there was a tie. During the deliberation, she also voted, even though there was no tie. She testified that she made her decision only after hearing all of the evidence.

¶ 46 Donna Wagner testified that she first heard about the waste transfer station in 2013, when she was campaigning for trustee. She campaigned on the same ticket as Lucassen, Raeanne McCarty, Bob Cerretti, McCue, and Karen Eggert. Lucassen, Wagner, McCarty, Cerretti, and McCue were elected trustees. Eggert was elected Village clerk. Wagner testified that the Village attorney instructed them not to discuss the waste transfer station "in any way, shape, or

form" during the campaign. According to Wagner, she heeded that advice. She testified that the opposing slate of candidates circulated literature against the waste transfer station. That bothered her. Comparing her position as a trustee who would hear the evidence on Groot's application to that of a juror, she testified that she understood that she had to be an unbiased, "sequestered juror." According to Wagner, she limited her decision to the evidence that was in the record and did not make up her mind until she heard all of the evidence. She testified that she took her job as a "juror" "very seriously."

¶ 47 Candace Kenyon, a Village trustee, testified that the waste transfer station was approved by a 4 to 3 vote. Wagner, Cerretti, and McCue voted yes; Kenyon and two others voted no. Lucassen, as mayor, broke the tie and voted yes. According to Kenyon, the four persons who voted yes usually voted together, although she did not "expect" the four to vote in favor of the waste transfer station, because anything can happen during deliberations. Kenyon recalled that McCue made a statement in May 2010 at an open house hosted by Groot to pitch the transfer station, but she could not remember what McCue said other than "possibly in the future we could bring something else into the Village." At the time, Kenyon thought that a waste transfer station was about recycling. According to Kenyon, McCue always wanted to bring additional revenue into the Village. To the best of her knowledge, none of the board members prejudged Groot's application.

¶ 48 In addition to the mayor and the board members who were deposed, Lawrence Joel Cohen, a TCH executive, was deposed. He lived in Lake Forest, about a half hour away from the Village. Cohen had no personal knowledge that the Village Board had predetermined the outcome, but he had heard "rumors." According to Cohen, "some people who knew other people said that" the waste transfer station was a "done deal." From observing the hearing, Cohen felt

that the Village colluded with Groot.

¶ 49 The PCB found no evidence of collusion. It found that, by entering into the host agreement, the Village Board did not prejudge Groot's application. It also found that McCue's contacts with Groot did not reveal that she had taken a position, much less prejudged, the application. The PCB noted that all of the Village Board members testified that their decisions were made on the basis of the application and the hearing. The PCB ruled that the Village's prior contacts with Groot did not render the proceedings fundamentally unfair.

¶ 50 2. The Contested Criteria

¶ 51 Using the manifest-weight-of-the-evidence standard of review, the PCB found in Groot's favor on each of the contested criteria. Specifically, it found that Siebert's testimony supported the Village Board's finding that the facility was necessary. It found that the Village Board's reliance on Moose's testimony that the facility was designed and located to protect the public, health, safety, and welfare was appropriate, especially considering that the Village Board added conditions. The PCB found that the record supported Lannert's opinion that Groot had minimized the impact on the surrounding property. With respect to the impact on surrounding property values, the PCB noted that Poletti and Kleszynski agreed that the impact was minimized, while MaRous did not perform an independent study. The PCB found that Werthmann offered a detailed analysis of traffic patterns, which was evidence supporting the Village Board's decision that criterion (vi) was met. Finally, the PCB found that TCH's claim that the facility was inconsistent with Lake County's solid waste management plan was not supported by any evidence.

¶ 52 II. ANALYSIS

¶ 53 TCH urges (1) that there was substantial evidence of collusion and a predisposition in Groot's favor, and (2) that the PCB's findings on the contested criteria are against the manifest weight of the evidence.

¶ 54 Before we reach the merits, we must address motions filed by Groot, the Village, and the Village Board (collectively movants) to strike section IB of TCH's reply brief. We ordered the motions to be taken with the case. The movants contend that section IB, which deals with the issue of collusion, articulates new theories and assertions in violation of Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 26, 2013). Arguments raised for the first time in a reply brief are forfeited. *Cordeck Sales, Inc. v. Construction Systems, Inc.*, 382 Ill. App. 3d 334, 347 (2008). While TCH expands on its arguments in response to Groot's and the PCB's briefs, most of its reply is nevertheless responsive and does not raise new issues. Even so, we caution against providing only minimal argument in the opening brief and expansive argument in the reply brief. However, TCH, for the first time in the reply brief, argues that McCue's vote in favor of the waste transfer station must be disallowed because of her bias. Accordingly, we strike that argument.

