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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SEP 22 2003

WASTE MANAGEMENT OF ILLINOIS, INC.,)

Petitioner,)

STATE OF ILLINOIS
Pollution Control Board
No. PCB 04- ~~33~~ 34

(Pollution Control Facility
Siting Appeal)

THE CITY OF KANKAKEE, ILLINOIS CITY)
COUNCIL, TOWN AND COUNTRY UTILITIES,)
INC. and KANKAKEE REGIONAL LANDFILL,)
L.L.C.)

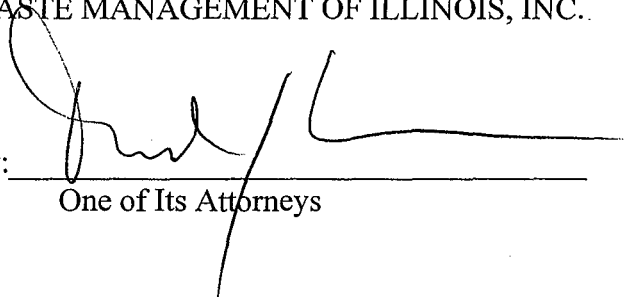
Respondents.)

NOTICE OF FILING PETITION FOR REVIEW

TO: See Attached Service List

PLEASE TAKE NOTICE that on September 22, 2003, we filed with the Illinois Pollution Control Board, the attached Waste Management of Illinois, Inc.'s **PETITION FOR HEARING TO CONTEST SITE LOCATION APPROVAL.**

WASTE MANAGEMENT OF ILLINOIS, INC.

By: 
One of Its Attorneys

Donald J. Moran
PEDERSEN & HOUP
161 North Clark Street, Suite 3100
Chicago, Illinois 60601
(312) 641-6888
Attorney Registration No. 1953923

PROOF OF SERVICE

Victoria L. Kennedy, a non-attorney, on oath states that she served the foregoing **Waste Management of Illinois, Inc.'s Petition for Hearing to Contest Site Location Approval** on the following parties by depositing same in the U.S. mail at 161 N. Clark St., Chicago, Illinois 60601, at 5:00 p.m. on this 22nd day of September, 2003:

City of Kankakee
c/o Anjanita Dumas, Clerk
385 E. Oak Street
Kankakee, IL 60901

Town and Country Utilities, Inc. and
Kankakee Regional Landfill LLC
c/o Mr. George Mueller
Attorney at Law
501 State Street
Ottawa, IL 61350

Edward Smith
Kankakee County State's Attorney
Kankakee County Administration Building
189 East Court Street
Kankakee, Illinois 60901

Mr. Charles F. Helsten
Hinshaw & Culbertson
100 Park Avenue
P.O. Box 1389
Rockford, Illinois 61105-1389

Christopher Bohlen
Barmann, Kramer and Bohlen, P.C.
300 East Court Street, Suite 502
P.O. Box 1787
Kankakee, IL 60901


Victoria L. Kennedy

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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COUNCIL, TOWN AND COUNTRY UTILITIES,)
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L.L.C.)

Respondents.)

STATE OF ILLINOIS
Pollution Control Board

PETITION FOR HEARING
TO CONTEST SITE LOCATION APPROVAL

Petitioner Waste Management of Illinois, Inc., ("WMII"), by Pedersen & Houpt, its attorneys, respectfully requests a hearing to contest the decision of the Kankakee City Council ("City Council") granting site location approval for the proposed Kankakee Regional Landfill ("Facility"). In support of this Petition, WMII states as follows:

1. This Petition is filed pursuant to Section 40.1 of the Illinois Environmental Protection Act (the "Act") (415 ILCS 5/40.1).
2. On March 7, 2003, Town & Country Utilities, Inc. and Kankakee Regional Landfill, L.L.C. ("Town & Country") submitted its request for site location approval for the Facility, located in Otto Township within the corporate limits of the City of Kankakee, Illinois ("Request"). The Facility is a 400-acre site which will receive 3,500 tons of waste per day, and provide disposal capacity for a minimum of 30 years.

3. Town & Country filed a request for the same facility on March 7, 2002. That request was disapproved by this Board in County of Kankakee, et al v. City of Kankakee, et al., Nos. PCB 03-31, 03-33, 03-35 (cons.), slip op. at 27-30 (January 9, 2003).

4. On August 18, 2003, following public hearings conducted before the City Council, said hearings having been held from June 24 to June 28, 2003, the City Council formally approved the Request. A true and correct copy of the City Council Ordinance approving same is attached hereto and made a part hereof as Exhibit A.

5. WMII appeared and participated in the public hearings held before the City Council.

6. WMII contests and objects to City Council's siting approval because the City Council lacked jurisdiction to consider the Request due to the failure of Town & Country to provide the required statutory notice pursuant to Section 39.2(b) of the Act.

7. WMII contests and objects to the City Council's siting approval because the City Council lacked jurisdiction to consider a request that was substantially the same as the application filed March 7, 2002, and disapproved by this Board on January 9, 2003, pursuant to Section 39.2(m) of the Act.

8. WMII further contests and objects to the City Council's siting approval because the siting process and procedures used by the City Council in reaching that decision were fundamentally unfair.

6. WMII further contests the City Council's siting approval because the evidence presented by Town & Country failed to establish that Town & Country met the following criteria as established in Section 39.2(a) of the Act:

- (a) that the Facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected; and
- (b) that as the Facility is to be located in a county where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the Facility is consistent with that plan.

10. The Request and testimony presented at the siting hearing by Town & Country inadequately characterized the hydrogeological conditions of the site, and based the design and location of the Facility on such characterization.

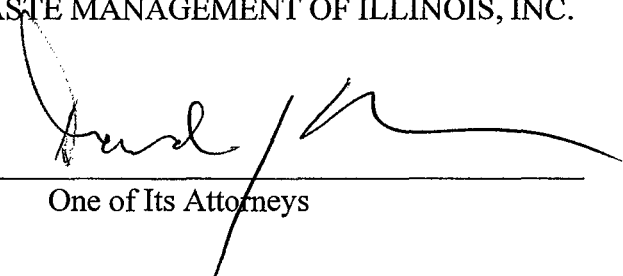
11. The Request and the approval by the City Council is directly contrary to the Kankakee County Solid Waste Management Plan (as amended).

