BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CITY OF KANKAKEE, Petitioner, v. COUNTY OF KANKAKEE, COUNTY BOARD OF KANKAKEE, and WASTE MANAGEMENT OF ILLINOIS, INC., Respondents.	)	PCB 03-03-125 (Third-Party Pollution Control Facility Siting Appeal)
MERLIN KARLOCK, Petitioner, v. COUNTY OF KANKAKEE, COUNTY BOARD OF KANKAKEE, and WASTE MANAGEMENT OF ILLINOIS, INC., Respondents.	)	PCB 03-133 (Third-Party Pollution Control Facility Siting Appeal)
MICHAEL WATSON, Petitioner, v. COUNTY OF KANKAKEE, COUNTY BOARD OF KANKAKEE, and WASTE MANAGEMENT OF ILLINOIS, INC., Respondents.	)	PCB 03-134 (Third-Party Pollution Control Facility Siting Appeal)
KEITH RUNYON, Petitioner, v. COUNTY OF KANKAKEE, COUNTY BOARD OF KANKAKEE, and WASTE MANAGEMENT OF ILLINOIS, INC., Respondents.	)	PCB 03-135 (Third-Party Pollution Control Facility Siting Appeal)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on September 12, 2003, we filed with the Illinois Pollution Control Board, the attached **WASTE MANAGEMENT OF ILLINOIS, INC.'S MOTION TO RECONSIDER** in the above entitled matter.

WASTE MANAGEMENT OF ILLINOIS, INC.

By _____
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PROOF OF SERVICE

Victoria L. Kennedy, a non-attorney, on oath states that she served the foregoing **WASTE MANAGEMENT OF ILLINOIS, INC.'S MOTION TO RECONSIDER** on the following parties via hand delivery on September 12, 2003:

Ms. Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
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and on the following parties via first class mail, postage prepaid in an envelope correctly addressed and placed in the mail depository at 161 North Clark Street, Chicago, Illinois on or before 5:00 p.m. on September 12, 2003

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Victoria L. Kennedy

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KEITH RUNYON,	)	
	)	
Petitioner,	)	PCB 03-135
	)	
v.	)	(Third-Party Pollution Control
	)	Facility Siting Appeal)
COUNTY OF KANKAKEE, COUNTY BOARD OF KANKAKEE, and WASTE MANAGEMENT OF ILLINOIS, INC.,	)	
	)	
Respondents.	)	

WASTE MANAGEMENT OF ILLINOIS, INC.'S
MOTION TO RECONSIDER

Respondent WASTE MANAGEMENT OF ILLINOIS, INC. ("WMII"), by its attorneys, Pedersen & Houpt and pursuant to Section 101.520 and 101.902 of the Illinois Pollution Control Board ("Board") Procedural Rules ("Rules"), moves the Board to reconsider and reverse its ruling in the Opinion and Order entered on August 7, 2003 ("Opinion") that one property owner was not properly served. In support thereof, WMII states as follows:

1. In its Opinion[1], the Board vacated the decision of the Kankakee County Board ("County Board"), which granted site location approval for the expansion of a landfill owned and operated by WMII, on the grounds that WMII failed to properly notify one out of seventy-five property owners, Brenda Keller, in accordance with Section 39.2(b) of the Illinois Environmental Protection Act ("Act"). Although the evidence in the record established that WMII made five separate attempts to serve Mrs. Keller in person, posted notice to the Kellers' residence and sent five separate notices to the Kellers via mail, the Board held that "the Act envisions two and only two types of service: personal or certified mail return receipt requested." (Slip op. at 15). Because the Board determined that Mrs. Keller did not receive notice by personal service or certified mail, the Board ruled that the County Board lacked jurisdiction to review and decide

[1] References to the Opinion will be cited as "(Slip op. at __)."

WMII's application for site location approval.

2. The Board's decision is based upon its erroneous construction of Section 39.2(b). The Board's strict interpretation of Section 39.2(b) is unsupported by both the statutory language and the adjudicatory decisions construing that language. In addition, the Board failed to recognize that the question of whether Mrs. Keller was properly served was an issue of fact, for which the manifest-weight-of-the-evidence standard is the proper standard of review. Rather than apply the manifest weight standard to its review of this factual issue, the Board incorrectly reviewed this question *de novo*.