¶ 55 We turn now to the merits. The Act requires us to review the PCB's decision rather than the Village Board's decision. *Town & Country Utilities, Inc. v. Illinois Pollution Control Board*, 225 Ill. 2d 103, 106 (2007); *Stop the Mega-Dump*, 2012 IL App (2d) 110579, ¶ 26.

¶ 56 We first address fundamental fairness. Section 40.1(a) of the Act requires the PCB to consider the fundamental fairness of the procedures used by the siting authority in reaching its decision. *County of Kankakee v. Pollution Control Board*, 396 Ill. App. 3d 1000, 1014 (2009). A nonapplicant's right to fundamental fairness incorporates only the minimal standards of procedural due process, such as the right to be heard, to cross-examine witnesses, and to have

impartial evidentiary rulings. *Kankakee*, 396 Ill. App. 3d at 1014. Whether proceedings were fundamentally fair is a mixed question of law and fact to which we apply the clearly erroneous standard of review. *Fox Moraine, LLC v. United City of Yorkville*, 2011 IL App (2d) 100017, ¶ 59.

¶ 57 The siting authority's role in the approval process is both quasi-legislative and quasi-adjudicative. *Fox Moraine*, 2011 IL App (2d) 100017, ¶ 60. The members of a siting authority are presumed to have made their decisions in a fair and objective manner. *Fox Moraine*, 2011 IL App (2d) 100017, ¶ 60. They are considered to have acted without bias. *Kankakee*, 396 Ill. App. 3d at 1014. This presumption is not overcome merely because a decision-maker has previously taken a public position or expressed strong views on a related issue. *Stop the Mega-Dump*, 2012 IL App (2d) 110579, ¶ 27. To establish bias, the complaining party must show that a disinterested observer might conclude that the local siting authority adjudged both the facts and the law before hearing the case. *Kankakee*, 396 Ill. App. 3d at 1014.

¶ 58 TCH perceives a long-standing conspiracy between the Village Board and Groot based upon: the Village Board's approval of each of Groot's facilities; McCue's alleged implementation of Groot's plans; and Kleszynski's opinion agreeing with Groot's appraiser, which TCH alleges was dictated by the Village. TCH argues that the "voting bloc" of McCue, Cerretti, Wagner, and Lucassen also "did its part" to make the waste transfer station a reality.

¶ 59 Preliminarily, we address Groot's argument that TCH forfeited this issue. Issues of bias or prejudice on the part of the siting authority are generally considered forfeited unless they are raised promptly in the siting proceeding. *Fox Moraine*, 2011 IL App (2d) 100017, ¶ 60. "It would be improper to allow the petitioner to knowingly withhold such a claim and then raise it after obtaining an unfavorable ruling." *Fox Moraine*, 2011 IL App (2d) 100017, ¶ 60. We reject

Groot's assertion of forfeiture, because the record shows that TCH raised the issue as soon as it surfaced during the Village's cross-examination of Thorsen. Then, TCH addressed the issue to the hearing officer, saying: "[T]he rules of fundamental fairness have been violated."

¶ 60 Initially, TCH contends that the PCB improperly limited discovery. The applicable standard of review for rulings on discovery issues is abuse of discretion. *Illinois Environmental Protection Agency v. Illinois Pollution Control Board*, 386 Ill. App. 3d 375, 390 (2008). The hearing officer has discretion to regulate discovery to prevent unreasonable delay, expense, harassment, or oppression. *Joliet Sand & Gravel Co. v. Pollution Control Board*, 163 Ill. App. 3d 830, 835 (1987). TCH must demonstrate that the restriction on discovery had a prejudicial impact on the proceedings. See *Citizens Against Regional Landfill v. Pollution Control Board*, 255 Ill. App. 3d 903, 909 (1994).

¶ 61 Here, the PCB limited discovery to the time between Kleszynski's retention by the Village and when the Village Board approved the waste transfer station. TCH argues that it should have been allowed to conduct discovery on all of Groot's dealings with the Village, because the existing discovery revealed "the intertwined nature of Groot's activities" in the Village. Specifically, TCH points to Brandsma's testimony that he was looking for land for a waste transfer station at the same time that he was looking for space for a larger office and maintenance facility. TCH also points to McCue's mention to the Village Board on December 13, 2011, that a "tough" stance might endanger the prospect of getting a waste transfer station in the future. McCue's statement was made in the context of discussing Groot's request for a construction and debris waste facility. According to TCH, McCue's statement provides a "direct link" between that facility and the waste transfer station.