12. The City Council's Siting approval should be vacated because the City Council lacked jurisdiction to review the Request pursuant to Sections 39.2(b) and 39.2(m) of the Act. In addition, the City Council's siting approval should be reversed because its findings that criteria two and eight were satisfied are against the manifest weight of the evidence.

WHEREFORE, WMII respectfully requests that the Board enter an order (a) setting for hearing this contest of the City Council siting approval decision, (b) vacating or reversing the City Council siting approval decision, and (c) providing such other and further relief as the Board deems appropriate.

Respectfully submitted,

WASTE MANAGEMENT OF ILLINOIS, INC.

By 

One of Its Attorneys

Donald J. Moran
PEDERSEN & HOUP
Attorneys for Petitioner
161 N. Clark Street
Suite 3100
Chicago, IL 60601
Telephone: (312) 641-6888

BEFORE THE CITY COUNCIL
CITY OF KANKAKEE, ILLINOIS

RECEIVED
CLERK'S OFFICE
SEP 23 2003

IN RE:

THE APPLICATION FILED ON MARCH 7, 2003
OF TOWN AND COUNTY UTILITIES INC.
and KANKAKEE REGIONAL LANDFILL, L.L.C.
for SITING APPROVAL
OF A POLLUTION CONTROL FACILITY.

STATE OF ILLINOIS
Pollution Control Board

FINDINGS OF FACT AND CONCLUSIONS OF
LAW OF THE CITY OF KANKAKEE.

The City Council of the City of Kankakee, as the siting authority pursuant to Section 39.2 of the Illinois Environmental Protection Act, 415 ILCS 5/39.2.(hereinafter "The Act") has received an application for siting approval of a Regional Pollution Control Facility and has thereafter conducted a siting hearing pursuant to the application and The Act.

Pursuant to the Act the City Council of Kankakee makes the following recitals:

NOW THEREFORE, the City Council of the City of Kankakee being fully advised of the premisses herein does hereby make the following findings of fact and conclusions of law.

I. Preliminary Findings:

- A. The City Council of the City of Kankakee has jurisdiction to consider the application filed herein pursuant to Section 39.2 of the Environmental Protection Act based upon the fact that the proposed site consisting of approximately 400 acres is located within the municipal boundaries of the City of Kankakee.
- B. A public hearing was held pursuant to the Act and City of Kankakee Pollution Control Facilities Siting Ordinance (hereinafter "the Ordinance") and the procedures set forth therein. The applicant filed herein an application, as corrected, which contains all of the information required by 39.2 (C) of the Act and the applicable ordinance.
- C. Town & County Utilities, Inc., and Kankakee Regional Landfill, L.L.C. properly filed the required number of its application. The application consists of eight volumes, supplemental drawings, core samples and core sample observation logs and modeling data.

Exhibit A

- D. The required filing fee of \$100,000.00 has been deposited with the City Clerk of the City of Kankakee. The City Clerk has made copies of the application available for public review and copying. The City further provided a copy of said application to Kankakee County at no expense.
- E. A public hearing on the application commenced on June 24, 2003 and was concluded on June 28, 2003 in the City of Kankakee City Council Chambers, Kankakee Illinois. The public hearing was held no sooner than 90 days but no later than 120 days from and after the filing of the application with the City on March, 7, 2003. All published and written notices for the public hearing were duly and properly given as required by the Act and by the Ordinance. The public hearing was presided over by Robert Boyd, a licensed attorney who was not otherwise employed by nor connected with any of the parties herein.
- F. All notices and publications required by the Act and the Siting Ordinance were duly and properly given and no objection has been made to the notices which have been given nor has any party argued or offered evidence indicating any deficiency in said notices.
- G. Said hearings were held pursuant to the applicable ordinances of the City of Kankakee and the rules and regulations adopted pursuant and specifically pursuant to the City of Kankakee Pollution Control Facility Siting Ordinance, (hereinafter referred to as "Siting Ordinance").
- H. During the hearings all persons desiring to be participants in the hearing, including members of the public were provided an opportunity to present testimony, offer exhibits, be represented by counsel, cross-examine witnesses and provide public comment. Prior to the hearing individuals and entities filed written comments and those comments are specifically included herein as a portion of this record.
- I. Persons who appeared and participated as objectors were: Kankakee County, Waste Management of Illinois, Inc. and Byron Sandberg.
- J. During said hearings testimony was offered by the applicant and objectors. Said testimony was under oath and subject to cross examination. Additional oral public comment was received which was neither under oath nor subject to cross examination.

- K. Following the final day of hearings additional public comments were accepted through July 29, 2003. In addition thereto, the applicant and objectors were requested to submit proposed findings, briefs and argument by July 29, 2003.
- L. The City also sought input from an independent geologist, Mr. Ralph Yarborough, PhD of Geo-Technical Associates, Inc. whose final report was received on July 28, 2003 and is expressly incorporated herein.
- M. At the public hearing, each witness was placed under oath and was subject to cross examination by those participating in and attending the hearing, with the exception of individuals who chose to make unsworn public comments.
- N. A transcript of the hearing was made and is expressly incorporated herein.
- O. The City of Kankakee received documentary evidence including maps, drawings and photographs from the applicant and other participants. Those exhibits are also expressly incorporated herein. Also offered and accepted into evidence are the written transcripts of a previous siting hearing held in connection with a previous siting application.
- P. The record of this public hearing is sufficient to form the basis of an appeal of any decision of this City Council in accordance with Section 40.1 of the Act.
- Q.. No amendment to the application was filed during the course of these proceedings.
- R.. Written public comments and other filings were received from the applicants and the others through July 29, 2003. Said public comments and filings are expressly incorporated herein.
- S. Motions were filed by various objectors prior to the commencement of the hearing. Those motions are as follows:
 - 1. Motion to Disqualify Alderman JoAnne Schwade filed by Waste Management and joined by Kankakee County. Said motion was denied by the Hearing Officer. The City Council finds that the ruling was correct and cites Section 39.2(d) in support of the Hearing Officer's Ruling. The City Council further notes that the evidence relied upon in support of the motion explicitly quotes Ald. Schwade indicating that she intended to await the hearings to decide the issue and desired additional evidence to determine her final position.

