

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

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

FOX MORaine, LLC	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB No. 07-146
	)	(Pollution Control Facility Siting
	)	Appeal)
UNITED CITY OF YORKVILLE, CITY	)	
COUNCIL	)	
	)	
Respondent.	)	

**NOTICE OF FILING**

To: See Attached Service List

PLEASE TAKE NOTICE that on October 7, 2008, Leo P. Dombrowski, one of the attorneys for Respondent, United City of Yorkville, filed via electronic filing the attached **United City of Yorkville's Reply in Support of Its Motion in Limine # 4**, with the Clerk of the Illinois Pollution Control Board, a copy of which is herewith served upon you.

Respectfully submitted,

UNITED CITY OF YORKVILLE

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

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**BEFORE THE  
ILLINOIS POLLUTION CONTROL BOARD**

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

**YORKVILLE'S REPLY IN SUPPORT OF ITS MOTION *IN LIMINE* NO. 4**

Fox Moraine LLC ("Fox Moraine") should never have received the Wildman, Harrold, Allen & Dixon LLP ("Wildman Harrold") legal bill dated June 15, 2007. It is a privileged document that was produced inadvertently.<sup>1</sup> Having obtained the document, however, Fox Moraine claims to have found in it all manner of hidden meanings and proof of non-existent intentions and events. Fox Moraine's arguments based on the invoice range from strained to knowingly false.

The Wildman Harrold invoice has provided a diversion for Fox Moraine during the discovery phase of this appeal, but the sideshow must end. The invoice is not relevant to any issue in this appeal, and should not be part of the evidence at the hearing or the record going forward. Yorkville requests that this Board grant its Motion *in Limine* No. 4.

**I. IT WAS APPROPRIATE FOR YORKVILLE TO HIRE NEW COUNSEL AFTER THE APRIL 2007 ELECTIONS.**

Valerie Burd was elected Mayor of Yorkville on April 17, 2008. At the time, Yorkville was nearing the end of lengthy hearings on Fox Moraine's siting application and a decision deadline was looming. As Mayor-elect, Ms. Burd decided that the City needed independent

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<sup>1</sup> This hearing officer has rejected Yorkville's privilege claims regarding the invoice. Yorkville respectfully disagrees with this ruling and intends to appeal it, if necessary.

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

legal advice and additional legal services to complete the hearing process. Even before she was sworn in, she began the work necessary to make sure that Yorkville had competent, independent legal advice. Her initial interview with Wildman Harrold occurred on April 30, 2007. Within minutes after she was sworn in as Mayor on May 8, 2007, she proposed to the City Council that Yorkville hire Wildman Harrold as city attorneys. The City Council approved the appointment. (A copy of the City Council's minutes of May 8, 2007 are attached as Exhibit A).

After their interview with the Mayor on April 30, 2007, the Wildman Harrold attorneys who had offered to assist the City began work. With the decision date on the local siting application approximately three weeks away, and over 140 hours of hearing transcripts and tens of thousands of pages of highly-technical material to review, waiting until an official appointment from the City would have been unwise. It is undisputed, however, that had Wildman Harrold not been approved as city attorneys by the City Council, Wildman Harrold would not have been paid for any of this work. Wildman Harrold accepted the risk of nonpayment in order to be of maximum potential service to the City.

Fox Moraine makes much of the work Wildman Harrold did for the City before it was officially appointed City attorney, but this is a non-issue. Any prudent lawyer would have done the same, given the time pressure involved and the prospective client's need for legal advice. As it happened, the full City Council later reviewed the invoice and approved it for payment, ratifying Wildman Harrold's decision to begin work before it was officially appointed.

The invoice itself is not evidence of bias, but rather evidence of Yorkville's need for independent legal advice and Wildman Harrold's thorough preparation for providing that advice. Yorkville will not engage in a point-by-point response to Fox Moraine's highly inaccurate characterization of the invoice. It is enough to say that a review of the invoice as a whole

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

demonstrates that Wildman Harrold was engaged to advise the City on its rights and legal obligations in the landfill siting process, and that this is exactly what Wildman Harrold did. There is no evidence that Wildman Harrold was hired to justify denial of Fox Moraine's siting application, and Fox Moraine's claims to that effect are not supported by the invoice or any other testimony or document. The invoice is therefore irrelevant.

### **II. THE ROTH MEMO IS NOT EVIDENCE OF BIAS.**

The legal memorandum prepared by City attorney Michael Roth is the subject of a separate motion and will be addressed in separate briefing. Briefly, however, there is no authority for Fox Moraine's apparent contention that a city like Yorkville is not allowed to seek independent advice from its own lawyers on the landfill siting process. Fox Moraine compares the memorandum prepared by Wildman Harrold to the reports prepared by Hearing Officer Larry Clark and Derke Price, the attorney engaged to advise City staff, but the comparison is completely unjustified. The report prepared by Mr. Clark was required by Yorkville's siting ordinance and was required to be made part of the record. The siting ordinance also required that if Mr. Price prepared a report, it too was required to be made part of the record. Wildman Harrold's work was neither required by nor prohibited by the local siting ordinance or any other state or local law. It is absurd to contend that Yorkville is not allowed to seek legal advice or that the mere fact that Yorkville sought legal advice is evidence of bias.

Moreover, Fox Moraine's attempt to read the invoice to determine what was in the Roth memorandum is a clear attempt to invade Yorkville's attorney-client privilege. As such, it is unconscionable and should not be tolerated. Certainly, arguments and discussion which guess at privileged communications are not appropriate topics for the hearing on this appeal.