I. THE BOARD ERRED BY STRICTLY CONSTRUING THE NOTICE REQUIREMENTS OF SECTION 39.2(b) OF THE ACT CONTRARY TO THE LEGISLATIVE INTENT

3. The Board misconstrued the plain language of Section 39.2(b) by holding that its notice requirements can only be satisfied by personal service or service via certified mail return receipt requested. The Board's overly restrictive interpretation of Section 39.2(b) runs counter to its plain language and the legislative intent that the Act be liberally construed so as to effectuate its purposes. 415 ILCS 5/2(c).

4. While the Board believed that it must strictly construe the notice requirements to be limited to personal and certified mail service, well-established rules of statutory construction require the Board to give effect to the legislature's intent. *In re Marriage of Hasabnis*, 322 Ill. App. 3d 582, 594-95, 749 N.E.2d 448, 458 (1st Dist. 2001). The best indicator of legislative intent is the plain and ordinary meaning of the statutory language, and every word or phrase should be given a reasonable meaning within the contest of the statute. *Id.* The Board may not engage in lockstep literalism where such a restrictive interpretation would lead to absurd or unjust results not reasonably presumed to have been contemplated by the legislature. *Helland v.*

Larson, 138 Ill. App. 3d 1, 5-6, 485 N.E.2d 457, 459-60 (3d Dist. 1985).

5. Neither the statutory language nor the legislative intent of Section 39.2(b) suggests, must less establishes, that notice requirements are to be strictly construed. Indeed, both the Board and Illinois courts have consistently refused to strictly construe Section 39.2(b) when doing so would countervene its true purpose. *See City of Columbia v. County of St. Clair*, PCB 85-177, 85-220, 85-223 (April 3, 1986) (refusing to construe Section 39.2(b) to require proof of actual receipt of notice); *Ash v. Iroquois County Board*, PCB 87-29 (July 16, 1987) (Section 39.2(b) permits notice by certified mail, even though certified mail not authorized in statute); *Daubs Landfill, Inc. v. Pollution Control Board*, 166 Ill.App.3d 778, 520 N.E.2d 977 (5th Dist. 1988) (notice sufficient despite defect in legal description); *Waste Management of Illinois, Inc. v. Village of Bensenville*, PCB 89-28 (August 10, 1989) (sufficiency of the notice determined by the timeliness of the mailing, not the date on which the property owner signed the mail receipt); *DiMaggio v. Solid Waste Agency of Northern Cook County*, PCB 89-138 (January 11, 1990) (timely and diligent attempts to obtain service of notice, as opposed to proof of actual notice, is sufficient to comply with Section 39.2(b)); *Ogle County Board v. Pollution Control* Board, 272 Ill. App.3d 184, 649 N.E.2d 545, 554 (2d Dist. 1995) (purpose of statute may permit constructive notice); *ESG Watts, Inc. v. Sangamon County Board*, PCB 98-2 (June 17, 1999) (Section 39.2(b) can be met through constructive notice).

6. Moreover, the plain language of the Act does not, contrary to the Board's ruling, mandate that "service on [] property owners must be effectuated using certified mail return receipt requested or personal service." (Slip op. at 15). Section 39.2(b) provides that "the applicant shall cause written notice of such request to be served either in person or by registered mail, return receipt requested...." 415 ILCS 5/39.2(b). Thus, the statutory language simply

requires applicants to cause notice to be served by one or two methods: in person or by registered mail.