2. Motion to Quash Siting Hearing filed by Kankakee County. Said motion was based upon the City filing an action to protect its jurisdiction and sought a finding that the Solid Waste Plan of Kankakee County was unconstitutional. The City Council finds that the decision of the Hearing Officer was correct and states that the action of challenging the legality of the County's Solid Waste Plan was not and is not indicative of prejudgement of the merits of the application but a proper assertion of its obligation to protect its Home Rule authority pursuant to the Constitution of the State of Illinois.

3. Motion To Dismiss Application filed by Waste Management of Illinois, Inc. The basis of the motion was that the application was substantially the same as a previous application which had previously been approved by the City of Kankakee but which approval was reversed by the Illinois Pollution Control Board. The City Council does hereby approve the denial of the motion by the Hearing Officer..

The City Council further finds that the prior application was not in fact disapproved by the local siting authority. Further the City Council finds that the current application is substantially different than the previous application in those portions of the application which describe compliance with the criteria of The Act.

(a) Specifically, the service area described by the applicant is substantially smaller in the current application than the prior application.

(b) The current application contains substantial additional hydro-geological information, including three additional volumes not previously included in the prior application. (c) The current application further proposes alternate designs not included in the prior application including a geo-composite liner, a double 60 mil. liner of the sumps and the v-notches, the incorporation of the updated flood plain map, new studies regarding endangered species, biology, fish and mussels and mammalogy, an archaeological investigation, substantial amounts of groundwater impact modeling using a two dimensional model and substantial additional ground water monitoring data.

T. A motion was filed by the applicant during the course of the hearing requesting the Hearing Officer to declare the Solid Waste Management Plan of Kankakee County to be unconstitutional. The Hearing Officer denied said motion upon the basis that he did not have the authority to rule upon said motion. The City Council, while supportive of the motion, hereby affirms the decision of the Hearing Officer. However, the City Council finds affirmatively that it does agree that the attempt of Kankakee County to deny the City of Kankakee the ability to site a solid waste facility in the City of Kankakee is an improper infringement of its Home Rule authority and inconsistent with intent and purpose of The Act.

II. FINDINGS REGARDING CRITERIA.

Now be it further resolved by the City Council of the City of Kankakee that the following expressed findings regarding said application are hereby made.

The City Council is required to make findings regarding each of the specific criteria provided in Section 39.2 of the Act. It is based upon these criteria that the following findings of fact are found to have been offered into evidence.

Criteria 1. The applicant has established that the facility is necessary to accommodate the waste needs of the area it is intended to serve.

FINDINGS OF FACT

Evidence in support of this finding:

A. The applicant has identified a service area consisting of the City of Kankakee, Kankakee County and seven other counties located in Northeastern Illinois and Northwestern Indiana.

B. The designation of the service area was supported by the testimony of Phillip Kowalski, a senior planner with Envirogen, Inc., which testimony is described in the following findings.

C. Based upon the needs of the service area, the facility is smaller in disposal capacity than is necessary for the area as described.

D. The only currently operating landfill in Kankakee County will have reached its capacity by 2005. All other operating landfills in the service area are projected to reach capacity by mid 2009. Based upon said projections the City of Kankakee will have few options available for the disposal of its waste in the near future.

E. The waste likely to be generated in the service area will increase over the next 30 years due to the projected increases in population.

F. Even considering the existing and anticipated levels of recycling, the proposed facility is necessary to accommodate the waste needs of the area that it is intended to serve.

G. Kankakee County argues Kowalski failed to consider the siting of the proposed addition to the operating Waste Management facility. The City Council takes notice of the fact that the siting approval of the Waste Management facility was expressly reversed by the Illinois Pollution Control Board on August 7, 2003 and that at the time of this decision there is no application pending for siting of said approval.

H. No testimony was offered to contradict the testimony of Kowalski.

CONCLUSION OF LAW

Based upon the testimony, the exhibits admitted and the applicable legal arguments and the absence of competent testimony to the contrary, the City Council determines that the applicant has satisfied Criteria Number One and this facility is necessary to accommodate the waste needs of the area it is intended to serve.

Criteria 2. The applicant has established that the facility is designed and located and proposed to be operated so that the public health, safety and welfare will be protected.

FINDINGS OF FACT

Evidence is support of this finding:

A. Daniel J. Drommerhausen, a senior hydrogeologist employed by Envirogen Inc. testified on behalf of the applicant. He testified that he is a licensed professional geologist of the State of Illinois. Drommerhausen testified that he had conducted hydro geologic investigations of the site in question. He also reviewed regional hydro geologic investigations of the Illinois State Geologic Survey, Illinois State Water Survey and the U.S. Geologic Survey.

It was his opinion that the site is located atop Silurian Dolomite bedrock. He characterized the Dolomite as a major variable aquifer whose productivity is affected by glacial till and Pennsylvanian deposits overlying the bedrock. He reviewed 174 private well logs within a two mile area of the site. He testified that the logs did not contain useful hydro geologic information because of the absence of information regarding casing and sealing and the lack of appropriate information regarding well yield.

He did testify that the original application was based upon 19 borings including one which penetrated 59 feet into bedrock. As a portion of the current application additional borings have been completed which include an additional 24 borings two of which were angle borings. The current application includes water level data from 36 additional monitoring wells, 81 additional permeability tests. 37 packer tests were performed including tests in the competent bedrock. 59 slug tests were performed including 50 in the bedrock system and 10 in the competent bedrock.

According to all of the tests which were performed, Drommerhausen found that the upper bedrock had an average hydraulic conductivity of 5.3×10^{-4} centimeters per second. He found that the competent bedrock had an average hydraulic conductivity of 1.1×10^{-5} centimeters per second. Drommerhausen further opined that the potentiometric surface of the water in the bedrock was significantly higher than the base of the proposed liner throughout the site. Drommerhausen, applying "Darcy's Law" determined that the groundwater seepage velocity is 3.7 meters per year in the weathered portion of the dolomite and .13 meters per year in the competent Dolomite

He testified that the slightly downward vertical gradient in the Silurian Dolomite between the weathered and competent zones will be reversed into an upward gradient after landfill construction.

Drommerhausen stressed in his testimony that the Applicant had employed a conservative approach in modeling the hydrogeologic properties of the site, by creating a model based on Dolomite which was thinner than that found at the site. Using a model with thinner Dolomite, according to Drommerhausen, demonstrates a more conservative approach as thinness decreases the opportunity for dilution of the contaminants within the landfill, thereby tending to project higher contaminant concentrations at the point of compliance. Consequently, even if the extremes for statistical deviations were to occur, the landfill would, nevertheless, remain in compliance.