**III. FOX MORAINE KNOWS THAT THE CITY CONSIDERED MULTIPLE RESOLUTIONS.**

Fox Moraine contends that Wildman Harrold prepared only one resolution for the City Council's consideration and that the single resolution was to deny Fox Moraine's siting application. They offer Wildman Harrold's invoice as proof of this claim. The invoice, however, is irrelevant to this contention because the hearing transcript belies it. Worse, Fox Moraine knows that its "single resolution" claim is not true.

The transcript of the May 24, 2007 City Council meeting demonstrates that the City Council was presented with three resolutions on that day. (May 24, 2007 Hearing Tr. At pp. 32-33, attached as Exhibit B). Mr. Roth, the City attorney, stated on the record that he had prepared resolutions for the City's consideration based on the City Council's deliberations of May 23, 2007. Mr. Roth advised the City Council that it was entitled to: 1) approve Fox Moraine's application; 2) deny it, or; 3) deny it with conditions. *Id.* Mr. Roth referred the City Council to the multiple resolutions he had prepared. (*Id.* at 33.) Alderman Munns clearly stated that he had three resolutions before him at that time. (*Id.*)

Fox Moraine's representatives and their attorney, George Mueller, were in attendance at the May 24, 2007 City Council hearing.<sup>2</sup> They know that three resolutions were offered to the City Council because they heard the resolutions discussed. If their memories are faulty, they can read the transcript. For Fox Moraine to now argue that the City Council was biased because it considered only one resolution is inexcusably disingenuous.

But the fact that Fox Moraine is brazen enough to think it can use the Wildman Harrold invoice to advance arguments it knows to be false is proof of how far Fox Moraine will go to misrepresent both the invoice and the facts. The Board cannot prevent Fox Moraine from

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<sup>2</sup> Counsel for Yorkville, Anthony Hopp, sat directly behind counsel for Fox Moraine, George Mueller, on May 24, 2007. For Fox Moraine to now misrepresent the events of May 24, 2007 is shameful.

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making future false statements, but it can take the Wildman Harrold invoice out of Fox Moraine's hands and thereby eliminate one vehicle for such extraneous and knowingly false claims.

#### **IV. YORKVILLE DID NOT ILLEGALLY DELEGATE ITS AUTHORITY.**

Finally, Fox Moraine accuses Yorkville of illegally delegating its authority to its attorneys. This argument is also disingenuous and inaccurate. As Fox Moraine knows (because it was there) one of the resolutions presented to the City Council on May 24, 2007 was denial with conditions. Mr. Roth had drafted the resolution based on the City Council's members' deliberations at the May 23, 2007 hearing. Some of the City Council members, however, proposed even further conditions on May 24, 2007. (Ex. B at pp. 19-28). Mr. Roth cautioned them that some of these new conditions may not be appropriate or legal. (Ex. B at pp. 33-35.) The City Council authorized Mr. Roth to remove any illegal conditions before presenting a final resolution for signature. (Ex. B at 37-39.) The City Council's instructions to Mr. Roth, therefore, were to remove items from the ordinance they had crafted at the meeting on May 24, not to add provisions. Asking an attorney to remove illegal conditions can hardly be called an illegal delegation of authority to the attorney.

More importantly, the invoice is not evidence of what the City Council did or whether its activities were legal. The City Council conducted its deliberations and instructed Mr. Roth in public, on the record. George Mueller, Fox Moraine's attorney, was in the audience at that time. For Fox Moraine to now suggest that it requires the Wildman Harrold invoice to make baseless arguments about alleged illegal delegation offends common sense.

**V. CONCLUSION**

Fox Moraine would have preferred the Yorkville City Council complete the local siting hearings in this matter without independent legal advice. The City Council, however, wisely chose to seek advice on its rights and obligations in the process. At the conclusion of their deliberations, the City Council asked their attorney to make sure that their resolution was a lawful one. This is not evidence of bias or prejudice, but rather just the opposite.

The City Council's activities and deliberations were conducted in public, on the record. The record demonstrates that Yorkville was careful to protect Fox Moraine's rights throughout the local siting process. The Wildman Harrold invoice is in no way relevant to the issues in this appeal. The record demonstrates that Fox Moraine's arguments based on the invoice are either baseless or intentionally false. Fox Moraine should not be allowed to clutter the record in this appeal with such nonsense. Yorkville respectfully requests that its Motion *in Limine* No. 4 be granted.

Respectfully submitted,

**THE UNITED CITY OF YORKVILLE**

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

October 7, 2008  
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**EXHIBIT A**



APPROVED BY  
CITY COUNCIL  
ON 6/12/07

MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL  
OF THE UNITED CITY OF YORKVILLE, KENDALL COUNTY, ILLINOIS,  
HELD IN THE CITY COUNCIL CHAMBERS,  
800 GAME FARM ROAD ON  
TUESDAY, MAY 8, 2007.

Mayor Prochaska called the meeting to order at 7:00 P.M and led the Council in the Pledge of Allegiance

ROLL CALL

Clerk Milschewski called the roll

Ward I	James	Absent
	Leslie	Present
Ward II	Burd	Present
	Golinski	Present
Ward III	Bock	Present
	Munns	Present
Ward IV	Besco	Present
	Spears	Present

Also present: City Clerk Milschewski, City Treasurer Powell, City Attorney Wyeth, Interim City Attorney Roth, Interim City Administrator Crois, Assistant City Administrator Olson, Finance Director Mika, Director of Public Works Dhuse, Police Chief Martin, Director of Park & Recreation Mogle, Community Development Director Miller, City Engineer Wywrot and Public Relations Officer Spies

QUORUM

A quorum was established.

SWEARING-IN:

Mayor Prochaska stated that it has been an honor and privilege to serve the people of the United City of Yorkville. He noted that there are exciting times ahead for the community as well as challenges. He stated that while things may at times seem arduous there will be many opportunities ahead. He expressed his wish that the new Council would be able to recognize the best of the opportunities and have the strength to act upon them in the best interest of the United City of Yorkville. He then vacated his seat.

