

MOTION FOR LEAVE TO FILE RESPONSE TO
REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS
PETITION FOR REVIEW FILED BY
THE CITY OF KANKAKEE

NOW COMES the CITY OF KANKAKEE by and through its Assistant City Attorneys, L. PATRICK POWER and KENNETH A. LESHEN, and moves this Board for leave to file this Motion and in support thereof states as follows:

1. That on or about April 9, 2003, the County of Kankakee and the County Board of Kankakee filed a motion and a brief with the Board.

2. As part of said motion, the County of Kankakee and the Kankakee County Board stated, "the only argument raised by the City of Kankakee is that 'since the City of Kankakee is allowed to participate in these hearings as an objector and since the issue of lack of standing was not raised prior to the hearing by the County, that issue if it has any merit whatsoever was waived, except for the grounds contained in Section 5/40.1(b).' (See City brief, Section III and IV). Once again, the City's argument is erroneous.

The City has provided no authority for its conclusion that the failure to raise the objection at the County level is in any way a waiver."

3. There is authority supporting that proposition of law, to-wit: *E & E Hauling, Inc. vs. Pollution Control Board* 107 IL2d 33. Said case states in part, as follows:

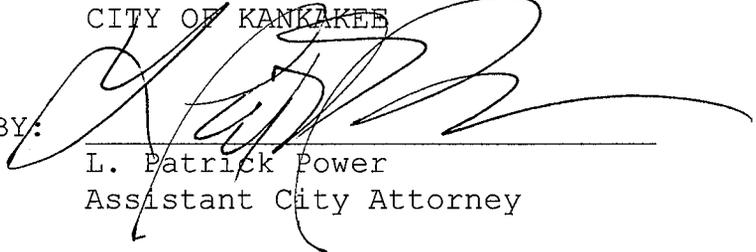
First, we must consider whether the village has waived its right to object to the adjudicators. The village did not raise the issue of bias at the board hearing. One citizen simply commented that the district would gain financially from the approval. Generally, of course, a failure to object at the original proceeding constitutes a waiver of the right to raise the issue on appeal.

WHEREFORE, Petitioner, City of Kankakee, prays for leave to file the above-referred to authority in support of its argument and further to allow the foregoing to stand as such filing.

Respectfully submitted,

CITY OF KANKAKEE

BY:



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AFFIDAVIT OF SERVICE

The undersigned, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, hereby under penalty of perjury under the laws of the United States of America, certifies that a copy of the foregoing was served upon the following parties by facsimile to those parties with facsimile numbers listed below and by depositing same to all parties in the U. S. Mail at Kankakee, Illinois, before 5:00 p.m., on the 11th day of April, 2003:

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