Drommerhausen further testified that the inward hydraulic gradient at the site ranges between 10 and 20 feet of positive hydraulic head difference between the potentiometric surface of the water in the dolomite and the base of the landfill liner. It is significant that neither Mr. Schuh, testifying for the County nor Mr. Cravens, testifying on behalf of Waste Management, contradicted this basic finding.

B. Devin Moose testified, as a professional engineer, on behalf of the applicant. He testified regarding the design and proposed operation of the proposed landfill. Moose's testimony is found as stated below.

Moose testified that the design is in accordance with all State and Federal requirements and meets and in some areas exceeds all applicable Federal and State standards. That compliance includes the necessary setbacks for both nearby airports. Moose further testified that there was no impact on wetlands and is not in a fault area or unstable zone, not in a seismic impact zone and does not impact any wild scenic rivers or historic and natural areas. Further the site meets all minimum setback requirements from local water supply wells, roads, highways, occupied dwellings, schools retirement homes and hospitals.

According to Moose, the design incorporates an inward hydraulic gradient where the potentiometric surface for the uppermost aquifer will be substantially higher than the maximum one foot of leachate allowed at the base of the liner.

Moose also described the composite liner system consisting of at least 3 feet of recompact clay and a 60 mil. high density polyethylene liner. Moose also described an option to include a geo-composite liner and double 60 mil. HDPE liners in sensitive locations such as the sump areas and v-notches.

The design also includes a leachate management system, a gas collection and monitoring system and a system for management of storm water. The storm water management system includes 4 wet bottom detention basins with a combined surface area of 26 acres. This will allow storm water to be discharged gradually into Minnie Creek. The system also assures that storm water and leachate will be separated to assure that no leachate will be discharged into the storm water system.

Moose also testified regarding the operational plan for the landfill including the measures to control litter, odors, mud and other similar issues. He described daily intermediate cover and the staffing and equipment requirements. He established that the fire protection plan was approved by the City of Kankakee Fire Department.

Moose's presentation included a description of certain engineering enhancements that exceeds minimum landfill requirements including a 12 foot side liner, a structural fill base on top of the physically competent bedrock and underneath the liner system.

Moose testified that the closure process will involve the placement of final cover of a vegetative layer of grasses. Post closure activities will include ground water monitoring and leachate collection for a period of 30 years or until such time as the IEPA certifies leachate management is no longer required.

C. Waste Management of Illinois, Inc. called Stuart Cravens, a geologist.

It was Cravens opinion that the entire depth of the Dolomite was an aquifer. He testified regarding the data he observed from 4 wells the penetrated the Dolomite. He characterized the area, including the landfill, as a fractured bedrock aquifer to a depth of at least 50 feet below the top of the bedrock. He was critical of the applicant's characterization of the location and the extent of the fractures in the Dolomite.

Cravens criticized the applicant's boring logs as containing inadequate information. He did acknowledge that the boring logs relied upon by him did not contain geologic classifications and that his logs were rounded to the nearest foot while those of the applicant were stated to .1 feet. Cravens testified regarding the fact that he had conducted calculations based upon his borings but was lacking missing data at the interface between the weathered bedrock and competent bedrock.

Cravens also testified that over 300 wells exist within 2 miles of the site. He concluded that more than half of the wells were drawing water from the lower zone of the Silurian Dolomite.

D. Kankakee County called Jeffery Schuh, an officer of Patrick Engineering and a licensed professional engineer. Schuh, testified that there was insufficient analysis to conclude that the design of the landfill was safe. He claimed that the calculations conducted by the applicant failed to properly estimate the hydraulic conductivity of the bedrock.

Schuh testified that while he supervised both Chris Burger who reviewed an application by co-objector Waste Management for siting of a landfill and Steve Van Hook who had reviewed the prior application presented to the City, he had no knowledge of the findings of either of those employees under his supervision. Thus, he was unable to explain the findings of approval by his employee of the Waste Management siting application with similar hydro geologic conditions as the instant site nor could he respond to questions regarding the previous testimony of Mr. Van Hook that the previous design was compliant with this criteria if the landfill was constructed as designed.

Mr. Schuh did not testify that the facility was not protective of the public health safety and welfare, but only that he felt there was insufficient information to conclude that the issue of public safety was proven.

E. Dr. David Daniel was called for his opinions by the applicant. Dr. Daniel is the Dean of the College of Engineering of the University of Illinois. He has extensive experience in research and consulting regarding pollution control facility sites including nuclear waste sites and several federal "super fund" sites.

Dr. Daniel testified that he had conducted a peer review of the hydro geologic investigation, the site's proposed design and the groundwater impact evaluation. He opined that the inward gradient design was "state of the art" and would assure the protection of the public safety, health and welfare and environment. He testified that the construction of the facility, as designed, would be consistent with the protection of the public health safety and welfare.

He found that the groundwater impact study was extremely conservative and further underscored the protection which the design of the landfill would provide. He further testified that the characterization of the bedrock as an aquifer or an aquitard was not essential to determine the safety of the landfill. Rather the design included the use of the inward gradient assuming and incorporating the assumption that the bedrock was an aquifer.

Dr. Daniel further testified regarding the use of "double liners". He testified that the use of double liners can be counter-productive due to the possibility of damage to the liner during the installation of the secondary liner and further the lack of proof of any benefit to be derived from a double liner. He testified that the use of a double liner was of no benefit in the design of the facility.

Addressing the concerns of the Pollution Control Board, in its decision regarding the previous siting application, that the effectiveness of the inward gradient "is compromised when the aquifer lies below the foundation of the landfill", Dr Daniel testified that the proper analysis required that the Dolomite be considered in its entirety. Once that analysis is accomplished, he said, the data resulting from that analysis discloses that the permeabilites of the Dolomite are high enough to actually increase the upward driving force of the inward gradient. Thus, there is not issue regarding downward vertical migration and the issues raised by the Pollution Control Board are not applicable to this site with this design.