Mayor-elect Burd introduced Judge McCann who proceeded to swear in City Treasurer William Powell, City Clerk Jacquelyn Milschewski, Ward 1 Alderman Walter Werderich, Ward 2 Alderman Arden Joseph Plocher, Ward 3 Alderman Robyn Sutcliff, Ward 4 Alderman Rose Ann Spears and Mayor Valerie Burd.

INTRODUCTION OF GUESTS

Mayor Burd asked the staff and guests to introduce themselves. She welcomed the guests and asked them to enter their names on the attendance sheet provided.

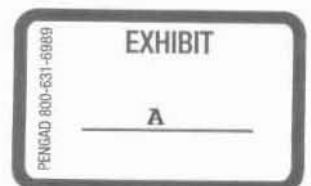
AMENDMENTS TO THE AGENDA

Mayor Burd requested that an emergency executive session be added to the end of the meeting before the Additional Business section of the agenda. She stated that there will be action taken afterward. A motion was made by Alderman Werderich; seconded by Alderman Spears.

Motion approved by a roll call vote. Ayes-8 Nays-0  
Besco-aye, Leslie-aye, Golinski-aye, Werderich-aye,  
Munns-aye, Plocher-aye, Spears-aye, Sutcliff-aye

COMMITTEE MEETING DATES

Public Works Committee	Committee of the Whole 7:00 P M , Tuesday, May 15, 2007 City of Yorkville Conference Room
Economic Development Committee	Committee of the Whole 7:00 P M , Tuesday, May 15, 2007 City of Yorkville Conference Room
Administration Committee	Committee of the Whole 7:00 P M , Tuesday, June 5, 2007 City of Yorkville Conference Room



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

The Minutes of the Regular Meeting of the City Council – May 8, 2007 – page 2

Public Safety Committee

Committee of the Whole  
7:00 P M., Tuesday, June 5, 2007  
City of Yorkville Conference Room

## PRESENTATIONS

None

## PUBLIC HEARINGS

None

## CITIZEN COMMENTS

Darrel Brown, 8262 Highpoint Road, congratulated the newly elected officials. He also expressed his concern with the composting facility owned by Don Hammon. He noted that the odor from it is adversely affecting his way of life and is the worst it has been in the last seven years. He stated that it smells so bad that his children have to stay indoors. He speculated that the odor is related to the proposed landfill. He stated that he left Building Inspector Bill Dettmer several messages reporting the issue and finally spoke directly to him earlier in the day. He requested the City Council hold Mr. Hammon accountable for his operation and possibly raise the standards for it. City Administrator Crois reported that Mr. Dettmer was out on the site today and will be preparing a report for the City Council. He also recommended that those making complaints leave their name and telephone number when they call so that Mr. Dettmer can respond to them.

Brian LeClercq, Village President of Oswego, thanked Mayor Burd for inviting him to the meeting. He congratulated everyone and commented that there will be a lot of work ahead with many things happening. He invited the City Council to meet with Oswego's Board of Trustees so that the two communities can work together.

Joanne Gilbert, 8730 E Highpoint, commented that she was told by a lawyer that complaints against Mr. Hammon's operation need to be filed with the Illinois Environmental Protection Agency however she has a court order dated April 12, 1995 from the Kendall County court which states that complaints can be made to the Kendall County Health Department in lieu of the IEPA. She asked if this process transfers to the City now that the property has been annexed. City Attorney Wyeth stated that he had not seen the court order but the City could be the enforcer if applicable.

Marilyn Michelfini, Village President of Montgomery congratulated the newly elected officials and stated that she looked forward to working together with them.

Tom Gilmore, county resident, wished the newly elected members of the City Council the best of luck. He stated that there was a bright future for Yorkville and he wished the new members the very best.

## CONSENT AGENDA

1. Monthly Treasurer's Report for March 2007 (ADM 2007-37)
2. Resolution 2007-29 - Approving Petty Cash Policy - *authorize the Mayor and City Clerk to execute* (ADM 2007-38)
3. Ordinance 2007-39 - Amending Ordinance 1994-91 – Providing for the Imposition of a Garbage and Refuse Pick-Up Surcharge – Change to Surcharge Amount - *authorize the Mayor and City Clerk to execute* (ADM 2007-40)
4. Sponsorship Request for the Optimist Club – *authorize waiving park rental fee and provide in-kind hours from Park and Recreation Department* (CC 2007-05)
5. Approval of Historical Street Name (CC 2007-06)
  - a. Barbra Joan Groesch
  - b. Ralph and Arlene Blake
6. Approval of Honorary Street Names – Nomination of Founding Fathers by HRC: Delbert Trummel, Wayne Larson, Russ Hughes, Bill Randals and Richard Mitchell (CC 2007-07)

Mayor Burd entertained a motion to approve the Consent Agenda as presented. So moved by Alderman Golinski; seconded by Alderman Spears.

Motion approved by a roll call vote. Ayes-8 Nays-0  
Leslie-aye, Munns-aye, Plocher-aye, Spears-aye,  
Sutcliff-aye, Werderich-aye, Besco-aye, Golinski-aye

## PLANNING COMMISSION/ZONING BOARD OF APPEAL

No report

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

The Minutes of the Regular Meeting of the City Council – May 8, 2007 – page 3

## MINUTES FOR APPROVAL

A motion was made by Alderman Spears to approve the minutes of the City Council meetings of March 13, 2007 and March 27, 2007; seconded by Alderman Besco.

Motion approved by a viva voce vote.

A motion was made by Alderman Spears to approve the minutes of the Committee of the Whole meetings of March 20, 2007 and April 3, 2007; seconded by Alderman Besco.