¶ 62 We are not persuaded. It is neither surprising nor sinister that Brandsma was planning for the future at the same time that he was planning for the present. Nor was McCue's statement collusive. She was the mayor at the time, and being concerned about future sources of revenue was part of her job. Consequently, we hold that the PCB did not abuse its discretion in limiting discovery.

¶ 63 Proceeding to the merits, TCH failed to produce any evidence of collusion between the Village Board and Groot. The "issue" arose during the Village's cross-examination of Thorsen. Apparently, TCH's attorney misheard the precise question that counsel asked. Counsel inquired whether Thorsen would take issue, *if* the Village and Groot found it necessary to site the waste transfer station. In several iterations of the same question, counsel consistently asked it as a hypothetical. The hearing officer pointed that out in refuting the assertion of lack of fundamental fairness. He said: "[Counsel made] statements or questions based on ifs, on assumptions." While TCH insinuated during its cross-examination of Kleszynski that he was hired by the Village to agree with Poletti's opinion, Kleszynski denied that was true. Kleszynski's unimpeached testimony was that he conducted his own analysis and came to his conclusion independently.

¶ 64 Furthermore, nothing in McCue's conduct supports TCH's conspiracy theory. In 2010, she, along with others who would eventually vote, was present at an open house sponsored by Groot. McCue made a statement to Kenyon. Kenyon recalled only that McCue said that in the future "we could" bring something else to the Village. Kenyon, who was generally a member of the voting bloc opposing McCue, testified that none of the board members prejudged Groot's application. The only other evidence that TCH presented was Cohen's testimony that he heard rumors and felt that the questioning at the hearing demonstrated collusion. That was insufficient

to overcome the presumption that the Village Board members were not biased. Accordingly, the PCB's finding that the proceedings before the Village Board were not fundamentally unfair was not clearly erroneous.

¶ 65 We next address TCH's contention that the PCB's findings on the contested criteria were against the manifest weight of the evidence.[2] The question before the PCB was whether the Village Board's decision was contrary to the manifest weight of the evidence. See *Waste Management of Illinois, Inc. v. Pollution Control Board*, 122 Ill. App. 3d 639, 644 (1984) (PCB decides whether the decision of the local siting authority was against the manifest weight of the evidence). The manifest-weight standard of review also governs this court's review of the PCB's decision. *Waste Management*, 122 Ill. App. 3d at 644. We do not reweigh the evidence. *Tate v. Pollution Control Board*, 188 Ill. App. 3d 994, 1022 (1989). Rather, the only question is whether it is "clearly evident" from the record that the PCB should have ruled as it did. *Peoria Disposal Co. v. Illinois Pollution Control Board*, 385 Ill. App. 3d 781, 801 (2008).

¶ 66 A. Criterion (i) Necessity

¶ 67 Although an applicant need not show absolute necessity, it must demonstrate an urgent need for the new facility as well as the reasonable convenience of establishing it. *Fox Moraine*, 2011 IL App (2d) 100017, ¶ 110. The applicant must show that the facility is reasonably required by the waste needs of the area, including consideration of its waste production and disposal capabilities. *Fox Moraine*, 2011 IL App (2d) 100017, ¶ 110.

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[2] At oral argument, TCH asserted that the PCB's opinion was deficient because it contains 65 pages devoted to the facts and the parties' arguments and only 8 pages devoted to its decision. However, this clearly was a formatting decision, and the PCB's analysis is not lacking in any respect.

¶ 68 TCH argues that Siebert erroneously equated "urgent" with "immediate" or "imminent." TCH maintains that there will be no need until 2027, when Lake County's two existing landfills close. TCH attempts to distinguish cases in which facilities have been approved even though there was remaining disposal capacity in the service area on the basis that there was no contrary evidence presented. Here, TCH asserts, its expert gave a contrary opinion. TCH also argues that the bases for Siebert's opinion were flawed.

¶ 69 At oral argument, TCH contended that no credibility issue, which would be for the trier of fact to resolve, is present. TCH urged at oral argument that it is undisputed that Lake County will have adequate landfill capacity until 2027. Further, TCH asserted at oral argument that this issue is not one of timing, because there will be no need until 2027. However, Siebert testified that the capacity commitments at both of the Lake County landfills expired in 2007 or 2008. She explained that the Zion landfill expanded, so its capacity will last through 2017. Siebert testified that if a transfer station is not operating in 2015, there will be at best only 12 years of combined landfill capacity to serve Lake County's needs. That is how she arrived at the year 2027. She did not testify that there would be no need until 2027. Moreover, credibility of the experts is an issue, because Thorsen did not do a needs analysis to determine whether criterion one was met.