Questioned on the issue of downward flow in the Dolomite to which Mr. Schuh had alluded, Professor Daniel referred to flow calculations which he had performed for the site. Because these calculations were made to directly address the merit of the issues raised by Schuh, they incorporated those contentions. Relying on those calculations, Professor Daniels stated that the "gradient is inward even in the rock, and the flow is inward in the rock." Explaining why that result occurred, Dr. Daniel referred back to the higher permeabilites shown to be present when the dolomite was considered in its entirety, emphasizing that those higher permeabilities actually increase the upward driving force of the inward gradient.

F. The City previously retained Dr. Ralph Yarborough to review this application as an independent geologist. His conclusions are included in the record. He concluded that the proposed landfill could be constructed and the groundwater supply of the immediate area can be protected as projected by the applicant. He recommended the grouting of the open joints which are located in the exposed competent dolomite on the landfill invert.

CONCLUSION OF LAW

Based upon all of the testimony provided herein, it is clear that the proposed design and proposed operation plan satisfies Criteria Number Two and that the facility is designed, located and proposed to be operated so that the public health, safety and welfare will be protected. Said conclusion is based upon these specific findings:

1. The bedrock system is an aquifer.
2. There is sufficient evidence to establish that the applicant's characterization of the bedrock, based upon the measured characteristics as established by the numerous test borings, is consistent with all other regional data.
3. The modeling performed by the applicant is sufficient and accurate.
4. The inward gradient design is adequate to eliminate the need to model downward movement of contaminants.
5. The potentiometric surface of the bedrock is sufficiently above the base of the liner and the maximum allowable level of leachate, which creates an inward gradient which is consistent with the protection of the environment
6. The ground water impact evaluations are sufficiently accomplished and are supportive of the applicant's witness' opinions that the design is consistent with the protection of the public health and environment.
7. The applicant and the testimony of Stuart Cravens are consistent in the characterization of the bedrock system.
8. The criticism of Stuart Cravens regarding the data of the applicant's boring data is not persuasive due to the lack of significant information in the data upon which he relied.
9. The testimony of Jeffery Schuh failed to consider the testing performed by the applicant. Further his testimony regarding his lack of knowledge of the conclusions of employees under his direct supervision on similar issues undermined his credibility.

10. The testimony of Dr. David Daniel is persuasive. His credentials and qualifications indicate substantial knowledge and involvement both in the design and remediation of solid waste disposal sites. His clear opinions were highly supportive of the applicant's satisfaction of this criteria. Dr. Daniel's testimony is found to be of substantial importance due to its clarity and his extensive background and thorough knowledge.

11. The opinion of Dr. Ralph Yarborough is also found to be supportive of the applicant's position. Dr. Yarborough, while not a formal witness, was hired to review the data of the application and the testimony of the hearing. The City Council relies upon his opinion for the benefit of corroboration and input regarding specific conditions to be attached to the granting or denial of the siting application.

The City specifically requests the additional conditions described below be imposed in order to provide additional assurance above and beyond that required by the Environmental Protection Act in order to provide additional assurance of compliance with this criteria. However, even without these conditions, the City Council finds that the criteria have been satisfied by the evidence. In the event that additional borings determine that additional protection of any aquifer that may exist, it is the understanding and expectation of the City that the technical expertise of the Illinois Environmental Protection Agency make such additional requirements of the applicant, as said technical expertise shall determine is necessary.

ADDITIONAL CONDITIONS

A. The City Council does desire to attach certain conditions in order to reassure the residents of the general area of the viability of the design. Specifically, City Council requests the following conditions.

1. The City shall provide a duplicate construction quality assurance program which will monitor the construction of the landfill to assure that the construction is consistent with the final design as permitted by the IEPA. The City program will provide inspections, monitoring, observation and documentation of the following construction stages:

- a. Excavation, grading and preparation of the subgrade and foundation to design parameters.
- b. Placement of the compacted low permeability soil liner.
- c. Placement of geomembrane and geosynthetic components.
- d. Installation of the leachate management systems.
- e. Placement of final cover.

- f. Installation of the gas management system.
- g. Construction of surface water ditches, channels, berms, basins and drainage structures.
- h. Placement of concrete structures.

The costs of this CQA shall be reimbursed by the applicant to the City.

2. That a minimum one hundred foot set back shall be maintained from Minnie Creek to the solid waste unit boundary. This set back may include any easement or right-of-way granted to the Minnie Creek Drainage District for access for cleaning of the creek and maintenance of any spoils derived from that portion of the cleaning which takes place abutting the facility.

3. Leachate storage shall not be permitted in surface ponds or lagoons in any point in the development or operation of the landfill.

4. Any leachate storage which would occur outside the waste receiving boundaries, shall occur in a location within the boundaries of the facility boundary and shall be a minimum of 5 feet above existing grade in an area protected by other berms of a design and specification approved by the City of Kankakee and the Illinois Environmental Protection Agency.

5. The quality and composition of leachate shall be monitored to assure the ability of the Kankakee River Metropolitan Agency Regional Waste Water Treatment Plant to treat said leachate on a more frequent basis than proposed by the applicant.

6. The 12 foot side liner shall be constructed between the landfill side walls and Minnie Creek and side walls shall be subject to the quality assurance program described above.

7. All storm water shall be routed to the sedimentation basins during the construction period and retained in the basins prior to discharge. Monitoring of said discharge will be reviewed by the City to assure sedimentation control during the construction, operation and closure and any post closure period.

8. The sedimentation basins closest to the initial cell construction shall be constructed so as to assure that any dewatering of the weather bedrock stratum takes place into the sedimentation basins.

9. Adequate measures shall be taken to assure the protection of any and all aquifers from any contamination as required by the IEPA through its permitting process. Upon the determination of the necessary measures of protection, said measures shall be also approved by the City of Kankakee.
10. The applicant shall investigate and use phyto-mitigation through the selection of appropriate plants, to reduce contamination. That, if necessary, the City shall, at all applicants expense, retain a botanist/biologist for the purposes of providing consultation to assure appropriate application of this condition. Costs of said consultant shall be reimbursed to the City by the applicant.
11. Provide sampling of the storm water quality in the sediment ponds and Minnie Creek on at least a quarterly basis and during any extreme events such as high or low flow events.
12. Provide a specific description of the manner in which the contaminated water will be collected or stored and develop a plan to assure that the contaminated water does not leave the site.
13. Facility inspections and plan updates shall be performed at least quarterly to detect any potential problems in the Storm Water Pollution Prevention Plan.
14. In the event that any dewatering occurs, effects on Minnie Creek and its surrounding environment shall be identified as a result of the said dewatering and associated plan and shall be submitted to the City for review and approval.
15. Any washing of wheels of the trucks should be routed through an oil-water separator and assure that the runoff from any wheel washing will not impact the quality of water in Minnie Creek.
16. The Spill Prevention and Control Plan should identify the type of equipment that will operate and be stored on site, the location of the equipment, the potential source and type of release, the amount of fuel or oil that will be kept on site and how oil or fuel products will be contained or captured if a release occurs. In addition, the plan should describe the type of spill control equipment both as to its maintenance and its location. The applicant shall also create a spill pollution control and counter-measures plan for the site.