Alderman Golinski noted a typographical error on page 6 of the April 3, 2007 minutes; "Alderman" Crois should be corrected to "Administrator" Crois.

Motion approved by a viva voce vote.

## BILLS FOR APPROVAL

A motion was made by Alderman Spears to approve the paying of the bills listed on the Detailed Board Report dated April 25, 2007 totaling the following amounts: checks in the amount of \$790,326.13 (vendors – revised 5/2/07 – see summary); \$223,420.54 (payroll period ending 4/14/07); for a total of \$1,013,746.67 (total); seconded by Alderman Besco.

Motion approved by a roll call vote   Ayes-8   Nays-0  
Munns-aye, Plocher-aye, Spears-aye, Sutcliff-aye,  
Werderich-aye, Besco-aye, Golinski-aye, Leslie-aye

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## REPORTS

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### MAYOR'S REPORT

**Mayor Pro Tem for FY 07/08**

Mayor Burd reported that in the past the mayor pro tem has been selected by seniority and Alderman Munns would be the next candidate.

A motion was made by Alderman Besco for Alderman Munns to be mayor pro tem; seconded by Alderman Spears.

Motion approved by a roll call vote   Ayes-8   Nays-0  
Besco-aye, Leslie-aye, Golinski-aye, Werderich-aye,  
Munns-aye, Plocher-aye, Spears-aye, Sutcliff-aye

### **Appointment of City Attorney**

Mayor Burd reported that she would like to appoint Mike Roth from Wildman, Harrold, Allen and Dixon to be the interim city attorney. She entertained a motion to accept this firm. She indicated that the City Council had information before them and this will be for the short-term. She explained that she had interviewed several firms and felt this one would best suit Yorkville's short-term needs. She noted that Attorney Roth was the former city attorney for the City of Naperville and she asked for the City Council's vote of confidence. So moved by Alderman Munns; seconded by Alderman Plocher.

Alderman Munns questioned if Attorney Roth's fees would be comparable to those paid the previous city attorney. Attorney Roth explained that the proposal is for a fixed number of hours, starting at 50 hours per month, for a fixed fee.

Alderman Besco questioned if the budget needed to be adjusted to accommodate Attorney Roth's fees. Finance Director Mika stated that potentially it may need to be adjusted. Administrator Crois indicated that adjustments can be made at the six month review of the budget.

Mayor Burd indicated that this is not for the long-term and she envisioned that a committee of four aldermen would be established to interview firms after it has been determined if a full or part-time attorney is needed.

Alderman Leslie asked what the time frame was for the appointment. Mayor Burd indicated that it was open-ended and could be ended at any time.

Both Aldermen Leslie and Spears felt the firm was a good choice.

Motion approved by a roll call vote   Ayes-8   Nays-0  
Leslie-aye, Golinski-aye, Werderich-aye, Munns-aye,  
Plocher-aye, Spears-aye, Sutcliff-aye, Besco-aye

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

The Minutes of the Regular Meeting of the City Council – May 8, 2007 – page 4

## Kendall Marketplace Payment and Priority Agreement (CC 2007-08)

Mayor Burd asked if anyone wanted to make a motion to approve the Kendall Marketplace Payment and Priority Agreement

A motion was made by Alderman Besco to approve the form of agreement for Kendall Marketplace "Payment and Priority Agreement" between the Developer (Cannonball, LLC) Kohl's, Target, Home Depot, the Lender and the City, as presented, subject to staff and legal review and to authorize the Mayor to execute the final form of the Agreement; seconded by Alderman Leslie

Motion approved by a roll call vote. Ayes-8 Nays-0  
Golinski-aye, Werderich-aye, Munns-aye, Plocher-aye,  
Spears-aye, Sutcliff-aye, Besco-aye, Leslie-aye

## City Administrator Salary Range (CC 2007-09)

Mayor Burd asked for a motion to approve the City Administrator recruitment posting salary range to be increased to \$130,000 00/year based on review of the position. She reported that the review indicated that high-end city administrators get up to this amount and the City wants to attract the brightest and best.

A motion was made by Alderman Leslie to approve City Attorney Recruitment Posting Salary Range to \$130,000 00; seconded by Alderman Werderich

Alderman Besco asked if the budget would have to be adjusted to accomplish this. Finance Director Mika stated that it may potentially have to be adjusted however some vacancies may affect this.

Alderman Munns asked what the low end of the range was. Assistant City Administrator Olson explained that there is no low range and that the posting will state a salary of \$130,000 00, plus or minus

Alderman Spears asked if the educational degree of the city administrators in other communities were investigated. Mr. Olson stated that his investigation revealed that a bachelor's degree was the minimum requirement with a master's degree preferred but not required. Alderman Spears felt that for \$130,000 00/year she would be more comfortable with a city administrator who had a master's degree. Mayor Burd stated that the intention is that in order for the candidate to get the high end of the salary, they would have to have top qualifications. Alderman Spears stated that she would like to see the job posting changed to indicate that the master's degree is required.

Alderman Golinski asked if the increase was recommended by the hiring consultant and Mr. Olson stated that he did discuss the increase with them and they agreed with it.

There was some discussion on how the posting should read and the increase of the range.