7. The legislature did not intend that personal service and registered mail would be the only means by which notice may be caused to be served. The purpose of the notice requirement is to place potentially interested persons on inquiry of the siting request and the public hearing, which is the only opportunity for public comment. *See Wabash & Lawrence Co. Taxpayers v. Pollution Control Board*, 198 Ill. App. 3d 388, 555 N.E.2d 1081, 1084 (5th Dist. 1990) (notice in compliance with Act that puts interested persons on inquiry is sufficient to confer jurisdiction); *Kane County Defender v. Pollution Control Board*, 139 Ill. App. 3d 588, 487 N.E.2d 743, 746 (2d Dist. 1985) (notice requirements of Section 39.2(b) are jurisdictional because public hearing is most critical stage of siting process and present only opportunity for public comment). Notice that places potentially interested persons on inquiry satisfies Section 39.2(b), irrespective of the specific method of service. If an applicant is able to show actual service of notice through any means, the legislative purpose of Section 39.2(b) has been satisfied. As such, evidence of actual notice by posting, certified mailing or regular mailing satisfies Section 39.2(b). Therefore, Section 39.2(b) cannot be interpreted to prohibit methods of service other than personal or registered mail, because to do so would create an absurdity. A potentially interested person who received timely notice by certified mail, regular mail or personal delivery (posting) would be deemed not to have been properly notified of the application. Such a result contravenes both the intent of Section 39.2(b) and common sense.

8. Furthermore, in view of the ease with which opponents could defeat a local government's jurisdiction to consider an application by evading service or simply by making herself unavailable, the purpose of Section 39.2(b) is best accomplished by requiring applicants

seeking to site a pollution control facility to undertake appropriately reliable and diligent efforts to cause notice of the request to be served on surrounding property owners. *City of Columbia*, slip op. at 13; *Village of Bensenville*, slip op. at 6; *DiMaggio*, slip op. at 10; *ESG Watts, Inc.*, slip op. at 9. Therefore, under the proper construction, providing notice through posting notice and regular mail complies with Section 39.2(b).

9. Indeed, the plain language of Section 39.2(b) establishes that posting is an acceptable method of service. Section 39.2(b) provides that "applicants shall cause written notice to be serve in person." This is not synonymous with the term "personal service." The term "personal service" refers to the person being served, whereas the phrase "cause written notice to be served in person" refers to the person doing the serving. *See Reynolds v. City of Tuscola*, 48 Ill. 2d 339, 270 N.E.2d 415 (1971) ("personally serve" refers to the person doing the serving, and "personal service" refers to the person being served). Causing notice to be served "in person" is not limited to attempts at personal service. It includes any other reliable method of delivering the notice in person, including sending a process server to post notice to a property owner's residence "in person." *Greene v. Lindsey*, 456 U.S. 444 (1982) (posted notice is reliable means of providing notice).

10. Moreover, Section 39.2(b) permits service by regular mail, in addition to registered mail and certified mail. The Board has already expanded the type of mailed service permitted to include service of notice via certified mail return receipt requested. *Ash*, slip op. at 7. Given that regular mail is a reliable method of providing notice, *Montalbano Builders, Inc. v. Rauschenberger*, 2003 Ill App. LEXIS 949 at *3 (3d Dist. July 23, 2003), evidence of actual service via regular mail should be held to satisfy Section 39.2(b).

11. The Board's overly restrictive interpretation would enable objectors to use Section

39.2(b) as a mechanism to upset the local siting process by engaging in tactics to frustrate attempts at those two types of service. Such a result would be manifestly unjust to applicants and is not consistent with Section 39.2(b). *ESG Watts, Inc.*, slip op. at 9. Nor could the legislature have intended that a property owner with actual notice but not through personal or certified mail service would be able to defeat jurisdiction, whereas an applicant who merely presented returned certified mailing receipts that were stamped "unclaimed" would obtain jurisdiction. Clearly, Section 39.2(b) should not be construed to bring about such an absurd result.

12. In this case, WMII actually served notice on Mrs. Keller in accordance with Section 39.2(b) through posted service and mailed service. The notices that WMII sent to Mrs. Keller via mail were never returned. While Mrs. Keller contended that she never actually saw the posted notice, such flat denials are insufficient. *See Montalbano Builders, Inc.*, 2003 Ill App. LEXIS 949 at *3. The fact that WMII actually caused notice to be served on Mrs. Keller by mail and by "in person" posting to her residence, WMII satisfied the notice requirements of Section 39.2(b), and the Board's ruling to the contrary was erroneous and should be reversed.