17. All storm water contacting the vehicle fuel and maintenance area shall be diverted through an oil water separator prior to discharging to the site drainage ditch or sediment ponds and shall be monitored for water quality.

18. The landfill shall be required to meet Phase 2 MS4 requirements in conformity with the City of Kankakee Separate Storm Sewer Program.

19. Because of Consumers Illinois Water Company's (hereinafter "CIWC") expressed interest in assisting the monitoring of the facility and cooperating with the applicant, the following additional conditions are imposed:

- a. The applicant shall allow CIWC to review and advise regarding the proposed monitoring of the upper aquifer.
- b. Allow CIWC to review and advise regarding all sampling programs for storm water management systems.
- c. Allow CIWC to review the sampling frequency and the constituents to be tested as a result of any dewatering which occur after waste placement.
- d. Allow CIWC to review the sampling frequency and the constituents for which testing will occur regarding the vehicle fueling and maintenance area.
- e. Allow CIWC to participate in construction quality insurance meetings.

20. The applicant shall cause the pressure grouting of all open joints found in the exposed competent Dolomite on the landfill invert as those open joints are discovered upon removal of the weathered rock and prior to the installation of any liner consistent with the application previously filed..

21. The City Council specifically finds that there is substantial political interest in the requirements of a "double liner". The evidence in this hearing has established, without contradiction, that a double liner does not offer any substantial additional protection and its installation may be harmful to the underlying liner system. However, as an additional condition, should it be determined either by statute or regulation that a "double liner" system provides any substantial measure of additional protection, the City Council hereby will require the applicant to install such a double liner in accordance with said statutes or regulations.

Criteria 3: The facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect and value of the surrounding property.

FINDING OF FACT

Evidence in support of finding:

1. Michael Donahue testified as an urban planner regarding the impacts of the proposed facility on the area in which it is proposed to be located.
2. He described the existing area mainly as agricultural with growing commercial and industrial development.
3. The Kankakee County Zoning Ordinance, previously zoned this property as industrial.
4. The City of Kankakee, upon annexation zoned the property as industrial. Donahue testified that this facility would be compatible with such uses.
5. Dr. Peter Poletti testified that the proposed facility would have no negative impact on the surrounding real property values.
6. He testified regarding his studies of impact on real estate values at a number of proposed sanitary landfill sites. He testified that his studies, as well as industrial literature, indicated that landfills do not negatively impact real estate values.
7. At the proposed site he performed an analysis where he compared real estate values on an area surrounding the currently operating landfill with sales in the greater Kankakee area. He found there was no statistically significant difference in the price of vacant ground, improved lots and single-family homes between the operating landfill area and the control area.
8. Dr. Poletti further testified the applicant has instituted a real property protection program offering land owners in the immediate facility the ability to lock in a current value of their property. However, Poletti testified that such a plan was not necessary due to the lack of impact on values.

9. No empirical evidence or studies were offered by any other witness to show a negative impact of a solid waste landfill on surrounding real estate values.

10. Poletti testified that he had re-evaluated his analysis after the initial testimony in the prior application submitted to the City. He acknowledged that additional sales had occurred but that those sales did not in any way change his evaluation.

CONCLUSION OF LAW

Based upon the evidence offered herein it is determined that the facility is located in such a manner as to minimize incompatibility with the character of the surrounding area and will have no effect on the value of the surrounding property. Said finding is supported by the evidence described above and is generally without contradiction. Applicant has established sufficient evidence to satisfy Criteria Number Three.

Criteria 4. The applicant has established that the facility is located outside the boundary of the 100-year Flood Plain.

FINDINGS OF FACT

Evidence in support of this finding:

1. The applicant's witness Devin Moose testified as a professional engineer that based upon the most recent maps of the Federal Emergency Management Agency Maps that the entire site is outside the 100-year Flood Plain.
2. There has been no testimony to the contrary.
3. Evidence in the form of public comment was received regarding past flooding in the area surrounding the facility which occurred most severely in 1957. However, that evidence does not alter the current maps described above which consider drainage improvements made since that time.
4. The applicant has established a proposed storm water management system which will allow for a controlled release of storm water.
5. The storm water management plan will assure a more controlled effect of storm water on the surrounding properties than currently occurs.

CONCLUSION OF LAW

Based upon the evidence offered, the City of Kankakee finds the proposed facility is outside the boundaries of the 100-year Flood Plain. Criteria Number Four is satisfied.

- Criteria 5. The applicant has established that the plan of operations for this facility is designed so as to minimize the danger to the surrounding areas from fire, spills or other operational accidents.

FINDINGS OF FACT

Evidence in support of this finding:

1. Devin Moose testified that this facility with the application contains detailed emergency response for fire, spills and other operational accidents.
2. Moose also testified and offered evidence that the City of Kankakee Fire Department had reviewed the Fire Protection Plan and had issued its approval of the plan.
3. No evidence was introduced indicating that any responding agency was incapable with any such accident which may occur.

CONCLUSIONS OF LAW

The applicant has established that the plan of operation for this facility is designed to minimize the danger to the surrounding areas from fires, spills, or other operational accidents. The applicant has introduced the only evidence on this issue and there is no contradictory evidence. The applicant has produced sufficient evidence to satisfy Criteria Number Five.

ADDITIONAL CONDITIONS

1. A condition of the approval of this application shall include a requirement that the applicant, prior to commencing of operations, shall work with the City of Kankakee Fire Department to assure that the operational plan is consistent with the emergency response of the City of Kankakee Fire Department and to assure that the City of Kankakee Fire Department shall be informed at all times regarding any potential hazardous conditions which may exists and which would increase the likelihood of any accidently fire, spill or other operational accident.