Motion approved by a roll call vote. Ayes-5 Nays-2 Present-1  
Werderich-aye, Munns-aye, Plocher-aye, Spears-aye,  
Sutcliff-aye, Besco-present, Leslie-aye, Golinski-nay

## Committee/Commission Appointment

Mayor Burd indicated that the chairmanship of the committee's would be established by seniority. The senior aldermen picked chairmanships and the outcome was:

- o Alderman Spears - Public Safety Committee
- o Alderman Munns - Administration Committee
- o Alderman Besco - Public Works Committee
- o Alderman Leslie - Economic Development Committee

The remaining aldermen picked vice-chairmanships based on seniority:

- o Alderman Golinski - Economic Development Committee
- o Alderman Werderich - Public Safety Committee
- o Alderman Plocher - Administration Committee
- o Alderman Sutcliff - Public Works Committee

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

## The Minutes of the Regular Meeting of the City Council – May 8, 2007 – page 5

After some discussion the following seats on committees were determined to be:

- o Administration Committee – Aldermen Spears and Werderich
- o Economic Development Committee – Aldermen Munns and Besco
- o Public Safety Committee - Aldermen Golinski and Alderman Sutcliff
- o Public Works Committee – Aldermen Leslie and Plocher

### Poppy Awareness Days

Mayor Burd read a proclamation for Poppy Awareness Days, May 17, 18 and 19, 2007 (see attached) She asked for a vote of ratification of the proclamation and it was approved by viva voce vote

### CITY COUNCIL REPORT

No report

### ATTORNEY'S REPORT

No report

### CITY CLERK'S REPORT

#### Appointment of Deputy Clerk

Clerk Milschewski requested a motion to approve Office Assistant Lisa Pickering as Deputy Clerk for the next fiscal year. So moved by Alderman Spears; seconded by Alderman Golinski.

Motion approved by a roll call vote Ayes-8 Nays-0  
Plocher-aye, Spears-aye, Sutcliff-aye, Besco-aye,  
Leslie-aye, Golinski-aye, Werderich-aye, Munns-aye

### CITY TREASURER'S REPORT

Treasurer Powell reported that bank signature cards will be available to be signed after the new aldermen receive their signature stamps. He indicated that until this is done, none of the newly elected aldermen can sign checks

### CITY ADMINISTRATOR'S REPORT

No report

### FINANCE DIRECTOR'S REPORT

Director Mika reported that she distributed new budget packets to the City Council.

### DIRECTOR OF PUBLIC WORKS REPORT

No report

### CHIEF OF POLICE'S REPORT

Chief Martin reported that a new police officer will be hired by June 5, 2007 and sworn in the following Tuesday

### DIRECTOR OF PARKS & RECREATION'S REPORT

No report

### COMMUNITY DEVELOPMENT DIRECTOR'S REPORT

No report

### COMMUNITY RELATIONS MANAGER'S REPORT

No report

### COMMUNITY & LIAISON REPORT

No report.

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## COMMITTEE REPORTS

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### PUBLIC WORKS COMMITTEE REPORT

No report

### ECONOMIC DEVELOPMENT COMMITTEE REPORT

Ordinance 2007- 40

Approving a Redevelopment Agreement for the  
Downtown Redevelopment Project Area  
(EDC 2007-17)

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

## The Minutes of the Regular Meeting of the City Council – May 8, 2007 – page 5

A motion was made by Alderman Leslie to approve an ordinance approving a Redevelopment Agreement for the Downtown Redevelopment Project; seconded by Alderman Munns

Motion approved by a roll call vote Ayes-8 Nays-0  
Spears-aye, Sutcliff-aye, Besco-aye, Leslie-aye,  
Golinski-aye, Werderich-aye, Munns-aye, Plocher-aye

## PUBLIC SAFETY COMMITTEE REPORT

No report.

## ADMINISTRATION COMMITTEE REPORT

No report.

## EXECUTIVE SESSION

Mayor Burd entertained a motion to Executive Session to discuss matters of pending litigation. She asked that the City Attorney and Attorney Kramer be included. So moved by Alderman Werderich; seconded by Alderman Munns

Motion approved by a roll call vote Ayes-8 Nays-0  
Spears-aye, Sutcliff-aye, Werderich-aye, Besco-aye,  
Golinski-aye, Leslie-aye, Munns-aye, Plocher-aye

The City Council entered in to Executive Session at 8:10 p m

The City Council returned to regular session at 8:45 p m

## ADJOURNMENT

Mayor Burd entertained a motion to adjourn. So moved by Alderman Munns; seconded by Alderman Besco

Motion approved by a viva voce vote.

Meeting adjourned at 8:45 P.M.

Minutes submitted by:

Jacquelyn Milschewski,  
City Clerk City of Yorkville, Illinois

\*\*\*Tape malfunctioned – barely audible

**EXHIBIT B**

1 But I know Larry's a man of character. He has  
2 dealt with a lot of these. The experiences he has  
3 had is firsthand knowledge. I have to respect his  
4 opinion. I know a lot of people aren't going to  
07:23PM 5 agree with that. I also know there is a record of  
6 many seated officials here that have made  
7 statements or been involved with the opposition  
8 and that -- I think that's going to make them look  
9 bad when the Pollution Control Board gets to the  
07:24PM 10 review this and I think some have shown bias.

11 I wanted my opinion on the record,  
12 and that is that we should never have been given  
13 the -- we should never have been the responsible  
14 party to judge this. The county shouldn't have  
07:24PM 15 been the responsible party to judge this. The  
16 Pollution Control Board should have that  
17 authority, so vote as you may. It will be up in  
18 their hands anyway. Thank you.

19 MAYOR BURD: Do we have any other  
07:24PM 20 comments? Aldermen Spears, did you have more that  
21 you wanted to say tonight?

22 MS. SPEARS: Yes, but I'm still  
23 preparing it. Nobody else is speaking? You have  
24 20 minutes. Okay, thank you. And I would like to



1 also thank everybody who has been in attendance  
2 and who has presented facts and statistics.

3 AUDIENCE MEMBER: We can't hear you.

4 MS. SPEARS: Again, I just -- just..

07:25PM

5 wanted to thank everybody for sitting through this  
6 with us. It has been a very long process. It has  
7 been very difficult on all of us, and I would like  
8 to agree with also Alderman Besco. There were --  
9 it did get pretty dirty. It got dirty among the

07:25PM

10 aldermen as well. Some of us were accused of  
11 being biased. I know on the onset of this I was  
12 also asked to work with Donny. I asked why, not  
13 knowing who Donny was, because I'm obviously not  
14 that close. And I was also told that he is a very  
07:26PM 15 good person and I think that we should work with  
16 him, which I find to be also biased going the  
17 other direction.