II. THE BOARD ERRED IN ITS APPLICATION OF THE DOCTRINE OF CONSTRUCTIVE NOTICE

13. In addition to actual service, Mrs. Keller was also constructively served. However, the Board misapplied the doctrine of constructive notice. First, the Board incorrectly stated that the concept of constructive notice was enunciated in *ESG Watts, Inc.*, and was nothing more than dicta. (Slip op. at 16). In fact, the doctrine of constructive notice was announced in *City of Columbia* and has been recognized as binding precedent in subsequent Board and Illinois court decisions. *See eg.,Ogle County*, 272 Ill. App. 3d at 195, 649 N.E.2d at 553; *DiMaggio*, slip op. at 9-10.

14. Second, in determining whether Section 39.2(b) has been satisfied through

constructive notice, the Board neglected to look to whether the applicant's efforts to serve notice were sufficiently timely and diligent to reasonably expect receipt of notice prior to the 14-day deadline. *City of Columbia*, slip op. at 13; *see also Village of Bensenville*, slip op. at 6; *DiMaggio*, slip op. at 9-10. The Board focused its analysis on whether WMII mailed Mrs. Keller notice via certified mail, rather than whether WMII's attempts to cause notice to be served on Mrs. Keller were sufficiently timely and diligent. (Slip op. at 16). Because the record did not show that Mrs. Keller was sent notice via certified mail, the Board ruled that it could not find that she had constructive notice. (Slip op. at 17).

15. To support its ruling, the Board reasoned that all of the cases it reviewed on the concept of constructive notice involved property owners who were at least sent notice via certified mail, even though they did not timely receive the mailed notice. (Slip op. at 16-17). However, the cases to which the Board referred in no way limited the doctrine of constructive notice to apply only in cases where the applicant attempted notice via mailing. In *ESG Watts, Inc.*, the Board reviewed the issue of whether an applicant's unsuccessful attempts to serve notice on certain property owners in person were nonetheless sufficient to constitute constructive notice. Although the Board ultimately held that the doctrine of constructive notice was not applicable in that case because the attempts at in person service took place after the deadline, the Board reached its conclusion after properly analyzing the timeliness of the applicant's efforts to serve in person notice. *ESG Watts, Inc.*, slip. op at 10.

16. As such, the Board should have analyzed the issue of whether Mrs. Keller received constructive notice of WMII's application by looking at whether WMII's attempts to cause service of notice were sufficiently timely and diligent. By failing to do so, the Board's ruling that WMII did not satisfy Section 39.2(b) through constructive notice was erroneous.

III. THE BOARD APPLIED THE WRONG LEGAL STANDARDS IN REVIEWING WHETHER WMII COMPLIED WITH SECTION 39.2(b) OF THE ACT

17. The Board applied the incorrect *de novo* standard of review to the County Board's factual determination that Mrs. Keller was served notice as required by Section 39.2(b). The Board stated that the issue of "whether or not the County Board had jurisdiction is a question of law and therefore the Board will use the *de novo* standard of review." (Slip op. at 15). However, in ruling that the *de novo* standard of review applied, the Board failed to recognize that (i) the issue of whether Mrs. Keller received notice involved an issue of fact that must be reviewed under the manifest weight of the evidence standard; and (ii) the issue of whether WMII's attempts to serve notice on Mrs. Keller were sufficiently timely and diligent to constitute constructive notice presented a mixed question of law and fact that must be reviewed under the clearly erroneous standard.

A. The Issue Of Whether Brenda Keller Received Notice Presented A Fact Question And, Therefore, Should Have Been Reviewed By The Board Under The Manifest Weight of Evidence Standard

18. In this case, the jurisdictional issue of whether Mrs. Keller received actual notice involved a question of fact which was ultimately resolved by the County Board after hearing testimony from three witnesses.