¶ 70 TCH improperly invites us to reweigh the evidence. It is not our function to determine which witnesses are "more expert" than others. *City of Rockford v. County of Winnebago*, 186 Ill. App. 3d 303, 315 (1989). An applicant is not required to show an "absolute" necessity, which is what TCH suggests in arguing that there will be no need until the landfills close. Siebert testified that an alternative to the landfills had to be operating by that time. The use of "necessary" in the statute means only that the proposed facility is "expedient" or "reasonably convenient." *E&E Hauling, Inc. v. Pollution Control Board*, 116 Ill. App. 3d 586, 609 (1983).

In *E&E*, this court observed that it would be "unreasonable to require petitioners to prove that every other landfill site in the region is unsuitable." *E&E*, 116 Ill. App. 3d at 609. We said that such a construction of the statute should be avoided as "unworkable and implausible." *E&E*, 116 Ill. App. 3d at 609. Consequently, the PCB's determination that the Village Board's finding of necessity was not against the manifest weight of the evidence was not in error.

¶ 71 B. Criterion (ii) The Public Health, Safety, and Welfare Will Be Protected

¶ 72 TCH argues that Moose was not credible on the issue of where the waste would be transported. Moose testified that it would go to a landfill 100 to 120 miles away. TCH's counsel asked: "Which landfill is that?" Moose replied: "I don't know." When counsel suggested that it was the Winnebago landfill, Moose responded: "As I recall it, *** we're not going through [the] Winnebago landfill." Moose then denied that Groot had entered into a host agreement with Winnebago, and he reiterated: "We don't know which landfill we're going to."

¶ 73 The Village asked Moose whether Groot could use "any landfill." Moose replied: "Yes. And, in fact, you know, we don't know what landfill [the waste from the transfer station] is going to." Moose explained that the "Winnebago landfill had come up." He directed Werthmann to use the Winnebago landfill as a destination for showing traffic routes. He further explained that disposal agreements between transfer stations and landfills are short-term, so there was "no guarantee" that Groot would use the Winnebago landfill over the life of the waste transfer station.

¶ 74 Upon further cross-examination by TCH, Moose agreed that Groot had an agreement with the Winnebago landfill. He testified that was the reason that he instructed his team to use the Winnebago landfill in assembling the application. Moose also testified that he had no idea whether the agreement was exclusive.

¶ 75 TCH also contends that Moose admitted fabricating his testimony that the waste transfer station would not accept food waste. However, TCH does not provide a record citation. Moose testified that the application did not address food waste. Then he said, "I really haven't thought about that." TCH's counsel asked Moose if the waste transfer station would accept "general household and commercial waste," "industrial lunchroom or office waste," and "landscape waste." Moose answered yes. To support its argument that Moose lied, TCH cites the Act's definition of "municipal waste" as "garbage, general household and commercial waste, industrial lunchroom or office waste, landscape waste, and construction or demolition debris." See 415 ILCS 5/3.290 (West 2012). TCH also argues that Moose's testimony in cases where the siting authority decided against him demonstrates his lack of credibility.

¶ 76 A determination on criterion (ii) is "purely a matter of assessing the credibility of the expert witnesses." *Fox Moraine*, 2011 IL App (2d) 100017, ¶ 102. The Village Board adopted the hearing officer's finding that Moose was credible, and the PCB found that the Village Board's reliance on his testimony was appropriate. The PCB's determination was not against the manifest weight of the evidence. Moose changed his testimony about whether Groot had an agreement with the Winnebago landfill. However, the rest of his testimony indicated that he chose the Winnebago landfill only as an example. Moose emphasized that other landfills could be the destination as well.

¶ 77 Nor does the record support TCH's accusation that Moose lied about what waste the transfer station would accept. Moose testified that food waste was not included in the application and that he had not thought about it. Asking him whether the transfer station would accept "general household and commercial waste" and "industrial lunchroom or office waste" was not, in our view, an impeaching question. Moreover, neither the PCB nor this court is

allowed to reassess the credibility of the witnesses. *Worthen v. Village of Roxana*, 253 Ill. App. 3d 378, 384 (1993); *McLean County Disposal, Inc. v. County of McLean*, 207 Ill. App. 3d 477, 480 (1991). Further, this court is permitted to rely on the PCB's expert consideration of each criterion. *City of Rockford*, 186 Ill. App. 3d at 314. Finally, that Moose may have testified in other hearings where the siting application was denied is not impeaching.