18 I would like to know at this time  
19 if we could include additional conditions in our  
07:26PM 20 resolution? Could we include additional  
21 conditions?

22 MR. ROTH: State the conditions you feel  
23 are appropriate.

24 MS. SPEARS: Okay. I would like to have

1 a condition regarding the -- changing the hours of  
2 operation. Is this okay?

3 MR. ROTH: Sure.

4 MS. SPEARS: And I would like to limit  
07:26PM 5 the hours of operation from 6:00 a.m. to  
6 4:30 p.m., and on Saturdays -- that would be  
7 weekdays. Saturdays would be 6:00 a.m. until  
8 noon.

9 MR. ROTH: Okay. I just want to be  
07:27PM 10 clear, for the benefit of the audience probably  
11 more than anyone else, that the statute calls for  
12 denial, approval with conditions, or approval.  
13 And so I think it's in that context that you are  
14 speaking?

07:27PM 15 MS. SPEARS: Yes. Yes, it is.

16 MR. MUNNS: Wasn't there also denial  
17 with approvals -- with conditions?

18 MR. ROTH: We had prepared two different  
19 resolutions in anticipation of the City Council's  
07:27PM 20 decision tonight, and we had included in a denial  
21 resolution that we prepared as a matter of form a  
22 condition -- a series of conditions that if --  
23 there it is.

24 MR. MUNNS: No. 4.

1 MR. ROTH: I'm sorry. I had the second  
2 one. Right. We had stated a condition or a term  
3 of one of the denial resolutions that in the event  
4 that the Pollution Control Board or a court were  
07:26PM 5 to reverse and send this matter back to the City  
6 Council, that conditions would be imposed. If it  
7 were required by a higher authority to send this  
8 matter back to the City Council for approval, that  
9 it be approved only with certain conditions.

07:28PM 10 And I want to be clear that that is  
11 not speaking to the City Council's decision in the  
12 event it does deny this and were to adopt the  
13 resolution denying the proposal, that that denial  
14 is what would stand and that would be with the  
07:28PM 15 City Council. It is only in the event that if it  
16 were returned by the Pollution Control Board or a  
17 court that that condition would take place.

18 MS. SPEARS: That's correct.

19 MR. ROTH: Thank you.

07:28PM 20 MS. SPEARS: That is the one that I am  
21 addressing at this time. I would also like to  
22 have property value protection extended to a  
23 10-mile radius. Well protection extended to a  
24 10-mile radius. I would like the removal of

1 Sleepy Hollow Road from the annexation agreement,  
2 whether that be by an addendum or whether it just  
3 be in an agreement with this.

4 I would like no garbage truck  
07:29PM 5 traffic traveling through downtown Yorkville. No  
6 truck traffic traveling through downtown  
7 Plainfield. I would like the applicant to pay  
8 city and county road impact fees based on the  
9 number of haulers. I would like no further  
07:29PM 10 attempt to move Hollenbeck Creek or any  
11 tributaries.

12 Also in the case of not removing  
13 Sleepy Hollow Road from the annexation agreement,  
14 if it is not removed and this does return to us, I  
07:29PM 15 would like the landfill to be redesigned and the  
16 City would have the sole right of approval of the  
17 new design.

18 I would like to have quarterly  
19 testing of private off-site wells within a 10-mile  
07:30PM 20 radius.

21 Bear with me while I find my other  
22 request. Please stop the clock, I'm not speaking.

23 MR. BESCO: Rose, can I address one of  
24 your points in-between before I forget it?

1 MS. SPEARS: No, hold your thought. I  
2 apologize. It is in my conditions folder. Okay.

3 I would like to be included as a  
4 condition, guarantee of payment. It further seems  
07:31PM 5 very clear that the county agreement is  
6 unconditional and guaranteed in payment where the  
7 City is contingent, and from a point of business  
8 it would be much better for the city to have the  
9 ability if it is traveling down this path to have  
07:31PM 10 a guaranteed revenue source.

11 Binding arbitration. This is one  
12 that I think these hearings alone will support my  
13 condition recommendation. I would recommend that  
14 the parties not agree that binding arbitration is  
07:31PM 15 the sole remedy in the event of a claim violation  
16 by the City or its citizens. I would recommend  
17 that the City shall have the sole right and  
18 election to choose binding arbitration as to the  
19 method of enforcement. And -- or the alternate,  
07:32PM 20 that the City may have injunction relief through  
21 the courts of competent jurisdiction.

22 In other words, what I'm trying to  
23 say is if there are any problems that are  
24 presented, I would like them to be ruled on by

1 Kendall County, the county that we live in. I  
2 think that it is very apparent from these hearings  
3 that we have a very close, tight-knit circle of  
4 people that represent either side in various  
07:32PM 5 landfill applications. And my fear is if there is  
6 some kind of arbitration, it may be one of the  
7 attorneys that have been here on either side, and  
8 I'm not comfortable with that. I would like to  
9 have our court system handle any type of  
07:33PM 10 arbitration, any complaint, and I hope our Council  
11 is in agreement with that as well.

12 As far as arbitration, I would like  
13 to remove every reference between city and  
14 arbitrator. Devaluation of property, third party.  
07:33PM 15 If another is named as a third party, then insert  
16 name -- and this is all in the host agreement --  
17 or pursue the revenues in our court. Third party  
18 would be held harmless for any claim for any  
19 reason.