19. It is well-settled under Illinois law that factual determinations made by an adjudicatory body are to be reviewed under the manifest weight of the evidence standard, not the *de novo* standard. *Bazydlo v. Volant*, 164 Ill. 2d 207, 647 N.E.2d 273 (1995). The Illinois Supreme Court in *Bazydlo* explained:

> A reviewing court should not overturn a trial court's findings merely because it does not agree with the lower court or because it might have reached a different conclusion had it been the fact finder. The trial judge, as the trier of fact, is in a position superior to a reviewing court to observe witnesses while testifying, to judge

> their credibility, and to determine the weight their testimony should receive. Consequently, where the testimony is conflicting in a bench trial, the trial court's findings will not be disturbed unless they are against the manifest weight of the evidence. [Citations omitted]. A judgment is against the manifest weight of the evidence only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence.

Id., at 214-15, 647 N.E.2d at 276-77. The principle articulated in *Bazydlo* is not limited to an appellate court's review of a trial court's factual findings, but applies equally to findings made by administrative agencies acting in an adjudicatory capacity, including findings made by local siting authorities in conjunction with the local siting process. *Laidlaw Waste Systems, Inc. v. Pollution Control Board*, 230 Ill. App. 3d 132, 137, 595 N.E.2d 600, 603-04 (6th Dist. 1992).

20. In *Laidlaw*, the issue on appeal was whether the Board committed reversible error by deciding the factual question of whether the plaintiff's application for local siting approval was substantially the same as the previous application *de novo*, rather than under a manifest-weight-of-the-evidence standard of review. *Id.*, at 133-35, 595 N.E.2d at 601-02. Because the circumstances in *Laidlaw* are particularly analogous to the instant case, they are detailed herein.

21. At the local public hearing in *Laidlaw*, certain objectors filed a motion to dismiss the application on the grounds that it was substantially the same as a previously filed application. *Id.* The hearing officer denied the motion to dismiss stating that the second application was not substantially the same because it involved a different facility. *Id.* In its findings of fact and recommendations, the local siting authority did not make express findings with respect to the motion to dismiss, but nevertheless found that the application conformed to the requirements of Section 39.2 of the Act and granted site location approval. *Id.* The objectors then filed a petition for review, and the Board reversed the decision of the local siting authority finding that the second application was substantially the same as the prior one and, as such, the local siting

authority lacked jurisdiction. *Id.* On appeal to the Fifth District appellate court, the applicant argued that factual determinations, such as whether the two applications were substantially the same, are to be made by the local siting authority and, consequently, the role of the Board is limited to determining whether the decision of the local siting authority is against the manifest weight of the evidence. *Id.*

22. The Fifth District agreed with the applicant and reversed holding that the Board may not decide factual issues *de novo*. *Id.*, at 137, 595 N.E.2d at 604. The *Laidlaw* court stated:

> In administrative law, the determinations and conclusions of the fact-finder, in this case the [local governing body], are generally deemed conclusive. The reviewing tribunal is not allowed to determine issues independently, to substitute its own judgment, or to re-weigh the evidence. In other words, the reviewing tribunal should not reverse the findings and conclusions initially reached simply because it would have weighed the evidence in a different manner. [Citations omitted.]
>
> Thus, the Pollution Control Board may not make its own findings of fact; it may only review the factual determinations of the local governing body and consider whether those findings are against the manifest weight of the evidence. [Citations omitted.]

Id.

23. The reason factual findings of local siting authorities must be accorded the respect of the manifest-weight-of-the-evidence standard of review is because the local siting process is adjudicatory in nature. *McLean County Disposal, Inc. v. County of McLean*, 207 Ill. App. 3d 477, 481-82, 566 N.E.2d 26, 29 (4th Dist. 1991). As part of the adjudicatory process, the local siting authority must hold a public hearing, which has certain due process safeguards, including the opportunity to be heard, present witnesses and to test the validity of witnesses through cross-examination. *Daly v. Pollution Control Board*, 264 Ill. App. 3d 968, 970-71, 637 N.E.2d 1153, 1155 (1st Dist. 1994). Thus, it is within the sole province of the local siting authority to

determine the credibility of witnesses, resolve conflicts in the evidence and weigh the evidence presented at the public hearing. *Land and Lakes Co. v. Illinois Pollution Control Board*, 319 Ill. App. 3d 41, 53, 743 N.E.2d 188, 197 (3d Dist. 2000). On review, the Board is charged with reviewing the local siting authority's factual findings only to determine whether they were against the manifest weight of the evidence, being mindful that conflicts in the evidence will not render the decision against the manifest weight of the evidence. *Bevis v. Illinois Pollution Control Board*, 289 Ill. App. 3d 432, 435, 681 N.E.2d 1096, 1098-99 (5th Dist. 1997).