¶ 78 C. Criterion (iii) Minimizing the Impact on the Surrounding Area and Property Values

¶ 79 An applicant must do what is reasonably feasible to minimize incompatibility with the surrounding area. *Waste Management of Illinois, Inc. v. Pollution Control Board*, 123 Ill. App. 3d 1075, 1090 (1984). This means demonstrating more than minimal efforts. *File v. D&L Landfill, Inc.*, 219 Ill. App. 3d 897, 907 (1991).

¶ 80 The first part of the criterion relates to compatibility with the surrounding area. TCH contends that Lannert did not properly assess the character of the surrounding area, because he failed to consider the large residential component. However, Lannert agreed with TCH that residential property was the second-most predominant use within a one-mile radius of the proposed facility. TCH focuses on that one-mile radius, whereas Lannert looked at three different "circle zones": 1,000 square feet, one-half mile, and one mile. The PCB concluded that there was evidence in the record to support Lannert's characterization of the surrounding area as 55% open space and 4% industrial use. TCH's expert, MaRous, disagreed, but as we continue to point out, we do not decide credibility.

¶ 81 The second part of the analysis relates to minimization of the impact on surrounding property values. TCH argues that Poletti's opinion was flawed, because he relied on Lannert's flawed characterization of the surrounding property. TCH asserts that its expert, MaRous, was more credible. However, MaRous did not perform an independent study on the impact on

property values, and we have determined that the PCB's finding that there was evidence to support Lannert's opinion was not against the manifest weight of the evidence.

¶ 82 D. Criterion (vi) Minimization of the Impact on Existing Traffic Flows

¶ 83 The PCB found that the record supported the Village Board's determination that Groot met criteria (vi). The Act does not require the elimination of all traffic problems. *Fox Moraine*, 2011 IL App (2d) 100017, ¶ 116. Nor is the applicant required to provide a traffic plan showing exact routes, types of traffic, noise, dust, or projections of volume. *Fox Moraine*, 2011 IL App (2d) 100017, ¶ 116. All the Act requires is a showing that the traffic patterns to and from the facility are designed to minimize the impact on existing flows. *Fox Moraine*, 2011 IL App (2d) 100017, ¶ 116.

¶ 84 TCH asserts that Werthmann's plan did not detail specific routes from the facility to the Winnebago landfill. It maintains that such an analysis is critical to a criterion (vi) study. TCH does not attempt to distinguish *Fox Moraine*, where we said that an applicant is not required to supply that information. Nevertheless, Werthmann assumed the destination to be the Winnebago landfill, and he testified to a number of truck routes that could be used. Consequently, the PCB's conclusion was not against the manifest weight of the evidence.

¶ 85 E. Criterion (viii) The Facility Is Consistent with Lake County's Plan

¶ 86 TCH argues that the proposed waste transfer station is incompatible with Lake County's solid waste management plan, because (1) the County requires in-county disposal and Groot intends to use the Winnebago landfill, and (2) the County had no agreement with the Winnebago landfill. However, as Moose pointed out, those requirements apply to direct-haul landfills, not transfer stations. Even if the Winnebago landfill were relevant, as TCH maintains in its reply brief, the portion of the Lake County plan that was quoted in Moose's testimony on cross-

examination stated: "[Lake County] will consider expanding the list of landfills located outside of Lake County deemed to be serving Lake County. *If* the owner of the landfill proposed for inclusion first negotiates a host agreement with [Lake County], the host agreement must provide for a capacity guarantee and payment of a host fee." (Emphasis added). Therefore, Lake County did not restrict a new landfill to those located in-county and did not require a host agreement.

¶ 87 TCH also argues that the proposed waste transfer station does not meet Lake County's guidelines as far as using proven technology and minimizing emissions. It draws that conclusion from Moose's testimony that Groot would not implement the odor control measures favored by TCH's expert. Again, TCH is inviting us to reweigh credibility. The PCB found that Moose's opinion was supported by the evidence. Our review of the record leads us to conclude that the PCB's finding was not against the manifest weight of the evidence.

¶ 88 III. CONCLUSION

¶ 89 For the reasons stated, we affirm the decision of the Illinois Pollution Control Board.

¶ 90 Affirmed.