07:33PM 20 Okay. Also for a post-closure plan  
21 I would like to see at least a 25-year escrow  
22 account to maintain the landscaping and whatever  
23 would be required after closure. I would like to  
24 also have included an irrigation plan. And I

1 would like to have the tonnage limited to 4,000  
2 tons per day. And this is pretty close to what  
3 Mr. Woodman indicated as his traffic witness.

4 And, oh, yes, also we would like to  
07:34PM 5 limit the service area and we would like to limit  
6 it to Kendall County.

7 I apologize again. I'm typically a  
8 little more organized but reading that whole  
9 binder last night until 4 o'clock this morning was  
07:35PM 10 rather difficult.

11 Also I would like to see the design  
12 include two layers of HDPE in the entire, the  
13 entire, liner system, not only in what is deemed  
14 critical areas. I also would like to make sure  
07:36PM 15 that the liner -- that the liners are tested not  
16 only at the weld seams but I would like to see  
17 them tested, the entire liners, in case there are  
18 factory defects or damage during the installation.

19 Also, regarding the tanks, the  
07:36PM 20 storage tanks that are going to be buried, first  
21 of all I would prefer they are not buried and,  
22 second, I would like to include as a condition  
23 that we use -- the proper tanks would be included  
24 in this design, and they would be the welded steel

1 tanks built A-W-W-A D dash 100 or the A-P-I 650  
2 standard.

3 Also I would like to have some  
4 protection, that I mentioned last night, as far as  
07:37PM 5 the run-off from the wheel-wash basin and  
6 stormwater that would be falling in the paved  
7 area. I would like to see that monitored and on  
8 a -- on a daily basis.

9 And also I would like to include as  
07:37PM 10 a condition that during the entire life of the  
11 landfill, including post-closure care period, that  
12 groundwater protection plan -- let's see, oh, that  
13 we protect all of the wells within, again, a  
14 10-mile radius, all the wells that are currently  
07:38PM 15 in, the private wells, and the wells that will be  
16 installed during the operation of the plant.

17 I believe I have like five minutes  
18 left, correct? And I believe that I did address  
19 every issue at this time. Thank you.

07:38PM 20 MAYOR BURD: Thank you, Rose.

21 (Applause.)

22 MAYOR BURD: Thank you, Alderman Spears.  
23 Who would like to speak next?

24 MR. WEDERICH: I would like to propose



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

07:39PM

7 MAYOR BURD: Okay.

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

07:39PM

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

07:40PM

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

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

07:40PM

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

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

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

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

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

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

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

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

07:42PM

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

07:42PM

07:43PM

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

07:43PM

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

1 feelings toward anyone here tonight or after.

2 Thank you.

3 (Applause.)

4 MAYOR BURD: Do we have any other

07:43PM

5 comments?

6 MR. ROTH: If there is no further

7 deliberation, then I think it is appropriate that

8 a motion be made for or against or with

9 conditions. And based upon that in a second,

07:44PM

10 there can be further deliberation on that or you

11 give us the direction as to how you would like to

12 revise the resolutions that we have put before

13 you.

14 Again, I want to emphasize that we

07:44PM

15 prepared resolutions for your consideration based

16 upon what we heard last night. Obviously more has

17 been stated tonight and those resolutions, if you

18 direct, will need to be revised. And what I would

19 recommend is that you vote on one measure or

07:44PM

20 another, give us direction, we will prepare the

21 resolution, and then the mayor can sign it

22 tomorrow.

23 MAYOR BURD: I would like to entertain a

24 motion --

1 MR. PLOCHER: I would like to make a  
2 motion to approve the denial resolution with  
3 restrictions, including all new restrictions.

4 MAYOR BURD: Do I have a second?

07:44PM

5 MR. WEDERICH: Second.

6 MAYOR BURD: We have a second? Alderman  
7 Wederich, okay. Could we have discussion, please.

8 MR. MUNNS: Is this the middle ordinance  
9 you wrote, the denial with conditions?

07:45PM

10 MR. ROTH: Yes.

11 MR. MUNNS: There is three. This is the  
12 middle one of the three?

07:45PM

13 MR. ROTH: Yes. Mayor, if I may make a  
14 comment, and I think it is for the benefit of the  
15 city in the process. While we will certainly  
16 respect whatever direction you give us, I think  
17 you need to be careful about setting conditions  
18 that would not be permissible by law. And I can  
19 tell you that the purpose of establishing

07:45PM

20 conditions is to -- is to allow for reasonable,  
21 necessary, and appropriate conditions in order to  
22 meet the siting criteria. It is the siting  
23 criteria. So there are certain things that I  
24 think are out of the jurisdiction of the city to

1 determine. Now, that doesn't mean that if you  
2 include them in the resolution that you are  
3 proposing, that that resolution is going to fail.  
4 But I want to caution you against having this  
07:45PM 5 matter quickly sent back based upon certain  
6 conditions, and there was a couple of them there  
7 that I want to be clear about.

8           One, it is the petitioner's or the  
9 applicant's right to determine what the service  
07:46PM 10 area is and it is not for the city to make that  
11 determination for them, even by way of a  
12 condition. So to make a -- set a condition, for  
13 example, that the City limits -- that the service  
14 area be limited to Kendall County, if that's not  
07:46PM 15 what the petitioner has so directed, I don't think  
16 that's appropriate.

17           Second, the courts have evaluated  
18 the standard of what is reasonable and appropriate  
19 conditions, and they have -- they have considered  
07:46PM 20 other governing bodies in position of conditions  
21 that established extraordinarily high financial  
22 requirements that were not rationally related to  
23 specific siting criteria, so I would caution you  
24 against a condition, for example, that sets a

1 \$10 million flat fee.

2 Next, as to the condition that's  
3 recommended that a court of jurisdiction would  
4 only be included with the court of Kendall County,  
07:47PM 5 I would caution you against that. That kind of a  
6 term would be decided by the law and couldn't be  
7 decided by the City.