24. The Board's reliance on *Panhandle Eastern Pipe Line Company v. IEPA*, 314 Ill. App. 3d 266, 734 N.E.2d 18 (4th Dist. 2000) and *Ogle County Board v. Pollution Control Board*, 272 Ill. App. 3d 184, 649 N.E.2d 545 (2d Dist. 1995) for support of its decision to apply the *de novo* standard is misplaced. (Slip op. at 15). In *Panhandle*, the issue on appeal did not involve a review of factual issues, but "the interpretation of statutes and administrative rules." *Panhandle*, 314 Ill. App. 3d at 300, 734 Ill. App. 3d at 21. Similarly, in *Ogle County*, it was undisputed that two notices were not timely delivered and the issue on appeal was limited to whether the Board's interpretation of the notice provisions of Section 39.2(b) was proper. *Ogle County*, 272 Ill. App. 3d at 187, 195, 649 N.E.2d at 548, 553.

25. In this case, it is undisputable that the determination of the Kellers received notice of WMII's application was a question of fact. Petitioner Watson presented Mrs. Keller and her husband, Robert Keller, to testify on this issue, and WMII presented the process server, Ryan Jones. All three witnesses were subjected to cross-examination. Their testimony and credibility were assessed by the County Board, and its finding on this issue should be accorded deference. If the Board were permitted to apply the *de novo* standard, the County Board's fact finding authority would be vitiated.

26. Under the proper manifest weight of the evidence standard of review, a finding of fact is against the manifest weight of the evidence only if the opposite conclusion is plainly evident and, therefore, the determination of an administrative agency must be sustained if any evidence fairly supports it. *Bevis*, 289 Ill. App. 3d at 435, 681 N.E.2d at 1098-99. A review of the record clearly shows that there was enough evidence presented to the County Board to support its finding that the Kellers received notice of the application.

27. The evidence in the record establishes that WMII sent notices to Mrs. Keller's husband via certified and regular mail, and to Mrs. Keller herself via regular mail, none of which were returned undelivered or undeliverable. (WMII Pub. Hrg. Ex. 7B). In addition to sending notice via certified and regular mailings, WMII hired Mr. Jones who made five separate in-person attempts to serve Mrs. Keller. (App. at Additional Information, Tab A; WMII Pub. Hrg. Ex. 7B; 12/5/02 Vol. 28, Tr. at 5-15, 18, 21-23, 26-27, 35, 44, 46-47, 58-59). On his fifth attempt, Mr. Jones securely and conspicuously posted a copy of the notice on the door of Mrs. Keller's residence. (12/5/02 Vol. 28, Tr. at 13-15, 73-74). Mr. Jones also mailed notices to the Kellers, none of which were returned undelivered or undeliverable. (WMII Pub. Hrg. Ex. 7B).

28. The foregoing evidence in the record that WMII caused written notice to be served on the Kellers by certified mail, regular mail and posted service provided ample basis to support the County Board's conclusion that the Kellers received notice of WMII's application. Even though Mrs. Keller testified at the hearing that she did not receive notice by any manner of service, such mere denials when weighed against conflicting evidence indicating receipt of notice are insufficient to support a finding that Mrs. Keller did not receive notice. *See Dean Management, Inc. v. TBS Construction, Inc.*, 339 Ill. App. 3d 263, 790 N.E.2d 934, 943 (2d Dist. 2003) (trial court's finding, based on defendant's mere denial, that defendant did not receive

notice of constructive termination, despite evidence that the notice was faxed, was against the manifest weight of the evidence); (defendant's self-serving denials that it received notice was rejected). In *Montalbano Builders,* despite the plaintiff's claims that he did not receive the request to admit, court presumed that, since the request was mailed, it was received four days after the date the notice of service was filed. *Montalbano Builders, Inc.*, at *3.