Criteria 6.. The applicant has established the traffic patterns to and from the facility are designed so as to minimize the impact on existing traffic flows.

FINDINGS OF FACT

Evidence offered in support of this finding:

1. The applicant called Michael Werthmann, a licensed professional engineer, who conducted a Traffic Impact Analysis. Werthmann testified regarding two proposed traffic patterns which were described as a Northern access route and a Southern access route. He testified that since preparing his initial report for the prior application that no changes had occurred which would cause him to modify his opinions.
2. A Northern access route was preferred due to the fact that it reduced the number of residences affected by the traffic.
3. Werthmann testified that all relevant intersections in the Northern access alternative were at an A or B service level. He indicated that those service levels would be unchanged by the projected traffic associated with the construction and operation of the facility.
4. In his opinion, the landfill would have no measurable impact on existing traffic patterns and that the traffic patterns were designed to minimize the impact on the existing traffic.
5. Werthmann further testified that the applicant was agreeing to a commitment to pay for all necessary upgrades to all road and intersections to accommodate an access route for trucks of 80,000 lbs. capacity. The financial costs will include the widening of the roads at certain intersections in order increase available turn radius.
6. There is no evidence indicating that the traffic pattern to and from the facility are designed other than to minimize the impact on existing traffic flows.
7. It is a finding of the City of Council of Kankakee that the Northern route is the preferred route.
8. If for any reason the Southern route is designed and permitted by the IEPA as the preferred route, the conditions as described below shall be imposed.

CONCLUSIONS OF LAW

Based upon the evidence and subject to the conditions described herein, the City of Kankakee finds that the applicant has established that the traffic patterns to and from the facility are designed so as to minimize the impact on existing traffic flows and therefore has satisfied Criteria Number Six.

ADDITIONAL CONDITIONS

1. The City Council of Kankakee requests that the following conditions to be imposed.
 - A. That the Northern route, as described in the testimony, be utilized and be the preferred route
 - B, That all trucks owned or under the control of the applicant be restricted to the designated route.
 - C. That all roadways be brought up to standards in accordance with the City of Kankakee Engineering requirements to accommodate trucks of 80,000 lbs. at the expense of the applicant.
 - D. That all transporting vehicles to the facility should be covered or enclosed as required by State law in order to reduce liter

Criteria 7. The applicant has established that the facility not be used to store, treat or dispose of hazardous waste.

FINDINGS OF FACT

Evidence in support of finding:

1. Devin Moose, witness for the applicant has testified that this proposed facility will not be permitted, nor will it be used to store, treat or dispose of hazardous waste.
2. There is no need for a finding or additional evidence on this criteria as such criteria is not applicable to this application.

CONCLUSIONS OF LAW

This facility will not be used to store, treat or dispose of hazardous waste.
Criteria Number Seven is not applicable.

Criteria 8. The applicant has established that Kankakee County has not adopted a solid waste plan which is consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act. Alternatively, if such a plan does exist, the applicant has established that the application is consistent with the plan.

FINDINGS OF FACT

Evidence in support of this finding:

1. Kankakee County has adopted a Solid Waste Management Plan, (hereinafter "the plan"). The plan was adopted on October 12, 1993.
2. Prior to the time of the adoption of the plan a solid waste advisory committee was appointed. After the committee was appointed the initial drafts of the plan were apparently developed.
3. Pursuant to the Freedom of Information Act, a request was filed by the City of Kankakee with Kankakee County for all information concerning the adoption of the plan and its amendments, including records of all notices to the municipalities regarding the plan and its adoption.
4. The response of Kankakee County is included in City of Kankakee Exhibit Number One. Kankakee County filed additional documents after the evidence had closed but during the period that the record was open for public comment. There is no evidence that the response to the City pursuant to the Freedom of Information Act request has not been supplemented.
5. The records which have been produced and filed herein provide no evidence that Kankakee County provided written notice to all municipalities when plan development began.
6. The records which have been produced and filed herein provide no evidence that Kankakee County provided any periodic written progress reports to any municipality or any other entity concerning the preparation of the plan.
7. The records which have been produced and filed herein provide no evidence that copies of the plan, as proposed, were submitted to all municipalities or to any other entity prior to its adoption, for review and comment.

8. The records which have been produced and filed herein provide no evidence of any notice to any body or entity or of any public hearings or public notice prior to the adoption of any of the amendments to the plan adopted by Kankakee County.

9. The plan was re-adopted by the Kankakee County Board on August 18, 1995 and a five year update was apparently adopted on July 31, 2000.

10. Prior to October 9, 2001, the plan prohibited any out-of-county waste.

11. The plan was amended, October 9, 2001. This amendment removed the prohibition against out-of-county waste.

12. Thereafter, the language included in the October 9, 2001 amendment provided:

“ Kankakee County has a single landfill owned and operated by Waste Management of Illinois, Inc.. This landfill has provided sufficient capacity to dispose of waste generated in Kankakee County and its owner advised the County that it plans to apply for local site approval to expand the facility to provide additional disposal capacity to the County. Operation of the landfill has been conducted pursuant to a landfill agreement signed by the County and Waste Management in 1974 and subsequently amended. In the event siting approval for an expansion is obtained, the landfill will provide a minimum of 20-years of disposal capacity through expansion of the Kankakee landfill. An expansion of the landfill, if approved, will satisfy the County's Waste Disposal needs for an additional 20 years. No new disposal facilities will be necessary or desired, in Kankakee County for purposes of implementing the plan. Kankakee County will not support and will contest the development of any other landfill in the County, unless the expansion of the existing landfill is not approved.”

13. Pursuant to the evidence offered, the amendment was not submitted to the City, nor any other municipalities or any other entity prior to, or after, its adoption. The amendment was not submitted to the State of Illinois Environmental Protection Agency until June 19, 2002, four days following the commencement of the siting hearing in the prior application proceedings before the City of Kankakee.

14. The plan was amended again on March 12, 2002, the day prior to the filing of the prior application. This amendment provided "an expansion of the existing landfill, if approved, would then satisfy the County's waste disposal needs for at least an additional 20 years. In and in accordance with the plan (as amended), as well as relevant provisions of the local Solid Waste Disposal Act and the Solid Waste Planning and Recycling Act, no new landfill facilities would be necessary.