8 And, finally, certain of these  
9 criteria or conditions that you have -- that  
07:47PM 10 members have spoken about are clearly related to  
11 the host agreement and the host agreement speaks  
12 for itself on that. So obviously there were a  
13 number of operational, siting, design conditions  
14 that were articulated tonight, and so I understand  
07:47PM 15 the resolution to include those that I have not  
16 specifically mentioned.

17 MS. SPEARS: May I ask a question  
18 regarding Kendall County?

19 MR. ROTH: Yes.

07:48PM 20 MS. SPEARS: Could we say rather than  
21 going to an arbitration board, that we could just  
22 go to a -- it goes to court?

23 MR. ROTH: I think that what I am  
24 understanding you to say is that you are speaking



1 to terms of the host agreement rather than to the  
2 terms of the enforcement of your resolution of  
3 ordinances.

4 So, again, the court of  
07:48PM 5 jurisdiction is going to be the county court, but  
6 there are exceptions under the law where it is  
7 sometimes the right of one party or another to  
8 take a case outside of this county, and that is  
9 not going to be for us to say. That would be for  
07:48PM 10 a judge to say. And, again, what I understand you  
11 to be speaking to is the host agreement anyway,  
12 and I don't think that this is the appropriate  
13 place to establish terms for a host agreement.

14 MS. SPEARS: Okay, thank you.

07:49PM 15 MR. MUNNS: Madam Mayor, I have one  
16 question too on the process for Mr. Roth. If this  
17 is appealed and it goes to the state, does it ever  
18 come back to us to re-discuss or vote?

19 MR. ROTH: Well, it is within the  
07:49PM 20 Pollution Control Board's authority to remand a  
21 case, so it could reverse and then the case could  
22 go directly to the Appellate Court or it could be  
23 remanded or it could be remanded by order of the  
24 Appellate Court. So it is possible, not highly

1 common but it is possible, that the matter could  
2 come back to the City. And that's the reason that  
3 we are recommending that if it did, there be a  
4 clear message as to strong conditions that be  
5 required.

07:49PM

6 MR. MUNNS: So you recommend keeping  
7 some of this information we have instead of  
8 throwing it all away.

9 MR. ROTH: Yes, I do.

07:49PM

10 MR. MUNNS: Thank you.

11 MAYOR BURD: I would like to ask the  
12 aldermen to amend the conditions or -- to this  
13 resolution to allow the attorney to make sure that  
14 they are in compliance with what conditions should  
15 be so that we don't add anything that's not  
16 allowable that does not pertain to the host  
17 agreement, the annexation agreement, that is not  
18 supposed to be in this resolution. So if that  
19 would be possible, I would like to amend it.

07:50PM

20 Could -- would one of you make a motion to amend?

21 MR. ROTH: If I may suggest -- I think  
22 there is a motion on the -- well, there is not a  
23 motion on the table yet.

07:50PM

24 MAYOR BURD: Yes, there is.

1 MR. ROTH: There is. Excuse me, there  
2 is a motion on the table, that's right.

3 MAYOR BURD: Okay. Do I have a motion  
4 to amend? Aldermen Plocher. Do I have a second?

07:51PM 5 MR. WEDERICH: Second.

6 MAYOR BURD: Okay. Could we have a roll  
7 call on the amendment?

8 MS. PICKERING: Werderich.

9 MR. WEDERICH: Aye.

07:51PM 10 MS. PICKERING: Munns.

11 MR. MUNNS: Aye.

12 MS. PICKERING: Plocher.

13 MR. PLOCHER: Aye.

14 MS. PICKERING: Spears.

07:51PM 15 MS. SPEARS: Aye.

16 MS. PICKERING: Sutcliff.

17 MS. SUTCLIFF: Aye.

18 MS. PICKERING: Besco.

19 MR. BESCO: I'm sorry? What are we --  
07:51PM 20 all of the conditions that were placed? Is that  
21 what we are --

22 MAYOR BURD: The amendment is to allow  
23 our attorney to remove any illegal conditions, any  
24 of them that pertain to the host agreement, the

1 annexation agreement, anything that we cannot  
2 legally ask for.

3 MR. BESCO: Right. Aye.

4 MS. PICKERING: Leslie.

07:51PM

5 MR. LESLIE: Aye.

6 MS. PICKERING: Golinski.

7 MR. GOLINSKI: Aye.

8 MAYOR BURD: All right. Now we are back

9 to discussion on the resolution itself. Does

07:52PM

10 anybody want to speak to the resolution on the  
11 floor? The resolution is on the floor with the  
12 appropriate conditions, so we will move ahead then  
13 with the roll call vote.

14 MS. SPEARS: Excuse me, can you clarify  
15 that one more time for us?

07:52PM

16 MAYOR BURD: Okay. What we are voting  
17 on is denial -- where is it -- denial of siting  
18 application from Fox Moraine, LLC for proposed  
19 landfill in the United City of Yorkville with

07:53PM

20 conditions. And it has been amended with all the  
21 conditions that were stated here tonight except  
22 those that are illegal and should not be included.

23 MS. SPEARS: And that's only if it is  
24 returned, correct?

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

## CERTIFICATE OF SERVICE

I, Patti Racky, a non-attorney, certify that I caused a copy of the foregoing **Notice of Filing and United City of Yorkville's Reply in Support of Its Motion in Limine # 4** to be served upon the Hearing Officer and all Counsel of Record listed on the attached Service list by sending it via Electronic Mail on October 7, 2008.

/s/ Patti Racky

[x] Under penalties as provided by law pursuant to ILL. REV. STAT. CHAP. 110 – SEC 1-109, I certify that the statements set forth herein are true and correct.

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

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