29. In any event, the record before the Board contained conflicting evidence that Mrs. Kellers knew that WMII was attempting to serve notice on her and conveniently made herself unavailable to be notified, in person or by mail. The hearing before the County Board provided the only opportunity to hear the conflicting testimony and to assess witness credibility. The County Board was also in the best position to analyze Mr. Keller's testimony in the context of the other evidence presented concerning the Kellers' relationship with Petitioner Watson, Petitioner Watson's influence on the Kellers to claim they did not receive notice, and the contradictions in the Kellers' own testimonies. The County Board ultimately determined that Mrs. Keller's denials were not credible and found that the notice requirements of Section 39.2(b) were satisfied. There was sufficient evidence presented before the County Board to support its finding, and conflicts in the evidence is not enough to render that finding against the manifest weight of the evidence. *McLean County Disposal, Inc.*, 207 Ill. App. 3d at 482, 566 N.E.2d at 29.

B. The Issue Of Whether WMII Accomplished Constructive Notice Presents A Mixed Question Of Law And Fact And, Therefore, Should Have Been Reviewed By The Board Under The Clearly Erroneous Standard

30. The Board also erred in failing to apply the clearly erroneous standard of review to the question of whether Mrs. Keller should be deemed to have received constructive notice. The issue of whether WMII's attempts to notify Mrs. Keller were sufficient to constitute constructive notice for purposes of satisfying the notice requirements of Section 39.2(b) presents

a mixed question of law and fact in that a factual determination must be made as to whether WMII's efforts at serving notice on Mrs. Keller were timely and diligent, and a legal determination must be made as to whether such efforts were sufficient to constitute constructive notice under the law.

31. Where an adjudicatory body's "determination presents a mixed question of law and fact, [its] decision will be set aside only if it is clearly erroneous." *Land and Lakes Co.*, 319 Ill. App. 3d at 53, 743 N.E.2d at 197. Under a clearly erroneous standard of review, reversal is appropriate only if, after review of the entire record, the reviewing court is left with the definite and firm conviction that a mistake has been committed. *Carpetland U.S.A., Inc. v. Illinois Department of Employment Security*, 201 Ill. 2d 351, 369, 776 N.E.2d 166, 177 (2002).

32. As stated above in paragraphs 14-16, the Board did not determine whether WMII's efforts at serving notice on Mrs. Keller were timely and diligent, or a legal determination as to whether such efforts were sufficient to constitute constructive notice under the law. However, the evidence in the record clearly demonstrates that WMII made sufficiently diligent and timely attempts to serve the Kellers through a variety of reliable means.

33. There was no dispute at the hearing before the County Board that WMII employed extensive efforts to notify the Kellers of its intent to file an application for site location approval. The process server made five separate attempts over four days to serve the Kellers. In addition to attempts at personal service, WMII sent notices to Mr. Keller via certified mail, and to Mr. and Mrs. Keller via regular mail. The process server also sent separate notices to Mr. and Mrs. Kellers via regular mail. Thus, five separate mailings were sent to the Kellers. Finally, WMII posted notice to the Kellers' residence. In total, 11 notices were sent or delivered to the Kellers.

34. There was also no dispute that WMII's efforts were timely. In order to be timely,

attempts to serve notice must also be initiated sufficiently in advance to reasonably expect receipt by the 14-day pre-filing deadline. *City of Columbia*, slip op. at 13. Initiating service via certified mail at least 21 days in advance of filing constitutes a timely attempt to effect notice. *Village of Bensenville*, slip op. at 6. In this case, WMII initiated service at least 22 days before filing its application.

35. Therefore, the County Board was presented with ample evidence of WMII's diligent and timely efforts to conclude that WMII's attempts to serve the Kellers were sufficient to constitute constructive notice and satisfy the notice requirements of Section 39.2(b). Thus, the County Board had jurisdiction to approve the Application.

WHEREFORE, WASTE MANAGEMENT OF ILLINOIS, INC. respectfully requests that the Board grant WMII's Motion to Reconsider and reverse its ruling that WMII did not notify Brenda Keller in compliance with Section 39.2(b) of the Act, and for such other and further relief as it deems appropriate.

Respectfully submitted,
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