15. In addition, the amendment provided that a "privately owned" landfill would meet the disposal needs of the County for a 20-year period. In addition, the plan required the existence of an Environmental Contingency Escrow Fund, a Domestic Well Water Protection Program and a Real Property Protection Plan.

16. The March 12, 2002 amendment was not submitted to any municipality including the City of Kankakee prior to its adoption. It also was not submitted to the State of Illinois EPA subsequent to its adoption, until June 19, 2002, four days after the commencement of the hearing for the prior application.

17. Subsequently, the Illinois Pollution Control Board found the Solid Waste Plan of Kankakee County to be ambiguous in its decision regarding the previous siting application.

18. On February 11, 2003, Kankakee County again adopted an amendment to its Solid Waste Management Plan. That amendment provided:

"It is the intent of Kankakee County that no landfills or landfill operations be sited, located, developed or operated within Kankakee County other than the existing landfill located southeast of the intersection of U.S. Route 45/52 and 6000 South Road in Otto Township, Kankakee County, Illinois. The only exception to this restriction on land filling is that an expansion of the existing landfill on the real property that is contiguous to the existing landfill would be allowed under this Plan. The expansion or development of a landfill on the real property contiguous to the existing landfill would limit the impacts of land filling activity in the County. Accordingly, the development of any other landfills in the County on land that is not contiguous to the existing landfill is inconsistent with this County's Solid Waste Management Plan. A noncontiguous landfill is inconsistent with this Plan regardless of whether it is or to be, situated

upon, unincorporated County land, incorporated municipal land, village land, township land, or any other land within the County borders that is not contiguous and adjacent to the existing landfill." (sic)

19. The City of Kankakee has adopted its own Solid Waste Plan which addresses the need for solid waste disposal for the City's residents.

20. The City of Kankakee, as previously described, has the authority for siting of a solid waste disposal facility within its own boundaries.

21. At the time of this finding, (August 18, 2003), no expansion of any current Kankakee County landfill has been approved, including any application for siting of any facility near or at the site of the currently operating Waste Management Landfill.

22. An application was filed with Kankakee County by Waste Management of Illinois, Inc., to expand its facility on March 29, 2002 which was scheduled for a public hearing on July 22, 2002. No public hearing took place due to the filing of a motion to dismiss for lack of jurisdiction for failure of proper notice. The applicant requested that the matter be continued. A second application for siting was filed by Waste Management with Kankakee County. The approval of that siting application was reversed by the Illinois Pollution Control Board on August 7, 2003 when the Board found that Kankakee County lacked jurisdiction to conduct the siting hearing which it had previously conducted.

23. The facility proposed by Town and Country Inc. will meet the needs of the disposal of the City of Kankakee's solid waste for a guaranteed thirty years.

24. The City of Kankakee has the largest demand for disposal of solid waste in Kankakee County.

25. In light of the fact that no expansion of any "existing" landfill has been approved, this application is consistent with the County's desire to have one location and one landfill.

26. No witness has testified that the application is inconsistent with the Kankakee County Solid Waste Plan.

27. The applicant has agreed to post a liability insurance policy in the face amount of \$5,000,000.00 which is in excess of the requirements of the plan.

28. The applicant has instituted a property value guarantee program and has made offers to surrounding property owners in compliance with the requirements of the plan. The applicant has also included a domestic well water protection plan which equals or exceeds the requirements of the plan.

29. The applicant has entered into a host agreement with the City of Kankakee in compliance with the plan.

30. The site proposed by this application is contiguous to an existing landfill and the Waste Management, Inc. operating landfill, in that it is in close proximity as the proposed site is within two miles of the operating and an existing landfill.

31.. The County's plan is ambiguous on its face as it is applied to these facts. in that the recitals include a stated desire to avoid a "second non-contiguous" landfill. Further the plan allows for the expansion of "the existing landfill" when in fact the undisputed evidence establishes that more than 20 landfills exist within Kankakee County.

CONCLUSIONS OF LAW

The City Council finds the following:

1. Kankakee County has not adopted a Solid Waste Management Plan which is consistent with the planning requirements of the Solid Waste Planning and Recycling Act.

2. Kankakee County failed to provide the required notices to the City of Kankakee and other municipalities prior to the adoption of the plan and further failed to notify or provide for any public hearings or other planning processes in the adoption of its subsequent amendments to the plan.

3. The application is consistent with the Kankakee County Plan as adopted due to the patent and latent ambiguity of the plan and the failure to define and describe terms of the plan including "contiguous" and "existing". Because the current site is located so as to be near, and in an area which is contiguous, the site is consistent with the plan.

4. The application is in all other ways compliant and consistent with the plan. The application is further consistent in that no other siting or expansion has currently been approved for any other site within Kankakee County.
5. The City further holds that in its opinion the plan, as repeatedly amended by Kankakee County constitutes an illegal and unconstitutional infringement upon its statutory authority to site a solid waste disposal facility and upon its constitutional authority as a Home Rule Unit of government, but concedes that the Hearing Officer and this City Council are without authority to make such a finding within the confines of this hearing.
6. The applicant has satisfied the requirements of Criteria Number Eight.

Criteria 9. The applicant has established that this facility is not located within a regulated recharge area.

FINDINGS OF FACT

Evidence in support of this finding:

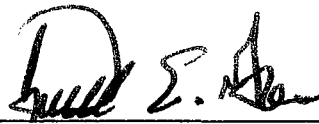
1. The applicant through Devin Moose has established that the site is not within any regulated recharge area as designated by the State of Illinois. Said finding has been verified by the IEPA.

CONCLUSIONS OF LAW

The facility site is not located within a regulated recharge area and Criteria Number Nine is not applicable..

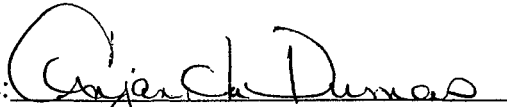
FINAL APPROVAL OF CITY OF KANKAKEE CITY COUNCIL

Based upon all of said findings and conclusions, the City Council does hereby find that the Siting Application filed herein has satisfied all criteria imposed by Statute and Ordinance and therefore approves the Siting Application subject to the conditions stated herein.



Mayor Donald E. Green

Attest:


Anjanita Dumas, City Clerk

Ayes:	<u>12</u>
Nays:	<u>1</u>
Absent:	<u>0</u>
<u>Abstentions</u>	<u>1</u>